No.

In the Supreme Court of the United States

STATE BOARD OF ELECTION COMMISSIONERS, ET AL.,
Appellants,

v.

MISSISSIPPI STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, ET AL.,
Appellees.

On Appeal from the United States District Court for the Southern District of Mississippi

JURISDICTIONAL STATEMENT

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QUESTION PRESENTED

Whether private parties may sue to enforce section 2 of the Voting Rights Act, 52 U.S.C. § 10301.

PARTIES TO THE PROCEEDING

There are five appellants. Four were defendants in the district court: the Mississippi State Board of Election Commissioners; Tate Reeves, in his official capacity as Mississippi Governor; Lynn Fitch, in her official capacity as Mississippi Attorney General; and Michael Watson, in his official capacity as Mississippi Secretary of State. The fifth appellant (an intervenor defendant in the district court) is the Mississippi Republican Executive Committee.

Appellees were plaintiffs in the district court. They are the Mississippi State Conference of the National Association for the Advancement of Colored People, Dr. Andrea Wesley, Dr. Joseph Wesley, Robert Evans, Gary Fredericks, Pamela Hamner, Barbara Finn, Otho Barnes, Shirlinda Robertson, Sandra Smith, Deborah Hulitt, Rodesta Tumblin, Dr. Kia Jones, Marcelean Arrington, and Victoria Robertson.

The other defendants in the district court were Dan Eubanks, in his official capacity as Ranking House Member of the Standing Joint Legislative Committee on Reapportionment and Redistricting, and Dean Kirby, in his official capacity as Vice Chairman of the Standing Joint Legislative Committee on Reapportionment and Redistricting. When appellees filed an amended complaint they dropped these defendants from the case. Both were terminated from the case in 2023.

The other plaintiff in the district court was Angela Grayson. She withdrew as a plaintiff in 2023.

RELATED PROCEEDING

United States District Court (S.D. Miss.):

Mississippi State Conference of the National Association for the Advancement of Colored People, et al. v. State Board of Election Commissioners, et al., No. 22-cv-734-DPJ-HSO-LHS (May 7, 2025)

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INTRODUCTION

This direct appeal presents an important legal question that has divided the courts of appeals: whether private parties may sue to enforce section 2 of the Voting Rights Act of 1965. The answer is no. The district court ruled otherwise. This Court should set this appeal for plenary review and reject the judgment below.

Private parties often want to sue to enforce federal law. But "only Congress" decides whether private parties may do that, and it allows such suits only in "atypical cases." *Medina v. Planned Parenthood South Atlantic*, 145 S. Ct. 2219, 2229, 2239 (2025) (cleaned up). Private enforcement stresses the separation of powers, erodes federalism, and imperils other constitutional guarantees. *Id.* at 2229-30, 2233 n.5. Recognizing these dangers, this Court has held that a private party may sue to enforce federal law only when Congress, in "clear and unambiguous terms," "create[s] new individual rights." *Gonzaga University v. Doe*, 536 U.S. 273, 286, 290 (2002). Even then, other features—like a congressional decision to entrust enforcement to government officials—can foreclose private suit. *Id.* at 284 & n.4.

Under that framework, private parties may not sue to enforce section 2 of the Voting Rights Act.

Statutory text shows that section 2 does not "create a federal right"—and certainly does not create a federal right in "clear and unambiguous terms." *Gonzaga*, 536 U.S. at 283, 290 (emphasis omitted). Section 2(a) provides: "No voting qualification or ... practice ... shall be imposed ... by any State ... in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on

account of race or color." 52 U.S.C. § 10301(a). That provision is "phrased in terms of" the acts prohibited and actors regulated—not the "persons benefited." *Gonzaga*, 536 U.S. at 284. The statute leads with and "focus[es] on" what is barred and by whom. *Id.* at 287. It only later identifies the "persons benefited" and refers to their "rights." *Id.* at 284. And it does so only to explain what is barred. Contrast that with the Civil Rights Act of 1964: "No person ... shall ... be subjected to discrimination." 42 U.S.C. § 2000d. When Congress passed the Voting Rights Act a year later, it knew how to focus on the benefited class to create individual rights. It did not do that in section 2. Section 2(b) confirms this view. It says how section 2(a) is violated—when "political processes ... are not equally open to participation by members of a class of citizens." 52 U.S.C. § 10301(b). That text has an "aggregate" focus and so does not create "individual rights." *Gonzaga*, 536 U.S. at 288. Indeed, that text was drawn from a decision recognizing the "group" focus of these claims. *White v. Regester*, 412 U.S. 755, 765-66 (1973). And this Court's later caselaw affirms that section 2 protects "group interests." *Thornburg v. Gingles*, 478 U.S. 30, 51 (1986).

Statutory structure confirms that section 2 does not create a federal right. The Voting Rights Act provides for enforcement—including for section 2—but does not provide for private enforcement of section 2. Rather than deputize private parties to enforce section 2, Congress "expressly authorized" the Attorney General to do so. *Gonzaga*, 536 U.S. at 289; *see* 52 U.S.C. § 10308(d). That structure "buttress[es]" the "conclusion" that section 2 "fail[s] to confer" a federal right. *Gonzaga*, 536 U.S. at 289. Congress did not greenlight private enforcement even when it

amended section 2 in response to *Mobile v. Bolden*, 446 U.S. 55 (1980), which questioned whether "there exists a private right of action to enforce" section 2. *Id.* at 60 (plurality opinion).

Even if section 2 did create a federal right, other features show that private parties may not enforce it. Again, Congress provided a mechanism for enforcing section 2: lawsuits by the Attorney General. "The express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others." *Alexander v. Sandoval*, 532 U.S. 275, 290 (2001). That feature again contrasts with the Civil Rights Act of 1964, which authorized suits by a "person aggrieved" by a "prohibited" "act or practice." 42 U.S.C. § 2000a-3(a). And the Voting Rights Act addressed litigation and enforcement extensively. That it did so yet nowhere authorized private suits to enforce section 2 "demonstrat[es] that Congress did not intend" to allow such suits. *Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 120 (2005). Context confirms this. Although Congress had ambitious aims for the Voting Rights Act, its ambitions did not extend to buoying private litigation. Congress had seen that private litigation had failed to vindicate voting rights. It steered a new course in the VRA—embracing powerful remedies, but not private enforcement.

