No. 25-253

IN THE

Supreme Court of the United States

TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS, *et al.*,

Petitioners,

v.

MICHAEL HOWE, SECRETARY OF STATE OF NORTH DAKOTA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF OF *AMICI CURIAE* AALDEF (ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND), AAJC (ASIAN AMERICANS ADVANCING JUSTICE), AND LATINOJUSTICE IN SUPPORT OF PETITIONERS

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TABLE OF CONTENTS

Table of Contents

TABLE OF CITED AUTHORITIES

Page

Cases

Cited Authorities

Cited Authorities

Page

Cited Authorities

Page

Page

Constitutional Provisions and Statutes

Legislative History

Other Authorities

Page

Page

Page

Page

INTEREST OF AMICI CURIAE[1]

AALDEF is a national organization, founded in 1974, that protects and promotes the civil rights of Asian Americans. By combining litigation, advocacy, education, and organizing, AALDEF focuses on critical issues affecting Asian Americans, including the right of Asian Americans across the country to cast an effective ballot and receive fair representation. AALDEF has litigated cases seeking to protect the ability of Asian Americans to elect candidates of their choice, *e.g., N.Y. Cmtys. for Change v. Cnty. of Nassau,* No. 602316/2024 (Sup. Ct. Nassau Cnty., Feb. 7, 2024); *League of United Latin Am. Citizens v. Abbott*, No. 3:21-cv-00259-DCG-JESJVB (W.D. Tex. Oct. 18, 2021); *Favors v. Cuomo*, 881 F. Supp. 2d 356 (E.D.N.Y. 2012), and to ensure that limited English proficiency Asian American voters have an equal opportunity to participate in our democracy, *e.g.*, *OCA-Greater Houston v. Texas*, 867 F.3d 604 (5th Cir. 2017); *Detroit Action v. City of Hamtramck*, No. 2:21-cv-11315-MAG-KGA (E.D. Mich. June 3, 2021); *All. of South Asian Am. Labor v. Bd. of Elections in the City of N.Y.*, No. 1:13-cv-03732-RJD-JMA (E.D.N.Y. July 2, 2013). A hallmark of AALDEF's voting rights work is its multilingual voter exit survey and poll monitoring efforts conducted in concert with local community groups. In every major election, across multiple states, AALDEF

1. Pursuant to Supreme Court Rule 37.6, *amici curiae* and their counsel represent that they have authored the entirety of this brief, and that no person other than *amici curiae* or their counsel has made a monetary contribution to the preparation or submission of this brief. Consistent with Supreme Court Rule 37.2, all counsel of record received timely notice of *amici*'s intention to file this brief more than 10 days before the due date.

monitors and documents language accessibility for voters in Asian American communities, provides real-time support, and advocates for effective post-election compliance with state and federal law.

Advancing Justice-AAJC is a nonprofit, nonpartisan organization that seeks to create an equitable society for all. Advancing Justice-AAJC works to further civil and human rights and empower Asian American communities through organization, education, advocacy, and litigation. Advancing Justice-AAJC is a leading expert on issues important to the Asian American community, including voting, census, educational equity, immigrant rights, and anti-racial profiling. Advancing Justice-AAJC has brought litigation to ensure all Americans, including Asian Americans and new Americans, have meaningful and equal access to the ballot. *E.g.*, *League of Women Voters Education Fund v. Trump*, No. 25-0955-CK (D.D.C. Apr. 1, 2025), *Arizona Asian American Native Hawaiian and Pacific Islander for Equity Coalition v. Hobbs*, No. 22-cv-1381 (D. Ariz. Aug. 16, 2022), *Asian Americans Advancing Justice-Atlanta v. Raffensperger*, No. 21-cv-1333-JPB (N.D. Ga. Apr. 1, 2021), *Asian Americans Advancing Justice-Chicago v. White*, No. 1:20-cv-01478 (N.D. Ill. Feb. 28, 2020). The organization also operates a voter protection hotline (1-888-API-VOTE) providing information in multiple AAPI languages.

LatinoJustice PRLDEF ("LatinoJustice") (formerly known as the Puerto Rican Legal Defense and Education Fund) is a fifty-year-old nonprofit organization that uses and challenges laws to promote a more just and equitable society. LatinoJustice has challenged gerrymandering and unfair electoral district maps through five decennial

