Nos. 24-109, 24-110

IN THE

Supreme Court of the United States

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

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INTRODUCTION AND SUMMARY OF THE ARGUMENT

At the intersection of two fundamental rights—the right to vote and the right to be free from racial discrimination—Congress acted at the apex of its constitutional enforcement powers in passing the Voting Rights Act of 1965 ("VRA") and its later amendments. The VRA is the crown jewel of civil rights legislation. As amended by Congress and interpreted by this Court, §2 of the VRA guards against the "unremitting and ingenious defiance of the Constitution" that has long characterized racial discrimination in voting. *South Carolina v. Katzenbach*, 383 U.S. 301, 309 (1966). Its brilliance is reflected in both its clarity and exactness in filtering out all but the most meritorious claims of racial discrimination.

Louisiana enacted SB8 to further political goals while also creating a second majority-Black district to comply with the detailed decisions of a federal district court and two unanimous Fifth Circuit panels in *Robinson*. This comported with the Fourteenth and Fifteenth Amendment guarantees of equal voting rights and the VRA's requirements. In *Robinson*, hewing closely to this Court's guidance in *Allen v. Milligan*, 599 U.S. 1 (2023), seven federal judges all agreed that, based on present conditions in Louisiana, the Legislature's 2022 congressional map likely unlawfully diluted the votes of Black Louisianians in violation of §2 of the VRA. The *Robinson* court made numerous findings of ongoing race discrimination against Black voters in Louisiana. Among other things, it found that the 2022 Legislature cracked and diluted the votes of Black communities of interest

without a plausible race-neutral justification. *Robinson v. Ardoin* ("*Robinson I*"), 605 F. Supp. 3d 759, 850-851 (M.D. La. 2022). The court also described extreme racially polarized voting in recent elections, state-created barriers to participation, and present-day effects of past official discrimination—all contributing to denying Black voters an equal opportunity to elect the candidates of their choice in the 2022 map. *See id.* at 844-851. Two Fifth Circuit panels affirmed the conclusion that Louisiana had likely violated §2. *Robinson v. Ardoin* ("*Robinson III*"), 86 F.4th 574 (5th Cir. 2023); *Robinson v. Ardoin* ("*Robinson II*"), 37 F.4th 208 (5th Cir. 2022). This Court ultimately declined to review those findings. *Ardoin v. Robinson*, 143 S. Ct. 2654 (2023). Against the background of those rulings, the State reasonably decided that it had a compelling interest in redistricting to consider race to remedy the §2 violation. *See Students for Fair Admissions, Inc. v. Pres. & Fellows of Harvard Coll.* ("*SFFA*"), 600 U.S. 181, 207 (2023) (explaining that "remediating specific, identified instances of past discrimination that violated the Constitution or a statute" is a "compelling interest[]").

Yet, at pages 36-38 of their brief last Term, Appellees argued for the first time in this litigation that, as applied in Louisiana, §2 violates the Fourteenth and Fifteenth Amendments and, thus, the State lacked a compelling interest in remedial redistricting. That belated, collateral attack on the Fifth Circuit's and district court's application of §2 in *Robinson* must fail.

First, because they did not raise this claim before the district court, Appellees presented no facts below

casting doubt on the constitutional propriety of the Legislature's reliance on the *Robinson* courts' findings. There is simply no factual or other record basis *in this case* for this Court to address the as-applied argument that Appellees now urge. *Cf. Milligan*, 599 U.S. at 45 (Kavanaugh, J., concurring) (declining to consider this "temporal argument" where the state failed to raise it). In contrast, the decisions in *Robinson* of two unanimous Fifth Circuit panels and the district court were all faithful to this Court's precedent. All found, based on an extensive record, that current conditions in Louisiana had denied Black voters the opportunity to elect the candidates of their choice. All agreed that the *Robinson* Appellants had offered reasonable plans that *both* did not allow race to predominate *and* better respected traditional redistricting criteria than the 2022 plan. Nothing in Appellees' brief offers any evidence that might undermine the detailed findings and considered analysis of the *Robinson* courts.

Second, Appellees' as-applied attack on §2 fails because the notion that the sun has set on the need for race-conscious remedial redistricting for identified instances of racial vote dilution is contrary to both the fact of ongoing discrimination in Louisiana and the text and purpose of §2 as it was amended in 1982 and has been consistently interpreted by this Court ever since. Congress enacted §2 pursuant to the specific textual authorizations in the Fourteenth and Fifteenth Amendments, U.S. Const. amend. XIV § 5; U.S. Const. amend. XV § 2. Section 2 focuses on discriminatory results, not subjective intent. Banning state actions with a discriminatory result without requiring a finding of subjective discriminatory

motive is "an appropriate method of promoting the purposes of the Fifteenth Amendment." *Milligan*, 599 U.S. at 41 (citation omitted). And Congress wisely did not choose to enact a "freewheeling disparate-impact regime." *Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 674 (2021). Rather, §2's "exacting requirements" serve to "limit judicial intervention to those instances of intensive racial politics where the excessive role of race in the electoral process denies minority voters equal opportunity to participate." *Milligan*, 599 U.S. at 30 (cleaned up). Congress thus properly acted at the heart of its textually conferred constitutional powers when enacting §2. *See id.* at 41.

Section 2's limited scope ensures that a state's interest in remedying a violation is sufficiently compelling to withstand constitutional scrutiny. The "prevention and remedying of racial discrimination and its effects is a national policy of 'highest priority.'" *United States v. Paradise*, 480 U.S. 149, 168 (1987) (citation omitted). A state thus has a compelling interest in remedying discrimination if: *first*, the discrimination it seeks to remedy is "identif[ied] . . . with some specificity," and *second*, the state has "a strong basis in evidence" to conclude that its remedial action is necessary to redress that discrimination. *Shaw v. Hunt*, 517 U.S. 899, 909-910 (1996) (citation omitted) ("*Shaw II*"). Strict compliance with the *Gingles* standard ensures that §2 compliance remains a compelling interest, especially when used to remedy a violation pursuant to court order. *Thornburg v. Gingles*, 478 U.S. 30 (1986).

Third, Appellees' as-applied attack fails because it rests on the faulty assumption that §2 contemplates overly broad race-based remedies. This fundamentally

misunderstands the statute and the standards under which it operates. Congress and this Court have constrained race-conscious remedies in §2 in two critical respects: First, through the *Gingles* framework, it requires evidence that "*present* local conditions" evince race discrimination, and second, under *Shaw*'s predominance standard, race-conscious remedial districts are subject to safeguards against excessive consideration of race. *See Abbott v. Perez*, 585 U.S. 579, 619 (2018) (reversing §2 vote dilution findings where "almost none" of them referenced current conditions) (emphasis added). In addition, the *Gingles* analysis and §2 remedial districting are always based on the latest census and election data, requiring the need for a remedy to be reevaluated at least every ten years. Where new elections or census data show that a remedy is no longer viable or necessary, §2 cannot (and does not) justify race-based redistricting in perpetuity based on past violations. *See Cooper v. Harris*, 581 U.S. 285, 302-304, 306 (2017).

Section 2 remedies only come into play in places where a violation or potential violation is shown. Significantly, the first step in establishing a violation of §2 involves "Plaintiffs adduc[ing] at least one illustrative map that comport[s] with [this Court's] precedents." *Milligan*, 599 U.S. at 33 (plurality). Successful §2 cases thus always offer at least one narrowly tailored remedy. *Id.* Once a violation is proven, states have significant flexibility in enacting §2 remedies. So long as it addresses the violation, a remedial district need not be majority-minority to satisfy §2 and must not consider race more than necessary to provide the required electoral

opportunity. *See Cooper*, 581 U.S. at 305-306; *Abrams v. Johnson*, 521 U.S. 74, 93-94 (1997); *Lawyer v. Dep't of Justice*, 521 U.S. 567, 575 (1997).

Section 2, moreover, applies nationwide, and thus does not implicate the concerns about equal sovereignty and specific burdens imposed on states that animated this Court's enjoining of the VRA's preclearance coverage formula. *See Shelby Cnty. v. Holder*, 570 U.S. 529, 537, 557 (2013) ("Our decision in no way affects the permanent, nationwide ban on racial discrimination in voting found in § 2.").

Fourth, because Appellees failed to adduce any evidence to support their attack on the constitutionality of the Legislature's reliance on the §2 findings in *Robinson*, this Court should reject that attack outright. But even if the Legislature's consideration of race in SB8 exceeded §2's careful constitutional constraints, this case should be remanded for development of a new map to remedy the §2 violation identified in *Robinson*. *See Bush v. Vera*, 517 U.S. 952, 994 (1996) (O'Connor, J., concurring) ("[I]f a State pursues that compelling interest by creating a district that substantially addresses the potential liability[], and does not deviate substantially from a hypothetical court-drawn § 2 district for predominantly racial reasons[], its districting plan will be deemed narrowly tailored.") (cleaned up). The record in this case, as the district court acknowledged, does not provide grounds for collaterally overruling the *Robinson* court's application of §2 to conditions in Louisiana or for assessing the constitutionality of other maps with two Black-opportunity districts.

This Court should reject Appellees' constitutional challenge to the State's reliance on §2-compliance as a compelling interest for adopting a second Black-opportunity district.

ARGUMENT

I. CONGRESS PROPERLY EXERCISED ITS BROAD CONSTITUTIONAL AUTHORITY TO ENACT §2, WHICH PERMITS THE LIMITED USE OF RACE TO REMEDY PRESENT-DAY DISCRIMINATION.