The ruling below is thus wrong. And the question it presents is substantial. It is the subject of a circuit conflict, has serious constitutional ramifications, and has massive practical consequences. This case would warrant review under the more demanding certiorari criteria. It plainly warrants plenary consideration under this Court's mandatory appellate jurisdiction.

This Court should note probable jurisdiction, set this case for oral argument, and reverse.

OPINIONS BELOW

The three-judge district court's opinion on liability (App.1a-139a) is reported at 739 F. Supp. 3d 383. The court's order allowing the Legislature to adopt new legislative maps in 2025 (App.140a-48a) is reported at 741 F. Supp. 3d 509. The court's order partially approving the new maps (App.149a-69a) is not yet reported but is available at 2025 WL 1113214. The court's order approving defendants' final map (App.170a-87a) is not yet reported but is available at 2025 WL 1318806.

JURISDICTION

The three-judge district court, convened under 28 U.S.C. § 2284(a), entered final judgment on May 7, 2025. App.188a. Appellants filed notices of appeal from that judgment on July 3, 2025. App.189a-97a. This Court has jurisdiction under 28 U.S.C. § 1253.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pertinent constitutional and statutory provisions are reproduced in the appendix. App.198a-200a.

STATEMENT

1. The Fifteenth Amendment was ratified in 1870. It provides: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." U.S. Const. amend. XV, § 1. Congress has "power to enforce" the Amendment "by appropriate legislation." *Id.* § 2.

Efforts to enforce the Fifteenth Amendment long failed. *See South Carolina v. Katzenbach*, 383 U.S. 301, 310-15 (1966). Soon after the Amendment was ratified, Congress passed the Enforcement Act of 1870, which made it a crime to obstruct the right to vote. 16 Stat. 140. Enforcement of that law "became spotty and ineffective," and it was mostly repealed in 1894. 383 U.S. at 310. By then, some States had adopted "tests" "designed to prevent" black citizens from voting. *Ibid.*; *see id.* at 310-11. "Fifteenth Amendment litigation" challenging such tests ensued, *id.* at 311—brought by the United States, *e.g.*, *Guinn v. United States*, 238 U.S. 347, 354 (1915), and by private parties, *e.g.*, *Myers v. Anderson*, 238 U.S. 368, 378 (1915) (invoking what is now 42 U.S.C. § 1983). In the first half of the 20th century, this Court struck down several of those tests. *See Katzenbach*, 383 U.S. at 311. But state officials continued to violate the Fifteenth Amendment by "appl[ying]" voting tests in "discriminatory" ways. *Ibid.*; *see id.* at 311-13.

In the 1950s and 1960s, Congress "repeatedly tried" to address voting discrimination by "facilitating case-by-case litigation" to combat it. *Katzenbach*, 383 U.S. at 313. The Civil Rights Act of 1957 authorized injunctive suits by the Attorney General, 71 Stat. 634, 637; the Civil Rights Act of 1960 allowed States to be joined in such suits as defendants, 74 Stat. 86, 92; and the Civil Rights Act of 1964 expedited voting cases, 78 Stat. 241, 242. But these laws "d[id] little to cure the problem." 383 U.S. at 313. "Voting suits" were "unusually onerous to prepare"; litigation was "exceedingly slow"; and even "favorable" judicial rulings were hollow because state officials adopted new "discriminatory devices" to replace those found unlawful. *Id.* at 314; *see id.* at 314-15.

By 1965, powerful evidence thus showed that the "remedies" Congress "had prescribed in the past" had failed to "satisfy the clear commands of the Fifteenth Amendment." *Katzenbach*, 383 U.S. at 309. Congress "concluded" that it had to "replace[ ]" those remedies with "sterner and more elaborate measures." *Ibid.*

Congress acted by passing the Voting Rights Act of 1965, 79 Stat. 437, codified as amended at 52 U.S.C. § 10301 *et seq.* The Act "prescribe[d]" "stringent new remedies" to enforce the Fifteenth Amendment. *Katzenbach*, 383 U.S. at 308. In upholding the Act, this Court placed its provisions in three groups. *See id.* at 315-16. First, "[t]he heart" of the Act is a set of "stringent remedies aimed at areas where voting discrimination ha[d] been most flagrant." *Id.* at 315. For these covered jurisdictions (§ 4(a)-(d)), the Act "suspen[ded]" "literacy tests and similar voting qualifications" (§ 4(a)), "suspen[ded]" "new voting regulations pending review by" the Attorney General or the D.C. district court (§ 5), and "assign[ed]" federal examiners who could declare citizens "entitled to vote" (§§ 6(b), 7, 9, 13(a)). *Id.* at 315-16; *see* 79 Stat. at 438-42, 444-45. Second, the Act "prescribe[d] subsidiary cures for persistent voting discrimination." 383 U.S. at 316. It authorized the appointment of federal poll-watchers (§ 8), excused payment of past poll taxes (§ 10(d)), and provided for voting by those denied access to the polls where examiners had been appointed (§ 12(e)). *Ibid.*; *see* 79 Stat. at 441, 442-43, 444. Third, the Act's "remaining remedial portions" "aimed at voting discrimination" in the country more broadly. 383 U.S. at 316. The Act barred "the use of voting rules to abridge exercise of the franchise on racial grounds" (§ 2); strengthened "procedures for attacking voting discrimination by means of

litigation" (§§ 3, 6(a), 13(b)); exempted certain students taught in foreign languages from English-language literacy tests (§ 4(e)); "facilitate[d] constitutional litigation" by the Attorney General to challenge poll taxes (§ 10(a)-(c)); and "authorize[d]," at the Attorney General's behest, "civil and criminal sanctions against interference with the exercise of rights guaranteed by the Act" (§§ 11, 12(a)-(d)). *Ibid.*; *see* 79 Stat. at 437-40, 442-45.

