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.*,
Appellant,

v.

PHILLIP CALLAIS, *et al.*,
Appellees.

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

BRIEF OF AMICI CURIAE MILLIGAN PLAINTIFFS IN SUPPORT OF THE ROBINSON APPELLANTS

KAYLA D. FISHER
HOGAN LOVELLS US LLP
1735 Market St.
Floor 23
Philadelphia, PA 19103

JESSICA L. ELLSWORTH
Counsel of Record
JO-ANN TAMILA SAGAR
ERICA J. SHULER
HOGAN LOVELLS US LLP
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5600
jessica.ellsworth@hoganlovells.com

Counsel for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES:

TABLE OF AUTHORITIES (CONT'D)

Page(s)

TABLE OF AUTHORITIES (CONT'D)

Page(s)

TABLE OF AUTHORITIES (CONT'D)

Page(s)

OTHER AUTHORITIES:

TABLE OF AUTHORITIES (CONT'D)

Page(s)

IN THE
Supreme Court of the United States

STATE OF LOUISIANA,
Appellant,

v.

PHILLIP CALLAIS, *et al.*,
Appellees.

PRESS ROBINSON, *et al.*,
Appellant,

v.

PHILLIP CALLAIS, *et al.*,
Appellees.

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

STATEMENT OF INTEREST[1]

Two years ago, Amici Evan Milligan, Shalela Dowdy, Letetia Jackson, and Greater Birmingham Ministries, were before this Court as appellees in *Allen* v. *Milligan*, 599 U.S. 1 (2023). They are Alabama residents who have worked to protect and secure their own rights under the Voting Rights Act and the rights of their neighbors. By virtue of their recent experience with Voting Rights Act litigation, including litigating and prevailing in this Court in *Milligan*, Amici are intimately familiar with this Court's decision in *Milligan*, the constitutional and statutory provisions that

[1] No party or counsel for a party authored this brief in whole or in part. No party, counsel for a party, or person other than *amici curiae* or their counsel made any monetary contribution intended to fund the preparation or submission of this brief.

the Court construed in that case, and the developments since that decision. Additionally, Amici can speak firsthand to the workability and efficacy of existing Section 2 doctrine in both the trial and appellate courts.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

This Court set re-argument to consider "[w]hether the State's intentional creation of a second majority-minority congressional district violates the Fourteenth or Fifteenth Amendments to the U. S. Constitution." Order, *Louisiana* v. *Callais*, No. 24-109 (August 1, 2025). But the Court answered that question just two years ago. *See generally Allen* v. *Milligan*, 599 U.S. 1 (2023). It said the answer is no. Nothing of relevance has changed since then.

When Amici were last before this Court, "Alabama assert[ed] that § 2, as construed by *Gingles*," "require[s] race-based redistricting in certain circumstances," and "exceeds Congress's remedial or preventive authority under the Fourteenth and Fifteenth Amendments." *Milligan*, 599 U.S. at 45 (Kavanaugh, J., concurring). And "[a]s the Court explain[ed], the constitutional argument presented by Alabama is not persuasive in light of the Court's precedents." *Id.* Five members of this Court—speaking with one voice—explicitly "reject[ed]" the "argument that § 2 as applied to redistricting is unconstitutional under the Fifteenth Amendment," or pushes states to unlawful "racial gerrymanders in violation of the Fourteenth Amendment." 599 U.S. at 28, 41 (opinion of Roberts, C.J., for the Court).

"The legal doctrine of *stare decisis* requires" this Court "to treat like cases alike." *June Med. Servs.*

L.L.C. v. *Russo*, 591 U.S. 299, 345 (2020) (Roberts, C.J., concurring). Adherence to precedent is "a foundation stone of the rule of law." *Michigan* v. *Bay Mills Indian Cmty.*, 572 U.S. 782, 798 (2014). "[I]t promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Payne* v. *Tennessee*, 501 U.S. 808, 827 (1991). For those reasons, this Court should virtually never overrule a statutory precedent. *Kimble* v. *Marvel Ent., LLC*, 576 U.S. 446, 456 (2015). "[T]he Court's precedents on precedent," *Ramos* v. *Louisiana*, 590 U.S. 83, 120 (2020) (Kavanaugh, J., concurring in part), permit the Court to override this "superpowered form of *stare decisis*," where there is "a superspecial justification to warrant reversing" the statutory precedent. *Kimble*, 576 U.S. at 458. There is no such justification here.

Milligan's interpretation of § 2, and its conclusion that this interpretation is consistent with the Fourteenth and Fifteenth Amendments, represents a statutory holding, such that the Constitution requires this Court to retain the precedent in deference to Congress's legislative function. *See Milligan*, 599 U.S. at 39 n.10; *see also Ramos*, 590 U.S. at 119-120 (Kavanaugh, J., concurring in part). *Milligan* presented precisely the same question that this Court addresses on re-argument. *Milligan* answered that question clearly, persuasively, and speaking with one voice for a majority of this Court. *Milligan*'s recency belies any argument that circumstances have changed since the decision was issued. And *Milligan* is workable and has engendered reliance interests. Those factors favor leaving *Milligan* undisturbed.

