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

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INTRODUCTION

Although we are making progress towards the goal of an America where race is no longer relevant to opportunity, "racial discrimination and racially polarized voting are not ancient history." *Bartlett v. Strickland*, 556 U.S. 1, 25 (2009) (plurality). Indeed, "racial discrimination still occurs and the effects of past racial discrimination still persist." *Students for Fair Admissions v. Harvard College* ("*SFFA*"), 600 U.S. 181, 317 (2023) (Kavanaugh, J., concurring). Today, there are places in Louisiana and elsewhere where race substantially factors into which candidate certain voters support, which constituents elected officials are responsive to, and what campaign messages candidates produce. Even now, it appears that Louisiana is planning to roll back Black representation in its congressional delegation. *See* La. Legis. Black Caucus Br.3, 11.

Section 2 of the Voting Rights Act ("VRA") did not create this problem; to the contrary, Congress enacted §2 "to hasten the waning of racism in American politics." *Johnson v. De Grandy*, 512 U.S. 997, 1020 (1994). As carefully calibrated by this Court, §2 has done much to address the "demonstrated ingenuity of state and local governments in hobbling minority voting power" through gerrymanders and at-large elections. *Id.* at 1018. The other parties attempt to strip §2 of its foundational context. But §2 is Congress's well-considered remedy to over a century of brutal racial discrimination. And this Court has lauded it as an exemplar of Congress's enforcement powers.

This Court and Congress have guaranteed all Americans that "[f]ederal and state civil rights laws [will] serve to deter and provide remedies for current acts of racial discrimination." *SFFA*, 600 U.S. at 317

(Kavanaugh, J., concurring). Section 2 is such a law. It is a "permanent, nationwide ban on racial discrimination in voting." *Shelby Cnty. v. Holder* ("*Shelby*"), 570 U.S. 529, 557 (2013). It deters all manner of discrimination in voting, and it provides a remedy only where plaintiffs can prove *current* discrimination based on *current* conditions. *See*, *e.g.*, *Abbott v. Perez*, 585 U.S. 579, 619 (2018). Congress acted at the height of its enforcement authority under the Reconstruction Amendments when it enacted §2 to address racial discrimination in voting. *E.g.*, *City of Boerne v. Flores*, 521 U.S. 507, 530 (1997). Unsurprisingly, the other parties cite no authority for their claim that Congress is required to regularly review federal civil rights legislation, because such a requirement would contravene the Reconstruction Amendments' aims of entrusting Congress with expansive enforcement powers. Congress does not need to periodically reconsider whether laws that bar segregation, literacy tests, and discrimination in private contracts are still necessary. And this Court has never imposed an atextual sunset date on a validly enacted, nationwide civil rights law. *Cf. Shelby*, 570 U.S. at 544, 557 (emphasizing that Congress devised a time-limited preclearance formula due to §5's unique "equal sovereignty" concerns and that the Court's decision invalidating that formula in "no way affects ... § 2," which is "nationwide and permanent"). Nor has this Court ever held that state lawmakers cannot be aware of race in enacting remedies for proven racial discrimination. *Contra Shaw v. Reno* ("*Shaw I*"), 509 U.S. 630, 646 (1993).

Indeed, contrary to what the other parties say, §2's genius is its flexibility—remedies do not require racial targets or classifications, much less lead to unconstitutional racial gerrymandering. Rather, state

actors have significant "leeway" to provide the required increases in minority electoral opportunities by creating §2-compliant districts drawn using nonracial traditional redistricting criteria or based on electoral performance. *See, e.g.*, *Lawyer v. DOJ*, 521 U.S. 567, 575 (1997); *Milligan v. Allen*, No. 2:21-CV-01530, 2025 WL 2451593, at *4 (N.D. Ala. Aug. 7, 2025) (noting that a §2 remedy was "drawn race-blind" based on communities of interest and socioeconomic data); La. Mathematics & Computer-Science Professors Amicus Br.7-24 ("Professors Amicus") (offering congressional plan with two opportunity districts drawn based on electoral competitiveness, neither majority Black); *cf. also Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 22 (2024) (holding that strict scrutiny was not triggered where a map-maker relied on election data, and reviewed racial data only afterward "solely for a lawful purpose" of ensuring VRA compliance).

While such alternative §2 remedies may involve an awareness of race, individuals are assigned to districts based solely on *nonracial* criteria, not racial targets. This approach mirrors other "race-neutral" remedies that neither subject individuals to race-based disparate treatment, *nor* trigger strict scrutiny. *See, e.g.*, *SFFA*, 600 U.S. at 299-300 (Gorsuch, J., with Thomas, J., concurring) (explaining that universities may use "race-neutral" admissions criteria, like socioeconomic status that correlate with race, to admit racially diverse classes); *id*. at 317 (Kavanaugh, J., concurring) (same). In attempting to remedy discrimination with "race-neutral tools," the "mere awareness of race … does not doom that endeavor at the outset." *Tex. Dep't of Hous. & Cmty. Affs. v. Inclusive Cmtys. Project, Inc.*, 576 U.S. 519, 545 (2015). Given this flex-

ibility, rarely does §2 require the predominant consideration of race in redistricting. *Cf. Abbott*, 585 U.S. at 616. And when it does, the state must meet strict scrutiny. *See Bush v. Vera*, 517 U.S. 952, 994-995 (1996) (O'Connor, J., concurring).

Critically, §2 "makes no assumptions one way or the other about the role of racial considerations in a particular community." S. Rep. No. 97-417 ("Senate Report") 34. If plaintiffs assert that the political process is not equally open, §2 requires them to prove it.

In contrast, the other parties' all-out assault on §2 rests on various unproven and baseless assumptions. They ask this Court to run roughshod over the basic principles of our legal system: respect for *stare decisis* and precedent; Congress's authority under the Reconstruction Amendments; and even the fundamental requirement of supporting factual assertions with record evidence. Without evidence, they ask this Court to presume that race no longer affects voters, bucking this Court's acknowledgment that "no one suggests that discrimination in voting has been extirpated or that the threat has been eliminated." *Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 678 (2021). They assert that §2 (rather than the discrimination it is designed to root out) is the reason race still affects our political system, omitting the century before §2's enactment in which the Fifteenth Amendment was "little more than a parchment promise." *Allen v. Milligan*, 599 U.S. 1, 10 (2023). Their arguments *both* ignore the *Robinson* court's well-supported findings of Louisiana's *present-day* discrimination *and* downplay the "exacting requirements" this Court has precisely crafted to ensure that §2 "limit[s] judicial in-

tervention" to only those places where "intensive racial politics" are *already* denying equal electoral opportunities to minority voters. *Id.* at 30 (cleaned up).

A challenge to §2's constitutionality must be grounded in law and fact, not breezy claims that a critical landmark statute has "lost its luster." Appellees' Supplemental Brief [hereinafter "App. Supp." or "Appellees (at)"] 3. This Court should hold to the specific questions presented about Louisiana's districts and again decline the invitation to "remake its Section 2 jurisprudence anew." *Milligan*, 599 U.S. at 23. The only question rightly before the Court is whether Louisiana acted within constitutional bounds to create a remedial majority-minority district based on the *Robinson* §2 violation. Precedent compels an affirmative answer.

ARGUMENT

I. THE FOURTEENTH AND FIFTEENTH AMENDMENTS GAVE CONGRESS THE BROAD AUTHORITY TO ENACT §2.

A. The Nation's Experience with Discrimination in Redistricting Informed Congress's Enactment of the Amended §2.

The history of constitutional violations supporting §2's enactment is massive and well-documented. In the century between Reconstruction's close in the 1870s and the VRA's enactment in 1965, racial discrimination in voting was systematic and pervasive. As "Redeemer" Democrats regained power in the 1870s, they deployed "the racial gerrymander—the deliberate and arbitrary distortion of district boundaries for racial purposes." *Shaw I*, 509 U.S. at 640

(cleaned up). Mississippi and Alabama "concentrated the bulk of the Black population" into "shoestring" congressional districts, eliminating majority-Black districts in states with Black majorities. *Id.* (citation omitted); *Singleton v. Allen*, 782 F. Supp. 3d 1092, 1326 (N.D. Ala. 2025). Local governments used at-large elections for the same purpose. *See, e.g.*, *Brown v. Bd. of Sch. Comm'rs of Mobile Cnty.*, 706 F.2d 1103, 1106-1107 (11th Cir. 1983), *aff'd*, 464 U.S. 1005 (1983). And when gerrymanders alone could not extinguish Black political power, States layered on literacy tests and poll taxes to expel Black voters from the rolls altogether. Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877*, at 590-592 (1988).

Louisiana followed the same pattern. In the 1870s, it prevented Black people from holding office. *Major v. Treen*, 574 F. Supp. 325, 339-340 (E.D. La. 1983). Then, until the 1960s, it enacted literacy tests to "preserve white supremacy." *Louisiana v. United States*, 380 U.S. 145, 147-150 (1965).

