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.
PHILLIPP CALLAIS, ET AL., APPELLEES

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

BRIEF OF THE TOWN OF NEWBURGH AS *AMICUS CURIAE* IN SUPPORT OF APPELLEES

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INTEREST OF *AMICUS CURIAE*[1]

Amicus the Town of Newburgh ("the Town") is one of the oldest political subdivisions in the State of New York, with its charter dating back to 1788. *See* Les Cornell, Town Historian, Town of Newburgh, *Town of Newburgh Retrospective*.[2] Today, the Town is home to just over 30,000 residents. *See* Cornell, *supra*; U.S. Census Bureau, *QuickFacts: Newburgh town, Orange County, New York*.[3] For more than 150 years, the Town has used an at-large election method to elect the supervisor and councilmembers of its Town Board. *See* Gerald Benjamin, *At-Large Elections in N.Y.S. Cities, Towns, Villages, and School Districts and the Challenge of Growing Population Diversity*, 5(3) Albany Gov't L. Rev. 733, 736–38 (2012). There is no claim that the Town's adoption or maintenance of this at-large system—which almost every town in New York uses—had anything to do with racial

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[1] *Amicus* affirms that no counsel for a party authored this brief in whole or in part and that no party, counsel for a party, or any person other than *Amicus* or its counsel made a monetary contribution intended to fund the preparation or submission of this *amicus* brief.

[2] Available at https://www.townofnewburghny.gov/cn/webpage.cfm?tpid=4844 (all webpages last accessed September 23, 2025).

[3] Available at https://www.census.gov/quickfacts/fact/table/newburghtownorangecountynewyork/PST045222.

considerations. And no one challenged the Town's at-large system under Section 2 of the Voting Rights Act.

But New York has now placed the Town into an unconstitutional crisis: either engage in racial discrimination by changing its 150-year-old at-large system for the *sole* purpose of increasing the electoral success of citizens lumped together by certain races or face crushing liability, including forcing this small town potentially having to pay millions of dollars in plaintiffs' attorneys' fees. That is because New York—like an increasing number of States—has adopted a statute that raises even more grave constitutional concerns than does Section 2 of the VRA. Under the newly enacted John R. Lewis Voting Rights Act of New York ("New York VRA"), N.Y. Elec. Law § 17-200 *et seq*., the Town must change its electoral system to increase the electoral prospects of its citizens lumped together by race if *either* (1) racially polarized voting exists in the Town, *id.* § 17-206(2)(b)(i)(A)—that is, the phenomenon of "discernible, non-random relationships between race and voting," which obtains "in most States," "to no one's great surprise," *Cooper v. Harris*, 581 U.S. 285, 304 n.5 (2017)—*or* (2) there is an impairment of citizens' ability to influence the outcome of an election, under an amorphous all-things-considered inquiry, N.Y. Elec. Law § 17-206(2)(b)(i)(B).

When a group of plaintiffs recently sued the Town under the New York VRA (and, notably, *not* Section 2 of the VRA), the trial court ruled that the New York

VRA violates the Equal Protection Clause. *See Clarke v. Town of Newburgh*, Index No.EF002460-2024, NYSCEF No.147 (N.Y. Sup. Ct. Nov. 7, 2024).[4] But the Appellate Division reversed. The Town's appeal to the New York Court of Appeals is now fully briefed, with oral argument set for October 14, 2025, *see Clarke v. Town of Newburgh*, No.APL-2025-00110 (N.Y.), the day before this Court is set to hear oral argument in this case.

This Court's resolution of this case, as elucidated by its supplemental question issued on August 1, 2025, directly implicates the Town's interests. This Court is facing various arguments from *amici* supporting the *Robinson* Appellants with regard to Section 2 of the VRA that are similar to the arguments that the Town is facing as to the New York VRA. To be sure, the Town's Equal Protection Clause challenge to the New York VRA should prevail no matter how this case comes out because the New York VRA systematically dismantles the vast majority of the safeguards of Section 2 of the VRA. At the same time, this Court explicitly rejecting the arguments put forward in this case in defense of Section 2 would necessarily mean that the Town's challenge to New York's VRA will prevail.

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[4] Available at https://iapps.courts.state.ny.us/nyscef/ViewDocument?docIndex=Npvril3DBk70tqvUnkvlVw==.

INTRODUCTION AND SUMMARY OF ARGUMENT

This Court has repeatedly held that governments cannot make decisions that impact citizens' rights and interests based upon race except in exceedingly narrow circumstances, such as remedying specific past discrimination. As relevant here, this Court has strongly suggested that Section 2 of the VRA stands at the outer boundaries of what the Equal Protection Clause, U.S. Const. amend. XIV, § 1, tolerates, assuming (but not holding) that Section 2's race-based redistricting mandate satisfies strict scrutiny, *see, e.g.*, *Cooper*, 581 U.S. at 292; *Bartlett v. Strickland*, 556 U.S. 1, 21–22 (2009) (plurality opinion); *Wis. Legislature v. Wis. Elections Comm'n*, 595 U.S. 398, 401–02 (2022) (per curiam); *Allen v. Milligan*, 599 U.S. 1, 30 (2023). This Court now appears to be considering whether Section 2, as cabined by *Thornburg v. Gingles*, 478 U.S. 30 (1986), can survive the Equal Protection Clause, including in light of this Court's landmark decision in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023) ("*SFFA*").

While the Town agrees with Appellees that this Court should hold that Section 2 cannot survive *SFFA* as applied to redistricting, the Town submits this *amicus* brief to bring to this Court's attention a serious problem that the Court's decision will affect. Recently, certain States have engaged in what can only be described as "massive resistance," *Harrison v.*

NAACP, 360 U.S. 167, 175 (1959), to this Court's Equal Protetion Clause jurisprudence. Reacting to this Court tightening the boundaries of what *Gingles* permits, including on constitutional-avoidance grounds, certain States have engaged in increasingly aggressive efforts to force their municipalities to racially discriminate. These States have done this by adopting ever-more-aggressive, race-based state VRAs that systematically eliminate the safeguards that this Court built into Section 2 in *Gingles*.

