Nos. 24-109, 24-110

In the
Supreme Court of the United States

LOUISIANA,
Appellant,
v.

PHILLIP CALLAIS, et al.,
Appellees.

PRESS ROBINSON, et al.,
Appellants,
v.

PHILLIP CALLAIS, et al.,
Appellees.

On Appeal from the United States District Court for the Western District of Louisiana

BRIEF OF STATE OF MISSOURI AS *AMICUS CURIAE* IN SUPPORT OF APPELLEES

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INTEREST OF *AMICUS CURIAE* & SUMMARY OF ARGUMENT

Under our Constitution, the government cannot treat individuals differently because of the color of their skin. U.S. Const. amends. XIV, XV. Consistent with that principle, the Missouri General Assembly wishes to draw federal congressional districts without looking at racial data. As the U.S. Constitution commands, Missouri wants future redistricting efforts to be "color-blind." *Plessy* v. *Ferguson*, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting).

Unfortunately, Section 2 of the Voting Rights Act ("VRA") "demands consideration of race" when Missouri draws legislative districts. *Abbott* v. *Perez*, 585 U.S. 579, 587 (2018). True enough, Congress's command to consider race in redistricting was once justifiable as a remedy against white supremacist laws in some American States. But this Court has long recognized that race-based remedies are appropriate only as a *temporary* response to past governmental discrimination. *See Students for Fair Admissions, Inc.* v. *President & Fellows of Harvard Coll.*, 600 U.S. 181, 212–13, 225, 227–28 (2023); *Concrete Works of Colorado, Inc. v. City & Cnty. of Denver*, 124 S. Ct. 556, 560 (2003) (Scalia, J., dissenting from denial of certiorari) ("[T]he deviation from the norm of equal treatment of all racial and ethnic groups [be] a temporary matter." (quoting *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 510 (1989) (plurality)). Eventually, the only "way to stop discrimination on the basis of race is to stop discriminating on the basis of race." *Parents Involved in Cmty. Schs.* v. *Seattle Sch. Dist. No. 1*, 551 U.S. 701, 748 (2007).

The Court should hold that race-based districting is no longer justified and thus violates the Equal Protection Clause. *Allen* v. *Milligan*, 599 U.S. 1, 45 (2023) (Kavanaugh, J., concurring); *id.* at 87–88 (Thomas, J., dissenting). Over thirty years ago, this Court recognized that "race-based districting" threatened to pose "lasting harm to our society." *Shaw* v. *Reno* ("*Shaw I*"), 509 U.S. 630, 657 (1993). Even after that cautionary note, race-based districting has been *mandated* even longer than federal courts *permitted* race-based decision-making after this Court issued a similar warning in the context of college admissions. *See Students for Fair Admissions*, 600 U.S. at 212–13. And just as in *Students for Fair Admissions*, there is "no end in sight" to race-based districting. *Id.* Unless the Court is prepared to "prolong immeasurably" the "'sordid business' of 'divvying us up by race,'" *Allen*, 599 U.S. at 86 (Thomas, J., dissenting) (quoting *League of United Latin American Citizens* v. *Perry*, 548 U.S. 399, 511 (2006) (LULAC) (Roberts, C.J., concurring in part, dissenting in part)), race-based districting under Section 2 of the VRA must end.

ARGUMENT

I. The Constitution generally prohibits treating individuals differently because of their race.

When it comes to race, the Constitution sets a simple rule for the government: treat everyone the same. The Equal Protection Clause guarantees to all the "equal protection of the laws." U.S. Const. amend. XIV, § 1. And in case that were not specific enough, the Fifteenth Amendment "promised unequivocally that the '[r]ight of citizens of the United

States to vote' no longer would be 'denied or abridged … by any State on account of race.'" *Shaw I*, 509 U.S. at 639 (quoting U.S. Const. amend. XV, § 1).

These provisions' "central purpose is to prevent the States from purposefully discriminating between individuals on the basis of race." *Id.* at 642. After all, "[c]lassifications of citizens solely on the basis of race 'are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.'" *Id.* at 643 (quoting *Hirabayashi* v. *United States*, 320 U.S. 81, 100 (1943)); *see also Plessy*, 163 U.S. at 559 (Harlan, J., dissenting) ("[A]ll citizens are equal before the law," and the law takes "no account of [a person's] surroundings or of his color."). "That principle cannot be overridden except in the most extraordinary case." *Students for Fair Admissions*, 600 U.S., at 208.

