

Nos. 25-273, 25-274

In the Supreme Court of the United States

WES ALLEN, in his official capacity as Alabama
Secretary of State, *et al.*,
Appellants,

v.
BOBBY SINGLETON, *et al.*,
Appellees.

WES ALLEN, in his official capacity as Alabama
Secretary of State, *et al.*,
Appellants,

v.
EVAN MILLIGAN, *et al.*,
Appellees.

*On Appeal from the United States District Court
for the Northern District of Alabama*

**BRIEF OF *AMICUS CURIAE* RESTORING
INTEGRITY AND TRUST IN ELECTIONS
(RITE) IN SUPPORT OF APPELLANTS**

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INTEREST OF AMICUS CURIAE*

This Court has held that §2 of the Voting Rights Act prohibits States from adopting legislative maps that impermissibly “dilute” the power of minority voter groups. Therefore, to avoid violating §2, States must consider race in the districting context. This puts States in a “lose-lose situation.” Jurisdictional Statement at 1 (“JS”), *Allen v. Singleton*, No. 25-273 (quoting *Alexander v. S.C. Conf. NAACP*, 602 U.S. 1, 65 (2024) (Thomas, J., concurring)). “Consider race too much and violate the Fourteenth Amendment.” *Id.* “Consider race too little and violate the Voting Rights Act.” *Id.*

This situation is untenable. “Either there is a way for States to comply with §2 without making race the criterion that cannot be compromised, or the clock has run out [on] §2’s authorization of ‘race-based redistricting,’ which ‘cannot extend indefinitely into the future.’” *Id.* (quoting *Allen v. Milligan*, 599 U.S. 1, 45 (2023) (Kavanaugh, J., concurring)). Alabama’s jurisdictional statement invites the Court to select from these options.

Restoring Integrity and Trust in Elections, Inc. (RITE) files this brief to expand upon a consideration that ought to guide the Court’s decision. Specifically, RITE explores the unworkability and

* No counsel for any party authored this brief in whole or in part, and no person other than the *amicus curiae*, its members, or its counsel made a monetary contribution intended to fund the preparation or submission of the brief. See Rule 37.6. In compliance with Rule 37.2, counsel for RITE notified the parties’ counsel of RITE’s intent to file this brief more than 10 days before its due date.

incoherence of the “*Gingles* test” this Court applies to vote-dilution claims. See *Thornburg v. Gingles*, 478 U.S. 30 (1986).

For nearly four decades, *Gingles* has forced courts to make inherently political judgments about racial representation without clear legal standards. By abandoning *Gingles*—either by adopting an alternative test or ending race-based districting altogether—the Court can extricate federal courts from the sordid and politically fraught process of overseeing race-based voting districts. Race-based districting undermines public confidence in our democratic institutions and the federal judiciary. To borrow a phrase, the Court “should get out of this area, where” it has “no right to be, and where” it does “neither” itself “nor the country any good by remaining.” *Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833, 1002 (1992) (Scalia, J., concurring in the judgment in part and dissenting in part).

These issues directly implicate RITE’s mission. RITE is committed to ensuring that “[e]lectorate systems” are “designed, safeguarded, and implemented in a manner that reflects the will of our citizens so that electoral results enjoy the public’s full faith and confidence.” *Our Mission*, Restoring Integrity and Trust in Elections, <https://riteusa.org/our-mission/>. That mission is hindered by decisions like the one below, which force States to abandon traditional districting principles and divide communities of interest while stoking racial divisions.

SUMMARY OF ARGUMENT

Alabama’s jurisdictional statement urges the Court to hold that race-based districting can no longer be justified under the Fourteenth Amendment. It observes that the Fourteenth Amendment permits race-based distinctions *only* in service of goals that are “sufficiently measurable to permit judicial review.” *SFFA v. Harvard*, 600 U.S. 181, 214 (2023) (quoting *Fisher v. Univ. of Texas at Austin*, 579 U.S. 365, 381 (2016)) (brackets omitted). And Alabama argues that vote-dilution claims pursue no such goal: “In truth, there is a Rorschach test for §2 ‘dilution’” claims, “but no legal test.” JS.19. As a result, courts can hardly define impermissible dilution, let alone determine whether the race-based distinctions required by *Gingles* are making any progress toward the satisfaction of whatever goal *Gingles* serves.