redistricting cycles in New York, Illinois, Florida, New Jersey, Pennsylvania, Massachusetts, and Rhode Island. The organization has a long history of defending the right to multi-lingual voting materials and poll workers and has expanded Spanish-language voting services for Puerto Rican voters in Florida and Pennsylvania. *See Rivera Madera v. Detzner*, 325 F. Supp. 3d 1269 (N.D. Fla. 2018), *CASA v. Wheeler*, 1:22-cv-01648-MCC (M.D. Pa Oct. 20, 2022). LatinoJustice's voting rights work has also fought discriminatory voter purges and other barriers to voting, and challenged attempts to dilute Latino, Black, and Asian American voting power. *See, e.g., New York Cmtys. for Change, supra*; *Trump v. New York*, 592 U.S. 125 (2020); *ACLU of Iowa v. Schultz*, No. 14-0585 (Iowa Sept. 15, 2014); *Favors v. Cuomo*, *supra*; *Hispanic Fed'n v. Byrd*, 719 F.Supp.3d 1236 (N.D. Fla. 2024). LatinoJustice's Cada Voto Cuenta Program monitors enforcement of language access protections for limited English proficient voters and offers in-language assistance to Spanish dominant voters in New York, Pennsylvania, Florida, and Georgia.

SUMMARY OF ARGUMENT

The Voting Rights Act of 1965 ("VRA") enshrines the right of every eligible voter to participate in our democracy without regard to race, color, or membership in a protected language minority group. Of particular interest to *amici*, Sections 2, 203, 208, and 4(e) of the VRA provide protection to citizens with limited English proficiency ("LEP"). Each of these provisions is privately enforceable, as courts have recognized for almost 60 years. But the Eighth Circuit, in a series of aberrant decisions, has found that there is no private right of action for claims brought under Section 2 of the VRA.

In this case, the Eighth Circuit held that individuals or groups may not enforce Section 2 of the VRA through 42 U.S.C. § 1983 to challenge the deprivation of their right to vote on the basis of race or color. *Turtle Mountain Band of Chippewa Indians v. Howe*, 137 F.4th 710 (8th Cir. 2025). The Eighth Circuit also reiterated its conclusion in *Arkansas State Conference* that there is no private right of action under Section 2 itself, as it is "unclear" whether Section 2 creates such a right. *Id*. at 719 (citing *Arkansas State Conf. NAACP v. Arkansas Bd. of Apportionment*, 86 F.4th 1204, 1209 (8th Cir. 2023)). *Amici* agree with Petitioners that these holdings are wrong and contravene this Court's precedent and that of all other circuits to have addressed the issue of the enforceability of Section 2.

The Eighth Circuit's decision is alarming to *amici* for the additional reason that it could undermine the established (outside the Eighth Circuit) private right of action under Sections 203, 208, and 4(e) of the VRA (collectively referred to herein as the "Language Access Provisions"), which provide essential protection for *amici*'s LEP members. Already the Eighth Circuit has applied its flawed logic to one of these Language Access Provisions, holding that there is no private right of action in Section 208. *Arkansas United v. Thurston*, 146 F.4th 673 (8th Cir. 2025). The Court should grant certiorari, reverse the Eighth Circuit, and reaffirm that Section 2 of the VRA both has an implied private right of action and is clearly enforceable through 42 U.S.C. § 1983.

ARGUMENT

The VRA was borne out of a recognition that the Fifteenth Amendment's purpose – to ensure that the right

to vote cannot be denied or abridged based on "race, color, or previous condition of servitude" – would not be fully realized without laws to further codify and enforce that right. In authorizing and re-authorizing various sections of the VRA, Congress has recognized that "to enforce the fifteenth amendment to the Constitution," voters must have specific protections against the infringement of their right to vote, and a mechanism to enforce those protections.

One of those key protections is Section 2 of the VRA, which prohibits voting practices or procedures that discriminate on the basis of race, color, or membership in one of an identified language minority group. Protection of language minorities is further enhanced by the Language Access Provisions of the VRA. Section 203 of the VRA, 52 U.S.C. § 10503, protects LEP voters who live in areas with sizable populations of minority-language speakers by requiring election administrators to provide election materials and assistance in the relevant languages. Section 208 of the VRA, 52 U.S.C. § 10508, protects LEP voters and voters with disabilities by ensuring their right to assistance by a person of their choice. Section 4(e) of the VRA, 52 U.S.C. § 10303(e) protects LEP Puerto Rican voters, in particular, by ensuring their access to election materials and information in Spanish.

For decades, private plaintiffs have enforced their rights under the Language Access Provisions in the same manner that private plaintiffs have enforced rights under Section 2. Like Section 2, these three provisions do not expressly provide for a private right of action.

The absence of an express private right of action does not preclude such suits. Rather, a private plaintiff's

right to bring a claim under 42 U.S.C. § 1983 is analyzed under this Court's decision in *Health & Hosp. Corp. of Marion Cnty. v. Talevski*, 599 U.S. 166 (2023). *Talevski* identified the key inquiry to be whether "the provision in question is 'phrased in terms of the persons benefited' and contains 'rights-creating,' individual-centric language" with an "unmistakable focus on the benefited class." 599 U.S. 166, 185 (2023) (quoting *Gonzaga Univ. v. Doe*, 536 U.S. 273, 284, 287 (2002)). If that focus on the individual right is present, a statute will not "fail[] to secure rights simply because it considers, alongside the rights bearers, the actors that might threaten those rights." *Id.* at 185.