This Court has also emphasized that race-based districting carries "particular dangers" beyond the "lasting harm" caused by other racial classifications. *Shaw I*, 509 U.S. at 657. "Racial gerrymandering, even for remedial purposes," "reinforce[s] the belief . . . that individuals should be judged by the color of their skin." *Id.* And "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, and to which the Nation continues to aspire." *Id.* Thus, this Court has long recognized that race-based redistricting is presumptively unconstitutional. *Id.* at 643. Indeed, a State that engages in this practice must satisfy strict scrutiny. *Id.* Thus, unsurprisingly, States that make districting decisions based on racial data jeopardize the constitutionality of their legislative maps. *See, e.g.*, *Wis. Legislature* v. *Wis. Elections Comm'n*,

595 U.S. 398 (2022); *Abbott*, 585 U.S. 579; *Cooper* v. *Harris*, 581 U.S. 285 (2017); *Shaw* v. *Hunt* ("*Shaw II*"), 517 U.S. 899 (1996); *Bush* v. *Vera*, 517 U.S. 952 (1996); *Miller* v. *Johnson*, 515 U.S. 900 (1995); *Shaw I*, 509 U.S. 630.

II. Section 2 of the Voting Rights Act was enacted to respond to governmental discrimination.

Despite the Constitution's clear prohibition of racial discrimination, U.S. Const. amends. XIV, XV, this Court has recognized that it was occasionally appropriate for governments to take race-based actions in response to patterns of government racial discrimination. *See Shaw I*, 509 U.S. at 639–42; *see also Shelby Cnty.. v. Holder*, 570 U.S. 529, 545–46 (2013). The VRA—and its mandate for race-based districting—was one such remedial measure.

During the Jim-Crow era, "a number of states . . . continued to circumvent the [Constitution's] prohibition through the use of both subtle and blunt instruments, perpetuating ugly patterns of pervasive racial discrimination." *Shaw I*, 509 U.S. at 639 (internal quotation marks and citation omitted). In an effort to perpetuate governmental white supremacy, certain States employed a variety of measures designed to suppress African-American voter-registration and turnout. *See Allen*, 599 U.S. at 10; *Shaw I*, 509 U.S. at 639–40. And these efforts were largely successful. In the mid-1960s, "registration of eligible black voters ran 50% behind that of whites." *Shaw I*, 509 U.S. at 640. At that time, "only 19.4 percent of African–Americans of voting age were registered to vote in Alabama, only 31.8 percent in Louisiana, and only 6.4

percent in Mississippi." *Shelby Cnty.*, 570 U.S. at 545–46.

"Congress enacted the Voting Rights Act of 1965 as a dramatic and severe response to [that] situation." *Shaw I*, 509 U.S. at 640. The VRA prohibited schemes designed to "dilute" the "voting power" of particular minority groups. *Id.* Although there was initially uncertainty on the point, Congress subsequently clarified that it intended Section 2 to prohibit the dilution of minority political power in redistricting. *See Allen*, 599 U.S. at 11–13; *Thornburg* v. *Gingles*, 478 U.S. 30, 34–36 (1986).

This Court has repeatedly suggested that Section 2—at the time it was enacted—was an appropriate response to a recent history of severe, pervasive governmental discrimination against black citizens. *See, e.g.*, *Allen*, 599 U.S. at 10–13; *City of Rome v. United States*, 446 U.S. 156, 173–74 (1980). And this Court recently refused to overrule those cases. *See Allen*, 599 U.S. at 33, 41–42. The Court has, however, left open the question of whether race-based districting has a temporal limit and whether it *continues* to be consistent with the Equal Protection Clause. *Allen*, 599 U.S. at 45 (Kavanaugh, J., concurring); *accord id.* at 38–42 (majority) (not addressing this argument).

III. In the limited situations where this Court has permitted the government to consider race, it has insisted that such consideration be temporary.

As several Justices have recognized, Section 2's mandate for race-based districting cannot persist in perpetuity. Tr. of Oral Arg., *Louisiana v. Callais* at 55:2–7 (remarks of Justice Kavanaugh); *Allen*, 599

U.S. at 45 (Kavanaugh, J., concurring); *id.* at 86–89 (Thomas, J., dissenting); *see also Shelby Cnty.*, 570 U.S. at 546–47. That is surely correct.