Our nation only began to emerge from this period of near-absolute racial exclusion after the VRA's enactment in 1965. For example, no Black person sat in Louisiana's Legislature from the 1880s until 1967. After the VRA led to a dramatic rise in Black voter registration, states began to employ "a broad array of dilution schemes ... to cancel the impact [of] the new Black vote." Senate Report 6. Indeed, just before the 1982 amendments, courts identified numerous constitutional violations in Louisiana. *See, e.g.*, *Wyche v. Madison Par. Police Jury*, 635 F.2d 1151, 1160 (5th Cir. 1981) *Perry v. City of Opelousas*, 515 F.2d 639 (5th Cir. 1975); *Wallace v. House*, 515 F.2d 619 (5th Cir. 1975); *Turner v. McKeithen*, 490 F.2d 191, 195 (5th Cir. 1973); *Zimmer v. McKeithen*, 485 F.2d 1297 (5th

Cir. 1973) (en banc), *aff'd sub nom.*, *E. Carroll Par. Sch. Bd. v. Marshall*, 424 U.S. 636 (1976). Black voters only gained the opportunity to elect their preferred candidate to Congress after litigation under amended §2 remedied Louisiana's perennial "racially selective" "slic[ing]" of New Orleans's Black population. *Major*, 574 F. Supp. at 353-355 & n.39. Even then, White bloc voting in primaries prevented Black voters from electing their preferred candidate to Congress until 1990—over a century after Reconstruction. Engstrom *et al.*, "Louisiana," *Quiet Revolution in the South* 120 (Davidson & Grofman eds., 1994).

In amending §2 in 1982, Congress considered this history and more. Senate Report 17-43. It also expressly identified cases that, despite strong evidence of intentional discrimination, failed under this Court's *Bolden* decision, which had read §2 as requiring plaintiffs to prove discriminatory intent. *Id.* at 38-40 & nn.143-147. Moreover, Congress examined a century of pre-*Bolden* experience with state and local governments' ingenuity in contriving discriminatory voting systems, and a decade of effective enforcement under the *White* test. *Id.* at 17-24. All this gave Congress reason to determine §2 was necessary to remedy or deter unconstitutional discrimination.

B. This Court Should Reject the Invitation To Overturn Nearly 150 Years of Precedent.

Despite this history, Louisiana, Louisiana Supplemental Brief [hereinafter "La. Supp." or "Louisiana (at)"] 42-43, and Appellees (at 11-16) newly assert that §2 was unconstitutional *even in 1982*. In so doing, they seek to expand this Court's supplemental question

from addressing a single remedial district's constitutionality to a full-scale attack on Congress's authority to enact §2 or *any other* prophylactic civil rights statute. This sweeping facial challenge to §2 is both unmoored from any legal precedent and not an argument *any* party presented below or before supplemental briefing here. It would be unprecedented to undertake such a radical step on expedited supplemental briefing and re-argument, with no relevant factual record below, and no indication that precedents spanning 150 years might be on the chopping block. When this Court has contemplated reconsidering established precedent on re-argument, it has said so. *Cf.*, *e.g.*, *Citizens United v. FEC*, 557 U.S. 932 (2009) (Mem.).

The contrast with Appellees' and Louisiana's approach here and the last time the Court considered a challenge to a major provision of the VRA could not be starker. In *Shelby*, the challengers directly raised their challenge in the lower courts—allowing for full consideration and analysis of the relevant facts—and the Court only reached the question four years after an earlier decision that "took care to avoid ruling on the constitutionality of the [VRA]," and resolved the case on narrower grounds to give Congress an opportunity to update the coverage formula. 570 U.S. at 556-557.

This Court should reject this extraordinary reframing of its question presented and limit its decision to addressing the constitutionality of SB8.

But even if the Court does reach §2's constitutionality, Louisiana's and Appellees' arguments fail on the merits. By asking the Court to declare §2 unconstitutional, Louisiana and Appellees seek to upend nearly 150 years of precedent affirming Congress's broad power under the Reconstruction Amendments.

To start, they effectively ask this Court to overrule *Ex Parte Virginia,* 100 U.S. 339 (1879)—a bedrock Reconstruction-era decision. There, the Court made clear that Congress's enforcement power under these Amendments is "appropriate" and constitutional so long as it "tends to enforce submission to the prohibitions [that the Amendments] contain, and to secure to all persons the enjoyment of perfect equality of civil rights and the equal protection of the laws against State denial or invasion, if not prohibited." *Id.* at 345-346.

Louisiana (at 5), meanwhile, openly asks the Court to overrule *Gingles*, which has governed §2's operation for forty years and which the Court reaffirmed just two years ago in *Milligan*. Appellees (at 13-16) go further still, asserting that §2's results test has never been constitutional. Yet from *Katzenbach* in 1966 to *Milligan* in 2023, this Court has consistently upheld the VRA's permanent, prophylactic measures as a rational means of enforcing the Fifteenth Amendment's ban on racial discrimination in voting. *See Milligan*, 599 U.S. at 41; *Katzenbach v. Morgan*, 384 U.S. 641, 651-656 (1966); *see also South Carolina v. Katzenbach*, 383 U.S. 301, 334 (1966).

Appellees (at 3) similarly suggest that the Court abrogate portions of *Boerne sub silentio*. But *Boerne* itself recognized that Congress's enforcement power is at its zenith when addressing racial discrimination in voting. 521 U.S. at 518; *accord Lopez v. Monterey Cnty.*, 525 U.S. 266, 283 (1999) (explaining that the VRA is consistent with *Boerne* and "may guard against both discriminatory animus and the potentially harmful *effect* of neutral laws") (citation omitted).

Accepting the contention that §2 exceeds Congress's enforcement authority would not only overturn all these precedents; it would also cast doubt on the constitutionality of the VRA's other prophylactic measures—for example, bans on literacy tests, poll taxes, and good-moral-character tests. *Cf. Katzenbach*, 383 U.S. at 334; *Morgan*, 384 U.S. at 653-656. But, as Appellees concede (at 11), *Milligan* rejected the argument that §2 exceeds Congress's constitutional authority. *Milligan* also forecloses the argument that §2 goes beyond the constitutional remedial consideration of race. 599 U.S. at 41-42.

Louisiana (at 45) goes further, insisting that the Fourteenth Amendment prohibits *any* consideration of race in redistricting, a position that would overturn statutory and constitutional vote-dilution precedents *as well as* the racial predominance standard this Court has consistently applied from *Shaw* to *Alexander* last year.

This Court has set an appropriately high bar for overturning precedent. In the constitutional context, it considers factors such as the rule's workability, *Montejo v. Louisiana*, 556 U.S. 778 (2009), and whether discarding precedent will "unduly upset reliance interests." *Ramos v. Louisiana*, 590 U.S. 83, 129 (2020). The bar is higher still for statutory precedent like *Gingles*. *See Milligan*, 599 U.S. at 39; *id*. at 42 (Kavanaugh, J., concurring). Yet Louisiana and Appellees urge the Court to dispense with 50 years of settled law—precedent that has guided states remedying vote dilution while avoiding race-predominant districting as an end in itself. Louisiana and Appellees fail to even acknowledge these standards, much less attempt to meet them. *See Gamble v. United States*,

587 U.S. 678, 691 (2009) (declining to overrule "numerous 'major decisions of this Court' spanning 170 years" based on "middling" historical revisionism).

These considerations are especially important here. Congress relies on the stability of precedent in crafting enforcement legislation, *see Boerne*, 521 U.S. at 536, and when it amended §2 in 1982, this Court had unequivocally held that Congress has the constitutional authority to prohibit results-based voting discrimination. *See City of Rome v. United States*, 446 U.S. 156, 177-178 (1980). Moreover, the Court's "legitimacy requires, above all, that [it] adhere to *stare decisis,* especially in such sensitive political contexts as the present, where partisan controversy abounds." *Vera*, 517 U.S. at 985 (plurality).

The upshot of Louisiana's burn-it-all-down approach is that it wants relief from any congressional or judicial scrutiny of its voting laws. Let there be no mistake: That was the situation that prevailed in Louisiana and nationwide for the 100 years before the VRA. It was a time when Black voters and other voters of color were systematically excluded from the political process, when states freely and regularly drew districts that made it impossible for Black citizens to elect candidates of their choice, and when no Black person sat in Louisiana's legislature or congressional delegation. It was an era "blind" to race only in the sense that obvious, widespread discrimination went unaddressed by Congress and courts. We cannot afford a return to such a blinkered past.

Section 2 has brought us a great distance from that era, but its work is by no means done, nor are such threats irreversibly in the past. *See, e.g.*, *United States v. City of W. Monroe*, No. 3:21-CV-988, 2021 WL 12363712, at *1 (W.D. La. Apr. 15, 2021) (noting that,

despite a 34% Black population, no Black candidate had ever been elected to city government). "Much remains to be done to ensure that citizens of all races have equal opportunity to share and participate in our democratic processes and traditions; and § 2 must be interpreted to ensure that continued progress." *Bartlett*, 556 U.S. at 25 (plurality). This Court should decline Louisiana's invitation to rewrite its well-hewn redistricting precedent wholesale.

C. Section 2, as Applied Through *Gingles*, Is Well Within Congress's Authority To Address and Deter Unconstitutional Racial Discrimination.