Applying the *Talevski* analysis explicitly or implicitly, this Court and eight other circuits – every one that has addressed such a case, except for the Eighth Circuit – have allowed private litigants to enforce Section 2 of the VRA. The Eighth Circuit's holding here, which cuts off the individual right to enforce Section 2 of the VRA under 42 U.S.C. § 1983, threatens private plaintiffs' ability to challenge not only Section 2 violations, but also violations of other provisions of the VRA. The decision not only undermines the purpose of the VRA, but it also contradicts this Court's and other courts' recognition that Section 2 permits private enforcement and Congress's repeated affirmation of private Section 2 litigation. Significantly for *amici*, the decision threatens the availability of private rights of action to enforce fundamental protections for language minority groups under the Language Access Provisions.

I. Congress Has Repeatedly Affirmed the Need for the Language Access Provisions of the Voting Rights Act

The Language Access Provisions ensure the right to vote for American citizens whose English language ability is limited. Many American citizens lack proficiency in English but both Congress and this Court have decided time and time again that these citizens are not only entitled to equal participation in elections but must have avenues to challenge jurisdictions infringing on that right.

A. The Language Access Provisions Enable Millions of American Citizens to Participate in Elections

Section 203 currently covers 24.2 million Americans who live in one of the 331 local jurisdictions in which at least five percent or 10,000 of the citizens of voting age lack English fluency and are members of a single language minority.[2] Section 208 protects the millions of Americans who do not live in a jurisdiction covered by Section 203. And Section 4(e) protects LEP Puerto Rican voters in the continental United States.

The Language Access Provisions, like Section 2, seek to ensure that our electoral politics include all American citizens. Only citizens can vote, but many have limited proficiency in English. More than 20 percent of all people

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2. U.S. Census Bureau, *Census Bureau Releases 2021 Determinations for Section 203 of the Voting Rights Act* (Dec. 8, 2021), https://www.census.gov/newsroom/press-releases/2021/section-203-voting-rights-act.html (last visited Oct. 5, 2025).

in the United States over the age of five – over 60 million people – speak a language other than English at home.[3] Meanwhile, more than 500 individual languages are spoken across the United States.[4] Over a third (35%) of all Asian Americans are LEP[5] and almost 72 percent speak a language other than English in their homes.[6] Similarly, 17.4 percent of the Latino voting age population report a predominantly Spanish-language household.[7]

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3. U.S. Census Bureau, *2021 Section 203 Language Determinations Public Use Dataset* (Dec. 28, 2022), https://www.census.gov/programs-surveys/decennial-census/about/voting-rights/voting-rights-determination-file.html (last visited Apr. 24, 2023).

4. U.S. Census Bureau, *New Data on Detailed Languages Spoken at Home and the Ability to Speak English* (June 3, 2025), https://www.census.gov/newsroom/press-releases/2025/2017-2021-acs-language-use-tables.html (last visited Oct. 5, 2025).

5. U.S. Census Bureau, *Age By Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over*, American Community Survey, ACS 5-Year Estimates Selected Population Detailed Tables, https://data.census.gov/table/ACSDT5YSPT2021.B16004?q=language+ability&t=012:031:Age+and+Sex. (last visited Sept. 29, 2025) at Table B16004.

6. U.S. Census Bureau, *Selected Population Profile in the United States*, American Community Survey, ACS 1-Year Estimates Selected Population Profiles, https://data.census.gov/table/ACSSPP1Y2024.S0201?t=012:031 (last visited Sept. 18, 2025) at Table S0201.

7. U.S. Census Bureau, *ACS 1-Year Estimates*, American Community Survey, https://data.census.gov/table/ACSST1Y2024.S1601?t=Language+Spoken+at+Home (last visited Sept. 23, 2025).

And approximately 13 percent of Alaska Natives and Native Americans living on tribal reservations are LEP.[8]

LEP voters include foreign-born immigrants who have naturalized to become American citizens, as well as those with families who have lived in the United States for generations. For instance, the Government has long encouraged the use of Spanish in public education in Puerto Rico, as this Court acknowledged in upholding Section 4(e) of the VRA. *Katzenbach v. Morgan*, 384 U.S. 641, 658 (1966). Section 4(e) assures that no voter who has completed sixth grade in Puerto Rico be denied the right to vote because of an inability to read or write English. Likewise, significant numbers of local Alaska Native citizens are LEP and multiple regions of Alaska are required to provide language assistance under the VRA.[9] The same is true for certain Native American populations. *See* H.R. Rep. No. 109-478, at 45-46 (2006). Many American citizens cannot read or are vision-impaired and require assistance when voting.[10]

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8. U.S. Census Bureau, *2021 Section 203 Language Determinations Public Use Dataset* (2022), https://www.census.gov/programs-surveys/decennial-census/about/voting-rights/voting-rights-determination-file.html (last visited Apr. 24, 2023).