The New York VRA, over which the Town is currently litigating, brings these attacks on the Equal Protection Clause together in one grotesquely unconstitutional package, as it: (1) eliminates *Gingles*' first and second preconditions; (2) mandates so-called "influence"-district claims, allowing a member of a minority group to assert a claim even where that group could only influence the outcome of an election; (3) authorizes so-called "coalition"-district claims, allowing a member of a minority group to assert a claim based upon a combination of multiple racial groups; (4) eliminates the mandatory nature of *Gingles*' second step by permitting plaintiffs to prove vote-dilution by showing that the common phenomenon of racial polarization exists, without also requiring satisfaction of a totality-of-the-circumstances inquiry; and (6) prevents courts from considering evidence that race-neutral factors like partisanship explain voting patterns, and much more. An increasing number of States are following New York's lead down this unconstitutional path.

The various arguments that courts across the country have accepted in defense of state VRAs, including New York's VRA, violate this Court's case law. Those arguments are now before this Court in the briefs filed by certain *amici* supporting the *Robinson* Appellants, in defense of Section 2 of the VRA. The Town thus respectfully asks that when this Court resolves this case, that it make clear that all of the arguments are wrong. That would not only properly reject various arguments that these *amici* have raised in defense of Section 2, but help put an end to state-level VRA defiance of this Court's Equal Protection Clause jurisprudence.

ARGUMENT

I. Some States Are Defying The Equal Protection Clause By Enacting State-Level VRAs That Discard More And More Of This Court's *Gingles* Framework Without Regard To This Court's Jurisprudence

This Court has long warned that race-based redistricting is an especially constitutionally-fraught area because of the "particular dangers" that "[r]acial classifications with respect to voting carry;" namely, the risk of "balkaniz[ation]" of the Nation into "competing racial factions" and the deferral of our Constitution's "goal of a political system in which race no longer matters." *Shaw v. Reno*, 509 U.S. 630, 657 (1993) ("*Shaw I*"). Accordingly, easing any of the "exacting requirements" of the *Gingles* framework for

Section 2 of the VRA, *Allen*, 599 U.S. at 30, would create "serious constitutional concerns under the Equal Protection Clause," *Bartlett*, 556 U.S. at 21 (plurality opinion). Defying these warnings, States across the Nation—from California to New York—have adopted state VRAs that have discarded more and more of *Gingles*' safeguards, expanding radically the use of racial classifications with respect to redistricting. *See* Cal. Elec. Code § 14025 *et seq.*; 10 Ill. Comp. Stat. § 120/5-1 *et seq.*; Wash. Rev. Code § 29A.92.005 *et seq.*; Or. Rev. Stat. § 255.400 *et seq.*; Va. Code § 24.2-125 *et seq.*; N.Y. Elec. Law § 17-200 *et seq.*; Conn. Gen. Stat. § 9-368i *et seq.*; Minn. Stat. § 200.50 *et seq.*; Colo. Rev. Stat. § 1-47-101 *et seq.*

A. California began this trend by enacting its own state VRA in 2003. *See generally* Cal. Elec. Code § 14025 *et seq.* "The most notable way" that the California VRA departs from *Gingles* is by "abandoning *Gingles*'s first prong." *See* Ruth M. Greenwood & Nicholas O. Stephanopoulos, *Voting Rights Federalism,* 73 Emory L. J. 299, 310 (2023). The California VRA "explicitly reject[s] the condition that plaintiffs demonstrate that another reasonably-compact, majority-minority district could be drawn," *id.* at 311, by providing that "[t]he fact that members of a protected class are not geographically compact or concentrated may not preclude . . . a violation of [the statute]," Cal. Elec. Code § 14028(c). It also "allow[s] influence claims to be advanced"—meaning a plaintiff can rely on "minority voters" who "*can't* elect their preferred candidate . . . but *can* still affect which

candidate wins." Greenwood & Stephanopoulos, *supra*, at 314; *see* Cal. Elec Code § 14027; *League of United Latin Am. Citizens ("LULAC") v. Perry*, 548 U.S. 399, 446 (2006) (plurality opinion) (declining to recognize "influence district[s]" for Section 2 claims) (citation omitted). Next, the California VRA departs from *Gingles*' second step by adopting a more open-ended, amorphous totality-of-the-circumstances inquiry. *See* Cal. Elec. Code § 14028. All that said, California did not wholesale abandon *Gingles* by requiring plaintiffs *both* to show the existence of racially polarized voting and to satisfy a totality-of-the-circumstances showing. *See id.* §§ 14028(a), 14026(e); Greenwood & Stephanopoulos, *supra*, at 313. The California VRA also incorporates *Gingles*' second and third preconditions and expressly requires courts to interpret the law's terms consistent with federal case law regarding Section 2. *See* Cal. Elec. Code § 14026(e); Greenwood & Stephanopoulos, *supra*, at 310–11.