This Court has long hesitated to sanction differential treatment on the basis of race. In a limited number of contexts, the Court has applied strict scrutiny and sanctioned certain forms of "affirmative action"—discriminatory treatment designed to benefit particular minority groups. In doing so, the Court has insisted that such measures be temporary and have a definite endpoint. A few examples illustrate that important point.

A. College admissions.

In the college-admissions context, this Court held that public colleges could consider race in order to advance the compelling government interest of obtaining the educational benefits that flow from a racially diverse student body. *Regents of Univ. of California v. Bakke*, 438 U.S. 265, 311–15 (1978) (opinion of Powell, J.). But the Court was careful to stress the limitations on this allowance, reaffirming that "[r]acial and ethnic distinctions of any sort are *inherently suspect*." *Id.* at 291 (emphasis added). In particular, the Court prohibited quotas or a "prescribed number of seats set aside for each" racial group. *Id.*, at 315.

In *Grutter* v. *Bollinger*, 539 U.S. 306 (2003), this Court recognized another important principle limiting consideration of race in college admissions. The Court noted that it had "been 25 years since" it "first approved the use of race" in the admissions context, and that it "expect[ed]" that further consideration of race would "no longer be necessary" after an additional 25 years. *Id.* at 343. In other words, the

Court sanctioned consideration of race "for another generation—and only for another generation." *Students for Fair Admissions*, 600 U.S. at 313 (Kavanaugh, J., concurring).

Twenty years after *Grutter*, this Court enforced its temporal limit on affirmative action and prohibited its further use in college admissions. *Students for Fair Admissions*, 600 U.S. at 212–13, 225, 227–28. In part, the Court based its ruling on the fact that it could discern no logical endpoint for the continued use of race-based admissions. *Id.* Notably, this Court emphasized that its decision *upheld* precedents like *Grutter*, which expressly disclaimed permanent racial classifications. *Id.* at 227–28 (quoting *Grutter*, 539 U.S. at 342). Without a concrete, logical test for determining when race would no longer be considered, the Court refused to sanction "unceasing" race-based admissions. *Id.* at 228.

B. Race-based student assignment in public schools.

This Court also applied the temporal limit in cases involving race-based student assignments in public schools. *See Students for Fair Admissions*, 600 U.S. at 314 (Kavanaugh, J., concurring) (collecting cases); *Bd. of Educ. of Okla. City Pub. Schs., Indep. Sch. Dist. No. 89, Okla. Cnty., Okla.* v. *Dowell*, 498 U.S. 237, 247–48 (1991) ("From the very first, federal supervision of local school systems was intended as a temporary measure to remedy past discrimination.").

Before and for some time after this Court's landmark decision in *Brown* v. *Board of Educ.* ("*Brown I*"), 347 U.S. 483 (1954), some school districts formally or informally segregated schools on racial grounds. To

remedy those violations, some districts—either voluntarily or by court order—set racial quotas for individual schools and bussed students accordingly. This Court upheld such efforts, emphasizing that they were appropriately designed to remedy prior racially discriminatory policies by the school districts. *See, e.g.*, *Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 31–32 (1971).

However, the Court also made clear that school districts could not intentionally sort students on racial grounds indefinitely into the future. *Dowell*, 498 U.S. at 247–48 ("injunctions entered in school desegregation cases" could not "operate in perpetuity"); *Pasadena City Bd. of Educ.* v. *Spangler*, 427 U.S. 424, 433–34, 36 (1976). In particular, processes existed whereby federal courts would determine that schools had adequately remedied their past segregationist policies. *See, e.g.*, *Parents Involved*, 551 U.S. at 722; *Dowell*, 498 U.S. at 248.

After that, the Constitution prohibited public schools from continuing to assign students on the basis of race—a point the Court made clear in *Parents Involved*, 551 U.S. at 747–48. As *Parents Involved* emphasized, once schools "have removed the vestiges of past segregation," "the way 'to achieve a system of determining admission to the public schools on a nonracial basis,' is to stop assigning students on a racial basis." *Id.* (quoting *Brown v. Bd. of Educ.* ("*Brown II*"), 349 U.S. 294, 300–01 (1955)). In other words, to the extent that school districts could ever consider race, they could do so only on a temporary basis. *Students for Fair Admissions*, 600 U.S. at 314 (Kavanaugh, J., concurring) (collecting cases).

