No. 24-109

In the Supreme Court of the United States

STATE OF LOUISIANA,
Appellant,

v.

PHILLIP CALLAIS, ET AL.,
Appellees.

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

SUPPLEMENTAL REPLY BRIEF FOR APPELLANT

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The Court should decide this case on constitutional principle, not statutory plastic surgery. In the redistricting context, "the whole point of the enterprise" under Section 2 of the Voting Rights Act (VRA) is to draw additional majority-minority districts "with an express [racial] target in mind"—both to prove up a Section 2 plaintiff's case and to install a remedy for any violation. *Allen v. Milligan*, 599 U.S. 1, 33 (2023) (plurality op.); *accord Abbott v. Perez*, 585 U.S. 579, 587 (2018) (Section 2, if violated, requires States to "draw 'opportunity' districts in which minority groups form 'effective majorit[ies]'" (citation omitted)). So life goes after *Thornburg v. Gingles*, 478 U.S. 30 (1986).

To hear the Robinson appellants tell it, this is the good life. They praise (Supp. Br. 1) a "brillian[t]" Section 2 that exudes "clarity and exactness." *Gingles* in particular, they say, is "limited," "stringent," subject to "safeguards" and "guardrails," and a "formidable barrier to plaintiffs." *Id.* at 5, 18, 21, 30, 36. Some *amici* pile on the praise. *E.g.*, Murray Br. 3 ("genius"), 16 ("laser focused"), 17 ("elegant[]"); Galmon Br. 23 ("Few legal tests are as clear as the *Gingles* inquiry.").

But that is not real life. *See, e.g.*, *Abbott*, 585 U.S. at 587 ("legal obstacle course"); *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring in grant of applications for stays) ("notoriously unclear and confusing"); *Merrill*, 142 S. Ct. at 883 (Roberts, C.J., dissenting from grant of applications for stays) ("considerable disagreement and uncertainty"); *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 65 (2024) (Thomas, J., concurring in part) ("impossible needle" and "a lose-lose situation").

The reality is that Section 2's race-based redistricting mandate as implemented by *Gingles* is both unworkable and unconstitutional. That is why parties and *amici* have flooded the docket with myriad proposals for *Gingles* repairs, updates, and renovations that would make Frankenstein blush. But no amount of surgery can eliminate the constitutional defects inherent in a system that, at the end of the day, requires States to sort their citizens by race.

To that end, three points warrant emphasis as briefing closes in this case. *First*, the Court should affirm the judgment below on the independent ground that the government "may never use race as a stereotype or negative." *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll. (SFFA)*, 600 U.S. 181, 213 (2023). *Second*, the Court should affirm the judgment below on the independent ground that race-based redistricting "lack[s] a 'logical end point.'" *Id.* at 221 (citation omitted). And *third*, if the Court thinks it necessary to step into the strict-scrutiny framework, race-based redistricting under the flag of Section 2 is not a cognizable compelling interest.

A. Race-Based Redistricting Impermissibly Uses Race As a Stereotype and a Negative.

This case should begin and end with "the twin commands of the Equal Protection Clause": that the government "may never use race as a stereotype or negative." *Id.* at 213, 218; *see* La. Supp. Br. 18–24.

1. Race-based redistricting under Section 2 is principally unconstitutional because it inherently rests on a racial stereotype: that all voters of a particular race must—by virtue of their membership in their racial

class—think alike, share the same interests, and prefer the same political candidates. As Louisiana explained, La. Supp. Br. 20–21, that class-based stereotype is baked into *Gingles* itself, which focuses on "the minority group" in each of the three preconditions.

That racial stereotype is squarely at odds with this Court's precedent. "At the heart of the Constitution's guarantee of equal protection," the Court has said, "lies the simple command that the Government must treat citizens as individuals, not as simply components of a racial ... class." *Miller v. Johnson*, 515 U.S. 900, 911 (1995) (cleaned up). *Gingles* itself violates that simple command—and so, too, does each federal court and State that sets out to draw district lines "with an express [racial] target in mind," *Allen*, 599 U.S. at 33 (plurality op.).