"Overruling precedent is never a small matter." *Kimble*, 576 U.S. at 455. But it has never been bigger than in this case. The Court has announced its openness to reconsidering a statutory precedent that this Court reaffirmed just two years ago, that Congress has acknowledged and relied upon for decades, and that touches upon a topic that the President has pushed into the headlines of every major newspaper for the past month. If the time has come for § 2 of the Voting Rights Act to be re-written, this Court should leave that task to the political branches—lest the Court become one of them.

ARGUMENT

I. *ALLEN* V. *MILLIGAN* ANSWERS THE QUESTION PRESENTED.

The State's intentional creation of a second majority-minority congressional district to remedy an identified § 2 violation does not violate the Fourteenth or Fifteenth Amendments. This Court held as much in *Milligan*. There, this Court explicitly "reject[ed]" the "argument that § 2 as applied to redistricting is unconstitutional under the Fifteenth Amendment," or pushes states to unlawful "racial gerrymanders in violation of the Fourteenth Amendment." 599 U.S. at 28, 41.

1. In *Milligan*, the Court addressed a challenge to an Alabama districting map that produced "only one district in which black voters constituted a majority of the voting age population." *Id.* at 16. A three-judge district court found that the map likely violated § 2 and preliminarily enjoined Alabama from using the map in future elections. *Id.* This Court affirmed that decision. *Id.* at 19.

As the Court explained, the extensive record in the case supported the district court's conclusion that the plaintiffs' § 2 claim was likely to succeed under *Thornburg* v. *Gingles*, 478 U.S. 30 (1986). *See Milligan*, 599 U.S. at 23. The district court "correctly found that black voters could constitute a majority in a second district that was 'reasonably configured'" under the first *Gingles* precondition. *Id.* at 19. And there was "no serious dispute that Black voters are politically cohesive, nor that the challenged districts' white majority votes sufficiently as a bloc to usually defeat Black voters' preferred candidate" under the second and third preconditions, respectively. *Id.* at 22 (quotation omitted). The Court also credited the district court's "careful factual findings" at the totality of circumstances stage, including its findings that "elections in Alabama were racially polarized" and that "Alabama's extensive history of repugnant racial and voting-related discrimination is undeniable and well documented." *Id.* at 22-23 (quotation omitted).

None of that is remarkable. The Court did not write a lengthy opinion in *Milligan* "to disturb the District Court's careful factual findings, which are subject to clear error review and have gone unchallenged by Alabama in any event." *Id.* at 23. Nor was the Court's exposition necessary "to upset the District Court's legal conclusions," which "faithfully applied our precedents and correctly determined that, under existing law, HB1 violated § 2." *Id.* In other words, the controversy in that case was "not about the law as it exists"; it was "about Alabama's attempt to remake our § 2 jurisprudence anew." *Id.*

2. Alabama brought the *Milligan* case to the Court to ask for a "new approach to § 2," based on arguments

that a State's intentional creation of a second majority-minority congressional district violates the Fourteenth or Fifteenth Amendments. *Id.* at 24. But this Court rebuffed that request. A five-Justice majority "reject[ed]" the "argument that § 2 as applied to redistricting is unconstitutional under the Fifteenth Amendment," or pushes states to unlawful "racial gerrymanders in violation of the Fourteenth Amendment." *Id.* at 28, 41.

a. The *Milligan* Court grounded its decision in precedent.

As the Court acknowledged, "we held over 40 years ago that, even if § 1 of the Fifteenth Amendment prohibits only purposeful discrimination, the prior decisions of this Court foreclose any argument that Congress may not, pursuant to § 2 of the Fifteenth Amendment outlaw voting practices that are discriminatory in effect." *Id.* at 41 (alterations and internal quotation marks omitted). Thus, "for the last four decades, this Court and the lower federal courts have repeatedly applied the effects test of § 2 as interpreted in *Gingles* and, under certain circumstances, have authorized race-based redistricting as a remedy for state districting maps that violate § 2." *Id.* "In light of that precedent," the Court declined to hold that "§ 2 as interpreted in *Gingles* exceeds the remedial authority of Congress." *Id*. at 41.

The Court held that its precedent likewise illustrated that § 2 claims are fully consistent with the Fourteenth Amendment. As the Court explained, "the *Gingles* framework itself imposes meaningful constraints on proportionality," such that a faithful application of § 2 yields only results that are also consistent with the Fourteenth Amendment. *Id.* at 26. "[I]n case

after case," this Court has "rejected districting plans that would bring States closer to proportionality when those plans violate traditional districting criteria." *Id.* at 29 & n.4; *see also id.* at 27-29 (discussing *Shaw* v. *Reno*, 509 U.S. 630 (1993); *Miller* v. *Johnson*, 515 U.S. 900 (1995); *Bush* v. *Vera*, 517 U.S. 952 (1996)). "Though the districts" at issue in those cases may have "brought the State closer to proportional representation, we nevertheless held that they constituted racial gerrymanders in violation of the Fourteenth Amendment." *Id.* at 28. Those cases illustrate that "[f]orcing proportional representation is unlawful and inconsistent with this Court's approach to implementing § 2." *Id.* at 28; *see also id.* at 43 ("As the Court's precedents make clear, *Gingles* does not mandate a proportional number of majority-minority districts.") (Kavanaugh, J., concurring).

b. The *Milligan* Court also explained why adherence to precedent was required.

