Nos. 24-109, 24-110

IN THE
Supreme Court of the United States

STATE OF LOUISIANA, et al.,
Appellants,
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 *AMICUS CURIAE*
THE BRENNAN CENTER FOR JUSTICE AT
NEW YORK UNIVERSITY SCHOOL OF LAW
IN SUPPORT OF PRESS ROBINSON, ET AL., APPELLANTS

MICHAEL C. LI
BRENNAN CENTER FOR JUSTICE
120 Broadway, Suite 1750
New York, New York 10271
(646) 292-8310

KAREEM U. CRAYTON
Counsel of Record
MAURA EILEEN O'CONNOR
BRENNAN CENTER FOR JUSTICE
1140 Connecticut Ave., NW,
Suite 1150
Washington, D.C. 20036
(202) 249-7190
craytonk@brennan.law.nyu.edu

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INTEREST OF *AMICUS CURIAE*[1]

Named for the late Associate Justice William J. Brennan, Jr., the Brennan Center for Justice at New York University School of Law[2] is a not-for-profit, nonpartisan think tank and public-interest law institute that seeks to improve systems of democracy and justice. The Democracy Program at the Brennan Center works to bring the idea of accountable representative government closer to reality, including by advocating for fair and non-discriminatory redistricting practices and for the protection of the right of all Americans to vote on a free and equal basis.

Since its founding in 1995, the Brennan Center's work has focused extensively on redistricting and protecting the right to vote using empirical, quantitative, historical, and legal research. It has participated in numerous redistricting, voting rights, and election law cases around the country, both as counsel and as *amicus curiae*. Some of the friend of the court briefs submitted by the Brennan Center before this Court in cases involving redistricting and/or the Voting Rights Act include briefs in *Brnovich v. Democratic National Committee*, 141 S. Ct. 2321 (2021); *Cooper v. Harris*,

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[1] Pursuant to Rule 37.6, counsel for *amicus curiae* states that they authored this brief in whole and that no party's counsel authored, in whole or in part, this brief. No person or entity other than *amicus* and its counsel contributed monetarily to preparing or submitting this brief.

[2] This brief does not purport to convey the position of New York University School of Law.

581 U.S. 285 (2017); *Alabama Legislative Black Caucus v. Alabama*, 575 U.S. 254 (2015); *Shelby County. v. Holder*, 570 U.S. 529 (2013); *Northwest Austin Municipal Utility District No. One v. Holder*, 557 U.S. 193 (2009); and *League of United Latin American Citizens v. Perry*, 548 U.S. 399 (2005).

SUMMARY OF THE ARGUMENT

The case before the Court involves a congressional map, but, throughout its history, Section 2 of the Voting Rights Act has been used *far* more often to challenge discriminatory systems used to elect local government bodies, particularly at-large elections.

Indeed, since the 1980s, Section 2 of the Voting Rights Act has played an indispensable role in improving representation on city councils, school boards, county commissions, and other local government bodies across the country. Its impact has been especially transformational in the South. In southern states, the widespread use of at-large elections for local government elections—a practice often dating to the post-Reconstruction era—frequently interacted with high rates of entrenched racially polarized voting, and hostility from white voters to the concerns and input of minority communities, to lock minority voters out of any realistic chance to elect candidates representing their interests. These lockouts occurred not only in partisan elections but also in the non-partisan contests that typically characterize local elections.

Congress appropriately identified the opportunity to elect candidates as a key component of the

enjoyment of the franchise, a core protection in the Fifteenth Amendment, and, with the 1982 amendments to the Voting Rights Act, devised a legal claim that would allow voters to ensure that was the case. *See South Carolina v. Katzenbach*, 383 U.S. 301, 324, 327 (1966) ("Congress may use any rational means to effectuate the constitutional prohibition of racial discrimination in voting," including "fashioning specific remedies.").

Using the tools in Section 2 made available by the 1982 amendments, minority voters have been able to challenge discriminatory at-large electoral systems in hundreds of local governmental bodies, large and small, across the nation. Where successful, these efforts saw replacement of at-large systems with alternatives that created an equal opportunity for minority communities to elect candidates who, for the first time, represented them on vital local issues like school funding, transportation, and public safety. Changing electoral systems in this manner also has produced other benefits. Research suggests that gaining a realistic chance at electoral success improves minority engagement and participation in the political process. Peter Miller & Arlyss Herzig, *Voting Rights Act Enforcement Increases Turnout*, Brennan Center for Justice (Apr. 25, 2025), https://www.brennancenter.org/our-work/research-reports/voting-rights-act-enforcement-increases-turnout [https://perma.cc/E3GL-GZ3L]; Bernard L. Fraga, *Candidates or Districts? Reevaluating the Role of Race in Voter Turnout*, 60 Am. J. Pol. Sci. 97, 98 (2016) (finding that turnout of Black and Latino voters is higher "when each group makes up a larger portion of the electorate" regardless of the race of the candidate).

