

IN THE SUPREME COURT OF THE UNITED STATES

PRESS ROBINSON, ET AL.,)
Appellants,)
v.) No. 24-110
PHILLIP CALLAIS, ET AL.,)
Appellees.)

www.hrcreporters.com

1 APPEARANCES:
2 JANAI NELSON, ESQUIRE, New York, New York; on behalf
3 of Appellants Press Robinson, et al.
4 J. BENJAMIN AGUIÑAGA, Solicitor General, Baton Rouge,
5 Louisiana; on behalf of Appellant Louisiana.
6 EDWARD D. GREIM, ESQUIRE, Kansas City, Missouri; on
7 behalf of the Appellees.
8 HASHIM M. MOOPPAN, Principal Deputy Solicitor General,
9 Department of Justice, Washington, D.C.; for the
10 United States, as amicus curiae, supporting the
11 Appellees.
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	JANAI NELSON, ESQ.	
4	On behalf of Appellants Press Robinson,	
5	et al.	3
6	ORAL ARGUMENT OF:	
7	J. BENJAMIN AGUIÑAGA, ESQ.	
8	On behalf of Appellant Louisiana	48
9	ORAL ARGUMENT OF:	
10	EDWARD D. GREIM, ESQ.	
11	On behalf of the Appellees	82
12	ORAL ARGUMENT OF:	
13	HASHIM M. MOOPPAN, ESQ.	
14	For the United States, as amicus	
15	curiae, supporting the Appellees	102
16	REBUTTAL ARGUMENT OF:	
17	JANAI NELSON, ESQ.	
18	On behalf of Appellants Press Robinson,	156
19	et al.	
20		
21		
22		
23		
24		
25		

1 P R O C E E D I N G S

2 (10:04 a.m.)

3 CHIEF JUSTICE ROBERTS: We'll hear
4 argument first this morning in Case 24-109,
5 Louisiana versus Callais, and the consolidated
6 case.

7 Ms. Nelson.

8 ORAL ARGUMENT OF JANAI NELSON

9 ON BEHALF OF APPELLANTS PRESS ROBINSON, ET AL.

10 MS. NELSON: Thank you, Mr. Chief
11 Justice, and may it please the Court:

12 A mere two years ago, in Allen versus
13 Milligan, a case nearly identical to Robinson,
14 this Court noted that under certain
15 circumstances, it has authorized race-based
16 districting to remedy state districting maps
17 that violate Section 2.

18 Louisiana affirmed findings that --
19 sorry. Six appellate judges affirmed findings
20 that Louisiana, in the face of extreme racially
21 polarized voting, packed and cracked Black
22 voters, and it rejected seven non-dilutive maps
23 in favor of one that would give its 58 percent
24 declining white electorate entrenched control
25 over 83 percent of the congressional districts.

1 Louisiana's creation of a district to
2 remedy that discrimination and to ensure that
3 Black Louisianans have an equal opportunity to
4 participate in the process is constitutional.
5 Precedent, from Brooks to Milligan, from Ex
6 parte Virginia to SFFA, confirm that.

7 And three facts guard against
8 indefinite use of race. First, not all
9 Section 2 remedies center race. Second, when
10 racialized politics and residential segregation
11 wane, so will the ability to satisfy Gingles.
12 Third, almost every redistricting map is
13 replaced decennially.

14 My opponents' late-breaking and
15 record-less facial and as-applied challenges
16 seek a staggering reversal of precedent that
17 would throw maps across the country into chaos.
18 If SB8 is unsatisfactory, the proper recourse
19 is to remand and adopt one of the many
20 alternative maps that address the Section 2
21 violation and satisfy the Constitution, as this
22 Court noted in Milligan.

23 Congress is undoubtedly aware of
24 Section 2 precedent and can change it if it
25 likes, but, unless and until it does, statutory

1 stare decisis counsels staying the course.

2 I welcome your questions.

3 JUSTICE THOMAS: Counsel, what was the
4 finding or the holding in Robinson and what
5 role does it play in the SB8 map creation?

6 MS. NELSON: The finding in Robinson
7 was that there was a likelihood of succeeding
8 in a Section 2 claim proving that the State of
9 Louisiana violated Section 2 by packing and
10 cracking Black voters. So there was a Section
11 2 liability finding under a preliminary
12 injunction, and there was an ordering of a new
13 map to be drawn.

14 JUSTICE THOMAS: What is the status of
15 that case now?

16 MS. NELSON: Robinson is concluded,
17 and there's now, as we know, the challenge in
18 Callais that suggests that the map that was
19 created out of -- out of Robinson, SB8, is a
20 racial gerrymander. And that's why we're here
21 today.

22 JUSTICE THOMAS: So SB8 was the remedy
23 for the Robinson case? I thought that was a
24 preliminary injunction.

25 MS. NELSON: Yes. There was a

1 preliminary injunction indicating that we were
2 likely to succeed if we continued to pursue a
3 claim. This is after a five-day hearing with
4 21 witnesses and a robust record.

5 So the court found based on that
6 evidence that we were likely to succeed on a
7 liability -- on liability and ultimately
8 instructed the State of Louisiana to draw a
9 correct and constitutional map.

10 JUSTICE THOMAS: But there was never a
11 full merits determination?

12 MS. NELSON: That's correct.

13 JUSTICE THOMAS: SB8 was the --
14 entirely separate, though, from that
15 litigation?

16 MS. NELSON: SB8 came after the
17 litigation. It was in response to the court's
18 order to create an opportunity -- an
19 opportunity district and a second map that
20 would cure the Section 2 violation.

21 JUSTICE THOMAS: But did the court
22 order this particular map?

23 MS. NELSON: No. The court gave the
24 State of Louisiana an opportunity, as this
25 Court has suggested it do. It gave it broad

1 discretion, gave it wide latitude to create a
2 map that it felt was satisfactory. And,
3 ultimately, that is the map that was in effect
4 and elected a congressional delegation in 2022.

5 JUSTICE THOMAS: Thank you.

6 CHIEF JUSTICE ROBERTS: Counsel, you
7 began with Allen against Milligan. That case,
8 of course, took the existing precedent as a
9 given and considered Alabama's application of
10 the -- its approach to the evidence and all
11 that under that precedent. Is that -- is that
12 your understanding as well?

13 MS. NELSON: That's correct. In fact,
14 the case was stayed because this Court held
15 that case in abeyance until it decided Milligan
16 because it understood Milligan to be important
17 to understanding the case in Robinson.

18 CHIEF JUSTICE ROBERTS: But it was a
19 case in which we were considering Alabama's
20 particular challenge based on its -- what
21 turned out to be an improper evidentiary
22 showing?

23 MS. NELSON: I'm sorry. I --

24 CHIEF JUSTICE ROBERTS: In other
25 words, we were looking at Alabama's suggestion

1 that -- how to apply its body of evidence or
2 which evidentiary considerations we should take
3 into account under the existing precedent?

4 MS. NELSON: That's correct.

5 CHIEF JUSTICE ROBERTS: Thank you.

6 JUSTICE JACKSON: But I -- I would ask
7 you to just expound a little bit on why you
8 think then that Allen versus Milligan is
9 relevant or the fact that we held or what we
10 held in that case is relevant to what we're
11 doing here today.

12 MS. NELSON: Allen versus Milligan is
13 a nearly identical case. There was a similar
14 challenge that -- where -- where we won on a
15 preliminary injunction, that there was a
16 Section 2 violation because the State of
17 Alabama in that case cracked and Black --
18 cracked and packed the Black community, cracked
19 the Black Belt, and, ultimately, this Court
20 found that that was a clear violation of
21 Section 2.

22 Similarly, what we have in Louisiana
23 is a circumstance where Louisiana was
24 constructing a map and had a single district
25 that could elect a preferred Black candidate

1 and had an opportunity to draw a second
2 district based on the size and geography of its
3 Black population and chose not to do so in the
4 face of seven illustrative maps that made clear
5 that the -- that they were not -- not -- they
6 were not dilutive.

7 JUSTICE JACKSON: And what we were --
8 what we, in part, were considering in the
9 context of Milligan was whether or not to
10 change the Section 2 criteria, the Gingles
11 criteria. Is that your understanding?

12 MS. NELSON: That's right. The State
13 of Alabama --

14 JUSTICE JACKSON: And we -- and we
15 chose not to, and so --

16 MS. NELSON: The -- the Court was very
17 clear about that.

18 JUSTICE JACKSON: And so the parties
19 -- I mean, I under -- I took your initial
20 starting with Milligan to be a suggestion that
21 we not revisit the determination that we made
22 just two years ago that the Gingles test not be
23 revised.

24 MS. NELSON: That -- that is
25 absolutely correct. And, in fact, Appellees

1 on page 11 of their supplemental brief state
 2 that they understand that this Court answered
 3 that question clearly that results is a -- a
 4 constitutional test, that race can be used to
 5 remedy violations, and it therefore isn't
 6 making that particular argument.

7 In fact, even the SG acknowledged that
 8 race can be used in a remedial form when
 9 necessary. So those questions have been asked
 10 and answered by this Court in Allen versus
 11 Milligan, and some parties here recognize that
 12 those are closed questions.

13 JUSTICE ALITO: Can I ask you a
 14 question about what Milligan means? In -- in
 15 Milligan, the Court said that the first Gingles
 16 precondition is that "The minority group must
 17 be sufficiently large to constitute a majority
 18 in a reasonably configured district."

19 And then it went on to say that "A
 20 district will be considered reasonably
 21 configured if it comports with traditional
 22 districting criteria."

23 Would you agree that incumbent
 24 protection is one of those?

25 MS. NELSON: Incumbent protection has

1 been considered a traditional districting
2 criteria. However, we know that protecting an
3 incumbent, like core retention, can continue
4 to perpetuate discrimination, and it does not
5 trump the antidiscrimination principle.

6 JUSTICE ALITO: All right. If --
7 if incumbent -- if incumbent protection is a
8 permissible districting criteria, then, under
9 Rucho, isn't seeking partisan advantage also an
10 objective that a legislature may legitimately
11 seek?

12 MS. NELSON: Not if it comes at the
13 cost of the equal protection principle and
14 the Fifteenth Amendment's prohibition on race
15 discrimination in voting. It is not.

16 JUSTICE ALITO: Well, if the objective
17 is simply to maximize the number of
18 representatives of a particular party, that's
19 seeking a partisan advantage, it is not seeking
20 a racial advantage, isn't that right?

21 MS. NELSON: Well, if race is used as
22 a means to seek the partisan advantage, then
23 that is unconstitutional.

24 JUSTICE ALITO: Oh, sure. Sure.

25 MS. NELSON: There's no -- there's no

1 part of --

2 JUSTICE ALITO: If race is -- if race
3 is used as a proxy for partisan affiliation.

4 Let me ask you a related question
5 about block voting, which is the second --
6 figures in the second and third Gingles
7 precondition.

8 If registered Democrats overwhelmingly
9 vote for Democratic candidates regardless of
10 the candidate's race, is that block voting?

11 MS. NELSON: If you're looking at it
12 simply from a party perspective, no. We don't
13 judge block voting based on party, we judge it
14 based on race. Racially polarized voting is
15 measuring racial performance --

16 JUSTICE ALITO: Okay.

17 MS. NELSON: -- and voting behavior.

18 JUSTICE ALITO: If -- and, likewise,
19 if Republican -- registered Republicans
20 overwhelmingly vote for Republican candidates,
21 that's not block voting?

22 MS. NELSON: That's not how we measure
23 voting. We measure voting based on race for
24 purposes of Section 2 because the Constitution
25 forbids race discrimination in voting, not

1 party discrimination.

2 JUSTICE ALITO: All right. So, if
3 it happens to be that people of one race or
4 another race overwhelmingly prefer one of the
5 political parties, does that transform the
6 situation into racial voting, or is it still
7 just partisan voting?