The Voting Rights Act "is far from ordinary." *Shelby County v. Holder*, 570 U.S. 529, 555 (2013). Congress used its Fifteenth Amendment power "in an inventive manner" to impose "remedies for voting discrimination" "without any need for prior adjudication." *Katzenbach*, 383 U.S. at 327-28. Congress "had found that case-by-case litigation was inadequate to combat widespread and persistent discrimination in voting," due to "the inordinate amount of time and energy required to overcome the obstructionist tactics invariably encountered in these lawsuits." *Id.* at 328. After "nearly a century of systematic resistance to the Fifteenth Amendment," Congress "shift[ed] the advantage of time and inertia from the perpetrators of the evil to its victims." *Ibid.*

The Act did address litigation. It mostly addressed litigation by the Attorney General. This included civil suits "to enforce ... the fifteenth amendment in any State or political subdivision" under sections 3, 6(a), and 13(b) (79 Stat. at 437-38; *see id.* at 439-40, 444-45); civil suits to combat poll taxes under section 10(a)-(c) (*id.* at 442); injunctive suits under section 12(d) to enforce sections 2, 3, 4, 5, 7, 10, 11, and 12(b) (*id.* at 444); applications under section 12(e) to enable voting by those blocked from the polls (*ibid.*); and criminal prosecutions under sections 11 and 12(a)-(c)

(*id.* at 443-44). The Act also provided, in section 9, for circuit-court review of hearing-officer determinations on voting eligibility and for Attorney General applications to enforce subpoenas. *Id.* at 441-42. The other provisions on litigation (sections 4, 5, and 13) authorized or addressed suits involving covered jurisdictions on voting practices, voting changes, and voting-eligibility lists. *Id.* at 438, 439, 444.

2. Central to this appeal is section 2 of the Voting Rights Act—"an uncontroversial provision" in 1965 (*Mobile v. Bolden*, 446 U.S. 55, 61 (1980) (plurality opinion)) that this Court placed in the third category of "remaining" provisions (*Katzenbach*, 383 U.S. at 316). When enacted, section 2 provided: "No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color." 79 Stat. at 437.

In *Mobile v. Bolden*, a plurality of this Court concluded that section 2 is "almost a rephrasing of the Fifteenth Amendment" and that a section 2 claim thus "adds nothing" to a Fifteenth Amendment claim. 446 U.S. at 61 (cleaned up). Section 2—like the Fifteenth Amendment—thus barred state laws "motivated by a [racially] discriminatory purpose" but not laws that are discriminatory only in effect. *Id.* at 62; *see id.* at 61-65. In considering section 2, the plurality "[a]ssum[ed]" that "there exists a private right of action to enforce" section 2, *id.* at 60, but cited right-of-action caselaw drawing that assumption into question, *id.* at 60 n.8.

Congress responded to *Mobile* in 1982 by amending section 2 to bar laws that are

discriminatory in effect. 96 Stat. 131, 134; *see Allen v. Milligan*, 599 U.S. 1, 13 (2023). Since then, section 2 has provided: "No voting qualification or ... practice ... shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color ... ." 52 U.S.C. § 10301(a). Subsection (b), added in 1982, explains that a violation of section 2(a) occurs when "the political processes leading to nomination or election ... are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." *Id.* § 10301(b). As a result of the 1982 amendments, section 2 prohibits vote dilution. Congress did not amend the Act to authorize private suits to enforce section 2.

A few years later, this Court decided *Thornburg v. Gingles*, 478 U.S. 30 (1986), which established the "framework" that this Court has since used to evaluate section 2 claims. *Milligan*, 599 U.S. at 17. Under *Gingles*, "[t]o succeed" on a claim under section 2, the challenger must prove "three preconditions": that a "minority group" is "sufficiently large and geographically compact to constitute a majority in a reasonably configured district"; that "the minority group" is "politically cohesive"; and that "the white majority votes sufficiently as a bloc to enable it to defeat the minority's preferred candidate." *Id.* at 18 (cleaned up). If the "three preconditions" are met, the challenger must then show that, "under the totality of the circumstances," the "political process is not equally open to minority voters." *Ibid.* (cleaned up).

3. The Mississippi Constitution requires the State Legislature to "apportion the state" into senate and house districts after each decennial census. Miss. Const. art. XIII, § 254. Following a census, the Legislature's standing joint legislative committee on reapportionment draws reapportionment plans. *See* Miss. Code Ann. § 5-3-91 *et seq.* The committee must follow "constitutional standards" and state guidelines requiring that districts be compact, contiguous, and drawn to respect governmental, political, and county boundaries. *Id.* § 5-3-101. After the committee draws plans, each legislative house considers them, including whether to amend them. *See id.* § 5-3-103. To enact final plans, the Legislature must approve a joint resolution. Miss. Const. art. XIII, § 254. The plans then take effect.

The 2020 census data were released in August 2021. App.5a. The data showed a drop in Mississippi's overall population by 6,018 persons (from 2,967,297 to 2,961,279), a decrease in the non-Hispanic white population of 83,210 persons, and an increase in the black population by 7,812 persons. *Ibid.* With these changes, the black population composes 37.94% of the State's population and 36.14% of its voting-age population. *Ibid.* Based on the census data, the ideal district size (according to the one-person, one-vote principle) is 56,948 for a senate district and 24,273 for a house district. *Ibid.*

Over the coming months, the committee held nine public hearings and four public meetings. App.5a. In November 2021, it adopted three criteria for drawing districts: (1) each district's population should be less than 5% above or below the ideal district size; (2) districts should be composed of contiguous territory; and (3) the plans should comply with

federal and state law, including section 2 of the Voting Rights Act. App.6a. The committee also sought to separate incumbents into different districts. *See ibid.* On March 27, 2022, the committee presented and adopted its plans. App.6a-7a.

The Legislature mostly agreed with those plans. *See* App.7a. The house adopted an amendment to separate the districts for two black Democratic incumbents, but rejected an amendment proposing an alternative map ("an admitted racial gerrymander") adding five black-majority house districts. *Ibid.* The senate rejected amendments that would have added four black-majority senate districts. *Ibid.*

On March 31, the Legislature enacted the plans. App.7a. Of the 52 senate districts, the enacted plan has 15 black-majority districts. App.8a. Of the 122 house districts, the enacted plan has 42 black-majority districts. *Ibid.* The enacted plans paired incumbents in one senate district and three house districts. App.7a-8a. Floor statements from both houses emphasized "political performance" as an "important consideration" in the plans. App.8a.

4. In December 2022, appellees filed this suit challenging the enacted plans under the federal Constitution and the Voting Rights Act. App.9a. Because appellees brought a constitutional claim, a three-judge district court was convened to hear the case. App.10a; *see* 28 U.S.C. § 2284(a).

