No. 25-918

In the
Supreme Court of the United States

JOSE TREVINO AND ALEX YBARRA,

Petitioners,

v.

STEVEN HOBBS, in his official capacity as Secretary of State of Washington, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

REPLY BRIEF OF PETITIONERS

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INTRODUCTION

The State of Washington asks this Court to grant, vacate, and reverse ("GVR") because *Louisiana v. Callais*, 146 S. Ct. 1131 (2026), "substantially changed" Section 2 law. State Opp'n Br. 1. The Palmer Respondents stand alone in their opposition.

But *Callais* warrants more than a GVR—it exposes the Ninth Circuit's errors on standing and strict scrutiny, which independently require correction. The district court applied a now-superseded *Gingles* framework to find a Section 2 violation, then imposed a "remedy" that further diluted Hispanic voting power while reconfiguring thirteen of forty-nine districts.[1] That unprecedented remedy injured Petitioners concretely. Trevino—a Hispanic voter—was reassigned by the court-ordered remedial map from LD-15 to a less-Hispanic LD-14; Ybarra—a Hispanic incumbent—lost 30,000 constituents to remedial re-sorting and had to campaign to a materially different, whiter and more Democratic-leaning electorate. App. 17–18, 34, 78–79, 347–49, 385–89, 396–97.

The Ninth Circuit denied both Petitioners standing to challenge these injuries, refused to apply strict scrutiny to a map drawn with an expressly racial objective, and permitted Section 2 to increase the very dilution it is meant to cure. Each error is independent of *Callais*, but *Callais* also underscores that, because Section 2 is inherently race-conscious, the map must satisfy strict scrutiny via the

[1] Respondents prefer to use a 2019 estimate of 50.02% Hispanic Citizen Voting Age Population ("HCVAP"). Palmer Opp'n Br. 4 n.2. But the Ninth Circuit used the more recent 2021 figure of 52.6%. App. 17, 387.

"update[d]" *Gingles* factors, *Callais*, 146 S. Ct. at 1143, 1146, 1152, 1159, which the district court never analyzed.

ARGUMENT

I. THE STATE'S GVR CONCESSION WARRANTS GRANTING THE PETITION

The State's GVR concession warrants granting that relief, which this Court has already done in *Allen v. Caster*, *Turtle Mountain Band of Chippewa Indians v. Howe*, and *State Board of Election Commissioners v. Mississippi State Conference of the NAACP*. But the standing and equal protection questions here are independent of *Callais* and will not be resolved on remand without this Court's guidance.

II. RESPONDENTS' STANDING ARGUMENTS ARE MERITLESS

A. Petitioners Suffered Concrete, Traceable, and Redressable Injuries

Trevino's standing for his equal protection claim is undisputed. App. 17–18. The facts establishing standing on that basis are also sufficient to establish standing for Petitioners' Section 2 challenges. Under controlling Ninth Circuit precedent, an injury-in-fact exists where redistricting dilutes minority voting strength and materially reconfigures the electorate. *Garza v. Cnty. of Los Angeles*, 918 F.2d 763, 775–76 (9th Cir. 1990). That is what happened here: The court lowered LD-15's HCVAP, reshuffled Trevino from LD-15 into LD-14, *see* App. 17–18, 34, 78–79, and removed 30,000 of Ybarra's constituents while adding whiter, more Democratic-leaning voters. *See* App. 347–49. Those are classic *Garza* injuries—district-specific

changes to who votes with Petitioners and diminished electoral opportunities for the affected minority.

Article III does not cabin injury to any particular legal theory; it recognizes harm from the reconfiguration itself. *See United States v. Hays*, 515 U.S. 737, 744–45 (1995); *Gill v. Whitford*, 585 U.S. 48, 68–69 (2018). Trevino's physical re-sorting and changed electorate thus establish injury for Section 2 purposes, just as they do for equal protection. And Ybarra offered precisely the individualized proof *Wittman v. Personhuballah*, 578 U.S. 539, 543–45 (2016), requires—evidence of weakened incumbency and additional campaign costs to reach 30,000 new constituents on a compressed timeline. App. 348–49.

Respondents' "unopposed race" point confuses outcome with injury. *See* Palmer Opp'n Br. 23. That Ybarra ran unopposed does not erase the injury from remedial reconfiguration; the map continues to govern his representation and future campaigns. *North Carolina v. Covington*, 585 U.S. 969, 976 (2018). Respondents note only a 0.64% decrease in Republican lean, but the relevant injury is the wholesale removal of 30,000 constituents, the forced expenditures to reach new voters, and the deprivation of fair process caused by a remedial map that departed from statutory and constitutional law. *Cf. Ne. Fla. Chapter of Associated Gen. Contractors v. City of Jacksonville*, 508 U.S. 656, 666 (1993); *Dep't of Com. v. New York*, 588 U.S. 752, 767–68 (2019). Under *Bost v. Illinois State Board of Elections*, 607 U.S. 71, 79–80 (2026), candidates suffer concrete injury when the government changes the rules governing which ballots a candidate must win and which voters he

must persuade. A court-ordered redistricting map does exactly that.

