No. 24-109, 24-110

In the Supreme Court of the United States

STATE OF LOUISIANA,

Appellant,

v.

PHILLIP CALLAIS, ET AL.,

Appellees.

PRESS ROBINSON, ET AL.,

Appellant,

v.

PHILLIP CALLAIS, ET AL.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA

SUPPLEMENTAL BRIEF BY AMICI CURIAE JUDICIAL WATCH, INC. AND ALLIED EDUCATIONAL FOUNDATION IN SUPPORT OF APPELLEES

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IDENTITY AND INTERESTS OF AMICI CURIAE[1]

Judicial Watch, Inc. ("Judicial Watch") is a non-partisan, public interest organization headquartered in Washington, D.C. Founded in 1994, Judicial Watch seeks to promote accountability, transparency and integrity in government, and fidelity to the rule of law. Judicial Watch regularly files amicus curiae briefs and lawsuits related to these goals.

In furtherance of these goals, Judicial Watch has litigated voting cases on behalf of private and government clients. This experience includes investigating and litigating cases under Section 2 of the Voting Rights Act of 1965 ("VRA"). 52 U.S.C. § 10301. As part of its election integrity mission, Judicial Watch has a substantial interest in the proper enforcement of Section 2. Judicial Watch has filed several amicus briefs before this Court on cases involving the VRA. *See Brnovich v. Democratic National Committee*, 594 U.S. 647 (2021) (No. 19-1257) (Section 2 of the Voting Rights Act); *North Carolina v. N.C. State Conf. of the NAACP*, 581 U.S. 985 (2017) (No. 16-833) (Section 2 challenge to North Carolina's election laws); and *Alexander v. S.C. State Conference of the NAACP*, 602 U.S. 1 (2024) (No. 22-807) (racial gerrymander challenge to South Carolina's Congressional map).

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[1] Amici state that no counsel for a party to this case authored this brief in whole or in part; and no person or entity, other than amici and their counsel, made a monetary contribution intended to fund the preparation and submission of this brief.

The Allied Educational Foundation ("AEF") is a nonprofit charitable and educational foundation based in Englewood, New Jersey. Founded in 1964, AEF is dedicated to promoting education in diverse areas of study. AEF regularly files amicus curiae briefs as a means to advance its purpose and has appeared as an amicus curiae in this Court on many occasions.

Amici submit this supplemental brief in response to the Court's August 1, 2025 docket entry.

SUMMARY OF ARGUMENT

The longstanding conflict between this Court's interpretation of § 2 of the VRA and its Equal Protection Clause jurisprudence has run its course. *See Thornburg v. Gingles*, 478 U.S. 30 (1986) (establishing framework for racial dilution claims under 52 U.S.C. § 10301) and *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023) ("*SFFA*"). The former mandates racial districting while the latter prohibits intentional racial classifications. For almost 30 years, courts and states have struggled to balance the conflicting mandates under *Gingles* and the Equal Protection Clause. The dividing of citizens by race, as required by *Gingles*, is now doing more harm than good.

Since its seminal ruling in *SFFA*, the Court has not had the opportunity to consider whether racial gerrymanders created to comply with § 2 survive strict scrutiny. Any redistricting plan whose purpose

is to achieve a racial target is a racial gerrymander subject to strict scrutiny. There is no compelling state interest to create intentional racial gerrymanders, even if done in a good faith effort to comply with § 2, as interpreted by *Gingles*.

The text of § 2 does not mandate racial gerrymanders. In fact, it only mandates "equal openness." It still prohibits any standard, practice, or procedure that results in the political process not being equally open to minority and non-minority voters alike. *Brnovich v. Democratic National Committee*, 594 U. S. 647, 667-68 (2021). Section 2 is not a means to settle political scores of the past.

ARGUMENT

I. THE SECOND MAJORITY-MINORITY DISTRICT IN SB8 VIOLATES THE FOURTEENTH AND FIFTEENTH AMENDMENT.

Section 2 of the VRA prohibits any "voting qualification or prerequisite to voting or standard, practice, or procedure" that "results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." 52 U.S.C. § 10301(a) ("results test"). In 1986, this Court established a framework for enforcing vote dilution claims under § 2. *Gingles*, 478 U.S. 30. The Court subsequently held that states must adhere to this framework during redistricting. *See Shaw v. Reno,* 509 U.S. 630, 655 (1993) ("*Shaw I*"); *Miller v. Johnson*, 515 U.S. 900, 920 (1995); *Shaw v. Hunt*, 517

U.S. 899, 911-16 (1996) ("*Shaw II*"); and *Wis. Legis. v. Wis. Elections Comm'n*, 595 U.S. 398, 402 (2022). Compliance with § 2 and *Gingles*, however, ultimately requires states to intentionally classify and assign voters to electoral districts based on their race. Thus, despite constitutional prohibitions against race-based state action, states are required under *Gingles* to treat voters differently based on race.