Several other States followed California's lead by enacting their own state VRAs similar to the California VRA. *See, e.g.*, 10 Ill. Comp. Stat. § 120/5-1 *et seq.*; Wash. Rev. Code § 29A.92.005 *et seq.*; Or. Rev. Stat. § 255.400 *et seq.*; Va. Code § 24.2-125 *et seq.* The Washington VRA, which "substantially resemble[s]" the California VRA, Greenwood & Stephanopoulos, *supra*, at 320, is perhaps the most notable, Wash. Rev. Code § 29A.92.005 *et seq.* It disclaims *Gingles*' first precondition and expands its scope by permitting coalition claims. *See* Greenwood

& Stephanopoulos, *supra*, at 310–14. It also contains an ambiguous totality-of-the-circumstances inquiry that requires no showing of discriminatory intent or practices. *See* Wash. Rev. Code § 29A.92.030. Nevertheless, like the California VRA, it retains *Gingles*' second and third preconditions, *see* Greenwood & Stephanopoulos, *supra*, at 310–11; requires plaintiffs to establish the existence of racially polarized voting and make a totality-of-the-circumstances showing, *see* Wash. Rev. Code § 29A.92.030(1)(a)–(b); and incorporates "relevant federal case law," *id.* § 29A.92.010. A couple of other States have taken largely the same approach. *See* Or. Rev. Stat. § 255.400 *et seq.*; Va. Code § 24.2-125 *et seq.*; 10 Ill. Comp. Stat. § 120/5-1 *et seq.*; Greenwood & Stephanopoulos, *supra*, at 312–14, 320.

B. In recent years, a new generation of state VRAs has emerged, with certain States departing even more aggressively from *Gingles*. *See, e.g.*, N.Y. Elec. Law § 17-200 *et seq.*; Conn. Gen. Stat. § 9-368i *et seq.*; Colo. Rev. Stat. § 1-47-101 *et seq.*

New York's state VRA, enacted in 2022, is the exemplar of this newer, more radical approach. It provides that illegal "vote dilution" is conclusively established with one of two "showings," depending upon whether the political subdivision at issue has adopted an "at-large method of election" (like the Town) or a "district-based or alternative method of election." N.Y. Elec. Law § 17-206(2)(b)(ii). For "at-large" election systems, prohibited "vote dilution"

exists when "*either*: (A) voting patterns of members of the protected class"—meaning "a class of individuals who are members of a race, color, or language-minority group," *id.* § 17-204(5)—"within the political subdivision are racially polarized," *id.* § 17-206(2)(b)(i)(A), "*or* (B) under the totality of the circumstances, the ability of members of the protected class to elect candidates of their choice or influence the outcome of elections is impaired," *id.* § 17-206(2)(b)(i)(B) (emphases added). The New York VRA then defines "racially polarized voting" as merely the "divergence in the . . . choice[s] of members in a protected class from the . . . choice[s] of the rest of the electorate." *Id.* § 17-204(6). A political subdivision with an at-large method has engaged in prohibited "vote dilution," *id.* § 17-206(2), whenever there are "discernible, non-random relationships between race and voting"—*i.e.*, "racially polarized voting." *Cooper*, 581 U.S. at 304 n.5. For "a district-based or alternative method of election," prohibited vote dilution exists whenever the "candidates or electoral choices preferred by members of the protected class would usually be defeated, and either: (A) voting patterns of members of the protected class within the political subdivision are racially polarized; or (B) under the totality of the circumstances, the ability of members of the protected class to elect candidates of their choice or influence the outcome of elections is impaired." N.Y. Elec. Law § 17-206(2)(b)(ii).

The New York VRA disclaims nearly *all* the safeguards in *Gingles*' two-step "framework"—the

satisfaction of the three necessary "preconditions" and then the showing that, under "the totality of circumstances," "'the political process is [not] equally open to minority voters.'" *Wis. Legislature*, 595 U.S. at 402 (quoting *Gingles*, 478 U.S. at 79).

To begin, the New York VRA "mandate[s] that a reviewing court *not* consider the first of the *Gingles* preconditions," *Clarke*, Index No.EF002460-2024, NYSCEF No.147 at 22—that "[t]he minority group must be sufficiently large and compact to constitute a majority in a reasonably configured district," *Wis. Legislature*, 595 U.S. at 402—"in determining a vote dilution claim" at the liability stage, *Clarke*, Index No.EF002460-2024, NYSCEF No.147 at 22.

The New York VRA authorizes plaintiffs to pursue vote-dilution claims based on minority groups that can only "*influence* the outcome of elections," N.Y. Elec. Law § 17-206(2)(b)(ii)(B) (emphasis added), as well as claims relying on a "combin[ation]" of multiple minority groups into a coalition, *id.* § 17-206(2)(c)(iv); Greenwood & Stephanopoulos, *supra*, at 314. That too makes the New York VRA sweep far broader than Section 2, which does not permit so-called "influence district[s]," *LULAC*, 548 U.S. at 446 (plurality opinion), or "coalition" district claims, *Petteway v. Galveston Cnty.*, 111 F.4th 596, 599 (5th Cir. 2024) (en banc); *but see Concerned Citizens of Hardee Cnty. v. Hardee Cnty. Bd. of Comm'rs*, 906 F.2d 524, 526 (11th Cir. 1990).

Further, the New York VRA eschews *Gingles*' second precondition—that the minority group be "politically cohesive." *Wis. Legislature*, 595 U.S. at 402. The New York VRA broadly defines "racially polarized voting" to mean only a mere "*divergence*" between the voting preferences of a protected class and "the rest of the electorate." N.Y. Elec. Law § 17-204(6) (emphasis added). The second *Gingles* precondition, in contrast, requires "a *significant* number" of the minority group's members usually to vote for the same "preferred candidates." 478 U.S. at 56 (emphasis added). And the New York VRA further prevents courts from fully evaluating whether a given minority group is politically cohesive by prohibiting consideration of evidence that "sub-groups" within the class "have different voting patterns." N.Y. Elec. Law § 17-206(2)(c)(vii).