8 MS. NELSON: No. You look at how
9 different races of voters vote and whether they
10 vote in a way that is polarized. And the
11 Gingles test requires us to look not only at
12 that but a number of other features as part of
13 the totality-of-the-circumstances test that
14 suggest that race is playing a role to
15 contaminate the electoral process and submerge
16 minority votes in a way that violates the
17 Constitution.

18 So party cannot explain away a -- a
19 racially polarized circumstance unless we look
20 at the totality of the circumstances.

21 And I will say, in Robinson, for
22 example, the Court entertained testimony along
23 those lines, as it did in Milligan, and found
24 that it wasn't credible, that the extreme
25 racially polarized voting that we have in the

1 State of Louisiana cannot be explained away by
2 party.

3 We're talking about racially polarized
4 voting that is above 84 percent, which is more
5 than what this Court found in Thornburg versus
6 Gingles in 1986 --

7 JUSTICE ALITO: Well, that could be --

8 MS. NELSON: -- when the numbers were
9 70 percent.

10 JUSTICE ALITO: -- I mean, that could
11 be -- that could be easily analyzed by
12 statistics to see whether Black -- whether
13 white Democrats vote for Black Democratic
14 candidates at a lower rate than they do for
15 white Democratic candidates, whether white
16 Republicans vote for -- for Black Republican
17 candidates at a lower rate than they do for
18 white candidates. It's easy to isolate race
19 from that -- from that to see whether there
20 really is racially polarized voting as opposed
21 to partisan polarized voting.

22 MS. NELSON: That's right. And in the
23 State of Louisiana, that -- that analysis was
24 conducted in the Nairne case, and it was clear
25 that regardless of party, white Democrats were

1 not voting for Black candidates, whether they
2 were Democrats or not.

3 And we know that there is such a
4 significant chasm between how Black and white
5 voters vote in Louisiana that there's no
6 question that even if there is some correlation
7 between race and party that race is the driving
8 factor.

9 JUSTICE KAVANAUGH: Can you comment on
10 the solicitor general's suggestion at page 25
11 of its brief that the Court should hold that
12 Plaintiffs' illustrative district cannot
13 disregard the state's political objectives and
14 goes on to say Section 2 plaintiffs cannot
15 claim a lack of equal openness where politics,
16 rather than race, is the likely reason for the
17 State's refusal to create a majority-minority
18 district?

19 MS. NELSON: Yes. That suggestion
20 would swallow Section 2 whole. As I said,
21 party cannot trump the responsibility of states
22 to ensure that all voters have an equally open
23 electoral process.

24 The fact that Black voters may
25 correlate with voting Democrat or white voters

1 may correlate with voting Republican does not
2 deny the fact that there is racially polarized
3 voting. And the totality of the circumstances,
4 including the inability to elect Black
5 candidates in Louisiana on a statewide basis
6 for a number of offices, there's never been
7 a Black person in Louisiana elected statewide,
8 is additional indicia that race is playing an
9 outsized role in the electoral process in
10 Louisiana.

11 And so the idea that you have to show
12 that a party -- that party is the reason for
13 the racially polarized voting would eclipse the
14 entire Section 2 analysis, which is focused on
15 ferreting out and ending race discrimination in
16 the political process.

17 CHIEF JUSTICE ROBERTS: You've said
18 several times that it's playing an outsized --
19 outsized role. Is there -- what's the proper
20 size? In other words, what -- are we -- is it
21 legal room we're talking about or a significant
22 percentage? What is meant by "outsized"?

23 MS. NELSON: So this Court has held
24 for -- for a long time, beginning in Shaw and
25 in many cases since, that there's always an

1 awareness of race. There are always racial
2 considerations and even race consciousness in
3 the districting process.

4 What becomes potentially unlawful is
5 when race is the motivating factor. That's
6 what Miller versus Johnson taught us, that's
7 what Milligan reaffirmed, that the line between
8 the appropriate use of race and the use of race
9 that will get us into the strict scrutiny
10 territory is the dividing line between
11 motivation and general awareness.

12 And what I'm explaining here is that
13 when voters are blocked by a -- a -- a white
14 block vote that is so substantial that it
15 usually overrides the politically cohesive vote
16 of Black voters, then we have at least a prima
17 facie case of vote dilution, and then the Court
18 is asked to consider the totality of the
19 circumstances.

20 If I may address the durational limit
21 question which came up. I'd like to talk about
22 the fact that Section 2 is self-limiting. I
23 know that there is a general concern about the
24 indefinite use of race, and there are several
25 reasons why that concern should be allayed.

1 First and foremost, there is no
2 precedent to suggest that a statute must
3 dissolve on its own simply because it may
4 require a race remedy.

5 And, as I've mentioned, race is not
6 required by Section 2, but it can be used if
7 that is necessary to address the Section 2
8 violation.

9 In addition, the non-discrimination
10 element of the Fifteenth Amendment is a
11 permanent right, and so should be the
12 protection that Section 2 affords.

13 And, finally, this is a significant
14 concern where Congress was very clear that it
15 did not want to include a durational limit.

16 Congress included a durational limit
17 in Section 5 of the Voting Rights Act. It
18 created a mechanism for reauthorization. It
19 decidedly did not do that in Section 2.

20 JUSTICE KAVANAUGH: The issue --

21 JUSTICE BARRETT: Can I --

22 JUSTICE KAVANAUGH: -- as you know, is
23 that this Court's cases in a variety of
24 contexts have said that race-based remedies are
25 permissible for a period of time, sometimes for

1 a long period of time, decades in some cases,
2 but that they should not be indefinite and
3 should have a end point.

4 And what exactly do you think the end
5 point should be or how would we know for the
6 intentional use of race to create districts?

7 MS. NELSON: Well, Justice Kavanaugh,
8 I -- you raised a very important distinction,
9 and that's between remedies and the statute.
10 So a race-based remedy can and should and --
11 and -- and usually does have a time limit and a
12 durational limit. Section 2 court-ordered
13 remedies have a time limit, and so that is
14 something that is grounded in our case law.

15 What is not grounded in case law is
16 the idea that an entire statute should somehow
17 dissolve simply because race may be an element
18 of the remedy. So, for example, this case has
19 affirmed Title VII. It has affirmed Section
20 1982, the Family Medical Leave Act, and also
21 Section 4(e) of the Voting Rights Act in
22 Katzenbach versus Morgan, and never has it
23 suggested that any of those statutes should
24 dissolve in and of themselves --

25 JUSTICE KAVANAUGH: Well, I don't

1 think it's --

2 MS. NELSON: -- as opposed to the
3 remedy.

4 JUSTICE KAVANAUGH: I'm sorry to
5 interrupt. I don't think it's the statute.
6 It's the particular application of the statute
7 that entails the intentional deliberate use of
8 race to sort people into different districts.
9 That particular aspect, I'm guessing -- I'm
10 asking what you think the time limit on that
11 should be, or there really shouldn't be a time
12 limit. I -- I think you might be saying there
13 shouldn't be a time limit unless Congress
14 chooses one.

15 MS. NELSON: I am saying that. I'm
16 saying there should not be a time limit. But
17 I -- I also think it's critical to emphasize
18 that Section 2 does not require a race-based
19 remedy in all circumstances.

20 JUSTICE JACKSON: Is that because --

21 JUSTICE BARRETT: Can I ask --

22 JUSTICE JACKSON: -- is that --

23 JUSTICE BARRETT: I just wanted to
24 follow up on Justice Kavanaugh's question.
25 What if this is an exercise of Congress's

1 enforcement power? If we're looking at the
2 City of Boerne test and we're saying it has to
3 be congruent and proportional, would that
4 affect Justice -- your answer to Justice
5 Kavanaugh's question, that if it's going above
6 and beyond what the Fifteenth Amendment
7 requires of its own force, but Congress has
8 actually chosen the Voting Rights Act as a
9 remedy, does that affect the question of
10 whether it can go on indefinitely or not, that
11 at some point it becomes not congruent and
12 proportional?

13 MS. NELSON: No, I don't think it
14 does. First, Boerne should not apply to
15 Section 2.

16 JUSTICE BARRETT: Just assume --
17 assume --

18 MS. NELSON: Assuming -- assuming that
19 it does.

20 JUSTICE BARRETT: The premise of my
21 question is assume that it does.

22 MS. NELSON: Sure. Assuming that it
23 does, as you know, in Boerne, this Court held
24 up the Voting Rights Act as the paradigmatic
25 example of congruence and proportionality. The

1 fact that the Voting Rights Act at times may
2 require a race-based remedy does not change the
3 fact that Congress, with its enlarged powers as
4 defined by Ex parte Virginia and the line of
5 cases forward, can address conduct that is
6 beyond what the Fifteenth Amendment addresses.

7 It doesn't need to simply parrot the
8 Fifteenth Amendment. It can address conduct
9 that is even considered constitutional in order
10 to ensure that race discrimination in voting
11 does not go undetected, uncorrected, or
12 undeterred, in the words of the Senate report
13 supporting --

14 JUSTICE JACKSON: So, Ms. Nelson --

15 MS. NELSON: -- the 1982 amendments.

16 JUSTICE JACKSON: -- I -- I guess I
17 wonder if it -- if it would be helpful at least
18 as I'm thinking about it, because I think this
19 is a very important question, to -- to
20 understand, I think, that you're saying that
21 Section 2 is not a remedy in and of itself. It
22 is the mechanism by which the law determines
23 whether a remedy is necessary.

24 MS. NELSON: That's absolutely
25 correct.

1 JUSTICE JACKSON: So it's a law that
2 is just encouraging or requiring a check-in.
3 It's like a tool. It's like a -- a tape
4 measure that we're looking as to whether or not
5 certain circumstances exist, and those
6 circumstances that Congress is worried about is
7 unequal access to electoral opportunity. And
8 Section 2 tells you we have to look for those
9 circumstances, and then the Court says, yep,
10 they exist in this situation under Section 2,
11 and so now a remedy is required.

12 And in our case law, we then say,
13 okay, State, it's up to you to figure out what
14 that remedy will be. And maybe that remedy
15 involves race consciousness, maybe it doesn't.
16 Whatever. But Section 2 itself is just the
17 measure by which we determine that a remedy is
18 required.

19 MS. NELSON: That's absolutely
20 correct.

21 JUSTICE JACKSON: And so that's why it
22 doesn't need a time limit because it's not
23 doing any work other than just pointing us to
24 the direction of where we might need to do
25 something.

1 MS. NELSON: That's right. And its
2 usage becomes less and less as we see racially
3 polarized voting and residential segregation
4 decreasing. The Katz amicus brief in this case
5 shows that in the past decade, Section 2 cases
6 have decreased by 50 percent.

7 JUSTICE JACKSON: Because the
8 plaintiffs can't make the showing.

9 MS. NELSON: They cannot make the
10 showing.

11 JUSTICE JACKSON: It's a pretty
12 bare -- it's a pretty significant showing to --
13 to establish that unequal opportunity of
14 electoral processes is happening in a
15 situation.

16 MS. NELSON: That's correct. Gingles
17 is an exacting test. It is data-obsessive. It
18 brings in experts and many other forms of
19 evidence to establish a racial violation.
20 There are many cases where the plaintiffs fail
21 in bringing the Gingles I precondition or
22 Gingles II or Gingles III before they even get
23 to the totality-of-the-circumstances test.

24 JUSTICE JACKSON: So, if we're talking
25 about a time limit, you would say maybe it's

1 with respect to the remedy that is used to
2 respond to the -- to the problem that we've
3 identified under Section 2, but the Section 2
4 tape measure itself doesn't need a -- a life
5 cycle? It's just --

6 MS. NELSON: No.

7 JUSTICE JACKSON: Yeah.

8 MS. NELSON: That's correct. I mean,
9 the Fifteenth Amendment is -- is permanently
10 enshrined in our Constitution, and Section 2 is
11 there to effectuate that prohibition of race
12 discrimination on voting and does not require a
13 time limit.

