No. 25-234

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

PLAINTIFFS-APPELLEES' MOTION TO AFFIRM

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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.

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INTRODUCTION

A unanimous district court panel concluded that Mississippi's 2022 state legislative districting plan violated Section 2 of the Voting Rights Act ("VRA") by cracking and diluting Black voting strength in three areas of the State. Appellants do not claim error in any aspect of the panel's liability determination or the remedy process. Instead, they submit that the injured voters here—and every Section 2 voter-plaintiff for the past sixty years—had no right to sue in the first place.

Appellants' question presented does not warrant plenary review. The Court can summarily affirm on multiple independent grounds.

First, the Court can summarily affirm because the question has already been answered. In *Morse v. Republican Party of Virgina*, five Justices concluded that private parties can sue to enforce Section 2 as a necessary premise for their ultimate holding that Section 10 of the Act is also privately enforceable. 517 U.S. 186, 232 (1996) (Stevens, J.) (plurality opinion); *id.* at 240 (Breyer, J., concurring). Congress then revisited the statute in 2006 and left Section 2 untouched, further cementing *Morse*'s holding. *Morse* squarely forecloses Appellants' argument.

Second, the Court can affirm because Section 2 is enforceable pursuant to 42 U.S.C. § 1983 under a straightforward application of *Gonzaga University v. Doe*, 536 U.S. 273 (2002), and its progeny. Section 2 protects "the right of any citizen of the United States to vote" free from discrimination "on account of race or color." 52 U.S.C. § 10301(a). The section title and chapter title further focus on "right to vote" and "voting rights," and the overall legislation is entitled

the *Voting Rights* Act. Section 2 thus speaks in terms of protectable "rights," clearly identifies rights-holders, and creates enforceable legal rights under *Gonzaga*. *See Medina v. Planned Parenthood S. Atl.*, 145 S. Ct. 2219, 2232-36 (2025); *Health & Hosp. Corp. of Marion Cnty. v. Talevski*, 599 U.S. 166, 184-85 (2023). And the fact that it does so is unsurprising, because Section 2 is a civil rights statute, enacted pursuant to Congress's rights-protecting powers under the Reconstruction Amendments. It is not (as Appellants wrongly imply) the type of funding statute, enacted under Congress' Spending Power, in which the inclusion of enforceable private rights is "atypical." *Medina*, 145 S. Ct. at 2239 & n.9 (quoting *Talevski*, 599 U.S. at 187); *see also id.* at 2240 (Thomas, J., concurring).

Because Section 2 creates an individual right, the right is presumptively enforceable via Section 1983. *E.g.*, *Talevski*, 599 U.S. at 184. Appellants cannot rebut that presumption. They claim the Attorney General's VRA enforcement powers implicitly preclude Section 1983 enforcement, but mere parallel public enforcement is not enough. Implicit preclusion requires some narrower *private* remedy scheme in the statute that would be "incompatible" with Section 1983. *Talevski*, 599 U.S. at 187-88; *see also Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 256 (2009). There is no incompatible private remedy scheme here, and the VRA's public enforcement provisions are fully compatible with Section 1983.

Third, the Court can summarily affirm by applying the implied-private-right-of-action standard from *Alexander v. Sandoval*, 532 U.S. 275 (2001).

Even without any presumption of enforceability, the statute's text and structure demonstrate Congress's understanding and intention that injured voters would sue to enforce Section 2. For instance, it repeatedly added language to other sections of the VRA that would not make sense without such private lawsuits. Section 3, as amended in 1975, refers to proceedings brought by an "aggrieved person," 52 U.S.C. § 10302. And Section 14 provides for attorneys' fees for "[a] prevailing party, other than the United States," *id.* § 10310(e). Who else could that be?

Even if the text were ambiguous (and it is not), Congress also specified its intentions in the legislative history, "reiterat[ing] the existence of the private right of action under Section 2." *E.g.*, S.Rep. No. 97-417, at 30 (1982), *as reprinted in* 1982 U.S.C.C.A.N. 177, 207-08; *see also Thornburg v. Gingles*, 478 U.S. 30, 43 n.7 (1986) (1982 Senate Report is "authoritative source for legislative intent" behind Section 2).

When this Court determined that the VRA's Section 5 preclearance process could no longer be constitutionally applied, it underscored that Section 2, which "individuals have sued to enforce," remained a "permanent" and "nationwide" protection. *Shelby Cnty. v. Holder*, 570 U.S. 529, 537 (2013). That protection has held in the 2020 redistricting cycle because voters like Plaintiffs here sued to vindicate their rights. But now Appellants, while identifying no error in the vote-dilution analysis of a careful panel of Mississippi federal judges, seek to tear it all down, based on an argument foreclosed by clear text, binding precedent, and the insurmountable weight of history.

The Court should summarily affirm.

STATEMENT OF THE CASE

I. STATUTORY BACKGROUND

A. 42 U.S.C. § 1983

The Fifteenth Amendment provides that the right to vote "shall not be denied or abridged . . . on account of race." U.S. Const. amend. XV, § 1. It was the last of the three Reconstruction Amendments, which collectively enshrined principles of racial equality after the Civil War. *See Slaughter-House Cases*, 83 U.S. 36, 71 (1872). These amendments triggered a backlash in Southern states: Black citizens who "attempt[ed] to vote were met with coordinated intimidation and violence," as well as discriminatory voting requirements. *E.g.*, *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 218-20 (2009) (Thomas, J., concurring in part and dissenting in part).

Congress responded with legislation to enforce the Reconstruction Amendments, *see* U.S. Const. amend. XV, § 2, including the Enforcement Act of 1871, *Chapman v. Houston Welfare Rts. Org.*, 441 U.S. 600, 608, 610 n.25 (1979). The 1871 Act provided, among other things, a federal cause of action for civil rights violations. 17 Stat. 13 (1871); *see Chapman*, 441 U.S. at 610 n.25, 611. The 1871 Act's cause of action is now codified at 42 U.S.C. § 1983. *Id.* at 608.

As originally drafted, Section 1983 authorized private lawsuits to vindicate "the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States." *Chapman*, 441 U.S. at 608 n.15. Three years later, in 1874, Congress amended that text to encompass violations of rights

granted by "the Constitution *and laws*" of the United States, *Maine v. Thiboutot*, 448 U.S. 1, 7 (1980) (emphasis added); *accord* 42 U.S.C. § 1983.

This Court has held that Section 1983 "broadly encompasses violations of federal statutory . . . law." *Thiboutot*, 448 U.S. at 4-5. That proposition extends even to legislation enacted pursuant to Congress's Spending Power, although the Court has characterized congressional creation of individually enforceable rights via such funding bills as "atypical." *Medina v. Planned Parenthood S. Atl.*, 145 S. Ct. 2219, 2239 (2025). By contrast, the undisputed core of Section 1983 remains the enforcement of the Reconstruction Amendments and the civil rights statutes they authorized. *See id.* at 2240 (Thomas, J., concurring).