The Fifteenth Amendment expressly gives Congress the authority to enact laws addressing racial discrimination in voting. *See Tennessee v. Lane*, 541 U.S. 509, 555 (2004) (Scalia, J., dissenting). Laws enacted under it are therefore constitutional so long as the statute is a "rational" method of enforcing the Constitution's ban on racial discrimination in voting. *Shelby*, 570 U.S. at 550. Nonetheless, Appellees (at 12) and Louisiana (at 42) wrongly insist that §2 must satisfy *Boerne*'s "congruence and proportionality" standard, 521 U.S. at 520—a standard applicable only to measures enacted under the Fourteenth Amendment, involving rights other than the right to vote and forms of discrimination subject to lesser scrutiny than racial discrimination.

Even if *Boerne* applied, §2 is the very model of congruent-and-proportional enforcement legislation. Congress "is not confined to the enactment of legislation" enforcing the Reconstruction Amendments "that merely parrots the precise wording of the" constitu-

tional text. *Lane*, 541 U.S. at 533 n.24 (citation omitted). The congruence-and-proportionality test preserves Congress's leeway to enact "legislation which deters or remedies constitutional violations ... even if in the process it prohibits conduct which is not itself unconstitutional." *Lopez*, 525 U.S. at 282. Indeed, *Boerne* repeatedly pointed to the VRA, with its prophylactic remedies that bar conduct based on discriminatory effects, as a paradigmatic enforcement statute. 521 U.S. at 517-518.

Hoping to bolster their *Boerne* argument, Appellees (at 17-18) also try to distinguish *Lane* and *Nevada Dep't of Hum. Res. v. Hibbs*, 538 U.S. 721 (2003), arguing those laws involved more evidence of recent discrimination and authorized more limited remedies. This effort fails. In *Hibbs*, the Court upheld a nationwide and permanent family-care leave provision even though the law went well-beyond remedying only specific instances of sex discrimination, and it did so "based primarily on evidence of disparate provision of parenting leave, little of which concerned unconstitutional state conduct." *Lane*, 541 U.S. at 528 (describing *Hibbs*). And in *Lane*, the Court upheld Title II of the Americans with Disabilities Act as applied to court access, even though the law broadly requires accommodations nationwide, despite congressional testimony primarily focusing on the physical inaccessibility of some local courthouses. *See id.* at 527. Likewise, in *Oregon v. Mitchell*, this Court unanimously upheld Congress's nationwide literacy tests ban, 400 U.S. 112, 118 (1970), despite Congress's recognition that not all states' tests were unconstitutional, *see Boerne*, 521 U.S. at 518; *Morgan*, 384 U.S. at 653-656.

In amending §2, Congress enacted a "hard-fought compromise," *Milligan*, 599 U.S. at 25, to deter

and remedy unconstitutional discrimination without forcing proportionality or injecting race into every redistricting decision. *See* Robinson Appellants' Supplemental Brief [hereinafter "Robinson Supp."] 10-16. Congress determined that requiring plaintiffs to prove discriminatory intent would allow too much unconstitutional conduct to go undetected and unremedied. *Gingles*, 478 U.S. at 30-31. To address this problem, Congress enacted a calibrated and exacting results test, which this Court has further refined. That test is not a pure disparate impact standard but instead considers all the relevant circumstances to allow courts to determine whether current conditions reveal the kind of persistent racial politics that require remedial action. *See Milligan*, 599 U.S. at 27-28; *see also* Robinson Supp.16-24.

The other facial attacks on §2 all fail. The United States misstates the law by suggesting, United States Amicus Br. [hereinafter "United States (at)"] 10-11, that Congress can address results-based discrimination only when accompanied by proof of intentional discrimination in the specific case before the Court. Instead, precedent recognizes that Congress may legislate to address results-based discrimination in voting, even if the evidence supporting a results-based violation does not meet the legal standard for proving intentional discrimination in a specific case. *See, e.g.*, *Milligan*, 599 U.S. at 40-41, *Lopez*, 525 U.S. at 282-283; *Rome*, 446 U.S. at 179. Nonetheless, while the results test does not require findings of discriminatory purpose, the totality-of-circumstances standard includes a number of factors probative of such purpose and allows §2 to deter state actions that often "bear[] the mark of intentional discrimination."

League of United Latin Am. Citizens v. Perry ("*LULAC*"), 548 U.S. 399, 440 (2006); *see* Robinson Supp.21-24.

Appellees' (at 11-13) federalism arguments are also misplaced. The Reconstruction Amendments "fundamentally altered the balance of state and federal power." *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 59 (1996); *accord Ex Parte Virginia*, 100 U.S. at 345-346. *Boerne* properly recognized that "measures protecting voting rights are within Congress' power to enforce the Fourteenth and Fifteenth Amendments, despite the burdens those measures placed on the States." 521 U.S. at 518. Appellees' (at 12) complaint that §2 "impinges on States' sovereign power to regulate their elections and draw congressional districts" fails to grapple with this incontrovertible constitutional truth and is, thus, wholly misplaced.

Indeed, §2 is a narrower and less intrusive statute than Congress had the authority to enact under its enforcement powers. For example, Congress could have required that jurisdictions nationwide "abandon" *all* "at-large voting schemes," *Rogers v. Lodge*, 458 U.S. 613, 632 (1982) (Stevens, J., dissenting). Or Congress could have exercised its Elections Clause authority to require cumulative voting for congressional districts. *Cf. Branch v. Smith*, 538 U.S. 254, 310 (2003) (O'Connor, J., concurring). Either option would have been race-neutral and ameliorative but would have outlawed a substantially greater swath of constitutional state laws than §2. As enacted, §2 "limits" intrusions on the states by only requiring a remedy where it is proven that race-based politics are already at play. *Gingles*, 478 U.S. at 46.

Appellees (at 15) then liken §2 to §5's coverage formula for preclearance, contending that §2 likewise requires "a prior detailed congressional finding of discrimination in the areas to which it applies," to prevent it from being "overinclusive." But this Court rejected that comparison in *Shelby*, holding that its ruling on §4's coverage formula "in *no way* affect[ed] the permanent, nationwide ban on racial discrimination in voting found in § 2." 570 U.S. at 557 (emphasis added).

The analogy ignores "the fundamental difference" between the two statutory provisions. Senate Report 42; *accord Shelby,* 570 U.S. at 542-545. Preclearance imposed "exceptional conditions" because it inverted usual burdens of proof and implicated state sovereignty by singling out specific states and counties. *Id*.

Section 2, by contrast, simply directs "the use of a particular legal standard to prove discrimination in court." Senate Report 42. It does not bar states from immediately implementing maps. In "appropriate cases," §2 authorizes courts to enjoin such laws provided plaintiffs can show that entitlement to relief. *Shelby*, 570 U.S. at 537; *see also id*. at 544. Louisiana's (at 13) and Appellees' (at 13) effort to bring §2 within *Shelby*'s ambit by labeling it a "de facto *post*clearance regime" is empty rhetoric. If a §2 challenge to a state map is a "postclearance" suit, then so is Appellees' present challenge to SB8.

Unlike §5, nothing about §2 litigation is extraordinary. Section 2 doesn't shift the burden to states to justify their laws; it instead requires plaintiffs to prove their case subject to the demanding *Gingles* standard. And because it applies nationwide, §2 does not target specific states for special treatment

while exempting others. *Shelby*, 570 U.S. at 557. Indeed, §2 does not impose a remedy *anywhere* without proof of current racial discrimination. There is no such thing as a *per se* §2 violation; "Plaintiffs must demonstrate that, under the totality of the circumstances, the devices result in unequal access to the electoral process." *Gingles*, 478 U.S. at 46; *see Major*, 574 F. Supp. at 347-348 (describing Congress's debates on this issue).

Appellees have made no record of §2 being routinely applied to penalize states for lawful, non-discriminatory actions. Section 2 applies only where and when voting discrimination has been *proved*. *Gingles*, 478 U.S. at 46; Senate Report 33-34. It is a generally applicable anti-discrimination law, closely tied to the constitutional prohibition it enforces, and therefore constitutional. *See Fitzpatrick v. Bitzer*, 427 U.S. 445, 456 (1976); *Shelby*, 570 U.S. at 557.

II. SECTION 2 AUTHORIZES REMEDIAL REDISTRICTING ONLY WHERE NECESSARY TO REMEDY SPECIFIC, PROVEN INSTANCES OF RACIAL DISCRIMINATION.

A. Section 2 Is Race-Neutral Legislation Designed To Identify Current Instances of Discrimination.

In urging the Court to declare §2 unconstitutional, Louisiana and Appellees fundamentally mischaracterize the statute. Louisiana (at 18-32) devotes 15 pages to attacking the role of race in the §2 analysis without acknowledging the obvious: §2's purpose is to prohibit racial discrimination, not create it. Section 2

neither classifies citizens by race, imposes racial quotas, nor mandates race-predominant remedies. Its text simply prohibits racially discriminatory voting practices.

Ignoring that Congress enacted §2 to remedy more than a century of entrenched discrimination, Louisiana (at 18-24) recasts it as a "racial classification" built on "racial stereotypes" and "racial targets" in districting. Appellees (at 21-27) pile on, claiming that §2 mandates, rather than prohibits, racial discrimination. This turns the statute on its head, since its plain language is meant to ensure equal opportunities and prevent voting discrimination.