Alabama is correct that the Court has failed to adopt a principled, administrable framework for assessing vote-dilution claims. Instead, the governing “*Gingles* framework”—which requires courts to make what amounts to an *ad hoc* judgment about whether legislative maps unduly dilute minority voting power—lacks judicially manageable standards. *Gingles* requires courts to answer an inherently non-legal and entirely offensive question: How much political power do different racial groups deserve? Without an answer to that question, there is no way to assess whether a minority group’s political power has been impermissibly diluted. But attempting an answer requires courts to choose among competing theories of political philosophy. And because no law could ever

resolve this question, the inquiry inherently devolves into abstract notions of fairness. (Unless it first devolves into statutorily impermissible, non-race-neutral assessments of proportionality. 52 U.S.C. §10301(b); *Allen v. Milligan*, 599 U.S. 1, 43 (Kavanaugh, J., concurring).) This Court’s decision in *SFFA v. Harvard* warns against the adoption of standards requiring courts to engage with “inescapably imponderable” questions. 600 U.S. at 215. Yet that is precisely what *Gingles* entails. And four decades’ “experience trying to derive” from *Gingles* a workable test approximating law should convince this Court that it has “embarked upon a failed enterprise.” *Johnson v. United States*, 576 U.S. 591, 601–02 (2015).

Beyond being unworkable, *Gingles* inflicts severe damage on public trust in the country’s democratic institutions and the federal courts. By mandating racial sorting in redistricting, *Gingles* forces States to divide communities along racial lines, perpetuating the offensive and false assumption that members of racial groups think alike and share uniform political interests that differ markedly in important ways from those of their neighbors and fellow citizens. This Court-mandated racial balkanization undermines progress toward the society our Constitution envisions. Meanwhile, federal courts are forced to make inherently political judgments about racial representation, damaging their credibility and exceeding their proper constitutional role.

Stare decisis does not save *Gingles*. The decision is unworkable, as demonstrated by decades of conflicting lower-court decisions and this Court’s

own inability to articulate clear standards. It contradicts this Court’s holdings in *Rucho* and *Harvard*, both of which counsel against tests that require courts to assess compliance with ineffable goals. Moreover, developments since 1986, when the Court invented the *Gingles* framework, show dramatic improvements in minority political participation and weakening racial polarization, undermining whatever justification *Gingles* once had. No legitimate reliance interests support retaining a framework that mandates racial sorting in legislative districting.

ARGUMENT

In *Louisiana v. Callais*, this Court will consider whether the “intentional creation of a ... majority-minority congressional district violates the Fourteenth or Fifteenth Amendments.” Order, Nos. 24-109 & 110 (Aug. 1, 2025). If the Court answers that question in the affirmative, the *Gingles* framework—which rests on the assumption that the Voting Rights Act may, at times, *require* legislatures to draw majority-minority districts—will not survive.

These cases are an ideal companion to *Callais*. Alabama’s appeal invites the Court to recognize that the *Gingles* framework is neither coherent nor workable. The fact that race-conscious districting led to the creation of so flawed a test may inform the result in *Callais*. And should the Court in *Callais* hold that the Constitution permits race-conscious districting, this Court will need to craft a new approach—if there is one—to govern vote-dilution claims so that lower courts can resolve in an

orderly fashion the flood of districting litigation that will follow.

One note before proceeding. The jurisdictional statements in these cases raise many of the same arguments as the petition for certiorari before judgment in *Allen v. Caster*, 25-243. Thus, RITE’s arguments in this brief apply with equal force to *Caster*. Rather than burden the Court with an additional, nearly identical filing, RITE notes the overlap and urges the Court to grant certiorari in *Caster* when it accepts jurisdiction in these cases.

I. The *Gingles* Test is Unworkable

The *Gingles* framework fails to provide clear, manageable standards that the rule of law requires. The problem stems from inherent deficiencies with *Gingles* itself.

Gingles’ test purports to interpret Section 2 of the Voting Rights Act. Understanding *Gingles*’ problems requires understanding the evolution of that statutory text.