Appellees (plaintiffs below) are the Mississippi State Conference of the National Association for the Advancement of Colored People and 14 individual Mississippians who are registered voters, residents of challenged districts, and Democrats. App.2a-3a. They sued the Mississippi State Board of Election

Commissioners and its members—the Mississippi Governor, Attorney General, and Secretary of State. App.3a; *see* Miss. Code Ann. § 23-15-211 (establishing Board and describing its role in election administration). The Mississippi Republican Executive Committee intervened as a defendant. App.3a. The defendants and intervenor defendant are appellants here. (One original plaintiff withdrew from the case. App.3a n.1. Appellees dropped two original defendants—both legislators—when they amended their complaint. App.9a-10a.)

Appellees claim that the enacted plans violate the Fourteenth Amendment's Equal Protection Clause and section 2 of the Voting Rights Act. App.9a. On equal protection, appellees claim that two senate districts and three house districts are unlawful racial gerrymanders—districts drawn with race as the predominant factor. App.10a. On section 2, appellees claim that Mississippi's increased black population requires at least four more black-majority senate districts and at least three more black-majority house districts than what the enacted plans provide. *Ibid.*

On July 2, 2024, after an eight-day bench trial, the district court issued an opinion rejecting appellees' equal-protection claim and crediting their section 2 claim for three of seven districts. App.2a. That opinion contains the ruling central to this appeal.

On equal protection, the court rejected appellees' claim for all five challenged districts. App.12a-21a. The court ruled that appellees "failed to prove that race was the predominant factor" in the enacted plans. App.21a. "Without invidious intent," the court ruled, appellees "cannot establish an Equal Protection violation." *Ibid.*

On section 2, the court ruled that appellees could sue to enforce section 2 and that they established violations for three districts. App.21a-133a. On the latter, merits ruling, the court concluded that two senate districts (in the DeSoto County and Hattiesburg areas) and one house district (in northeast Mississippi) violate section 2. App.27a-133a. For those districts, the court ruled that appellees proved each *Gingles* precondition (App.65a, 82a-84a; *see* App.29a-84a) and that the totality of the circumstances showed that the State's political process is not equally open to black voters (App.132a-33a; *see* App.84a-133a). The court ruled that appellees failed to establish a violation for the other four challenged districts. App.52a-57a, 60a-65a.

In the ruling central to this appeal, the court rejected appellants' argument that section 2 "cannot be enforced by private parties." App.21a; *see* App.21a-27a. The court recognized that the Fifth Circuit had "foreclos[ed]" this argument in *Robinson v. Ardoin*, 86 F.4th 574, 588 (5th Cir. 2023). App.21a. But because *Robinson*'s "explanation" on the issue "was brief" and "[f]urther review of the private-right-of-action issue in the present case may occur," the court "include[d] additional analysis." App.22a. The court gave three reasons for its view that "[i]f a court now holds, after almost 60 years, that [section 2] cases filed by private individuals were never properly brought, it should be the Supreme Court." App.27a.

One: The court evaluated section 2's text in light of this Court's cases addressing when a private party may enforce a federal statute under an implied right of action or under 42 U.S.C. § 1983. App.22a-24a. Those cases direct courts to ask whether the statute "confers an individual right" and whether Congress

intended to provide "a private remedy." App.22a-23a. The court believed that section 2(a) "certainly" has "an emphasis on rights" "when it prohibits states taking actions that 'result[] in a denial or abridgement of the right ... to vote.'" App.24a (quoting 52 U.S.C. § 10301(a)). "Less obvious," the court said, "is textual language revealing a congressional intent to provide for a private remedy." *Ibid.*

Two: The court invoked *Morse v. Republican Party of Virginia*, 517 U.S. 186 (1996), where, the court said, a majority agreed that "'the existence of the private right of action under Section 2 ... has been clearly intended by Congress since 1965.'" App.25a (quoting 517 U.S. at 232 (two-Justice lead opinion)); *see* App.24a-26a. The court said that this statement "may have been *dicta*," but it believed that the Fifth Circuit would "tread cautiously before taking a different path." App.25a. And although *Morse* was decided before *Alexander v. Sandoval*, 532 U.S. 275 (2001), "articulated" the current test for evaluating whether "Congress has created a private right of action to enforce a particular enactment," the district court believed that it had to "remain faithful" to the "on-point precedent" of *Morse*. App.25a; *see* App.25a-26a.

Three: The court emphasized the history and impact of Voting Rights Act litigation. App.26a-27a. Before and after *Sandoval*, the court observed, courts have "assumed" "[t]he existence of a private right of action" to enforce section 2 and "have resolved Section 2 cases brought by private parties without addressing whether there was even a right for those parties to sue." App.26a. The court added: "[F]ew congressional enactments have had a more profound effect on the country than the Voting Rights Act," and "a large percentage of the enforcement actions under" the Act

"have been brought by private individuals." App.27a. On that last point, the court found "noteworthy" an "assertion" from a committee report (*ibid.*): "the Committee reiterates the existence of the private right of action under Section 2, as has been clearly intended by Congress since 1965. See *Allen v. [State] Board of Elections*, 393 U.S. 544 (1969)." S. Rep. No. 97-417, at 30 (1982).

The court "provide[d] the Mississippi Legislature an opportunity to enact revised maps" to address the section 2 violations. App.2a; *see* App.133a-38a.

On July 18, 2024, the district court rejected appellees' request to order the Legislature to adopt new maps in a special session and hold new elections for affected districts in 2024. App.140a-48a. Emphasizing "how few districts are subject to [a] finding of a Section 2 violation," the court "conclude[d]" that the Legislature could enact new plans in "its regular 2025 session" and could hold special elections after that in 2025. App.147a.

In its 2025 session, the Legislature enacted new plans to address the section 2 violations identified by the district court. *See* App.150a; D. Ct. Dkts. 243-1 (adoption), 243-6 (senate plan), 243-7 (house plan).

On April 15, 2025, the district court ruled that the new plans remedied two of the three violations. App.149a-69a. Appellees did not object to the new senate map in the Hattiesburg area, App.150a, so the court "accept[ed]" that the Legislature had remedied the violation in that area, App.169a. The court ruled that the Legislature remedied the violation in northeast Mississippi, rejecting appellees' argument that two newly drawn house districts failed to provide black voters "a realistic opportunity to elect the

candidates of their choice." App.168a; *see* App.162a-68a. For the DeSoto County area, however, the court ruled that the Legislature had redrawn the previous black opportunity senate district in a way that "no longer offers black voters a realistic opportunity to elect candidates of their choice," emphasizing that the "percent-won score" for "black-preferred candidates" is "below 50%." App.158a, 159a; *see* App.157a-62a. The court gave defendants seven days "to submit a proposed map" to remedy the violation in that area. App.168a.

