No. _____

In the

Supreme Court of the United States

JOSE TREVINO and ALEX YBARRA,
Petitioners,

v.

STEVEN HOBBS, in his official capacity as Secretary of State of Washington, et al.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Respondents challenged Washington state legislative district 15 ("LD-15"), alleging it diluted Hispanic votes under Section 2 of the Voting Rights Act ("VRA"), 52 U.S.C. § 10301(b). Petitioners intervened to oppose the VRA claim and assert that LD-15 was a racial gerrymander. The district court ruled for Respondents, enjoined the Commission's map, and adopted a new remedial map that *reduced* the Hispanic Citizen Voting Age Population ("HCVAP") in LD-15 from 52.6% to 50.2%.

The Ninth Circuit affirmed, holding that Petitioners lack standing to challenge the VRA ruling or assert their own Section 2 claim based on the remedial map's dilution of Hispanic votes. It further held that one Petitioner had standing to challenge the remedial map as a racial gerrymander, but strict scrutiny was unnecessary because the remedial map was not "predominantly" based on race, even if race may have been "a" motivating factor.

The questions presented are:

1. Whether a voter who is moved into a new district and a legislator whose district is reconfigured by a court-drawn remedial map have standing to challenge that map or the underlying determination of VRA Section 2 liability that caused the remedial map to be drawn.

2. Whether a map drawn to remedy racial vote dilution is subject to strict scrutiny under the Equal Protection Clause when it is race conscious.

PARTIES TO THE PROCEEDINGS

Petitioners Alex Ybarra and Jose Trevino were Intervenor-Defendants before the district court and Intervenor Defendants-Appellants before the Ninth Circuit.

Respondents Susan Soto Palmer, Alberto Macias, Fabiola Lopez, Caty Padilla, and Helidora Morfin were Plaintiffs before the district court and Plaintiffs-Appellees before the Ninth Circuit.

Respondents the State of Washington and Steven Hobbs in his official capacity as the Washington Secretary of State, were Defendants before the district court and Defendants-Appellees before the Ninth Circuit.

Ismael Campos is not a party to this Petition.

STATEMENT OF RELATED PROCEEDINGS

- *Soto Palmer* v. *Hobbs*, No. 3:22-cv-05035, U.S. District Court for the Western District of Washington. Judgment entered Aug. 11, 2023 (merits); Mar. 15, 2024 (remedy).
- *Trevino* v. *Palmer*, No. 23-484, U.S. Supreme Court. Certiorari before judgment denied Feb. 20, 2024.
- *Palmer* v. *Trevino*, No. 23-35595 (merits) & 24-1602 (remedy), U.S. Court of Appeals for the Ninth Circuit. Judgment entered Aug. 27, 2025.
- *Garcia* v. *Hobbs*, No. 3:22-cv-05152, U.S. District Court for the Western District of Washington. Judgment entered Sept. 8, 2023; amended judgment entered Mar. 25, 2024.[1]
- *Garcia* v. *Hobbs*, No. 23-467, U.S. Supreme Court. Judgment entered Feb. 20, 2024.
- *Garcia* v. *Hobbs*, No. 24-2603, U.S. Court of Appeals for the Ninth Circuit. Judgment entered Aug. 27, 2025.

[1] *Garcia v. Hobbs* was a separate challenge to the same congressional district map on constitutional grounds before a three-judge panel that included District Judge Robert Lasnik, the judge in *Soto Palmer v. Hobbs*. Sitting on the *Garcia v. Hobbs* panel, District Judges Lasnik and David Estudillo held that the relief granted in *Soto Palmer v. Hobbs* mooted the dispute before it, over the dissent of Circuit Judge Lawrence VanDyke. A petition for certiorari as to the holding in *Garcia v. Hobbs* is also pending before this Court.

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INTRODUCTION

Respondents are a group of Hispanic voters in the Yakima Valley region in central Washington State who sued to prevent the use of a state legislative map drawn by Washington's independent, bipartisan redistricting commission, challenging only one legislative district, LD-15. Even though LD-15 had been drawn by the Commission to contain a 52.6% HCVAP, Respondents nevertheless argued that it diluted Hispanic votes in violation of VRA Section 2. Petitioners, another group of Yakima Valley Hispanic voters, intervened as defendants, arguing that LD-15 constitutes a racial gerrymander that violates equal protection, and the court could not, under the auspices of VRA Section 2, "remedy" a district that was already majority-minority. Moreover, Petitioners argued, a reconfiguration of LD-15 would likely create new vote-dilution and equal protection problems.

Petitioners' fears came true. The district court held that VRA Section 2 was violated, enjoined the Commission's map, and drew its own remedial map that *reduced* the voting power of Hispanics in LD-15 by lowering the HCVAP from 52.6% to 50.2%. Because of the court-drawn remedial map, Petitioner Jose Trevino was moved out of LD-15 into a new, less Hispanic district (LD-14) that diluted his and other Hispanic votes on the basis of race. Likewise, the court-drawn remedial map harmed Petitioner Alex Ybarra, because LD-13, the district he represented (and in which he lived and voted), was substantially reconfigured to remove approximately 30,000 voters, many of whom were Hispanic, replacing them with voters who were more White and Democrat-leaning. This reconfiguration not only discriminated against

Ybarra on the basis of race and diluted his vote, but it cost him money and made his reelection more difficult.