If this Court were to retreat from the sensitively calibrated vote-dilution framework it established nearly four decades ago in *Thornburg v. Gingles*, 478 U.S. 30 (1986), the danger is two-fold. Not only would the possibility of further progress toward an equal opportunity for minority voters to participate in the electoral process be cut off, but many jurisdictions could interpret the Court's decision as an invitation to return to the racially discriminatory systems that previously entrenched the power of white voters at the expense of minority communities.

These concerns are not idle. Shortly after this Court's decision in *Shelby County v. Holder*, 570 U.S. 529 (2013), the City of Pasadena, Texas, rushed through changes to the single-member district system for city council elections that it had used since 1992. *Patino v. City of Pasadena,* 230 F. Supp. 3d 667, 673, 681 (S.D. Tex. 2017). These changes replaced two single-member districts with at-large seats and, as a district court found, diluted the influence of the city's large and growing Latino community. *Id.* at 730 (holding that creation of at-large districts violated the Voting Rights Act and was intended to dilute the electoral power of Latino voters). The district court reversed the change but only after four years of litigation. *Id.*; s*ee also* Kevin Morris and Coryn Grange, *Growing Racial Disparities in Voter Turnout, 2008-2022*, Brennan Center for Justice, at 3 (March 2024), https://www.brennancenter.org/media/12347/download/2024_02_Growing%20Racial_Disparities_in_Voter%20Turnout_Report.pdf [https://perma.cc/4USL-S5BV] (finding that the turnout gap between white and non-white voters "grew

almost twice as quickly in formerly covered jurisdictions as in other parts of the country with similar demographic and socioeconomic profiles" after this Court's decision in *Shelby County*). Voting Rights Act enforcement matters. It is vital that the check and deterrent provided by Section 2 remain in place.

However, as powerful as the enforcement tool created by Congress has been, Section 2's reach is also carefully circumscribed by the Court's *Gingles* framework.[3] Far from mandating wholesale changes to electoral systems everywhere, the *Gingles* framework provides for a remedy only where plaintiffs show the usual "pull, haul, and trade" of politics is impossible because of entrenched racial discrimination. *See Johnson v. De Grandy*, 512 U.S. 997, 1020 (1994) ("[M]inority voters are not immune from the obligation to pull, haul, and trade to find common political ground."). While hundreds of city councils, school boards, and county governments across the country,

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[3] Under the *Gingles* framework, plaintiffs must establish the existence of three preconditions. *Gingles*, 478 U.S. at 48–51. First, they must prove that the minority group is "sufficiently large and geographically compact to constitute a majority in a single-member district." *Id.* at 50. Second, they must establish that the minority community is politically cohesive. *Id.* at 51. Third, they must show that white voters in the region vote as a bloc and that this bloc voting typically enables the candidate preferred by white voters to defeat the candidate preferred by the politically cohesive minority community. *Id.* If and only if these three preconditions are met, the court then examines the "totality of circumstances" to determine whether a particular electoral practice (e.g., the use of at-large elections) "interacts with social and historical conditions . . . to minimize or cancel out the voting strength of racial minorities in the voting population." *Id.* at 46–48.

and especially in the South, have moved away from at-large systems since 1980 as a result of Section 2 litigation or settlements, at-large elections continue to be used in the overwhelming majority of the country's over 3,000 counties and its tens of thousands of school districts, cities, towns, and municipalities. Absent the rigorous evidentiary showing that the *Gingles* framework requires, jurisdictions remain free to continue organizing their elections as they see fit.

The Brennan Center submits this amicus brief to provide the Court with illustrations both of the ways that (1) applying the *Gingles* framework has demonstrably improved electoral opportunities for minority voters at the local government level since 1982 and (2) the framework's careful design—with its insistence on methodical proof of racially polarized voting and racial discrimination in a community—appropriately limits the places where Section 2 will be applied.

Far from creating permanent "racial entitlements," the Court's demanding and nuanced *Gingles* framework responds on a case-by-case basis to localized circumstances and, by design, sunsets liability under Section 2 as conditions evolve and improve.

