Nos. 24-109, 24-110

IN THE

Supreme Court of the United States

STATE OF LOUISIANA,
Appellant,
v.
PHILLIP CALLAIS, et al.,
Appellees.

PRESS ROBINSON, et al.,
Appellants,
v.
PHILLIP CALLAIS, et al.,
Appellees.

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

BRIEF FOR EDWARD GALMON, SR., CIERRA HART, NORRIS HENDERSON, TRAMELLE HOWARD, AND ROSS WILLIAMS AS AMICI CURIAE IN SUPPORT OF *ROBINSON* APPELLANTS

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INTERESTS OF AMICI CURIAE[1]

Edward Galmon, Sr., Cierra Hart, Norris Henderson, Tramelle Howard, and Ross Williams are Black Louisiana voters who successfully challenged the prior congressional map under Section 2 of the Voting Rights Act, which resulted in the enactment of S.B. 8, the congressional districting map challenged below. They are interested in defending their Section 2 victory and in ensuring that the federal voting rights they vindicated in one court are not permanently revoked by another court. Further, Dr. Williams, Mr. Henderson, and Mr. Howard have an interest in protecting their right to an undiluted vote, which S.B. 8 ensures.

[1] In accordance with Rule 37.6, no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. The National Redistricting Foundation made a monetary contribution to fund the preparation and submission of this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

In the portion of their briefing highlighted for supplemental argument, the *Callais* Plaintiffs challenge Louisiana's congressional map by arguing that the legislature's 2024 effort to comply with federal prohibitions against racial discrimination violated federal prohibitions against racial discrimination. That up-is-down logic is foreclosed twice over. Plaintiffs' bid to pit the Fourteenth and Fifteenth Amendments against Section 2 of the Voting Rights Act (1) fights factual findings from a different case that is not presently before this Court and (2) mangles the relevant law.

First, Plaintiffs question whether Louisiana's 2021 congressional map was, in fact, suffused with the indicia of racial discrimination that establish a Section 2 violation. *See* Appellee Br. at 38. But that evidence is not subject to review in this litigation over the 2024 map. In a separate action, the United States District Court for the Middle District of Louisiana found on a full record that the State's 2021 map likely violated Section 2. *See Robinson v. Ardoin*, 605 F. Supp. 3d 759, 851 (M.D. La. 2022), *vacated on other grounds*, 86 F.4th 574 (5th Cir. 2023). Those findings were appealed by defendants, affirmed in relevant part by the Fifth Circuit, and accepted by the parties. *See Robinson v. Ardoin*, 86 F.4th 574, 583 (5th Cir. 2023). The validity of those facts is therefore a settled matter immune from second-guessing here. As this Court has oft repeated, "[i]f a dispute is not a proper case or controversy, the courts have no business

deciding it, or expounding the law in the course of doing so." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 341 (2006).

The present inquiry is not whether this Court would have found the same facts in the same way as the Middle District, or even whether it agrees that those facts are sufficient to establish a Section 2 violation. Nor is the question whether Louisiana's political leaders were subjectively persuaded by the district court's evaluation of the Section 2 record when they enacted the 2024 remedy. Instead, the relevant factual predicate here is that Louisiana accepted the judgment of Article III courts, and it did so in a manner tailored to achieving Republican leaders' political goals. Neither element of that sequence violated the Fourteenth or Fifteenth Amendment. To the contrary, political branches are affirmatively obligated to comply with judicial decrees, and this Court has forbidden any scrutiny of mapdrawers' political motivations. *See Rucho v. Common Cause*, 588 U.S. 684, 718 (2019).

Second, Plaintiffs manufacture a false conflict between the constitutional and statutory prohibitions against racial vote dilution. Together, the legal protections against discrimination in voting reflect a consistent, harmonized regime aimed at thoroughly disinfecting our electoral processes of all racial machinations. Recognizing that the repugnant stain of racial discrimination must be expunged completely from our electoral system, the Fourteenth Amendment, Fifteenth Amendment, and Voting Rights Act all scrub in the same direction. The

Constitution prohibits states from diluting the right to vote on account of race, and Section 2 enforces that prohibition by ensuring it reaches subtle and covert instances of discrimination—that is, the forms of discrimination most likely to be enacted by modern legislatures. The Constitution's "prohibition against racial discrimination," after all, is "'levelled at the thing, not the name.'" *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 230 (2023) ("*SFFA*") (quoting *Cummings v. Missouri*, 71 U.S. (4 Wall.) 277, 325 (1867)).

Plaintiffs would mandate an ahistorical, head-in-the-sand naivete—really, a willful gullibility—about the ways in which racial discrimination replicates and metastasizes in our society. As with any vice, this formalized ignorance would be broadly understood as tacit encouragement. Make no mistake: If this Court delivers the judicial weakening of Section 2 that Plaintiffs invite, it will lead to *more* rather than less racial discrimination, and will prolong immeasurably the day when the "sordid business" of "divvying us up by race" is no more. *LULAC v. Perry*, 548 U.S. 399, 511 (2006) (Roberts, C.J., concurring in part, concurring in judgment in part, and dissenting in part).