Before the VRA's enactment, voters used Section 1983 to enforce federal voting guarantees. For example, in *Smith v. Allwright*, the landmark challenge to Texas's Whites-only primaries, plaintiffs invoked Section 1983 to enforce both Reconstruction-era voting-rights guarantees now codified at 52 U.S.C. § 10101(a)(1) and constitutional protections. 321 U.S. 649, 651 n.1 (1944); *see also, e.g.*, *Terry v. Adams*, 345 U.S. 461, 480 nn.2 & 3 (1953) (Clark, J., concurring) (noting, in "Jaybird primary" case, invocation of those statutes); *Ray v. Blair*, 343 U.S. 214, 227 (1952); *Reddix v. Lucky*, 252 F.2d 930, 933 (5th Cir. 1958); *Brown v. Baskin*, 78 F. Supp. 933, 935 (E.D.S.C. 1948); *King v. Chapman*, 62 F. Supp. 639, 639 & n.1, 650 (M.D. Ga. 1945), *aff'd*, 154 F.2d 460 (5th Cir. 1946).

The 1957 Civil Rights Act—the first voting legislation since Reconstruction—newly authorized

voting enforcement lawsuits by the United States Attorney General. By then, private enforcement of the civil rights laws was so ingrained that Congress felt the need to stress it was merely "supplement[ing] existing law," whereby statutory rights were enforced via "Section 1983." H.R.Rep. No. 85-291, at 11 (1957), *as reprinted in* 1957 U.S.C.C.A.N. 1966, 1976. Attorney General Brownell, whose office drafted the bill's public enforcement provisions, assured Congress that "private people will retain the right they have now to sue in their own name" to enforce the voting laws. *See Civil Rights Act of 1957: Hearings on S.83*, 85th Cong. 67-73 (1957), https://perma.cc/MGN4-ANP4. The understanding that Attorney General enforcement would supplement—not supplant—private enforcement of the voting laws continued with the 1965 VRA and subsequent amendments. *See, e.g.*, *Allen v. State Bd. of Elections*, 393 U.S. 544, 554 (1969).

B. Section 2 of the VRA, 52 U.S.C. § 10301

Congress enacted the VRA under its authority to enforce the Reconstruction Amendments, in order "to banish the blight of racial discrimination in voting." *South Carolina v. Katzenbach*, 383 U.S. 301, 308 (1966); *see also City of Boerne v. Flores*, 521 U.S. 507, 518 (1997); *Katzenbach v. Morgan*, 384 U.S. 641, 652 (1966). Recognizing that the 1957 and 1960 Civil Rights Acts had fallen far short of this goal, Congress created new, stronger protections against discriminatory voting practices. *Katzenbach*, 383 U.S. at 313-16. Section 2, which "broadly prohibit[ed] the use of voting rules to abridge exercise of the franchise

on racial grounds," was one of those. *Id.*; *see* Pub. L. No. 89-110, § 2, 79 Stat. 437 (1965).

In 1965, when Congress enacted the VRA, private plaintiffs had been enforcing the civil rights laws in court, *supra* 5-6, and courts routinely recognized implied private rights of action to enforce federal statutes, *see Alexander v. Sandoval*, 532 U.S. 275, 287 (2001); *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 379, 381 (1982). Against that baseline, Congress took care to ensure that the Attorney General's new parallel authority under the VRA could be exercised in harmony with continued private enforcement. Section 12 of the Act thus provided that federal courts would have jurisdiction to hear cases the Attorney General brought, whether or not injured voters had exhausted any administrative or legal remedies. 52 U.S.C. § 10308(f) (federal jurisdiction lies "without regard to whether a person asserting rights under the provisions of [this chapter] shall have exhausted any administrative or other remedies that may be provided by law").

A year after the VRA's enactment, the first of numerous federal three-judge panels held that voters could enforce Section 2 based on the "plain effect of [Section 12(f)'s] language." *Morris v. Fortson*, 261 F. Supp. 538, 541, n.3 (N.D. Ga. 1966); *see also, e.g.*, *Brown v. Post*, 279 F. Supp. 60 (W.D. La. 1968). Only a few years later, this Court acknowledged the "force" of that reasoning while holding that private litigants can enforce Section 5 of the Act. *See Allen*, 393 U.S. at 555 n.18.

In 1975, Congress amended the VRA and addressed private enforcement in two important

ways. First, Congress extended the availability of certain special remedies, like the imposition of federal observers, to actions brought by an "aggrieved person." 52 U.S.C. § 10302(a), (b), (c); *see also, e.g.*, S.Rep. No. 94-295, at 9-10, 40 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 774, 775-76, 806-07 (Section 3 amended so "private persons are authorized to request the application of the Act's special remedies"). Congress also added an attorneys' fees provision to Section 14, allowing a "prevailing party, other than the United States," to recover fees and costs for actions under the statute. 52 U.S.C. § 10310(e); *see also, e.g.*, S.Rep. 94-295, at 40 ("Fee awards are a necessary means of enabling private citizens to vindicate these Federal rights.").

In 1982, Congress amended Section 2 to abrogate this Court's decision in *City of Mobile v. Bolden*, 446 U.S. 55 (1980), and establish a Section 2 standard based on discriminatory "results," not just invidious discriminatory intent. *See Thornburg v. Gingles*, 478 U.S. 30, 35 (1986). Today, subsection (a) of Section 2 provides:

> No voting [rule] 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, . . . as provided in subsection (b)."

52 U.S.C. § 10301(a).

Subsection (b), which the 1982 amendments added, then "sets out what must be shown to prove a § 2 violation," articulating a "totality of the circumstances" test. *Brnovich v. Democratic Nat'l*

Comm., 594 U.S. 647, 659 (2021). That test requires a plaintiff to show that minority voters "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." *Id.* (quoting 52 U.S.C. § 10101(b)).

With these changes, Congress made clear that it understood Section 2 would be privately enforced. The 1982 Senate Report "reiterate[d] the existence of the private right of action under Section 2, as has been clearly intended by Congress since 1965." S.Rep. No. 97-417, at 30 (1982), *as reprinted in* 1982 U.S.C.C.A.N. 177, 207-08 (citing *Allen*, 393 U.S. 544). And the House Report declared Congress's "inten[t] that citizens have a private cause of action to enforce their rights under Section 2 . . . [and] [i]f they prevail they are entitled to attorneys' fees." H.R.Rep. No. 97-227, at 32 (1981).