The other parties' mischaracterizations of §2 bear no resemblance to how the "flexible, fact-intensive test" under *Gingles* works to "limit[] the circumstances under which § 2 violations may be proved in three ways." 478 U.S. at 46; *accord Milligan*, 599 U.S. at 29-30. First, "the results test does not assume the existence of racial bloc voting; plaintiffs must prove it." *Gingles*, 478 U.S. at 46. Second, no scheme *per se* violates §2. *Id.* Third, "Plaintiffs must *demonstrate* that ... the devices result in unequal access to the electoral process." *Id.*

Gingles's and *Shaw*'s rigorous constraints limit §2's application to cases where racial discrimination already distorts the political process to exclude Black voters from equal participation. *See* Robinson Supp.13-16; *see also Milligan*, 599 U.S. at 28; *Gingles*, 478 U.S. at 46. Only where there is significant evidence of a likely §2 violation, *Cooper*, 581 U.S. at 293, does §2 supply a compelling state interest in "remediating specific, identified instances of past discrimination that violated the Constitution or a statute."

SFFA, 600 U.S. at 207. Indeed, establishing §2 liability often requires evidence indicative of intentional discrimination. *See* Robinson Supp.21-24. Remedying such statutory violations provides a quintessential compelling interest that justifies the narrowly tailored remedial use of race. *See* Robinson Supp.12.

B. States Can Address Racial Vote Dilution Without Violating the Constitution.

Section 2, as this Court has repeatedly explained, does not require "strict racial percentages," *Abrams v. Johnson*, 521 U.S. 74, 93 (1997); "says nothing about majority minority districts," *Voinovich v. Quilter*, 507 U.S. 146, 155 (1993); and never mandates "[f]orcing proportionate representation." *Milligan*, 599 U.S. at 28; *see also* Robinson Supp. 24-25. Rather, where §2 liability attaches, *Shaw* guards against the impermissible use of race in developing a remedy. *See Milligan*, 599 U.S. at 25-28. And, by ensuring that illustrative districts are reasonably configured based on traditional districting principles, this Court's precedent carefully guards against the excessive use of race in determining §2 liability. *Milligan*, 599 U.S. at 21; *see id.* at 43 & n.2 (Kavanaugh, J., concurring).

A §2 remedy's touchstone is equality of opportunity to participate in the electoral process—not a guaranteed share of representation. *LULAC*, 548 U.S. at 428. To avoid strict scrutiny, §2 remedies can, in some cases, be drawn without reference to racial data. *See, e.g.*, *Singleton*, 782 F. Supp. 3d at 1358. Under *Shaw*, state mapmaking triggers strict scrutiny only where a district is drawn predominantly based on race. A general awareness of the racial makeup of a region or community is insufficient to raise constitutional concerns. *See*, *e.g.*, *Milligan*, 599 U.S. at 24-25.

In the rare instances where racially predominant map-drawing is necessary to fully remedy or prevent a §2 violation, state cartographers are permitted to use race in a narrowly tailored way. *See Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 194-195 (2017); *accord Vera*, 517 U.S. at 994-995 (O'Connor, J., concurring).

1. Section 2 Does Not Require Racial Classifications.

Louisiana and Appellees assert that merely by prohibiting racial discrimination, §2 in effect creates an unconstitutional racial classification. But §2 neither treats individuals differently based on race nor requires states or courts to do so. Rather, like any anti-discrimination statute, it protects voters from racial discrimination regardless of their race. Of course, assessing §2 liability requires some consideration of race to determine whether electoral opportunities have been denied or abridged on account of race. Making that determination is not making a racial classification; rather, it is analyzing whether the challenged law or practice is itself operating to make racial distinctions in providing electoral opportunities.

Louisiana (at 20-21) argues that merely "run[ning] the §2 analysis" under *Gingles* forces courts and states to engage in racial classifications. By its logic, even asking whether a redistricting plan "den[ies] or abridg[es] the right ... to vote on account of race," is itself unconstitutional. U.S. Const. amend. XV §1. That argument defies §2's text, the Reconstruction Amendments, and common sense. Courts routinely account for race to detect racial discrimination. For example, jury-discrimination claims necessarily examine the race of prospective jurors or a jury pool's

racial composition. *See*, *e.g.*, *Flowers v. Mississippi*, 588 U.S. 284, 299 (2019); *Foster v. Chatman*, 578 U.S. 488, 513-514 (2016). So, too, do §2 claims require considering voters' race to determine whether a state has diluted the votes of members of a racial group. *See*, *e.g.*, *Milligan*, 599 U.S. at 21. Indeed, a racial gerrymandering claim likewise requires assessing the racial composition of districts and the way voters were assigned to them. These protections do not create racial classifications—they identify and remedy racial discrimination.

2. Section 2 Does Not Rely on Stereotypes.

Identifying and remedying a §2 violation does not rest on the assumption that members of a protected class "think alike." La. Supp.18. To the contrary, "the results test does not assume the existence of racial bloc voting; plaintiffs must prove it." *Gingles*, 478 U.S. at 48.

Proof typically comes through statistical analyses of actual voting behavior, not race-based assumptions. *Id.* at 52-53. Where polarization is not proven, there is no violation and, thus, no remedy. *See* Katz Amicus Br.2a. Likewise, any proposed remedial district must be supported by evidence showing that minority voters in the district share candidate preferences and other nonracial interests. *See*, *e.g.*, *Milligan*, 599 U.S. at 21; *LULAC*, 548 U.S. at 434; *see also Vera*, 517 U.S. at 964 (plurality). Thus, contrary to Louisiana's claim (at 18), §2 presumes neither that minority voters share political interests nor that they will elect candidates of choice merely because they form the majority in a remedial district. Those are facts that must be proved. *Gingles*, 478 U.S. at 46.

Pointing to data showing that Latino voters were nearly evenly divided in the 2024 Presidential Election, Louisiana (at 20) suggests that §2 may compel race-predominant remedies without strong evidence of shared political interests. That raises a strawman problem that *Gingles* itself forecloses: If a minority group does not vote cohesively or the majority does not vote as a bloc to defeat the minority group's preferred candidates, then there is no §2 violation. Stephanopoulos Amicus Br.18-22. And even where some polarization is present, *Gingles* requires courts to assess its extent. *See* 478 U.S. at 77. Weak polarization weighs against liability in the totality-of-circumstances analysis. *See* Robinson Supp.20 (collecting cases).

3. Section 2 Does Not Mandate Majority-Minority Districts or Other Racial Targets.

Section 2 remedies in redistricting must give the affected minority group the "opportunity ... to elect representatives of their choice." 52 U.S.C. §10301(b). That guarantee does not mean that Black voters' candidate of choice will always win. It does not entitle Black voters to proportional representation or a fixed "share of political power." La. Supp.30. Instead, §2 can be satisfied by competitive districts in which "all candidates, regardless of race, would have ... both a fair chance to win and the usual risk of defeat." *Lawyer*, 521 U.S. at 581 (citation omitted); *see, e.g.*, *Miss. State Conf. of the NAACP v. State Bd. of Election Comm'rs*, 782 F. Supp. 3d 336, 348 (S.D. Miss. 2025) (approving remedy where Black-preferred candidates won 73% of the elections); *Baltimore Cnty. Branch of NAACP v. Baltimore Cnty.*, No. 21-CV-3232, 2022 WL 888419, at

*5 (D. Md. Mar. 25, 2022) (remedy where "the Black-preferred candidate does not *always* win"). Remedying a §2 violation thus does not require states or courts to pick "winners and losers based on race." *See* La. Supp.2. And §2 remedies are warranted only where "intensive racial politics" already predetermine electoral outcomes based on race. *See Milligan*, 599 U.S. at 30.

Appellees (at 29) argue (without evidence) that the constraints on §2 do not "stop Section 2 plaintiffs from pushing for maximized majority-minority districts." But the *Gingles* standard and the mandated "intensely local appraisal" of current circumstances *do* stop §2 plaintiffs from achieving maximization or proportionality. *Cf. Wis. Legislature v. Wis. Elections Comm'n*, 595 U.S. 398, 405 (2022); *Abbott*, 585 U.S. at 617-619; *see also Milligan*, 599 U.S. at 28-29. For example, minorities are 20% of Arkansas's population, but none of its four congressional districts are majority-minority. Thus, no person of color has ever been elected to Congress from Arkansas. But because a reasonably configured majority-minority district likely cannot be drawn, §2 does not require a remedy. *Cf.* Robinson Supp.17 (collecting cases that failed at *Gingles* I, precluding forced proportionality). It might be possible to draw a second majority-White crossover district in Arkansas. But an Arkansan plaintiff's inability to satisfy *Gingles* means that §2 does *not* require *any* opportunity districts there. *See Bartlett*, 556 U.S. at 25-26 (plurality).