Plaintiffs' invitation to obliterate established redistricting law, demolish Congress's assigned enforcement power, and renege on the historic promise ratified in the Reconstruction Amendments is nothing short of an invitation to launch a new era of racialized redistricting. Wherever mapdrawers can craft districts that are relatively compact while concealing their aims in euphemism, they will be free to exploit racial tension to aggrandize the majority race's power by systematically incinerating electoral opportunities for minority voters. The Constitution does not require surrender to that evil.

ARGUMENT

Louisiana did not violate the U.S. Constitution when it replaced a map that discriminated on the basis of race with a map that ceases to discriminate. Plaintiffs' contrary arguments require de novo review of the record *in a different case* and a general amnesty for most contemporary efforts to dilute citizens' voting power on account of race. They are entitled to neither. The relevant Section 2 facts were adjudicated in since-concluded Section 2 litigation, and the relevant Section 2 law operates hand-in-glove with the constitutional prohibitions against racial vote dilution.

I. Section 2's application in Louisiana is not before this Court.

In 2021, Louisiana enacted a racially discriminatory congressional districting plan that packed Black voters from New Orleans to Baton

Rouge into one district, while cracking Black voters throughout the rest of the state into districts where they were deprived of any meaningful opportunity to elect their preferred representatives. Those facts are not up for debate here.

How do we know the 2021 configuration was discriminatory? Because Louisiana capped Black representation well below Black voters' share of the statewide population *despite* the state's political geography, which would naturally accommodate an additional majority-Black district. *See Robinson*, 605 F. Supp. 3d at 820–39. It did so in the context of stark racially polarized voting—a polarization likely both to *reflect* discrimination (as Black voters developed shared policy needs that are consistently vetoed by the White majority) and *incentivize* discrimination (as White officeholders recognize they can exploit the polarization to maintain power without any need to appeal to Black constituents for support). *Id.* at 839–44. And it did so in a thoroughly racialized political context, where the totality of circumstances confirmed that Louisiana's electoral process was not equally open to minority voters. *Id.* at 844–51.

How do we know that all these indicia of discrimination were present? The same way we know any facts to be true in our system of adversarial litigation. Injured voters (including the individual amici here) presented evidence in federal court that was tested by three sets of sophisticated defendants—Louisiana's Secretary of State, Louisiana's legislature, and the State of Louisiana, collectively represented by 21 lawyers at four law firms and the

Louisiana Attorney General's Office—and an impartial factfinder memorialized her determinations in a formal opinion that was approved in all relevant respects in multiple rounds of appellate review. *See Robinson v. Ardoin*, 37 F.4th 208, 215 (5th Cir. 2022) (unanimous motions panel denying stay of injunction); *Ardoin v. Robinson*, No. 21-1596 (U.S. June 26, 2023) (vacating stay of injunction and "allow[ing] the matter to proceed before the Court of Appeals for the Fifth Circuit for review in the ordinary course"); *Robinson*, 86 F.4th at 583 (unanimous merits panel concluding "[t]he district court did not clearly err in its necessary fact-findings nor commit legal error in its conclusions that the Plaintiffs were likely to succeed on their claim that there was a violation of Section 2 of the Voting Rights Act in the Legislature's planned redistricting").[2]

The Middle District's finding of a likely Section 2 violation, and the defendants' decision to accept that finding after years of litigation, are bad facts for Plaintiffs here. This Court has had no trouble assuming (for good reason, as discussed below) that states have a compelling interest in complying with the Voting Rights Act. *See, e.g.*, *Cooper v. Harris*, 581 U.S. 285, 292 (2017). As a result, Plaintiffs are left grasping for evidence that Section 2 cannot be violated in Louisiana, or that the legislature was not subjectively convinced that there was a Section 2

[2] The State quibbles with totality-of-circumstances findings made *after* S.B. 8 was enacted in altogether different litigation challenging Louisiana's state legislative maps. *See* State Suppl. Br. at 27–28. This appeal is not the time or place to parse the record from that action.

violation that required a remedy. This effort has them bushwhacking far afield of the racial gerrymandering claim they purport to be pursuing, and still they can find no support.

A. The Section 2 record is closed.

Plaintiffs complain that the record below lacks evidence to support a finding that Louisiana's prior map, enjoined for violating Section 2, did, in fact, violate Section 2. *See* Appellee Br. at 38. But the reason for that is obvious—the 2021 map (like the 1996 map that Plaintiffs are fond of referencing) is not at issue here. This Court declined the invitation to review the injunction of the 2021 map, *see Ardoin v. Robinson*, No. 21-1596 (U.S. June 26, 2023)), and Plaintiffs chose to sit out that litigation entirely. Any decision now about the application of Section 2 to hypothetical maps not in effect would be purely advisory, and thus beyond the judicial power. *See, e.g.*, *Ala. State Fed'n of Lab. v. McAdory*, 325 U.S. 450, 461 (1945).[3]

[3] Renewed scrutiny of the Middle District record now would be particularly inequitable given that half the litigants responsible for obtaining the Section 2 injunction (the individual amici here) were arbitrarily excluded from this action. *See Callais v. Landry*, No. 3:24-CV-00122-DCJ-CES-RRS, 2024 WL 1237058, at *3 (W.D. La. Feb. 26, 2024) (denying intervention based on purported adequate representation by later-moving intervenors,

