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 Appeals from the United States District Court for the Western District of Louisiana

BRIEF OF CENTER FOR ELECTION CONFIDENCE AS AMICUS CURIAE IN SUPPORT OF APPELLEES

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INTEREST OF *AMICUS CURIAE*[1]

Center for Election Confidence, Inc. (CEC), is a nonprofit organization that promotes ethics, integrity, and professionalism in the electoral process. CEC works to ensure that all eligible citizens can vote freely within an election system of reasonable procedures that promote election integrity, prevent vote dilution and disenfranchisement, and instill public confidence in election systems and outcomes. To accomplish these objectives, CEC conducts, funds, and publishes research and analysis regarding the effectiveness of current and proposed election methods. CEC is a resource for lawyers, journalists, policymakers, courts, and others interested in the electoral process. CEC also periodically engages in public-interest litigation to uphold the rule of law and election integrity and files amicus briefs in cases where its background, expertise, and national perspective may illuminate the issues under consideration.

SUMMARY OF ARGUMENT

At the first oral argument in this appeal, Justice Alito identified an issue that gets to the core of why the Court continues to face so many cases in which § 2 "remedial" maps give rise to racial gerrymander claims: "[T]he question seems to be: Is it not the case that if you grant the premise [that a §2 violation may have occurred] then … at

[1] No counsel for any party authored this brief in whole or in part, and no entity or person, aside from amicus curiae, its members, and its counsel, made any monetary contribution toward its preparation or submission. *See* Sup. Ct. R. 37.6.

the remedial phase, anything goes? [¶] Now, can that possibly be correct?" Trans. 82.

The answer to this question is "No, that cannot be correct." In *Shaw v. Hunt*, the Court emphatically rejected the argument that "once a legislature has a strong basis in evidence for concluding that a § 2 violation exists in the State, it may draw a majority-minority district anywhere, even if the district is in no way coincident with the compact *Gingles* district[.]" 517 U.S. 899, 916–17 (1996); *see also id.* at 916 ("No one looking at [the remedial district] could reasonably suggest that the district contains a 'geographically compact' population of any race."). Likewise, the Court affirmed in *LULAC v. Perry* that "[a] State cannot remedy a § 2 violation through the creation of a noncompact district." 548 U.S. 399, 431 (2006). Simply put, a remedial district under § 2 cannot violate the Fourteenth Amendment.

Yet Louisiana and other states continue to draw maps like its proposed Congressional District 6, which stretches 250 miles from end to end in order to scoop up far-flung pockets of black voters through much of the State. Even worse, lower courts routinely sign off on them. So-called § 2 remedial districts like this demonstrate that modern "vote-dilution" litigation under the Voting Rights Act bears no resemblance to its origin in *Thornburgh v. Gingles*, 478 U.S. 30 (1986).

To fully understand how far removed modern § 2 litigation has strayed from *Gingles*, it is important to step back and review the actual facts in *Gingles.* Those facts demonstrate that *Gingles*' vote-dilution theory is premised on a degree of *residential racial segregation* that is

sufficient for a single geographic area of segregated voters *themselves* to constitute the majority of a voting district. Though the Court has rarely emphasized the centrality of segregation, scholars confirm it is a necessary precondition to the sort of "compactness" *Gingles* actually considered.

It is relatively easy to visualize such a compact and contiguous group of minority voters when dealing with small state legislative districts, as in *Gingles*, which involved no more than 120,000 residents. It makes far less sense when dealing with congressional districts of 775,000 residents in 2025. All the more so when considering how much more racially integrated American society is now than in 1986 when *Gingles* was decided, let alone 1965, when the first Voting Rights Act was passed. Absent blatant "cracking" of dense populations of minority voters in our biggest cities, it is difficult, in 2025, to envision a § 2 remedial congressional district that could possibly be drawn consistent with the principles announced in *Gingles*.

And while our racial progress should be celebrated, the § 2 litigation industry laments that integration is a "problem" for their partisan cause. Undeterred by America's racial progress and evolution, this permanent movement churns out § 2 cases all across the Nation as if we are all living in 1980s Mecklenburg County.