But § 2's anti-dilution jurisprudence is not a license for states to engage in race-based classifications that are "antithetical to the Fourteenth Amendment." *Shaw II*, 517 U.S. at 907. Any redistricting plan whose purpose is to achieve a racial target is a racial gerrymander subject to strict scrutiny. *Miller*, 515 U.S. at 916. The question of what a state must show to establish a compelling justification based on the need to comply with § 2 remains unsettled. The line dividing permissible racial considerations for § 2 compliance and impermissible racial considerations under the Equal Protection Clause is functionally impossible to discern. Critically, how then can states like Louisiana comply with § 2 and *Gingles* without also violating the Fourteenth and Fifteenth Amendments?

Amici submit that to the extent § 2 requires states to use racial classifications to create majority-minority districts, such districts cannot withstand strict scrutiny and violate the Fourteenth and Fifteenth Amendments. States lack any interest, much less a compelling one, to create racial gerrymanders, even if done in a good faith effort to comply with § 2. Because Louisiana impermissibly

used race to create a second majority-minority district, SB8 violates both the Fourteenth and Fifteenth Amendments.

II. Permitting Racial Classifications in the Redistricting Context Perpetuates, Rather Than Remedies, Discrimination.

Less than two years ago, this Court rejected Alabama's challenge to the *Gingles* framework for vote dilution claims under § 2 of the VRA. *Allen v. Milligan*, 599 U.S. 1 (2023). Three weeks later it affirmed that our Constitution is color blind. *SFFA*, 600 U.S. at 230. The principles that underlie these two rulings conflict: How can the Constitution be color blind while a federal statute mandates race-based districting?

This conflict between the Constitution and § 2 originated from the framework the Court established to bring vote dilution claims under the 1982 amendment to § 2. *Gingles*, 478 U.S. at 34. Distilled, *Gingles* provides that racial districting is necessary whenever a plaintiff identifies a geographic area where a sufficiently concentrated racial minority constitutes an electoral minority under the existing districting scheme.[2] Then, seven years later, the Court recognized that allegations of race-based districting could establish a racial gerrymandering

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[2] In 20 years following *Gingles*, plaintiffs that satisfied its three prongs prevailed in 57 of 68 lawsuits. *See* DOCUMENTING DISCRIMINATION IN VOTING: JUDICIAL FINDINGS UNDER SECTION 2 OF THE VOTING RIGHTS ACT SINCE 1982: FINAL REPORT OF THE VOTING RIGHTS INITIATIVE, 39 U. Mich. J.L. Reform 643, 660.

claim under the Equal Protection Clause. *Shaw I*, 509 U.S. 630. Under these holdings, racial districting is necessary to enforce the § 2 in one context (*Gingles*) even though racial districting violates the Equal Protection Clause in another (*Shaw I*). *See also Milligan*, 599 U.S. at 31 ("[T]he line between racial predominance and racial consciousness can be difficult to discern[.]" (citation omitted)).

In the time since, enormous public and private resources have been spent litigating, in vain, to resolve the conflict between *Gingles* and *Shaw* progeny. These efforts have resulted in impossibly complex, multi-year litigation projects yielding voluminous judicial rulings that attempt to reorient without resolving this conflict.[3] The next redistricting cycle will be here soon. Before then, it is important for the public and state legislatures to have a clear rule from this Court that there is no redistricting exception to the Constitution's color-blind mandate. As Justice Thomas has emphasized, this "intractable conflict" demands that the Constitution prevail over Section 2 where they clash. *Louisiana v. Callais*, No. 24-109 (Thomas, J., dissenting from reargument order, June 27, 2025).

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[3] Indeed, these complicated rulings have created new sources of conflict. For example, in *Bush v. Vera*, this Court held that a district drawn to comply § 2, "must not subordinate traditional districting principles to race substantially more than is '*reasonably necessary*' to avoid § 2 liability." 517 U.S. 952, 979 (1996) (emphasis added). Yet, more recently, this Court held that § 2 never requires the adoption of districts that violate traditional redistricting principles. *Milligan*, 599 U.S. at 29-30 (citation omitted)

Ultimately, § 2 claims and remedies are statutory, not constitutional. The Fifteenth Amendment's text prohibits denial or abridgment of the right to vote "on account of race, color, or previous condition of servitude," which Congress is authorized to enforce. U.S. CONST. amend. XV and 52 U.S.C. § 10301(a). It does not provide affirmative rights nor require race-based reallocation of voting strength whenever a critical mass of geographically compact minority voters fail to elect their candidate of choice. Judicial inertia and *stare decisis* do not supersede the duty to faithfully apply the text of the Constitution.