To be sure, a full rehash below of the Section 2 evidence would have been *sufficient* to defeat liability on Plaintiffs' claims—indeed, *Robinson* Intervenors and the State attempted to introduce precisely this evidence in the trial below. *But see* J. App'x Vol. I ("J.A.") at 283–89 (excluding evidence). But in no sense was that necessary. A state justifies its map whenever it shows it had "good reasons" to believe that it would violate Section 2 if it diluted the voting power of minority voters. *Cooper*, 581 U.S. at 293. And it is difficult to imagine a *better* reason to believe that a map would be enjoined as a violation of Section 2 than an actual court order, ink still wet, affirming a finding that the state failed to provide sufficient electoral opportunities for minority voters. The record is replete with evidence that just such an order motivated the legislature's enactment of the operative map. *See, e.g.*, J.A. 98–89; Robinson App. 352a, 393a, 539a.[4]

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notwithstanding text of Federal Rule of Civil Procedure 24); *Galmon v. Callais*, 145 S. Ct. 369 (2024) (Mem.) (dismissing appeal because Supreme Court lacked jurisdiction); *Callais v. Landry*, No. 24-30177, 2025 WL 928839, at *1 (5th Cir. Mar. 27, 2025) (dismissing appeal because Supreme Court had exclusive jurisdiction).

[4] The true crux of Plaintiffs' opposition to the congressional map is the non-compact shape of CD-6, *see* Appellee Br. at 23, but the record makes clear that the legislature's motivation for rejecting

B. The Constitution does not require states to agree with Section 2 injunctions before complying.

To parry the unassailable evidence that the Middle District litigation provided the State good reasons to believe Section 2 required a less vote-dilutive map, Plaintiffs propose that Louisiana's legislature, in its proverbial heart, was not truly persuaded by the courts' Section 2 analysis. *See* Appellee Br. at 36–37. If that made any difference, however, then the most discriminatory legislatures would be most immune from Section 2's commands—the very fact that they do not *agree* with Section 2 would effectively *prevent* them from complying with Section 2, as otherwise they would be liable under Plaintiffs' theory of racial gerrymandering.

Federal voting rights law is not so easily defeated. To establish the requisite "good reasons" to conclude that Section 2 requires a new map, the legislature that previously passed a discriminatory map need not air an open-court confession replete with public repentance. A law's validity never turns on the endorsement of defendants charged with violating it, and tasking injured voters with persuading their

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more compact configurations (including those presented by amici in the course of their Section 2 litigation before the Middle District) was to jeopardize the reelection of Congressman Graves instead of Congresswoman Letlow. *See, e.g.*, *Robinson* App. 232a–235a, 393a, 399a, 402a, 423a. This Court has consistently rejected efforts to hold legislatures liable for racial gerrymandering when they pursue political goals. *See, e.g.*, *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 6 (2024).

legislative antagonists before obtaining a remedy would be an especially perverse assignment here, given that the essence of a Section 2 violation is that the political process is broken and nonresponsive.

The true audience for Section 2 claims is the impartial judicial factfinder. When a commissioned Article III judge enjoins a state from enforcing a map, that state does not merely have a good reason to create an additional opportunity district for minority voters; it has *no other choice* but to add that opportunity in any new map it chooses to enact. "[P]ersons subject to an injunctive order issued by a court with jurisdiction are expected to obey that decree until it is modified or reversed, even if they have proper grounds to object to the order." *Celotex Corp. v. Edwards*, 514 U.S. 300, 306 (1995) (quoting *GTE Sylvania, Inc. v. Consumers Union of U.S., Inc.*, 445 U.S. 375, 386 (1980)); *see also Walker v. City of Birmingham*, 388 U.S. 307, 314 (1967) (recognizing a party's failure to obey even an erroneous injunction is punishable by contempt); *see also Singleton v. Allen*, 690 F. Supp. 3d 1226, 1238 (N.D. Ala. 2023) (enjoining purported remedial map where Alabama conceded that "notwithstanding our order and the Supreme Court's affirmance," the legislature's map "does not include an additional opportunity district"), *stay denied sub nom.*, *Allen v. Milligan*, 144 S. Ct. 476 (2023) (Mem.); *id.* at 1239 ("We are not aware of any other case in which a state legislature—faced with a federal court order declaring that its electoral plan unlawfully dilutes minority votes and requiring a plan that provides an additional opportunity district—responded with a plan that the state concedes does not provide that district.").

Plaintiffs challenge the legislature's motivation for drawing a second majority-minority district, but they accept—indeed, they affirmatively argue—that the legislature's motivation was to comply with the orders in the Section 2 litigation so as to avoid forfeiting its mapdrawing prerogative. *See* Appellee Br. at 39. Complying with court orders is always, definitionally, lawful.[5]

II. Section 2 is constitutional.

Contrary to Plaintiffs' accusation, Section 2 has always been consistent with the U.S. Constitution. The statute was enacted pursuant to the Fourteenth and Fifteenth Amendments' explicit grant of authority to Congress to enforce the Amendments' protections. It advances those Amendments' aim of eradicating state practices that discriminate against voters because of their race. And its test is neatly tailored to the evolving salience of race in local politics.