First, the Court reaffirmed that its § 2 precedent offered the best reading of the text of the statute. *C.f., e.g.*, *Ramos*, 590 U.S. at 121 (Kavanaugh, J., concurring in part) (explaining that a "prior decision" must be "not just wrong, but grievously or egregiously wrong" to justify departure from it).

The Court explained that it has long "understood the language of § 2 against the background of the hard-fought compromise that Congress struck." *Milligan*, 599 U.S. at 25. In 1982, Congress undertook amending § 2 in order to legislatively overrule this Court's decision in *City of Mobile* v. *Bolden*, 446 U.S. 55 (1980), which had held that a districting plan did not violate § 2 where it was discriminatory only in effect. *Milligan*, 599 U.S. at 11-13. Senator Dole, taking note

of the "avalanche of criticism" that *Bolden* produced, recommended amending the statute in a way that "would allow courts to consider effects but avoid proportionality." *Id.* at 13. Congress voted overwhelmingly in favor of striking that balance, *see id.* at 14, and the statutory language incorporating that compromise has remained unchanged since 1982.

Second, the Court reaffirmed that its § 2 precedent has proven workable. *C.f., e.g.*, *Ramos*, 590 U.S. at 121 (Kavanaugh, J., concurring in part) (explaining that this Court evaluates "the workability of the precedent" in considering whether to adhere to the rule of *stare decisis*).

This Court, for its part, has "applied *Gingles* in one § 2 case after another, to different kinds of electoral systems and to different jurisdictions in States all over the country." *Milligan*, 599 U.S. at 19 (collecting cases). In *Milligan* itself, for example, five members of the Court had no problem concluding that "a faithful application of our precedents and a fair reading of the record before us d[id] not bear" out Alabama's "concern that § 2 may impermissibly elevate race in the allocation of political power within the States." *Id.* at 41; *see also, e.g.*, *id.* at 43 (Kavanaugh, J., concurring) (rejecting "conten[tion] that *Gingles* inevitably requires a proportional number of majority-minority districts, which in turn contravenes the proportionality disclaimer in § 2(b) of the Voting Rights Act" and collecting additional cases holding as much).

Third, the Court recognized that Congress and the President's decision to leave *Gingles* undisturbed—especially when viewed against the background of their swift move to overrule *Bolden*—is a decision that demands this Court's respect. *C.f., e.g.*, *Ramos*, 590 U.S.

at 118 (Kavanaugh, J., concurring in part) ("In statutory cases, *stare decisis* is comparatively strict, as history shows and the Court has often stated.").

"Unlike with constitutional precedents, Congress and the President may enact new legislation to alter statutory precedents such as *Gingles*." *Milligan*, 599 U.S. at 42 (Kavanaugh, J., concurring). And because the political branches have the power to legislatively overrule this Court's interpretation of statutes, "the *stare decisis* standard for this Court to overrule a statutory precedent, as distinct from a constitutional precedent, is comparatively strict." *Id.* at 42 (Kavanaugh, J., concurring). "In the past 37 years, however, Congress and the President have not disturbed *Gingles*, even as they have made other changes to the Voting Rights Act." *Id.* at 42 (Kavanaugh, J., concurring). The Court therefore concluded that "statutory *stare decisis* counsels strongly in favor of not undoing the compromise that was reached between the House and Senate when § 2 was amended in 1982." *Id.* at 39 n.10 (alterations and internal quotation marks omitted).

* * *

Milligan directly answers the question that this Court has set for re-argument here. There, this Court explicitly "reject[ed]" the "argument that § 2 as applied to redistricting is unconstitutional under the Fifteenth Amendment," or pushes states to unlawful "racial gerrymanders in violation of the Fourteenth Amendment." 599 U.S. at 28, 41. And for several reasons—precedent, text, workability, and statutory *stare decisis*—the *Milligan* Court "declin[ed] to adopt an interpretation of § 2 that would 'revise and reformulate'" the Court's "§ 2 jurisprudence." *Id.* at 24.

II. *STARE DECISIS* REQUIRES ADHERENCE TO *ALLEN* V. *MILLIGAN* IN THIS CASE.

The weight of *stare decisis* depends on the interpretive task before the Court. *See Ramos*, 590 U.S. at 119 (Kavanaugh, J., concurring in part). As to judicial precedents interpreting statutes, this Court has made clear that "*stare decisis* carries enhanced force." *Kimble*, 576 U.S. at 456. In this "superpowered form of *stare decisis*," the Court has required "a superspecial justification to warrant reversing" the statutory precedent. *Id.* at 458.

