Nos. 24-109, 24-110

IN THE

Supreme Court of the United States

STATE OF 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 , NATIONAL WOMEN'S LAW CENTER, NATIONAL URBAN LEAGUE, 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 ("LWV" or "the League"), National Women's Law Center ("NWLC"), National Urban League ("NUL"), 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 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 60 years, the Lawyers' Committee has advocated inside and outside the courts to ensure that Black people and other people of color have the voice, opportunity, and power to make the promises of democracy real. This includes being able to enjoy unencumbered access to the ballot and the ability to elect candidates of their choice. 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

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[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.

and their communities the equal opportunity previously denied them to participate in the political process. The Lawyers' Committee has litigated voting rights cases before this Court including *Shelby County, Alabama v. Holder*, 570 U.S. 529 (2013), *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013), *Young v. Fordice*, 520 U.S. 273 (1997), and *Clark v. Roemer*, 500 U.S. 646 (1991). This case is of utmost importance to the Lawyers' Committee because it threatens to undermine the process used to remedy Section 2 violations and to damage the legitimacy of democratic institutions already at risk.

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 important 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 in conjunction with APIAVote (1-888-API-VOTE) providing information in nine 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 focuses on critical

issues affecting Asian Americans, including the right of Asian American communities across the country to cast an effective ballot and receive fair representation. 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).

League of Women Voters is a nonpartisan, grassroots, membership-based organization committed to protecting voting rights, empowering voters, and defending democracy. Leage of Women Voters includes the League of Women Voters of the United States ("LWVUS") and the League of Women Voters Education Fund ("LWVEF"') (collectively, "LWV" or "the League"). The League works to ensure that all voters—including those from historically disenfranchised communities, including Black voters, Indigenous voters, and other voters of color, first-time voters, non-college youth, new citizens, older voters, 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 one million members and supporters and is organized in more than 750 communities, all 50 states, and the District of Columbia. The League has long

advocated for fair redistricting across the country. In 2019, LWV 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. The League has a direct interest in this case because it raises important voting rights issues central to LWV's mission.

NWLC fights for gender justice — in the courts, in public policy, and in our society — working across the issues that are central to the lives of women and girls. NWLC uses the law in all its forms to change culture and drive solutions to the gender inequity that shapes our society and to break down the barriers that harm all of us — especially women of color, LGBTQ people, and low-income women and families. Since its founding in 1972, NWLC has worked to advance workplace justice, income security, educational opportunities, and health and reproductive rights for women and girls and has participated as counsel or amicus curiae in a range of cases in the U.S. Supreme Court and the lower courts. As an organization that fights for gender justice, NWLC recognizes that its work depends on a fair and functioning democracy, that the progress we have made has been possible because women have been able to exercise their right to vote and to hold leaders accountable. Efforts to suppress voting are frequently part of a broader agenda to limit abortion access, weaken workplace protections, cut social programs, and undermine civil rights. We oppose efforts to weaken Section 2 of the VRA because vote dilution has a disproportionate impact on Black women voters and elected leaders.

NUL, founded in 1910, is a historic, nonpartisan civil rights and economic empowerment organization dedicated to advancing equity and opportunity for Black people and other marginalized communities. For over a century, NUL has worked to eliminate barriers to full participation in American democracy through advocacy, education, employment initiatives, civic engagement, and policy reform, with a central focus on protecting the fundamental right to vote. NUL played a pivotal role in the civil rights movement, contributing to the passage of the Voting Rights Act of 1965 (VRA), and continues to lead national efforts to safeguard ballot access, promote fair redistricting, and defend voting rights for historically disenfranchised communities. NUL has a substantial interest in this case, as weakening Section 2 of the VRA would erode decades of progress and perpetuate systemic inequities. NUL supports race-conscious remedies under Section 2 as essential to ensuring that Black voters and other voters of color have an equal opportunity to participate fully in the democratic process and elect candidates of their choice.

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

A compelling government interest justifies consideration of race in remedying violations of Section 2 of the Voting Rights Act (VRA). Although the Court's jurisprudence provides little direct guidance in identifying which government interests are compelling, Section 2 precisely fits into the pattern that emerges from the caselaw. The provision protects voting, a fundamental right. It rests on explicit constitutional authority. And it requires a rigorous showing of specific harms incurred on account of race, rather than addressing general social ills. To refuse to recognize a government interest so manifestly compelling would defy legal principle and undermine American democracy.