Louisiana enacted SB8, with its second majority-Black congressional district, to achieve specific political goals while responding to multiple federal-court rulings in the *Robinson* litigation. This Court also declined to review the *Robinson* decision, despite the State's assertion that the lower courts had misapplied the relevant legal standards. *Ardoin v. Robinson*, 143 S. Ct. 2654 (2023).

Subsequently, Louisiana "reasonably judged" that §2, as applied by the *Robinson* courts, offered a compelling interest supporting its decision to undertake remedial districting. *Cooper*, 581 U.S. at 306. The State complied with the Fourteenth and Fifteenth Amendments as well as §2, which Congress enacted pursuant to its expressly authorized powers under those Amendments.

A. Section 2 Is Within the Core of Congress's Authority To Legislate Under the Fourteenth and Fifteenth Amendments.

Congress acted in the core of its powers under the Fourteenth and Fifteenth Amendments in enacting §2. The Fourteenth and Fifteenth Amendments provide that "Congress shall have power to enforce" their provisions. U.S. Const. amend. XIV § 5; U.S. Const. amend. XV § 2. Thus, these Amendments "empower[] 'Congress,' not the Court, to determine in the first instance what legislation is needed to enforce" them. *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 205 (2009) (citation omitted).

Tellingly, the Fifteenth Amendment is the only place in the Constitution that explicitly mentions "race." U.S. Const. amend. XV § 1. And it does so to expressly delineate that "Congress shall have power to enforce" its bar on racial discrimination affecting the "right of citizens . . . to vote." *Id.* §§1-2. While the Fourteenth Amendment's breadth has since been understood to prohibit many other forms of discrimination, *see, e.g.*, *Tennessee v. Lane*, 541 U.S. 509, 550 (2004) (Rehnquist, C.J., dissenting), none involves the same "unremitting and ingenious defiance of the Constitution" that has characterized our nation's experience with racial discrimination in voting. *Katzenbach*, 383 U.S. at 309.

For this reason, racially discriminatory "practices . . . are distinctively violative of the principal purpose of the Fourteenth Amendment." *Lane*, 541 U.S. at 561 (Scalia, J., dissenting). Consequently, "Congress has full remedial powers to

effectuate the constitutional prohibition against racial discrimination in voting." *Katzenbach*, 383 U.S. at 326. This Court has held that Congress exceeded that power only when, in the Court's view, it has "attacked evils not comprehended by the Fifteenth Amendment," *id.*, or violated equal sovereignty principles without an adequate record that current conditions justified such differential treatment. *Shelby Cnty.*, 570 U.S. at 554.

Congress's amendments to §2 in 1982 were made against the backdrop of judicial decisions upholding similarly forceful remedial statutes, further confirming that Congress acted within its authority under the Fourteenth and Fifteenth Amendments in amending §2 to incorporate the results test, *contra* Appellee Br. 36-38. Just two years before Congress amended §2, this Court unequivocally held in *City of Rome v. United States* that "under the Fifteenth Amendment, Congress may prohibit voting practices that have only a discriminatory effect." 446 U.S. 156, 175 (1980); *see also* S. Rep. No. 97-417 ("Senate Report") at 40 (1982) (citing *Rome*). Congress also relied on this Court's unanimous decision upholding the VRA's national literacy test ban, *see id.* at 42-43 (citing *Oregon v. Mitchell*, 400 U.S. 112 (1970) (opinion of Black, J.)), which Congress had enacted based on "substantial evidence" that "literacy tests reduce voter participation in a discriminatory manner . . . throughout the Nation." *Mitchell*, 400 U.S. at 133-134 (opinion of Black, J.). These decisions inform this Court's present-day assessment of §2: "When the political branches of the Government act against the background of a judicial interpretation of the Constitution already issued, it must be understood

that in later cases and controversies the Court will treat its precedents with the respect due them under settled principles, including *stare decisis*, and contrary expectations must be disappointed." *City of Boerne v. Flores*, 521 U.S. 507, 536 (1997).

Congress followed the well-trodden paths laid in *Rome* and *Mitchell* in amending §2 in 1982. Before the amendment, Congress undertook an "extensive survey of what it regarded as Fifteenth Amendment violations that called out for legislative redress," including "many examples" that Congress and federal courts "took to be unconstitutional vote dilution . . . ." *Brnovich*, 594 U.S. at 659 (citing Senate Report 6, 8, 23-24, 27, 29); *accord Rogers v. Lodge*, 458 U.S. 613 (1982); *White v. Regester*, 412 U.S. 755 (1973). The remedies in many of these constitutional cases involve either creating or restoring majority-minority single-member districts. *See, e.g.*, *Rogers*, 458 U.S. at 627-628; *Connor v. Finch*, 431 U.S. 407, 424-425 (1977); *White*, 412 U.S. at 769. As this Court has made clear, some consideration of race may be needed to cure racial discrimination in redistricting. *See, e.g.*, *Milligan*, 599 U.S. at 41; *North Carolina v. Covington*, 585 U.S. 969, 977-978 (2018).

In amending §2 in 1982, Congress was well aware of its century-long failure to protect the rights of minority voters and the remedies necessary to correct this history of discrimination and deter future discrimination. *See Milligan*, 599 U.S. at 10. This comprehensive record demonstrated the shortcomings of doing anything less than banning discriminatory results under the *White* standard. *See id.* at 9-14. In adopting *White*'s results test, Congress sought to mitigate "the substantial risk that intentional

discrimination . . . will go undetected, uncorrected and undeterred," in part because of "the difficulties faced by plaintiffs forced to prove discriminatory intent . . . ." Senate Report 40. Congress also necessarily sought to make the same remedies available for a limited class of cases where a plaintiff proves discriminatory results, without requiring that they prove intentional discrimination. *See id.* at 31. In so doing, Congress appropriately exercised its authority to remedy and deter conduct that raises a significant risk of constitutional violations.

Unsurprisingly then, this Court has consistently concluded—from forty years ago to as recently as two years ago—that §2 is a constitutional exercise of congressional power. *See Milligan*, 599 U.S. at 41; *Miss. Republican Exec. Comm. v. Brooks*, 469 U.S. 1002 (1984). "Hard problems often require forceful responses" and the Constitution allows "Congress to 'enact[] reasonably prophylactic legislation' to deter constitutional harm.'" *Allen v. Cooper*, 589 U.S. 248, 261 (2020) (citation omitted). Congress rationally concluded that amending §2 to permit remedial redistricting in certain instances was needed to deter unconstitutional discrimination. "Congress's conclusions on that score are 'entitled to much deference'[.]" *Id.* at 261 (quoting *Boerne*, 521 U.S. at 536). And Appellees' broader argument that requiring "race-based redistricting in certain circumstances[] exceeds Congress's remedial or preventive authority under the Fourteenth and Fifteenth Amendments . . . is not persuasive in light of the Court's precedents." *Milligan*, 599 U.S. at 45 (Kavanaugh, J., concurring).

This precedent, which Appellees offer no reason to disturb—and to which *stare decisis* binds this Court—therefore resolves the Court's supplemental question: A state legislature acts constitutionally when it complies with a federal statute enacted pursuant to the Reconstruction Amendments and has a compelling interest in considering race to do so. *See SFFA*, 600 U.S. at 207; *Shaw II*, 517 U.S. at 909; *see also League of United Latin Am. Citizens v. Perry* ("*LULAC*"), 548 U.S. 399, 518 (2006) (Scalia, J., concurring in part and dissenting in part, joined in relevant part by Roberts, C.J., Thomas & Alito, JJ.) (concluding that states had a compelling interest in satisfying §5 of the VRA); *id.* at 475 (Stevens, J., concurring in relevant part, joined by Breyer, J.); *id.* at 490 (Souter, J., concurring in relevant part, joined by Ginsburg, J.); *Vera*, 517 U.S. at 991-992 (O'Connor, J., concurring) (explaining that, given its solid constitutional underpinnings, "it would be irresponsible for a State to disregard the §2 results test"); *Walen v. Burgum*, 700 F. Supp. 3d 759, 775 (D.N.D. 2023) (holding that a district survived strict scrutiny because the State had a compelling interest in complying with §2), *aff'd in relevant part, appeal dismissed in part*, 145 S. Ct. 1041 (2025) (mem.).

Today, §2 remains an appropriate and rational means of enforcing the Reconstruction Amendments. As interpreted, §2's "exacting requirements . . . limit judicial intervention" and provide a compelling interest to consider race only in those places where there is *present-day* evidence of "intensive racial politics" and where "the excessive role of race" *already* results in discrimination. *Milligan*, 599 U.S. at 30 (cleaned up); *see infra* Part I(B)-(C).

Ultimately, "[w]henever called upon to judge the constitutionality of an Act of Congress—'the gravest and most delicate duty this Court is called upon to perform'—[this Court] accord[s] 'great weight to the decisions of Congress.'" *Rostker v. Goldberg*, 453 U.S. 57, 64 (1981) (citation omitted). Congress rationally determined that the results test is needed to fully and finally eradicate unconstitutional discrimination in voting. *See, e.g.*, Senate Report 31 ("It was only after the adoption of the results test [in *White*] and its application by the lower federal courts [that] minority voters in many jurisdictions finally began to emerge from virtual exclusion from the electoral process."). Displacing Congress's judgment in the absence of the kind of violations of equal sovereignty and the extraordinary burdens on covered states found in §5, *see Shelby Cnty.*, 570 U.S. at 544-545, would exceed this Court's role.

B. As Construed by This Court in *Gingles*, §2's Permanent Ban on Racial Vote Dilution Permits Remedial Redistricting Only Where There Is "Good Reason" To Believe That Current Discrimination Can Be Proven.

