IN THE UNITED STATES DI[illegible]RIC[illegible]
FOR THE WESTERN DISTR[illegible]
MONROE DIV[illegible]

PHILLIP CALLAIS, *et al.*,

Plaintiffs,

vs.

NANCY LANDRY, in her official capacity
as Louisiana [illegible]retary [illegible]

[illegible]

UN[illegible]

[illegible]

Exhibit 1

PARTIES TO THE PROCEEDING AND RELATED PROCEEDINGS

Petitioners are R. Kyle Ardoin, in his official capacity as Secretary of State for Louisiana, and the State of Louisiana, by and through Attorney General Jeff Landry.

Respondents are Press Robinson, Edgar Cage, Dorothy Nairne, Edwin Rene Soule, Alice Washington, Clee Earnest Lowe, Davante Lewis, Martha Davis, Ambrose Sims, the National Association for the Advancement of Colored People Louisiana State Conference, Power Coalition for Equity and Justice, Edward Galmon, Sr., Ciara Hart, Norris Henderson, and Tramelle Howard.

CORPORATE DISCLOSURE STATEMENT

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

/s/ *Elizabeth B. Murrill*
Elizabeth B. Murrill

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

Louisiana's congressional boundaries cannot be drawn to create two majority-minority districts without "segregat[ing] the races for purposes of voting." *Shaw v. Reno*, 509 U.S. 630, 641 (1993). Nonetheless, the district court issued a preliminary injunction ordering the Louisiana Legislature to add a second district by June 20, 2022. By fixing race as the sole "non-negotiable" district-drawing variable, *see Cooper v. Harris*, 137 S. Ct. 1455, 1470 (2017), the district court disregarded decades of this Court's precedents, which "mak[e] clear that proportionality is never dispositive." *Johnson v. De Grandy*, 512 U.S. 997, 1026 (1994) (O'Connor, J., concurring); *accord. Wis. Legis. v. Wis. Elections Comm'n*, 142 S. Ct. 1245, 1250 (2022). Despite acknowledging serious flaws in the Plaintiffs' case, the Fifth Circuit declined to issue a stay—tossing Louisiana into divisive electoral pandemonium. App. 152. The district court's ruling upends statutory deadlines with a promise of more to come, throws the election process into chaos, and creates confusion statewide, all of which undermines confidence in the integrity of upcoming congressional elections. A stay is manifestly warranted because of these harms and because this case is worthy of certiorari. An administrative stay pending further evaluation of this matter is also manifestly warranted to calm the chaos and to permit more orderly proceedings. This case presents the exact question this Court will soon resolve: Whether Louisiana's 2021 redistricting plan for its six seats in the United States House of Representatives violated section 2 of the Voting Rights Act, 52 U. S. C. §10301?

Louisiana has worked long and hard to comply with federal redistricting mandates. After receiving the 2020 Decennial Census data from the federal government far behind schedule, Louisiana began the same congressional district-drawing processes undertaken by other states throughout the Nation. It followed several guideposts. First, because the State was again allotted six congressional districts (and its demographics remained largely consistent), it maintained existing district boundaries to the extent it could, which meant retaining one majority-minority district. App. 318 n.8. Second, it took into account the fact that the United States Department of Justice had twice precleared, under Section 5 of the Voting Rights Act, congressional-district boundaries, which included only one majority-minority district. *See Hays v. Louisiana*, 862 F. Supp. 119, 124 n.4 (W.D. La. 1994). Third, it construed as a warning two federal-court cases that struck, as racial gerrymanders, Louisiana congressional maps drawn to include two majority-minority districts. *Hays v. Louisiana*, 839 F. Supp. 1188, 1191 (W.D. La. 1993) (*Hays I*); *Hays v. Louisiana*, 936 F. Supp. 360, 368 (W.D. La. 1996) (*Hays IV*). Against this legal background, the Louisiana Legislature approved new maps with two-thirds approval in both bodies.

The day the Louisiana Legislature's plan took effect, however, two groups of plaintiffs sued, insisting that, because "Louisiana has six congressional districts and a Black population of over 33%," Section 2 of the Voting Rights Act mandates proportional representation. After conducting a rushed hearing, the district court enjoined Louisiana's maps. The Fifth Circuit declined a stay despite tremendous electoral upheaval. Perhaps even more perplexingly, the Fifth Circuit failed to disturb the district court's misapplication of Supreme Court precedent that in areas where there is significant white cross-over voting, the third *Gingles* precondition *cannot* be met. Nor did the Fifth Circuit address the badly bungled analysis surrounding racially polarized voting, which it conflated with *legally significant* racially polarized voting. As this Court well knows, there is a difference.

The record accentuates the inability to draw a constitutionally-compliant plan. Out of *ten-thousand* simulated plans using neutral, non-racial criteria, *none* produced even *one* majority-minority district, let alone *two* that the district court believes the Voting Rights Act requires. App. 270-271. The inescapable conclusion: the district court has ordered a racial gerrymander that "by its very nature" is particularly "odious." *Wis. Legis.*, 142 S. Ct. at 1248 (quoting *Shaw*, 509 U. S. at 643).

Rivaling the lower courts' blunders on the Voting Rights Act question is their baseless refusal to stay this case under *Purcell v. Gonzalez*, 549 U.S. 1 (2006). Potential Louisiana congressional candidates can qualify for the ballot by nominating petition on July 8, 2022 (moved from June 20, 2022 by the District Court) and the regular qualifying period is July 20-22, 2022—but it is impossible for them to qualify with no congressional districts in place. When "[f]iling deadlines need to be met, but candidates cannot be sure what district they need to file for" or even "which district they live in," *Purcell* commands federal courts to refrain from "swoop[ing] in and re-do[ing] a State's election laws." *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring). The lower courts' refusal to heed this principle clashes with admonitions this Court has issued time and again—as recently as four months ago. *See id.*

Aggravating the erroneous refusal to apply *Purcell* is the lower courts' decisions to barrel ahead despite *Merrill*, which this Court will hear less than four months from now. Because this case presents the same question as *Merrill*, the Court should grant certiorari in advance of judgment, consolidate the cases, and issue a briefing schedule for this case under which arguments could be heard the same day as *Merrill,* or simply hold the case in abeyance pending the opinion in *Merrill*.

In *Merrill* (like here), Alabama drew districts that tracked its previous district boundaries, given the relative consistency of its demographics. In *Merrill* (like here), the plaintiffs' experts[1] prioritized race in a (failed) attempt to show that an additional majority-minority district with some semblance of compactness could conceivably be created. And in *Merrill* (like here), a federal district court essentially threw out the redistricting work of a state legislature during a time that all but guaranteed "chaos for candidates, campaign organizations, independent groups, political parties, and voters, among others." *Merrill*, 142 S. Ct. at 880 (Kavanaugh, J., concurring). Proceeding in this case while *Merrill* is pending defies all conceivable notions of judicial economy and fairness to a State that will otherwise have to (1) redraw congressional districts in compliance with the district court's order to create racial gerrymanders, (2) litigate this question before the Fifth Circuit while conducting the 2022 midterm elections under congressional districts that are most likely illegal, and

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[1] Indeed, one expert—Mr. William Cooper**Error! Bookmark not defined.**—served as a plaintiffs' expert in *both Milligan* and this case.

(3) likely have to start the redistricting process over *again* after this Court issues its opinion in *Merrill*. An administrative stay and stay pending appeal both are warranted, as is a grant of certiorari before judgment. *See, e.g.*, *Abbott v. Perez*, 138 S. Ct. 2305, 2319, 2322 (2018); *Perry v. Perez*, 565 U.S. 388, 392 (2012).

Events that transpired yesterday underscore why an administrative stay is necessary. In response to a motion to extend the limited time permitted to the Legislature to do its important work, the district court ordered the Speaker of House and the President of the Senate to appear in person for a hearing on the morning of the second legislative day (of only six days). At that hearing, the district court threatened the Speaker with contempt (for filing a bill she found displeasing), App. 455-457, and demanded the President of the Senate commit to suspend rules and move legislation faster, App. 437. She ordered all parties (two of which were not before her in the hearing) to submit briefs (by the close of business) on how she should proceed if the legislature failed to draw a second district. *See* App. 476. It appears the legislative session is merely a formality.

Without a stay, "even heroic efforts likely [will] not be enough to avoid chaos and confusion" during the rapidly approaching midterm election cycle. *Merrill*, 142 S. Ct. at 880 (Kavanaugh, J., concurring). Even if Louisiana pulls it off, with the proverbial gun to its head held by a federal court, the State will be forced to elect congressional representatives using boundaries anathema to the Fourteenth Amendment's Equal Protection Clause, unless this Court steps in now.

OPINIONS BELOW

Petitioners seek an administrative stay and a stay or injunction pending appeal of the district court's preliminary injunction, entered on June 6, 2022. The district court's opinion is reproduced at App. 1. The district court's order denying a stay pending appeal is reproduced at App. 161. The Fifth Circuit's opinion denying a stay pending appeal is reproduced at App. 167.

JURISDICTION

This Court has jurisdiction to resolve this application under 28 U.S.C. Sections 1331 and 2101(f), and the authority to grant certiorari before judgment under Section 1254(1).

STATEMENT OF THE CASE

A. 2022 redistricting efforts begin against a 30-year legal history.

Louisiana's redistricting saga began thirty-years before the State legislature received the 2020 Decennial Census data. After the 1990 redistricting cycle, the Louisiana Legislature twice attempted[2] to draw congressional maps to include two majority-minority congressional districts. Both times, the maps pinned East Baton Rouge Parish as the population anchor for the second majority-minority district, which extended north along the Mississippi River, into Louisiana's Delta Region (over 180 miles away), and then across the top of the State. App. 333-334. Courts struck both maps as racial gerrymanders that violated the Fourteenth Amendment's Equal Protection Clause. *See Hays v. Louisiana (Hays I)*, 839 F. Supp. 1188, 1195 (W.D. La.

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[2] The legislature was forced to attempt this feat because, at the time, the U.S. Attorney General's Office made it plain that "any plan that did not include at least two 'safe' black districts out of seven" would not be precleared under Section 5 of the Voting Rights Act. *Hays I*, 839 F. Supp. at 1196 n.21.

1993) (*Hays I*); *Hays v. Louisiana (Hays IV)*, 936 F. Supp. 360, 368 (W.D. La. 1996).

Because Louisiana could not draw two majority-minority districts without "segregat[ing] the races for purposes of voting," *Shaw*, 509 U.S. 630, 641 (1993), the *Hays* remedial map contained only one. The heart of this district (CD2) centered on New Orleans. East Baton Rouge, the anchor of Louisiana's ill-fated second majority-minority district, found itself in CD6. Since then, the Legislature has never enacted a redistricting plan connecting East Baton Rouge Parish to the Delta region.

In the three decades since *Hays* was litigated, some things changed. Louisiana lost a congressional seat after the 2000 Decennial Census, reducing the number of districts to six. Other things remained constant. Specifically, Louisiana's total black voting-age population (BVAP) did not meaningfully grow. As a matter of plain math, if the State could not draw two districts out of seven without unconstitutionally considering race, its likely impossible for it to draw two districts of six unless race predominates. Efforts to do so proved this assumption correct.

B. 2022: Roadshows, public input, hard work, a veto, and litigation.

Upon receiving long-delayed results of the 2020 Decennial Census, Louisiana, began its redistricting process. This work began months before the Extraordinary Session convened February 1, 2022, with statewide "road shows" to collect feedback and concluded (after a gubernatorial veto and subsequent override vote) March 31, 2022. Although the U.S. Constitution's one-person, one-vote requirement compelled the Legislature to modify several boundaries, its plan deliberately retained the "core districts as they [were] configured" after the 2010 census to ensure continuity of representation, perpetuating "the traditional boundaries as best as possible" to "keep[] the status quo." Defs. Proposed Findings of Fact, App. 226-227. As enacted, Louisiana's congressional map includes one majority-Black district, as it has since the 1990s.

The same day the Legislature's plan took effect, two groups of plaintiffs sued. *See Robinson v. Ardoin*, No. 3:22-cv-00211 (M.D. La.); *Galmon v. Ardoin*, No.: 3:22-cv-00214 (M.D. La.). In their collective view, Section 2 of the Voting Rights Act requires Louisiana to create a second majority-Black congressional district. At its core, their arguments hinge 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. *Robinson, et al. v. Ardoin, et al.,* No. 3:22-cv-211 (M.D. La.) (ECF 42-1 at 4) (hereinafter, *Robinson*). The State of Louisiana and two of the State's Legislative leaders–the Speaker of the House and the President of the Senate—quickly moved for, and were granted, intervention. *Id.* (ECF Nos. 10, 30, 64). The district court consolidated the two cases,[3] denied the State's motion to stay the case pending this Court's disposition in *Merrill v. Milligan*, No. 21-1087 (U.S.) (consolidated with *Merrill v. Caster*, No. 21-1087 (U.S.)), and conducted a truncated preliminary-injunction hearing, *e.g.*, *Robinson* (ECF Nos. 135, 63). After the parties submitted post-trial briefs and proposed findings of fact and conclusions of law, the district court granted Plaintiffs' motions for a preliminary injunction. App.

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[3] The consolidated case is *Galmon, et al. v. Ardoin, et al.*, No. 3:22-cv-214 (M.D. La.).

2.

In so doing, the district court concluded Plaintiffs were likely to satisfy the Voting Rights Act Section 2 preconditions this Court set out in *Thornburg v. Gingles*, 478 U.S. 30 (1986). It also reasoned that the Plaintiffs would suffer irreparable harm without a remedial map. App. 88–105, 141–42. For this reason, the district court further decreed that the Louisiana Legislature must enact a remedial plan with a second majority-minority district within the next fourteen days, or the court would contrive a map of its own. App. 2.

C. Election deadlines bumped; Special Session called; no relief from lower courts.

Within hours of the district court's preliminary-injunction order, each Defendant noticed appeals. App. 153, 156, 158. A joint motion filed with the district court for a stay pending appeal followed that same day. When the district court declined to stay its injunction, every Defendant group (the Secretary of State, the Attorney General, and the Speaker of the House and President of the Senate) filed emergency motions for a stay pending appeal with the Fifth Circuit. After expedited briefing and an administrative stay, the Fifth Circuit declined to pause the district court's preliminary injunction (though it concluded the Plaintiffs' "arguments and the district court's analysis are not without weakness"). App. 168. It did, however, expedite the appeal and scheduled oral argument July 8, 2022. App. 168-169.

D. Chaos ensues; Legislative process is undermined.

Compliance with the district court's deadline is impossible. For starters, the Louisiana Legislature adjourned *sine die* on the day the district court issued its injunction, June 6, 2022, as required by the State Constitution. *See* La. Const. art. II, §2(A)(3)(a). So the Governor called a special session. *See* La. Const. art. II, §2(B); https://www.gov.louisiana.gov/assets/Proclamations/2022/89JBE2022CallSpecialSession.pdf. Pursuant to the State Constitution, however, seven days' notice is required before the Legislature may convene an Extraordinary Session, *see id.,* which reduced to six the number of days the ruling actually allowed to complete the task this Court knows "is *never* easy." *Abbott v. Perez*, 138 S. Ct. at 2314 (emphasis added).

For this reason, the Legislative Leadership moved for an extension of time to enact a remedial map. They told the district court that redrawing the State's congressional maps in only six days could not be accomplished, at a minimum, without denying the public their right to notice and to participate. In response, the district court ordered the House Speaker and Senate President, to appear in person at a hearing it had set on the motion *during* the second day of the Session. This hearing occurred June 16, 2022; neither the State's Attorney General nor the Secretary of State were allowed to participate, the district court denied the requested extension from the bench:

> [O]rder[ed] the parties to file briefs by 5:00pm setting forth their proposals for the nature and timeline of the judicial redistricting process in the event that the Legislature is unable to enact a remedial map. The Court specifies that each side will be permitted to offer one proposed remedial map.

Robinson (ECF No. 196). Moreover, during the hearing, the district court threatened the Speaker with contempt for having filed a "placeholder bill" that did not contain a second majority minority district (which he explained can be amended), attempted to strong-arm the Senate President into suspending the rule to force the process to move faster, and all but declared the legislative process a mere formality. *See* App. 437-438.

REASONS FOR GRANTING THE STAY

Few cases are better candidates for a stay pending appeal and entry of a writ of certiorari before judgment. Indeed, the district court's preliminary-injunction order achieves the rare trifecta of (1) getting both the law and facts egregiously wrong; (2) ordering relief that inflicts immediate irreparable harm in the form of a State-wide Equal Protection violation, accomplishing nothing other than creating utter mayhem in a midterm year; and (3) ignoring the colossal waste of judicial resources inherent in resolving (wrongly) an issue this Court is taking up the first week of its next Term. The Fifth Circuit reinforced the need for this Court's intervention when it declined to act, waiving off *Milligan* as an "outlier" relative to the *Purcell* doctrine. Together, Louisiana's Attorney General and Secretary of State request that the Court return both sensibility and the rule of law to Louisiana's redistricting process.

I. THERE IS A REASONABLE PROBABILITY FOUR JUSTICES WILL VOTE TO GRANT CERTIORARI AND FIVE WILL VOTE TO REVERSE AND VACATE THE PRELIMINARY INJUNCTION.

This case, like *Merrill*, presents the important question whether prioritizing race under Section 2 is inconsistent with the federal Constitution. The answer matters: here, as in Alabama, it is impossible to draw a map without prioritizing race as the predominant factor in order to generate a second majority-minority district, which federal courts have cautioned Louisiana *not* to do in the past.

Section 2 vote-dilution claims are governed by *Thornburg v. Gingles*, 478 U.S.

30 (1986). The *Gingles* criteria ask whether (1) "the minority group [can] demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district;" (2) "the minority group . . . is politically cohesive;" and (3) "the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." *Id.* at 50–51. If—and only if—the Plaintiffs can satisfy all three *Gingles* preconditions, they must then show "under the totality of the circumstances," that they "do not possess the same opportunities to participate in the political process and elect representatives of their choice." *See League of United Latin Am. Citizens, Council No. 4434 v. Clements (LULAC, Council)*, 999 F.2d 831, 849 (5th Cir. 1993).

Plaintiffs failed across the board to carry their burden. That the district court concluded otherwise (and the Fifth Circuit acquiesced in this error) affirms how terrifically far the district court's legal analysis wandered. Simply put, race predominated, politics was mistaken for racially polarized voting, and (for good measure) the district court botched the showing necessary to justify imposing mandatory preliminary relief. The result is a legally deficient preliminary injunction that offends all conceivable notions of equal protection, generates chaos during critically important qualifying periods, and undermines confidence in Louisiana's election process. It must be stayed.