The history of the VRA illuminates its critical role in advancing our democracy. The starting point is the Fifteenth Amendment, ratified in 1870, which barred federal and state governments from denying citizens the right to vote on account of race, color, or prior condition of servitude. After Reconstruction ended in

1877, however, Southern states denied the right anyway. In the words of President Lyndon Johnson, they used "every device of which human ingenuity is capable," including violence, to prevent Black people from voting. President Lyndon B. Johnson, Speech Before Congress on Voting Rights (March 15, 1965).

These depredations continued for many decades. By the 1950s and 60s, however, civil rights leaders increasingly identified the right to vote as critical to other civil rights advances. Dr. King declared that without the vote, "I cannot live as a democratic citizen." Dr. Martin Luther King Jr., Give Us the Ballot (May 17, 1957). Other civil rights activists intensified their focus on voting. In 1964, they organized a nonviolent voting rights march from Selma to Montgomery, Alabama. At the Edmund Pettis Bridge in Selma, Alabama, law enforcement authorities brutally beat the marchers. The televised carnage dramatized the intolerable violations of civil rights in the South and galvanized Congress to adopt the Voting Rights Act of 1965 (VRA).

The VRA was the crowning achievement of the Civil Rights Movement. Section 5 of the Act required jurisdictions with a history of civil rights violations to obtain preclearance from the Justice Department or a federal district court before changing their voting practices and procedures. It further codified a rule against retrogression, to prevent steps that diminished the voting strength of people of color. Section 2 of the Act barred voting practices and procedures that discriminated based on race. After passage of the Act, registration rates of Black voters rose dramatically.[2]

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[2] In Louisiana, for example, the percentage of Black persons registered to vote went from 31 percent in 1956 to 47.1 percent in

In the ensuing years, Congress repeatedly renewed the VRA by overwhelming bipartisan majorities, including by a unanimous Senate vote in 2006, H.R.9, 109th Cong. (2006); S.2703, 109th Cong. (2006), and access to the ballot continued to improve. In 2013, however, this Court struck down the formula for determining which jurisdictions needed to seek preclearance for voting changes. *Shelby County, Ala. v. Holder*, 570 U.S. 529 (2013). The Court found that "things have changed dramatically" regarding access by voters of color to the ballot in covered jurisdictions, and that current conditions no longer justified preclearance. *Id* at 547. The Court offered reassurance, however, that Section 2 remained intact, stating that it "is permanent, applies nationwide, and is not at issue in this case." *Id* at 537.

The ostensible progress in formerly covered jurisdictions, however, did not prevent a flood of voter suppression legislation in the aftermath of *Shelby County*. U.S. Comm'n on C.R., *An Assessment of Minority Voting Rights Access in the United States* 82 (2018) ("At least 23 states have enacted newly restrictive statewide voter laws since the *Shelby County* decision"); Danielle Lang & J. Gerald Hebert, *A Post-Shelby Strategy: Exposing Discriminatory Intent in Voting Rights Litigation*, 127 Yale L.J.F. 779, 784 (2018) (post-*Shelby* developments "have resulted in an avalanche of voting restrictions that target minority voters to minimize their political power"); Nicholas Stephanopoulos, *Disparate Impact, Unified Law*, 128 Yale L.J. 1566, 1577-78 (2019) (restrictions since 2010 "amount to the

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1966. In Mississippi, the increase was from five percent in 1956 to 32.9 percent in 1966. Kevin J. Coleman, Cong. Rsch. Serv., R4326, *The Voting Rights Act of 1965: Background and Overview* 12-13 (2014).

most systematic retrenchment of the right to vote since the civil rights era"). Turnout gaps between white and voters of color increased, particularly in jurisdictions that previously had been subject to preclearance. Kevin Morris, Peter Miller & Coryn Grange, *Racial Turnout Gap Grew in Jurisdictions Previously Covered by the Voting Rights Act*, Brennan Center for Justice (Aug. 20, 2021), https://www.brennancenter.org/our-work/research-reports/racial-turnout-gap-grew-jurisdictions-previously-covered-voting-rights; Stephen Billings, Noah Braun, Daniel Jones & Ying Shi, *Disparate Racial Impacts of Shelby County v. Holder on Voter Turnout*, 230 J. Pub. Econ. Feb. 2024 (2024) (documenting decline in relative turnout rate of voters of color after *Shelby County*).