ARGUMENT

I. The *Gingles* Framework Has Helped Root Out Racial Discrimination in Local Government Elections.

In the United States, local government elections take place in significant part using at-large electoral

systems. For example, a 2012 survey found that 64 percent of American cities, towns, and municipalities used at-large systems to elect all members of their city councils, while another 21 percent used a combination of at-large elections and single-member districts. Carolyn Abott and Asya Magazinnik, *At-Large Elections and Minority Representation in Local Government*, 64 Am. J. Pol. Sci. 717, 717–718 (2020). A recent study found a similarly high 71 percent of local school boards members in the United States are elected at-large. *Analysis of School District and Board Member Characteristics, 2022*, Ballotpedia (Aug. 24, 2022), https://ballotpedia.org/Analysis_of_school_district_and_board_member_characteristics,_2022 [https://perma.cc/CT3L-TJ9F].

In most cases, these electoral systems work generally as intended, allowing coalition building and robust debate over issues to take place across different cross-sections of a community. Importantly, this exchange of ideas and robust give-and-take politics is not limited to demographically homogeneous communities. It happens routinely in a wide variety of communities across the country.

However, as Congress recognized, the conditions for "pull, haul, and trade" politics do not exist everywhere. Successful Section 2 cases vividly show that there are some situations where vigorous, conventional politics is impossible because persistent racially polarized voting—rooted in longstanding societal racial divides and sometimes open racial hostility—works in tandem with local conditions to lock minority voters out of the political process before it even begins, both in partisan and non-partisan elections. For these

instances, Congress has appropriately used its power under the Fourteenth and Fifteenth Amendments to devise a legal claim that affected voters can use to challenge discriminatory methods of election and seek changes allowing them to participate on a more equal footing.

With the tools provided by Section 2, minority voters, especially in the South, were at last able to pry open doors previously blocked by societal racial divisions and the effects of past discriminatory state practices. For example, in just the first decade after Congress's adoption of the 1982 amendments, Black representation on city councils governing white-majority cities in eight southern states soared when at-large districts gave way to single member districts. Chandler Davidson and Bernard Grofman (eds.), *Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965-1990*, at 306–307 (1994) (examining the impact of the Voting Rights Act in local elections in Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, and Virginia). In cities with a population that was 10–29.9 percent Black that switched from at-large to single member districts, Black representation increased by an average of 23 percentage points; similarly, in cities with a population that was 30–49.9 percent Black that made the same change, Black representation increased by an average of 34 percentage points. *Id.* By contrast, in cities that retained at-large elections, the gains in Black representation were an average of 6 percentage points for cities with a Black population of 10–29.9 percent and an average of 14 percentage points for cities with a Black population of 30–49.9 percent. *Id.* Similarly large gains also occurred at the county level

when white-majority counties switched from at-large elections to single-member districts. *Id*. at 312.

Alabama offers a striking, but hardly unique, case study of the impact of Section 2. From the post-Reconstruction era until the 1970s, most Alabama cities of all sizes used at-large elections, and well into the decade, only two white-majority cities using at-large elections – Auburn and Birmingham – had ever elected a Black candidate to their city councils. *Id.* at 54–55. This pattern slowly changed over the next two decades, but, as late as 1987, 27 of 42 white-majority cities in Alabama with total populations of 6,000 or more and Black populations of 10 percent or more still elected their city councils at-large and, with rare exception, continued to have only "only minimal black representation." *Id.* at 55.

Then, using Section 2, Black voters spurred a dramatic change. Through a series of cases that have come to be known collectively as the *Dillard* cases, they challenged the use of discriminatory at-large elections by 19 counties, 30 school districts, and 148 cities and towns. Jerome Gray and James U. Blacksher, *The Dillard Cases and Grassroots Black Political Power*, 46 Cumb. L. Rev. 311, 321–322 (2016); *see Dillard v. Crenshaw Cnty.*, 640 F. Supp. 1347, 1356–1360 (M.D. Ala. 1986) (finding that Alabama's post-Reconstruction era legislature had intentionally switched from ward elections to at-large elections for county commissions to prevent Black voters from being able to elect their candidates of choice). Of the jurisdictions challenged in the *Dillard* cases, 180 eventually changed their methods of election due to court order. Gray & Blacksher, *supra*, at 322.

The changes in the wake of the *Dillard* cases were rapid and profound at all levels of local government. By 1989, 39 of 42 white-majority cities in Alabama with a population of 6,000 or more and a Black population of at least 10 percent[4] had switched to single-member districts or mixed plans. Davidson & Grofman, *supra*, at 55. As a result, Black representation "increased from zero in 1970 to slightly better than proportional representation in 1989." *Id.* Whereas in 1985, there had only been 38 Black members of county commissions, 47 Black school board members, and 179 Black members of city councils across the state, those numbers doubled following the *Dillard* decision, and, by 2000, had improved further still. Gray & Blacksher, *supra*, at 312.[5]

The major transformation that Section 2 brought about to local representation in Alabama is not an aberration. Indeed, while Section 2 has been used to

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[4] An additional six cities with a population over 6,000 were majority-Black including three that used at-large elections. Davidson & Grofman, *supra*, at 55.