As originally enacted, Section 2 “closely tracked the language of the Fifteenth Amendment.” *Allen v. Milligan*, 599 U.S. 1, 10–11 (2023) (quoting *Brnovich v. DNC*, 594 U.S. 647, 656 (2021)) (alterations omitted). And Section 2, like the Fifteenth Amendment, was interpreted to forbid only *intentional* discrimination—it did not “prohibit [election] laws that [were] discriminatory only in effect.” *Id.* at 11.

In the early 1980s, Congress began considering an amendment to Section 2 that would address this perceived deficiency by adding an effects test.

But how would any such test operate? One option would be to adopt a proportionality test, at least with respect to laws governing legislative districting. Under a proportionality approach, a law could be said to have a discriminatory effect whenever “a minority group won fewer seats in the legislature than its share of the population.” *Id.* at 12. “But mandating racial proportionality in elections was regarded by many as intolerable”; the public might resent it, and adopting such an approach might “generate more, not less, racial and ethnic polarization.” *Id.* (quotation omitted).

Disagreement, as it often does, produced a compromise: “Section 2 would include the effects test that many desired but also a robust disclaimer against proportionality.” *Id.* at 13. That compromise is embodied in the statutory text that applies today:

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 10303(f)(2) of this title, as provided in subsection (b).

(b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in

the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) 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. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

52 U.S.C. §10301.

This seemingly contradictory command left courts and litigants with little guidance: if there is no right to proportionality, what does it mean for a law to give minority voters “less opportunity than other members of the electorate to ... elect representatives of their choice”? Put differently, given that there is no right to proportional representation, what is the proper baseline against which to measure minority voters’ diminished “opportunity” to elect their preferred representatives?

The Court took up this question in *Gingles*, a challenge to “North Carolina’s multimember districting scheme, which allegedly diluted the vote of” the State’s “black citizens.” *Milligan*, 599 U.S. at 17 (citing *Gingles*, 478 U.S. at 34–36). And *Gingles* announced a multi-step test for adjudicating such vote-dilution claims under Section 2. The test

begins by requiring plaintiffs to satisfy three pre-conditions. First, plaintiffs must show that the “minority group” is “sufficiently large and geographically compact to constitute a majority in a reasonably configured district.” *Id.* at 18 (quotation and brackets omitted). “Second, the minority group must be able to show that it is politically cohesive.” *Id.* (quoting *Gingles*, 478 U.S. at 51). “And third, ‘the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it ... to defeat the minority’s preferred candidate.’” *Id.* (quoting *Gingles*, 478 U.S. at 51). If and only if the plaintiff can make these showings, it must additionally “show, under the ‘totality of circumstances,’ that the political process is not ‘equally open’ to minority voters.” *Id.* (quoting *Gingles*, 478 U.S. at 45–46).

As this description shows, *Gingles* clarifies nothing—it simply announces three pre-conditions that must be met before courts address the still-unanswered question of what it means for the political process to be not “equally open” to minority voters. In other words, *Gingles* fails to identify the benchmark against which claims for vote-dilution must be measured.

The benchmark *Gingles* never identifies, however, is the most important aspect of a vote-dilution claim. Remember, the essence of a vote-dilution claim is that a State has made it *too hard* for minorities to elect their preferred candidates. But “to decide whether an electoral system has made it harder for minority voters to elect the candidates they prefer, a court must have an idea in mind of how hard it ‘should’ be for minority voters to elect

their preferred candidates under an acceptable system.” *Gingles*, 478 U.S. at 88 (O’Connor, J., concurring in the judgment). On this point, *Gingles* leaves courts at sea. As Justice Frankfurter recognized decades earlier, “[t]alk of ‘debasement’ or ‘dilution’ is circular talk.” *Baker v. Carr*, 369 U.S. 186, 300 (1962) (Frankfurter, J., dissenting). It is impossible to “speak of ‘debasement’ or ‘dilution’ of the value of a vote until there is first defined a standard of reference as to what a vote should be worth.” *Id.*

It is no wonder that, despite nearly four decades of trying, the Court has “never succeeded in translating the *Gingles* framework into an objective and workable method of identifying the undiluted benchmark.” *Milligan*, 599 U.S. at 69 (Thomas, J., dissenting). Without that benchmark, courts must embark on “a hopeless project of weighing questions of political theory.” *Holder v. Hall*, 512 U.S. 874, 892 (1994) (Thomas, J., concurring).