If, despite this, the Court decides to salvage *Gingles* in some form, it is urgent that the Court clarify that, as in *Gingles*, all remedial districts must themselves be "compact," rather than "reasonably compact" or "reasonably configured." States and district courts have abused such

leeway by creating districts that have nothing to do with the factual circumstances that produced the *Gingles* decision.

The Court should also clarify the permissible factors for determining whether a remedial district is actually "compact." In particular, the Court should confirm once and for all that combining geographically disparate groups of minority voters is not permissible under the guise of "maintaining communities of interest" as a purported basis for achieving "compactness" or appropriate "configuration." Such combinations rest on pernicious assumptions about minority groups that the Court has rejected in other contexts. Drawing district lines on blatantly racial assumptions should not get a special exemption from the Fourteenth Amendment.

Instead, the Court should affirm that "compactness" must incorporate the historical meaning of a "district" as a recognizable geographic unit of representation. The Founders recognized that effective representation can be accomplished by dividing a state into geographic units encompassing relatively recognizable meanings. This understanding carried through to the first Apportionment Act in 1842 and must provide the touchstone for drawing districts that provide voters with genuine and responsive representation.

Finally, it must be emphasized that the unseemly practice of constantly shifting district lines to segregate voters by race imposes a significant practical cost on election administrators and voters. Real votes are being lost due to confusion by administrators and voters. In our closely divided partisan era, this is a heavy price that compromises

public confidence in the integrity and reliability of the electoral process. It is an intolerable result in pursuit of the unconstitutional ends here.

ARGUMENT

I. Congressional District Maps In 2025 Bear No Resemblance To The Districts At Issue In *Gingles*, And Those Distinctions Should Have Profound Implications Here.

The issues at the heart of this case arise out of *Gingles*' compactness factor: to prevail on a vote-dilution theory, the "minority group [itself] must be … sufficiently large and geographically compact to constitute a majority in a single-member district." 478 U.S. at 50. In the nearly 40 years since *Gingles*, § 2 vote-dilution litigation has expanded to cover factual settings bearing no resemblance to the facts in *Gingles*. As the Court considers how to restrain out-of-control applications of *Gingles* and § 2, it is worth focusing on how different modern *congressional* redistricting is from the tiny, segregated state legislative districts in *Gingles*.

A. The State Legislative Districts In *Gingles* Involved No More Than 120,000 People Living In Highly Segregated Areas Of North Carolina.

Gingles involved a challenge to North Carolina's unusual state legislative redistricting scheme following the 1980 census. Some of North Carolina's legislative "districts" had one member, and other "at-large" districts had multiple (up to eight) members. Plaintiffs alleged that North Carolina violated § 2 by submerging pockets of black voters in five multi-member state house legislative

districts and one multi-member state senate district in a manner that diluted the voting power of black citizens. 478 U.S. at 34–35.[2]

North Carolina was apportioning its nearly 6 million residents into 120 state assembly seats (roughly 50,000 residents per seat) and 50 state senate seats (roughly 120,000 residents per seat). U.S. Dep't of Commerce, Bureau of the Census, *1980 Population and Number of Representatives by State*, p. 2 (Dec. 31, 1980) (North Carolina's population basis for apportionment 5,874,429); *Gingles*, 478 U.S. at 40 (identifying size of North Carolina House and Senate).

Considering the level of residential segregation following the 1980 census, and with districts of this small size, the district court found that "at the time the multi-member districts were created, there were concentrations of black citizens within the boundaries of each that were sufficiently large *and contiguous* to constitute effective voting majorities in single-member districts lying wholly within the boundaries of the multi-member districts." *Gingles*, 478 U.S. at 38 (emphasis added). It bears repeating: The concentrations of black citizens that could form a majority in a district were *themselves* contiguous.

Thus, when it came to challenging North Carolina's gambit of creating at-large legislative districts (or, in the

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[2] Plaintiffs also challenged a single-member state senate district on a "cracking" theory, alleging that a sufficiently large and geographically compact concentration of black voters had been split across two adjoining single-member districts, again in a manner that diluted black voters' voting power. *Gingles*, 478 U.S. at 38.

more typical vote-dilution case, the configuration of district lines), the Court explained why it is essential for "the minority group [itself] to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district. If it is not, as would be the case in a substantially integrated district, the *multi-member form* of the district cannot be responsible for minority voters' inability to elect its candidates." 478 U.S. at 50. In short, a vote-dilution theory doesn't make sense in the absence of *contiguous* concentrations of a sufficient size to constitute the majority of a district. *See also id.* at 50 n.17.

