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 CAMPAIGN LEGAL CENTER AS *AMICUS CURIAE* IN SUPPORT OF *ROBINSON* APPELLANTS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Statutes and Codes

Other Authorities

INTERESTS OF *AMICUS CURIAE*[1]

Amicus curiae Campaign Legal Center ("CLC") is a leading nonpartisan election law nonprofit. CLC develops policy on a range of democracy issues. CLC aims to protect Americans' voting rights and secure equal access for historically disenfranchised racial minorities under the Constitution and the Voting Rights Act ("VRA"). CLC regularly litigates Section 2 vote dilution cases and has an interest in the correct application of racial gerrymandering and Section 2 jurisprudence. CLC also has an interest in ensuring that Section 2, a critical tool in *enforcing* the guarantees of the Fourteenth and Fifteenth Amendments, is not undermined by the distorted arguments Appellees and the State advance here.

SUMMARY OF ARGUMENT

Section 2 of the Voting Rights Act ("Section 2") is among the most important federal civil rights provisions in this country's history. *See, e.g.*, *Bush v. Vera*, 517 U.S. 952, 992 (1996) (O'Connor, J., concurring) (describing Section 2's results test as "an important part of the apparatus chosen by Congress to effectuate this Nation's commitment 'to confront its conscience and fulfill the guarantee of the Constitution' with respect to equality in voting") (quoting S. Rep. 97-417, at 4 (1982) ("S. Rep.")). Enacted pursuant to Congress'

[1] No counsel for a party authored this brief in whole or in part and no person or entity other than *Amicus*, their members, or their counsel made a monetary contribution to its preparation or submission.

enforcement authority under the Fourteenth and Fifteenth Amendments to the Constitution, Section 2 creates a right for citizens of the United States to vote free from practices that "result[] in a denial or abridgement of the right . . . to vote on account of race or color." 52 U.S.C. § 10301(a). That right is violated if the "totality of circumstances" show that the electoral conditions in a State or political subdivision "are not equally open to participation by members of a class of citizens protected by" the Act. 52 U.S.C. § 10301(b).

Appellees and the State ask this Court to upend decades of redistricting jurisprudence and "the most successful civil rights statute in the history of the Nation," *Allen v. Milligan*, 599 U.S. 1, 10 (2023) (citation and internal quotation marks omitted), because "[t]he Court has [] set time limits on race-based state action," and apparently "[i]t's time" to do so for race-based redistricting under Section 2. Appellees' Br. at 37-38 (citing *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181, 212-13 (2023) ("*SFFA*")); State of Louisiana's Supplemental Br. at 24-33. This argument lacks merit for at least three reasons.

First, Section 2 is a statute of "self-limitation" and is already cabined in scope and duration. S. Rep. at 43. Section 2's purpose, language, and the judicial standards applied to it demonstrate that proving a violation under the statute already requires an analysis of current electoral conditions and a showing of ongoing racial discrimination.

Indeed, with the 1982 amendments to Section 2, Congress noted that the statute would impact only communities where race plays an excessive role in the political process. *Id.* at 33. Moreover, just two years ago, the Court reaffirmed the framework for applying Section 2 under *Thornburg v. Gingles*, 478 U.S. 30 (1986), as well as the statute's constitutionality. *Milligan*, 599 U.S. at 18-20, 41. Given Section 2's built-in requirement of analyzing current electoral conditions, the explanation for continued litigation and race-based redistricting under Section 2 is that intensive racial discrimination still requires a remedy.

Second, proof that race and racial discrimination continue to play an excessive role in the political process is abundant, demonstrating the continued necessity of Section 2's protections. Appellees and the State claim that current conditions no longer justify race-based action under Section 2, but the state of play in our country's politics belies that claim. Racial discrimination in voting and redistricting remains pervasive. Only just a week ago, the State of Texas enacted a rushed mid-decade redraw of its congressional map because the U.S. Department of Justice ("DOJ") researched the racial demographics of four Texas congressional districts, alerted the legislature to their racial makeup (all majority-minority), and demanded that they dismantle the districts on the basis of race. If that is not racial discrimination, what is? Or take Alabama. In light of a judicial finding that Alabama's congressional map likely diluted the

voting strength of Black voters in violation of Section 2, a finding that was affirmed by this Court, Alabama openly defied a lower court's order to draw a second congressional district providing Black voters with an equal opportunity to participate in the process. Instead, it enacted another congressional map with only one opportunity district, which the lower court found was dilutive and enacted with discriminatory intent. Alabama has yet again appealed to this Court. Race pushes to the forefront of elections in a variety of other ways—such as through the widespread use of racial appeals in political campaigns. The pervasiveness of racial discrimination demonstrates that Section 2 remains vital for allowing voters an equal opportunity to participate in the political process regardless of race.

