No. 25-243

IN THE

Supreme Court of the United States

WES ALLEN, ALABAMA SECRETARY OF STATE, et al.,
Petitioners,

v.

MARCUS CASTER, et al.,
Respondents.

On Petition for a Writ of Certiorari Before Judgment to the United States Court of Appeals for the Eleventh Circuit

CASTER RESPONDENTS' RESPONSE TO ALABAMA'S PETITION FOR A WRIT OF CERTIORARI BEFORE JUDGMENT

LALITHA D. MADDURI
JACOB D. SHELLY
RICHARD A. MEDINA
QIZHOU GE
ELIAS LAW GROUP LLP
250 Massachusetts Ave. NW
Suite 400
Washington, DC 20001
(202) 968-4490

ABHA KHANNA
Counsel of Record
ELIAS LAW GROUP LLP
1700 Seventh Ave
Suite 2100
Seattle, Washington 98101
(206) 656-0177
AKhanna@elias.law

Counsel for Respondents

QUESTIONS PRESENTED

1. Whether the State of Alabama's 2023 redistricting plan for its seven seats in the United States House of Representatives violated § 2 of the Voting Rights Act, 52 U.S.C. §10301.

2. Whether § 2 of the Voting Rights Act, 52 U.S.C. §10301, as applied by the District Court is constitutional.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CONSTITUTIONAL PROVISIONS

STATUTES

OTHER AUTHORITIES

INTRODUCTION

Just two years ago, Alabama took a swing at *Thornburg v. Gingles*, 478 U.S. 30 (1986), hoping to dodge § 2 liability on a devastating record by knocking out the law. This Court rejected "Alabama's attempt to remake our § 2 jurisprudence anew." *Allen v. Milligan*, 599 U.S. 1, 23 (2023). But here we go again.

There remains no real question that Alabama's congressional map violated the *Gingles/Allen* test. Indeed, Alabama presses only one evidentiary argument with any enthusiasm here. Before trial, the State manipulated its redistricting criteria to elevate the maintenance of the White Gulf Coast community over the uncracking of neighboring Black voters. Thus, Alabama now boasts, its dilutive map became more reasonably configured than Plaintiffs' illustrative maps according to Alabama's own revised scorecard. But that inventive logic goes nowhere. The illustrative configurations this Court endorsed as reasonable two years ago were not rendered unreasonable by Alabama's rigged rubric for a beauty contest that this Court explicitly rejected. *See id.* at 21. And any doubt as to the reasonableness of Plaintiffs' illustrative districts was definitively erased upon the adoption of a remedial map that was drawn *race-blind*.

Alabama is thus left flailing against the law once more, aiming to smash Congress's landmark enactment and 40 years of precedent. It argues that § 2 is bad policy, as if the evaluation of racial discrimination is somehow more divisive than racial discrimination itself. It argues that § 2 is a relic of a bygone era—but in the next breath emphasizes that courts continue to

find violations "from purple Georgia to deep blue Washington State." Pet.17. It complains that § 2's test is too mechanical but also that it is too abstract.

None of these criticisms land. Congress enacted § 2 as a "permanent, nationwide ban on racial discrimination in voting." *Shelby County v. Holder*, 570 U.S. 529, 557 (2013). The operative legal standard pairs objective criteria with a holistic analysis, requiring plaintiffs to prove in a specific way that a specific kind of discrimination is corrupting a specific political process in a specific place at a specific time. By bridging the Fifteenth Amendment's radiant command with "an intensely local appraisal," *Allen*, 599 U.S. at 19 (quoting *Gingles*, 478 U.S. at 79), § 2 endures to protect voters like Plaintiffs from schemes like Alabama's.

The Court should summarily affirm the judgment below in *Milligan* and *Singleton* and deny the petition for a writ of certiorari in this case. If the Court declines to summarily affirm the judgment below, *Caster* Plaintiffs respectfully join Alabama's request for a writ of certiorari before judgment so that the *Caster*, *Milligan*, and *Singleton* cases can be heard together as they were in 2022.

STATEMENT

The Court is well familiar with the history of this case. Alabama's 2021 Plan cracked Black voters in southern Alabama across three congressional districts—CDs 1, 2, and 3—such that they constituted an ineffective minority in each, while maintaining CD-7

as the lone district in which Black voters had the opportunity to elect their preferred candidates. App.90. Plaintiffs sued, the District Court preliminarily enjoined the use of that plan, and this Court affirmed the injunction in full. *Allen*, 599 U.S. at 1. The Court saw no reason "to disturb the District Court's careful factual findings," "upset [its] legal conclusions," or "remake [this Court's] § 2 jurisprudence anew." *Id.* at 23.

Alabama then enacted the 2023 Plan, which, once again, contained only one district in which Black voters had the opportunity to elect their preferred candidates. App.3. Like the 2021 Plan, the 2023 Plan kept Mobile and Baldwin Counties united in a majority-White district. App.55, 136. The District Court preliminarily enjoined use of the 2023 Plan for failing to remedy the likely § 2 violation already found and, in the alternative, for likely violating § 2 in its own right. App.4.

After this Court declined to stay that injunction, *Allen v. Milligan*, 144 S. Ct. 476 (2023) (Mem.), the District Court adopted a plan prepared by a special master and a court-appointed cartographer. The plan was prepared "race-blind" and "satisfied all constitutional and statutory requirements while hewing as closely as possible to the Legislature's 2023 Plan." App.16. The 2024 elections were conducted under the court-adopted remedial plan.

Early this year, the District Court held an 11-day trial on the 2023 Plan. App.5. In addition to the evidence from the first two preliminary injunction hearings, the District Court heard live testimony from 23 witnesses, received testimony by designation from 28

additional witnesses, and considered 39 pages of stipulated facts and more than 790 exhibits. On May 8, 2025, the District Court permanently enjoined the 2023 Plan, finding that it violated § 2. App.7. The District Court also found that the 2023 Plan was enacted with discriminatory intent. App.527. Alabama appealed and now petitions for certiorari before judgment.

ARGUMENT

I. The District Court correctly applied the Court's longstanding § 2 precedent as reaffirmed in *Allen*.

The District Court's final judgment reflects the same careful and correct application of § 2 that this Court affirmed in *Allen*. The robust trial record confirmed that Alabama's congressional plan unlawfully diluted Black Alabamians' votes, leading the District Court to hold for the third time that Plaintiffs' "Section Two claim is not a close call." App.6. Alabama's arguments to the contrary are foreclosed by this Court's precedent—including its previous holdings in this very case—and the District Court's extensive factual findings.

