No. 25-253

IN THE

Supreme Court of the United States

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

Petitioners,

v.

MICHAEL HOWE, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE OF NORTH DAKOTA,

Respondent.

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

BRIEF OF BIPARTISAN GROUP OF CURRENT AND FORMER MEMBERS OF CONGRESS AS *AMICI CURIAE* IN SUPPORT OF GRANTING CERTIORARI

JEFFREY P. JUSTMAN
Counsel of Record
ANDERSON C. TUGGLE
FAEGRE DRINKER BIDDLE & REATH LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
(612) 766-7000
jeff.justman@faegredrinker.com

Counsel for Amici Curiae

120686

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

TABLE OF CONTENTS

TABLE OF CITED AUTHORITIES

Page

CASES:

Cited Authorities

Page

Cited Authorities

Page

STATUTES AND OTHER AUTHORITIES:

Page

INTEREST OF *AMICI CURIAE*[1]

Amici are current and former Members of Congress from both major political parties. Each of *amici* sponsored or voted to enact the 1982 amendments to and/or the 2006 reauthorization of the Voting Rights Act (the "VRA").

Amici represent(ed) a diverse array of constituents across America. They disagree on many important political and cultural questions. Indeed, *amici* do not even take a position on the merits of this dispute, *i.e.*, whether North Dakota's legislative maps in fact violated Section 2 of the VRA.

Amici are unanimous, however, in their understanding that Congress enacted the VRA and its subsequent amendments to make Section 2 enforceable by private parties. Section 2's bar on discriminatory voting practices was never meant to be left solely to the whim of the prevailing administration, as rulings in the Eighth Circuit would now hold. *Amici* know this because they reviewed and approved the operative statutory language and so are well positioned to explain how that language was understood at the time it was enacted.

Because the ruling below ignores contemporaneous understandings of the VRA, *amici* write to provide that important historical perspective. *Amici* have an interest

1. No counsel for any party authored this brief in whole or in part, and no party, counsel for a party, or person or entity other than *amici* or their counsel financially contributed to preparing or submitting this brief. *Amici* provided counsel of record for all parties notice of their intention to file an *amicus curiae* brief at least 10 days prior to the due date for this brief. *See* S. Ct. R. 37.2(a).

in accurately conveying Congress's intent and in ensuring that Section 2 does what the enacting Congresses intended it to do.

Amici are the following current and former Congressional members:

- Sen. Patrick Leahy (D-VT) (1975-2023)
- Sen. Lisa Murkowski (R-AK) (2002-present)
- Rep. Tom Coleman (R-MO) (1976-1993)
- Rep. John LeBoutillier (R-NY) (1981-1983)
- Rep. Steny Hoyer (D-MD) (1981-present)
- Rep. Wayne Gilchrest (R-MD) (1991-2009)
- Rep. Lloyd Doggett (D-TX) (1995-present)
- Rep. Zoe Lofgren (D-CA) (1995-present)
- Rep. Diana DeGette (D-CO) (1997-present)
- Rep. Charles Boustany (R-LA) (2005-2017)

SUMMARY OF THE ARGUMENT

Our constitutional system of government is built on the separation of powers. "It is Congress's job to enact policy and it is this Court's job to follow the policy Congress has prescribed." *SAS Inst., Inc. v. Iancu*, 584 U.S. 357, 368 (2018). Thus, when a court reviews a duly passed statute,

its interpretation of the statute must be consistent with its "ordinary . . . meaning . . . at the time Congress enacted the statute." *New Prime Inc. v. Oliveira*, 586 U.S. 105, 113 (2019). Any other approach risks courts "amending legislation" and "upsetting reliance interests in the settled meaning of a statute." *Id.*

In holding that Section 2 of the VRA is not enforceable by private parties, the Eighth Circuit ran afoul of these bedrock principles. The lower court adopted an interpretation of the VRA at odds with the statute's settled meaning and decades of legal practice. In so doing, the court usurped Congress's legislative role and amended the VRA by fiat. This is a profound error worthy of this Court's review, as argued in the Petition and other *amicus* briefs supporting Petitioners.

Amici expressly do not take a position on whether anything legislators in North Dakota did violated Section 2 of the VRA. But *amici* do wish to confirm what should be plain from a review of the statute and the relevant precedent: the enacting Congresses *always* intended Section 2 of the VRA to be privately enforceable.

