Nos. 24-109, 24-110

IN THE

Supreme Court of the United States

STATE OF LOUISIANA,
Appellant,
v.
PHILLIP CALLAIS, *et al.*,
Appellees.

PRESS ROBINSON, *et al.*,
Appellants,
v.
PHILLIP CALLAIS, *et al.*,
Appellees.

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

BRIEF OF THE DISTRICT OF COLUMBIA, NEW YORK, ARIZONA, CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, HAWAII, ILLINOIS, MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, MINNESOTA, NEVADA, NEW JERSEY, NEW MEXICO, NORTH CAROLINA, OREGON, RHODE ISLAND, VERMONT, WASHINGTON, AND WISCONSIN AS *AMICI CURIAE* IN SUPPORT OF APPELLANTS

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QUESTION PRESENTED

Whether the State's intentional creation of a second majority-minority congressional district violates the Fourteenth or Fifteenth Amendments to the U.S. Constitution.

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INTEREST OF *AMICI CURIAE*

Under this Court's settled precedents, States have long relied on two pathways to redistrict while complying with both Section 2 of the Voting Rights Act ("VRA") and the Constitution. First, States may consider race in drawing districts without triggering strict scrutiny so long as racial considerations are not "the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." *Miller v. Johnson*, 515 U.S. 900, 916 (1995). Second, even where racial considerations do predominate, the resulting district lines satisfy strict scrutiny where they are narrowly tailored to further States' compelling interest in complying with Section 2. *See Shaw v. Reno*, 509 U.S. 630, 658 (1993).

As sovereigns entrusted with the weighty responsibility of redistricting, States have strong interests in ensuring that neither pathway is upended by the Court's resolution of this case. For decades, States have relied on the Court's racial-predominance framework in drawing district lines with Section 2 compliance as one goal among many, without necessarily triggering strict scrutiny. And where race is found to have predominated over race-neutral considerations, they have relied on the Court's framework by invoking their compelling interest in complying with Section 2 to defend against claims of racial gerrymandering.

Stare decisis principles weigh heavily against this Court jettisoning its settled jurisprudence—which would upend States' reliance interests and trigger massive uncertainty in the already fraught context of

redistricting. Accordingly, the District of Columbia and the States of New York, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, North Carolina, Oregon, Rhode Island, Vermont, Washington, and Wisconsin (collectively, "*Amici* States") submit this brief as *amici curiae* in support of appellants and to explain why the Court should adhere to its settled framework.

SUMMARY OF ARGUMENT

In our initial amicus brief, *Amici* States explained that, even if racial considerations did predominate, Louisiana had the requisite strong basis in evidence to satisfy strict scrutiny because a different federal court had earlier ruled that Louisiana's original map likely violated Section 2. *See* Br. of the District of Columbia, New York, et al. as *Amici Curiae* in Supp. of Appellants at 12-16. A contrary conclusion, the brief explained, would deprive States of the "breathing room" they need to draw remedial maps that comply with both Section 2 and the Constitution. *Id.* at 11 (quoting *Bethune-Hill v. Virginia State Bd. of Elections*, 580 U.S. 178, 196 (2017)). These arguments continue to apply with full force and warrant reversal of the decision below.

In response to the Court's supplemental briefing order, *Amici* States now make two additional arguments. First, a ruling that Louisiana violated the Fourteenth or Fifteenth Amendments merely because its creation of a second majority-minority district was "intentional" would upend the Court's long-settled racial-predominance framework—with devastating

consequences for States. Second, even if strict scrutiny applies here, compliance with Section 2 remains a compelling interest that justifies Louisiana's consideration of race.

I. More than 30 years ago, this Court established a framework for evaluating claims of unconstitutional racial discrimination in the complicated context of redistricting. Observing that States will "almost always be aware of racial demographics" as they seek to "balance competing interests" in this "most difficult" exercise, the Court imposed strict scrutiny only where race "predominates" in the redistricting decision at issue. *Miller v. Johnson*, 515 U.S. 900, 915-16 (1995). That approach has proven effective and workable for States, courts, and litigants.

In cases like this one, the long-settled racial-predominance framework permits States to consider race in tandem with traditional, race-neutral redistricting principles to draw a majority-minority district to remedy a likely Section 2 violation. This Court held as much just three Terms ago in *Allen v. Milligan*, 599 U.S. 1 (2023), when it reaffirmed the *Gingles* framework for Section 2 vote-dilution claims, *see Thornburg v. Gingles*, 478 U.S. 30 (1986), and recognized that it had for decades "authorized race-based redistricting as a remedy" for Section 2 violations. *Milligan*, 599 U.S. at 41. Race is an inevitable consideration in any redistricting exercise seeking to prevent or remedy a Section 2 violation. But "intentionally" considering race to draw a majority-minority district does not necessarily mean that race "predominated" over race-neutral districting principles.

Stare decisis principles weigh heavily in favor of adhering to the long-settled racial-predominance framework. This Court has affirmed and applied that framework for more than 30 years. During that time, States have relied on the framework in balancing the many competing interests that factor into redistricting, including complying with Section 2. And the framework has proven workable in practice. It has allowed States to routinely defeat claims of unconstitutional racial gerrymandering because race was merely one consideration among many, while allowing courts to identify and apply strict scrutiny to the unique instances where racial considerations subordinated race-neutral redistricting principles.

