Nos. 24-109, 24-110

In the

Supreme Court of the United States

LOUISIANA

Appellant,

v.

PHILLIP CALLAIS, *et al.*,

Appellees.

PRESS ROBINSON, *et al.*,

Appellants,

v.

PHILLIP CALLAIS, *et al.*,

Appellees.

On Appeals from the United States District Court for the Western District of Louisiana

Brief of Black Voters Matter Capacity Building Institute, Inc., and Pastor Steven Harris as Amici Curiae in Support of Appellants

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INTEREST OF *AMICI CURIAE*[1]

Black Voters Matter Capacity Building Institute, Inc. ("BVM"), is a non-profit organization that helps marginalized, predominantly Black communities shape their destiny by actively participating in the political process. BVM is "dedicated to non-partisan voter registration and turnout efforts," with the goal of "ensur[ing] every voice can be heard." *Our Work*, BLACK VOTERS MATTER CAPACITY BUILDING INST., https://bvmcapacitybuilding.org/our-work-2/. Knowing that "true equity requires justice across race, gender, economics, and more," BVM fights to "expand[] voting rights and access for all." *Id.*

Pastor Steven Harris is a life-long Louisianan who has been preaching in Natchitoches for over 35 years. In addition to his full-time work overseeing two congregations, he serves his community in numerous capacities, including as a member of the Natchitoches Parish School Board, NAACP, and Civic League. One of the many issues he addresses with his congregations is the importance of voting and active civic engagement.

Both BVM and Pastor Harris are plaintiffs in *Nairne v. Landry* ("*Nairne*"), which challenges Louisiana's state legislative maps under Section 2 of the Voting Rights Act of 1965 ("VRA"). Following a seven-day trial, the district court in *Nairne* issued a 91-page decision finding that Louisiana's state legislative maps violate §2. Only weeks ago, a three-

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[1] Amici certify that no counsel for any party authored this brief in whole or in part and that no person other than Amici and their counsel financed the brief's preparation or submission.

judge panel of the Fifth Circuit unanimously upheld the district court's "meticulous findings."

Amici urge the Court to uphold the challenged map because it has unified marginalized communities in Louisiana and given them equal opportunity to participate in the election of their Congressional Representatives. This brief uses the trial record in *Nairne* to describe the unfortunate current conditions in Louisiana that demonstrate the continued need for §2 to remedy ongoing race-based inequities in the political process.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

"The record on this point is clear—Black Louisianans suffer from long-term effects of discrimination which impede their ability to participate in the political process." *Nairne v. Landry*, No. 24-30115, ___ F.4th ___, 2025 WL 2355524, at *21 (5th Cir. Aug. 14, 2025).

Just three weeks ago, the U.S. Court of Appeals for the Fifth Circuit affirmed a district court's ruling—after a seven-day trial—that Louisiana's state legislative maps violated §2 of the VRA. Embedded in that ruling was a factual finding that current conditions in Louisiana (as of 2024) continue to justify relief under §2. The Fifth Circuit's unanimous decision upholding the trial court's 91-page Ruling and Order, conclusively dispels any notion that §2 is no longer needed and that complying with it is no longer a compelling government interest.

Whether a law violates §2 is determined, in part, by applying a totality-of-the-circumstances analysis, which requires courts to consider nine (9)

non-exclusive factors—the "Senate Factors." The Senate Factors play a key role in evaluating whether a challenged law denies minority citizens equal access to the political process and call for a thorough examination of current conditions within the challenged jurisdiction.

The district court in *Nairne* heard extensive testimony at trial on the Senate Factors from both expert and fact witnesses. Most relevant here is the testimony from Dr. Traci Burch, an expert in racial discrimination, political participation, and barriers to voting; the *Nairne* plaintiffs themselves; and a then-sitting member of Louisiana's house—all of whom detailed the *current* effects of discrimination borne by Black Louisianans.

In its 91-page trial opinion, the district court wholly credited this evidence, concluding that each of the applicable Senate Factors—including those that require examination of current conditions of discrimination in Louisiana—favored the *Nairne* plaintiffs and justified relief under §2. Indeed, the district court found that the evidence presented by the *Nairne* plaintiffs credibly linked *ongoing* depressed political participation by Black voters to the *continuing* effects of discrimination felt by Black voters.

On appeal, the Fifth Circuit did far more than merely affirm that the district court's factual findings had sufficient record support—it affirmatively held that the findings were *correct*. "The record on this point is clear," the court observed, "Black Louisianans suffer from long-term effects of discrimination which impede their ability to participate in the political process."

Against this factual backdrop, it is abundantly clear that §2—and the standards utilized to assess liability under §2—is *not* a relic from the distant past with no further work to do. The evidence in *Nairne* demonstrates that our country (and Louisiana, specifically) still needs §2 and that complying with it remains a compelling state interest.