Congress and this Court, from *Gingles* to *Milligan*, have long accounted for concerns that §2 would require consideration of race in inappropriate circumstances. In the statutory text and in its application under the *Gingles* framework, §2 builds in constraints to ensure its remedies are justified by current conditions. Based on the ongoing history of racial discrimination in voting described above, Congress rationally concluded that a permanent,

nationwide results test was "necessary to enforce the substantive provisions of the 14th and 15th Amendments." Senate Report 17.

Section 2 authorizes race-conscious remedies only where, when, and to the extent required to respond to a "regrettable reality" of ongoing unequal electoral opportunity based on race. *Id.* at 34. Only where a state makes "a strong showing of a pre-enactment analysis with justifiable conclusions" will it have "good reasons" to believe that §2 requires remedial redistricting. *Wis. Legislature v. Wis. Elections Comm'n*, 595 U.S. 398, 404 (2022). A valid court order affirmed on appeal necessarily constitutes a good reason. *Cf., e.g.*, *Abbott*, 585 U.S. at 616 (court's prior §2 findings provided State with "good reasons" to draw remedial district). But a good reason does not necessarily require an adjudicated violation. *See Cooper*, 581 U.S. at 306; *cf. also Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 194 (2017) (finding that a state had good reason to redistrict based on a desire to avoid a §5 violation).

Section 2's permanent nature does not mean that its application is without limitation. Congress ensured that §2's results test is appropriately constrained and requires a remedy only where race is already shaping political decision-making. To do so, Congress both codified the totality-of-circumstances standard that this Court devised to evaluate vote dilution claims in *White*, 412 U.S. at 765-766, and added a proviso expressly disclaiming any group's "right" to proportional representation. 52 U.S.C. § 10301(b); *see also Milligan*, 599 U.S. at 13.

These "meaningful constraints" limit §2's geographic and temporal scope. *Id.* at 26. Because "[f]orcing proportional representation is unlawful and inconsistent with this Court's approach to implementing § 2," no court or state can rely on §2 as a justification for remedial redistricting without specific evidence that current conditions satisfy §2's "exacting requirements." *Id.* at 28, 30; *accord Wis. Legislature*, 595 U.S. at 402-405 (enjoining a remedial map in absence of a record that current circumstances met the *Gingles* preconditions or totality analysis); *Abbott*, 585 U.S. at 619 (reversing a district court's vote dilution finding where "present local conditions" did not merit remedial relief). That is, §2 is "peculiarly dependent upon the facts of each case." *Milligan*, 599 U.S. at 19 (citation omitted). It serves as a compelling state interest in remedial redistricting only where a "searching *practical* evaluation of the past and *present* reality" reveals discrimination. *Id.* (cleaned up) (emphasis added). "[T]he very terms and operation of [§2] confine its application to *actual* racial discrimination." Senate Report 43.

To succeed under the *Gingles* framework, a §2 plaintiff must satisfy three preconditions. The first precondition requires §2 plaintiffs to prove that, based on the *present* decennial census, a mapmaker can draw a "reasonably configured" majority-minority district. *Milligan*, 599 U.S. at 18. The second and third preconditions require plaintiffs to establish that racially polarized voting is endemic in the relevant area, and that it usually leads to the defeat of the minority-preferred candidates.

If any one of the preconditions cannot be satisfied, the claim fails. If all three preconditions have been

met, then—and only then—may the court consider whether the plaintiff has also demonstrated that the totality of circumstances reveals a "past and *present*" reality of "polarized voting preferences" and "racially discriminatory actions taken by the State." *Milligan*, 599 U.S. at 26 (emphasis added).

The three *Gingles* preconditions, the totality-of-circumstances test, and their sequencing are inherently and by design sensitive to "changing conditions," and ensure that race-conscious remedies for §2 violations do not "extend indefinitely into the future." *Milligan*, 599 U.S. at 45 (Kavanaugh, J., concurring).

1. The *Gingles* preconditions require proof that present circumstances justify remedial redistricting.

To satisfy the first *Gingles* precondition ("*Gingles* I"), plaintiffs must prove that Black voters as a group are "sufficiently large and compact to constitute a majority in a reasonably configured district." *Wis. Legislature*, 585 U.S. at 402. A *Gingles* I district is "reasonably configured," *id.*, if it "take[s] into account 'traditional districting principles,'" *LULAC*, 548 U.S. at 433 (quoting *Abrams*, 521 U.S. at 91-92).

Gingles I plays a significant role in limiting remedial redistricting under §2 to circumstances where current conditions show a constitutionally acceptable remedy to a §2 violation. To succeed, §2 plaintiffs must "adduce[] at least one illustrative map that comport[s] with [this Court's] precedents" regarding racial gerrymanders. *Milligan*, 599 U.S. at 33 (plurality). Again, any *Gingles* I illustrative map must be based on the *present* census. *Cf. LULAC*, 548

U.S. at 438. Even if a reasonably configured remedial district could have been drawn based on a prior census and earlier residential patterns, §2 does not require states to continue drawing majority-minority districts in perpetuity when a new census and changing demographics no longer require it. *Cf. Cooper*, 581 U.S. at 302-304.

This is important because "as residential segregation decreases—as it has 'sharply' done since the 1970s—satisfying traditional districting criteria such as the compactness requirement 'becomes more difficult.'" *Milligan*, 599 U.S. at 28-29 (quoting T. Crum, Reconstructing Racially Polarized Voting, 70 Duke L. J. 261, 279 & n.105 (2020)). Section 2 litigation has been, and will likely increasingly be, "rarely . . . successful for just that reason." *Milligan*, 599 U.S. at 29. Indeed, in recent years, *Gingles* I has frequently foreclosed claims where plaintiffs could not draw a reasonably configured district. *See, e.g.*, *Petteway v. Galveston Cnty.*, 111 F.4th 596, 610-611 (5th Cir. 2024) (en banc); *League of United Latin Am. Citizens v. Abbott*, 767 F. Supp. 3d 393, 401-403 (W.D. Tex. 2025); *Simon v. DeWine*, No. 22-cv-612, 2024 WL 3253267, at *2-4 (N.D. Ohio July 1, 2024).

Thus, where no illustrative district can be drawn without substantially departing from traditional redistricting principles, *Gingles* I does not support a compelling interest for race-conscious redistricting. Only if, at the first step, a plaintiff can "adduce[] at least one illustrative map that comports with [this Court's] precedents" is a §2 claim allowed to move forward at all. *Milligan*, 599 U.S. at 33.

Nor does *Gingles* I require drawing a majority-minority district based solely on the percentage of the total population that the minority group comprises. "If *Gingles* demanded a proportional number of majority-minority districts, States would be forced to group together geographically dispersed minority voters into unusually shaped districts, without concern for traditional districting criteria such as county, city, and town lines. But *Gingles* and this Court's later decisions have flatly rejected that approach." *Milligan*, 599 U.S. at 43 (Kavanaugh, J.).

So limited, *Gingles* I is consistent with rational concerns about the prophylactic deterrence of unconstitutional conduct. For example, "where a State has split (or lumped) minority neighborhoods that would have been grouped into a single district (or spread among several) if the State had employed the same line-drawing standards in minority neighborhoods as it used elsewhere in the jurisdiction, the inconsistent treatment" can be strong evidence of unconstitutional discrimination. *Johnson v. De Grandy*, 512 U.S. 997, 1015 (1994); *see also Connor*, 431 U.S. at 422, 425 (finding that "unexplained departures from the neutral guidelines," which had the "effect of scattering Negro voting concentrations among a number of white majority districts," demonstrated the plan was "explicable only in terms of a purpose to minimize" minorities' votes).

Thus, where, as in *Robinson*, an additional opportunity district is offered that better respects race-neutral redistricting criteria than the enacted plan, such evidence provides a strong indication that something else is driving a state's decision-making. *See Robinson I*, 605 F. Supp. 3d at 850-851 (finding

that Louisiana rejected plans with two opportunity districts even though they better met its purported goals of low population deviation, compactness, and minimizing split precincts than the enacted plan). Such evidence is at least suggestive that the original plan was tainted by intentional discrimination. *See Singleton v. Allen* ("*Singleton III*"), No. 21-cv-1291, 2025 WL 1342947, at *202 (N.D. Ala. May 8, 2025) (describing a state's intentional prioritization of a majority-White district due to its "French and Spanish colonial heritage" at the expense of a majority-Black community); *Busbee v. Smith*, 549 F. Supp. 494, 517 (D.D.C. 1982) (finding that a state intentionally disparately treated a majority-Black community vis-à-vis a majority-White community of "mountain people"), *aff'd*, 459 U.S. 1166 (1983).

The second and third *Gingles* preconditions examine racial polarization and limit §2 to cases of systemic exclusion. They are satisfied if minority voters are politically cohesive as measured by their recent voting behavior, and the majority votes sufficiently as a bloc to usually defeat minority voters' preferred candidate. *See, e.g.*, *Milligan*, 599 U.S. at 21. *Gingles* requires evidence showing that racially polarized voting has occurred in recent elections in the relevant jurisdiction. *See id.* at 21 (citing *Singleton v. Merrill* ("*Singleton I*"), 582 F. Supp. 3d 924, 1016 (2022), which relied on elections since 2010); *Abbott*, 585 U.S. at 617 (reviewing elections since 2010); *LULAC*, 548 U.S. at 428-429 (reviewing only the most recent 2004 election).