Moreover, abandoning the racial-predominance framework to subject any "intentional" consideration of race in redistricting to strict scrutiny would upend States' long-held reliance interests and cause chaos. It would introduce a fissure in this Court's *Gingles* analysis, where race *must* be intentionally considered in the preparation of illustrative maps to establish Section 2 liability, but then *could not* be considered by States in undertaking to remedy that violation. Specifically, when such violations are found, States would face the ultimate *Catch-22*: attempt to remedy that violation by considering race and face strict scrutiny, or attempt to remedy that violation while remaining blind to race and likely fail to do so, facing renewed Section 2 litigation. Jettisoning the racial-predominance framework would also cause serious federal court intrusion into States' complex redistricting work. Indeed, it would subject potentially hundreds of districts across the country,

drawn in reliance on that framework, to destabilizing legal scrutiny.

II. If this Court does conclude that strict scrutiny applies to Louisiana's drawing of a second majority-minority district, the Court should ratify its longstanding assumption that compliance with Section 2 of the VRA is a compelling interest. Section 2's commands are predicated on Congress's power to enforce the Fifteenth Amendment, which prohibits race-based discrimination in voting. States have a compelling interest in remedying constitutional and statutory violations that arise from current and ongoing racial discrimination.

Appellees, Alabama *Amici*, and now Louisiana incorrectly contend that the compelling interest in complying with Section 2 has lapsed by the mere passage of time. On their telling, Section 2 is an outdated provision that mechanically imposes majority-minority districts wherever discrimination may once have occurred. But that account is wrong. This Court's longstanding framework for Section 2 claims, articulated in *Gingles* and upheld by this Court just three Terms ago, makes clear that only present-day racially discriminatory vote dilution can violate Section 2. The *Gingles* framework builds in durational limits as part of the three *Gingles* preconditions and the ultimate totality-of-the-circumstances standard for liability. Specifically, the *Gingles* preconditions require courts to examine current data demonstrating compactness and racially polarized voting. And the totality-of-the-circumstances standard requires courts to weigh the nine fact-intensive Senate factors, most of which turn

on evidence of present discrimination and disparities. To be sure, historical discrimination can play a role in that inquiry. But this Court has long recognized that an established pattern of discrimination is relevant to the extent its effects persist today.

Ignoring this Court's established Section 2 jurisprudence, Appellees and Alabama *Amici* speculate that lower courts apply Section 2 beyond its proper scope—purportedly undermining the compelling interest in complying with Section 2. But States' extensive experience contradicts that contention. In States' decades of drawing district lines and defending against Section 2 claims, liability has generally remained limited to current instances of racially discriminatory vote dilution. Indeed, this Court recently observed in *Milligan* that Section 2 plaintiffs rarely satisfy their heavy burden to prove present-day compactness, racially polarized voting, and that race-based vote dilution is occurring under the totality of the circumstances. Alabama *Amici*'s hodgepodge of district court decisions, read in context, prove the point: courts must exhaustively evaluate and weigh the evidence before finding a Section 2 violation. And such a violation, where found, is a compelling reason to permit race-conscious redistricting.

ARGUMENT

I. Stare Decisis Weighs Strongly In Favor Of Adhering To This Court's Well-Established Racial-Predominance Framework.

The Court's supplemental briefing order asks "[w]hether the State's intentional creation of a second majority-minority congressional district violates the

Fourteenth or Fifteenth Amendments to the U. S. Constitution." Order, Aug. 1, 2025. In answering this question, the Court should be exceedingly careful not to abandon the long-settled racial-predominance framework that States, courts, and litigants have relied on for more than 30 years. Appellees have asked the Court to do just that in arguing that Louisiana's "intent" to create a second majority-minority district alone establishes that race predominated in its creation of a remedial map and that strict scrutiny thus applies. *See* Br. for Appellees at 33-34. The Court should not endorse that view, which would upend the racial-predominance framework with devastating consequences for States.

Under this Court's well-settled racial-predominance framework, States may consider race in drawing election districts without triggering strict scrutiny under the Fourteenth or Fifteenth Amendments so long as racial considerations are not "the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." *Miller*, 515 U.S. at 916; *see Shaw*, 509 U.S. at 644-48. But whenever a State creates a majority-minority district to comply with Section 2, its creation of that district could be said to be "intentional" in the sense that it was one factor that went into the districting process—even when that factor ultimately did not predominate. Accordingly, a ruling that any "intention" to create a majority-minority district triggers strict scrutiny, as Appellees' urge, would assume away the racial-predominance framework in the context of creating majority-minority districts. And Appellees' argument, if accepted, risks jettisoning the racial-predominance

framework entirely because nearly any consideration of race in redistricting could be characterized as "intentional." But States have long relied on this Court's settled precedent that merely considering race in districting, without allowing it to predominate, does not raise constitutional concern. Stare decisis principles counsel strongly against this Court abandoning its established racial-predominance framework—which has proven workable for States, courts, and litigants, and undergirds the *Gingles* test used to adjudicate liability for alleged Section 2 vote-dilution claims.

A. States have long relied on the racial-predominance framework, which is well-settled and workable.

More than three decades ago, this Court developed the racial-predominance framework to ensure that States could successfully exercise their responsibility over the complex task of drawing district lines. Redistricting "is primarily a matter for legislative consideration and determination." *Reynolds v. Sims*, 377 U.S. 533, 586 (1964). As States know from experience, fulfilling this duty is a difficult endeavor requiring "a delicate balancing of competing considerations." *Bethune-Hill*, 580 U.S. at 187. For example, States drawing congressional districts must ensure that each district's population is as nearly equal as possible, *Wesberry v. Sanders*, 376 U.S. 1, 7-8 (1964), while balancing traditional redistricting principles like compactness, contiguity, and respect for political subdivisions and communities of interest. And they must complete this challenging task without violating either the Constitution or the VRA's

prohibition against racially discriminatory vote dilution. *See Milligan*, 599 U.S. at 13-14.