One challenge to identifying a benchmark stems from the dubious premise on which *Gingles* claims rest: that certain groups—here, racial groups—“should enjoy a ... level of political power and influence” commensurate with their numbers in a particular state. *Rucho v. Common Cause*, 588 U.S. 684, 704 (2019). Section 2 “claims invariably sound in a desire for proportional representation.” *Id.* The logic goes: “the greater the departure from proportionality, the more suspect an apportionment plan becomes.” *Id.* (quoting *Davis v. Bandemer*, 478 U.S. 109, 159 (1986) (O’Connor, J., concurring in the judgment)).

The problem with this logic is that “[f]orcing proportional representation is unlawful and inconsistent with this Court’s approach to implementing § 2.” *Milligan*, 599 U.S. at 28. Again, Section 2 itself says that “nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.” §10301(b). Further, the rest of Section 2 guarantees equality in access and opportunity; it does not prohibit laws simply because they have a disparate impact on some racial group. *Brnovich v. Democratic Natl. Committee*, 594 U.S. 647, 674 (2021). But a proportionality baseline would measure for disparate impacts. *Milligan*, 599 U.S. at 53 (Thomas, J., dissenting). And using such a baseline would undermine the use of “traditional districting criteria such as county, city, and town lines.” *Id.* at 43 (Kavanaugh, J., concurring).

Yet despite the Court’s rejections of proportionality, “the gravitational force of proportionality” remains strong. *Id.* at 72 (Thomas, J., dissenting). As a result, courts, like the District Court in these cases, end up “cracking and packing” racial groups to “ensure each [group receives] its ‘appropriate’ share of ‘safe’ seats.” *Rucho*, 588 U.S. at 706.

Those courts that do not rely on proportionality inevitably “make their own political judgment about how much representation particular [racial groups] deserve,” and “rearrange the challenged districts to achieve that end.” *Id.* at 705. In other words, they resort to “fairness.” *Id.* But judges, just like legislators and executive-branch officials, are constitutionally barred from weighing the benefits and burdens assignable to each race: “Our

constitution is color-blind, and neither knows nor tolerates classes among citizens.” *Harvard*, 600 U.S. at 278 (Thomas, J., concurring) (quoting *Plessy v. Ferguson*, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting)). Beyond that, “federal courts are not equipped” to dole out political power “as a matter of fairness, nor is there any basis for concluding that they were authorized to do so.” *Rucho*, 588 U.S. at 705. As is often the case, Justice Scalia put it best in one of his opinions for the Court:

‘Fairness’ does not seem to us a judicially manageable standard ... Some criterion more solid and more demonstrably met than that seems to us necessary to enable the state legislatures to discern the limits of their districting discretion, to meaningfully constrain the discretion of the courts, and to win public acceptance for the courts’ intrusion into a process that is the very foundation of democratic decisionmaking.

Vieth v. Jubelirer, 541 U.S. 267, 291 (2004).

Deciding between proportionality or some other seemingly fair distribution “poses basic questions that are political, not legal.” *Rucho*, 588 U.S. at 707. Section 2 contains no discernable legal standards “for making such judgments, let alone limited and precise standards that are clear, manageable, and politically neutral.” *Id.* “Any judicial decision on what is ‘fair’ in this context would be an ‘unmoored determination’ of the sort characteristic of a political question beyond the competence of the

federal courts.” *Id.* (quoting *Zivotofsky v. Clinton*, 566 U.S. 189, 196 (2012)).