A. Section 2 enforces the Fourteenth and Fifteenth Amendments.

Section 2 falls well within Congress's authority to enforce the Fourteenth and Fifteenth Amendments, which were designed to provide members of minority

[5] The Fifth Circuit eventually vacated the preliminary injunction only because of the timing in the election cycle; it affirmed the district court's finding that the legislature would likely violate Section 2 if it maintained the dilutive map. *Robinson*, 86 F.4th at 583.

racial groups equal access to the political process by prohibiting discrimination. *See Oregon v. Mitchell*, 400 U.S. 112, 127 (1970). Congress's power to enforce these amendments by "appropriate" legislation is explicit from the constitutional text, U.S. Const. amend. XIV, § 5; *id.* amend. XV, § 2, and that power is broad. Indeed, this Court's decisions "foreclose any argument that Congress may not, pursuant to [the Fifteenth Amendment], outlaw voting practices that are discriminatory in effect." *City of Rome v. United States*, 446 U.S. 156, 173 (1980); *see also Trump v. Anderson*, 601 U.S. 100, 110 (2024) (recognizing that Section 5 of the Fourteenth Amendment "casts upon Congress the responsibility of seeing to it, for the future, that all the sections of the amendment are carried out in good faith") (quoting Cong. Globe, 39th Cong., 1st Sess., at 2768 (May 23, 1866)).

While legislation enacted pursuant to Congress's authority to enforce the Fourteenth Amendment must exhibit "congruence and proportionality" between injury and remedy, *City of Boerne v. Flores*, 521 U.S. 507, 520 (1997), Congress's enforcement of the Fifteenth Amendment—which guarantees that the right of citizens to vote shall not be denied or abridged "by any State on account of race," U.S. Const., amend. XV, § 1—need only provide a "rational means [of] effectuat[ing]" the Amendment. *South Carolina v. Katzenbach*, 383 U.S. 301, 324 (1966); *see City of Rome*, 446 U.S. at 177; *Shelby County v. Holder*, 570 U.S. 529, 550–51 (2013). This differing limitation on Congress's enforcement authority stems from the "blight of racial discrimination in voting," the "ingenious" ways jurisdictions have violated minority

voting rights, *Katzenbach*, 383 U.S. at 308–09, and how "inordinately difficult" it is to prove intentional discrimination in the voting context, *Thornburg v. Gingles*, 478 U.S. 30, 44 (1986) (quoting S. Rep. No. 97-417 (1982) ("S. Rep.") at 36).

Even if this Court were to take the unsupported step of extending *City of Boerne*'s standard to the Fifteenth Amendment, Section 2 is a congruent and proportional mechanism for enforcing both amendments' broad mandates. The Fourteenth and Fifteenth Amendments were enacted to end *all* political systems that discriminate against racial minorities. *Cf. Lane v. Wilson*, 307 U.S. 268, 275 (1939) ("The [Fifteenth] Amendment nullifies sophisticated as well as simple-minded modes of discrimination."); *Ham v. South Carolina*, 409 U.S. 524, 526–27 (1973) (recognizing "a principal purpose of the adoption of the Fourteenth Amendment was to prohibit the States from invidiously discriminating on the basis of race"). As the Court has explained, vote dilution that results in the "political processes leading to nomination and election" not being "equally open to participation by the group in question"—precisely the scheme that Section 2 forbids—is "invidiously discriminatory" and unconstitutional. *White v. Regester*, 412 U.S. 755, 756, 766–69 (1973).

Moreover, "[l]egislation which deters or remedies constitutional violations can fall within the sweep of Congress' enforcement power." *City of Boerne*, 521 U.S. at 518. Section 2 accomplishes just that, serving as an effective antidote to the intentional discrimination that the Fourteenth and Fifteenth

Amendments prohibit. When applying Section 2, courts "distinguish[] between situations in which racial politics play an excessive role in the electoral process, and communities in which they do not." S. Rep. at 33. This test considers a range of evidence that identifies political systems that invidiously deny minority voters the opportunity to "pull, haul, and trade to find common political ground." *Johnson v. De Grandy*, 512 U.S. 997, 1020 (1994). "The presence or absence of each [*Gingles* and Senate] factor therefore serves as a piece of evidence pointing either towards or away from an ultimate conclusion that an electoral system is or is not operating to dilute a minority group's voting strength on account of race." *Nipper v. Smith*, 39 F.3d 1494, 1526 (11th Cir. 1994) (en banc) (op. of Tjoflat, C.J.). Congress was entitled to codify consideration of these elements as a means of enforcing the Fourteenth and Fifteenth Amendments.