14 JUSTICE JACKSON: Thank you.

15 MS. NELSON: With the time I have
16 remaining, I'd like to mention that there are
17 many proposals on the table that have been
18 presented by my colleagues on the other side,
19 and a number of them resurrect the intent
20 standard that this Court was very clear about
21 and Congress was extraordinarily clear about
22 knowing that results is key to ensuring that we
23 do not continue to have rampant racial
24 discrimination in voting.

25 And the absence of it or -- or the

1 declining ability to show a Section 2 case is
2 because of the success of Section 2 over the
3 past four decades. And we would be reckless if
4 we determined that Section 2 somehow is no
5 longer needed simply because it has been so
6 successful in rooting out racial discrimination
7 in voting.

8 There's also, as I mentioned at the
9 outset, a very easy and elegant solution to
10 this case. If SB8 is not satisfactory, if the
11 Court believes, as the Callais panel did, that
12 the state violated the Constitution in
13 constructing SB8, it should remand and use one
14 of the many alternatives that are available
15 that meet Section 2 and also comply with the
16 Constitution.

17 The liability finding in Robinson is
18 undisturbed and it must be remedied. If SB8 is
19 the inappropriate remedy, there are many other
20 options for this Court to pursue.

21 CHIEF JUSTICE ROBERTS: Thank you,
22 counsel.

23 Justice Thomas, anything further?

24 Justice Alito?

25 JUSTICE ALITO: Yeah. Let me pick up

1 with where you left off, which related to the
2 illustrative map in -- in the Robinson case,
3 and let me go back once again to what we said,
4 what the Court said, in Milligan.

5 The minority group -- this is the
6 first Gingles precondition. The minority group
7 must be sufficiently large and geographically
8 compact to constitute a majority in a
9 reasonably configured district.

10 Did the Robinson court apply that, or
11 did the Robinson court simply say that the
12 district in question in the illustrative map,
13 the second minority -- majority-minority
14 district in the illustrative map, was compact?
15 There's a big difference between the
16 compactness of the minority group and the
17 compactness of a district.

18 MS. NELSON: All of the seven
19 illustrative maps that we presented to the
20 Robinson court were geographically compact.
21 They met every traditional redistricting
22 criteria. They even beat the State's maps on
23 the very criteria that the State set forth that
24 it was pursuing in the redistricting process.

25 JUSTICE ALITO: Well, that wasn't my

1 question. My question was, did the Robinson
2 court find that the minority group was compact
3 as opposed to the district being compact?

4 MS. NELSON: Yes, it did.

5 JUSTICE ALITO: It's a very serious --

6 MS. NELSON: Yes, it did.

7 JUSTICE ALITO: I believe it didn't
8 and nor did the -- did the Fifth Circuit on
9 appeal in that. And there's a big difference,
10 and there's a serious question about whether
11 the Black population within the district in
12 question in the illustrative map was
13 geographically compact.

14 You have people from a rural area in
15 the northwest part of the state, and you have
16 people from an urban area many miles away
17 combined in a district just for the purpose of
18 getting over the 50 percent BVAP.

19 MS. NELSON: So, Justice Alito, you
20 might be referring to SB8 as opposed to the
21 illustrative maps.

22 JUSTICE ALITO: No, I'm referring to
23 the illustrative map, although the same may be
24 said about SB8, but I'm referring to the
25 illustrative map. But we can -- we -- we -- we

1 don't need to argue about what was done in the
2 case, but it's my firm recollection that what
3 the district court did and what the Fifth
4 Circuit did on appeal was not to apply the
5 correct standard under Milligan.

6 Thank you.

7 CHIEF JUSTICE ROBERTS: Justice
8 Sotomayor?

9 JUSTICE SOTOMAYOR: Counsel, I would
10 note that the State's maps join people in
11 districts from the far north all the way down
12 and across the state.

13 MS. NELSON: That's correct.

14 JUSTICE SOTOMAYOR: The -- the map
15 that it put into effect. So the district
16 wasn't compact and neither were the interests
17 necessarily compact, except that they were
18 white voters, correct, and Republican?

19 MS. NELSON: Correct.

20 JUSTICE SOTOMAYOR: All right. Now
21 you have not addressed the issues of the
22 unconstitutionality, which is what this
23 reargument was about. Justice Barrett
24 mentioned congruence and proportionality.
25 Others have suggested that our Harvard case is

1 appropriate. One, Louisiana has said that the
2 use of race in any way violates the Equal
3 Protection Clause.

4 Would you give us a couple lines on
5 why those -- assuming, as the Chief did, that
6 Mulligan and all of our cases and precedents
7 support you --

8 MS. NELSON: Sure.

9 JUSTICE SOTOMAYOR: -- the others are
10 now saying, the ad -- your adversaries are
11 saying, even if it does, we should still
12 declare this unconstitutional. I don't know
13 that you've addressed that.

14 MS. NELSON: Happy to. So SFFA is an
15 entirely different case from the one before the
16 Court at the moment. SFFA made clear that
17 there's -- it is still constitutional to use
18 race to remedy specified discrimination, which
19 is what we have in the State of Louisiana, what
20 we showed before the Robinson court.

21 So SFFA is, in fact, working more in
22 our favor, we believe, than supporting our
23 opponents. And there are many distinctions
24 between this case and the SFFA case.

25 For example, Section 2 is a decidedly

1 remedial statute. SFFA involved the diversity
2 rationale involving a admissions process with a
3 university, not a statute that is derived from
4 Congress's enforcement powers under the
5 Reconstruction Amendments that deals with
6 remedying discrimination.

7 That is a very clear distinction.

8 This Court has been clear in Shaw, in SFFA, in
9 Croson, in Fullilove, that you can use race in
10 a limited way to remedy racial discrimination.

11 The other factor that makes SFFA
12 reconcilable with Milligan, which is
13 controlling here, is that we know both
14 decisions were issued within three weeks of one
15 another. It is illogical to think that this
16 Court issued the SFFA decision and Milligan in
17 the same term, in the same month even, and
18 somehow those cases work at cross-purposes with
19 one another.

20 So, in our view, it is very clear that
21 the case law in -- before this Court supports
22 the use of race as needed once there has been a
23 showing of specified discrimination. And the
24 Section 2 test gives the Court an inference of
25 intentional discrimination to draw upon.

1 Congress was very intentional in
2 crafting the results test to balance the
3 concerns of getting at all discrimination in
4 our electoral processes but also being mindful
5 of a potential allegation of racism against
6 states and other state actors.

7 And so Section 2 requires neither a
8 confession nor an accusation of racism. It
9 looks strictly at results, which this Court has
10 upheld on numerous occasions, including most
11 recently in Milligan, but before that, in
12 Lopez, in Bernie, in -- in City of Rome written
13 by Justice Marshall for this Court, made very
14 clear that results is constitutional and that
15 the use of race is permissible in remedying
16 discrimination.

17 CHIEF JUSTICE ROBERTS: Justice Kagan?

18 JUSTICE KAGAN: Ms. Nelson, were
19 Section 2 to cease to operate in the way that
20 you just described to prevent vote dilution in
21 districting, what could happen? What would the
22 results on the ground be?

23 MS. NELSON: I think the results would
24 be pretty catastrophic. If we take Louisiana
25 as one example, every congressional member who

1 is Black was elected from a VRA opportunity
2 district. We only have the diversity that we
3 see across the South, for example, because of
4 litigation that forced the creation of
5 opportunity districts under the Voting Rights
6 Act.

7 Every justice in Louisiana has been
8 elected through a VRA opportunity district, and
9 nearly all legislative representatives have
10 been elected on those same districts. So
11 Louisiana alone is an example of how important
12 it is to have Section 2 continue to be enforced
13 to create these opportunities.

14 We also know that after
15 majority-minority districts have been created,
16 they often no longer need the same population
17 to continue to provide an equally open
18 electoral process for minority voters. So it
19 is an intervention that has been crucial to
20 diversifying leadership and providing an
21 ability of minority voters to have an equal
22 opportunity to participate in the process, but
23 it also isn't a permanent remedy. It -- it
24 corrects itself over time, and it's only
25 triggered when those extreme conditions exist.

1 JUSTICE KAGAN: Thank you.

2 CHIEF JUSTICE ROBERTS: Justice
3 Gorsuch?

4 JUSTICE GORSUCH: When it gets to the
5 remedy side, do you think a plaintiff in a
6 Section 2 case has to come up with a -- a map
7 where race doesn't -- isn't the predominant
8 factor in -- in the map, or is it okay for a
9 federal court to use a map on the remedial side
10 that intentionally discriminates on the basis
11 of race?

12 MS. NELSON: You do -- you do not have
13 to use race to create the remedy in a map. And
14 I think that Milligan --

15 JUSTICE GORSUCH: No, I'm asking
16 whether one can. Sometimes you don't have to.

17 MS. NELSON: Yes.

18 JUSTICE GORSUCH: I understand that.
19 I'm asking, is it acceptable under Section 2
20 as -- as you understand it, given our
21 precedents, for a court to intentionally
22 discriminate in a remedial map on the basis of
23 race?

24 MS. NELSON: Not -- not in those
25 words. Not for a court to intentionally

1 discriminate, but I think it depends. There
2 may be a circumstance where the only possible
3 remedy is the limited use of race.

4 I will say that I think those
5 circumstances are rare. And the permissibility
6 of race is constrained by strict scrutiny.
7 This Court has a very clear precedent around
8 ensuring that race does not motivate the line
9 drawer in a way that requires a map to be drawn
10 that isn't narrowly tailored, that uses race
11 for race's sake.

12 There are already constraints between
13 Gingles and Shaw that keep the use of race
14 within constitutional bounds.

15 JUSTICE GORSUCH: I understand that.
16 But, you know, one -- one argument is often,
17 well, once you've found a Section 2 violation,
18 you've got a compelling interest to go ahead
19 and -- and discriminate on the basis of race in
20 your remedial map. And I'm just wondering, do
21 you endorse that view or -- or do you reject
22 that view?

23 MS. NELSON: I don't endorse the
24 concept of discriminating on the basis of race.
25 If discrimination has been established under

1 Section 2 and a state determines that it needs
2 a very precise incision of race in order to
3 remedy that Section 2 violation, then Section 2
4 and this Court's precedent supports that.

5 JUSTICE GORSUCH: So a federal
6 district court can sometimes, to remedy a
7 Section 2 violation --

8 MS. NELSON: Well, not a federal
9 district court. I'm sorry. I'm glad you --
10 I'm glad you emphasized that.

11 JUSTICE GORSUCH: Well, if I might
12 just finish the question.

13 MS. NELSON: Yes.

14 JUSTICE GORSUCH: You know, sometimes
15 federal district courts order maps. And you're
16 saying sometimes acceptable for a federal
17 district court to order a map that
18 intentionally discriminates on the basis of
19 race?

20 MS. NELSON: I -- I -- I -- I disagree
21 with that formulation. So, first and foremost,
22 states and plaintiffs, as they put forth
23 illustrative maps, cannot put forth maps that
24 discriminate and that use race in -- in
25 excessive fashion.

1 The only actor that has broader leeway
2 are states because we give states breathing
3 room. We give states wide latitude in order to
4 balance their political interests and concerns.

5 JUSTICE GORSUCH: So federal district
6 courts can't discriminate on the basis of race
7 and remedies, but states can?

8 MS. NELSON: Federal district courts
9 can only order maps that are constitutional,
10 and, again, the constitutional boundaries are
11 between Gingles and Shaw --

12 JUSTICE GORSUCH: I understand that.

13 MS. NELSON: -- and sometimes --

14 JUSTICE GORSUCH: You said states have
15 more breathing room. So do they have the
16 breathing room to intentionally discriminate on
17 the basis of race when you are --

18 MS. NELSON: They don't have breathing
19 room to intentionally discriminate on the basis
20 of race. They have breathing room to use race
21 to remedy their own discrimination.