ARGUMENT

Amici will first explain the critical role that the Senate Factors play in evaluating whether a challenged law denies minority citizens equal access to the political process. Amici then recount the trial testimony and factual findings from *Nairne* related to certain Senate Factors to highlight that *current* conditions of discrimination in Louisiana justify relief under §2.

I. The Senate Factors Are Critical in Evaluating How a Challenged Law Interacts With the Social and Historical Effects of Discrimination.

As originally drafted, §2 of the VRA prohibited any voting practices or procedures that "den[ied] or abridge[d] the right of any citizen of the United States to vote on account of race or color." Pub. L. No. 89-110, §2, 79 Stat. 437 (1965). After the Supreme Court held that the statute prohibited intentional discrimination only, Congress swiftly "repudiate[d]" that ruling by enacting the current version of §2 in 1982. *Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 658 (2021).

The Senate Report on the amendment explained that the Supreme Court's intent test had

"place[d] an 'inordinately difficult' burden of proof on plaintiffs," and more fundamentally, "it 'asks the wrong question.'" *Thornburg v. Gingles*, 478 U.S. 30, 44 (1986) (quoting S. Rep. No. 97-417, 97th Cong., 2d Sess., at 36 (1982)). Congress decided that intent should be irrelevant to whether relief is warranted because if minority citizens "are denied a fair opportunity to participate," then "the system should be changed." S. Rep. No. 97-417, at 36, *reprinted in* 1982 U.S.C.C.A.N. 177, 214. The "'right' question" is whether "*as a result* of the challenged practice or [procedure] plaintiffs do not have an equal opportunity to participate in the political processes." *Gingles*, 478 U.S. at 44 (emphasis added) (quoting S. Rep. No. 97-417, at 28). Answering this question requires a "searching practical evaluation of the 'past *and present* reality,'" guided by a non-exhaustive list of "objective factors." *Id.* at 44–45 (emphasis added) (quoting S. Rep. No. 97-417, at 27, 30). These "objective factors" would later come to be known as the "Senate Factors." Focusing on the "results," in the Senate Committee's view, would sweep in all "*remaining instances* of racial discrimination in American elections," regardless of the form they took. *See* S. Rep. No. 97-417, at 37, *reprinted in* 1982 U.S.C.C.A.N. at 215 (emphasis added).

Courts look to these principles from the Senate Report in construing §2, as it stands today. Section 2 prohibits any voting practice or procedure "*which results in* a denial or abridgement of the right . . . to vote on account of race or color." 52 U.S.C. § 10301(a) (emphasis added). This "results" test is satisfied "if, *based on the totality of circumstances*," the "political processes leading to nomination or election . . . are not equally open to participation by members of a class of

citizens," which occurs when the class's "members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." *Id.* § 10301(b) (emphasis added).

The Supreme Court first construed the current version of §2 in *Gingles*. The Court recognized that the "essence of a §2 claim is that a certain electoral law, practice, or structure *interacts with social and historical conditions* to cause" a race-based inequality in access to the political process. *Gingles*, 478 U.S. at 47 (emphasis added). Hewing closely to the Senate Report, the Court established three preconditions for proving a vote-dilution claim under §2 and provided a non-exhaustive list of factors (the Senate Factors) to consider in the totality-of-the circumstances analysis. *Gingles*, 478 U.S. at 44–51. Those factors include:

1. "the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process";

2. "the extent to which voting in the elections of the state or political subdivision is racially polarized";

3. "the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the

opportunity for discrimination against the minority group";

4. "if there is a candidate slating process, whether the members of the minority group have been denied access to that process";

5. "the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process";

6. "whether political campaigns have been characterized by overt or subtle racial appeals";

7. "the extent to which members of the minority group have been elected to public office in the jurisdiction";

8. "whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group"; and

9. "whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous."

Id. at 36–37 (quoting S. Rep. No. 97-417, at 28–29). This analysis is "peculiarly dependent upon the facts of each case" and demands "an intensely local appraisal of the design and impact" of the challenged law. *Id.* at 79 (citations omitted).

The totality-of-the-circumstances analysis was intentionally designed. Congress knew well the "demonstrated ingenuity of state and local governments in hobbling minority voting power," *Johnson v. De Grandy*, 512 U.S. 997, 1018 (1994), and so it crafted an approach aimed at capturing "even the most subtle forms of discrimination," *Chisom v. Roemer*, 501 U.S. 380, 406 (1991) (Scalia, J., dissenting).

II. The District Court's Affirmed Factual Findings in *Nairne* Prove that Current Conditions in Louisiana Justify Relief Under §2.

Senate Factors Five, Six, Seven, and Eight call for the evaluation of any current conditions of discrimination that impact participation in the political process. In *Nairne*, the district court found, and the Fifth Circuit wholly affirmed, that the plaintiffs presented ample evidence of persisting racial discrimination in Louisiana and that such discrimination greatly impacts Black Louisianans' ability to participate effectively in the political process.