A. Black voters in southern Alabama can comprise a majority in an additional, reasonably configured district.

This Court already determined that Plaintiffs satisfied the first *Gingles* precondition at the preliminary injunction phase by presenting eleven illustrative maps "contain[ing] two majority-black districts that

comported with traditional districting criteria." *Allen*, 599 U.S. at 20. Based on that evidence, this Court held, "the District Court correctly found that black voters could constitute a majority in a second district that was 'reasonably configured.'" *Id.* at 19.

At trial, the parties stipulated that there is a "numerically sufficient number of Black people of voting age in Alabama to draw [] two majority-Black Congressional Districts." App.123. And based on the eleven illustrative plans Plaintiffs submitted during the preliminary injunction phase and the four additional illustrative plans submitted at trial, the District Court found that Black voters in southern Alabama are sufficiently compact to constitute a majority in a second reasonably configured district. App.319 (citing *Allen*, 599 U.S. at 18). The District Court gave "particular[] focus" to Cooper Plan 9, which *Caster* Plaintiffs' expert Bill Cooper "drew in response to criticisms about compactness." App.333. As Alabama's expert Dr. Sean Trende conceded, Cooper Plan 9 is "'more compact than any plan that Alabama has drawn or used in the last 40 years,' including the 2023 Plan," App.333-34, while simultaneously splitting fewer counties and municipalities than the 2023 Plan, App.211-12.

Ultimately, the District Court analyzed the "reasonable configuration" element of *Gingles* 1 "six ways"—including through visual assessment of the geographic concentration of the Black population, statistical compactness scores, traditional districting principles, and all these methods in combination—

and found that "all the arrows point in the same direction; [Plaintiffs' illustrative plans], and the remedial districts in them, are reasonably configured." App.362. If any question remained about Plaintiffs' satisfaction of *Gingles* 1, the District Court's remedial plan puts it to bed: the Special Master's plan, drawn *race-blind*, grouped together the same compact Black population as Plaintiffs' illustrative maps. App.529, 531.

Alabama disputes none of this. Instead, it rehashes the same arguments this Court already rejected, complaining that Plaintiffs' plans (1) split Mobile County and the Gulf Coast and (2) were drawn predominantly based on race.

1. It is no serious demerit that Plaintiffs' illustrative plans split one of Alabama's 67 counties that Alabama preferred to keep whole. Alabama previously argued "that plaintiffs' maps erred by separating [the Gulf Coast region] into two different districts," and this Court rejected that very argument as "not … persuasive." *Allen*, 599 U.S. at 20. The Court further held that "[e]ven if the Gulf Coast did constitute a community of interest, ... [t]he District Court concluded—correctly, under our precedent—that it did not have to conduct a 'beauty contest[]' between plaintiffs' maps and the State's." *Id.* at 21 (quotation omitted).

But Alabama remains fully committed to the pageant, placing a tiara on its own map and declaring it best-in-show.

Alabama's first order of business after this Court accepted Plaintiffs' illustrative districts was to rewrite the State's districting criteria—and then fault

Plaintiffs' illustrative plans for not abiding by them. The 2023 Plan was accompanied by a "novel" series of "legislative findings" that emphasized the Gulf Coast community's "distinct culture stemming from its French and Spanish colonial heritage," App.548, and purported to "elevat[e] the Gulf Coast community of interest over all other traditional districting principles in Alabama," App.347. According to Alabama, the effect of the 2023 legislative findings was to render Plaintiffs' illustrative maps unreasonably configured—contra this Court's explicit determination otherwise—because they divide one "predominantly white" community of interest that Alabama has since deemed inviolable. Pet.11-12.[1]

Alabama sorely misunderstands the fundamental purpose of *Gingles* 1. "A district will be reasonably configured, [this Court's] cases explain, if it comports with traditional districting criteria, such as being contiguous and reasonably compact." *Allen*, 599 U.S. at 18. "Traditional districting criteria," in turn, "are important not because they are constitutionally re-

[1] Alabama's insistence that the Gulf Coast is now somehow inviolable is belied by its State Board of Education Plan, which splits the Gulf Coast in the same manner as Plaintiffs' illustrative plans. App.357. In fact, Alabama placed Mobile and Baldwin Counties in different congressional districts for nearly 100 years and only placed them together in the 1970s to prevent the reelection of a Black incumbent. App.349; *see also Allen*, 599 U.S. at 21 ("The District Court understandably found [the PI record] insufficient to sustain Alabama's overdrawn argument that there can be no legitimate reason to split the Gulf Coast region." (citation modified)).

quired—they are not—but because they serve as *objective* factors" by which courts may evaluate claims that a district's configuration was unduly influenced by race. *Shaw v. Reno*, 509 U.S. 630, 647 (1993) (emphasis added). They are not, as Alabama would have it, a subjective set of policy preferences that states can manipulate to move the goalpost for § 2 plaintiffs and courts alike. *Cf. Rucho v. Common Cause*, 588 U.S. 684, 715 (2019) (noting that "it does not make sense to use criteria that will vary from State to State and year to year as the baseline for determining" undue consideration of various factors because "the same map could be [lawful] or not depending solely on what the mapmakers said they set out to do").

Alabama's insistence that § 2 liability turns on the preservation of the Gulf Coast community fails for the same reason this Court rejected Alabama's "related argument based on 'core retention.'" *Allen*, 599 U.S. at 21; *see* Br. for Appellants at 60 ("*Merrill* Appellants' Br."), *Merrill v. Milligan*, Nos. 21-1086, 21-1087 (U.S. Apr. 25, 2022) (defending Alabama's "longstanding interests in maintaining the Gulf Coast and respecting the existing district"). Like core retention, Alabama's Gulf Coast criterion has the practical effect of entrenching CD-2 as a majority-White district, precluding the creation of a second majority-Black district. App.347. "No document, testimony, or lawyer disputes ... this point." *Id.* In fact, "counsel for the State conceded in closing argument that he is 'not aware of a way to draw two majority-Black districts without going against the Legislature's priority of keeping Mobile and Baldwin County whole.'" *Id.* And as with core

retention, "this Court has never held that a State's adherence to a previously used" majority-White district "can defeat a § 2 claim. If that were the rule, a State could immunize from challenge a new racially discriminatory redistricting plan simply by" mandating the preservation of a predominantly-White community that was prioritized in "an old racially discriminatory plan." *Allen*, 599 U.S. at 22. "That is not the law: § 2 does not permit a State to provide some voters 'less opportunity ... to participate in the political process'" simply by proclaiming one community of interest paramount to all others. *Id.* (quoting 52 U.S.C. § 10301(b)).

Alabama has already conceded that it "couldn't rely on core retention" to escape § 2 liability. App.68 ([Solicitor General]: "*Allen* made that clear. So if we said the new context is core retention, it is our number one priority, that would do us no good in a future challenge."). Alabama's attempt to repackage "core retention" as "retention of a majority-White district" fails for the same reason.