Milligan's construction of § 2 is entitled to that special deference. *Milligan*, 599 U.S. at 39 & n.10; *see also id*. at 42 (Kavanaugh, J., concurring) (characterizing "*Gingles*" as "a statutory precedent"). And there is no "superspecial justification" that warrants this Court's departure from *Milligan*. To the contrary, the balance of the factors that this Court weighs in response to every request to depart from precedent tilts decisively toward adhering to *Milligan*.

A. The Five-Justice Majority Opinion In *Milligan* Was Well-Reasoned.

As an initial matter, the quality of *Milligan*'s reasoning is too strong to warrant overturning that decision. That is so not just because the question of § 2's consistency with the Fourteenth and Fifteenth Amendments was pressed by the parties and passed upon by this Court (though it was, *see supra* at 6-7); and not just because the opinion is well-reasoned and well-written (though it is, *see supra* at 7-9); but also because *Milligan* is fundamentally different from the fractured decisions that this Court has recently overruled.

Milligan's holding and the bulk of its reasoning commanded the votes of five Justices of this Court. *See Milligan*, 599 U.S. at 1-30, 33-42. In so doing, *Milligan* reaffirmed *Gingles*, a decision that was similarly endorsed by a clear majority of this Court. *See Gingles*, 478 U.S. at 34-61, 74-76, 77-80. That fact—the congruence between the number of votes necessary to force a particular result, and the number of votes supporting the reasoning in the opinion announcing the Court's judgment—sets *Milligan* apart from other recent decisions overturning precedent.

Take, for example, *Ramos* v. *Louisiana*, 590 U.S. 83 (2020), in which this Court overruled *Apodaca* v. *Oregon*, 406 U.S. 404 (1972). *Apodaca* was a badly split decision, in which four Justices concluded that the Sixth Amendment did not require jury unanimity at all, while the fifth vote in support of the judgment came from Justice Powell, who concluded that the Sixth Amendment did require unanimity; it simply was not a fundamental element of jury trials binding on the States. 406 U.S. at 406; *see also Johnson* v. *Louisiana*, 406 U.S. 366, 369-380 (1972) (Powell, J., concurring in that case and *Apodaca* v. *Oregon*, 406 U.S. 404 (1972)). *Apodaca* was so fractured that, in *Ramos*, three Justices agreed that *Apodaca* supplied no governing precedent at all. *Ramos*, 590 U.S. at 101-103. Indeed, as the Court noted in *Ramos*, "five Justices in *Apodaca* said" that "the Sixth Amendment *does* require unanimity." *Id.* at 96.

Many other recently overruled cases fit this pattern. There is *Dobbs* v. *Jackson Women's Health Organization*, 597 U.S. 215 (2022), in which this Court overruled *Planned Parenthood of Southeastern Pennsylvania* v. *Casey*, 505 U.S. 833 (1992), a decision in which

"the Court split three ways" with "[t]wo Justices express[ing] no desire to change *Roe* in any way," "[f]our others want[ing] to overrule the decision in its entirety," "[a]nd the three remaining Justices, who jointly signed the controlling opinion, t[aking] a third position." *Dobbs*, 597 U.S. at 229. Another such case is *Students for Fair Admissions* v. *President and Fellows of Harvard College*, 600 U.S. 181 (2023) (*SFFA*), in which this Court overruled Justice Powell's opinion, "written for himself alone," but controlling for lower courts, *id.* at 208, in *Regents of University of California* v. *Bakke*, 438 U.S. 265 (1978) (Powell, J., announcing the judgment of the Court). And *Rucho* v. *Common Cause*, 588 U.S. 684, 702 (2019), in which the Court overruled the "splintered" decision in *Davis* v. *Bandemer*, 478 U.S. 109 (1986), is similar.

These cases reflect the rule that where a precedent "has created confusion among the lower courts that have sought to understand and apply [a] deeply fractured decision," *Seminole Tribe of Fla.* v. *Florida*, 517 U.S. 44, 64 (1996), overruling may be appropriate. *See also, e.g.*, *Nichols* v. *United States*, 511 U.S. 738, 746 (1994) ("[C]onfusion following a splintered decision * * * is itself a reason for reexamining that decision.").

The opposite is also true. Where, as here, clear and consistent majorities of this Court adopt and apply a rule, *stare decisis* prohibits this Court from disavowing that rule. A "precedent's consistency and coherence" is a reason to retain it. *Ramos*, 590 U.S. at 121 (Kavanaugh, J., concurring in part).

B. This Case Is Functionally Identical To *Milligan*.

1. *Stare decisis* requires fidelity to the Court's precedent—not to the individual views expressed by each

Justice in deciding any given case. *Stare decisis* therefore prohibits individual Justices from elevating their own individual jurisprudence above the Court's own jurisprudence. Even where a jurist had "joined the dissent" in a prior case, and "continue[s] to believe that the case was wrongly decided," that jurist has an obligation to "adhere to" the majority's holding in deciding an identical case. *June Medical*, 591 U.S. at 344 (C.J., Roberts, concurring). Regardless of whether a particular decision is "right or wrong"—"*stare decisis* requires" this Court "to treat like cases alike." *Id.* at 344-345.