Scholars confirm the centrality of residential segregation to *Gingles.* Professor Nicholas Stephanopoulos (a frequent amicus in VRA cases, including this one) has written that "[g]eographic compactness is almost a synonym for geographic segregation. The criterion is satisfied only by minority groups that are densely concentrated in discrete areas." Stephanopoulos, *Civil Rights in A Desegregating America*, 83 U. Chi. L. Rev. 1329, 1334 (2016). And Professor Crum writes that "*Gingles* boils down to whether a minority group is residentially segregated and whether there is racially polarized voting." Crum, *Reconstructing Racially Polarized Voting*, 70 Duke L.J. 261, 279 (2020); *see also id.* ("By focusing on residential segregation, the *Gingles* Court reinforced the relationship between geography and representation.").

As a consequence, "[b]y definition, an integrated minority group is not geographically compact, and so cannot prevail in a VRA challenge." Stephanopoulos, 83 U. Chi. L. Rev. at 1377. Why? Because "if a group is residentially integrated, it becomes very difficult for a district to capture

enough of its members to enable them to elect the candidate of their choice. To do so (where it is possible at all), a district must assume a highly irregular shape, connecting whatever local concentrations of the group happen to occur." *Id.* at 1380. As discussed in Section II below, this practice must be expressly forbidden once and for all.

B. Congressional Districts In 2025 Present Radically Different Demographic Circumstances Than The State Legislative Districts In *Gingles*.

1. Louisiana's population in the 2020 Census was approximately 4.6 million, so each of its six congressional districts consists of roughly 776,000 residents. J.A.334–36. Across the Nation, the average size of a congressional district is now 761,169. U.S. Census Bureau, *2020 Census Apportionment Results Delivered to the President* (April 26, 2021).

These district sizes bear no resemblance to the remedial districts in *Gingles*. The Louisiana congressional districts are roughly **15 times** the population of the North Carolina House seats at issue in *Gingles*, and roughly **6.5 times** the population of the State Senate seats at issue in *Gingles*.

Louisiana's disparate concentrations of black voters, spread throughout the state, also differ wildly from the concentrations of North Carolina's black voters submerged within the comparatively tiny multi-member districts in *Gingles*. Outside of New Orleans, the only other relatively concentrated and sizeable populations of black residents can be found in cities spread throughout the state (Baton Rouge, Shreveport, and Lafayette). This is

why, for every reapportionment since the VRA was enacted, Louisiana has had only one majority-black district, centered around New Orleans, by far its largest metropolitan area. The only exception was the effort to create a second district at the behest of the Department of Justice in the 1990s, which was soundly rejected as a racial gerrymander in *Hays v. Louisiana*, 936 F. Supp. 360 (W.D. La. 1996). In short, it is impossible to draw a second majority-black congressional district in Louisiana without combining different cities many miles apart to lump manifestly *noncontiguous* pockets of black residents.

Were it otherwise, surely Louisiana could have proposed a map that didn't match so closely the map that the district court rejected 30 years ago in *Hays*, where the court described the racial gerrymander as follows:

> Far from being compact, District 4 winds its way through fifteen of Louisiana's sixty-four parishes … and is approximately 250 miles long, considerably longer than any other district in the state. The District thinly links minority neighborhoods of several municipalities from Shreveport in the northwest to Baton Rouge in the southeast (with intermittent stops along the way at Alexandria, Lafayette, and other municipalities), thereby artificially fusing numerous and diverse cultures, each with its unique identity, history, economy, religious preference, and other such interests. Along its otherwise aimless and tortuous path the District splits twelve of its fifteen parishes, as well as fourteen municipalities, among which are included four of Louisiana's five largest population centers.