With the evisceration of the preclearance provision of Section 5, the "permanent" and "nationwide" promise of Section 2 diminished, too. Courts restricted election law claims of all types. Governmental defendants attacked the constitutionality of the VRA, *see, e.g.*, *Nairne v. Landry*, No. 24-30115, 2025 WL 2355524, at *22 (5th Cir. Aug. 14, 2025) (rejecting Louisiana's argument that Section 2 of the VRA is unconstitutional), and litigants repeatedly challenged the right of private plaintiffs to sue under Section 2, even though courts have adjudicated more than 400 suits brought by private plaintiffs during the decades the law has been in force. *Arkansas State Conf. NAACP v. Arkansas Bd. of Apportionment*, 86 F.4th 1204 (8th Cir. 2023) (holding that there is no private right of action under Section 2 of the VRA). *See also Turtle Mountain Band of Chippewa Indians v. Howe*, 137 F.4th 710, 21 (8th Cir. 2025) (holding that private plaintiffs may not bring Section 2 claims under 42 U.S.C. § 1983, barring any private enforcement of the VRA in the Eighth Circuit); *see generally* Ellen D. Katz, et al., *To*

Participate and Elect: Section 2 of the Voting Rights Act Since 1982, U. Mich. L. Sch. Voting Rights Initiative (2025), https://voting.law.umich.edu.

Section 2 faced (and survived) another test, though, in *Allen v. Milligan*, 599 U.S. 1, 42 (2023), where the Court affirmed a finding that Alabama's Congressional redistricting plan violated Section 2. The Court reiterated its longstanding holding that the ban in Section 2 "on electoral changes that are discriminatory in effect is an appropriate method of promoting the purposes of the 15th Amendment." 599 U.S. at 41, quoting *City of Rome v. United States*, 446 U.S. 156, 177 (1980).

Although the outlook for equality in voting rights and political participation has not improved—if anything, it has deteriorated—the Court, just two years after *Milligan,* has now requested argument on the constitutionality of Section 2 remedies that account for race. *Louisiana v. Callais*, No. 24-109 (S. Ct. Aug.1, 2025). In that request, the Court directed attention to Appellees' argument that compliance with the Voting Rights Act is not a compelling government interest. *Id.* Given the history of the VRA, the recent assaults upon it, and the potential impact of the ruling on democratic institutions, it is important that the Court tie its consideration of this case to clear guideposts. The question the Court has framed, however, poses a challenge in that regard because the Court has not clearly articulated what makes a government interest compelling. In its decades of jurisprudence applying this test, the Court's designation of an interest as compelling has been declarative, rather than analytical, deciding what is compelling—or what is not—without the benefit of a well-defined standard that can be applied prospectively. *See City of*

Cleburne, Tex. v. Cleburne Living Center, 473 U.S. 432, 451 (1985) (Stevens, J. concurring) (Court's cases "reflect a continuum of judgmental responses to differing classifications . . . . I have never been persuaded that these so-called 'standards' adequately explain the decisional process."); *Ramirez v. Collier*, 595 U.S. 411, 442 (2022) (Kavanaugh, J., concurring) (compelling interest test arguably "permits and even requires judges to engage recurrently in only minimally structured appraisals of the significance of competing values or interests in many cases" (citation omitted)).

This brief therefore seeks to derive from the cases an analytical framework for the determination of those compelling government interests that may be relevant in assessing Section 2 remedies that account for race. Application of that framework demonstrates that compliance with Section 2 is a compelling government interest.

Specifically, review of cases involving the compelling government interest test, especially in the context of race conscious remedies, identifies common attributes that appear to influence the assessment of the government's interest: the strength and source of the individual rights at stake; the clarity, strength, and textual source of the government's authority; and the specificity of the harms that the government action addresses. Application of this framework shows that Louisiana had compelling government interests in passing remedial maps that account for race.