Amici know this because they were involved in, or voted for, the 1982 amendment to and/or the 2006 re-authorization of the VRA. At both times, it was widely understood that Section 2 was privately enforceable, as confirmed by contemporary practice and court decisions like *Allen v. State Board of Elections*, 393 U.S. 544 (1969) (holding that Section 5 of the VRA was privately enforceable). Because no one in Congress thought this was a problem—indeed, many Congressional members supported private Section 2 litigation—Congress re-

authorized the statute both times. *See Lorillard v. Pons*, 434 U.S. 575, 580 (1978) ("Congress is presumed to . . . adopt that interpretation when it re-enacts a statute without change.").

This is borne out by the relevant legislative history. For example, the 1982 Senate Committee on the Judiciary Report stated that: "***[T]he Committee reiterates the existence of the private right of action under Section 2, as has been clearly intended by Congress since 1965***. *See Allen v. Board of Elections*, 393 U.S. 544 (1969)." S. Rep. No. 97-417, at 30 (1982), *available at* 1982 WL 25033 (emphasis added); *see Thornburg v. Gingles*, 478 U.S. 30, 43 n.7 (1986) (calling the 1982 Senate Judiciary Committee Report the "authoritative source for legislative intent" regarding Section 2). Likewise, the 1982 House Report stated, with perfect clarity, that it was "intended that citizens have a private cause of action to enforce their rights under Section 2. This is not intended to be an exclusive remedy for voting rights violations, since such violations may also be challenged by citizens under 42 U.S.C. §§ 1971, 1983, and other voting rights statutes." H.R. Rep. No. 97-227, at 32 (1981), *available at* https://bit.ly/3Exc192.

The decision below, however, ignores this "clear evidence of legislative intent." *Milner v. Dep't of Navy*, 562 U.S. 562, 572 (2011) (court may appropriately consider "clear" legislative history). Its reasoning is thus "anachronistic" and "disrupt[s] . . . settled expectations." *Arkansas State Conference NAACP v. Arkansas Bd. of Appointment*, 91 F.4th 967, 970 (8th Cir. 2024) (Colloton, J., dissenting from denial of rehearing *en banc*). *Amici* urge the Court to grant certiorari and, ultimately, reverse.

ARGUMENT

I. The Enacting Congresses' Understanding of a Statute Informs the Interpretative Analysis.

Statutory interpretation is necessarily a historical exercise. A court's "job is to interpret" a statute "consistent with [its] ordinary meaning . . . *at the time Congress enacted the statute*." *Wisconsin Central Ltd. v. United States*, 585 U.S. 274, 277 (2018) (emphasis added). Interpreting statutes written years ago as if they were written today "risk[s] amending legislation" by judicial fiat and "upsetting reliance interests in the settled meaning of [the] statute." *New Prime Inc. v. Oliveria*, 586 U.S. 105, 113 (2019). "Written laws are meant to be understood and lived by. . . . [I]f their meaning could shift with the latest judicial whim, the point of reducing them to writing would be lost." *Wisconsin Central*, 585 U.S. at 284.

One way to determine a law's "ordinary meaning . . . at the time Congress enacted the statute," *id.* at 277, is to ask what the legislators who voted on the law understood the law to mean. "Members of Congress are skilled English speakers who are presumed to understand the language of the law. As such, members of Congress are included within the prototype of an English speaker, typically conversant in legal conventions, who serves as the textualist construct." Amy Coney Barrett, *Congressional Insiders and Outsiders*, 84 U. Chi. L. Rev. 2193, 2202 (2017).

To understand how a typical legislator understood a law at the time it was enacted, it helps to consider the legislative history. In searching for a statute's meaning,

legislative history may "supply[] a well-informed, contemporaneous account of the relevant background to the enactment." John F. Manning, *Textualism as a Nondelegation Doctrine*, 97 Colum. L. Rev. 673, 732 (1997). "Clarity depends on context, which legislative history may illuminate," bearing in mind that "the search is not for the contents of the authors' heads but for the rules of language they used." *In re Sinclair*, 870 F.2d 1340, 1342 (7th Cir. 1989) (Easterbrook, J.).

