Nos. 24-109 and 24-110

In the Supreme Court of the United States

STATE OF LOUISIANA, APPELLANT

v.

PHILLIP CALLAIS, ET AL.

PRESS ROBINSON, ET AL., APPELLANTS

v.

PHILLIP CALLAIS, ET AL.

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

SUPPLEMENTAL BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING APPELLEES

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QUESTION PRESENTED

This Court requested supplemental briefing on the following question raised at pages 36-38 of appellees' opening brief:

Whether the State's intentional creation of a second majority-minority congressional district violates the Fourteenth or Fifteenth Amendments to the U. S. Constitution.

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INTEREST OF THE UNITED STATES

This case involves a racial-gerrymandering challenge under the Fourteenth and Fifteenth Amendments to a redistricting plan that Louisiana adopted in response to judicial decisions finding a likely violation of Section 2 of the Voting Rights Act of 1965 (VRA), Pub. L. No. 89-110, 79 Stat. 437 (52 U.S.C. 10301). The Department of Justice enforces Section 2 and has a substantial interest in the statute's proper interpretation. 52 U.S.C. 10308(d). The United States also has a substantial interest in ensuring that its citizens are not subject to unconstitutional racial discrimination.

INTRODUCTION AND SUMMARY OF ARGUMENT

This Court requested supplemental briefing on "the following question raised on pages 36-38 of the Brief for Appellees: Whether the State's intentional creation of a second majority-minority congressional district violates the Fourteenth or Fifteenth Amendments." 8/1/2025 Order. The answer to that question is yes.

As this case illustrates, lower courts have repeatedly interpreted this Court's framework from *Thornburg* v. *Gingles*, 478 U.S. 30 (1986), to require States to draw district lines where race predominates over neutral districting principles as a remedy for perceived violations of Section 2's "results" test. They have done so even where the evidence does not suggest any objective risk that intentional discrimination has had the effect of rendering the political process not "equally open" to racial minorities. 52 U.S.C. 10301(b). In doing so, they have compelled States to violate the Constitution to remedy phantom statutory violations. The Court should modify the *Gingles* framework to prevent those common errors, align the factors more closely with the statutory text, and avoid the otherwise-fatal constitutional problems created by the prevailing approach to Section 2.

More specifically, the cited pages of appellees' brief address whether Section 2 provides a compelling interest that can justify race-predominant districting. Section 2 does not supply a compelling interest to draw such districts because the statute would be unconstitutional if it required such race-based districting. Congress enacted the VRA pursuant to its power to enforce the Fifteenth Amendment, which bans only *intentional* racial discrimination in voting. Construing Section 2's "results" test to require race-predominant districting would decouple the statute from its function of smoking

out voting practices and procedures that are likely intentionally discriminatory and would instead effectively compel racial gerrymanders. While that likely would have been unconstitutional even when the "results" test was enacted in 1982, its unconstitutionality is even clearer today. Current voting conditions cannot justify such excessive consideration of race. See *Shelby County* v. *Holder*, 570 U.S. 529 (2013); *Students for Fair Admissions, Inc.* v. *President & Fellows of Harv. Coll.*, 600 U.S. 181 (2023).

Section 2's plain text, moreover, does *not* require States to engage in race-predominant districting. The "results" test has had that effect only because of the unduly malleable framework for vote-dilution claims established in *Gingles*. This Court should modify various aspects of that framework to better align with both the statutory text and constitutional principles, paralleling the approach the Court took to Section 2 vote-denial claims in *Brnovich* v. *Democratic National Committee*, 594 U.S. 647 (2021). Specifically, the Court should make three key modifications to the *Gingles* framework.

First, for Section 2 plaintiffs to meet their threshold burden to offer a reasonably configured majority-minority district, their district must be *superior* to the State's enacted district under the State's own race-neutral districting principles, including racial non-predominance and political goals. Otherwise, there is no basis for inferring that the State's failure to create the majority-minority district reflects intentional discrimination, since the race-neutral districting principles provide an obvious alternative explanation.

Second, plaintiffs must decouple party from race when determining whether majority and minority voters vote differently. Otherwise, rather than protecting equal

opportunities for minority voters, Section 2 simply provides an electoral advantage for the party they favor.

Third, when considering the totality of circumstances, courts must focus on factors that illuminate whether the State's failure to create the district was objectively likely to reflect intentional discrimination. Only then can it reasonably be said that voting is not "equally open" to minority voters. *Brnovich*, 594 U.S. at 668 (quoting 52 U.S.C. 10301(b)).

In short, this Court's Section 2 jurisprudence should account for the fact that, today, a State's failure to create a compact majority-minority district, even where demographically possible, is far more likely to reflect *political* motives than *racial* ones. Too often, Section 2 is deployed as a form of electoral race-based affirmative action to undo a State's constitutional pursuit of political ends. That misuse of Section 2 is unconstitutional.

Under the proper reading of Section 2, the judgment below should be affirmed. The district court in *Robinson* v. *Ardoin*, 605 F. Supp. 3d 759 (M.D. La. 2022), misapplied Section 2 in determining that Louisiana likely needed to draw a second majority-minority district. The Robinson appellants' proposed district was far inferior to the State's original district from the perspective of the State's Republican-majority legislature, as it would have cost Louisiana Republicans a seat in Congress. While the Robinson appellants now cast *Gingles* as an exacting framework trained on current discrimination, that account bears scant resemblance to the *Robinson* court's unfocused, wide-ranging opinion, which exemplifies many of the flaws with recent Section 2 litigation. As Louisiana now concedes, Section 2 cannot justify the racially gerrymandered majority-minority district created to appease the *Robinson* court.

ARGUMENT

I. SECTION 2 DOES NOT PROVIDE A COMPELLING INTEREST TO DRAW DISTRICTS WHERE RACE PREDOMINATES

Under the Constitution, States cannot draw districts where race predominates over neutral districting principles, absent a compelling interest that satisfies strict scrutiny. Compliance with Section 2's "results" test is not such an interest. If the statute required race-predominant districting, it likely would have been unconstitutional when enacted, and it would be plainly unconstitutional today.

A. Strict Scrutiny Applies To Districting Where Race Predominates

1. Under precedents that this Court has recently and repeatedly reaffirmed, the intentional creation of a majority-minority district does not itself trigger strict scrutiny. Instead, strict scrutiny applies only when "a legislature gives race a predominant role" in placing "'a significant number of voters within or without a particular district.'" *Alexander* v. *South Carolina State Conference of the NAACP*, 602 U.S. 1, 6-7 (2024) (quoting *Miller* v. *Johnson*, 515 U.S. 900, 916 (1995)); accord, *e.g.*, *Cooper* v. *Harris*, 581 U.S. 285, 291 (2017).

To show predominance, "a plaintiff must prove that the legislature subordinated traditional race-neutral districting principles * * * to racial considerations." *Miller*, 515 U.S. at 916. That occurs when "'[r]ace was the criterion that, in the State's view, could not be compromised' in the drawing of district lines." *Alexander*, 602 U.S. at 7 (quoting *Shaw* v. *Hunt*, 517 U.S. 899, 907 (1996) (*Shaw II*)) (brackets in original).