Some top-side *amicus* briefs try to downplay this problem, insisting that *Gingles* avoids stereotyping by requiring a Section 2 plaintiff to show that the minority group is politically cohesive. *See* Galmon Br. 18; Murray Br. 20. By that logic, requiring "a consistently strong shared communal preference for candidates" eliminates any "stereotyped assumptions that voters who share a race or ethnicity automatically vote alike or share the same concerns or interests." Brennan Ctr. Br. 19–20.

That argument implies that the political-cohesion requirement compels a Section 2 plaintiff to show that *every single minority voter* shares the same political preferences. That is not accurate—not even close, apparently. According to another top-side *amicus* brief, "[t]he most common" presumption applied by lower courts is that political cohesion exists "if more than 60

percent of the relevant voters typically support the same candidates." Stephanopoulos Br. 31. If that number is correct, that means up to 40% of the remaining minority population does *not* share the same preferences and interests—and yet the *Gingles* framework carries on with its focus on "the minority group" and "the minority's preferred candidate." So long as that percentage of the remaining population is not zero (and, in our pluralistic society, it will never be zero), this is "the very racial stereotyping the Fourteenth Amendment forbids." *Miller*, 515 U.S. at 928.

2. Also inherent in this race-based redistricting system is the improper use of race as a negative. In zero-sum contexts like this, "[a] benefit provided to some [] but not to others necessarily advantages the former group at the expense of the latter." *SFFA*, 600 U.S. at 218–19; *accord Allen*, 599 U.S. at 99, 109 (Alito, J., dissenting). Creating a safe district for a minority group with allegedly shared political preferences "comes at the expense" of voters of other races who may have different political preferences. *Rucho v. Common Cause*, 588 U.S. 684, 706 (2019). "Indeed, that is the avowed purpose of race-based redistricting under Section 2." La. Supp. Br. 23 (citing *Abbott*, 585 U.S. at 587).

To its credit, one top-side *amicus* brief owns up to this "elementary arithmetic." Galmon Br. 21. "If an enacted map artificially restricts electoral opportunities for Black voters," it says, "then the remedial map must provide additional electoral opportunities for Black voters"—"a deficit cannot be negated without an offsetting sum." *Id.* The same "elementary arithmetic" shows the effect on *non*-minority voters amid

an effort to draw a majority-minority district: a *surplus* of non-minorities "cannot be negated without an offsetting" *reduction*. *Id.* And that is improperly "us[ing] race as a ... negative." *SFFA*, 600 U.S. at 213.

B. Race-Based Redistricting Lacks a Logical End Point.

Independent of those constitutional defects, race-based redistricting is unconstitutional because it "lack[s] a 'logical end point.'" *Id.* at 221. Neither the Robinson appellants nor *amici* have a serious answer to this problem.

1. At the outset, one brief tries to avoid this problem altogether by insisting that there is no racial classification in play. Stephanopoulos Br. 8–9. "Because § 2 doesn't classify individuals on the basis of their race," it claims, "the requirement of a time limit doesn't apply to it." *Id.* at 9 (cleaned up). That is near frivolous. The question in this reargument is whether intentionally drawing a majority-minority district—as the Court has understood Section 2 to require in certain circumstances—is constitutional. By definition, it is impossible to draw such a district without racially classifying citizens. Hence the problem that "the authority to conduct race-based redistricting cannot extend indefinitely into the future." *See Allen*, 599 U.S. at 45 (Kavanaugh, J., concurring).

2. The Robinson appellants and *amici* understandably struggle to identify any conceivable logical end point to race-based redistricting under Section 2—and they come up short across the board.

a. As predicted, La. Supp. Br. 31–33, the Robinson appellants purport to disclaim (at least in their brief)

any reliance on proportionality, *e.g.* Robinson Supp. Br. 15, 18, 24, 29, 44–45. (Not so much in their media appearances.[1]) "Section 2 has not resulted in proportional or near-proportional representation in the South or the nation as a whole," they promise—while insisting on the second majority-minority district in S.B. 8 that gives them virtually proportional representation in Louisiana. *Id.* at 37.

b. The Robinson appellants devote (*id.* at 29, 31) most of their attention to claiming that Section 2 will self-sunset once Section 2 plaintiffs can no longer satisfy the *Gingles* framework. "Current conditions," they say, are what drive this analysis.