First, the right at stake under Section 2 is the right to vote, which the Court has repeatedly deemed "fundamental." *Reynolds v. Sims*, 377 U. S. 533, 562 (1964). Indeed, the Court has described voting as "preservative of all other rights." *Id.*

Second, the source of Congress's authority to protect that right is direct, definitive, and based on the constitutional text. The Fifteenth Amendment authorizes Congress to enact legislation enforcing the proscription on denying or abridging access to the ballot. Section 2 exercises that authority.

Third, the harms from the challenged action are specific, rather than amorphous. In this case, the factors articulated in *Thornburg v. Gingles*, 478 U.S. 30, 80 (1986), ensure that consideration of race as part of a remedy is acceptable only after inequality in political participation "on account of race" has been established.

To prohibit consideration of race in remedying Section 2 violations would undo decades of jurisprudence under the VRA. Effectively, it would neutralize the law and violate the original intent of the Fifteenth Amendment, which sought to ensure equal rights of all races in the nation's governance, an ideal that we have yet to attain today. It also would be profoundly destabilizing, unleashing Legislatures around the country to seek partisan advantage by restricting equal opportunity for voters of color. Siding with Louisiana would not end redistricting disputes. It would amplify them and lead both political parties to launch a quest for partisan advantage that would dismantle or weaken districts previously protected by Section 2.

At a time when democratic principles are in peril, fueling a precipitous decline in representation of people of color would threaten the longevity of our democracy and undermine the legitimacy of its institutions.

ARGUMENT

I. The Court has found government interests compelling when they are connected to significant rights, rest on clear constitutional authority, and address specific harms.

Although this Court has addressed compelling government interests in scores of cases, it has not unequivocally identified the attributes that make a government interest compelling. Nevertheless, it is possible to extrapolate from the case law several factors that appear to influence the Court's determination whether specific interests satisfy the standard. For purposes of this argument, it is not necessary to develop a comprehensive matrix of these factors, but only to highlight those indicating that compliance with Section 2 qualifies as a compelling government interest.[3]

A key factor emerging from the case law is the importance and constitutional source of the rights that the government is seeking to protect. *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 463-66 (1958) (holding that a state cannot require disclosure of an organization's membership lists, as they are protected by a member's right to freedom of association); *Roberts v. U.S. Jaycees*, 468 U.S. 609, 623, 625 (1984) (state can impinge on Jaycees' First Amendment rights to further the compelling interest to eliminate gender discrimination); *United States v. Carolene Products Co.*, 304 U.S. 144, 153 n.4 (1938) ("There may be

[3] Given the variety of government interests the Court has addressed—from education, child safety and religious freedom to free speech and national security—and the variety of contexts in which the Court has addressed them—including the First Amendment, equal protection, and public safety—the analysis here, to be useful, must be limited to contexts relevant to this case.

narrower scope for operation of the presumption of constitutionality when legislation appears on its face to be within a specific prohibition of the Constitution, such as those of the first ten Amendments"); Roy G. Spece, Jr. & David Yokum, *Scrutinizing Strict Scrutiny*, 40 Vt. L. Rev. 286, 304-06 (2015).

Another aspect relevant to the compelling nature of a governmental interest is its unambiguous grounding in constitutional authority. *See, e.g.*, *Oregon v. Mitchell*, 400 U.S. 112, 237-38 (1970) ("From whatever constitutional provision this right [to travel] may be said to flow, both its existence and its fundamental importance to our Federal Union have long been established beyond). The compelling interest test is a means for the Court to evaluate carefully the importance of the reasons the government advances to justify its actions. An explicit grant of constitutional authority is strong textual confirmation of the importance of the interest asserted.

Thus, the Fifteenth Amendment provides "The right...to vote shall not be denied or abridged...on the account of race, color, or prior condition of servitude" and then specifies that "Congress shall have the power to enforce this article by appropriate legislation." U.S. Const. amend. XV. Such an express constitutional grant of Congressional authority to protect voting rights is tantamount to a textual instruction that the interest served by the legislation is compelling. *See South Carolina v. Katzenbach*, 383 U.S. 301, 324 (1966) ("The language and purpose of the Fifteenth Amendment . . . are a specific constitutional authorization for Congress to use any rational means to effectuate the constitutional prohibition of racial discrimination in voting."); *Katzenbach v. Morgan*, 384 U.S. 641, 650 (1966) ("By including § 5, the draftsmen

sought to grant to Congress, by a specific provision, the power to enforce the substantive guarantees contained in § 1 of the Fourteenth Amendment.").