Third, Section 2, enacted pursuant to Congress's broad remedial enforcement authority expressly granted under the Fourteenth and Fifteenth Amendments, is not subject to a sunset provision. As the Court held in *Shelby County v. Holder*, 570 U.S. 529, 557 (2013), Section 2 is a "permanent, nationwide ban on racial discrimination in voting." In addition, the Court has held that Section 2 (and the statute's effects test) is an appropriate enforcement of the Constitution on multiple occasions. *See, e.g.*, *City of Rome v. United States*, 446 U.S. 156, 177 (1980); *Milligan*, 599 U.S. at 41. Nor has racial discrimination in the electoral process somehow been ameliorated in the two years since *Milligan*

was decided. Finally, the Court's decision in *SFFA* does not provide a basis for imposing a time limit on Section 2—the conduct regulated in that case, action by individual schools pursuant only to school policy, is categorically different from Congress' authority, granted to it by the Constitution, to enact remedial legislation to enforce the Reconstruction Amendments.

The Court should reverse the district court's decision concluding that Louisiana's congressional map is an unconstitutional racial gerrymander.

ARGUMENT

I. Section 2 is self-limiting and durationally cabined by its text and judicial standards.

Section 2 was designed by Congress to be self-limited in scope. The "time limit" Appellees and the State seek for race conscious remedies is built into the statute's text and the judicial standards utilized for Section 2 claims. Appellees' Br. at 37. Indeed, Section 2 inherently requires the consideration of current conditions and a showing of racial discrimination to establish a violation of the statute.

In *City of Mobile v. Bolden*, 446 U.S. 55, 61-65 (1980), this Court held that discriminatory intent was required to prove a violation of the Fifteenth Amendment (and thus Section 2 as originally enacted), but that the Fifteenth Amendment "does not prohibit laws that are discriminatory only in effect." *Milligan*, 599 U.S. at 11. The decision in *Mobile* "produced an avalanche of criticism." *Id.* (citing T. Boyd & S. Markman, *The 1982*

Amendments to the Voting Rights Act: A Legislative History, 40 Wash. & Lee L. rev. 1347, 1355 (1983)). As a result, in 1982 Congress amended Section 2 pursuant to its enforcement power under the Reconstruction Amendments to allow for challenges to voting practices and procedures, including election systems and redistricting plans, with a racially discriminatory effect alone. *Milligan*, 599 U.S. at 13; *City of Rome*, 446 U.S. at 177 (holding that Congress was justified in adopting an effects test in the VRA because requiring proof of intent would cause "the perpetuation of earlier, purposeful racial discrimination, regardless of whether the practices they prohibited were discriminatory only in effect").

In adopting the results test, Congress made clear that a showing of *current racial discrimination* is required to prove a vote dilution claim under Section 2, even though discriminatory purpose is not. As the Senate Report that accompanied the 1982 amendment states, the results test would impact "communities in our Nation where racial politics *do* dominate the electoral process." S. Rep. at 33 (emphasis added); *Vera*, 517 U.S. at 992 (O'Connor, J., concurring). As a result, it was understood that "Section 2 is not meant to create race-conscious voting but to attack the discriminatory results of such voting where it is present." *United States v. Marengo Cnty. Comm'n*, 731 F.2d 1546, 1561 (11th Cir. 1984).

Thus, Section 2 does not classify any election system as *per se* illegal—any system must be shown in operation to not be equally open for participation by members of a protected class of voters. S. Rep. at 33; 52 U.S.C. § 10301(b). Indeed, the Senate Report stated that "[t]he results test *makes no assumptions one way or the other* about the role of racial political considerations in a particular community" and plaintiffs "have to prove it." S. Rep. at 34; *see also id.* at 33 (where race does not dominate, "it would be exceedingly difficult for plaintiffs to show that they were effectively excluded from fair access to the political process under the results test"); *id.* at 43 ("the proposed amendment to section 2 would only invalidate those election laws where a court finds that discrimination, in fact, has been proved").

Tellingly, Congress referred to Section 2's results test as having a "self-limitation" because of the statute's bounded scope and the high burden on plaintiffs to prove a violation. S. Rep. at 43; *id.* at 32-33. And the text of the statute itself calls for an analysis of whether "the political processes . . . are not equally open to participation" and whether members of a protected class "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 52 U.S.C. § 10301(b). As such, "the very terms and operation of the provision . . . confine its application to actual racial discrimination." S. Rep. at 43.

In addition to Congress's intent and the statute's text, judicial standards utilized by courts for litigating Section 2 claims cabin its reach and duration. Indeed, since the adoption of the framework for Section 2 vote dilution claims in *Gingles*, the Court has held that Section 2's "exacting requirements . . . limit judicial intervention to those instances of intensive racial politics where the excessive role of race in the electoral process denies minority voters equal opportunity to participate." *Milligan*, 599 U.S. at 30 (citation modified).