22 JUSTICE GORSUCH: Okay. Thank you.

23 CHIEF JUSTICE ROBERTS: Justice
24 Kavanaugh?

25 JUSTICE KAVANAUGH: I guess the

1 hang-up there is the word "discriminate." But
2 your answer is that they can intentionally use
3 race in those circumstances, correct --

4 MS. NELSON: That --

5 JUSTICE KAVANAUGH: -- the federal
6 district court?

7 MS. NELSON: If -- if needed. If
8 needed. And there are -- there are often a
9 wide range of possibilities and alternatives
10 that don't require that.

11 JUSTICE KAVANAUGH: And then I think
12 you said so long as it's not excessive, and you
13 mentioned strict scrutiny as well, correct?

14 MS. NELSON: Correct.

15 JUSTICE KAVANAUGH: But part of strict
16 scrutiny, again, is the temporal limit that's
17 been part of strict scrutiny for a long time.
18 And I think your answers earlier to that to me
19 and when you were talking with Justice Jackson
20 were, well, Congress, defer to Congress. But,
21 when we're applying the Equal Protection Clause
22 or, as Justice Barrett said, the Fifteenth
23 Amendment, congruent and proportionality, or
24 Fourteenth Amendment, deferring to Congress is,
25 I think, not what we're supposed do.

1 So what -- if we're not just deferring
2 to Congress, is there anything you can point us
3 to that would not allow it to extend forever,
4 the -- the intentional use of race, which you
5 acknowledged in response to Justice Gorsuch?

6 MS. NELSON: Sure. Well, we maintain
7 that there does not need to be a durational
8 limit, but there is some guidance that this
9 Court could consider. So, for example, in
10 Grutter, the Court, Justice O'Connor suggested
11 that affirmative action did not need to endure
12 beyond another 25 years. She forecast that
13 another generation might need affirmative
14 action. And, ultimately, this Court thought
15 otherwise in SFFA.

16 So that sort of runway, that advance
17 notice, that -- that expression of an ability
18 for Congress to intervene if it disagrees with
19 the Court or decides it wants to remedy on its
20 own, that is the type of guidance I think this
21 Court should consider if it feels that it must
22 pursue a durational limit on -- on Section 2.
23 And, again, we don't believe that's necessary.

24 JUSTICE KAVANAUGH: Do you -- Justice
25 Kennedy in 1994 in Johnson versus De Grandy

1 said a couple things that I just want to get
2 your reaction to. He said the sorting of
3 persons with an intent to divide by reason of
4 race raises the most serious constitutional
5 questions, and he added that explicit
6 race-based districting embarks us on a most
7 dangerous course. It is necessary to bear in
8 mind that redistricting must comply with the
9 overriding demands of the Equal Protection
10 Clause.

11 Do you take issue with what he said
12 there?

13 MS. NELSON: No. What I think is
14 missing from the understanding of Section 2 is
15 the work that it has done to advance the goal
16 of ridding our electoral process of race. It
17 brings racial groups together.

18 And, as I mentioned earlier, many of
19 the VRA opportunity districts ultimately
20 convert to non-majority-minority districts.
21 Not all VRA opportunity districts are
22 majority-minority districts. And, in fact, we
23 see greater racial harmony and less racially
24 polarized voting as a result of Section 2
25 districts.

1 So Section 2 is addressing a
2 preexisting problem. It is not producing it.
3 And, in fact, it reduces it more broadly across
4 society.

5 JUSTICE KAVANAUGH: Thank you.

6 CHIEF JUSTICE ROBERTS: Justice
7 Barrett?

8 JUSTICE BARRETT: So we've assumed
9 without deciding -- this is picking up on
10 Justice Gorsuch's questions -- that complying
11 with Section 2 is a compelling interest for
12 purposes of the Fourteenth Amendment.

13 MS. NELSON: Correct.

14 JUSTICE BARRETT: And now this is kind
15 of picking up on some of Justice Alito and
16 Justice Thomas's questions earlier. How are we
17 to think about that when we're thinking about
18 the Robinson litigation? Because it was a
19 preliminary injunction, and Louisiana, of
20 course, argued there that, no, it -- it wasn't
21 a violation of Section 2 to have those maps.

22 So when -- I mean, I guess, how do we
23 judge the compelling interest in avoiding a
24 violation of Section 2? If the State doesn't
25 really think it violates Section 2 and it

1 hasn't been finally adjudicated yet, how do we
2 approach the -- assuming that compliance with
3 Section 2 is a compelling interest, how do we
4 think about that in a context like Robinson?

5 MS. NELSON: So states can, for good
6 reason, draw a map that addresses Section 2
7 prophylactically. Here, we have a finding from
8 a district court based on a robust evidentiary
9 record that we were likely to succeed on our
10 Section 2 claim.

11 This is not the first case. There are
12 many cases that have provided the basis for an
13 opportunity map to be drawn just on a
14 preliminary injunction motion. And, again,
15 that was -- that finding by the lower court was
16 affirmed by two federal panels of the Fifth
17 Circuit. And this Court had an opportunity to
18 revisit the Robinson litigation and did not.

19 JUSTICE BARRETT: But -- but what
20 if -- I mean, district courts sometimes make
21 errors of law, right? So what if the district
22 court -- I guess I'm trying to figure out how
23 much weight then the district court's finding
24 has in comprising that -- that compelling
25 interest in avoiding the Section 2 violation.

1 Do you see what I mean?

2 Like, what if the -- what if the
3 district court was just wrong, and what if the
4 State thinks that the district court was wrong?

5 MS. NELSON: Well, the -- the State
6 has already conceded that it did --

7 JUSTICE BARRETT: Okay. Never mind.

8 MS. NELSON: The State already
9 conceded that it should comply with the
10 Robinson decision.

11 JUSTICE BARRETT: Right. I mean, it
12 got complicated here because of all of the
13 other litigation. But just why don't you just
14 strip out what happened and answer the
15 question, like, at the time Robinson was
16 decided. If the -- if Louisiana thought that
17 the Robinson court was wrong, that the district
18 court was wrong, but it didn't -- it wanted to
19 avoid the court-imposed map, wanted the
20 opportunity to draw its own map, Justice
21 Kavanaugh has been asking you what role race
22 can play without running afoul of the Equal
23 Protection Clause.

24 And the State would have to say at
25 that point: Well, we're weighting race heavily

1 because we have a compelling interest in
2 avoiding a Section 2 violation. And the
3 State's position might be we don't actually
4 really think that we violated Section 2, but we
5 have a litigation risk. We know that if we
6 don't draw this other map, the court may impose
7 one.

8 On that understanding, on -- on those
9 facts, not concessions and whatever is made, is
10 that then a legitimate compelling state
11 interest when there is the possibility and the
12 State, in fact, thinks that the district court
13 was wrong?

14 MS. NELSON: It is still a compelling
15 governmental interest. The State can do what
16 it did here, which is to appeal to the Fifth
17 Circuit, and the Fifth Circuit considered the
18 same evidence and unanimously found that the
19 Robinson court was correct. Yet another Fifth
20 Circuit panel also affirmed that decision.

21 JUSTICE BARRETT: Thank you.

22 CHIEF JUSTICE ROBERTS: Justice
23 Jackson?

24 JUSTICE JACKSON: So, in essence, are
25 you saying in response to Justice Barrett that

1 it's a compelling interest nonetheless because
2 the State has an obligation under our
3 Constitution and under Section 2 to provide an
4 equally open electoral process?

5 MS. NELSON: That's correct.

6 JUSTICE JACKSON: I mean, I guess what
7 I'm trying to really wrap my mind around is the
8 different stages of this case and, like, the
9 different questions at issue because it's
10 complicated.

11 But I think the beginning of the whole
12 thing is the requirement of equal protection in
13 the Constitution and Congress's determination
14 under Section 2 to make sure that that is being
15 provided to minority groups in the electoral
16 process by having a statute that requires
17 states to provide equally open electoral
18 processes.

19 I mean, that's what we said in
20 Milligan. We were very clear that individuals
21 lack an equal opportunity to participate when a
22 state's electoral structure operates in a
23 manner that minimizes or cancels out their
24 voting strength. I mean, everybody -- I don't
25 think there's a disagreement that we have this

1 initial goal, which is providing equal
2 opportunity.

3 And so then the Robinson court is
4 asked under Section 2, is this a situation in
5 which that's not happening? And they go to
6 trial and they bring in a lot of evidence and
7 they do the thing, and the Robinson court says,
8 yes, this is that situation. Fine.

9 I guess I don't understand why the
10 Robinson court's decision is before us right
11 now, because what I understood is that as a
12 result of the Robinson court's decision,
13 Louisiana then enacts a map that it believes
14 will remedy the violation that the Robinson
15 court has identified, and we're here on a
16 challenge about that map. That, I think, we
17 call is a Shaw problem. We're --- we're here
18 deciding whether they can use race as a remedy,
19 as people say they did in the construction of
20 this map.

21 So I guess I'm not even clear why the
22 Robinson court's initial identification of the
23 problem is being questioned as a compelling
24 interest because there's an interest in not
25 having an unequal electoral system, right?

1 MS. NELSON: That's correct. The
2 Robinson decision is absolutely not before this
3 Court. There's no record in the Callais case
4 to support that.

5 JUSTICE JACKSON: Thank you.

6 CHIEF JUSTICE ROBERTS: Thank you,
7 counsel.

8 Mr. Aguiñaga.

9 ORAL ARGUMENT OF J. BENJAMIN AGUIÑAGA
10 ON BEHALF OF APPELLANT LOUISIANA

11 MR. AGUIÑAGA: Thank you, Mr. Chief
12 Justice, and may it please the Court:

13 Race-based redistricting is
14 fundamentally contrary to our Constitution. It
15 requires striking enough members of the
16 majority race to sufficiently diminish their
17 voting strength, and it requires drawing in
18 enough members of a minority race to
19 sufficiently augment their voting strength.

20 Embedded within these express targets
21 are racial stereotypes that this Court has long
22 criticized. They assume, for example, that a
23 Black voter, simply because he is Black, must
24 think like other Black voters, share the same
25 interests, and prefer the same political

1 candidates.

2 And this stereotyping system has no
3 logical end point. We are 40 years removed
4 from Gingles, and yet, according to my friends
5 on the other side, nothing has changed in the
6 voting and housing patterns in Louisiana that
7 require race-based redistricting.

8 These problems are part of why we
9 never wanted to be here in the first place.
10 They have placed states in impossible
11 situations where the only sure demand is more
12 racial discrimination for more decades.

13 But I think, if anything is clear in
14 this Court's dedication to eliminating all
15 racial discrimination, it is that the
16 Constitution does not tolerate this system of
17 government-mandated racial balancing.

18 I welcome the Court's questions.

19 JUSTICE THOMAS: Why did the State of
20 Louisiana switch sides since our last argument?

21 MR. AGUIÑAGA: Your Honor, we told the
22 Court at pages 1 and 2 of our original opening
23 brief in this case that our predicament in this
24 case presents as good a reason as any for the
25 Court to reevaluate its voting precedents.

1 We told the Court at page 18 of our
2 original reply brief that we thought this would
3 be a different case if the Court thought it was
4 worth revisiting the longstanding assumption
5 that compliance with Section 2 is a compelling
6 interest.

7 Your Honor, we thought all along, and
8 in my colloquy with Justice Kavanaugh back in
9 March, we discussed our longstanding position
10 in our state legislative map litigation where
11 we have taken the position that Section 2,
12 insofar as it requires race-based
13 redistricting, is unconstitutional.

14 This Court's reargument QP squarely
15 tees up that question, and so our duty of
16 candor requires -- requires us to give the
17 Court our honest answer to that question.

18 JUSTICE THOMAS: I --

19 JUSTICE KAGAN: General, the
20 race-based redistricting that you're now
21 objecting to is redistricting designed to
22 remedy a specific, identified, proved violation
23 of law; more, a specific, identified, proved
24 racial discrimination by the State.