Nor does the New York VRA require plaintiffs to satisfy *Gingles*' second step—the totality-of-the-circumstances inquiry. *See id.* §§ 17-206(2)(b)(i)(B), 17-206(2)(b)(ii)(B). Rather, New York VRA plaintiffs can prove a vote-dilution claim solely by showing that the exceedingly common phenomenon of racially polarized voting exists *or, separately*, by satisfying the totality-of-the-circumstances inquiry. *Supra* pp.9–10. And even when a plaintiff does rely upon the New York VRA's totality-of-the-circumstances inquiry, that inquiry is far more capacious than Section 2's totality-of-the-circumstances test. The New York VRA's totality-of-the-circumstances inquiry "lists 11 factors that *may* be considered," leaving the court

"free to find vote[ ] dilution based on *any* criteria that the court itself creates, or no criteria at all." *Clarke*, Index No.EF002460-2024, NYSCEF No.147 at 20 (discussing N.Y. Elec. Law § 17-206(3)). It is, in sum, "lax to the point of explicitly allowing a court to find vote[ ] dilution exists without citing any basis." *Id.*

Finally, and again showing the breadth of the New York VRA's departure from this Court's precedent, the law establishes several evidentiary rules for "purposes of demonstrating that a violation . . . has occurred." N.Y. Elec. Law § 17-206(2)(c). For instance, the New York VRA prevents courts from considering "whether members of a protected class are geographically compact or concentrated," but allows courts to consider such evidence "in determining an appropriate remedy." *Id.* § 17-206(2)(c)(viii). Thus, the New York VRA "suggest[s] that a form of proportional representation is a proper remedy in certain cases," Greenwood & Stephanopoulos, *supra*, at 314, in direct contrast to Section 2 of the VRA and this Court's precedent, *see* 52 U.S.C. § 10301(b); *Gill v. Whitford*, 585 U.S. 48, 68 (2018). The New York VRA similarly prevents courts from considering highly relevant evidence going to whether there was any "intent" by the relevant political subdivision "to discriminate against [the] protected class," N.Y. Elec. Law § 17-206(2)(c)(v), or whether non-race-based factors like partisanship could explain "voting patterns and election outcomes" in the relevant jurisdiction, *id.* § 17-206(2)(c)(vi).

Other States have followed New York's unconstitutional lead and enacted state VRAs that are more race-infused than either Section 2 of the VRA or the prior state VRAs. *See* Conn. Gen. Stat. § 9-368i *et seq.* (2023); Minn. Stat. § 200.50 *et seq.* (2024); Colo. Rev. Stat. § 1-47-101 *et seq.* (2025). For example, the Colorado VRA, Colo. Rev. Stat. § 1-47-101 *et seq.*, contains a "[p]rohibition on voter dilution," *id.* § 1-47-106, that broadly prohibits "any method of election" with the "intent[ ]" (at least "in part") or the "effect" of "disparately impairing the equal opportunity or ability of members of a protected class to elect the candidates of their choice *or* otherwise influence the outcome of elections," *id.* § 1-47-106(1) (emphasis added). Like the New York VRA, the Colorado VRA authorizes plaintiffs to prove a vote-dilution claim *either* by showing that there is "polarized voting" *or* by showing that, "[b]ased on the totality of the circumstances," minority voters' "opportunity or ability . . . to nominate or elect the candidates of their choice is disparately impaired." *Id.* § 1-47-106(2)(a). Similarly, like the New York VRA, the Colorado VRA disclaims many of *Gingles*' safeguards. *See id.* §§ 1-47-103(23), -106(2)(a), -205(1)(a)(I)–(II), -205(4); *compare supra* pp.10–13.

II. Certain Courts Have Erroneously Held That State VRAs Do Not Trigger Strict Scrutiny Based Upon Rationales That Are Contrary To This Court's Case Law

Notwithstanding warnings that the loosening of *Ginlges*' preconditions would create "serious constitutional concerns," *Bartlett*, 556 U.S. at 21 (plurality opinion), and these state VRAs dismantling virtually all those safeguards, several state and lower-federal court have upheld these state VRAs against Equal Protection Clause challenges. *See, e.g.*, *Clarke v. Town of Newburgh*, 237 A.D.3d 14 (N.Y. App. Div. 2025), *mot. for leave to appeal granted* (New York VRA); *Serratto v. Town of Mount Pleasant*, 233 N.Y.S.3d 885 (N.Y. Sup. Ct. 2025) (same); *Coads v. Nassau Cnty.*, 236 N.Y.S.3d 490 (N.Y. Sup. Ct. 2024) (same); *Pico Neighborhood Ass'n v. City of Santa Monica*, 534 P.3d 54 (Cal. 2023) (California VRA); *Yumori-Kaku v. City of Santa Clara*, 59 Cal. App. 5th 385 (2020) (same); *Higginson v. Becerra*, 786 Fed. App'x 705 (9th Cir. 2019) (same); *Sanchez v. City of Modesto*, 145 Cal. App. 4th 660 (2006) (same); *Portugal v. Franklin Cnty.*, 530 P.3d 994 (Wash. 2023) (Washington VRA); *Radogno v. Ill. State Bd. of Elections*, No.1:11-cv-04884, 2011 WL 5025251 (N.D. Ill. Oct. 21, 2011) (Illinois VRA). These courts have reached these holdings by concluding that strict scrutiny does not apply to these race-based statutes for several primary reasons, described below, which are each contrary to decades of this Court's Equal Protection case law and, at minimum, cannot survive

this Court's latest clarification of its Equal Protection Clause jurisprudence in *SFFA*.[5]

A. No Strict Scrutiny When Citizens Of Any Race Can Seek Race-Based Relief

Certain courts considering equal-protection challenges to state VRAs have declined to apply strict scrutiny because these provisions "allow[ ] members of all racial groups, including white voters, to bring vote dilution claims, including when white voters constitute a minority in a political subdivision." *Clarke*, 237 A.D.3d at 33; *see also Sanchez*, 145 Cal. App. 4th at 668, 682; *Portugal*, 530 P.3d at 1007, 1011.