A. The district court mangled *Gingles*'s third precondition.

The third *Gingles* precondition requires the Plaintiffs to show that the "amount of white bloc voting . . . can generally 'minimize or cancel' black voters' ability to elect representatives of their choice." *Gingles*, 478 U.S. at 56 (citations omitted). "In areas with substantial crossover voting," *Bartlett v. Strickland*, 556 U.S. 1, 24 (2009), which arises when enough white voters support a Black-preferred candidate that the candidate can prevail "without a VRA remedy," (*i.e.,* the creation of a majority-minority district), *Covington v. North Carolina*, 316 F.R.D. 117, 168 (M.D.N.C. 2016), *aff'd*, 137 S. Ct. 2211 (2017), this third precondition remains unsatisfied. *Gingles,* 478 U.S. at 56. "[I]n the absence of significant white bloc voting it cannot be said that the ability of minority voters to elect their chosen representatives is inferior to that of white voters." *Voinovich v. Quilter*, 507 U.S. 146, 158 (1993) (quoting *Gingles*, 478 U.S. at 49 n.15).

Plaintiffs' experts each defined polarized voting as existing where "black voters and white voters voted differently." App. 328. Specifically, they testified that polarized voting occurs when "black voters and white voters would have elected different candidates if they had voted separately." *Id.* But, that is not the correct standard. This Court has made clear that the Plaintiffs must prove that *extreme* white bloc voting renders the creation of a majority-minority district the only way to ensure that a minority community has an equal opportunity to elect the candidate of that community's choice. *Gingles,* 478 U.S. at 56.[4] To adopt the broader standard converts

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[4] Specifically, this Court has held that "Racially polarized voting" exists whenever "there is a consistent relationship between [the] race of the voter and the way in which the voter votes." *Gingles*, 478 U.S. at 53 n.21. But *Gingles* requires evidence of "legally significant racially polarized voting." *Id.* at 55. This occurs only when "less than 50% of white voters cast a ballot for the black candidate." *Id.* Thus, a Section 2 plaintiff can prevail only when there is proof that the white majority usually votes as a bloc to defeat the minority's preferred candidate. *Cooper*, 137 S. Ct. at 1470; *Covington v. North Carolina*, 316 F.R.D. 117, 167 (M.D.N.C. 2016), *aff'd*, 137 S. Ct. 2211 (2017) (Mem.). None of plaintiffs' experts provided any testimony that African

the Section 2's protection into electoral guarantees through the reconfiguration of district lines any time a slim majority of white voters supports a candidate that a minority group disfavors.

The Plaintiffs have not, *and cannot*, show that such an extreme level of white bloc voting exists in Louisiana. Indeed, when pressed, one of Plaintiffs' experts conceded that meaningful white crossover voting exists in Louisiana, meaning that at least two congressional districts (CD2 and CD5) could be drawn with a BVAP below 50 percent that would still, enable the Black community in those districts to elect the candidate of their choice. App. 329. Another expert testified that a district around 40 percent BVAP could perform. *Id*. And an amicus brief submitted by LSU and Tulane University mathematics and computer-science professors analyzed nineteen elections, which demonstrated that districts of about 42 percent BVAP afford an

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Americans need a congressional district with a majority BVAP to have an equal opportunity to elect their candidate of choice. Quite to the contrary, Drs. Palmer and Lichtman conceded that because of substantial white crossover voting, African Americans in Louisiana only need a congressional district with a black VAP in the low 40% range in order to control the election result. Dr. Handley agreed that districts may be "effective" in providing black voters with an opportunity to elect their candidate of choice with a BVAP under 40% but that she did not analyze whether black voters in Louisiana would have such an opportunity in a district drawn with less than 50% BVAP. While Dr. Handley did not attempt to analyze the lowest black percent needed for black voters to control a district, she also gave no testimony whatsoever that a district in excess of 50% is required. All of Plaintiffs experts testified that Plaintiffs illustrative majority black districts would perform, in the sense that black voters would have an opportunity to elect their candidate of choice in those districts. But none of plaintiffs' experts testified that a district with a black VAP in excess of 50% is necessary in order to give black voters an opportunity to elect their candidates of choice. Thus, under the Court's precedent *Gingles*, *Bartlett v. Strickland, Cooper v. Harris, and Covington v. North Carolina*, the evidence in this case only shows the presence of statistically significant RPV and nothing more.

equal minority electoral opportunity. *Robinson* (ECF 97 at 30, 34, 41–43).

The preliminary-injunction record shows that "partisan affiliation, not race, best explains the divergent voting patterns among minority and white citizens." App. 330. This means, in turn, that there is no "legally significant" racially polarized voting sufficient to satisfy *Gingles* precondition 3. *LULAC, Council*, 999 F.2d at 850; *see also* App. 287. The motions panel wrongly adopted the test of Plaintiffs' expert Lisa Handley, that whenever the Democrat loses a district, this proves the existance of significant white bloc voting. This is in contravention of *Gingles, Covington,* and *Cooper v. Harris.*

"The Voting Rights Act," naturally, "does not guarantee that nominees of the Democratic Party will be elected, even if black voters are likely to favor that party's candidates.'" *Id.* at 854 (quoting *Baird v. Consolidated City of Indianapolis*, 976 F.2d 357, 361 (7th Cir. 1992)). Instead, Section 2 "is implicated only where Democrats lost because they are black, not where blacks lost because they are Democrats." *Id.* (quoting *Baird*, 976 F.2d at 361). This interpretation is reinforced by the text of Section 2 itself, which prohibits state laws that "result[] in a denial or abridgement of the right . . . to vote *on account of race or color*." 52 U.S.C. § 10301(a) (emphasis added). Hence, "evidence that divergent voting patterns are attributable to partisan affiliation or perceived interests rather than race [is] quite probative" to *Gingles* precondition 3. *LULAC, Council*, 999 F.2d at 858 n.26. Bloc voting that is not "on account of race or color" is by its own terms not a violation of Section 2.

Evidence of partisan-motivated racially polarized voting permeates the record.

Defendants' expert testified that, while "voting may be correlated with race[,] . . . the differential response of voters of different races to the race of the candidate is not the cause." App. 330. Instead, he found the polarization exhibited in the data resulted from Democratic party allegiance—*not race*. App. 330-331. By analyzing the last three presidential elections, Defendants' expert found the all-white 2016 Democratic ticket received greater black and less white support than either the 2012 Democratic ticket (which featured a black presidential candidate) or the 2020 Democratic ticket (which featured a black vice-presidential candidate). *Robinson* (ECF 108-4 at 5-6). By contrast, in Louisiana elections that featured *no* Democratic candidates, "pattern[s] of racial differences in voting largely disappears." *Id.* at 6-7. This is strong evidence that racial voting differences in Louisiana are driven not by the race of the candidates, but by partisan factors.

Plaintiffs failed to carry their burden of proving "legally significant" bloc voting for purposes of *Gingles* precondition 3. *See LULAC, Council*, 999 F.2d at 850. This, in turn, renders their Section 2 claim meritless—rather than "entirely clearcut" in their favor, *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring). At the very least, the evidence of racial bloc voting does not "clearly favor" Plaintiffs enough to warrant striking the State's enacted congressional map. *See Martinez v. Mathews*, 544 F.2d 1233, 1243 (5th Cir. 1976). This is no ordinary error due to the enormity of its consequences.

B. The district court improperly ordered a racial gerrymander, which was wrong and worthy of certiorari before judgment.

This Court has been clear and consistent for decades. "Classifications of citizens solely on the basis of race 'are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.'" *Shaw*, 509 U.S. at 643 (quoting *Hirabayashi v. United States*, 320 U.S. 81, 100 (1943)); *accord Wis. Legis.*, 142 S. Ct. at 1248. Creating such classifications "threaten[s] to stigmatize individuals by reason of their membership in a racial group and to incite racial hostility." *Shaw*, 509 U.S. at 643 (citing *Richmond v. J. A. Croson Co.*, 488 U.S. 469, 493 (1989) (plurality opinion).[5] For that reason, "the Fourteenth Amendment requires state legislation that expressly distinguishes among citizens because of their race to be narrowly tailored to further a compelling governmental interest." *Id.* (citing *Wygant v. Jackson Bd. of Ed.*, 476 U.S. 267, 277-78 (1986) (plurality opinion); *id.*, at 285 (O'Connor, J., concurring in part and concurring in judgment)).

This Court has assumed (but never held) that compliance with Section 2 of the Voting Rights Act constitutes a compelling governmental interest. *See Cooper v. Harris*, 137 S. Ct. 1455 (2017). It has set beyond peradventure, however, that a "sufficiently large and compact population of black residents" alone does not justify race-based redistricting. *Wis. Legis.*, 142 S. Ct. at 1249. It has never been enough to surmise that the Voting Rights Act "*may* . . . require[]" creation of additional majority minority districts; instead, there must exist "a strong basis in evidence to conclude

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[5] *See also United Jewish Organizations of Williamsburgh, Inc. v. Carey*, 430 U.S. 144 (1977) ((Brennan, J., concurring in part) ("Even in the pursuit of remedial objectives, an explicit policy of assignment by race may serve to stimulate our society's latent race consciousness, suggesting the utility and propriety of basing decisions on a factor that ideally bears no relationship to an individual's worth or needs."). Indeed, this is now happening as a direct consequence of the district court order.

that §2 *demands*" it. *Wis. Legis.*, 142 S. Ct. at 1249 (first emphasis in original). Without this exacting demonstration, Section 2 becomes a rank proxy "allow[ing] a State to adopt a racial gerrymander." *Id.* at 1250.

The facts to which the district court lent its imprimatur are indistinguishable from those in *Covington*, 316 F.R.D. at 130, a three-judge district court case this Court summarily affirmed, *North Carolina v. Covington*, 137 S. Ct. 2211 (2017). In *Covington*, the map-drawers were "instructed" (1) "to draw . . . districts with at least 50%-plus-one" black voting age population; (2) "to draw these districts first, before drawing the lines of other districts"; and (3) "to draw these districts everywhere there was a minority population large enough to do so and, if possible, in rough proportion to their population in the state." *Id.* at 130. In this case, one of Plaintiffs' map-drawers testified as follows:

> Q. During your map drawing process did you ever draw a one majority minority district?
>
> A. I did not because I was specifically asked to draw two by the plaintiffs.

App. 300-301. Additional testimony reveals that "in order to begin drawing" mapdrawers viewed the BVAP of Louisiana precincts to "get an idea where the black population is inside the state." App. 301.

The *Covington* Court criticized North Carolina map-drawers for seeking "proportionality." 316 F.R.D. at 133. In this case, Plaintiffs' pursuit of two majority-minority districts is based on the premise that Louisiana has six congressional districts and a Black voting age population of 31%. *Robinson* (ECF No. 1 at 1). And, in *Covington*, "because race-based goals were primary in the . . . redistricting process, other 'traditional race-neutral districting principles, including . . . compactness, contiguity, and respect for political subdivisions or communities defined by actual shared interests, were secondary, tertiary, or even neglected entirely." 316 F.R.D. at 137 (quoting *Miller v. Johnson*, 515 U.S. 900, 916 (1995). So too here.

Simply put, North Carolina relied on evidence indistinguishable from that offered by Plaintiffs here. When it did so, the courts struck down that state's racially gerrymandered districts, and this Court affirmed finding North Carolina violated the Equal Protection Clause when it created them. The district court's preliminary-injunction order, which *requires* Louisiana to create a second majority-minority district based on the very same evidence that led to North Carolina's constitutionally-defectivemaps, thus has no hope of surviving this Court's review. This is particularly true because of *Bartlett v. Strickland*. In *Bartlett*, this Court held that a state cannot rely upon Section 2 to justify using race to draw a crossover district. *Bartlett v. Strickland,* 556 U.S. 1, 14-18 (2009). If a state cannot use race to draw crossover districts, then surely a federal court cannot order a state to draw a crossover districts. *Id.* Again, this case does not call for ordinary error correction: the consequences of imposing constitutionally defective maps at the eleventh-hour during mid-term Congressional elections has nation-wide implications. That also renders this case worthy of a stay and certiorari.

C. The district court contorted *Gingles*'s first precondition beyond recognition.

To prevail under the first *Gingles* precondition, a plaintiff must show the allegedly injured racial group is "sufficiently large," and "geographically compact."

Gingles, 478 U.S. at 50-51; *see also Cooper*, 137 S. Ct. at 1470 (quoting *Gingles*, 478 U.S. at 50). The Plaintiffs failed to carry their burden here for two reasons. First, the illustrative plans they produced are irrefutably racially gerrymandered, so the Legislature could never, consistent with the Fourteenth Amendment, implement them. And second, the minority community they have identified is not compact, reasonably or in any other application of the concept. The district court erred by concluding otherwise.

1. *Racially gerrymandered illustrative maps cannot satisfy the first Gingles precondition.*

In no uncertain terms, this Court has "expressly rejected" "uncritical majority-minority district maximization." *Wis. Legis.*, 142 S. Ct. at 1249; *see also Johnson v. De Grandy*, 512 U.S. 997, 1017 (1994) ("Failure to maximize cannot be the measure of §2."). The reason is obvious. Maximizing majority-minority districts necessarily involves "segregat[ing] the races for the purposes of voting," which "balkanize[s] us into competing racial factions [and] threatens to carry us further from the goal of a political system in which race no longer matters—a goal that the Fourteenth and Fifteenth Amendments embody, and to which the Nation continues to aspire." *Shaw*, 509 U.S. at 642, 657. And for that reason, illustrative maps infected by racial predominance (which devolves inexorably to racial segregation) cannot satisfy *Gingles* precondition 1. Because elevating race to the pole position, above all other traditional district-drawing criteria, is always constitutionally abhorrent, race cannot be elevated in this way under the Voting Rights Act either. *See Cooper*, 137 S. Ct. at 1468-69.

This case is a good vehicle to affirm this principle. Here, Plaintiffs offered only racially gerrymandered exemplars. Both common sense and the record irrefutably show that they were fabricated to “segregate the races for purposes of voting.” *Shaw*, 509 U.S. at 642. Indeed, in their effort to produce exemplar maps featuring two majority-Black districts, the Plaintiffs warped each step in this process.

First, the Plaintiffs declined to use the U.S. Department of Justice’s definition of “Black” when calculating the BVAP. The Justice Department’s definition covers those Census respondents identifying as black alone or multiracial black and white, but “does not include Hispanic individuals that may identify as black, nor multiracial individuals identifying as a combination of races other than ‘White’ and ‘Black or African American.’” *Pope v. Cnty. of Albany*, No. 1:11-cv-0736 (LEK/CFH), 2014 U.S. Dist. LEXIS 10023, at *7–8 n.3 (N.D.N.Y. Jan. 28, 2014).

Instead, Plaintiffs chose “Any Part Black,” a broader measure that includes persons who may be 1/7th Black and also self-identify as both Black and Hispanic. They claimed this choice followed from a footnote in *Georgia v. Ashcroft*, 539 U.S. 461, (2003) but their conclusion does not follow what the Court said there. *See Robinson* (ECF Nos. 41-2 at 11; 43 at 6). When this Court decided *Ashcroft*, the Georgia Secretary of State lacked access to a racial category corresponding to “DOJ Black” that it could use for district drawing. *See Georgia*, 539 U.S. at 473 n.1. Thus, the Court permitted Georgia to use “Any Part Black,” while underscoring the novelty of this approach by explaining it in a long footnote. The Plaintiffs here are not in the same predicament. Their use of “Any Part Black” was a deliberate choice intended to load the dice in favor of triggering Section 2.

Second, Plaintiffs offered exemplar maps with districts that exceeded the 50 percent BVAP threshold by a razor-thin margins and surgical precision. The BVAP percentage for the *Robinson* Plaintiffs' majority-Black illustrative districts are 50.16 percent, 50.04 percent, 50.65 percent, 50.04 percent, 50.16 percent, and 51.63 percent. (ECF Nos. 172, at 41-42). For the *Galmon* Plaintiffs, they are 50.96 percent and 52.05 percent. In other words, after adopting the most expansive definition of "Black" they could find, they contrived districts that eked over the majority-Black threshold by a hair's breadth.

Third, Plaintiffs undeniably subordinated *all* traditional redistricting criteria while elevating race to the apex position. By "reach[ing] out to grab small and apparently isolated minority communities," *League of United Latin American Citizens v. Perry,* 548 U.S. 399, 433 (2006) (*LULAC*). Plaintiffs obliterated any argument that the minority population within their majority-Black exemplar districts is reasonably compact.[6] The illustrative maps often split cities, counties, and communities of interest while merging far flung and distinct areas with nothing in common but-for their common racial makeup. Indeed, the State's demographic expert showed many examples of how Plaintiffs' map-drawers intentionally segregated cities by race. App. 210-217.

In one illustrative plan for Baton Rouge, for instance, the line drawn through

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[6] Although the Fifth Circuit believed that Plaintiffs' compactness evidence was "unrebutted," App. 176, the record belies that notion.

the middle of the map depicts the division between Plaintiffs' proposed majority-minority District 5 in the north and Districts 2 and 6 in the south. App. 210.[7] The only conceivable reason District 5 reaches only so far into Baton Rouge is to pick up the majority BVAP Census blocks (shaded in green). The only other district in this exemplar map that contains any substantial black population is District 2, which is also a majority-minority district. To accomplish this designation, District 2 extends to the New Orleans area to fill out its BVAP. The same scenario, in which district lines are drawn precisely to segregate white voters from black voters, is repeated throughout Plaintiffs' proposed maps in communities as far flung as Baton Rouge, App. 210-213, and Lafayette, App. 214-215.

Louisiana's spatial analytics expert also offered a mileage chart that showed the distance between the center of the Black populations in communities across Louisiana. *Robinson* (ECF 169-12 at 25); App. 288 (showing the large distance between two minority population centers "as the crow flies"); *see also* App. 242 (testimony of Plaintiff witness who stated that it would take almost four-and-a-half hours to get from Baton Rouge to Lake Providence, which lies at the northern end of Plaintiffs' illustrative plans in the delta region). The Plaintiffs' illustrative maps combine Monroe's Black population with the Black population of Baton Rouge and Lafayette—even though these communities are, respectively 152 and 157 miles apart. *Robinson* (ECF 169-12 at 25); App. 288. Combining in the same district Black

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[7] Note: these maps only show the division in the city population, not the remainder of the parish.

communities from far-flung parts of Louisiana eviscerates any consideration of the different experiences and make-up of those communities. Incredibly, it improperly assumes all persons belonging to the same racial group share homogenous political interests. The Equal Protection Clause rejects this race-based assumption.