Moreover, although States must avoid engaging in unlawful racial discrimination when drawing district lines, mapmakers will "almost always be aware of racial demographics." *Milligan*, 599 U.S. at 30 (internal quotation marks omitted); *see Miller*, 515 U.S. at 915-16. Indeed, as this Court has repeatedly explained, Section 2 often requires consideration of race to prevent or remedy a districting plan that unlawfully provides less opportunity to racial minorities to elect representatives of their choice. *See, e.g.*, *Abbott v. Perez*, 585 U.S. 579, 587 (2018).

The Court established the racial-predominance framework to accommodate this complexity, including the "delicately balanced requirements regarding the consideration of race" in redistricting. *Abbott*, 585 U.S. at 585. The racial-predominance framework provides that strict scrutiny applies only when race is "the *predominant factor* motivating" a redistricting decision. *Cooper v. Harris*, 581 U.S. 285, 291 (2017) (emphasis added). In other words, constitutional concerns are raised only when the State "subordinated traditional race-neutral districting principles, including but not limited to compactness, contiguity, and respect for political subdivisions or communities defined by actual shared interests, to racial considerations." *Miller*, 515 U.S. at 916.

The racial-predominance framework has proven effective and workable for States, courts, and litigants. This Court has regularly applied the framework. *See, e.g.*, *Alexander v. South Carolina State Conf. of the NAACP*, 602 U.S. 1, 17-37 (2024);

North Carolina v. Covington, 585 U.S. 969, 975-78 (2018) (summary disposition); *Cooper*, 581 U.S. at 299-301, 307-22; *Bethune-Hill*, 580 U.S. at 188-92; *Alabama Legis. Black Caucus v. Alabama*, 575 U.S. 254, 262-68 (2015); *see also Milligan*, 599 U.S. at 30-33. In doing so, the Court has made clear the types of evidence that may establish predominance, such as "circumstantial evidence of a district's shape and demographics or more direct evidence going to legislative purpose." *Miller*, 515 U.S. at 916; *see Bethune-Hill*, 580 U.S. at 191.

For 30 years, States have drawn district lines in reliance on the framework's core principle that race may be considered in districting so long as it does not predominate over other considerations. States have thus successfully defended against claims of unconstitutional racial gerrymandering by arguing that race was merely a consideration, but not a predominant one, in the redistricting exercise. These include circumstances where legislators sought a "fair, geographic, racial, and partisan balance throughout" the State, *Easley v. Cromartie*, 532 U.S. 234, 253 (2001); where race was considered to ensure that drafted maps complied with the VRA, *see Alexander*, 602 U.S. at 22; and where race was considered to create a majority-minority district to prevent or remedy a Section 2 violation, *see Perez v. Perry*, No. SA-11-CV-360, 2012 WL 13124278, at *17-20 (W.D. Tex. Mar. 19, 2012); *Quilter v. Voinovich*, 981 F. Supp. 1032, 1048-49 & n.14 (N.D. Ohio 1997), *aff'd*, 523 U.S. 1043 (1998).

As this extensive experience demonstrates, a State does not necessarily allow racial considerations to

predominate when it "intentionally" considers race, including when it has—as one redistricting goal among many—the creation of a majority-minority district. Rather, the creation of such a district may properly be one factor so long as race-neutral considerations do not become subordinated to it. *See Milligan*, 599 U.S. at 33 (plurality opinion) ("The line that we have long drawn is between consciousness and predominance.")

The ability to "intentionally" draw a majority-minority district without having racial considerations predominate is further illustrated by the long-settled *Gingles* test for Section 2 vote-dilution claims—a test that this Court reaffirmed just three Terms ago, *see Milligan*, 509 U.S. at 38-42. Specifically, the first *Gingles* precondition requires a plaintiff to show that a minority group "'is sufficiently large and geographically compact to constitute a majority' in some reasonably configured legislative district." *Cooper*, 581 U.S. at 287 (quoting *Thornburg v. Gingles*, 478 U.S. 30, 50 (1986)). Satisfying this precondition involves consideration of race. "The question whether additional majority-*minority* districts can be drawn, after all, involves a quintessentially race-conscious calculus." *Milligan*, 599 U.S. at 31 (plurality opinion) (internal quotation marks omitted). Doing so also involves race-neutral considerations: showing that the district is reasonably configured requires demonstrating that it comports with traditional race-neutral criteria. *See Alabama Legis. Black Caucus*, 575 U.S. at 272.