As an initial matter, it is astounding to see the Robinson appellants represent that "[n]othing in a § 2 case ties violations to data or practices from the distant past, like 'literacy tests and low voter registration and turnout in the 1960s and early 1970s.'" *Id.* at 30 (citation omitted). *Robinson*—yes, Robinson's *Robinson*—begs to differ:

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[1] Ashley K. Shelton, *Louisiana's attack on the Voting Rights Act could set back Black voters everywhere*, MSNBC (Sept. 2, 2025), tinyurl.com/3jx6ax65 (founder, president, and CEO of Robinson appellant Power Coalition: "Black people make up nearly a third of Louisiana's population but historically have had influence in only one of six congressional districts.... The remedy is clear: create a second district."). Marlo Lacen, *Upcoming hearing in US Supreme Court is about more than Louisiana's redistricting*, MyArkLaMiss.com (Oct. 1, 2025), tinyurl.com/4xbkx9yt (Robinson appellant Davante Lewis: "This case is extremely important, because for the first time in Louisiana's history, the congressional delegation reflects the population of this state[.]").

- "Dr. Gilpin concludes[that] the 'state of Louisiana's long history of racial discrimination is without dispute.' The powers that be in Louisiana ... subscribe to the notion that there is an appropriate level of 'white political control,' which they have strived to maintain by consistent disenfranchisement efforts from 1868 to the present day," *Robinson v. Ardoin*, 605 F. Supp. 3d 759, 812–13 (M.D. La. 2022) (footnotes omitted);
- "Dr. Gilpin reported about voting restrictions like poll taxes, property ownership requirements, and literacy tests, which were first implemented before Black Louisianans were granted the right to vote," *id.* at 846;
- "Dr. Gilpin recounted that Black voting in Louisiana reached its peak in 1896, when Black voters made up almost 45% of registered voters," *id.*;
- "[T]he Grandfather Clause, enacted in 1898, prohibited a Black citizen from voting unless they could establish that either their father or grandfather had voted before January 1, 1867," *id.*;
- "Registration purges, the Understanding Clause, and other restrictions disenfranchised Black voters to the point that, between 1910 and 1948, fewer than 1% of Black Louisianans of voting age were able to register to vote," *id.*;

- "From 1965 to 1999, the U.S. Attorney General issued 66 objection letters to more than 200 voting changes," *id.*;
- "[T]o the extent [recent facts] are offered as mitigation of the repugnant history of discrimination in Louisiana, they fall completely flat," *id.* at 847;
- "In the 2017 case *Terrebonne Par. Branch NAACP v. Jindal*, Judge James Brady analyzed Senate Factor 1, finding that 'Louisiana consistently ignored its preclearance requirements under Section 5,' and that 'Louisiana and its subdivisions have a long history of using certain electoral systems that have the effect of diluting the black vote,'" *id.* at 847–48 (footnotes omitted));
- "In 1983, the District Court for the Eastern District of Louisiana concluded that 'Louisiana's history of racial discrimination, both de jure and de facto, continues to have an adverse effect on the ability of its black residents to participate fully in the electoral process,'" *id.* at 848;
- "In 1988, that same Court took 'judicial notice of Louisiana's past *de jure* policy of voting-related racial discrimination. Throughout the earlier part of this century, the State implemented a variety of stratagems including educational and property requirements for voting, a 'grandfather' clause, an 'understanding' clause, poll taxes, all-white

> primaries, anti-single-shot voting provisions, and majority-vote requirement to suppress black political involvement,'" *id.* (cleaned up).

That representation is not accurate.

More fundamentally, while the Robinson appellants and *amici* claim that Section 2 will phase itself out once Section 2 plaintiffs can no longer satisfy *Gingles*, that claim is misleading in two respects.