Under the *Gingles* framework, plaintiffs must first prove three preconditions. First, plaintiffs must show that the "minority group . . . is sufficiently large and geographically compact to constitute a majority" in a reasonably configured district ("*Gingles* I"). 478 U.S. at 46-51; *Milligan*, 599 U.S. at 18. Second, "the minority group must be able to show that it is politically cohesive" ("*Gingles* II"). *Gingles*, 478 U.S. at 51. 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" ("*Gingles* III"). *Id.*[2] Once the three preconditions are met, a plaintiff must then demonstrate that, under the "totality of the circumstances," the political process is not "equally open" to minority voters. *Id.* at 45-46; *id.* at 36-38 (identifying seven

[2] The second and third preconditions require an analysis of voting patterns in a State or political subdivision and together are often referred to as racially polarized voting.

factors and other potentially probative information, outlined in the Senate Report that accompanied the 1982 amendments, relevant to the totality inquiry).

As articulated in *Gingles*, which the Court affirmed only two years ago, all three of the preconditions and the totality analysis are inherently tethered to current electoral conditions in a State or political subdivision. For example, *Gingles* I requires a plaintiff to show that the *existing* size and compactness of the relevant minority population allows for a majority-minority district to be drawn *at the time of the proceeding*. *See Milligan*, 599 U.S. at 18 (noting the first precondition is needed "'to establish that the minority has the potential to elect a representative of its own choice in some single member district'") (citing *Growe v. Emison*, 507 U.S. 25, 40 (1993)). *Gingles* II and III require plaintiffs to show that there is *ongoing* cohesion among minority voters and that white voters vote as a bloc against minority-preferred candidates in *recent* elections. *Milligan*, 599 U.S. at 18-19 (holding that *Gingles* II "shows that a representative of [] choice would in fact be elected" while *Gingles* III "establishes that the challenged districting" currently "thwarts a distinctive minority vote") (citation and internal quotation marks omitted). And the totality of the circumstances analysis determines whether the minority group in question *presently* lacks equal opportunity and whether there is a "backdrop of substantial racial discrimination within the State." *Id.* at 25.

In particular, the totality of circumstances is often an exhaustive search into the present conditions of the political process and racial discrimination in a State or political subdivision, including the history of voting discrimination in a jurisdiction, the level of racially polarized voting in elections, any electoral mechanisms that may enhance vote dilution, any candidate slating process, past and current discrimination and disparities in areas such as health, employment, housing, and education that bear more heavily on the minority group, racial appeals in recent campaigns, the extent to which minority candidates have been elected, proportionality, and more. *Gingles*, 478 U.S. at 36-38. The Court has recognized that application of the *Gingles* factors is "peculiarly dependent upon the facts of each case," 478 U.S. at 79 (quoting *Rogers v. Lodge*, 458 U.S. 613, 621 (1982)), and "before courts can find a violation of § 2, therefore, they must conduct an intensely local appraisal of the electoral mechanism at issue, as well as a searching practical evaluation of the past and present reality." *Milligan*, 599 U.S. at 19 (citation and internal quotation marks omitted).

Neither the statute nor the *Gingles* framework assumes that the necessary conditions for vote dilution are met. Plaintiffs must prove them, case by case. *See, e.g., Shaw v. Reno*, 509 U.S. 630, 653 (1993) ("racial bloc voting and minority-group political cohesion . . . must be proved in each case in order to establish that a redistricting plan dilutes minority voting strength in violation of §

2"). Nor is doing so an easy burden. Indeed, "§ 2 litigation in recent years has rarely been successful." *Milligan*, 599 U.S. at 29 (citing Brief for Professors Jowei Chen et al. as *Amici Curiae* at 3-4, 7, 15-16). This aligns with Congress's finding regarding vote dilution litigation pre-*Bolden*, where "the results test did not assure victory for plaintiffs. Of the total 23 cases, defendants won 13 and prevailed in part in two others." S. Rep. at 33. Indeed, the 40 years of cases following *Gingles* have narrowed Section 2's application, not expanded it.

Nevertheless, Appellees argue that "aggressive VRA-only litigation before single-judge courts has proliferated and expanded racial gerrymanders." Appellees' Br. at 38. But that argument makes little sense. Given the built-in tether between Section 2 and current election conditions, it can only be that ongoing racial discrimination continues to necessitate remedies for vote dilution. As Congress stated in enacting the 1982 amendments, "[t]o suggest that it is the results test, carefully applied by the courts, which is responsible for those instances of intensive racial politics, is like saying that it is the doctor's thermometer which causes high fever." S. Rep. at 34. Indeed, as this Court recently stated in *SFFA*, "[e]liminating racial discrimination means eliminating all of it." 600 U.S. 181 at 206. Given that intensive racial discrimination in the electoral process persists, in Louisiana and elsewhere, legislation remedying such conditions remains essential.