Yet no court has held that every illustrative map adduced to satisfy the first *Gingles* precondition is

necessarily one in which racial considerations predominated. To the contrary, for three decades, courts have successfully distinguished maps that draw a majority-minority district while adhering to race-neutral criteria, and therefore satisfy the first *Gingles* precondition, from maps that are not reasonably configured.[1] Indeed, in *Milligan*, a plurality of the Court specifically rejected the proposition that every creation of a majority-minority district necessarily allows race to predominate, emphasizing that such an approach would require overruling *Gingles*, 599 U.S. at 32-33, which a majority of the Court declined to do, *Milligan*, 599 U.S. at 41 (majority opinion). And where *Milligan* concerned the availability of a *potential* Section 2 remedy as part of the *Gingles* vote-dilution analysis, this case involves an *actual* remedy following a

[1] *Compare, e.g.*, *Alpha Phi Alpha Fraternity Inc. v. Raffensperger*, 700 F. Supp. 3d 1136, 1252-64 (N.D. Ga. 2023) (holding *Gingles* 1 satisfied where illustrative Congressional map contained reasonably compact additional majority-Black district "that balanced traditional redistricting criteria"), *and Mississippi State Conf. of NAACP v. State Bd. of Election Comm'rs*, 739 F. Supp. 3d 383, 423-25 (S.D. Miss. 2024) (*Gingles* 1 satisfied as to two districts in illustrative State Senate map, where districts were "reasonably compact" and "follow[ed] traditional redistricting principles"), *with, e.g.*, *Pierce v. North Carolina State Bd. of Elections*, 713 F. Supp. 3d 195, 224 (E.D.N.C. 2024) (illustrative district did not satisfy *Gingles* 1 because, in its reasonably compact form, it did not contain a majority of Black voters), *aff'd*, 97 F.4th 194 (4th Cir. 2024), *and Christian Ministerial All. v. Arkansas*, No. 4:19-CV-402, 2020 WL 12968240, at *7 (E.D. Ark. Feb. 21, 2020) (Section 2 claims failed to plausibly allege that State's black population was reasonably compact enough to constitute a majority in single-member district).

judicial finding that Louisiana's original map likely violated Section 2 by diluting the voting power of Black voters. Thus, like in *Milligan*, the Louisiana legislature had to consider race to draw a new map to address that likely VRA violation. But such intentional consideration of race does not necessarily mean that racial considerations predominated over traditional race-neutral redistricting principles or political considerations.[2]

To be sure, a plaintiff alleging an unconstitutional racial gerrymander may be able to prove, by presenting sufficient facts, that racial considerations predominated even where the challenged map does not drastically depart from traditional redistricting criteria. *See Miller*, 515 U.S. at 916-18 (courts may rely on, for example, "direct evidence going to legislative purpose" and context of redistricting decisions). But that possibility does not suggest that *every* instance where a mapmaker both intentionally creates a majority-minority district and complies with race-neutral criteria is an instance where racial considerations predominated. As this Court has emphasized, legislatures that engage in impermissible racial gerrymandering will very often "find it necessary to depart from traditional principles in order to do so." *Bethune-Hill*, 580 U.S. at 190. "And,

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[2] Indeed, appellants have explained in detail that Louisiana carefully considered a number of traditional redistricting factors like identifying and assessing communities of interest; strategizing incumbency protection; calculating how often maps split parishes, census locations (or municipalities), and landmarks; and measuring and comparing compactness scores in promulgating its map. *See* Br. for Robinson Appellants at 9-17; Br. for Louisiana at 10-19.

in the absence of a conflict with traditional principles, it may be difficult for challengers to find other evidence sufficient to show that race was the overriding factor causing neutral considerations to be cast aside." *Id.* But these examples underscore that the Court's existing racial predominance framework appropriately subjects such instances to rigorous constitutional scrutiny. There is no reason to depart from that framework here.

B. Abandoning the racial-predominance framework would upend States' entrenched reliance interests and sow uncertainty in redistricting.

Stare decisis principles counsel strongly against upending the well-settled racial-predominance framework—as would occur if the Court were to accept Appellees' theory that any intentional creation of a majority-minority district triggers strict scrutiny. States have relied on the racial-predominance framework in drawing district lines and defending against claims of unconstitutional racial gerrymandering. As explained, the racial-predominance framework is well-reasoned, and has been affirmed and applied by this Court for 30 years without significant alteration. *See CSX Transp., Inc. v. McBride*, 564 U.S. 685, 699 (2011) (abandoning precedent that "has been accepted as settled law for several decades" would "ill serve" stare decisis goals of stability and predictability (internal quotation marks omitted)).

Moreover, the well-settled racial-predominance framework has given rise to entrenched reliance by States, particularly given the need for advance

planning of great precision in redistricting. Indeed, stare decisis has added force where, as here, "the legislature, in the public sphere, . . . ha[s] acted in reliance on a previous decision." *Hilton v. South Carolina Pub. Rys. Comm'n*, 502 U.S. 197, 202 (1991). And in light of States' long-standing reliance on the framework, abandoning it would cause substantial uncertainty in redistricting in several ways. *See Kimble v. Marvel Ent., LLC*, 576 U.S. 446, 459 (2015) (adhering to stare decisis where abandoning current precedent "would make the law less, not more, workable than it is now").

First, abandoning the racial-predominance standard would upend the *Gingles* test by divorcing the standard for plaintiffs to establish the first *Gingles* precondition—which shows the existence of a *potential* remedy for a Section 2 violation—from the standard for States to constitutionally implement an *actual* remedy to a probable violation. It would be incongruous to *allow* Section 2 plaintiffs to use race to show that a remedy would be possible but *forbid* States from using race in the same way to then craft such a remedy. The Constitution should not be interpreted to impose such an artificial distinction.

Second, a ruling that subjects any map drawn with an "intentional" outcome of creating a majority-minority district to strict scrutiny would trap States "'between the competing hazards of liability' under the Voting Rights Act and the Equal Protection Clause." *Bethune-Hill*, 580 U.S. at 196 (quoting *Bush v. Vera*, 517 U.S. 952, 977 (1996)). Indeed, adopting such a standard risks an outcome where any majority-minority district drawn with any awareness of the

racial make-up of the district's residents could be challenged as having been drawn "intentionally."