936 F. Supp. at 368. Despite all of this, Louisiana once again proffers a so-called § 2 remedial district that, just as in *Hays*, sprawls 250 miles from end to end across the state, from Baton Rouge to Shreveport. Considering the ease with which the § 2 violation was remedied in *Gingles*—because the majority-minority population itself was contiguous—this purported remedy has nothing to do with *Gingles*.

To be sure, had Louisiana tried to blatantly "crack" the large and contiguous population of minority voters in the New Orleans area, it likely would have been possible to create a remedial district that was compact. Given *Gingles*' dependence on individual pockets of segregated communities that were *each* sufficiently large to constitute a district majority, however, in the absence of allegations that a legislature "cracked" a contiguous minority voting-age population in the hundreds of thousands, it is unlikely that a remedial *congressional* district in 2025 could possibly remain true to the principles announced in *Gingles*.

2. There is another significant difference between Louisiana in 2025 and 1980s North Carolina: Louisiana, like the rest of America, is far more integrated in 2025. In *Shelby County v. Holder*, the Court noted that "things have changed dramatically" since the VRA's passage; namely, the "conditions justifying [Section 5's preclearance] requirement have dramatically improved." 570 U.S. 529, 547, 550 (2013). As the Court recognized in *Allen v. Milligan*, "residential segregation" has decreased "sharply … since the 1970s." 599 U.S. 1, 28–29 (2023) (citing Crum, *supra*, at 279 and n.105). Professor Stephanopoulos points in his amicus brief to the fact that the leading measure of segregation (the "dissimilarity index") has

fallen "sharply" over the past 50 years. Stephanopoulos Am. Br. at 16-18.

Louisiana has changed along with the rest of the Nation. As the district court found here, "the record is clear that Louisiana's Black population has become more dispersed and integrated in the thirty years since the *Hays* litigation." *Callais v. Landry*, 732 F. Supp. 3d 574, 613 (W.D. La. 2024). And it noted that Louisiana "Representative Carlson acknowledged that racial integration made drawing a second majority-Black district difficult." *Id.* at 588; *see id.* (quoting Carlson, "the reason why this is so difficult is because we are moving in the right direction"). This integration has massive consequences for vote-dilution claims given the geography and basic mathematical realities set out above.

The § 2 litigation movement does not celebrate this progress, however, since integration interferes with its partisan uses of § 2. Professor Stephanopoulos, for example, calls integration a "problem" for the cause:

> The problems posed by integration are clearest with respect to *Gingles*'s first prong. Minority voters who are residentially integrated are the very opposite of a geographically compact group. In the Court's terminology, they are diffuse rather than "insular," dilute rather than "concentrated."

Stephanopoulos, *supra*, 83 U. Chi. L. Rev. at 1384; *see also id.* at 1388 ("Residential integration is *not* one of § 2's goals. But minority representation *is* one of them, and for all of the reasons discussed above, it is imperiled by desegregation.") (emphasis in original); and 1335 ("desegre-

gation unsettles the [§ 2] doctrine" because where "minority populations are residentially integrated" and "a jurisdiction nevertheless encloses a dispersed minority group within a single district, then the district probably violates the constitutional ban on racial gerrymandering").

Partisan scholars have long shared his lament that § 2 creates tension between integration and maximizing minority voting representation through district line-drawing. Briffault, Book Review, *Lani Guinier and the Dilemmas of American Democracy, The Tyranny of the Majority: Fundamental Fairness in Representative Democracy*, 95 Colum. L. Rev. 418, 430 (1995) ("districting is increasingly a problematic device for even the election of minority representatives;" "[d]istricting will be effective only in areas where minority voters are residentially concentrated in homogeneous territories so that majority-minority districts can be created"); Karlan, *Our Separatism? Voting Rights As an American Nationalities Policy*, 1995 U. Chi. Legal F. 83, 88–89 (1995) ("Even a minority group whose members all live quite segregated lives … can seek relief through relatively race-neutral remedial districting only if they live in large ghettoes that form seemingly 'natural' districts. Otherwise, smaller minority communities must be strung together like pearls on a necklace to create a majority-nonwhite district."); Carstarphen, *The Single Transferable Vote: Achieving the Goals of Section 2 Without Sacrificing the Integration Ideal*, 9 Yale L. & Pol'y Rev. 405, 407 (1991) ("By making residential segregation a prerequisite for vote dilution remedies," *Gingles* "created a direct conflict between voting rights and the integration ideal.").