Enforcement is broader than remediation. That the Fifteenth Amendment grants Congress enforcement authority does not limit that authority to rectifying violations of the Constitutional prohibition after-the-fact. As the Court stated in *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 490 (1989), "The power to 'enforce' may at times also include the power to define situations which Congress determines threaten principles of equality and to adopt prophylactic rules to deal with those situations." (emphasis omitted); *City of Rome v. United States*, 446 U.S. 156, 177 (1980) (Congress can prohibit voting barriers that do not violate the Constitution but that perpetuate past discrimination).

A third factor implicit in key cases finding a compelling government interest reflects the Court's careful assessment of such Congressional determinations regarding concrete threats to equality. In cases applying the compelling interest test, the Court appears to have focused on the specificity of the interest, that is, whether the government has targeted distinct deprivations that have a strong basis in evidence, rather than addressed broader social concerns. *See Shaw v. Hunt*, 517 U.S. 899, 909 (1996) ("'While the States and their subdivisions may take remedial action when they possess evidence' of past or present discrimination, 'they must identify that discrimination with some specificity before they may use race-conscious relief.'" quoting *Richmond v. J.A. Croson Co.*, 488 U.S. 469, 498 (1989) (O'Connor, J., concurring)); *Students for Fair Admissions, Inc. v. Pres. & Fellows of Harv. Coll.*, 600 U.S. 181, 226 (2023)

(SFFA) (compelling interest in "remediating specific, identified instances of past discrimination that violated the Constitution or a statute").

Each of these factors supports the conclusion that a state has a compelling interest in complying with Section 2.

II. Section 2 serves a compelling government interest because it protects voting rights and exercises authority expressly granted by the 15th Amendment.

Voting is the lifeblood of a democracy. It is the means for citizens to influence the laws that regulate their lives. This Court has recognized the transcendent importance of the right to vote, deeming it "a fundamental political right, because preservative of all rights." *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). In *Reynolds v. Sims*, 377 U. S. 533, 562 (1964), the Court specifically linked the importance of voting to the rigor of review, noting that, "Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." *See Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 670 (1966) ("the right to vote is too precious, too fundamental to be so burdened" by obstacles to cast a ballot); *Dunn v. Bluestein*, 405 U.S. 330, 336 (1972) ("In case after case, this Court has made clear that a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction.").

The right to vote is especially momentous for Black Americans. The Fifteenth Amendment specifically sought to protect access to the ballot for formerly

enslaved people who had only recently been freed. Senator William Stewart, the principal drafter of the Amendment, deemed the vote as, "the only safety for the freedman, the only guaranty of his rights." Cong. Globe, 40th Cong., 3d Sess. (1869). Yet for most of the twentieth century, Southern communities used every means imaginable, from literacy tests to lynchings, to prevent Black people from voting. In Mississippi in 1964, only 6.7 percent of eligible Black adults were registered to vote. U.S. Comm'n on C.R., *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination, Vol. VII, The Mississippi Delta Report* (February 2001), ch. 3 at n.67. The rate in Alabama was 19.3 percent, and in Louisiana, 31.6 percent. *Id.* Those percentages, moreover, reflect only the number permitted to register. Many registered Black voters were turned away (or worse) when they tried to vote.

The VRA sought to guarantee Black citizens the right to vote. This Court has recognized that the VRA reflected "Congress' firm intention to rid the country of racial discrimination in voting." *South Carolina v. Katzenbach*, 383 U.S. 301, 315 (1966); *see also Milligan*, 599 U.S. at 10 (many viewed the VRA as "the most successful civil rights statute in the history of the Nation") quoting S. Rep. No. 97-417, p. 111 (1982). The United States Department of Justice described the Act as "the single most effective piece of civil rights legislation ever passed by Congress." [4] U.S. Dep't of

[4] Despite the successes of the VRA generally, a judicial finding of a Section 2 violation in a jurisdiction means that this overall success has not reached that specific jurisdiction, which still reflects "inequality in the opportunities enjoyed by white and black voters" *Milligan*, 599 U.S. at 18, quoting *Gingles*, 478 U.S. at 48, that occurs "on account of race." 52 U.S.C. § 10301. *See* pp. x-x, *infra*.