Under this Court's cases, predominance can be shown through "direct evidence" that race dictated

where lines were drawn, which the State may "express[ly] acknowledge[]" or reveal through discovery. *Alexander*, 602 U.S. at 8. Predominance also can be shown through "circumstantial evidence," such as a "bizarre" shape or other "conflicts with traditional redistricting criteria" that leave no likely "alternative explanation." *Ibid.* Because the ultimate question is *why* the State drew the district it did, a "showing of 'inconsistency between the enacted plan and traditional redistricting criteria' is unnecessary" if other evidence shows that race predominated. *Cooper*, 581 U.S. at 301 n.3 (quoting *Bethune-Hill* v. *Virginia State Bd. of Elections*, 580 U.S. 178, 190 (2017)). While States cannot use race as a proxy for party affiliation, *Alexander*, 602 U.S. at 7 n.1, an "adverse inference" against predominance is warranted if plaintiffs cannot produce "an alternative map" that could achieve the State's "political objectives" without the challenged placement of minority voters, *id.* at 34.

2. Louisiana asks (Supp. Br. 46) this Court to "amend or overrule its racial-predominance precedents" and reject any role for race in districting. But neither the State nor appellees challenged the predominance requirement in their opening briefs. And this Court has often reaffirmed the predominance principle—for good reason: jettisoning predominance would aggravate, not terminate, the "endless" redistricting litigation Louisiana bemoans (*id.* at 12).

The predominance requirement reflects the "extraordinary caution" warranted when federal courts review a redistricting plan, which "represents a serious intrusion on the most vital of local functions." *Alexander*, 602 U.S. at 7. Redistricting involves a "complex interplay of forces," and mapmakers will "almost always

be aware of racial demographics." *Miller*, 515 U.S. at 915-916. The predominance requirement implements "the presumption of good faith" owed to legislators, *id.* at 916, and prevents politically motivated challenges to virtually any redistricting on the ground that race played *some* role, *Alexander*, 602 U.S. at 7, 10-11. Abandoning predominance would thus not only facially invalidate Section 2—which requires States to consider race to avoid prohibited results—but would also precipitate an onslaught of racial-gerrymandering claims.

3. The district court properly found that race predominated in drawing Louisiana's second majority-minority district.

Louisiana concededly created the district solely to avoid a court-drawn remedy for the Section 2 violation found likely in *Robinson* v. *Ardoin*, 605 F. Supp. 3d 759 (M.D. La. 2022). Oral Arg. Tr. 25, 55-56. The State obviously preferred the 5-1 Republican map that it enacted following the 2020 census. No one has identified any reason besides *Robinson* why a Republican legislature and governor would suddenly create a 4-2 map that cost a Republican incumbent his seat.

Of course, when responding to *Robinson*, political considerations were also "at work." *Shaw II*, 517 U.S. at 907. In triaging *which* Republican had to be ousted, the legislature protected the Speaker of the House, the Majority Leader, and Louisiana's representative on the Appropriations Committee. 24-109 J.S. App. 49a & n.10. But the decision to create a majority-minority district "was made at the outset of the process and never seriously questioned." *Bush* v. *Vera*, 517 U.S. 952, 961 (1996) (plurality opinion). Race-neutral considerations thus "came into play only after the race-based decision had been made." *Bethune-Hill*, 580 U.S. at 189 (quoting

Shaw II, 517 U.S. at 907). Because race "could not be compromised" in satisfying the *Robinson* court's demands, race predominated. *Alexander*, 602 U.S. at 7.

In *Miller*, Georgia similarly drew a third majority-minority district after the Department of Justice denied VRA preclearance for plans with only two such districts. 515 U.S. at 906-908. The DOJ pressure, this Court observed, made it "obvious" that "race was the predominant factor in drawing" the contested district. *Id.* at 917-918; see *Shaw II*, 517 U.S. at 906 (similar). Louisiana's "abject surrender" to a federal authority's (mis)reading of the VRA, *Miller*, 515 U.S. at 917, thus confirms, rather than refutes, that race predominated. That the federal authority was a district court rather than the DOJ makes no difference—either way, *race* was the uncompromisable factor.

B. Section 2 Cannot Constitutionally Require Race-Predominant Districting Today

This Court has often "assumed" without deciding that Section 2 compliance is a compelling interest that could justify race-based districting under strict scrutiny. *E.g.*, *Wisconsin Legislature* v. *Wisconsin Elections Comm'n*, 595 U.S. 398, 401 (2022) (per curiam). If Section 2's "results" test required drawing districts where race predominates, that assumption would be mistaken. Such a reading of the statute would mandate unconstitutional racial discrimination. And compliance with an unconstitutional statute cannot justify unconstitutional conduct. See *Miller*, 515 U.S. at 921.

1. Congress enacted the VRA pursuant to its "power to enforce [the Fifteenth Amendment] by appropriate legislation." U.S. Const. Amend. XV, § 2; see *Brnovich* v. *Democratic Nat'l Comm.*, 594 U.S. 647, 656 (2021). The Fifteenth Amendment states that "[t]he right of

citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." U.S. Const. Amend. XV, § 1. Especially given the phrase "on account of," the Fifteenth Amendment, like the Fourteenth Amendment, bars only actions taken "with a discriminatory purpose." *Reno* v. *Bossier Parish Sch. Bd.*, 520 U.S. 471, 481 (1997); see *Washington* v. *Davis*, 426 U.S. 229, 239 (1976).

Section 2's text originally tracked the Fifteenth Amendment, stating that "[n]o voting qualification or prerequisite to voting, or standard, practice, or procedure[,] shall be imposed or applied by" a state or political subdivision "to deny or abridge the right of any citizen of the United States to vote on account of race or color." 79 Stat. 437. In *City of Mobile* v. *Bolden*, 446 U.S. 55 (1980), a plurality concluded that Section 2 "simply restated" the Fifteenth Amendment and thus barred only "purposeful discrimination." *Id.* at 61, 63.

In 1982, Congress abrogated *City of Mobile* and made two significant changes to Section 2 relevant here. *First*, Congress "str[uck] out 'to deny or abridge'" and "substitut[ed] 'in a manner which *results* in a denial or abridgment of.'" *Chisom* v. *Roemer*, 501 U.S. 380, 393 (1991). *Second*, Congress added subsection (b), which elaborates the kind of "result[]" that subsection (a) prohibits. *Id.* at 394. Subsection (b) provides that a "violation of [Section 2(a)] is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by" persons of a particular race, color, or language-minority group. 52 U.S.C. 10301(b). Section 2(b) defines "not equally open" to mean that members of a mi-

nority group "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." *Ibid.* In addition, Section 2(b) provides that the statute creates no right to "proportion[al]" representation. *Ibid.*

2. Section 2's "results" test would be unconstitutional if it required States to draw majority-minority districts where race predominates.