And despite the Nation's inspiring racial progress, the Brennan Center reports that, as of August 28, 2025, a total of 90 cases have been filed challenging congressional or legislative maps; 49 of those cases have alleged racial discrimination including 30 cases asserting § 2 challenges.[3] The last decade alone saw several states' redistricting plans struck down as racial gerrymanders after falling short of the necessary evidentiary showings under *Gingles* to justify the use of race in redistricting. *See, e.g.*, *Covington v. North Carolina*, 270 F. Supp. 3d 881, 892 (M.D.N.C. 2017).

Some have even argued that the supposed limitations of § 2 as interpreted by the Court (including the geographic compactness requirement) necessitate radical alternative remedies, such as cumulative voting or "transferable votes." *E.g.*, Engstrom, *The Single Transferable Vote: An Alternative Remedy for Minority Vote Dilution*, 27 U.S.F. L. Rev. 779 (1993); Richie & Spencer, *The Right Choice for Elections: How Choice Voting Will End Gerrymandering and Expand Minority Voting Rights, from City Councils to Congress*, 47 U. Richmond L. Rev. 959 (2013); Mulroy, *Alternative Ways Out: A Remedial Road Map for the Use of Alternative Electoral Systems as Voting Rights Act Remedies*, 77 N.C. L. Rev. 1867 (1999). Indeed, Prof. Stephanopoulos urges the Court to consider such a radical approach as an alternative to faithful application of *Gingles* in this very case. *See* Stephanopoulos Am. Br. at 6, 35.

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[3] Brennan Center for Law and Justice, *Redistricting Litigation Roundup,* https://www.brennancenter.org/our-work/research-reports/redistricting-litigation-roundup-0 (visited Sept. 13, 2025).

In short, the modern § 2 litigation movement has evolved into a political industry unto itself, similar to the DEI movement in college admissions before the Court outlawed race-preferences in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023). Race is being used in a cynical effort to draw district lines, based largely on stereotypes—people sharing the same skin color hundreds of miles apart are really one "community in interest," they claim—and in circumstances far removed from the conditions that gave rise to the § 2 vote dilution theory in *Gingles* 40 years ago.

II. If *Gingles* Is To Survive In Any Form, The Court Should Provide Clear Instructions Governing The Compactness Of Remedial Districts.

Whether § 2 can compel race-conscious remedial districting consistent with the Equal Protection Clause is in serious doubt. If the Court determines that *Gingles* remains viable in some form, it is urgent that the Court emphasize that drawing § 2 remedial district lines is not an "anything goes" enterprise. The Court should reiterate that "[a] State cannot remedy a § 2 violation through the creation of a noncompact district," *LULAC*, 548 U.S. at 431, and clarify the factors determining whether a district is "compact."

States and lower courts should no longer be allowed to seek shelter in the Court's statements that a § 2 "minority group must be sufficiently large and [geographically] compact to constitute a majority in a *reasonably configured* district." *Wisconsin Legislature v. Wisconsin Elections Comm'n*, 595 U. S. 398, 402 (2022) (emphasis added).

See also Allen, 599 U.S. at 18 (2023) ("A district will be reasonably configured … if it comports with traditional districting criteria, such as being contiguous and reasonably compact."). *Gingles* had no need to speak of "reasonably configured" districts because the district lines practically drew themselves around the small and densely segregated minority populations.

Nor should States and lower courts be allowed to continue exploiting the absence of a "precise rule … governing [§ 2] compactness," or latch on to the capacious concept of "'maintaining communities of interest.'" *LULAC*, 548 U.S. at 433 (quoting *Abrams v. Johnson*, 521 U.S. 74, 92 (1997)). "[B]izarre shaping of" remedial districts that "cut[] across pre-existing precinct lines and other natural or traditional divisions," reveals not just "a level of racial manipulation that exceeds what [§ 2] could justify," *Bush v. Vera*, 517 U.S. 952, 980–81 (1996), it also exceeds what the Fourteenth Amendment can justify. "A district that 'reaches out to grab small and apparently isolated minority communities'" should be considered an affront to all citizens. *LULAC*, 548 U.S. at 402 (quoting *Vera*, 517 U.S. at 979).