Alabama's insistence that the 2023 Plan escapes § 2 liability by cracking the Black Belt into two districts instead of three does not help either. The problem of cracking is not the *number* of districts into which a community is split, but the *effect* of that dispersal—that it leaves the community in "districts in which they constitute an ineffective minority of voters." *Gingles*, 478 U.S. at 46 n.11; *cf. Gill v. Whitford*, 585 U.S. 48, 67 (2018) (noting that vote dilution harm "arises from the particular composition of the voter's own district, which causes his vote—having been

packed or cracked—to carry less weight than it would carry in another, hypothetical district").

Alabama does not dispute that, under the 2023 Plan, Black voters in southern Alabama are dispersed into two districts—CDs 1 and 2—in which they constitute an *ineffective* minority of voters, or that CD-7 remains the sole district in which Black voters have the opportunity to elect their preferred candidates. App.355; *see also* App.417 (explaining that the State "sent a lawyer into court to concede that the 2023 Plan has only one Black-opportunity district"). "This evidence—and concession—undermine the State's assertion that the 2023 plan remedies the cracking of Black voting strength in the Black Belt simply by splitting the Black Belt into fewer districts." App.355. *Gingles* 1 is satisfied where, as here, the State could have drawn an additional, reasonably-configured majority-minority district but chose not to. App.334-35. Whether Black Belt voters are fragmented to form a minority of two or three districts makes no difference; it is the denial of an additional opportunity district that matters.

Ultimately, a "reasonably configured" *Gingles* 1 illustrative district cannot be rendered "unreasonable" just because the legislature chooses to elevate a particular community of interest—or any other criterion—as especially important. To rule otherwise would let states evade Section 2 by gerrymandering their redistricting criteria to match their preferred districts.

2. The District Court correctly found "no evidence that [Plaintiffs' mapdrawers] allowed race to predominate, and extensive evidence that they took great care to avoid that fault," when drawing illustrative maps. App.362. Reviewing seven of those illustrative maps, this Court confirmed that "[t]he District Court did not err" in making that finding. *Allen*, 599 U.S. at 32. The only additional evidence on this point that Alabama adduced at trial was expert testimony from Dr. Trende. *See* App.362. Tellingly, Alabama does not even mention his name on appeal. For good reason: Dr. Trende failed to offer *any* "evidentiary basis for his bald assertion" of race-based splits, and ultimately the District Court assigned his testimony "less weight" based on the flaws and concessions in his testimony. App.325-26, 361-62. Alabama does not contest these credibility findings on appeal, where they are subject to "singular deference," *Cooper v. Harris*, 581 U.S. 285, 311 (2017) (quoting *Anderson v. City of Bessemer City*, 470 U.S. 564, 575 (1985)).

Alabama is thus left with the same predominance arguments it advanced—and the Court rejected—last time: that connecting Mobile and the Black Belt is *per se* racial predominance, *compare* Pet.12, *with Merrill* Appellants' Br.25-26, and that Plaintiffs' experts predominantly pursued racial targets, *compare* Pet.13, *with Merrill* Appellants' Br.57. Neither argument has improved with age.

Alabama's insistence that Mobile and the Black Belt have nothing in common besides race is wholly unmoored from the record. Pet.14. Alabama does not

cite *any* witness testimony or exhibit evidence in support of this assertion, *see id.*, and ignores the extensive record chronicling the shared interests between Mobile, Montgomery, and the core Black Belt counties. Testimony from Plaintiffs' expert Dr. Bagley charted the historical, cultural, socioeconomic, and migratory connections between Mobile and the Black Belt. App.169-70. Lay witness testimony from Mr. Milligan, Ms. Dowdy, Representative Jones, Mr. Clopton, Dr. Caster, and Pastor Jackson detailed migration, work, familial, educational, religious, economic, healthcare, and cultural ties. App.182-93, 236-43. And Alabama's own 2011 and 2021 State Board of Education Plans—drawn by Alabama lawmakers pursuant to the same redistricting guidelines that governed the state's congressional plans—combine the City of Mobile with the Black Belt and separate Mobile from Baldwin County, just like Plaintiffs' illustrative plans. App.349; *see also* App.351 (noting that Plaintiffs' experts used the State Board of Education Plan as guidance for what Alabama considered reasonable).

Alabama's rehashed accusations against Plaintiffs' experts likewise "badly misstate the record." App.359. Alabama points to Mr. Cooper's testimony that he believed it was possible to create "a majority-black district in south-central Alabama" and "also have a Gulf Coast district." Pet.12. But far from indicating racial predominance, that testimony only underscores Mr. Cooper's careful consideration of *all* relevant communities of interest in constructing his plans. As his illustrative plans demonstrate, respecting the shared interests between the City of Mobile and the Black Belt does not preclude respecting the shared interests

between the coastal communities in Mobile and Baldwin Counties. *See* Trial Tr. 207-08 (Cooper) ("I've always left part of Mobile County in a district that joins with Baldwin County…. Why can't you have a majority-black district in south-central Alabama and also have a Gulf Coast district that includes parts of Mobile County and all of Baldwin County?"); *see also* App.351 (quoting Cooper testimony that rather than separating Mobile County along racial lines, his illustrative majority-minority District 2 excludes "the waterfront area of Mobile, which is actually a grouping of precincts that are predominantly African-American" and puts that area into District 1 "so that there was a transportation route between District 1 [in] Mobile County and District 1 in Baldwin County"). While Alabama tries to retroactively inject race into Plaintiffs' experts' mapdrawing process through its selective "splic[ing]" of the testimony, the District Court rightly "reject[ed] th[o]se accusations." App.359; *see* App.360 ("[W]e will not infer from things Mr. Cooper knew that he assigned race a predominant role in his mapmaking process, particularly in the light of his testimony that he did not.").

Nor did Plaintiffs' mapdrawers use any "announced racial target," Pet.13; instead, they set out to determine whether it was *possible* to draw a second majority-Black district based on the size and compactness of the Black population. App.219-24, 360-63. As Mr. Cooper explained, he did not consider a "race threshold as an outer limit on his respect for traditional districting principles," App.223; he "would not have gone to 50 percent plus one for a second majority-Black district if [he] were not also balancing the other

traditional redistricting principles," App.322; and he "never split a VTD ... for the purpose of creating a majority-Black district," *id*. Indeed, Mr. Cooper testified that in the course of his nearly 40-year career, he has "routinely" advised potential § 2 plaintiffs that he could not draw a reasonably compact district in satisfaction of *Gingles* 1. *Id.*; *see also id.* ("This testimony enhances Mr. Cooper's trustworthiness and our regard for his opinions."). Alabama offers nothing to refute either Mr. Cooper's testimony or the District Court's credibility findings, let alone demonstrate that the District Court committed "clear error" on this score. *Cooper*, 581 U.S. at 293.

