Nos. 24-109, 24-110

IN THE

Supreme Court of the United States

LOUISIANA,
Appellant,
v.
PHILLIP CALLAIS, ET AL.,
Appellees.

PRESS ROBINSON, ET AL.,
Appellants,
v.
PHILLIP CALLAIS, ET AL.,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA

BRIEF OF FORMER REPUBLICAN GOVERNORS ARNOLD SCHWARZENEGGER, CHRISTINE TODD WHITMAN, MARC RACICOT, AND WILLIAM F. WELD AS *AMICI CURIAE* IN SUPPORT OF ROBINSON APPELLANTS

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INTERESTS OF *AMICI CURIAE*[1]

Amici curiae are a group of former Republican governors. They bring a unique perspective as the chief executives of their respective states and as individuals elected by their entire state's population. Based on that experience, this group of former governors believes that ensuring fair representation is one of the central pillars of our democracy, and that Section 2 of the Voting Rights Act, as applied through the *Gingles* framework, strikes the correct balance between safeguarding fair representation and avoiding undue consideration of race under the Fourteenth and Fifteenth Amendments. They write to urge the Court to continue permitting states to draw majority-minority districts while adhering to traditional districting principles to remedy violations of Section 2, so as to guard against the harm that racial vote dilution continues to inflict on our democracy.

Governor Arnold Schwarzenegger was the thirty-eighth governor of California, serving in that role from 2003 until 2011.

Governor Christine Todd Whitman was the fiftieth governor of New Jersey, serving in that role from 1994 until 2001.

Governor Marc Racicot was the twenty-first governor of Montana, serving in that role from 1993 to 2001.

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[1] No counsel for a party authored this brief in whole or in part, and no person other than *amici* or their counsel made a monetary contribution to this brief's preparation or submission.

Governor William F. Weld was the sixty-eighth governor of Massachusetts, serving in that role from 1991 to 1997.

SUMMARY OF ARGUMENT

The Voting Rights Act rests on the fundamental principle, enshrined in the Reconstruction Amendments, that fair representation is essential to democracy, while racially discriminatory voting practices threaten both the theoretical underpinnings and practical functioning of democratic government. Racial vote dilution and the resulting suppression of minority voices and power—an unfortunate yet longstanding aspect of our political system —poses a grave threat to fair representation.

Section 2 of the Voting Rights Act serves as an effective means of enforcing the Fourteenth and Fifteenth Amendments by guarding against racial discrimination in voting, including vote dilution, whether it is intentional or not. Section 2 has been successfully applied in the districting context for nearly 40 years using the framework this Court set forth in *Thornburg v. Gingles*, 478 U.S. 30 (1986), and recently reaffirmed in *Allen v. Milligan*, 599 U.S. 1 (2023).

As former governors of diverse states, *amici* recognize the crucial role that Section 2, as applied through the *Gingles* framework, plays in protecting the rights of minority voters to fair representation. Its stringent requirements provide a restrained and constitutional approach to countering racial vote dilution in districting. The *Gingles* preconditions and totality-of-the-circumstances inquiry ensure that a

Section 2 remedy is imposed only when current conditions deprive voters of their constitutional rights. As such, Section 2 effectively has time limits built in, obviating any need to impose an artificial endpoint to its protections. And when federal courts determine that Section 2 has been violated, states have a compelling interest in remedying that violation.

For decades, this Court and lower courts have thoughtfully applied the *Gingles* framework across a range of scenarios to effectively determine whether a remedy is constitutionally warranted. There is thus no need or basis to alter the current operation of Section 2 under *Gingles*. This Court should thus reject Appellees' suggestion that the creation of a majority-minority district in response to Section 2 liability violates the Fourteenth or Fifteenth Amendments.