The Ninth Circuit affirmed, holding that neither Trevino nor Ybarra have standing to appeal the district court's VRA Section 2 liability determination or to assert their own VRA vote dilution claims. As to equal protection, the Ninth Circuit held that that only Petitioner Trevino had standing to challenge the remedial map as a racial gerrymander. Addressing the merits of that claim, the Ninth Circuit concluded that even though the court-drawn remedial map may have been partially motivated by race, race was not a "predominant factor," so strict scrutiny was not necessary and thus, there was no equal protection violation.

The Ninth Circuit's conclusions on both standing and equal protection are egregiously wrong. If one set of Yakima Valley Hispanic voters (Respondents) have standing to bring a VRA-based vote dilution claim against the Commission's map, then another set of Yakima Valley Hispanic voters (Petitioners) also have standing to challenge the court's conclusion that the VRA has been violated. Holding otherwise, as the Ninth Circuit did, creates an asymmetry whereby one group has standing to raise a VRA claim, but a group that has intervened to oppose that claim lacks standing to appeal a determination adverse to them, even though it caused them harm. Indeed, but for the district court's VRA liability determination, there *would have been no remedial map*. And it is the remedial map—predicated on the VRA liability determination—that diluted Petitioners' votes and violated their equal

protection rights. The remedial map and the VRA liability determination, in other words, are inextricably intertwined and caused Petitioners harm. Contrary to the Ninth Circuit's conclusion, Petitioners' injuries are thus "fairly traceable" to both the district court's VRA liability determination and the consequent remedial map, and they are fully redressable by the courts. Article III standing is satisfied.

Regarding the merits of Petitioners' equal protection claim, the Ninth Circuit held that even though race may have been "a" motivation for the court in drawing the remedial map, a mere motivation to draw district lines based on race is insufficient to trigger strict scrutiny, which can only be applied when race is the "predominant factor" in map drawing. This conclusion is contrary to this Court's decision in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023), which held that race-conscious higher education admissions programs must satisfy strict scrutiny. *Id.* at 206 ("Any exception to the Constitution's demand for equal protection must survive a daunting two-step examination known in our cases as 'strict scrutiny.'"). *See also id.* at 213, 218 (equal protection forbids consideration of race as a stereotype or negative). If race-conscious admissions programs violate equal protection, so too does race-conscious redistricting.

OPINIONS BELOW

The opinion of the court of appeals (App. 1–30) is reported at 150 F.4th 1131. The opinion of the district court finding a violation of VRA Section 2 (App. 31–42) is reported at 686 F. Supp. 3d 1213. The unpublished decision of the district court adopting the remedial map (App. 43–79) is available at *Soto Palmer v. Hobbs*, 2024 WL 1138939 2024 U.S. Dist. LEXIS 50419 |(W.D. Wash. Mar. 15, 2024).

STATEMENT OF JURISDICTION

The Ninth Circuit entered judgment on September 18, 2025. Petitioners applied for an extension of time to file this Petition, which Justice Kagan granted on November 6, 2025, extending the time to and including January 24, 2026. The lower courts had jurisdiction under 28 U.S.C. § 1331. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The relevant constitution provision, the Equal Protection Clause, U.S. Const. amend. XIV, § 1, and the relevant statutory provision, Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, are reproduced in the appendix immediately following this brief. App. 148, 149.

STATEMENT OF THE CASE

1. Washington's Constitution requires redistricting of state and federal legislative districts following each census. Wash. Const. art. II, § 43(1). It uses a bipartisan, independent redistricting commission comprised of four voting members and one non-voting member, with each voting member appointed by the leaders of the two largest political parties in the state legislature. *Id*. art. II, § 43(2). The nonvoting member is the Chair of the Commission, who is selected by the four voting members. *Id*. A redistricting map must be approved by a majority of the voting members of the Commission. *Id.* art. II, § 43(6).

Following the 2020 census, the Commission redrew the state legislative districts. App. 2. During the Commission's deliberative process, each voting member released an initial proposed map, and all four proposed maps included a district in the Yakima Valley region that was comprised of less than 50% Hispanic Citizen Voting Age Population ("HCVAP"). App. 114.

Approximately one month later, at the request of the Commission's Democratic members, the Commission received a presentation by Matt Barreto, Ph.D., who argued that the Yakima Valley region suffered from "racially polarized voting" and that the proposed maps "cracked" the Hispanic population. *Id*. Barreto proposed two alternative maps that he claimed would be "VRA compliant." *Id*. From that point onward, the evidence shows that the Commission considered it nonnegotiable that LD-15

be drawn to ensure it was a majority HCVAP district. App. 114–17.