And of all the forms of legislative history, the most "authoritative" are "the Committee reports on the bill, which represent the considered and collective understanding of those Congressmen involved in drafting and studying proposed legislation." *Garcia v. United States*, 469 U.S. 70, 76 (1984) (Rehnquist, C.J.); *see also, e.g.*, *United States v. Fausto*, 484 U.S. 439, 442-49 (1988) (Scalia, J.) (relying on Senate committee report to elucidate a statute's background and purpose). This makes good sense, as committee reports are "[b]y far, the type[] of legislative history viewed as most reliable" by Democratic and Republican congressional staffers alike. Abbe R. Gluck & Lisa Schultz Bressman, *Statutory Interpretation From the Inside—An Empirical Study of Congressional Drafting, Delegation, and the Canons: Part I*, 65 Stan. L. Rev. 901, 977 (2013).

Committee reports can be particularly helpful, moreover, in understanding whether Congress intended to adopt a prevailing judicial interpretation of language in a statute by "re-enact[ing]" that language "without change." *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 239 (2009). A re-enactment without change will, by definition, lack any textual indicators of Congressional intent. A

committee report can help fill that void and thereby provide "invaluable" assistance "in revealing the setting of the [re-]enactment and the assumptions its authors entertained about how their words would be understood." *Sinclair*, 870 F.2d at 1342. *See, e.g.*, *Texas Dept. of Hous. and Cmty. Affairs v. Inclusive Cmtys. Project, Inc.*, 576 U.S. 519, 536-37 (2015) (calling "Congress' decision in 1988 to amend [the Fair Housing Act] while still adhering to the [disputed] operative language" "convincing support for the conclusion that Congress . . . ratified" the prevailing judicial interpretation of that language; citing committee reports recognizing as much).

Amici of course appreciate that legislative history, like all forms of historical evidence, may be misused. For example, a legislator could theoretically insert language into a committee report at odds with the statute's plain meaning and thereby attempt to "secure results" the legislator was "unable to achieve through the statutory text." *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005). A litigant may then, in turn, use that "ambiguous legislative history to muddy clear statutory language" against the litigant's position. *Azar v. Allina Health Servs.*, 587 U.S. 566, 579 (2019).

But when the words on the page are unclear (or, at the least, disputed), "*clear* evidence of congressional intent," like an unambiguous committee report, "may illuminate" that disputed language. *Milner*, 562 U.S. at 572 (emphasis added). It is also "entirely appropriate to consult . . . legislative history . . . to verify that what seems" like "an unthinkable" interpretation of a statute was "indeed unthought of." *Green v. Bock Laundry Mach. Co.*, 490 U.S. 504, 527 (1989) (Scalia, J., concurring); *see* Brett M.

Kavanaugh, *Fixing Statutory Interpretation*, 129 Harv. L. Rev. 2118, 2149-50 (2016) (sharing this sentiment).

II. The Enacting Congresses, Including *Amici*, Intended Section 2 To Be Privately Enforceable.

Here, the contemporary context and legislative history point in only one direction: Congress intended Section 2 to be enforceable by private parties.

A. The original language of Section 2 provided a private right of action under then-prevailing legal doctrine.

Congress' intent to provide a private right of action was evident from the start. Congress passed Section 2 as part of the Voting Rights Act of 1965 "[t]o enforce the fifteenth amendment to the Constitution of the United States." Pub. L. No. 89-110, 79 Stat. 437 (1965). The provision broadly barred "standard[s]," "practice[s]," or "procedure[s]" that "den[ied] or abridge[d] the right of any citizen of the United States to vote . . . on account of race or color." Pub. L. 89-110, 79 Stat. 437, § 2. *Cf.* U.S. Const. amend. XV, § 1 (1870) ("the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude").

Indeed, Section 12(f) of the Act stated that "[t]he district courts of the United States shall have jurisdiction of proceedings instituted pursuant to [Section 2] and shall exercise the same without regarding to whether *a person asserting rights* under the provisions of this Act shall have exhausted any administrative or other remedies that may be provided by law." Pub. L. 89-110, 79 Stat. 437,

444, § 12(f) (emphasis added). This statutory reference to a "person asserting rights" supports a private right of action because the Department of Justice is not a "person asserting rights."

Beyond that, the rights-centric language Congress used in Section 2 was plainly sufficient to provide a private cause of action under prevailing law "at the time Congress enacted the statute." *Wisconsin Central*, 585 U.S. at 277. *See Green*, 490 U.S. at 527 (Scalia, J., concurring) (courts should interpret statutes to be "compatible with the surrounding body of law into which the provision must be integrated"); *New Prime*, 586 U.S. at 114 (interpreting language in Federal Arbitration Act consistent with how it would have been understood "at the time of the Act's adoption in 1925").