Finally, the Special Master's remedial plan "confirmed ... that a lawful remedial plan" similar to Plaintiffs' illustrative plans "may be prepared *race-blind*." App.531 (emphasis added). Alabama stipulated to the Special Master's description, *id.*, and has offered no argument or evidence—at trial or on appeal—to contest the race-blind auspices of the remedial plan. Thus, "[a]lthough federal law does not require a Section Two remedial plan to be prepared race-blind, the ability of the Special Master to do it that way" stamps out any "concern that race will predominate in the preparation of a remedial plan." App.532.

B. Voting in Alabama is racially polarized.

Alabama does not dispute that voting in the state is extremely racially polarized, satisfying the second and third *Gingles* preconditions. As the District Court found, "[t]his record supports only one finding: that voting in Alabama, particularly in the districts at issue in these cases, is intensely and extremely racially

polarized." App.372; *see also* App.372-73 ("We cannot imagine a more comprehensive record, and we really cannot imagine clearer proof.").

C. The totality of the circumstances demonstrates that the challenged political process is not equally open to Black voters.

The District Court carefully and correctly analyzed the Senate Factors in concluding that the political process in Alabama is not equally open to Black voters. App.373-428. Alabama offers no reason to question the District Court's finding that "every relevant Senate Factor weighs in favor of the Plaintiffs, and none is neutral or weighs in favor of the State." App.425.

Alabama waves away the trial record as reflecting little more than bygone racial animus and modern-day partisan politics. But the District Court carefully considered—and thoroughly rejected—Alabama's efforts to minimize the totality of its "intensive racial politics," *Allen*, 599 U.S. at 30 (quoting S. Rep. No. 97-417 ("S. Rep."), 97th Cong., 2nd Sess. (1982), at 33-34).

First, Alabama contends that its admittedly "stark[] and intense[]" racial polarization—and resulting "nearly invariant" electoral losses for Black-preferred candidates—is merely the consequence of partisan differences. App.271. But despite Alabama's best efforts, the District Court found "no evidence that only party politics are at work." App.385.

Indeed, Alabama's *own experts* dispel Alabama's claim. Alabama offered Dr. Trey Hood to testify to Al-

abama's purportedly race-blind politics, but his testimony was "widely inconsistent" with his own scholarly work, including several articles that "directly refute his litigation opinions." App.375-76. Contrary to Alabama's position, Dr. Hood's published scholarship "spanning nearly a decade" "repeat[edly]" concludes that "race remains the dominant political influence in Southern politics today." App.385. Where the very scholarship that *qualifies* Dr. Hood as an expert explicates "[t]oday's racialized partisan cleavage," App.377, Alabama can hardly contend otherwise. *See* App.385 ("Ultimately, Dr. Hood's opinions support the Plaintiffs more than the State on the issue of racially polarized voting.").

Alabama's other expert on this issue, Dr. Christopher Bonneau, analyzed only a handful of Alabama elections, made a "material error that reversed his conclusions," and ultimately conceded that the data on racial voting patterns "established 'that White voters in Alabama support White Democrats more than they support Black Democrats.'" App.367, 386 (quoting Trial Tr. 1789). This is consistent with the undisputed data demonstrating that White Alabamians of *both* parties are less willing to support minority candidates. For instance, in 2008, White Democrats in Alabama supported Senator John McCain over then-Senator Barack Obama. App.389. And just last year, the four Black candidates in the CD-2 Republican primary finished behind the four White candidates, together amassing only 6% of the primary vote. *Id.*

The result of such stark racial polarization is that "Black Alabamians enjoy virtually zero success in

statewide elections," *Allen*, 599 at 22, or at the state or federal level outside of majority-Black districts prescribed by § 2. App.393-94.[2] And while Alabama complains that the Court did not give due weight to the single Black Republican state legislator elected in a majority-White district in the last 150 years, Pet.8, it was the state's *own expert* who described that election as a "unicorn," App.394.

Ultimately, Alabama's asserted partisan explanation for racial polarization is directly at odds with the "political reality" borne out in the evidentiary record. App.389. As the District Court found based on its "intensely local appraisal," *Allen*, 599 U.S. at 19, "it denies reality for us to say that at the end of the day, all of that is just party politics." App.391.

Second, Alabama suggests there can be no § 2 violation because Black registration rates in Alabama have risen. Pet.16. But this argument only underscores the uniquely insidious nature of discriminatory redistricting maps. While burdens on the registration and balloting process may eventually be overcome through strenuous mobilization efforts, a dilutive map destroys electoral power no matter how passionate the civic resistance. *See* S. Rep. at 199 (§ 2 was intended to stamp out precisely this kind of "complex form[] of invidious discrimination"); *South Carolina v. Katzenbach*, 383 U.S. 301, 308, 335 (1966).

---

[2] The fact that Black elected officials in Alabama hail almost exclusively from majority-minority districts entirely undermines Alabama assertion that the state's racial progress is unconnected to § 2 or that § 2 has run its course, Pet.23-24.

Third, Alabama swings at a strawman, claiming § 2 punishes it for its sordid history of racial discrimination. Pet.24. But, in accordance with the Court's precedent, the District Court declined to "assign Alabama's shameful history dispositive weight." App.395. Instead, the court "carefully considered an extensive record about both past and present discrimination"—including documented incidents of official discrimination found "in the last ten years by federal judges who remain in service today," the bail-in of three Alabama jurisdictions in the last decade, and ongoing school desegregation litigation in three major school districts, App.395-412—to conclude that "under all the circumstances in Alabama *today*, Black Alabamians have less opportunity than other Alabamians to elect representatives of their choice," App.7 (emphasis added).

Alabama's only remaining quibble relies on *Whitcomb v. Chavis*, 403 U.S. 124 (1971), Pet.15, a case that predates the 1982 Amendments and *Gingles*, to argue that Black Alabamians suffer nothing more than normal political defeat. But the *Gingles* Court cited *Whitcomb* to explain that "loss of political power through vote dilution is distinct from the mere inability to win a particular election." *Gingles*, 478 U.S. at 57. Section 2 prohibits only the former—redistricting plans like Alabama's that perpetuate electoral racial exclusion by systematically "minimiz[ing] or cancel[ing] out" the votes of a sizeable minority group. *Id.* at 48.

D. The District Court's finding of intentional discrimination further supports its totality-of-circumstances determination.