For example, with respect to the New York VRA, New York's Appellate Division has explained that the New York VRA gives "rights to 'members of [any]

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[5] Notably, courts had to uphold these state VRAs on the grounds that they do *not* trigger strict scrutiny because there is no plausible argument that these state VRAs survive strict scrutiny's "daunting two-step examination." *SFFA*, 600 U.S. at 206–07. Such laws do not further the government's interest in "remediating specific, identified instances of past discrimination," *id.* at 207, as they disclaim any need to prove that the political subdivision at issue engaged in past discriminatory conduct, *see supra* Part I. Further, these laws are not "narrowly tailored—meaning necessary," *SFFA*, 600 U.S. at 207 (citations omitted)—to furthering any compelling interest, including because they systematically shed *Gingles*' limits without sufficient justification, *see supra* Part I.

race, color, or language-minority group' in order to 'ensure that voters of [any] race, color, and language-minority groups have equitable access to fully participate in the electoral process'"—including "white voters," when they "constitute a minority in a political subdivision." *Clarke*, 237 A.D.3d at 33 (first quoting N.Y. Elec. Law § 17-204(5) and then N.Y. Elec. Law § 17-206(5)(a)).

Courts in California and Washington have adopted the same rationale. The California Court of Appeal has concluded that the California VRA is not "subject to strict scrutiny" because it "confers on members of any racial group a cause of action to seek redress for a race-based harm, vote dilution." *Sanchez*, 145 Cal. App. 4th at 680–81. Thus, the California Court of Appeal has explained, the California VRA "does not favor any race over others or allocate benefits or impose burdens on the basis of race," meaning that the law triggered only "rational basis review." *Yumori-Kaku*, 59 Cal. App. 5th at 427. The Supreme Court of Washington agreed, holding that the "plain meaning" of the Washington VRA "applies to all Washington voters" and makes "every Washington voter [ ] a member of at least one protected class," *Portugal*, 530 P.3d at 1007, meaning that the statute only "triggers rational basis review, not strict scrutiny," *id.* at 1011.

This conclusion is clearly contrary to this Court's equal-protection precedent. This Court has repeatedly explained that "*all* racial classifications,

imposed by [a] governmental actor, must be analyzed . . . under strict scrutiny." *Adarand Constructors Inc. v. Peña*, 515 U.S. 200, 227 (1995) (emphasis added); *see also Johnson v. California*, 543 U.S. 499, 505 (2005). So, whenever "the government distributes burdens or benefits on the basis of individual racial classifications, that action is reviewed under strict scrutiny." *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 720 (2007). That is because the Equal Protection Clause applies "without regard to any differences of race, of color, or of nationality." *SFFA*, 600 U.S. at 206 (citation omitted). Accordingly, every time a law makes "racial classifications"—"even when they may be said to burden or benefit the races equally"—courts must subject that law to strict scrutiny. *Johnson*, 543 U.S. at 506 (citation omitted).

Johnson and *Powers v. Ohio*, 499 U.S. 400 (1991), are on point. *Johnson* held that "strict scrutiny" applied to the California Department of Correction's "policy of racially segregating [all] prisoners" of any race for a period of time upon their transfer to a new facility because "racial classifications receive close scrutiny even when they may be said to burden or benefit the races equally." 543 U.S. at 502, 506 (citations omitted). Similarly, *Powers* held that an Ohio prosecutor's race-based preemptory strikes of potential jurors violated the Equal Protection Clause, after specifically rejecting the argument "that race-based peremptory challenges survive equal protection

scrutiny because members of all races are subject to like treatment." 499 U.S. at 410.

Applying this Court's equal-protection precedent here, state VRAs cannot evade strict-scrutiny review simply because they may theoretically be invoked by members of any particular race, depending on the demographic and political-performance mix in a specific town. State-level VRAs make "racial classifications," *Adarand*, 515 U.S. at 227, or "distribute[ ] burdens or benefits on the basis of individual racial classification," *Parents Involved*, 551 U.S. at 720, whenever a plaintiff wields them against a political subdivision. That is because these laws compel political subdivisions to alter their method of election for the sole purpose of increasing the electoral success of citizens lumped together by race.

A straightforward hypothetical based on *SFFA* further demonstrates the flaw in the reasoning that state VRAs evade strict-scrutiny review by authorizing members of all races to bring claims. If, in response to *SFFA*, colleges and universities simply changed their race-based admission schemes to give a "plus" factor, 600 U.S. at 196, to applicants of any race that was presently underrepresented at the college or university, based upon the most recently admitted class, no one would seriously argue that those modified affirmative-action programs would escape strict-scrutiny review, even if applicants of any race could theoretically benefit from affirmative action if their race was underrepresented in the prior year's

admitted class. For the same reason, state VRAs trigger strict-scrutiny review because they always require political subdivisions to alter their election methods based on race, notwithstanding the fact that citizens grouped together by any race may theoretically invoke these provisions, if those citizens happen to be electing "too few" of their preferred candidates in a political subdivision.

B. No Strict Scrutiny Because Insufficient Electoral Success Is "Discrimination"

Multiple courts considering challenges to state VRAs have also held that such laws avoid strict-scrutiny review because they "protect against racial discrimination" within the political subdivision. *Clarke*, 237 A.D.3d at 31–32; *see Coads*, 236 N.Y.S.3d at 505; *Sanchez*, 145 Cal. App. 4th at 666; *Higginson*, 786 Fed. App'x at 707; *Portugal*, 530 P.3d at 1011.

The courts' consideration of the New York VRA is illustrative. In holding that the New York VRA did not facially trigger strict scrutiny, the Appellate Division stated that "the New York State Legislature has the authority to enact statutes that protect against racial discrimination pursuant to its general police power." *Clarke*, 237 A.D.3d at 31–32. The New York VRA, the court further explained, is such an "[anti]racial discrimination" statute—just like "the federal Civil Rights Act." *Id.* at 34 (citations omitted). No court has concluded that such antidiscrimination laws are "subject to strict scrutiny." *Id.* Or, as

another court in New York explained, the New York VRA simply "protect[s] all voters from racial discrimination in voting," *Coads*, 236 N.Y.S.3d at 505, so strict scrutiny does not apply.