III. THE TEXT OF SECTION 2 DOES NOT AUTHORIZE RACIAL GERRYMANDERS

The Court asked for supplemental briefing on the narrow question of whether Louisiana's racial gerrymander under the auspices of § 2 compliance violates the Fourteenth and Fifteenth Amendments. The conflict between this Court's interpretation of § 2 and the Equal Protection Clause can be traced to the *Gingles* framework. For years, this Court has attempted to harmonize the two and interpret § 2 to avoid "unnecessarily infus[ing] race into virtually every redistricting" plan. *Bartlett v. Strickland*, 556 U.S. 1, 21 (2009) (citation omitted). But if complying with this Court's interpretation of § 2 under *Gingles* requires states to assign voters to electoral districts based solely on their race, then the proper conclusion is for the Court's interpretation to conform to the dictates of the Equal Protection Clause. *See Marbury v. Madison*, 5 U.S. 137, 178 (1803).

This conflict ultimately stems from the fact that the Court's "seminal" interpretation of § 2 is disconnected from its statutory text. *See Brnovich*, 594 U.S. at 667 (noting that the *Gingles* opinion quoted the text of § 2 before "jump[ing] right to" legislative history). The question raised in the Court's request for supplemental briefing is just one of several byproducts of the fact that *Gingles* failed to adhere to § 2's text. Another byproduct, which the Court only recently resolved, was that *Gingles* utterly failed to provide federal courts any framework for evaluating non-dilution claims. *See id.* at 672 (acknowledging that the *Gingles* framework was "plainly inapplicable" to non-dilution claims). This is why more than 35 years after *Gingles* this Court needed to announce a framework for non-dilution claims. *Id.* at 666-79. In doing so, the Court took a "fresh look at [§ 2's] statutory text." *Id.* at 667-68. Analyzing the text, it concluded that "core […] requirement" and "touchstone" under § 2(b) is that the political process is "equally open" to minority and non-minority groups alike. *Id.* at 668-69 (analyzing the text of 52 U.S.C. § 10301); *see also Milligan*, 599 U.S. at 98 (Alito, J., dissenting).[4]

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[4] Concerns about the lack of clarity in § 2's text arose almost immediately after the 1982 amendment. "[T]he language used in the amended statute is, to say the least, rather unclear." *Miss. Republican Exec. Comm. v. Brooks*, 469 U.S. 1002, 1010 (1984) (Rehnquist, J., dissenting). Indeed, the Court waited several years before issuing the highly fractured *Gingles*. Several members of the Court have expressed their concern that *Gingles* interpretation of § 2 failed to adequately consider the statutory text, especially its emphasis on "equal openness." *See, e.g.*,

Rather than ensuring equal opportunity, dilution claims under *Gingles* go well beyond the text of both § 2 and the Fifteenth Amendment. *Gingles* does not simply prohibit discrimination "on account of race, color, or previous condition of servitude." [5] It mandates racial preferences in the form of majority-minority districts. *Gingles* facilitates extraordinary relief in the form of perpetual electoral realignment in favor of racial minorities whenever they satisfy certain size requirements to create a remedial district. In that regard, the *Gingles* framework seems to more closely resemble a framework targeting racial retribution than reconciliation. *Gingles* mandates race-based representative districts that are "ageless in their reach into the past, and timeless in their ability to affect the future." *See Milligan*, 599 U.S. at 84 (Thomas, J., dissenting) (citations omitted). Unlike *SFFA*'s temporary remedies, *Gingles* lacks a logical endpoint, perpetuating division indefinitely.

To be sure, the desire to protect the voting rights of racial minorities is understandable, especially given the well-known history of discrimination. But the United States is not defined by its irredeemable past. Section 2's results test, as interpreted by *Gingles*, goes well beyond the text of both the

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Holder v. Hall, 512 U.S. 874, 914-36 (1993) (Thomas, J., concurring in judgment) and *Brnovich*, 594 U. S. at 667.

[5] In 1975, § 2's protections "on account of race, color, or previous condition of servitude" were extended to members of "language minority group[s]." 94 Pub. L. No. 73, 89 Stat. 400 (1975); *see also* U.S. CONST. amend. XV; 52 U.S.C. § 10301(a); 52 U.S.C. § 10303(f)(2).

Fifteenth Amendment and § 2.[6] The race-based districting regime this Court ordered in *Gingles* is "inimical to our Constitution." *Alexander*, 602 U.S. at 40 (Thomas, J., concurring in part).