Four years later, this Court decided *Gingles*, setting forth the Section 2 vote-dilution framework, which was recently re-affirmed in *Allen v. Milligan*, 599 U.S. 1, 17 (2023). Both *Gingles* and *Milligan* were initiated by private plaintiffs. *Milligan*, 599 U.S. at 16; *Gingles*, 478 U.S. at 33-34. Since 1982, this Court has heard at least seven additional Section 2 vote-dilution cases brought exclusively by private plaintiffs.[1] And in 1996, a majority of the Court held

[1] *See e.g.*, *Abbott v. Perez*, 585 U.S. 579 (2018); *Bartlett v. Strickland*, 556 U.S. 1 (2009); *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399 (2006); *Holder v. Hall*, 512 U.S. 874 (1994); *Growe v. Emison*, 507 U.S. 25 (1993); *Voinovich v. Quilter*, 507 U.S. 146 (1993); *Houston Lawyers' Ass'n v. Att'y Gen. of Tex.*, 501 U.S. 419 (1991).

that Section 10 of the VRA is privately enforceable by extension of the long-recognized private right of action under Sections 2 and 5. *See Morse v. Republican Party of Va.*, 517 U.S. 186, 232, 233-34 (1996) (Stevens, J.) (joined by Ginsburg, J.) (plurality opinion); *id.* at 240 (Breyer, J., concurring, with O'Connor & Souter, JJ.).

In the four decades since *Gingles*, private plaintiffs have litigated most of the 460-plus Section 2 cases filed in federal court.[2] The Attorney General has brought 46.[3] Of the at-least 199 successful Section 2 cases during that forty-year period—many involving local redistricting—only 14 were brought solely by the Attorney General.[4]

That pattern holds true in Mississippi, where (as in this case) individual Black voters have consistently litigated Section 2 vote-dilution claims. *See, e.g.*, *Thomas v. Bryant*, 938 F.3d 134, 139 (5th Cir. 2019), *on reh'g en banc sub nom.*, *Thomas v. Reeves*, 961 F.3d 800 (5th Cir. 2020); *NAACP v. Fordice*, 252 F.3d 361, 364 (5th Cir. 2001); *Jordan v. Winter*, 604 F. Supp. 807, 808 (N.D. Miss. 1984), *aff'd*, 469 U.S. 1002 (1984); *see also, e.g.*, *Gunn v. Chickasaw Cnty.*, 166 F.3d 341 (5th Cir. 1998); *Teague v. Attala Cnty.*, 92 F.3d 283, 284 (5th Cir. 1996); *Clark v. Calhoun Cnty.*, 88 F.3d 1393, 1394 (5th Cir. 1996); *Jamison v. City of Tupelo*,

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[2] *See* Ellen D. Katz et al., *Section 2 Cases Database*, Univ. of Mich. L. Sch. Voting Rights Initiative (2022), https://perma.cc/GUM9-LVP9 (hereinafter "Katz Study") (VRI-Database-August-2025 listing 466 cases).

[3] U.S. DOJ, *Cases Raising Claims Under Section 2 of the Voting Rights Act*, https://perma.cc/2VUE-SXNE.

[4] *See* Katz Study, *supra* n.2, "Codebook", https://perma.cc/4TTM-CE96.

471 F. Supp. 2d 706, 708 (N.D. Miss. 2007); *Ewing v. Monroe Cnty.*, 740 F. Supp. 417, 417 (N.D. Miss. 1990).

Congress most recently re-authorized the VRA in 2006, with overwhelming bipartisan support.[5] At no point in the legislative process did Congress suggest that the courts had erred hundreds of times over by allowing private litigants to enforce Section 2. Rather, it stated that litigation by "private citizens . . . has been critical to" enforcing the VRA, and identified a voter-initiated case as being "illustrative" of Section 2's importance. H.R.Rep. 109-478, at 42, 52-53 (2006), *as reprinted in* 2006 U.S.C.C.A.N. 618, 646-47, 652-54 (citing *Citizens for a Better Gretna v. City of Gretna*, 636 F. Supp. 1113, 1118 (E.D. La. 1986)). The 2006 legislation included, in its text, a formal finding that "the section 2 litigation filed to prevent dilutive techniques from adversely affecting minority voters" constitutes "evidence" of the "[p]resent day discrimination experienced by racial . . . minority voters." 120 Stat. 577, § 2(b)(8) (2006); *see also id.* § 2(b)(4)(C).

In 2013, this Court invalidated Section 4 of the VRA, which set out the formula for identifying states covered under Section 5's preclearance regime. *Shelby Cnty.*, 570 U.S. at 537. The decision released the former "covered" jurisdictions, including Mississippi, from the requirement to submit proposed voting laws to a federal court or the U.S. Department of Justice for approval. *Id.* But the Court stated that the voting protections of Section 2, which had long been enforced

[5] *E.g.*, U.S. Senate, *Roll Call Vote 109th Congress - 2nd Session* (July 20, 2006), https://perma.cc/DD7W-5RUM.

by "individuals," remained "permanent" and "nationwide." *Id.* at 537, 540, 557.

II. FACTUAL BACKGROUND

A. Mississippi Voters Challenge the 2022 State Senate and House Plans.

In the redistricting cycle following the 2020 Census, the first full cycle without the Section 5 preclearance process in place, JS.App.95a, Mississippi enacted new State Senate and State House districting plans with lightning speed. Maps were first made public during the last week of the legislative session; just four days later, they were passed into law. JS.App.6a-8a.

Plaintiffs—fourteen Black Mississippians from across the State and the State Conference of the NAACP, acting on its members' behalf—challenged some of these new districts on Section 2 vote-dilution and constitutional grounds. JS.App.2a-3a, 7a. On a percentage basis, Mississippi has the largest Black population in the United States, and the 2020 Census showed that the State's Black population had grown relative to its White population in both percentage and absolute terms over the past decade. JS.App.7a, 39a. Plaintiffs' challenges focused on areas where the 2022-enacted lines cracked large, cohesive Black populations. They challenged five state senate districts and five state house districts, advancing Section 2 claims as to four senate districts and three house districts. JS.App.36a-38a.

Plaintiffs invoked both 42 U.S.C. § 1983 and an implied right of action under Section 2 as the bases for their right to enforce the statute. JS.App.24a (citing

Am.Compl. ¶ 11). Defendants did not move to dismiss or for summary judgment and proceeded to trial.

B. A Panel of Mississippi Federal Judges Unanimously Concludes that the Plans Violate Section 2.

A panel of three Mississippi federal judges—a Fifth Circuit judge (Southwick, J.), the current chief judge of the Southern District of Mississippi (Ozerden, J.), and a former chief judge of the Southern District (Jordan, J.)—presided over an eight-day trial featuring seventeen witnesses and hundreds of documentary exhibits. JS.App.10a-11a. In a 133-page decision, the panel unanimously concluded that the challenged plans violated Section 2 of the VRA. JS.App.2a, 132a-133a.[6]

As to the Section 2 claims, the district court concluded that in three areas of the State (two in the state senate and one in the state house) Plaintiffs had met the first *Gingles* prong by proffering reasonably configured illustrative Black-majority districts. The district court held, however, that Plaintiffs had not met this precondition in the other four areas. JS.App.132a-33a.