First, compelling race-predominant districting would not be a permissible means of enforcing the Constitution's prohibition on *intentional* racial discrimination in voting. Congress's power "to enforce" the Reconstruction Amendments is "not the power to determine what constitutes a constitutional violation." *City of Boerne* v. *Flores*, 521 U.S. 507, 519 (1997); see *id.* at 518 (treating Fourteenth and Fifteenth Amendment enforcement powers as "parallel"); *Allen* v. *Milligan*, 599 U.S. 1, 80 n.19 (2023) (Thomas, J., dissenting) (same).

Although this Court has held that a statute banning discriminatory effects can be an "appropriate method" of enforcing a ban on intentional discrimination, that is so *only* where the proscribed effects reflect a "risk of purposeful discrimination." *City of Rome* v. *United States*, 446 U.S. 156, 177 (1980). Discriminatory effects can help identify practices that are objectively likely to reflect intentional discrimination—"to 'smoke out,' as it were, disparate treatment," *Ricci* v. *DeStefano*, 557 U.S. 557, 595 (2009) (Scalia, J., concurring), and capture subtle or implicit discrimination that "escape[s] easy classification," *Texas Dep't of Hous. & Cmty. Affairs* v. *Inclusive Cmtys. Project, Inc.*, 576 U.S. 519, 540 (2015). But a ban on discriminatory effects is inappropriate if it sweeps in practices that likely reflect valid, race-neutral motives. Rather than "enforcing" the Reconstruction

Amendments, such a ban would be "changing what the right is." *City of Boerne*, 521 U.S. at 519.

If a State declines to draw a majority-minority district where race would predominate, that choice is highly unlikely to reflect disguised intentional discrimination. Rather, the State's decision is almost certainly based on the race-neutral principles that the State refuses to "subordinate[]." *Alexander*, 602 U.S. at 7. Reading Section 2's "results" test to *require* race-predominant districting would thus lack "congruence and proportionality between the injury to be prevented" (intentional racial discrimination in voting) "and the means adopted to that end." *City of Boerne*, 521 U.S. at 520. In fact, it would reflect a stark *variance* between the end (race-neutral treatment) and the means (race-predominant action).

Second, a statute that enforces the Fifteenth Amendment cannot compel States to engage in conduct that *violates* the Amendment. Yet race-predominant districting is "presumptively unconstitutional" and consequently subject to strict scrutiny. *Miller*, 515 U.S. at 927; see pp. 5-6, *supra*.

Setting aside abrogated affirmative-action cases and cases involving prison security, the only compelling interest that this Court has ever accepted to justify race-based government action is "remediating specific, identified instances of past discrimination." *Students for Fair Admissions, Inc.* v. *President & Fellows of Harv. Coll.*, 600 U.S. 181, 207 (2023) (*SFFA*). That category is limited to "extreme case[s]" where racial preferences are "necessary to break down patterns of deliberate exclusion." *City of Richmond* v. *J.A. Croson Co.*, 488 U.S. 469, 509 (1989) (plurality opinion); see *Shaw II*, 517 U.S. at 909-910. The Robinson appellants attempt to shoehorn Section 2 into that category (Supp. Br. 31), but

elsewhere admit (*id.* at 6, 11) that Section 2 does not require a finding of "intentional discrimination" and applies "nationwide," including to jurisdictions lacking such a history. Section 2 thus reaches far beyond remedying specific past discrimination, especially as currently construed. See pp. 17-19, 22-29, *infra*.

3. At minimum, any interpretation of Section 2's "results" test that requires race-predominant districting would be unconstitutional today. If such a mandate were ever permissible, it could only have been justified by the "exceptional conditions" of the Nation's history of race-based discrimination in voting. *South Carolina* v. *Katzenbach*, 383 U.S. 301, 334 (1966).

Critically, "even if Congress in 1982 could constitutionally authorize race-based districting under § 2 for some period of time, the authority to conduct race-based redistricting cannot extend indefinitely into the future." *Milligan*, 599 U.S. at 45 (Kavanaugh, J., concurring in part). Any "deviation from the norm of equal treatment of all racial and ethnic groups" must be "temporary." *Croson*, 488 U.S. at 510 (plurality opinion). Accordingly, in *SFFA*, this Court held that race-based affirmative action in higher education must come to an end. 600 U.S. at 221-225; see *id.* at 314 (Kavanaugh, J., concurring) (noting temporal limits on race-based school assignments to cure segregation). And *Shelby County* v. *Holder*, 570 U.S. 529 (2013), held that the VRA's preclearance regime could not continue even for States with the worst segregation-era histories of voting discrimination. *Id.* at 552-553.

Those principles apply *a fortiori* here. As the Robinson appellants appear to agree (Supp. Br. 13), Section 2 "imposes current burdens and must be justified by current needs." *Northwest Austin Mun. Utility Dist.*

No. One v. *Holder*, 557 U.S. 193, 203 (2009). Roughly 60 years after Section 2's enactment and 40 years after the "results" test's adoption, there is no adequate justification for nationwide race-predominant districting, let alone as a means to enforce the right to vote free from racial discrimination.

As this Court has observed, by 2004, the racial gap in voter registration and turnout had largely disappeared, with minorities registering and voting at levels that sometimes surpassed the majority. *Shelby County*, 570 U.S. at 547-548. Since 2004, black voters have turned out at *higher* rates than white voters in two of five presidential elections nationwide and in Louisiana. U.S. Census Bureau, *Voting and Registration Tables* (Apr. 30, 2025), https://perma.cc/8DPK-NQWY.[1] And the voter-registration gap has not exceeded 6% nationally or 5% in Louisiana. *Ibid.* Contrast that to 1965, when a *50*-point gap marred much of the South, including Louisiana. *Katzenbach*, 383 U.S. at 313.

Moreover, "minority candidates hold office at unprecedented levels." *Northwest Austin*, 557 U.S. at 202. Sixty-six black representatives serve in the current Congress. Cong. Research Serv., R48525, *Membership of the 119th Congress* 7 (Aug. 4, 2025), https://www.congress.gov/crs-product/R48535. And Louisiana has gone from all-white assemblies in the 1960s to black representation over 25% today. H.R. Rep. No. 478, 109th Cong., 2d Sess. 18 (2006); Louisiana House of Representatives, *Member Party & Demographics*, https://perma.cc/62LT-FXK8; Louisiana State Senate, *Membership Statistics*,

[1] For each presidential-election year, select "Voting and Registration in the Election of November [year]," and see "Table 4b: Reported Voting and Registration of the Total Voting-Age Population by Sex, Race, and Hispanic Origin."

https://perma.cc/VS6V-9WU4. Some top-side amici claim that successful "Section 2 litigation has sharply declined in the last two decades." Katz Br. 1; see *Milligan*, 599 U.S. at 29. If so, that too suggests that improved conditions can no longer justify an overbroad reading of Section 2. Cf. *Shelby County*, 570 U.S. at 548 (noting decline in preclearance objections).

