No. 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 OF AMICUS CURIAE SOUTHERN POVERTY LAW CENTER IN SUPPORT OF THE ROBINSON APPELLANTS

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INTEREST OF THE AMICUS CURIAE[1]

The Southern Poverty Law Center ("SPLC") is a nonprofit organization dedicated to protecting the civil rights of society's most vulnerable members. Founded in 1971 and headquartered in Montgomery, Alabama, with offices across the Southern states, the SPLC has been dedicated to ensuring that the promise of the civil rights movement becomes a reality for all. SPLC aims to ensure that every citizen is afforded the opportunity to fully exercise their voting rights, by being afforded an equal opportunity to elect the representatives of their choice, equal access to the ballot box, and an equal voice in our democracy. SPLC has challenged discriminatory redistricting plans in court, serving as counsel or amicus curiae before the U.S. Supreme Court, federal appellate and district courts, and state courts in its efforts to secure equal treatment and opportunity for marginalized members of society.

SUMMARY OF ARGUMENT

Seeking to draw a districting plan that will dramatically reduce the effectiveness of votes cast by Louisiana's Black voters, Appellant State of Louisiana now asks this Court to hold the 1982 amendment to Section 2 and the legal framework for applying the amendment unconstitutional. The Court should reject taking such a radical and ruinous step. Countermanding Congress's will by dismantling what has come to be known as the "results standard" would be an immensely destructive departure from well-established precedent,

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[1] Pursuant to this Court's Rule 37.6, amicus states that no counsel for any party authored this brief in whole or in part. No entity or person, aside from amicus curiae, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

eliminating the most meaningful remaining federal instrument for combating the evil of intentional minority vote dilution.

Neither Section 2, as amended in 1982, nor this Court's time-tested *Gingles*[2] framework for applying Section 2 are "unbounded in time, place, and subject matter[.]" *Allen v. Milligan*, 599 U.S. 1, 88 (2023) (Thomas J., dissenting). On the contrary, the results standard only permits remedial redistricting maps when a very particular set of circumstances establish that such a remedy is warranted. Consequently, the results standard itself limits the time, place, and subject matter of the Act. This makes the *Gingles* framework "a rational means" to "prohibit[ ] racial discrimination in voting." *South Carolina v. Katzenbach*, 383 U.S. 301, 324 (1966). It satisfies this modest test by leaps and bounds. Nothing further is necessary for the Act to survive constitutional scrutiny. The results standard's own limitations (such as the standard's prohibition against requiring proportional representation) in combination with this Court's existing prohibition against racially predominant redistricting guarantees that a state's intentional creation of additional majority-minority congressional districts will not violate the Fourteenth and Fifteenth Amendments to the U.S. Constitution. Wholesale changes to federal law are not necessary for Section 2 to comply with the U.S. Constitution. All that is required is the faithful application of existing law.

First, Congress has broad authority under the Fifteenth Amendment to "use any rational means to effectuate the constitutional prohibition of racial discrimination in voting." *Katzenbach*, 383 U.S. at 324*; see also City of Rome v. United States*, 446 U.S. 156, 175

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[2] *Thornburg v. Gingles*, 478 U.S. 30 (1986).

(1980) ("Congress's authority under § 2 of the Fifteenth Amendment" is "no less broad than its authority under the Necessary and Proper Clause") (citing *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819)).

The results standard is a rational means for combating racial discrimination in redistricting. It consists of a two-step framework for federal courts. The first step requires that courts find that a minority population is usually denied an opportunity to elect a candidate of its choice when the population could otherwise do so based on a different, reasonably configured map. And the second step requires courts to look to the totality of the circumstances, focusing on a list of nine factors identified by the U.S. Senate as relevant to the results standard when it amended Section 2 in 1982. All this must be done before any determination can be made that a statutory violation has occurred. Thus, Section 2's result standard easily satisfies the rational means test of the Fifteenth Amendment.

Second, the results standard is constitutional even assuming, *arguendo*, that the results standard must also satisfy the congruency and proportionality limitation on congressional authority. Section 2's results standard is both congruent and proportional because it reaches only so far as Congress determined was necessary to remedy the pervasive problem of unconstitutional racial discrimination in voting. *See, e.g.*, *City of Boerne v. Flores*, 521 U.S. 507, 520 (1997).