2. In November 2021, the Commission transmitted its final map to the state legislature, which approved it with minor changes (not relevant here). App. 119. Under the Commission's map, LD-15, was a majority-Hispanic district with 52.6% of its citizen voting age population being Hispanic. App. 314. Despite this, in January 2022, a group of Hispanic voters, led by Soto Palmer ("Respondents"), sued to enjoin the Commission's map, asserting LD-15 diluted Hispanic votes in violation of VRA Section 2. App. 2, 150–198.

3. Two months later, on March 15, 2022, a voter in LD-15, Benancio Garcia, filed a separate lawsuit challenging the Commission's map as a racial gerrymander in violation of the Equal Protection Clause and requesting a three-judge panel pursuant to 28 U.S.C. § 2284(a). App. 199–224. A three-judge panel was empaneled to hear the *Garcia* case.

4. Two weeks after *Garcia* was filed, on March 29, 2022, Petitioners sought to intervene as of right in Respondents' VRA Section 2 case "because Plaintiffs' [Respondents'] VRA claim 'pulls in the opposite direction' of their [Petitioners'] Fourteenth Amendment right not to be assigned 'to a district on the basis of race without sufficient justification'" and the "outcome of this [VRA] case will also affect the boundaries of the legislative districts in which each of the Intervenors are registered and intend to vote and where Representative Ybarra is actively running for reelection." App. 233. Petitioners argued that their interests would not be adequately represented by

Secretary of State Hobbs, as "Defendant Hobbs ha[d] 'notifie[d] the Court that he intends to take no position on the issue of whether the state legislative redistricting plan violates section 2 of the Voting Rights Act." App. 228, 230–34. They alternatively argued for permissive intervention based on sharing common questions of law or fact with Respondents. App. 238–40.

On May 6, 2022, the district court granted Petitioners permissive intervention but denied intervention as of right, concluding that Secretary Hobbs adequately represented Petitioners' interests. App. 91–93, 96. The court observed that Petitioners "intend to oppose plaintiffs' request for relief under Section 2" and that they "might raise new, legitimate arguments" against such relief. App. 95.

5. In November 2022, Washington State held its general election for state legislative districts using the Commission's map. For LD-15, a Latina Republican candidate for state senate, Nikki Torres, defeated her White Democratic opponent, Lindsey Keesling, by over thirty-five points (67.7% to 32.1%), despite Republican candidates outpolling Democratic candidates in that district by an average of only 1.9 points in the 2016 through 2020 elections. App. 315, 329–31. The victory was hardly indicative of Hispanic vote dilution.

6. Approximately six months after they intervened, in November 2022, Petitioners sought permission to file an amended answer, asserting *inter alia* that Respondents had failed to state a claim for relief under VRA Section 2, and that any remedy under VRA Section 2 would violate the Fourteenth

Amendment "by requiring a map drawn on the basis of race." App. 225, 283. The proposed amendment also asserted a crossclaim against the State and Secretary Hobbs, seeking declaratory injunctive relief, on the basis that as configured by the Commission, LD-15 was a racial gerrymander in violation of the Equal Protection Clause. App. 310–311. Because of this equal protection claim, Petitioners requested a three-judge panel pursuant to 28 U.S.C. § 2284(a). App. 310.

The district court denied Petitioners' request to amend or assert an equal protection crossclaim, reasoning that the equal protection claim was "essentially the same one presented in *Garcia,*" that Petitioners had engaged in "undue delay," and that the amendment and crossclaim would prejudice the other parties. App. 82–84. Moreover, the district court concluded that "judicial efficiency will best be served by hearing the Section 2 and the equal protection claims [in *Garcia*] together" thereby consolidating *Garcia* with this case for purposes of trial. App. 85.

7. The consolidated trial was held and, shortly thereafter, in August 2023, the *Palmer* district judge ruled that LD-15 violated VRA Section 2 because, although it was majority-Hispanic, "the boundaries of LD 15, in combination with the social, economic, and historical conditions in the Yakima Valley region, results in an inequality in the electoral opportunities enjoyed by white and Latino voters in the area." App. 78. The court then asked the State to revise its maps to conform to its VRA holding, but the State declined. App. 78–79, 2. The parties submitted competing maps, and the court held an additional evidentiary hearing, ultimately adopting Remedial Map 3B submitted by Respondents. App. 33–35.

The court-drawn map "remedied" the VRA Section 2 violation it found in LD-15 by *reducing* the number of Hispanics in the district from 52.6% to 50.2% HCVAP. App. 314–15, 316. To achieve this "remedy," the district court altered over a quarter (13 out of 49) of Washington's legislative districts, moving a half-million Washingtonians into new districts—all in the name of remedying supposed racial vote dilution in a single district, LD-15, in a manner that reduced that district's Hispanic population. App. 314–16. Petitioners presented an alternative remedial map that impacted only two districts. But the district court selected Respondents' map that redrew over a quarter of the State's districts in ways that benefited the Democratic Party.

8. The court-drawn remedial map harmed Petitioners in a concrete, particularized way. Petitioner Jose Trevino was moved out of LD-15 into a new, less Hispanic district (LD-14) that diluted his and other Hispanic votes and did so on the basis of race. App. 340–44. Likewise, the court-drawn remedial map harmed Petitioner Alex Ybarra, because the district he represented in the state legislature (LD-13), and in which he lived and voted, was substantially reconfigured to remove approximately 30,000 voters, many of whom were Hispanic voters, replacing them with voters who were more White and Democratic-leaning. App. 433–34. This reconfiguration not only discriminated against Ybarra on the basis of race and diluted his vote, but it cost him money and made his reelection more difficult. App. 346–48.