II. Current conditions demonstrate that race still plays an excessive role in the electoral process and Section 2's protections are necessary.

Proof that race currently plays an excessive role in the electoral process abounds, demonstrating that Section 2's protections are necessary. Appellees claim that "Section 2 imposes burdens on constitutional redistricting laws that cannot be justified by Black Louisianans' needs" today. Appellees' Br. at 37. Other parties have addressed the lack of merit in this argument as it relates to Louisiana. *See, e.g., Robinson* Appellants' Supplemental Br. at 41-47. But this argument is also wrong as applied more broadly. Racial discrimination continues to pervade the political process in myriad ways as it relates to redistricting *right now*. Take, for example, the State of Texas. Only about a week ago, Texas abruptly enacted a mid-decade redraw of its congressional map, after the DOJ and Governor Abbott tasked the legislature with intentionally eliminating congressional districts that happen to have a multiracial majority of Black and Latino voters.[3] A special session was called only after the DOJ sent a letter to Governor Abbott and Attorney

[3] *See* Letter from Bruce V. Spiva and Annabelle E. Harless to Texas House Select Committee on Congressional Redistricting, Re: Unconstitutional Racially Discriminatory Redistricting, July 28, 2025, https://perma.cc/2CZ6-YRX5. The same letter was sent to the Texas Senate Redistricting Committee, Governor, Lieutenant Governor, and Attorney General.

General Paxton on July 7, 2025, identifying the racial composition of four congressional districts and demanding the dismantling of those districts *because of their racial makeup*.[4] Governor Abbott also stated that he called a special session for redistricting to "make sure that we have maps that don't impose coalition districts."[5] But the 2021 congressional mapdrawers testified repeatedly during the pending *League of United Latin American Citizens* (*LULAC) v. Abbott* litigation that *race was not considered at all* in the map's configuration. *LULAC v. Abbott*, 3:21-cv-00259 (W.D. Tex. filed Oct. 18, 2021). Thus, unless the State's witnesses perjured themselves at trial, the 2021 congressional districts cannot possibly be unconstitutional racial gerrymanders as asserted by the DOJ.

It is difficult to imagine a more blatant example of intentional racial discrimination and racial gerrymandering than the DOJ researching the racial composition of districts that were drawn race blind, reporting that information to the State and ordering the State to dismantle any districts that happen to contain a multiracial minority, with the Governor calling a special session on that basis and the legislature proceeding to do just that.

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[4] Letter from Harmeet Dhillon to Gregory Abbott & Ken Paxton, Re: Unconstitutional Race-Based Congressional Districts TX-09, TX-18, TX-29, and TX-33, July 7, 2025, https://perma.cc/EXQ9-322A.

[5] FOX 4 Dallas-Fort Worth, *Abbott on THC, redistricting, & the special session*, (YouTube, July 22, 2025), https://www.youtube.com/watch?v=PHsYs0NTPTY.

Indeed, the Court has said that "if there were a showing that a State intentionally drew district lines in order to destroy otherwise effective crossover districts, that would raise serious questions under both the Fourteenth and Fifteenth Amendments." *Bartlett v. Strickland*, 556 U.S. 1, 24 (2009). The violation is worse here, because the districts targeted for destruction are coalition districts, which are majority-minority, unlike crossover districts.

The State of Alabama provides another example. In 2023, Alabama's congressional map was preliminarily enjoined for diluting Black voting strength in violation of Section 2. The lower court issued a 227-page opinion and found that the question was not "a close one." *Milligan*, 599 U.S. at 16 (citation and internal quotation marks omitted). Alabama appealed to this Court, but this Court agreed that the map likely violated Section 2. *Id*. at 19-23. As a result, Alabama was given the opportunity to remedy the violation by drawing a map with two districts which would provide Black voters with an equal opportunity to elect candidates of their choice. *Milligan v. Allen*, 2:21-cv-01530, Dkt. 272, Injunction, Opinion, and Order (N.D. Ala. Sep. 5, 2023), at 4.

Instead, in open defiance of the court and the Voting Rights Act, the Legislature enacted a map that once again contained only one such district. *Id*. at 8. The map was challenged by the plaintiffs for non-compliance with Section 2. The lower court agreed with plaintiffs, finding that the remedial

map did not remedy the Section 2 violation affirmed by this Court. In so deciding, the court was "deeply troubled that the State enacted a map that the State readily admits does not provide the remedy we said federal law requires." *Id*. The court was also "disturbed by the evidence that the State delayed remedial proceedings but ultimately did not even nurture the ambition to provide the required remedy" and stated that it "clearly [] illustrates the lack of political will to respond to the needs of Black voters in Alabama in the way that we ordered." *Id*.; *id*. at 184. Alabama sought a stay in this Court, arguing that it was not required to draw a second Black majority-district and that there would be "no logical endpoint." *Allen v. Milligan*, 23A231, Application for Stay Pending Appeal (Sep. 11, 2023), at 38. The Court denied the State's stay request with no noted dissents, allowing the map created by a special master to stay in effect for the 2024 election. *See Allen v. Milligan*, 144 S. Ct. 476 (2023) (mem.).