C. Government contracting.

This Court has also applied the temporal limit on race-based decision-making to government contracting programs. *See, e.g.*, *Adarand Constructors, Inc.* v. *Pena*, 515 U.S. 200, 238 (1995); *Croson*, 488 U.S. at 510 (racial classification must be "a temporary matter").

In prior decades, the federal government and some state governments discriminated against black-owned businesses when disbursing government contracts. In response, the Court held that governments that had discriminated against African-Americans in the past could give racially preferential treatment. Here again, however, the Court insisted on temporal limits to governmental race-based decision-making. In *Adarand*, for example, the Court insisted that any such program must be "appropriately limited such that it 'will not last longer than the discriminatory effects it is designed to eliminate.'" *Adarand*, 515 U.S. at 238 (quoting *Fullilove* v. *Klutznick*, 448 U.S. 448, 513 (1980) (Powell, J., concurring)).

* * *

The Court should hold that—as in other areas of law—racial classification in legislative districting was justifiable only on a temporary basis. As in *Students for Fair Admissions*, the Court should not permit the discriminatory practice to continue absent a logical endpoint. *See Allen*, 599 U.S. at 45 (Kavanaugh, J., concurring); Tr. of Oral Arg., *Louisiana* v. *Callais* at 55:2–7 (remarks of Justice Kavanaugh).

IV. Race-based districting under Section 2 of the VRA is no longer justified.

State legislatures have been forced to consider race in drawing legislative maps for over 45 years. Even after this Court warned about the dangers of race-based districting in *Shaw I*—more than thirty years ago—federal courts have continued to force States to use race in drawing legislative maps. Notably, *Shaw*'s warning against race-based remedies in the legislative-districting context has been in effect even longer than *Grutter*'s warning was in effect for college admissions. *See Students for Fair Admissions*, 600 U.S. at 212–13, 230–31 (20 years between *Grutter* and *Students for Fair Admissions*).

Although this practice may once have been justified as a temporary remedy for government discrimination against minority groups, it no longer is. Since the VRA's enactment, "things have changed dramatically." *Shelby Cnty.*, 570 U.S. at 545–47. By any objective measure, American States no longer enforce white supremacy. "Voter turnout and registration rates now approach parity. Blatantly discriminatory evasions of federal decrees are rare. And minority candidates hold office at unprecedented levels." *Id.* at 547 (quoting *Nw. Austin Mun. Util. Dist. No. 1* v. *Holder*, 557 U.S. 193, 202 (2009)).

Moreover, throughout the United States, minority groups register and vote at comparable—or even higher—rates than white Americans. And minority groups wield substantial political power in statewide races throughout the United States. These facts confirm that race-based districting is not necessary to ensure minority groups' access to the voting booth or representation in Congress.

At the same time, if the Court allows race-based districting to continue, there is no logical endpoint for this "sordid" practice. *LULAC*, 548 U.S. at 511 (Roberts, C.J., concurring in part, dissenting in part). This Court has made clear that no racial group has the right to wield political power proportional to its share of the population. *Allen*, 599 U.S. at 28; *see also id.* at 43–44 (Kavanaugh, J., concurring) (collecting cases). With that metric excluded, the only rational course is to prohibit race-based districting unless there is evidence that a particular government is employing discriminatory rules to enforce white supremacy.

A. Race-based districting is no longer needed.

The United States has come a long way from the Jim-Crow era—in which explicit, governmental discrimination against African-Americans and other minorities was commonplace. By any metric, American governments no longer prevent minority groups from exercising their right to vote.

To start, all American citizens enjoy constitutional and statutory rights to vote. No State or locality bars citizens from registering or voting based on their race. Moreover, it is easy to vote in all States. Every State permits in-person voting. Many allow early voting. And almost all offer mail voting for groups—like individuals with disabilities and the elderly—who would struggle to vote in person. Moreover, the Constitution and federal statutes prevent States from imposing even non-discriminatory burdens at all steps of the voting process. *See, e.g.*, *Crawford* v. *Marion Cnty. Election Bd.*, 553 U.S. 181, 189–91 (2008); 52

U.S.C. § 10101(a)(2)(B). Any suggestion that American governments enforce white supremacy through voting rules is baseless.