Accordingly, mapmakers might feel compelled to try to blind themselves to race to avoid subjecting the resulting district plan to the gauntlet of strict scrutiny. But that would only *increase* the likelihood of Section 2 litigation. After all, States often need to consider race to ensure that the resulting maps do not "crack" or "pack" members of a racial minority group in districts in ways that might lead to discriminatory vote dilution. And being blind to race would *extend* litigation when, as here, a court finds that a Section 2 violation is likely (or proven)—a finding that necessarily includes a showing that a minority group is sufficiently large and geographically compact to constitute a majority in a reasonably configured district. States would be put in the untenable position of having to remedy that Section 2 violation without "intentionally" adopting either an illustrative map used to satisfy the first *Gingles* precondition or another map that "intentionally" considered how to place a majority of the minority group's members in a district while adhering to traditional race-neutral criteria. States would then be left to blindly create a remedial map with little more than a hope of curing the violation by chance. If they are unsuccessful in that effort, another round of Section 2 litigation awaits. The Court should not subject States to such endless cycles of litigation.

Third, and relatedly, upending the racial-predominance framework is likely to erode States' primary authority over redistricting because States will be more likely to cede the task to federal courts

where a Section 2 violation is proven or found to be likely—rather than attempt to craft a remedy themselves and be caught in another round of litigation. That result would undermine the core principle that States, rather than federal courts, are best suited to balance the many, often conflicting considerations of policy and politics that go into drawing election districts. *See, e.g.*, *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978).

Fourth, jettisoning the racial-predominance standard would risk broadly exposing States to further litigation and liability even where they do not intentionally create a majority-minority district. As noted, States often successfully defend against claims of unconstitutional racial gerrymandering by arguing that race, though considered, did not predominate in the redistricting exercise. *See supra* p. 10. But a framework that looks to whether the consideration of race was merely "intentional" rather than predominant threatens to eliminate such long-accepted practices and subject redistricting, the "most vital of local functions," to serious intrusion by federal courts. *Miller*, 515 U.S. at 915. Given the "sensitive nature of redistricting and the presumption of good faith that must be accorded legislative enactments," the Court should continue to apply the racial-predominance framework, which ensures that courts "exercise extraordinary caution in adjudicating claims that a State has drawn district lines on the basis of race." *Id.* at 916.

Finally, jettisoning the racial-predominance framework might call into question the legality of hundreds of legislative districts across the country, at

all levels of government, that considered, as one factor among many, the drawing of districts to ensure that members of a minority group were not given unequal electoral opportunity. *Cf.* Jowei Chen & Nicholas O. Stephanopoulos, *The Race-Blind Future of Voting Rights*, 130 Yale L.J. 862, 901-02 (2021) (identifying over 400 "minority opportunity districts" among State house districts in a dataset of only 19 states). It would mean that state legislatures, independent redistricting commissions, and courts that have adopted legislative redistricting plans may have long engaged in unconstitutional racial gerrymandering simply by following this Court's established precedents. Such a startling change would not only substantially alter decades of jurisprudence but also potentially open States' current maps to novel legal challenges. Stare decisis warrants adhering to the racial-predominance framework.

II. Compliance With Section 2 Remains A Compelling Interest.

If the Court finds that race predominated in drawing Louisiana's map, it should hold that the State's effort to comply with Section 2 constitutes a compelling interest. As explained, "[t]his Court has long assumed that" compliance with Section 2 is a "compelling interest." *Cooper*, 581 U.S. at 285. That is for good reason: Section 2 is an exercise of Congress's authority to enforce the Fifteenth Amendment's command that "[t]he right of citizens of the United States to vote shall not be denied or abridged . . . on account of race, color, or previous condition of servitude." U.S. Const. amend. XV, §§ 1-2. And this Court has long permitted race-conscious remedies to

cure "judicial, legislative, or administrative findings of constitutional or statutory violations." *Fisher v. Univ. of Tex. at Austin*, 570 U.S. 297, 308 (2013) (quoting *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 307 (1978) (plurality opinion)); *see City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 500 (1989).

Contrary to some parties' and *amici*'s contentions, this Court's longstanding approach to Section 2 is rooted in present reality and current conditions, and it continues to give States a compelling interest in redistricting to produce VRA-compliant maps. *See Gingles*, 478 U.S. at 45; *see also, e.g.*, *Nairne v. Landry*, No. 24-30115, 2025 WL 2355524, at *23 (5th Cir. Aug. 14, 2025) (per curiam) (rejecting argument that validity of Section 2 "has somehow lapsed" and explaining that "[t]he Reconstruction Amendments do not demand that Congress re-justify its judgments on a rolling basis").

A. Section 2 is not frozen in the past.

Appellees erroneously proclaim that "[i]t's time to retire the assumption that the VRA provides Louisiana a compelling interest, at least since January 2024." Appellees' Br. 38. For support, Appellees contend that race-based districting under Section 2 "cannot extend indefinitely into the future." Appellees' Br. 37 (quoting *Milligan*, 599 U.S. at 45 (Kavanaugh, J., concurring)). Similarly, certain of Appellees' *amici* posit that Section 2's reliance on past racial discrimination in voting risks being "ageless in [its] reach into the past, and timeless in [its] ability to affect the future." Brief of Alabama and 13 Other States as *Amici Curiae* in Support of Appellees 27,

Jan. 28, 2025 ("Alabama *Amici* Br.") (internal quotation marks omitted). And, following this Court's supplemental briefing order, Louisiana has changed its tune to align with Appellees' and Alabama *Amici*'s time-limit arguments. *See* Suppl. Br. for Louisiana 26-33.