[5] The election of a large number of Black candidates after the remedies implemented in the *Dillard* cases suggests that Black voters of the time in Alabama strongly preferred Black candidates in local elections. *See Gingles*, 478 U.S. at 68. The *Gingles* framework, of course, would apply equally if minority voters preferred candidates of other races and their opportunity to elect those candidates were being similarly stymied by racially polarized voting and local conditions. *Id.* ("[I]t is the *status* of the candidate as the *chosen representative of a particular racial group*, not the race of the candidate, that is important.") (emphasis in original). Likewise, there would be no Section 2 liability if minority voters were not, in fact, politically cohesive and thus did not have preferred candidates. *See infra.* at 19–22.

challenge congressional and legislative districting plans, including in the case before the Court, it has been used far more widely throughout its history at the local-government level. According to a study of reported Section 2 decisions by researchers at the University of Michigan School of Law, nearly half of all vote-dilution claims brought between 1982 and 2021 involved challenges to the use of at-large elections by counties, municipalities, school boards, or other local government bodies. Ellen D. Katz, Brian Remlinger, Andrew Dziedzic, Brooke Simone, and Jordan Schuler, *To Participate and Elect: Section 2 of the Voting Rights Act at 40*, Univ. Mich. L. Sch. Voting Rights Initiative, 3 (2022), https://voting.law.umich.edu/wp-content/uploads/2022/02/VRI-Findings-and-Appendix.pdf [https://perma.cc/YRZ4-5URF].

II. The *Gingles* Framework Requires a Remedy Only in Extreme Cases Where Racially Polarized Voting Interacts with Local Conditions to Severely Disadvantage Minority Voters.

As dramatic and important as the impact of Section 2 has been for local-level representation, it is not, and has never been, an open invitation for race-based districting. Under the *Gingles* framework, district courts must engage in a rigorous, locality-specific, and highly fact-intensive inquiry before finding liability. Each of the *Gingles* factors is carefully calibrated to identify circumstances in which "racial politics [so] dominate the electoral process" that an otherwise race-neutral election method, when combined with polarized voting and other factors, could effectively

deprive minority voters of the ability to compete for political power through the ordinary push and pull of the democratic process. S. Rep. No. 97-417, at 33 (1982); *see* H.R. Rep. No. 109-478, at 34 (2006) ("Racially polarized voting occurs when voting blocs within the minority and white communities cast ballots along racial lines and is the clearest and strongest evidence the Committee has before it of the continued resistance within covered jurisdictions to fully accept minority citizens and their preferred candidates into the electoral process.").

Moreover, satisfying the three *Gingles* preconditions is only the start. Even if Section 2 plaintiffs carry their burden and prove the existence of these three preconditions, *Gingles* directs the trier of fact to then conduct a searching totality-of-the-circumstances inquiry to determine if a challenged electoral system or districting plan truly denies minority voters an equal opportunity to participate in the electoral process. *De Grandy*, 512 U.S. at 1011–1012 ("[T]he ultimate conclusions about equality or inequality of opportunity were intended by Congress to be judgments resting on comprehensive, not limited, canvassing of relevant facts."); *Uno v. City of Holyoke*, 72 F.3d 973, 983–984 (1st Cir. 1995) ("[P]laintiffs . . . must prove that . . . racial politics . . . significantly diminished opportunities for minority participation in elective government."). In short, Section 2 cases are, by design, hard.

Recent successful Section 2 cases illustrate the types of extreme situations where liability is appropriate, and wholly consistent with the Fourteenth and Fifteenth Amendments to the Constitution, because

the "pull, haul, and trade" of politics has irretrievably broken down for minority voters in the face of racial discrimination:

A. Ferguson-Florissant School District

By the early 2010s, Black residents in the Ferguson-Florissant School District in suburban St. Louis had come to make up just over half of the district's voting age population and 77 percent of the district's students. *Mo. State Conf. of NAACP v. Ferguson-Florissant Sch. Dist.*, 201 F. Supp. 3d 1006, 1019, 1024 (E.D. Mo. 2016).

Yet, despite the fact that Black voters constituted more than half the district's voting age population, the district court found that they were almost always, with the rarest of exceptions, unsuccessful in at-large elections for the district's non-partisan school board. *Id.* at 1043.

