

No. 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 *AMICI CURIAE* ELLEN D. KATZ
AND THE VOTING RIGHTS INITIATIVE IN
SUPPORT OF ROBINSON APPELLANTS**

JEFFREY THEN
HECKER FINK LLP
350 Fifth Avenue, 63rd
Floor
New York, NY 10018

JOSHUA MATZ
Counsel of Record
TRISHA ANDERSON
BRIAN REMLINGER
HECKER FINK LLP
1050 K St NW, Suite 1040
Washington, DC 20001
(212) 763-0883
jmatz@heckerfink.com
Counsel for Amici Curiae

TABLE OF CONTENTS

	<i>Page</i>
TABLE OF AUTHORITIES.....	ii
INTEREST OF <i>AMICI CURIAE</i>	1
INTRODUCTION AND SUMMARY OF ARGUMENT.....	1
ARGUMENT.....	2
I. SECTION 2 VOTE DILUTION LITIGATION HAS DECLINED IN RECENT DECADES	2
A. VRI's Data Collection Process	2
B. VRI Data Confirms That Section 2 Litigation Has Declined, Not “Proliferated”	5
CONCLUSION	9
APPENDIX	
Total Lawsuits and Successful Cases in Voting Rights Act Section 2 Vote Dilution Litigation, 1982-2024.....	1a
Unsuccessful Vote Dilution Claims Where At Least One <i>Gingles</i> Factor Found, 1982-2024	2a
Unsuccessful Vote Dilution Districting Challenges Where At Least One <i>Gingles</i> Factor Found, 1982-2024	2a

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Allen v. Milligan</i> , 599 U.S. 1 (2023)	8
<i>Shelby County v. Holder</i> , 570 U.S. 529 (2013)	4
<i>Shelby County v. Holder</i> , 679 F.3d 848 (D.C. Cir. 2012)	3-4
<i>Thornburg v. Gingles</i> , 478 U.S. 30 (1986)	4

Statutes

52 U.S.C. § 10301	1
52 U.S.C. § 10301(a)	2-3
52 U.S.C. § 10301(b)	3, 7
Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, Pub. L. No. 109- 246, 120 Stat. 577	3

Other Authorities

Ellen D. Katz et al., <i>Documenting Discrimination in Voting: Judicial Findings Under Section 2 of the Voting Rights Act Since 1982</i> , 39 U. Mich. J.L. Reform 643 (2006)	4
<i>About the Project</i> , Voting Rights Initiative, Univ. of Mich. L. Sch., https://voting.law.umich. edu/about/ (last visited Sept. 1, 2025)	3, 4, 5

<i>Section 2 Cases Database, Voting Rights Initiative, Univ. of Mich. L. Sch., https://voting.law.umich.edu/database/ (last visited Sept. 1, 2025)</i>	3
---	---

INTEREST OF *AMICI CURIAE*¹

The Voting Rights Initiative (VRI) at the University of Michigan Law School is a faculty-student collaborative research venture under the direction of Ralph W. Aigler Professor of Law Ellen D. Katz. Since 2005, VRI has been tracking and analyzing litigation involving Section 2 of the Voting Rights Act of 1965, 52 U.S.C. 10301. By virtue of that scholarly work, Professor Katz and VRI have a professional interest in the development of the law and judicial reliance on accurate empirical information about Section 2 litigation.

INTRODUCTION AND SUMMARY OF ARGUMENT

Appellees ask this Court to hold electoral maps drawn to remedy Section 2 violations effectively unconstitutional under the Fourteenth and Fifteenth Amendments. In support of their position, they claim that “[a]ggressive VRA-only litigation before single-judge district courts has proliferated and expanded racial gerrymanders.” Brief for Appellees at 38, *Louisiana v. Callais*, No. 24-109 (Appellees’ Br.). But this claim is incorrect. In fact, the opposite is true: As demonstrated by VRI’s data, Section 2 litigation has sharply declined in the last two decades and the bar to access Section 2 remedies remains properly high. Appellees’ mistaken assertion about trends in VRA

¹ No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund its preparation or submission. No person other than *amici* or its counsel made a monetary contribution to the preparation or submission of this brief.

litigation should therefore not inform the Court’s consideration of this case.