First, this argument does not address the South. A viable Section 2 claim needs two main ingredients to survive the *Gingles* preconditions: residential segregation and racially polarized voting. The Robinson appellants' self-sunset theory rests on the premise that, as residential segregation and racially polarized voting decrease, successful Section 2 claims will likewise decrease. Robinson Supp. Br. 17; Stephanopoulos Br. 3; District of Columbia Br. 21. And as an evidentiary matter, the theory goes, that has become true in "much of the country." Stephanopoulos Br. 16 (capitalization altered); *accord id.* at 22.

In a vacuum, this theory suggests Section 2 will take care of itself throughout the entire country—but that is where everyone gives the game away. Where do residential segregation and racially polarized voting "remain high"? *Id.* at 21. "Only in the Black Belt of the deep South, comprising portions of Alabama, Arkansas, Georgia, Louisiana, Mississippi, and South Carolina[.]" *Id.* Section 2's proponents thus freely admit that it "has real teeth"—just "in places, *like the deep South*, where minority voters are still residentially concentrated and voting is still highly racially-

polarized." *Id.* at 28–29 (emphasis added). And no one knows when, *if ever*, that fact will change. If it never does (and perhaps it never will), Section 2 will never sunset in the South.

In that way, moreover, this self-sunset theory is a de facto version of the equal-sovereignty problem that this Court criticized in *Shelby County v. Holder*, 570 U.S. 529 (2013). True, the equal-sovereignty issue there was written into the VRA. But the States' entitlement to equal "power, dignity[,] and authority" is no less valid in matters out of their control (residential segregation and racially polarized voting) than it is in the context of de jure inequality. *Id.* at 544 (citation omitted). In both contexts, "the fundamental principle of equal sovereignty remains highly pertinent in assessing disparate treatment of States." *Id.*

Second, and in all events, the Robinson appellants' self-sunset theory assumes that the Section 2 sun will not rise again in those parts of the Nation that, for now, are experiencing declines in residential segregation and racial polarization. That is not a valid assumption. *See* Stephanopoulos Br. 29 ("If the trends of residential desegregation and racial depolarization in voting were to reverse, as is possible, § 2 would also regain its potency throughout the country."). The self-sunset theory, therefore, is more of a self-sunset, self-sunrise theory: Section 2 could "sunset" across the country in 20 years only to "sunrise" 50 years from now. And that theory is diametrically opposed to the concept of a "logical end point." *SFFA*, 600 U.S. at 221 (citation omitted).

C. Race-Based Redistricting Under Section 2 Is Not a Compelling Interest.

The foregoing grounds for affirmance are significant because they stand outside the strict-scrutiny framework. *See SFFA*, 600 U.S. at 213 (distinguishing a failure to "comply with strict scrutiny" from these other independent grounds for reversal in that case); *see* La. Supp. Br. 44–45. That is deeply important, in Louisiana's respectful view, because affirming on those grounds would shut down arguments in future cases that race did not predominate in a particular map and thus strict scrutiny is inapplicable (and thus courts and parties can sidestep the Court's ruling in this case). And to be clear, that is a very serious risk. *See, e.g.*, District of Columbia Br. 3 ("'[I]ntentionally' considering race to draw a majority-minority district does not necessarily mean that race 'predominated' over race-neutral district principles."); La. Leg. Black Caucus Br. 6 ("[A]lthough SB8 did contain 'two 50%-plus majority-Black districts' in order to comply with the VRA, a holistic analysis shows that politics and other nonracial factors predominated in the Legislature's process of creating district boundaries.").

If the Court proceeds to strict scrutiny, there are any number of reasons why race-based redistricting under Section 2 is not a compelling interest. *See* La. Supp. Br. 33–43. Rather than recount them all, the State here focuses on one in particular (*id.* at 37–39) where the Robinson appellants and their *amici* severely misapprehend this Court's cases and the state of the law.