On May 7, 2025, after receiving competing plans from the parties, the district court adopted defendants' plan, App.171a; *see* App.170a-87a, and entered final judgment, App.188a. The court concluded that the parties' maps "both remedy the Section 2 violation" in the DeSoto County area. App.179a. The court ruled that defendants' plan "is the proper remedy" because, beyond "giv[ing] a meaningful opportunity for minority voters to elect senators of their choice," that plan aligns with the Legislature's "policy of not pairing incumbents" (unlike appellees' plan) and "creates less of a disruption to State government" because it requires elections in only four districts (appellees' plan required elections in six districts). App.186a.

This timely appeal followed. App.189a-97a.

REASONS FOR NOTING PROBABLE JURISDICTION

All this Court needs to decide now is whether to note probable jurisdiction and set this case for oral argument or to summarily affirm the district court's judgment. This Court should grant plenary review because the district court erred in deciding the

question presented—whether private parties may sue to enforce section 2 of the Voting Rights Act—and that question is substantial. Indeed, that question is an unsettled and profoundly important issue that has divided the courts of appeals. This appeal would meet the more demanding criteria for certiorari. It certainly warrants plenary consideration under the mandatory appellate jurisdiction of 28 U.S.C. § 1253.

I. The District Court Erred In Holding That Private Parties May Sue To Enforce Section 2 Of The Voting Rights Act.

Private parties may not sue to enforce section 2 of the Voting Rights Act, 52 U.S.C. § 10301. The district court erred in holding otherwise.

A. Appellees claim that private parties may sue to enforce section 2 either because the Voting Rights Act impliedly authorizes such suits or 42 U.S.C. § 1983 expressly authorizes such suits. D. Ct. Dkt. 220 at 218-20 (appellees' proposed findings and conclusions).

The question "whether a private right of action can be implied from a particular statute" involves "a different inquiry" from the question "whether a statutory violation may be enforced through § 1983." *Gonzaga University v. Doe*, 536 U.S. 273, 283 (2002). But the inquiries "overlap." *Ibid.*

Start with implied rights of action. To establish that "a private right of action can be implied from a particular statute," a plaintiff must make two showings. *Gonzaga*, 536 U.S. at 283; *see id.* at 283-84; *Alexander v. Sandoval*, 532 U.S. 275, 286-87 (2001). First, the plaintiff must show that Congress "intended to create a federal right." *Gonzaga*, 536 U.S. at 283 (emphasis omitted). The statute must use

"explicit rights-creating terms": it must be "phrased in terms of the persons benefited" and "with an unmistakable focus on the benefited class." *Id.* at 284 (emphasis omitted). Second, the plaintiff "must show that the statute manifests an intent 'to create not just a private *right* but also a private *remedy*.'" *Ibid.* (quoting *Sandoval*, 532 U.S. at 286).

Now take section 1983. It authorizes private parties to sue state actors who deprive them of "rights, privileges, or immunities secured by the Constitution and laws" of the United States. 42 U.S.C. § 1983. Section 1983 thus "provides a cause of action only for" the deprivation of "individual rights"—not mere "benefits" or "interests"—and only when federal law "secures" those rights. *Medina v. Planned Parenthood South Atlantic*, 145 S. Ct. 2219, 2229 (2025) (cleaned up). "To prove that a statute secures an enforceable right," a plaintiff "must show" that the statute "'clearly and unambiguously'" gives the plaintiff "individual federal rights." *Id.* at 2229, 2234 (quoting *Gonzaga*, 536 U.S. at 290; cleaned up). The plaintiff must also show that the statute displays "an unmistakable focus on individuals like the plaintiff." *Id.* at 2229 (cleaned up). Even if the plaintiff makes those showings, section 1983 does not allow suit "if Congress has displaced § 1983's general cause of action with a more specific remedy," *ibid.*, or "Congress did not intend" that section 1983 would be available for the "newly created right," *Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 120 (2005).

In sum, whether a court is assessing the availability of an implied or an express private right of action, it "must first determine whether Congress intended to create a federal right." *Gonzaga*, 536 U.S. at 283 (emphasis omitted). "[I]f Congress wishes to

create new rights enforceable under § 1983, it must do so in clear and unambiguous terms—no less and no more than what is required for Congress to create new rights enforceable under an implied private right of action." *Id.* at 290. A court must determine whether Congress has done that based on "the entire legislative enactment." *Suter v. Artist M.*, 503 U.S. 347, 357 (1992). If a statute's "text and structure" do not create a federal right, "there is no basis for a private suit, whether under § 1983 or under an implied right of action." *Gonzaga*, 536 U.S. at 286. And even when Congress has created a federal right, other features can establish that a private suit is still unavailable. *Id.* at 284 & n.4.

B. Under those principles, private parties may not sue to enforce section 2 of the Voting Rights Act.

1. Section 2 does not "create a federal right." *Gonzaga*, 536 U.S. at 283 (emphasis omitted). And it certainly does not create a federal right in "clear and unambiguous terms." *Id.* at 290. This alone forecloses private suits to enforce section 2—under an implied right of action or under section 1983.

Section 2's text shows that it does not create a federal right. Start with section 2(a):

> No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 10303(f)(2) of this title, as provided in subsection (b).

52 U.S.C. § 10301(a). Section 2 is "phrased in terms of" the acts prohibited and actors regulated, not the "persons benefited." *Gonzaga*, 536 U.S. at 284. The statute leads with and "focus[es] on" (*id.* at 287) what is barred (certain "qualification[s]," "prerequisite[s]," "standard[s]," "practice[s]," and "procedure[s]") and by whom ("any State or political subdivision"). The statute only later identifies the "persons benefited" and refers to their "rights." *Id.* at 284. And it does so only to explain what is prohibited (actions that "result[ ] in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color"). *Cf. id.* at 289 n.7 (there is "no presumption of enforceability merely because a statute speaks in terms of rights") (cleaned up). Section 2(a) is thus not "phrased with an unmistakable focus on the benefited class." *Id.* at 284 (cleaned up). Rather than show that "'Congress intended to create a federal right' *for* the identified class," section 2(a) shows that those like appellees only "fall 'within the general zone of interest that the statute is intended to protect.'" *Health & Hospital Corp. of Marion County v. Talevski*, 599 U.S. 166, 183 (2023) (quoting *Gonzaga*, 536 U.S. at 283).