With orders in hand from both the District Court and this Court warning that a map confining Black voters' electoral opportunity to only a single district would likely discriminate in violation of § 2, Alabama intentionally reenacted just such a map. It "purposefully and admittedly refused to provide th[e] remedy" that federal law requires. App.489. The District Court's finding of intentional discrimination on that basis means that Senate Factor 9 (whether the policy underlying the 2023 Plan is tenuous) weighs strongly in favor of Plaintiffs and further supports the District Court's determination that Plaintiffs carried their burden on the totality of circumstances. App.149-51 (citing *Gingles*, 478 U.S. at 36-37); App.489.

Alabama cannot recast its defiance as a mere procedural disagreement. Contrary to Alabama's suggestion, Pet.29, preliminary injunctions are not advisory and compliance is not optional. *See Celotex Corp. v. Edwards*, 514 U.S. 300, 306 (1995) ("[P]ersons subject to an injunctive order issued by a court with jurisdiction are expected to obey that decree until it is modified or reversed, even if they have proper grounds to object to the order." (quoting *GTE Sylvania, Inc. v. Consumers Union of U.S., Inc.*, 445 U.S. 375, 386 (1980))). And Alabama's claim that it defied the District Court's order because it feared racial gerrymandering charges, Pet.28, cannot be squared with the reality that Alabama had assurance from both the District Court and this Court that it was possible to draw

a remedial district that did not give undue consideration to race. *Allen*, 599 U.S. at 33; App.114 (explaining that satisfaction of *Gingles* 1 "demonstrate[s] the existence of a proper remedy").

While Alabama now suggests that the 2023 Plan was driven by partisanship, Pet.33-35, the record contains "precious little evidence to support the State's claim." App.524. To the contrary, Alabama adamantly insisted—in detailed legislative findings and legal arguments—that the 2023 Plan was grounded in its desire to preserve the predominantly White Gulf Coast community, rooted in White colonial heritage, App.346-48.

In any event, "[i]ntentions to achieve partisan gain and to racially discriminate are not mutually exclusive." *Veasey v. Abbott*, 830 F.3d 216, 241 n.30 (5th Cir. 2016). Alabama's partisan defense rests on the untenable notion that states may avoid providing remedies for adjudicated § 2 violations if doing so would reduce the dominant racial group's political power. Neither § 2 nor the Constitution condone such an outcome. *See infra* II.E.

II. Section 2 is constitutional.

Re-costuming arguments that this Court rejected in *Allen*, Alabama argues that § 2 itself is unconstitutional. But as this Court held just two years ago, § 2 is a valid exercise of Congress's enforcement power under the Fourteenth and Fifteenth Amendments. *Allen*, 599 U.S. at 41. Section 2's test is meticulously designed to identify and remedy only current, proven instances of racial discrimination. And the Court need

look no further than Alabama's unrelenting efforts to avoid a second Black opportunity district here to confirm that § 2's protections have not outlived their purpose. Even so, the *Gingles/Allen* test builds in a clear sunset for § 2.[3]

A. Section 2 enforces the Fourteenth and Fifteenth Amendments.

Section 2 falls well within Congress's authority to enforce the Fourteenth and Fifteenth Amendments, which were designed to provide members of minority racial groups equal access to the political process by prohibiting discrimination. *See Oregon v. Mitchell*, 400 U.S. 112, 127 (1970). Congress's power to enforce these amendments by "appropriate" legislation is explicit from the constitutional text, U.S. Const. amend. XIV, § 5; *id.* amend. XV, § 2, and that power is broad.

---

[3] Alabama's cursory challenge to § 2's private right of action is foreclosed by *Morse v. Republican Party of Virginia*, 517 U.S. 186, 232 (1996), as explained by the District Court below, App.439, and courts across the country, *see, e.g., Robinson v. Ardoin*, 86 F.4th 574, 587-88 (5th Cir. 2023); *Mixon v. Ohio*, 193 F.3d 389, 406 (6th Cir. 1999); *Ala. State Conf. NAACP v. Alabama*, 949 F.3d 647, 649 (11th Cir. 2020), *vacated on other grounds sub nom. Alabama v. Ala. State Conf. NAACP*, 141 S. Ct. 2618 (2021). Alabama relies exclusively on two Eighth Circuit decisions, Pet.26, one of which has been stayed by this Court, *Turtle Mountain Band of Chippewa Indians v. Howe*, 145 S. Ct. 2876, 2877 (2025), and the second which did not reach any conclusions about private litigants' ability to bring § 2 claims, *Ark. State Conf. NAACP v. Ark. Bd. of Apportionment*, 86 F.4th 1204, 1209 (8th Cir. 2023) ("It is unclear whether § 2 creates an individual right.").

Congress's enforcement of the Fifteenth Amendment—which guarantees that the right of citizens to vote shall not be denied or abridged "by any State on account of race," U.S. Const. amend. XV, § 1—need only provide a "rational means [of] effectuat[ing]" the Amendment. *Katzenbach*, 383 U.S. at 324; *see City of Rome v. United States*, 446 U.S. 156, 177 (1980); *Shelby County*, 570 U.S. at 550-51. In *Allen,* the Court affirmed that "[t]he VRA's 'ban on electoral changes that are discriminatory in effect' … 'is an appropriate method of promoting the purposes of the Fifteenth Amendment.'" *Id.* (citing *City of Rome*, 446 U.S. at 177).[4]

In amending § 2 in 1982, Congress eliminated the "inordinately difficult" evidentiary burden to demonstrate intentional discrimination. *Gingles*, 478 U.S. at 44 (quoting S. Rep. at 36). But even without an intent requirement, § 2 plaintiffs must prove the existence of circumstances where minority voters have "less opportunity than d[o] other residents" to "participate in the political processes and to elect legislators of their choice." *White v. Regester*, 412 U.S. 755, 766 (1973). By requiring plaintiffs to prove pervasive racially polarized voting, contemporary effects of discrimination,

---

[4] As scholars have recently reiterated, there is no originalist basis for importing into the Fifteenth Amendment the "congruent and proportional" test applied to statutes enforcing the Fourteenth Amendment. *See* Lori Ringhand & Zach Poppe, *Congruence & Proportionality as a Const'l Construction*, UNIV. OF GA. SCH. OF L. LEGAL STUD. RSCH. PAPER FORTHCOMING (Sep. 2, 2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5418455.

barriers to minority-candidate success, and other factors indicative of racially exclusionary political systems, § 2 remains closely tethered to the constitutional prohibitions it enforces. *See Rogers v. Lodge*, 458 U.S. 613, 623 (1982) (recognizing § 2's focus on "evidence of bloc voting along racial lines" and a lack of minority success "bear[s] heavily on the issue of purposeful discrimination"). And precisely because "discriminators may go to great lengths to hide and perpetuate their unlawful conduct," *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.* ("*SFFA*"), 600 U.S. 181, 257 (2023) (Thomas, J., concurring), § 2's results-centric approach to identifying circumstantial evidence of intentional discrimination is perfectly constitutional.

