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 *AMICUS CURIAE* LANDMARK LEGAL FOUNDATION IN SUPPORT OF APPELLEES

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STATEMENT OF INTEREST OF *AMICUS CURIAE*[1]

Amicus Curiae Landmark Legal Foundation ("Landmark") is a national public-interest law firm committed to preserving the principles of limited government, separation of powers, federalism, originalist construction of the Constitution and individual rights. This case is about the proper scope of the Voting Rights Act (VRA), Pub. L. 89-110, 79 Stat. 437, as amended, 52 U.S.C. § 10301 *et seq.* Landmark has previously filed amicus briefs in cases involving the Voting Rights Act, including *Shelby Cnty. v. Holder*, 570 U.S. 529 (2013), and *Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647 (2021), as well other election law cases such as *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756 (2018), and *Bost v. Ill. State Bd. of Elections*, No. 24-568 (petition for cert. filed Nov. 19, 2024).

Landmark respectfully urges this Court to affirm.

INTRODUCTION AND SUMMARY OF ARGUMENT

"In the wake of the Civil War, the Framers of the Fourteenth Amendment charted a way out: a colorblind Constitution that requires the government to, at long last, put aside its citizens' skin color and focus on their individual achievements." *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S.

1. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *Amicus Curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

181, 283 (2023) (Thomas, J., concurring). Despite the momentousness of this promise, the nation is still mired in the challenges of its implementation a century and a half later. Louisiana's congressional districts as they stand currently are aggressive and unconstitutional racial gerrymanders. The map divides Louisiana into six districts that snake across the state with little regard to geographical or political boundaries to maximize the percentages of different racial groups in their allotted districts. The map strikes directly at the foundational American ideal that our government will not treat people differently and pit them against one another based on the color of their skin.

The map exists in this form because the test put forth in *Thornburg v. Gingles*, 478 U.S. 30 (1986), has been loosened considerably since its creation almost four decades ago. Specifically, the Middle District of Louisiana's finding that a second majority-black district was likely necessary to remedy a Section 2 violation relied heavily on the desire for proportionality in representation. *Robinson v. Ardoin*, 605 F. Supp. 3d 759, 851 (M.D. La. 2022). Even though this is explicitly eschewed by the statute, the district court drew upon this Court's post-*Gingles* precedents to justify its decision. *Id.* at 777 n. 107 (citing *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399 (2006); *Johnson v. De Grandy*, 512 U.S. 997 (1994)). In doing so, the district court reopened a central irony of the federal judiciary's recent Section 2 jurisprudence. A test designed to prevent racial gerrymandering is now being employed to cause stark racial gerrymandering.

The district court's emphasis on proportionality in its decision-making is a predictable result of statutory precedents endorsing maximalist readings of Section 2

of the VRA. *Allen v. Milligan*, 599 U.S. 1 (2023), is the most recent of such precedents. It enabled plaintiffs suing Alabama to effectively flip the standard of review for Section 2 claims. Since the 1982 amendment to the statute, the test to show discrimination has inched toward the mere possibility that another majority-minority district could be drawn. In *Robinson*, the potential for proportionality, even where it came at the expense of compactness, incumbents, and municipal subdivisions, was determinative. Loosening the standards to achieve the first *Gingles* precondition and allowing racial considerations to override all others diminishes the credibility of Section 2's proportionality disclaimer. It also, crucially, puts the statute as interpreted on a collision course with the Fourteenth and Fifteenth Amendments.

This constitutional dilemma was wholly avoidable, however. Several standards proposed over the decades of Section 2 cases resolve this issue. One expansive option to do so would be adopting Justice Thomas's longstanding position that Section 2 of the VRA never applied to districting in the first place. *Abbott v. Perez*, 585 U.S. 579, 622 (2018). Even much more modest changes could achieve the same effect of curing the constitutional error here. For example, Alabama's proposed race-neutral standard in *Allen v. Milligan* to detect racial discrimination remains a strong option to resolve this tension. Considering race-neutral maps to highlight which traditional factors would need to be diminished to achieve additional majority-minority districts is not a "novel requirement," *Allen*, 599 U.S. at 6, but central to the analysis that is supposed to undergird the *Gingles* test. The race-neutral benchmark test comports with both the text of the VRA and the commands of the Constitution.