ARGUMENT

I. Fair Representation Through Districting Is Essential to American Democracy.

Our system of republican government rests on the theory that the government is legitimate because it operates on the consent of the governed. *See, e.g.*, *McCulloch v. Maryland*, 17 U.S. 316, 316–17 (1819) ("The government of the Union is a government of the people; it emanates from them; its powers are granted by them; and are able to be exercised directly on them . . . for their benefit."); Alexander Hamilton, The Debates in the Convention of The State of New York, *reprinted in* 2 *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 257 (Jonathan Elliot ed., 2d ed. 1836)

("[T]he true principle of a republic is, that the people should choose whom they please to govern them.").

To ensure this governing theory holds in practice, voting districts must be drawn fairly. That is, they must be drawn to ensure that voters "choose their representatives, not the other way around." *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 824 (2015); *see also Reynolds v. Sims*, 377 U.S. 533, 555 (1964) ("The right to vote freely for the candidate of one's choice is of the essence of a democratic society.").

When voters have the opportunity to choose their representatives, they "support candidates who share their beliefs and interests," and in turn, "candidates who are elected can be expected to be responsive to those concerns." *McCutcheon v. Fed. Election Comm'n*, 572 U.S. 185, 192 (2014). That relationship is "a central feature of democracy." *Id.*; *see also The Federalist No. 37*, at 227 (James Madison) (Clinton Rossiter ed., 1961) ("The genius of republican liberty seems to demand . . . not only that all power should be derived from the people, but that those intrusted with it should be kept in dependence on the people . . . .").

The districting process is critical to determining whether all citizens in a state can fairly elect their chosen representatives. *See Reynolds*, 377 U.S. at 565–66 ("[T]he achieving of fair and effective representation for all citizens is concededly the basic aim of legislative apportionment."). If districting interferes with citizens' ability to elect their representatives and hold them accountable,

democracy itself is degraded. *See id.* at 555 ("[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.").

To ensure fair districts that embody bedrock tenets of American democracy, states typically follow "traditional districting principles[,] such as maintaining communities of interest and traditional boundaries." *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 433 (2006) (quoting *Abrams v. Johnson*, 521 U.S. 74, 92 (1997)). These principles recognize the importance not just of establishing reasonable geographic boundaries for districts, but also of considering the characteristics of the people within them. Thus, maintaining communities of interest is an important component of districting—one this Court has recognized includes communities whose interests include a common racial identity. *Miller v. Johnson*, 515 U.S. 900, 920 (1995). Accordingly, "when members of a racial group live together in one community, a reapportionment plan that concentrates members of the group in one district and excludes them from others may reflect wholly legitimate purposes." *Shaw v. Reno*, 509 U.S. 630, 646 (1993); *see also Miller*, 515 U.S. at 920 ("A State is free to recognize communities that have a particular racial makeup, provided its action is directed toward some common thread of relevant interests.").

Contrary to these principles and basic notions of representative democracy, districts can be drawn in ways that effectively dilute the votes of racial

minorities, either by "packing" them into a single district or "cracking" them across multiple districts. *See, e.g.*, *Johnson v. De Grandy*, 512 U.S. 997, 1007 (1994) ("[M]anipulation of district lines can dilute the voting strength of politically cohesive minority group members, whether by fragmenting the minority voters among several districts where a bloc-voting majority can routinely outvote them, or by packing them into one or a small number of districts to minimize their influence in the districts next door.").

Racial vote dilution is harmful not just because it causes the political process not to be equally open to racial minorities, but because when a representative does not depend on a minority group for support, the representative can ignore their interests. *See, e.g.*, *Rogers v. Lodge*, 458 U.S. 613, 623 (1982) ("Voting along racial lines allows those elected to ignore black interests without fear of political consequences."). In such circumstances, racial minorities are not truly "represented," and our representative democracy is undermined.

As former governors of diverse states, *amici* are acutely attuned to the need to avoid the disastrous effects that unfair districting practices wreak on effective governance.