Third, the *Gingles* framework contains an easily comprehensible evidence-based test to determine when remedial relief under Section 2 is no longer appropriate. When local conditions evolve and residential segregation abates, the first *Gingles* precondition will fail. When

political conditions evolve and minority voters no longer vote as a cohesive bloc, the second *Gingles* precondition will fail. And when racial polarization in voting recedes and the majority population no longer votes as a cohesive bloc to defeat the minority population's preferred candidate, then the third *Gingles* precondition will fail. Accordingly, federal courts already possess all the tools that are needed to cabin Congress's remedial power through Section 2 of the VRA to those circumstances where remedial action is appropriate. Section 2 of the VRA is neither designed nor intended to last forever.

Fourth, Section 2's proportionality provision and this Court's existing racial predominance standard developed in the *Shaw* line of cases provide additional safeguards which preclude the excessive consideration of race.

Fifth, this Court's reasons for striking down the Section 4(b) geographic coverage formula of the VRA are inapplicable to Section 2 of the VRA. This is because Section 2 of the VRA does not block state action before it occurs and only demands remedial action after a violation is proven. This is also because Section 2 impacts all jurisdictions equally and does not target any particular states. This is also because Section 2 requires appraisal of present conditions and does not rely on outdated data.

Finally, current conditions in the South, especially between Black and White voters, show that Section 2 of the VRA is still required. Given extreme racial polarization in the South and the "inordinately difficult burden" of proving intentional vote dilution, the loss of the results standard's protections risks unleashing a flood of racially discriminatory redistricting plans that

wipes out minority representation in Congress, state legislatures, and local jurisdictions across the South. *See Gingles*, 478 U.S. at 44.

ARGUMENT

I. Section 2's Results Standard Has Been and Continues to be an Appropriate Exercise of Congress's Fourteenth and Fifteenth Amendment Authority to Remedy Racial Discrimination in Voting.

The results standard, which includes the *Gingles* framework, is constitutional. It does not exceed Congress's authority to enact appropriate legislation to enforce the Fifteenth and Fourteenth Amendments to the U.S. Constitution. And it is not "unbounded in time, place, and subject matter[.]" *Milligan*, 599 U.S. at 88 (Thomas J., dissenting). Moreover, the reasons that this Court relied on to invalidate the Section 4(b) geographic coverage formula of the VRA are inapplicable to Section 2 of the VRA. And current conditions in the South, especially between Black and White voters, show that Section 2 remains necessary and vitally important.

A. Section 2 Enforcement is Rationally Related to Congress's Enforcement of the Fifteenth Amendment.

The Fifteenth Amendment protects "[t]he right of citizens of the United States to vote[.]" U.S. Const. amend. XV. The Fifteenth Amendment also empowers Congress to "enforce" this right through "appropriate legislation." *Id.* This Court has held that Congress's legislation to enforce the rights of U.S. citizens to vote complies with the Fifteenth Amendment as long as the legislation offers a "rational means" to achieve this goal. *Katzenbach*, 383 U.S. at 324.

The "rational means" standard is not a demanding one. In *Shelby County v. Holder*, this Court explained that the coverage formula considered in *Katzenbach* was rational because it was "'relevant to the problem'" it was seeking to resolve. *See Shelby County v. Holder*, 570 U.S. 529, 551-52 (2013) (quoting *Katzenbach*, 383 U.S. at 329). The coverage formula considered in *Shelby County* only failed this rational means test because this Court considered it "irrational." *Id.* at 554.

Section 2 of the VRA forbids any "standard, practice, or procedure" that "results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." *See* 52 U.S.C. § 10301(a). In the context of redistricting, this statute is enforced through the framework set forth in *Thornburg v. Gingles*, 478 U.S. 30 (1986).

The results test framework includes two steps. First, under *Gingles,* the plaintiff must prove three preconditions: (1) the minority voters' "geographical compactness and numerosity"; (2) their "political cohesiveness"; and (3) the existence of "racially polarized voting[.]" *Milligan*, 599 U.S. at 18-19; *see also Wisconsin Legislature v. Wisconsin Elections Comm'n*, 595 U.S. 398, 402 (2022). Each of these preconditions requires proof related to current political and social circumstances in the challenged jurisdiction. Thus, Section 2 can only be violated when there is a current need to impose liability. *See, e.g.*, *Wisconsin Legislature*, 595 U.S. at 404 (requiring district courts to "carefully evaluat[e]" the *Gingles* preconditions) (quoting *Cooper v. Harris*, 581 U.S. 285, 304 (2017)). This is a rational means to achieve the Fifteenth Amendment's goals. *See, e.g.*, *Johnson v. De Grandy*, 512 U.S. 997, 1007 (1994) ("[T]he *Gingles* factors cannot be applied mechanically

and without regard to the nature of the claim.") (citation omitted).