A. Senate Factor Five

It is no secret that "past discrimination can severely impair the present-day ability of minorities to participate on an equal footing in the political process." *United States v. Marengo Cnty. Comm'n*, 731 F.2d 1546, 1567 (11th Cir. 1984) (Wisdom, J.). One of the lingering effects of past discrimination is "*present*

socioeconomic disadvantages," which "can reduce participation" in the political process. *Id.* (emphasis added).

The Congress that passed §2 knew these truths and did not shy away from them—it structured §2 to account for them. Indeed, "the essence" of a totality-of-the-circumstances analysis under §2 is determining whether applying a challenged law to a community results in racial discrimination because of past *and present* conditions there. *Gingles*, 478 U.S. at 47.

Senate Factor Five in particular helps courts understand the effects of discrimination outside the political process, providing necessary context for determining whether a challenged law results in unequal access to the political process when its text runs into reality. Janai S. Nelson, *The Causal Context of Disparate Vote Denial*, 54 B.C. L. Rev. 579, 597 (2013) (explaining that Senate Factor Five captures the "inequality external to the electoral system that is transmitted into the electoral arena via election laws"). In this way, Senate Factor Five plays a key role in revealing the wolf in sheep's clothing, laying bare a discriminatory law that is nonetheless facially neutral.

Senate Factor Five also tethers a §2 violation to the actual, *current* conditions in the communities where the challenged law operates. The totality-of-the-circumstances analysis itself is already "dependent upon the facts of each case" and demands "an intensely local appraisal of the design and impact" of the challenged law. *Gingles*, 478 U.S. at 79. Senate Factor Five strengthens the link to the current conditions on the ground by pulling into the analysis the lingering effects of discrimination that minority group members are presently experiencing. *See*

Brnovich, 594 U.S. at 673 (stating Senate Factor Five shows whether the "effects of [past] discrimination *persist*" (emphasis added)). In other words, as the present effects of past discrimination fade, so too do the odds of showing a §2 violation.

The district court's (now-affirmed) factual findings in *Nairne* confirm that actual, current conditions in Louisiana justify relief under §2. After hearing extensive evidence at trial from both expert and fact witnesses, the district court unequivocally held that Black voters living in Louisiana today "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." *Nairne v. Ardoin*, 715 F. Supp. 3d 808, 878 (M.D. La. 2024) (quoting 52 U.S.C. § 10301), *aff'd sub nom.*, *Nairne v. Landry*, No. 24-30115, ___ F.4th ___, 2025 WL 2355524 (5th Cir. Aug. 14, 2025). So §2 is hardly a relic from the distant past.

1. The *Nairne* Record Proves that Louisiana's Black Voters Presently Bear the Effects of Discrimination.

The *Nairne* plaintiffs presented testimony from Dr. Burch, an expert in the fields of racial discrimination, political participation, and barriers to voting, who testified extensively about the disparities in economics, education, health, and criminal justice currently faced by Black Louisianans, and how those disparities impact Black Louisianans' participation in the electoral process. Further, the individual *Nairne* plaintiffs—four Black Louisianan voters—testified about their personal experiences of the disparities and

the impact they have on their respective abilities to participate in the electoral process.

On the basis of this testimony, both the district court and the Fifth Circuit concluded that Senate Factor Five weighs "decidedly" in favor of finding a §2 violation in Louisiana. *See Nairne*, 715 F. Supp. 3d at 874; *Nairne*, 2025 WL 2355524, at *21. Indeed, these findings were unequivocal. The *Nairne* district court found that "[t]he preponderance of the evidence proved that Black voters' participation in the political process is impaired by historic and continuing socio-economic disparities in education, employment, housing, health and criminal justice." *Nairne*, 715 F. Supp. 3d at 872. The Fifth Circuit ratified this finding, holding that the trial court record made "clear" that "Black Louisianans suffer from long-term effects of discrimination which impede their ability to participate in the political process." *Nairne*, 2025 WL 2355524, at *21.

The trial record in *Nairne* did more than elucidate the discrimination affecting Louisiana's Black voters today; it demonstrated the direct, negative impact that this discrimination has on voter participation—a link that the Fifth Circuit panel specifically pointed to when affirming the district court's decision. *See Nairne*, 2025 WL 2355524, at *21 ("Dr. Burch did link her testimony on these effects of discrimination to depressed political participation of Black voters.").

a) *Education Disparities*

The *Nairne* record demonstrates that significant education disparities between Black and white people persist in Louisiana. Dr. Burch's

testimony on this point referenced U.S. Census data from the 2019 American Community Survey displaying disparate levels of educational attainment by race in Louisiana among adults ages 25 and over. *See Nairne v. Ardoin*, No. 3:22-cv-00178, Dkt. 213 ("Trial Tr. Day 3") at 14. As Dr. Traci Burch testified, the data indicates that

> Black people are much more likely than white people in Louisiana to have not completed high school. In fact . . . there are more black people in Louisiana who haven't finished high school than there are who have finished college. In comparison, among white people in Louisiana, . . . a larger percentage of the group has completed a bachelor's degree or higher.