9. The district court's VRA liability determination had other negative effects. Four weeks

after the district court concluded that the Commission's map violated VRA Section 2, the three-judge panel in *Garcia* concluded, in a split decision, that "[s]ince LD 15 has been found to be invalid [by the district court in *Palmer*] and will be redrawn (and therefore not used for further elections), the Court cannot provide any more relief to Plaintiff" and dismissed Garcia's equal protection claim as moot. App. 100–02.

a. Judge VanDyke dissented from the three-judge district court's opinion, asserting that by finding VRA liability without considering whether LD-15 violated equal protection, the *Palmer* court put the cart before the horse, "jump[ing] ahead to decide whether a hypothetically constitutional map would violate the VRA." App. 121. He concluded that the Commission's map "violates the Equal Protection Clause," and is "void *ab initio*," and therefore the single-judge decision in *Palmer* was merely an "advisory opinion" *Id.* Moreover, Judge VanDyke concluded that Garcia still had a live racial gerrymandering claim that had never been passed upon by the three-judge panel. App. 127–29 .

b. The Ninth Circuit affirmed the three-judge panel's mootness determination, concluding that because the district court here in *Palmer* had ordered a remedial district that "invalidated LD 15 and replaced it with a new legislative district, Legislative District 14 ("LD 14")," Mr. Garcia's equal protection claim—involving the defunct LD-15—was no longer active. App. 97–99.

10. Petitioners likewise appealed the *Palmer* decision to the Ninth Circuit, asserting *inter alia* that they have standing to challenge the district court's

VRA liability determination and to challenge the court-drawn remedial map as violative of both VRA section 2 and the Equal Protection Clause. The Ninth Circuit disagreed, holding that Petitioners lack standing to challenge both the district court's VRA liability determination and the court-drawn remedial map as a VRA Section 2 violation, but that Petitioner Trevino alone has standing to challenge the court-drawn remedial map as an equal protection violation. App. 2–3.

a. On the issue of Petitioners' standing to challenge the district court's VRA liability determination, the Ninth Circuit concluded that Petitioner Trevino's racial classification injury—derived from his being resorted from LD-15 into a less Hispanic LD-14—was not "fairly traceable" to the district court's VRA liability determination. App. 11. Trevino asserted that racial classification is "inherent to Section 2 remedies" but the Ninth Circuit disagreed, reasoning that while "many cases" of redistricting "implicate[] racial considerations, those challenges rest on 'unequal treatment,' or a constitutionally prohibited 'use of race.'" App. 12. Although somewhat cryptic, presumably this means that the Ninth Circuit believes that explicit consideration of race in VRA Section 2 liability determinations is *per se* permissible. Petitioners disagree.

Perhaps sensing the weakness of its position, the Ninth Circuit further concluded that "[e]ven if it is possible to trace a race-classification injury to a liability determination," Petitioner Trevino still had no standing because he did not "plausibly allege[] that the specific method or substance of that [liability]

determination somehow made race-based treatment in the remedial phase more likely." App. 12. It then remarkably concluded that because Petitioner Trevino's harms "arise only from the alleged use of race in crafting the Remedial Map, and bears no connection to the liability judgment, he lacks standing to challenge the latter." App. 12–13 .

b. Regarding Petitioner Ybarra's standing to challenge the district court's VRA liability determination, the Ninth Circuit held, "At the time of this appeal, the 2024 election for the Washington state legislature had not occurred" and thus, Ybarra's harms relating to increase campaign expenditures and reduced chances of reelection were merely "past harms" he had suffered during the 2024 campaign that could support standing for his claim of prospective equitable relief. App. 13 . As to similar future harm caused by the court-drawn remedial map, the Ninth Circuit held that Ybarra had "not declared any intention of running again" in 2026 and even if he did so intend, there was "no reason to believe that increased expenditures" would persist, since by 2026, his constituents would be familiar with him. App. 13–14. These future harms were thus too speculative to support standing. App. 14.

The Ninth Circuit likewise dismissed Ybarra's claim of harm based on reduced chances for reelection caused by the court's VRA liability determination, concluding that even though the court-drawn map reduced the Republican lean of his district, any reduction in his reelection, "[a]ny chain of causation from the liability determination to Ybarra's [reduced reelection chance] injury is too tenuous to support standing." App. 14.