But that's not all. After satisfying the three *Gingles* preconditions, voters must "conduct 'an intensely local appraisal' of the electoral mechanism at issue, as well as a 'searching practical evaluation of the past and present reality.'" *Milligan*, 599 U.S. at 19 (quoting *Gingles*, 478 U.S. at 79). This "totality of the circumstances" step adds an additional constraint to ensure that Section 2 only imposes liability when warranted. *See Rose v. Sec'y, State of Georgia*, 87 F.4th 469, 476 (11th Cir. 2023) ("Once all three *Gingles* requirements are established, the statutory text directs us to consider the totality of the circumstances to determine whether members of a racial group have less opportunity than do other members of the electorate.") (internal quotation and citation omitted), *cert. denied sub nom. Rose v. Raffensperger*, 144 S. Ct. 2686 (2024), *reh'g denied*, 145 S. Ct. 103 (2024); *see also* 52 U.S.C. § 10301(b) ("A violation . . . is established if, based on the totality of circumstances, it is shown"). Again, this is a rational means to achieve the Fifteenth Amendment's goals.

B. Section 2 is Also Congruent and Proportional to Congress's Enforcement of the Fourteenth Amendment, Even Though It Need Not Meet This Test.

Section 2's results standard is constitutional even if we assume that Congress is not authorized under the Fifteenth Amendment to employ any "rational means" to stamp out the scourge of intentional discrimination against racial minorities in voting, and that, as Appellant Louisiana asserts in its brief, Appellant Brief at 42, *Louisiana v. Callais*, No. 24-109, the results standard must satisfy the more demanding congruency

and proportionality limitation on Congress's remedial authority.

The congruency and proportionality limitation—articulated in *Boerne v. Flores*, 521 U.S. 507 (1997) and its progeny, and developed primarily in the context of defining the limits of Congress's authority to enact enforcement legislation under the Fourteenth Amendment—requires Congress to "tailor its legislative scheme to remedying or preventing" the unconstitutional conduct it has identified.[3] *Florida Prepaid Postsecondary Educ. Expense Bd. v. Coll. Sav. Bank*, 527 U.S. 627, 639 (1999). But Congress may "paint with a much broader brush than [the judicial branch]." *Fullilove v. Klutznick*, 448 U.S. 448, 501-502 n.3 (1980) (Powell, J., concurring), and "is not confined to the enactment of legislation that merely parrots the precise wording of the Fourteenth Amendment." *Kimel v. Florida Bd. of Regents*, 528 U.S. 62, 91 (2000). "[L]egislation which deters or remedies constitutional violations can fall within the sweep of Congress' enforcement power even if in the process it prohibits conduct which is not itself unconstitutional." *Lopez v. Monterey Cnty.*, 525 U.S. 266, 282 (1999); *Board of Trs.*

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[3] *Boerne* only addresses Congress's Fourteenth Amendment authority. 521 U.S. 507. The *Boerne* Court was concerned that, if it did not appropriately constrain Congress's Fourteenth Amendment enforcement authority, given the Amendment's wide-ranging guarantees to "life, liberty, or property," U.S. Const., amend. XIV, § 1, congressional action could "displace[] laws and prohibit[] official actions of almost every description and regardless of subject matter," as it found that the challenged statute did. 521 U.S. at 532. In contrast, the Fifteenth Amendment focuses narrowly and exclusively on racial discrimination in voting. When this Court struck down Congress's 2006 extension of the Section 4(b) geographic coverage formula, it did so because it found the reauthorization was "irrational." *Shelby County*, 570 U.S. at 556.

of Univ. of Alabama v. Garrett, 531 U.S. 356, 365 (2001) ("Congress' power to enforce the Amendment includes the authority both to remedy and to deter violation of rights guaranteed thereunder by prohibiting a somewhat broader swath of conduct, including that which is not itself forbidden by the Amendment's text.") (cleaned up).