Respondents' argument that this construction of *Bost* would let "*any* litigant who might lose" establish harm, Palmer Opp'n Br. 25 (emphasis in original), is a straw man. Ybarra's pocketbook and process injuries stem not from the liability determination alone but from the remedial map that followed. If a remedial map causes such concrete, particularized harms to candidates, they have standing. Most disappointed Section 2 litigants will not come close.

The Palmer Respondents also assert Ybarra "does not reside in or represent the challenged district" and thus suffered "non-existent harms." Palmer Opp'n Br. 20. But Ybarra's injury is district-specific: The remedial map removed 30,000 of his constituents, added whiter and more Democratic-leaning voters, and forced additional expenditures on a compressed timeline. App. 347–49. Expert analysis identified him as an incumbent whom the new map "weaken[ed]." App. 348. His preference for including certain neighborhoods (*see* Palmer Opp'n Br. 24) was not a concession that the wholesale, race-based reconfiguration improved his candidacy, and both his 2022 and 2024 races were uncontested—making "win/loss" an inapt metric.

Respondents insist the liability decision "d[id] not itself classify any individual on the basis of race" and that the remedy was drawn "without *any* consideration of race." Palmer Opp'n Br. 19. The record is otherwise. The court framed its remedial task in expressly ethnic terms—declaring a "fundamental goal" to "unite the Latino community of interest" in the region (App. 27, 37 n.7, 41)—and

rejected maps for failing to pack Hispanic voters into one district. App. 34, 37 n.7. The court's expert admitted he was instructed to "unif[y] the population centers" associated with that Latino community. App. 342; *see also* App. 34 (defining the "Latino community of interest"). And the court approved the new LD-14, which reduced HCVAP from 52.6% to 50.2% and made LD-14 "substantially more Democratic," justifying the change because Section 2 "require[d] [the court to] creat[e] a Latino opportunity district." App. 41. Those race-based premises confirm Petitioners' injuries are fairly traceable to both the liability finding and the remedy's race-based design.

FDA v. Alliance for Hippocratic Medicine, 602 U.S. 367, 382–87 (2024), is inapposite. *Alliance* turned on attenuated causation through third-party choices; here, the remedial order operates directly on Petitioners—Trevino cannot opt out of voting in LD-14, and Ybarra cannot opt out of representing a reconfigured LD-13. The Ninth Circuit's recognition of Trevino's equal-protection standing (App. 17–18) necessarily concedes the map's direct operation; the same injury satisfies Article III for his Section 2 challenge.

Nor did Petitioners "doom[]" their appeal by moving to hold it in abeyance. Palmer Opp'n Br. 17. Courts routinely manage dockets to avoid piecemeal review. The stay preserved judicial economy; it did not waive standing. When the stay expired, Petitioners promptly sought review of both the liability ruling and the remedial map.

Petitioners have standing to challenge both determinations. Their injuries exist because the court first found a violation and then imposed a court-

drawn map. App. 33–34, 78–79. Redressability is satisfied where vacatur of the liability determination would eliminate the remedial map and restore the Commission's plan. *Cf. Bennett v. Spear*, 520 U.S. 154, 168–69 (1997). *Abbott v. Perez*, 585 U.S. 579, 587 (2018), confirms: A Section 2 liability determination is the legal trigger that can justify race-conscious redistricting, so injuries from a race-based remedial map are fairly traceable to the antecedent ruling. If courts could insulate erroneous liability determinations simply by issuing them in separate orders, sweeping single-judge remedies can replace a bipartisan commission's plan with no adversarial check whenever the State declines to appeal.

Respondents' "political aims" argument confuses motive with injury. Palmer Opp'n Br. 28–30. The Article III inquiry asks whether a litigant has suffered concrete, personal harm—not why he chose to fight about it. *See Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 260–66 (1977) ("The parties' motivations are not relevant to standing analysis."). Every litigant in every redistricting case has political preferences. In *Hollingsworth v. Perry*, 570 U.S. 693, 706–08 (2013), and *Diamond v. Charles*, 476 U.S. 54, 62–64 (1986), the intervenors lacked *any* concrete personal injury. Here, Petitioners have record-supported injuries independent of partisan preference: Trevino was reassigned from his district, and Ybarra lost 30,000 constituents, gained a materially different electorate, and was forced to spend money on a compressed timeline—harms the Ninth Circuit itself credited for equal-protection purposes. App. 17–18, 347–49. That counsel or donors care about Republican electoral fortunes no more defeats standing than a civil-rights organization's

policy agenda defeats a discrimination plaintiff's standing. If it did, partisan advocacy-funded parties in every voting-rights case would be barred—a rule this Court has never endorsed and that *Callais* necessarily rejects.