11. Petitioners also asserted two affirmative claims for relief that flowed from the court-drawn remedial map: (1) their own VRA vote dilution claim; and (2) an equal protection claim. The Ninth Circuit denied standing for both Petitioners on the vote dilution claim but granted standing to Petitioner Trevino alone on the equal protection claim. App. 15.

a. Regarding Petitioners' VRA vote dilution claim, the Ninth Circuit stated that the "only evidence proffered tending to show vote dilution is that the [HCVAP] declined slightly, from 52.6% in the [Commission's] LD 15 to 50.2% in the Remedial LD 14." App. 17. This statistical vote dilution was insufficient, reasoned the Ninth Circuit, because VRA vote dilution "involves a holistic analysis." *Id.* Under such analysis, the court must consider the "specific political dynamic of a given region" and a "bare assertion of a marginally diminished group is not enough" to show vote dilution. App. 17. The Ninth Circuit "decline[d] to infer" that a voter's vote "has been diluted merely because he is Hispanic and will now vote alongside fewer Hispanics" because of the district court's remedial map. *Id*.

b. Regarding Petitioners' equal protection claims against the court-drawn remedial map, the Ninth Circuit held that Petitioner Trevino had standing to assert racial gerrymandering because he resided in an allegedly gerrymandered district (LD-14) and vacatur of the remedial map would redress his equal protection–based harm. App. 17–18.

12. On the merits of Petitioner Trevino's equal protection claim, the Ninth Circuit held that under this Court's prior precedents, such as *Cooper v.*

Harris, 581 U.S. 285 (2017) and *North Carolina v. Covington*, 585 U.S. 969 (2018), a racial gerrymandering claim under the Equal Protection Clause must establish that race was the "predominant factor" in redistricting and absent that, strict scrutiny is not required. App. 20–21. It concluded that race did not predominate in the district's remedial map decision but instead was based on a desire to "avoid gratuitous changes to" the Commission's map and keep the Yakama Nation tribe together, and it was consistent with traditional redistricting criteria. App. 21.

The Ninth Circuit further held that, even though the district court had expressly stated that its "fundamental goal" in drawing the remedial map was to "unite the Latino community of interest in the region" and expressly rejected Petitioners' proffered remedial map because it failed to unite that Latino community, these statements were "far from sufficient to show that race predominated" in drawing the remedial map. App. 27–28. It concluded that the "Latino community in the Yakima Valley evinces the 'common thread of interests' rendering it a 'tangible communit[y] of interest" and that keeping that community together was "not tantamount to a predominantly racial motivation." App. 27 (quoting *Miller v. Johnson*, 515 U.S. 900, 919–20 (1995).

Finally, the Ninth Circuit concluded, "Even if race—as distinct from belonging to a political community—were '*a* motivation' in the district court's actions, which it was not, that motivation alone would not trigger strict scrutiny. The touchstone is whether race predominates in shaping that configuration." App. 28 (emphasis in original).

REASONS FOR GRANTING THE PETITION

To Petitioner' knowledge, the decision below is the only circuit opinion that has ever held that parties who have suffered uncontested, concrete and particularized injury flowing from a district court's adverse liability determination lack standing to challenge that liability determination simply because the *remedy* employed to cure that liability was imposed in a *separate order*. If this holding is correct, courts can readily deprive litigants of standing to appeal adverse liability determinations by putting off their remedy decision for another day. The "fairly traceable" prong of Article III standing is not dependent on procedural technicalities such as bifurcation of liability and remedy proceedings. This Court should grant the petition to make this point clear.

Relatedly, the decision below gave short shrift to the injury suffered by candidates such as Petitioner Ybarra, because "winning, and doing so as inexpensively and decisively as possible, are not a candidate's only interests in an election." *Bost v. Ill. State Bd. of Elections*, 607 U.S. —, 2026 WL 96707 (Jan. 14, 2026). As this Court recently held in *Bost*, candidates also "suffer when the process departs from the law." *Id*. at *3. Here, both the district court's liability determination and its remedy departed from statutory and constitutional law alike. This case provides an excellent vehicle for reaffirming candidates' standing to challenge state action—particularly judicial action—that alters the way elections are conducted, including the way districts are drawn.

Finally, if the decision below is allowed to stand, lower courts will continue to defy this Court's equal protection jurisprudence, which demands strict scrutiny for all race-based classifications. *Students for Fair Admissions*, 600 U.S. at 206, 214. Equal protection is a central tenet of the Constitution, and "[e]liminating racial discrimination means eliminating all of it." *Id.* at 206. All individuals, regardless of race, are entitled to be free from race-based classifications imposed by their government. Equal protection does not mean, as it did in George Orwell's *Animal Farm*, that "[a]ll animals are equal, but some animals are more equal than others." By failing to apply strict scrutiny to the race-based classifications imposed on Petitioners here, the courts below undermined the Constitution's guarantee of equal protection of the laws.

These questions are both important and recurring. Resolution by this Court is warranted because if the Ninth Circuit's decision is allowed to stand: (1) standing can be manipulated by the bifurcation of liability and remedial determinations; (2) standing for candidates can be denied as unredressable even though a ruling in the candidate's favor would provide relief; (3) VRA Section 2 will become a vehicle by which race-based vote dilution can be *increased* rather than reduced; (4) candidates' standing can be denied despite a deprivation of fair process; and (5) strict scrutiny can be evaded under equal protection when race is an inherent motivation for drawing a race-based remedial map or when race is only "a" motivation for race-conscious decision-making.