These arguments rest on a fundamentally incorrect understanding of this Court's Section 2 jurisprudence. The *Gingles* preconditions and the Senate factors relevant to the totality-of-the-circumstances inquiry turn on *present-day* circumstances, not merely past discrimination.

Start with the first *Gingles* precondition: compactness. *Gingles*, 478 U.S. at 50. This Court has determined whether a proposed majority-minority district is compact by looking to, among other facts, decennial census data reflecting current population demographics. *See Milligan*, 599 U.S. at 15, 34. That current data is updated with each census and thus reflects changing demographics. As the Court observed in *Milligan*, Section 2's compactness requirement "becomes more difficult" to prove "as residential segregation decreases—as it has 'sharply' done since the 1970s." *Id.* at 28-29 (quoting Travis Crum, *Reconstructing Racially Polarized Voting*, 70 Duke L.J. 261, 279 & n.105 (2020)).

Likewise, *Gingles*'s second and third preconditions build in a natural "durational limit on Section 2's operation" by requiring that voting in a jurisdiction is "characterized by racial polarization." Pamela S. Karlan, *Two Section Twos and Two Section Fives: Voting Rights and Remedies After* Flores, 39 Wm. & Mary L. Rev. 725, 741 (1998); *see Gingles*, 478 U.S. at

51. Specifically, courts may not assume that members of the same minority community necessarily vote for the same candidates. *Gingles*, 478 U.S. at 48; *cf. Students for Fair Admission, Inc. v. President & Fellows of Harvard Coll.* (*SFFA*), 600 U.S. 181, 219 (2023) (cautioning against assuming "that minority students always (or even consistently) express some characteristic minority viewpoint on any issue" (internal quotation marks omitted)). Rather, "plaintiffs must prove it" in every case by establishing that voting in that jurisdiction is characterized by racial polarization. *Gingles*, 478 U.S. at 46. Section 2 thus already contains a "functional sunset provision" in that, "[w]hen people cease to vote along racial lines, [it] will become a paper tiger." Heather K. Gerken, *A Third Way for the Voting Rights Act: Section 5 and the Opt-in Approach*, 106 Colum. L. Rev. 708, 745 (2006). Moreover, this Court has long looked to current circumstances when applying the *Gingles* preconditions to Section 2 disputes. *See Milligan*, 599 U.S. at 22 (looking to "average" voting behavior over the prior decade) (quoting *Singleton v. Merrill*, 582 F. Supp. 3d 924, 1017 (N.D. Ala. 2022)); *Abbott*, 585 U.S. at 617 (evaluating voter behavior over four prior elections); *League of United Latin Am. Citizens v. Perry* (*LULAC*), 548 U.S. 399, 427-29 (2006) (relying on election data from year prior to challenged redistricting).

Alabama *Amici* and Louisiana incorrectly contend that courts applying *Gingles* merely "identify[] a distant history of discrimination and elections that didn't go the 'right' way 'enough.'" Alabama *Amici* Br. 23; Suppl. Br. for Louisiana 28-29. That contention misunderstands the role of history in the *Gingles*

framework. An established pattern of racially polarized voting may inform courts' understanding of whether a minority community *currently* lacks equal access to the political process. As this Court put the point in *Cooper*, "longtime voting patterns are highly probative of racial polarization." 581 U.S. at 304 (citing *Gingles*, 478 U.S. at 57). Were courts to instead entirely disregard a jurisdiction's history of racially polarized voting—or lack thereof—they might incorrectly infer a minority's "loss of political power" from its "mere inability to win a particular election." *Gingles*, 478 U.S. at 57. That would be exactly the kind of "mechanical[]" application of *Gingles* this Court has long forbidden. *Bartlett v. Strickland*, 556 U.S. 1, 15 (2009) (quoting *Voinovich v. Quilter*, 507 U.S. 146, 158 (1993)).

In any event, while history helps in gleaning a potential "pattern of racial bloc voting" under *Gingles*, the "ultimate" question remains whether the minority community currently lacks "an equal opportunity to participate in the political process and to elect representatives of their choice." *Gingles*, 478 U.S. at 57, 77. Accordingly, "[a]s the lingering effects of racial discrimination abate, and thus as excluded minorities become physically and politically integrated into the dominant society, their ability and need to bring claims under section 2 will subside as well." Karlan, *supra*, at 741. Moreover, lower courts routinely attach more weight to recent election results than they do dated election results in examining the totality of the circumstances under *Gingles*. *See, e.g.*, *Pope v. County of Albany*, 94 F. Supp. 3d 302, 333 (N.D.N.Y. 2015) ("In addition, the Court finds that more recent elections are more probative." (citing *Vecinos de*

Barrio Uno v. City of Holyoke, 72 F.3d 973, 990 (1st Cir. 1995))); *NAACP, Inc. v. City of Niagara Falls*, 913 F. Supp. 722, 752 (W.D.N.Y. 1994) ("More recent elections are more probative in discerning the discriminatory present effects of the electoral standard, practice, or procedure under scrutiny."). Far from having the talismanic effect Alabama *Amici* suppose, past discrimination is ultimately relevant under *Gingles* only to the extent its effects continue to be felt today.