25 That's the way in which the race-based

1 districting is coming in. It's coming in as a
2 remedy for specific, proved discrimination on
3 the State's part.

4 How could that possibly fall subject
5 to the categorical rule that you're suggesting?

6 MR. AGUIÑAGA: Your Honor, I
7 respectfully but firmly resist the premise
8 that this comes to the Court on a finding of
9 specific discrimination by the State. I think,
10 if anything is clear about how Gingles plays
11 out on the ground, it is that once you run the
12 three preconditions and get to the totality of
13 the circumstances, it's anyone's guess what the
14 alleged violation is.

15 I mean, I think Justice Thomas's
16 colloquy --

17 JUSTICE KAGAN: General, I mean, what
18 Gingles does, and, you know, the idea that this
19 is like 50 years later, this is not a kind of
20 Shelby County thing where one could say that
21 Congress had acted and 50 years later, you
22 know, the conditions on the ground might have
23 changed and there would be no way to respond to
24 that change, because what Gingles does and what
25 these Section 2 suits do is they ask about

1 current conditions and they ask whether those
2 current conditions show vote dilution, which is
3 violative of Section 2.

4 So they say: Is there racial
5 segregation, racial residential segregation
6 now? Is there racially polarized voting now?

7 And when the State fails with respect
8 to those issues, when those conditions obtain
9 now, what our precedents say and what you're
10 asking us now to change what our precedents say
11 is that when those things operate currently
12 right as of now and are proved in a courtroom,
13 that -- that still there can't be a race-based
14 remedy.

15 MR. AGUIÑAGA: That's correct, Justice
16 Kagan. And I think the two trends that my
17 friends on the other side point to, the rates
18 of residential segregation and the rates of
19 racially polarized voting, are what allow them
20 to get past the Gingles preconditions. They
21 told you at page 33 of their yellow brief that
22 those things are worse today in Louisiana than
23 they were in the 1980s. And this Court said at
24 page 228 in Northwest Austin that those sorts
25 of factors are not evidence of intentional

1 discrimination.

2 That's not intentional discrimination,
3 Justice Kagan.

4 JUSTICE KAGAN: It's not intentional
5 discrimination because Section 2 is not about
6 intentional discrimination. Section 2 is about
7 effects discrimination, is about Congress
8 saying, and specifically in response to a
9 decision of this Court, that intentional
10 discrimination and the values behind that
11 prohibition can only be vindicated if Section 2
12 under -- if, under Section 2, the State shows
13 that the effects are not discriminatory. And,
14 you know, Congress put us, this Court, in its
15 place when it said that.

16 And so what Section 2 does is to say
17 where the effects are discriminatory such that
18 people are not having the same -- African
19 Americans here are not being given the same
20 voting opportunities as white people are, then
21 a remedy is appropriate.

22 That remedy doesn't have to be
23 race-based, but sometimes it is race-based in
24 order to correct the racially discriminate --
25 racially discriminatory situation that exists

1 in the state right now.

2 MR. AGUIÑAGA: And, Justice Kagan, if
3 Congress had attempted in 1982 to make a record
4 of intentional discrimination in districting,
5 and today, if there were a record of an
6 intentional -- of intentional discrimination in
7 districting, then there might be a congruence
8 and proportionality argument to sustain
9 race-based redistricting as a remedy.

10 But I think something that you don't
11 see in the Congressional Record in the 1980s
12 and something that doesn't exist today is that
13 justification. And that's why I think --

14 JUSTICE SOTOMAYOR: I -- I'm sorry,
15 counsel. That's because they weren't dealing
16 with a history of it. They're dealing with the
17 current situation.

18 And Gingles is, as Justice Kagan
19 pointed out, what's happening today and are
20 there lingering effects of the past.

21 The one thing I look at is Alabama's
22 maps for the last 30 years, the map that --
23 that the Robinson court found cracked and
24 packed voters was a map that's been in effect
25 almost the entire history of Alabama.

1 That map was put in effect because
2 of -- of -- of discrimination, so it's going to
3 have a lingering effect. They wanted to pack
4 white voters. They've been doing that. And
5 they wanted to uncrack Black voters as much as
6 they could, and they've done that. And it's
7 only Section 2 and Section 5 that kept them
8 giving for -- creating one majority district.

9 But I -- I -- using race, race is a
10 part of redistricting always. We've said that
11 the only actionable part that's intentional, if
12 it predominates, but race is always a part of
13 these decisions. And my colleagues are trying
14 to tease it out in this intellectual way that
15 doesn't deal with the fact that race is used to
16 help people.

17 Legislators might try to keep an
18 ethnic community in one district. They might
19 consider it to get a sense of which district to
20 draw an incumbent into. They might review it
21 to predict what kind of issues a district voter
22 might be particularly interested in. They
23 might use it to inform partisan goals. We
24 permit all of that.

25 What you're saying to us, if you use

1 it to remedy past lingering discrimination,
2 intentional discrimination, then you can't use
3 it. You can use it to help yourself achieve
4 goals that reduce a particular group's
5 electoral participation, but you can't use it
6 to remedy that situation. That's what you want
7 us to hold.

8 MR. AGUIÑAGA: Justice Sotomayor, my
9 humble point is that the government has no
10 business telling citizens in which districts
11 they may live or what voting power they may --

12 JUSTICE SOTOMAYOR: But it's not doing
13 that, counsel. The six plaintiffs in this case
14 are white plaintiffs who live in a district
15 with Black voters. So no one's keeping them
16 out of that district. No one's stopping them
17 from participating in the voting process. No
18 one is stopping them from trying to run
19 candidates or support candidates that reflect
20 their views.

21 But out -- but this state is stopping
22 Black voters from doing that in many districts
23 because it's packing them into areas that
24 whites overwhelm them. I -- I -- I don't
25 understand this.

1 MR. AGUIÑAGA: So, Justice Sotomayor,
2 let's look at the facts in this case. My --

3 JUSTICE SOTOMAYOR: If you can use
4 race in some ways that are positive, why can't
5 you use it to remedy something in some ways?

6 MR. AGUIÑAGA: Your Honor, my friends
7 on the other side walked into the Middle
8 District of Louisiana -- may I finish very
9 briefly?

10 CHIEF JUSTICE ROBERTS: Yes.

11 MR. AGUIÑAGA: Walked into the
12 Middle District of Louisiana and demanded a
13 majority-Black district.

14 What's the purpose of that kind of
15 district? The valid purpose of drawing a
16 majority-Black district is to diminish the
17 voting strength of some racial groups and
18 augment the voting strength of others. And --

19 CHIEF JUSTICE ROBERTS: Thank you,
20 counsel.

21 Justice Thomas?

22 JUSTICE THOMAS: What role did
23 Robinson play in the development of SB8?

24 MR. AGUIÑAGA: Justice Thomas,
25 Robinson is the only reason SB8 exists. We

1 fought tooth and nail in the Robinson
2 litigation itself to -- in -- in telling the
3 courts that we did not think the Constitution
4 permitted us to draw a second majority-Black
5 district. As you know, under protest, we drew
6 SB8 because the threat was that the federal
7 courts were going to do it if we didn't.

8 And that's -- I mean, I think that's
9 the best way to conceive of why SB8 exists. We
10 would never pass SB8 in the first instance
11 without Robinson, Justice Thomas.

12 JUSTICE THOMAS: What were the
13 findings in Robinson?

14 MR. AGUIÑAGA: The finding by -- by
15 the Middle District in Robinson was that the
16 plaintiffs in this case were likely to show a
17 violation of Section 2, and the likely
18 violation -- and I'm using very broad
19 terminology because I do not know what the
20 underlying violation is. I can't articulate
21 that for you, Justice Thomas, because I don't
22 think anybody can. But I think the finding in
23 the district court's mind in that case was that
24 the likely -- the likelihood of a Section 2
25 violation meant that a majority-Black district

1 was required, a second one.

2 And I think, like, that was the bottom
3 line, and when our legislature saw that, we
4 understood the marching order, and that's why
5 you see SB8 as it exists today.

6 JUSTICE THOMAS: Just briefly, what
7 were the findings that led to that conclusion?

8 MR. AGUIÑAGA: Well, Your Honor,
9 running through the preconditions and the
10 totality of the circumstances, I mean, I think
11 the totality of the circumstances did most of
12 the work for the Middle District in -- in
13 Robinson. Senate Factor 1, the official
14 history of past discrimination, Justice Thomas,
15 we can never outrun the bad era of poll taxes,
16 of grandfather clauses, of literacy tests. I
17 think we're always going to lose across the
18 board on that kind of analysis.

19 And that's what the Middle District in
20 Robinson focused on, is how bad was Louisiana
21 in the 1930s, '40s, '50s, '60s, and, you know,
22 add all that together and, at the end, you have
23 a vote dilution finding that I don't think is
24 clearly articulable in the way that SFFA
25 requires a finding of discrimination to be

1 specified.

2 JUSTICE THOMAS: Thank you.

3 CHIEF JUSTICE ROBERTS: Justice Alito?

4 JUSTICE ALITO: Can I clear up a
5 couple of factual points that have been brought
6 out by the questioning. Your HB1, enacted in
7 2022, followed to a large extent the map that
8 you had for the prior decade, isn't that right?

9 MR. AGUIÑAGA: That's exactly right,
10 Justice Alito.

11 JUSTICE ALITO: Which suggested that
12 that prior map was discriminatory. What --
13 what was the origin of that prior map? Do I
14 remember correctly that it was pre-cleared by
15 the Justice Department?

16 MR. AGUIÑAGA: Twice. That's correct,
17 Justice Alito.

18 JUSTICE ALITO: So it wasn't -- there
19 is no finding that that map was based on
20 discrimination and that by following that map,
21 you were perpetuating prior discrimination?

22 MR. AGUIÑAGA: No, Justice Alito. And
23 I think that's why I firmly have to resist any
24 suggestion that the Louisiana state legislature
25 is out here targeting minority voters and

1 trying to abridge the right to vote. That is
2 just completely unfounded.

3 JUSTICE ALITO: And as to the
4 suggestion that there was a proven violation in
5 the Robinson litigation, that was a preliminary
6 injunction, right?

7 MR. AGUIÑAGA: That's correct, Justice
8 Alito.

9 JUSTICE ALITO: So there wasn't a
10 finding that there was a violation. At most, a
11 finding that there was likely to be a violation
12 shown. And is it not correct for the reasons
13 that I brought out in my questioning of
14 Ms. Nelson that what the district court did
15 there was not to ask whether the minority group
16 was sufficiently compact but whether the
17 district itself was sufficiently compact?

18 MR. AGUIÑAGA: That's exactly right,
19 Justice Alito. And if you look at the Black
20 population in Louisiana, I mean, it is all over
21 the place. You can identify pockets of Black
22 voters, but they are dispersed across the
23 state. There's no way you can conceive of that
24 population as compact.

25 JUSTICE ALITO: Thank you.

1 CHIEF JUSTICE ROBERTS: Justice
2 Sotomayor?

3 JUSTICE SOTOMAYOR: I may be
4 remembering the record wrong on this because it
5 was a while back, but if I recall, the district
6 court looked at the three main parishes that
7 make up District 6 now and looked at it and
8 said they have a commonality of history, many
9 of its residents go from where they live near
10 the Baton Rouge area to work or go to school
11 and they go back to their communities. They
12 have long family ties between the communities
13 and among the communities. There may be a
14 difference in education and -- and some income
15 differences, but that's true of all the
16 districts in Louisiana. You've got the
17 districts that are protecting incumbents where,
18 in the north, there's less money than in other
19 areas. So those differences are not
20 meaningful.

21 But I thought the district court did a
22 very careful analysis of the commonality of
23 interests of those -- of that Black community.
24 You may disagree with its finding, but it did
25 do that analysis.