In evaluating the remaining *Gingles* preconditions (relating to racial polarization in the areas at issue) and the totality of the circumstances, the panel closely examined Mississippi's current political reality and the role and salience of race in its

[6] The court rejected Plaintiffs' constitutional claims, which are not at issue here, as insufficient under *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1 (2024). JS.App.20a-21a.

politics. The district court found that "racial polarization among voters in Mississippi is quite high," with "nearly non-existent" White support for candidates supported by Black voters. JS.App.82a, 104a. Black-preferred candidates in Mississippi "are consistently unable to win elections unless running in a majority-minority district" and no Black candidate has won statewide office since Reconstruction. JS.App.82a-83a, JS.App.127a.

Notably, the panel found that racial voting patterns in Mississippi persist today even controlling for partisanship, with White Democrats earning significantly greater White crossover support than Black Democrats. J.S.App.80a. "[N]one" of the usual facts potentially suggesting that voter polarization is partisan, as opposed to racial, "exist in this record." JS.App.103a-04a. Rather, the panel agreed that "the split between the political parties rests on a racial division." JS.App.109a; *see also* JS.App.110a-11a.

The panel also found that ongoing racial division and inequality in Mississippi stem from a "long and dubious history" of racial discrimination and that, today, "black Mississippians' ability to participate effectively in Mississippi politics is hindered by racial gaps in education access, financial status, and health." JS.App.89a-91a, 124a. It noted racial appeals in contemporary Mississippi politics. J.S.App.124a-27a. And it credited extensive testimony from individual voters describing racial division in real-world terms. For example: a Hattiesburg plaintiff's testimony that his State Senator never attended community

meetings hosted by Black civic groups, and a DeSoto County plaintiff's testimony that residents in a predominantly White neighborhood called police on her campaign volunteers when she ran for office. *E.g.*, JS.App.126a, 129a.

The panel concluded that, in assessing political opportunity in Mississippi today: "Race matters." JS.App.80a. Notably, a *fourth* Mississippi federal judge, following a Section 2 trial involving many of the same facts and data, recently "agree[d]." *White v. State Bd. of Election Comm'rs*, No. 22-cv-62, 2025 WL 2406437, at *35 (N.D. Miss. Aug. 19, 2025).

The district court allowed the Mississippi Legislature an opportunity to remedy the violation and ordered special elections in certain districts. JS.App.147a. After further proceedings, the panel finalized a remedial map. JS.App.169a, 186a-87a. Appellants never sought a stay, and special elections under the new map are now set for November 2025. JS.App.187a.

C. This Appeal

Appellants do not identify any error in the panel's merits analysis, based on the trial record, that Mississippi's 2022 districting plan illegally diluted the voting strength of Black citizens in places like Hattiesburg and DeSoto County. *See* J.S.i. Nor do they cite any error in the remedial process.

Rather, Appellants seek review on one question: Whether Plaintiffs here (and generations of plaintiffs before them) never had any ability to enforce the

rights guaranteed them under Section 2 of the VRA. *See* J.S.i.

REASONS TO SUMMARILY AFFIRM

I. THIS COURT DECIDED THE QUESTION PRESENTED IN *MORSE*.

In *Morse v. Republican Party of Virginia*, five Justices agreed there is a private right of action under Section 2. Justice Stevens, in a plurality opinion for two Justices, concluded that "the existence of the private right of action under Section 2 . . . has been clearly intended by Congress since 1965," and explained that Congress's amendments to the VRA after the Court's 1969 decision in *Allen v. State Board of Elections* had "ratified" *Allen*'s broad view of private enforcement of the VRA. 517 U.S. at 232 (Stevens, J.) (plurality opinion) (citation omitted). And Justice Breyer, writing for three Justices, agreed, concluding that "the rationale of *Allen*" regarding the enforceability of the VRA "applies . . . to § 2." *Id.* at 240 (Breyer, J., concurring). *Morse* directly addresses the question presented and controls this appeal.

Appellants claim that the conclusions of five Justices in *Morse* on the question presented here were "dicta" and not a "holding." J.S.26-27. But the Justices' conclusions were integral to their opinions, "necessary to th[e] result" that they reached. *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 66-67 (1996); *see also Marks v. United States*, 430 U.S. 188, 193 (1977).

Morse was about whether Section 10 of the VRA, which prohibits poll taxes and authorizes Attorney General enforcement actions, *see* 52 U.S.C. § 10306,

was privately enforceable. *Morse*, 517 U.S. at 232-34. The *Morse* majority concluded that it was, in large part because treating Section 10 differently from Sections 2 and 5 would have been an "anomal[y]" as they "all lack the same express authorizing language." *See* 517 U.S. at 232; *accord id.* at 240 (Breyer, J., concurring). In other words, both Justice Stevens's and Justice Breyer's opinions relied on the conclusion that Section 2 confers a private right of action as a necessary premise to conclude that Section 10 does the same. Section 2's enforceability is accordingly part of *Morse*'s holding.

The Court should not disturb *Morse*'s holding. Voter enforcement of Section 2 was already well-settled reality by the time the Court decided *Morse*. *See supra* 7-12 & nn.1-4; *see also Gingles*, 478 U.S. at 50-52 (describing modern Section 2 vote-dilution test in terms of what "the minority group must be able to demonstrate"). True, the Court refined the implied-private-right-of-action analysis a few years later in *Alexander v. Sandoval*, but it made clear that rights of action found to exist under its earlier approach "must be taken as given." 532 U.S. at 279. Per *Morse*, that includes Section 2.

Then, following *Morse* and decades of private litigation under *Gingles*, Congress amended the VRA in 2006, making no changes to Section 2 and favorably referring to "[S]ection 2 litigation filed to prevent dilutive techniques" in its legislative findings, 120 Stat. 577, § 2(b)(8) (2006). *See generally, e.g.*, *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 239-40 (2009) ("Congress is presumed to be aware of an administrative or judicial interpretation of a statute

and to adopt that interpretation when it re-enacts a statute without change." (citation omitted)); *Bragdon v. Abbott*, 524 U.S. 624, 645 (1998); *see also Shelby Cnty.*, 570 U.S. at 537.[7]

At this point, Congress is "undoubtedly aware" of *Morse* and the pervasive reality of private enforcement of Section 2 under *Gingles*, and "[i]t can change that if it likes. But until and unless it does, statutory stare decisis counsels staying the course." *Milligan*, 599 U.S. at 39; *id.* at 42 (Kavanaugh, J., concurring). *Cf. Ramos v. Louisiana*, 590 U.S. 83, 118 (2020) (Kavanaugh, J., concurring) ("In statutory cases, *stare decisis* is comparatively strict . . . .").

This Court can and should summarily affirm based on *Morse*.