Of course, "these improvements" may be partly "*because of*" the VRA. *Shelby County*, 570 U.S. at 548. But that should still be cause for "eas[ing] the restrictions" that courts have construed Section 2 to impose, not for indefinitely continuing federally mandated racial gerrymanders nationwide. See *id.* at 549.

II. SECTION 2 SHOULD NOT BE READ TO REQUIRE DRAWING DISTRICTS WHERE RACE PREDOMINATES

Properly construed, Section 2's "results" test should never have compelled race-predominant districting. But that has been the consequence of misguided applications of the vague framework for vote-dilution claims established in *Thornburg* v. *Gingles*, 478 U.S. 30 (1986). This Court should modify that judge-made framework to address the constitutional problems that it has created.

A. The *Gingles* Framework Is Too Malleable To Prevent Courts From Requiring Race-Predominant Districting

1. Under Section 2, a prohibited result "is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election * * * are not equally open to participation" by members of a minority group "in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 52 U.S.C. 10301(b). At the same time, Section 2 creates no right to a minority

group's election "in numbers equal to their proportion in the population." *Ibid.* Nothing in that text—which *disclaims* proportional representation—compels States to draw majority-minority districts where race predominates. That compulsion has arisen only due to fundamental flaws in the *Gingles* framework for adjudicating Section 2 vote-dilution claims.

Gingles, which involved a challenge to North Carolina's multimember legislative districts, marked this Court's first encounter with Section 2's "results" test. 478 U.S. at 34-35. The Court held that the test reaches not just vote-denial claims—*i.e.*, claims that a voting practice abridges minorities' right to cast a ballot—but also "vote dilution" claims that a practice "operate[s] to minimize or cancel out the voting strength" of minorities. *Id.* at 47-48. The Court reasoned that "[t]he essence of a § 2 claim is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives." *Id.* at 47. And the Court explained that, "where minority and majority voters consistently prefer different candidates," the use of multimember districts rather than single-member districts may have that effect. *Id.* at 48.

Gingles adopted a baroque structure for vote-dilution claims against districting plans. The Court identified three "preconditions for multimember districts to operate to impair minority voters' ability to elect representatives of their choice," which the Court drew from secondary literature. *Gingles*, 478 U.S. at 50; see *id.* at 50-51. First, the minority must be "sufficiently large and geographically compact to constitute a majority in a single-member district." *Id.* at 50. Second, the minority must

be "politically cohesive." *Id.* at 51. And third, the majority must "vote[] sufficiently as a bloc to enable it * * * usually to defeat the minority's preferred candidate." *Ibid.*

Once the preconditions are met, the *Gingles* framework considers the totality of circumstances to determine whether a violation exists. Here, *Gingles* examined the "legislative history in some detail," treating the Senate Report as "the authoritative source for legislative intent." 478 U.S. at 42, 43 n.7. The Senate Report offered nine non-exhaustive factors which "may be relevant to a § 2 claim":

(1) the jurisdiction's "history of voting-related discrimination";
(2) "the extent to which voting * * * is racially polarized";
(3) the use of "voting practices or procedures that tend to enhance the opportunity for discrimination";
(4) "the exclusion of members of the minority group from candidate slating processes";
(5) "the effects of past discrimination in areas such as education, employment, and health, which hinder [the minority group's] ability to participate effectively in the political process";
(6) "the use of overt or subtle racial appeals in political campaigns";
(7) minorities' past "elect[ion] to public office";
(8) elected officials' "unresponsive[ness] to the particularized needs" of the minority group; and
(9) the "tenuous[ness]" of the challenged practice.

Id. at 44-45.

Because *Gingles* involved multimember districts, the Court had "no occasion to consider" "other sorts of vote

dilution claims," such as claims challenging the drawing of single-member districts. 478 U.S. at 46 n.12. But this Court later extended the *Gingles* framework to those claims, while noting that single-member districts "generally pose [lesser] threats to minority-voting participation" than multimember districts. *Growe* v. *Emison*, 507 U.S. 25, 40 (1993). Only in 2006—two decades after *Gingles*—did this Court first find that a single-member district violated Section 2. *League of United Latin Am. Citizens* v. *Perry*, 548 U.S. 399, 442 (2006) (*LULAC*).

2. The *Gingles* preconditions and factors bear a negligible relationship to the statutory text, as exemplified by the heavy reliance on legislative history and secondary literature. That is unsurprising because *Gingles* was decided in 1986, before the Court's modern return to careful textualism. See *Brnovich*, 594 U.S. at 667; *Milligan*, 599 U.S. at 103 (Alito, J., dissenting).

Worse, the *Gingles* framework, as implemented in the ensuing decades, has proven sufficiently malleable that it does not meaningfully constrain plaintiffs and district courts from requiring unconstitutional race-predominant districting. The Robinson appellants recognize (Supp. Br. 4) that Section 2 must have a "limited scope" because "overly broad race-based remedies" would raise constitutional concerns. But they cast (*id.* at 1, 36) the *Gingles* framework as "a formidable barrier" that operates with "exactness in filtering out all but the most meritorious claims of racial discrimination." That description is divorced from the reality of how *Gingles* is too often applied. *Robinson* itself illustrates this problem. See pp. 31-35, *infra*. And many other cases do too.

In practice, the three preconditions typically boil down to whether it is *possible* to draw a reasonably con-

figured majority-minority district, without any real regard for the likely reasons *why* the State did not draw such a district. For example, on remand in *Milligan*, the district court rejected Alabama's remedial map, and compelled the State to draw a second majority-minority district, because the State's black population could "readily support an additional opportunity district," even though the State's remedial map better maintained communities of interest. See *Singleton* v. *Allen*, 782 F. Supp. 3d 1092, 1115 (N.D. Ala. 2025), appeal filed, No. 25-273 (Aug. 26, 2025); see *id.* at 1271-1272. Another court similarly credited expert maps showing that "it would be *possible* to draw" a majority-minority district, despite the State's race-neutral reasons for declining to do so. *White* v. *State Bd. of Election Comm'rs*, No. 22-cv-62, 2025 WL 2406437, at *9 (N.D. Miss. Aug. 19, 2025) (emphasis added); see *id.* at *13-*16, *50-*51. And yet another court rejected the State's argument that its district "better reflect[ed] traditional redistricting criteria," reasoning that the first precondition purportedly "focuses on electoral *potential*," not whether "the challenged plan performs better on certain traditional redistricting criteria." *Turtle Mountain Band of Chippewa Indians* v. *Howe*, No. 22-cv-22, 2023 WL 8004576, at *8-*9 (D.N.D. Nov. 17, 2023), vacated on other grounds, 137 F.4th 710 (8th Cir. 2025).

As Justice O'Connor presciently warned, *Gingles* too often "[r]equire[s] that every minority group that could possibly constitute a majority in a single-member district be assigned to such a district"—a result that "approach[es] a requirement of proportional representation" and violates Section 2's disclaimer to the contrary. *Gingles*, 478 U.S. at 97 (concurring in the judgment).