9. In 2013, the Native American Rights Fund successfully sued Alaska, alleging that it failed to provide election information in Alaska Native languages. *Toyukak v. Dahlstrom*, No. 3:13-cv-00137-SLG (D. Alaska Jul. 22, 2013). After trial, Alaska was ordered to provide written and audio translation of all pre-election materials and the posting of bilingual translators at all polling places. Native American Rights Fund, *Native Voting Rights and Language Access (Toyukak v. Dahlstrom),* https://narf.org/cases/toyukak-v-treadwell/ (last visited Oct. 5, 2025).

10. Kristy Roschke and Tara Bartlett, *The Dangers of Low Literacy for American Democracy: The Promising Role of*

The Language Access Provisions were added to protect the rights of these voters, acknowledging that LEP voters are no less deserving of an equal opportunity for political participation than any other American. Congress enacted Section 203 in 1975 to remedy "voting discrimination against citizens of languages minorities [that] is pervasive and national in scope" after documenting a "systematic pattern of voting discrimination and exclusion against minority group citizens who are from environments in which the dominant language is other than English." Act to Amend the Voting Rights Act of 1965, Pub. L. No. 94-73, 89 Stat. 400, 401 (1975); *see also* H.R. Rep. No. 109-478, pt. 6, at 624 (2006). Congress observed that "where State and local officials conduct elections only in English, language minority citizens are excluded from participating in the electoral process." 52 U.S.C. § 10303. Section 203 applies to jurisdictions where more than five percent or 10,000 citizens of voting age are LEP and members of a single language minority group, and where the illiteracy rate of citizens in the language minority as a group is higher than the national illiteracy rate. 52 U.S.C. § 10503(b)(2). Section 203 requires these jurisdictions with a critical mass of LEP voting-age citizens to provide election materials – *e.g.*, registration or voting notices, instructions, and ballots – and assistance in the minority language as well as in English.

Congress has overwhelmingly, and on a bipartisan basis, reauthorized Section 203 three times since 1975: in

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Public Institutions as Community Conveners, Adult Literacy Education (2025), https://www.proliteracy.org/wp-content/uploads/2025/02/7.1.8-Research-Digest.pdf (last visited Oct. 5, 2025).

1982, in 1992, and in 2006. Each time, Congress recognized that members of language minority groups continue to "suffer from discrimination in voting" and to experience barriers to voting because of "limited abilities to speak English and high illiteracy rates." *See* H.R. Rep. No. 109-478, at 45-46 (2006). In its last reauthorization, Congress found that "a significant number of jurisdictions have yet to fully comply with [S]ection 203's obligations, which has had the effect of keeping citizens from experiencing full participation in the electoral process."[11] Recognizing that some voters speak English "only as a second language" or "poorly," but are nevertheless entitled to equal access to participate in elections, Congress reauthorized Section 203 through the year 2032. H.R. Rep. No. 109-478 at 46.

Protecting LEP voters whose primary language or jurisdiction is not covered by Section 203, Section 208 was enacted by Congress to enfranchise "[c]ertain discrete groups of citizens [who] are unable to exercise their rights to vote without obtaining assistance." S. Rep. No. 97-417, at 62 (1982) (defining the "discrete groups" as including "those who either do not have a written language or who are unable to read or write sufficiently well to understand

11. H.R. Rep. No. 109-478, at 58-59 (2006). *See also* Glenn D. Magpantay & Nancy W. Yu, *Asian Americans and Reauthorization of the Voting Rights Act,* 19 Nat'l Black L.J. 501, 510 (2006) ("poll workers [in major U.S. cities] kept translated materials hidden and unavailable to voters" or "did not even bother to open supply kits containing translated materials" and noting that "[v]oters also complained about the lack of interpreters or interpreters speaking the wrong language or dialect."), https://www.yarnpolitik.org/wp-content/uploads/2006/01/Asian-Americans-and-Reauthorization-of-the-Voting-Rights-Act.pdf (last visited Oct. 5, 2025).

the election material and the ballot."); *see* Voting Rights Act Amendments of 1982, Pub. L. No. 97-205, § 5, 96 Stat. 131, 134-35. It protects voters who require assistance, whether because of disability or inability to read or write in English. *See* 52 U.S.C. § 10508. It ensures their right to assistance by a person of their choice, so long as that person is not the voter's employer or officer of the voter's union. *Id.*