The one circuit that has considered whether Section 2 would satisfy the congruent and proportional test concluded unambiguously that it would. In *Blaine County*, the Ninth Circuit opined the following:

> While it is true that the Supreme Court has . . . adopted a congruence-and-proportionality limitation on Congressional authority, this line of authority strengthens the case for section 2's constitutionality. Indeed, in the Supreme Court's congruence-and-proportionality opinions, the VRA stands out as the prime example of a congruent and proportionate response to well documented violations of the Fourteenth and Fifteenth Amendments.

U.S. v. Blaine County, Montana, 363 F.3d 897, 904 (2004). The results standard, when applied to redistricting plans, is congruent and proportional because it reaches only as far as Congress determined was necessary to remedy the pervasive problem of unconstitutional racial discrimination in voting. Prior to enacting the results standard in 1982, Congress reviewed an extensive record replete with cases of intentional racial discrimination in voting, including testimony and documents showing consistent efforts to create or maintain redistricting plans that intentionally

diluted the voting strength of racial minorities. *See* Extension of the Voting Rights Act: Hearings Before the Subcomm. On Civil and Constitutional Rights of the House Comm. On the Judiciary, 97th Cong. 1st Sess. 385, 238, 244 (South Carolina state senate redistricting), 382-85, 403 (Virginia state senate redistricting), 492-93, 517-18 (redistricting plan, county board of Warren County, Mississippi), 495, 521-22, 2457 (redistricting plan, county board of Hinds County, Mississippi), 2013 (congressional redistricting in North and South Carolina, Alabama, Mississippi), 2014 (city council redistricting plans, Richmond, Virginia, Nashville and Chattanooga, Tennessee, Raleigh, North Carolina, Montgomery, Alabama, Jackson, Mississippi); Voting Rights Act: Hearings Before the Subcomm. on the Constitution of the Senate Comm. On the Judiciary, 97th Cong., 2nd Sess. Vol. 1, 452-58 (Virginia state house and senate redistricting), 628-87 (Mississippi congressional redistricting) 829, 1803 (school board redistricting, Rapides Parish, Louisiana), 829, 1185-86 (redistricting plan county board, Hinds County, Mississippi), 766-70 (Texas state house redistricting).

Congress also determined that the intent test—which was how the Court was interpreting Section 2 prior to Congress amending it in 1982—was "hopelessly ineffective" at addressing the problem. *Blaine Cnty.*, 363 F.3d at 908. Congress found that plaintiffs struggled to prove intent cases for various reasons, including difficulties obtaining testimony about motive from legislators protected by legislative immunity, *see* Voting Rights Act: Hearings Before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary, 97th Cong., 2nd Sess. Vol. 1, at 37-39, and efforts by legislatures to hide their intentionally discriminatory motives underneath false information planted in the

legislative record. *Id.* at 37. Also, "[t]he intent test had the added burden of placing local judges in the difficult position of labeling their fellow public servants 'racists,'" which resulted in further undermining racial progress. *Blaine Cnty., Montana*, 363 F.3d at 908*; see also Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965-1990*, (Chandler Davidson & Bernard Grofman eds., 1994) (explaining that because of the Court's decision in *City of Mobile, Alabama v. Bolden*, 446 U.S. 55 (1980)—which requires a showing of intentional discrimination to prove both a constitutional violation and a violation of Section 2—affirmative challenges to vote dilution came to a virtual standstill).

Congress amended Section 2 in 1982—not to create a new substantive right, but merely to design a more effective prophylactic enforcement mechanism. While more effective than the constitutional standard, the results standard hues close to it. When Congress fashioned the results standard, the factors identified by the U.S. Senate as most relevant to proving a violation ("the Senate Factors")—including polarized voting patterns, a history of official discrimination, the existence of other voting practices that may enhance the opportunity to discriminate against the minority group, and political campaigns characterized by racial appeals—were the very same factors that this Court had consistently identified as highly probative circumstantial evidence of unconstitutional, invidious vote dilution. *White v. Regester*, 412 U.S. 755 (1973) (identifying factors later all included among the Senate Factors—such as history of official racial discrimination in Texas, the lack of minorities elected to the offices at issue, socio-economic conditions of the minority voters, among others—as evidence that the challenged multimember districts violated constitutional

protections by "invidiously exclud[ing] [minority voters] from effective participation in political life"); *see also Bolden*, 446 U.S. at 73; *Rogers v. Lodge*, 458 U.S. 613, 623-28 (1982).

