Nos. 24-109 and 24-110

IN THE

Supreme Court of the United States

LOUISIANA,

Appellant,

v.

PHILLIP CALLAIS, *et al.*,

Appellees.

PRESS ROBINSON, *et al.*,

Appellants,

v.

PHILLIP CALLAIS, *et al.*,

Appellees.

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

BRIEF OF *AMICI CURIAE* LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, ASIAN AMERICANS ADVANCING JUSTICE | AAJC, ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND, LEAGUE OF WOMEN VOTERS OF THE UNITED STATES, AND LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS IN SUPPORT OF *ROBINSON* APPELLANTS

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STATEMENT OF INTEREST[1]

Amici, the Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee"), Asian Americans Advancing Justice | AAJC ("Advancing Justice-AAJC"), Asian American Legal Defense and Education Fund ("AALDEF"), League of Women Voters of the United States ("LWVUS" or "the League"), and Leadership Conference on Civil and Human Rights ("Leadership Conference") are nonpartisan, nonprofit civil rights organizations dedicated to protecting civil rights through litigation and policy work. *Amici* have a significant interest in preserving the standard processes used to remedy violations of Section 2 of the Voting Rights Act ("VRA") that dilute the voting strength of Black voters and other voters of color.

The Lawyers' Committee is a nonpartisan, nonprofit civil rights organization, formed at the request of President John F. Kennedy in 1963, that uses legal advocacy to achieve racial justice. For more than sixty years, the Lawyers' Committee has used legal advocacy inside and outside the courts to ensure that Black people and other people of color have the voice, opportunity, and power to elect candidates of their choice and access the ballot. The Lawyers' Committee litigates Section 2 cases across the country. Many of these cases have resulted in the creation of majority-Black districts that have given Black voters and their communities equal opportunity to participate in the political process. The instant case is of

1. Pursuant to Supreme Court Rule 37.6, counsel for *amici* represent that they authored this brief in its entirety and that none of the parties or their counsel, nor any other person or entity other than *amici* or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

utmost importance to the Lawyers' Committee because it threatens to undermine the process used to remedy Section 2 violations.

Advancing Justice-AAJC is a nonprofit, nonpartisan organization that seeks to create an equitable society for all. Advancing Justice-AAJC works to further civil and human rights and empower Asian American communities through organization, education, advocacy, and litigation. Advancing Justice-AAJC is a leading expert on issues of importance to the Asian American community, including voting, census, educational equity, immigrant rights, and anti-racial profiling. In recent years, Advancing Justice-AAJC has brought litigation in both Arizona (*Arizona AANHPI for Equity Coalition v. Hobbs*, No. 22-cv-1381 (D. Ariz. filed Aug. 16, 2022)) and Georgia (*Asian Americans Advancing Justice-Atlanta v. Raffensperger*, No. 21-cv-1333 (N.D. Ga. filed Apr. 1, 2021)) on behalf of Asian American and Pacific Islander voters to vindicate their right to vote. It also operates a voter protection hotline (1-888-API-VOTE) providing information in eight AAPI languages.

AALDEF is a national organization, founded in 1974, that protects and promotes the civil rights of Asian Americans. By combining litigation, advocacy, education, and organizing, AALDEF works with Asian American communities across the country to secure human rights for all. AALDEF has litigated cases seeking to protect the ability of Asian American communities to elect candidates of their choice, *see, e.g., N.Y. Cmtys. for Change v. Cnty. of Nassau*, No. 602316/2024 (Sup. Ct. Nassau Cnty., Feb. 7, 2024); *LULAC v. Abbott*, No. 3:21-cv-00259-DCG-JES-JVB (W.D. Tex. Nov. 16, 2021); *Favors v. Cuomo*, 881

F. Supp. 2d 356 (E.D.N.Y. 2012), and ensure that limited English proficient Asian American voters have an equal opportunity to participate in our democracy, *see, e.g.*, *OCA-Greater Houston v. Texas*, 867 F.3d 604 (5th Cir. 2017); *Detroit Action v. City of Hamtramck*, No. 2:21-cv-11315 (E.D. Mich. June 3, 2021); *All. of South Asian Am. Labor v. Bd. of Elections in the City of N.Y.*, No. 1:13- cv-03732 (E.D.N.Y. July 2, 2013).