B. Section 2 remedies instances of likely intentional discrimination.

Alabama contrives a tension between the Constitution and statute by interpreting § 2 to arbitrarily require race-based districting. Pet.16-18, 20. But § 2 does no such thing—it operates only where a specific race-based harm has been demonstrated, constrains remedies to actual, ongoing discrimination in political structures, and forecloses relief in contexts where the districting is genuinely race-neutral. In other words, § 2 targets likely instances of intentional discrimination.

Consider again the many elements that § 2 plaintiffs must prove to establish a violation, each of which corroborates a finding that districting in a jurisdiction is *already* race-based. First, the "minority group must be sufficiently large and geographically compact to

constitute a majority in a reasonably configured district" that the mapdrawer chose not to create. *Allen*, 599 at 18. In other words, there must be substantial residential segregation (alarm bell number one of a racialized social context) where the minority population was cracked or packed by district lines (alarm bell number two).

"Second, the minority group must be able to show that it is politically cohesive," and "[t]hird, … that the white majority votes sufficiently as a bloc to enable it ... usually to defeat the minority's preferred candidate." *Gingles*, 478 U.S. at 51. In other words, voters in the jurisdiction must consistently vote along racial lines in opposition to one another (alarm bell number three), resulting in the systematic defeat of the minority group's preferences (alarm bell number four). In a context that is not defined by race, policy needs will not be tightly intertwined with race.

When a siloed minority converges on the same political pleas, and no amount of organizing can obtain any traction in translating those pleas into policy because lawmakers have cracked or packed the minority group within districts so that their efforts are reflexively rejected by the dominant group, the racial strife is manifest. *See Sanchez v. Colorado*, 97 F.3d 1303, 1310 (10th Cir. 1996) (recognizing the presence of the *Gingles* preconditions "creates the inference the challenged practice is discriminatory").

Even still, § 2 requires more. After establishing each of the *Gingles* preconditions, § 2 plaintiffs must ring further alarm bells by showing that the totality of circumstances reveals that political processes "are

not equally open to participation by members of" the minority group. 52 U.S.C. § 10301(b). Again, each of the factors considered provides indicia of a racialized political system. *Gingles*, 478 U.S. at 44-45. Only after § 2 plaintiffs adduce this gauntlet of evidence does liability attach.

Contrary to Alabama's contention, Pet.25, § 2 evaluation of racial discrimination does not cause racial discrimination. Just as a thermometer does not create or raise a fever—it simply reflects its presence, S. Rep. at 34—§ 2's evidentiary test is calibrated to identify intensely racialized politics that are already present. *Schuette v. BAMN*, 572 U.S. 291, 331 (2014) (Scalia, J., concurring). Likewise, race-conscious correction of a race-based harm is not the same thing as race-based infliction of that harm. "Section 2 litigation perpetuates a fixation on race," Pet.25, only in the way that cancer detection tools prolong the use of chemotherapy—as a means to a cure.

Nor does § 2 require race-based remedies: This case proves that § 2 remedies need not consider race at all. The District Court's remedial plan was drawn entirely race-blind, without any "racial demographic data," considering *only* traditional redistricting principles "such as preserving the Black Belt community of interest, restoring counties that had been split, and preserving precincts and municipalities to the extent possible." App.17. The Court's precedent also guards against the excessive use of race in remedial districts by ensuring illustrative districts are reasonably configured and adhere to traditional redistricting princi-

ples. *Allen*, 599 U.S. at 21; *see id.* at 43 & n.2 (Kavanaugh, J., concurring). In other words, *Gingles* 1 itself prevents any constitutionally suspect use of race. Finally, the Court's racial gerrymandering precedents serve as a backstop, preventing any excessive use of race that is not otherwise justified by § 2. *See id.* at 27-28 (citing *Shaw*, 509 U.S. at 630, *Miller v. Johnson*, 515 U.S. 900 (1995), and *Bush v. Vera*, 517 U.S. 952 (1996)).

When a § 2 violation has been proven—that is, when the inference of racial discrimination has been strongly corroborated by extensive evidence—courts have two options. They can either 1) tolerate the discrimination by doing nothing, or 2) require a new map. The first option would not be neutral as to discrimination—it would affirmatively permit, facilitate, and aggravate discrimination. The second option accomplishes the opposite—the remedy excises proven discrimination. For this reason, Alabama's argument that § 2 uses race as a negative, Pet.22-23, is wrong. Section 2 does not give any "race-based preference[s]," Pet.22—let alone guarantee electoral victories—it merely eliminates identified race discrimination, so minority voters have the same opportunity to "pull, haul, and trade to find common political ground" as majority-group voters. *Johnson v. De Grandy*, 512 U.S. 997, 1020 (1994).

C. The Court's § 2 and race-based admissions jurisprudence are fundamentally different.

Because § 2 is a congressional enactment that targets proven discrimination, Alabama's attempt to

cram § 2 in an ill-fitting *SFFA* box fails. Pet.16-25. Section 2 is a remedial statute passed under Congress's express authority under the Reconstruction Amendments to address ongoing instances of discrimination. *Supra* II.A. The admissions programs at issue in *SFFA* involved universities conducting race-conscious admissions, absent any specific finding of discrimination, in perpetuity.

None of the Court's reasoning in *SFFA* applies to § 2. The Court rejected interests—such as "training future leaders," "better educating [] students through diversity," and "fostering innovation"—that the universities offered in defense of race-conscious admissions programs as "not sufficiently coherent for purposes of strict scrutiny." *SFFA*, 600 U.S. at 214. It found the universities' "racial categories" simultaneously "arbitrary," "overbroad," "underinclusive," and "opaque." *Id.* at 217-18. It was persuaded by evidence that universities used race to stereotype. *Id.* at 220. And it emphasized the universities' concession that there was no conceivable circumstance whereby their system of racial preferences would no longer be necessary. *Id.* at 220-25.

Section 2 differs in every respect. First, this Court has found interests in remedying unlawful vote dilution to be concrete and compelling. *See Allen*, 599 U.S. at 41 ("[W]e are not persuaded by Alabama's arguments that [Section] 2 as interpreted in *Gingles* exceeds the remedial authority of Congress."). Second, Black Alabamians plainly comprise a discrete racial minority. *See* App.331. Third, § 2 never stereotypes

voters or makes "assumption[s]" regarding their electoral viewpoints, *SFFA*, 600 U.S. at 219-20, instead requiring proof of minority and majority voting preferences. *Allen*, 599 U.S. at 18. Fourth, § 2's test is designed to cease operation as discrimination in voting subsides. *Infra* II.F.