Trial Tr. Day 3 at 15.

Dr. Burch's data-driven testimony was corroborated by the individual testimony of Pastor Steven Harris, who spoke of the challenges in his community in Natchitoches Parish, whose population is roughly 95 percent Black. *Nairne v. Ardoin*, No. 3:22-cv-00178, Dkt. 223 ("Trial Tr. Day 1") at 70. Pastor Harris shared testimony of his concerns, including that many members of his congregation drop out of school and later have trouble obtaining jobs. *Id.* at 71. Pastor Harris also noted that because of the poverty many people face, children have no choice but to attend under-resourced local schools with no means to seek out a better education. *Id.* at 78 ("The kids that I serve are not able to get up and drive

and go out of state and . . . take up roots there for a better situation. They are stuck where they are.").

Additionally, as the district court recognized, "Louisiana has endured de facto segregated public schools." *Nairne*, 715 F. Supp. 3d at 872. In so finding, the district court relied on Dr. Burch's testimony citing to the Miseducation Project published by ProPublica, which found that as recently as 2017, 50 percent of traditional school districts for which data were available "demonstrated high levels of racial segregation within the district," and that "[n]ine of the 68 traditional school districts in Louisiana [were] more than 87 percent non-white." *Id.* at 872 n.446. Dr. Burch further presented U.S. Census data, also credited by the district court, comparing the white and Black school population in East Baton Rouge Parish. *Id.* The data showed that although "there is kind of a parity between Black people and White people" in East Baton Rouge, "the school system [is] over. . . 70 percent Black." Trial Tr. Day 3 at 17–18 (Burch testimony). As the district court found, this is likely due to white families "abandon[ing] East Baton Rouge for a different school district." *Nairne*, 715 F. Supp. 3d at 872 n.446. The district court further found that "[p]redominately Black public schools are resource challenged," and "[t]he underfunding of HBCUs reveals that disparities persist into higher education." *Id.* at 872.

Educational disparities are crucial to the Senate Factor Five analysis because of education's immense impact on voter participation and all aspects of civic life. In short, education "is fundamental to voting." Trial Tr. Day 3 at 20 (Burch testimony). Dr. Burch explained that education is one of the strongest variables for determining "how and when people vote

and participate in politics generally," because education "makes it easier for people to navigate the cost of voting" and to "acquir[e] information about the candidates or learn[] how to register." *Id.*

Dr. Burch credibly illustrated how voter turnout increases "almost uniformly" with educational attainment. *Id.* at 16. To do so, she cited data from the 2020 Current Population Survey Voting and Registration Supplement, which collected 2020 voter turnout by educational attainment and race among Louisianans. *Id.* The data showed that for both races, voter turnout increased with educational attachment. Dr. Burch plainly laid out the import of this correlation:

> If . . . Black people are concentrated in this no high school diploma [category,] . . . whereas white people are more likely to be in these Bachelor's degree and graduate school categories, . . . the ways that the groups are arranged in these categories kind of shapes the gap in turnout.

Id.

The trial court credited Dr. Burch's testimony on this point, and the Fifth Circuit invoked it to specifically highlight the link between educational attainment and voter participation among Louisiana's Black population. *Nairne*, 2025 WL 2355524, at *21 ("[Dr. Burch] testified that educational attainment makes it easier for people to navigate the cost of voting, and that Black Louisianans have lower rates of education, making it more difficult for them to vote.").

Troublingly, the State of Louisiana appears to miss (or worse, chooses to ignore) the point of Senate Factor Five. In its most recent brief to this Court, the State points to a statistic indicating that voter turnout of Black, college-educated Louisianans slightly exceeded voter turnout of white, college-educated Louisianans, and suggests that this statistic is indicative of some radical "transformation" towards equality. But the State's citation is both fundamentally misleading and *entirely misses the point*. Of course, it stands to reason that Black Louisianans who have obtained higher levels of education (*i.e.*, high school and college degrees) participate in the political process at a similar rate as similarly educated white Louisianans. But, as the *Nairne* record unequivocally demonstrates, current conditions in Louisiana are such that far more white Louisianans than Black Louisianans *actually attain* that level of education. And it is the disparity in *attainment*—and the impact that that disparity has on Black Louisianans' engagement in the political process—that speaks to what Senate Factor Five aims to assess.

b) *Employment Disparities*

The *Nairne* record presented extensive evidence that employment disparities between Black and white people also persist in Louisiana, and that such disparities significantly impact Black Louisianans' participation in the political process. Dr. Burch presented the findings of the 2021 Louisiana Survey in which 74 percent of Black respondents agreed "that Black people are treated less fairly than White people in hiring, pay, and promotions at work."