Petitioners' positions have been consistent: The Commission's LD-15 did not violate Section 2, and if the court concluded otherwise, the defect would be equal protection, not "dilution," because race predominated. The through-line is that no Section 2 dilution existed to begin with, and neither a liability determination nor remedy may rest on racial line-drawing that fails strict scrutiny. That is textbook alternative pleading, not a change of position, as Respondents claim. *See* Palmer Opp'n Br. 14.

B. Permissive Intervenors Have Article III Standing to Appeal

Respondents' argument against permissive-intervenor standing collapses because the relevant question is *whether* the intervenor satisfies Article III, not *how* it entered the case. *See Diamond*, 476 U.S. at 68. Petitioners assert classic personal harms: Trevino resides and votes in the court-drawn district (App. 17–18); Ybarra lost 30,000 constituents, incurred new campaign costs, and faces a materially altered electorate (App. 347–49). Once the district court adopted a remedy that harmed Petitioners concretely, they had standing to challenge both the remedy and the liability determination that caused it. *See Davis v. FEC*, 554 U.S. 724, 733–34 (2008). Even if Petitioners lacked a concrete injury when they intervened, they had it when the remedy was ordered. That is all Article III requires. *See Town of Chester v. Laroe*

Estates, Inc., 581 U.S. 433, 439–41 (2017); *United Airlines, Inc. v. McDonald*, 432 U.S. 385, 394 (1977).

For these reasons, this Court should reverse, and hold that Petitioners have standing to challenge the Section 2 liability and remedy; otherwise, these issues will evade review.

III. PETITIONERS' EQUAL PROTECTION CLAIM HAS NOT BEEN FORFEITED

The Palmer Respondents argue that this Court "should not reach" Petitioners' equal protection claim because Petitioners forfeited it by "sandbagging." Palmer Opp'n Br. 30. But the Ninth Circuit exercised its discretion to reach the merits, and having done so, there is no procedural bar to this Court's review, especially since this Court's equal protection jurisprudence is "in a state of evolving definition and uncertainty." *Va. Bankshares, Inc. v. Sandberg*, 501 U.S. 1083, 1099 n.8 (1991) (quotation omitted).

IV. DILUTION CANNOT CURE DILUTION

The district court "remedied" alleged dilution by reducing HCVAP—from 52.6% in LD-15 to 50.2% in the court-drawn LD-14—while reconfiguring thirteen districts—expressly because the new district would be "substantially more Democratic." App. 316–17, 331–32, 385–86, 389. Respondents have not identified a single instance where a court "remedied" a Section 2 violation by diluting the relevant minority group's CVAP. *See* App. 385–86. Every proposal submitted by Respondents lowered HCVAP (46.9%–51.7%), and the court renumbered the district to place Senate elections in presidential years "when Latino voter turnout is generally higher." App. 34, 315–17. That

logic presupposes non-Hispanic crossover voting.[2] But Section 2's threshold (*Gingles* I) requires that the minority be "sufficiently large and geographically compact to constitute a majority" in a single-member district; it does not compel crossover or coalition districts. *Bartlett v. Strickland*, 556 U.S. 1, 12, 18–21 (2009) (quoting *Thornburg v. Gingles*, 478 U.S. 30, 50 (1986)); *Cooper v. Harris*, 581 U.S. 285, 305 (2017). If Hispanics must rely on non-Hispanic crossover support for the district to "perform," *Gingles* I was never met—so the liability finding collapses, and the remedy is *ultra vires*.

Allowing "dilution-as-remedy" untethers Section 2 from its purpose and invites the partisan manipulation *Callais* warns against. 146 S. Ct. at 1158, 1163. A lawful Section 2 remedy must increase minority effective voting strength, not decrease it. Because the court's remedy reduces HCVAP and depends on crossover voting by design, it independently requires reversal.