LWVUS is a nonpartisan, grassroots, membership organization committed to protecting voting rights, empowering voters, and defending democracy. The League works to ensure that all voters—including those from historically underrepresented or underserved communities, including Black voters, Indigenous voters, and other voters of color, first-time voters, non-college youth, new citizens, the elderly, and low-income Americans—have the opportunity and the information they need to exercise their right to vote. Founded in 1920 as an outgrowth of the struggle to win voting rights for women, the League now has more than 500,000 members and supporters and is organized in more than 750 communities, all 50 states, and the District of Columbia. LWVUS has long advocated for fair redistricting across the country. In 2019, LWVUS launched "People Powered Fair Maps" to create fair, transparent, people-powered redistricting processes that ensure maps are drawn fairly and accurately, with all voices considered and equitably represented. The League is active in federal redistricting cases, including those raising Section 2 claims and racial gerrymandering claims. LWVUS has a direct interest in this case because it raises important voting rights issues central to LWV's mission.

The Leadership Conference is a coalition charged by its diverse membership of more than 240 national organizations to promote and protect the civil and human rights of all persons in the United States. It is the nation's oldest and largest civil and human rights coalition working to build an America as good as its ideals. The Leadership Conference was founded in 1950 by A. Philip Randolph, head of the Brotherhood of Sleeping Car Porters; Roy Wilkins of the NAACP; and Arnold Aronson, a leader of the National Jewish Community Relations Advisory Council. For more than seven decades, The Leadership Conference has led the fight for civil and human rights by advocating for federal legislation and policy—securing passage of landmark civil rights legislation including the Civil Rights Acts of 1957, 1960, and 1964; the Voting Rights Act of 1965 and all of its subsequent reauthorizations; the Fair Housing Act of 1968; the Americans With Disabilities Act of 1990; the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009; and more. Through its Voting Rights program, The Leadership Conference leads efforts to strengthen and improve voting rights laws and ensure that all citizens can fully participate in our democracy. The Leadership Conference's work is also informed and amplified by The Leadership Conference Education Fund, its public education and research arm.

INTRODUCTION AND SUMMARY OF ARGUMENT

After Louisiana redistricted following the 2020 census, multiple federal courts determined that the State violated Section 2 of the VRA, 52 U.S.C. § 10301, when it adopted a congressional map that diluted the voting strength of Black voters. This case originates from the

Louisiana Legislature's ("Legislature's") effort to enact a lawful map to address this violation. In line with the findings of these courts, the Legislature's remedial plan, Senate Bill 8 ("SB8"), contained an additional majority-Black district. But SB8 became the subject of separate litigation. In that case, a divided three-judge panel threw out SB8, concluding that race predominated in its creation in large part *because* it was crafted to remedy a Section 2 violation. That decision is at issue here.

In subjecting SB8 to strict scrutiny, the panel majority lost sight of basic legal principles and put legislatures across the country in a catch-22 of choosing to comply with federal law only to risk a constitutional lawsuit or choosing to flout federal law only to risk a Section 2 lawsuit. By treating SB8 as constitutionally suspect because it was created to remedy a Section 2 violation, the panel majority's reasoning jeopardizes the ability of impacted communities to enforce their right to equal participation in the political process through Section 2. Such a result should be rejected by this Court.

This brief addresses two main points. First, the panel majority committed legal error by placing unwarranted significance on the Legislature's decision to create a second majority-minority district. The law is clear that the intentional creation of a majority-Black district to comply with Section 2 does not automatically trigger strict scrutiny. But the panel majority's reasoning comes dangerously close to endorsing this proposition. Such an outcome undermines efforts to remedy vote dilution and should not be tolerated by this Court.

Second, courts should encourage jurisdictions to enact Section 2-compliant plans, not penalize them for doing so. Here, where the Legislature had the strongest possible reasons for drawing a majority-Black district—in the form of multiple court orders affirming the likelihood of success on the merits of a Section 2 claim—its passage of SB8 was met with inappropriate skepticism.

For these reasons, the Court should reverse the panel majority's decision applying strict scrutiny to SB8.

ARGUMENT

I. The Panel Majority Misapplied Core Legal Principles in its Analysis of the Legislature's Decision to Create a Majority-Minority District.

Reasoning that "the State first made the decision to create a majority-Black district and, only then, did political considerations factor into the State's creation of District 6," J.S. App. 174a, the panel majority concluded that race predominated in the drawing of SB8. In so finding, the panel majority effectively suggested that the intentional decision to remedy a Section 2 violation is enough to establish racial predominance or is at least highly suspicious. Such a rule is deeply problematic and is contrary to this Court's jurisprudence.