But Alabama did not stop there. It insisted on taking the case to trial regarding the validity of its 2023 map passed in defiance of the district court's order. After receiving extensive evidence, on May 8, 2025, the district court held that the 2023 congressional map violated Section 2, and that "the Legislature intentionally discriminated against Black Alabamians when it passed the 2023 Plan." *Milligan v. Allen*, 2:21-cv-01530, Dkt. 490, Injunction and Order (N.D. Ala. May 8, 2025), at 12. Continuing its pattern of defiantly ignoring the needs of Alabama's Black voters, the State has

once again appealed to this Court. Alabama is not even trying to hide its discrimination against Black voters.

Traveling back to Texas—this time to Tarrant County—yet another example of racial discrimination in redistricting appears. There, the County decided to dismantle and redraw its commissioner precinct map mid-decade, reducing the number of majority-minority districts from two to one. *Jackson v. Tarrant County*, 4:25-cv-00587, Dkt. 8, Amended Complaint (N.D. Tex. June 17, 2025). The result is that in a county in which the majority of residents are non-white, three out of four districts are majority-white, with only one majority-minority district. *Id.* And in so configuring the districts, the County caused four times as many Black voters in the County than Anglo voters to suffer a two-year period of disenfranchisement caused by shifting them between staggered-term districts. *Id.* When asked by a reporter after his vote to explain his vote, County Judge Tim O'Hare, who cast the deciding vote in favor of the map, said this:

> The policies of Democrats continue to fail Black people over and over and over, but many of them keep voting them in. It's time for people of all races to understand the Democrats are a lost party, they are a radical party, it's time for them to get on board with us and we'll welcome them with open arms.

Lone Star Politics: June 8, 2025, NBC 5 at 16:20, https://www.nbcdfw.com/news/politics/lone-star-politics/lone-star-politics-june-8-2025-video/3858717/.

A government official cannot cast the deciding vote to reduce the number of majority-minority districts in a map because he disapproves of the candidate choices of "Black people" and because he demands that "people of all races" change their candidate preferences to match his. Redrawing district lines to eliminate or dilute the voting power of a certain group of voters based on race violates the Fourteenth and Fifteenth Amendments, as well as Section 2. But Tarrant County did it anyway on June 3, 2025. A similar racial redrawing occurred in Galveston County, Texas post-2020 Census, and is currently subject to litigation claiming intentional racial discrimination. *See Petteway v. Galveston County*, 3:22-cv-00057 (S.D. Tex. filed Feb. 15, 2022).

Racial discrimination routinely continues to appear in the political process in myriad other ways. One way Section 2 tries to screen for racial discrimination in elections in the "totality of the circumstances" analysis is by inquiring into the use of overt and subtle racial appeals in campaigns. As the Court noted in *Gingles*, racial appeals "encourage[] voting along color lines by appealing to racial prejudice," and thus demonstrate the ongoing excessive role of race in the political process. 478 U.S. at 40. Examples of racial appeals in campaigns at all levels of

government are pervasive.[6] A few recent examples are illustrative.

In finding that Alabama's congressional map violated Section 2 for diluting Black voting strength, the district court found that several racial appeals had permeated recent congressional campaigns. These included U.S. Senate candidate Roy Moore in 2017 "acclaim[ing] the antebellum period in the South," former Congressman Mo Brooks' "'repeated[] claim[s] that Democrats are waging a 'war on Whites,'" and a "campfire commercial" where then-Congressman Bradley Byrne's campaign ran a "video of a white man narrating as images of prominent persons of color (and only persons of color) are juxtaposed with images of the 9/11 terrorist attacks, in or on or hovering above a crackling fire." *Milligan v. Merrill*, 2:21-cv-01530, Dkt. 107, Preliminary Injunction Opinion & Order (N.D. Ala. Jan. 24, 2022), at 188-191. The state did not contest the first two examples, which the court found were "obvious and overt appeals to race." *Id*. at 190.