V. *CALLAIS* WAS NOT SATISFIED HERE

A. Strict Scrutiny Applies Because Race Predominated

Race predominated—and strict scrutiny applies. The district court declared "unit[ing] the Latino community" its "fundamental goal" and rejected maps that did not "segregate[] the Hispanic voters" in the Yakima-Pasco corridor into one district. App. 33–35, 316, 392–93. It defined the "community of interest" in

[2] If 50.2% HCVAP were sufficient to elect Hispanic-preferred candidates, election timing would be irrelevant. This engineering concedes that this bare majority does not yield a majority of actual voters, so non-Hispanic support is required to "perform."

expressly ethnic terms—language, religious and cultural practices—traits "ubiquitous" across Hispanic communities. App. 55–57, 365. And the district's odd shape—"two ungainly, reaching appendages," one up into the City of Yakima and one down into Pasco, over 80 miles away—was the "direct result of trying to stitch together" far-flung Latino populations. App. 363–64. The court's additional decision to renumber LD-15 to LD-14 to "ensure[] . . . elections will fall on a presidential year when Latino voter turnout is generally higher" confirms the race-based design. App. 34.

That is race-based decision-making, triggering strict scrutiny. *Callais* strengthens this by insisting courts control for party affiliation when assessing racial polarization and cautioning against "dressing [] political-gerrymandering claims in racial garb." 146 S. Ct. at 1158. The district court did neither.

Respondents' effort to rebrand the court's objective as keeping the Yakama Nation together is belied by the record. The remedial order never identifies "tribal governmental integrity" as an independent goal. The court spoke in expressly ethnic terms—"Latino community of interest," "Latino voter[s]"—not tribal cohesion. App. 34–35, 392–93. A genuine effort to preserve tribal cohesion would have focused on the reservation; instead, the court reached over 80 miles to capture Latino neighborhoods in Pasco—an urban area with no nexus to the Yakama Nation—producing the "farflung" district shape that *LULAC v. Perry*, 548 U.S. 399, 433–35 (2006), condemns. App. 364. The court's findings—shared language, religion, immigrant experience, agricultural work—are generalized ethnic traits, not "intensely local"

evidence of a singular community of interest. App. 55–57, 365–67.

Even if Section 2 compliance could justify some consideration of race, the remedy flunks narrow tailoring: it lowered HCVAP from 52.6% to 50.2% and depends on non-Hispanic crossover support—precisely what Section 2 does not require. *Bartlett*, 556 U.S. at 14–15, 21–24; *Cooper*, 581 U.S. at 305. A court cannot invoke Section 2 to justify a map where race predominates when the "remedy" reduces the minority's effective voting strength and is justified by generalized ethnic stereotypes rather than district-specific proof.

B. The Liability and Remedial Orders Fail Strict Scrutiny Under *Callais*

The remedial map is inconsistent with *Callais*. First, *Gingles* I: *Callais* forbids using race as a districting criterion in illustrative maps and requires that plaintiffs meet all legitimate State districting objectives. 146 S. Ct. at 1159. The district court declared its "fundamental goal" was preserving the "Latino community of interest." App. 27, 37 n.7. It also admitted the remedial map produced a "substantially more Democratic" district than the original LD-15, which represented a "bipartisan consensus" that "promoted competitiveness." App. 41, 47–48 n.4. The remedial map thus failed to meet the "State's specified political goals." *Callais*, 146 S. Ct. at 1159.

Second, *Gingles* II/III: *Callais* requires controlling for party affiliation. *Id*. The district court accepted polarization evidence lacking partisan controls and credited aggregate returns and expert assertions of an ethnic effect, App. 56–57 & n.8, but it never employed any method holding constant partisanship to isolate

race. App. 369–74. The court acknowledged that "the Democratic platform is apparently better aligned with the economic and social preferences of Latinos in the Yakima Valley region," yet drew no legal consequence from that admission. App. 76. The court even opined that correlation between race and partisanship "does not inform the political cohesiveness or bloc voting analyses." App. 58–59. Under *Callais*, that is dispositive: If Latino cohesion and Anglo bloc voting are explained by policy-driven partisan preference, not race, *Gingles* II/III are not satisfied.

Real-world data underscores the error. In the only contested election that took place under the original LD-15, Senator Torres—a Latina Republican—won by over 35 points, despite the district having only a 1.9-point average Republican lean. *See* App. 68, 315, 324, 326, 330. Respondents dismiss Torres as "*not* the Latino candidate of choice," Palmer Opp'n Br. 27 n.13, but Torres's landslide is powerful counter-evidence that LD-15's pre-remedy configuration did not "dilute" Hispanic votes. The court failed to disentangle race and politics, as *Callais* demands. 146 S. Ct. at 1159.

VI. THIS CASE IS AN EXCELLENT VEHICLE

No circuit split is required to GVR, and *Callais* creates the need for guidance because the framework it established does not resolve the standing, dilution-as-remedy, and equal protection questions presented here—issues that will recur in every future Section 2 case proceeding to a judicial remedy. This case is an ideal vehicle because it presents these issues on a fully-developed record. A GVR alone would merely remand without guidance on these important questions.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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