Courts considering the California and Washington VRAs have employed the same logic. So, courts in California have explained that the California VRA "remed[ies] a race-related harm," *Sanchez*, 145 Cal. App. 4th at 687, and "eliminate[s] racial disparities" in voting, *Higginson*, 786 Fed. App'x at 707 (citation omitted), equivalent to "statutes that create causes of action for racial discrimination" like "the federal Civil Rights Act" or the Fair Housing Act, *Sanchez*, 145 Cal. App. 4th at 666. In these courts' view, strict scrutiny "does not apply" to the California VRA because it is an "antidiscrimination law[ ]." *Sanchez*, 145 Cal. App. 4th at 682. The Supreme Court of Washington similarly held that the Washington VRA escapes strict scrutiny because it is designed "to remedy proven *racial discrimination*." *Portugal*, 530 P.3d at 1010. Indeed, in that court's opinion, subjecting a law like the Washington VRA to strict scrutiny would mean that "every statute prohibiting racial discrimination or mandating equal voting rights would . . . trigger[ ] strict scrutiny." *Id.* at 1006.

In holding that state VRAs remedy race discrimination, these courts must have concluded that citizens lumped together by race experiencing insufficient electoral success is disparate-impact race

discrimination. After all, none of these state VRAs require proof that anyone within the political subdivision—let alone the political subdivision itself—has engaged in intentional discrimination. *See supra* Part I. Thus, for these courts to label the insufficient electoral success of a racial group as "racial discrimination," *Clarke*, 237 A.D.3d at 31–32, or "race-related harm," *Sanchez*, 145 Cal. App. 4th at 687, in the absence of any discriminatory intent, they have necessarily concluded that insufficient electoral success qualifies as a "discriminatory effect alone," *Gingles*, 478 U.S. at 35.

This conclusion is wrong. Antidiscrimination statutes require treatment of "all persons . . . with fairness and equal dignity" *without regard to race*, *Schuette v. Coal. to Defend Affirmative Action*, 572 U.S. 291, 312 (2014), by "prohibit[ing]" the relevant state actor "from classifying individuals by race" and then taking some adverse action based on that impermissible classification, *Coal. to Defend Affirmative Action v. Brown*, 674 F.3d 1128, 1132 (9th Cir. 2012) (citation omitted). An antidiscrimination statute treats race in a "neutral-fashion" by declaring it to be an "impermissible criteria" on which to base the conduct at issue; a law that forbids the relevant actor "from classifying individuals by race . . . a fortiori does not classify individuals impermissibly." *Coal. to Defend Affirmative Action*, 674 F.3d at 1132 (citations omitted); *see also Coal. for Econ. Equity v. Wilson*, 122 F.3d 692, 707 (9th Cir. 1997)

(O'Scannlain, J.); *accord Raso v. Lago*, 135 F.3d 11, 16–17 (1st Cir. 1998).

State VRAs do the opposite of making race an "impermissible criteria." *Coal. to Defend Affirmative Action*, 674 F.3d at 1132. Rather, they demand that a political subdivision make racial classifications among its citizens and then take official action based solely on those classifications. So, for example, under the New York VRA, a political subdivision whose voters happen to exhibit the common dynamic of racially polarized voting must change its race-neutral election system to increase the electoral chances of citizens lumped together by race, necessarily harming the electoral chances of other citizens lumped together by other races, due to the zero-sum nature of elections. *Supra* pp.9–13.

That state VRAs target racially polarized voting does not change the result. "[R]acially polarized voting" is nothing more than a "discernible, non-random relationship[ ] between race and voting," which, "to no one's great surprise," is a common condition in most jurisdictions throughout the Nation. *Cooper*, 581 U.S. at 304 n.5; *see Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 9 (2024); *Shelby Cnty. v. Holder*, 570 U.S. 529, 578 (2013) (Ginsburg, J., dissenting) ("[R]acially polarized voting alone does not signal a constitutional violation"). As such, the presence of racially polarized voting in no way indicates racial discrimination, so as to make statutes

that target that racially polarized voting actual antidiscrimination statutes.

State VRAs' amorphous, totality-of-the-circumstances tests do not make these statutes antidiscrimination laws either. As explained above, satisfaction of these tests does not require any finding that the town engaged in race discrimination at all. *See supra* Part I. For example, the New York VRA provides that courts "*may*" consider "the history of discrimination in or affecting the political subdivision" under its totality-of-the-circumstances inquiry, but in no way requires courts to do so. N.Y. Elec. Law § 17-206(3) (emphasis added). Instead, the New York VRA permits courts to find a violation under the totality-of-the-circumstances test based upon "*any*" number of factors, even just one. *Id.* § 17-206(3) (emphasis added). The totality-of-the-circumstances tests in other state VRAs are similarly open-ended and lack any requirement of evidence that a political subdivision has engaged in race discrimination to satisfy them. *See* Colo. Rev. Stat. § 1-47-205(2)(a)–(b); Cal. Elec. Code § 14028; Wash. Rev. Code § 29A.92.030.

Finally, a hypothetical based on *SFFA* demonstrates the flaw in this rationale. Imagine that, after *SFFA*, a college declared that disparities between the racial demographics of its admitted class and the population at large are "discrimination" that justify affirmative-action policies designed to rebalance the racial outcomes of the college's

admissions processes. It should go without saying that such a gambit would still trigger (and fail) strict scrutiny under *SFFA*, as that kind of affirmative-action program would still "make admissions decisions that turn on an applicant's race," 600 U.S. at 208, which is "invidious in all contexts," *id.* at 214 (citation omitted). There is no constitutional difference between this hypothetical and the rationale described above that various courts have adopted to avoid subjecting state VRAs to strict-scrutiny review.