Appellees (at 30-31) complain that §2 "trends toward" proportional representation "in many courtrooms," and Louisiana (at 31) argues that rulings against its congressional and state legislative maps prove that §2 insists on proportionality. But this

Court has rejected such arguments: Proportionality may provide a defense where it exists, but it is never the baseline for equal electoral opportunity. *Milligan*, 599 U.S. at 28; *De Grandy*, 512 U.S. at 1017-1018. And the record belies Louisiana's and Appellees' suggestion. Even in this 2020 census cycle, §2 cases have been brought and won at lower rates than in earlier periods and usually have not resulted in proportional representation. *See* Katz Amicus Br.6 & n.4; Stephanopoulos Amicus Br.23-27.

Moreover, Appellees are wrong to assert (at 12) that §2's "chosen remedy" is "race-based districting." Section 2 says nothing about the form in which equal electoral opportunity must be provided. *Cf. Voinovich*, 507 U.S. at 155 (§2 "says nothing about majority-minority districts"). And courts have adopted remedies short of majority-minority districts that secure the opportunity that §2 guarantees. *See*, *e.g.*, *Singleton v. Allen*, No. 21-CV-1291, 2023 WL 6567895, at *16 (N.D. Ala. Oct. 5, 2023) (adopting "opportunity" district that is "not majority Black"); *Jones v. Jefferson Cnty. Bd. of Educ.*, No. 2:19-CV-1821, 2019 WL 7500528, at *5 (N.D. Ala. Dec. 16, 2019) (remedial opportunity districts ranging from 38% to 46% Black); *Montes v. City of Yakima*, No. 12-CV-3108, 2015 WL 11120964, at *9, 12 (E.D. Wash. Feb. 17, 2015) (remedial district with a 46% Latino citizen population); *see also Cooper*, 581 U.S. at 305-306 (§2 satisfied with existing crossover district); *Abrams*, 521 U.S. at 93 (court-order crossover district satisfied §2); Robinson Supp.24-25.

Nor do vote-dilution remedies require classifying voters by race or assigning them to districts on that basis. Remedial districts can be drawn based solely on traditional redistricting principles—such as communities of interest—without consulting racial

data. *See, e.g.*, *Singleton*, 2023 WL 6567895, at *16 (adopting remedial plan drawn without viewing race data). They can also be drawn using election performance data without regard to their racial composition. *See, e.g.*, Professors Amicus 7-24. Where districts are crafted using elections data, strict scrutiny does not apply, even if racial data is later consulted for the "lawful purpose" of confirming §2 compliance. *See Alexander*, 602 U.S. at 22.

At the local level, §2 violations can be (and routinely are) addressed without any redistricting at all— instead using remedies that require no consideration of race, including cumulative and limited voting. S*ee*, *e.g.*, *United States v. City of Eastpointe*, No. 417-CV-10079, 2019 WL 2647355, at *2 (E.D. Mich. June 26, 2019); *Ala. State Conf. of NAACP v. City of Pleasant Grove*, No. 2:18-CV-2056, 2019 WL 5172371, at *1-2 (N.D. Ala. Oct. 11, 2019); *Mo. State Conf. of NAACP v. Ferguson-Florissant Sch. Dist.*, 219 F. Supp. 3d 949, 955-961 (E.D. Mo. 2016); *United States v. Vill. of Port Chester*, 704 F. Supp. 2d 411, 453 (S.D.N.Y. 2010); *United States v. Euclid City Sch. Bd.*, 632 F. Supp. 2d 740, 770-771 (N.D. Ohio 2009); *United States v. City of Calera*, No. CV-08-BE-1982-S, 2009 WL 10730411, at *1 (N.D. Ala. Oct. 23, 2009).

To be sure, §2 as construed in *Gingles* requires plaintiffs to present an illustrative map containing an additional, reasonably configured majority-minority district. *See Bartlett*, 556 U.S. at 19-20. This requirement applies in assessing §2 liability but does not constrain §2 remedies. *Cooper*, 581 U.S. at 305-306. This difference makes sense: Requiring reasonably configured illustrative majority-minority districts at the liability phase serves to constrain proportionality and

limit the instances of §2 liability, but it does not unnecessarily require elevating race in fashioning the ultimate remedy.

4. Remedying Racial Discrimination in Voting Is Not a Zero-Sum Game.

Louisiana (at 23) and Appellees (at 32, 47) argue that affording Black Louisianians equal electoral opportunity is a "zero-sum game" that "uses race as a negative." That rests on a false premise: that remedying proven discrimination against Black voters necessarily harms non-Black voters. But by that logic, no form of discrimination in any context could ever be addressed, since providing equal opportunity to those previously excluded could always be cast as taking something away from those who have benefited from greater opportunity.

The argument also assumes—wrongly—that White voters are entitled to preserve "safe" dilutive districts in which racialized politics and racially polarized voting *always* results in White bloc voting overriding Black voters' preferences. And here, the supposed "harm" does not even exist: Under SB8, White voters decisively control five districts and remain sufficiently represented in Louisiana's congressional delegation. Robinson Supp.42.

The other parties (Appellees at 32; State at 23) appear to suggest—without evidence—that non-minority voters are "harmed" when they are represented by minority-preferred candidates. Nothing supports this demeaning stereotyping of minority elected officials, which underlies much of the opposing parties'

arguments. There is no basis to fear that non-minorities will be injured from being represented by minority officials.

Appellees (at 7) and Louisiana (at 10) are also incorrect in suggesting that SB8 and the Robinson illustrative plans "balkanize" Louisianians into districts by race. To the contrary, the opportunity districts in those plans are the most racially diverse districts in the state. *See Robinson v. Ardoin*, 605 F. Supp. 3d 759, 821-822 (M.D. La. 2022).

C. Court-Ordered Plans or State-Enacted Remedial Districts Are Always Time-Limited, So a Durational Limit on §2 Is Unwarranted and Not Constitutionally Required.

Concurring in *Milligan*, Justice Kavanaugh questioned whether "even if Congress in 1982 could constitutionally authorize race-based redistricting under §2 for some period of time, the authority to conduct race-based redistricting can[] extend indefinitely into the future." 599 U.S. at 45. As explained previously, §2 itself addresses that concern. Robinson Supp.9-33. It authorizes remedies only when necessary to cure proven racial vote dilution and only for so long as race-based discrimination impedes equal access to the political process. *See* Robinson Supp.14-16. Remedies need not involve racial predominance or otherwise trigger strict scrutiny. *See supra* II(B)(3). Court-ordered remedies in these cases are time-limited. Robinson Supp.31-32. And, in those limited instances where race needs to predominate to provide a complete remedy, the use of race in the remedial plan must be narrowly tailored to survive strict scrutiny.

Moreover, the circumstances warranting §2 remedies have become increasingly rare over time and, with §2's protections, will continue to diminish. *See* Stephanopoulos Amicus Br.16-22. But they still exist in some places, including, as the seven federal judges in *Robinson* agreed, in Louisiana. *See* Robinson Supp.41-47.

Louisiana (at 17-43) and Appellees (at 8-18) argue that §2 remedial redistricting must be cut off across the board—a categorical durational limit that, according to them, has already expired—regardless of any case-specific facts. They go further still, asserting that not only remedial districting, but §2's underlying prohibition against discrimination in redistricting (Louisiana at 17-43) or in all voting laws (Appellees at 12-13) must itself be subject to an expiration date, untethered from the nature of the violation or the remedy needed to cure it. Both arguments are fundamentally at odds with the Constitution and the Court's precedent.

Remedial districts are always adopted in response to an identified instance of racial vote-dilution and carry built-in durational limits. No redistricting plan is permanent; each lasts at most a decade. *E.g.*, *Milligan*, 2025 WL 2451593, at *4-6 (imposing a remedial map until the 2030 census). With each new census, a state must reassess demographics and voting patterns to determine whether §2 demands corrective measures to ensure equal electoral opportunities. It may not simply rely on past practice or stale analysis. *See Cooper*, 581 U.S. at 303-304.

Louisiana (at 29) and Appellees (at 32-33) invoke *SFFA*—which addressed an entirely different context—to argue that the mere awareness of race in

redistricting under §2 is categorically impermissible, regardless of the evidence in a particular case or the durational limits imposed on a specific remedy.

But *SFFA* is inapposite: Section 2 is a remedial statute passed under Congress's express authority in the Reconstruction Amendments. The voluntary admissions programs at issue in *SFFA* involved public universities' desire to use race-based admissions in perpetuity. *Cf.*, *e.g.*, *Grutter v. Bollinger*, 539 U.S. 306, 328 (2003) (finding a compelling interest in attaining a "diverse student body" for which, "25 years from now, the use of racial preferences will no longer be necessary"). Strict durational limits were deemed appropriate because the goal these admissions programs advance (student diversity) was not remedial or measurable, and the schools' decisions to use race in admissions were not predicated on satisfying a well-considered judicial standard governing a statute designed to identify specific instances of current racial discrimination. *Cf. SFFA*, 600 U.S. at 214. Thus, this Court held that race-based admissions programs in *SFFA* are subject to absolute durational limits because the programs did not identify a concrete measure for achieving their diversity goals or ending their programs. *Id.* at 226-227. And, even in that context, the Court's approach reflected a "careful balance," *id.* at 315 (Kavanaugh, J., concurring), as it explicitly announced in *Grutter* that it would permit affirmative action for another 25 years, allowing affected actors ample time to prepare for a new legal landscape.