Now take section 2(b). It explains how section 2(a) is violated:

> A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their

> choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

52 U.S.C. § 10301(b). This provision shows that section 2 has an "aggregate" focus and so does not create "individual rights." *Gonzaga*, 536 U.S. at 288. Section 2(b) trains section 2's sights not on violations of any individual right but on broader "political processes" and whether those processes are "equally open" to all "members of a class of citizens" protected by section 2(a). Indeed, in drafting section 2(b) Congress drew language from this Court's decision in *White v. Regester*, 412 U.S. 755 (1973), which explained that liability in voting cases turns on whether "political processes" are "equally open to participation by *the group* in question." *Id.* at 766 (emphasis added); *see Allen v. Milligan*, 599 U.S. 1, 13 (2023). As later caselaw confirms, section 2 thus has a group focus—not an individual focus and thus not an individual-rights focus. *See Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986) (to prevail under section 2 the "minority group" must prove "political[ ] cohesive[ness]" such that the challenged district "thwarts distinctive minority group interests").

Statutory structure confirms that section 2 does not create a federal right. The Voting Rights Act provides extensive enforcement mechanisms, but it does not provide for private enforcement of section 2. *Supra* pp. 6-8. That structure "buttress[es]" the "conclusion" that section 2 "fail[s] to confer" a federal

right. *Gonzaga*, 536 U.S. at 289; *see Suter*, 503 U.S. at 360-61 (similar). And Congress provided for section 2's enforcement. In section 12 Congress "expressly authorized" (*Gonzaga*, 536 U.S. at 289) the Attorney General to sue to enforce section 2. That was true in 1965. 79 Stat. 437, 443-44. That remained true in 1982—after Congress amended section 2 in response to *Mobile v. Bolden*, 446 U.S. 55 (1980), without authorizing the "private right of action to enforce" section 2 that the *Mobile* plurality called into question. *Id.* at 60 & n.8. That is true today. 52 U.S.C. § 10308(d). All this reflects a deliberate, sustained choice not to create a new right in section 2.

Broader statutory context affirms that section 2 does not create an individual right. The Civil Rights Act of 1964 says: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d; *see* 78 Stat. 241, 252. That provision has an "unmistakable focus on the benefited class," *Gonzaga*, 536 U.S. at 284 (emphasis omitted): "No person ... shall ... be subjected to discrimination." It contrasts markedly with section 2 of the Voting Rights Act—enacted just a year later: "No voting qualification or ... practice ... shall be imposed ... by any State." 52 U.S.C. § 10301(a); *see* 79 Stat. at 437. When Congress passed the Voting Rights Act, it knew how to focus on the benefited class in a way that creates individual rights. It did not do that in section 2.

2. Even if section 2 did create a federal right, private parties still could not enforce it—"under an

implied right of action" or "under § 1983." *Gonzaga*, 536 U.S. at 286.

a. Start with the implied-right framework. Again, "even where a statute is phrased in ... explicit rights-creating terms," a plaintiff "must show that the statute manifests an intent 'to create not just a private *right* but also a private *remedy*.'" *Gonzaga*, 536 U.S. at 284 (quoting *Sandoval*, 532 U.S. at 286).

Section 2 does not manifest an intent "to create ... a private remedy." *Gonzaga*, 536 U.S. at 284 (emphasis omitted). Again, section 2 "itself contains no private enforcement mechanism." *Arkansas State Conference NAACP v. Arkansas Board of Apportionment*, 86 F.4th 1204, 1210 (8th Cir. 2023). Congress instead empowered the Attorney General to enforce section 2. Section 12 of the Act authorizes the Attorney General to bring "an action for preventive relief ... for a temporary or permanent injunction, restraining order, or other order." 52 U.S.C. § 10308(d). Congress provided two paths for the Attorney General to take: fast-tracked lawsuits to address violations in jurisdictions with federal observers, *see id.* § 10308(e); and normal-pace lawsuits for jurisdictions without federal observers, *see id.* § 10308(d). Congress thus considered and addressed how to remedy violations of section 2—and it decided not to supply a private remedy for such violations. So private plaintiffs, like appellees, may not enforce section 2 under an implied right of action.

This point is strengthened by again comparing the Voting Rights Act with the Civil Rights Act of 1964. In the latter, Congress authorized private persons to sue: "Whenever any person has engaged or there are reasonable grounds to believe that any person is

about to engage in any act or practice prohibited by section 2000a-2 of this title, a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, may be instituted by the person aggrieved ... ." 42 U.S.C. § 2000a-3(a); *see* 78 Stat. at 244. Congress thus knew how to authorize private suits when it enacted the Voting Rights Act. It did not authorize such suits to enforce section 2.

b. Now take the section 1983 framework. Even if a statute unambiguously secures individual federal rights, "a § 1983 action still may not be available if Congress has displaced § 1983's general cause of action with a more specific remedy." *Medina*, 145 S. Ct. at 2229. To defeat the "presumption that [a] right is enforceable under § 1983," a defendant need only "demonstrat[e] that Congress did not intend" that section 1983 would be available for the "newly created right." *Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 120 (2005). Courts "apply ordinary interpretive tools to determine whether the statute allows access to § 1983." *Talevski*, 599 U.S. at 194 (Barrett, J., concurring). An "actual clash ... is not required to find that a statute forecloses recourse to § 1983." *Id.* at 195.

Text, structure, and historical context show that Congress "did not intend" that section 1983 would be available for any right "newly created" in section 2. *Rancho Palos Verdes*, 544 U.S. at 120.

Start with text. Again, Congress addressed section 2's enforcement. And it "confe[rred] authority to sue ... on [a] government official[ ]." *Talevski*, 599 U.S. at 195 (Barrett, J., concurring). "The express provision of one method of enforcing a substantive rule suggests

that Congress intended to preclude others." *Sandoval*, 532 U.S. at 290. Here it does so even if "other aspects of the statute ... suggest" that Congress intended "to create a private right of action." *Ibid.* Congress's decision to authorize the Attorney General to enforce section 2 thus supports the view that it walled off private suits.