This Court has long affirmed that a finding of racial predominance requires more than a showing that a majority-Black district was created to comply with Section 2. As such, the panel majority's suggestion that express statements by legislators regarding Section 2 compliance indicate an impermissible racial motive runs

directly contrary to this Court's guidance. *See Allen v. Milligan*, 599 U.S. 1, 30–32 (2023) (explaining Section 2 requires consideration of race, but such consideration does not *de facto* cross line to racial predominance); *Shaw v. Reno*, 509 U.S. 630, 646 (1993) (cautioning in redistricting context "race consciousness does not lead inevitably to impermissible race discrimination"); *Bush v. Vera*, 517 U.S. 952, 958 (1996) (plurality) ("[s]trict scrutiny does not apply merely because redistricting is performed with consciousness of race," "[n]or does it apply to all cases of intentional creation of majority-minority districts"); *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 182, 192–93, 196 (2017) (finding "undisputed" evidence that challenged districts "were drawn with a goal of ensuring that each district would have a black voting-age population (BVAP) of at least 55%" was relevant to, but not dispositive of racial predominance inquiry and remanding to lower court).

To be sure, Section 2 demands consideration of race—to show "that an additional majority-minority district could be drawn" is "the whole point of the enterprise" of proving a Section 2 violation. *Milligan*, 599 U.S. at 33. To that end, this Court has recognized "a difference 'between being aware of racial considerations and being motivated by them.'" *Id.* at 30 (quoting *Miller v. Johnson*, 515 U.S. 900, 916 (1995)). Thus, while drawing district lines that comply with Section 2 may require consideration of race along with other demographic factors, that kind of awareness of race "does not lead inevitably to impermissible race discrimination." *Shaw*, 509 U.S. at 646. As such, courts must be "sensitive to the complex interplay of forces that enter a legislature's redistricting calculus." *Miller*, 515 U.S. at 915–16.

For example, in "mixed motive" cases where creating majority-minority districts was a legislative goal alongside other permissible redistricting objectives such as "incumbency protection," a trial court must conduct a "careful review" and "must scrutinize each challenged district to determine whether . . . race predominated over legitimate districting considerations." *Bush*, 517 U.S. at 959, 965. The result of this inquiry may well be that the Legislature considered many factors, with none predominating. *See Milligan*, 599 U.S. at 31–32 (discussing illustrative maps produced by expert that trial court found gave "equal weight" to all traditional redistricting criteria). Here, the panel majority misapplied this Court's precedent when it undertook to identify one prevailing motivation driving the Legislature without considering the possibility that a multitude of factors worked in concert to produce SB8. That was legal error.

Consistent with the reasoning applied to mixed motive cases, this Court has flatly rejected the argument that compliance with Section 2 equates to impermissible race-based discrimination:

> Alabama further argues that, even if the Fifteenth Amendment authorizes the effects test of §2, that Amendment does not authorize race-based redistricting as a remedy for §2 violations. But for the last four decades, this Court and the lower federal courts have repeatedly applied the effects test of §2 as interpreted in [*Thornburg v. Gingles*, 478 U.S. 30 (1986)] and, under certain circumstances, have authorized race-based redistricting as a remedy for state districting maps that violate

> §2. . . . In light of that precedent, . . . we are not persuaded by Alabama's arguments that §2 as interpreted in *Gingles* exceeds the remedial authority of Congress.

Milligan, 599 U.S. at 41. Strict adherence to the judicially manageable *Gingles* framework provides the necessary guardrail against the misapplication of Section 2. *See id.* at 42 (explaining that "a faithful application of [the Court's] precedents and a fair reading of the record before [the Court] do not bear . . . out" Alabama's concern that Section 2 "impermissibly elevate[s] race in the allocation of political power"). The Section 2 litigation that preceded the instant case illustrates this point. *See infra*, Part II. Both the Middle District of Louisiana and the Fifth Circuit carefully applied *Gingles* to Louisiana's initial post-2020 census congressional map and identified a likely violation of Section 2. The panel majority's decision unsettles the diligent application of this Court's precedents and places legislatures in an untenable position. *See Bethune-Hill*, 580 U.S. at 196 (courts should not leave state legislatures "trapped between the competing hazards of liability under the Voting Rights Act and the Equal Protection Clause" (internal quotation omitted)).