As for the Senate factors, they lack any "overarching standard or central question" and readily devolve into "an impressionistic moral audit of [the State's] racial past and present." *Milligan*, 599 U.S. at 71 (Thomas, J., dissenting). The *Milligan* district court, for example, weighed everything from civil-rights marches in the 1960s, to racial disparities in car ownership and smartphone access, to hookworm infestations in Alabama's Black Belt. *Singleton* v. *Merrill*, 582 F. Supp. 3d 924, 1020, 1022 (N.D. Ala. 2022), aff'd *sub nom. Allen* v. *Milligan*, 599 U.S. 1 (2023). In Washington, a court ordered the State to redraw a Latino-majority district, which had recently elected a Latino Republican, based on, among other things, the location of sidewalks, elected leaders' failure to attend May Day celebrations, and a "sense of hopelessness" among Latino voters. *Soto Palmer* v. *Hobbs*, 686 F. Supp. 3d 1213, 1228, 1231, 1234 (W.D. Wash. 2023), cert. before judgment denied, 144 S. Ct. 873 (2024). And in Georgia, a court considered racial disparities in "putting up political signs" and treated preclearance objections from the 1990s as historical evidence of discrimination, even though this Court had held that those objections rested on a mistaken and unconstitutional view of the VRA. *Alpha Phi Alpha Fraternity Inc.* v. *Raffensperger*, 700 F. Supp. 3d 1136, 1270, 1279 (N.D. Ga. 2023), appeal pending, No. 23-13914 (11th Cir.); see *Miller*, 515 U.S. at 906-907, 924-927.

Such sprawling historical and social considerations—which can be invoked in perpetuity—do little to smoke out actual discriminatory actions. Instead, they enable plaintiffs and courts to force States to draw majority-minority districts that they never would have drawn for race-neutral reasons.

To be sure, in *Milligan*, this Court suggested that *Gingles* itself should bar courts from requiring race-predominant districts under Section 2, reasoning that "a reasonably configured district" under the first precondition must "comport[] with traditional districting criteria." *Milligan*, 599 U.S. at 18, 29-30; see Robinson Supp. Br. 16-19. But as discussed below, a lax view of that precondition and other aspects of *Gingles* have failed to prevent courts from mandating racial gerrymanders under Section 2.

B. This Court Should Modify *Gingles* To Align With The Statutory Text And Avoid Constitutional Problems

1. This Court's decision in *Brnovich* provides a model for how this Court should modify *Gingles*. In *Brnovich*, this Court for the first time considered how Section 2's "results" test applies to vote-denial claims. 594 U.S. at 653-654. In stark contrast to *Gingles*, *Brnovich* started with the text. *Id.* at 667. The text's "touchstone," the Court explained, is "that voting be 'equally open.'" *Id.* at 668 (quoting 52 U.S.C. 10301(b)). A "disparate impact" is not enough. *Id.* at 677. While some legislators wanted a "freewheeling disparate-impact regime," Congress compromised by adopting Section 2(b)'s equal-openness standard. *Id.* at 674; see *id.* at 657-659.

The Court further observed that, because the text "requires consideration of 'the totality of circumstances,'" "any circumstance that has a logical bearing on whether voting is 'equally open' * * * may be considered." *Brnovich*, 594 U.S. at 668-669 (quoting 52 U.S.C. 10301(b)). The Court nonetheless emphasized various circumstances that were "important" in the vote-denial context, *id.* at 669-672, while minimizing others as having "less direct" relevance, *id.* at 672-673.

Of course, vote-denial and vote-dilution claims present different considerations, as *Brnovich* recognized. 594 U.S. at 672. While the remedy for vote-dilution claims in the districting context requires redrawing lines in ways that account for individual voters' race, see *Milligan*, 599 U.S. at 41-42, the remedy for vote-denial claims is to replace the rule that causes the proscribed "result" with another facially neutral rule that does not, see *Brnovich*, 594 U.S. at 677-678. But that is a difference in form, not substance. Changing "facially neutral" policies can raise equal-protection concerns when done for the "purpose" of favoring one "racial group" over another. *Coalition for TJ* v. *Fairfax Cnty. Sch. Bd.*, No. 23-170, 2024 WL 674659, at *5 (Feb. 20, 2024) (Alito, J., dissenting from denial of certiorari); see *SFFA*, 600 U.S. at 230 ("[W]hat cannot be done directly cannot be done indirectly.") (brackets in original). So just as *Brnovich* used text and context to cabin but retain Section 2's "results" test for vote-denial claims, this Court should modify the framework for vote-dilution claims involving single-member districting.[2]

2. Specifically, the Court should tighten the *Gingles* preconditions and focus the totality-of-circumstances inquiry. As "equal openness [is] the touchstone," *Brnovich*, 594 U.S. at 668, the end goal should be to ensure that majority-minority districts are not required where creating them would subordinate a State's race-neutral districting principles, and to ensure that majority-minority districts are required only when the State's failure to create them reflects an objective likelihood of

[2] Because this case involves single-member districting, we do not address Section 2's application to other types of vote-dilution claims. Cf. *Brnovich*, 594 U.S. at 665-666 (declining to adopt a one-size-fits-all test for vote-denial claims).

intentional discrimination. That requires plaintiffs, among other things, to refute the likelihood that politics rather than race drove the State's decision.

First Precondition. This Court should strengthen the first *Gingles* precondition—that the minority "be sufficiently large and compact to constitute a majority in a reasonably configured district," *Wisconsin Legislature*, 595 U.S. at 402—in three ways.

First, this Court should make clear that race may not predominate in drawing the plaintiffs' illustrative district. The first precondition aims "to establish that the minority has the potential to elect a representative of its own choice in some single-member district." *Milligan*, 599 U.S. at 18. No legitimate potential exists if plaintiffs can only draw a majority-minority district by using race to an extent that would be unconstitutional if done by the State. "[N]on-predominance is a longstanding and vital feature of districting law" and must be respected like any other traditional districting criterion. *Id.* at 98 (Alito, J., dissenting).