Finally, another way in which the results standard is a remedy proportional to the constitutional violation is that it enables Congress to effectively address the problem of intentional vote dilution without unduly interfering in the affairs of state and local governments. "Section 2 leaves state and local governments free to choose the election system best suited to their needs, as long as that system provides equal opportunities for effective participation by racial and language minorities." *U.S. v. Marengo Cnty. Comm'n*, 731 F.3d 1546, 1560 (11th Cir. 1984). In fact, the results standard does not include any *per se* bars on a voting procedure or practice and explicitly states that it does not require jurisdictions to adopt proportional representation when they redistrict. *See generally* 52 U.S.C. § 10301. In this way too, the results standard reaches no further than Congress reasonably deemed necessary to remedy and prevent ongoing unconstitutional discrimination.

C. The *Gingles* Framework Provides an Endpoint for Liability under the Section 2 Results Standard.

The results standard is not "unbounded in time, place, and subject matter[.]" *Milligan*, 599 U.S. at 88 (Thomas J., dissenting). This is because the "different purpose[s]" that the preconditions "serve" require a careful appraisal of the geographic and political conditions of the jurisdiction at issue. *See id.* at 18; *see also Wisconsin Legislature*, 595 U.S. at 404 (requiring district courts to "carefully evaluat[e]" the *Gingles* preconditions). When those geographic and political

conditions change, the preconditions will fail and there will be no Section 2 results violation.[4]

Gingles Precondition 1. To satisfy the first precondition, the "'minority group must be sufficiently large and [geographically] compact to constitute a majority in a reasonably configured district.'" *Milligan*, 599 U.S. at 18 (quoting *Wisconsin Legislature*, 595 U.S. at 402. For a minority group to form a geographically compact majority within a large contiguous population, the minority group must be residentially segregated. *See, e.g., Gingles*, 478 U.S. at 49 (bloc voting must usually defeat "candidates supported by a politically cohesive, *geographically insular* minority group") (emphasis added); Br. of Amici Curiae Professors Jowei Chen, Christopher S. Elmendorf, Nicholas O. Stephanopoulos, and Christopher S. Warshaw in Support of Appellees/Resp'ts, *Allen v. Milligan*, 599 U.S. 1 (2023), 2022 WL 2873376, at *16 ("Chen Br."). "[I]n a substantially integrated district," "the minority group [is not] able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district." *Gingles*, 478 U.S. at 50.

"[A]s residential desegregation decreases—as it has 'sharply' done since the 1970s—satisfying traditional districting criteria such as the compactness requirement 'becomes more difficult.'" *Milligan*, 599 U.S. at 28-29

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[4] The totality of circumstances inquiry provides an additional hurdle before courts may find a violation of the results standard. "[A] plaintiff who demonstrates the three preconditions must also show, under the 'totality of circumstances,' that the political process is not 'equally open' to minority voters." *Milligan*, 599 U.S. at 18 (quoting *Gingles*, 478 U.S. at 45-46). The "application of the *Gingles* factors [under the totality of circumstances inquiry] is 'peculiarly dependent upon the facts of each case.'" *Milligan*, 599 U.S. at (quoting *Gingles*, 478 U.S. at 79).

(quoting Travis Crum, *Reconstructing Racially Polarized Voting*, 70 Duke L. J. 261, 279, and n.105 (2020)). In fact, numerous Section 2 plaintiffs have failed the *Gingles* 1 precondition because the minority population for which they sought an opportunity district was not sufficiently compact. *See, e.g., Rodriguez v. Harris Cnty.*, 964 F. Supp. 2d 686, 753-54 (S.D. Tex. 2013), *aff'd sub nom. Gonzalez v. Harris Cnty., Texas,* 601 Fed. Appx. 255 (5th Cir. 2015). If the residential desegregation trend continues, minority groups will not be able to satisfy *Gingles* 1's numerosity and compactness requirements, and their Section 2 results claims will fail.

While satisfying the first *Gingles* precondition has become harder, it remains a precondition that can be met in much of the country. But that's only because racially segregated housing patterns persist and many Americans remain unable or unwilling to reside in racially and ethnically diverse communities. To the extent that this situation continues to change, the first *Gingles* precondition will increasingly foreclose Section 2 cases from going forward.