Trial Tr. Day 3 at 21. In a damning illustration of the mechanics of discrimination, Dr. Burch testified about reviewing audit studies in which trained actors applied for jobs with identical resumes except for either the name or race of the applicant. Those studies revealed that employers do in fact discriminate against racial minorities in hiring. *Id.*

Dr. Dorothy Nairne shared her personal experience with this type of discrimination, noting that she has had immense difficulty securing funding to start her small business while observing younger, less experienced white individuals achieving their ends more easily. Trial Tr. Day 1 at 34. Dr. Nairne testified that this difference is "based upon [her] race." *Id.*

The trial record further shows how disparities in hiring, pay, and promotions have resulted in compounded poverty and economic inequality. Dr. Burch testified and presented data showing that "white households earn or have incomes that are tens of thousands of dollars higher at the median than black households," and, astoundingly, "that black poverty is more than double, almost triple that of white poverty." Trial Tr. Day 3 at 22.

A poignant and helpful example of the interplay between employment discrimination, economic inequality, and voter participation faced by Black Louisianans is transportation. Dr. Burch spoke to this point through testimony on a study that compared the number of households in Louisiana that do not have access to a vehicle by race. *Id.* at 23. Dr. Burch testified that the results showed that "a significant percentage of Black households [do not] have access to a car, compared with less than . . . about five percent of white households." *Id.*

Fact witnesses likewise testified to this trend as it plays out on the ground. Dr. Dorothy Nairne testified that transportation is "for sure" an issue for the people of her community, "especially people who may be low resource[d]." Trial Tr. Day 1 at 32. Multiple witnesses discussed a lack of public transportation in their respective communities. *See id.* (individual plaintiff Dr. Dorothy Nairne testifying "[t]here's no public transportation in that area [*i.e.*, her community of Napoleonville, Louisiana]."); *id.* at 104 (individual plaintiff Dr. Alice Frances Washington testifying to the lack of public transportation in Baton Rouge).

The import of this reality is simple: barriers to transportation, whether a personal vehicle or public transit, impact people's ability to access the polls. The district court's decision succinctly laid out this pattern: "Economic hardships caused by under-employment are directly manifested in a lack of transportation. Transportation barriers adversely affect access to voter registration and polling sites." *Nairne*, 715 F. Supp. 3d at 873. The Fifth Circuit upheld this finding. *See Nairne*, 2025 WL 2355524, at *21.

Access to white collar jobs, another strong indicator of voter participation, is also largely unavailable to Louisiana's Black communities. The district court found that "Black Louisianans are underrepresented in white collar occupations," *Nairne*, 715 F. Supp. 3d at 873, a finding that was reiterated in the Fifth Circuit decision, *see Nairne*, 2025 WL 2355524, at *21. And, as Dr. Burch testified, holding a white collar job may "make it easier for people to develop civic skills that can be useful in thinking about how to navigate bureaucracies." Trial

Tr. Day 3 at 24. Further, a person with a white collar job is more likely to have the freedom to take off work and vote without risking losing hourly pay. *Id.* Dr. Nairne confirmed this trend in her testimony, observing that "if people have to go to work at the big box store, they don't know where they're going to vote." Trial Tr. Day 1 at 32–33. She poignantly noted the broader ways in which economic hardship impedes voter participation by simply making life too busy and too difficult, reflecting that "[i]f it's raining and you've got to worry about your house and it's raining inside your house, then you're not going to vote on that day. [There are] issues that would then take precedence over going to vote or remembering to vote." *Id.* at 33.

c) *Criminal Justice Disparities*

The *Nairne* record also demonstrates that persistent, disparate interactions with the criminal justice system likewise impact Black voter participation in Louisiana. Dr. Burch testified that Black people are overrepresented in Louisiana's prisons, making up roughly 66 percent of the prison population. Trial Tr. Day 3 at 34. She roots this statistic in the state's history, noting that Black people have always made up at least 60 percent of the state's prison population since 1925. *Id.* As Dr. Burch testified, differential commission of crimes by race cannot fully explain these current and historical disparities. Rather, "discrimination [has played] a role in producing [these] racial disparities in criminal justice in Louisiana in the past," and contemporary research shows that this discrimination persists today. *Id.* at 36. As an example, Dr. Burch referenced

a study that highlighted disparities between arrests and sentencing among Black and white Louisianans:

> [About] 65 percent of the people in Louisiana in prison for a drug conviction are Black. But then when you look at the arrest data, a majority of the people who are arrested for serious drug offenses in Louisiana—so those that include either trafficking of any drug or possession of a hard drug—are white. So the underlying data in terms of criminality aren't really explaining those outcomes with respect to incarceration in—at least with respect to drug convictions and drug crimes.

Id. at 36–37.