In 2021, mailers were sent out targeting Black state delegates in Virginia. One of the mailers featured several Black male delegates suspended in the air with ropes wrapped around them. Pastor and Delegate Joshua Cole said the mailer made

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[6] *See Race in Our Politics: A Catalog of Campaign Materials*, Campaign Legal Center, https://campaignlegal.org/race-our-politics-catalog-campaign-materials (cataloguing numerous racial appeals in campaigns across all levels of government from 2017-2019).

him uneasy, and that the image was "really disheartening . . . considering the history of Virginia."[7] A second ad pictured the delegates engulfed in flames. In response, one of the delegates targeted by both ads, Delegate Alex Askew, noted that "depicting any Black person as burning or hanging propagates some of the most dangerous, racist tropes in history. This dog whistle attack has no place in our politics."[8] A picture of the various ads is below:

In recent years, a number of mailers associating candidates with a stock image of MS-13 gang members have been sent across the country, and at varying levels of elected office, including at least Virginia, New York, Texas, and California.[9] In one instance, Kelly Fowler, a state delegate who is of Mexican and Filipino descent, is superimposed next to an image of MS-13 gang

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[7] NBC Washington Staff, *Virginia GOP Campaign Flyers Show Ropes Around Black Male Delegates*, NBC4 (Oct. 5, 2021), https://www.nbcwashington.com/news/local/northern-virginia/virginia-gop-campaign-flyers-show-ropes-around-black-male-delegates/2822167/.

[8] *Id*.

[9] *Race in Our Politics*, supra note 6.

members with the message that she is "weak on illegal immigration," "openly welcomes illegal immigrants," and is "supporting sanctuary cities." Delegate Fowler responded by saying "My opponent chose to present me as a criminal gang member and this is extremely racist."[10] A picture of the ad is below:

A similar mailer was utilized in a race in Nassau County, New York. It claimed that a candidate was "MS-13's choice for County Executive."[11]

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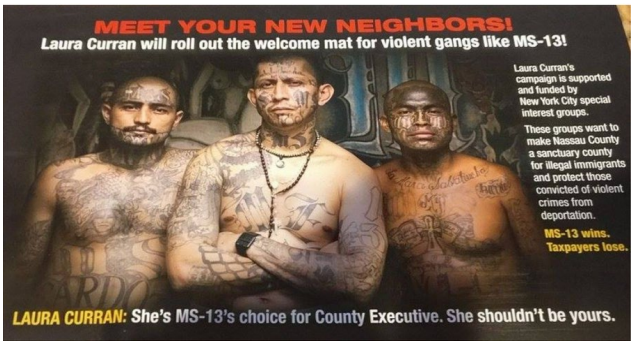
[10] Delegate Kelly Convirs-Fowler, Facebook (Oct. 24, 2019), https://www.facebook.com/DelegateFowler/posts/2936376646390890.

[11] *Race in Our Politics*, supra note 6.



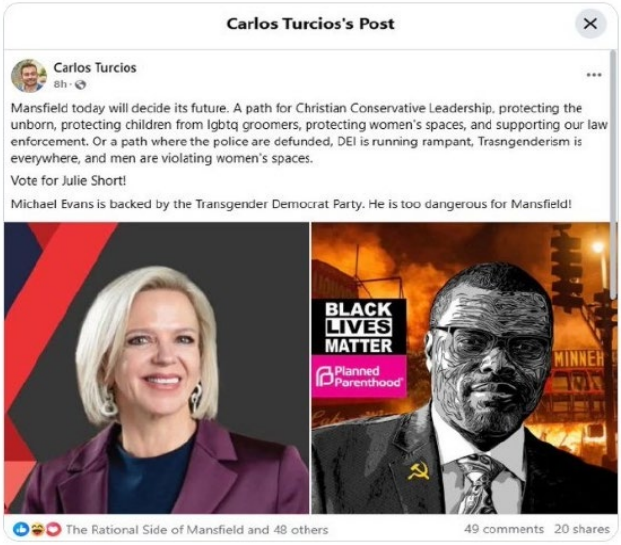
Building on the theme of stoking racial fears by associating undocumented immigration with Latino heritage and criminality, recent Georgia gubernatorial candidate Michael Williams, who is white, published a video where he announced he would travel around the state on a "Deportation Bus" and "fill th[e] bus with illegals to send them back where they came from." The bus is featured in his campaign video, and features messages such as "follow me to Mexico" and "Danger! Murderers, rapists, kidnappers, child molestors [sic], and other criminals on board."[12] A screenshot of the bus from the video is pictured below:

[12] *Race in Our Politics*, *supra* note 6.

A recent Tennessee candidate for a U.S. house seat, Richard Tyler, ran billboards in the state while he was campaigning that said "Make America White Again" in all caps. The billboards are not afraid to say the quiet part out loud and directly invoke race in the campaign.[13] A picture of the billboard is below:

Racial appeals were also utilized in the 2025 mayoral race in Mansfield, Texas. A post by a local county political party official calling for voters to support white candidate Julie Short in her race against Mayor Michael Evans displays an image of Evans, who is Black, engulfed by flames with "Black Lives Matter" next to his face. The image superimposes tattoos on Mayor Evans, and states that "he's too dangerous for Mansfield" and that voting for him would be "a path where the police are defunded" and "DEI is running rampant."