In *SFFA*, the Court observed that its "precedents have identified only two compelling interests that permit resort to race-based government action." 600 U.S. at 207. "One is remediating specific, identified instances of past discrimination that violated the Constitution or a statute," while the second is "avoiding imminent and serious risks to human safety in prisons, such as a race riot." *Id.* In this case, the Robinson appellants and their *amici* have latched onto that first statement—"remediating specific, identified instances of past discrimination that violated the Constitution or a statute"—to claim that remedying an alleged violation of Section 2 through the drawing of a new majority-minority district falls squarely within that "compelling interest." *E.g.*, Robinson Supp. Br. 2, 31. They are wrong.

This Court's cases make clear that remediating specific, identified instances of past discrimination means "remedying the effects of past *intentional* discrimination." *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 720 (2007) (citing *Freeman v. Pitts*, 503 U.S. 467, 494 (1992)) (emphasis added); *see Freeman*, 503 U.S. at 494 ("Racial balance is not to be achieved for its own sake. It is to be pursued when racial imbalance has been caused by a constitutional violation."). Here, of course, nobody claims (or could claim) that Louisiana intentionally discriminated against black voters by not drawing two majority-minority districts. Indeed, the Middle District in *Robinson* itself thought it "irrelevant" that there is no evidence of black voters "being denied the right to vote." La. Supp. Br. 38 (citation omitted).

Nevertheless, the Robinson appellants repeatedly claim that race-based redistricting remediates "discrimination" and that they proved "discrimination" in *Robinson*. *See, e.g.*, Robinson Supp. Br. 1 ("The *Robinson* court made numerous findings of ongoing race discrimination against Black voters in Louisiana."), 25 (Section 2 "authorizes some consideration of race, but only when doing so is required to remedy identified racial discrimination."), 29 (Section 2 "requir[es] [] plaintiffs to prove current race discrimination."), 34 (Section 2 "constrain[s] the use of race for remedial purposes to proven instances of ongoing racial discrimination."), 47 ("specific, present-day racial discrimination").

That word play should be called out for what it is: an attempt to, well, dilute the term *intentional discrimination* to include *vote dilution*—which is not necessarily based on a finding of intentional discrimination. The Robinson appellants are thus asking the Court to *expand* the universe of compelling interests that could permit race-based government action. The Court should reject that request for two reasons.

First, the two exceptions identified in *SFFA* "up to now have been the outermost constitutional limits of permissible" race-based government action. *Cf. Free Enter. Fund v. PCAOB*, 537 F.3d 667, 698 (D.C. Cir. 2008) (Kavanaugh, J., dissenting). On constitutional principle, therefore, it makes good sense to decline to expand that universe of exceptions any further.

Second, weakening the exception for *intentional discrimination* to include *vote dilution* would generate the precise problems that justify requiring "specific, identified instances of past discrimination" in

the first place. *SFFA*, 600 U.S. at 207. "In the absence of particularized findings, a court could uphold remedies that are ageless in their reach into the past, and timeless in their ability to affect the future." *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 498 (1989) (plurality op.) (citation omitted). That is not a problem in the context of intentional discrimination, which is identifiable with some specificity. But the same is not true of vote dilution, which is governed by "notoriously unclear and confusing precedents" that have given courts, legislatures, and litigants headaches for decades. *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring in grant of applications for stays). Ask anyone "exactly what [is] the underlying Voting Rights Act violation," Tr. of Oral Arg. 30, and the answers always will be unsatisfactory and inconsistent.

If neither litigants nor courts can have confidence in the predictability of the governing legal standard, no government or court should be wielding the awesome power of race-based action under that standard.

* * *

One final word on a remedy. If the Court affirms the judgment below, it should remand to permit the district court and the parties to assess the proper path forward. The Robinson appellants request, in the alternative, a remand with a thumb on the scales for them: The Court "should remand this matter for the development of a remedy more closely tailored to the § 2 violation identified in *Robinson*." Robinson Supp. Br. 51. The Court should ignore that request because it would be inconsistent with a determination that race-based redistricting is unconstitutional; because "[n]either the [VRA] nor the Constitution imposes a

compactness requirement," *Allen*, 599 U.S. at 97 (Alito, J., dissenting); and because, with *Robinson* moot and closed, there is no legal decision in place requiring the State to draw such a map.

CONCLUSION

The Court should affirm the judgment below.

Respectfully submitted,

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