The Court has gone down a dangerous path by permitting a central role for racial classifications in redistricting. The Constitution requires that race not predominate in the drawing of legislative districts. And yet, without any sort of race-neutral standard in Section 2 claim evaluations, race has now repeatedly done just that. Without walking back statutory precedents like *Allen*, the constitutional violations currently enshrined in Louisiana's deeply segregated districts put the whole of Section 2 in jeopardy. It is time to change course.

ARGUMENT

I. The *Robinson* district court spurred the creation of a racial gerrymander because it failed to enforce the first *Gingles* test precondition.

The Middle District of Louisiana's decision in *Robinson v. Ardoin*, 605 F. Supp. 3d 759 (M.D. La. 2022), was profoundly mistaken. By ruling in favor of the plaintiffs based on Section 2, it forced Louisiana to change its maps to adopt a different racial balance of its congressional districts. The district court's key error was accepting the plaintiffs' claim that Louisiana's political geography satisfies *Gingles I*, or the "large and geographically compact" precondition. *Thornburg v. Gingles*, 478 U.S. 30, 50 (1986). It did so partly based on two small sets of illustrative maps from expert witnesses that were visibly racial gerrymanders. *Robinson*, 605 F. Supp. 3d at 780, 785. The illustrative maps bypass almost every traditional redistricting factor, including parish boundaries, city boundaries, geographical regions of the state, protection of incumbents, and compactness in the interest of configuring a second majority-black

district. And despite the contortions necessary to put these illustrative maps together, they still ran into several issues.

The first was their rigidity. In joining together black communities from around the state with little else in common, each of the illustrative maps required that the new Baton Rouge-anchored, majority-black district evict Representative Julia Letlow from her seat. *Id.* Their maps require this despite her living approximately one hundred fifty miles from Baton Rouge in the state's northeastern Richland Parish. This was because the political geography of the state, which has only seven majority-black parishes, leaves few options in drawing this second district. Of the seven parishes, two (Orleans and St. John the Baptist) form the basis of the first majority-black district (CD2), four are exceedingly small (East Carroll, Madison, Tensas, and St. Helena), and the final parish (Caddo) is in the northwest, on the other side of the state entirely. U.S. Census Bureau, *Louisiana: Profile*, data.census.gov, https://data.census.gov/profile/Louisiana?g=040XX00US22 (last visited Sept. 20, 2025). What this implies is that pieces of parishes, instead of parishes themselves, would be needed to get across the fifty-percent threshold in the construction of the second district at issue. With this context, it becomes apparent why each of the six illustrative maps looked so similar: options for splitting parishes based on race and connecting them in a way that looked even plausibly constitutional were quite limited.

Another issue was that even with the black populations of Monroe, Alexandria, Lafayette, the rural Delta Parishes, and Baton Rouge configured together in suggested districts based unmistakably on race, it

produced the barest of majorities. None of the illustrative maps the Middle District endorsed had any districts that exceeded fifty four percent black. *Robinson*, 605 F. Supp. 3d at 779-780, 785-786. Moreover, even the question of who could count as black became a point of issue at the district court level. Louisiana and the *Robinson* plaintiffs disputed whether to employ an expansive (Any Part Black Voting Age Population) or restrictive (Non-Hispanic Single-Race Black Citizen Voting Age Population) definition of race for Section 2 purposes. This disagreement had meaningful implications for whether the second majority-black district could be constructed in relative accordance with traditional redistricting principles. *Id.* at 779-786, 791-792. Both of these factors seriously call into question whether the *Gingles I* precondition was met.

The clash among experts at the district court over how much black heritage makes someone black for congressional purposes is an indication of the inherent problems in vote dilution cases. This dispute is reminiscent of the infamous Louisiana black codes that produced cases like *Sunseri v. Cassagne*, 196 So. 7 (1940), where the Louisiana Supreme Court had to scour a Louisiana woman's family history for evidence of any black ancestry in a divorce case. For modern judicial opinions to read like blood quantum laws explicitly thrown out decades ago in *Loving v. Virginia*, 388 U.S. 1 (1967), strongly suggests that Fourteenth Amendment protections are implicated.