[13] *Id.*



In a 2017 election for the Edison School Board in New Jersey, an anonymous mailer discouraged voters from supporting two Asian American and Pacific Islander candidates expressly because of their race. The ad features photos of the candidates with a large red stamp saying "Deport" underneath. It then says "The Chinese and Indians are taking over our town! Chinese school! Indian school! Cricket fields! Enough is Enough!!"[14] The ad is pictured below:

[14] *Id.*

These examples are a few—of many—that demonstrate the ongoing and intense focus on race in the political process across levels of government, from local races to state legislative and congressional. Such appeals "divide[ ] the community," creating "animosities" that fuel racial bloc voting. *Meek v. Metro. Dade Cty.*, 985 F.2d 1471, 1487 (11th Cir. 1993).

As this Court noted in *South Carolina v. Katzenbach*, "racial discrimination in voting" is an "insidious and pervasive evil." 383 U.S. 301, 308-09 (1966). And it remains so today. Indeed, Section 2 is still necessary because the excessive role of race in our electoral process requires it. Thus, removing the ability to utilize Section 2's protections, particularly for Americans' most basic right to participate in the political process, "when [they] have worked and [are] continuing to work to stop discriminat[ion]…is like throwing away your umbrella in a rainstorm because you are not getting wet." *Shelby County*, 570 U.S. at 590 (Ginsburg, J., dissenting) (citation modified). This

Court should decline the invitation and reverse the decision below. Section 2 is still needed to prevent racial discrimination from denying voters the equal opportunity to participate in our political process.

III. Congress' power to enforce the Fourteenth and Fifteenth Amendments via Section 2 cannot lapse.

Even if this Court finds that Section 2 is not sufficiently tied to current conditions through its text and judicial standards—it is—Congress' power to enforce the Fourteenth and Fifteenth Amendments via Section 2 has no independent limit on its duration and cannot lapse.

To begin, the text of the Constitution imposes no such sunset provision on Congress' power to enforce the Fifteenth Amendment via legislation, including Section 2. The Fifteenth Amendment states that "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude" and that "Congress shall have the power to enforce this article by appropriate legislation." U.S. Const. amend. XV, §§ 1-2. The Amendment expressly grants Congress an enforcement authority without any kind of time limit. *Id*. at §2.

The text of the Fourteenth Amendment does the same. U.S. Const. amend. XIV, § 5. In *City of Boerne v. Flores*, this Court held that a statute need not contain a sunset provision to be constitutional under § 5 of the Fourteenth

Amendment. 521 U.S. 507, 533 (1997) ("This is not to say, of course, that § 5 legislation requires termination dates, geographic restrictions or egregious predicates"). Nor can the Fourteenth Amendment, which was ratified almost two years *before* the Fifteenth Amendment, be read to somehow eliminate Congress' non-time-limited authority to pass legislation enforcing the Fifteenth Amendment. Indeed, in *Shelby County*, this Court assured the nation that Section 2 of the VRA would remain because it is a "*permanent*, nationwide ban on racial discrimination in voting." 570 U.S. at 557 (emphasis added).[15]

In addition, there exists no doubt that Section 2 was a direct exercise of Congress' authority to enforce the Fifteenth Amendment. In enacting and amending the VRA in 1982, Congress explicitly said so. *See* Pub. L. No. 89-110, 79 Stat. 437, 437 (1965) (stating that the VRA is ""[a]n Act . . . [t]o enforce the fifteenth amendment to the Constitution of the United States . . . ."); S. Rep. at 39-43. Moreover, on numerous occasions, this Court has held that Section 2 (and the statute's effects test) is an appropriate enforcement of the Constitution. *See, e.g.*, *City of Rome*, 446 U.S. at 177 (holding that the VRA's "ban on electoral changes that are discriminatory in effect is an

[15] In *Shelby County*, the Court was careful to distinguish the "permanent" Section 2 from the invalidated preclearance coverage formula in Section 4(b), which was always "intended to be temporary" and "set to expire after five years" in the statute. 570 U.S. at 546-47. The statute placed no such limitation on Section 2.

appropriate method of promoting the purposes of the Fifteenth Amendment");[16] *id.* at 175 ("Congress may prohibit voting practices that have only a discriminatory effect"); *Mississippi Republican Executive Committee v. Brooks*, 469 U.S. 1002 (1984) (applying effects test of § 2 as interpreted in *Gingles* and authorizing race-based redistricting as a remedy for maps that violated the statute); *Vera,* 517 U.S. at 990–91 (1996) (O'Connor, J., concurring); *Milligan*, 599 U.S. at 41 ("In light of [] precedent . . . we are not persuaded by Alabama's arguments that § 2 as interpreted in *Gingles* exceeds the remedial authority of Congress"); *id.* ("We also reject Alabama's argument that §2 as applied to redistricting is unconstitutional under the Fifteenth Amendment").