Section 2's focus on remedying current discrimination in voting disposes of analogies to the "time limits" discussed in *SFFA*. Appellees' Br. 37 (citing *SFFA*, 600 U.S. at 212-13); Suppl. Br. for Louisiana 24. In that case—decided just one month after this Court reaffirmed *Gingles* in *Milligan*—neither of the university defendants purported to use race in admissions to remedy civil rights violations. *SFFA*, 600 U.S. at 214. Rather, they asserted interests in preparing students for "an increasingly pluralistic society" and "enhancing appreciation, respect, and empathy, cross-racial understanding, and breaking down stereotypes," which this Court rejected as impossible to quantify. *Id.* By contrast, *Gingles* not only requires present racially polarized voting before imposing Section 2 liability, but its three preconditions are also readily administrable based on "objective, numerical" criteria. *See Bartlett*, 556 U.S. at 18. Nor does the decision in *Shelby County* regarding Sections 4 and 5 of the VRA, which "were intended to be temporary," call into question the continued validity of Section 2. *Shelby County v. Holder*, 570 U.S. 529, 538 (2013); *see id.* at 557 ("Our

decision in no way affects the permanent, nationwide ban on racial discrimination in voting found in § 2.").

What is more, *Gingles*'s totality-of-the-circumstances inquiry, including the Senate factors, also requires looking to all present circumstances relevant to whether Section 2 has been violated. Alabama *Amici* argue that courts have transformed the fact-specific totality analysis into "'an affirmative-action program' for race-based districting in perpetuity" by looking primarily to "race-based gaps . . . with respect to the health, wealth, [or] well-being of American citizens." Alabama *Amici* Br. 27 (quoting *SFFA*, 600 U.S. at 384 (Jackson, J., dissenting)). But this is not true.

The Court recently rejected such a "single-minded view of § 2" where "there is only one 'circumstance[ ]' that matters." *Milligan*, 599 U.S. 1 at 26 (quoting 52 U.S.C. § 10301(b)). As Section 2 makes plain, it is violated only where, "based on the *totality of the circumstances*," members of a minority community "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 52 U.S.C. § 10301(b) (emphasis added). Reviewing courts therefore "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*, 478 U.S. at 19 (quoting *Growe v. Emison*, 507 U.S. 25, 79 (1993)); *see Johnson v. De Grandy*, 512 U.S. 997, 1009 (1994) (rejecting notion that proving "the three *Gingles* preconditions" and "that Hispanics had suffered historically from official discrimination" whose effects "they generally

continued to feel" sufficed to show a Section 2 violation).

The Senate factors that are central to the totality-of-the-circumstances inquiry illustrate Section 2's focus on ongoing vote dilution. Indeed, the Senate Committee admonished that Section 2 liability "depends upon a searching practical evaluation of the 'past and present reality.'" *Gingles*, 478 U.S. at 45 (quoting S. Rep. No. 97-417, at 30 (1982)). The specific factors the Senate Committee enumerated drive home that point: racially polarized voting, "voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group," exclusion "from candidate slating processes," "racial appeals in political campaigns," lack of minority electoral success, elected officials being "unresponsive" to the minority group's needs, and the challenged practice resting on a "tenuous" policy. *Id.* at 44-45. Each of these factors asks whether *ongoing* conditions indicate "that the political process is not 'equally open' to minority voters." *Milligan*, 599 U.S. at 18 (quoting *Gingles*, 478 U.S. at 45).

True enough, the remaining two Senate factors concern "the history of voting-related discrimination" and "the extent to which minority group members bear the effects of past discrimination." *Gingles*, 478 U.S. at 44-45. But this Court has recognized that the "political, social, and economic legacy of past discrimination" against a minority "may well hinder their ability to participate effectively in the political process." *LULAC*, 548 U.S. at 440 (internal quotation marks omitted). The critical word is "may": the Senate Report enumerates only the "typical factors" relevant

to a Section 2 violation. S. Rep. No. 97-417, at 28 (1982); *see LULAC*, 548 U.S. at 426. Accordingly, litigants are free to argue that past discrimination is irrelevant or outweighed by other evidence in a particular case. And this Court has shown its ability to accept such arguments. *See De Grandy*, 512 U.S. at 1013.

Appellees discount the Senate factors, contending that litigants and courts "abuse[]" Section 2 "to set racial quotas." Appellees' Br. 38. But this Court in *Milligan* repudiated the view that its "existing § 2 jurisprudence inevitably demands racial proportionality in districting." 599 U.S. at 26. The Court explained that its "decisions have frequently demonstrated" that "the *Gingles* framework itself imposes meaningful constraints on proportionality." *Id.* And as the Court further emphasized, "[t]he numbers" demonstrate that representation proportional to population is quite rare nationally. *Id.* at 28; *see infra* pp. 27-29 (explaining that the *Milligan* Court's observations hold true today).

In sum, the *Gingles* preconditions and Senate factors do real work in limiting Section 2 liability to *current* instances of race-based vote dilution. And proven, present-day vote dilution so severe as to likely violate Section 2—as the *Robinson* courts found here—presents a compelling reason to draw VRA-compliant maps.[3]

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[3] Indeed, outside the redistricting context, lower courts have understood that Section 2 liability is tailored to current conditions, not history. *See, e.g.*, *United States v. Brown*, 494 F. Supp. 2d 440, 486 (S.D. Miss. 2007) (finding Section 2 violation

B. In *Amici* States' experience, Section 2 has not become an out-of-control vehicle for racial gerrymandering.

Appellees erroneously argue that "[a]ggressive VRA-only litigation before single-judge district courts has proliferated and expanded racial gerrymanders." Appellees' Br. 38. That argument is belied by reality.