Accordingly, where claims of racial polarization are based on outdated election results, elections in other states, or elections in another part of the state,

§2 plaintiffs cannot succeed. *See, e.g.*, *Gingles*, 478 U.S. at 103 (vote-dilution claims are "district-specific"). Likewise, in places where voting is no longer racially polarized, either because the minority group does not vote cohesively or because there is sufficient crossover voting for their candidates of choice to have a fair opportunity to be elected, courts reject §2 claims. *See, e.g.*, *Pierce v. N.C. State Bd. of Elections*, 97 F.4th 194, 211 (4th Cir. 2024); *Coca v. City of Dodge City*, No. 22-cv-1274, 2024 WL 3360446, at *34 (D. Kan. July 10, 2024); *Agee v. Benson*, No. 22-cv-272, 2023 WL 10947213, at *5 (W.D. Mich. Aug. 29, 2023) (three-judge court); *McConchie v. Scholz*, 577 F. Supp. 3d 842, 859-862 (N.D. Ill. 2021) (three-judge court); *cf. also Cooper*, 581 U.S. at 302-303.

But where voting is starkly racially polarized, leading to a pattern of persistent and ongoing electoral losses for candidates preferred by a cohesive minority voting bloc, as is true in Louisiana, those current conditions may give rise to the need for a race-conscious remedy for unlawful racial vote dilution. *Cf. Robinson III*, 86 F.4th at 597.

2. The totality-of-circumstances analysis requires significant evidence of current racial discrimination in voting.

After establishing the exacting *Gingles* preconditions, then (and only then) may a plaintiff attempt to show, "based on the totality of circumstances," that members of the minority group "have less opportunity . . . to elect representatives of their choice." 52 U.S.C. § 10301(b). The totality-of-circumstances analysis, too, focuses on "the frequency

of racially discriminatory actions taken by the State, past and *present*." *Milligan*, 599 U.S. at 26 (emphasis added). It also places additional guardrails on §2 claims to ensure any consideration of race for remedial redistricting is tied to current conditions.

The totality-of-circumstances inquiry examines a (non-exclusive) series of factors that test the role that race and racial discrimination currently play in the political process. Adapted from *White*, 412 U.S. at 766-767, and outlined in the Senate Report accompanying the 1982 VRA amendments, these factors (the "Senate Factors") include: (1) the history of voting-related discrimination; (2) the "extent" of racially polarized voting; (3) the current use of practices that "enhance the opportunity for [voting-related] discrimination"; (4) present-day exclusion from any "candidate slating processes"; (5) "the extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health"; (6) "overt or subtle racial appeals in political campaigns"; (7) "the extent to which members of the minority group have been elected to public office in the jurisdiction"; (8) lack of responsiveness by public officials to minorities' needs; and (9) whether the State's justification for using the "the contested practice . . . is tenuous." *Gingles*, 478 U.S. at 44-45.

Demonstrating that proof of discriminatory results and discriminatory intent often overlap, these factors originated in challenges to vote dilution under the Constitution, *see Milligan*, 599 U.S. at 41 (citing *White*, 412 U.S. at 765), and many of them are "relevant to the issue of intentional discrimination." *Rogers*, 458 U.S. at 623-624; *see, e.g.*, *LULAC*, 548 U.S. at 440 (applying these factors to conclude that a plan

"b[ore] the mark of intentional discrimination"). A decisionmaker's history of discrimination (Factors 1, 3, and 5); racial appeals (Factor 6); a discriminatory impact (Factors 2 and 7); and whether elected officials are responsive or a decision has tenuous justifications (Factors 8 and 9) are all evidence of discriminatory intent. *See generally Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266-267 (1977); *accord Flowers v. Mississippi*, 588 U.S. 284, 301-303 (2019).

Several of the factors that bear the most "heavily on the issue of purposeful discrimination," *Rogers*, 458 U.S. at 623-624, are also the most directly related to the present-day role of race in the political process and electoral outcomes. *Gingles*, 478 U.S. at 48 n.15. Factors 2, 3 and 6 require proof of present discriminatory voting practices and recent racial polarization and campaign appeals, which indicate that race continues to be a potent political issue. *See Gingles*, 478 U.S. at 36-37. Where election data shows voting is severely polarized along racial lines and where candidates rely on racial appeals to motivate turnout, it suggests that race is playing an outsized role in driving political behavior in the present day. *See, e.g.*, *Singleton I*, 582 F. Supp. 3d at 1022-1024.

Other factors also indicate a discriminatory purpose. Factor 8 asks whether elected officials have been responsive to minority voters' particularized needs. *See Gingles*, 478 U.S. at 37. When the evidence shows that elected officials ignore or are hostile to their minority constituents, the race-based harm that results from lack of an equal voice in the electoral process may justify a race-conscious remedy. *See Rogers*, 458 U.S. at 625-626.

Factor 9 asks courts to analyze the jurisdiction's proffered justifications for the electoral system or redistricting plan challenged in the litigation. Rationales bearing only a tenuous relationship to the choice of the particular, challenged districting scheme—as the *Robinson* court found, 605 F. Supp. 3d at 850-851—may provide circumstantial evidence that race and racial discrimination have influenced the choice rather than other, legitimate considerations. *See LULAC*, 548 U.S. at 457-458.

Senate Factors 1 and 5 expressly focus on historical discrimination, but only to the extent such discrimination bears on present conditions and results in modern-day disparities in voter turnout, education, employment, or other barriers to participation that have an ongoing impact. *See Gingles*, 478 U.S. at 36-37; *see also Robinson I*, 605 F. Supp. 3d at 846-848 (rejecting Louisiana's argument that "Plaintiffs did not present any meaningful recent evidence of official discrimination").

Properly applied, the totality-of-circumstances test allows courts to "distinguish[] between situations in which racial politics play an excessive role in the electoral process, and communities in which they do not." Senate Report 33; *see, e.g.*, *Fusilier v. Landry*, 963 F.3d 447, 462-463 (5th Cir. 2020).

This test is sensitive to changes in the role of race in the political process, and as race diminishes as a salient driver of politics and the political process in a jurisdiction—as it has done in many parts of the country—plaintiffs will no longer be able to succeed on §2 claims. *Cf. Abbott*, 585 U.S. at 619 (denying relief where plaintiffs failed to show that an "opportunity

district is possible at the present time"). The test ensures that §2 only serves as a compelling interest in places where the "excessive role of race in the electoral process . . . denies minority voters equal opportunity to participate." *Milligan*, 599 U.S. at 30 (cleaned up).

Unfortunately, racial progress in this country is not always linear or lasting. Section 2's permanence is a critical check against the backsliding strictly prohibited by the Fourteenth and Fifteenth Amendments. *Cf. Bartlett v. Strickland*, 556 U.S. 1, 24 (2009) (plurality opinion) ("[A] showing that a State intentionally drew district lines in order to destroy otherwise effective crossover districts, that would raise serious questions under both the Fourteenth and Fifteenth Amendments.").

C. This Court Has Established Additional Safeguards Against Excessive Consideration of Race in Remedying a §2 Violation.

Even when the *Gingles* standard has been satisfied, §2 is subject to additional constraints that limit the use of race for remedial purposes. Remedying a §2 violation does not always require a majority-minority district. *Cf. Cooper*, 581 U.S. at 302-304. In fashioning a remedy, race may be considered only for the purpose of ensuring that minority voters enjoy an equal opportunity to participate and elect representatives of their choice and only to the extent necessary to provide that opportunity. *Cf. Covington*, 585 U.S. at 977-978; *Vera*, 517 U.S. at 992 (1996) (O'Connor, J., concurring). Section 2 does not require mechanical population targets, racial quotas, or proportional representation (and indeed, expressly

disclaims any such requirement), and it "never requires" consideration of race to draw districts that violate traditional redistricting principles. *Milligan*, 599 U.S. at 30 (cleaned up); *see also Abrams*, 521 U.S. at 93 (finding that a court plan drawn to remedy racial gerrymanders also comported with §2 where the three Black-preferred "incumbents won elections under the court plan, two in majority white districts running against white candidates"); *Lawyer*, 521 U.S. at 581 (upholding a similar district that was "not a majority black district," and "'offer[ed] to any candidate, without regard to race, the opportunity' to seek and be elected to office" (citation omitted)). Properly applied, §2 is a quintessential civil rights law at the heart of Congress's enforcement authority: It authorizes some consideration of race, but only when doing so is required to remedy identified racial discrimination.

The racial predominance standard developed by this Court further ensures that §2 remedies do not result in excessive consideration of race in the redistricting process. *See, e.g.*, *Miller v. Johnson*, 515 U.S. 900, 915-916 (1995). The predominance standard recognizes that legislators and map drawers are always aware of race, and that, in itself, does not raise constitutional concerns. *See Shaw v. Reno* ("*Shaw I*"), 509 U.S. 630, 646 (1993). This recognition reflects the reality that legislators are familiar with the communities in the states or localities where they serve, including those communities' racial demographics, and that it is entirely legitimate to draw communities with similar needs together when creating redistricting plans, even when doing so may affect the racial makeup of a district. *See Miller*, 515 U.S. at 915-916; *Vera*, 517 U.S. at 961 (plurality

opinion). For this reason, this Court has long rejected the notion that being aware of race in creating a district with a particular racial makeup is inherently suspect. *See Covington*, 585 U.S. at 977-978. So too has the Court rejected the notion that the intentional creation of a district with a particular racial makeup is *per se* subject to strict scrutiny. *See Bethune-Hill*, 580 U.S. at 192; *Vera*, 517 U.S. at 962 (plurality opinion); *see also Milligan*, 599 U.S. at 34 n.7. "Application of the [*Shaw*] standard does not throw into doubt the vast majority of the Nation's 435 congressional districts, where presumably the States have drawn the boundaries in accordance with their customary districting principles. That is so even though race may well have been considered in the redistricting process."[1] *Miller*, 515 U.S. at 928-929 (1995) (O'Connor, J., concurring).