ARGUMENT

I. SECTION 2 VOTE DILUTION LITIGATION HAS DECLINED IN RECENT DECADES

In asking this Court to declare Louisiana’s Congressional map unconstitutional, Appellees imply that litigation to enforce Section 2 has run amok. To hear Appellees tell it, plaintiffs pressing Section 2 vote dilution claims face no real barrier in convincing rogue district judges to impose unnecessary, race-based remedial maps. That supposed recklessness with Section 2 remedies, Appellees argue, cuts against trusting the Judiciary to properly manage any tension that may exist between Section 2 redistricting jurisprudence and the Fourteenth and Fifteenth Amendments.

This argument rests on erroneous factual contentions that should not play any role in this Court’s decisionmaking. Instead, VRI’s dataset tracking VRA litigation over the last two decades supports the inference that lower federal courts have faithfully applied this Court’s Section 2 precedents. And it further shows that, in so doing, those courts have enforced Section 2’s exacting standards to ensure that only truly meritorious claims are remedied. Courts today adjudicate far fewer Section 2 vote dilution claims, and find far fewer Section 2 violations, than in prior decades.

A. VRI’s Data Collection Process

Section 2 of the Voting Rights Act prohibits any “voting qualification or prerequisite to voting or standard, practice, or procedure . . . which results in a denial

or abridgement of the right of any citizen of the United States to vote on account of race or color.” 52 U.S.C. § 10301(a). That prohibition is violated “if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.” *Id.* § 10301(b).

VRI, overseen by Professor Katz, explores how Section 2 has operated in practice over time. It does so by tracking Section 2 litigation that results in one or more opinions published to Westlaw or Lexis. *See About the Project*, Voting Rights Initiative, Univ. of Mich. L. Sch., <https://voting.law.umich.edu/about/> (last visited Sept. 1, 2025). The database that VRI has assembled, which includes opinions issued on or before December 31, 2024, is hosted online by the University of Michigan Law School. *See Section 2 Cases Database*, Voting Rights Initiative, Univ. of Mich. L. Sch., <https://voting.law.umich.edu/database/> (last visited Sept. 1, 2025).

VRI has been collecting data on Section 2 litigation for many years. Its data was part of the evidentiary record before Congress when legislators reauthorized Section 5 of the Voting Rights Act in 2006. *See* Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, Pub. L. No. 109-246, 120 Stat. 577. And a VRI report published in 2006 was relied upon by the D.C. Circuit in *Shelby County v. Holder*, 679 F.3d 848, 874-

80 (D.C. Cir. 2012), as well as by Justice Ginsburg in her dissent from this Court’s reversal of that D.C. Circuit opinion, *see Shelby County v. Holder*, 570 U.S. 529, 577-78 (2013) (Ginsburg, J., dissenting). *See generally* Ellen D. Katz et al., *Documenting Discrimination in Voting: Judicial Findings Under Section 2 of the Voting Rights Act Since 1982*, 39 U. Mich. J.L. Reform 643 (2006) (VRI report).

VRI analyzes the opinions it collects and, in doing so, logs information about the underlying litigation. This information includes the outcome reached and the reasoning of the most thorough controlling opinion. *See About the Project*, Voting Rights Initiative, Univ. of Mich. L. Sch., <https://voting.law.umich.edu/about/> (last visited Sept. 1, 2025). In vote dilution cases involving challenges to at-large election systems, majority vote requirements, or districting plans, VRI logs whether (on the facts before it) the controlling opinion found that each of the so-called *Gingles* preconditions were satisfied.² The VRI dataset records a precondition as “found” if the court expressly finds the precondition met or if the precondition was uncontested.