In amending Section 2 in 1982, Congress eliminated the "inordinately difficult" evidentiary burden to demonstrate intentional discrimination. *Gingles*, 478 U.S. at 44 (quoting S. Rep. at 36). But even without an intent requirement, Section 2 plaintiffs must prove the existence of circumstances where minority voters have "less opportunity than d[o] other residents" to "participate in the political processes and to elect legislators of their choice." *White*, 412 U.S. at 766. By requiring plaintiffs to prove pervasive racially polarized voting, contemporary effects of discrimination, barriers to minority-candidate success, and other factors indicative of racially exclusionary political systems, Section 2 remains closely tethered to the constitutional

prohibitions it enforces. *See Rogers v. Lodge*, 458 U.S. 613, 623 (1982) (recognizing Section 2's focus on "[e]vidence of bloc voting along racial lines" and a lack of minority success "bear[s] heavily on the issue of purposeful discrimination"). Indeed, this Court recently emphasized courts' solemn obligation to ensure that the Constitution's ban on racial discrimination is not compromised by subtle workarounds: "'[W]hat cannot be done directly cannot be done indirectly. The Constitution deals with substance, not shadows,' and the prohibition against racial discrimination is 'levelled at the thing, not the name.'" *SFFA*, 600 U.S. at 230 (quoting *Cummings*, 71 U.S. (4 Wall.) at 325). Precisely because "discriminators may go to great lengths to hide and perpetuate their unlawful conduct," *id.* at 257 (Thomas, J., concurring), Section 2's redistricting-centric approach to identifying circumstantial evidence of intentional discrimination is perfectly constitutional.[6]

When White voters systemically elect favored officials over the objections of Black voters, and then those officials artificially inflate the electoral power of White voters, and all of this occurs in a time and a place rife with racial antagonism, the Constitution does not require congressional naivete about the dynamics at play. Quite the opposite, it assigns

[6] Justice Thomas has identified another route to affirm the constitutionality of Section 2 against claims like Plaintiffs' by recognizing that congressional redistricting "is textually committed to a coordinate political department, Congress." *Alexander*, 602 U.S. at 42 (Thomas, J., concurring).

Congress the solemn power to banish the blight of racial discrimination in voting. *See* U.S. Const. amend. XV, § 2; *cf. Katzenbach*, 383 U.S. at 308. Section 2 does precisely that.

B. Section 2 does not require illicit "race-based districting."

Plaintiffs contrive a tension between Constitution and statute by interpreting Section 2 to require race-based districting. Appellee Br. at 36. But Section 2 does the opposite—minority voters are unable to prove violations in contexts where the districting is genuinely race-neutral. Thus, the way for states to avoid liability for "discrimination on the basis of race is to stop discriminating on the basis of race." *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 748 (2007) (plurality op.). A map that is drawn free from discriminatory intent should apportion electoral opportunities in a manner that does not systematically dilute the votes of racial minorities. It is only when that dilution is present—along with a full battery of other supporting evidence—that Section 2 liability attaches.

Consider again the many elements that Section 2 plaintiffs must prove to establish a violation, each of which corroborates a finding that districting in a jurisdiction is *already* race-based. First, the "minority group must be sufficiently large and geographically compact to constitute a majority in a reasonably configured district" that the mapdrawer chose not to create. *Allen v. Milligan*, 599 U.S. 1, 18 (2023) (alteration adopted) (quoting *Wis. Leg. v. Wis.*

Elections Comm'n, 595 U.S. 398, 402 (2022) (per curiam)). In other words, there must be substantial residential segregation (alarm bell number one of a racialized social context) where the minority population was cracked or packed by district lines (alarm bell number two). In a colorblind society that has overcome its legacy of racial discrimination, this sort of residential sorting should not occur, as families do not generally self-select into neighborhoods based on traits that lack social salience.

"Second, the minority group must be able to show that it is politically cohesive." *Id.* (quoting *Gingles*, 478 U.S. at 51). In other words, the minority voters must consistently prefer the same political candidates—alarm bell number three. In a post-racial society, policy needs should not be highly correlated with race.

"Third, the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." *Gingles*, 478 U.S. at 51. In other words, members of the majority race must also vote cohesively (alarm bell number four), and they must systematically oppose and defeat the minority group's preferences (alarm bell number five). Together, these circumstances create a strong inference that the political context is shot through with racial difference, racial tension, and racial bias. Far from stereotyping the political preferences of voters according to their race, Section 2 requires *proof* of a systematic, insidious pattern. When a siloed minority converges on the same political pleas, and no amount of

organizing can obtain any traction in translating those pleas into policy because mapdrawers have artificially cracked or packed the minority group within districts so that their efforts are reflexively rejected by the dominant group, the social strife is manifest. And when the fault line of antagonism is *race*, the crisis is especially dire.

Even still, Section 2 requires more. After establishing each of the *Gingles* preconditions, Section 2 plaintiffs must further ring alarm bell number six by showing that the totality of circumstances reveals that "the political processes leading to nomination or election . . . are not equally open to participation by members of a [protected class] in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 52 U.S.C. § 10301(b). To conduct this inquiry, courts examine factors from the Senate report accompanying Section 2's 1982 amendments. *See Gingles*, 478 at 44. Relevant factors include the history of voting-related discrimination in the jurisdiction; the extent to which the jurisdiction has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group; the extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process; the use of overt or subtle racial appeals in political campaigns; and the extent to which members of the minority group have been elected to public office in the jurisdiction. *Id.* at 44–45. In other words, even where

residential segregation, voting patterns, and district lines interact in a way that walks like racial discrimination and quacks like racial discrimination, plaintiffs are still required to confirm the feathers and the nest and the pond.