Consider, for example, Chief Justice Roberts's concurring vote in *June Medical*. There, the Chief Justice joined four other Justices of this Court in invalidating a Louisiana law that was identical, in every relevant way, to a Texas law that the Court had invalidated four years earlier in *Whole Woman's Health* v. *Hellerstedt*, 579 U.S. 582 (2016). The Chief Justice cast a vote to invalidate the Louisiana law, even though the Chief Justice had "joined the dissent in *Whole Woman's Health*," and he "continue[d] to believe that [*Whole Woman's Health*] was wrongly decided." *June Medical*, 591 U.S. at 344 (Roberts, C.J., concurring). The Chief Justice nevertheless cast a vote to invalidate the Louisiana law because, in *June Medical*, the question before the Court was "not whether *Whole Woman's Health* was right or wrong, but whether to adhere to it in deciding the present case." *Id*. Answering *that* question, he reasoned that "[u]nder principles of *stare decisis*," he had to "agree with the plurality that the determination in *Whole Woman's Health* that Texas's law imposed a substantial obstacle requires the same determination about Louisiana's law." *Id.* at 354.

Or take *Moore* v. *Texas*, 586 U.S. 133 (2019) ("*Moore II*"), where six Justices voted to summarily reverse the court below, in an application of a two-year-old decision that had commanded only a five-Justice majority, *see Moore* v. *Texas*, 581 U.S. 1 (2017) ("*Moore I*"). In *Moore I*, this Court had vacated a decision of the Texas Court of Criminal Appeals regarding an intellectual disability claim in a capital case because of the analytical framework applied by the Texas court. *Id.* at 5. Two years later, after Texas reinstated the very capital sentence *Moore I* had vacated, this Court granted certiorari and summarily reversed, observing that the opinion on remand simply "repeat[ed] the analysis" *Moore I* had "found wanting." *Moore II*, 586 U.S. at 139 (per curiam). Because of this overlap, the Chief Justice joined *Moore II*'s majority, despite having authored the *Moore I* dissent. *Id.* at 143 (Roberts, C.J., concurring). Even if he had dissented "two years ago," he could not ignore that the Texas court's decision on remand had "repeated the same errors" that a majority of this Court had "previously condemned." *Id.*

Justices Kennedy and Scalia made the same move in *Clark* v. *Martinez*, 543 U.S. 371 (2005). *Clark* involved an alien detained in the United States for a long period of time pending removal. Four years earlier, in *Zadvydas* v. *Davis*, 533 U.S. 678 (2001), a five-Justice majority of the Court had concluded that the government could not detain an alien indefinitely without violating the Due Process Clause. *Id.* at 690. When *Clark* came before the Court, and required the Court to address involving a different category of aliens, but the same statute, a seven-Justice majority reached a result consistent with *Zadvydas*. Although they had dissented in *Zadvydas*, Justices Kennedy and Scalia voted with the *Clark* majority. Justice

Scalia explained his vote as follows: if *Zadvydas* had erred its interpretation of the statute, "Congress can attend to it," but "for this Court to sanction" a contradictory reading of the same statute "would establish within our jurisprudence, beyond the power of Congress to remedy, the dangerous principle that judges can give the same statutory text different meanings in different cases." *Clark*, 543 U.S. at 386.[2]

2. *Milligan* similarly binds this Court—the whole Court—to hold here that the State's intentional creation of a second majority-minority congressional district does not violate the Fourteenth or Fifteenth Amendments to the U. S. Constitution. Although individual Justices expressed doubts about *Milligan*'s holding, *see* 599 U.S. at 46 (Thomas, J., dissenting); *id.* at 95 (Alito, J., dissenting), a clear majority of this Court "reject[ed]" the "argument that § 2 as applied to redistricting is unconstitutional under the Fifteenth Amendment," or pushes states to unlawful "racial gerrymanders in violation of the Fourteenth Amendment." *Id.* at 28, 41.

And the overlap between *Milligan* and this case is widely acknowledged. In his dissent from the Court's order setting this case for re-argument, Justice Thomas noted that *Milligan* involved the same interpretive question at issue here. *See Louisiana* v. *Callais, re-argument ordered*, 145 S. Ct. 2608, 2609-10 (June 27, 2025) (Thomas, J., dissenting) (noting that

---

[2] We could go on. *Compare, e.g.*, Chief Justice Rehnquist's position in *Dickerson* v. *United States*, 530 U.S. 428 (2000), and *Withrow* v. *Williams*, 507 U.S. 680 (1993); Justice Harlan's position in *Orozco* v. *Texas*, 394 U.S. 324 (1969) and *Miranda* v. *Arizona*, 384 U.S. 436 (1966).