Lest the Court have any residual doubt that Plaintiffs' exemplar maps used race as the predominant consideration, their map-drawers' testimony resolves it. When asked whether they ever attempted to produce a map containing only one majority-minority district, they said no "because I was specifically asked to draw two by the plaintiffs." App. 368. This is indistinguishable from *Covington*, where map-drawers were ordered to produce a map that maximized majority-minority districts to the exclusion of all other criteria. *See* 316 F.R.D. at 130.

"Courts cannot find § 2 violations on the basis of *uncertainty*." *Harding v. Cnty. of Dallas*, 948 F.3d 302, 310 (5th Cir. 2020) (emphasis in original). If Plaintiffs were compelled to use illustrative plans where race predominated, then it is at the very least *uncertain* whether a remedial plan can be drawn that does not violate the Fourteenth Amendment. Phrased differently, if the only evidence that a Plaintiff can produce for *Gingles I* is rife with racial intent, that amounts to no evidence at all.

Elevating race in this way routinely dooms legislative redistricting efforts. If the district court's preliminary injunction ultimately results in adoption of one of Plaintiffs' exemplar plans (which remains a possibility), that map would itself likely be stricken as unconstitutional. *Bethune-Hill v. Va. State Bd. Of Elections*, 137 S. Ct. 788, 799 (2017) (noting that a finding of racial predominance usually coincides with a showing that traditional redistricting criteria were subordinated to racial considerations). At a minimum, then, the merits are not "entirely clearcut" in favor of Plaintiffs—the appropriate standard for awarding an injunction in an election case.*Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring); *see also infra* at Section 2D. A stay pending appeal should thus issue.

2. *The compactness of the minority population, not the district as a whole, is the relevant inquiry under Section 2 of the Voting Rights Act.*

Beyond subordinating traditional redistricting criteria to race, the district court and the Plaintiffs' experts further erred by examining the compactness of the *district* rather than the compactness of the relevant *minority population*, *see,* e.g., App. 27 (relying on metrics that measure the *district's* compactness). The Fifth Circuit motions panel correctly recognized that "the requirement relates to the compactness of the *minority population* in the proposed district, not the proposed district itself," even though it noted that "the Supreme Court has not developed a 'precise rule' for evaluating all facets of that requirement." App. 173 (quoting *LULAC*, 548 U.S. at 433). The Fifth Circuit nonetheless excused this error after conducting "a visual inspection" of the district (*i.e., not* the underlying minority population) and conjecturing that "the illustrative CD 5 appears geographically compact." App. 174.

The Fifth Circuit was wrong. Although a bizarrely gerrymandered district can suggest that the underlying minority population is insufficiently compact for Section 2 purposes, *see LULAC*, 548 U.S. at 433, that ratchet twists only one way. Visual compactness of a district, in contrast, *does not* automatically translate into a conclusion that the minority population within that district is itself compact. A

"specially [sic] asked to draw two by the plaintiffs." App. 368. How that testimony can be construed as anything but a subordination of traditional redistricting criteria to race remains a mystery. At a minimum, this concession shows that the relevant racial community is not compact enough to constitute a second majority district without torquing all traditional notions of compactness to their breaking point. *See id.*; *see also LULAC*, 548 U.S. at 433 (noting that since "no precise rule has emerged governing § 2 compactness, the inquiry should take into account traditional districting principles." (quotations omitted)). The segregation of voters on account of race is *not* a traditional districting principle, and "[w]e do a disservice to the[] important goals [of the VRA] by failing to account for the differences between people of the same race." *LULAC*, 548 U.S. at 434. If the minority community in Louisiana were sufficiently compact, there would be no need for race to predominate in drawing the illustrative plans; a second majority-minority district would emerge from the application of traditional redistricting principles without creative line-drawing. Defendants' unrebutted evidence that no second majority-minority district naturally emerged from *ten-thousand* simulated districts using race-neutral criteria conclusively proves no naturally-occurring, sufficiently compact minority group supports a second majority-minority district. *Robinson* (ECF No. 109-3 pp. 3-4).

D. Mandatory preliminary relief was improper without a showing of a clear right to relief.

To secure injunctive relief during an election year, "the underlying merits [must be] entirely clearcut in favor of the plaintiff." *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring). And a "mandatory injunction" (*i.e.,* an injunction that forces a party to *take* action rather than an injunction that *prohibits* a party from taking action is an "extraordinary remedial process which is granted, not as a matter of right but in the exercise of sound judicial discretion." *Morrison v. Work*, 266 U.S. 481, 490 (1925). These admonitions make sense. A district court decision at the preliminary-injunction stage is often based on "procedures that are less formal and evidence that is less complete than in a trial on the merits." *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981).

Plaintiffs have not shown, and cannot show, that the facts and law were so "entirely clearcut" in their favor, *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring), such that a mandatory preliminary-injunction must issue. In holding to the contrary, the district court failed to apply the appropriate heightened standard. Instead, it relied solely on the standard four-factor preliminary injunction test applicable to prohibitory, not mandatory, injunctions. *See* App. 17. But "[t]he 'clear' or 'substantial' showing requirement" for *mandatory* injunctions applies in federal courts across the country, including the Fifth Circuit, and it "alters the traditional formula by requiring that the movant demonstrate a *greater* likelihood of success" than is required for the issuance of a prohibitory injunction. *Tom Doherty Assocs.*, 60 F.3d at 34 (emphasis added). The district court missed this legal point entirely and failed to explain its resort to the laxer standard. And the Fifth Circuit failed to question that decision, despite purporting to "review the district court's legal conclusions *de novo*." App. 170.

The Fifth Circuit did identify flaws in Plaintiffs' argument that cast doubt on their likelihood of success on the merits. *See, e.g.*, *id.* at 11 (noting that "the plaintiffs' evidence has weaknesses"); *see also id.* at 2; *id.* at 35 ("[N]either the plaintiffs' arguments nor the district court's analysis is entirely watertight."). The Fifth Circuit even conceded that "it is feasible that the merits panel . . . may well side with the defendants" after a complete review of the record. *Id.* at 33. Based upon a record like this, "the underlying merits appear to be close and, at a minimum, not clearcut in favor of the plaintiffs." *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring). In such a scenario, "[e]ven under the ordinary stay standard outside the election context," both parties have "at least a fair prospect of success on appeal," and no preliminary injunction—much less a mandatory one upending a state's elections—should have issued. *Id.* Nevertheless, the Fifth Circuit denied a stay. App. 199.

The Fifth Circuit's decision is perplexing. It acknowledges holes in Plaintiffs' argument, *id.* at 2-3, concedes Defendants could prevail on the merits, *id.* at 33, and yet leaves the mandatory injunction in place. At no point in the panel's thirty-three-page opinion does it nod to the heightened legal standard, even though it is directly implicated. If Plaintiffs "have much to prove when the merits are ultimately decided" as the Fifth Circuit claimed, then they were not entitled to a mandatory preliminary injunction even if they ultimately prevail later. *Id.* at 3. That award grants Plaintiffs' deference to which they are not entitled and turns the applicable burdens on their head.

Although the heightened mandatory injunction standard should have been sufficient to defeat Plaintiffs' request, the district court's decision was particularly improper given the unique election context. A "preliminary" injunction granted for the duration of a single election is effectively permanent. If the 2022 election is conducted under a court-ordered congressional map that is later determined held to be an unconstitutional racial gerrymander, the harm cannot be undone. There is no do-over when a federal court order denies citizens the right to vote under a lawful map enacted by their duly-elected representatives. The injury to the State and its voters is permanent and irreparable. Because a mandatory injunction "issues to remedy a wrong, not to promote one," *Morrison*, 266 U.S. at 490, this Court should stay the order below.

II. DECLINING TO STAY THIS CASE INFLICTS PROFOUND, IRREPARABLE HARM UPON NOT ONLY IN LOUISIANA, BUT NATIONWIDE.

This case falls within the heart of the *Purcell* doctrine, which, standing alone, should compel a stay. Dismissing and diminishing Louisiana's *Purcell* arguments as "administrative burdens" that inflict ordinary "bureaucratic strain" on Louisiana's elections officials, App. 195, egregiously misses the point. Mistakes and voter confusion flow directly from increasing the burdens on electoral processes and election officials, particularly as election-year deadlines and responsibilities barrel ever closer. Indeed, this Court recently stayed a materially identical case based expressly on potential infliction of "significant logistical challenges" requiring "enormous advance preparations." *Merrill v,* 142 S. Ct. at 880 (Kavanaugh, J. concurring in grant of applications for stays). The same is true here and having stayed *Merrill*, the justifications here are doubled.

Successful elections demand enormous preparation. Chaotic administration of elections undermines public trust in the election results. Disturbing *any* step in that process has a cascading effect on many other interlocking and interdependent steps. For the upcoming November 2022 midterm elections, ballots must be drafted, proofed, printed, and distributed to Parish Registrars of Voters by September 23, 2022, so that ballot mailing can be completed by the September 24, 2022 Federal UOCAVA deadline. La. Rev. Stat. §18:1308.2. But before any of that can happen, candidates need to know *where* they can run and voters need to know the districts in which they can vote.

The sand in this electoral hourglass is rapidly sifting. To successfully reach federal UOCAVA deadlines without electoral catastrophe, many interlocking tasks must be completed. Louisiana election officials must comply with state and federal laws about candidacy, ballot preparation, and voter assignment, all of which require significant preparation. A key part of this preparation requires ensuring that voters are correctly assigned in the State's election database system (ERIN). App. 376-379. Only *after* voters receive are assigned in ERIN can the State begin to draft ballots. *Id.* And *before* these assignments can be made, the Secretary of State must know where the congressional district boundaries lie.

The timeline for completing these tasks becomes more compressed the longer the State's congressional districts remain unsettled. *Purcell* exists to make sure that the sand does not run out of the hourglass before all preparations necessary for a smooth election conclude. It applies here. There are hundreds of statewide and local elections running in November 2022. To hold a successful election for the November

2022 election cycle in Louisiana the following major steps must be taken:

First on June 22, 2022, all other municipal and school board redistricting plans are due to the Secretary of State for verification and coding. La. Rev. Stat. §18:465(E)(1)(a). This deadline presupposes that the statewide districting plans have already been entered in the system, and that only the municipal and school board plans remain outstanding. The Legislature's Congressional plan was already implemented in ERIN, meaning that, if the district court's preliminary injunction remains intact, a new plan must be coded. This, in turn, means that elections staff who would otherwise work on assigning voters to their assigned municipal and school board plans need to forgo those tasks to recode the new Congressional district lines. App. 376-379.

Assigning voters to their districts is complicated, time-consuming work. For example, the Legislature's Congressional plan moved only 250,000 voters, but it took weeks to implement. App. 372. In fact, elections administrators worked for a week studying the plan before any coding began. *Id.* If this Court does not stay the district court's preliminary injunction, elections administrators will have to code a different Congressional plan (while coding the municipal and school board plans) by July 13, 2022—less than a month from now. La. Rev. Stat. §18:58(B)(2). Piling on to this coding work will inevitably increase the likelihood of mistakes, which impacts ballot assignment. App. 377-379.

Second, election administrators must handle nominating petitions, qualifying, and objections to candidacy. The deadline for candidates to file by nominating petition is now, because of the district court's preliminary injunction, July 8, 2022. The candidate qualifying period, which begins July 20 and ends July 22, 2022, has not been moved[9]. La. Rev. Stat. §18:462; 18:467; 18:468(A). This means that under the current, district-court imposed schedule, elections administrators have one week to proof assignments and make any adjustments based on inadvertent mistakes in ERIN. This makes moving the coding deadline impossible. State law affords citizens just one week to object to the candidacy of any person running for election, and they must do so by July 29, 2022. La. Rev. Stat. §18:493; 18:1405(A).

Third, election administrators must program and prepare ballots. Ballot programing must begin no later than August 1, 2022, to ensure that all ballots can be created, proofed, and printed ahead of the September 23, 2022, deadline for local registrars to receive ballots in time to mail them in accordance with federal UOCAVA deadlines. These ballots, in turn, cover hundreds of state and local elections during the November 2022 election cycle. This August 1 date comes just days after the deadlines for qualifying and objections to candidacy. The elections administration calendar is already tight; moving these deadlines back any further will likely result in an insufficient time to prepare the ballots needed for the November election cycle.[10]

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[9] The Governor's call included one thing: drawing a second majority minority map. Changing deadlines and taking any other actions, such as appropriating additional funds necessary to accomplish these Herculean tasks are not included in the call and would likely require another Extraordinary Session (with the accompanying seven-day notice before convening).

[10] These dates are calculated based on the current qualifying period running from July 20-22, 2022, and the court-ordered nominating petition deadline of July 8, 2022. Because many of the statutory deadlines run from one of these two dates, pushing

Fourth, election administrators must work to register voters and administer the November 2022 election cycle. While the election begins on September 24, 2022 for some voters under federal law, the last six weeks before the election are dedicated to registering and assisting people in exercising their right to vote. Statewide voter registration week begins on September 26, 2022. La. Rev. Stat. §18:18(A)(8)(b). This is followed shortly by the deadline to register to vote by mail or in-person (October 11, 2022), and online (October 18, 2022). La. Rev. Stat. §18:135(A)(1)&(C); La. Rev. Stat. §18:135(A)(3). Also on October 18, 2022, early voting begins under the nursing home voting program. La. Rev. Stat. §18:1333(B). Statewide early voting begins soon after on October 25, 2022. La. Rev. Stat. §18:1309

The timeframe to conduct the November 2022 election cycle was *already* extremely tight at the time the district court conducted the rushed preliminary injunction hearing. It is worse now, including merely *three weeks* to code millions of Louisianans to dozens, if not hundreds, of redistricting plans. Adding a new statewide congressional plan to these coding efforts causes rushed coding efforts likely to be riddled with mistakes, especially if the new plan splits precincts, which requires the local registrar of voters to move voters in split precincts *by hand*. App. 376-379.

This is not mere conjecture. Ms. Hadskey, Louisiana's Commissioner of Elections testified that this scenario has already occurred because of a compressed timeframe this cycle. For example, in Calcasieu Parish, late census information

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either of these dates would have a waterfall effect, impacting numerous deadlines that, in turn, decrease the time needed for ballot coding and printing, ahead of federal deadlines that cannot be moved.

caused a rushed entry of voter information and led to entry of incorrect voter information, ultimately resulting in the issuance of incorrect ballots. App. 379. As a result, a judge required state and local officials to hold a special municipal election to remedy the issue. *Id.* Thus, the undisputed evidence shows that rushing voter assignments in ERIN leads to mistakes. App. 378-379. That these issues arose in a small parish-wide election suggests catastrophe during the congressional races. A statewide special election might ensue if the election tanks, and Louisiana's failure to seat its Congressional representatives on time would not be out of the question.

Ms. Hadskey expressed this very concern in her testimony. Specifically, she testified that the issues Calcasieu Parish experienced will arise again on a much larger scale if a new congressional plan is implemented by the Court in June or July—especially since there are nineteen new registrars who have never handled decennial redistricting before. App. 379-380. She continued:

> I'm extremely concerned. I'm very concerned because when you push—when you push people to try and get something done quickly and especially people that have not done this process before, the worst thing you can hear from a voter is I'm—I'm looking at my ballot and I don't think it's right, I think I'm in the wrong district or I don't feel like I have the right races.
>
> The other thing is notifying the voters. I think we all can relate to we know who our person is that we voted for Congress or for a school board or any race; and when you get there and you realize it's not the person you are looking for, you're thinking that's who you are going to vote for and then you find out, wait, I'm in a different district. If we don't notify them in enough time and have that corrected, it causes confusion across the board, not just confusion for the voters, but also confusion for the elections administrators trying to go back and check and double check that what they have is correct.

App. 381-382.

This is precisely why *Purcell* requires a stay of the lower court's orders. The Supreme Court held in *Purcell*, "[c]ourt orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase." 549 U.S. at 4-5. In similar situations, this Court has regularly issued stays.[11]

Purcell is a "bedrock tenet of election law." *Milligan*, 142 S. Ct. at 880 (Kavanaugh, J., concurring). It stands for twin simple, unassailable propositions: "(i) that federal district courts ordinarily should not enjoin state election laws in the period close to an election, and (ii) that federal appellate courts should stay injunctions when, as here, lower federal courts contravene that principle." *Id.* at 879 (Kavanaugh, J., concurring) (citing *Purcell*, 549 U.S. 1).

The lower courts transgressed these principles. Because they did, this Court should resuscitate them by issuing the stay.[12] The lower courts erred in both simply counting days until the election and comparing that count with the other cases

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[11] *See Andino v. Middleton*, 141 S. Ct. 9, 10 (2020) (Kavanaugh, J., concurring in grant of stay application); *Merrill v. People First of Ala.*, 141 S. Ct. 25 (2020); *Clarno v. People Not Politicians*, 141 S. Ct. 206 (2020); *Little v. Reclaim Idaho,* 140 S. Ct. 2616 (2020); *Republican Nat'l Comm. v. Democratic Nat'l Comm.,* 140 S. Ct. 1205 (2020) (per curiam); *Benisek v. Lamone*, 138 S. Ct. 1942 (2018) (per curiam); *Veasey v. Perry*, 574 U.S. 951 (2014).

[12] Where lower courts have transgressed these principles, this Court has consistently stayed those opinions. *Karcher v. Daggett*, 455 U.S. 1303 (1982) (Brennan, J., in chambers) (issuing stay in March of election year); *Gill v. Whitford*, 137 S. Ct. 2289 (2017) (issuing stay about a year and a half before the next election); *Rucho v. Common Cause*, 138 S. Ct. 923 (2018) (stay of an order enjoining North Carolina's Congressional districts 4 months ahead of the primary election).

applying the *Purcell* doctrine. They made a faulty assumption that all state election laws and administrative burdens are equal. Under *Purcell* "the Court of Appeals was required to weigh, in addition to the harms attendant upon issuance or non-issuance of an injunction, considerations specific to election cases and its own institutional procedures." *Purcell*, 549 U.S. at 4. The lower courts did not address Louisiana-specific laws that require additional time and administrative duties beyond what is required in other states. Nor did the courts adequately grapple with the fact that a Louisiana parish has already held one special election this year because of rushed election administration, much less state-wide and ultimately harm the nation as a whole as well.

The courts simply did basic math and assumed *Purcell* did not apply. This is insufficient. Under *Purcell,* courts were required to balance the harms. The lower courts here performed no balancing that took into account that administrators are not just implementing the state Congressional plan, or a few statewide redistricting plans, but dozens, if not hundreds of municipal and school board redistricting plans too. App. 376-380. Thus, under Louisiana's election laws, the work required to administer the election is significantly more than states' where administrators may only deal with a few plans.