Statutory structure does too. Congress addressed litigation in many of the Act's provisions. Most concern litigation brought by the Attorney General—to enforce the Fifteenth Amendment, combat poll taxes, enforce specific provisions, prosecute crimes, and more. *Supra* pp. 7-8. Others concern preclearance litigation. *Supra* p. 8. Congress addressed litigation and enforcement extensively. That it nowhere authorized private suits to enforce section 2 "demonstrat[es] that Congress did not intend" that section 1983 would be available to enforce section 2. *Rancho Palos Verdes*, 544 U.S. at 120.

Context drives the point home. Although Congress had ambitious aims for the Voting Rights Act, its ambitions did not extend to buoying private litigation. Quite the contrary: Congress had seen that private litigation—and even strengthened government litigation—had failed to vindicate voting rights. Congress steered a new course in the VRA—embracing a raft of drastic and inventive remedies different from private litigation. *Supra* pp. 5-8. Congress "concluded" that it had to "replace[ ]" the remedies of the past with "sterner and more elaborate measures." *South Carolina v. Katzenbach*, 383 U.S. 301, 309 (1966). To the extent it addressed litigation, it did not embrace private lawsuits to enforce section 2. Congress turned away from private enforcement.

C. The district court recognized that Fifth Circuit precedent "foreclos[ed]" appellants' argument that section 2 "cannot be enforced by private parties." App.21a. But the court suggested that it would have reached the same conclusion anyway. *See* App.21a-27a. None of its reasons withstands scrutiny.

First, after invoking the private-right-of-action framework, the court said that section 2(a) "certainly" has "an emphasis on rights" "when it prohibits states taking actions that 'result[] in a denial or abridgement of the right ... to vote.'" App.24a (quoting 52 U.S.C. § 10301(a)); *see* App.22a-24a. But a statute must have not just "an emphasis on rights" (App.24a) but "an unmistakable focus on the benefited class." *Gonzaga*, 536 U.S. at 284 (emphasis omitted). That latter feature is absent where, as here, the statute is "phrased in terms of" and "unmistakabl[y] focus[ed] on" the conduct prohibited and actors regulated. *Ibid.* (emphasis omitted).

Second, the court invoked (App.24a-26a) *Morse v. Republican Party of Virginia*, 517 U.S. 186 (1996), and found it significant that most Justices (in its view) agreed that "the existence of the private right of action under Section 2 ... has been clearly intended by Congress since 1965." *Id.* at 232 (lead opinion). Although the court acknowledged that this statement "may have been" both "*dicta*" and in tension with this Court's later decision articulating the current test for evaluating whether "Congress has created a private right of action to enforce a particular enactment," the court believed that it had to "remain faithful" to *Morse* as "on-point precedent." App.25a; *see* App.25a-26a. But *Morse* did not decide whether private parties may enforce section 2. It decided that private parties may enforce section 10—a poll-tax provision. The two

opinions composing a Court majority assumed that private parties may enforce section 2. *See* 517 U.S. at 232 (Stevens, J., for two Justices); *id.* at 240 (Breyer, J., for three Justices). But these were "background assumptions—mere dicta at most." *Arkansas*, 86 F.4th at 1215. That "dicta" came with "hardly any analysis of *why* § 2 is privately enforceable." *Id.* at 1216. And "this Court is bound by holdings"—not "language" or "assumption[s]." *Sandoval*, 532 U.S. at 282. And because those assumptions conflict with how this Court now assesses the availability of private rights of action, they should prompt scrutiny.

Third, the court emphasized the history and impact of Voting Rights Act litigation. App.26a-27a. But none of its points holds up. The court observed that, both before and after *Sandoval*, courts have "assumed" "[t]he existence of a private right of action" to enforce section 2 and "have resolved Section 2 cases brought by private parties without addressing whether there was even a right for those parties to sue." App.26a. All that shows is that courts have made an assumption—not that the assumption is right. The court added that "few congressional enactments have had a more profound effect on the country than the Voting Rights Act" and that "a large percentage of the enforcement actions under" the Act "have been brought by private individuals." App.27a. But that is not a sound reason to keep allowing suits that Congress did not authorize. Those lawsuits come at serious cost to our constitutional order, to States, and to citizens. *Infra* pp. 31-33. Last, the court found "noteworthy" a congressional committee's "assertion" (App.27a): "the Committee reiterates the existence of the private right of action under Section 2, as has been clearly intended by Congress since 1965. See

Allen v. [State] Board of Elections, 393 U.S. 544 (1969)." S. Rep. No. 97-417, at 30 (1982). Committee reports are not law. More important than what some in Congress may have thought is "what Congress actually enacted." *Medina*, 145 S. Ct. at 2236. Nothing that Congress enacted authorizes private parties to sue to enforce section 2.

Some courts have concluded that the Voting Rights Act abrogates state sovereign immunity and on that basis have concluded that private parties may sue to enforce section 2. *Infra* pp. 30-31. These courts have not squared that conclusion with this Court's demanding private-right-of-action framework. Some courts have thought that section 3 of the Act supports the view that private parties may sue to enforce section 2. *Infra* pp. 30-31. This view is flawed. *See Arkansas*, 86 F.4th at 1211-13. Section 3 recognizes that certain "proceeding[s]" to enforce "voting guarantees" will be brought by "the Attorney General or an aggrieved person." 52 U.S.C. § 10302(a). But section 3 lacks section 12's right-of-action language. Reading section 3 to authorize private suits to enforce section 2 would thus be problematic: Section 3 speaks of suits by the Attorney General *and* by aggrieved persons. Yet section 12 authorizes only the Attorney General to sue to enforce section 2. Reading section 3 to authorize suit *at all* would "create a redundancy" with section 12: both provisions would authorize Attorney General suits. *Arkansas*, 86 F.4th at 1211. And reading section 3 to authorize *private* suits to enforce section 2 would disrespect Congress's careful work in specifying who may sue to enforce section 2.

The district court erred in ruling that private parties may sue to enforce section 2 of the Voting Rights Act.

II. The Question Presented Is Substantial And Warrants Plenary Review.

The question presented warrants plenary review. As explained, the arguments against the district court's resolution of that question are powerful. Three more points confirm that the question is substantial—indeed, it is an unsettled and profoundly important issue that would meet this Court's more demanding certiorari criteria.