I. THE DECISION BELOW IS EGREGIOUSLY WRONG AND CONTRARY TO SUPREME COURT PRECEDENT

A. The Traceability Element Does Not Require Proximate Cause

The Ninth Circuit's rationale for rejecting Petitioners' standing to challenge the VRA liability determination rested upon a rigid view of standing that is directly contradicted by this Court's precedents. The Circuit did not contest that Petitioners suffered concrete, particularized harm as a result of the district court's VRA liability determination. It skipped over the injury-in-fact element, concluding that Petitioners' injuries are not "fairly traceable" to the VRA liability determination, App. 11, but instead only to the court-drawn remedial map. App. 12.

In the Ninth Circuit's view, there were two standing deficiencies for challenging the VRA liability determination. First, that court concluded that there was insufficient evidence that the district court's VRA decision "used race, classified Trevino by race, or treated him unequally based on his race." App. 11. It dismissed as "rhetoric" Trevino's argument that race-based classification is "inherent" in both Section 2 liability and remedy determinations. App. 12. But this is not mere rhetoric, and the Circuit's offhand dismissal of this argument was improper.

As this Court has recognized, by its very nature, "the VRA *demands consideration of rac*e . . . ." *Abbott v. Perez*, 585 U.S. 579, 587 (2018) (emphasis added). Accordingly, this "Court has long recognized

that its VRA jurisprudence and the Equal Protection Clause are in tension." *Louisiana v. Callais*, 145 S. Ct. 2608, 2610 (2025) (Thomas, J., dissenting). This Court's ongoing consideration of *Callais v. Louisiana*, No. 24-109, evinces the seriousness of this issue.[2] In light of this longstanding concern, the Ninth Circuit's refusal to even acknowledge that VRA Section 2 liability inherently involves consideration of race was clear legal error.

The Ninth Circuit's second error regarding the "fairly traceable" element of standing was its conclusion that "[e]ven if it is possible to trace a racial-classification injury to a liability determination," a litigant must show specifically how "that determination somehow made race-based treatment in the *remedial phase* more likely." App. 12 (emphasis added). It reasoned that the race-based classification injury "arose only from the alleged use of race in crafting the Remedial Map and bears *no connection* to the liability judgment"—so Petitioner Trevino "lacks standing to challenge the latter." App. 12–13 (emphasis added).

The Ninth Circuit made the same mistake with regard to Petitioner Ybarra when it concluded that his allegation of harm due to a reduced chance of reelection was traceable solely to the court-drawn remedial map, not the antecedent VRA liability determination: "The liability order had no assured impact whatsoever on LD 13" because it did not "determine which of LD 13's constituents might be

[2] As of the time of this filing, *Callais* remains pending. The outcome of *Callais* may result in a conclusion that this matter should be reversed and remanded in light of this Court's forthcoming judgment.

removed or which constituents from other districts might be added." App. 14. It thus concluded that the "chain of causation from the liability determination to Ybarra's injury is too tenuous to support standing." App. 15.

The Ninth Circuit's feeble attempt to erect a firewall between the court's VRA liability determination and its remedial map was gross legal error. "Proximate causation is not a requirement of Article III standing, which requires only that the plaintiff's injury be fairly traceable to the defendant's conduct." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 134 n.6 (2014). The "fairly traceable" element does not require that the injury in fact derive from "the very last step in the chain of causation." *Bennett v. Spear*, 520 U.S. 154, 169 (1997). If it were otherwise, litigants could be deprived of standing to appeal an adverse liability determination whenever the district court opts to bifurcate liability and remedy proceedings. Article III's traceability demand does not hinge upon such procedural machinations.

Moreover, even under a more rigid, proximate cause conception of the traceability element, the VRA liability determination and the court-drawn remedial map are inextricably intertwined. But for the VRA liability determination, there *would have been no remedial map*. And it is the remedial map—predicated on the VRA liability determination—that caused Petitioners' race-based harms. Petitioners' injuries are thus "fairly traceable" to both the district court's VRA liability determination and the consequent remedial map.

B. Petitioner Ybarra's Injuries Were Redressable

The Ninth Circuit concluded that the harms suffered by Petitioner Ybarra as a result of the VRA liability determination were "past" harms that could not support standing based on a lack of redressability. App. 13.

This was obvious legal error under this Court's precedents. Article III standing is assessed "at the commencement of the litigation." *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 732 (2008) (quoting *Friends of the Earth, Inc. v. Laidlaw Envt'l Servs. (TOC), Inc.*, 528 U.S. 167, 191 (2000)). Here, the litigation was commenced on January 19, 2022, when Respondents filed their VRA Section 2 lawsuit. App. 150. At that time, Ybarra's harm was not a "past" harm but a present, imminent one. He was a sitting state representative for LD-13, a district adjacent to LD-15, and Respondents' lawsuit challenging LD-15 posed an "actual or imminent, not conjectural or hypothetical" threat that his district would be reconfigured, causing increased expenditures and a reduced chance of reelection. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (internal quotation marks omitted); *accord Davis*, 554 U.S. at 734. His belief that Respondents' lawsuit would harm him this way was reasonable, and certainly not "improbable," given that his district was adjacent to LD-15. *Laidlaw*, 528 U.S. at 184–85.