1 MR. AGUIÑAGA: Your Honor, no doubt
2 the Middle District purported to run through
3 the Gingles analysis, and it said, you know, it
4 will be the unusual --

5 JUSTICE SOTOMAYOR: You're disagreeing
6 with it, but it did do that?

7 MR. AGUIÑAGA: It did -- it did what
8 this Court's precedents allow lower courts to
9 do. And, Justice Sotomayor, my only point in
10 response to that is to say, when the district
11 court was asking about what the minority group
12 does and thinks and prefers, it is exactly the
13 sort of racial stereotyping that this Court's
14 precedents say is -- is impermissible.

15 JUSTICE SOTOMAYOR: Counsel, with
16 respect, the last time the SG was here before
17 us on behalf of your state, they said that race
18 did not predominate just with your creation of
19 District 6 because what you were trying to do
20 and why it's oddly shaped was to protect
21 incumbents. Are you walking that back?

22 MR. AGUIÑAGA: Your Honor, our
23 position in our supplemental briefing on racial
24 predominance is as follows: If race is a
25 non-negotiable in the drawing of a new

1 district, we think that should satisfy this
2 Court's --

3 JUSTICE SOTOMAYOR: Well --

4 MR. AGUIÑAGA: -- predominance
5 analysis. And the argument is --

6 JUSTICE SOTOMAYOR: Well, but -- but
7 that's just it, which is was it? What really
8 was non-negotiable for you was nonpartisanship.

9 MR. AGUIÑAGA: That's --

10 JUSTICE SOTOMAYOR: And you could have
11 picked -- you could have picked one of the
12 other maps, the illustrative map, you didn't
13 have to, but you drew this because of your
14 partisan needs more than because of race.

15 MR. AGUIÑAGA: We drew it for partisan
16 reasons, Justice Sotomayor. My point and the
17 point we make at the end of our opening
18 supplemental brief is to say, when this Court's
19 racial predominance questions ask about
20 non-negotiability, it shouldn't matter if race
21 is the one non-negotiable factor or it's one of
22 10 non-negotiable factors. In both --

23 JUSTICE SOTOMAYOR: Well, but we do --
24 we -- we -- we always talk about what
25 predominates, and what predominated here was

1 politics. That's what you said the last time.

2 MR. AGUIÑAGA: And --

3 JUSTICE SOTOMAYOR: Thank you,
4 counsel.

5 CHIEF JUSTICE ROBERTS: Justice Kagan?

6 JUSTICE KAGAN: General, a couple of
7 years ago when we decided Milligan, the party
8 there, the state there, made several arguments
9 that we specifically rejected. And in the
10 answers that you just gave to me, it seems to
11 me that you repeated each and every one of
12 those arguments that we rejected.

13 So I'll just run through a few of
14 them. What they said was that the Fifteenth
15 Amendment permits Congress to legislate against
16 only purposeful discrimination by the states.
17 We rejected that. We said, no, Section 2,
18 which is an effects-based test of vote
19 dilution, is permitted under the Fifteenth
20 Amendment.

21 There, in Milligan, the state said
22 that the Fifteenth Amendment doesn't authorize
23 race-based redistricting as a remedy for vote
24 dilution Section 2 violations. We said, no,
25 that wasn't correct either. You just repeated

1 it, but we rejected it.

2 And -- and they said that we should
3 adopt an interpretation of Section 2 -- and I'm
4 quoting here -- that would revise and
5 reformulate the Gingles threshold inquiry that
6 has been the baseline of our Section 2
7 jurisprudence for several decades. And we
8 rejected that as well.

9 So each of the propositions that
10 you're putting forward here that Section 2 has
11 to be limited in some way just to purposeful
12 discrimination, that it doesn't authorize
13 race-based redistricting as a remedy, and that
14 we need to fundamentally overhaul the Gingles
15 threshold inquiry was rejected, I don't know,
16 three years ago, two years ago, by a majority
17 of this Court.

18 MR. AGUIÑAGA: Justice Kagan, the
19 Court has never addressed and rejected the two
20 key parts of our argument here. The first is
21 the Court has always -- has long assumed,
22 without deciding, in cases like Cooper versus
23 Harris, that compliance with Section 2 is a
24 compelling interest. We're asking the Court to
25 finally decide that question and answer it no.

1 The second question the Allen Court
2 left --

3 JUSTICE KAGAN: Well, but you're
4 answering -- you're asking us based on
5 arguments that have been specifically rejected
6 by this Court over many decades and three years
7 ago.

8 MR. AGUIÑAGA: Your Honor, this is an
9 antecedent question that the Court has
10 routinely left open in its voting precedents,
11 and that's why we're asking the Court to
12 address it here.

13 If I could answer the second question
14 that the Court has left open, in Allen, the
15 Court left open the question of whether a
16 logical end point is identifiable in the
17 race-based redistricting context.

18 And our submission to the Court is
19 it's time to answer that question and answer no
20 because there is no logical end point to
21 race-based redistricting under Section 2 as the
22 Court has construed it.

23 CHIEF JUSTICE ROBERTS: Justice
24 Gorsuch?

25 Justice Kavanaugh?

1 JUSTICE KAVANAUGH: I'd like to get
2 your views on pages 25 and 26 of the Solicitor
3 General of the United States' brief, where they
4 say this Court should hold that the Plaintiffs'
5 illustrative district cannot disregard the
6 State's political objectives and further say
7 that Section 2 plaintiffs cannot claim a lack
8 of equal openness where politics, rather than
9 race, is the likely reason for the state's
10 refusal to create a majority-minority district.

11 Do you have thoughts about the S --
12 the Solicitor General's approach? And then, in
13 the course of answering that, do you see
14 differences between your basic submissions and
15 the federal government's submissions?

16 MR. AGUIÑAGA: I do.

17 JUSTICE KAVANAUGH: I'm going to ask
18 them that too.

19 MR. AGUIÑAGA: I do, Justice
20 Kavanaugh. I do think the top-line response is
21 we like the proposal and we don't. I think we
22 like it insofar as you know from our original
23 briefing and our supplemental briefing that the
24 thing we want most as the state is clarity in
25 this area of the law, and so any remodeling of

1 Gingles that brings about that clarity, of
2 course, we're going to like.

3 I think the reason we don't like it,
4 there's a practical reason and a doctrinal
5 reason. I think the practical reason with the
6 proposal is that you're probably going to see a
7 new front of Section 2 litigation over what any
8 new test means and how it plays out on the
9 ground. And so I think the upshot is the
10 courts are going to continue to be inundated
11 with Section 2 cases under this new test if it
12 exists. So, as -- as a practical matter, I
13 don't know that we give it --

14 JUSTICE KAVANAUGH: What's the
15 practical lack of clarity that you see? I -- I
16 guess I would have thought that solves a lot of
17 the concerns that you've identified and that
18 the amicus briefs that support your side have
19 identified so far.

20 MR. AGUIÑAGA: Yes. If I could answer
21 then and get to the quick doctrinal point.

22 JUSTICE KAVANAUGH: Yes.

23 MR. AGUIÑAGA: On the practical one, I
24 do think that you start to see hints of this in
25 the Robinson Appellants' yellow brief, the

1 supplemental yellow brief, which is there's
2 going to be a lot of -- of disagreement in the
3 lower courts about racial predominance. That
4 is a critical trigger in a lot of this Court's
5 cases, and unless there's absolute clarity
6 about how that analytical framework shakes out,
7 then you're still going to see this onslaught
8 of litigation that you see today in the Section
9 2 context.

10 The doctrinal reason, Justice
11 Kavanaugh, why, you know, we're not just, like,
12 totally thrilled with the proposal is I think
13 it's just a half solution to the constitutional
14 problem because, at the end of the day, what
15 the government's asking you to do is keep
16 Gingles in some form. And, as we've laid out
17 in our supplemental briefs, Gingles I, II, and
18 III are expressly built on the sorts of racial
19 stereotypes that the Court's cases say are
20 impermissible under the Equal Protection
21 Clause.

22 And so I think that anytime any test,
23 whether it's good or bad as a practical matter,
24 that at the end of the day is asking the
25 government to assign voters to different

1 districts on the basis of their race and is
2 engaged in stereotypes about how members of a
3 race simply by virtue of their membership in
4 that racial class think, I think that's a
5 constitutional problem, and so that's why it's
6 not wholly fulfilling.

7 JUSTICE KAVANAUGH: I think the reason
8 they say we haven't really addressed their
9 proposal before in the -- in our jurisprudence,
10 in part, because, before Rucho, states wouldn't
11 articulate that objective explicitly and,
12 therefore, it's an open question.

13 Do you agree with that?

14 MR. AGUIÑAGA: I think, as a practical
15 matter, that's probably true, Your Honor. I
16 mean, I think pre-Rucho, states were going to
17 be very hesitant to venture out to say, you
18 know, overtly, like, politically, like, here's
19 what we're doing, and so that -- that is, I
20 think, a great explanation of why the Court's
21 cases have treated the -- the political versus
22 racial divide as it does.

23 JUSTICE KAVANAUGH: And just on common
24 ground here, because I think it's always
25 important in a case like this where there's

1 disputes to identify what's common ground,
2 Justice Jackson said the goal is equal
3 opportunity for all Americans. I think we all
4 agree on that completely.

5 And the goal, of course, is racial
6 non-discrimination, but at the same time, given
7 history and given Congress's action, the goal
8 is making sure that there have been sufficient
9 remedies for the history of discrimination in
10 the United States. And we've seen that in the
11 school desegregation context, in the college
12 admissions context, and a variety of contexts.

13 And then Ms. Nelson I think suggested,
14 if there is going to be a temporal limit, she
15 doesn't want one at all, but then I think she
16 said, if there's going to be one, there -- it
17 should be identified in advance. And I just
18 want to get your response to that.

19 MR. AGUIÑAGA: Our response to that is
20 simple, Your Honor. Over three decades dating
21 back to Shaw I and Miller, the Court has always
22 qualified its voting cases with the caveat that
23 racial stereotyping is bad, the Fourteenth
24 Amendment forbids it, and in all events, it
25 can't persist.

1 I think anybody remotely involved in
2 redistricting knows those caveats and has been
3 on notice since the 1990s. And so, you know,
4 as recently as this Court's plurality opinion
5 in Shady and then SFFA, where the Court again
6 reproduced that blackletter law that racial
7 stereotyping is not permitted under the
8 Fourteenth Amendment, the warning bells have
9 been sounding for decades, and I think that's a
10 long enough notice for anybody involved, Your
11 Honor.

12 JUSTICE KAVANAUGH: In response to
13 Justice Kagan, Ms. Nelson said that Black
14 representatives and justices in Louisiana have
15 primarily if not exclusively been elected in
16 majority-minority or majority-minority
17 opportunity districts and that the results
18 would be terrible.

19 You want to respond to that?

20 MR. AGUIÑAGA: Sure, Your Honor. I
21 mean, I -- I think there's been a lot of
22 sky-is-falling rhetoric from the other side in
23 this case. And I just want to give you, like,
24 one political reality, why I think that's a
25 little overstated, which is remember that in a

1 case -- use a state like Louisiana, Republican
2 legislature, if a Republican legislature wants
3 to maximize its political seats, draw a 6-0
4 map, remember what has to happen with the
5 hundreds of thousands of Democrat voters that
6 currently exist in the majority Democrat
7 districts, District 2 and District 6. They
8 have to go somewhere.

9 And that means that if the -- if the
10 legislature wants to take the risk of
11 maximizing what they're doing is turning safe
12 districts for high-profile political incumbents
13 purple. And that, I think, is a very dangerous
14 political risk.

15 I'm not -- I don't know what our
16 legislature would do if the Court rules in our
17 favor, but I'm just saying that's one political
18 reality that makes me pause and say I don't
19 think the sky is going to fall.