Justice, Civil Rights Div., *Introduction to Federal Voting Rights Laws*, https://www.justice.gov/crt/introduction-federal-voting-rights-laws-0 (last visited Aug. 31, 2025).

The VRA expressly invokes the authority granted to Congress in the Fifteenth Amendment to enforce the ban on abridging or denying the right to vote based on race, color, or prior condition of servitude. U.S. Constitution. Amend. XV, Sec. 2 ("Congress shall have power to enforce this article by appropriate legislation."). The title of the law—its very first words—are "An ACT to enforce the fifteenth amendment to the Constitution of the United States, and for other purposes." Voting Rights Act, Pub. L. 89-110 (1965), 79 Stat. 437.

In Section 2 of the VRA, Congress effectuated the prohibition of the Fifteenth Amendment in terms that mirror the constitutional text: "No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied...in any manner which results in a denial or abridgement of the right of any citizen...to vote on account or race or color." 52 U.S.C. § 10301. Given this congruence, the Court has repeatedly recognized Section 2 of the Voting Rights Act as an exercise of Congressional authority granted under the 15th Amendment. Thus, the Court stated in *Gingles* that, "Congress enacted the results test of Section 2 as an appropriate method of enforcing the Fifteenth Amendment." 478 U.S. 43 n.7. Likewise, in *Shelby County v. Holder*, 570 U.S. 529, 557 (2013), the Court affirmed the constitutional grounding of Section 2, stating that the provision "bans any 'standard, practice, or procedure' that results in the denial or abridgement of the right to vote on account of race or color, as provided in the Fifteenth Amendment." *See also City of Rome v. United States*, 446 U.S. 156, 177 (1980) (the Fifteenth Amendment "empowers

Congress not only to bar practices that are unconstitutional under that Amendment but also to prohibit practices that in and of themselves do not violate the Constitution, but which in Congress' judgment perpetuate the effects of past discrimination").

It is difficult to conceive of a government interest more compelling than protecting the right to vote—a right elemental to our democratic experiment—under authority explicitly conferred by the Constitution to protect Black Americans.

III. When a court finds a Section 2 violation, the state has a compelling interest in remedying it.

In the portion of the Appellees' brief highlighted in this Court's order of August 1, 2025, Appellees contend that compliance with Section 2 is not a compelling state interest because the Black voting age population (BVAP) in Louisiana has dispersed across the state due to social advancements and Hurricane Katrina. Brief for Appellees at 36-38, *Louisiana v. Callais*, No. 24-109 (S. Ct. Aug. 1, 2025). This focus on aggregate data regarding statewide trends misconceives the function of Section 2, ignores the particularized proof of inequality and discrimination necessary to establish a Section 2 claim, and elides the inconvenient but critical fact that a federal district court found Louisiana's 2021 redistricting plan in violation of Section 2 and issued a preliminary injunction.

Contrary to Appellee's implication, Section 2 is not an unrefined, across-the-board effort to address "the effects of societal discrimination," *SFFA*, 600 U.S. at 226 (2022), nor does it promote an "amorphous concept of injury." *Id.* at 209 quoting *Regents of the University of Cal. v. Bakke*, 438 U.S. 265, 307 (1978) (Powell, J.,

concurring). The statute requires a plaintiff to make a rigorous showing, based on solid evidence and on "the totality of the circumstances," that the political processes in a State or its subdivision "are not equally open to participation by [a minority group] in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 52 U.S.C. § 10301(b). Interpreting this language, this Court in *Gingles* required Section 2 plaintiffs to prove concretely, for specific populations in specific geographic areas, the denial of equal opportunity to participate in the political process. *Gingles*, 478 U.S. at 79.

The aggregate trends Appellees cite can affect the ability of plaintiffs to make the requisite showing. A decline in residential segregation, for example, may make it more difficult to satisfy the first *Gingles* requirement, here, demonstrating the feasibility of drawing a compact Black majority district. *Milligan*, 599 U.S. at 28-29. But where, as here, a plaintiff has satisfied that requirement and won a preliminary injunction on their Section 2 claim, invoking aggregate data to contest the continued need to enforce Section 2 ignores the specific harms that real people incurred despite advances achieved on average.