Gingles Preconditions 2 and 3. To satisfy the second precondition, "'the minority group must be able to show that it is politically cohesive,'" and to satisfy the third precondition, "'the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it . . . to defeat the minority's preferred candidate.'" *Milligan*, 599 U.S. at 18 (quoting *Gingles*, 478 U.S. at 51). The congruen Report accompanying the 1982 amendments also specifies that the extent to which voting in the elections of the State or political subdivision is racially polarized is a factor that typically may be relevant to a results claim. *Gingles*, 478 U.S. at

44-45 (citing S. Rep. 97-417 at 28-29) (the "Senate Report").

Where voting ceases to be polarized along racial lines, the results standard as applied under the *Gingles* framework will self-liquidate. *See, e.g.,* Travis Crum, *Reconstructing Racially Polarized Voting,* 70 Duke L.J. 261, 286-87 (2020) ("[B]y making racially polarized voting a threshold requirement to a statutory vote dilution claim, the *Gingles* Court fashioned a de facto sunset date for Section 2. . . . [M]inority plaintiffs will no longer be able to bring Section 2 claims as the level of racially polarized voting decreases."). As with residential segregation, there is evidence that White bloc voting is abating in certain parts of the country. *See Bartlett v. Strickland*, 556 U.S. 1, 25 (2009) (plurality opinion) (noting that "[s]ome commentators suggest that racially polarized voting is waning"). Since the Court decided *Strickland*, numerous lower courts have found insufficient White bloc voting to satisfy the third *Gingles* precondition, particularly in the Midwest, Northeast, and West. Chen Br. at *19; *see, e.g., Baca v. Berry,* 806 F.3d 1262, 1274-75 (10th Cir. 2015); *McConchie v. Scholz*, 577 F. Supp. 3d 842, 859-60 (N.D. Ill. 2021); *Fletcher v. Lamone*, 831 F. Supp. 2d 887, 899-900 (D. Md. 2011). This Court, in *Cooper v. Harris*, found an absence of White bloc voting within a region of North Carolina. 581 U.S. 285, 302-03 (2017). And in and near urban areas, White voters support minority candidates of choice at rates of forty percent and higher. Chen Br. at *19-*20.

But racially polarized voting has not dissipated everywhere. Particularly in the Southern states where SPLC focuses its work, ample evidence shows that White bloc voting continues to defeat Black-preferred candidates. *See, e.g.*, *Milligan*, 599 U.S. at 22-23 (finding

no clear error where the district court "observed that elections in Alabama were racially polarized"); *Nairne v. Landry*, No. 24-30115, 2025 WL 2355524, at *15 (5th Cir. Aug. 14, 2025) ("[T]he district court did not clearly err in concluding that Black voters in Louisiana are politically cohesive and that the white majority in Louisiana votes as a bloc to defeat Black voters' preferred candidates. The statistics are stark and clearly show that voting in Louisiana is intensely racially polarized."); *Robinson v. Ardoin*, 86 F.4th 574, 596 (5th Cir. 2023) ("The record establishes that minority-preferred candidates will usually fail in Louisiana without a different district configuration."); *Wright v. Sumter Cnty. Bd. of Elections and Registration*, 979 F.3d 1282, 1306 (11th Cir. 2020) (finding no error by district court where expert witness analysis "emphasized the high levels of racially polarized voting and observed the lack of success enjoyed by black candidates in [Georgia's] Sumter County"); *White v. State Bd. Of Election Comm'rs*, No. 4:22-CV-62, 2025 WL 2406437, at *23 (N.D. Miss. Aug. 19, 2025) ("The data here is so overwhelmingly staggering in favor of White bloc voting to defeat the Black-preferred candidates that the Court cannot reach any other conclusion.").

Where voting remains racially polarized, for as long as it remains so, it is crucial that the protections of the results standard remain in place to provide minority voters a remedy so long as the first *Gingles* precondition is also met and the political process is not equally open to minority voters under the "totality of circumstances." *Cf. Shelby Cnty., Ala. v. Holder*, 570 U.S. 529, 565-66 (2013) (Ginsburg, J., dissenting) ("After considering the full legislative record, Congress [in its 2006 reauthorization of the VRA] made the following finding[ ]: . . . [R]acially polarized voting in the covered

jurisdictions . . . increased the political vulnerability of racial and language minorities in those jurisdictions.").