II. PLAINTIFFS HAVE A RIGHT OF ACTION TO ENFORCE SECTION 2 UNDER 42 U.S.C. § 1983.

Section 1983 provides an independent and complete basis to summarily affirm. Section 1983 empowers individuals to sue for violations of "the Constitution and laws of the United States." 42 U.S.C. § 1983. In *Gonzaga University v. Doe*, this Court announced a two-part test for determining whether statutes create rights enforceable via Section 1983. 536 U.S. 273, 283-84 (2002). The first question is "whether Congress intended to create a federal right." *Id.* at 283; s*ee Medina*, 145 S. Ct. at 2234;

[7] In contrast, Congress has not been shy about amending Section 2 when it views the courts as misapplying the statute, as it did in 1982. *See Gingles*, 478 U.S. at 35.

Health & Hosp. Corp. of Marion Cnty. v. Talevski, 599 U.S. 166, 172 (2023). Where a federal right is created, it is presumptively enforceable via Section 1983, and the presumption is difficult to rebut, requiring express statutory preclusion or implicit preclusion by a competing, incompatible private remedy scheme. *E.g.*, *Talevski*, 599 U.S. at 186-89.

The *Gonzaga* framework is purpose-built for Spending Power legislation, where the creation of individual federal rights is "atypical." *Medina*, 145 S. Ct. at 2239 & n.9 (quoting *Talevski*, 599 U.S. at 183). This Court has never employed it for a civil rights statute like Section 2, where rights creation is the norm. But assuming (as Appellants do) that the *Gonzaga* test applies here, the result is crystal clear: Plaintiffs can enforce Section 2 of the VRA via Section 1983.

A. Section 2 Unambiguously Confers an Individual Right.

To answer the question "whether Congress intended to create a federal right," this Court looks to a statute's text to see whether it uses "explicit rights-creating terms" and is "phrased in terms of the persons benefited." *See, e.g.*, *Gonzaga*, 536 U.S. at 283-84 (citation modified); *accord Medina*, 145 S. Ct. at 2229; *Talevski*, 599 U.S. at 183.

Different inferences necessarily flow from differences in text. The provisions of the Federal Nursing Home Reform Act ("FNHRA") at issue in *Talevski*, for example, were rights-creating because they specified particular "rights" of nursing home residents, called them "rights," and placed them in a

subsection entitled, "[r]equirements *relating to residents' rights*," 42 U.S.C. § 1396r(c). 599 U.S. at 184-85 (alteration and emphasis in original) (quoting *West Virginia v. EPA*, 597 U.S. 697, 721 (2022)); *see Medina*, 145 S. Ct. at 2234-35 (discussing usage of "rights" in the FNHRA). Conversely, the any-qualified-provider Medicaid provision at issue in *Medina* did not use the term "right" or "rights" to describe "what a State must do to participate in Medicaid." 145 S. Ct. at 2234-36. And the provision of the Family Educational Rights and Privacy Act at issue in *Gonzaga*, which did not create an individual right, similarly spoke "only in terms of institutional policy and practice." 536 U.S. at 288; *accord Suter v. Artist M.*, 503 U.S. 347, 358 (1992).

Section 2 easily passes the text-based *Gonzaga* test. It prohibits voting rules 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*." 52 U.S.C. § 10301(a) (emphasis added). It thus "grants [individuals] a right to be free from" racial discrimination in voting. *Chisom v. Roemer*, 501 U.S. 380, 392 (1991); *accord* H.R.Rep. No. 89-439, at 23 (1965), *as reprinted in* 1965 U.S.C.C.A.N. 2437, 2454 ("[Section 2] grants to all citizens of the United States a right to be free from [voting rules] which deny or abridge the right to vote on account of race or color.").

In Section 2, Congress explicitly identified a "right" to vote free from race discrimination—and even called it a "right," a dead giveaway. *E.g.*, *Medina*, 145 S. Ct. at 2234-36. Driving the point home, Congress also used the term "right" in Section 2's title, which reads, in relevant part, "Denial or

abridgement of right to vote on account of race or color through voting qualifications or prerequisites," 52 U.S.C. § 10301—a "framing" that, as with the statutory titles in *Talevski*, confirms the statute's rights-creating text. 599 U.S. at 184; *accord Medina*, 145 S. Ct. at 2234, 2237. Congress then placed that code section in a chapter (Chapter 103) entitled "Enforcement of *Voting Rights*." (emphasis added). And, of course, it called the overall piece of legislation the "Voting *Rights* Act."

Other sections of the VRA are similarly replete with references to "rights" conferred by Section 2. For example, Section 3, entitled "[p]roceeding to enforce the right to vote," repeatedly describes enforcement proceedings "instituted by . . . an aggrieved person" against voting procedures that have "the effect of denying or abridging *the right to vote* on account of race or color," *i.e.*, the precise protection in Section 2. 52 U.S.C. § 10302(b), (c) (emphasis added). And Section 12 also refers to "rights" "secured by" or "under" Section 2. 52 U.S.C. § 10308(a), (c), (f).

Section 2's explicit guarantee of voting rights also describes the persons benefited: "any citizen of the United States" whose right to vote is "deni[ed] or abridge[d]" "on account of race or color." 52 U.S.C. § 10301(a); *see also Milligan,* 599 U.S. at 25. This "right of any citizen" language identifies affected voters as rights holders, focusing on the "individuals protected," and demonstrating "an intent to confer rights on a particular class of persons," *Sandoval*, 532 U.S. at 289 (citation omitted), namely voters who experience discrimination from state voting rules, like the Black voter-plaintiffs in this case.

That Congress used all this individual-rights-focused terminology is unsurprising. Section 2 is not some edge-case sub-provision in a piece of Spending Power legislation that outlines "scores of things a state [must do] to qualify for federal funding." *Medina*, 145 S. Ct. at 2236. It is a core voting-rights statute passed to enforce the rights-centric Reconstruction Amendments. *See infra* 27-30. And even setting aside that critical context, Section 2's text is at least as explicitly rights-creating as the "rights"-focused statutory language in *Talevski*. *See* 599 U.S. at 184 (evaluating 42 U.S.C. § 1396r(c)(1)(A)(ii), which provides that a nursing facility must "protect and promote . . . [*t*]*he right* to be free from . . . any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat *the resident's* medical symptoms." (emphases in original)); *see also Gonzaga*, 536 U.S. at 283 ("[I]t is *rights,* not the broader or vaguer 'benefits' or 'interests,' that may be enforced under the authority of [Section 1983]."") (emphasis in original). Applying *Gonzaga*'s familiar standard, Section 2 recognizes an individual right.

Appellants cannot make the text say otherwise. They mainly argue (at J.S.1-2, 19-20) that because Section 2 "leads with" language saying no prohibited voting rule "shall be imposed . . . by any State or political subdivision," the statute is focused on "what is barred . . . and by whom," not individual rights. Appellants admit that the statute "later" (that is, right there in the very same sentence) also "identifies the 'persons benefited' and refers to their 'rights.'" J.S.19-

20.[8] But they suggest the Court can ignore that explicit rights-creating language because the statute is phrased as a command to the parties who must respect the rights Congress conferred.