A legislature's decision to comply with Section 2, without more evidence of the subordination of traditional districting principles, is not subject to strict scrutiny, and no court has suggested otherwise. Any holding to the contrary would severely undermine Section 2 enforcement, making it difficult for groups like *amici* to obtain remedial plans that cure Section 2 violations. When this Court struck down Section 4 of the VRA, effectively eliminating the protections of Section 5, Chief Justice

Roberts' majority opinion emphasized, "our decision in no way affects the permanent, nationwide ban on racial discrimination in voting found in § 2." *Shelby County v. Holder*, 570 U.S. 529, 557 (2013). But a holding that mere compliance with Section 2 subjects a redistricting plan to strict scrutiny would perpetuate racial discrimination by trapping communities that suffer from vote dilution in unlawful electoral districts with no legal recourse. With the demise of Section 5, the protections of Section 2, as manifested in the *Gingles* framework, are even more essential than they have ever been.

By finding racial predominance simply because the Legislature drew a majority-Black district as required by Section 2, the panel majority embraced a rule that violates this Court's precedents and would inappropriately frustrate Section 2 enforcement.

II. This Court Should Encourage Legislatures to Enact Section 2-Compliant Maps, Not Penalize Their Efforts to Comply with Court Orders.

Compliance with Section 2 is not optional. Redistricting plans are required to comply with federal law, and legislatures should endeavor to create compliant maps without the need for litigation. Many legislatures understand this, which is why compliance with Section 2 is typically a component of a legislature's stated redistricting criteria, along with other traditional districting principles. *See*, *e.g.*, 2020 Redistricting Criteria, Nat'l Conf. State Legislatures (last updated Aug. 27, 2024), https://www.ncsl.org/elections-and-campaigns/2020-redistricting-criteria (collecting state constitutions, laws, and guidelines reflecting compliance with the VRA is required or incorporated).

Moreover, the history of Section 2 is replete with examples in which jurisdictions settled or chose to address Section 2 without a judicial liability finding.[2] A *per se* rule that effectively subjects every redistricting plan drawn to comply with Section 2 to strict scrutiny would

2. *See*, *e.g.*, *Tyson v. Richardson Indep. Sch. Dist.*, No. 3:18 Civ. 00212-K, ECF 46 (N.D. Tex. 2019) (dismissing case after parties reported compliance with settlement agreement); *Rodriguez v. Grand Prairie Indep. Sch. Dist.*, No. 3:13 Civ. 01788-D, ECF No. 72 (N.D. Tex. 2015) (same); *Young & Golsby v. Ouachita Parish Sch. Bd.*, No. 3:02 Civ. 1644, ECF 25, 39 (W.D. La. 2002) (approving consent decree and dismissing case following the issuance of a preliminary injunction); *Ga. State Conf. of the NAACP v. Emanuel Cnty. Bd. of Comm'rs*, No. 6:16 Civ. 00021, ECF 40 (S.D. Ga. 2017) (dismissing case by stipulation after reported compliance with terms of settlement agreement); *League of United Latin Am. Citizens, Statewide v. Dumas Indep. Sch. Dist.*, No. 2:93 Civ. 00154-J, ECF 6, 19 (N.D. Tex. 1994) (approving settlement agreement following issuance of preliminary injunction); *Gamez v. Hereford Indep. Sch. Dist.*, No. 2:95 Civ. 00028-D-BR (N.D. Tex. 1995) (approving consent decree and dismissing remainder of case pursuant to settlement agreement); *Henderson v. Galveston Indep. Sch. Dist.*, No. 3:94 Civ. 00144, ECF 17 (S.D. Tex. 1994) (entering judgment for plaintiffs and dismissing case after approving settlement agreement following issuance of partial preliminary injunction); *Hubbard v. Lone Star Coll. Sys.*, No. 4:13 Civ. 01635, ECF 14 (S.D. Tex. 2013) (approving a remedial map by consent decree); *United States v. Morgan City*, No. 6:00 Civ. 01541, ECF 11 (W.D. La. 2001) (same); *Wilkins v. Washington Cnty. Comm'rs*, No. 2:93 Civ. 0012, ECF 37 (E.D.N.C. 1995) (same); *Webster v. Bd. of Educ. of Person Cnty.*, No. 1:91 Civ. 00554, ECF 45 (M.D.N.C. 1995) (same); *Dillard v. City of Foley*, 926 F. Supp. 1053, 1059, 1067 (M.D. Ala. 1995) (same); *N.A.A.C.P. v. Rowan Bd. of Elections*, No. 4:91 Civ. 00293, ECF 46 (M.D.N.C. 1994) (same); *Rowsom v. Tyrrell Cnty. Comm'rs*, No. 2:93 Civ. 00033, ECF No. 11 (E.D.N.C. 1994) (same); *Fifth Ward Precinct 1A Coal. & Progressive Ass'n v. Jefferson Par. Sch. Bd.*, 1989 WL 3801, at *1 (E.D. La. 1989) (same).

undermine judicial economy while further weakening VRA protections afforded to marginalized communities that experience vote dilution.