Forty years of *Gingles* litigation has stretched the concept of "reasonably configured" and "reasonably compact" beyond its breaking point. This case offers an important opportunity for the Court to clarify the parameters of a "compact" remedial district and affirm that a "reasonably configured" district is one that itself is "compact." The Court should affirm that for a remedial district to be compact, it must follow traditional districting principles such as maintaining traditional geographic and political boundaries and "communities of interest" that do not

consider race. Doing so honors the important doctrinal, historical, and policy reasons behind district-based representation.

A. The Court Must Eradicate The Combination Of Disparate Pockets Of Minority Voters In The Name Of Achieving Compactness By "Maintaining Communities Of Interest."

As shown above, in *Gingles*, there was just one "compact" group of minority voters. The Court should affirm that amalgamating geographically disparate groups of minority voters is not permissible under the guise of "maintaining communities of interest" as a purported basis for achieving "compactness" or appropriate district "configuration." Indeed, disparate groupings of minority voters are not "communities" in the ordinary sense of the word: they are not "a group of people living a particular place." Black's Law Dictionary (12th ed. 2024); *see also* Merriam-Webster's Dictionary, https://www.merriam-webster.com/dictionary/community (providing a primary definition of "community" as "a unified body of individuals" "with common interests living in a particular area"). To the extent it is assumed that geographically dispersed groupings of minority voters satisfy alternative broader definitions of "community" by sharing common interests, characteristics, or attitudes, the Court must clarify that such assumptions violate the colorblind ideal of the Constitution. *See Students for Fair Admissions*, 600 U.S. at 230.

Consideration of "nonracial communities of interest reflects the principle that a State may not 'assum[e] from a group of voters' race that 'they think alike, share the

same political interests, and will prefer the same candidates at the polls."" *LULAC*, 548 U.S. at 433 (quoting *Miller v. Johnson*, 515 U.S. 900, 920 (1995), in turn quoting *Shaw v. Reno*, 509 U.S. 630, 647 (1993)). As Justice Thomas put it over three decades ago:

> The basic premises underlying our system of safe minority districts and those behind the racial register are the same: that members of the racial group must think alike and that their interests are so distinct that the group must be provided a separate body of representatives in the legislature to voice its unique point of view. Such a "system, by whatever name it is called, is a divisive force in a community, emphasizing differences between candidates and voters that are irrelevant."

Holder v. Hall, 512 U.S. 874, 906 (1994) (Thomas, J., concurring in the judgment) (quoting *Wright v. Rockefeller*, 376 U.S. 52, 66 (1964) (Douglas, J., dissenting)). Once the devious assumption that all members of a minority group think in lockstep is cast aside, "there is no basis to believe that a district that combines two farflung segments of a racial group with disparate interests provides the opportunity that § 2 requires or that the first *Gingles* condition contemplates." *LULAC*, 548 U.S. at 433.

LULAC illustrates the point well. In that case, Texas had created a majority-Latino district (District 25) that combined "the Latino community near the Mexican border" with "the one in and around Austin," with a "300-mile gap" between the two Latino communities. 548 U.S. at 432, 434. Despite the two Latino communities having different backgrounds and interests, however, the district

court in that case concluded the resultant district was reasonably compact because of the "relative smoothness of the district lines." *Id.* at 432–33. However, "the practical consequence of drawing a district to cover two distant, disparate communities is that one or both groups will be unable to achieve their political goals." *Id.* at 434. In particular, the Court credited the idea that the sprawling size and diversity of the new district "could make it more difficult for the constituents in the Rio Grande Valley to control election outcomes." *Id.* (quotation omitted).

LULAC's grouping of widely dispersed pockets of minority voters was not an isolated example. The sprawling size and character of North Carolina's District 12 doomed it in *Shaw II*. *See Shaw II*, 517 U.S. at 916 ("no one looking at District 12 could reasonably suggest that the district contains a 'geographically compact' population of any race"); *id.* at 903 (noting that, "for much of its length, [District 12 was] no wider than the [Interstate]-85 corridor"). So too in *Miller*, where one district "centered around four discrete, widely spaced urban centers that ha[d] absolutely nothing to do with each other, and stretch[ed] the district hundreds of miles across rural counties and narrow swamp corridors." 515 U.S. at 908. The same could be said here. Like that congressional district in *Miller*, Louisiana's proposed Congressional District 6 is, from a geographic perspective, a "monstrosity." 515 U.S. at 909.