In the VRI dataset, a case is recorded as a “success” if it resulted—or its litigation posture suggests it

² The *Gingles* preconditions require a showing that (1) “the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district;” (2) “the minority group . . . is politically cohesive;” and (3) “the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority’s preferred candidate.” *Thornburg v. Gingles*, 478 U.S. 30, 50–51 (1986).

resulted—in a change to a challenged electoral practice.³ Examples of successful cases include those where a preliminary injunction was issued, where a court expressly found and remedied a Section 2 violation, or where plaintiffs recovered attorney fees on a claim under Section 2. *See About the Project*, Voting Rights Initiative, Univ. of Mich. L. Sch., <https://voting.law.umich.edu/about/> (last visited Sept. 1, 2025).

B. VRI Data Confirms That Section 2 Litigation Has Declined, Not “Proliferated”

In support of their position, Appellees assert that Section 2 vote dilution claims have “proliferated” in recent years. Appellees’ Br. at 38 (“What else has changed? Aggressive VRA-only litigation before single-judge district courts has proliferated and expanded racial gerrymanders.”). That “proliferat[ion],” they continue, shows that district courts cannot be trusted and renders suspect districting maps remedying Section 2 violations.

VRI’s data undercuts important empirical premises of these assertions. Applying the Court’s precedents, federal district courts have found fewer Section 2 violations in recent decades than in the years following the statute’s 1982 reauthorization. Plaintiffs, likely recognizing the barriers to obtaining a Section 2 remedy, have correspondingly brought fewer Section 2 vote dilution claims. This indicates that lower courts have applied real rigor to Section 2 analysis and

³ The VRI dataset also tracks and analyzes ongoing litigation. Those cases are coded based on their most recent available controlling opinion, though that opinion obviously may not reflect the future resolution of that litigation.

suggests the inaccuracy of Appellees' assertions that the floodgates are open to rampant, race-conscious remedies.

As recorded in VRI's dataset and set out in the Appendix to this brief, the number of Section 2 vote dilution claims has almost halved over recent decades. The period after Section 2's reauthorization saw an increasing number of vote dilution claims—ninety-five from 1982 to 1991, followed by 105 from 1992 to 2001. In the early 2000s, however, the number of vote dilution claims began to fall, with only sixty-seven such suits filed between 2002 and 2011. In recent years, such suits have decreased even further: forty-eight were brought from 2012 to 2021, and only twenty-six have been brought since 2022. (Because the majority of vote dilution claims are usually brought just after decennial redistricting, the current decade is on track to see even fewer Section 2 claims than the last one.)

Likewise, the number of successful vote dilution cases has plummeted from the decade following the 1982 reauthorization to the present. VRI's analysis of vote dilution cases from 1982 to 1991 shows that seventy-one vote dilution cases filed in that period were successful. The same analysis for cases from 1992 to 2001 shows that only thirty-seven vote dilution cases were successes. From 2002 to 2011, only twenty-six were successful, and from 2012 to 2021, only twenty-one.⁴ These numbers squarely rebut Appellees' claim.

⁴ While sixteen of the twenty-six Section 2 vote dilution claims litigated between 2022 and 2024 appear as successes in the VRI dataset, the ongoing nature of many of those cases likely

VRI's data likewise shows that lower courts apply *Gingles* to have real teeth. For example, notwithstanding that there have been 139 total vote dilution cases in which the first *Gingles* precondition was found to be met (or conceded), plaintiffs were nevertheless unsuccessful in forty-seven of those cases. Similarly, of the 141 vote dilution cases in which the second *Gingles* precondition was met, plaintiffs were ultimately unsuccessful in fifty. And, of the 108 decisions in which the third precondition was met, twenty still failed. In other words, plaintiffs pressing Section 2 vote dilution claims who make sufficient showings on at least one of the *Gingles* prongs routinely fail—a result that belies Appellees' tales of reckless district courts imposing undue Section 2 remedies. Instead, the data suggests that courts indeed take seriously each of the *Gingles* requirements.⁵

Courts are no more cavalier in the subset of Section 2 vote dilution challenges focused on district boundaries: of the fifty-four Section 2 challenges to districting schemes where a court found the first *Gingles* precondition was present, nineteen cases were nevertheless ultimately unsuccessful. The same is true for the second precondition: of the fifty-eight Section 2 challenges to districting schemes where a court found the

overstates success. Many have survived a motion for dismiss and are thus coded as a success in the VRI database but may ultimately fail at summary judgment or trial.