Section 2 liability is hardly automatic, as States' experience confirms. This Court recently observed in *Milligan* that "§ 2 litigation in recent years has rarely been successful" and that "plaintiffs nationwide have apparently succeeded in fewer than ten § 2 suits," redrawing only "a handful of state house districts near Milwaukee and Houston." *Milligan*, 599 U.S. at 29. Section 2 plaintiffs carry a heavy burden of proof precisely because *Gingles* focuses on present conditions. Although residential segregation persists in the United States, in those locations where it has declined, plaintiffs may often fail to carry their burden under *Gingles* because "minority populations' geographic diffusion" makes it difficult to "design an additional majority-minority district or satisfy the compactness requirement." *Id.* at 29 (internal quotation marks omitted). *Gingles*'s "exacting requirements" thus ensure that redistricting remains "'primarily the duty and responsibility of the State[s].'" *Id.* (quoting *Abbott v. Perez*, 585 U.S. 579, 603 (2018)).

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where, following significant changes in political power since the VRA was enacted, black elected officials intentionally discriminated against white voters, who were "historically privileged" and "who as a group do not suffer the effects of past discrimination"), *aff'd*, 561 F.3d 420 (5th Cir. 2009).

In Alabama *Amici*'s telling, a "post-2020 surge in liability" due to "statutory mission creep" has superseded *Milligan*'s account of how courts apply Section 2. Alabama *Amici* Br. 29; *see* Suppl. Br. for Louisiana 26-27 (similar). Alabama *Amici* neglect to mention, however, that most of the dozen Section 2 injunctions they cite arose in jurisdictions now no longer covered by the Section 5 preclearance formula that this Court ruled unconstitutional in *Shelby County*. *Compare id.* at 29 n.5 (listing cases from Louisiana, Mississippi, Georgia, and Alabama), *with Shelby County*, 570 U.S. at 537-38 (noting these States were covered jurisdictions). Indeed, this Court foreshadowed in *Shelby County* that these previously covered jurisdictions could see increased scrutiny under Section 2. *See* 570 U.S. at 557. Though Alabama *Amici* sidestep this straightforward explanation for any uptick in successful Section 2 claims, the single law review article they rely on ultimately tells the same story. That is, "the recent litigation record of Section 2 redistricting plaintiffs is abysmal, including less than a handful of victories (versus dozens of defeats) over the last two decades." Nicholas Stephanopoulos, Eric McGhee, & Christopher Warshaw, *Non-Retrogression Without Law*, 2023 U. Chi. Legal F. 267, 277 (2024). The fact that some plaintiffs occasionally prevail is not evidence that courts fail to faithfully apply the *Gingles* framework. Rather, it further establishes that courts are properly finding Section 2 liability only where the fact-intensive inquiry proves that racially discriminatory vote dilution is currently occurring.

Taking a different tack, Alabama *Amici* find fault in three district court decisions. Alabama *Amici* Br. 31-34. But, even setting aside that none of those handpicked cases are before this Court, Alabama *Amici* paint a false picture of them. Alabama seizes on stray sentences that seemingly support its narrative that courts too easily find Section 2 liability based on only one or two of the Senate factors. But these stray sentences are improperly taken out of the context of the hundreds of pages of evidentiary support for each court's Section 2 findings. For instance, Alabama *Amici* cite footnote 461 of the Middle District's opinion in *Nairne*, which recites the testimony of an expert witness concerning Senate factor 5. *Id.* at 34 (citing *Nairne v. Ardoin*, 715 F. Supp. 3d 808, 874 n.461 (M.D. La. 2024)). To state the obvious, that testimony was just one exceedingly small part of the court's extensive evaluation of the volumes of evidence pertaining to the nine Senate factors, which the defendants there "did not meaningfully contest." *Nairne*, 715 F. Supp. at 876. Alabama *Amici*'s reliance on two other cases fails because they apply the same cherry-picking tactic, again bypassing many pages of factual findings.[4]

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[4] *Compare* Alabama *Amici* Br. 31-32 (citing a sentence in the Western District of Washington's opinion noting that many members of the Latino community were "ineligible to vote because of their immigration status" (quoting *Soto Palmer v. Hobbs*, 686 F. Supp 3d 1213, 1228 (W.D. Wash. 2023)), *with Soto Palmer*, 686 F. Supp 3d at 1228 (continuing, in the same sentence, to reference "literacy and language barriers that prevent full access to the electoral process" in support of Senate factor 1), *and id.* at 1233-34 (finding that "Senate Factors 1, 2,

Ultimately, Alabama *Amici*'s speculation that Section 2 has become unbounded lacks support and is contravened by States' experience and this Court's recent precedent in *Milligan*. Accordingly, the Court should confirm its longstanding assumption that Section 2 compliance provides a compelling interest for States to draw race-conscious remedial maps.

3, 5, 6, 7, and 8 all support" Section 2 liability); *compare* Alabama *Amici* Br. 32-33 (suggesting that the Northern District of Georgia relied improperly on several voting laws with a racially disparate impact "determined . . . to *not* be illegal under federal law" (quoting *Raffensperger*, 700 F. Supp. 3d at 1272), *with Raffensperger*, 700 F. Supp. at 1272 (explaining in the next sentence that the practices' legality "certainly impact[s] the weight to afford" them), *and id.* at 1369 (concluding after an additional *hundred* pages of evidence that "Senate Factors One, Two, Three, Five, and Seven weigh in favor of" Section 2 liability).

CONCLUSION

This Court should reverse the judgment of the three-judge district court in the Western District of Louisiana.

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