Plaintiffs' charge that Section 2 somehow exacerbates race-based districting is thus confused. *See* Appellee Br. at 37. Just as fire alarms do not introduce or otherwise aggravate smoke—they simply reflect its presence—Section 2's evidentiary test is calibrated to confirm the existence of a toxic dynamic once it is already pervasive. As other courts have recognized, the purpose of Section 2 is to remedy "race-conscious politics," and "[t]he surest indication of race-conscious politics is a pattern of racially polarized voting." *United States v. Marengo Cnty. Comm'n*, 731 F.2d 1546, 1567 (11th Cir. 1984); *see also Sanchez v. Colorado*, 97 F.3d 1303, 1310 (10th Cir. 1996) (recognizing the presence of the *Gingles* preconditions "creates the inference the challenged practice is discriminatory"). And crucially, Section 2 does not merely *recognize* discriminatory districting; it affirmatively *prohibits* it. *See* 52 U.S.C. § 10301(a). "[A] law that prohibits the State from classifying individuals by race *a fortiori* does not classify individuals by race." *Schuette v. BAMN*, 572 U.S. 291, 331 (2014) (Scalia, J., concurring) (alteration adopted) (quoting *Coal. For Econ. Equity v. Wilson*, 122 F.3d 692, 702 (9th Cir. 1997)).

When a Section 2 violation has been proven—that is, when the inference of racial discrimination has been strongly corroborated by extensive evidence—

courts have two options. They can either 1) tolerate the discrimination by doing nothing, or 2) require a new map. The first option would not be neutral as to discrimination—it would affirmatively permit, facilitate, and aggravate discrimination. The second option accomplishes the opposite; the remedy *excises* the discrimination. If an enacted map artificially restricts electoral opportunities for Black voters, then the remedial map must provide additional electoral opportunities for Black voters. That is elementary arithmetic; a deficit cannot be negated without an offsetting sum.

Race-conscious correction of a race-based harm is not the same thing as race-based infliction of that harm. Eradicating racial discrimination in a districting map cannot be "race-blind" any more than treating a snake bite can be "venom-blind" or effective oncology can be "tumor-blind." The problem is that the discrimination (or venom or cancer) is *already present*, which demands an intentional response. Precisely because courts cannot enjoin legislators' private motivations, the Section 2 remedy is tailored to the output (prohibiting any map resembling what we would expect if the legislature intended to

discriminate) rather than the input (requiring legislators to purge any bias from their hearts).[7]

The finding of likely Section 2 liability in Louisiana indicated that a legislature harboring an unspoken desire to dilute Black votes would likely enact a plan without two Black-opportunity districts, while an unbiased legislature would likely enact a plan *with* two Black-opportunity districts. By requiring a two-opportunity-district map, the court is not requiring the legislature to be any more race-conscious than it otherwise would have been—we know legislatures will "almost always be aware of racial demographics" when redistricting. *Alexander*, 602 U.S. at 22 (quoting *Miller v. Johnson*, 515 U.S. 900, 916 (1995)). It simply ensures that the legislature's race-consciousness is not used to harm vulnerable minorities in precisely the way that the Constitution forbids.

C. Section 2 is clear.

Notwithstanding its flip-flop on S.B. 8's compliance with federal law, the thrust of the State's position remains a plea for "clarity" that will spare it

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[7] The State extolls statistics indicating that Black registration and turnout rates have increased in Louisiana, *see* State. Suppl. Br. at 27, but 1) the statistics are not drawn from the record in this case, and 2) this argument only underscores the uniquely insidious nature of discriminatory redistricting maps. A map that artificially limits Black voting opportunity to a single district inflicts the same injury regardless of the extent to which Black residents register and vote. Section 2's application in the redistricting context is so essential precisely *because* vote dilution cannot be overcome by increased voter mobilization.

from endless litigation and undesirable accusations of racism. *See* State Suppl. Br. at 5, 11–12, 40, 47. This Court can fulfill both those requests by reversing the decision below.

Few legal tests are as clear as the *Gingles* inquiry. Each precondition is based on objective measurements of quantifiable data about where people live and how they tend to vote, providing states with bright-line benchmarks that they can monitor to assess—and prevent—potential Section 2 liability. *Cf. Bartlett v. Strickland*, 556 U.S. 1, 18 (2009) (recognizing *Gingles* "provides straightforward guidance to courts and to those officials charged with drawing district lines to comply with § 2"). Thus, to neutralize the threat of successful Section 2 litigation, Louisiana knows exactly what it must avoid: the adoption of a map that dilutes a compact and cohesive group of minority voters whose electoral preferences are consistently vetoed by another racial group. That is not a difficult task. Plaintiffs in the Middle District litigation, including amici here, introduced seven illustrative maps that would have indisputably avoided Section 2 liability, *see Robinson*, 605 F. Supp. 3d at 781–85, and the State proved perfectly capable of identifying an additional configuration—S.B. 8—on its own.