D. Section 2's Proportionality Provision and the Predominance Standard Ensure that Section 2 is Enforced Without Violating the Fourteenth Amendment.

In addition to the *Gingles* framework, there exist two additional safeguards against applying Section 2's results standard in a way that leads to Fourteenth Amendment violations. Specifically, both the proportionality provision embedded within Section 2 and this Court's existing predominance standard prohibit the excessive consideration of race.

First, Section 2's proportionality provision—which states that "nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population," 52 U.S.C. § 10301(b)—ensures that enforcement of Section 2 does not degenerate into drawing majority-minority districts to satisfy racial targets or quotas. In other words, Section 2 itself includes a prohibition against straying away from doing more than what needs to be done to address potential invidious discrimination in voting.

Second, the predominance standard developed by this Court in the *Shaw* line of cases also safeguards against the excessive consideration of race when applying Section 2. *See Shaw v. Reno*, 509 U.S. 630 (1993). Those cases cabin the consideration of race when remedying a violation of the Voting Rights Act so that the remedy is always "narrowly tailored" to comply with the VRA. *Bethune-Hill v. Virginia State Bd. Of Elections*, 580 U.S. 178, 188 (2017). The predominance standard the Court has developed prohibits any application of the Section 2 results standard that would

result in "racial stereotyping" and jurisdictions considering race in a manner that would inappropriately sideline traditional redistricting principles, such as compactness and respect for political boundaries. *Miller v. Johnson*, 515 U.S. 900, 914-28 (1995). The predominance standard also ensures that jurisdictions do not create majority-minority districts in the name of complying with Section 2 where remedies can be fashioned that minimize or entirely avoid racial sorting. *See Cooper v. Harris*, 581 U.S. 285, 302-04 (2017).

E. This Court's Decision in *Shelby County* is Inapplicable to the Case at Bar.

In *Shelby County*, Chief Justice Roberts emphasized that while the Court was declaring Section 4(b) unconstitutional, the Court's decision "in no way affects the permanent, nationwide ban on racial discrimination in voting found in § 2." *Shelby County v. Holder*, 570 U.S. 529, 557 (2013). *Shelby County* remains inapposite because the Section 2 results standard operates in a different manner than the former preclearance system.

First, the Section 2 results standard does not involve any "departures from the basic features of our system of government," like blocking state action before it occurs and requiring federal preclearance. *Id.* at 545. Unlike Section 5, Section 2 enables challenges to state and local enactments only after they go into effect, the same as innumerable other federal statutes that provide a cause of action in federal court. And exactly like innumerable other federal statutes, Section 2 applies equally to all states, in accord with "the tradition of equal [state] sovereignty." *Id.* at 544.

Second, this Court took issue with the Section 4(b) coverage formula because it used outdated data to address current conditions. *See id.* at 550-51 ("[A]

statute's current burdens must be justified by current needs, and any disparate geographic coverage must be sufficiently related to the problem that it targets."). Section 2 does not rely on outdated data. It demands an assessment that is "peculiarly dependent on the facts of the case." *Milligan*, 599 U.S. at 19; *see also supra* § I.C.

Third, as discussed *supra*, the results standard requires plaintiffs to prove circumstantial evidence that is highly probative and relevant to what this Court considers evidence of unconstitutional, invidious discrimination in voting. Section 5, on the other hand, involved a retrogression standard that is not as directly tied to what constitutes a violation of either the Fourteenth or Fifteenth Amendment.

And fourth, as discussed *supra*, when facts on the ground change and the circumstances that the U.S. Congress has determined are most relevant to ferreting out the evil of intentional discrimination in voting are no longer present, plaintiffs will not be able to go forward with Section 2 cases. The same cannot be said of Section 4(b) where Congress "based [its coverage decision] on decades-old data and eradicated practices," *Shelby County*, 570 U.S. at 551, and selected an arbitrary timetable for ending coverage untethered to the facts on the ground.

II. If Unprotected by the Section 2 Results Standard, Black Voters Across the South Would Lose Their Opportunity to Elect Any Candidates of Choice.