To be sure, consideration of the amorphous "communities of interest" factor has also allowed race to trump the classic and historically important factors of traditional geographic and political boundaries. *See*, *e.g.*, *Miller*, 515 U.S. at 918–20 (proposed district carved up counties and cleaved precincts, which could not "be rescued by mere

recitation of purported communities of interest" given "the fractured political, social, and economic interests" of the district's minority population); *LULAC*, 548 U.S. at 424, 432–35 (proposed district was noncompact because it split across cities and counties to connect minority communities that had "divergent 'needs and interests'"). But this Court has left no doubt that this factor must focus on "actual shared interests" outside of race, *Miller*, 515 U.S. at 916, and that such a "common thread of relevant interests" must not be a pretext for engaging in "racial stereotyping," *id.* at 920.

Indeed, the remedial districts proposed by modern § 2 litigants often make such a mockery of traditional criteria that geographical integrity might just as well be abandoned altogether, comprising districts of people based on their race without regard to where they live. Districts that connect blocks of minority voters by traversing swamps, as in *Miller*, or travelling narrow freeways as in *Shaw II*, are contiguous in name only; they had might as well be separate ink blots on a map that share the same district number.

In short, when analyzing whether a § 2 remedial district is compact, courts must first apply "traditional districting principles" in a race-neutral manner. Otherwise, history has shown that these factors will be deputized into the service of race-based gerrymandering.

B. "Compactness" Should Incorporate The Notion That A District Is A Recognizable Representational Unit Of Geography.

If the Court salvages *Gingles* in some form, it should further affirm that "compactness" must incorporate the

historical meaning of a "district" as a recognizable geographic unit of representation.

The term "district" encompasses the Founders' view that effective representation can be accomplished by dividing a state into geographic units encompassing relatively recognizable meanings. Such districts give effect to political subdivisions, allow representatives to "bring with them ... a local knowledge of their respective districts," and can thereby effectively represent their constituencies. *The Federalist No. 56*, at 261 (James Madison) (Hallowell ed., 1842); *see also Wesberry v. Sanders*, 376 U.S. 1, 15 (1964) (explaining that "Madison in The Federalist described the system of division of States into congressional districts, the method which he and others assumed States probably would adopt," and quoting The Federalist No. 57).

Further support for the historical understanding of the term "district" is found in the debates on the Apportionment Act of 1842, "which required single-member districts for the first time" for congressional districts. *Rucho v. Common* Cause, 588 U.S. 684, 698 (2019). That debate further indicates that Congress used the term to refer to a recognizable local representational unit of geography that respects political subdivisions. Senator Graham commented "[we] find in every great nation with any extension of country … that the representative assemblies of the people have been chosen by counties, parishes, departments, and districts, by whatever named called. It ensures that personal and intimate acquaintance between the representative and constituent which is of the very essence of true representation." *Cong. Globe*, 27th Cong., 2d Sess. app. 749 (1842). The House debate also focused on

the advantages of localized, geographically recognizable districts. Representative Summers stated, "[t]he essential feature of representative democracy is that the Representative shall reflect the will and know the wants of his constituents. He should live among them, be familiar with their condition, and hold with them a common political interest. These ends can only be secured by providing for representative elections in districts suited to the situation and convenience of the people." *Id.* at 354.

Nothing in the legislative history of the first Apportionment Act would indicate that the drafters ever considered that districts would be divided in any way other than straightforward geographic partitions representing local interest. And while the 1842 Apportionment Act has gone through a number of renditions over the past 150 years, the requirement that Congressional elections be held in "districts" has remained generally constant since 1842.[4] It remains so today. *See* 2 U.S.C. § 2c.