The effect of this inequity cannot be overstated. As Dr. Burch observed, people who are incarcerated are unable to vote, and voting rights are not immediately restored upon release. *Id.* at 35. "[A]pproximately 80% of the parolees/probationers currently ineligible to vote are African American, compared with about 32% of the population of the state." *Id.* And nearly 48,000 Black Louisianans were unable to vote in 2020 due to their felony convictions, twice the number of White Louisianans. *Id.* Put simply, compared to other groups, "a disproportionate amount of the Black voting age population in Louisiana cannot vote due to a felony, relative to people in other groups." *Id.* at 35–36.

But the criminal justice system affects voting in subtler ways, not just through the blunt mechanism of felony disenfranchisement. Both the district court and the Fifth Circuit underscored Dr. Burch's finding

that "negative interactions with the criminal justice system 'tend to demobilize voting and make people shy away from participating in politics.'" *Nairne*, 2025 WL 2355524, at *21; *see also Nairne*, 715 F. Supp. 3d at 874 (same). The *Nairne* plaintiffs corroborated Dr. Burch's testimony. As Dr. Nairne recounted, many men with felony convictions mistakenly believe they can never vote again. Trial Tr. Day 1 at 32. And as Dr. Washington recounted, and the district court specifically credited, Louisiana's placement of the voter registration office *on the same floor* of the same building as the Sheriff's office likely dissuades individuals who have interacted with the criminal justice system from engaging in the political process for fear of being arrested, intimidated, or harassed while trying to do so. Trial Tr. Day 1 at 101–02.

d) *Health Disparities*

The *Nairne* record also included evidence on racial disparities in healthcare access and health outcomes felt by Black and white Louisianans, a final illustrative component of persistent racial discrimination in Louisiana and how it *still* impacts voter participation. Dr. Burch cited data from the CDC's chronic disease indicator for adults in Louisiana, which showed higher rates of mortality among Black Louisianans compared to white Louisianans for every disease studied. Trial Tr. Day 3 at 30. Relatedly, Dr. Burch presented testimony regarding life expectancy disparities, using public health data to demonstrate that "white men are expected—and white women are expected to live several years longer than Black men and women in Louisiana." *Id.* at 30–31. The district court and the

Fifth Circuit both credited this testimony, finding that "the prevalence of disease and mortality rates is higher for Black Louisianans as compared to White Louisianans." *Nairne*, 2025 WL 2355524, at *21; *Nairne*, 715 F. Supp. 3d at 873.

Social policies have shaped these health outcomes. As the district court and Fifth Circuit highlighted, "Black Louisianans have less access to health insurance and healthcare" than other races. *Nairne*, 2025 WL 2355524, at *21; *Nairne*, 715 F. Supp. 3d at 873. Dr. Burch testified that Black Louisianans are "slightly more likely to be uninsured than white people." Trial Tr. Day 3 at 31. Somewhat less intuitively, Dr. Burch described how environmental factors that are the result of social inequities lead to varying health outcomes. Dr. Burch pointed to the way chemical plants are placed in the state, which has created an area in Louisiana referred to as "cancer alley." *Id.* at 32. In "cancer alley," residents are exposed to "high levels of air pollution and other dangers," "which have been shown to detrimentally affect health." *Id.* Particularly, studies in this region "have linked high levels of air pollution to respiratory illnesses like cancer, Covid-19, and asthma." *Id.* Dr. Nairne provided harrowing personal testimony of living "in the mouth of cancer alley," describing attending funerals "almost every Saturday." Trial Tr. Day 1 at 36.

Dr. Burch testified, and the district court agreed, that health is an "important predictor of voter turnout." Trial Tr. Day 3 at 32; *see also Nairne*, 715 F. Supp. 3d at 873 ("The Court finds that these health disparities adversely impact voter engagement and participation"). Dr. Burch explained that "[i]f you have impaired cognitive functioning or [a] physical

disability, it might make voting more difficult. . . . And likewise, people with disabilities are less likely to vote[, which can sometimes be] explained by problems with polling place accessibility." Trial Tr. Day 3 at 33. But at the simplest level, the damage is clear—a very sick individual does not "have the time [or] the money to go vote or engage in politics." *Id.*

In the end, the record was "clear" that the current effects of discrimination impede Black voters' ability to effectively participate in the political process. *Nairne*, 2025 WL 2355524, at *21 ("[G]iven the district court's factual findings, [Senate Factor Five] also strongly weighs in favor of finding a §2 violation.").