But the Court has never suggested, in *SFFA* or elsewhere, that a federal statute prohibiting racial discrimination, or the claims it gives rise to, must carry a constitutional sunset date just because the remedies for some violations may sometimes trigger

strict scrutiny and require narrow tailoring. Section 2 bears no resemblance to the programs at issue in *SFFA*. Section 2 remedies can (and increasingly do) involve race-neutral criteria. *See supra* II(B)(3). And the time-limited orders in §2 cases more closely mirror the durational limits this Court has approved in affirmative action remedies for proven civil-rights violations. *See Bd. of Educ. v. Dowell*, 498 U.S. 237 (1991); *Sheet Metal Workers v. EEOC*, 478 U.S. 421, 487 (1986); *U.S. v. Paradise*, 480 U.S. 149, 171 (1987); *accord Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 238 (1995) (narrow tailoring analysis must assess "whether the program was appropriately limited such that it will not last longer than the discriminatory effects it is designed to eliminate") (cleaned up). While the Court has applied case-specific durational limits to ensure a fit between a specific remedy and the particular violation it seeks to address, no Justice in any of these cases suggested that narrow tailoring required a categorical termination date for the underlying anti-discrimination laws or claims.

Louisiana (at 17-34) tries to cram §2 vote-dilution cases into the *SFFA* box, mischaracterizing remedial districting as "outright racial balancing" and decennial redistricting as "periodic review" of the sort rejected as insufficient in the affirmative-action context. But this Court's precedent is clear that, unlike affirmative action in admissions, §2 does not mandate proportional representation or racial balancing. *See Milligan*, 599 U.S. at 28. Likewise, decennial redistricting is not simply an occasion for a *pro forma* "periodic check" where inertia may substitute for meaningful review. New plans must be drawn, and the state must affirmatively reevaluate, based on current conditions, whether §2 requires any effort to ensure

equal opportunity. *Cf. Cooper*, 581 U.S. at 303-304 ("a legislature undertaking a redistricting must assess whether the new districts it contemplates ... conform to the VRA's requirements"). In other words, the existing constraints on §2 keep remedial redistricting within constitutional bounds.

Appellees (at 29-30) acknowledge (and then try to discount) "the fact that any particular race-based remedy is subject to change," because the "problem" is that §2 itself "is set in stone in perpetuity," and is not subject to a durational limit. But that is precisely the point. There does not need to be a durational limit on §2's prohibition on discrimination because, unless plaintiffs prove a violation under the strict *Gingles* framework, §2 does *not* require *any* remedy, race-predominate or otherwise.

III. CURRENT CONDITIONS IN LOUISIANA JUSTIFIED A §2 REMEDY HERE.

Louisiana (at 27-28) and Appellees (at 34-36) contend that conditions in Louisiana no longer support the application of §2. But the history of Louisiana's adoption of HB1 demonstrates the persistent role of race and racial discrimination in Louisiana politics. Since the release of the 2020 census, Louisiana has fought to preserve the racial status quo even as its White population has fallen precipitously. *Robinson*, 605 F. Supp. 3d at 778-779.

In 2022, as the Legislature began considering congressional plans, Black voters statewide testified about the need for more responsive representation. The Legislature considered alternative plans that would have offered Black Louisianians a fair electoral opportunity in two districts. *Id.* at 851. These plans satisfied the Legislature's professed redistricting

guidelines as well as or better than HB1. *See id.* Contrary to Appellees' contention (at 35-36), this was easily accomplished because "in Louisiana cities, the Black population tends to be concentrated in very compact, easily definable areas, partly as a result of historical housing segregation which still prevails in the current day," particularly in Baton Rouge, which HB1 packed together with Black voters in New Orleans. *Id.* at 784.[1] Rather than choose one of these options, Louisiana selected a plan where White voters, who usually vote as a bloc, control over 83% of congressional districts, even though White Louisianians today are just 56% of the population—a 10 percentage-point drop since 1990. *Id.* at 779.

As the *Robinson* court found, and the Fifth Circuit affirmed, Louisiana's explanations for this choice were inconsistent and tenuous. *Id.* at 850-851. First, Louisiana cited population equality as justifying HB1—until a senator offered a §2-compliant plan with a lower population deviation, at which point that "priority" gave way. *Id.* The Legislature next invoked traditional redistricting criteria to justify their map—yet "proposed maps with higher levels of compactness and with zero split precincts were rejected when they had two majority-minority districts." *Id.* at 851. That the illustrative maps were superior to HB1 suggests that

[1] Appellees and the court below cite stray testimony from Appellees' expert that "Louisiana's Black population has become more dispersed and integrated in the thirty years since the *Hays* litigation." App. Supp. 35. As the *Robinson* court explained, however, "the fact that Louisiana's Black population is unevenly dispersed geographically when viewed statewide is not illuminating, first because congressional districts are not statewide, and second, it overlooks patterns of significant pockets or clusters of [Black population] that are the result of segregated housing." 605 F. Supp. 3d at 826.

Louisiana's shifting justifications for preferring HB1 were mere pretexts. *Cf. Ames v. Ohio Dep't of Youth Servs.*, 605 U.S. 303, 309 (2025).

The *Robinson* court rejected Louisiana's claim that its history of discrimination is all in the past. 605 F. Supp. 3d at 812, 846-848. The court found significant present-day voting discrimination from the continued use of dilutive at-large local election systems to extreme racial disparities in access to polling places. *Id.* Louisiana and the United States fault the *Robinson* court for relying on preclearance objections under §5. But *Shelby* never held that preclearance was invalid, much less that prior findings of discrimination were unreliable. *Accord Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 305 (1978) (§5 objections are "administrative finding[s] of discrimination"). Even after *Shelby*, this Court continued to assume that a state's prior efforts to satisfy §5 was a compelling interest, something it could not have done if *Shelby* had totally vitiated §5. *See, e.g.*, *Bethune-Hill*, 580 U.S. at 196-197.

Robinson also demonstrated extreme levels of racially polarized voting that were unexplainable as mere partisanship. 605 F. Supp. 3d at 801-803, 840-842. Indeed, racial polarization in recent Louisiana elections exceeds that present in *Gingles*. *Compare id.* (Black voters' support for Black candidates at 83.8-93.5%, with White support at only 11.7%), *with Gingles*, 478 U.S. at 58-59 (Black support for Black candidates at 71-92% with White support averaging 20%). The result of this polarization is the same today as it was in 1982: then, as now, "there [still] has not been a Black candidate elected to statewide office in Louisiana since Reconstruction." *Robinson*, 605 F. Supp. at 845-846; *accord Major*, 574 F. Supp. at 341. Congress

identified such "racial bloc voting" as a current condition that can allow a state's choice of "a particular election method [to] deny minority voters equal opportunity to participate meaningfully in elections." Senate Report 33.

Legislators were aware of Black voters' concerns that HB1, combined with Louisiana's racialized politics, would deny Black voters any opportunity to elect their preferred candidates in five of six districts. *Robinson*, 605 F. Supp. 3d at 813, 850-851. Yet legislators deliberately adopted HB1 over a gubernatorial veto, celebrating by "high-fiving one another, cheering, and jumping in the air." *Id.* at 813.

That racial politics continue to drive electoral outcomes in Louisiana is as evident today as it was in 1982.

The contention that conditions for Black voters in Louisiana have changed and no longer support the application of §2 lacks any evidentiary support, its simply an improper effort to relitigate *Robinson*. Indeed, the Secretary focuses almost entirely on arguments she made and lost in *Robinson* (which this Court declined to review).

In any event, the Secretary and State had an opportunity in *Robinson* to defend HB1 at trial or to again seek review in this Court. This Court should not countenance their efforts to game the legal system through this collateral attack on *Robinson* in a case where the relevant evidence simply is not in the record. For their part, Appellees failed to raise these arguments below and now seek to blame Appellants and the State. But the *Robinson* decisions (and other recent decisions) make clear that ongoing racial discrimination in Louisiana persists and justifies §2's continued necessity.

Moreover, accepting the unfounded argument that changed conditions should render Louisiana categorically exempt from §2 would result in seismic inequities, including a dramatic loss of representation for Black Louisianians statewide where §2 is the only reason that Black voters have any electoral voice. *See Robinson*, 605 F. Supp. at 845-846. If freed of §2, Louisiana appears intent on eliminating both opportunity districts. *See* La. Legis. Black Caucus Br.3, 11. Further, if §2 is held to be unconstitutional in Louisiana, other states will undoubtedly claim similar exemptions from a critical voting rights law, likewise without any factual basis to justify it.

IV. *GINGLES* ESTABLISHES A WORKABLE STANDARD THAT AVOIDS UNDUE CONSIDERATION OF RACE.

Louisiana, Appellees, and the United States mount the additional argument that *Gingles* is unworkable not just in Louisiana but anywhere. But for four decades, the *Gingles* framework, as refined by *Shaw* and its progeny, has given states clear, workable guidance on how to comply with §2 without resorting to unfettered race-based redistricting the other parties conjure. What these parties seek would override Congress's judgment, dismantle §2, and have untold and devastating consequences on elections and representation not just for voters of color but for all Americans.