This Court reiterated in *SFFA* that "race-based government action" is permissible to "remediat[e] specific, identified instances of past discrimination that violated the Constitution *or a statute*." 600 U.S. at 207 (emphasis added) (citing redistricting example); *id*. at 317 (Kavanaugh, J. concurring) ("Federal and state civil rights laws serve to deter and provide remedies for current acts of racial discrimination."). That is, *SFFA* expressly endorses requiring states to remedy "specific," proven instances of discriminatory vote dilution in a map "that violated" § 2—precisely what Plaintiffs proved here—by enacting a new map that corrects racial discrimination. *Id.* at 207.

D. Section 2 is clear.

As the Court affirmed just two years ago, there is nothing "amorphous" about § 2, the vote dilution injury that gives rise to a violation, or the test for identifying unlawful electoral schemes. Pet.18-19. "'The essence of a § 2 claim,' the Court explained, 'is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters.'" *Allen*, 599 U.S. at 17-18 (citing *Gingles*, 478 U.S. at 47).

Courts are well equipped to adjudicate these claims, and few legal tests are as clear as the *Gingles* inquiry. Each precondition is based on objective measurements of quantifiable data about where people live and how they tend to vote, providing bright-line benchmarks to determine § 2 liability. *Cf. Bartlett v. Strickland*, 556 U.S. 1, 18 (2009) (recognizing *Gingles* "provides straightforward guidance to courts and to those officials charged with drawing district lines to comply with § 2"). The totality, while requiring a "searching practical evaluation," is far from imprecise. *Gingles*, 478 U.S. at 79. It examines specific factors, each designed to ferret out racialized political systems. *White*, 412 U.S. at 767-70. Like the preconditions, several of the factors are numeric and measurable: the extent of racially polarized voting, whether members of the minority group have been elected to office, and whether members of the minority group bear the effects of past discrimination that hinders their ability to participate politically. Other factors are qualitative, but no less concrete, including the existence of official instances of racial discrimination and racial campaign appeals. Still others resemble familiar constitutional tests like the tenuousness between the challenged law and the government's justification.

Alabama does not seriously dispute the District Court's totality finding here. *Supra* § I.C. It instead argues that the totality of circumstances test is inherently flawed because a *different* district court, on a *different* factual record, considering a challenge to *different* maps, in a *different* decade, rejected a § 2 claim for Alabama's *state legislative elections*. Pet.19-20 (citing

Ala. Legis. Black Caucus v. Alabama ("*ALBC*"), 989 F. Supp. 2d 1227 (M.D. Ala. 2013)). But in *ALBC*, the district court held the totality of the circumstances did not support a § 2 violation in large part because Black voters were able to elect their preferred candidates to the state legislature in majority-Black districts in proportion to Alabama's Black voting age population. *ALBC*, 989 F. Supp. 2d at 1286 (citing *De Grandy*, 512 U.S. at 1020). And while § 2 disclaims any *right* to proportional representation, proportionality can nevertheless act as a shield from liability because it "is obviously an indication that minority voters have an equal opportunity, in spite of racial polarization 'to participate in the political process and to elect representatives of their choice.'" *Id.* at 1287 (citing *De Grandy*, 512 U.S. at 1020).

The *ALBC* case therefore only underscores that the *Gingles*/*Allen* intensely local appraisal, as set forth in the District Court's 50 pages of careful and extensive totality findings, distinguishes between instances where unlawful dilution is and is not occurring. *See Allen*, 599 U.S. at 19 (quoting *Gingles*, 478 U.S. at 79) ("[T]he totality of the circumstances inquiry ... is 'peculiarly dependent upon the facts of each case.'"). Absent a strong evidentiary basis like the one here, courts will not rubberstamp a § 2 claim based on "bare disparities." Pet.20.

E. The Court should not remake *Gingles* 1.

The Court should not adopt the United States' suggestion that Plaintiffs at *Gingles* 1 should be required to provide a map that meets a jurisdiction's partisan goals. Suppl. Br. for United States at 25, *Louisiana v.*

Callais, Nos. 24-109, 24-110 (U.S. Sep. 24, 2025). The United States' test essentially imports *Alexander*'s racial gerrymandering alternative-map requirement into *Gingles*, conflating these "analytically distinct" claims, *Alexander v. S.C. State Conf. NAACP*, 602 U.S. 1, 38 (2024), and nullifying Congress's express purpose in enacting the 1982 amendments.

Adding a partisan-matching requirement to *Gingles* 1 effectively reinstates the intent test Congress "repudiated" in amending § 2, "ask[ing] the wrong question" by focusing on motives rather than impact on minority electoral opportunity. *Gingles*, 478 U.S. at 44 (quoting S. Rep. at 36). The dangers of requiring plaintiffs to adhere to a state's purportedly race neutral goal of partisanship are well illustrated by the "race-neutral" justifications Alabama offered for its dilutive maps here—core retention and inviolability of one majority-White community. Accepting either of Alabama's non-racial redistricting goals, like adding a partisan safe harbor, allows jurisdictions to hide behind those facially neutral justifications for racially dilutive practices, just as they have done throughout history. *See, e.g.*, *Rogers*, 458 U.S. at 613 (invalidating "racially neutral" but discriminatory at-large election system); *LULAC v. Perry*, 548 U.S. 399, 440 (2006) (rejecting incumbent protection as justification for discriminatory redistricting). Congress did not intend for § 2 to be so easily thwarted: "[T]he need for" § 2's "'totality' review springs from the demonstrated ingenuity of state and local governments in hobbling minority voting power, a point recognized by Congress when it amended the statute in 1982." *De Grandy*, 512 U.S. at 1018 (citation omitted).

More fundamentally, § 2 claims are definitionally aimed at correcting the racial majority's attempts to entrench its political power at the expense of minority political representation. Where voting is deeply polarized along racial lines, as in Alabama, providing a racial minority group with an equal opportunity to elect their preferred candidates will necessarily result in the possibility of change to the partisan composition of the challenged plan. That is a feature, not a bug, of § 2—the partisan change reflects the restoration of minority political power. It is precisely where minority voters are shut out by the White majority's political preferences that § 2 is meant to operate. Adding a partisan-matching requirement would nonsensically pit *Gingles* 1 against itself and *Gingles* 2 and 3—anywhere minority and White voters are politically segregated along racial lines, resulting in the defeat of minority-preferred candidates (*Gingles* 2 and 3), the minority group would be unable to produce a *Gingles* 1 map that both preserves the partisan goals of the ruling White majority and "performs" for them. *Abbott v. Perez*, 585 U.S. 579, 618-19 (2018).