Section 4(e) was enacted to remedy impediments faced by Puerto Rican citizens when attempting to vote in the mainland United States. Section 4(e) supported the federal government's intention to both foster Spanish instruction in Puerto Rican schools and encourage migration from Puerto Rico. *Katzenbach v. Morgan*, 384 U.S. 641, 658 (1966) (discussing legislative history of Section 4(e)). Thus, Section 4(e) guarantees LEP Puerto Rican voters the right to participate fully in elections through the provision of Spanish-language election materials. 52 U.S.C. § 10303(e); *see e.g.*, *Rivera Madera v. Detzner*, 325 F. Supp. 3d 1269 (N.D. Fla. 2018) (noting that Section 4(e) covers the provision of Spanish-language materials); *Puerto Rican Organization for Political Action v. Kusper*, 350 F. Supp. 606 (N.D. Ill. 1972) (same).

B. Private Enforcement Is Necessary to Realize the Intent and Promise of the Language Access Provisions of the Voting Rights Act

Taken together, the Language Access Provisions not only provide vital protections for LEP voters to participate equally in our democracy but also prescribe a mechanism to challenge the denial of that right. In practice, groups like *amici* are essential to enforcing these protections

through the Language Access Provisions' private right of action. While the Attorney General is empowered to enforce the language access protections, DOJ has done so infrequently. Indeed, in the last decade, challenges under the Language Access Provisions were almost always brought by private plaintiffs. In that 10-year period, DOJ initiated only two lawsuits and obtained only one settlement under Section 203, only two lawsuits under Section 208, and not a single lawsuit under Section 4(e).[12]

The Language Access Provisions point to Congress's understanding that certain communities, though as much a part of our democracy as any other group of citizens, may not have proficient language skills to always be represented at the ballot box. The expansive scope of the Language Access Provisions also implicates the impracticality of DOJ alone enforcing these protections. According to the U.S. Census Bureau, from 2016 to 2021, there was a 26 percent increase in jurisdictions covered under Section 203, with 73 language minority groups – comprising 51 American Indian or Alaska Native language groups, 21 Asian language groups and one Hispanic language group (Spanish) – entitled to protection.[13] Yet despite the increase in covered languages and jurisdictions, DOJ brought virtually no enforcement actions over this time period – even as Congress's findings and the actions brought by

12. U.S. Department of Justice, Civil Rights Division, *Voting Section Litigation*, https://www.justice.gov/crt/v,oting-section-litigation#sec203cases (last visited Sept. 25, 2025).

13. U.S. Census Bureau, *Census Bureau Releases 2021 Determinations for Section 203 of the Voting Rights Act* (Dec. 8, 2021), https://www.census.gov/newsroom/press-releases/2021/section-203-voting-rights-act.html (last visited Sept. 18, 2025).

amici and similar groups shed light on the continuing and pervasive pattern of Section 203 violations. *Amici* and similar groups work closely with LEP communities and are demonstrably better positioned than DOJ to respond with litigation or the threat of litigation to remedy violations of the Language Access Provisions.

Thus, in recent years, *amici* have brought claims on behalf of many impacted LEP communities to compel jurisdictions to provide required language access services. *Amicus* AALDEF sued multiple jurisdictions including New York City,[14] Philadelphia,[15] and Hamtramck, Michigan[16] for failing to provide required materials or translators for LEP voters. AALDEF worked with local officials in Malden, Massachusetts to secure Chinese

14. AALDEF, *South Asian Voters Sue NYC Board of Elections for Violations of the Voting Rights Act* (July 2, 2013), https://www.aaldef.org/press-release/south-asian-voters-sue-nyc-board-of-elections-for-violations-of-the-voting-rights-act/ (last visited Oct. 5, 2025); AALDEF, *NYC Board of Elections Settles Lawsuit on Bengali Ballots in Queens* (Mar. 24, 2014), https://www.aaldef.org/press-release/nyc-board-of-elections-settles-lawsuit-on-bengali-ballots-in-queens/ (last visited Oct. 5, 2025).

15. AALDEF, *Asian Americans File Complaint Against Philadelphia City Commissioners Over Denial of Language Access to Voters* (Apr. 16, 2014), https://www.aaldef.org/press-release/asian-americans-file-complaint-against-philadelphia-city-commissioners-over-language-access-to-voter/ (last visited Oct. 5, 2025).

16. AALDEF, *South Asian Voters Sue Hamtramck, Michigan for Violations of the Voting Rights Act* (June 4, 2021), https://www.aaldef.org/press-release/south-asian-voters-sue-hamtramck-michigan-for-violations-of-the-voting-rights-act/ (last visited Oct. 5, 2025).

language translations and translators for LEP voters.[17] And AALDEF successfully challenged a Texas bill that sought to limit LEP voters from receiving assistance at the ballot box. *OCA-Greater Houston v. Texas*, 867 F.3d 604, 615 (5th Cir. 2017); *OCA Greater Houston v. Texas*, No. 1:15-CV-679-RP, 2022 WL 2019295, at *5 (W.D. Tex. June 6, 2022).