Take for example, *Moore v. Harper,* 142 S. Ct. 1089 (2022), where just this term this Court refused to grant relief that would change North Carolina's congressional election districts due to *Purcell.* 142 S. Ct. 1089 (Kavanaugh, J., concurring). In North Carolina the plans at issue for the State Board of Elections were statewide plans for congressional elections, and state general assembly elections. The State Board told this Court that those three plans were needed three months before the primary for orderly implementation of the election.[13]

The situation here could not be any more different, where dozens of municipalities and school boards are also redistricting after the decennial census, with plans all due to the Secretary of State for administration in the November 2022 election cycle on June 22, 2022. La. Rev. Stat. §18:465(E)(1)(a). Logically, if a state's election administrators need three months to administer three statewide districting plans to ensure an orderly election, then it's impossible to not find that more than three months might be needed in a state like Louisiana with dozens if not hundreds of redistricting plans to implement. And, as discussed above, ballots for Louisiana's election cannot be prepared until *all* redistricting plans are implemented.

Louisiana is entitled to have state election laws that allow for municipalities and school boards to redistrict in the same year as congressional districting. Louisiana's elections officials should not be penalized for attempting to comply with their own laws that make election administration in a decennial redistricting year more difficult to administer than other states'. Because the lower courts erroneously assumed all state election laws are equal, and all state election administrators are faced with the same burdens, they failed to adequately weigh the harms under *Purcell*. As a result, this Court should stay these opinions as they are in contravention

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[13] https://www.supremecourt.gov/DocketPDF/21/21-1271/215498/20220302161119617_21A455_Response.pdf pp. 9-10.

of *Purcell*. *Merrill,* 142 S. Ct. at 879-880

III. THE EQUITIES TILT DRAMATICALLY IN FAVOR OF GRANTING A STAY.

Given that Plaintiffs elected solely to bring *statutory* claims, their interests must subordinate to the *constitutional* claims of Louisiana's public. Simply put, it "is always in the public interest to prevent the violation of a party's constitutional rights." *Jackson Women's Health Org. v. Currier*, 760 F.3d 448, 458 n.9 (5th Cir. 2014); *see also Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013) ("[I]t may be assumed that the Constitution is the ultimate expression of the public interest."). And here, the constitutional rights of the entire Louisiana electorate hang in the balance. "The Equal Protection Clause forbids 'racial gerrymandering,' that is, intentionally assigning citizens to a district on the basis of race without sufficient justification," *Abbott v. Perez*, 138 S. Ct. 2305, 2314 (2018). (citing *Shaw I*, 509 U.S. at 641), and the district court's preliminary-injunction order mandates a racial gerrymander. *See supra* at Section I, B. If Section 2 does *not* require creating a gerrymandered second majority-Black district, Louisiana's entire electorate suffers an irreversible Fourteenth Amendment violation when they next cast their ballots for their congressional representatives.

This Court will address an identical issue to the one here—*i.e.,* when does Section 2 of the Voting Rights Act command the creation of additional majority-minority districts. Given the public deprivation that would ensue if (1) the district court's preliminary injunction were to stay in effect, (2) the 2022 midterms were to take place with Louisiana's judicially mandated majority-minority districts and (3) soon after, this Court held that the district court's analysis perpetuated an Equal

Protection violation against every one of the State's voters, the public interest all but ensures that entering a stay is the correct approach here. Given the risk to the public that would arise without a stay, entering one far outweighs any burden Plaintiffs may claim.

CONCLUSION

From start to finish, the proceedings below have transgressed this Court's instructions—and, making matters worse, as recently as yesterday the district court threatened the House Speaker with contempt for engaging his legislative duties, which were apparently not to her satisfaction, interfering with the very legislative defense the State is owed by federal courts in this process.

Only two months ago, the Court reversed a decision from the Wisconsin Supreme Court that—as here—"embrac[ed] just the sort of uncritical majority-minority district maximization that [the Court] ha[s] expressly rejected." *Wis. Legis.*, 142 S. Ct. at 1249 (citing *De Grandy*, 512 U. S., at 1017. And four months ago, this Court stayed a district court order imposing the *precise injunction* that the district court levied in this case—*i.e.*, creation of an additional majority-minority district under the auspices of Section 2.

For all these reasons, the Petitioners request that the Court (1) immediately enter an administrative stay, (2) enter a stay pending appeal, and (3) construe this stay application as a petition for writ of certiorari before judgment, grant it, expedite it and consolidate it, or alternatively grant it and hold in abeyance pending the Court's decision in *Merrill*.

Respectfully submitted,

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Exhibit 2

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[illegible]beth B. Murrill

Counsel for Appellant State of Louisiana

Exhibit 3

No. 23-_____

In the United States Court of Appeals for the Fifth Circuit

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

PETITION FOR A WRIT OF MANDAMAS

On Petition for a Writ of Mandamus from the
United States District Court
for the Middle District of Louisiana
No. 3:22-cv-00211 (Hon. Shelly D. Dick)

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CERTIFICATE OF INTERESTED PERSONS

Under the fourth sentence of Fifth Circuit Rule 28.2.1, the Petitioners are governmental parties and therefore need not furnish a certificate of interested parties.

Dated: September 15, 2023

/s/ Jason B. Torchinsky
JASON B. TORCHINSKY

STATEMENT REGARDING ORAL ARGUMENT

The case giving rise to this petition for a writ of mandamus involves ongoing litigation over the State of Louisiana's congressional-district boundaries. The district court has scheduled a hearing on a preliminary-injunction motion that sought relief before the congressional elections held in November 2022 (roughly nine-months ago), and it has refused to set a trial date for final adjudication of the Plaintiffs' claims, even though resolution of their claims (including conclusion of the appellate process) is essential before the November 2024 congressional elections. The Petitioners, Louisiana Attorney General Jeff Landry and Louisiana Secretary of State R. Kyle Ardoin (collectively, "the State"), respectfully submit that oral argument (set expeditiously) is likely to assist the Court in resolving this petition for a writ of mandamus.

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STATEMENT OF THE RELIEF SOUGHT

The State seeks an order directing the district court to vacate the currently scheduled preliminary-injunction remedial hearing and to instead set a trial date regarding the Plaintiffs' Section 2 Voting Rights Act challenges to the State of Louisiana's congressional districts.

STATEMENT OF THE ISSUE

The issue giving rise to this petition for a writ of mandamus is whether a district court may rely upon a preliminary-injunction order it entered in 2022 that specifically and solely granted relief regarding the 2022 congressional elections to forego a final trial on the merits of the Plaintiffs' Voting Rights Act claims in advance of the 2024 congressional elections.

INTRODUCTION

For thirty years, the State of Louisiana's congressional districts included one that was majority-Black. When the State twice tried to create a second majority-Black district, a federal court struck its maps as unconstitutional under the Fourteenth Amendment's Equal Protection Clause. *See Hays v. Louisiana*, 839 F. Supp. 1188, 1191 (W.D. La. 1993); *Hays v. Louisiana*, 936 F. Supp. 360, 368 (W.D. La. 1996). Despite this history, two sets of Plaintiffs challenged Louisiana's 2022 congressional-district maps, asserting that Section 2 of the Voting Rights Act forbids the State from establishing a map with fewer than two majority-Black congressional districts. *See, e.g.*, ECF No. 1.[1] Along with their complaint, they sought preliminary-injunctive relief premised solely and explicitly on their desire to secure new maps before the November 2022 midterm elections. ECF Nos. 41, 42. The district court acquiesced, and after a tremendously expedited hearing, granted their requested relief, ECF No. 173, only to have its order stayed by the United States Supreme Court, *see Ardoin v. Robinson*, 142 S. Ct. 2892, 2892 (2022).

The 2022 midterm elections have come and gone, which renders moot the district-court-ordered remedial hearing and clears the way for an ultimate, fulsome, and timely trial on the merits of the Plaintiffs' claims. The district court, however, has refused to set a trial date for ultimate resolution of the Plaintiffs' Voting Rights Act challenges. Instead, it has ordered "that the preliminary injunction hearing stayed by the United States Supreme Court, and which stay has been lifted, be and is hereby reset to October 3–5, 2023 . . . ." ECF No. 250. It has since made clear that this hearing will consider solely the remedial map that the court will order the State of Louisiana to implement. *See* ECF Nos. 267, 275.

In so doing, the district court is poised to exceed its jurisdiction, trammel the fundamental fairness of the proceedings before it, and flout new, binding authority issued by the United States Supreme Court. Logic dictates that the federal courts cannot enter *prospective* relief based on a preliminary-injunction request premised on a purported need for resolution by a date that passed more than two-hundred days ago. Rudimentary elements of this Nation's adversarial tradition forbid a court from striking a legislative act as unconstitutional without first allowing the

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[1] All ECF citations are to the dockets consolidated at *Robinson v. Ardoin*, No. 3:22-cv-211 (M.D. La.).

State a chance to fully and fairly defend its actions, which necessarily takes longer than the expedited, preliminary hearing that the district court held roughly a year ago. And prudence dictates that, given the Supreme Court's latest Section 2 and Equal Protection jurisprudence, a full trial needs to occur.

The Court should grant the State's petition for a writ of mandamus, vacate the remedial hearing scheduled to begin on October 3, and order the district court to set a trial on the Plaintiffs' Voting Rights Act claims.

STATEMENT OF THE CASE

A. After the 2020 decennial census, Louisiana retained six congressional districts. Between June 2021 and February 2022, the Legislature began preparations for redrawing its districts in accordance with all state and federal statutory and constitutional requirements. After an extraordinary session that convened on February 1, 2022, Louisiana adopted a map that maintained the "core districts as they [were] configured" to "ensure continuity of representation." ECF No. 159. As has been the case for three-decades, one of the six congressional districts is majority-Black.

Two sets of plaintiffs immediately sued the Louisiana Secretary of State. *See* ECF No. 1. Both argued that Section 2 of the Voting Rights Act mandated that the State's congressional voting maps contain a second majority-Black district. *See* ECF No. 1. General Landry (among others) intervened in defense of the maps, ECF No. 30, the district court eventually consolidated the two actions, ECF No. 33, and weeks after filing their respective complaints, the Plaintiffs moved for a preliminary injunction in advance of the November 2022 midterm elections, ECF Nos. 41, 42.

Over the State's objection, the district court rammed through a frantically rushed preliminary-injunction hearing. Expert-witness reports, for example, had to be prepared in two-weeks. ECF No. 35, 63. After an evidentiary hearing, the district court took no action for twenty-four days. *See* ECF No. 173. On June 6, 2022, however, it granted the Plaintiffs' request for a preliminary injunction and began to prepare for a hearing regarding remedial maps. ECF No. 173. The district court's order arrived on the last day of Louisiana's legislature's Regular Session, but it ordered the State to procure a legislatively created remedial map by June 20, 2022, ECF No. 173, despite testimony from Louisiana's chief election official that it was infeasible to implement a new congressional plan before the November 2022 congressional elections, ECF No. 177-1, at 9.

B. The State immediately moved the district court to stay the preliminary-injunction order pending appeal. ECF No. 177. Among other things, the State pleaded with the district court that "the Legislature ha[d] no ability to meet th[e] deadline" the court had set, ECF No. 177-1, at 11, because "the Legislature must now convene a new Extraordinary Session to consider redistricting legislation," ECF No. 177-1, at 11 (citing La. Const. art. 3, § 2(B)). The Louisiana Constitution sets a seven-day notice period "prior to convening the legislature in extraordinary session," *id.*, and it also imposes a nondiscretionary requirement that "each bill shall be read at least by title on three separate days in each house," La. Const. art. 3, § 15(D). The district court denied the motion but stated in its order that "[i]f Defendants need more time to accomplish a remedy, . . . the Court will favorably consider a *Motion* to extend the time to allow the Legislature to complete its work." ECF No. 182, at 3 (italics in original).

The State accepted the district court's offer and moved for an extension of time to enact a remedial map, noting that the extraordinary-session requirements meant that, as scheduled, "the Legislature will have only five days to introduce, deliberate over, and pass a bill enacting a plan through the legislative process required by Louisiana law." ECF No. 188. Because five days is not enough time for the Legislature to complete "the most difficult task a legislative body ever undertakes," *Covington v. North Carolina*, 316 F.R.D. 117, 125 (M.D.N.C. 2016) (three-judge court), *aff'd*, 137 S. Ct. 2211 (2017) (citation omitted), the State asked the district court for (at a minimum) ten extra days, ECF No. 188-1, at 2. The district court responded by ordering the Speaker of the Louisiana House of Representatives and the President of the Louisiana Senate to "appear **IN PERSON**" for a hearing on the extension request, ECF No. 189 (bolding and capitalization in original), and then denied it from the bench, ECF No. 196.

C. Meanwhile, the proceedings on appeal continued. This Court denied the State's motion to stay but expedited briefing and oral argument. *See* Robinson v. Ardoin, 37 F.4th 208, 232 (5th Cir. 2022). On June 28, 2022, however, the United States Supreme Court (1) granted the State's application for a stay of the district court's preliminary-injunction order, (2) construed the State's application for a stay as a petition for a writ of certiorari before judgment, (3) granted certiorari before judgment, and

(4) held the case in abeyance pending *Merrill v. Milligan*, No. 21-1086 and No. 21-1087. *See Ardoin v. Robinson*, 142 S. Ct. 2892, 2892 (2022).

On June 8, 2023, the Supreme Court issued its opinion in *Allen v. Milligan*. 143 S. Ct. 1487, 1502 (2023). Two weeks later, it dismissed the writ in the Louisiana's case and ordered "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*, 2023 U.S. LEXIS 2684, *1 (Jun. 26, 2023) (emphasis added). This Court has since calendared oral argument for October 6, 2023 (less than a month from now). *See* 8/22/2023 Notice of Calendaring, *Robinson v. Ardoin*, No. 22-30333 (5th Cir.).

D. In light of the Supreme Court's reactivation of this case, the district court conducted a status conference on July 12, 2023. ECF No. 246. On July 17, 2023, it issued an order stating that "*the preliminary injunction* hearing stayed by the United States Supreme Court, and which stay has been lifted, be and is hereby reset to October 3–5, 2023." ECF No. 250 (emphasis added). The parties submitted competing scheduling orders; the Plaintiffs proposed a schedule that would allow "for any party . . . to submit a new or amended map along with supporting expert evidence," ECF No. 256, at 2, while the Defendants explained why doing so on an expedited basis cannot work, since new plans mean redoing all the expert analyses required to litigate those plans, ECF No. 255.

In an attempt to avoid another fiasco, the State, on August 25, 2023, filed an emergency motion to cancel the hearing on remedy and to instead enter a scheduling order for trial. ECF No. 260. In it, the State, first, set out the obvious: without a scheduling order, briefing, new maps, or exchange of expert material, it would be impossible to prepare for a three-day fact-intensive remedial-map hearing in the six weeks. ECF No. 260-1, at 4–7. It also reminded the district court that it had not yet actually ruled on merits of the Plaintiffs' Section 2 claims, and pointed out that it is error to "improperly equate[] 'likelihood of success' with 'success,'" especially given "the significant procedural differences between preliminary and permanent injunctions." ECF No. 260-1, at 7–10 (citing *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 394 (1981)). And, finally, it pointed out that the Court had no jurisdiction to conduct a remedial hearing in *October 2023* based on a preliminary-injunction motion advanced by the Plaintiffs solely to seek *temporary*, *prospective* relief before *November 2022.* ECF No. 260-1, at 10.

The district court denied the motion on August 29, 2023, in an order that addressed none of the substantive objections that the State raised. ECF No. 267. Instead, the district court stated, essentially, (1) a lot of stuff happened in 2022,[2] and (2) "there is adequate time to update the discovery needed in advance of the hearing to take place October 3–5, 2023." ECF No. 267. It declined to elaborate further why it thought the time was sufficient.

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[2] This isn't a hyperbolic description. The entirety of the district court's reasoning is as follows:

> This case has been extensively litigated. The parties have conducted expansive discovery, presented testimony from twenty-one witnesses, introduced hundreds of exhibits into evidence throughout a five-day preliminary injunction hearing, and filed hundreds of pages of pre- and post-hearing briefing—all of which culminated in this Court's 152-page Ruling on liability. On the eve of the remedial hearing, this matter was stayed by the United States Supreme Court. The preparation necessary for the remedial hearing was essentially complete. The parties were ordered to submit proposed remedial maps. The Defendants elected not to prepare any remedial maps. The Plaintiffs disclosed proposed remedial maps; witnesses and exhibits were disclosed; expert reports were disclosed; and Defendants deposed Plaintiffs' identified experts. The only remaining issue is the selection of a congressional district map—a limited inquiry—which has been the subject of disclosure and discovery in the run up to the June 29, 2022 remedy hearing that was stayed on the eve of trial.

ECF No. 267, at 2.

SUMMARY OF ARGUMENT

Although mandamus is an extraordinary remedy, the Court will encounter few cases more appropriate for its use than this one. The district court has refused to set a trial on the merits of the Plaintiffs' Voting Rights Act Section 2 claims, and instead it plans to rely on its resolution of a preliminary-injunction order that (1) was justified based on an event that has since passed (the November 2022 congressional elections), (2) was rushed so terrifically that the State was not able to fully defend its work, and (3) relied on now-outdated Section 2 and Equal Protection jurisprudence. Each of these factors demonstrate that the State has a clear and indisputable right to relief; taken together, they compel that conclusion.

The State has also satisfied the other mandamus criteria. If the writ does not issue, the Louisiana electorate will experience profound and irreparable injury because the issues the State advanced here will not be fully litigated before the 2024 congressional elections, at which point Louisiana voters will suffer through an election with congressional districts that are likely gerrymandered based on race. And even though a merits panel of this Court will hear oral argument this coming October, the preliminary-injunction posture divests it of jurisdiction to address errors arising after the district court's Summer 2022 preliminary-injunction order. In other words, the State has no other avenue for vindicating the interest of Louisianans, and irreparable injury will ensue unless immediate relief arrives. And because foundational issues regarding the franchise and the Equal Protection Clause are at play, the circumstances here counsel in favor of this Court's prompt action.

REASONS WHY THE WRIT SHOULD ISSUE

The Court should issue the State's requested writ of mandamus. Specifically, (1) it has a clear and indisputable right to it, (2) it has no other adequate means of relief, and (3) issuance is plainly appropriate under the circumstances." *In re Gee*, 941 F.3d 153, 157 (5th Cir. 2019) (per curiam); *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 311 (5th Cir. 2008) (en banc). Given that all three prongs are satisfied, mandamus is appropriate.

I. BECAUSE THE DISTRICT COURT CANNOT ISSUE A REMEDY WITHOUT FIRST DECIDING THE MERITS OF THE PLAINTIFFS' SECTION 2 CLAIMS, THE STATE IS INDISPUTABLY ENTITLED TO RELIEF.