Additionally, over 70% of eligible African-Americans nationwide were registered to vote in 2024—just barely below the average registration rate of 73.6% for all Americans. *See,* KFF, Voting and Voter Registration as a Share of the Voter Population, by Race/Ethnicity (Nov. 2024) [KFF Numbers].[1] In Alabama, for example, 67.7% of eligible African-American voters are registered, and there is less than a two percent registration gap between white and African-American voters. *See id; cf. Brnovich* v. *Democratic Nat'l Comm.*, 594 U.S. 647, 671 (2021) ("[T]he mere fact there is some disparity . . . does not necessarily mean that a system is not equally open."); *id.* at 680 (noting similar statistical gap was insignificant). Recall that, "[s]hortly before enactment of the Voting Rights Act, only 19.4 percent of African–Americans of voting age were registered to vote in Alabama, only 31.8 percent in Louisiana, and only 6.4 percent in Mississippi." *Shelby Cnty.*, 570 U.S. at 545–46. And "[t]hose figures were roughly 50 percentage points or more below the figures for whites." *Id.* at 546. That gap simply does not exist anymore—even in the southern States that most recently tried to enforce discriminatory voting rules. *See* KFF Numbers.

Similarly, voting rates are roughly equivalent between white and African-American voters. In 2020, for example, African-American turnout was just a few

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[1] https://www.kff.org/other/state-indicator/voting-and-voter-registration-as-a-share-of-the-voter-population-by-raceethnicity/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D.

percentage points less than white turnout, and higher than all other racial minorities. *See, e.g.*, U.S. Elections Project, Voter Turnout Demographics (last visited Sept. 19, 2025).[2] Once again, that small gap pales in comparison to the conditions Congress confronted in 1965 when it enacted Section 2. *See Shelby Cnty.*, 570 U.S. at 545–46.

Finally, and unsurprisingly given roughly equivalent registration and voting rates, minority groups exercise real political power in the United States. In national politics, Americans recently elected an African-American president for two terms and an African-American vice president for one term. Minority candidates have been prominently featured in presidential elections and both major parties' presidential primaries.[3] And candidates from racial minority groups have performed well in recent years, including in southern States. Within the last few years, Georgia and South Carolina elected African-American senators,[4] South Carolina and Louisiana elected Indian-American governors,[5] and both major political parties

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[2] electproject.org/election-data/voter-turnout-demographics.

[3] *See, e.g.*, *Kamala D. Harris*, The Office of Kamala D. Harris, kamalaharris.com/about (last accessed Sept. 19, 2025); Brian Schwartz, *Peltz, Druckenmiller, Navarro give big to Tim Scott PACs*, CNBC (July 31, 2023); Karl de Vries, *Carson captures southern Republican straw poll*, CNN (May 23, 2015).

[4] *See, e.g.*, Sen. Tim Scott, www.scott.senate.gov (last accessed Sept. 19, 2025); Sen. Raphael Warnock www.warnock.senate.gov (last accessed Sept. 19, 2025).

[5] *See* Gov. Nikki Haley, Nat'l Governors Assoc., www.nga.org/governor/nikki-r-haley (last accessed Sept. 19, 2025); Gov. Bobby Jindal, Nat'l Governors Assoc., www.nga.org/governor/bobby-jindal (last accessed Sept. 19, 2025).

have selected African-Americans as their gubernatorial candidates.[6] Moreover, from the 115th Congress forward, the majority of African-American members represent districts that are *not* majority-black seats.[7]

In short, the reasons that once justified race-based districting no longer exist. Racial minorities can cast votes under equal rules with everyone else. And racial minorities wield substantial political power in the United States—at least as much as in any other country in the world.

B. There is no logical endpoint if this Court allows race-based districting to continue.

The proponents of continued race-based districting cannot identify a logical endpoint to the practice. That too is a strong reason not to permit such discriminatory practices continue. *See Students for Fair Admissions*, 600 U.S. at 227–28.

To start, Congress did not make its mandate to employ race-based districting a temporary one. Section 2 has no expiration date. *See, e.g.*, *Allen*, 599 U.S. at 88 n.21 (Thomas, J., dissenting); *cf. Shelby Cnty.*, 570 U.S. at 537 ("Section 2 is permanent, applies nationwide . . . .").