Amicus Advancing Justice-AAJC sued the Illinois Secretary of State resulting in a settlement ensuring that Illinois would provide community-reviewed translations in languages covered by Section 203 during online and remote voter registration processes. *Asian Americans Advancing Justice-Chicago v. White*, No. 1:20-cv-01478 (N.D. Ill. Feb. 28, 2020), Dkt. No. 56 (June 28, 2021).

Amicus LatinoJustice sued the York County Board of Elections in Pennsylvania under Section 4(e) to expand access to Spanish-language ballots and voting materials. *See CASA v. Wheeler*, 1:22-CV-01648 (M.D. Pa. Oct. 20, 2022), Dkt. No. 45-1 (Aug.23, 2023). When 32 counties in Florida held English-only elections that prevented Puerto Rican LEP voters from voting, LatinoJustice brought suit on behalf those voters. *Rivera Madera v. Detzner*, 325 F. Supp. 3d 1269 (N.D. Fla. 2018). LatinoJustice secured a settlement ensuring language access services in those 32 counties for the next ten years, including translated

17. AALDEF, *AALDEF and Local Asian American Community Secure Commitment from Malden, MA to Provide Chinese Language Assistance in Compliance with Voting Rights Act* (Aug. 26, 2022), https://www.aaldef.org/press-release/aaldef-and-local-asian-american-community-secure-commitment-from-malden-ma-to-provide-chinese-language-assistance-in-compliance-with-voting-rights-act/ (last visited Oct. 5, 2025).

ballots, polling place materials, and assistance; vote-by-mail ballots and request forms; and a county-specific hotline to ensure Spanish-speaking Puerto Rican voters full access to vote.

With the ability to privately enforce the Language Access Provisions, *amici* were able to secure the necessary services mandated by federal law. *Amici*'s advocacy efforts are vital in identifying and challenging violations to ensure that future elections provide equal access for all eligible voters, and demonstrate the ongoing need for the protections guaranteed by the Language Access Provisions for minority language voters.

II. *Turtle Mountain* Was Wrongly Decided and Threatens the Language Access Provisions of the Voting Rights Act

The Eighth Circuit's decision in *Turtle Mountain* threatens the ability of private litigants to enforce the Language Access Provisions. The *Turtle Mountain* decision is incorrect. It endorses an unprincipled and unprecedented analysis of the private right of action under Section 2 of the VRA. And its reasoning endangers the private right of action under the similar Language Access Provisions in the VRA. The errors in the *Turtle Mountain* decision are fully developed in the Petitioners' petition and *amici* do not repeat them all here. We briefly summarize the decision's flaws, however, so that the dangers the Eighth Circuit's analysis poses to the Language Access Provisions are clear.

Turtle Mountain rests on the Eighth Circuit's recent decision in *Arkansas State Conference* and echoes that

court's similarly erroneous determination that it is "unclear" whether Section 2 creates a private right. *Turtle Mountain*, 137 F.4th at 719 (citing *Arkansas State Conf.*, 86 F.4th at 1209-10). Much of the reasoning relies on the notion that Section 2 "focuses" not only "on the individuals protected" but also on "the entities regulated." 137 F.4th at 717-19. But this Court has rejected a similar argument. As this Court has held, a statute will not "fail[] to secure rights simply because it considers, alongside the rights bearers, the actors that might threaten those rights." *Talevski*, 599 U.S. at 185.

Furthermore, the Eighth Circuit's conclusion flies in the face of Supreme Court precedent and every other circuit that has considered the private right of action. In *Morse v. Republican Party of Virginia*, five justices (Justices Stevens and Ginsburg in the judgment, and Justices Breyer, O'Connor, and Souter in concurrence) explicitly affirmed that Section 2 authorizes a private right of action. 517 U.S. 186, 232 (1996); *see also Allen v. State Board of Elections*, 393 U.S. 544, 556 (1969).[18] Moreover, at the circuit level, three Circuits have explicitly concluded,[19]

18. This Court has also decided myriad Section 2 claims brought by private litigants without discussion, implicitly recognizing a private right of action under Section 2. *E.g.*, *Chisom v. Roemer,* 501 U.S. 380 (1991); *Johnson v. De Grandy,* 512 U.S. 997 (1994); *Allen v. Milligan*, 599 U.S. 1 (2023).