II. The Voting Rights Act Responds to a Long and Continued History of Discrimination in the Political Process.

Congress enacted the 1965 Voting Rights Act ("VRA") "to banish the blight of racial discrimination in voting, which ha[d] infected the electoral process in

parts of our country for nearly a century." *South Carolina v. Katzenbach*, 383 U.S. 301, 308 (1966).

In crafting the VRA, Congress recognized that representative democracy requires that every person be provided an equal say in the election of their representatives, and that racial vote dilution thwarts that objective. Congress thus designed the VRA to guarantee that the political process would be "equally open" to all, 52 U.S.C. § 10301(b), pursuant to its authority to enforce the Fourteenth and Fifteenth Amendments. U.S. Const. amend. XIV, § 5; U.S. Const. amend. XV, § 2; *see also, e.g.*, *Katzenbach*, 383 U.S. at 308 ("Congress assumed the power to prescribe these remedies from § 2 of the Fifteenth Amendment"); *Katzenbach v. Morgan*, 384 U.S. 641, 652 (1966) ("There can be no doubt that § 4(e) [of the VRA] may be regarded as an enactment to enforce the Equal Protection Clause.").[2]

This Court has consistently acknowledged our Nation's history of racial discrimination in the political process. *See, e.g.*, *Katzenbach*, 383 U.S. at 310–13 (collecting cases condemning "the variety and persistence of [tests] and similar institutions designed to deprive Negroes of the right to vote"). And this

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[2] *See also Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 655 (2021) ("Congress enacted the [VRA] . . . in an effort to achieve at long last what the Fifteenth Amendment had sought to bring about 95 years earlier: an end to the denial of the right to vote based on race."); *Voinovich v. Quilter*, 507 U.S. 146, 152 (1993) (similar); *City of Rome v. United States*, 446 U.S. 156, 173 (1980) (similar).

Court has recounted how, in "a substantial number of voting jurisdictions," the "past reality" of those "reprehensible practices" included "ballot box stuffing, outright violence," and "the poll tax." *Johnson v. De Grandy*, 512 U.S. 997, 1018 (1994). Louisiana is one of those jurisdictions.

In the litigation that precipitated the enactment of the map challenged in this case, two federal courts found that there was "no sincere dispute" that Louisiana has a "history of voting-related discrimination." *Robinson v. Ardoin*, 605 F. Supp. 3d 759, 848 (M.D. La. 2022); *Robinson v. Ardoin*, 86 F.4th 574 (5th Cir. 2023).[3] This discrimination included "poll taxes, property ownership requirements, and literacy tests," as well as "the Grandfather Clause, . . . [r]egistration purges, the Understanding Clause, and other restrictions," which "disenfranchised Black voters to the point that, between 1910 and 1948, fewer than 1% of Black Louisianans of voting age were able to register to vote." 605 F. Supp. 3d at 846. And "[b]y the passage of the 1965 Voting Rights Act, only one third of the Black population was registered." *Id.*

Unfortunately, courts have found that discrimination in the political process that made the VRA a necessity continues to exist today as "some

[3] The Fifth Circuit held that "[t]he district court did not clearly err in its necessary fact-findings nor commit legal error in its conclusions that the Plaintiffs were likely to succeed on their claim that there was a violation of Section 2 of the Voting Rights Act in the Legislature's planned redistricting." *Robinson*, 86 F.4th at 583.

jurisdictions . . . moved from direct, overt impediments to the right to vote to more sophisticated devices that dilute minority voting strength." *See De Grandy*, 512 U.S. at 1018 (quoting S. Rep. No. 97-417, at 10 (1982)) (cleaned up). In 1983, for example, a district court concluded that "Louisiana's history of racial discrimination, both *de jure* and *de facto*, continue[d] to have an adverse effect on the ability of its black residents to participate fully in the electoral process." *Major v. Treen*, 574 F. Supp. 325, 339–40, 351 (E.D. La. 1983) (holding that the State's congressional redistricting created a "prima facie case of vote dilution" under the VRA).[4]