20 JUSTICE KAVANAUGH: Thank you.

21 CHIEF JUSTICE ROBERTS: Justice
22 Barrett?

23 JUSTICE BARRETT: I just have a
24 clarifying question to see how I'm thinking
25 about this and -- or -- or the arguments that

1 are being made.

2 Would you say that Section 2 insofar
3 as it goes beyond just intentional
4 discrimination because, as Justice Kagan said,
5 Congress amended it when we said that before,
6 is itself an exercise of the enforcement power,
7 Judge -- I'm going to assume here that
8 Congress's enforcement power is necessary and
9 the congruence-and-proportionality test applies
10 to Section 2.

11 Do you agree with that conception?
12 And I guess just to tell you where I'm coming
13 from, I mean, it's one thing to say that the
14 map itself is the remedy. But it might also be
15 that the statute itself insofar it goes beyond
16 intentional discrimination is the remedy.

17 Is that a way to think about it, or is
18 that how the arguments are going?

19 MR. AGUIÑAGA: I think that's right,
20 Justice Barrett. I mean, I think the Court's
21 precedents assume that if a plaintiff in a
22 Section 2 case can prove up the preconditions
23 and the totality of the circumstances, the
24 automatic remedy at least in this case is going
25 to be a -- a majority-minority district.

1 And I think the Court's precedents
2 assume that that is statutorily mandated.
3 Like, that's -- that's just the natural follow,
4 the consequence of a violation finding. So I
5 do think it's built into the statute.

6 Now there was a lot of discussion
7 earlier about whether we're attacking Section 2
8 itself, like, facially. And that's just not
9 true. The -- the reargument QP and our
10 briefing has been focused solely on this use of
11 race-based redistricting as a remedy.

12 I think all the other applications of
13 Section 2 that this Court has considered remain
14 fair game if a plaintiff especially can show
15 intentional discrimination. Of course, that
16 all remains fair game.

17 But I think ordinarily focused here on
18 the use of race to draw district lines insofar
19 as the Court has understood that to be mandated
20 by Section 2 to remedy an alleged violation.

21 JUSTICE BARRETT: So you don't
22 understand yourself to be arguing that any part
23 of Section 2 is itself unconstitutional but
24 simply is the way that courts have been
25 applying it goes beyond?

1 MR. AGUIÑAGA: That's correct, Justice
2 Barrett. I mean, this Court's precedents
3 culminating in SFFA have said, if the racial
4 classification that a government's employing to
5 allegedly remedy a violation is what's at
6 issue, like, that's the constitutional problem.
7 And that's where we focused our briefing.

8 JUSTICE BARRETT: Thank you.

9 CHIEF JUSTICE ROBERTS: Justice
10 Jackson?

11 JUSTICE JACKSON: So where in Section
12 2 does it mandate another minority district? I
13 mean, my -- my understanding as I explored with
14 Ms. Nelson is that Section 2 is the mechanism
15 by which we determine that equal electoral
16 opportunity is not being provided for a certain
17 minority group.

18 And we've interpreted in Gingles,
19 we've given some flesh to how one goes about
20 identifying that set of circumstances.

21 But I thought that's the end of it in
22 terms of the Court's announcement under Section
23 2, and the Court then turns to the state and
24 says: How do you want to remedy this? We've
25 got a problem.

1 And sometimes the state might draw a
2 second minority district. Sometimes it might
3 not. And yet your answer to Justice Barrett
4 was: Well, everybody just knows that that's
5 the automatic remedy. So can -- can you help
6 me figure out that disconnect?

7 MR. AGUIÑAGA: Well, Justice Jackson,
8 I think there's a reason why this Court's
9 voting precedents going all the way back to
10 Shaw I are so tied up with race. It's because
11 the -- the remedy, as parties and the courts
12 have understood Section 2 to operate, is almost
13 always going to be race-based. That's why they
14 went --

15 JUSTICE JACKSON: No, they're show --
16 they're so -- they're so tied up with race
17 because that's the initial problem, right?
18 That's where -- that -- that's the beginning.
19 The beginning is the claim that a person makes
20 under Section 2 that because of their race,
21 they are not being afforded equal electoral
22 opportunity.

23 It is a separate question as to how we
24 go about remedying that and the extent to which
25 we need to use race as a remedy. That's the

1 question we're here on today.

2 But the Section 2 issue is just what
3 circumstances do we look at to determine
4 whether this problem of unequal electoral
5 opportunity on the basis of race is occurring.

6 MR. AGUIÑAGA: Right. And a couple of
7 responses to that, Justice Jackson.

8 JUSTICE JACKSON: Wait. So can I just
9 ask --

10 MR. AGUIÑAGA: So --

11 JUSTICE JACKSON: -- why is that not a
12 compelling state interest to -- to identify
13 areas in which that problem is occurring?

14 MR. AGUIÑAGA: Your Honor, of course,
15 as this Court recognized in SFFA, states can
16 remedy intentional discrimination if they --

17 JUSTICE JACKSON: No, I'm not talking
18 about the remedy. I'm not talking -- I'm
19 talking about the --

20 MR. AGUIÑAGA: They can identify --

21 JUSTICE JACKSON: Identify, all right.

22 MR. AGUIÑAGA: They -- of course.

23 JUSTICE JACKSON: So, if -- if I'm
24 right that Section 2 is about identifying the
25 problem and then requiring some remedy, I don't

1 understand why your answer to Justice Kagan's
2 question about is this a compelling state
3 interest is no. The answer is obviously yes,
4 that you have an interest in remedying the
5 effects of racial discrimination that we
6 identify using this tool.

7 Whether you go too far in your remedy
8 is another issue, right?

9 MR. AGUIÑAGA: Your Honor, I think
10 step zero in all these cases, it was certainly
11 step zero in the Robinson litigation, is the
12 plaintiffs came in and said we want another
13 majority-Black district. I think the Court --

14 JUSTICE JACKSON: I thought they came
15 in and said we are not receiving equal
16 electoral opportunity because our votes are
17 being diluted.

18 MR. AGUIÑAGA: Which is the same way
19 of saying we deserve a second majority-Black
20 district.

21 JUSTICE JACKSON: No, it's not because
22 that -- again, just trust me on this -- the --
23 the second electoral -- or second district is a
24 remedy that one could offer for a problem that
25 we've identified. And the whole Robinson

1 litigation was about identifying the problem.

2 Is this really happening?

3 In many, many Section 2 cases, the
4 court says you're wrong, you're fine, there --
5 there is not an electoral opportunity being
6 denied to you, go away. In this case, the
7 court said, I see, I'm looking at the factors,
8 I appreciate what you're saying, you've proven
9 that we have this problem.

10 And so the next question is, how do we
11 go about remedying it?

12 MR. AGUIÑAGA: Right. And the
13 problem, Justice -- Justice Jackson, that the
14 Middle District identified was not intentional
15 discrimination. And, in fact, I think, when I
16 hear my --

17 JUSTICE JACKSON: Why do you need
18 intentional discrimination to remedy a problem
19 like the one that I've identified?

20 MR. AGUIÑAGA: Because, if you're
21 going to use race the way that the Robinson
22 Appellants want the Court to use race in
23 drawing a second majority-minority interest,
24 you've got to have a compelling interest.

25 JUSTICE JACKSON: Thank you.

1 MR. AGUIÑAGA: And as --

2 JUSTICE JACKSON: I understand.

3 MR. AGUIÑAGA: Thank you, Mr. Chief
4 Justice.

5 CHIEF JUSTICE ROBERTS: Thank you,
6 counsel.

7 Mr. Greim.

8 ORAL ARGUMENT OF EDWARD D. GREIM

9 ON BEHALF OF THE APPELLEES

10 MR. GREIM: Mr. Chief Justice, and may
11 it please the Court:

12 The Appellees should prevail here
13 regardless of the grounds on which the Court
14 chooses to rely. In today's America, voters
15 like the Appellees are still being racially
16 stereotyped to place them into single-member
17 districts. If it was ever acceptable under our
18 color-blind Constitution to do this, it was
19 never intended to continue indefinitely.

20 Section 2 effects findings alone can
21 no longer justify the widespread stereotyping
22 of American voters based on race in violation
23 of the Fourteenth and Fifteenth Amendments. It
24 is time to reach a question this Court has
25 never reached and hold that Section 2 alone is

1 no compelling interest for racially
2 gerrymandering citizens like the Appellees
3 today.

4 The Court should affirm and direct the
5 district court to order a remedial map in time
6 for the 2026 elections.

7 I welcome any questions.

8 JUSTICE THOMAS: The last time we had
9 this case and in the materials that we have,
10 there was quite a bit of discussion in the
11 debate surrounding SB8 that this district had
12 to be drawn this way, the second district,
13 because of the litigation earlier in the
14 Robinson case.

15 What's your view of the role of
16 Robinson in the development of SB8?

17 MR. GREIM: Well, it has exactly one
18 point of contact, which is the State has
19 admitted that it felt that it had to draw a
20 second majority-minority district because of
21 Robinson to avoid trial in Robinson. They did
22 not want to have a trial during the time it was
23 going to be scheduled, and so they -- they
24 passed the second majority-minority district
25 and they -- they -- race predominated in doing

1 that.

2 JUSTICE THOMAS: When you say race
3 predominated, what exactly do you mean by that?

4 MR. GREIM: I just mean to apply the
5 standard from -- from Cooper and --

6 JUSTICE THOMAS: Well, I mean
7 practically, how is it used in -- in your -- in
8 your mind or in your thinking?

9 MR. GREIM: Well, the -- basically,
10 the State went to the strongest remaining area
11 of minority population, which was east Baton
12 Rouge, and then they looked about the state for
13 enough majority -- enough minority voters that
14 was still contiguous to the main concentration
15 in east Baton Rouge, and they went to the
16 northwest.

17 And, again, the goal that could not be
18 compromised, which was a standard here, was
19 that they had to draw a second
20 majority-minority district, and that made race
21 predominate both in the direction and in the
22 details of how the lines were drawn.

23 JUSTICE KAGAN: Mr. Greim, you and the
24 solicitor general spoke about stereotyping and
25 how there's no place for stereotyping. But I'm

1 wondering what stereotyping has to do with any
2 of this.

3 The requirements of a Section 2 vote
4 dilution claim are essentially that there's
5 residential segregation by race. That's not
6 stereotyping. That's just where people live.
7 And that there is racial block voting,
8 essentially that whites won't vote for a Black
9 candidate. That's not stereotyping either.
10 That's just what the data shows about race --
11 racially block voting.

12 So I'm wondering how it is that
13 stereotyping gets into this case at all?

14 MR. GREIM: Well, Your Honor, two --
15 two points. First of all, stereotyping is the
16 remedy that occurs when race predominates and
17 is used to sort voters into one district or the
18 other. And -- and the reason that's important
19 is to go back to the -- the second kind of
20 predicate to your question.

21 In a Gingles showing, the showing
22 that's made is not that white voters or
23 majority voters won't vote for the minority
24 candidate. The only showing that's currently
25 being made is correlation.

1 And so what we're not seeing in cases
2 today is a showing that we can separate out
3 partisan politics, any partisan motivations
4 that the majority or minority voters have. And
5 so that case could come along, but that's not
6 part of the required showing of Gingles the way
7 courts are applying it.

8 JUSTICE KAGAN: Well, I -- I think
9 that, you know, we've had several cases up here
10 where we've acknowledged that there's some
11 interaction between racially -- racial -- race
12 and partisan affiliation. Obviously, that's
13 right. And the task for the courts is to
14 separate those things out, which may be hard in
15 a given case, may be easier in a given case,
16 but the only thing that's at issue, the
17 violation, is where there's racially block
18 voting.

19 And, again, you know, it's just a
20 there there. There is currently -- in order to
21 prove a Section 2 violation, you have to show
22 that the current conditions, not some old
23 conditions that happened in 1962 or in 1982,
24 but the current conditions are such that
25 there's no equal opportunity for African

1 American voters or some other group because
2 there's racially block voting.

3 And I guess I don't see what --
4 where -- where stereotyping comes into that.
5 It's just there's a there there that African
6 Americans can't elect candidates of their
7 choice.