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[6] *See, e.g.*, Bruce Schreiner, *Trump-backed Daniel Cameron to face Democratic Kentucky Gov. Andy Beshear in November*, The Associated Press (May 17, 2023); *Chris Jones wins Democratic primary for Arkansas governor, facing Trump's press secretary*, PBS News (May 24, 2022).

[7] *See* Geoffrey Skelly, *How Majority-Minority Districts Fueled Diversity in Congress*, FiveThirtyEight (Aug. 14, 2023) [538 analysis], https://fivethirtyeight.com/features/majority-minority-congressional-districts-diversity-representation/.

Moreover, the courts have not developed a test that would render Section 2's mandate temporary. Under *Gingles* and subsequent cases, the only hard requirements for a minority group to be guaranteed an additional legislative seat is a (1) sufficient minority population that (2) favors one political party and is (3) reasonably compact, such that an additional district would not violate traditional redistricting principles. *See, e.g.*, Tr. of Oral Arg., *Louisiana* v. *Callais*, at 35:24–36:12; *see also Allen*, 599 U.S. at 18 (summarizing *Gingles* preconditions); *id.* at 43 (Kavanaugh, J., concurring) (identifying compactness as the primary guardrail against Section 2 claims). In *Allen*, the Court suggested that those requirements are hard to meet. 599 U.S. at 29; *but see* Ellen Katz, et al., *Discrimination in Voting: Judicial Findings Under Section 2 of the Voting Rights Act Since 1982*, 39 U. Mich. J.L. Reform 643, 660 (2006) (finding plaintiffs succeeded in 57 of 68 lawsuits following *Gingles* once three preconditions were satisfied). But there is no evidence that Section 2 redistricting claims are becoming rarer. To the contrary, the courts "have extracted years of litigation from every districting cycle," *See Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 66 (2024) (Thomas, J., concurring in part), and have seen a flood of new Section 2 redistricting claims in recent years, *see*, *infra* Section IV.C.2.

In the end, proponents of continued mandatory race-based districting often appeal to proportionality—the idea that racial groups should have a percentage of legislative seats close to their population share. *See, e.g.*, *Singelton* v. *Merrill*, 582 F. Supp. 3d 924, 946, 958–59, 969, 976, 982, 991–92, 996–97, 1016, 1018, 1025–26 (N.D. Ala. 2022). But this Court has already made clear that proportionality cannot be the

standard. *See Allen*, 599 U.S. at 28. Nor would such a standard be fair; in legislative systems, political majorities frequently win percentages of seats far higher than their percentages of the popular vote. Consequently, complaints that political parties in particular States do not wish to give their political opponents a proportional number of seats cannot justify race-based districting.

C. Continuing to mandate race-based districting harms voters, States, and the courts.

Maintaining race-based districting harms voters, States, and the courts—all while leaving no clear beneficiaries.

1. Voters

Sorting voters based on their race into districts with particular racial makeups demeans the dignity of all Americans. It "reinforce[s] the belief, held by too many for too much of our history, that individuals should be judged by the color of their skin." *Shaw I*, 509 U.S. at 657.

Moreover, because legislative districting "is something of a zero-sum endeavor, giving an advantage to one minority group may disadvantage" everyone else. *Allen*, 599 U.S. at 99 (Alito, J., dissenting). In this case, Louisiana's use of race-based districting to give African-American voters more political power weakened the political power of non-African American voters. It is hard to see why non-African American voters should be disadvantaged merely because of their skin color. *See Adarand*, 515 U.S. at 239 (Scalia, J., concurring in part) (warning against assigning Americans to "creditor" and "debtor race[s]").

Moreover, Section 2's racial districting mandate disadvantages some minority groups more than others. The *Gingles* test is designed to benefit minority groups with (1) large populations that (2) live close to each other and (3) tend to vote for the same political party. *See Wis. Legislature*, 595 U.S. at 402 (citing *Gingles*, 478 U.S. at 50–51). But many minority groups—*e.g.*, Asian-Americans and Native Americans—cannot typically satisfy those requirements due to lack of numbers. And both Hispanics and Native Americans likely cannot benefit because they have become swing voters winnable by both political parties. *See, e.g.*, Z. Levitt, *See the Voting Groups That Swung Right in the 2024 Vote*, New York Times (Dec. 17, 2024).[8] Thus, in guaranteeing legislative seats only for some minority populations, but not others, the VRA mandates differential treatment among minority populations.