Looking to the present, the district court in *Robinson* found voting-related discrimination in Louisiana to be "ongoing," crediting expert testimony establishing that Black voter suppression continues as

[4] Section 5 of the VRA required jurisdictions with a long history of discriminatory voting practices to have any changes in their election processes "precleared" by the U.S. Department of Justice to ensure they wouldn't perpetuate discrimination. *See, e.g.*, *Shelby Cnty. v. Holder*, 570 U.S. 529, 536–39 (2013). "From 1965 to 1999, the U.S. Attorney General issued 66 objection letters to more than 200 [such] voting changes [in Louisiana], and from 1990 until the end of preclearance in 2013, an additional 79 objection letters were issued." *Robinson*, 605 F. Supp. 3d at 846. In 2017, a district court observed that "Louisiana federal courts ha[d] [] found that Louisiana consistently ignored its preclearance requirements under Section 5." *Terrebonne Par. Branch NAACP v. Jindal*, 274 F. Supp. 3d 395, 440 (M.D. La. 2017), *rev'd sub nom. Fusilier v. Landry*, 963 F.3d 447 (5th Cir. 2020).

a result of "modern day practices such as restricting access to polling places, restrictions on early voting, and limited mail voting." *Robinson*, 605 F. Supp. 3d at 846–48 (discussing a report by the U.S. Commission on Civil Rights that "found that there are fewer polling locations per voter in heavily Black areas," including in Caddo Parish, which "was found to have only one polling location for its 260,000 residents").

Louisiana is not the only state where courts have found discrimination in the political process to continue in recent times. In 2016, for example, the Fifth Circuit held that a Texas voter-ID law violated the VRA due to its discriminatory effects on racial minorities, noting the district court's "well-supported" findings of "contemporary examples of state-sponsored discrimination." *Veasey v. Abbott*, 830 F.3d 216, 257, 264–65 (5th Cir. 2016).[5] *See also, e.g.*, *Allen v. Milligan*, 599 U.S. 1, 23 (2023) (affirming district court's "careful factual findings") (citing *Singleton v. Merrill*, 582 F. Supp. 3d 924, 1020–21 (N.D. Ala. 2022) (finding that Alabama had "recent instances of official discrimination" involving districting)).

The VRA has thus proven essential to combatting racial discrimination in voting, in Louisiana and around the country, through the present day. In the decades following its enactment, leaders of both

[5] The Fifth Circuit in *Veasey* also credited the district court's discussion of how, "[i]n every redistricting cycle since 1970, Texas ha[d] been found to have violated the VRA with racially gerrymandered districts." *Id.* at 258 (quoting *Veasey v. Perry*, 71 F. Supp. 3d 627, 636 & n.23 (S.D. Tex. 2014)).

political parties have recognized the VRA's enduring importance. *See, e.g.*, President Ronald Reagan, *Remarks on Signing the Voting Rights Act Amendments of 1982* (June 29, 1982), https://www.reaganlibrary.gov/archives/speech/remarks-signing-voting-rights-act-amendments-1982 ("This act ensures equal access to the political process for all our citizens."); President George W. Bush, *President Bush Signs Voting Rights Act Reauthorization and Amendments Act of 2006* (July 27, 2006), https://georgewbush-whitehouse.archives.gov/news/releases/2006/07/20060727.html ("For some parts of our country, the Voting Rights Act marked the first appearance of African Americans on the voting rolls since Reconstruction."); Senators Lisa Murkowski and Joe Manchin III, Bipartisan Voting Rights Act Reauthorization Letter (May 17, 2021), https://www.murkowski.senate.gov/imo/media/doc/05.17.21%20Bipartisan%20Voting%20Rights%20Act%20Reauthorization%20Letter.pdf (discussing "the positive impact [the VRA] has had on individual Americans' ability to exercise their most fundamental right—the right to vote—and the strength of democracy writ large").