Where "race for its own sake," *Bethune-Hill*, 580 U.S. at 188, is the "predominant factor motivating the placement of voters in or out of a particular district," however, a redistricting map must satisfy strict scrutiny, *Wis. Legislature*, 595 U.S. at 401. "[A] State can satisfy strict scrutiny if it proves that its race-based sorting of voters is narrowly tailored to comply with the VRA." *Id.*; *see Abbott*, 585 U.S. at 616 (upholding a district where a state "had 'good reasons' to believe that the district . . . satisfied the *Gingles*

[1] If any use of race in redistricting were *per se* suspect, challenges to the intentional drawing of majority-White districts would presumably become easier to prove. *Cf. Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1 (2024); *Hodges v. Albritton*, No. 24-cv-879, 2025 WL 2391348 (M.D. Fla. Aug. 18, 2025); *Christian Ministerial All. v. Jester*, No. 23-cv-471, 2025 WL 1635282 (E.D. Ark. June 9, 2025).

factors"). But in the rare instances where government actors exceed the permissible bounds of §2-compliance, the *Shaw* standard requires courts to reject districting maps that predominantly sort voters on the basis of race. *See Milligan*, 599 U.S. at 27-29 (summarizing various cases where this Court found racially predominant plans unconstitutional because they were not justified by §2).

A rigid application of §2 that mandated arbitrary racial targets would violate *Shaw*'s directive that §2 remedies should be "narrowly tailored." *Shaw II*, 517 U.S. at 908. As this Court cautioned, §2 "should not be interpreted to entrench majority-minority districts by statutory command, for that . . . could pose constitutional concerns," by increasing, rather than reducing, the degree of race-conscious decision-making involved in redistricting determinations. *Bartlett*, 556 U.S. at 23-24 (plurality opinion); *see also Cooper*, 581 U.S. at 302-304.

Notably, however, in most cases (as here), race does not predominate. For example, §2 remedies can include crossover districts or districts drawn based solely on traditional redistricting criteria like communities of interest, compactness, or avoiding county splits. *See, e.g.*, *Singleton v. Allen*, No. 21-cv-1291, 2023 WL 6567895, at *16 (N.D. Ala. Oct. 5, 2023) (adopting a remedial plan drawn without referencing racial data with a new "opportunity" district that is "not majority Black"); *Baltimore Cnty. Branch of NAACP v. Baltimore Cnty.*, No. 21-cv-3232, 2022 WL 888419, at *5 (D. Md. Mar. 25, 2022) (adopting a 40% Black remedial district where "the Black-preferred candidate does not *always* win" (emphasis in original)); *see also United States v. Vill.*

of Port Chester, 704 F. Supp. 2d 411, 453 (S.D.N.Y. 2010) (adopting a cumulative voting system).

In striking down past racial gerrymanders, this Court has repeatedly approved remedial plans that maintained Black electoral opportunity without requiring undue consideration of race. In *Covington*, the court affirmed a remedial plan that reduced the Black population in certain districts but nonetheless maintained Black voters' equal opportunity to elect candidates of their choice. *Covington v. North Carolina*, 283 F. Supp. 3d 410, 455-456 (M.D.N.C. 2018), *aff'd in part, rev'd in part*, 585 U.S. at 969. In *Abrams*, this Court affirmed a remedial plan that eliminated three unconstitutional racially gerrymandered majority-Black districts. 521 U.S. at 78-79. This Court accepted the remedial plan in part because it continued to permit the three Black-preferred incumbents to win elections in newly revised crossover districts that did not unduly prioritize race. *Id.* at 91-92. In *Lawyer*, this Court similarly approved of replacing a racially gerrymandered majority-Black district with a crossover district that both complied with race-neutral traditional redistricting criteria and ensured that "all candidates, regardless of race, would have an opportunity to seek office, with 'both a fair chance to win and the usual risk of defeat.'" 521 U.S. at 575 (citation omitted); *accord Wis. Legislature*, 595 U.S. at 405-406 (requiring courts to consider "whether a race-neutral alternative" would dilute the vote of minority voters).

Taken together, the *Gingles* and *Shaw* standards "harmonize[] the[] conflicting demands" of both protecting against race becoming a predominant

factor in redistricting and respecting Congress's power to discourage (and provide a remedy for) racially discriminatory dilution. *Abbott*, 585 U.S. at 579. In devising the *Shaw* standard, the Court recognized "§2's role as part of our national commitment to racial equality" and has properly "reconciled [§2] with the complementary commitment of our Fourteenth Amendment jurisprudence to eliminate the unjustified use of racial stereotypes." *Vera*, 517 U.S. at 993 (O'Connor, J., concurring). Collectively, the *Gingles* and *Shaw* standards continue to prohibit government actors or plaintiffs from using §2 to force unlawful proportionality or impose unconstitutional remedies where race might predominate in a manner that does not satisfy strict scrutiny. *See Milligan*, 599 U.S. at 31-32.

D. Section 2—Like Other Permanent Civil Rights Laws Targeting Only Identified Instances of Discrimination—Is Self-Limiting and Does Not Require an Expiration Date.

As set forth above, Congress wrote an evergreen statute in requiring §2 plaintiffs to prove current race discrimination. This built-in focus on current conditions obviates the need for a sunset date. *See* Senate Report 43 ("Section 2 avoids the problem of potential overinclusion entirely by its own self-limitation."). There is no justification for imposing one now.

The logic of *Shelby County*, which invalidated the preclearance coverage formula in §4(b), does not apply here. 570 U.S. at 550. Unlike §4(b), §2's "permanent, nationwide ban on racial discrimination in voting"

does not impinge on the "equal sovereignty" of the states. *Id*. at 544, 557. As explained at length above, §2 requires proof that current conditions, including recent census and elections data, reveal present-day discrimination.

Section 2 likewise does not rely on the "extraordinary" remedy of preclearance, which shifted the burden from challengers of a law to the state. *Id.* at 549. Rather, it authorizes a race-conscious remedy only after plaintiffs have satisfied their burden of proving that a challenged practice, in the totality of circumstances, has resulted in discrimination. *See* 52 U.S.C. § 10301. As this Court observed in *Shelby County*, there are "important differences between [post-enactment lawsuit] proceedings and preclearance proceedings[.]" 570 U.S. at 545.

Furthermore, unlike §4(b), §2 does not rely on a formula or other statutory standards that are tied to conditions at the time of its amendment in 1982. Under the *Gingles* framework, a §2 violation can be shown only based on "current data reflecting current needs," not "decades-old data relevant to decades-old problems." *Shelby Cnty.*, 570 U.S. at 553. Nothing in a §2 case ties violations to data or practices from the distant past, like "literacy tests and low voter registration and turnout in the 1960s and early 1970s." *Id.* at 551.

The §2 results test is also more stringent than the §5 retrogressive effects test at issue in *Shelby County*. To obtain relief, §2 places the burden on plaintiffs to prove the multitude of factors relevant under the *Gingles* standard. In contrast, §5's effects test places the burden on the jurisdiction defending the

challenged practice and requires remedial action whenever a change would likely have a retrogressive effect. *See Bethune-Hill*, 580 U.S. at 183.

Where the Court *has* imposed durational limits on the consideration of race in other contexts, it has done so because the compelling interest justifying a departure from the Equal Protection Clause's "equal treatment" was not designed to remedy specific instances of discrimination. *See, e.g.*, *Grutter v. Bollinger*, 539 U.S. 306, 328 (2003) (compelling interest in attaining a "diverse student body"). For example, with respect to college admissions, this Court had recognized a compelling interest in student diversity, but it repeatedly rejected arguments that affirmative action is justified to remedy past societal discrimination in general. *See Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 310 (1978). And the Court has placed time limits on the use of affirmative action programs in pursuit of diversity because, as construed in *SFFA*, such programs inject race into a process (*e.g.*, university admissions) where it would not otherwise be operating with any logical, measurable endpoint. *See SFFA*, 600 U.S. at 260-261. In contrast, §2 comes into play only where race is already operating in the political process and leading to discriminatory results, and tailored consideration of race is therefore needed to remedy the proven, "identified discrimination." *Shaw II*, 517 U.S. at 909.

Section 2 remedial districts are also not set in stone in perpetuity—further obviating the need to set a sunset date. Each new census provides a natural end point for each §2 remedial order. Consistent with this reality, court orders enforcing §2 usually contain durational limits. *See Milligan v. Allen*, No. 21-cv-

1530, 2025 WL 2451593 (N.D. Ala. Aug. 7, 2025) (imposing a remedial map only until the 2030 census); *see also Thomas v. Reeves*, 961 F.3d 800, 801 (5th Cir. 2020) (en banc) (vacating a mooted §2 order because the district would not be used after a new census). States too must reassess after each census. *Cf. Cooper*, 581 U.S. at 285, 294-295. This is rational because residential patterns, voting patterns, and other circumstances can and do change over time.

Moreover, a rule that Louisiana has no compelling interest in remedying racial vote dilution would expose states to liability for any attention to minority electoral opportunity, leaving the State in the double bind of either failing to remediate racial discrimination or being liable anew for the mere consideration of race. *See* La. Br. 42; *see also Bethune-Hill*, 580 U.S. at 196.