this case "highlight[s] the intractable conflict between this Court's interpretation of [§ 2] and the Equal Protection Clause of the Fourteenth Amendment," and that *Milligan* "placed the VRA in direct conflict with the Constitution"). The district court and the parties have acknowledged the same. *See, e.g., Callais* v. *Landry*, 732 F. Supp.3d 574, 609-613 (W.D. La. 2024); Brief for Appellant Louisiana at *2, 28, 36, 44, 47-48, *Louisiana* v. *Callais*, Nos. 24-109, 24-110 (2025); Brief for Appellants Press Robinson, et al. at *21, 27-28, 43, *Louisiana* v. *Callais*, Nos. 24-109, 24-110 (2025); Brief for Appellees at *37-38, 40-41, 48, 52, *Louisiana* v. *Callais*, Nos. 24-109, 24-110 (2025). "The result in this case is" therefore "controlled by" *Milligan* and this Court's obligation to "treat like cases alike." *June Medical*, 591 U.S. at 358 (Roberts, C.J., concurring).

C. Nothing Has Changed In The Two Years Since *Milligan* Was Decided.

Milligan was decided just two years ago. In the two years that have elapsed since this Court decided *Milligan*, 599 U.S. 1, nothing of relevance has changed. No legal developments have undermined *Milligan*'s doctrinal foundation. No changes in the facts on the ground have rendered *Milligan*'s holding obsolete. Any other development cited by the parties is inherently political in nature and must be disregarded by this Court. The recency of *Milligan* therefore provides a third, equally compelling reason to adhere to its holding that a State's intentional creation of a second majority-minority congressional district does not violate the Fourteenth or Fifteenth Amendments to the U. S. Constitution. That was true two years ago. It remains true today.

1. There have been no legal developments. Congress has not altered the text of § 2 in a way that would require reconsidering this Court's Voting Rights Act precedent. To the contrary, as the Court recognized in *Milligan*, decades of dialogue between this Court and Congress support the conclusion that the State's intentional creation of a second majority-minority congressional district does not violate the Fourteenth or Fifteenth Amendments. *See supra* at 8-9.

Nor has this Court issued any decision since *Milligan* that would call *Milligan*'s reasoning in doubt. Contrary to the Appellee's claims in Brief for Appellees at *36–38, *Louisiana* v. *Callais*, No. 24-109, 24-110 (2025), the Court's decision in *Students for Fair Admissions, Inc.* v. *President & Fellows of Harvard College*, 600 U.S. 181 (2023), is fully consistent with this Court's § 2 jurisprudence.

In *SFFA*, the Court reaffirmed that "remediating specific, identified instances of past discrimination that violated the Constitution or a statute" remains a "compelling interest[] that permit[s] resort to race-based government action." *See SFFA*, 600 U.S. at 207. In support of that statement, the *SFFA* opinion cited *Shaw* v. *Hunt*, 517 U.S. 899 (1996), one of this Court's cases interpreting and applying § 2 of the Voting Rights Act. *See SFFA*, 600 U.S. at 207 (citing *Shaw*, 517 U.S. at 909-910).[3] In other words, the Court anticipated and rejected the argument that the *SFFA*

[3] As the cross-referenced section of *Shaw* explains, a "State's interest in remedying the effects of past or present racial discrimination may * * * justify a government's use of racial distinctions," particularly where the state's action targets "identified discrimination" and the state has "a 'strong basis in evidence' to conclude that remedial action was necessary." *Shaw*, 517 U.S. at 909-910.

decision would undermine *Milligan*, explicitly distinguishing the Court's § 2 jurisprudence from the Court's admissions cases.

Even if *SFFA* signals a change in how the Court views constitutional avoidance when related to a Fourteenth Amendment claim, that would not justify a retreat from *Milligan* here. "[D]ecisions construing particular statutes continue to command respect even when the interpretive methods that led to those constructions fall out of favor." *Kisor* v. *Wilkie*, 588 U.S. 558, 630 (2019) (Gorsuch, J., concurring in the judgment); *see also, e.g.*, *John R. Sand & Gravel Co.* v. *United States*, 552 U.S. 130, 137, 139 (2008) (noting new presumption with respect to tolling of statutes of limitations but refusing to overturn prior interpretation). Thus, to the extent that § 2 is in need of revision because it relies on an outmoded method of analysis, this Court should leave "the updating or correction * * * to the legislative process," *Ramos*, 590 U.S. at 119 (Kavanaugh, J., concurring in part).

Finally, and fundamentally, the claim that *SFFA* and *Milligan* are, in some manner, inconsistent is too cute by half. A case that was decided by the same Court, in the same term, and within weeks of *Milligan* cannot fairly be said to have "changed [the] law since" *Milligan* was decided. *Id.* at 121; *see also id.* at 122 (explaining that this Court considers "the age of the precedent" in deciding whether to retain it). Nor is it credible to argue that those two decisions—which were authored by the same jurist and featured overlapping majorities—reflect inconsistent understandings of the Fourteenth and Fifteenth Amendments.