The threat Representative Ybarra faced, moreover, continued throughout the litigation and was fully redressable by the court. Indeed, after the district court determined VRA liability and drew its

remedial map, Ybarra's district was in fact reconfigured. He lost over 30,000 constituents, many of whom were Hispanic, replaced with new voters who were more on average White and Democratic-leaning. App. 347. That injury continues to this day. As for redressability, this Court has made clear that the inquiry is whether the injury "is likely to be redressed *by a favorable decision*." *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 38 (1976) (emphasis added); *accord Rivers v. Guerrero*, 605 U.S. 443, 451–52 (2025). Here, if the district court had ruled in Petitioners' favor by holding that LD-15 did *not* violate VRA Section 2, Ybarra would not have suffered any harm. Ybarra's injuries thus were fully redressable by a court decision in his favor, contrary to the Ninth Circuit's conclusion otherwise. App. 13–15.

C. Petitioners Have Standing to Challenge the Remedial Map

Even after repeatedly emphasizing that Petitioners' injuries were traceable only to the court-drawn remedial map, App. 12–15, the Ninth Circuit held that Petitioners lacked standing to challenge that map as a violation of VRA Section 2. App. 16–17. It did so even though the remedial map *reduced* the percentage of the HCVAP from 52.6% to 50.2% while also moving more White, Democratic-leaning voters into the district. The Ninth Circuit argued that such evidence was a "bare assertion" of vote dilution that was "not enough to show, let alone permit reasonable inference of any change in the effectiveness of any [Petitioner's] vote or other individualized disadvantage to any [Petitioner's] political participation." App. 17. What matters, held the court,

is that a particular racial group's vote be diluted via a "holistic analysis of the relative opportunities for political participation of various groups, considering the specific political dynamics of a given region." *Id.*

The Ninth Circuit's "totality of the circumstances" rationale is derived from this Court's decision in *Thornburg v. Gingles*, 478 U.S. 30, 50–51, and its progeny. But even assuming that *Gingles* remains unscathed after this Court's pending decision in *Callais*, it has *never been used* to find VRA Section 2 vote dilution liability in a district, like LD-15, that is *already majority-minority*. This is especially so here, where the Commission's version of LD-15 was actually used during the 2022 election, and the Republican Latina candidate for state senate in LD-15, Nikki Torres, defeated her White, Democratic opponent by over thirty-five points. App. 358, 370. This real-world example hardly suggests that LD-15 diluted Hispanic voting power–just that it did not elect a Democratic candidate.

More fundamentally, the district court's VRA liability determination turned Section 2 on its head, employing Section 2 to remedy a hypothetical dilution of Hispanic votes in LD-15 under a "totality of the circumstances" analysis by *further diluting* Hispanic votes in that district. If race-based vote dilution is the problem Section 2 addresses, further dilution of that racial group's voting power cannot possibly remedy that problem. Holding otherwise, as the lower courts did here, makes a farce out of Section 2. This Court intended lower courts to use a "totality of the circumstances" analysis to flush out vote dilution, not to *cause* it. *Gingles*, 478 U.S. at 79. No other court has

ever allowed this, and this Court cannot allow such a perverse construction of Section 2 to stand.

D. Representative Ybarra Also Has Standing Due to a Deprivation of Fair Process

The Ninth Circuit's denial of standing for Representative Ybarra to challenge either the VRA liability determination or the remedial map is independently problematic given this Court's recent decision in *Bost*, which held that an "unlawful election rule can injure a candidate in several ways," including: (1) reduced reelection chances; (2) expenditure of additional resources; and (3) a deprivation of fair process and an accurate result precipitated by a "process [that] departs from the law." *Bost*, 2026 WL 96707, at *3.

Here, Representative Ybarra alleged the first two injuries, which the Ninth Circuit rejected as elaborated in subsection B above. But Ybarra also alleged injury in the third way—deprivation of fair process. Specifically, he asserted that a finding of VRA Section 2 liability would depart from both existing Section 2 jurisprudence and the Constitution. App. 351–400. Under *Bost*, therefore, the district court's departure from the law under VRA Section 2 and the Equal Protection Clause created an independent, cognizable injury in fact that the lower courts failed to address. This case thus provides a clean vehicle for reaffirming candidates' standing to challenge state action—particularly judicial action—that alters the way elections are conducted, including the way districts are drawn. A remand on this issue is warranted.

E. The Ninth Circuit's Failure to Apply Strict Scrutiny Was Egregious Error

Finally, in its consideration of the merits of the Equal Protection challenge[3] to the remedial map, the Ninth Circuit held that strict scrutiny was required only if there was evidence that race was the "predominant factor" in drawing the revised district lines. App. 21. It held that race was not the predominant factor because the district court, in drawing the remedial map, was concerned about the "Latino community in the Yakima Valley," which it viewed as a "political community," not a racial community. App. 27–28. It further held that "[e]ven if race—as distinct from belonging to a political community—were 'a motivation' in the district court's actions . . . that motivation alone would not trigger strict scrutiny" because the "touchstone is whether race predominates in shaping the configuration." App. 28.