A. The determinations required for a Section 2 violation identify problems that the State has a compelling interest in rectifying.

In *Milligan*, this Court affirmed that a finding of violation under Section 2 necessarily reflects a determination that the State's electoral law, practice, or structure "interacts with social and historical forces to cause an inequality in the opportunities enjoyed by white and black voters." 599 U.S. at 17-18, quoting *Gingles*, 478 U.S. at 47. The inequality of opportunity

occurs, the Court found, where an "'electoral structure operates to minimize or cancel out' minority voters' 'ability to elect their preferred candidates.'" *Milligan*, 599 U.S. at 18, quoting *Gingles*, 478 U.S. at 48. Voters of color confront such inequality of opportunity when they "face—unlike their majority peers—bloc voting along racial lines, arising against the backdrop of substantial racial discrimination within the State, that renders a minority vote unequal to a vote by a nonminority voter." *Milligan*, 599 U.S. at 25.

To establish inequality of opportunity that violates Section 2, plaintiffs must satisfy the preconditions set forth in *Gingles*, designed to establish that the racial or ethnic group has suffered harms the State has a compelling interest in addressing. First, the Court held in *Gingles*, "the minority group must be . . . sufficiently large and geographically compact to constitute a majority in a single-member district." 478 U.S. at 50. This showing is necessary to prove that the group could have had an opportunity to elect preferred candidates but for the current political structure.

Second, the racial or ethnic group must establish political cohesiveness. *See id*. at 56. This criterion is necessary to show that the group's candidate could have been elected were it not for the political action taken by the state or political subdivision.

Third, the racial or ethnic group must demonstrate that the "majority votes sufficiently as a bloc to enable it . . . to defeat the minority's preferred candidate." *Id.* at 58. This precondition "'establish[es] that the challenged districting thwarts a distinctive minority vote' at least plausibly on account of race." *Milligan*, 599 U.S. at 18, quoting *Growe v. Emison*, 507 U.S. 25, 40 (1993). Again, the State has a compelling interest in remediating this harm. *See Robinson v. Ardoin*, 37

F.4th 208, 224 (5th Cir. 2022) ("the question posed by the third *Gingles* precondition is concrete: If the state's redistricting plan takes effect, will the voting behavior of the white majority cause the relevant minority group's preferred candidate 'usually to be defeated'?" (citation omitted)).

If the plaintiff satisfies these preconditions, it must show that under the totality of the circumstances, members of the racial or ethnic group had less opportunity than members of the White majority to participate in the political process. The circumstances that the plaintiffs must show and that the court must consider include the legacy of official discrimination in voting, education, housing, employment, and health services and the persistence of campaign appeals to racial prejudice. *Gingles*, 478 U.S. at 80.

In sum, the Court concluded in *Milligan*, the "exacting requirements" of *Gingles* "limit judicial intervention to 'those instances of intensive racial politics' where the 'excessive role [of race] in the electoral process . . . den[ies] minority voters equal opportunity to participate.'" 599 U.S. at 30, quoting S. Rep. No. 97-417, pp. 33-34 (1982).

The Court has held that "§ 2 turns on the presence of discriminatory effects, not discriminatory intent." *Milligan*, 599 U.S. at 25. To be sure, the government's interest is at its most compelling when it acts to counter intentional discrimination. See *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 720 (2007) (noting that remedying the effects of past intentional discrimination is a compelling interest under the strict scrutiny test). But invidious discriminatory intent does not mark the boundary of the government's compelling interest. For one, the third *Gingles* factor demonstrates that whether or not

the State's redistricting intentionally sought to harm a racial or ethnic group, "'the challenged districting thwarts a distinctive minority vote' at least plausibly *on account of race*." *Milligan*, 599 U.S. at 19, quoting *Gingles*, 479 U.S. at 79, and "against the backdrop of substantial racial discrimination within the State." 599 U.S. at 25. Second, a state found to have violated Section 2 in a vote dilution case has drawn maps knowing that they will disproportionately harm voters of color. The racial effect might not be the principal objective of the plan. The legislature, perhaps, also could be pursuing objectives such as partisan advantage, which—when voting is racially polarized—can be entangled with race. But a state cannot use race as a proxy to achieve other purposes, including partisan advantage. *See Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 7 n.1 (2024).