The *Robinson* decision required Louisiana and its leaders to engage in something they repeatedly have told this and other courts that they are loath to do: highly race-based districting. Louisiana's response, to pass a map (S. B. 8) that at least protected the high-profile

incumbent Representative Julia Letlow, Louisiana's only Representative on the House Appropriations Committee, was a reasonable political decision while otherwise facing very difficult circumstances. La. Rev. Stat. § 18:1276.1 (2024). But regardless of the reasons for S. B. 8's adoption, understandable or not, the map egregiously divides Louisianans based on race, with the new Congressional District 6 splitting nine separate communities and six of its ten parishes into pieces based on little more than racial grounds. *Id.* A fair assessment of this situation yields the clear result that race predominated in the drawing of these maps. Justice Alito's analogy to define predomination applies here: that "if achieving a certain objective is 'non-negotiable,' then achieving that objective will necessarily play a predominant role." *Allen v. Milligan*, 599 U.S. 1, 101 (2023) (Alito, J., dissenting). The legislative record makes this non-negotiability, and thus predominance, explicit. Brief for Appellees at 12–16, *Louisiana v. Callais*, Nos. 24-109, 24-110 (filed Jan. 21, 2025).

Thus, the consequent equal protection claims lodged by Appellees here stand on solid legal footing. Louisiana has a high bar to meet to demonstrate that this racial classification and differential treatment would survive strict scrutiny. That the Secretary of State herself says it does not is telling. Brief for Appellee Louisiana Secretary of State at 15-20, *Louisiana v. Callais*, Nos. 24-109, 24-110 (U.S. Sept. 17, 2025). In the "sordid business [of] divvying us up by race," *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 511 (2006) (Roberts, C.J., concurring in part, concurring in the judgment, and dissenting in part), districts like this send an unmistakable signal to Louisiana voters: members of Congress represent racial constituencies rather than diverse communities. This is

antithetical to the American project and is a travesty of the Fourteenth Amendment. When districting is as racially motivated as it is here, every voter not of the dominant race of their district (non-white voters in Districts 1, 3, 4, and 5; as well as non-black voters in Districts 2 and 6) has a strong claim that they have been placed into districts with the state's intent for them not to see their preferred candidate win elections simply on account of their race.

Moreover, the Middle District's decision, in addition to making Louisiana liable for a host of equal protection claims, stands to make *Gingles* meaningless. If Section 2 plaintiffs can prevail on claims as tenuous as this, leading to districts as odd-looking as this, then *Gingles* serves as a de facto requirement for proportionality. Louisiana is thankfully a very integrated state, with each of its largest metropolitan areas having quite large populations of both black and white voters. U.S. Census Bureau, *supra*. This is a testament to the decisions that average people make every day to live in integrated communities. Overriding the way that Louisianans have decided to organize themselves is not what the statute requires, and it is not something the Constitution allows.

II. The Court's current interpretation of the VRA on vote dilution claims and its application of *Gingles* lead to a conflict with the Fourteenth and Fifteenth Amendments.

The Middle District of Louisiana's decision in *Robinson*, while constitutionally suspect, is a predictable result of this Court's vote dilution jurisprudence. By accepting vote dilution claims as covered under Section 2 and refusing to tie the assessment of these claims to any

sort of neutral baseline, the Court has inched further towards a proportionality standard in contravention of the law's explicit text. Steadily bringing Section 2 into greater contention with the Fourteenth and Fifteenth Amendments has not come without warnings, however.

Three decades ago, Justice Thomas argued that the VRA should be interpreted narrowly and not be read to permit vote dilution claims. *Holder v. Hall*, 512 U.S. 874, 892 (1994) (Thomas, J., concurring). He drew on an earlier warning another three decades prior about districting from Justice Douglas. "The principle of equality is at war" with racial and religious districting. *Wright v. Rockefeller*, 376 U.S. 52, 66 (1964) (Douglas, J., dissenting). Justice Douglas further stated in *Wright* that "government has no business designing electoral districts along racial or religious lines." *Id*. According to Justice Thomas, the text of Section 2 referred to the pressing issue at the time of the Act's passage in 1965—the black voter's inability to vote in the South due to intentional impediments to their ballot access like literacy tests and grandfather clauses. *Holder*, 512 U.S. at 893.

As amended after *City of Mobile v. Bolden*, 446 U.S. 55 (1980), the VRA provides an amorphous "totality of the circumstances" standard for whether some groups have "less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 52 U.S.C. § 10301(b). By its terms, this standard is not something that can be measured with precision. And Section 2 claims are unlike Section 5 preclearance claims where the proposed change could be compared to an existing standard, the status quo.