Amici share the views of these public officials regarding the essential values embodied in, and protected by, the VRA. To ensure that the VRA continues to serve the role that Congress intended, the Court must not weaken its protections.

III. Section 2 of the VRA, as Applied Through the *Gingles* Framework, Provides a Restrained and Constitutional Approach to Countering Racial Vote Dilution.

Section 2 of the VRA provides an essential safeguard to ensure that states and local governments do not administer elections in a way that "results in a denial or abridgement of the right of any citizen . . . to vote on account of race or color." *See* 52 U.S.C. § 10301(a). As Senator Joseph Tydings, one of the VRA's primary sponsors, explained, Section 2 "is a practical and effective answer to the problem of racial discrimination in voting" and achieves the "restrained" and "appropriate" remedy called for by the Act. *See* 111 Cong. Rec. 8369 (1965) (statement of Sen. Joseph Tydings).

As originally drafted, however, Section 2 "had little independent force," because, although it "prohibit[ed] States from acting with a 'racially discriminatory motivation,'" it "d[id] not prohibit laws that [we]re discriminatory only in effect." *Allen v. Milligan*, 599 U.S. 1, 10–11 (2023) (quoting *City of Mobile v. Bolden*, 446 U.S. 55, 61–65 (1980)). In 1981, Congress thus took up the contentious issue of whether to expand the reach of Section 2, a months-long debate which concluded with a compromise: "Section 2 would include the effects test that many desired but also a robust disclaimer against proportionality." *Id.* at 13. The Senate passed the

amendment "by an overwhelming margin, 85–8," and President Reagan signed it into law. *Id.*[6]

In 1986, the case of *Thornburg v. Gingles* gave this Court its "first opportunity since the 1982 amendments to address how the new § 2 would operate." *Milligan*, 599 U.S. at 17. The Court explained that Section 2 of the VRA guards against "'electoral structure[s] [that] operate[] to minimize or cancel out' minority voters' 'ability to elect their preferred candidates.'" *Id.* at 17–18 (quoting *Gingles*, 478 U.S. 30, 48). To accomplish this purpose, *Gingles* established a comprehensive framework for proving a Section 2 violation, which "has governed [the Court's] Voting Rights Act jurisprudence since it was decided . . . ." *Id.* at 19.

Not even three years ago, in *Allen v. Milligan*, 599 U.S. 1 (2023), this Court had an opportunity to reconsider, but instead reaffirmed, the *Gingles* framework. Similar to the arguments animating this case, Alabama had argued that *Gingles* was "inconsistent with . . . the Constitution's prohibition on racial discrimination in voting," and proposed a "race-blind" approach in order to avoid "requiring racial proportionality in districting." *See id.* at 23–24. But this Court found "Alabama's new approach to § 2

[6] Over 40 years ago, this Court held "that, even if § 1 of the [Fifteenth] Amendment prohibits only purposeful discrimination," the VRA's "ban on electoral changes that are discriminatory in effect is an appropriate method of promoting the purposes of the Fifteenth Amendment." *City of Rome v. United States*, 446 U.S. 156, 173–77 (1980). *See also South Carolina v. Katzenbach*, 383 U.S. 301, 308–09 (1966).

compelling neither in theory nor in practice," and thus "decline[d] to adopt an interpretation of § 2 that would 'revise and reformulate the *Gingles* threshold inquiry that has been the baseline of [the Court's] § 2 jurisprudence' for nearly forty years." *Id.* at 24, 26 (quoting *Bartlett v. Strickland*, 556 U.S. 1, 16 (2009) (plurality opinion)). There is no reason for the Court to alter that baseline now.[7]

As currently applied, *Gingles* ensures that implementation of Section 2 is carefully calibrated to protect against the subordination of minority groups in the political process without requiring proportionality. Far from that, the *Gingles* framework imposes a series of "preconditions" to ensure that the drawing of majority-minority districts is mandated only when necessary to remedy proven racial vote dilution. *Gingles* does not require creation of a majority-minority district just because the first precondition—that the minority community is sufficiently large and compact to do so—is satisfied. Section 2 plaintiffs must additionally prove that the minority community is *also* politically cohesive, in that its members tend to vote similarly—the second precondition—*and* that the majority group usually votes as a bloc to defeat the minority group's chosen candidate—the third precondition. *See id.* at 18.