This Court squarely rejected the same argument in *Talevski,* where the rights-creating provisions at issue began with the prescription, "nursing facilities . . . 'must.'" 599 U.S. at 185. The Court concluded "it would be strange to hold that a statutory provision fails to secure rights simply because it considers, alongside the rights bearers, the actors that might threaten those rights." *Id.*

A glance at the Bill of Rights confirms that Appellants' approach to text is indefensible. By their logic, the Framers never conveyed individual rights in the First Amendment, because its text "leads with" the phrase "Congress shall make no law." U.S. Const. amend. I. Nor did they create individual rights with the Second Amendment, because it "leads with" a clause about well-regulated militias. U.S. Const. amend. II; *see also District of Columbia v. Heller*, 554 U.S. 570, 577-78 (2008) (holding the opposite). Nor, by Appellants' logic, must the Fourteenth Amendment's framers have meant to convey individual rights with the Due Process Clause or Equal Protection Clause, because those provisions "lead with" with "[N]or shall any State." U.S. Const. amend. XIV, § 1. Of course this is wrong, as this Court

[8] Unsurprisingly, Appellants omit any mention of the other references to Section 2 "rights" throughout the statute, including in the section and chapter titles, which all "underscore" the actual, substantive focus of the text here, *Medina*, 145 S. Ct. at 2237. *See supra* 21.

recognized. *Talevski*, 599 U.S. at 185 n.12 ("The Fourteenth Amendment hardly fails to secure § 1983-enforceable rights because it directs state actors not to deny equal protection.").

Appellants also misuse Section 2's other subsection, 52 U.S.C. § 10301(b), which was added by Congress in the 1982 VRA amendments creating the results test for vote dilution. J.S.20-21. The subsection sets out the test for how "[a] violation of subsection (a) is established." 52 U.S.C. § 10301(b). Appellants wrongly suggest that aspects of subsection (b)'s totality-of-the-circumstances test, and particularly its reference to "members of a class of citizens protected by subsection (a)," indicate an emphasis on "aggregate" rather than individual rights, J.S.21. But subsection (b) just confirms that Section 2 identifies a particular "class of beneficiaries," a hallmark of rights-creating language. *E.g.*, *Talevski*, 599 U.S. at 183. Indeed, Congress's addition of a legal standard by which any litigant—even an individual one—may "establish[]" a "violation" of Section 2's "right . . . to vote" in court is another "clue[]" that it sought to confer individually actionable rights. *Cf. Medina*, 145 S. Ct. at 2235. *See also supra* 8-9. And Appellants' suggestion that Section 2 involves only "aggregate" rights also contravenes the settled principle that Section 2 "right[s]" "do[] not belong to the 'minority as a group,' but rather to 'its individual members.'" *E.g.*, *LULAC v. Perry*, 548 U.S. 399, 437 (2006).

Lastly, Appellants point (at J.S.2, 22) to Section 601 of Title VI of the Civil Rights Act—a different statute—which they say shows Congress could have

spoken even more clearly in creating an individual right in Section 2. That is debatable: Section 601 certainly creates a private right, *see Sandoval*, 532 U.S. at 279-80, but it doesn't use explicit rights-giving terminology like "the right . . . to vote" in either its text or its title. Section 2 does. 52 U.S.C. § 10301(a).

In the end, whether *other* civil rights laws that provide different protections are *also* sufficiently clear and unambiguous to pass muster under *Gonzaga* makes no difference. There is no one set of "magic words" to pass the *Gonzaga* test—the FNHRA language at issue in *Talevski*, for example, did not use the same formula as Section 601, either. Applying the test here, the focus is on Section 2, wherein Congress clearly evinced its intentions to create an individual right. *E.g.*, *Medina*, 145 S. Ct. at 2232; *see supra* 19-22.

B. Appellants Cannot Rebut the Presumption of Enforceability.

Demonstrating Congress's intention to create an individual right is generally the hard part of the *Gonzaga* analysis. Once that intent is shown (as here), the right is "presumptively enforceable" via Section 1983. *Talevski*, 599 U.S. at 184 (quoting *Gonzaga*, 536 U.S. at 284).

Appellants may "defeat t[he] presumption by demonstrating that Congress did not intend that § 1983 be available to enforce those rights." *E.g.*, *Talevski*, 599 U.S. at 186 (alteration in original) (quotation marks omitted). Here, because the VRA contains no express bar on Section 1983 enforcement, Appellants' only possible argument is that Section

1983 enforcement is implicitly precluded. *See, e.g.*, *Talevski*, 599 U.S. at 186-89; *see also id.* at 194-95 (Barrett, J., concurring). This is an exacting standard, satisfied only in "exceptional cases." *Livadas v. Bradshaw*, 512 U.S. 107, 133 (1994). Appellants cannot meet it.

Each of the three instances where this Court has found that Section 1983 enforcement of statutory rights was implicitly precluded has involved "a more restrictive *private* remedy." *Talevski*, 599 U.S. at 188-89 (emphasis added); *accord Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 256 (2009). There must be a conflict between the statute's bespoke remedy scheme and Section 1983's broader private remedies, rendering the two "incompatible." *Talevski*, 599 U.S. at 187 ("the *sine qua non* . . . is incompatibility"); *accord Fitzgerald*, 555 U.S. at 252-54.

But Appellants never identify any incompatible *private* remedy scheme in the VRA or even address the distinction between public and private remedies. They point to the VRA's *public* remedy provisions—*i.e.*, its express authorization of Attorney General enforcement—but never argue, and cannot argue, that those provisions are incompatible with concurrent private enforcement by voters via Section 1983. J.S.24-25. *See Talevski*, 599 U.S. at 187; *accord Fitzgerald*, 555 U.S. at 252.

This Court has *never* held that the existence of a public remedy scheme foreclosed private rights enforcement under Section 1983. Appellants cannot demonstrate that Section 2—one of the most significant and well-known civil rights laws, which has been enforced by *both* private parties and the

Attorney General for 60 years—is one of the rare rights-creating statutes where Section 1983 enforcement is precluded. *See Talevski*, 599 U.S. at 186-89. *Cf. Fitzgerald*, 555 U.S. at 256 (rejecting argument that presumption was overcome as to Title IX and explaining "we should 'not lightly conclude that Congress intended to preclude reliance on § 1983 as a remedy for a substantial equal protection claim'" (citation omitted).

Meanwhile, the broader statutory "structure" and "context" (J.S.24-25) only confirm that Congress understood and intended that private parties would enforce (and, by 1975, 1982, and 2006, had been enforcing) Section 2. *See supra* 6-11. Indeed, evidence of this intent is so strong that it would also satisfy the more demanding standard that applies in the implied-private-right-of-action analysis. *See infra* 30-34.

C. Summary Affirmance Would Avoid the Need to Take Up Appellants' Mistaken Interpretation of Gonzaga.

Summarily affirming via straightforward application of the *Gonzaga* framework would avoid having to unnecessarily consider whether that framework even applies here, as Appellants wrongly presume (J.S.17-24).