And while a judicial liability finding has never been a prerequisite to Section 2 compliance, where, as here, a legislature has multiple court orders confirming a likely violation of federal law, it should not be penalized in its effort to create a remedy that includes required majority-minority districts. In fact, this Court has long counseled that when a federal court finds a violation in a redistricting case, the legislature should be provided the first chance to craft a remedy. *See Wise v. Lipscomb*, 437 U.S. 535, 540 (1978).

The Legislature had every reason to believe that it needed to draft a congressional redistricting plan with two majority-Black districts to comply with the VRA. First, the Middle District of Louisiana's preliminary injunction order provided strong reasons for the Legislature to consider Section 2 in its redistricting decisions. The Middle District held that the Legislature's post-census congressional plan, House Bill 1 ("HB1"), which only included one majority-Black district, likely violated Section 2 of the VRA because it diluted the electoral strength of Black voters. *Robinson v. Ardoin*, 605 F. Supp. 3d 759, 851, 857–58 (M.D. La. 2022) ("*Robinson I*").[3]

3. The extensive evidentiary record in *Robinson I* demonstrated a likelihood of success on the merits of the first three *Gingles* preconditions for establishing Section 2 liability. 605 F. Supp. 3d at 778–806; *Gingles*, 478 U.S. at 47–51. The district court found that Black voters were sufficiently numerous and geographically compact to form the majority in a single-member district that satisfied traditional redistricting principles, *Robinson I*, 605 F. Supp. 3d at 831; Black voters were politically cohesive

These findings were left undisturbed by this Court. *Ardoin v. Robinson*, 142 S. Ct. 2892 (2022) (without addressing merits, staying district court's preliminary injunction pending the Court's decision in *Allen v. Milligan*). The Fifth Circuit also twice affirmed the underlying reasoning of the Middle District, first in denying the State's motion to stay the preliminary injunction order and subsequently in considering the merits of the preliminary injunction order. *See Robinson v. Ardoin*, 37 F.4th 208 (5th Cir. 2022) ("*Robinson II*") (denying motion for stay on grounds that plaintiffs had established strong likelihood of success on the merits of Section 2 claim); *Robinson v. Ardoin*, 86 F.4th 574 (5th Cir. 2023) ("*Robinson III*") (finding district court did not err in issuing preliminary injunction, vacating injunction because 2022 election had passed, and giving Legislature an opportunity to address Section 2).

Indeed, in its order vacating the district court's preliminary injunction because of the passage of the 2022 election, the Fifth Circuit stated that it "cannot conclude on this record that the Legislature would not take advantage of an opportunity to consider a new map now that we have affirmed the district court's conclusion that the Plaintiffs have a likelihood of success on the merits." *Robinson III*, 86 F.4th at 601. The Fifth Circuit gave the State until January 15, 2024, to enact a new map, if it chose, before further substantive proceedings in the Middle District. *Id.*

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across elections, *id.* at 840–41, and white voters voted sufficiently as a bloc to defeat the preferred candidates of Black voters, *id.* at 842–44. The Middle District's evaluation of the Senate Factors confirmed a likelihood of success on the merits based on the totality of circumstances. *Id.* at 820–51.

Given this history, it is hardly a surprise that the legislative record contains examples of legislators expressing their concern with remedying vote dilution in Louisiana. A stated desire by legislators to comply with Section 2 is not inherently constitutionally suspect. As such, the panel majority's decision to penalize the Legislature's attempt to comply with a court order by subjecting it to strict scrutiny is particularly anomalous.

CONCLUSION

Correctly applied, this Court's jurisprudence allows legislatures to prevent racially discriminatory vote dilution without running afoul of the Equal Protection Clause. By rejecting this premise and punishing the Louisiana Legislature for complying with federal law, the panel majority's reasoning contradicts decades of this Court's precedents and endangers the ability of groups like *amici* to enforce the VRA.

This Court should reverse the panel majority's holding that racial considerations predominated and its application of strict scrutiny to SB8.

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