The Hobson's choice that the State bemoans exists only insofar as states face potential liability, as here, for *remedying* racial discrimination established in Section 2 litigation. This purported dilemma, however, is easily resolved. By confirming once and for all that states have a compelling interest in

Section 2 compliance, and by expressly permitting states to remove the discriminatory effect from their enacted maps, this Court can alleviate Louisiana's professed anxiety and put an end to spurious racial gerrymandering claims like the one below.[8]

The State's interest in avoiding public criticism is more utopian, as every piece of major legislation will be seen as too much by some voters and too little by others, and "someone always will claim that their ox was gored." State Suppl. Br. at 12. Federal law does not require—or otherwise guarantee—an end to political disagreement. But by focusing on a districting map's effects rather than on legislators' intent, Section 2's test mitigates the very accusations of racism that the State professes to find so hurtful. Indeed, one reason that Congress gave for repudiating the intent test when it amended Section 2 was its recognition that "it is 'unnecessarily divisive [to require] charges of racism on the part of individual officials or entire communities.'" *Gingles*, 478 U.S. at 43 (citing S. Rep. at 36). Unlike Plaintiffs' racial gerrymandering allegations, Section 2 claims do *not*

[8] This clarity will also have the salutary effect of unclogging the Court's mandatory docket by reducing the number of constitutional challenges that increasingly follow every Section 2 action. *See* 28 U.S.C. §§ 1253, 2284(a). Affirming the decision below, by contrast, will have the opposite effect, as every district in the country—congressional, state, or municipal—where minority voters can elect their candidates of choice will be vulnerable to a constitutional challenge by a non-minority voter seeking to aggrandize their electoral clout, with a right to an automatic appeal to this Court.

require a pleaded accusation or formal finding that the state discriminated intentionally.

In this respect, the Court should give the State what it wants: confirmation that Section 2 compliance will not subject it to colorable racial gerrymandering claims, and assurance that Section 2 claims do not require any aspersions about lawmakers' character.

D. Section 2's protections have not expired.

Plaintiffs are further wrong to propose that Section 2 is subject to "time limits." Appellee Br. at 37 (citing *SFFA*); *see also* State Suppl. Br. at 13, 27–28, 43 (citing *Shelby County*, 570 U.S. at 536, 543–48). In *Shelby County*, this Court addressed federalism concerns unique to a statutory regime that singled out targeted jurisdictions for preclearance obligations, and in *SFFA* it addressed university admissions programs in a decision that alluded to redistricting only in passing to *endorse* Section 2's requirements. Neither case casts doubt on Section 2's constitutionality.

Contrary to the State's suggestion, *Shelby County* cannot stand for the proposition that every statute becomes invalid unless Congress has recently reenacted or amended it with fresh findings. *Contra* State Suppl. Br. at 43. If that were the case, monopolists would be free to ignore the venerable Sherman Antitrust Act of 1890, and mobsters facing federal charges could complain that the statutes criminalizing their conduct were legislated too long ago. That is plainly not how the law works. When

Congress exercises its constitutional authority to proscribe conduct that it deems harmful—as *Allen* confirmed Congress did in enacting Section 2, 599 U.S. at 41—that conduct remains unlawful until the political process produces a contrary policy judgment through amendment or repeal.

Shelby County's caveat to this elementary principle reflected a highly unusual (perhaps even unique) circumstance. The statutory provision at issue was several steps removed from proscribing harmful conduct—the Court reviewed a coverage formula that singled out particular jurisdictions, based on historical data, that had to obtain federal permission before enacting any law related to voting. *See Shelby County*, 570 U.S. at 534–35. This regime required states that may have done nothing wrong for decades to obtain preclearance before enacting new laws, "however innocuous," that would be valid in any other state. *Id.* at 544. Congress may single out jurisdictions for such strong medicine, the Court held, only where the prescription is justified by present-day symptoms of discrimination and disenfranchisement. *Id.* at 535, 553.

Section 2 is different in every way—as *Shelby County* itself recognized. *See id.* at 537. Where the coverage formula at issue in *Shelby County* discriminated against disfavored states, Section 2's commands apply "nationwide," *id.*, in equal force from Arizona to Maine, from Shreveport to Seattle. Where the coverage formula subjected states to preclearance "based on decades-old data and eradicated practices . . . having no logical relation to the present

day," *id.* at 551, 554, Section 2 applies only upon "a searching practical evaluation of the past and present reality" and "intensely local appraisal," *Gingles*, 478 U.S. at 79 (cleaned up), and the statute's application will naturally fall into desuetude "as residential segregation decreases—as it has 'sharply' done since the 1970s," *Allen*, 599 U.S. at 28–29. Where the coverage formula required states to proactively beseech federal officials, hat in hand, for permission to enact voting regulations, Section 2 guarantees victims of discrimination a remedy for violations that have been proven in court. In short, nothing about Section 2's routine scheme is "extraordinary," "drastic," "unprecedented," or in any way unconstitutional. *Shelby County*, 570 U.S. at 534–35.[9]

In *SFFA*, meanwhile, this Court reiterated that "race-based government action" is permissible to "remediat[e] specific, identified instances of past discrimination that violated the Constitution *or a statute*." 600 U.S. at 207 (emphasis added) (citing redistricting example). In other words, *SFFA* expressly accounts for and endorses the principle that requires a state to remedy a "specific," proven instance of discriminatory vote dilution in a prior map "that violated" Section 2 by enacting a new map that corrects the identified racial discrimination. *Id.*

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[9] The State's apoplexy about "a de facto *post*clearance regime in which *federal courts*" review legislative enactments for compliance with federal law, State Suppl. Br. at 13, betrays a fundamental ignorance about the nature of judicial review in our constitutional system. *See Marbury v. Madison*, 5 U.S. 137, 177 (1803).