The *Gonzaga* framework is designed to suss out whether "*spending legislation* give[s] rise to enforceable rights." 536 U.S. at 280 (emphasis added); *see also, e.g.*, *Medina*, 145 S. Ct. at 2228, 2234; *Talevski*, 599 U.S. at 183 (framework applies "[f]or Spending Clause legislation in particular"); *id.* at 193 (Barrett, J., concurring) ("*Gonzaga []* sets the

standard for determining when a Spending Clause statute confers individual rights[.]"). Indeed, the Spending Power's particular attributes and limitations are what create the need for Congress to speak clearly and unambiguously when it uses that power to create enforceable rights. *E.g.*, *Medina*, 145 S. Ct. at 2230-34.

Under the Spending Power, Congress can only "offer funds to States" in exchange for compliance, creating a contract-like arrangement "between two sovereignties." *Medina*, 145 S. Ct. at 2228, 2231. In the context of these Federal-State transactions, private "citizens" are "generally" beneficiaries, rather than direct rights-holders. *Id.* When the terms of such Federal-State arrangements are breached, "'the typical remedy' is not a private enforcement suit 'but rather action by the Federal Government to terminate funds to the State.'" *Id.* at 2228 (quoting *Gonzaga*, 536 U.S. at 280). But the *Gonzaga* framework is designed to identify those "atypical case[s]" where a "federal spending-power statute[]" goes further and also confers a private right. *Id.* at 2239 & n.9 (quoting *Talevski*, 599 U.S. at 183). *But see* J.S.1 (quoting "atypical cases" language without acknowledgement that it refers to Spending-Power statutes).

The VRA is very different. It was enacted under the authority of the Reconstruction Amendments, and thus "rests on a different footing." *Cf. Medina*, 145 S. Ct. at 2230; *see also id.* at 2241 (Thomas, J., concurring) (explaining Section 1983's original purpose to enforce civil rights). Unlike the Spending Power, the Reconstruction Amendments expressly regulate state conduct, including voting. U.S. Const.

amends. XIV, XV; *Katzenbach*, 383 U.S. at 308. Unlike with Spending Power legislation, the civil rights laws enacted pursuant to the Reconstruction Amendments are "commands," not "contracts." *See Medina*, 145 S. Ct. at 2231; *accord Talevski*, 599 U.S. at 176; *Katzenbach*, 383 U.S. at 309. Unlike with Spending Power legislation, the "typical remedy" for civil rights violations is federal lawsuits, which have always been litigated by aggrieved individuals. *See supra* 5-11. *Cf. N.Y. State Rifle & Pistol Ass'n, Inc. v. City of New York*, 590 U.S. 336, 361 (2020) (Alito, J., dissenting) (civil rights attorney fees statute, 42 U.S.C. § 1988, "ensures that 'private attorneys general' can enforce the civil rights laws through civil litigation"). And unlike with Spending Power legislation, the civil rights laws are all about "protect[ing] . . . individual rights against state infringement[]," *Talevski*, 599 U.S. at 176, including the right to vote, which is "individual and personal in nature," *Reynolds v. Sims*, 377 U.S. 533, 561 (1964).

Whatever the outer limit of Section 1983's application to Spending Power legislation, even the narrowest interpretation of Section 1983 enforceability must include civil rights provisions like Section 2. *See Medina*, 145 S. Ct. at 2241 (Thomas, J., concurring) (discussing constructions of Section 1983 to "refer to civil rights only" (citation omitted)). Indeed, this Court has *never* applied *Gonzaga*'s "demanding bar," *Talevski*, 599 U.S. at 180, to scrutinize whether civil rights laws contain sufficiently "clear and unambiguous" rights-creating language. Rather, it has applied a less stringent analysis to non-Spending-Power legislation. *See Livadas*, 512 U.S. at 132-33 (rights under National

Labor Relations Act enforceable via Section 1983 where statute "impose[d] a 'binding obligatio[n]'" and rights-creating language was not "so 'vague and amorphous' that determining whether a "deprivation" might have occurred would strain judicial competence" (citations omitted)).

Again, the Court can simply apply the *Gonzaga* framework and summarily affirm on that basis. *See supra* 19-27. But on plenary review, the Court would need to grapple with Appellants' misapplication of that framework and, potentially, to fashion and apply a standard fit for civil rights statutes as opposed to Spending Power legislation. The ultimate result—affirmance—would be the same.

III. ALTERNATIVELY, PLAINTIFFS HAVE AN IMPLIED RIGHT OF ACTION TO ENFORCE SECTION 2.

Even if the Court were to ignore *Morse* (which it should not) and even if Plaintiffs had not sued under Section 1983 (which they did), summary affirmance would still be proper because Section 2 also supports an implied private right of action.

The implied-right-of-action analysis has two parts. First comes the "critical" determination that Section 2 contains clear "'rights-creating' language" demonstrating Congress's "'intent to confer rights on a particular class of persons.'" *Sandoval*, 532 U.S. at 289. This is the same analysis as the first step of the *Gonzaga* framework discussed already. 536 U.S. at 283-84. Again, Section 2's clear, rights-focused language fits the bill. *See supra* 19-25.

The second part is whether Congress intended "a private remedy" for the right. *Sandoval*, 532 U.S. at 286-88. Such intentions can be gleaned from the statute's text and structure, and, to the extent the question is unclear, from legislative history, too. *E.g.*, *Curran*, 456 U.S. at 382-87. Here, all sources point to the same conclusion: Congress understood and intended that voters would be able to vindicate their Section 2 rights in federal court.

The VRA repeatedly references private enforcement. Most obvious are two of the provisions added in 1975, in Section 3 and Section 14. The original 1965 Act provided for certain special remedies like federal election observers that could be ordered whenever "the Attorney General institutes a proceeding under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment." Pub. L. No. 89-110, § 3, 79 Stat. 437 (1965). The 1975 VRA amendments added, for each of Section 3's special remedies, the words "the Attorney General *or an aggrieved person*," thus providing that the special remedies could be invoked in private lawsuits as well. 52 U.S.C. § 10302(a), (b), (c) (emphasis added); *see, e.g.*, *Morse*, 517 U.S. at 233-34; *see also Dir., Off. of Workers' Comp. Programs, Dep't of Lab. v. Newport News Shipbuilding & Dry Dock Co.*, 514 U.S. 122, 126 (1995) ("aggrieved person" is a "term of art" for private litigant). This addition could *only* make sense if Congress intended for private litigants to initiate lawsuits to enforce rights under the VRA.[9]

[9] Section 2 is plainly "[a] statute to enforce the voting guarantees of the fourteenth or fifteenth amendment." 52 U.S.C. § 10302; *see Morse*, 517 U.S. at 233-34;

And again, if there were any ambiguity on the point, the legislative history confirms that was exactly Congress's intention. *See, e.g.*, S.Rep. No. 94-295, at 9-10, 40 (Section 3 amended so "private persons are authorized to request the application of the Act's special remedies in voting rights litigation," creating "dual enforcement mechanism" for VRA special remedies).