The reasons for this severe disadvantage were multifold. The most significant factor was sharply racially polarized voting. *Id.* at 1064. The district court found that the differences in candidate preferences in at-large school board elections manifested strikingly along racial lines. *Id.* These racially aligned preferences were often reinforced, moreover, by subtle racially coded appeals to white voters on issues such as school discipline and inter-district school transfers. *Id.* at 1078. The court also found that Black voters' electoral effectiveness was further undermined by the fact that they participated in school board elections at a far lower rate than white voters, in part due to the cumulative "effects of discrimination in such areas as

education, employment, and health . . . which hinder their ability to participate in the political process." *Id.* at 1071–1072 (quoting *Gingles*). The combined effect of these factors was that while white candidates won 69.6 percent of the time, Black candidates won only 10.5 percent of the time. *Id*. at 1064.

After a fact-intensive trial, the district court found that the "electoral process in FFSD Board election is not equally open to African Americans" both because of "stark levels of racially polarized voting" and because of the "ongoing effects of racial discrimination that have long plagued the region, and the District in particular." *Id.* at 1082.

B. City of Farmers Branch, Texas

Located just outside Dallas, the City of Farmers Branch by the early 2000s had developed a large and growing Latino community, with Latinos constituting just under a quarter of the city's citizen voting age population by 2010. *Fabela v. City of Farmers Branch*, No. 3:10-cv-1425-D, 2012 WL 3135545, at *1 (N.D. Tex Aug. 2, 2012).

The city's quickly changing demographics created significant ethnic tensions in the formerly white-majority city, fueled by the belief among white residents and elected officials that city's rapidly expanding Latino population consisted largely of undocumented immigrants who were "lower income" and presented "obstacles for [the] redevelopment" envisioned by city leaders. *Villas at Parkside Partners v. City of Farmers Branch*, 675 F.3d 802, 805 (5th Cir. 2012).

This led to the city council's passage or consideration of various anti-immigrant measures, including an ordinance declaring English as the city's official language and proposals to remove non-English language materials from the city's public library system. *Fabela*, 2012 WL 3135545, at *14. The culmination came in 2008 when the city council unanimously passed a housing ordinance, later struck down by courts, requiring any renter seeking property in the city to show proof of citizenship or legal residency status and to obtain a residential occupancy permit from the City Building Inspector. *Villas at Parkside Partners*, 675 F.3d at 804.

Like many smaller Texas municipalities, Farmer Branch's five-member city council was elected on a non-partisan basis using staggered at-large elections. *Fabela,* 2012 WL 3135545, at *14. After a trial on Section 2 claims, the district court found that Latino candidates had run for the council in the last four elections and had received overwhelming and consistently cohesive support from Latino voters ranging from "54.1% to 88.1%," but none had ever won. *Id.* at *13. Nor, the district court found, would they ever be likely to because stark rates of bloc voting meant that in the same elections Latino-preferred candidates had only won between "2.0% to 42.1%" of non-Latino votes and because an atmosphere of considerable ethnic hostility toward the city's Latino community pervaded city politics. *Id.* at *12–14. Faced with these circumstances, the district court found that some Latino voters had simply given up, with one witness cited by the district court recounting how he had stopped voting since, "the people [he] voted for were never elected" and "there was nobody there representing the

community, the Hispanic community." *Id.* at *14 (internal quotations omitted).

This would change, however, after successful Section 2 litigation. The city switched to single-member districts and saw the election of its first Latina member in 2013. Lauren Silverman, *First Hispanic Council Member In Farmers Branch Elected*, KERA (May 12, 2013), https://www.keranews.org/texas-news/2013-05-12/first-hispanic-council-member-in-farmers-branch-elected [https://perma.cc/FVY9-ALFH].

C. East Ramapo Central School District

The East Ramapo Central School District is a "highly segregated" school district located in diversifying Rockland County, New York. *NAACP Spring Valley Branch v. E. Ramapo Cent. Sch. Dist.*, 462 F. Supp. 3d 368, 374 (S.D.N.Y. 2020).

Although the district's overall population is around two-thirds white and 30 percent Black and Latino, rates of residential segregation in the district were, and continue to be, extreme. *Id.* at 374-375. As found by the district court, 7 in 10 white residents live in census block groups that are at least 80 percent white, and more than half of minority residents live in block groups that are "83.6% to 98.2% minority." *Id.*

Schools within the district's boundaries are similarly segregated due to the decision of most white parents to send their children to private schools: While 92 percent of public-school students were Black or

Latino, the area's private schools were and are 98 percent white. *Id.* at 375.