19. *Robinson v. Ardoin*, 86 F.4th 574, 588 (5th Cir. 2023); *Alabama State Conf. of NAACP v. Alabama*, 949 F.3d 647, 651-54 (11th Cir. 2020), *cert. granted*, *opinion vacated*, *and case dismissed as moot*, — U.S. —, 141 S. Ct. 2618, 209 L.Ed.2d 746 (2021); *Mixon v. Ohio*, 193 F.3d 389, 406 (6th Cir. 1999).

and five Circuits have implicitly concluded,[20] that Section 2 provides a private right of action. (The remaining circuits have not been presented with the issue.) *See also Singleton v. Allen*, 740 F.Supp.3d 1138, 1150, 1158 (N. D. Ala. 2024) ("[E]very sentence of Section [2] either refers to rights of the benefited class, contains rights-creating language that creates new rights for that specific class, or expressly focuses on the benefited class. . . . If all of this is not rights-creating language with an 'unmistakable focus on the benefited class,' it is difficult to imagine what is.") (cleaned up) (quoting *Cannon v. Univ. of Chicago*, 441 U.S. 677, 691 (1979)).[21]

If private enforcement of Section 2 is ended, then the Language Access Provisions risk being neutered as well. The Language Access Provisions contain rights-conferring language similar to the language of Section 2 and similarly reference the entities that must honor those rights. *See infra* at III.A. Thus, it is imperative that this Court reiterate its own precedent that Section 2 allows for private enforcement not only on its own terms, but also under 42 U.S.C. § 1983.

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20. *Clerveaux v. East Ramapo School District*, 984 F.3d 213, 243 (2d Cir. 2021); *Jenkins v. Red Clay Consol. School Dist. Bd. of Educ.* 4 F.3d 1103, 1136 (3d Cir. 1993); *Dickinson v. Indiana State Election Bd.* 933 F.2d 497, 503 (7th Cir. 1991); *Arakaki v. Hawaii*, 314 F.3d 1091, 1098 (9th Cir. 2002); *Navajo Nation v. San Juan County*, 929 F.3d 1270, 1290 (10th Cir. 2019).

21. The Fifth Circuit recently held that the Materiality Provision of the Civil Rights Act of 1964, 52 U.S.C. § 10101, which prohibits the denial of the right to vote because of an error that "is not material in determining whether such individual is qualified under State law to vote in such election" contains a private right of action, citing the same line of Supreme Court cases. *Vote.Org v. Callanen*, 89 F.4th 459, 473–75 (5th Cir. 2023).

III. The Language Access Provisions on Their Own Unambiguously Provide for a Private Right of Action

Amici's concerns are not driven by idle speculation. The Eighth Circuit has already used *Arkansas State Conference* to cut off a private right of action for claims under Section 208. *Arkansas United v. Thurston*, 146 F.4th 673 (8th Cir. 2025). Left unchecked, the Eighth Circuit's erroneous approach to the VRA could be used to eviscerate private rights of action under the remaining provisions of the VRA. Already, the Eighth Circuit's analysis of Sections 2 and 208 leaves little room for argument in that circuit about whether Sections 203 and 4(e) provide a private right of action.

This Court should resolve the glaring eight-to-one circuit split about the meaning of the VRA and reject the Eighth Circuit's superficial analysis. We write here to emphasize that a careful analysis of each of the Language Access Provisions reveals that, like Section 2, each is privately enforceable by its own terms and under 42 U.S.C. § 1983. That has been the conclusion of most courts that have considered the issue, leaving the Eighth Circuit as an aberrant outlier.

A. The Language Access Provisions Plainly Confer Individual Rights

1. Section 203

Section 203's language confers the right to voting materials and assistance in non-English minority languages for LEP voters in certain jurisdictions. As with

Section 2, Section 203 identifies its intended beneficiaries – members of a single language minority who are LEP – and the right to which those beneficiaries are entitled – voting materials and assistance in their non-English language. Thus, Section 203 exists to prevent the "denial of the right to vote" for "citizens of language minorities [who] have been effectively excluded from participation in the electoral process." 52 U.S.C. § 10503(a). It defines the regions subject to the provision in terms of the percentage or total number of LEP and language minority citizens of voting age present in that region. *Id.* § 10503(b). In such regions, it provides that materials and assistance relating to the electoral process, including ballots, be provided to such voters "in the language of the applicable minority group as well as in the English language . . . ." *Id.* § 10503(c).

After establishing the provision's focus on the "persons protected" – LEP voters – Section 203 then "establish[es] who it is that must respect and honor" the voters' right to voting materials in their native language, and provides specific mandatory directives to those entities. *See Talevski*, 599 U.S. at 184-85 (noting that "it would be strange to hold that a statutory provision fails to secure rights simply because it considers, alongside the rights bearers, the actors that might threaten those rights"). Considered as a whole, Section 203 "unambiguously confers rights" and is privately enforceable. *Id.* at 184.