University admissions, as the Court explained, are altogether different from the redistricting context. Evaluating the constitutionality of admissions standards employed by Harvard College and the University of North Carolina, the Court rejected the interests that those institutions offered in defense of race-conscious admissions programs as "not sufficiently coherent for purposes of strict scrutiny." *Id.* at 214. It found the "racial categories" used by the universities to be "opaque." *Id.* at 217. It was persuaded by evidence that universities used race to stereotype. *Id.* at 220. And it emphasized the universities' concession that there was no conceivable circumstance whereby their system of racial preferences would no longer be necessary. *Id.* at 220–25.

Again, Section 2's application differs in every respect. First, this Court has found interests in remedying unlawful vote dilution to be concrete and compelling. *See Allen*, 599 U.S. at 41 ("[W]e are not persuaded by Alabama's arguments that [Section] 2 as interpreted in *Gingles* exceeds the remedial authority of Congress."); *see also Singleton*, 690 F. Supp. 3d at 1318 (noting faulty affirmative-action analogy "would fly in the face of forty years of Supreme Court precedent—including precedent *in this case*"). Second, Black Louisianians plainly comprise a discrete racial minority. *See Robinson*, 605 F. Supp. 3d at 820 (finding the "Any Part Black definition is deeply rooted in Louisiana history"). Third, *Gingles* requires cohesive racial voting to be proved rather than assumed. *See Gingles*, 478 U.S. at 51; *cf. Robinson*, 605 F. Supp. 3d at 841 (finding that

"Plaintiffs have demonstrated that Black voters in Louisiana are politically cohesive"). And fourth, Section 2's functional expiration date for vote-dilution claims, as *Allen* explains, is built directly into the *Gingles* test: Precisely because plaintiffs must prove that minority groups are geographically compact, their task will grow increasingly difficult "as residential segregation decreases—as it has 'sharply' done since the 1970s." *Allen*, 599 U.S. at 28–29 (recognizing "§ 2 litigation in recent years has rarely been successful for just that reason");[10] *cf. Robinson*, 605 F. Supp. 3d at 784 (recognizing "well-known and easily demonstrable fact" of "historical housing segregation" in Louisiana, "which still prevails in the current day"). Same for the other corroborating evidence that plaintiffs must produce. As voting becomes less racially polarized and evidence of voting-related discrimination recedes in the rearview mirror, Section 2 claims will grow ever-more-difficult to

[10] The State contests this finding by noting that, across the country, there have been five successful Section 2 actions this decade. *See* State Suppl. Br. at 26. That statistic hardly contradicts this Court's statement or the amicus brief that it was derived from; if anything, the State's tally corroborates the enduring need for Section 2 to remedy rare-but-persisting violations.

prove.[11] Thus, regardless of whether this Court would have made each of these Louisiana findings in the same way as the Middle District (not the present task), it is readily apparent that the Section 2 inquiry cleanly addresses *SFFA*'s concerns.

In *SFFA*, the Court pledged to "vindicate the Constitution's pledge of racial equality" and emphasized that "[e]liminating racial discrimination means eliminating all of it." 600 U.S. at 205–06. It is Section 2 plaintiffs who seek to secure the promise of this aspirational rhetoric. Louisiana's 2021 congressional map resulted in vote dilution "on account of race or color." 52 U.S.C. § 10301(a). In response, Black Louisiana voters, including amici here, petitioned a federal court to enjoin this unlawful racial discrimination—*to eliminate all of it*. The district court's preliminary injunction was thus a first step toward vindicating the U.S. Constitution's essential pledge. After appellate review of those findings confirmed (several times over) that they were not found in error, the legislature responded accordingly and enacted a new map that discontinued the discrimination against Black voters. We cannot settle for any less.

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[11] The State, for whatever reason, highlights that Hispanic and Asian American voters did not vote cohesively at the national level in the 2024 presidential election. *See* State Suppl. Br. at 20. All that demonstrates is that the current Section 2 test would effectively weed out any hypothetical nationwide claims on behalf of those groups, precisely because it is responsive to modern conditions. It tells us nothing about the viability of Section 2 claims on behalf of Black voters in Louisiana.

CONCLUSION

As this Court has recognized, "racial discrimination and racially polarized voting are not ancient history. Much remains to be done to ensure that citizens of all races have equal opportunity to share and participate in our democratic processes and traditions; and § 2 must be interpreted to ensure that continued progress." *Bartlett*, 556 U.S. at 25. Because the Constitution does not forbid states from replacing districting maps in response to judicial findings that the map discriminates on the basis of race, the Court should reverse the judgment below.

Respectfully submitted,

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