A. States have successfully complied with §2 for decades under this Court's existing guidance.

Most states have met their redistricting obligations after each census without spawning §2 or *Shaw* litigation. *See* D.C. Amicus Br.8-14; Stephanopoulos Amicus Br.26-28; Katz Amicus Br.6. Yet, citing a handful of cases, the other parties claim that §2 litigation and unconstitutional race-based redistricting are rampant. The record shows otherwise: Both the number of §2 cases filed and the number of successful §2 cases have plummeted since 1982. Katz Amicus Br.1-8 & app'x.

The decline in successful §2 litigation underscores the rigor of *Gingles*, its sensitivity to evolving conditions, and its powerful prophylactic effect. *See* Robinson Supp.13-24. Courts applying *Gingles* routinely deny relief when plaintiffs cannot establish the preconditions. *See* Robinson Supp.20 (citing recent §2 claims failing to establish *Gingles* preconditions); Stephanopoulos Amicus Br.18, 22, 28. And even when the preconditions are met, courts frequently deny relief at the totality-of-circumstances stage. *See, e.g.*, *Wis. Legislature*, 595 U.S. at 405; *Fusilier v. Landry*, 963 F.3d 447, 459-463 (5th Cir. 2020); *Lopez v. Abbott*, 339 F. Supp. 3d 589, 619 (S.D. Tex. 2018); *see also* Katz Amicus Br.7-8.

Successful §2 cases this cycle represent a tiny fraction of the thousands of redistricting plans adopted nationwide without §2 challenges. Stephanopoulos Amicus Br.26-28. Those few cases where courts have found specific violations each involve undertaking the rigorous analysis that *Gingles* commands and relying on detailed factual records that prove *current* discrimination based on an "intensely

local appraisal" of current conditions. *See, e.g.*, *Ala. NAACP v. Allen,* No. 21-CV-1531, 2025 WL 2451166 (N.D. Ala. Aug. 22, 2025); *White v. State Bd. of Election Comm'rs*., No. 22-CV-62, 2025 WL 2406437 (N.D. Miss. Aug. 19, 2025). And in most states where there have been successful §2 challenges this cycle, no *Shaw* challenge has been brought, or such challenges have failed. *E.g.*, *Walen v. Burgum*, 700 F. Supp. 3d 759 (D.N.D. 2023), *aff'd in part, appeal dismissed in part*, 145 S. Ct. 1041 (2025) (rejecting *Shaw* challenge to state legislative districts).

Yet Louisiana complains (at 2) that this Court's precedents leave it perpetually facing "the indignity of being sued for considering race too much or too little." But the states and the lower federal courts have consistently and narrowly applied *Gingles*, ensuring remedies are limited to established instances of racial discrimination. *See* Robinson Supp.13-24; *see also* D.C. Amicus Br.8-14; Brennan Center Amicus Br.11-22. And this Court's precedents, properly applied, give states "breathing room" to comply with both the VRA and Equal Protection Clause without facing "competing hazards of liability." *See, e.g.*, *Bethune-Hill*, 580 U.S. at 196-197 (cleaned up).

Louisiana's losses in two recent §2 cases hardly amount to rampant abuse of §2, even if they were unfounded (which the Fifth Circuit has repeatedly held they are not), nor do two losses justify abandoning four decades of settled and workable precedent. La. Supp.31. Rather, they underscore the ongoing need for §2 to rein in recalcitrant states. Only four other states have faced similar outcomes this cycle. Stephanopoulos Amicus Br.26-27. Many states have successfully defeated statewide §2 challenges. *See, e.g., Pierce v. N.C. State Bd. of Elections*, 97 F.4th 194 (4th Cir.

2024); *Sanders*, 2023 WL 4745352, at *20; *McConchie v. Scholz*, 577 F. Supp. 3d 842, 851-852 (N.D. Ill. 2021). These results confirm not that *Gingles* is unworkable, but that it works exactly as it should—providing a remedy only where current racial politics are denying minority voters equal access to the political process while rejecting unproven claims.

The "damned-if-you-do, damned-if-you-don't" dilemma Louisiana claims it faces stems not from a defect in the *Gingles* framework, but from the *Callais* district court's erroneous failure to accord Louisiana the requisite breathing room to comply with *Robinson*. Opening Br.39-47. Reversing the district court will resolve Louisiana's dilemma without dismantling a federal law that has gradually made the political process more equally open.

On the other hand, adopting Louisiana's approach of requiring all redistricting to be "race blind" would only make matters worse, ignoring the reality that legislatures are "always ... aware of race when [they] draw[] district lines." *Shaw I*, 509 U.S. at 646. Without the racial predominance standard to protect states from liability for this mere awareness of race, no map will be safe from accusations that race was a factor. *See Miller v. Johnson*, 515 U.S. 900, 928 (1995) (O'Connor, J., concurring) (explaining that the racial predominance standard "does not throw into doubt the vast majority" of districts "even though race may well have been considered in the redistricting process").

But, if this Court believes Louisiana's use of race in SB8 went too far, it should remand for remedial proceedings. There are alternative, reasonably configured maps that both meet Louisiana's political

goals and satisfy §2 without assigning voters to districts based on race. See, e.g., Professors Amicus 7-24. A remand would not require the Court to reconsider long-standing precedents or issue a far-reaching constitutional ruling on limited facts. Further, remand could address Justice Kavanaugh's question at oral argument (Tr. 20) on this point, *e.g.*, to ensure that the remedial district meets the State's political goals and does "not deviate substantially from a hypothetical court-drawn § 2 district," *Vera*, 517 U.S. at 994-995 (O'Connor, J., concurring), including with respect to traditional redistricting criteria, *see* Professors Amicus 20-22.

B. Alternative Standards Proposed by Appellees, the Secretary, and the United States Would Replace *Gingles* with the Intent Standard Congress Rejected.

The other parties suggest seven scattershot modifications to *Gingles* in the name of rendering §2 more "workable." Some lower courts are *already* applying their proposals under the existing *Gingles* framework. The few novel modifications they propose would either expressly or in effect resurrect a purpose requirement in §2, overriding congressional intent and trampling well-developed precedents. Rather than addressing any legitimate constitutional concerns, these radical proposals suffer from all the problems Congress sought to address through the results test and would make much unconstitutional discrimination unreachable.

1. Appellees (at 43-44) contend that to render §2 constitutional, the Court must require that plaintiffs prove "ongoing or very recent" intentional discrimination. The United States (at 21) urges a similar

"tighten[ing]" of *Gingles* to require that plaintiffs prove discriminatory intent. Although it couches its proposals as requiring an "*objective likelihood* that the State intentionally discriminated," what the United States means by "objective likelihood," as explained below, exceeds even what current precedent requires to prove intentional discrimination. The United States frames this as merely aligning the *Gingles* standard with §2's text. But this proposal is contrary to §2's text, which reflects Congress's rejection of *Bolden*'s intent requirement. *See Milligan,* 599 U.S. at 11-13. And just two years ago, this Court rejected a similar invitation to resurrect an intent standard and instead reaffirmed §2's results test as a valid means of remedying and deterring unconstitutional discrimination. *Id.*

2. The United States urges the Court to "make clear" that race cannot predominate in *Gingles* illustrative maps. But its version of "non-predominance" would invalidate a plan merely because the map drawer sought to satisfy the *Bartlett* standard. According to the United States (at 22), plaintiffs would have to show that a majority-minority illustrative district was drawn in a purely race-neutral process. But this Court rejected Alabama's nearly identical proposal in *Milligan*, recognizing it as just another way of requiring proof of discriminatory intent. 599 U.S. at 24-26. Worse, adopting the United States' version of non-predominance would create a catch-22 for §2 plaintiffs: Regardless of how it is created, "the very reason a plaintiff adduces a map at the first step of *Gingles* is precisely *because of* its racial composition." *Id*. at 34 n.7. And according to the United States, that purpose alone is enough to show racial predominance,

rendering any map that intentionally satisfied *Bartlett* invalid.

3. The United States further proposes (at 23-25) that illustrative plans must "be superior to the State's" on the State's "race-neutral" districting principles. Appellants agree that producing a "reasonably configured" illustrative district comparable to the enacted plan under the state's own criteria is probative of intentional discrimination. But asking that plaintiffs' maps be *superior* to the enacted map has no jurisprudential justification and demands far more than the law requires, even for proving intentional discrimination. *Cf. Flowers*, 588 U.S. at 311-312 (explaining that, under *Batson*, it is enough that a struck Black juror is "similar" to a White juror who was not struck; challenger is "not required to identify an *identical* White juror for the side-by-side comparison to be suggestive of discriminatory intent"). Even alternative maps in *Shaw* cases need only be "comparably consistent" with the enacted plan. *Alexander*, 602 U.S. at 10 (citation omitted).

This Court in *Milligan* made clear that it is enough for illustrative plans to be "reasonably" comparable to the challenged plan on traditional criteria, without requiring a "beauty contest" and without veering into racial predominance. *Milligan*, 599 U.S. at 21; *see id.* at 43 & n.2 (Kavanaugh, J., concurring). Moreover, the current standard already excludes illustrative maps that unreasonably deviate from traditional criteria, or that would require a state to abandon well-settled redistricting principles, *see, e.g.*, *Hous. Laws.' Ass'n. v. Atty. Gen. of Tex.,* 501 U.S. 419, 426-428 (1991).