Several problems arise from an expansive reading of an already broadly worded statute. The Court is drawn into political issues—not just partisan politics, but questions of political philosophy. For instance, are single-member or multi-member districts preferable? Is it better for a minority group to be more highly concentrated in one district or spread out in lower, but still potentially outcome-determinative, margins within two? *Holder*, 512 U.S. at 893-897. As the Court gets drawn into these questions best left to Congress, separation-of-powers issues arise. In addition, the Court's recent political gerrymandering cases highlight the need for a fixed principle when deciding cases. "'[J]udicial action must be governed by *standard*, by *rule*,' and must be 'principled, rational, and based upon reasoned distinctions' found in the Constitution or laws." *Rucho v. Common Cause*, 588 U.S. 684, 718, (2019) (citing *Vieth v. Jubelirer*, 541 U.S. 267, 278, 279 (2004) (plurality opinion)).

Justice Thomas laid the vote dilution problem bare. "In construing the Act to cover claims of vote dilution, we have converted the Act into a device for regulating, rationing, and apportioning political power among racial and ethnic groups." *Holder*, 512 U.S. at 893. Once again, that warning was made thirty years ago. Since then, other Justices have sounded warnings about the looming conflict between the racial focus of the vote dilution cases with the Fourteenth and Fifteenth Amendments.

> • "Racial classifications of any sort pose the risk of lasting harm to our society. . . . 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—a goal that the Fourteenth and Fifteenth Amendments embody. . . ." *Shaw v. Reno*, 509 U.S. 630, 657 (1993) (O'Connor, J.).

- "To the extent there is any doubt whether § 2 calls for the majority-minority rule, we resolve that doubt by avoiding serious constitutional concerns under the Equal Protection Clause. . . . If § 2 were interpreted to require crossover districts throughout the Nation, 'it would unnecessarily infuse race into virtually every redistricting, raising serious constitutional questions.'" *Bartlett v. Strickland*, 556 U.S. 1, 21 (2009) (Kennedy, J.) (plurality opinion) (quoting *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 446 (2006)).

- "Since the Equal Protection Clause restricts the consideration of race and the VRA demands consideration of race, a legislature attempting to produce a lawful districting plan is vulnerable to 'competing hazards of liability.'" *Abbott v. Perez*, 585 U.S. 579, 587 (2018) (Alito, J.) (quoting *Bush v. Vera*, 517 U.S. 952, 977 (1996)).

Similarly, Justices have warned about the lack of a neutral benchmark in vote dilution cases beyond proportionality. Justice O'Connor noted that "[t]here is an inherent tension between what Congress wished

to do and what it wished to avoid, because any theory of vote dilution must necessarily rely to some extent on a measure of minority voting strength that makes some reference to the proportion between the minority group and the electorate at large." *Gingles*, 478 U.S. at 84 (O'Connor, J., concurring). Justice Alito wrote, "a § 2 plaintiff who claims that a districting map violates § 2 because it fails to include an additional majority-minority district must show at the outset that such a district can be created without making race the predominant factor in its creation." *Allen*, 599 U.S. at 99 (2023) (Alito, J., dissenting). Unfortunately, the holding in *Allen* rejected the idea that a race-neutral benchmark was necessary and instead adopted a de facto proportionality standard. If the VRA demands proportionality, race is considered in the creation of legislative maps to an extent that violates the Fourteenth and Fifteenth Amendments. As Judge Bork wrote about the Fourteenth Amendment's Enforcement Clause, "The power to 'enforce' a law is not the power to change the law's content. . . . Had the ratifiers intended to reserve to Congress the authority to alter the concept of equal protection, they could have said so much more plainly." Robert H. Bork, The Tempting of America: The Political Seduction of the Law 91-92 (1990).