In other contexts, this Court has declined to impose a sunset date on civil rights statutes. *See Lane*, 541 U.S. at 533-534 (upholding a permanent national ban on discrimination against people with disabilities with respect to government services); *Nev. Dep't of Human Resources v. Hibbs*, 538 U.S. 721, 735, 740 (2002) (upholding a permanent law designed to address sex discrimination).

Given the severity of our nation's experience with racial discrimination and exclusion, this is especially important where Congress has banned discrimination based on race. There is no question that bans on racial segregation or discrimination in contracting, housing, employment, or public accommodations should be permanent. *See Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 412-413 (1968) (upholding 42 U.S.C. § 1981 under

the Thirteenth Amendment). There is equally no question that the VRA's prophylactic bans on literacy tests and poll taxes are—and should remain—permanent. *See* 52 U.S.C. §§ 10303(e), 10501, 10306(b); *accord Morse v. Republican Party of Va.*, 517 U.S. 186 (1996); *Katzenbach v. Morgan*, 383 U.S. 301, 309 (1966). So too with §2, which is the VRA's overarching check against any voting-related discrimination. 52 U.S.C. § 10301(a).

Appellees' suggestion that the Court write a sunset date into Congress's evergreen statute is illogical, violates the separation of powers, and should be rejected.

II. SECTION 2 REMAINS NECESSARY TO REMEDY CURRENT RACIAL DISCRIMINATION AND IS NOT BEING ABUSED.

"[R]acial discrimination still occurs and the effects of past racial discrimination still persist. Federal and state civil rights laws serve to deter and provide remedies for current acts of racial discrimination." *SFFA*, 600 U.S. at 317 (Kavanaugh, J., concurring). Section 2's protections advance us toward the "goal of a political system in which race no longer matters—a goal that the Fourteenth and Fifteenth Amendments embody, and to which the Nation continues to aspire." *Shaw I*, 509 U.S. at 657. In doing so, §2 has enhanced the integrity of our multi-racial democracy and brought us closer to our constitutional ideals under the Reconstruction Amendments.

The VRA is "the most successful civil rights statute in the history of the Nation." *Milligan*, 599 U.S. at 10 (citation omitted). Yet despite that success,

"voting discrimination still exists; no one doubts that." *Shelby Cnty.*, 570 U.S. at 534. Without §2, minority voters would continue to face extreme instances of discrimination. For example, within months after this Court affirmed an injunction against Alabama's congressional map for diluting Black voting strength under §2's results test, *see Milligan*, 599 U.S. at 42, the legislature simply drew a new map that perpetuated the exact same §2 violation, *see Singleton v. Allen* ("*Singleton II*"), 690 F. Supp. 3d 1226, 1315-1317 (N.D. Ala. 2023)*, stay denied sub nom.*, *Allen v. Milligan*, 144 S. Ct. 476 (2023). Instances like this show that voters still need §2's protections because, as Appellants proved in *Robinson* and the State acknowledged in enacting SB8, "racial discrimination . . . [is] not ancient history." *Bartlett*, 556 U.S. at 25 (plurality opinion).

Accepting Appellees' arguments would upend decades of precedent that have successfully constrained the use of race for remedial purposes to proven instances of ongoing racial discrimination. And it would risk unraveling §2 altogether, thereby displacing Congress's judgment about the most appropriate and effective means for safeguarding the Reconstruction Amendments protections against racial discrimination in voting.

Removing §2's protections in Louisiana will not end discrimination there or lead to a race-blind society, but it may well lead to a severe decrease in minority representation at all levels of government in many parts of the country. *See* Br. of Amici Curiae Professors Jowei Chen, Christopher S. Elmendorf, Nicholas O. Stephanopoulos, and Christopher S. Warshaw in Support of Appellees/Respondents, *Allen*

v. Milligan, 599 U.S. 1 (2023), 2022 WL 2873376, at *21-28 (hereinafter "Chen & Stephanopoulos Br.").

Without §2, jurisdictions could simply eliminate minority opportunity districts even where they remain necessary for voters of color to have any opportunity to elect candidates of choice, wiping out minority representation and re-segregating legislatures, city councils, and school boards—as some have recently attempted to do. *See, e.g.*, *Patino v. City of Pasadena*, 230 F. Supp. 3d 667, 718 (S.D. Tex. 2017) (holding that a city violated §2 and the Constitution by dismantling Latino opportunity districts in its city-council map). Districts based in obvious majority-minority communities, like Harlem or Tuskegee, could be divided along obvious racial lines without consequence. And voters of color would once again be shut out of policy-making that affects their everyday lives. Protecting against this outcome is §2's role and was Congress's purpose in adopting it.[2]

[2] This is not a partisan issue: Most §2 cases allege that *nonpartisan* local election plans have locked minority voters out of the political process. *See, e.g.*, *Coca v. City of Dodge City*, 669 F. Supp. 3d 1131, 1136 (D. Kan. 2023); *Ala. State Conf. of NAACP v. City of Pleasant Grove*, 372 F. Supp. 3d 1333, 1340 (N.D. Ala. 2019). And both major parties could create more extreme and more racially dilutive gerrymanders if they were not under the constraints of §2. *See, e.g.*, *Baltimore Cnty. Branch of NAACP v. Baltimore Cnty.*, No. 21-cv-3232, 2022 WL 657562, at *14 (D. Md. Feb. 22, 2022) (enjoining a map passed by a Democratic-controlled council); *Pope v. Cnty. of Albany*, 94 F. Supp. 3d 302, 325 (N.D.N.Y. 2015) (finding a §2 violation in a county "dominated by the County Democratic Party"); *Black Pol. Task Force v. Galvin*, 300 F. Supp. 2d 291, 313-314 (D. Mass. 2004) (three-judge court) (finding that the state intentionally

Thus, eliminating §2 as a compelling interest in Louisiana will not eliminate race-based redistricting. Rather, it will bind the hands of the courts and ensure that many cases of "actual" intentional discrimination go unremedied—the very concern that animated Congress's adoption of the amended statute in 1982. *See* Senate Report 31 ("It was only after the adoption of the results test [in *White*] and its application by the lower federal courts that minority voters in many jurisdictions finally began to emerge from virtual exclusion from the electoral process.").

At bottom, Appellees' problem with §2 is a policy dispute masquerading as a constitutional argument. Appellees contend that §2 is being "abused" in cases before "single-judge courts" to force new majority-minority districts in inappropriate cases. This is flatly wrong.

In fact, there is no evidence in the record or recent history to support the concern that §2 is being abused, and Appellees cite no examples of such abuse. Appellee Br. 38. On the contrary, as discussed above, the *Gingles* framework continues to weed out and serve as a formidable barrier to plaintiffs who are unable to satisfy its requirements or where current conditions otherwise do not merit relief. And these failures do not account for the many potential claims of racial discrimination in voting that are never brought under §2 because of the inability of plaintiffs to satisfy the *Gingles* preconditions, totality-of-circumstances, or the *Shaw* standards.

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eliminated a Black opportunity district to protect Democratic incumbents).

Section 2 has not resulted in proportional or near-proportional representation in the South or the nation as whole. *See* Chen & Stephanopoulos Br. at 9-11. Nor has §2 required proportionality even in those cases where plaintiffs have seen partial successes. *See, e.g.*, *Ala. State Conf. of the NAACP v. Allen*, No. 21-cv-1531, 2025 WL 2451166 (N.D. Ala. Aug. 22, 2025) (declining to consider proportionality, and rejecting one of plaintiffs' proposed districts because, in the court's view, it did "not serve traditional districting principles"); Order at 15, *Pendergrass v. Raffensperger*, No. 21-cv-5339 (N.D. Ga. Dec. 28, 2023), Dkt. No. 334 (approving a §2 remedy that did not change the number of opportunity districts for Congress).

In any event, assuming arguendo that §2 or *Gingles* were being misapplied in some cases, the solution would be further guidance to the lower courts in a case in which §2 has actually been applied. Alleged "abuse" of §2 by litigants or the courts is not grounds for finding it unconstitutional.

III. APPELLEES' AS-APPLIED CHALLENGE TO §2'S CONSTITUTIONALITY IN LOUISIANA FAILS.

Though they failed to introduce any evidence to collaterally attack the *Robinson* courts' findings as to current race discrimination in the 2022 congressional map, Appellees now contend, for the first time at pages 36-38 of their brief before this Court last Term, that §2 is outdated and can no longer be constitutionally applied in Louisiana. In making this argument, Appellees do not argue that §2 was unconstitutional when enacted in 1965 or when it was

amended in 1982. Appellee Br. 36-38. Nor do they argue that the statute today is facially unconstitutional. *Id.* Instead, Appellees raise an as-applied constitutional challenge to the specific use of the VRA in Louisiana "since January 2024" to justify remedial redistricting. *Id.* at 38.

Although they offer no meaningful evidence or argument to support this claim, their argument correctly notes that an as-applied constitutional challenge to Louisiana's consideration of race in fashioning a remedy for the §2 violation identified in *Robinson* cannot be resolved simply as a question of law. *Id.* It raises deeply factual questions concerning "Black Louisianans' needs." *Id.* at 37 (citation omitted).

Appellees' constitutional challenge to Louisiana's reliance on §2 fails. As Appellees acknowledge, because they did not raise the issue, there was "zero evidence" at trial on what "Black Louisianans' needs" might be or why Louisiana could not constitutionally enact SB8 in response to court findings of a proven instance of racial vote dilution. *Id.* at 38.