A. As noted above, the Plaintiffs filed their motions for a preliminary injunction specifically requesting that the district court issue immediate relief before the 2022 congressional elections. ECF Nos. 41, 42. When the district court granted their motions, it explicitly reasoned that the "Plaintiffs have demonstrated that they will suffer an irreparable harm if voting takes place in the 2022 Louisiana congressional elections" under the enacted maps. ECF No. 173, at 141. Had it not reached this conclusion regarding the 2022 Louisiana congressional elections, it could not have found that the Plaintiffs demonstrated the purported irreparable injury necessary for issuance of a preliminary injunction.

The 2022 congressional elections were held nine months ago. An injunctive remedy is necessarily and solely prospective. This means that the need for a remedial map to avoid a purported injury inflicted during the 2022 congressional election no longer exists (i.e., it is now moot). And *that* means that the district court no longer has jurisdiction to issue a preliminary-injunctive remedy.

If a petition for a writ of mandamus seeks to "confine a trial court to a lawful exercise of its prescribed authority," this Court "should issue the writ almost as a matter of course." *In re Reyes*, 814 F.2d 168, 170 (1987) (quoting *United States v. Denson*, 603 F.2d 1143, 1145 (5th Cir. 1979) (en banc)) (quotations omitted). Given that the district court lacks jurisdiction to "reset" to *October 2023* a preliminary-injunction remedial hearing considering whether action was necessary before elections held in *November 2022*, the district court is plainly acting outside of its prescribed power. *See* ECF No. 250. And when a "judicial usurpation of power" arises, mandamus should issue. *In re Reyes*, 814 F.2d at 170 (quoting *Will v. United States*, 389 U.S. 90, 95 (1967)).

B. Even if the district court had jurisdiction to "reset" the now-moot preliminary-injunction remedial hearing (and it does not), the district court still erred by declining to resolve the merits of the Plaintiffs' Section 2 claims by way of a full trial. The State has not had the opportunity to fully and fairly litigate the merits of its enacted maps, given the remarkably expedited preliminary-injunction proceedings. Whether enshrined in the due process clause, principles of federalism, or basic fairness, it remains true that "*all litigants*[]" have a "right to the 'integrity and accuracy of the fact-finding process,'" *United States v. Thoms*, 684 F.3d 893, 900 (9th Cir. 2012) (quoting *United States v. Bergera*, 512 F.2d 391, 393 (9th Cir. 1975)), which would be trampled if the district court is permitted to move past the full and fair resolution of the merits and onto considerations of a remedy.

These procedures matter. It is constitutional-level error to "improperly equate[] 'likelihood of success' with 'success,'" especially given the "the significant procedural differences between preliminary and permanent injunctions." *Camenisch*, 451 U.S. at 394. "The purpose of a preliminary injunction is merely to preserve the relative positions of the parties *until a trial on the merits can be held*." *Id.* at 395 (emphasis added). "Given this limited purpose, and given the haste that is often necessary if those positions are to be preserved, a preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits." *Id.*

Most critically, "[a] party . . . is *not required to prove his case in full* at a preliminary-injunction hearing, . . . and the findings of fact and conclusions of law made by a court granting a preliminary injunction are not binding at trial on the merits." *Id.* (emphasis added). And, for more than a century, the Supreme Court has enshrined the notion that *every* litigant must be afforded "an opportunity to present" its defense *and then* to have a "question" *actually* "decided" against it before a remedy may issue. *Fayerweather v. Ritch*, 195 U.S. 276, 299 (1904).

For this reason, the district court cannot "force the parties" via Rule 65(a)(2) consolidation "to sacrifice their right to fully present the available evidence." *Dillon v. Bay City Const. Co.*, 512 F.2d 801, 804 (5th Cir. 1975). Simply put, deciding that a claim is "likely to succeed" is not the same as "actually litigat[ing] and resolv[ing]" a claim. *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008). And providing a remedy for a claim that has not yet been "actually litigated and resolved" offends *every* notion of fundamental fairness. *Id.*; *see also Fayerweather*, 195 U.S. at 299.

These are the stakes. The State was prevented from fulsomely defending its case by virtue of the expedited preliminary-injunction proceedings, and the resulting preliminary-injunction opinion from the Court did not fully resolve—and as a matter of law, could not have fully resolved—the merits of the Plaintiffs Section 2 claims. "[A]t preliminary injunction stage, "the court is called upon to assess the *probability* of the plaintiff's ultimate success on the merits" and "[t]he foundation for that assessment will be more or less secure" depending upon multiple factors, including"—critically relevant here—"the pace at which the preliminary proceedings were decided." *Sole v. Wyner*, 551 U.S. 74, 84–85 (2007). The State has fought vigorously for the mere opportunity to make its case, and at every turn, the district court has expedited, truncated, and—most recently—flat out refused to allow the State to defend its enacted maps.

The State raised these issues to the district court. *See* ECF No. 260. In response, the district court retorted that "[t]he parties have conducted expansive discovery, presented testimony from twenty-one witnesses, introduced hundreds of exhibits into evidence throughout a five-day preliminary injunction hearing, and filed hundreds of pages of pre- and post-hearing briefing—all of which culminated in this Court's 152-page Ruling on liability." ECF No. 267, at 2. But this sort of bean-counting does not suffice, and has never sufficed, to show that a claim has been fully and fairly adjudicated. Resolving Section 2 claims require "'an intensely local appraisal' of the electoral mechanism at issue, as well as a 'searching practical evaluation of the 'past and present reality,'" *Allen v. Milligan*, 143 S. Ct. 1487, 1503 (2023) (quoting *Thornburg v. Gingles*, 478 U.S. 30, 79 (1986)), which means mountains of expert and fact discovery. And both the quantity *and* the quality of the evidentiary presentation matters, especially as a court weighs "the most difficult task a legislative body ever undertakes." *Covington*, 316 F.R.D. at 125 (three-judge court), *aff'd*, 137 S. Ct. 2211 (2017). Despite the district court's superficial recitation of the evidentiary *quantity* before it during the preliminary-injunction proceedings, the lack of evidentiary *quality*, given the rushed nature of the proceedings during the run-up to the 2022 congressional elections, is what renders a full trial on the merits critical to ensuring that the district court reaches a correct and just outcome before the 2024 congressional elections.

C. There is, moreover, the changing legal landscape in the wake of *Allen v. Milligan* and *Students for Fair Admissions v. University of North Carolina*, both of which the Supreme Court issued while it held the case below in abeyance. In the former, the Supreme Court addressed Section 2 of the Voting Rights Act for the first time in fourteen years, and it clarified how the *Gingles* preconditions apply. Relevant to this case, the Supreme Court elucidated "how traditional districting criteria limit[] any tendency of the VRA to compel proportionality," *id.* at 1509, which means that the district court's reliance (in part) on a proportionality as a legitimate goal is no longer tenable and must be revisited. *See Robinson v. Ardoin*, 605 F. Supp. 3d 759, 851 (M.D. La. 2022). *Milligan* also emphasized the centrality of communities of interest in the Section 2 analysis, which has featured prominently at every stage of this case. *See* 143 S. Ct. at 1505. And Justice Kavanaugh's concurring opinion in *Milligan* stressed that it is the compactness of the minority community—not solely the compactness of the proposed districts—that must be evaluated. *Id.* at 1518 (Kavanaugh, J., concurring).

The latter case, in turn, changed fundamentally the way in which States may consider race when taking state action. The *Students for Fair Admissions* Court underscored that as race-based legislative acts reach their intended ends, they become obsolete and less likely to survive Equal Protection scrutiny. This principle followed the Court's decision in *Shelby County v. Holder*, which struck as unconstitutional a different Voting Rights Act provision because "[o]ur country has changed, and while any racial discrimination in voting is too much, Congress must ensure that the legislation it passes to remedy that problem speaks to current conditions." 570 U.S. 529, 557 (2013).

* * *

There is no legally defensible reason to allow the district court's preliminary-injunction order to control its resolution of the Plaintiffs' claims on the merits. The district court no longer has jurisdiction to issue the relief they sought. The truncated timeline under which it was adjudicated the Plaintiffs' preliminary-injunction motion prejudiced the State's right to a fulsome adversarial process and ran afoul of the notion that "[w]hen the vindication of important legal rights necessarily hangs in the balance, the law must require whatever is essential to preserve the integrity of the fact-finding process," even if the State is a litigant. *Bergera*, 512 F.2d at 393. And the governing law has changed. In other words, the State plainly has a clear right to the relief he is seeking via this petition.

II. THE STATE'S ONLY ADEQUATE REMEDY IS MANDAMUS

Under these circumstances, the State has no other adequate means of vindicating the State's rights. The district court's decision *not* to set a trial and to instead rely on its preliminary-injunction order is not immediately appealable under any statute or doctrine for which the under-signed is aware. And resolution on appeal after the district court's remedial hearing will ossify the injury inflicted onto the State into one that cannot be remedied.

Specifically, the 2024 congressional elections are roughly sixteen-months away. This is *just* enough time to hold a trial on the merits of the Plaintiffs claims and to allow the appellate process to run its course in advance of those elections. It will *not* be enough time, however, if the State is forced to wait until *after* the district court resolves the now-moot preliminary-injunction motion to raise the issue (i.e., whether the district court erred by not holding a trial *at all*). The district court's resolution of the now-moot preliminary-injunction remedial proceedings will not occur until mid-October at the earliest, which means that an appeal from the anticipated injunction to administer a particular map will likely not be resolved until early 2024, and the trial that the district court should schedule for late-2023 will not be scheduled until mid-to-late 2024.[3] At that point, the citizens of Louisiana are again left without any certainty

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[3] The Secretary of State's calendar demonstrates that filing for Congress takes place in July of 2024, and maps need to be in place weeks before that deadline: https://www.sos.la.gov/ElectionsAndVoting/PublishedDocuments/ElectionsCalendar2024.pdf.

as to their congressional districts in the run up to a Congressional election, and the prospect of the need for the State to seek relief from any such late election related orders under the *Purcell* doctrine becomes a far more likely outcome.

Direct appeal will not suffice to remedy a district court's error. By the time this court sees this case again, the error "will have worked irreversible damage and prejudice by the time of final judgment." *In re Lloyd's Register N. Am., Inc.*, 780 F.3d 283, 289 (5th Cir. 2015). That is precisely the situation facing every one of Louisiana's eligible voters if this litigation is not resolved in its entirety before the 2024 congressional elections.

And forthcoming resolution of the preliminary-injunction appeal does not provide a pathway for the relief that the State seeks through this petition for a writ of mandamus. The merits panel addressing that portion of this case does not have appellate jurisdiction to address any of the irreparable injuries that have been, or will be, inflicted *after* the summer 2022 order giving rise to that appeal. All *those* errors, including the ones alleged via this Petition, merge into the final judgment or another interlocutory appeal of the remedial map for purposes of this Court's jurisdiction, which means (as noted), they cannot be remedied (given the passage of time).[4]

Whether or not the State prevails before the preliminary-injunction merits panel this coming Fall, the harms will persist. *See Camenisch*, 451 U.S. at 394 ("Because the only issue presently before us—the correctness of the decision to grant a preliminary injunction—is moot, the judgment of the Court of Appeals must be vacated and the case must be remanded to the District Court for trial on the merits."). Delaying now accomplishes nothing but a guarantee that the 2024 election cycle will witness the same pandemonium as the 2022 election cycle. For this reason, the State has satisfied the second mandamus-petition consideration.

---

[4] *See* 11A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 3905.1 ("[T]he general rule [is] that an appeal from final judgment opens the record and permits review of all rulings that led up to the judgment."); *id.* § 2962 ("Upon an appeal from the final decree every interlocutory order affecting the rights of the parties is subject to review in the appellate court."); *see also Satanic Temple, Inc. v. Texas Health & Hum. Serv. Comm'n*, No. 22-20459, 2023 WL 5316718, at *2 (5th Cir. Aug. 18, 2023).

III. MANDAMUS IS PLAINLY APPROPRIATE GIVEN THE CIRCUMSTANCES.

Finally, the circumstances plainly warrant an exercise of this Court's discretion. At issue are the constitutional and statutory voting rights of hundreds of thousands (maybe millions) of Louisiana citizens when they cast their ballots during the 2024 congressional elections. It is, of course, "always in the public interest to prevent the violation of a party's constitutional rights," *Jackson Women's Health Org. v. Currier*, 760 F.3d 448, 458 n.9 (5th Cir. 2014), which in and of itself counsels in favor of this Court's immediate action. Additionally, its bears reiterating that the district court's preliminary-injunction order requires the State to consider race in redistricting *more* than it has already, and the more that the State does so, the more it offends the fundamental Equal Protection Rights enshrined in the Fourteenth Amendment. Because "race-based sorting of voters" may be allowed *only* if doing so "serves a 'compelling interest' and is 'narrowly tailored' to that end," *Cooper v. Harris*, 581 U.S. 285, 292 (2017), the Court should err on the side of acting now to make sure the State has the opportunity to defend against the race-based sorting that the Plaintiffs request.

CONCLUSION

For the foregoing reasons, the Court should grant mandamus relief and instruct the district court to set expeditiously a trial on the merits of the Plaintiffs' Voting Rights Act claims.

Dated: September 15, 2023

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing complies with the length limitations of Federal Rule of Appellate Procedure 32(a)(7)(B) because it is 4,876 words, excluding the parts that are exempted under Rule 32(f). It complies with the typeface and type-style requirements of Rule 32(a)(5) and Rule 32(a)(6) because it is printed in 14-point Century Schoolbook font, a proportionally spaced typeface with serifs.

Dated: September 15, 2023

/s/ Jason B. Torchinsky
JASON B. TORCHINSKY

CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2023, a true and correct copy of the foregoing was filed via the Court's CM/ECF system and served via email and Federal Express on the following parties:

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I hereby further certify that on September 15, 2023, a true and correct copy of the foregoing was caused to be delivered to the district court by Federal Express:

Hon. Shelly D. Dick
U.S District Court, Middle District of Louisiana
777 Florida Street,
Suite 301
Baton Rouge, LA 70801

Dated: September 15, 2023

/s/ Jason B. Torchinsky
JASON B. TORCHINSKY

Exhibit 4

United States Court of Appeals for the Fifth Circuit

No. 22-30333

Press Robinson; Edgar Cage; Dorothy Nairne; Edwin Rene Soule; Alice Washington; Clee Earnest Lowe; Davante Lewis; Martha Davis; Ambrose Sims; National Association for the Advancement of Colored People Louisiana State Conference, *also known as* NAACP; Power Coalition for Equity and Justice,

Plaintiffs—Appellees,

versus

Kyle Ardoin, in his official capacity as Secretary of State for Louisiana,

Defendant—Appellant,

Clay Schexnayder; Patrick Page Cortez; State of Louisiana - Attorney General Jeff Landry,

Intervenor Defendants—Appellants,

Edward Galmon, Sr.; Ciara Hart; Norris Henderson; Tramelle Howard,

Plaintiffs—Appellees,

versus

KYLE ARDOIN, *in his official capacity as Secretary of State for Louisiana*,

Defendant —Appellant,

CLAY SCHEXNAYDER; PATRICK PAGE CORTEZ; STATE OF LOUISIANA - ATTORNEY GENERAL JEFF LANDRY,

Movants—Appellants.

ON PETITION FOR REHEARING EN BANC

Before KING, ELROD, and SOUTHWICK, *Circuit Judges*.

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5TH CIR. R. 35 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P. 35 and 5TH CIR. R. 35), the petition for rehearing en banc is DENIED.

Exhibit 5

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

MINUTE ENTRY:
NOVEMBER 27, 2023
CHIEF DISTRICT JUDGE SHELLY D. DICK

PRESS ROBINSON, ET AL	CIVIL ACTION
VERSUS	NO. 22-211-SDD-SDJ
KYLE ARDOIN, ET AL	

CONSOLIDATED WITH

EDWARD GALMON, SR., ET AL	CIVIL ACTION
VERSUS	NO. 22-214-SDD-SDJ
KYLE ARDOIN, ET AL	

This matter came on this day for a *Status Conference*.

Making appearances for the parties were[1]:

Stuart C. Naifeh, Esq.
Counsel for Robinson Plaintiffs

Abha Khanna, Esq.
Counsel for Galmon Plaintiffs

Philip J. Strach, Esq.
Counsel for Kyle Ardoin

Katherine L. McKnight, Esq.
Counsel for Clay Schexnayder and Patrick Page Cortez

Elizabeth Baker Murrill, Esq.
Angelique Duhon Freel, Esq.
Counsel for State of Louisiana – Attorney General Landry

---

[1] Numerous other enrolled counsel for the parties were present in person and telephonically.

Stephen M. Irving, Esq.
Arthur Ray Thomas, Esq.
Counsel for Louisiana Legislative Black Caucus

The parties discussed scheduling of the bench trial.

The parties filed briefs setting forth their scheduling preferences. (Rec. Doc. Nos. 307, 311). This matter is scheduled for a remedial hearing on the preliminary injunction set to commence on February 5, 2024. Pursuant to the Fifth Circuit's most recent ruling in this case the remaining procedure will be converted to a trial on the merits.

The Plaintiffs move the Court to convert the presently scheduled preliminary injunction remedial hearing date to a trial on the merits. The Defendants and intervenors submit that a trial commencing on February 5, 2024 leaves insufficient time for trial preparation and argue that considering the legislative process the earliest the legislature could plausibly enact a Voting Rights Act ("VRA") Section 2[2] compliant map would be January 25, 2024. Defendants propose a trial date commencing on or after March 11th. Plaintiff's counsel expressed that unalterable conflicts and expert witness availability make a March 11th trial date impossible.

The Court hereby sets the following dates:

The deadline for the parties to produce and exchange enacted maps and illustrative maps is January 30, 2024. The maps exchanged among the parties shall be contemporaneously filed in the record. If the Defendant/Intervenors fail to produce a new enacted map on or before January 30, 2024, this matter will proceed to a trial on the merits on February 5, 2024 which shall continue daily until complete. If a new enacted map is produced, exchanged with Plaintiff's counsel, and filed in the record on or before

---

[2] 52 U.S.C § 10301.

January 30, 2023, a trial on the merits shall be held commencing on March 25, 2024, and shall continue daily until complete.

An in-person final pre-trial conference shall be held in Court Room 3 seven days before trial. Expert reports shall be exchanged and filed in the record within ten days after the exchange of maps. Motions in limine shall be filed thirty days prior to trial.

This matter is hereby referred to the Magistrate Judge for a detailed scheduling order under both schedules set forth above.