As established in Section 2 litigation, elections for the district's non-partisan school board were also starkly divided by race. *Id.* at 380–392. This was due, in part, to an elaborate, closed-door slating process within the white community. As found by the district court: "Influential members of the white, private school community in the District participate in a slating process by which they select, endorse, promote, and secure the election of their preferred candidates, and minorities have no input into this process." *Id.* at 402. While minority candidates on very rare occasion won, they were "elected with the support of the white community, [having] been chosen by the white slating mechanism, … they are often not minority-preferred," and frequently did not even bother to campaign in minority communities "because they knew they would win by virtue of the white slating organization's support." *Id.* at 406, 409.

The district court's Section 2 assessment also found that these racially divided politics produced a school board that was persistently unresponsive to concerns and issues raised by Black and Latino parents. This unresponsiveness went as far as a decision by the board to "mov[e] the public comment period to the end of its meetings" and then hold "such long executive sessions beforehand that public comments began after 10 or 11 p.m., when most members of the public already had to leave." *Id.* at 413. Unresponsiveness to the concerns of minority parents also manifested itself in district policies. Between 2009 and 2014, "budgets were cut dramatically, and the Board

eliminated hundreds of public school teaching, staff, and administrative positions," closed two schools over minority community opposition, and attempted to sell one of them to a private school at a "sweetheart price." *Id*. at 414–415.

The district court found that the impact on Black and Latino students was significant as "[g]raduation rates and test scores sank." *Id*. at 415. In 2019, only 28 percent of students in grades 3-8 were proficient in English and 24 percent proficient in math, well below statewide figures. *Private Privilege, Public Pain: The Rise of 21st Century Jim Crow Education in East Ramapo Schools,* New York Civil Liberties Union, 7 (Aug. 25, 2021), https://www.nyclu.org/uploads/2021/09/20210914_nyclu_eramapo_report.pdf [https://perma.cc/Z99H-QC9L].

Successful litigation under Section 2 led to the district to change from at-large elections to single-member districts starting in 2021. Thomas C. Zambito, *Vote Count Begins in East Ramapo School Board Election, Nine Open Seats to Be Decided*, Westchester Journal News (Feb. 10, 2021), https://www.lohud.com/story/news/local/rockland/2021/02/10/vote-count-begins-east-ramapo-school-board-election/4456623001/ [https://perma.cc/6CNS-4KNP].

III. The Self-Enforcing Limits Built into the *Gingles* Framework Are Sufficient to Address Concerns About the Constitutionality of Section 2 Remedies.

The wisdom of the carefully tailored *Gingles* framework is evident not only in where it applies, but also where it does not.

If plaintiffs fail to prove the existence of any one of the three *Gingles* preconditions with the exacting, locality-specific evidence demanded by this Court, Section 2 liability will not exist. *See Voinovich v. Quilter*, 507 U.S. 146, 158 (1993) (rejecting a Section 2 claim in the absence of evidence that the white majority voted as a bloc); *Wright v. Sumter Cnty. Bd. of Elections and Regristration*, 979 F.3d 1282, 1308 (11th Cir. 2020) ("We do not suggest . . . that Section 2 allows a protected group to bring a vote dilution claim in perpetuity and irrespective of its numerical advantage."). In the same way, Section 2 liability will cease to exist if circumstances in the locality change for the better—for example, if communities no longer have legally significant racially polarized voting or if broader social, economic, and political disparities rooted in racism ease.

The requirement, for instance, in the second *Gingles* precondition that a minority group be "politically cohesive" limits Section 2 liability to circumstances in which that minority group, in fact, has a consistently strong shared communal preference for candidates. *Gingles*, 478 U.S. at 51, 56; *see also De Grandy*, 512 U.S. at 1020. This limitation ensures that Section 2 does not compel lumping voters together into a district

based on stereotyped assumptions that voters who share a race or ethnicity automatically vote alike or share the same concerns or interests. *Growe v. Emison*, 507 U.S. 25, 42 (1993) ("Section 2 does not assume the existence of racial bloc voting; plaintiffs must prove it.") (quoting *Gingles*, 478 U.S. at 46)); *Rodriguez v. Harris Cnty., Texas*, 964 F. Supp. 2d 686, 756 (S.D. Tex. 2013) (The second factor "contemplates that a specified group of voters shares common beliefs, ideals, principles, agendas, concerns, and the like such that it generally unites behind . . . particular candidates and issues."); *see also Luna v. Cnty. of Kern*, 291 F. Supp. 3d 1088, 1117 (E.D. Cal. 2018) ("If the minority group does not have a preferred candidate, it cannot be said that the jurisdiction's electoral scheme thwarts the minority group's interest.") (citing *Gingles*, 478 U.S. at 51).