C. No Strict Scrutiny When A Statute Permits Remedies Other Than Drawing Majority-Minority Districts

Several courts have concluded that state VRAs do not trigger strict scrutiny because they permit courts to order remedies other than the creation of a majority-minority district to increase the electoral success of citizens grouped together by race. *See Clarke*, 237 A.D.3d at 36–37; *Coads*, 236 N.Y.S.3d at 508–09; *Pico*, 534 P.3d at 66–67, 70; *Sanchez*, 145 Cal. App. 4th at 687–88; *Portugal*, 530 P.3d at 1002.

For example, with respect to the New York VRA, the Appellate Division declined to apply strict scrutiny because, while "districting maps that sort voters on the basis of race" must satisfy strict scrutiny, "race-based districting" as a remedy for vote dilution "is only one of the possible remedies under the [New York VRA]." *Clarke*, 237 A.D.3d at 35–36 (citation omitted). Under the New York VRA, a court

could order a political subdivision found to have engaged in prohibited vote dilution to implement some other remedy, "such as ranked-choice voting, cumulative voting, limited voting, [or] the elimination of staggered terms." *Id.* In other words, as another New York Court held, the New York VRA does not trigger strict scrutiny because it contemplates "a lengthy list of possible remedies," in addition to race-based redistricting. *Coads*, 236 N.Y.S.3d at 508.

Courts in California and Washington considering those States' VRAs have put forward the same reasoning. For example, California courts have concluded that strict-scrutiny review does not apply to the California VRA because it "calls only for appropriate remedies," *Sanchez*, 145 Cal. App. 4th at 687 (citation omitted)—including "cumulative voting, limited voting, or ranked choice voting"—meaning that a political subdivision may not have to "draw [new] district lines . . . based principally on race" if it has violated the California VRA, *Pico*, 534 P.3d at 67, 70 (citations omitted). The Supreme Court of Washington held that the Washington VRA avoids strict scrutiny in part because the law "contemplates a much broader range of available remedies" than "order[ing] a political subdivision to implement a district-based election system and to draw or redraw district boundaries" based on race. *Portugal*, 530 P.3d at 1002 (citation omitted).

These courts misunderstand the Equal Protection Clause. Although a court imposing a remedy that

requires a political subdivision to draw majority-minority district triggers strict scrutiny, *see Shaw I*, 509 U.S. at 643, 646; Suppl. Br. For Appellees 18–20, *Louisiana v. Callais*, Nos.24-109, 24-110 (Sept. 17, 2024); *see also* Suppl. Br. For *Robinson* Appellants 26–27, *Louisiana v. Callais*, Nos.24-109, 24-110 (Aug. 27, 2025), all *remedies* under a state VRA necessarily depend upon a court finding a state VRA *violation*. And if a political subdivision violates a state VRA because voters statutorily lumped together by race are not winning enough elections (whatever "enough" means), then any remedy—and any changes to the election system by the political subdivision to avoid a finding of liability—would be undertaken *for the sole and express purpose of having voters lumped together by race win more elections, while voters lumped together by other races win fewer elections*. *See supra* Part I. Thus, the imposition of *any* remedy under those circumstances must trigger strict scrutiny, as "racial considerations" would be the *sole* factor motivating the court's decision to impose that remedy, not merely "the predominant factor motivating the [ ] decision." *Miller v. Johnson*, 515 U.S. 900, 916 (1995).

SFFA is again helpful here. After holding that universities cannot "mak[e] admissions decisions that turn on an applicant's race," *SFFA*, 600 U.S. at 208, this Court made clear that universities also cannot adopt "application essays" or "other" facially race-neutral machinations that had as their goal the changing of the racial composition of incoming classes, *id.* at 230. "The Constitution deals with

substance, not shadows, and the prohibition against racial discrimination is levelled at the thing, not the name." *Id.* (citations omitted). What the Equal Protection Clause prohibits a university from doing "directly" it "cannot" do "indirectly." *Id.* (citations omitted). For the same reason, a state VRA cannot avoid strict scrutiny by imposing remedies that are facially race-neutral yet solely designed to increase the electoral success of some citizens lumped together by race at the necessary expense of other citizens lumped together by other races. *See id.* And while, in some situations, it may be hard to identify facially "neutral" action that is motivated by race-based intent, *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977)—for example, a university might adopt a "Top Ten Percent Plan" with the nonracial goals of increasing geographic or socioeconomic diversity or with the racial goal of "boost[ing] minority enrollment," *Fisher v. Univ. of Texas at Austin*, 579 U.S. 365, 373, 385–86 (2016)—the inquiry with respect to state VRAs is easy. The *sole and express design* of the state VRAs is to reallocate the electoral success of citizens based on race. *Supra* Part I. So, while a town abandoning its at-large election system for a district-based system with non-racial motives raises no equal-protection concerns, a political subdivision taking such an action in order to comply with a state VRA has acted for explicitly racial reasons, triggering strict scrutiny. *Arlington Heights*, 429 U.S. at 266.

III. This Court Should Resolve This Case In A Manner That Provides Clarity As To The Constitutionality Of State VRAs As Well

The supplemental question that this Court posed to the parties involves a two-step inquiry: (1) whether strict scrutiny applies when Section 2 of the VRA mandates that a jurisdiction engage in race-based redistricting; and (2) whether, if strict scrutiny applies, Section 2 is narrowly tailored to achieving a compelling governmental interest. The Town respectfully submits that the answer to the first question is clear, given that this Court has long indicated that any race-based redistricting done in compliance with Section 2 triggers strict scrutiny. *See, e.g.*, *Cooper*, 581 U.S. at 292; *Abbott v. Perez*, 585 U.S. 579, 587 (2018); *Wis. Legislature*, 595 U.S. at 401–02. And while the second of these inquiries is more complex, *see infra* pp.32–33, the Town respectfully submits that this Court detailing why Section 2 triggers strict scrutiny would provide a great service to the small towns now laboring under the unconstitutional mandates of the growing number of state VRAs. In particular, in holding that Section 2 triggers strict scrutiny, this Court should expressly repudiate the three erroneous rationales that state and lower federal courts have relied upon for concluding that state VRAs evade strict scrutiny, as discussed above. *Supra* Part II.A–C.