The only relevant evidence is in the voluminous record in *Robinson*, which seven federal judges agreed showed a §2 violation based on a reasoned application of precedent. The *Robinson* decisions were amply supported by that district court's finding that conditions in Louisiana unequivocally show both that the dual constraints of the *Gingles* framework and *Shaw*'s racial predominance standard are adequate to the task of keeping §2 appropriately constrained, and that creating a second Black-opportunity district was appropriate and necessary to remedy the §2 violation.

A. Because Appellees Failed To Raise This Issue in the Expedited Trial Proceedings Below, There Is No Factual Record To Support the As-Applied Challenge.

For the first time on appeal to this Court, Appellees raised the argument that the Constitution requires an end to race-conscious remedies even though the *Robinson* courts held there was ongoing unlawful racial vote dilution in the 2022 congressional map. Appellee Br. 36-38. Thus, Appellees ask the Court to reconsider §2's constitutionality as applied here, with no factual record, a mere two years after this Court reaffirmed decades of precedent holding that §2 is "'an appropriate method of promoting the purposes of the Fifteenth Amendment,'" *Milligan*, 599 U.S. at 41 (citing *Rome*, 446 U.S. at 177).

Because Appellees failed to raise this issue below, the Court cannot and should not reach their constitutional challenge in the first instance. There is no record evidence of changed conditions since the *Robinson* court's findings in 2022 that led to the Legislature's enactment of SB8. Rather than an evidentiary record, Appellees assert only an *ipse dixit*, that SB8 was not "justified by Black Louisianans' needs." Appellee Br. 37.

Appellees' waiver of this claim below is not simply a formality. It served to deprive this Court of a record on which it can address the fact-intensive question whether current conditions in Louisiana constitutionally justify the continued application of §2 in the state. *See Singleton v. Wulff*, 428 U.S. 106, 120 (1976) (inappropriate for appellate court to address fact-bound issues not passed on by the court below and

with no evidentiary record). Because Appellees did not raise these constitutional arguments below, *no one* put on *any* evidence about whether Black Louisianans' needs or current conditions in the State justified §2's application, and the district court made no factual or legal findings on it.[3] *See Callais v. Landry*, 732 F. Supp. 3d 574, 607-608 (W.D. La. 2024).

Without a record, this Court simply has no basis for addressing Appellees' constitutional challenge for the first time on appeal.[4] *Cf. Milligan*, 599 U.S. at 22-23 (describing the "careful factual findings" needed for §2 to justify remedial districting). Even if Appellees had raised a facial challenge—and they have not—the Court still lacks any factual basis to assess the constitutionality of §2's application in Louisiana or anywhere else in the country. *See United States v. Raines*, 362 U.S. 17, 24-26 (1960) (court cannot find statute facially unconstitutional if it cannot conclude that statute was unconstitutionally applied in the case before it).

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[3] It is also dubious that any record would support the conclusion that one state should forever after be exempt from an evergreen statute banning racial discrimination in voting presently and prospectively nationwide.

[4] Other cases that squarely raise questions based on an ample trial record about whether and under what circumstances §2 may constitutionally authorize a race-conscious remedy are or will likely soon be pending before this Court. *E.g.*, *Milligan v. Allen*, No. 25A110 (S. Ct. July 25, 2025) (granting extension of time to docket an appeal from a three-judge district court's final judgment enjoining Alabama's 2023 congressional plan under §2).

B. Based on the Record of Current Conditions Established in *Robinson*, §2 Provided Louisiana with a Compelling Interest in Remedial Redistricting.

Even if Appellees' constitutional claim were properly presented, their argument would fail on its merits because the Legislature relied on court orders finding unlawful racial vote dilution in the previous congressional map. The findings of the *Robinson* district court were based on evidence of ongoing residential segregation, extreme racially polarized voting, and tenuous justifications for cracking majority-Black communities and rejecting non-dilutive maps, as well as other evidence showing the existence of unlawful vote dilution in the 2022 map.

These findings gave the Legislature a compelling interest in redrawing the map to include a second Black-opportunity district. Appellees offer this court no evidence that those circumstances had changed by "January 2024" (Appellee Br. 36-38) or that §2 was unconstitutionally (or even incorrectly) applied in *Robinson*. Instead, they predicate their constitutional argument on unsupported and vague factual claims about changing demographics in Louisiana. But each and every one of these assertions is amply addressed (and rejected) by the *Robinson* courts in a proper application of the *Gingles* and *Shaw* lines of cases.

First, Appellees assert, based on one of their experts' vague statements, that Louisiana's Black population has become too dispersed and integrated to support a remedial §2 district. Appellee Br. 27-28. This is the only record evidence that Appellees cite for their claim that §2 is no longer constitutional in

Louisiana. But *Gingles* I demands consideration of this circumstance, and Louisiana made that very argument in *Robinson*. *See Robinson I*, 605 F. Supp. 3d at 826. The *Robinson* courts specifically found that segregation presently remains a fact of Louisiana's residential geography. *See id.* at 784 (recognizing "well-known and easily demonstrable fact" of "historical housing segregation" in Louisiana, "which still prevails in the current day"). Indeed, maps in Appellees' own evidence show how starkly segregated Louisiana remains. *E.g.*, J.A. 373-374. Whatever progress may have been made recently on this front, §2 still has force and provides a necessary remedy for race discrimination in Louisiana.

Likewise, Appellees' unsupported assertion that Louisiana's Black population "has flatlined," Appellee Br. 38, is conclusively refuted by the findings in *Robinson*. Based on expert evidence and census data, the *Robinson* district court concluded that Louisiana's Black population *grew* in the decades between 1990 and 2020. By comparison, the White population collapsed—dropping by 10 percentage points from about 66% to 56% in 1990 to 2020. *Robinson I*, 605 F. Supp. 3d at 778-779. The White population fell in both relative and absolute terms in the last decade as compared to the growing Black population. *Id.* As a result, under the 2022 map, White Louisianians were dramatically overrepresented—holding majorities in 83% of the State's congressional districts, *id.* at 851, despite being a mere 56% of the State's total population, *id.* at 779. And they remain greatly overrepresented even under SB8.

Appellees appear to acknowledge that the totality-of-circumstances factors keep §2 tethered to

contemporary reality, Appellee Br. 38, but they nevertheless urge the Court to impose an expiration date on §2 and hold that it can no longer be constitutionally applied in Louisiana. Yet each of Appellees' unsupported factual assertions was tested through an evidentiary hearing in *Robinson* and considered, along with other evidence of racialized politics and ongoing discrimination, in the totality of the circumstances. The *Robinson* courts concluded that current conditions in Louisiana demanded a remedy for the vote dilution perpetrated by the 2022 plan.

For example, the *Robinson* district court found that Louisiana's justifications for enacting a plan that packed and cracked majority-Black communities was "tenuous." *Robinson I*, 605 F. Supp. 3d at 850. Despite Louisiana's purported goals of prioritizing low population deviation, compactness, and minimizing parish, municipal, and precinct splits, "proposed maps with higher levels of compactness and with zero split precincts were rejected [by the Legislature] when they had two majority-minority districts." *Id.* at 850-851. The court found that "lawmakers did not stand by their proffered justifications when they voted for the enacted map." *Id.* Legislators' inability to articulate a plausible reason for preferring a less compact map that denied electoral opportunity to Black voters constituted significant evidence that the 2022 plan violated §2. *Id.*; *cf. Major v. Treen*, 574 F. Supp. 325, 352 (E.D. La. 1983) (finding that Louisiana's dissection of Orleans Parish, despite "virtually all neutral" guidelines supporting keeping it in a single, majority-Black congressional district, suggested intentional discrimination).

Evidence of extreme racial polarization, the complete absence of Black elected officials outside of majority-Black districts, a recent history of discrimination in voting and racial appeals, the cracking of predominantly Black communities in favor of keeping predominantly White ones whole, and other factors also provided evidence that Louisiana's racialized politics deprived Black voters of an equal opportunity to elect their preferred candidates. *Robinson I*, 605 F. Supp. 3d at 784-789, 829, 841, 844-848, 850-851; *see Milligan*, 599 U.S. at 19-23 (citing similar evidence); *Robinson III*, 86 F.4th at 600 (noting that the case is nearly "identical" to *Milligan*).

Rather than grapple with the *Robinson* decision, which the Legislature relied on explicitly when it enacted SB8, or any other evidence relevant to ongoing racial discrimination in redistricting in Louisiana, Appellees rely on *Hays v. Louisiana*, 936 F. Supp. 360 (W.D. La. 1996), to support their as-applied challenge to §2. Appellee Br. 38. They obliquely suggest that if *Hays* held that the State could not rely on §2-compliance to justify a map with two majority-Black districts out of seven, then it cannot justify a plan today with two majority-Black districts out of six. *Id*. The implication is that only an improper reliance on proportional representation could justify a plan with two majority-Black districts in 2024.

But *Hays* is a case that considered a different map, with different asserted justifications, based on a census and circumstances in Louisiana thirty years ago. Unlike in *Hays*, which made the record-specific finding that the Legislature drew the map to obtain proportional representation, *Hays v. Louisiana*, 839 F. Supp. 1188, 1205-1206 & n.58 (W.D. La. 1993),

vacated as moot, 512 U.S. 1230 (1994), the *Robinson* decisions were not based on any proportionality imperative nor on 30-year-old conditions. The *Robinson* court "recognized there is no right to proportional representation." *Robinson III*, 86 F.4th at 598. It "did not require proportionality but considered it along with the other factors in examining the totality" of circumstances, concluding that the 2022 map dramatically underrepresented Black voters. *Id.*; *accord De Grandy*, 512 U.S. at 1000. And again, even with two Black-opportunity districts, White voters (who are 56% of the population) remain greatly overrepresented (with controlling majorities in 66.6% of districts). The problem with the *Hays* map was that the map-drawer focused "virtually exclusively on racial demographics," resulting in a non-compact district that disregarded traditional districting principles to maximize the Black population in the district. *Hays*, 936 F. Supp. at 368 & n.43. That is not true of the plans considered in *Robinson*. It is also not true of SB8. SB8 predominately prioritized political goals, which drove the map's specific contours to the extent they deviated from traditional redistricting principles. Any limited consideration of race was driven by a compelling interest in remedying a §2 violation.