The Robinson appellants (Supp. Br. 16) and eight Justices in *Milligan* all appeared to accept that race may not predominate in illustrative districts. 599 U.S. at 30-33 (plurality opinion); *id.* at 64-65 (Thomas, J., dissenting) (noting consensus); *id.* at 98 (Alito, J., dissenting). The plurality rejected only the stronger argument that race can play *no* role in such districts. *Id.* at 30-33. This Court, however, should restate the point unambiguously, as it continues to confuse lower courts.[3]

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[3] Compare *Christian Ministerial Alliance* v. *Sanders*, No. 19-cv-402, 2023 WL 4745352, at *3, *16 (E.D. Ark. July 25, 2023) (treating racial predominance in illustrative districts as irrelevant, notwithstanding *Milligan*); *Nairne* v. *Ardoin*, 715 F. Supp. 3d 808, 855-856 (M.D. La. 2024) (same), aff'd, No. 24-30115, 2025 WL 2355524 (5th

Second, this Court should hold that plaintiffs' illustrative district must be *superior* to the State's under the State's own race-neutral districting principles. Forcing the State to replace its preferred district with one that is equivalent or worse under neutral principles would improperly give "minority voters an electoral advantage," rather than ensuring the process is "equally open" to them. *Bartlett* v. *Strickland*, 556 U.S. 1, 20 (2009) (plurality opinion). Conversely, if the State "[s]ubstantive[ly] depart[s]" from "the factors usually considered important" by refusing to draw the plaintiffs' illustrative district even though it better satisfies the State's own neutral principles, *Arlington Heights* v. *Metropolitan Hous. Dev. Corp.*, 429 U.S. 252, 267 (1977), that raises a stronger inference that the process may not be equally open due to "the risk of purposeful discrimination," *City of Rome*, 446 U.S. at 177. The Robinson appellants recognize as much: Their account of the first precondition lauds the value of an illustrative district "that *better* respects race-neutral redistricting criteria." Supp. Br. 18 (emphasis added).

To prevent race-predominant districting, it is not sufficient that "a reasonably configured district" under the first *Gingles* precondition must "comport[] with traditional districting criteria." *Milligan*, 599 U.S. at 18, 29-30. As this Court has recognized, even where there is no "inconsistency" with "traditional restricting criteria," race still predominates if it "provide[s] the essen-

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Cir. Aug. 14, 2025), with *Mississippi State Conference of the NAACP* v. *State Bd. of Election Comm'rs*, 739 F. Supp. 3d 383, 415 (S.D. Miss. 2024) (treating *Milligan* plurality as having resolved that racial predominance is impermissible under the first *Gingles* precondition), appeal filed, No. 25-234 (Aug. 26, 2025); *Alpha Phi Alpha*, 700 F. Supp. 3d at 1261-1262 (same).

tial basis for the lines drawn." *Bethune-Hill*, 580 U.S. at 189-190. When plaintiffs' illustrative district is no better than the State's, forcing the State to change maps "subordinate[s]" the State's choice. *Alexander*, 602 U.S. at 7. By contrast, when a court requires the State to use a district that is superior on the State's own race-neutral metrics, race is not the "criterion" that "could not be compromised." *Ibid.*

Milligan, however, held that plaintiffs need only offer a *roughly equivalent* district. The Court stated that the first precondition does not require "a 'beauty contest[]' between plaintiffs' maps and the State's." 599 U.S. at 21 (brackets in original). With respect, that statement was misguided. *Milligan* drew the "beauty contests" language from the plurality opinion in *Vera*, 517 U.S. at 977. But *Vera* said only that, to survive strict scrutiny on a racial-gerrymandering claim, *the State*'s map need not "defeat rival compact districts designed by plaintiffs' experts in endless 'beauty contests.'" *Ibid.* Without analysis, *Milligan* flipped the standard, allowing *plaintiffs*' maps to avoid beauty contests and thereby forcing States to prioritize racial considerations over their own weighing of race-neutral districting principles. That is particularly problematic because, as *Milligan* elsewhere acknowledged, districting requires States to "make difficult, contestable choices" when "measuring, prioritizing, and reconciling" oft-conflicting principles. 599 U.S. at 35. Unless plaintiffs' proposed district is superior even under the State's own weighing of principles, federal courts should not order "a serious intrusion on the most vital of local functions." *Alexander*, 602 U.S. at 7.

The *Milligan* remand illustrates the dangers of not requiring plaintiffs to produce a superior map. This

Court had held that the plaintiffs' map equaled the State's because there was "a split community of interest in both"—the State split the Black Belt while the plaintiffs split the Gulf Coast. 599 U.S. at 21. Respecting that yardstick, Alabama then drew a *better* map, keeping both the Gulf Coast *and* the Black Belt together to the maximum extent possible, but without creating a second majority-minority district. See *Singleton*, 782 F. Supp. 3d at 1132-1133. The district court nevertheless deemed that insufficient, asserting that plaintiffs needed to offer only a "reasonable" map, not "the best map" or even one that outperformed the State's on "*any* particular[] metric." *Id.* at 1264 (emphasis added). In other words, the court compelled the State to adopt an objectively *worse* map in order to increase minority representation, just because both maps were, in the court's view, roughly similar. See J.S. at 6-7, *Allen* v. *Singleton*, No. 25-273 (filed Aug. 26, 2025).

Third, this Court should hold that the plaintiffs' illustrative district cannot disregard the State's *political* objectives. In the racial-gerrymandering context, the Court has recognized that traditional districting criteria include "incumbency protection" and "political affiliation." *Alabama Legislative Black Caucus* v. *Alabama*, 575 U.S. 254, 272 (2015). So too in the Section 2 context, those are criteria with which "a reasonably configured district" must "comport[]." *Milligan*, 599 U.S. at 18. Just as "an adverse inference" is warranted where racial-gerrymandering plaintiffs cannot produce "an alternative map" that achieves the State's "political objectives," *Alexander*, 602 U.S. at 34, Section 2 plaintiffs cannot claim a lack of equal openness where politics rather than race is the likely reason for the State's refusal to create a majority-minority district.

Disregarding the role of politics when applying Section 2 would also undermine this Court's holding that partisan-gerrymandering claims are not justiciable. *Rucho* v. *Common Cause*, 588 U.S. 684, 718 (2019). If Section 2 plaintiffs need not account for partisan effects when drawing illustrative districts, they "could repackage a partisan-gerrymandering claim" as a Section 2 claim "by exploiting the tight link between race and political preference." *Alexander*, 602 U.S. at 21. In essence, plaintiffs could require States to create more districts favoring political minorities when those voters are also racial minorities. That would "transform federal courts into 'weapons of political warfare' that will deliver victories that eluded [the minority party] 'in the political arena.'" *Id.* at 11. Under Section 2, however, racial minorities "are not immune from the obligation to pull, haul, and trade to find common political ground." *Johnson* v. *De Grandy*, 512 U.S. 997, 1020 (1994).

Admittedly, this Court has found the first *Gingles* precondition satisfied without considering partisan effects, even where the plaintiffs' illustrative map likely would cost the majority party a seat. But this Court has never meaningfully justified that approach. Before *Rucho* interred partisan-gerrymandering claims, States were sometimes reticent to admit partisan aims. And in *Milligan*—this Court's only post-*Rucho* vote-dilution case—Alabama did not argue that the plaintiffs' failure to account for partisanship defeated their illustrative map. That litigation choice does not justify continuing to discount incumbency protection and political affiliation as race-neutral criteria that plaintiffs must respect. Only by "rigorously apply[ing]" the first precondition's "'reasonably configured' requirement[]" can courts "ensure that *Gingles* does not improperly morph into a pro-

portionality mandate." *Milligan*, 599 U.S. at 44 n.2 (Kavanaugh, J., concurring in part).