Notably, other *amici* here have offered some of the same erroneous reasons for this Court not to subject

Section 2 to strict scrutiny as have the state and lower federal courts considering state VRAs discussed above. For example, the *amicus* brief of Professor Nicholas O. Stephanopoulos relies upon the first erroneous rationale—that race-based laws authorizing citizens of any race to bring suit evade strict scrutiny, *supra* Part II.A—in arguing that, because Section 2 "appl[ies] to all racial groups" and allows "[m]embers of any race or ethnicity [to] bring both vote-dilution and vote-denial claims," it does not "rely on racial classifications" and so avoids strict scrutiny, Br. For *Amicus Curiae* Prof. Nicholas O. Stephanopoulos In Support Of Neither Party 10, *Louisiana v. Callais*, Nos.24-109, 24-110 (Sept. 3, 2025). Professor Stephanopoulos also invokes the second erroneous rationale—that laws targeting insufficient electoral success of certain citizens lumped together by race actually remedy "race discrimination." *Supra* Part II.B. So, Professor Stephanopoulos compares Section 2 to antidiscrimination laws like Title VII and the Fair Housing Act, Stephanopoulos Amicus, *supra*, at 12, just like some of the courts discussed above with respect to state VRAs, *supra* pp.20–22—comparisons that fail for all the same reasons, *supra* pp.22–25. Similarly, the *amicus* brief of the Brennan Center For Justice relies upon the third erroneous rationale. *Supra* Part II.C. That *amicus* brief argues that Section 2's "flexibility in adopting a remedy [ ] guards against [its] unconstitutional application" by allowing "a jurisdiction with Section 2 liability [to] choose to remedy that liability by drawing a district that is less

than majority-minority" or to "adopt[ ] alternatives to districted elections, such as cumulative voting and limited voting." Br. For *Amicus Curiae* The Brennan Ctr. For Just. At N.Y. Univ. Sch. Of L. In Support Of Press Robinson, et al., Appellants 23–25, *Louisiana v. Callais*, Nos.24-109, 24-110 (Sept. 3, 2025).

These arguments are equally wrong for Section 2 as they are for state VRAs. *See supra* Part II. First, that Section 2 allows members of any racial group to bring vote-dilution claims does not save Section 2 from having to satisfy strict scrutiny, which applies to "*all* racial classifications[ ] imposed by [a] governmental actor," *Adarand*, 515 U.S. at 227 (emphasis added), even if those classifications "may be said to burden or benefit the races equally," *Johnson*, 543 U.S. at 499 (citation omitted); *see supra* Part II.A. Second, Section 2 does not escape strict scrutiny as an "antidiscrimination" law that prohibits the government from classifying individuals by race, *see Schuette*, 572 U.S. at 312; *accord Coal. to Defend Affirmative Action*, 674 F.3d at 1132, since Section 2 demands that political subdivisions expressly consider the electoral opportunities of its citizens grouped together by race and then, if the *Gingles* two-step framework is satisfied, take certain official action to rebalance those opportunities, *see Allen*, 599 U.S. at 17–19; *supra* Part II.B. Finally, Section 2 triggers strict scrutiny even though it authorizes remedies other than the drawing of majority-minority districts, *see, e.g.*, *Cooper*, 581 U.S. at 305–06, as towns necessarily carry out those remedies with race

as the *sole* motivating factor, *Arlington Heights*, 429 U.S. at 266; *supra* Part II.C.

B. Notably, the question of whether Section 2 satisfies strict scrutiny is admittedly more complicated, given Section 2's venerable pedigree and this Court's prior "assum[ption] that complying with the VRA" means that a State's "consideration of race" in a redistricting plan "satisfies strict scrutiny." *Abbott*, 585 U.S. at 587. While the Town agrees with Appellees that Section 2 no longer satisfies the strictures of strict scrutiny, especially in light of *SFFA*, *see* Supp. Br. For Appellees 21–34, *Louisiana v. Callais*, Nos.24-109, 24-110 (Sept. 17, 2024), if this Court reaches a different conclusion, it should make clear that it is not blessing state VRAs that lack Congress' imprimatur or Section 2's tailoring. Specifically, if this Court upholds Section 2 as a lawful exercise of Congress' power to "identify and redress the effects of society-wide discrimination," *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 490 (1989), it should reaffirm that the Fourteenth Amendment "explicit[ly] constrain[s]" the *States* from using "race as a criterion for legislative action," *id.* at 490–91. Further, if this Court upholds Section 2 under Congress' "power to enforce" the Fifteenth Amendment "by appropriate legislation," U.S. Const. amend. XV, § 2; *see* Br. For *Amicus Curiae* Prof. Travis Crum In Support Of The *Robinson* Appellants 23–24, *Louisiana v. Callais*, Nos.24-109, 24-110 (Sept. 3, 2025), it should explain that this does not empower *States* to enact state VRAs like the ones

discussed above. Finally, certain parties and *amici* have argued that Section 2's incorporation of the *Gingles* framework makes it narrowly tailored. *See, e.g.*, Stephanopoulos Amicus, *supra*, at 3–4; Brennan Amicus, *supra*, at 6; Supp. Br. For *Robinson* Appellants 13–24, *Louisiana v. Callais*, Nos.24-109, 24-110 (Aug. 27, 2025). If this Court agrees with that argument, it should explain that this rationale does not apply to state VRAs specifically designed to reject *Gingles*' strictures. *See supra* Part I.

CONCLUSION

This Court should affirm the judgment of the District Court.

Respectfully submitted,

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