B. Senate Factor Six

Senate Factor Six asks "whether political campaigns [in the area] have been characterized by overt or subtle racial appeals." *Gingles*, 478 U.S. at 37. This Factor covers all forms of racial pandering, "ranging in style from overt and blatant to subtle and furtive." *Id.* at 40. Preying on racial anxiety, *United States v. City of Euclid*, 580 F. Supp. 2d 584, 610 (N.D. Ohio 2008), and exploiting "heightened racial tension," *NAACP v. E. Ramapo Cent. Sch. Dist.*, 462 F. Supp. 3d 368, 381 (S.D.N.Y. 2020), are well-established forms of racial appeals. The use of racially charged campaign tactics, "Congress undoubtedly recognized," provides evidence that racial bias continues to taint the political process. *See LULAC v. Clements*, 986 F.2d 728, 750 (5th Cir. 1993). More recent examples of these tactics are more probative of current conditions. *See Thomas v. Bryant*, 366 F. Supp. 3d 786, 807 n.71, 808 n.74 (S.D. Miss. 2019),

vacated on other grounds sub nom., *Thomas v. Reeves*, 961 F.3d 800, 801 (5th Cir. 2020) (en banc) (per curiam).

The *Nairne* record included several examples of recent political campaigns for office in Louisiana that used racial appeals to sway voters. For example, Dr. Burch testified about the 2019 Louisiana gubernatorial election, during which candidate Eddie Rispone sent out advertisements featuring mugshots of Black men with the following underlying audio:

> Dangerous, sick, violent. John Bel Edwards put them back on our streets where they robbed, attacked, murdered. Under Edwards murder is up 20 percent. Thousands of dangerous criminals released and New Orleans a Sanctuary City mecca for lawlessness. Eddie Rispone will ban sanctuary cities and leave forgiveness to God, not government. Commit the crime, do the time. Eddie Rispone for Governor.

Trial Tr. Day 3 at 44–45. Dr. Burch also testified on the use of covert racial appeals, explaining that while Louisiana candidates "need to appear racially egalitarian," there remains "an incentive to appeal to white racial fears" through "subconscious[]" means. *Id.* at 45. Dr. Burch referenced the recent campaign of Louisiana state senate candidate Conrad Appel as an example of such appeals. *Id.* at 46.

The *Nairne* plaintiffs echoed Dr. Burch's observations. Both Dr. Nairne and Omari Ho-Sang (representing organizational plaintiff BVM) testified about an advertisement released by Senator John

Neely Kennedy during his re-election campaign, which featured Senator Kennedy speaking over images of Black Lives Matter protests and stating "[i]f you hate cops just because they're cops, the next time you're in trouble, call a crackhead." Trial Tr. Day 1 at 37, 191. And plaintiff Reverend Clee Lowe testified about covert racial signaling—"little dog whistles"—used by candidates during the 2023 election cycle and stated that those "little dog whistles" signal which candidates are "not going to represent our interests and what we look for in an elected official." *Id.* at 62.

The district court credited this testimony and found that Senate Factor Six weighed in favor of finding a §2 violation. *Nairne*, 715 F. Supp. 3d at 874. In affirming that finding, the Fifth Circuit noted that the record was "replete with testimony from both experts and fact witnesses" on Senate Factor Six, and concluded that in light of that evidence, the district court's "meticulous findings" should be left "undisturbed." *Nairne*, 2025 WL 2355524, at *21.

C. Senate Factor Seven

Senate Factor Seven considers the "extent to which members of the minority group have been elected to public office in the jurisdiction." *Gingles*, 478 U.S. at 37. Factor Seven is particularly important, *Gingles*, 478 U.S. at 48 n.15, as well as the only factor included in the statutory text, *see* 52 U.S.C. § 10301(b). This Factor plays a critical role in "contextualiz[ing] the degree to which vestiges of discrimination continue to reduce minority participation in the political process." *Veasey v. Abbott*, 830 F.3d 216, 261 (5th Cir. 2016) (en banc). If minority citizens are not being elected to public office,

"it is of course" strong proof that the political process is not equally open to them. *Marengo Cnty. Comm'n*, 731 F.2d at 1571.

The *Nairne* record offered decisive evidence on Senate Factor Seven. As the district court acknowledged:

> It is undisputed that Black Louisianans are underrepresented in public office. No Black candidates have been elected as Governor or Lieutenant Governor in Louisiana since the end of Reconstruction. Never in history has Louisiana elected a Black U.S. Senator. Since 1991, only four Black Louisianans have been elected to Congress, and then only from majority-Black districts.

Nairne, 715 F. Supp. 3d at 874. The court then observed that Black Louisianans' underrepresentation in public office extends into Louisiana's state and local governments:

> While the state is roughly one-third Black, Black legislators held only 36 out of 144 total State House seats in 2023 and Black senators held only 10 out of 39 total State Senate seats. Less than 24 percent of Louisiana mayors are Black and only 26.1 percent of Louisiana state court judges are Black. Two of the eight elected Board of Elementary and Secondary Education members are Black, both elected from majority-black districts. And only one Associate Justice

> on the Louisiana Supreme Court, who was elected from the State's sole majority-Black Supreme Court district, is Black.

Id. at 875.

After acknowledging its "particular importance," the Fifth Circuit confirmed that Senate Factor Seven "unequivocally support[ed]" the *Nairne* plaintiffs, quoting the same statistics the district court relied on (as recounted above). *Nairne*, 2025 WL 2355524, at *22.