Second and third preconditions. This Court should similarly make clear that plaintiffs must control for party affiliation when proving the second and third *Gingles* preconditions—politically cohesive voting by the minority and racial-bloc voting by the majority. See *Milligan*, 599 U.S. at 18. Failure to do so risks confusing partisan effects for racial ones.

As noted, in racial-gerrymandering cases, this Court has emphasized the importance of "disentang[ling] race and politics" given that the two are often "highly correlated." *Alexander*, 602 U.S. at 6. That logic applies equally to Section 2. Proving that the minority and majority vote differently is irrelevant to equal openness—the statute's "touchstone," *Brnovich*, 594 U.S. at 668—if those differences reflect partisanship, not race. See Robinson Supp. Br. 46 (endorsing analysis "controlling for political party affiliation"). If, for example, black voters in a jurisdiction heavily favor Democrats while white voters generally favor Republicans, a Republican legislature's decision not to create a black-Democratic-majority district likely reflects partisan rather than racial motivation, and thus it does not deprive black voters of electoral opportunity based on race. See *Whitcomb* v. *Chavis*, 403 U.S. 124, 152-153 (1971).

Gingles itself illustrates the significance of controlling for party when assessing racially polarized voting. There, black and white *Democrats* had starkly different voting patterns. Black Democrats supported black candidates in most primaries at rates between 71% and 92%, while white Democrats supported black candidates at rates between 8% and 50%. *Gingles*, 478 U.S. at 59. In general elections, white voters in heavily Dem-

ocratic areas often ranked black candidates last among Democrats, with most white voters categorically refusing to vote for black Democrats. *Ibid.* Such intra-party disparities make it "at least plausibl[e]" that racially polarized voting thwarts minorities "on account of race"—the core "purpose" of the third precondition. *Milligan*, 599 U.S. at 18-19. Yet in a portion of *Gingles* joined only by a plurality, Justice Brennan suggested that controlling for party was improper because "the reasons black and white voters vote differently" purportedly "have no relevance to the central inquiry of § 2." 478 U.S. at 63.

Since *Gingles*, the second and third preconditions have become largely moribund. Plaintiffs offer check-the-box evidence of racial differences in voting, and courts quickly move on. *E.g.*, *Milligan*, 599 U.S. at 22; *LULAC*, 548 U.S. at 427. Besides noting that substantial crossover voting can defeat a showing of bloc voting, *e.g.*, *Cooper*, 581 U.S. at 302-303, and that these preconditions must be analyzed at the district level, *Abbott* v. *Perez*, 585 U.S. 579, 616 (2018), the Court has never rigorously elaborated the second and third preconditions. Requiring plaintiffs to control for partisanship would reinvigorate those preconditions and realign *Gingles* with Section 2's text.

Totality of circumstances. Finally, this Court should focus the totality-of-circumstances inquiry on Section 2's touchstone of equal openness, just as it did for vote-denial claims in *Brnovich*, 594 U.S. at 668-673. For vote-dilution claims involving single-member districts, that means probing whether the facts reveal an *objective likelihood* that the State's failure to create a majority-minority district reflects intentional discrimination.

While Section 2's "results" test is not so "demanding" as to require an ultimate finding of discriminatory

intent, *Milligan*, 599 U.S. at 37, it cannot be construed so loosely as to invalidate a State's map that does not reflect even a meaningful "risk of purposeful discrimination," *City of Rome*, 446 U.S. at 177. As *Brnovich* explained, "disparate impact" alone cannot justify denigrating a State's voting practices as not "equally open." 594 U.S. at 674. To the contrary, in compromising on the language of the "results" test, Congress pulled the "equally open" standard almost verbatim from *White* v. *Regester*, 412 U.S. 755 (1973)—a case that analyzed "invidious discrimination under the Equal Protection Clause." *Id.* at 764; see *Brnovich*, 594 U.S. at 659.

In each case, some factors, like recent, intentional official discrimination, may be "highly relevant." *Brnovich*, 594 U.S. at 669. Others, like decades-old discrimination or disparate health outcomes, have "much less direct" relevance. *Id.* at 673. Again, the Robinson appellants claim to agree (Supp. Br. 20, 22), urging a totality-of-circumstances inquiry focused on "current racial discrimination," including hidden "discriminatory intent." But see pp. 33-34, *infra* (discussing the *Robinson* court's unfocused inquiry). Too often, though, this inquiry devolves into a grab-bag of historical and social considerations without any organizing principle. See p. 19, *supra*. This Court should focus lower courts on identifying an *objective likelihood* that the State intentionally discriminated in drawing the challenged district.

C. *Stare Decisis* Does Not Prevent Modifying *Gingles*

"[T]he *Gingles* framework is not the same thing as a statutory provision," *Milligan*, 599 U.S. at 103 (Alito, J., dissenting), and this Court often alters the contours of judge-made doctrines without addressing *stare decisis*. For example, in *Groff* v. *DeJoy*, 600 U.S. 447 (2023), the Court "clarif[ied]" that *Trans World Airlines* v. *Hardi-*

son, 432 U.S. 63 (1977), could not be read literally to permit any non-"*de minimis*" cost to defeat a Title VII religious-accommodation claim. *Groff*, 600 U.S. at 454; see *Kisor* v. *Wilkie*, 588 U.S. 558, 574 (2019) (reaffirming *Auer* deference while "reinforcing" its "limits"); *Halliburton Co.* v. *Erica P. John Fund, Inc.*, 573 U.S. 258, 284 (2014) (adhering to the *Basic* presumption of reliance in securities cases, while creating an opportunity "to defeat the presumption"). That approach is especially warranted here, where certain interpretations of *Gingles* have "relied on assumptions that have gone unstated and unexamined." *Arizona Christian Sch. Tuition Org.* v. *Winn*, 563 U.S. 125, 145 (2011).

Even if they applied, the *stare decisis* factors would not compel adherence to the malleable *Gingles* framework. See *Dobbs* v. *Jackson Women's Health Org.*, 597 U.S. 215, 267-268 (2022). Like other statutory decisions that this Court has reconsidered, *Gingles* rests on an "outmoded" interpretive methodology that "has been steadily eroded over the years." *Rodriguez de Quijas* v. *Shearson/American Express, Inc.*, 490 U.S. 477, 480-481, 484 (1989). It reflects a "bygone era of statutory construction" when courts prioritized legislative history over statutory text. *Food Mktg. Inst.* v. *Argus Leader Media*, 588 U.S. 427, 437 (2019); see pp. 15-17, *supra*. As *Brnovich* illustrates, a modern, textualist approach to Section 2 would look very different. 594 U.S. at 667-672.

The prevailing understanding of *Gingles* has also "spawned intractable difficulties." *Milligan*, 599 U.S. at 90 (Thomas, J., dissenting). As explained, pp. 17-19, 22-24 & n.3, *supra*, the test is sufficiently malleable to allow plaintiffs to demand race-predominant districts to remedy maps that reflect no objective risk of intentional discrimination—a result that is unconstitutional. It

would turn both *stare decisis* and constitutional avoidance on their heads to retain a judge-made construction of Section 2 that would require its invalidation. Cf. *Girouard* v. *United States*, 328 U.S. 61, 69-70 (1946) (overruling statutory precedents "abhorrent to our tradition" of accommodating "religious scruples").