* * * * *

C: CV 36; T: 30 mins

Exhibit 6

JEFF LANDRY

(/) OFFICE *of the* GOVERNOR

Governor Jeff Landry Assumes Office

January 08, 2024

Baton Rouge, La–Today, Governor Jeff Landry took action to maintain education standards, he issued a court required call for a redistricting special session, and he formally established the office of the First-Lady

Today's Executive Order (/assets/ExecutiveOrders/2024/JML-Executive-Order-01.pdf), the Veto of Graduation Appeals Process, will ensure that students are adequately prepared for postsecondary education and the workforce by meeting minimum standards of proficiency in core subjects. (EO attached)

"Ensuring our children have a quality education is a top priority. Today's Executive Order will maintain our education standards," said Jeff Landry.

Today's required call for a special session will redistrict the congressional districts of Louisiana along with the districts of the Louisiana Supreme Court, and make other election related changes. (Call attached)

"The courts have mandated that the state of Louisiana redraw our congressional districts. Redistricting is a state legislative function. That is why today, I followed the court order and made the call to convene the legislature of Louisiana into a special session on redistricting," said Jeff Landry.

Today's Executive Order (/assets/ExecutiveOrders/2024/JML-Executive-Order-02.pdf)to fund the office of the First Lady mirrors the actions of former Governor John Bel Edwards. It will establish and formerly recognize her office as part of the Office of the Governor. (EO attached)

"Our First-Lady, Sharon Landry, will be an incredible ambassador to Louisiana. I am proud to fund this important office, and I look forward to seeing the work she will do for folks across the state," said Jeff Landry.

Governor Jeff Landry signs documents on his first day in office

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APPLY *to*
SERVE

(https://twitter.com/LAGovJeffLa (https://www.facebook.com/GovJeffLandry) (https://www.instagram.com/gov

Contact the Governor (/page/contact) | Employee Webmail (https://webmail.la.gov/) | Report Possible Fraud or Abuse (https://www.la.gov/hotline/) | Public Records Request (/page/public-records-request) | Privacy Policy (/page/privacy-policy)

Exhibit 7

JEFF LANDRY

(/) OFFICE *of the* GOVERNOR

Governor Jeff Landry Opens First Special Session on Court Ordered Redistricting

January 16, 2024

Baton Rouge, La - Today, Governor Jeff Landry opened his first special session, which will address the court order to redistrict the congressional districts of Louisiana along with the districts of the Louisiana Supreme Court, and it will make other election-related changes.

Remarks as prepared:

Mr. Speaker, Mr. President, Members of the House and Senate,

Thank you for your cordial welcome.

May I begin by recognizing on this day Dr. Martin Luther King, JR. whose moral fortitude, and spiritual inspiration allowed millions to live the American Dream.

I would like to begin with one of my favorites of his many quotes: "The ultimate measure of a man is not where he stands in moments of comfort and convenience, but where he stands at times of challenge and controversy."

Our state's DNA, is directly connected to the diverse and varied relationships we all share with one another. Diverse relationships between our friends and acquaintances, Our neighbors, old classmates, co-workers, caregivers, teammates, colleagues, our family, and EACH OTHER right here in this room. For our culture is built on these relationships.

We are here today because we have inherited issues that others have laid at our feet. Let us accept this task. Let us do the work incumbent upon us so we can move on to solving MUCH larger problems.

Now I am aware Huey Long was shot over redistricting, I am hopeful and confident we can dispose of this matter without you disposing of me.

For various reasons known and unknown, spoken and unspoken, CLOSURE of this re-districting problem has evaded us. It is time to stop averting the issue and confront it head on. We are here today because the Federal Courts have ordered us to perform our job. Our job - which is not finished. A job that our own laws direct us to complete. AND a job that our individual oaths promised we would perform.

To that end, I ask you to join me in adopting the re-districting maps proposed. These maps will satisfy the Court...and ensure that the congressional districts of our State -- are made right here in the Legislature and not by some heavy-handed member of the Federal Judiciary.

We do not need a federal judge to do for us what the people of Louisiana have elected YOU to do. You are the voice of the people. It is time to use that voice.

The people sent us here to solve problems, not exasperate them. To heal divisions, not widen them. To be fair and reasonable. The people expect us to operate government efficiently, and to act in compliance with the laws of our nation and the instruction of our Courts - even when we disagree with them. And let me say this: I know of the hard work some of our Legislators have endured -- trying their very best to get this right.

As Attorney General -- I did everything I could to dispose of this litigation. I defended the re-districting plan adopted by this body as the will of the people. I sought a stay at the 5th Circuit. We successfully stayed the case at the U.S. Supreme Court for more than a year, allowing our 2022 elections to proceed. Last October, we filed a writ of mandamus, which was granted by the 5th Circuit -- giving the people of Louisiana yet another chance to take care of our own business. But when the 5th Circuit panel ruled against us in November, I filed for an en banc hearing, which was denied.

We have exhausted ALL legal remedies, and we have labored with this issue for far - too - long.

I recognize the difficulty of getting 144 people to agree on anything, and I sincerely commend you for the work you have done so far. But now, once and for all, let's put this to bed. Let's make the Adjustments necessary, heed the instructions of the Court, take the pen out of the hand of non-elected Judges and place it in your hand – the hand of the people. It's that simple.

Help me make this a reality… in this special session for this special purpose on this special day.

This redistricting challenge goes further than just our congressional maps. While one Federal Judge has a pen in her hand eager to draw our Congressional maps, another threatens to pick up a pen and redraw OUR Supreme Court.

In your 2021 Regular Session, you passed Senate Resolution 248, asking our State Supreme Court to provide this legislature with recommendations for redistricting their districts. A wide majority of the Court (OVER 2/3) have responded.

Justice McCallum, Justice Genovese, Justice Crain, Justice Hughes, and Justice Griffin have conscientiously, unselfishly, and courageously stepped forward and presented us with a map that re-draws our Supreme Court districts in a manner that will comply with the Voting Rights Act, - and alleviate costly litigation.
You can fulfill your responsibility -- and honorably meet your obligation to re-district our High Court -- - so the people of Louisiana will have a fair, democratic, and equally representative judiciary. The litigation involving our Supreme Court districts -- has been pending for some time. There are cases in all 3 federal districts in this state.

As Attorney General we worked to defend the state and to have those cases dismissed. I know first-hand, this matter is in-defensible.

Our Supreme Court districts have been re-districted by the Legislature only ONE TIME in the last 103 years. The result -- is districts that are grossly unbalanced – with two districts twice as large as another one.

Last year, I negotiated a scheduling order with the plaintiffs allowing the Legislature the chance to willingly handle our own affairs, rather than unwillingly have it done by another non-elected Federal Judge.

I want to publicly commend the 5 Justices for their willingness to set aside any regard for their own careers, and the power they hold. They epitomize statesmanship, honor, integrity, and the very embodiment of fairness. They are a reflection of our people's goodness, decency, and just-ness. Every single person in our great state can look up to these 5 Justices with pride, with reverence, and with a reborn confidence in the judicial system that these great men and women administer for us each and every day.

Just as we would respect, honor, and comply with any other decision reached by such a majority of our High Court; I ask that you do so now by adopting the Court's re-districting map, and allowing the first seat to be filled this Fall.

Every voting aged citizen in Louisiana may or may not join the political party of his or her choosing. It is a choice. It is a freedom. If you do choose to join a political party, it is only fair and right that you have the ability to select your Party's candidates for office, without the interference of another party and without the distraction and the interference of a convoluted, complicated, and extended ballot to wade through and decipher.

As I travel this state, I have listened carefully to those who seek a more focused electoral process...where they may participate in the nomination of THEIR party's chosen candidate. And I believe it is an issue that our Legislature should consider. We have included the proposal for a closed party primary system for your consideration for these very reasons.

It is about fairness. It is about simplicity. It is about clarity.

We have tested this system before in this state, and it works. The U.S. House Majority Leader is in his seat as a result of being first elected to Congress under a party primary system. Our State Treasurer was elected to Congress under this tried and tested system. I was elected to Congress under a party primary system. President Joe Biden was elected in Louisiana's Presidential Primary, and President Trump, and our other Presidential nominees put forward by this state -- were chosen in a party primary system which allows the major parties to pick their candidates. It is fair and it is common sense. And, for our independent or no party voters who by their own choice decide not to join a political party - their voice is heard and counted…

…Counted on a simpler, shorter, clearer November election ballot containing generally one Democrat, one Republican, and ballot qualified independent candidates.

Some things make Louisiana very unique: our food, our music, and our culture. These are a source of pride. However, our jungle of election system is the only one of its kind in the country.

It is relic of the past – which has left us dead last.

Our fellow southern states are succeeding – because of their primary process. A process which results in a stronger, more unified team of elected leaders. It is time to re-write our story and move to a similar system we have already tried, tested and still use in Presidential primaries today. As we work on other electoral reforms with these redistricting maps, now is the time to also deal with this common-sense change.

Today, as we honor Dr. Martin Luther King, JR. I do not believe that it is mere irony that finds us here today. On this consecrated day, we seek to amplify the voice of the few... We seek to broaden the opportunity for participation in the governance of our people.

The courage, the wisdom, and the relentless pursuit of fairness in our electoral process by Dr. King, is profoundly moving. His words in 1968 are wholly appropriate 56 years later at this very hour: "...the arc of the moral universe is long, but it bends toward justice..."

For Dr. King's was an uphill journey into the head winds of hate, His was a march into battle, while ours is a walk-in-the-park. His? -- Was persecution for speaking his truth, while ours is a comfortable dialogue. His was a mighty shove, while yours is the mere push of a button.

God bless Louisiana God bless each of you and God bless the people we represent.

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Contact the Governor (/page/contact) | Employee Webmail (https://webmail.la.gov/) | Report Possible Fraud or Abuse (https://www.lla.la.gov/hotline/) | Public Records Request (/page/public-records-request) | Privacy Policy (/page/privacy-policy)

Exhibit 8

https://www.nola.com/news/politics/rep-garret-graves-sees-fortunes-fall-steeply/article_c4592922-b721-11ee-bba8-c3fe4cd6a7ad.html

Rep. Garret Graves was on top. Now he's fighting for his political life. What happened?

BY TYLER BRIDGES | Staff writer

Jan 20, 2024

1 of 2

U.S. Rep. Garret Graves, R-Baton Rouge, speaks at a news conference after the House passed the debt ceiling bill at the Capitol in Washington on May 31, 2023. Then-House Speaker Kevin McCarthy, a close ally, is at right. A similar budget deal led to McCarthy's ouster.

Jose Luis Magana

It’s hard to overstate how high U.S. Rep. Garret Graves was riding a year ago.

He had just helped corral the votes of Republican colleagues to elect Kevin McCarthy speaker of the House. That put Graves in line for a plum position.

Back home in Baton Rouge, Graves was so popular that major GOP donors were beseeching him to run for governor as an alternative to then-Attorney General Jeff Landry, the more conservative frontrunner.

Today, Graves’ world seems to be crashing down.
He managed to antagonize both Landry and U.S. Rep. Steve Scalise in 2023, and around the same time, federal courts unexpectedly signaled that Louisiana would have to draw a new congressional map to create a second majority-minority district.

As a result, Landry – now the governor – and the Republican-controlled Legislature carved up Graves’ once-safe 6th Congressional District to create a second Black-majority seat in Louisiana, a move that could put him out of Congress next year.

“Garret was on top of the ladder,” said former U.S. Rep. Billy Tauzin, one of Graves’ former bosses. “What’s happening now is sad – for him and Louisiana. He’s one of the brightest, most policy-driven people I know.”

Graves says he'll seek reelection this year no matter what.

“I expect to run, and I expect to be re-elected,” Graves said in an interview.

Making powerful enemies

After deciding not to run himself for governor, Graves ran afoul of Landry by backing the bid of Stephen Waguespack, an ally who was then the head of the Louisiana Association of Business and Industry. The other six Republican members of Louisiana’s congressional delegation either supported Landry or didn’t endorse.

Apart from payback, Landry has an additional reason to want to sideline Graves, political insiders say. As a sitting congressman with an ability to raise money, Graves could be a formidable challenger to Landry’s re-election in 2027.

Graves, meanwhile, upset Scalise by not publicly supporting his bid to be speaker in October after McCarthy resigned – and pointedly questioning the plan to "give everyone one rung of promotion.” Not only that, Graves

Rep. Steve Scalise, R-La., congratulates House speaker-elect Rep. Mike Johnson, R-La., after Johnson was elected the new House speaker, at the Capitol in Washington on Oct. 25, 2023.

Alex Brandon

privately spread the word that Scalise's cancer diagnosis made him a health risk for the job, Scalise has indicated. Graves has denied this and said he always supported Scalise.

“I think he just got crossways with the new governor by not supporting him in the primary and with Steve Scalise when he was running to be speaker,” said former U.S. Sen. John Breaux, another member of Congress Graves worked for. “Both of those two situations are now reflected in what's happening with reapportionment.”

Landry has said repeatedly that if lawmakers don't draw a new map with two majority-Black districts, U.S. District Court Judge Shelly Dick – who they note was appointed by President Barack Obama – will do so, in a way that might be less favorable to Republicans. So one GOP district would have to go. After calling legislators into the special session, Landry pushed lawmakers to sacrifice Graves.

While endorsing the plan they enacted, state legislators repeatedly said that they wanted to draw a map that protected four of the five Republicans in the House: Scalise, Speaker Mike Johnson, U.S. Rep. Julia Letlow and U.S. Rep. Clay Higgins. Practically no one said they wanted to protect Graves.

U.S. District Judge Shelly Dick

Graves seems undaunted. He has indicated that he believes Dick or the 5th U.S. Court of Appeals will reject the new map, enabling him to run in a district that resembles his current one.

But Dick already rejected the map Republicans drew in advance of the 2022 elections, saying it diluted Black representation.

Graves, however, noted that Dick has not held a trial on the merits of that question. She has scheduled one for next month, which led to the GOP scramble to adopt a new map first.

“Bottom line, no court has mandated that the state redraw the maps," Graves said. "It’s sort of like changing answers on your test before it’s graded. Get somebody to go through and tell you what’s right and what’s wrong (with the existing map) and then go back and correct them. It’s premature to do this right now.”

Long odds

But Graves’ voice may be a lonely one, with most Republicans as well as the NAACP Legal Defense Fund endorsing the new map. If it withstands legal scrutiny, Graves would have to run in his 6th District, which has now been designed to elect a Black Democrat, or challenge Scalise, Letlow or Higgins, whose districts include areas near his home. There’s no prohibition on him running in a district where he doesn’t live.

Graves, 51, was first elected to the House in 2014 by finishing ahead of three major Republicans in the primary and then defeating 87-year-old former Gov. Edwin Edwards, a Democrat, in the runoff. He has won at least 62% of the vote in winning reelection four times.

Graves came to Congress with a deep understanding of how Washington functions, having served as a longtime aide to Tauzin and on various House and Senate committees. Graves also understood state politics from his tenure as then-Gov. Bobby Jindal's point person on the coastal master plan.

Graves quickly won a reputation as a hard worker who was willing to dive into the details of legislation.

U.S. Rep. Garret Graves, R-Baton Rouge, tours part of the Comite River Diversion Canal project where stone has been laid down along the canal on June 29, 2023 in Zachary.

STAFF PHOTO BY MICHAEL JOHNSON

Despite a reputation as a wonk who could work with Democrats, he won plaudits from conservatives by voting with then-President Donald Trump 90% of the time.

In addition, after the attack on the Capitol by Trump supporters on Jan. 6, 2021, Graves voted against certifying some of Joe Biden's electors.

Graves also opposed impeaching Trump over his role in the insurrection.

Progressives have generally applauded Graves for taking the lead among Republicans in saying that climate change is real.

Even so, as the New Yorker magazine reported in a 2019 profile, critics have noted that he consistently votes with the oil and gas industry and was a major recipient of their campaign contributions.

Some saw Graves as trying to give voice to both sides, while others said he was trying to have it both ways.
“Graves’s position depends on his ability to persuade people in both parties of two ideas that are generally thought to be contradictory: that the environment urgently needs to be saved, and that the fossil-fuel industry can ultimately be a hero of our climate story, rather than the villain,” the magazine reported.

Earning his stripes

Graves catapulted onto the national stage in January when he played a role in breaking a deadlock by helping persuade 21 conservative hard-liners to elect McCarthy as speaker on the 15th ballot.

U.S. Rep. Garret Graves, R-Baton Rouge, talks on his cellphone as he stands in the entrance to the offices of the speaker of the House on Oct. 4, 2023 .

Associated Press Photo by Mark Schiefelbein

Two weeks later, McCarthy announced Graves would chair the Elected Leadership Committee, vaulting him into the senior ranks of the House. In that role, Graves oversaw meetings of key Republican House leaders. McCarthy likened Graves to an “assistant coach.”

In the meantime, Graves was weighing whether to jump into the governor’s race. Analysts saw him as the biggest threat to Landry, especially after U.S. Sens. John Kennedy and Bill Cassidy both said they wouldn’t run.

In early 2023, Landry and Graves met at a restaurant in Livonia to see if they could hash out their differences. They couldn’t.

In March, Graves announced that he wouldn’t run but emailed his supporters, “In the coming days, the field for governor will brighten. And Louisiana will have a generational opportunity to write America’s greatest comeback story.” It was a clear shot at Landry. A short time later, Graves endorsed Waguespack while appearing with him in a video.

In May, McCarthy showed his confidence in Graves by tasking him to work out a deal with President Joe Biden where Republicans agreed to raise the debt ceiling in exchange for spending cuts. McCarthy and Graves secured the deal. But it needed Democratic votes to win, and hard-right conservatives denounced it. They went on to oust McCarthy as speaker in October.

Scalise, the majority leader, was next in line. Supporting a fellow member of the state's delegation seemed like a no-brainer to most Louisianans.

But when asked directly by CBS-TV if he would support Scalise, Graves wouldn't commit. "There are a handful of people being discussed," he said. "There are some qualified candidates. I think it's premature to get into that discussion."

Graves went on to talk up the positives of Rep. Jim Jordan of Ohio, a right-winger and Scalise's primary foe. His response baffled Breaux.

"It's very much in the interest of a small state," Breaux said. "I was surprised that Garret wasn't on board early on."

A second act?

After Scalise couldn't secure the votes, support eventually coalesced around Johnson, the Republican from suburban Shreveport, and he was elected speaker.

Johnson quickly removed Graves from his leadership post, although he still might be elected by his colleagues next year to become chair of the Transportation Committee. If that happened, he could direct big dollars to infrastructure projects in Louisiana.

Graves didn't graduate from college, but he has always impressed colleagues with his intelligence. But he's also come across at times as a know-it-all, say Washington sources.

"He generally is smarter than anyone else in the room – and that's his problem," Tauzin said. "People sometimes are offended by that. It's kind of hard to hide that sometimes. That can hurt you in politics."