2. There have been no factual developments. That is, no changes in the facts on the ground have rendered

Milligan's holding obsolete. Appellees argue (at 38) that "litigation before single-judge district courts has proliferated and expanded racial gerrymanders." But Appellees do not cite anything to support that assertion. Nor is it plausible that any evidence supports the view that, in the two years since *Milligan* acknowledged that "§ 2 litigation in recent years has rarely been successful," 599 U.S. at 29, there has been some explosion in § 2 suits.

But even if that were true, it would not be a change that warrants overruling *Milligan*. Indeed, to the extent that there has been any increase in § 2 litigation, that is likely the result of this Court's own jurisprudence. Prior to this Court's decision in *Shelby County* v. *Holder*, Sections 2 and 5 of the Voting Rights Act worked in tandem to provide mechanisms for challenging enacted discriminatory election practices nationwide and, in jurisdictions with a history of discrimination, for preventing certain discriminatory measures before enactment, respectively.

In *Shelby County*, this Court invalidated § 5 with the understanding that the continued availability of § 2 would prevent continued voter discrimination. This position was advanced by one of the parties at oral argument and ultimately reflected in the Court's opinion. Counsel for Shelby County assured the Court that § 2 was an "effective remedy" against discriminatory practices such that the pre-clearance provisions were no longer necessary. *Shelby County* Oral Arg. Tr. 26. And this Court ultimately agreed, observing that "[b]oth the Federal Government and individuals have sued to enforce § 2, and injunctive relief is available in appropriate cases to block voting laws from going into effect," *Shelby County* v. *Holder*, 570 U.S. 529,

537 (2013) (internal citations omitted). Indeed, the Court emphasized that "Section 2 is permanent, applies nationwide, and is not at issue in this case." *Id.*

Thus, any increase in § 2 litigation is an increase that this Court anticipated—or even, invited—years ago.

3. Nor are there any other developments that could serve as a hook for a re-evaluation of *Milligan*. To be sure, things have happened in the past two years. We have inaugurated a new President.[4] There are new members in both chambers of Congress.[5] Some states have announced an intention to engage in redistricting without new census data.[6] But those changes are not cognizable in this Court.

The Court is, by design, a fundamentally apolitical institution. The judiciary is primarily concerned with the "evenhanded, predictable, and consistent development of legal principles." *Payne*, 501 U.S. at 827. *Stare decisis* thus functions as "a basic self-governing

---

[4] *See* Kadia Goba et al., *Led by Trump, Republicans push to redraw election maps in multiple states*, The Washington Post (Aug. 7, 2025), https://www.washingtonpost.com/politics/2025/08/07/trump-republicans-redistricting-texas-indiana/.

[5] *See 2024 Election Results*, AP News, https://apnews.com/projects/election-results-2024/ (last visited Sept. 2, 2025).

[6] *See* Wall St. J., *The Gerrymander Race to the Bottom* (Aug. 21, 2025), https://www.wsj.com/opinion/partisan-gerrymandering-texas-california-gop-democrats-donald-trump-gavin-newsom-7ee26118?gaa_at=eafs&gaa_n=ASWz-DAgf7FeZw9bklZmbRtpausFQ3ITIsxQ8ymucb3B5-RsF4YPcgT5FdxrUNjl0N70%3D&gaa_ts=68b7b50f&gaa_sig=Z58KfKzw1L5dHD6zdtg7S6zsEOmqrEu_AcagxgR1MjkiP3kKlawU1_GezUbGyCYEApeEvnEXMy7rh0qR69DUPg%3D%3D (explaining that "geographic sorting" of Republican and Democratic voters "has made it easier for both parties to gerrymander").

principle within the Judicial Branch, which is entrusted with the sensitive and difficult task of fashioning and preserving a jurisprudential system that is not based upon 'an arbitrary discretion.'" *Patterson* v. *McLean Credit Union*, 491 U.S. 164, 172 (1989) (quoting The Federalist No. 78, p. 490 (H. Lodge ed. 1888) (A. Hamilton)).

Justice Stewart once opined that "[n]o misconception could do more lasting injury to this Court and to the system of law which it is our abiding mission to serve," than the "misconception" that this Court—at times—overturns precedent based solely on "a change in [the Court's] membership." *Mitchell* v. *W. T. Grant Co.*, 416 U.S. 600, 636 (1974) (Stewart, J., dissenting); *see also Florida Dep't of Health & Rehab. Servs.* v. *Florida Nursing Home Ass'n*, 450 U.S. 147, 153 (1981) (Stevens, J., concurring) (noting "the potential damage to the legal system that may be caused by frequent or sudden reversals of direction that may appear to have been occasioned by nothing more significant than a change in the identity of this Court's personnel").