The road to continued racial classification in American law is paved with the good intentions of using race as a remedial tool. Despite this, the use of racial classifications to solve real or perceived racial discrimination without a compelling interest runs a perilous risk of "den[ying] . . . equal protection of the law" to those outside the racial classification. U.S. Const. Amend. XIV, § 1. The Court has recognized this, and repeatedly rejected the use of racial classifications, well intentioned though they may

have been, for this reason. *See Richmond v. J. A. Croson Co.*, 488 U.S. 469 (1989) (holding a municipal minority set-aside plan violated the Equal Protection Clause); *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007) (ruling a voluntary racial segregation program violated the Equal Protection Clause); *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023) (holding the use of race in college admissions violated the Equal Protection Clause). Nevertheless, *Allen* has encouraged states to use racial classifications in districting. The discord here is untenable. Even if created with the best of intentions to benefit racial minorities, these Section 2-driven maps clash directly with the Equal Protection Clause. Remedial racial gerrymandering is still unconstitutional. The Chief Justice said it best himself: "The way to stop discrimination on the basis of race is to stop discriminating on the basis of race." *Parents Involved in Cmty. Sch.*, 551 U.S. at 748.

In the instant case, evidence strongly suggests that S. B. 8 and even the *Robinson* illustrative maps fit squarely among these unconstitutional racial gerrymanders. Configuring this second majority-black district is nearly impossible to do without the racial considerations that the Amendments almost always bar. When a race-neutral benchmark was applied to Louisiana at the district court stage, and 10,000 race-neutral maps were drawn, none had any majority-black districts, let alone two. *Robinson*, 605 F. Supp. 3d at 794-795. Louisiana's geography explains this finding. Orleans Parish (coterminous with New Orleans) is the largest majority-black parish, but because its population size forms only about half of a congressional district, the expert witness was forced to reach into neighboring parishes, which are likely to be either more

white, more Hispanic, or both. *Id.*; U.S. Census Bureau, *supra*. Election results in recent cycles strongly suggest that any district centered on New Orleans in a race-neutral situation would be a coalition district where black voters still succeed quite often in electing their candidate of choice due to crossover voting. Graphical Election Results, Louisiana Secretary of State, voterportal.sos.la.gov/graphical (last visited Sept. 22, 2025). Regardless, it is inescapable that getting past the arbitrary fifty-percent black voting age population threshold in two different districts around the state would not happen but for quite exacting racial classifications.

Voting Rights Act-driven racial gerrymanders are ultimately nothing more than one nail driving out another. A state which creates a black-majority district through gerrymandering may do so to satisfy the VRA's requirements. Yet, by effectively disenfranchising non-white residents in white majority districts and non-black residents in black majority districts on account of race, the state will have violated their rights. These groups become permanently entrenched as electoral losers because of the color of their skin, and "[w]hen a legislature thus singles out a readily isolated segment of a racial minority for special discriminatory treatment, it violates the Fifteenth Amendment." *Gomillion v. Lightfoot*, 364 U.S. 339, 346 (1960). Similarly, because the map purposely dilutes the voting power of these groups on the basis of their race, it does not afford them the equal protection of their voting rights guaranteed by the Fourteenth Amendment.

The maps at issue here do not fare much better on Fifteenth Amendment grounds, either. This Court made clear in *Rice v. Cayetano,* 528 U.S. 495 (2000),

that, "[c]onsistent with the design of the Constitution, the Amendment is cast in fundamental terms, terms transcending the particular controversy which was the immediate impetus for its enactment. The Amendment grants protection to all persons, not just members of a particular race." *Id.* at 512. Packing voters into different districts based on race does the exact opposite for voters of all races left out in the cold. So long as Section 2 is read to permit what are essentially proportionality claims, a system will continue which generates endless equal protection and racial vote dilution claims each time an electoral map is redrawn. Ultimately, it bears repeating that the Fourteenth and Fifteenth Amendments, by their own text, apply to the individual. U.S. Const. Amend. XIV, XV. That some voters of any race are advantaged in certain districts in Louisiana does nothing to mitigate potential claims brought by those whose race plays a major role in their disenfranchisement elsewhere in the state. The way out of this quandary, of course, is to move toward the colorblindness required by the Constitution. When racial considerations are limited to assuring representation at the level that race-blind maps would entail, then the constitutional claims that arise under the current scheme dissipate. The strength of this standard is that it cuts both ways. By continuing to allow challenges in cases of empirically backed dilution while removing the gerrymandering that stems from proportionality for its own sake, the Court can strike the balance that Section 2 jurisprudence has sorely needed for decades now.

CONCLUSION

The decision of the district court should be affirmed.

Respectfully submitted,

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