⁵ A case in which one *Gingles* prong is met might still fail because a court found plaintiffs failed to prove another *Gingles* precondition, failed to satisfy Section 2's "totality of the circumstances" test, 52 U.S.C. § 10301(b), or failed to state a cognizable claim under Section 2 for some reason unrelated to *Gingles*.

second *Gingles* precondition was present, twenty-three were nevertheless unsuccessful. And so, too, for the third precondition: of the forty-five Section 2 districting challenges where the third precondition was found to be present, eleven still failed. In other words, satisfying one of the *Gingles* preconditions is no guarantee of success on a Section 2 dilution claim—a fact that reflects rigorous and reasoned decisionmaking by district courts and that accords with this Court’s own recently articulated understanding of Section 2 litigation. *See, e.g., Allen v. Milligan*, 599 U.S. 1, 26 (2023).

In contending that Section 2 vote dilution litigation has “proliferated,” Appellees appear to claim that district courts find Section 2 violations where none exist and then impose race-conscious remedies where none are justified. As the VRI data indicates, that is not the case. Courts rigorously scrutinize Section 2 claims, and there is no empirical basis for suggesting that lower courts adjudicating such cases do anything other than faithfully apply this Court’s Section 2 precedents, including the preconditions established by *Gingles*. Appellees have offered no contrary data to support their claims—and so their assertions should not be credited.

CONCLUSION

For the foregoing reasons, *Amici* respectfully submit that the judgment below should be reversed.

Respectfully submitted,

September 3, 2025

JEFFREY THEN
HECKER FINK LLP
350 Fifth Avenue
63rd Floor
New York, NY 10018

JOSHUA MATZ
Counsel of Record
TRISHA ANDERSON
BRIAN REMLINGER
HECKER FINK LLP
1050 K Street NW
Suite 1040
Washington, DC 20001
(212) 763-0883
jmatz@heckerfink.com

Counsel for Amici Curiae

APPENDIX

TABLE OF APPENDICES

	<i>Page</i>
Total Lawsuits and Successful Cases in Voting Rights Act Section 2 Vote Dilution Litigation, 1982-2024.....	1a
Unsuccessful Vote Dilution Claims Where At Least One <i>Gingles</i> Factor Found, 1982-2024	2a
Unsuccessful Vote Dilution Districting Challenges Where At Least One <i>Gingles</i> Factor Found, 1982-2024	2a

APPENDIX¹

Total Lawsuits and Successful Cases in Voting
Rights Act Section 2 Vote Dilution Litigation, 1982-
2024

Decade	Total Section 2 Vote Dilution Claims	Successful Section 2 Vote Dilution Claims
1982-1991	95	71
1992-2001	105	37
2002-2011	67	26
2012-2021	48	21
2022-2024	26	16

¹ The data set out in this Appendix is reflected in the VRI dataset, see *The Evolution of Section 2: Numbers and Trends*, Voting Rights Initiative, Univ. of Mich. L. Sch., <https://voting.law.umich.edu/findings/> (last visited Sept. 1, 2025); see also *Section 2 Cases Database*, Voting Rights Initiative, Univ. of Mich. L. Sch., <https://voting.law.umich.edu/database/> (last visited Sept. 1, 2025).

Unsuccessful Vote Dilution Claims Where At Least
One *Gingles* Factor Found, 1982-2024

	Total Cases Where Precondition Met	Unsuccessful Cases Where Precondition Met
First Precondition	139	47
Second Precondition	141	50
Third Precondition	108	20

Unsuccessful Vote Dilution Districting Challenges
Where At Least One *Gingles* Factor Found,
1982-2024

	Total Cases Where Precondition Met	Unsuccessful Cases Where Precondition Met
First Precondition	54	19
Second Precondition	58	23
Third Precondition	45	11