Graves seems to have few friends in politics today.

But don't count him out, Tauzin said.

"I'll make a prediction: if he doesn't run for the House, you can look forward to Garret Graves running for the Senate," Tauzin said.

Cassidy, who has angered many Republicans by voting to certify Biden's election and convict Trump of insurrection, is up for reelection in 2026.

-Staff writer Mark Ballard contributed to this report.

Email Tyler Bridges at tbridges@theadvocate.com.

Exhibit 9

https://www.nola.com/news/politics/garret-graves-endorses-stephen-waguespack-in-governors-race/article_fa443074-0559-11ee-af08-27e4fcb098fe.html

Garret Graves endorses Stephen Waguespack in Louisiana governor's race

BY TYLER BRIDGES | Staff writer

Jun 7, 2023

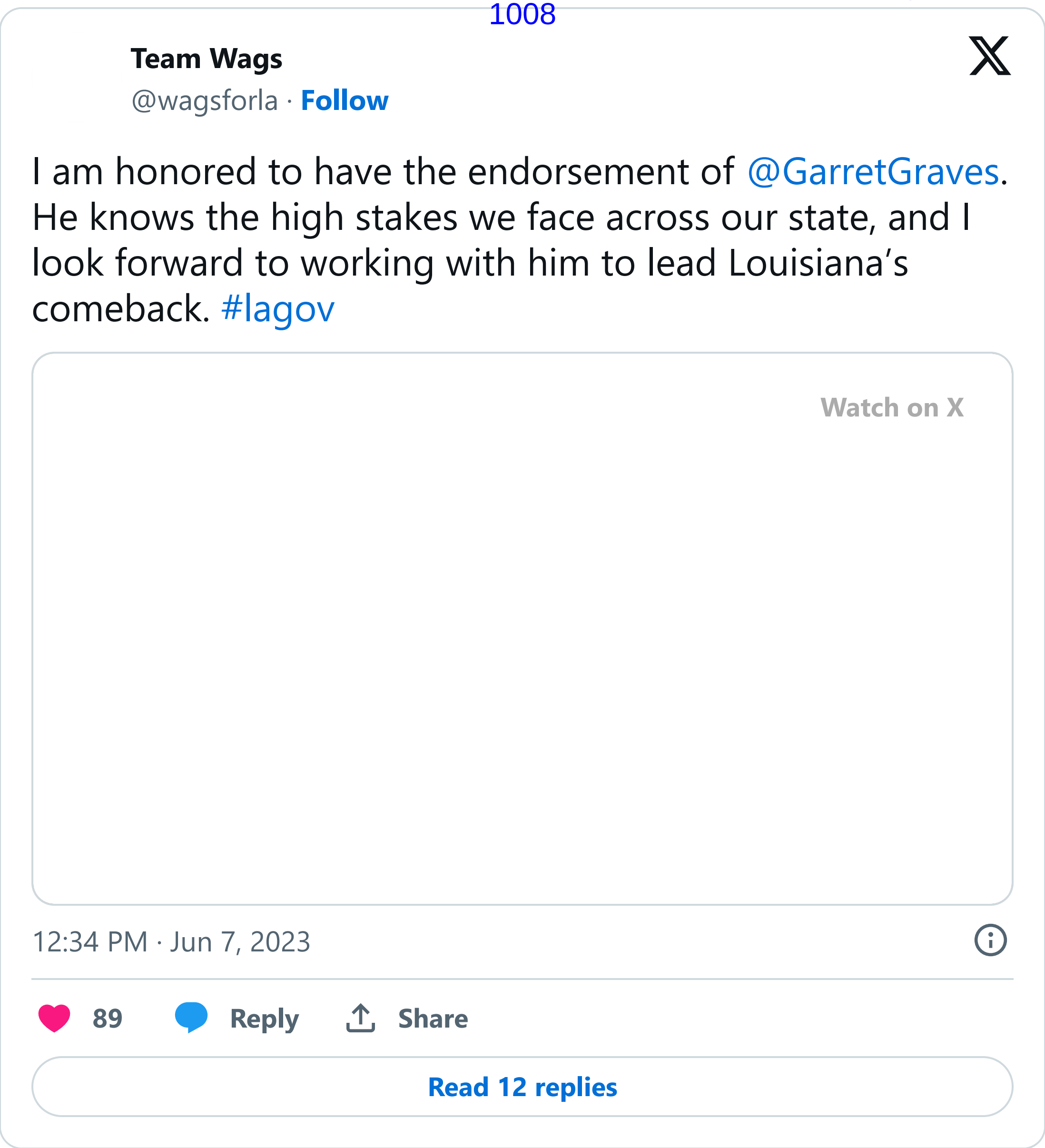
Gubernatorial candidate Stephen Waguespack, former President and CEO of the Louisiana Association of Business and Industry, speaks during a forum at the 2023 Industry Day, Wednesday, May 10, 2023, at the Capitol Park Museum in downtown Baton Rouge, La.

STAFF PHOTO BY HILARY SCHEINUK

Stephen Waguespack scored his first major endorsement of his gubernatorial campaign Wednesday when U.S. Rep. Garret Graves announced his support.

“He’s the person in this race who can put politics aside, do what’s right and give us the Louisiana that we deserve,” Graves said in a Twitter video posted by the Waguespack campaign.

The video showed Waguespack and Graves sitting across from each other at what appeared to be a breakfast spot.



Team Wags
@wagsforla · Follow

I am honored to have the endorsement of @GarretGraves. He knows the high stakes we face across our state, and I look forward to working with him to lead Louisiana's comeback. #lagov

12:34 PM · Jun 7, 2023

The endorsement by Graves, who represents metro Baton Rouge in Washington, was not a surprise, as he and Waguespack have been close since they worked together as aides to then-Gov. Bobby Jindal. Waguespack jumped into the governor's race in March only after Graves said he wouldn't run.

U.S. Rep. Garret Graves, R-Baton Rouge, in his Washington office on March 22, 2023.

Staff photo by Mark Ballard

Waguespack took a job as president of the Louisiana Association of Business and Industry – the state's top business lobby – after his stint with Jindal.

Attorney General Jeff Landry, the frontrunner in the governor's race, has the endorsements of U.S. Rep. Clay Higgins, who represents Acadiana, and U.S. Rep. Mike Johnson, who represents northwest Louisiana.

Super PACs supporting Landry and Waguespack are slugging it out in attack ads on TV against the other candidate.

Waguespack and Landry are Republicans, as are three other candidates: Treasurer John Schroder, state Sen. Sharon Hewitt of Slidell and state Rep. Richard Nelson of Mandeville.

Shawn Wilson, who served as the transportation secretary for Gov. John Bel Edwards, is the only Democrat in the race. Jason Williams, the Orleans Parish district attorney, recently expressed interest in becoming a candidate to attack Landry. He, too, is a Democrat.

Candidate Hunter Lundy, a trial lawyer and fundamentalist minister, is a political independent from Lake Charles.

The primary is Oct. 14.

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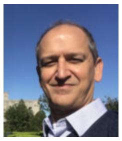
Email Tyler Bridges at tbridges@theadvocate.com.

Exhibit 10

Election 2023
Executive
Govt + Politics

Commentary

In governor's race, we'll see if 'Wags' can tail top dog Landry



Greg LaRose

March 8, 2023 12:00 pm

LABI and RLDF.org photos

One of the bigger questions hanging over the 2023 governor's race has been answered now that Congressman Garret Graves, R-Baton Rouge, has opted to stay out. His decision came Tuesday morning, just hours after news broke that his good friend and Louisiana Association of Business and Industry President Stephen Waguespack would become a candidate.

"After much prayerful consideration and hundreds of conversations, it is clear that the best service we can provide to Louisianians and the next governor is by building on our wins in the U.S. Congress," Graves said in an email Tuesday.

A closer look at their respective backgrounds reveals many similarities.

Graves, 51, and Waguespack, 49, were both part of former Gov. Bobby Jindal's administration – Graves as Coastal Protection and Restoration Authority (CPRA) chairman, and Waguespack as executive counsel, chief of staff and later a state school board appointee.

In his email, Graves hinted at his support for another soon-to-be-announced candidate for governor.

"In the coming days, the field for governor will brighten," he said. "And Louisiana will have a generational opportunity to write America's greatest comeback story."

It wasn't until this email that Graves offered much insight on his contemplation about running for governor. Since saying last fall he was considering the race, the congressman has kept his intentions close to his vest.

Graves was also discouraged from running by the leader of the Louisiana Republican Party, which endorsed Attorney General Jeff Landry months ago. State GOP chairman Louis Gurvich issued a message to members on the party's website Jan. 15 that strongly expressed reasons why Graves should bypass the race.

In his message, titled “Unity is Our Only Path to Victory,” Gurvich justified the Republican State Central Committee’s endorsement of Landry for governor – three months before anyone else announced their candidacy – and listed why Graves should continue to represent Louisiana’s 6th House district in Congress.

“If Garret does enter the governor’s race, he will start well behind Jeff Landry in popularity,” Gurvich wrote as one reason for Graves to stay in his House seat.

Graves’ early exit from Congress could also lead to a Democrat taking over the seat, according to Gurvich. His possible replacement? Gov. John Bel Edwards, the chairman said.

A candidacy for the U.S. House would be a stepping stone for Edwards, Gurvich predicted.

“The Democrats would instantly commit tens of millions of dollars to John Bel’s election,” he wrote. “A few years in the House would place him in an excellent position to run for U.S. Senator in 2026, when Bill Cassidy must run for re-election or leave the Senate.”

In his email Tuesday, Graves mentioned nothing about the Louisiana GOP’s support for Landry, although he has met in person with the attorney general recently. It’s assumed their conversation included the governor’s race, though neither official has discussed the meeting publicly.

But with Waguespack leaning toward a candidacy, the argument that Gurvich and the big-money GOP donors kept Graves out of the race doesn’t hold water. Waguespack and Graves are connected to many of the same fiscal backers, and the LABI chairman doesn’t seem daunted by the six-month advantage Landry has enjoyed in fundraising.

That edge is likely to grow after Landry announced Wednesday he has the endorsement of wealthy GOP businessmen Boysie Bollinger and Joe Canizaro.

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Waguespack, known as “Wags” among his peers, has the same right-aligned stances as Graves but without the voting record Graves’ detractors would have likely used against him in the governor’s race.

Graves has a deep conservative streak. He’s a member of the Republican Study Committee, a conservative caucus within Congress. He did call on former President Donald Trump to resign a day after the Jan. 6, 2021, attack on the U.S. Capitol, but he voted against impeaching him for insurrection.

In his Jan. 8, 2021, column for LABI, Waguespack summed up events two days earlier at the Capitol with his opening words: “Ridiculous. Unbelievable. Heartbreaking.”

“These words, and many more that should not be uttered by a gentleman, are the words that came to mind this week as images of our Nation’s Capitol being treated like a frat house on a drunken weekend came across the airwaves,” he continued.

While spelling out his philosophical differences with the incoming President Joe Biden, Waguespack made it clear he accepted the results of the 2020 election as valid. He even leveled a critique of outgoing President Donald Trump in the process.

“Our current President, rather than running on a strong economic record of job creation, has relied more on incendiary rhetoric to provoke furor and rage against those who disagree with his positions,’’ Waguespack wrote. “Our incoming President promises to replace our foundational free enterprise economic system with one that more closely resembles the failed socialist structures of the past, many of which were found in countries we bravely fought to reform generations ago.”

On COVID-19, Waguespack argued against business vaccine mandates while also encouraging everyone to get the shot. In November 2021, he acknowledged having received the vaccine himself. LABI also lobbied state lawmakers to give employers a break on unemployment taxes once the pandemic triggered a run on job benefits.

Graves was similarly pragmatic during the pandemic. Early on, he conveyed the various actions the government took in response to COVID-19 and kept abreast of what the medical field was learning about the virus. As Congress fashioned pandemic recovery plans, Graves argued for additional economic resources and well as funding to continue community testing and vaccination events.

Waguespack and Graves are also similarly aligned on energy issues. The LABI president has been critical of Biden’s moratorium on exploration leases, and his organization typically lands on the pro-industry side of environmental issues.

In the U.S. House, Graves has been a consistent supporter of fossil fuel legislation while also advocating for alternatives. He has promoted exploration for rare earth minerals needed to create solar panels while also opposing the Paris Climate Accords. The chief weakness of the international pact is that it doesn’t address the world’s top polluters, Graves has said.

The League of Conservation Voters scores Graves at 6% over his congressional career for his record on environmental policy. While green groups are among his campaign contributors, money from the oil and gas industry led the way in the most recent election cycle, according to OpenSecrets.org.

Graves has routinely said the fossil fuel industry will be involved in solving environmental issues, yet he has challenged fellow Republicans who question the scientific truth of climate change.

The comparison reveals how much Graves and Waguespack are alike, but the question that lingers is whether they are different enough from Landry to pull enough support from middle-of-the-road voters who won’t support Democratic candidate Shawn Wilson.

One thing’s for sure: If you’re a Republican voter in Louisiana this year, you can’t complain about a lack of choices.

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Exhibit 11

POLITICO

PLAYBOOK

What Steve Scalise won't forget

The House majority leader reflects on a nasty battle for the speakership: "Anybody who thinks that there are secrets in this town, there are not."

Rep. Steve Scalise (R-La.) speaks with reporters at the U.S. Capitol on Oct. 12, 2023. | Francis Chung/POLITICO

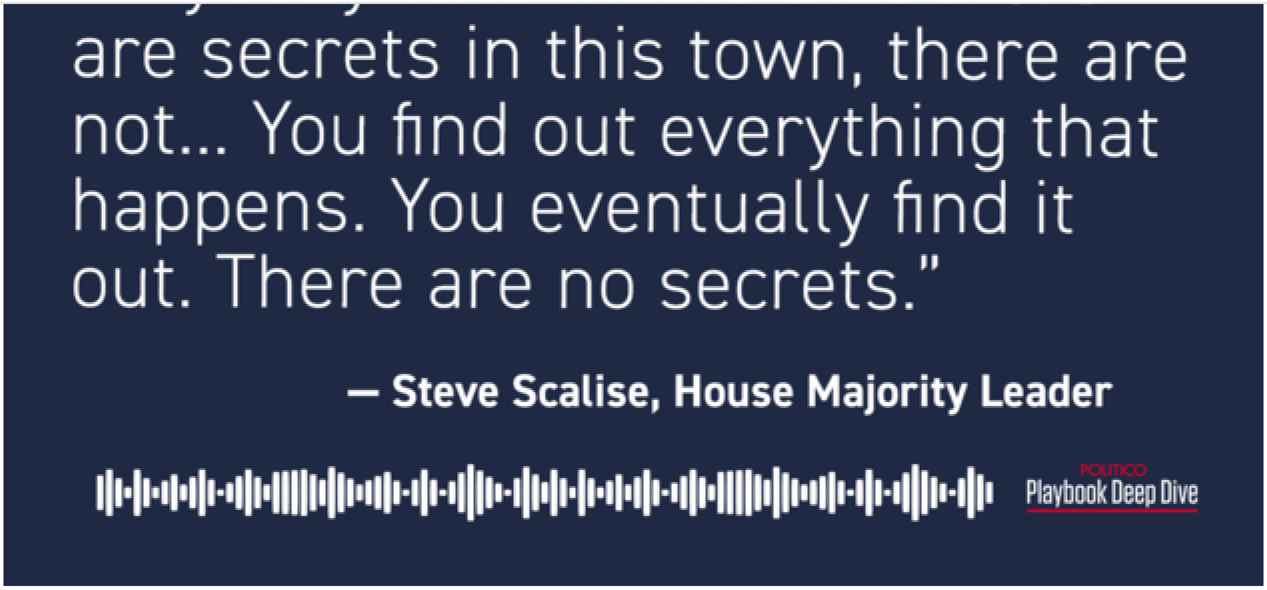
By **RYAN LIZZA**
12/01/2023 08:14 AM EST

hold.

“There’s some folks that really need to look in the mirror the next couple of days and decide, are we going to get back on track?” he said, announcing he was dropping his bid to succeed Kevin McCarthy as House speaker.

Now, six weeks later, Scalise himself is looking in the mirror and reflecting on a whirlwind stretch that saw McCarthy removed by a coalition of right-wing hardliners and Democrats, Scalise’s own ambitions thwarted by many of the same conservatives, and the anointing of a younger fellow Louisianan, Mike Johnson, as speaker.

In a new interview for the Playbook Deep Dive podcast, Scalise examines the backdrop to the drama — his “complicated” relationship with McCarthy, the alleged back-stabbing of a fellow member from Louisiana, and former President Donald Trump’s influence inside the House GOP.



are secrets in this town, there are not... You find out everything that happens. You eventually find it out. There are no secrets."

— Steve Scalise, House Majority Leader

Scalise professes no regrets: "The way that Kevin got removed was a shock to everybody, including myself. I didn't want it to happen the way it did. And yet when it happened, you don't have a choice. There's an opening for speaker, and you have to make a quick decision."

But he made clear there were episodes in the dramatic weekslong fight for the gavel that he won't soon forget — including the role of Rep. Garret Graves, a fellow Louisiana Republican who allegedly spread disparaging information about Scalise, including about his recently diagnosed cancer.

"He'll tell people differently — like, I mean, in the end, we all, you know, we all make our decisions," he said of Graves, whom Johnson recently removed from the GOP leadership team.

Scalise added: "You can read through the B.S. And believe me, you know, anybody who thinks that there are secrets in this town, there are not. You know that as the press. I can surely tell you as a former whip, more even than majority leader, you find out everything that happens. You eventually find it out."

More from the extended conversation …

historically gets complicated, and there's been good and bad examples. With Kevin and I, it changed over time. But I mean, you know, like Mike and I get along great."

- ***On Graves:*** "I know what was being said. I mean, medical opinions that were being given out were completely false. I had a doctor from M.D. Anderson, the top myeloma cancer specialist in the world, who, along with my local doctor, was looking at all of my blood work and meeting with me on a regular basis, who said, 'Everything you're doing is fine, the cancer is almost gone and you're going to live a long life.' He's looking at my blood work. And then there's some, you know, member, unnamed member of Congress, who's naming somebody that might not even be a doctor saying he's going to die in six months. That's how bad it was."

- ***On whether not endorsing Trump for president harmed him:*** "He and I talked during that period, and I still won the nomination, by the way, during that period with him. And he never came out against me. And, believe me, he and I talked even after he endorsed Jim [Jordan]. He said really good things about me. He cares about my health. He asked me about my health. He and I speak on a regular basis."