Conversely, there are no valid reliance interests in the *Gingles* framework's contours. No voter arranges his life on the premise that the first *Gingles* precondition does not require plaintiffs to offer a superior map compared to the State's own race-neutral districting criteria. And while States may rely on Section 2 precedent when districting, the modified framework proposed here would give States more breathing room by cabining Section 2 claims to those that actually smoke out likely racial discrimination. States have no reliance interests in perpetuating more restrictive constraints on themselves, as illustrated by Louisiana's confession of error.

III. THE DECISION BELOW SHOULD BE AFFIRMED

Under the proper view of Section 2, the district court correctly concluded that Louisiana's sixth congressional district is an unconstitutional racial gerrymander. 24-109 J.S. App. 39a-66a. As explained, pp. 7-8, *supra*, race predominated in the drawing of that majority-minority district because *Robinson* forced Louisiana to treat race as nonnegotiable. The State must therefore satisfy "the daunting," "extraordinarily onerous" requirements of strict scrutiny: that the use of race was "narrowly tailored" to achieve "a compelling governmental interest." *Alexander*, 602 U.S. at 11.

Louisiana cannot meet that burden, as the State now correctly concedes. This Court's precedents make clear that attempted compliance with a federal authority's er-

roneous and unconstitutional interpretation of the VRA cannot supply a compelling interest justifying race-predominant districting. See *Shaw II*, 517 U.S. at 911-913; *Miller*, 515 U.S. at 922-925; contra Robinson Supp. Br. 14 (incorrectly suggesting that any "valid court order affirmed on appeal" automatically establishes a compelling interest). The *Robinson* court's interpretation of Section 2 was neither correct nor constitutional.

Most significantly, under the first *Gingles* precondition, the Robinson appellants not only failed to offer a *superior* map, but proposed maps that were *far inferior* to the State's. While they now highlight (Supp. Br. 43, 50) that some maps beat the State's on some metrics, they flouted the traditional districting criteria of "incumbency protection" and "political affiliation," *Alabama*, 575 U.S. at 272, by forcing a Republican-led State to unseat a Republican incumbent.

The *Robinson* court reasoned that the plaintiffs' maps protected incumbents because they left all six representatives "in the district where they currently live." 605 F. Supp. 3d at 830. But the plaintiffs' maps transformed one Republican incumbent's district into a majority-minority district where she was likely to *lose*. *Id.* at 779-780, 785; La. Br. 14. That is the opposite of incumbency *protection*. *Robinson* forced Louisiana to treat race as a nonnegotiable criterion and pick which Republican incumbent to sacrifice on the altar of racial predominance. That unconstitutional interpretation of Section 2 cannot justify race-predominant districting.

The *Robinson* court also erred on the second and third *Gingles* preconditions. It refused to control for partisanship, treating as dispositive evidence that white and black Louisianians on average support different candidates. *Robinson*, 605 F. Supp. 3d at 840-842.

Turning to the totality of circumstances, *Robinson* minimized that inquiry on the ground that it would be "very unusual" for plaintiffs to meet the *Gingles* preconditions but fail to prove their claim. 605 F. Supp. 3d at 844; but see Robinson Supp. Br. 21 (asserting that the totality-of-circumstances inquiry provides "additional guardrails on §2 claims"). While the Robinson appellants now recognize the need for "significant evidence of current racial discrimination in voting" (Supp. Br. 20) and emphasize "current conditions" (*id.* at 3, 9, 13, 15-16, 21, 29-30, 36, 39-41, 43), that late-breaking account looks nothing like the opinion they won in *Robinson*.

In marching through the nine Senate factors, the court offered no organizing principle and made no effort to smoke out intentional discrimination. Instead, the court surveyed Louisiana's "repugnant history of discrimination," citing an 1898 grandfather clause and low black-voter-registration rates between 1910 and 1948, and noted the party realignment "since the 1860s." *Robinson*, 605 F. Supp. 3d at 845, 847; see *id.* at 846-847. The court declared such evidence "not ancient history" since "[a] Black Louisianan born in 1965" would have been only 57 in 2022. *Id.* at 847; but see Robinson Supp. Br. 30 (disclaiming the relevance of "the distant past" like the 1960s). The court treated more recent limitations on early and mail-in voting as reflecting "Black voter suppression." *Robinson*, 605 F. Supp. 3d at 846-847; but see *Brnovich*, 594 U.S. at 670 (noting that, in 1982, in-person election-day voting was the norm nationwide). And the court recounted at length plaintiffs' "sobering" expert testimony on disparities in, among other things, medical-school graduation rates and broadband internet access, although it ultimately

purported not to weigh that evidence. *Robinson*, 605 F. Supp. 3d at 849; see *id.* at 809-810.

The Robinson appellants spotlight (Supp. Br. 1-2, 23, 43) the court's finding on the final Senate factor that the justification for Louisiana's map was "tenuous" because some two-majority-minority-district maps beat the State's on population equality and precinct splits. *Robinson*, 605 F. Supp. 3d at 850-851. But that analysis simply repeats the court's error of subordinating the State's race-neutral interest in protecting Republican incumbents to plaintiffs' race-based interest in electing a second black representative. See p. 32, *supra*.

In sum, the Robinson appellants did not come close to carrying their burden under a proper construction of Section 2, and thus Louisiana did not carry its burden under strict scrutiny to establish a compelling interest in VRA compliance. It is no defense for the State—which, again, no longer defends its district—that some of the problems identified above had not been clearly established by this Court's precedents when the challenged district was drawn. This Court's "construction of a statute is an authoritative statement of what the statute meant before as well as after the decision of the case giving rise to that construction." *Rivers* v. *Roadway Express, Inc.*, 511 U.S. 298, 312-313 (1994). When doctrine adjusts, this Court applies current law, not the "*ancien regime*" one might have "expect[ed]" under "contemporary legal context." *Alexander* v. *Sandoval*, 532 U.S. 275, 287-288 (2001). Where, as here, the *ancien regime* invited unconstitutional racial gerrymanders, that should be especially true.

Regardless, *Robinson*'s error should have been clear at the time. It has long been established that "the § 2 compactness inquiry should take into account 'tradi-

tional districting principles.'" *Abrams* v. *Johnson*, 521 U.S. 74, 92 (1997). And two such principles, this Court announced a decade ago, are "incumbency protection" and "political affiliation." *Alabama*, 575 U.S. at 272. Because the Robinson appellants' illustrative districts did not even arguably "comport[]" with those race-neutral objectives, *Milligan*, 599 U.S. at 18, the *Robinson* court's order had no legitimate basis under Section 2 and cannot justify forcing Louisiana to racially gerrymander.

CONCLUSION

The district court's judgment should be affirmed.

Respectfully submitted.

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