The Ninth Circuit's holding undermines this Court's decision in *Students for Fair Admissions*, which held that race-conscious decision-making must satisfy strict scrutiny. *Students for Fair Admissions*, 600 U.S. at 206 ("Any exception to the Constitution's demand for equal protection must survive a daunting two-step examination known in our cases as 'strict scrutiny.'"). *See also id.* at 213, 218 (equal protection forbids consideration of race as a stereotype or negative). If race-conscious admissions programs violate equal protection, so too should race-conscious

[3] The Ninth Circuit found that only Petitioner Trevino had standing to litigate the equal protection claim. App. 18.

redistricting. "Eliminating racial discrimination means eliminating all of it." *Id.* at 206.

Here, the Ninth Circuit acknowledged that, in drawing the remedial map, the district court was focused on "the Latino community in the Yakima Valley." App. 27. Remarkably, the Ninth Circuit claimed this focus was not racial, but political.[4] But as Petitioner's Ninth Circuit brief pointed out, district court "failed to evaluate whether voting was polarized on the basis of partisanship [i.e., politics] rather than race." App. 367. Any VRA liability determination, therefore, could not have been based on a determination that the "Latino community in the Yakima Valley" was a political rather than racial community. App. 27, 373–74. Given this reality, it is unreasonable to conclude, as the Ninth Circuit did, that the district court's remedial map was based on anything other than race. Failing to apply strict scrutiny to the court's race-based remedial map thus undermined the Constitution's guarantee of equal protection of the laws. Indeed, even if race was only "*a* motivation" of the district court, it should trigger strict scrutiny, contrary to the Ninth Circuit's conclusion otherwise. App. 26 (emphasis in original); *Students for Fair Admissions*, 600 U.S. at 206, 213, 214; *see also id.* at 232, 262–63 (Thomas, J., concurring) (providing an originalist defense of the colorblind Constitution). "[T]rying to derive equality from inequality" is "inherent folly" that is inherently

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[4] If this Court concludes that the remedy map was selected on the basis of politics rather than race, the entire case should be dismissed and the original map restored because partisan considerations may not serve as the basis of a federal court districting claim. *Rucho v. Common Cause*, 588 U.S. 684, 703–09 (2019).

incompatible with the guarantee of equality protected by the Equal Protection Clause. *Id.* at 203.

Because the dismissal of all of Petitioners' claims (except Trevino's equal protection claim) were jurisdictional, the merits of those claims remain unresolved. Certiorari and remand would allow the lower courts to consider the merits of the important questions raised by Petitioners.

II. THE QUESTIONS PRESENTED ARE IMPORTANT AND RECURRING

These questions are both important and recurring. Resolution by this Court is warranted because if the Ninth Circuit's decision is allowed to stand: (1) standing can be manipulated by the bifurcation of liability and remedial determinations; (2) standing for candidates can be denied as unredressable even though a ruling in the candidate's favor will provide relief; (3) VRA Section 2 will become a vehicle by which race-based vote dilution can be *increased* rather than reduced; (4) candidates' standing can be denied despite a deprivation of fair process; and (5) strict scrutiny can be evaded under equal protection when race is an inherent motivation for drawing a race-based remedial map or when race is only "a" motivation for race-conscious decision-making.

Indeed, the Ninth Circuit's contradictory conclusions on both standing and equal protection illustrate the potential harm that could be wrought if its decision is allowed to stand. For example, the court conceded that Petitioners had suffered injury in fact and emphasized that Petitioners' injuries were

traceable only to the court-drawn remedial map. App. 11–13. Yet when Petitioners tried to *challenge that map*, the Ninth Circuit held that they lacked standing to do so. It reasoned, perplexingly, that the Commission's version of LD-15 diluted Hispanic votes in violation of VRA Section 2 despite creating a majority-minority HCVAP district that *elected a Hispanic candidate*. Even more remarkably, the court-ordered map actually *reduced* the voting power of Hispanics in that district. App. 17. The Ninth Circuit reasoned that race-based vote dilution does not occur merely because the voting power of a certain race is diluted. Instead, it held that Section 2 requires a "totality" approach that *allows race-based vote dilution* by reducing Hispanic CVAP in a remedy map—something no other court has ever done. App. 17.

The lower courts' handling of Petitioners' equal protection claim is equally remarkable. The district court *refused to consider* it because it found that VRA Section 2 had been violated and the *Garcia* court would address equal protection. App. 45. The *Garcia* court then *also refused* to address the equal protection claim on the basis that *Palmer* found VRA Section 2 violated. App. 101–02. Such machinations to avoid an important constitutional question are inappropriate. The net result is that none of the litigants who raised equal protection, either in *Palmer* or *Garcia*, had a fair opportunity to litigate this constitutional issue. The Ninth Circuit purported to address it but as elaborated above, it summarily dismissed the claim by dispensing with strict scrutiny. An issue of race-based classification under the Equal Protection

Clause deserves more searching judicial analysis, and it certainly should not be evaded by gamesmanship.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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