The Court more recently rejected a legal framework lacking judicially manageable standards in the affirmative-action context. *See Harvard*, 600 U.S. 181. Before *Harvard*, universities defended their consideration of race in affirmative-action programs on the ground that these programs helped “prepar[e] engaged and productive citizens and leaders,” and helped “enhanc[e] appreciation, respect, ... empathy, cross-racial understanding, and breaking down stereotypes.” *Id.* at 214 (quoting *Students for Fair Admissions, Inc. v. Univ. of North Carolina*, 567 F. Supp. 3d 580, 656 (M.D.N.C. 2021)). As *Harvard* acknowledged, however, it was not clear how courts were to measure such goals—no matter how commendable those goals might be. *See id.* And even if those goals “could somehow be measured,” it was still unclear how courts were “to know when they [had] been reached, and when the perilous remedy of racial preferences [could] cease.” *Id.*

The question in the affirmative-action cases, like the question here, was one of “degree.” *Id.* at 215. “How many fewer leaders Harvard would create without racial preferences, or how much poorer the education at Harvard would be.” *Id.* These were not questions that any court “could resolve,” just as no court can resolve whether a racial group’s voting power has been excessively diluted. *Id.* Such questions “are inescapably imponderable.” *Id.*

Gingles’ inherent deficiencies have spawned an “area of law notorious for its many unsolved puzzles.” *Milligan*, 599 U.S. at 68 (2023) (Thomas, J., dissenting) (quoting J. Chen & N. Stephanopoulos, *The Race-Blind Future of Voting Rights*, 130 Yale L. J. 862, 871 (2021)). In *Holder v. Hall*, 512 U.S. 874, for example, the Court produced no majority opinion and split multiple ways on the question whether a single-member commission in Bleckley County, Georgia, violated Section 2. Meanwhile, lower courts have repeatedly struggled to apply *Gingles*’ three preconditions and *Gingles*’ totality-of-circumstances analysis. See, e.g., *Wisconsin Legis. v. Wisconsin Elections Comm’n*, 595 U.S. 398, 404–05 (2022) (Wisconsin Supreme Court “fell short of [the Court’s] standards” when applying *Gingles*’ three preconditions and improperly reduced *Gingles*’ totality-of-circumstances analysis to a single factor); *Abbott v. Perez*, 585 U.S. 579, 607 (2018) (district court misapplied *Gingles*’ three preconditions and totality-of-circumstances analysis); *Johnson v. De Grandy*, 512 U.S. 997, 1013 (1994) (district court was not “critical enough” in applying totality-of-the-circumstances factor).

Unless and until the Court overrules or substantially reforms the *Gingles* test, the Court can expect that “a steady stream of § 2 vote-dilution cases” will continue to swell its docket. *Brnovich*, 594 U.S. at 660. And that does no one any good—save perhaps the lawyers who can drive up their billable hours bringing and defending against these claims.

II. *Gingles* Undermines Public Trust in the Democratic Process and Federal Courts

The *Gingles* test is worse than unworkable—it is deeply damaging to the public’s trust in the democratic process and federal courts. *Gingles* “encourage[s] a conception of politics as a struggle for power between ‘competing racial factions.’” *Milligan*, 599 U.S. at 86 (2023) (Thomas, J., dissenting) (quoting *Shaw v. Reno*, 509 U.S. 630, 657 (1993)). It “indulges the pernicious tendency of assigning Americans to ‘creditor’ and ‘debtor races,’ even to the point of redistributing political power on that basis.” *Id.* (quoting *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 239 (1995) (Scalia, J., concurring in part and concurring in judgment)) (brackets omitted). It perpetuates “race-based redistricting” resulting in “divisive consequences long into the future.” *Id.* It “place[s] States in the impossible position of having to weigh just how much racial sorting is necessary to avoid the ‘competing hazards’ of violating §2 and violating the Constitution.” *Id.* (quoting *Abbott*, 585 U.S. at 587). And it prolongs “immeasurably the day when the ‘sordid business’ of ‘divvying us up by race’ is no more.” *Id.* (quoting *League of United Latin American Citizens v. Perry*, 548 U.S. 399, 511 (2006) (plurality op.)).