Moreover, some supposedly "neutral" criteria are anything but. In *Milligan*, this Court rejected Alabama's argument that illustrative plans could not satisfy *Gingles* if they did not match the State's plan on core retention. Such a rule "could immunize from challenge a new racially discriminatory redistricting plan simply by claiming that it resembled an old racially discriminatory plan." 599 U.S. at 21-22. On remand, the *Milligan* court described in detail how Alabama's intentional manipulation of purportedly neutral criteria sought to preclude the creation of a meaningful remedial district. *Singleton*, 782 F. Supp. 3d at 1117-1118. For similar reasons, the Court has also rejected incumbent protection as a legitimate §2 or constitutional defense. *LULAC*, 548 U.S. at 440; *cf. Easley v. Cromartie*, 532 U.S. 234, 262 n.3 (2001) (Thomas, J., dissenting) (calling it "questionable" whether "the goal of protecting incumbents is legitimate, even where … individuals are incumbents by virtue of their election in an unconstitutional racially gerrymandered district"). The United States' new test would allow states to immunize their plans from scrutiny (as Alabama attempted to do) by "planting a false trail of direct evidence in the form of official resolutions, sponsorship statements and other legislative history eschewing any racial motive, and advancing other governmental objectives." Senate Report 37.

Requiring plaintiffs to show *superiority* on state-selected criteria assumes those criteria are valid and insulates them from scrutiny for "tenuousness." *See Gingles*, 478 U.S. at 45. But testing whether the state's criteria were legitimate or pretexts for discrimination is a bedrock aspect of §2's results test—or even intent claims. *Cf. Flowers*, 588 U.S. at 298; *LULAC*, 548 U.S. at 440. There is no logical reason to relieve

all state-proffered criteria from §2's "textual command" of "totality" review. *Milligan*, 599 U.S. at 6 (citation omitted).

4. The United States (at 25-27) and Appellees (at 44-45) suggest requiring illustrative maps to meet states' purported partisan political goals. But, as the United States acknowledges, that approach finds no support in this Court's precedent and indeed is foreclosed by it. This Court has explained a viable claim of vote dilution requires plaintiffs to present an illustrative map with an additional district that is both majority-minority, *Bartlett*, 556 U.S. at 19, and "perform[s]" for minority voters. *Abbott*, 585 U.S. at 618-619. That is, under *Abbott*, if a new district does not provide greater electoral opportunity for minority voters to elect preferred candidates, then it cannot satisfy *Gingles*. *Id*. That may be difficult, if not impossible, if an illustrative map must maintain the *exact* existing partisan balance. *Cf. supra* II(B)(3); *cf. also infra* 41 & n.4.

The United States' standard would in effect turn *Gingles*' illustrative map requirement into *Alexander*'s alternative map requirement and require proof that race predominated in the state's map. This proposal, which conflates these "analytically distinct" claims, *Alexander*, 602 U.S. at 38, contradicts amended §2's text and purpose. *Milligan*, 599 U.S. at 41. Section 2 "says nothing about … districts dominated by certain political parties, or even districts based entirely on partisan political concerns. Instead, §2 focuses exclusively on the consequences of apportionment. Only if the apportionment scheme has the

effect of denying a protected class the equal opportunity to elect its candidate of choice does it violate § 2." *Voinovich*, 507 U.S. at 155.

As this Court has recognized, states have at times deployed racial discrimination for partisan ends. *See, e.g.*, *Cooper*, 581 U.S. at 308 n.7; *LULAC*, 548 U.S. at 440; *Hunter*, 471 U.S. at 230-232. An interpretation of §2 that immunizes maps drawn based on partisanship would prevent it from reaching even intentional discrimination. This Court's conclusion that partisan gerrymandering is non-justiciable does not license states to shut minorities out of the political process merely because states do not like who they may vote for.

5. The Secretary argues that lower courts evaluating illustrative plans wrongly focus on a district's compactness rather than the compactness of the minority population. But the geographic compactness of the minority population is the relevant question. *See LULAC*, 548 U.S. at 430-431. This requirement is satisfied if plaintiffs can draw a reasonably configured majority-minority district. *Id*. If that district violates traditional redistricting criteria to cobble together isolated pockets of minority voters, then the minority population is not geographically compact. *Id*. The Secretary's real dispute is evidentiary. She proposes new scientific methods to measure population compactness. But that is a question to be resolved through a "battle of the experts." It does not require new legal standards, nor does it resolve the question this Court has asked the parties to address.

6. The United States argues that §2 plaintiffs must "control for party affiliation" in proving the second and third *Gingles* preconditions. But it offers no compelling reasons to account for the role of partisan

politics in the preconditions rather than in the totality of the circumstances analysis. Since *Gingles*, some lower courts have addressed the role of politics in polarized voting within the second Senate Factor. *Nipper v. Smith*, 39 F.3d 1494, 1513 (11th Cir. 1994) (en banc) *LULAC v. Clements*, 999 F.2d 831, 850 (5th Cir. 1993) (en banc). Where a state presents evidence that party, not race, is driving racial polarization, courts evaluate this issue and consider the parties' quantitative or qualitative evidence, *see, e.g., Gingles*, 478 U.S. at 59, and they reject §2 claims where partisan polarization, not race, better explains minorities' electoral defeats. *See, e.g.*, *Sanders*, 2023 WL 4745352, at *11-12; *Lopez*, 339 F. Supp. 3d at 614.

It also bears noting that §2 remedies do not always inure to the benefit of one party. *See* Robinson Supp.35 n.2. Indeed, in 2008, Louisiana's own District 2, which is majority-Black, elected Joseph Cao, a Republican.[2] And the remedial district drawn after *LULAC*, 548 U.S. 399, swung between Democrats and Republicans for a decade.[3]

To the extent the Court wants to provide additional guidance about the role of politics in the polarized voting analysis, it could follow the Fifth and Eleventh Circuits and clarify that this consideration falls within Senate Factor 2. The Court could also clarify

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[2] *Cao, Joseph,* Hist., Art & Archives, U.S. House of Representatives, https://history.house.gov/People/Detail/44592 (last visited Oct. 3, 2025).

[3] Fares Sabawi, *A Recent History of Texas' Most Competitive Congressional District: CD-23*, KSAT (Oct. 2, 2020), https://www.ksat.com/vote-2020/2020/10/02/a-recent-history-of-texas-most-competive-congressional-district-cd-23/.

that while a complete §2 remedy unquestionably *demands* creating a new district that minority-preferred candidates can win, *Abbott*, 585 U.S. at 617-618; §2 *does not* require a "safe" district where minority-preferred candidates *always* win.[4] *See De Grandy*, 512 U.S. at 1014 n.11.

7. None of the other parties persuasively advocate for changing the totality-of-circumstances analysis. The United States (at 28) identifies no clear faults in the totality analysis as it is currently applied. Instead, it simply repeats that the totality must "reveal an objective likelihood that the State's failure to create a majority-minority district reflects intentional discrimination." The United States then identifies one of the factors—"recent, intentional official discrimination"—and asks that courts be required to weigh this most heavily. *Id.* at 29. Of course, the *Gingles* framework already prioritizes present circumstances and already more heavily weighs recent instances of discrimination. *See* Robinson Supp.15-22. While evidence of recent *intentional* discrimination is certainly probative, it is not dispositive. It is merely one of the "totality" of circumstances §2 permits courts to consider. *See Milligan*, 599 U.S. at 26. Even intent claims do not require such a narrow evidentiary focus. *Rogers*, 458 U.S. at 625; *cf. also Flowers*, 588 U.S. at 302 (considering "other relevant circumstances").

[4] *Compare Abbott*, 585 U.S. at 617-618 (finding a district ineffective that elected the minority-preferred candidate only 20% of the time); *Abrams*, 521 U.S. at 93-94 (rejecting a §2 district where the "probability of electing a candidate is below 50%"), *with LULAC*, 548 U.S. at 428 (finding a district "effective" that elected Latino-preferred candidate 86% of the time).

Appellees (at 26-28) also argue that considering the present-day impact on voting of other forms of discrimination, such as educational disparities, amounts to an "effort to alleviate the effects of societal discrimination." This misunderstands the Senate Factors: These forms of "societal discrimination" often result from government action. *See Gingles*, 478 U.S. at 69-70, 80. Just as Congress could ban literacy tests to address state-sponsored educational discrimination's impact on voting, *cf. Boerne*, 521 U.S. at 526; *Gaston Cnty. v. United States*, 395 U.S. 285, 289-293 (1969); so too may Congress permit §2 to consider the effects of other state-sponsored socioeconomic discrimination on minority electoral opportunities in a state-enacted plan.

Finally, Appellees imply (at 45) that under *Gingles*, courts improperly consider discrimination that does not "emanate from the state." But when a state offers only tenuous justifications for districts that pack or crack Black citizens in ways that—because of stark racial polarization—regularly defeat Black-preferred candidates, *see Robinson*, 605 F. Supp. 3d at 850-851, that *is* discrimination emanating from the State.

CONCLUSION

The decision of the district court should be reversed.

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