In the 1960s, "Congress . . . tended to rely to a large extent on the courts to *decide* whether there should be a private right of action, rather than determining that question for itself." *Cannon v. Univ. of Chicago*, 441 U.S. 677, 718 (1979) (Rehnquist, J., concurring). And at the time, this Court held that a statute lacking an express right of action could be privately enforced if the statute involved "federally secured rights" and the statute "provides a general right to sue for [an] invasion" of those rights. *J.I. Case Co. v. Borak*, 377 U.S. 426, 433 (1964) (inferring private right of action to enforce federal securities laws). Thus, by drafting a law with rights-creating language (Section 2) and vesting general jurisdiction in federal courts (Section 12(f)), the 1965 Congress had "good reason to think that the federal judiciary would" conclude the Section 2 was privately enforceable. *Cannon*, 441 U.S. at 718 (Rehnquist, J., concurring).

And indeed, that is exactly what happened. Almost immediately after the VRA's passage, private parties began bringing Section 2 actions—without objection from the defendant-governments or the courts. *See, e.g.*, *Whitley v. Johnson*, 260 F. Supp. 630 (S.D. Miss. 1966).

Further, in 1969, this Court issued *Allen v. State Board of Elections*, 393 U.S. 544 (1969), which effectively held that Section 2 was privately enforceable. *See* Pet. at 36-38 (discussing *Allen*). To be sure, *Allen* addressed whether the (now-inoperable) Section 5 of the VRA was privately enforceable. *Cf. Shelby County v. Holder*, 570 U.S. 529 (2013). But *Allen*'s logic and broad language plainly suggested that Section 2 was privately enforceable, too, consistent with prevailing legal practice and doctrine. *See Arkansas State*, 91 F.4th at 970-71 (Colloton, J., dissenting from denial of rehearing *en banc*) (emphasizing this point). Indeed, if Section 5 is privately enforceable, then it would be particularly upside down for Section 2 not to be.

In his opinion for the Court, Chief Justice Warren noted that Congress passed the VRA "to make the guarantees of the Fifteenth Amendment finally a realty for all citizens," and because "existing remedies were inadequate to accomplish this purpose." *Allen*, 393 U.S. at 556. "The achievement of the Act's laudable goal could be severely hampered . . . if each citizen were required to depend solely on litigation instituted at the discretion of the Attorney General." *Id.* (citing *J.I. Case* in support). This logic applies just as much to Section 2 of the Act as it does to Section 5.

Unsurprisingly, after *Allen*, "federal courts across the country, including" this Court, "considered numerous Section Two cases brought by private plaintiffs," without

anyone questioning the plaintiff's right to bring suit. *Alabama State Conference of the NAAP v. Allen*, --- F. Supp. 3d ---, 2025 WL 2451166, at *83 (N.D. Ala. Aug. 22, 2025) (collecting cases).

B. When Congress re-authorized the VRA in 1982, it affirmed that Section 2 provided a private right of action.

If any doubt remained after 1965 as to whether Section 2 was privately enforceable, the 1982 Congress—including some *amici*—eliminated it.

The 1982 amendments substantially changed the VRA in several respects, including Section 2. *See generally Allen v. Milligan*, 599 U.S. 1, 10-14 (2023) (recounting history). Notably, however, Congress did *not* amend the Act to suggest that Section 2 was *not* privately enforceable. This alone is "convincing support for the conclusion that Congress . . ratified" prevailing practice and the Court's reasoning in *Allen*, all of which had effectively interpreted Section 2 as providing a private right of action. *Texas Dept. of Hous.*, 576 U.S. at 536-37; *see also Shapiro v. U.S.*, 335 U.S. 1, 16 (1948) ("In adopting the language used in the earlier act, Congress must be considered to have adopted also the construction given by this Court to such language, and made it a part of the enactment."); *Hecht v. Malley*, 265 U.S. 144, 153 (1924) (same).

But that's not all. In accompanying committee reports, Congress made "clear" that it was aware of the prevailing consensus regarding private enforcement of Section 2, and that it *approved* of that consensus. *See Milner*, 562 U.S. at 572 (appropriate for courts to consider "clear evidence of congressional intent").