2. Section 208

Congress intended Section 208 to extend language access to voters who do not live in regions covered by Section 203. It provides, in full: "Any voter who requires

assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union." 52 U.S.C. § 10508. Section 208 similarly identifies a right – assistance – to which a class of voters who are unable to read or write in English are entitled.

Section 208 unmistakably focuses on the "persons protected," *i.e.*, "voter[s] who require[] assistance to vote," and it guarantees to such voters the right to "assistance by a person of [their] choice . . . ." 52 U.S.C. § 10508. Section 208 also sets forth the only conditions under which this right may be denied: if the assistance is to be provided by "the voter's employer or agent of that employer or officer or agent of the voter's union." *Id.* Section 208's phrasing "in terms of the persons benefited" and the "individual right[]" to which those persons are entitled clearly establishes Congress's "unambiguous conferral" of a private right to enforce its terms if the right to assistance is infringed. *Talevski*, 599 U.S. at 183; *see Gonzaga*, 536 U.S. at 280-86.

3. Section 4(e)

Section 4(e) similarly begins with an express pronouncement of congressional intent "to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant classroom language was other than English . . . ." 52 U.S.C. § 10303(e)(1). It states that no such person "shall be denied the right to vote." *Id.* § 10303(e)(2). It then turns to the entities that "must respect and honor" this right, *Talevski*, 599 U.S. at 185, and "prohibit[s] the States from

conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language." 52 U.S.C. § 10303(e)(1).

B. Outside the Eighth Circuit, the Courts Have Recognized a Private Right of Action for the Language Access Provisions

Recognizing that the plain language of each Language Access Provision clearly confers an individual right, courts outside of the Eighth Circuit have either explicitly held or otherwise assumed that the Language Access Provisions each confer a private right of action. The Eighth Circuit's decision in this case flies in the face of the well-established body of Section 2 and 42 U.S.C. § 1983 caselaw that the courts have relied on to so hold.

For example, the Northern District of Florida explicitly concluded that "the VRA's plain text provides that private parties may enforce section 208," noting that "the Supreme Court has permitted private suits under sections 2, 5, and 10 of the VRA even though those sections '"provide[ ] no right to sue on [their] face."' *Fla. State Conf. of NAACP v. Lee*, 576 F. Supp. 3d 974, 988, 990 (N.D. Fla. 2021) (quoting *Morse*, 517 U.S. at 232); *see also La Union del Pueblo Entero v. Abbott*, 618 F. Supp. 3d 388, 432 (W.D. Tex. 2022) ("Section 208 of the VRA creates a private cause of action").

The District of Utah has said the same with respect to Section 203. *Navajo Nation Hum. Rts. Comm'n v. San Juan Cnty.*, 215 F. Supp. 3d 1201, 1219 (D. Utah 2016) ("conclud[ing]" based on *Morse* and *Allen*, "that there is an implied private right of action under Section 203"

and explaining that "provisions . . . giving the Attorney General the explicit right to bring suit under certain sections of the Voting Rights Act do not foreclose a private right of action to enforce those same sections.").

Other courts have assumed a private right of action under the Language Access Provisions without discussion. The Fifth Circuit in *OCA-Greater Houston v. Texas* allowed non-profit advocacy groups, including *amicus* AALDEF to challenge to a Texas election law under Section 208, implicitly holding that Section 208 permits a private right of action. 867 F.3d 604, 614 (5th Cir. 2017). Similarly, without discussion, the Middle District of North Carolina permitted nonpartisan voter advocacy groups to challenge Covid-19-related North Carolina election laws under Section 208. *Democracy N. Carolina v. N. Carolina State Bd. of Elections*, 476 F. Supp. 3d 158, 235 (M.D.N.C. 2020). The Northern District of Florida did the same with Section 4(e), allowing a private claim by an individual voter to go forward without discussion. *Madera v. Detzner*, 325 F. Supp. 3d 1269 (N.D. Fla. 2018).

Relying on established 42 U.S.C. § 1983 caselaw, courts have also affirmed the right of private plaintiffs to enforce the language access provisions through § 1983 actions. In *League of Women Voters of Ohio v. LaRose*, for instance, the Northern District of Ohio held that "Section 208 permits private causes of action," and that, "[i]n any event, § 1983 provides a backstop for Plaintiffs to pursue their claims" arising out of Section 208 violations. 741 F. Supp. 3d 694, 710-11 (N.D. Ohio 2024); *see also Disability Rts. N. Carolina v. N. Carolina State Bd. of Elections*, 602 F. Supp. 3d 872, 876 (E.D.N.C. 2022) (same).

CONCLUSION

The *Turtle Mountain* decision was wrong and should be reversed. Not only is it in error with respect to Section 2 of the VRA, but the decision also threatens the ability of private plaintiffs to enforce the Language Access Provisions of the VRA. This Court should grant certiorari and reverse the decision of the Eighth Circuit.

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Respectfully submitted,

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