Finally, it is not even clear that African-Americans benefit from VRA-mandated districts. African-American leaders often *disagree* as to whether African-American voters should be clumped so that they form majorities in particular districts. *See, e.g.*, Marilyn W. Thompson, *Clyburn's Role in South Carolina Redistricting May Be Examined as Supreme Court Hears Racial Gerrymandering Case*, ProPublica (May 17, 2023).[9] After all, creating more VRA districts guarantees some amount of political strength for African-Americans, but spreading out African-American voters may ensure that they have influence in a

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[8] nytimes.com/interactive/2024/11/06/us/elections/trump-america-red-shift-victory.html.

[9] propublica.org.article/james-clyburn-south-carolina-gerrymander-redistricting-scotus.

greater number of districts. *See* 538 Analysis (acknowledging this point). Thus, despite the fact that Section 2's mandate discriminates against large numbers of voters, it is not even clear that such discrimination truly benefits anyone.

2. States

The status quo is also bad for States. "Redistricting 'is primarily the duty and responsibility of the State,' and '[f]ederal-court review of districting legislation represents a serious intrusion on the most vital of local functions.'" *Abbott*, 585 U.S. at 603 (quoting *Miller*, 515 U.S. at 915). Moreover, redistricting is an enormously "complex" and difficult process. *Id.* States must honor a host of competing considerations—including equal population rules, protecting incumbents, preserving communities of interest, and respecting the needs of counties and other political entities. *See, e.g.*, *Miller*, 515 U.S. at 915–16. Many state legislatures must also heed complex demands from state constitutions. In Missouri, for example, the General Assembly must try to keep congressional districts "as compact as may be." Mo. Const. art. III, § 45. And all state legislatures must consider sharply competing political interests. Thus, this Court recognized that "States must have discretion to exercise the political judgment necessary to balance" the many "competing interests" inherent in districting. *Miller*, 515 U.S. at 915–16.

Federal legal requirements respecting race make the States' difficult task of districting even more difficult. Under current law, "the Equal Protection Clause restricts consideration of race and the VRA demands consideration of race," leaving state legislatures constantly "vulnerable to 'competing hazards of

liability.'" *Abbott*, 585 U.S. at 587 (quoting *Bush* v. *Vera*, 517 U.S. 952, 977 (1996) (plurality opinion)); *see Alexander*, 602 U.S. at 65–66 (Thomas, J., concurring in part) ("[O]ur precedents stand for the rule that States must consider race *just enough* in drawing districts."). Too much consideration of race leads to liability under the Equal Protection Clause. *Shaw I*, 509 U.S. at 641. Too little leads to liability under the VRA. *Abbott*, 585 U.S. at 587**.** As this case demonstrates, a State is not safe regardless of which direction it errs. *See Alexander*, 602 U.S. at 65 (Thomas, J., concurring in part) ("[T]his Court's jurisprudence puts States in a lose-lose situation.")

The lack of clarity on the appropriate role of race in the redistricting process is unfair to States. Well-funded litigation groups stand ready to challenge legislative maps. Since 2020, such groups have brought at least 30 cases asserting challenges to legislative maps under Section 2 of the VRA. *See Redistricting Litigation Roundup*, Brennan Center for Justice (last visited Sept. 19, 2025).[10] All these lawsuits impose enormous litigation costs on States and sow political chaos.

States need certainty during redistricting. *See Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring in grant of stay); *accord id.* at 882 (Roberts, C.J., dissenting from grant of stay). But Missouri can identify only one rule that provides adequate certainty: States should not consider race when districting.

3. The Courts

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[10] https://www.brennancenter.org/our-work/research-reports/redistricting-litigation-roundup-0.

Finally, the courts also lose under the status quo. Redistricting is one of the most inherently political activities undertaken taken by state legislatures. *See Rucho v. Common Cause*, 588 U.S. 684, 718–19 (2019) (describing redistricting as "one of the most intensely partisan aspects of American political life.") Consequently, redistricting litigation is typically little more than a thinly-veiled effort by the plaintiff to circumvent the legislative process. *Alexander*, 602 U.S. at 11 (noting Court "must be wary of plaintiffs who seek to transform federal courts into 'weapons of political warfare' that will deliver victories that eluded them 'in the political arena.'" (quoting *Cooper* v. *Harris*, 581 U.S. 285, 335, (2017) (Alito, J., concurring in judgment in part and dissenting in part)). With each new redistricting cycle, parties that lost legislative battles call upon the federal courts to referee these political fights. *See Alexander*, 602 U.S. at 66 (Thomas, J., concurring in part) (noting "[t]here is no density of minority voters that this Court's jurisprudence cannot turn into a constitutional controversy").