In light of this precedent, every Circuit Court to consider the issue has also upheld the constitutionality of Section 2's results test. *See, e.g.*, *Nairne v. Landry*, --F.4th--, 2025 WL 2355524, at *22-23 (5th Cir. Aug. 14, 2025); *Veasey v. Abbott,* 830 F.3d 216, 253 n.47 (5th Cir. 2016) (en banc) ("[T]his court and many others have upheld the constitutional validity of the Section 2 results test[.]"); *Jones v. City of Lubbock,* 727 F.2d 364, 373–74 (5th Cir. 1984); *United States v. Blaine County,* 363 F.3d 897, 909 (9th Cir. 2004) (holding that Section 2's "results test is a constitutional

[16] The Court also reached the same conclusion regarding other provisions of the VRA in *South Carolina*, 383 U.S. at 308–309.

exercise of Congress' Fourteenth and Fifteenth Amendment enforcement powers"); *Marengo County Comm'n,* 731 F.2d at 1550, 1556, 1563 (holding that in enacting Section 2's results test, Congress "relied not on any independent power to interpret the Constitution but rather on congressional power to *enforce* the Civil War Amendments" and that "Section 2 does not conflict with or contract any right protected by the Constitution"); *Johnson v. Hamrick,* 196 F.3d 1216, 1219 n.3 (11th Cir. 1999).

Nor does this Court's recent decision in *SFFA* provide any legal basis for the argument that the timer on Congress' enforcement power to enact Section 2 under the Fifteenth Amendment has apparently run out. The authority granted to Congress to enact remedial legislation enforcing the Reconstruction Amendments is categorically different from the type of conduct invalidated in *SFFA*. There, the Court struck down admissions decisions and policies made by individual universities that "turn[ed] on an applicant's race" in part because they lacked "a logical end point." 600 U.S. at 208, 221 (citing *Grutter v. Bollinger*, 539 U.S. 302, 342 (2003)). Those admissions decisions were made by individuals employed by a school, pursuant only to that school's policies. *Id.* at 193-197.

In contrast, Congress exercised its statutory power to enact Section 2 under the authority expressly granted to it in the U.S. Constitution. *See* Pub. L. No. 89-110, 79 Stat. 437, 437 (1965); S.

Rep. at 39-43. Congress did so to remedy the effects of past and present discrimination, which undoubtedly still exist today. S. Rep. at 31 ("It was only after the adoption of the results test and its application by the lower federal courts that minority voters in many jurisdictions finally began to emerge from virtual exclusion from the electoral process. We are acting to restore the opportunity for further progress."). And, unlike the admissions policies this court found unconstitutional in *SFFA*, Section 2 is "self-limit[ing]" and requires that litigants demonstrate racial discrimination in current voting conditions before establishing a violation or requiring any potential race-conscious remedies. S. Rep. at 43; *supra* Part I. The *Robinson* Appellants demonstrated that current racial discrimination in Louisiana necessitates a remedy for Black voters under Section 2. *Robinson* Appellants' Br. at 41-47. As such, the Constitution provides no basis for any ticking time bomb on Congress' authority to continue to enforce the Fifteenth Amendment through Section 2 of the VRA, including in Louisiana.

As this Court held in *City of Rome,* Congress has "broad power to enforce the Civil War Amendments." 446 U.S. at 176; *Katzenbach v. Morgan*, 384 U.S. 641, 651 (1966) (referring to Congress' enforcement authority as "a positive grant of legislative power authorizing Congress to exercise its discretion in determining whether and what legislation is needed to secure the guarantees of the [Reconstruction] Amendment[s]"). Under that authority, and "after making an extensive

investigation," Congress "rationally" banned voting practices "that are discriminatory in effect as an appropriate method of promoting the purposes of the Fifteenth Amendment." *City of Rome*, 446 U.S. at 174, 177; *Vera*, 517 U.S. at 992 (Section 2 is "necessary and appropriate to ensure full protection of the Fourteenth and Fifteenth Amendment rights.") (O'Connor, J., concurring) (citation modified). And only two years ago, this Court upheld Section 2 as constitutional, and declined to stay a district court's decision when Alabama made a similar "logical end point" argument regarding Section 2. *Milligan*, 599 U.S. at 41 (collecting cases); *Allen v. Milligan*, 144 S. Ct. 476 (2023) (mem.). Nothing has changed to warrant a different outcome. *See supra* Part II. As a result, whatever durational constitutional limit *SFFA* placed on university admissions decisions simply does not apply to Section 2, which was enacted pursuant to the authority expressly granted to Congress via the Constitution to enforce the guarantees of the Reconstruction Amendments.

CONCLUSION

The district court's judgment should be reversed.

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