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[7] "Congress has never disturbed . . . § 2 as *Gingles* construed it," and this Court has "applied *Gingles* in one § 2 case after another, to different kinds of electoral systems and to different jurisdictions in States all over the country." *Id.* at 19 (collecting cases).

The three *Gingles* preconditions thus work together to carefully identify a very real political harm: When voting is racially polarized and minority voters lack districts in which their electoral preferences can prevail, "the majority, by virtue of its numerical superiority, will regularly defeat the choices of minority voters." *Gingles*, 478 U.S. at 48.

This is not just a theoretical concern. In the *Robinson* litigation underlying this case, the district court concluded that "Black voters in Louisiana are politically cohesive," but that "White voters in Louisiana vote 'sufficiently as a bloc to usually defeat [Black voters'] preferred candidate.'" *Robinson*, 605 F. Supp. 3d at 841 (alteration in original) (quoting *Cooper v. Harris*, 581 U.S. 285, 302 (2017)). Consistent with that finding of racially polarized voting, it was therefore "undisputed that there ha[d] not been a Black candidate elected to statewide office in Louisiana since Reconstruction." *Id.* at 845.[8]

IV. The Totality-of-the-Circumstances Inquiry Ensures That Majority-Minority Districts Are Mandated Only When Necessitated by Current Conditions.

The *Gingles* framework does not provide for the creation of a majority-minority district unless the "totality of circumstances" shows that the political process is not "equally open to minority voters." *Wis.*

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[8] During this same period, only five Black Louisianans had been elected to Congress, and not one of them was elected from a non-majority-Black district. *See id.*

Legislature v. Wis. Elections Comm'n, 595 U.S. 398, 402 (2022). The totality-of-the-circumstances inquiry requires courts to conduct "an intensely local appraisal" and a "searching practical evaluation of the past *and present* reality." *Gingles*, 478 U.S. at 79 (emphasis added). Indeed, all but one of the nine "Senate Factors" underlying the totality inquiry require consideration of recent and even *ongoing* circumstances, with only Senate Factor 1 focused principally on the past.

This case exemplifies how the totality inquiry examines the "present reality." The *Robinson* courts found that voting in Louisiana not only has been, but *is* racially polarized; that Louisiana's *current* congressional delegation and state legislature have disproportionately low numbers of Black lawmakers; and that "modern day practices" have contributed to *modern day* voter suppression, such as the "*recent* closing and consolidation of predominately Black polling places." *See Robinson*, 605 F. Supp. 3d at 839–51 (emphasis added).

Appellees nonetheless argue that Section 2's "burdens" (*i.e.*, protections) "cannot be justified by Black Louisianans' needs." *See* Appellees' Br. 37. And on this basis, they ask this Court to impose a "time limit" on Section 2, so that "race-based redistricting cannot extend indefinitely into the future." *See id.* (quoting *Milligan*, 599 U.S. at 45 (Kavanaugh, J., concurring)).

Appellees' request is at odds not only with the majority opinion in *Milligan*, but also with this Court's decision in carrying out its "gravest and most delicate

duty" in declaring the VRA's coverage formula under Section 4(b) unconstitutional. *Shelby Cnty. v. Holder*, 570 U.S. 529, 556–57 (2013) (quoting *Blodgett v. Holden*, 275 U.S. 142, 148 (1927) (Holmes, J., concurring)). The *Shelby County* decision concludes with assurance that it "in no way affects the permanent, nationwide ban on racial discrimination in voting found in § 2," and then states that "Congress must ensure that [] legislation . . . to remedy th[e] problem [of racial discrimination in voting] speaks to current conditions." *Id.* at 557. Section 2 of the VRA, as applied through the *Gingles* framework, does exactly that.