Worse, all of this occurs in the politically sensitive context of districting—a “most difficult subject for legislatures.” *Miller v. Johnson*, 515 U.S. 900, 915 (1995). Legislatures contend with a “complex interplay of forces” when fashioning electoral districts. *Id.* at 915–16 (citing *Shaw*, 509 U.S. at 646). It is not easy exercising “the political judgment

necessary to balance” these “competing interests.” *Id.* at 915. But the task becomes infinitely harder when the *Gingles* test requires engaging in just the right amount of “racial sorting” to avoid violating Section 2 on the one hand and the Constitution on the other. See *id.*

Gingles has likewise damaged “the credibility of the Federal Judiciary.” *Milligan*, 599 U.S. at 91 (Thomas, J., dissenting). Federal court review “of districting legislation” already “represents a serious intrusion on the most vital of local functions.” *Abbott*, 585 U.S. at 603 (quoting *Miller*, 515 U.S. at 915). It is therefore “vital in such circumstances that the Court act only in accord with especially clear standards.” *Rucho*, 588 U.S. at 704 (2019). By that measure, however, *Gingles* and its progeny have been a total failure: they *require* that courts make inherently political judgments in an inherently political—and inherently heated—context. One side’s ox is bound to be gored in all litigation. When that results from neutral legal principles, that side can at least find peace in the knowledge that *the law* dictated the result in its case. Losing parties will find no such peace in cases decided on contested and unfalsifiable assertions sounding in abstract fairness concerns and political theory.

Exacerbating the problem, for nearly forty years, *Gingles* has required federal courts to “methodically carv[e] the county into racially designated electoral districts.” *Milligan*, 599 U.S. at 49 (Thomas, J., dissenting) (quotation omitted). In so doing, courts have “balkanize[d]” the country into “competing racial factions” and hindered progress toward “a political system in which race no longer

matters.” *Id.* at 54 (quoting *Shaw*, 509 U.S. at 657). The result has been nothing short of “political apartheid.” *Holder*, 512 U.S. at 905 (Thomas, J., concurring). Blacks are placed in “black districts” to elect “black representatives”; Hispanics are placed in “Hispanic districts” to elect “Hispanic representatives”; and the cycle continues. *Id.*

The pernicious assumption underlying this “racial apartheid,” *id.*, is that “members of [a] racial group must think alike and ... their interests are so distinct” that they must receive their own legislative representatives to voice their “unique point of view,” *id.* at 906. Relatedly, this rationale assumes that blacks cannot adequately represent whites and vice versa. This system, whatever label it is given, “is a divisive force in a community, emphasizing differences between candidates and voters that are irrelevant.” *Id.* (quoting *Wright v. Rockefeller*, 376 U.S. 52, 66 (1964) (Douglas, J., dissenting)). “In short, few devices could be better designed to exacerbate racial tensions than the consciously segregated districting system currently being” overseen by the federal courts and “constructed in the name of the Voting Rights Act.” *Id.* at 907.

“The way to stop discrimination on the basis of race is to stop discriminating on the basis of race.” *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 748 (2007) (plurality op.). That is just as true in the districting context as it is in every other.

III. *Stare Decisis* Does Not Justify Keeping *Gingles*

Stare decisis should be no barrier to overruling *Gingles*. “*Stare decisis* is not an ‘inexorable command.’” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 407 (2024) (quoting *Payne v. Tennessee*, 501 U.S. 808, 828 (1991)). And the *stare decisis* factors most relevant here—(1) “the workability of the rule [*Gingles*] established,” (2) “its consistency with other related decisions,” (3) “developments since the decision was handed down,” and (4) “reliance on the decision”—all counsel in favor of discarding *Gingles*. *Janus v. Am. Fed’n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. 878, 917 (2018)

Unworkable. As explained above, the *Gingles* test is unworkable. Its logic is circular and it assigns to courts the inherently legislative task of “choos[ing] among ... competing theories of political philosophy.” *Holder*, 512 U.S. at 905 (Thomas, J., concurring) (quotation omitted). As a result, the Court has “never succeeded in translating the *Gingles* framework into an objective and workable” test. *Milligan*, 599 U.S. 1, 69 (Thomas, J., dissenting).

Inconsistent. *Gingles* is in severe tension with this Court’s other caselaw. As noted above, the Court has recognized in affirmative-action cases that the judicial branch should not be attempting to resolve “inescapably imponderable” questions. *Harvard*, 600 U.S. at 215. But that is exactly what *Gingles* asks courts to do when requiring them to determine whether a minority group’s voting

power is too diluted under a State's districting map.