If this Court were to discard the protective umbrella of Section 2's results standard, Black citizens in the South would again confront the "'inordinately difficult' burden" of proving intentional vote dilution, and throughout the South, they would lose the ability to cast

a vote resulting in any meaningful representation in Congress and state and local elective bodies. *See Gingles*, 478 U.S. at 44 (quoting Senate Report at 36).[5]

In the past, Southern states and their sub-jurisdictions routinely used mechanisms such as the adoption of at-large election systems and gerrymandered district boundaries to intentionally dilute the efficacy of the Black vote. *See Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965-1990*, 39-43, 109, 140-41, 145, 159-61, 201-05, 242-48 (Chandler Davidson & Bernard Grofman eds., 1994). The various mechanisms all served the same purpose—to convert the votes of the region's Black voters into a "meaningless act" by submerging them in a sea of White voters with completely different political preferences. Joseph L. Bernd & Lynwood M. Holland, *Recent Restrictions Upon Negro Suffrage: The Case of Georgia*, J. of Politics XXI, 487 (August 1959). The use of unambiguously dilutive elective mechanisms by Southern jurisdictions was no less a direct assault on the Fifteenth Amendment's guarantees than a Southern registrar of elections requiring Black voters to know how many jellybeans were contained in a jar before allowing them to register. Today, any weakening of the results standard, either in whole or in part, has encouraged the

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[5] Given the South's extreme racial polarization, Southern map drawers are undoubtedly aware that intentionally diluting minority voting strength simultaneously advantages the majority political party. *Cf. N. Carolina State Conf. of NAACP v. McCrory*, 831 F.3d 204, 222 (4th Cir. 2016) ("It is the political cohesiveness of the minority groups that provides the political payoff for legislators who seek to dilute or limit the minority vote."). Ending Section 2's results standard would not end race-based redistricting in the South; it only would end race-based redistricting favoring minority voters, while making race-based redistricting favoring White voters much harder to contest.

South's political leadership to again call for the adoption of unambiguously gerrymandered districts that would deny Black voters the opportunity to have meaningful representation. *See, e.g.*, Douglas C. Lyons, *Is the 'R' Word Driving Gov. Ron DeSantis to Fix Black Congressional Districts?*, Palm Beach Post, Aug. 28, 2025; Eleanor Klibanoff, *In Rapidly Diversifying Tarrant County, a Summer of GOP Redistricting Hits Black and Latino Representation*, Texas Tribune (Sept. 2, 2025).

Rather than Black voters in Alabama having two districts in which they can elect congressional candidates of choice, as mandated by this Court in *Milligan*—or only one, as drawn by the Alabama legislature in the 2021 map that violated the Section 2 results standard—Black voters in Alabama could be shut out of electing *any* congressional candidates of choice after redistricting. And rather than Black voters in Louisiana having two districts in which they can elect congressional candidates of choice, as mandated by the court in *Robinson v. Ardoin*, 605 F. Supp. 3d 759 (M.D. La. 2022), *vacating as moot*, 86 F. 4th 574 (5th Cir. 2023) (upholding the preliminary injunction as valid when issued)—or only one, as drawn by the Louisiana legislature in the 2021 map found to violate the Section 2 results standard—Black voters in Louisiana could be shut out of *any* opportunity to elect preferred congressional candidates. Mississippi and other Southern states could likewise eliminate their sole Black opportunity congressional districts.

After this Court in *Allen v. Milligan*, 599 U.S. 1 (2023) affirmed the district court's preliminary finding that Alabama's 2021 congressional plan likely violated the results standard, which required the initiation of interim remedial proceedings to create a second Black

opportunity district, Alabama's legislature intentionally discriminated against Black voters by defying that command. *Singleton v. Allen*, No. 2:21-CV-01291, 2025 WL 1342947, at *194-*213 (N.D. Ala. May 8, 2025). If not for the results standard, this proof of the legislature's intent to discriminate against Black voters may never have surfaced. *Cf.* Senate Report at 40 (In adopting the results standard, Congress sought to mitigate "the substantial risk that intentional discrimination . . . will go undetected, uncorrected, and undeterred," in part because of "the difficulties faced by plaintiffs forced to prove discriminatory intent . . . ."). If this Court abolishes the results standard now, it opens the floodgates to redistricting maps that do more than deny minority voters in the South an equal opportunity to participate in the political process; the ensuing wall of majority-White districts in which White voters vote as a bloc would deny minority voters *any* opportunity.

CONCLUSION

For the foregoing reasons, this Court should reverse the judgment of the court below.

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