In the same way, the requirement in the third *Gingles* precondition that the "white majority [also] vote[] sufficiently as a bloc" further limits Section 2 liability to those circumstances in which a minority's "submergence in a white [majority] district impedes its ability to elect its chosen representatives." *Gingles*, 478 U.S. at 51. Courts have made clear, moreover, that this bloc voting by white voters must be the *usual* state of affairs, not just an occasional occurrence. *Id.* at 56, 76.

The second and third *Gingles* preconditions operate in tandem to make a demanding inquiry of plaintiffs, requiring them to show that "racial politics [so] dominate the electoral process" that an unreceptive white majority's electoral success is nearly inevitable. S. Rep. No. 97-417, at 33; *Gingles*, 478 U.S. at 51; *see*

Abrams v. Johnson, 521 U.S. 74, 92-93 (1997) (finding no Section 2 liability where there was a significant degree of cross-over voting and so, no need for a Section 2 remedy); *Rodriguez*, 964 F. Supp. 2d at 757 (noting that the correct test is whether, "as a practical matter," bloc voting effectively minimizes or cancels "minority voters' ability to elect representatives of their choice").

As directed by this Court, courts around the country have consistently applied the second and third *Gingles* factors rigorously, focusing on the specific local circumstances in a jurisdiction. For example, in Boston, a district court recently rejected a Section 2 claim after concluding that there was insufficient evidence to establish bloc voting by white voters in city council races and finding, in fact, that Black-preferred candidates frequently won with crossover support. *Walters v. Boston City Council*, 676 F. Supp. 3d 26, 45-46 (D. Mass. 2023). Likewise, a district court in Illinois rejected a challenge by Latino voters to the legislative map drawn after the 2020 census after finding "significant crossover voting by non-Latino voters . . . ranging from more than twenty-five to seventy percent." *McConchie v. Scholz*, 577 F. Supp. 3d 842, 859 (N.D. Ill. 2021). A court in Texas, similarly, rejected a Section 2 challenge to at-large school board elections in a suburban Dallas district after finding that minority voters in the district split along a "conservative/liberal line" and "splinter[ed] over tax/public education issues," among other things, and thus were not politically cohesive. *Kumar v. Frisco Ind. Sch. Dist.*, 476 F. Supp. 3d 439, 510–513 (E.D. Tex. 2020).

In sum, the *Gingles* framework does not demand racial balkanization or mandate the blind creation of race-based districts. Far from it: As interpreted and applied by this Court in *Gingles* and its progeny, Section 2 provides a critical remedy for a limited and very specific subset of electoral conditions where the political process has broken down for minority voters because a facially neutral election system or a jurisdiction's map-drawing choices interacts with local conditions, including the effects of racial discrimination, to make it impossible for minority voters to engage in the "pull, haul, and trade" of politics. *De Grandy*, 512 U.S. at 1020.

Rather than creating a universal and permanent mandate to draw a majority-minority district whenever a minority group is numerically large enough, Section 2 provides a targeted remedy carefully tied to racially polarized voting and geared to local conditions. *See* 52 U.S.C. § 10301(b) ("*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.")

IV. The Broad Flexibility That Jurisdictions Have in How They Remedy Vote Dilution Further Addresses Constitutional Concerns.

The *Gingles* framework does not automatically require map drawers to create majority-minority districts as a remedy, nor does it compel a body to draw districts that prioritize race to the exclusion of other considerations.

While jurisdictions must consider the existence and severity of racially polarized voting when remedying vote dilution, they have flexibility to find a solution that addresses vote dilution while also maximizing the jurisdiction's other legitimate policy objectives.[6] *See Clark v. Calhoun Cnty., Miss.*, 88 F.3d 1393, 1408 (5th Cir. 1996) ("Redistricting to remedy found violations of § 2 of the Voting Rights Act by definition employs race. . . . The limit is that the remedy must use race at the expense of traditional political concerns no more than is reasonably necessary to remedy the found wrong." (citing *Bush v. Vera*, 517 U.S. 952, 993–994 (1996) (O'Connor, J., concurring)).