A. The courts of appeals are divided on the question presented. That conflict confirms that the question is substantial.

The Eighth Circuit has held that private plaintiffs may not sue to enforce section 2. In *Arkansas State Conference NAACP v. Arkansas Board of Apportionment*, 86 F.4th 1204 (8th Cir. 2023), the court held that "[t]ext and structure" show that section 2 does not impliedly authorize private suits. *Id.* at 1206-07. The court first ruled that "[i]t is unclear whether § 2 creates an individual right." *Id.* at 1209; *see id.* at 1209-10. The court then ruled that Congress did not authorize private plaintiffs to enforce any such right. *Id.* at 1210-11. The court emphasized that section 12 empowers the Attorney General to enforce section 2. *See ibid.* Congress thus "not only created a method of enforcing § 2 that does not involve private parties, but it also allowed someone else to bring lawsuits in their place." *Id.* at 1211. And in *Turtle Mountain Band of Chippewa Indians v. Howe*, 137 F.4th 710 (8th Cir. 2025), *mandate stayed*, No. 25A62, 2025 WL 2078664 (U.S. July 24, 2025), the court held that private plaintiffs may not "maintain a private right of action for alleged violations of § 2 through 42 U.S.C. § 1983." *Id.* at 713.

The court followed *Arkansas* in holding that section 2 does not speak "with a clear voice that manifests an unambiguous intent to confer individual rights." *Id.* at 719. The court explained that although some language in section 2 focuses on the benefited class, "the gravamen of § 2 is a proscription of discriminatory conduct, with the very subject of its prohibition being 'any State or political subdivision.'" *Id.* at 718; *see id.* at 718-19. Section 2 thus does not "unambiguously confer[ ] an individual right," so private parties may not sue under section 1983 to enforce it. *Id.* at 719.

Other courts of appeals have held that private plaintiffs may sue to enforce section 2. The Fifth Circuit so ruled in *Robinson v. Ardoin*, 86 F.4th 574, 587-88 (5th Cir. 2023). Citing its prior decision "holding that the Voting Rights Act abrogated" state sovereign immunity, the court reasoned that "[t]he purpose" of abrogating sovereign immunity "is to allow the States to be sued by someone," that section 3 of the Act "provides that proceedings to enforce voting guarantees in any state or political subdivision can be brought by the Attorney General or by an 'aggrieved person,'" and that the private plaintiffs before the court were aggrieved persons and so could sue to enforce section 2. *Id.* at 588 (citing *OCA-Greater Houston v. Texas*, 867 F.3d 604, 614 (5th Cir. 2017), and quoting 52 U.S.C. § 10302). In *Mixon v. Ohio*, 193 F.3d 389 (6th Cir. 1999), the Sixth Circuit ruled that "[a]n individual may bring a private cause of action under Section 2 of the Voting Rights Act." *Id.* at 406; *see also id.* at 398-99 (ruling that VRA abrogated state sovereign immunity). And in *Alabama State Conference of NAACP v. Alabama*, 949 F.3d 647 (11th Cir. 2020), the Eleventh Circuit held that the VRA

"unmistakably" abrogated state sovereign immunity and "subject[ed] States to liability by private parties" under section 2. *Id.* at 654; *see id.* at 650-55. (This Court vacated the Eleventh Circuit's judgment and remanded with instructions to dismiss the case as moot. *Alabama v. Alabama State Conference of NAACP*, 141 S. Ct. 2618, 2618-19 (2021).)

In at least two circuits private plaintiffs are entitled to sue to enforce section 2; in at least one circuit they may not do so. This conflict over an important "open question" of federal law would merit certiorari review. *Brnovich v. Democratic National Committee*, 594 U.S. 647, 690 (2021) (Gorsuch, J., concurring). It is substantial.

B. The question presented has significant constitutional importance.

The question has serious separation-of-powers ramifications. "[T]he decision whether to let private plaintiffs enforce a new statutory right poses delicate questions of public policy." *Medina v. Planned Parenthood South Atlantic*, 145 S. Ct. 2219, 2229 (2025). "The job of resolving" such policy questions "belongs to the people's elected representatives, not unelected judges." *Ibid.*; *see Alexander v. Sandoval*, 532 U.S. 275, 286 (2001) ("private rights of action to enforce federal law must be created by Congress"). Even when Congress allows private parties to enforce federal law, that decision still raises separation-of-powers concerns. After all, the Executive Branch—not private citizens enlisting the Judiciary—generally "enforc[es] federal law." *Medina*, 145 S. Ct. at 2229.

The question has deep federalism implications. Allowing private parties to enforce federal law "risk[s] altering the Constitution's balance of federal-state

authority ... by expanding federal regulation beyond Congress's enumerated powers and into areas traditionally reserved for the States." *Medina*, 145 S. Ct. at 2233 n.5. "Redistricting is primarily the duty and responsibility of the State[s], and federal-court review of districting legislation represents a serious intrusion on the most vital of local functions." *Abbott v. Perez*, 585 U.S. 579, 603 (2018) (cleaned up). The danger magnifies when federal courts are enlisted to review redistricting laws at the behest of private parties. Private parties have little incentive to respect federalism. They have an opposing incentive—to disrupt a State's enacted plans.

The question has significant consequences for other constitutional guarantees. Section 2 is, at best, in tension with the Equal Protection Clause. That Clause generally bars States from considering race in lawmaking. *Perez*, 585 U.S. at 587. But section 2 requires States to consider race in lawmaking. *Ibid.* That uneasy state of affairs might be manageable if enforcing section 2 were left to the Attorney General—someone accountable to the people and country. It is not manageable when enforcing section 2 is left to private parties with no such constraints.

C. The question presented has enormous practical ramifications. The question boils down to whether Congress deputized millions of politically unaccountable actors to upend a State's entire redistricting plans, move millions of people to different districts, and unleash a new cycle of onerous litigation after every census. If appellants are right about the question presented, courts have many times struck down and remade state redistricting plans in cases that never should have proceeded. In the post-2020 redistricting cycle, private lawsuits have led

courts to block at least a dozen state redistricting plans. *See* Alabama Br. 12 & n.3, *Turtle Mountain Band of Chippewa Indians v. Howe*, No. 25A62 (S. Ct.). All this buttresses the conclusion that the Attorney General alone may enforce section 2. It confirms at least that the question presented is substantial and warrants plenary review.

CONCLUSION

This Court should note probable jurisdiction, set this case for oral argument, and reject the district court's judgment.

Respectfully submitted.

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