The *Gingles* preconditions and the totality-of-the-circumstances inquiry—unlike Section 4(b)'s coverage formula—are predominately concerned with "current conditions." *See id.* In this way, the Court's *Gingles* framework effectively builds "time limits on race-based state action" directly into Section 2. *See* Appellees' Br. 37 (citing *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 212–13 (2023); *id.* at 260 (Thomas, J., concurring); *id.* at 311, 314 (Kavanaugh, J., concurring)). This is part of the reason why courts frequently reject Section 2 claims under the existing *Gingles* framework—because the "present reality" in the challenged jurisdiction does not constitute a

violation. *See* Supp. Br. for Robinson Appellants 20 (collecting cases); *Milligan*, 599 U.S. at 29.[9]

In the instant case, it is all but certain that the *Robinson* courts would not have found a likely Section 2 violation were there not in fact, for example, racially polarized voting in Louisiana. *See Voinovich v. Quilter*, 507 U.S. 146 (1993) (rejecting Section 2 claim where the evidence did not support a finding of racially polarized voting).

Accordingly, the Court need not be concerned that Section 2's protections will "extend indefinitely into the future." Appellees' Br. 37 (quoting *Milligan*, 599 U.S. at 45 (Kavanaugh, J., concurring)). They will extend only so far as they are supported by current conditions on the ground. Section 2's protections are thus "limited in time" and will be "employed no more broadly than the interest demands." *See Students for Fair Admissions, Inc. v. President & Fellows of*

[9] *See also, e.g.*, *Cooper v. Harris*, 581 U.S. 285, 302–06 (2017) (rejecting Section 2 claim where plaintiff could not "demonstrate the third *Gingles* prerequisite—effective white bloc-voting"); *Bartlett v. Strickland*, 556 U.S. 1 (2009) (plurality opinion) (rejecting Section 2 claim where a reasonably compact majority-minority district could not be drawn); *Abrams v. Johnson*, 521 U.S. 74 (1997) (holding that court-ordered redistricting plan did not violate Section 2 where Black population was not sufficiently compact for a second majority-Black district and there was insufficient racial polarization); *Johnson v. De Grandy*, 512 U.S. 997 (1994) (holding that Florida House districts did not violate Section 2 where, in spite of continuing discrimination and racial bloc voting, minority voters formed effective voting majorities in a number of districts roughly proportional to their shares of the voting-age population).

Harvard Coll. (SFFA), 600 U.S. 181, 311, 313 (2023) (Kavanaugh, J., concurring) (internal citation omitted). When jurisdictions nationwide reach a point where the totality of the circumstances show that the political process *is* "equally open to minority voters," *Wis. Legislature v. Wis. Elections Comm'n*, 595 U.S. 398, 402 (2022), Section 2's work will be done.

V. Louisiana's Creation of a Second Majority-Minority District Remedied Racial Vote Dilution Forbidden by the Equal Protection Clause.

The Equal Protection Clause of the Fourteenth Amendment "prohibits intentional 'vote dilution'—'invidiously . . . minimiz[ing] or cancel[ing] out the voting potential of racial or ethnic minorities,'" which is enforced, in part, through Section 2 of the VRA under *Gingles*. *Abbott v. Perez*, 585 U.S. 579, 586 (2018) (alteration in original) (quoting *City of Mobile v. Bolden*, 446 U.S. 55, 66–67 (1980) (plurality opinion)). But the Equal Protection Clause also prohibits "racial gerrymandering," which this Court has defined as "intentionally assigning citizens to a district on the basis of race without sufficient justification" (*i.e.*, without a compelling state interest). *See Abbott*, 585 U.S. at 585–86 (citing *Shaw v. Reno*, 509 U.S. 630, 641 (1993)).