In contrast, the tortured and sprawling amalgamations of census geography that appear in some district plans largely fail to follow any political boundaries or evince any geographical reasoning, preventing representatives from becoming intimately familiar with issues important to their constituents. Such meandering districts often require the representative to represent communities of diverse interests, are inconvenient for voters, and make it far more difficult for candidates and members to

[4] The Apportionment Act of 1850, ch. 11, 9 Stat. 433, eliminated the provision requiring election by districts, but this provision was restored twelve years later in the Apportionment Act of 1862, ch. 170, 12 Stat. 572.

become familiar with the issues. Thus, requirements that preserve political subdivisions serve independent values, including facilitation of political organization, electoral campaigning, and constituent representation. *See Karcher v. Daggett,* 462 U.S. 725, 756 (1983) (Stevens, J., concurring).

The insidious practice of scooping up small disparate pockets of minority voters perpetuates race-based politics, which, sadly, is the motivation of the § 2 litigation industry. Legislators represent not only individuals, but also the interests of organized and unorganized associations of individuals. If members of a legislature become uncoupled from specific political subdivisions, their bonds to identifiable interests are reduced. Legislative members cast free of the responsibility for specific communities of interest become more vulnerable to the influence of special, or single, interest groups. This is why respect for genuine, non-race-based communities of interest remains an important districting principle in the modern age of technology when communities can take many forms. Subordinating traditional districting principles to race, and thereby creating a § 2 "district" that departs from the traditional common understanding of a district, would risk depriving those voters of these benefits of traditional districting.

III. The "Anything Goes" Approach To Remedial District-Drawing Imposes Significant Election-Administration Costs And Undermines Election Integrity.

The current regime of remedial district line-drawing has practical consequences for election administration, election integrity, and voter confidence. The flood of § 2

litigation—and the ever-changing maps it spawns—poses significant challenges to election administration. District boundaries change from election to election and, with them, polling places. Too often, this leads to election officials scrambling and leaves voters in the dark, confused about shifting boundaries and why, for example, their incumbent representative keeps changing. This, in turn, undermines voter confidence.

News stories about such election administration troubles abound every election season. A few examples from the latest redistricting cycle illustrate these difficulties. In the wake of redistricting in 2022, one California county sent out ballots containing missing or inaccurate candidates based on "outdated district boundaries." Lauten-Scrivner, *Inaccurate general election ballots sent to Merced County voters. What happens now?*, Merced Sun-Star (Oct. 13, 2022). That same year, Virginia election officials mailed out notices with incorrect voting information to tens of thousands of voters throughout the state, causing widespread confusion. Melton & Sanchez-Cruz, *Voters in Fairfax, Prince William counties were sent incorrect voting information*, WUSA9 (Oct. 21, 2022); NBC Washington, *Thousands of Virginia Voters Sent Incorrect Voting Info: Here's How to Check Your Polling Place* (Oct. 21, 2022).

In the 2024 election, a tight race for a Georgia state legislative seat was called into question when several dozen voters cast ballots in the wrong district after redistricting split their district across a rural highway. Niesse, *Outcome in Georgia's Closest House Race in Doubt Due to Botched Ballots*, Atlanta Journal-Constitution (Dec. 13, 2024). And in Wisconsin, a local election official "failed to

realize" that redistricting had moved a rural town into a new state legislative district, which resulted in the town's 700 voters receiving ballots for an incorrect race and cast the result of a primary election into doubt. WCCO News, *Confusion over new legislative district leads to ballot error in Wisconsin Assembly primary* (Aug. 14, 2024). The list goes on.

Election officials deserve better and maintaining voter confidence requires more. This Court has previously held that "the need for workable standards and sound judicial and legislative administration" counseled in favor of adopting a bright-line rule for the first *Gingles* precondition. *Bartlett v. Strickland,* 556 U.S. 1, 17 (2009). This is an area where objective rules—like one requiring § 2 illustrative districts be drawn in a race-neutral manner—add value and clarity in an area of law bedeviled by complexity and uncertainty. Legislatures, lower courts, and the public would be better served with a clear, administrable standard for determining a § 2 vote-dilution claim.

CONCLUSION

For the foregoing reasons, the Court should clarify the geographical limits on § 2 remedial districts and affirm the district court.

Respectfully submitted,

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