Most notably, the Senate Committee on the Judiciary Report (the "Senate Report") stated: "[T]he Committee reiterates the existence of the private right of action under Section 2, as has been clearly intended by Congress since 1965. *See Allen v. Board of Elections*, 393 U.S. 544 (1969)." S. Rep. No. 97-417, at 30 (1982), *available at* 1982 WL 25033.

This language is notable not only because it provides clear evidence of ratification, *see Texas Dept. of Hous.*, 576 U.S. at 536-37 (citing similar committee reports), but also because this Court has called the Senate Report the "authoritative source for legislative intent" regarding Section 2. *Thornburg v. Gingles*, 478 U.S. 30, 43 n.7, 45-46 (1986) (adopting Section 2 legal standard from the Senate Report); *Milligan*, 599 U.S. at 17-19 (re-affirming *Gingles*). There is no reason the Senate Report should not be afforded the same respect here.

Amici are not cherry-picking favorable language from one congressional report to the exclusion of other, less favorable language. *Cf. Exxon Mobil*, 545 U.S. at 568 (observing that citing legislative history can be "an exercise in looking over a crowd and picking out your friends"). As far as *amici* are aware, there was not one legislator at the time who expressed the view that Section 2 was enforceable only by the Attorney General.

The House of Representatives Committee on the Judiciary Report made plain that the House, too, thought Section 2 was already privately enforceable: "It is intended that citizens have a private cause of action to enforce their rights under Section 2. This is not intended to be an exclusive remedy for voting rights violations, since such

violations may also be challenged by citizens under 42 U.S.C. §§ 1971, 1983, and other voting rights statutes. If they prevail they are entitled to attorneys' fees under 42 U.S.C. §§ 1973*l*(e)[2] and 1988." H.R. Rep. No. 97-227, at 32 (1981), *available at* https://bit.ly/3Exc192.

There are also many other references to private enforcement in the 1982 legislative record, further confirming a shared understanding of Section 2's remedial scope. *See, e.g.*, H.R. Rep. No. 97-227, at 31 n.105 ("As another example, purging of voter registration rolls would violate Section 2 if ***plaintiffs*** show a result which demonstrably disadvantages minority voters."); *id.* at 71 ("Following this redistricting, a suit is filed ***by plaintiffs*** alleging a violation of amended Section 2."); S. Rep. No. 97-417, at 16 ("In pre-*Bolden* cases ***plaintiffs*** could prevail by showing that a challenged election law or procedure . . . ."); *id.* at 28 ("If as a result of the challenged practice or structure ***plaintiffs*** do not have an equal opportunity to participate in the political processes and to elect candidates of their choice, there is a violation of this section."); *id.* at 158 n.180 (Report of the Subcommittee on the Constitution) (indicating that claims could be brought by ***"'public interest' litigating organizations"***) (all emphases added).

The 1982 Congressional Quarterly Almanac similarly acknowledged private plaintiffs' role in Section 2 litigation, again, without any evidence of dissent. *See, e.g.*, *Voting*

2. In 1975, Congress had amended the VRA to make private attorneys' fees recoverable, yet more proof that Congress interpreted Section 2 as providing a private right of action. *See* Pet. at 30-31.

Rights Act Extended, Strengthened, CQ Almanac, at 373 (1982) (noting that the 1982 bill "[a]llowed ***private parties***, under Section Two of the act, to prove a voting rights violation . . ."); *id.* at 374 ("civil rights groups argued that Section Two played an equally important role [in the VRA] because it covered the entire nation and allowed ***citizens*** to challenge election procedures that were in place before the 1965 act"); *id.* ("The most sensitive part of the compromise [underlying the 1982 re-authorization] dealt with Section Two, the provision allowing ***private*** voting rights suit") (all emphases added).

The bottom line here is straightforward: *amici* are not aware of any evidence suggesting that even a single member of Congress thought Section 2 was *not* privately enforceable as of 1982. Neither the lower court nor Respondents have pointed to such evidence either. This fact "veri[fies] that what seems" like "an unthinkable" interpretation of the 1982 re-authorization—that Congress intended to re-authorize Section 2 but *not* ratify the existing private right of action—was "indeed unthought of." *Green*, 490 U.S. at 527 (Scalia, J., concurring).

C. When Congress re-authorized the VRA in 2006, it again affirmed that Section 2 was enforceable by private parties.

This logic applies with equal force to the 2006 VRA re-authorization, which some *amici* also participated in and voted for.