D. Senate Factor Eight

Senate Factor Eight asks whether "elected officials are unresponsive to the particularized needs of the members of the minority group." *Gingles*, 478 U.S. at 45. This Factor taps into political influence. *Marengo Cnty. Comm'n*, 731 F.2d at 1572. If elected officials are not meeting the needs of minority citizens, that indicates that those citizens do not have "[]sufficient political influence to ensure that their desires are considered by those in power." *Id.* By the same token, one would expect elected officials to be responsive to groups with equal access to the political process. *Id.* at 1573; *see also Veasey*, 830 F.3d at 262–63.

Again, the *Nairne* record presented substantial evidence that Louisiana's elected officials are unresponsive to the particular needs of Black Louisianans. Dr. Burch testified about a public opinion survey of Louisianans, which revealed that 70 percent of Black respondents agreed that "most elected officials in Louisiana don't care what people

like me think." Trial Tr. Day 3 at 53. And then-Louisiana state representative Cedric Glover testified that even though Black citizens had voiced a desire at the redistricting roadshows for more minority representation, the Louisiana legislature instead *eliminated* a majority-Black district in north Louisiana and prioritized incumbency protection. Trial Tr. Day 1 at 149.

Both the district court and the Fifth Circuit credited this evidence in ruling that Senate Factor Eight weighed in favor of finding a §2 violation. *See Nairne*, 715 F. Supp. 3d at 875; *Nairne*, 2025 WL 2355524, at *22. And more, both the district court and Fifth Circuit agreed that the "demonstrated disparities across socioeconomic indicators" discussed in the previous Senate Factors also showed that elected officials were not responsive to the needs of Black Louisianans. *See Nairne*, 715 F. Supp. 3d at 875; *Nairne*, 2025 WL 2355524, at *22.

E. The Remaining Senate Factors

While Senate Factors Five through Eight specifically demand evidence of current conditions within the challenged jurisdiction, certain remaining Senate Factors also call for an evaluation of current circumstances. The *Nairne* record makes clear, as the district court found and the Fifth Circuit affirmed, that current circumstances in Louisiana satisfy each of those Factors and support a §2 violation.

Senate Factor Two examines "the extent to which voting in the elections of the state or political subdivision is racially polarized." *Gingles*, 478 U.S. at 37. The *Nairne* plaintiffs presented evidence of racial polarization in dozens of recent elections through

expert testimony provided by Dr. Lisa Handley and Dr. Marvin King. *See Nairne*, 2025 WL 2355524, at *20. Both the district court and the Fifth Circuit credited that evidence. *See Nairne*, 715 F. Supp. 3d at 870–71; *Nairne*, 2025 WL 2355524, at *20.

Similarly, Senate Factor Three examines "the extent to which the state has used unusually large election districts, majority vote requirements . . . or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group." *Gingles*, 478 U.S. at 37. The *Nairne* plaintiffs presented evidence that Louisiana's continued use of a majority vote requirement for its primaries and general elections has resulted in "repeated and voluminous decentralized elections"—indeed, *seven* (7) separate elections were held in 2023 alone. *Nairne*, 715 F. Supp. 3d at 871. And testimony from Dr. Dorothy Nairne and Ms. Ho-Sang, credited by both the district court and the Fifth Circuit, confirmed that Louisiana's punishing election calendar breeds voter fatigue and confusion. *Id.*; *Nairne*, 2025 WL 2355524, at *20.

Senate Factor Nine examines whether the "policy underlying" the challenged law is "tenuous." *Gingles*, 478 U.S. at 45. Based on the evidence supporting Senate Factors Three and Five, the district court concluded that the use of the challenged map "is tenuous to anything *other* than disenfranchising Black voter participation in the political process." *Nairne*, 715 F. Supp. 3d at 876 (emphasis added). The Fifth Circuit affirmed this finding. *Nairne*, 2025 WL 2355524, at *22.

As a final remark, the district court noted that the "Defendants did not meaningfully contest any of the Senate Factors evidence," despite every

opportunity to do so. *Nairne*, 715 F. Supp. 3d at 876. That failure must not be ignored.

As of February 2024, current conditions in Louisiana justified relief under §2. *Nairne*, 715 F. Supp. 3d at 878; *Nairne*, 2025 WL 2355524, at *22.

CONCLUSION

"[V]oting discrimination still exists; no one doubts that." *Shelby Cnty. v. Holder*, 570 U.S. 529, 536 (2013). This statement is no less true today, as current conditions in Louisiana confirm. There may come a time when we have washed away the "insidious and pervasive evil" of "racial discrimination in voting," *see id.* at 535 (quoting *South Carolina v. Katzenbach*, 383 U.S. 301, 309 (1966)), but as the evidence in *Nairne* makes clear, Louisiana is not there yet.

For the reasons above, the three-judge district court's decision should be reversed.

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Respectfully submitted,

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