He was wrong. There is a misconception that could do more harm. And that is the misconception that this Court would change position based on changes within the political branches. *Stare decisis*' "greatest purpose is to serve a constitutional ideal—the rule of law." *Citizens United* v. *Federal Election Comm'n*, 558 U.S. 310, 378 (2010) (Roberts, C.J., concurring). The Court's respect for *stare decisis* is what "distinguishes the judicial 'method and philosophy from those of the political and legislative process.'" *June Medical*, 591 U.S. at 346 (Roberts, C.J., concurring) (internal quotation marks omitted). And by abiding by former

precedents in the face of political changes, the Court "contributes to the actual and perceived integrity of the judicial process.'" *Gamble* v. *United States*, 587 U.S. 678, 691 (2019) (quoting *Payne*, 501 U.S. at 827). That is why this Court must adhere to *Milligan* here.

D. The Remaining *Stare Decisis* Factors Also Counsel In Favor Of Adhering To *Milligan*.

1. Although *Milligan* was issued too recently to have engendered significant reliance interests itself, *Gingles*—which *Milligan* reaffirmed and reapplied—has long been the backbone of § 2 litigation. Districting lines have been shaped by it. And courts have endorsed remedies dictated by it. But most importantly, Congress has long "acted in reliance" on this Court's decisions interpreting § 2, *Hilton* v. *South Carolina Pub. Rys. Comm'n*, 502 U.S. 197, 202 (1991), suggesting that those decisions should not be disturbed by the judiciary. *See supra* at 8-9.

Moreover, *Milligan*'s recency is itself a reason that this Court must adhere to that decision. *Stare decisis* carries added persuasive force when the precedent at issue was recently adopted or recently applied. *See, e.g.*, *June Medical*, 591 U.S. at 344 (Roberts, C.J., concurring in Court's refusal to overrule a case decided "four years ago"); *Moore II*, 586 U.S. at 143 (Roberts, C.J., concurring in Court's refusal to overrule a case decided "two years ago").[7] Overruling a recent precedent tends to undermine public confidence that the

[7] *See also, e.g.*, *Arizona* v. *Rumsey*, 467 U.S. 203, 212 (1984) (declining to overrule a case "decided only three years ago"); *Vasquez* v. *Hillery*, 474 U.S. 254, 261 (1986) (declining to overrule a case decided "[o]nly six years ago"); *Twentieth Century Music Corp.* v. *Aiken*, 422 U.S. 151, 165 (1975) (Blackmun, J., concurring in Court's refusal to overrule a case decided "[s]even years ago").

Court's decisions "are founded in the law rather than in the proclivities of individuals." *Vasquez*, 474 U.S. at 265-266. Preserving that confidence "contributes to the integrity of our constitutional system of government, both in appearance and in fact." *Id.*

2. This Court should also adhere to *Milligan* because it is workable. To be sure, the "general terms of the statutory standard" in § 2 "require judicial interpretation," *League of United Latin Am. Citizens* v. *Perry*, 548 U.S. 399, 426 (2006), and some lower courts have at times exhibited "uncertainty regarding the nature and contours of a vote dilution claim," *Merrill* v. *Milligan*, 142 S. Ct. 879, 883 (2002) (Roberts, C.J., dissenting from grant of stays).

But as *Milligan* itself illustrates, lower courts are able to "properly appl[y] existing law * * * with no apparent errors for our correction." *Id.* at 882. Indeed, the *Milligan* majority responded to the "principal dissent" and its "complain[t] that 'what the District Court did here is essentially no different from what many courts have done for decades under this Court's superintendence,'" with the note that "[t]hat is not such a bad definition of *stare decisis*." 599 U.S. at 26 n.3 (quoting *id*. at 90-91 (Thomas, J., dissenting).

And if the Court had any concern that lower courts have sometimes failed to heed the limitations incorporated into the *Gingles* framework, the answer would be to reinforce those limitations, not to jettison *Gingles*, *Milligan*, and the many decisions that came between them in that line of precedent. *Cf., e.g.*, *Evenwel* v. *Abbott*, 578 U.S. 54, 63-75 (2016) (reaffirming the one-person, one-vote rule while clarifying its contours). The lower courts are capable of following this Court's lead. *See, e.g.*, *Ala. State Conf. of the NAACP*

v. *Allen*, No. 21-cv-1531, 2025 WL 2451166 at *61 (N.D. Ala. Aug. 22, 2025) (rejecting a proposed district because, in the court's view, it did "not serve traditional districting principles"). And the alternative—the Court striking down a long-standing statutory precedent—would be to legislate, not adjudicate.

CONCLUSION

For the foregoing reasons, as well as those in Robinson Appellants' brief, the judgment of the district court should be reversed, and the case should be remanded with instructions to enter judgment for the State of Louisiana and Appellants.

Respectfully submitted,

KAYLA D. FISHER
HOGAN LOVELLS US LLP
1735 Market St.
Floor 23
Philadelphia, PA 19103

JESSICA L. ELLSWORTH
Counsel of Record
JO-ANN TAMILA SAGAR
ERICA J. SHULER
HOGAN LOVELLS US LLP
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5600
jessica.ellsworth@hoganlovells.com

Counsel for Amici Curiae

SEPTEMBER 2025