Congress also demonstrated its intentions with its changes to Section 14 of the Act, which it amended to provide for attorneys' fees to "prevailing parties, other than the United States." 52 U.S.C. § 10310(e). Again, it would make no sense to add that provision unless rights under the VRA were enforceable in court by private parties, *i.e.*, parties "other than the United States." And again, if there were any confusion on what Congress meant when it expressly referred to parties "other than the United States" who would "prevail[]" in VRA enforcement litigation, the legislative history dispels it. S.Rep. 94-295, at 40.

Appellants repeatedly point (at J.S.21-22, 23, 28) to the inclusion of an express right of action for the Attorney General in Section 12 of the VRA, 52 U.S.C. § 10308, as supposedly countervailing evidence. But Section 12 is consistent with Congress's understanding and intention that rights under the VRA would be privately enforced.

In 1965, voting rights were generally considered "'private' rights," so much so that defendants in some of the initial public enforcement suits under the 1957

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see also, e.g., *Flores*, 521 U.S. at 518; *Katzenbach*, 383 U.S. at 308.

Civil Rights Act challenged those suits as impermissible on the grounds that voting rights were *exclusively enforceable by private parties*. *See Allen*, 393 U.S. at 555 n.18 (quoting *United States v. Raines,* 362 U.S. 17, 27 (1960), which involved such a challenge). That is why, in 1965, Congress felt it necessary to make the Attorney General's new authority to enforce the VRA explicit, but felt no similar need with respect to private parties. *See, e.g.*, *Medina*, 145 S. Ct. at 2245 (2025) (Thomas, J., concurring) ("[W]e interpret statutes at the time of their enactment." (citing *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024))).

Yet even in Section 12, Congress indicated its understanding that private litigants would also sue to enforce Section 2 and the VRA. In particular, Section 12(f) provides federal courts with jurisdiction over actions brought by the Attorney General regardless of "whether a person asserting rights under the provisions of chapters 103 to 107 of this title [*e.g.*, under Section 2] shall have exhausted any administrative or other remedies that may be provided by law." 52 U.S.C. § 10308(f). Section 12(f) thus acknowledges that "a person" (*i.e.*, a voter) may "assert[] rights under" Section 2, and that they may seek "remedies that may be provided by law" for such rights, which remedies then as now included those available via Section 1983. *Id.* Including this language ensured that, while individuals could continue to enforce their civil rights through private actions as they had for decades, the Attorney General would not be required to wait for the resolution of such individual voter actions before proceeding with public enforcement. This Court confirmed the "force" of that

understanding only a few years later. *See Allen*, 393 U.S. at 555 n.18.

And if Congress's intentions were still ambiguous after considering all these textual and structural references to private litigation, the legislative history from the 1982 amendments to Section 2 directly confirms that Congress meant for Section 2 be privately enforced. The 1982 Senate Report, which has been repeatedly cited by this Court as the "authoritative source for legislative intent" behind Section 2, *e.g., Gingles*, 478 U.S. at 43 & n.7, expressly pointed to "the existence of the private right of action under Section 2, as has been clearly intended by Congress since 1965." S.Rep. No. 97-417, at 30. The corresponding House Report is similarly pellucid: "It is intended that citizens have a private cause of action to enforce their rights under Section 2." H.R.Rep. No. 97-227, at 32.

Text, context, extremely explicit legislative history, and Congress's repeated acts of ratification (including reauthorization of the VRA in 2006, a decade after *Morse* and hundreds of Section 2 cases brought by private litigants) all support a private remedy for Section 2 rights. The Court need not even reach this analysis, but it can summarily affirm on that ground as well.

IV. THE QUESTION PRESENTED DOES NOT REQUIRE PLENARY REVIEW.

The district court got the question presented right for all the reasons stated above. Appellants' arguments about the question's ostensible

significance do not independently justify plenary review.

Appellants point to a circuit split on the question presented (at J.S.29-31), but any existing split is both lopsided and not at all entrenched. Outside of the Eighth Circuit, every federal judge to have directly passed upon the question presented—including at least three circuit courts, and four three-judge district courts—has rejected Appellants' arguments. *See, e.g.*, *Robinson v. Ardoin*, 86 F.4th 574, 587-88 (5th Cir. 2023); *Ala. State Conf. of NAACP v. Alabama*, 949 F.3d 647, 652 (11th Cir. 2020), *vacated as moot*, 141 S. Ct. 2618 (2021); *Mixon v. Ohio*, 193 F.3d 389, 406 (6th Cir. 1999); *Singleton v. Allen*, No. 21-cv-1291, 2025 WL 1342947 (N.D. Ala. May 8, 2025); *Ga. State Conf. of NAACP v. Georgia*, No. 21-cv-5338, 2022 WL 18780945, at *7 (N.D. Ga. Sep. 26, 2022); *League of United Latin Am. Citizens v. Abbott*, No. 21-cv-529, 2021 WL 5762035, at *1 (W.D. Tex. Dec. 3, 2021); *see also* J.S.App.21a-27a. And the ink is barely dry on the Eighth Circuit's outlier decisions to the contrary.

Summary affirmance would be binding precedent for the courts of appeals on the precise question presented, namely private parties' ability to enforce Section 2. *See, e.g.*, *Mandel v. Bradley*, 432 U.S. 173, 176 (1977). It would abrogate the Eighth Circuit's aberrant decisions and resolve the split that court opened. Plenary review is unnecessary to harmonize the law where the right answer is clear. Indeed, summary affirmance here is the most straightforward way to provide "finality" on the question presented in advance of the 2026 elections, as some have requested. *See* Br. in Opp'n at 2, *Turtle Mountain Band of*

Chippewa Indians v. Howe, No. 25-253 (S. Ct. Sep. 19, 2025).[10]

Nor can Appellants substantiate their claim (at J.S.31-32) that the question presented is of great "constitutional importance." For instance, they claim private rights of action involve "delicate" questions of federalism and separation of powers, but cite only Spending Power cases that are inapposite (while omitting the Spending Power part). *See supra* 27-28.

In any case, the Court can avoid these claimed "delicate" questions by summarily affirming and declining Appellants' request to overturn long-settled law. Appellants suggest that decades of history and precedent "never should have proceeded," J.S.33, implying that, in almost every successful Section 2 case ever, private voter-plaintiffs who met the difficult standard of proving unlawful vote dilution should nevertheless have been left without a remedy. The inconsistency of Appellants' argument with sixty years of precedent and practice (not to mention statutory text and the broad sweep of this Court's decisions) makes their theory *less* deserving of plenary consideration, not more.

[10] After affirming here, the Court could grant the pending petition in *Turtle Mountain*, vacate, and remand for good measure.

CONCLUSION

The Court should summarily affirm the judgment.

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