By 2006, private enforcement of Section 2 had grown even more widespread, resulting in numerous cases being brought before this Court. *See, e.g.*, Ellen D. Katz, *Curbing Private Enforcement of the Voting Rights Act: Thoughts*

on Recent Developments, 123 Mich. L. Rev. Online 23, 34 (2024) (from 1982 through August 2024, "private plaintiffs have been party to 96.4% of Section 2 claims that produced published opinions . . . and the sole litigants in 86.7% of those decisions"); *Alabama State Conference*, 2025 WL 2451166, at *83 (citing, for example, *Chisom v. Roemer*, 501 U.S. 380 (1991); *Houston Lawyers Association v. Attorney General*, 501 U.S. 419 (1991); *Voinovich v. Quilter*, 507 U.S. 146 (1993); and *League of United Latin American Citizens v. Perry*, 548 U.S. 399 (2006)).

And perhaps most important, in 1996 this Court issued *Morse v. Republican Party of Virginia*, 517 U.S. 186 (1996), in which five Justices *explicitly* stated that Section 2 was privately enforceable. *See Morse*, 517 U.S. at 232 (opinion of Stevens, J., joined by Ginsburg, J.) ("the existence of the private right of action under Section 2 . . . has been clearly intended by Congress since 1965"); *id.* at 240 (Breyer, J., concurring in the judgment, joined by O'Connor & Souter, JJ.) ("Congress intended to establish a private right of action to enforce § 10, no less than it did to enforce §§ 2 and 5."); *see also* Pet. at 36-39 (further discussing *Morse*).

No reasonable reader could interpret *Morse* as anything other than an explicit recognition that Section 2 was privately enforceable. *See Arkansas State Conference*, 91 F.4th at 970 (Colloton, J., dissenting from denial of rehearing *en banc*) ("[I]n 1996, the Supreme Court majority in *Morse* said that § 2 is enforceable by a private right of action.").

Nonetheless, the 2006 Congress *again* re-authorized Section 2 without change. This is proof positive that Congress agreed with *Morse*'s reading of Section 2

and "ratified" it accordingly. *Texas Dept. of Hous.*, 576 U.S. at 536-37; *accord id.* at 568 (Alito, J., dissenting) (acknowledging that the logic of Congressional ratification applies with greater force when "*this Court*," as opposed to lower courts, "ha[s] . . . addressed" the relevant question).

The legislative record again confirms this shared understanding. For one, Congress expanded Section 14(e) of the Act—originally passed in 1975, *supra* n.2—to allow a "prevailing party, other than the United States," *i.e.*, private plaintiffs, to recover "reasonable expert fees" and "other reasonable litigation expenses," in addition to "a reasonable attorney's fees." Pub. L. 109-246, 120 Stat. 577, 581 (2006). Why would Congress strengthen a private fee-shifting provision if it didn't think Section 2 was privately enforceable?

Congress also expressly called "the continued filing of section 2 cases that originated in covered jurisdictions" "[e]vidence of continued discrimination" and stated that these cases *supported* re-authorizing the VRA. Pub. L. No. 109-246, 120 Stat. 577 (2006). And the House of Representatives Committee on the Judiciary Report again favorably referenced suits brought by "plaintiffs." *See, e.g.*, H.R. Rep. 109-478, at 10 (2006), *available at* 2006 WL 1403199 (describing the 1982 amendment as Congress amending Section 2 to change the standard for "***plaintiffs*** bringing lawsuits under the section"); *id.* at 42 (the assistance of "***private citizens*** . . . has been critical to" enforcing the VRA's protections); *id.* at 53 (noting that "African American ***plaintiffs*** filed and won the largest number of suits under Section 2" in the prior 25 years).

As with the 1982 VRA re-authorization, moreover, *amici* are not aware of anything in the 2006 legislative

record suggesting that even a single Congressional member thought Section 2 did *not* authorize a private right of action.

* * * *

Simply put, when Congress (including *amici*) re-authorized the VRA in 1982 and 2006, they could not have been clearer: they intended Section 2 to be privately enforceable, just as the original language and subsequent practice suggested it was. The decision below flouts that plain congressional intent and in so doing violates core separation-of-powers principles. *Amici* respectfully submit that this Court should grant certiorari.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jeffrey P. Justman
Counsel of Record
Anderson C. Tuggle
Faegre Drinker Biddle
& Reath LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
(612) 766-7000
jeff.justman@faegredrinker.com

Counsel for Amici Curiae

October 6, 2025