The request for supplemental briefing involved a narrow question. It did not suggest the Court is considering striking down § 2. Nevertheless, the Court has received several briefs addressing the much broader question of whether § 2's result test is valid under the Fourteenth and Fifteenth Amendments and what happens if it is struck down. These arguments are based on the mistaken belief that vote dilution claims are the only claims allowed under § 2. If the Court holds that all racial gerrymanders violate the Fourteenth and Fifteenth Amendments, as it should, § 2 will continue. The *Gingles* framework "is not the same thing as a statutory provision, and it is a mistake to regard it as such." *See Milligan*, 599 U.S. at 103 (Alito, J., dissenting) (citation omitted). While the *Gingles* framework leads to impermissible racial sorting and, thus, violates the Fourteenth and Fifteenth Amendments, § 2 as interpreted under *Brnovich* does not. Regardless of the outcome in these proceedings, § 2 still prohibits any standard, practice, or procedure that results in the political process not

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[6] This task of protecting racial minorities against any backsliding in voting rights is even more muddled given that race is now viewed as a "social construct[.]" *SFFA*, 600 U.S. at 276 (Thomas, J., concurring). "[W]e may each identify as members of particular races for any number of reasons, having to do with our skin color, our heritage, or our cultural identity. And, over time, these ephemeral, socially constructed categories have often shifted." *Id.*

being equally open to minority and non-minority voters alike. *Brnovich*, 594 U.S. at 667-68. This rather significant point seems to have been lost in all the angst about what will happen if the Court decides, once and for all, that all racial gerrymanders are unconstitutional.

IV. The Division of Citizens Based on Race Causes Irreparable Harm to the Individual and to Society.

Racial segregation under the guise of § 2 compliance is segregation. This Court should make clear that sorting citizens into voting districts based on their race, regardless of what a government actor believes is necessary to satisfy the VRA or any other statute, is a violation of the Equal Protection Clause. The racial sorting harm extends to states, the judiciary, and the nation, as endless litigation traps demonstrate.

This Court recognized in its earliest opinions on racial gerrymandering the harm it threatens to inflict. It noted that allowing racial stereotypes to govern redistricting "may exacerbate the very patterns of racial bloc voting that majority-minority districting is sometimes said to counteract," *Shaw I,* 509 U.S. at 648. And it noted that "[w]hen the State assigns voters on the basis of race, it engages in the offensive and demeaning assumption that voters of a particular race, because of their race, 'think alike, share the same political interests, and will prefer the same candidates at the polls.'" *Miller*, 515 U.S. at 911-12 (citations omitted).

Indeed, when this Court first determined that racial gerrymandering violated the Equal Protection Clause, it explained that such racialized decision-making "injures voters" because it "reinforces stereotypes and threatens to undermine our system of representative democracy by signaling to elected officials that they represent a particular racial group rather than their constituency as a whole." *Shaw I*, 509 U.S. at 650. This system "emphasiz[es] differences between candidates and voters that are irrelevant in the constitutional sense," and "is at war with the democratic ideal." *Id.* at 648-49 (quoting *Wright v. Rockefeller*, 376 U.S. 52, 66-67 (1964) (Douglas, J., dissenting)). "Racial classifications with respect to voting carry particular dangers. Racial gerrymandering, even for remedial purposes, may balkanize us into competing racial factions; it threatens to carry us further from the goal of a political system in which race no longer matters." *Id.* at 657. Moreover, racial gerrymanders are bad democratic practice. They send a pernicious message to elected representatives: "When a district obviously is created solely to effectuate the perceived common interests of one racial group, elected officials are more likely to believe that their primary obligation is to represent only the members of that group," which is "altogether antithetical to our system of representative democracy." *Id.* at 648.

This Court has compared race-based districting to segregation of "public parks, . . . buses, . . . and schools," and warned that we "should not be carving electorates into racial blocs." *Miller*, 515 U.S. at 912,

928 (internal citations and quotations omitted). That is because "[c]lassifications of citizens solely on the basis of race 'are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.'" *Shaw I*, 509 U.S. at 643 (quoting *Hirabayashi v. United States*, 320 U.S. 81, 100 (1943)). Racial gerrymandering, like all "[r]acial classifications of any sort" cause "lasting harm to our society" because "[t]hey reinforce the belief, held by too many for too much of our history, that individuals should be judged by the color of their skin." *Shaw I*, 509 U.S. at 657; *see United Jewish Organizations of Williamsburgh, Inc. v. Carey*, 430 U.S. 144, 173 (1977) (Brennan, J., concurring in part) ("An explicit policy of assignment by race may . . . suggest[] the utility and propriety of basing decisions on a factor that ideally bears no relationship to an individual's worth or needs.").

There should be no question that race-based division of citizens for purposes of compliance with § 2 and *Gingles* is a violation of the Equal Protection Clause, the "central purpose" of which "is to prevent the States from purposefully discriminating between individuals on the basis of race." *Shaw I*, 509 U.S. at 642 (citing *Washington v. Davis*, 426 U.S. 229, 239 (1976)). The same may be said of the Voting Rights Act.

CONCLUSION

For these reasons, *Amici* respectfully request the Court affirm the Western District's ruling.

Respectfully submitted,

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