Gingles is also squarely at odds with the Court's decision in *Rucho*, where the Court held that partisan gerrymandering claims present nonjusticiable political questions. 588 U.S. at 718. *Gingles* claims, like partisan-gerrymandering claims, nearly always "sound in a desire for proportional representation." *Id.* at 704. "But federal courts are not equipped to apportion political power as a matter of fairness, nor is there any basis for concluding that they were authorized to do so." *Id.* at 705.

Subsequent Developments. Societal developments since the Court decided *Gingles* reinforce the view that the decision has outlived any useful purpose it ever served. "Things have changed in the South." *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 202 (2009). "Voter turnout and registration rates now approach parity. Blatantly discriminatory evasions of federal decrees are rare. And minority candidates hold office at unprecedented levels." *Id.* Congress acknowledged as much when it reauthorized the Voting Rights Act in 2006. See H.R.Rep. 109-478, at 12–19 (2006). There have been "significant increases in the number of African-Americans serving in elected offices." *Id.* at 18. In particular, the number of African Americans holding office in the six States originally covered by the Voting Rights Act has increased by roughly 1000 percent. See *id.*

Not only that, but there has also been a material decline in racial polarization within the two major political parties. For example, in 2020, the

Democratic presidential nominee won Hispanic voters by 25 percentage points relative to the Republican presidential nominee. See Pew Research Center, *Voting Patterns in the 2024 Election* (June 26, 2025), <https://perma.cc/C3AX-TTQZ>. The Democratic nominee won by an even greater percentage in 2016. *Id.* But in 2024, the Republican nominee drew “nearly even” with the Democratic nominee “among Hispanic voters, losing among them by only 3 points.” *Id.* And among blacks, the Republican nominee “nearly doubled his support” between 2020 and 2024: 8 percent voted for him in 2020 as compared to 15 percent in 2024. *Id.* These statistics undermine *Gingles*’ corrosive assumption that “members of [a] racial group must think alike.” *Holder*, 512 U.S. at 906.

“Our country has changed,” and whatever merits *Gingles* once had, the decision no longer “speaks to current conditions.” *Shelby Cnty. v. Holder*, 570 U.S. 529, 557 (2013).

Reliance. No reliance interests justify retaining *Gingles*. For one thing, *Gingles* has not created any reliance interests: its unworkability and incoherence keep anyone from relying upon it. Beyond that, any reliance interests resting on race-based thinking are properly disregarded. “*Stare decisis* did not save ‘separate but equal,’ despite its repeated reaffirmation in this Court and the pervasive reliance States had placed upon it for decades.” *Milligan*, 599 U.S. at 49 (Thomas, J., dissenting). “It should not rescue modern-day forms of *de jure* racial balkanization—which,” as this case shows, “is exactly where” the Court’s Section 2 “vote-dilution jurisprudence has led.” *Id.* at 49.

Saying that *Gingles* ought to be discarded does not mean that anything specific ought to take its place. For one thing, *Louisiana v. Callais* may hold race-based districting unconstitutional. If that is true, Section 2 vote-dilution claims will disappear and there will no longer be work for *Gingles* to do.

Regardless, the Court can discard *Gingles* without identifying anything else to replace it. The onus would then fall to vote-dilution plaintiffs to find a statutorily defensible alternative. (Or Congress could enact a new statute.) If there is no statutorily defensible alternative, then courts should simply stop adjudicating vote-dilution claims: when a statute provides no answer to a question before a court, the role of a court is to say so and rule against the party relying upon that statute. Frank H. Easterbrook, *Statutes' Domains*, 50 U. Chi. L. Rev. 533 (1983). Indeed, to assume that a statute “must supply an answer to the question presented” entails “resolv[ing] an important question in favor of the party invoking it.” *Id.* at 533. All this follows from the principle that an “unintelligible text is inoperative.” Antonin Scalia & Bryan A. Garner, *Reading Law* §16, p.134 (2012). Section 2 is unintelligible—it functions like an inkblot—insofar as it purports to prohibit something indescribable. “To give meaning to what is meaningless is to create a text rather than to interpret one.” *Id.* And the creation of text is a job for Congress, not the courts.

CONCLUSION

This Court should note probable jurisdiction and reverse the District Court.

Respectfully submitted,

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