"In an effort to harmonize these conflicting demands," this Court has repeatedly "assumed that compliance with the VRA is a compelling state interest" for purposes of strict scrutiny, and "that compliance with the VRA may justify the

consideration of race in a way that would not otherwise be allowed." *Id.* at 587; *see also Wis. Legislature*, 595 U.S. at 401 (citing *Cooper v. Harris*, 581 U.S. 285, 291–93 (2017)).[10] Indeed, "for the last four decades, this Court and the lower federal courts have . . . under certain circumstances, [] authorized race-based redistricting as a remedy for state districting maps that violate § 2." *Milligan*, 599 U.S. at 41.

In this case, the *Robinson* district court concluded that the totality of the circumstances showed that the political process was not equally open to Black Louisianans. *See Robinson*, 605 F. Supp. 3d at 851. Based on that conclusion, including satisfaction of the *Gingles* preconditions, the court held—and the Fifth Circuit affirmed—that Louisiana's original map likely violated Section 2 of the VRA, and that a second majority-minority district was needed to remedy the violation. *Id.* at 851, 858; *see also Robinson v. Ardoin*, 86 F.4th 574, 601 (5th Cir. 2023) ("We cannot conclude on this record that the Legislature would not take advantage of an opportunity to consider a new map now that we have affirmed the district court's

[10] Justice Scalia once posited that, if VRA compliance "were not a compelling state interest, then a State could be placed in the impossible position of having to choose between compliance with [the VRA] and compliance with the Equal Protection Clause." *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 518 (2006) (Scalia, J., concurring in the judgment in part and dissenting in part).

conclusion that the Plaintiffs have a likelihood of success on the merits.").

The Section 2 violation in *Robinson* thus presented an "exceedingly persuasive justification that is measurable and concrete enough to permit judicial review," which gave Louisiana a compelling interest in "remediating [a] specific, identified instance[] of past discrimination that violated the Constitution or a statute." *See SFFA*, 600 U.S. at 207, 217. And Louisiana's remediation of the Section 2 violation—enactment of a new map with a second majority-minority district—is also "'sufficiently measurable to permit judicial [review]' under the rubric of strict scrutiny." *Id.* at 214 (quoting *Fisher v. Univ. of Tex. at Austin*, 579 U.S. 365, 381 (2016)).

This Court has explained that "a State's consideration of race in making a districting decision is narrowly tailored and thus satisfies strict scrutiny if the State has 'good reasons' for believing that its decision is necessary in order to comply with the VRA." *Abbott v. Perez*, 585 U.S. 579, 587 (2018) (quoting *Cooper v. Harris*, 581 U.S. 285, 293 (2017)); *see also Bethune-Hill v. Virginia State Bd. of Elections*, 580 U.S. 178, 193 (2017) ("[T]he narrow tailoring requirement insists only that the legislature have a strong basis in evidence in support of the (race-based) choice that it has made." (citation omitted)).

It is hard to imagine a better reason or a stronger basis for the Louisiana State Legislature to believe that drawing a second majority-minority district was

necessary to avoid unconstitutional discrimination under the VRA than two federal courts saying so.

The State's creation of a second majority-minority congressional district does not *violate* the Fourteenth or Fifteenth Amendments. Instead, it *remedies* an effective violation of those Amendments as enforced through Section 2 of the VRA.

CONCLUSION

Section 2 of the Voting Rights Act is essential to protecting against racial vote dilution and the suppression of minority voices in our political process. Given the stringent requirements that the *Gingles* framework imposes to ensure a remedy is mandated only when constitutionally warranted by current conditions, there is no need or basis to alter the current operation of Section 2 under *Gingles*. The Court should reject Appellees' suggestion that the creation of a majority-minority district in response to Section 2 liability violates the Fourteenth or Fifteenth Amendments.

Respectfully submitted,

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