Ultimately, the United States' test would force Black voters to forfeit § 2's protections because they mobilize to pursue unique goals and interests under a common party banner. The purpose of a political party is for people who vote alike to come together to advance their shared goals. *See, e.g., Gingles*, 478 U.S. at 56 (examining whether Black voters are "politically cohesive"). Where partisan alignment is so tightly organized on racial lines around racialized issues, the majority party's discrimination against the minority

party to entrench its own political power *is* racial discrimination. *Cf. N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204, 222-23 (4th Cir. 2016) ("[I]ntentionally targeting a particular race's access to the franchise because its members vote for a particular party, in a predictable manner, constitutes discriminatory purpose.").

F. Section 2's protections have not expired.

The Court need look no further than the District Court's finding of intentional discrimination *in this very case* to see that § 2 remains necessary. The Legislature's effort to "intentionally checkmate any remedial order designed to require a second opportunity district," App.504, makes abundantly clear that § 2 remains both necessary and effective in smoking out invidiously discriminatory electoral structures. Section 2 is thus working just as Congress intended: to eliminate "discriminatory election systems or practices which operate, designedly or otherwise, to minimize or cancel out the voting strength and political effectiveness of minority groups." S. Rep. at 28.

Despite proven racial discrimination in its redistricting map, Alabama says the Court should abandon its duty to remedy that invidious discrimination because some time has passed since Congress amended § 2. But when Congress exercises its constitutional authority to proscribe unlawful conduct—as it did in enacting § 2, *Allen*, 599 U.S. at 41—that conduct remains unlawful until the political process produces a contrary policy judgment through amendment or repeal. *Ry. Emps.' Dep't v. Hanson*, 351 U.S. 225, 234 (1956) ("Congress, acting within its constitutional

powers, has the final say on policy issues … The task of the judiciary ends once it appears that the legislative measure adopted is relevant or appropriate to the constitutional power which Congress exercises."). Indeed, this Court's interpretation of § 2 in *Gingles* and *Allen* enjoys "enhanced" stare decisis protection. *Kimble v. Marvel Ent., LLC*, 576 U.S. 446, 456 (2015); *see Allen*, 599 U.S. at 42 (Kavanaugh, J., concurring); *id.* (rejecting Alabama's argument "that the Court should overrule *Gingles*" in part because statutory stare decisis "is comparatively strict" and "[i]n the past 37 years [] Congress and the President have not disturbed *Gingles*, even as they have made other changes to the Voting Rights Act"). The decision whether § 2 has served its purpose and that the country no longer requires a "permanent, nationwide ban on discrimination in voting," *Shelby County*, 570 U.S. at 557, is appropriately left to Congress.

Even so, § 2 will not operate in perpetuity, as Alabama prophesizes. Pet.23. Section 2's functional expiration date for vote-dilution claims, as *Allen* explained, is built directly into the *Gingles/Allen* test: Precisely because plaintiffs must prove that minority groups are geographically compact, their task will grow increasingly difficult "as residential segregation decreases—as it has 'sharply' done since the 1970s." *Allen*, 599 U.S. at 28-29 (quoting T. Crum, *Reconstructing Racially Polarized Voting*, 70 DUKE L. J. 261, 279 (2020)) (recognizing "§ 2 litigation in recent years has rarely been successful for just that reason"). The same is true for the other corroborating evidence that plaintiffs must produce. As voting becomes less ra-

cially polarized and evidence of voting-related discrimination recedes in the rearview mirror, § 2 claims will grow ever-more-difficult to prove. The § 2 inquiry thus inherently dispels *SFFA*'s concerns of indefiniteness. Pet.23.[5]

If, however, the Court is inclined to put a clock on the life left in Congress's landmark enactment, the timing should provide sufficient notice for state and local governments to evaluate and achieve within their borders § 2's purpose of equal opportunity, such that the majority can no longer maintain power through racial division or exclusion. Any timeline must also align with the traditional redistricting cycle. Redistricting is a decennial task, and hewing to that schedule serves principles of equity, reliance, and judicial minimalism. A mid-decade change in the rules would potentially upset settled expectations about a districting map's applicability, penalize states that legislated in good faith to follow then-existing law, impose new burdens on states to revisit their maps mid-cycle, and interpose courts in a politicized morass with legislators and litigants in every state racing against varying state-specific election deadlines. Because all states must redistrict anew after the

[5] Though Alabama notes that there have been a handful more successful § 2 cases in the current redistricting cycle as compared to the last, Pet.17 & n.4, that is the obvious result of the demise of Section 5. *See* Ellen D. Katz, et al., *The Evolution of Section 2: Numbers and Trends*, UNIV. MICH. L. SCH. VOTING RIGHTS INITIATIVE (2025), https://voting.law.umich.edu/findings. And in any event, that courts continue to find violations demonstrates § 2's continued necessity, not its obsolescence.

publication of decennial census results, any new regime should go into effect then.

In all events, the Court should tread lightly before signaling the end of § 2, as history tells us jurisdictions will be quick to jostle power away from minority voters, decimate minority representation—in Congress, state legislatures, city councils, and school boards—and roll back minority voting strength to the dismal levels that demanded enactment of the Voting Rights Act in the first place. *See Brnovich v. DNC*, 594 U.S. 647, 698 (2021) (Kagan, J., dissenting) (detailing the discriminatory voting legislation passed in the immediate aftermath of *Shelby County* by several states and local governments, including Alabama); Br. of *Amici Curiae* Professors Chen, Elemendorf, Stephanopoulos, & Warshaw at 27, *Merrill v. Milligan*, Nos. 21-1086, 21-1087 (U.S. July 18, 2022) ("The empirical literature is thus unanimous about the impact of [weakening § 2]: It would enable most states to substantially reduce their numbers of minority opportunity districts."). Where § 2 has guarded against "the demonstrated ingenuity of state and local governments in hobbling minority voting power" for half a century, an erosion of § 2's barriers will usher in a new wave of both "over[t]" and more "sophisticated devices to dilute minority voting strength." *De Grandy*, 512 U.S. at 1018 (quotations omitted).

CONCLUSION

The Court should deny the Petition for Certiorari before Judgment and summarily affirm the district court's order in *Milligan* and *Singleton*. If the Court does not summarily affirm *Milligan* and *Singleton*, it

should grant the Petition in *Caster* so the cases can be heard together.

Respectfully submitted,

LALITHA D. MADDURI
JACOB D. SHELLY
RICHARD A. MEDINA
QIZHOU GE
ELIAS LAW GROUP LLP
250 Massachusetts Ave. NW
Suite 400
Washington, DC 20001
(202) 968-4490

ABHA KHANNA
Counsel of Record
ELIAS LAW GROUP LLP
1700 Seventh Ave
Suite 2100
Seattle, Washington 98101
(206) 656-0177
AKhanna@elias.law

Counsel for Respondents

October 20, 2025