- ***On whether he ever wonders how Johnson ended up speaker:*** "It's exciting for Mike. I'm one of these people that, you know, you rip the rearview mirror off. You know, you don't look back. You you know, you deal with what's in front of you because you don't have time to look back. You learn from everything you've done, you know, whether it's successes or mistakes, you want to learn from things in the past. But I mean, I'm lucky to be where I am."

- ***On his health:*** "I was having health issues. I didn't know what it was. And luckily it got detected early and the doctors put me on a chemotherapy that was very aggressive for what I had, and it's working incredibly well. … So if you see something wrong with your system, go see your doctor, get blood work run, and it can add years and decades to your life."

POLITICO

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Playbook

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Exhibit 12

https://www.nola.com/news/politics/i-know-what-was-being-said-steve-scalise-suggests-garret-graves-undercut-speaker-bid/article_c8fb3590-905e-11ee-86ce-4319bdb3475d.html

'I know what was being said': Steve Scalise suggests Garret Graves undercut speaker bid

BY GORDON RUSSELL | Staff writer

Dec 1, 2023

1 of 2

U.S. Rep. Garret Graves, R-Baton Rouge, speaks at a March 30 press conference in the U.S. Capitol. Then-House Speaker Kevin McCarthy, R-Calif., is to Graves' right. Beside McCarthy is House Majority Leader Steve Scalise, R-Jefferson.

Staff Photo by Mark Ballard

In his most direct remarks on the controversy to date, House Majority Leader Steve Scalise in a new interview suggested Rep. Garret Graves, a fellow Republican who represents an adjoining district, helped undercut his recent bid to become speaker.

Scalise, of Jefferson, had hinted at his frustration with Graves, of Baton Rouge, in previous interviews, and aides have privately confirmed a rift.

In the new interview, published by Politico, reporter Ryan Lizza asked Scalise: “What happened with Garret Graves? He really tried to screw you?”

Scalise responded: “Funny. He’ll tell people differently. He, look … in the end, we all make our decisions."

Lizza said he wished Scalise’s wife, Jennifer, could answer his question about Graves. “No, you really don’t,” Scalise said.

A minute later, Scalise added: "You can read through the B.S. And believe me, you know, anybody who thinks that there are secrets in this town, there are not. You know that as the press."

U.S. Rep. Garret Graves, R-Baton Rouge, talks on his cellphone as he stands in the entrance to the Capitol offices of the speaker of the House on Oct. 4.

Associated Press Photo by Mark Schiefelbein

Scalise was careful not to utter Graves' name in the interview, but his comments were made in response to questions about Graves. The same was true when Scalise complained at length about misinformation that had been spread about his cancer diagnosis -- a campaign he implied Graves was involved in.

“I know what was being said," Scalise told Politico. "I mean, medical opinions that were being given out were completely false. I had a doctor from M.D. Anderson, the top myeloma cancer specialist in the world, who, along with my local doctor, was looking at all of my blood work and meeting with me on a regular basis, who said, ‘Everything you’re doing is fine, the cancer is almost gone and you’re going to live a long life.’ He’s looking at my blood work. And then there’s some, you know, member, unnamed member of Congress, who’s naming somebody that might not even be a doctor saying he’s going to die in six months. That’s how bad it was.

He added: “I really don’t think it moved votes but it showed you the lack of character of other people.”

Scalise loyalists have previously said that Graves also reminded some colleagues of a controversial Scalise comment from years ago, in which he described himself as "David Duke without the baggage," and brought up Scalise's 2002 speech before a group of White supremacists. (Scalise has said he wasn't aware of the group's affiliation, and that his Duke remark was not meant as an embrace of the former Ku Klux Klan leader's White supremacist views.)

Graves has emphatically denied he did anything to resurface those episodes, calling such claims "bulls--t."

Graves was a close ally of ousted House Speaker Kevin McCarthy -- who didn't get along well with Scalise -- and made public comments at the time suggesting he opposed Scalise's ascension to the House's top job. Graves also went out of his way to praise Rep. Jim Jordan of Ohio, a far-right Republican who was challenging Scalise for the gavel.

The remarks surprised many Louisianans, who assumed the four other members of the state's House GOP contingent would fall in line behind the congressman from Jefferson.

Graves has said he actually supported Scalise for speaker, and that his comments were misinterpreted. He did not immediately respond to a request for comment Friday.

Scalise won a majority of the House Republicans behind closed doors to become the speaker-designate, but came about a dozen votes shy of the majority of the full House he needed.

After about a day and a half, Scalise threw in the towel, saying he didn't want to put his colleagues through vote after vote.

The drama ended unexpectedly with the elevation of another Louisianan -- Rep. Mike Johnson, of Benton -- to the speakership.
-Staff writer Mark Ballard contributed to this report.

Exhibit 13

https://www.nola.com/news/politics/steve-scalise-dream-to-be-speaker-and-by-hardball-politics/article_19431f68-6f85-11ee-ba5d-73611afd20e7.html

How did Steve Scalise's dream for speaker get squashed? Hardball politics are to blame.

BY MARK BALLARD | Staff writer

Oct 23, 2023

U.S. Rep. Garret Graves, R-Baton Rouge, discusses House passage of the Lower Energy Costs Act, H.R. 1, during a March 30, 2023 press conference in the U.S. Capitol. House Speaker Kevin McCarthy, R-Calif., is to Graves' right. Beside McCarthy is House Majority Leader Steve Scalise, R-Jefferson and chief sponsor for H.R. 1, on which Graves contributed a section.

Staff Photo by Mark Ballard

WASHINGTON – Steve Scalise's lifelong dream of being speaker of the House was sidetracked by the hardball tactics of a group of über-conservatives — including former President Donald Trump — with assists from former Speaker Kevin McCarthy and at least one colleague in Louisiana's GOP delegation.

The Jefferson congressman was on the cusp after he won a slim majority of fellow House Republicans in an Oct. 10 secret ballot, a contest that pitted him against U.S. Rep. Jim Jordan, the pugnacious Ohio Republican.

But Scalise, whose amiability is often viewed as a weakness by the far right, needed the support of 107 more Republicans to claim the speaker's gavel in the full House.

About 20 would not be persuaded. He could only afford to lose four. On the evening of Oct. 12, Scalise withdrew from the race.

Jordan, who was then elected the speaker-designate, also failed to reach 217 votes in three tries. He dropped out Friday afternoon after 25 Republicans withheld their support. Scalise said he would not run this time.

From the moment on Oct. 4 when he announced his intentions to run through the 32-hour period when he was speaker-designate, Scalise's opponents within the GOP sought to undermine him with questions – some whispered, some broadcast -- about his fitness for the job in public statements.

Scalise was too sick with cancer to serve, Trump said after he endorsed Jordan, a message echoed by other congresspersons. A speech he gave to a gathering of White supremacists in 2002 — which had never created serious problems for Scalise within the GOP caucus — was dusted off again. And his opposition to proposed rules that would have changed generations of tradition on how a speaker is chosen was held up as a sign of his self-interest. Those proposed rules were quickly jettisoned when Jordan became the lead candidate.

The campaign to defeat Louisiana's most powerful congressman highlighted schisms not only within the fractious GOP House majority, but among the five Republicans in Louisiana's six-member House delegation.

One notable thorn in Scalise's side was U.S. Rep. Garret Graves, R-Baton Rouge.

Scalise supporters say Graves was among those who undercut his campaign for the speakership, which would have put him behind the vice president in the presidential succession. Graves was one of former Speaker McCarthy's most trusted lieutenants. McCarthy had criticized Scalise earlier this year and he was reported to have worked against Scalise's ascendance, while later promoting Jordan.

Nineteen people with a close view of events – including members of the Louisiana delegation, other congresspersons, staffers, confidants, donors and lobbyists – were interviewed for this report. All described the situation surrounding Scalise's campaign but all spoke on condition of anonymity. They didn't want to anger either Scalise or Graves. Graves, who did speak on the record, denies he undermined his fellow House member.

"I'm sorry Steve didn't make speaker," Graves said Thursday. "It's clear that there's not a path for anyone. Jesus couldn't get 217 votes right now. I committed to support Steve."

Scalise released a statement Saturday expressing frustration with his intraparty opponents, but not naming names.

"There are some folks who really need to look in the mirror and decide: Are we going to get back on track? Or are they going to continue to pursue their own agenda? You can't do both. Our country is counting on us to come back together," the statement said. "Ultimately, we have to unite for the country, and it needs to happen soon."

Public comments, private comments

While Scalise was pursuing the speakership, Graves' public statements surprised some Louisiana politicos and media watching the action unfold from afar.

Graves told reporters after McCarthy's Oct. 3 sacking that the result should not be "to just give everybody one rung of promotion."

He did not name Scalise, but it was obvious that not moving people up the ladder would deny Scalise -- who holds the House's No. 2 spot -- the top job. Graves has said his real focus was on fundamentally changing the majority's rules.

The next day on Baton Rouge radio, Graves told interviewer Brian Haldane he had concerns about Scalise serving given his medical challenges.

"I want to remind you he is going through an incredible bout of cancer right now and I don't know that that's the best decision for him or his family at this point," Graves said. "That is one of the most stressful jobs that you can even imagine. His timing is not ideal for him. Obviously, we'd love to have a speaker from Louisiana."

Graves repeated his view that the Republican Conference needed to change the rules that had handcuffed House leadership and allowed eight Republicans to instigate McCarthy's ouster.

Meanwhile, when reporters asked him about Jordan, Graves found ways to praise him. In an Oct. 5 interview, Graves said he believed the fiery Ohioan had "matured" during his years in the House.

On Oct. 10, Graves stormed out of a closed-door GOP conference after it rejected an idea he had championed that would have changed how the Republicans would select a speaker. The plan was defeated on a motion by one of Scalise's supporters. Soon after, Scalise was voted speaker-designate, with 113 votes to Jordan's 99.

Rep. Chip Roy of Texas, who had officially proposed the change, said that Scalise's defeat of the rule made him a "hard no" on Scalise.

As Scalise was trying to round up support from the additional 107 Republicans he needed, at least a half-dozen Scalise loyalists say Graves began reminding some colleagues of a controversial Scalise comment from years ago, in which he described himself as "David Duke without the baggage."

Graves also brought up a 2002 speech Scalise gave in Metairie to a group Duke organized, according to five Scalise supporters. Scalise apologized when the story emerged in 2014, saying he didn't know what the group stood for.
In an interview Thursday in the Capitol, Graves emphatically denied he did anything to resurface those episodes.

"That is bulls--t. That is something they have said and that's just not true," Graves said.

'A little bit of tension'

While insisting he supported Scalise's speakership bid, Graves acknowledged that relations aren't always great among the five Republican House members Louisiana has sent to Washington.

"I'll admit there's a little bit of tension," Graves said. "But most of us talk regularly."

He made note of recent interactions with his GOP colleagues: Reps Mike Johnson, Julia Letlow and Clay Higgins. “I had lunch with Julia the other day. I talked on the phone with Mike today, talked to him face-to-face twice. Clay and I talk. We’re not drinking buddies, but…”

He trailed off.

Notably, Graves wasn't the only Louisiana delegation member who didn’t go to the mat for Scalise.

Neither Clay Higgins, of Lafayette — Louisiana’s only member of the Freedom Caucus, which Jordan founded — nor Mike Johnson, of Benton, a close friend of Jordan’s, committed publicly to Scalise when he announced his candidacy.

They both said they voted for Scalise on the secret ballot. Once the leader of their delegation withdrew, both Higgins and Johnson almost immediately gave full-throated support to Jordan.

Higgins said little after Scalise’s bid tanked. But after Jordan flopped, Higgins’ disappointment was plain.

“Well, the swamp won this round,” he posted on X, formerly known as Twitter. “I’m feeling very Old Testament.”

Old politicos who have watched the House imbroglio from afar said this week that regardless of how Scalise's bid was scuttled, the whole affair suggested that egos overtook a higher loyalty to what's best for Louisiana.

“I like Steve Scalise,” said former U.S. Sen. John Breaux, who represented Louisiana for 33 years in Congress. “Even if I hated Steve Scalise, I would have held my nose and voted for him because that’s in the best interest of the state of Louisiana. It’s beyond party stuff.”

Being speaker of the House requires skills that everyday ideologues don’t need. For instance, a speaker needs to build intra-party and bipartisan coalitions in order to forge majorities to approve legislation on which members of both parties have strong and often unyielding opinions.

No side deals

The job description seemed ready-made for Scalise, many opponents and supporters agree.

Since 2008, when he joined the House, Scalise had worked his way up through GOP leadership, leading the Republican Study Committee, the largest ideological caucus. He corralled votes for nearly nine years as whip before being elected majority leader, the post just below speaker.

But Scalise wasn't able to win over opponents to his candidacy during the penultimate Oct. 12 meeting, which ended with Scalise withdrawing his speaker bid, said seven people either in the meeting or briefed on it. All seven agreed on the fundamental account of the meeting but stressed different aspects depending on what side they championed.

Four sources said Scalise refused to negotiate side deals in return for votes, and that was why he stepped aside.

Three others said Scalise made a tactical error by including in the meeting Republican conference members with divergent views. Since they were all in the same room, Scalise couldn't address the wants of one group of opponents without angering another.

Of course, any sniping between members of the Louisiana delegation was relatively polite compared to what Ohio's GOP delegation has seen.

A few years after Jordan arrived in Washington, he began feuding with then-Speaker John Boehner, a fellow Ohio Republican, for not being conservative enough. Boehner went on to call Jordan "a legislative terrorist."

Boehner, weary of fighting Jordan and his allies, stepped down from Congress in 2015. The nickname he gave Jordan stuck.

Email Mark Ballard at mballard@theadvocate.com.

Exhibit 14

2024 FIRST EXTRAORDINARY SESSION

SB8 by Senator Glen Womack

CONGRESS: Provides for redistricting of Louisiana congressional districts. (Item #1)(See Act) (EN INCREASE GF EX See Note)

Current Status (as of 2/26/2024 1:11 pm): Signed by the Governor - Act 2

Date	Chamber	Journal Page	Action
01/22	S		Effective date: See Act.
01/22	S		Signed by the Governor. Becomes Act No. 2.
01/19	S	6	Sent to the Governor by the Secretary of the Senate.
01/19	H		Signed by the Speaker of the House.
01/19	S	6	Enrolled. Signed by the President of the Senate.
01/19	S	4	Rules suspended. Amendments proposed by the House read and concurred in by a vote of 27 yeas and 11 nays.
01/19	S	3	Received from the House with amendments.
01/19	H		Read third time by title, amended, roll called on final passage, yeas 86, nays 16. Finally passed, ordered to the Senate.
01/18	H		Scheduled for floor debate on 01/19/2024.
01/18	H	3	Read by title, amended, passed to 3rd reading.
01/18	H	3	Reported without Legislative Bureau amendments.
01/18	H	1	Rules suspended.
01/18	H	1	Reported with amendments (14-1). Referred to the Legislative Bureau.
01/17	H	7	Received in the House from the Senate, rules suspended, read by title, referred to the Committee on House and Governmental Affairs.
01/17	S	2	Rules suspended. Read by title, passed by a vote of 27 yeas and 11 nays, and sent to the House. Motion to reconsider tabled.
01/16	S	3	Rules suspended. Reported with amendments. Rules suspended. Read by title; Committee amendments read and adopted. Ordered engrossed and passed to third reading and final passage.
01/15	S	5	Introduced in the Senate; read by title. Rules suspended. Read second time and referred to the Committee on Senate and Governmental Affairs.

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Available Documents:

Text

SB8 Act 2	https://legis.la.gov/legis/ViewDocument.aspx?d=1341081
SB8 Enrolled	https://legis.la.gov/legis/ViewDocument.aspx?d=1340797
SB8 Engrossed	https://legis.la.gov/legis/ViewDocument.aspx?d=1340284
SB8 Original	https://legis.la.gov/legis/ViewDocument.aspx?d=1340141

Amendments

House Floor Amendment, #83, Beaullieu, Adopted	https://legis.la.gov/legis/ViewDocument.aspx?d=1340695
House Committee Amendment, #74, H&G, Adopted	https://legis.la.gov/legis/ViewDocument.aspx?d=1340645
House Committee Amendment, #68, H&G, Draft	https://legis.la.gov/legis/ViewDocument.aspx?d=1340501
House Committee Amendment, #70, H&G, Draft	https://legis.la.gov/legis/ViewDocument.aspx?d=1340478
Senate Committee Amendment, #48, S&G, Adopted	https://legis.la.gov/legis/ViewDocument.aspx?d=1340274
Senate Committee Amendment, #38, S&G, Draft	https://legis.la.gov/legis/ViewDocument.aspx?d=1340218
Senate Committee Amendment, #34, S&G, Draft	https://legis.la.gov/legis/ViewDocument.aspx?d=1340190
Senate Committee Amendment, #31, S&G, Draft	https://legis.la.gov/legis/ViewDocument.aspx?d=1340187

Digests

Summary of House Amendments to SB8	https://legis.la.gov/legis/ViewDocument.aspx?d=1340757
House Committee Redigest of SB8	https://legis.la.gov/legis/ViewDocument.aspx?d=1340646
Digest of SB8 Engrossed	https://legis.la.gov/legis/ViewDocument.aspx?d=1340304
Digest of SB8 Original	https://legis.la.gov/legis/ViewDocument.aspx?d=1340142

Notes

Fiscal Note - SB8 Enrolled	https://legis.la.gov/legis/ViewDocument.aspx?d=1340837
Fiscal Note - SB8 Engrossed With House Floor Amendments	https://legis.la.gov/legis/ViewDocument.aspx?d=1340767
Fiscal Note - SB8 Engrossed With House Cmte Amendments	https://legis.la.gov/legis/ViewDocument.aspx?d=1340657
Fiscal Note - SB8 Engrossed	https://legis.la.gov/legis/ViewDocument.aspx?d=1340336
Fiscal Note - SB8 Original	https://legis.la.gov/legis/ViewDocument.aspx?d=1340185

Votes

Senate Vote on SB 8, CONCUR (#20)	https://legis.la.gov/legis/ViewDocument.aspx?d=1340794
House Vote on SB 8, FINAL PASSAGE (#21)	https://legis.la.gov/legis/ViewDocument.aspx?d=1340770
House Vote on SB 8, AMENDMENT # 83 BY BEAULLIEU, MOTION TO ADOPT (#20)	https://legis.la.gov/legis/ViewDocument.aspx?d=1340769
Senate Vote on SB 8, FINAL PASSAGE (#9)	https://legis.la.gov/legis/ViewDocument.aspx?d=1340426

IN THE UNITED STATES D[illegible]RIC[illegible]
FOR THE WESTERN DISTR[illegible]
MONROE DIV[illegible]

PHILLIP CALLAIS, et al.,

Plaintiffs,

vs.

NANCY [illegible] r official [illegible]
as Lou[illegible]

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