For example, a jurisdiction with Section 2 liability could choose to remedy that liability by drawing a district that is less than majority-minority if doing so would remedy vote dilution while, at the same time, better meet the jurisdiction's other legitimate goals, such as avoiding splitting counties or towns or

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[6] The requirement that a jurisdiction consider race at the remedial phase is entirely consistent with this Court's equal protection jurisprudence. *See, e.g.*, *N.C. State Bd. of Educ. v. Swann*, 402 U.S. 43, 45–46 (1971) (permitting consideration of race when drawing school district boundaries and assigning students to particular schools in light of persistent segregation in public education and a history of discrimination); *United States v. Paradise*, 480 U.S. 149, 166 (1987) ("It is now well established that government bodies, including courts, may constitutionally employ racial classifications essential to remedy unlawful treatment of racial or ethnic groups subject to discrimination."); *cf. Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No.* 1, 551 U.S. 701, 720–721 (2007) (holding that a race-conscious remedy was improper where there was no indication of constitutionally-offensive discrimination).

important communities of interest, having a district cross a mountain range or body of water, or pairing incumbents.[7] In Alabama, for instance, a district court approved a new remedial congressional district that was less than 50 percent Black (though a district with a higher Black population percentage was possible) after concluding that the district fully remedied the vote dilution found by the court while at the same time, adhering completely with state limitations on county splits and "better respect[ing] municipal boundaries and the communities of interest that the Legislature identified." *Singleton v. Allen*, No. 2:21-cv-1530, 2023 WL 6567895, at *14–16 (N.D. Ala. Oct. 5, 2023) (three-judge panel).

Likewise, other jurisdictions have addressed Section 2 liability by adopting alternatives to districted elections, such as cumulative voting and limited voting. *See, e.g.*, *Mo. State Conf. of NAACP,* 219 F. Supp. 3d at 951 (adopting cumulative voting election system); *Ala. State Conf. of NAACP v. City of Pleasant Grove*, No. 2:18-cv-2056, 2019 WL 5172371, at *1–2 (N.D. Ala. Oct. 11, 2019) (approving city's adoption of cumulative voting as part of settlement with plaintiffs, finding that cumulative voting was a "well-established means of election that, under appropriate circumstances, empowers minority voters and remedies

[7] While a plurality in this Court's decision in *Bartlett v. Strickland*, 556 U.S. 1, 19–20 (2009), stated that Section 2 requires that plaintiffs show the possibility of creating a majority-minority district in order to establish *liability*, this Court has never held that the *remedy* for vote dilution must be a majority-minority district. Instead, courts around the country have approved a variety of remedies.

vote dilution); *United States v. Vill. of Port Chester*, 704 F. Supp. 2d 411, 447, 449–453 (S.D.N.Y. 2010) (finding that a system of cumulative voting, where each voter would be allocated "the same number of votes as there are seats up for election and would be free to allocate them however he or she chooses," was an appropriate remedy under Section 2); *United States v. Euclid Cnty. Sch. Bd.*, 632 F. Supp. 2d 740, 755–757, 770–771 (N.D. Ohio 2009) (finding that a system of limited voting, where "each voter would be able to vote for a single candidate in [a given] election[], even though multiple seats would be vacant" was an appropriate remedy under Section 2).

This flexibility in adopting a remedy also guards against unconstitutional application of Section 2. The only constraint Section 2 imposes is to prevent a jurisdiction from using a method of election that deprives a minority group of an equal opportunity to elect candidates when there are feasible alternatives that would not have this discriminatory effect.

As the examples described in this brief amply illustrate, Section 2 continues to be a powerful and effective tool for enforcing the guarantees of the Fourteenth and Fifteenth Amendments of the United States Constitution. Its impact has been especially profound in local jurisdictions, including those with non-partisan elections. Where plaintiffs have satisfied the rigorous evidentiary burdens in *Gingles,* court-ordered remedies have improved their opportunity to participate on an equal basis in the electoral process by undoing the lockout that occurs when sustained racially polarized voting interacts adversely with local conditions,

If this Court retreats from or abandons the framework it established in *Gingles*, four decades of significant progress toward equal enjoyment of the franchise will be put at great risk. Moreover, minority communities, who have already lost other critical tools under the Voting Rights Act, most notably with this Court's decision in *Shelby County*, would lose one of few remaining checks against unresponsive electoral systems.

CONCLUSION

This Court should confirm the continued constitutionality of the vote-dilution framework established by the Court in *Thornberg v. Gingles*, and for reasons argued here and by Appellants Press Robinson, *et al.*, reverse the judgment of the District Court below.

Respectfully submitted,

KAREEM U. CRAYTON
MAURA EILEEN O'CONNOR
BRENNAN CENTER FOR JUSTICE
1140 Connecticut Ave., NW, Suite 1150
Washington, D.C. 20036
(202) 249-7190
craytonk@brennan.law.nyu.edu

MICHAEL C. LI
BRENNAN CENTER FOR JUSTICE
120 Broadway, Suite 1750
New York, New York 10271
(646) 292-8310

Counsel for Amicus Curiae

September 3, 2025