A finding that a state or political subdivision has engaged in vote dilution in violation of Section 2 reflects a judicial determination—on a preliminary injunction or otherwise—that the jurisdiction denied equal opportunity to voters of color. That denial of opportunity is tied to specifically proven, localized racial conditions and actions, and in many instances is linked with ongoing discrimination and racial appeals in campaigns. To allow such conditions to persist undermines democratic legitimacy, fosters resentment, and introduces political instability. In the face of such a finding, the state has a compelling interest in an effective remedy.

B. While purporting to recognize a compelling state interest in compliance with Section 2, the court below wrongly treated Louisiana's effort to remedy its Section 2 violation as establishing that race predominated in creating the plan.

Remedying a violation of Section 2 requires consideration of race. *See Bush v. Vera*, 517 U.S. 952, 958 (1996) (showing the deliberate consideration of race in drawing of district lines does not in and of itself invite constitutional suspicion); *Shaw v. Reno*, 509 U.S. 630, 646 (1993) ("districting differs from other kinds of state decision-making in that the legislature is always aware of race when it draws district lines. That sort of race consciousness does not lead inevitably to impermissible race discrimination."). As Justice Souter wrote in his *Shaw I* dissent, there is a "legitimate consideration of race in a districting decision" which is "inevitable under the Voting Rights Act when communities are racially mixed." *Shaw I*, 509 U.S., at 683 (Souter, J., dissenting). Although the VRA does not grant states unlimited authority to rely on race in redistricting, a Section 2 inquiry "involves a quintessentially race-conscious calculus." *Milligan*, 599 U.S. 1 at 32, quoting *Johnson v. De Grandy*, 512 U.S. 997, 1020 (1994). In failing to appreciate the legal significance of the predicate Section 2 violation here, the court below undervalued the interests the State was vindicating. The court equated the legislature's racial awareness with racial predominance—despite the substantial evidence demonstrating that political considerations drove the configuration of the remedial districting scheme.

IV. This Court should encourage legislatures to enact Section 2-compliant maps, not penalize their efforts to comply with court orders.

In this instance, the district court found in *Robinson v. Ardoin*, 605 F. Supp. 3d 759, 851 (M.D. La. 2022), that the 2021 redistricting plan violated Section 2. The court of appeals affirmed that conclusion. *Robinson v. Ardoin*, 86 F.4th 574 (5th Cir. 2023). The compelling government interest in remedying that violation is unequivocal.

It would be cumbersome and counterproductive, however, to confine effective remedies under Section 2 only to litigated cases after a finding of violation. Section 2 applies to all 50 states and thousands of political subdivisions. Compliance with Section 2 is not optional. Redistricting in these jurisdictions must satisfy federal law, and legislatures should create compliant maps without being forced to do so in litigation. Many legislatures understand this, which is why compliance with Section 2 is typically one of their stated redistricting criteria, along with other traditional districting principles. *See, e.g.*, Nat'l Conf. State Legislatures, 2020 Redistricting Criteria, https://www.ncsl.org/elections-and-campaigns/2020-redistricting-criteria (last visited Aug. 31, 2025) (collecting state constitutions, laws, and guidelines reflecting compliance with the VRA is required or incorporated).

The history of Section 2 reflects multiple examples where jurisdictions settled or chose to address Section 2 without a judicial finding of Section 2 liability. A *per se* rule that effectively subjects every redistricting plan drawn to comply with Section 2 to strict scrutiny would undermine judicial economy and interfere with state sovereignty, while further weakening VRA

protections afforded to marginalized communities that experience vote dilution.

CONCLUSION

A holding that Louisiana does not have a compelling interest in considering race to comply with Section 2 would amount to judicial nullification of the key provision of the VRA. The experience after *Shelby County* foreshadows the consequences, a spree of unchecked voter suppression and illegal gerrymandering measures that would undermine equal representation, devalue core American principles, and put democratic institutions in peril. There is no justification, legal or otherwise, to incur that risk.

For the foregoing reasons, the Court should hold that Louisiana had a compelling interest in considering race to comply with Section 2 of the VRA.

Respectfully submitted,

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