Under current jurisprudence, courts are forced to employ amorphous legal standards when evaluating race-based districting claims. Deciding, for example, whether an additional majority-minority is "reasonably configured" is hardly a crisp inquiry. *See Allen*, 599 U.S. at 19–20; *id.* at 96–97 (Alito, J., dissenting) (discussing this inquiry). And assessing how alternative maps perform under traditional redistricting principles does not entail a simple mathematical equation, but instead requires judgments of the "'competing interests' and 'complex . . . forces' involved in drawing districts." *Alexander*, 602 U.S. at 43 (Thomas, J., concurring in part) (quoting *Miller*, 515

U.S. at 915-16); *see also Allen*, 599 U.S. at 31 (discussing methodology used by plaintiffs' expert against Alabama). Justice Thomas has rightfully characterized this task as a "dubious undertaking in the best of circumstances." *Alexander*, 602 U.S. at 43 (Thomas, J., concurring in part).

Further, assessing how racial minorities are likely to vote is pure guesswork, requiring courts to engage in precisely the stereotyping that the Equal Protection Clause seeks to prohibit. *See Alexander*, 602 U.S. at 59–60 (Thomas, J., concurring in part) (explaining that judicial stereotyping improperly reduces minority voters "to partisan pawns and racial tokens"). But past is not prologue. No minority group "belongs" with one party or another. The last presidential election puts this in focus, as President Trump received a significant increase in voter share among Black, Hispanic, and Asian voters as compared to the shares he received in the 2016 and 2020 Presidential elections. *See* Hannah Hartig et al., *Voting Patterns in the 2024 Election*, Pew Research Center (June 26, 2025).[11] Yet, this Court's current jurisprudence requires the Court to "construct a caricature" of racial groups, and "assume that 'members of racial and ethnic groups must all think alike on important matters." *Alexander*, 602 U.S. at 59–60 (Thomas, J., concurring in part) (quoting *Holder v. Hall*, 512 U.S. 874, 903 (1994)). Continued application of such stereotyping is untenable.

Maintenance of the status quo—in the absence of clear, judicially manageable standards—creates a

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[11] https://www.pewresearch.org/politics/2025/06/26/voting-patterns-in-the-2024-election/

risk that judicial decisions in this area will be seen as political—and not firmly based on law. *Cf. Rucho*, 588 U.S. at 721 ("[W]e have no commission to allocate political power and influence in the absence of a constitutional directive or legal standards to guide us in the exercise of such authority."); *see also Vieth* v. *Jubelirer*, 541 U.S. 267, 307 (2004) (Kennedy, J., concurring) ("With uncertain limits, intervening courts—even when proceeding with best intentions—would risk assuming political, not legal, responsibility for a process that often produces ill will and distrust."). Instead of continuing to force States and courts to make subjective judgments about how much race should infect legislative districting, this Court should hold that States may conduct color-blind districting and that Section 2 is unconstitutional to the extent it currently requires otherwise. "It is well past time for the Court to return these political issues where they belong—the political branches." *Alexander*, 602 U.S. at 66 (Thomas, J., concurring in part).

CONCLUSION

"Eliminating racial discrimination means eliminating all of it." *Students for Fair Admissions*, 600 U.S. at 206. Although Section 2's mandate for race-based districting was once an appropriate, tailored remedial response to governmental discrimination against African-Americans, it can no longer be justified on that basis. Intentional differential treatment on the basis of race is a dangerous tool for American governments to use. That is why this Court has consistently insisted that any sort of affirmative action designed to benefit particular racial groups be temporary in nature. Under that principle, race-based districting has lasted long enough. *See Students for*

Fair Admissions, 600 U.S. at 212–13, 230–31 (45 years was long enough for affirmative action); *Dowell*, 498 U.S. at 248 (race-based "injunctions entered in school desegregation cases" could not "operate in perpetuity"); *Parents Involved*, 551 U.S. at 747–48 (same).

Unless this Court is willing to indefinitely force States to discriminate on the basis of race when drawing legislative maps, the Court should affirm and hold that States may conduct color-blind districting.

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