The *Robinson* district court is not an outlier in concluding that current and past official racial discrimination still affects the lives of Black people in Louisiana. *See, e.g.*, *Ramos v. Louisiana*, 590 U.S. 83, 86-88, 111 (2020) (holding unconstitutional Louisiana's racially discriminatory non-unanimous jury rule); *see also id.* at 126-128 & n.44 (Kavanaugh, J., concurring) ("Then and now, non-unanimous juries

can silence the voices and negate the votes of black jurors[.]"); *Snyder v. Louisiana*, 552 U.S. 472, 484-485 (2008) (finding that state officials discriminated in jury selection); *United States v. Town of Franklinton,* 24-cv-1633, 2024 WL 3739103 (E.D. La. June 28, 2024) (finding racial discrimination in housing).

Discrimination in voting in Louisiana also continues at present. *See, e.g.*, *Nairne v. Landry*, No. 24-30115, 2025 WL 2355524, at *10-22 (5th Cir. Aug. 14, 2025) (finding that the record was "replete" with "contemporary evidence of state-sponsored discrimination" and that, "[e]ven controlling for political party affiliation, there was strong evidence of racially polarized voting"); Consent J. and Decree, *United States v. City of West Monroe*, No. 21-cv-988 (W.D. La. Apr. 15, 2021), Dkt. No. 5 (ordering changes to a city's at-large elections where racial polarization and the totality of circumstances resulted in no Black person ever having been elected to office); *Guillory v. Avoyelles Par. Sch. Bd.*, No. 10-cv-1724, 2011 WL 499196, at *1 (W.D. La. Feb. 7, 2011) (finding that errors by a local registrar effectively disfranchised of Black voters in a particular); *Williams v. McKeithen*, No. 5-cv-1180, 2007 WL 9676892, at *1 (E.D. La. Oct. 31, 2007) (settling a VRA challenge to the method of electing local state judges). And, when Congress last reauthorized the VRA, the record in Louisiana revealed ongoing intentional discrimination, including the rejection of readily available non-discriminatory alternatives to retrogressive laws,[5]

[5] *See, e.g.*, Letter from Ralph F. Boyd, Jr., Assistant Att'y Gen., Dep't of Just., to Bill Robertson, Mayor of Minden, La. (July 2, 2002), https://www.justice.gov/sites/default/files/crt/legacy/2014/

severe voting restrictions adopted immediately following Black candidates' winning,[6] and even a sitting state senator's candid use of the "n-word."[7]

In sum, there can be no doubt that racial discrimination persists in Louisiana. And Appellees have presented no basis to conclude that in January 2024, the State had suddenly cast off its history of discrimination and rendered §2 protections obsolete. While progress has undoubtedly been made, these recent cases show that Black voters in Louisiana still avail themselves, successfully, of §2's protections against current race discrimination. The ongoing pattern of racial discrimination in voting in the State makes Louisiana the prototypical case for the ongoing need for §2, not for abandoning it.

Nothing in the instant case raises any doubt that Congress's careful crafting of §2 has limited the consideration of race under the statute to tailored remedies for ongoing race discrimination in voting. No expiration date is needed to prevent "race-based redistricting [from] extend[ing] indefinitely into the future" because the *Gingles* and *Shaw* standards are adequate to cabin §2 to instances of specific, present-day racial discrimination. *See* Appellee Br. 37-38 (quoting *Milligan*, 599 U.S. at 45 (Kavanaugh, J., concurring)).

05/30/LA-2380.pdf, (noting that the city rejected a non-discriminatory redistricting plan).

[6] *See* H.R. Rep. No. 109-478 (2006) at 23.

[7] *See St. Bernard Citizens for a Better Gov't v. St. Bernard Parish Sch. Bd.*, No. 2-cv-2209, 2002 WL 2022589, at *10 (E.D. La. Aug. 26, 2002).

Appellees' constitutional challenge to Louisiana's reliance on §2 to justify the creation of a second Black-opportunity congressional district must fail.

IV. ASSUMING ARGUENDO THAT THE LEGISLATURE RELIED ON RACE MORE THAN NECESSARY IN SB8, THE CONSTITUTIONAL PROBLEM WOULD LIE WITH THE SPECIFIC MAP THE STATE ENACTED, NOT §2.

To the extent that the Court concludes that the Legislature's consideration of race in SB8 was not narrowly tailored or justified by the State's interest in §2-compliance, that is not a basis to collaterally overrule the *Robinson* decisions' findings that the previous map violated the VRA. Nor is it a basis to conclude that §2 was unconstitutionally applied in Louisiana or would not provide a compelling interest for a different remedial district. The claim in this case concerns the constitutionality of SB8, and any constitutional error that could be identified based on the record below goes to whether the map the Legislature drew is narrowly tailored to the violation identified in *Robinson*. That is, if Louisiana violated the Equal Protection Clause, that violation lies in the State's failure to comply with *Shaw*'s safeguards against undue consideration of race in drawing the specific district it created in SB8.

Neither the claims nor the record in this case support broader conclusions about the constitutionality of other §2-compliant maps not reviewed below. If the Court concludes that the State violated *Shaw* in drawing SB8, that would provide no indication whether a different map might remedy the

§2 violation established in *Robinson* while complying with *Shaw*. As discussed above, states remedy §2 violations all the time without excessive reliance on race. And the *Robinson* record makes plain that many different plans exist that would remedy the *Gingles* violations while adhering to traditional redistricting principles and not unduly prioritizing race. Thus, even if this Court entertains Appellees' claim that SB8 is a racial gerrymander, it does not follow that this Court should effectively overrule the *Robinson* courts on a collateral attack or leave Appellants without a §2 remedy, much less upend the whole of §2 jurisprudence.

As explained in Appellants' opening merits briefs, in remedying the §2 violation identified in the *Robinson* opinions, Louisiana deliberately chose a less compact plan than necessary to comply with §2, and it did so in order to accomplish its nonracial political goals. Br. 9-17. In *Robinson*, the plaintiffs presented seven illustrative congressional maps to satisfy *Gingles*, each containing a new majority-Black district centered in Baton Rouge and the central Louisiana parishes of West Baton Rouge, St. Landry, Pointe Coupee, Avoyelles, and parts of Rapides and Lafayette, and, from there, extending north to the Delta region and east to the Florida Parishes in varying configurations, mirroring the 2022 map's Congressional District 5. *Robinson I,* 605 F. Supp. 3d at 781-785. In *Robinson*, every judge agreed that these illustrative plans were reasonably configured, contained two majority-Black districts, and were created without race predominating. *Id.* at 820-839; *Robinson II*, 37 F.4th at 217-223; *Robinson III*, 86 F.4th at 593-595.

The Fifth Circuit determined that these *Robinson* illustrative maps were not racially gerrymandered. In so doing, the Fifth Circuit "rigorously appl[ied] the 'geographically compact' and 'reasonably configured' requirements," thereby ensuring *Gingles* did "not improperly morph into a proportionality mandate." *Milligan*, 599 U.S. at 44 n.2 (Kavanaugh, J., concurring). As the Fifth Circuit explained: "The target of reaching a 50 percent BVAP was considered alongside and subordinate to the other race-neutral traditional redistricting criteria *Gingles* requires. The plaintiffs' experts considered communities of interest, political subdivisions, parish lines, culture, religion, etc." *Robinson III*, 86 F.4th at 595 (citations omitted). The *Robinson* plans "protect[ed] incumbents, reflect[ed] communities of interest, and respect[ed] political subdivisions, splitting fewer parishes," and they were "almost always more geographically compact" than the enacted map. *Robinson I*, 605 F. Supp. 3d at 831; *accord Milligan* at 44 n.2 (Kavanaugh, J., concurring) ("[I]t is important that at least some of the plaintiffs' proposed alternative maps respect county lines at least as well as Alabama's redistricting plan."). Yet rather than adopting one of the *Robinson* illustrative maps, the State enacted SB8, its own less compact map, for political reasons. J.S.A. 392a-394a.

Even if the Court views the Legislature's use of race in creating SB8 as excessive, that view would not lead to the conclusion, as Appellees argue, that §2 compliance is not a compelling interest or that there can be no constitutional remedy for the specific instance of racial vote dilution identified in *Robinson*. SB8's particular contours—and whatever

consideration of race they entailed—were *not* required by §2. The illustrative maps demonstrate that, while the State's decision to connect Baton Rouge and Shreveport may have been necessary to satisfy the Legislature's political goals, §2 could be met by other plans with more compact districts.

Accordingly, if this Court believes the Legislature used race in SB8 in ways unjustified by the State's interest in complying with §2, it should remand this matter for the development of a remedy more closely tailored to the §2 violation identified in *Robinson*. That remand should require the Legislature to draw a map that complies with the Constitution and remedies unlawful vote dilution by providing two districts in which Black voters are not foreclosed by racial bloc voting from electing the candidates of their choice.[8]

CONCLUSION

The judgment of the district court should be reversed.

[8] If the Court entertains the State's challenge to Appellees' standing, La. Br. 22-32, that may be another basis to remand.

Respectfully submitted,

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