8 MR. GREIM: Well, the -- the problem,
9 though, is in the remedy. The problem is that
10 when you are drawing your remedial district,
11 which is the very first part of Gingles, that
12 may not be the final district you end up with,
13 but just to -- I'm covering your question
14 and -- and a question Justice Jackson asked,
15 the very first thing the plaintiff shows is
16 here's the community that was cracked or
17 packed.

18 And so, to undo that, you have to look
19 at the race of the voters all around that area
20 and you've got to make assumptions about them
21 based on statistics, but you got to make
22 assumptions about what they think and how they
23 vote based on their race, and you've got to --
24 you're drawing new districts based on that.

25 JUSTICE KAGAN: Yeah. I mean, this is

1 the -- the thing that we decided in Milligan
2 because what the state said in Milligan was
3 that the plaintiffs could not use a map that
4 was at all race-based themselves in order to
5 show that there was a way out of this kind of
6 vote dilution -- these kind of vote dilution
7 practices.

8 And the Court says -- said: Of
9 course, you can do something that is
10 race-based, even though not race-predominant,
11 that we're not going to insist that you come in
12 and ignore the factor of race when the only
13 reason we're here is because race has played
14 such an integral part in the voting process
15 that people are being deprived of their voting
16 rights because of race.

17 MR. GREIM: Well, Justice Kagan, the
18 plurality in that section of -- of Milligan
19 drew the line between race-conscious and
20 race-predominant districting. "Race-based"
21 appears -- and maybe we need to define all of
22 our terms. It appears in the decision, but --
23 but the -- I think what -- what is clear from
24 that case is that the remedial maps can't allow
25 race to predominate.

1 I mean, the -- the Court said that the
2 remedial map, the illustrative map, can't
3 violate the Court's redistricting decisions.
4 And, of course, there's the entire Shaw line.

5 JUSTICE KAGAN: I don't think that
6 there's any dispute as to that point, but
7 there's -- but, you know, we're a long way from
8 racial predominance to have the plaintiffs come
9 in with a map that, in order to remedy the
10 race-based problem that exists, the violation
11 of voting rights based on race, itself takes
12 race into account.

13 MR. GREIM: Well --

14 JUSTICE KAGAN: That's what Milligan
15 said three years ago.

16 MR. GREIM: -- the -- the problem -- I
17 mean --

18 JUSTICE KAGAN: And that wasn't a
19 stereotype issue, and it wasn't a kind of,
20 like, we're based on past conditions issue.
21 We're based on current conditions, which is
22 that we just proved a violation of people's
23 voting rights based on current conditions.

24 MR. GREIM: Stereotyping is always the
25 main injury in a Shaw case. It's always the

1 injury when race predominates. And you're --
2 you're --

3 JUSTICE JACKSON: But you're asking
4 for changes to Section 2, which is not a Shaw
5 case.

6 MR. GREIM: Well --

7 JUSTICE JACKSON: That's the
8 confusion.

9 MR. GREIM: Well --

10 JUSTICE JACKSON: I understood that
11 the illustrative maps that the plaintiffs bring
12 in the beginning of a Shaw case is part of
13 their showing that we have a problem. They're
14 illustrative. They're not what Louisiana
15 picked in this case. They're not what the
16 Court requires. The Court gives the state,
17 once the violation is established, the
18 opportunity to draw its own map.

19 So they're just showing -- like,
20 that's just a step that you have to do as a
21 part of your showing that we do have this vote
22 dilution problem in this situation. And, as
23 Justice Kagan says, that's all based on current
24 information.

25 MR. GREIM: Well, but the question is

1 what's the "that" that is based on current
2 information. It's not a showing of intentional
3 discrimination.

4 JUSTICE JACKSON: Why does it need
5 to be? Is your suggestion that the only thing
6 that's worthy of remedying is the intentional
7 discrimination by the State?

8 MR. GREIM: If you are -- if the
9 remedy is stereotyping and race-based, which
10 would trigger --

11 JUSTICE JACKSON: Set aside -- set
12 aside what the -- what the remedy is. I just
13 need an answer to the initial question, right?
14 If I'm looking only at Section 2 world, we have
15 a mechanism for identifying race-based vote
16 dilution and other kinds of problems.

17 Is your view that you only are
18 entitled to some remedy for that if the --
19 if -- if you demonstrate that the State
20 intentionally is causing this to happen to you?

21 MR. GREIM: Well, that -- that's
22 not -- that's not current doctrine under
23 Gingles, but the problem is go back to LULAC --

24 JUSTICE JACKSON: Is that your
25 argument? Is that what you're saying we have

1 to do?

2 MR. GREIM: Our argument is that
3 if you're going to allow race-based -- a
4 race-based remedy, it must be in response to
5 intentional discrimination.

6 JUSTICE JACKSON: So you don't get a
7 remedy for an actual dilution or problem with
8 your vote, the kinds of things that Congress
9 cared about and that the Constitution requires.
10 You don't get a remedy unless this was
11 intentional on the part of the State with
12 respect to you?

13 MR. GREIM: Which is a constitutional
14 vote dilution claim which people always can be
15 bringing.

16 CHIEF JUSTICE ROBERTS: Thank you,
17 counsel.

18 Justice Thomas?

19 Justice Alito?

20 Justice Sotomayor?

21 JUSTICE SOTOMAYOR: So I'm assuming
22 that the ban on poll taxes, literacy -- well,
23 not poll taxes because those have been
24 eliminated by the Twenty-Sixth Amendment, but
25 that the literacy ban that we have will sunset

1 too?

2 MR. GREIM: Those are not stereo --
3 those remedies don't require racial
4 stereotyping. They're nothing like that.

5 JUSTICE SOTOMAYOR: Well, they do
6 because, to prove them, you have to prove that
7 it affects the races.

8 I mean, I -- I -- I just don't
9 understand the stereotyping concept in -- in
10 the Gingles factors.

11 The Gingles factors is looking at
12 whether these people have -- their vote is
13 being diluted or their vote is being taken away
14 from them merely because they are Black.

15 And so, if that's the case, we have
16 always said that remedying discrimination, you
17 can use race.

18 Now you want to add the qualifier
19 it has to be intentional. But I don't see the
20 Fifteenth Amendment being limited that way.
21 The words of the Fifteenth Amendment are that
22 Congress can stop any practice that dilutes
23 voting. That has an -- "practice" is an act
24 that has an effect. It didn't say intentional,
25 intentional dilution of voting. It talked --

1 the amendment itself talks about a practice.

2 MR. GREIM: Your Honor, this Court has
3 never held that the Fifteenth Amendment
4 addresses anything other than intentional
5 discrimination.

6 JUSTICE SOTOMAYOR: No, it does.
7 That's just not true.

8 MR. GREIM: And the --

9 JUSTICE SOTOMAYOR: We just, in
10 Milligan, and we've said in a slew of cases
11 Congress itself said we're not using intent.
12 We're using effects. And we said that's okay.
13 That's within their power as specified in the
14 Fifteenth Amendment.

15 MR. GREIM: But -- but, Your Honor,
16 you can only catch the effects as part of an
17 enforce -- that's just the enforcement power at
18 that point. So you're using the enforcement
19 power based on a showing --

20 JUSTICE SOTOMAYOR: No, the
21 discrimination is the practice.

22 MR. GREIM: The -- the case law going
23 back to Katzenbach and --

24 JUSTICE KAGAN: Mr. Greim, I mean --

25 CHIEF JUSTICE ROBERTS: I'm sorry.

1 JUSTICE KAGAN: Oh, are we --

2 CHIEF JUSTICE ROBERTS: Yes.

3 JUSTICE KAGAN: Sorry.

4 CHIEF JUSTICE ROBERTS: Justice
5 Sotomayor?

6 JUSTICE SOTOMAYOR: Well, I'll stop
7 and you can go.

8 CHIEF JUSTICE ROBERTS: Justice Kagan?

9 MR. GREIM: Oh, sorry. I thought we
10 were all done.

11 CHIEF JUSTICE ROBERTS: No, you're not
12 done.

13 (Laughter.)

14 MR. GREIM: I'm in no hurry.

15 JUSTICE SOTOMAYOR: You're not done.

16 JUSTICE KAGAN: What we've said, and
17 this goes back umpteen years and it was said
18 again in -- in Milligan, is that even if the
19 constitutional prohibition is won on -- on
20 purposeful discrimination, Congress can enforce
21 that prohibition under Section -- under
22 Section 5 of the amendment by way of
23 prohibiting various kinds of effects.

24 And -- and so, in Milligan, we said a
25 ban on discriminatory effects is an appropriate

1 method of promoting the purposes of the
2 Fifteenth Amendment. And, as I said, that goes
3 back to Katzenbach, it goes back to City of
4 Rome.

5 And I understand that common ground
6 here, including among the SG, is essentially
7 a desire to take us back to an entirely
8 intent-based world, but that is -- you know,
9 that -- that is the thing that we tried to do
10 that Congress prevented us from doing and that,
11 since the amendments of 1982, have been very
12 clear that -- that you do an effects test for
13 Section 2 in order to vindicate the purposes of
14 the Fifteenth and Fourteenth Amendments.

15 MR. GREIM: It's clear what Congress
16 did, I mean, but it was using its enforcement
17 power only. It doesn't have the power to
18 change what the Fifteenth Amendment says.

19 JUSTICE KAGAN: I mean, I'll take
20 that -- I'll take that label. That's fine.
21 But that's --

22 MR. GREIM: But it was not an --

23 JUSTICE KAGAN: Congress has
24 enforcement power under the Fifteenth
25 Amendment.

1 MR. GREIM: But it was not an
2 appropriate use of the enforcement power. And
3 even if it was then, it's not appropriate today
4 because it's not congruent and proportional.

5 And the Court has never held --

6 JUSTICE KAGAN: And what is this kind
7 of -- was it congruent and proportional in
8 1982, or is it just, like, suddenly not
9 congruent and proportional because it's 40
10 years later?

11 Like, I never understood our
12 congruence-and-proportionality test, which, by
13 the way, we have never applied to voting, but
14 even if you were to apply it to voting, I've
15 never understood it to have a kind of: Oh, you
16 know, Congress has to re-up its congruence and
17 proportionality findings every 10 years or
18 every six months or every whatever you want
19 to say it.

20 MR. GREIM: Well, City of Boerne, that
21 decision holds up Katzenbach and City of Rome
22 as sort of paradigmatic exercises of this sort
23 of scrutiny, although they're much older.

24 But -- but the point is this. Those
25 cases were based on a strong factual record

1 about very particular effects-based
2 prohibitions that had just been used for
3 purposeful discrimination.

4 They were using poll taxes and
5 literacy tests, although facially neutral, to
6 purposely discriminate, and they would keep
7 changing them over time to make sure that they
8 kept the discrimination in place. So that was
9 a very unique circumstance.

10 And Congress recognized that in 1982.
11 It said: We don't have the same kind of record
12 that we built in 1965 under Section 4A to get
13 rid of a literacy test in a certain area or,
14 you know, when we expanded that in '70 and '75.
15 People were actually using literacy tests and
16 they were using them in a discriminatory
17 fashion.

18 So that's -- but none of those
19 remedies stereotyped.

20 JUSTICE KAGAN: Thank you.

21 CHIEF JUSTICE ROBERTS: Justice
22 Gorsuch?

23 Justice Kavanaugh?

24 Justice Barrett?

25 Justice Jackson?

1 JUSTICE JACKSON: So going back to
2 this discriminatory intent point, I guess I'm
3 thinking of it -- of the fact that remedial
4 action absent discriminatory intent is really
5 not a new idea in the civil rights laws, and --
6 and my kind of paradigmatic example of this is
7 something like the ADA.

8 Congress passed the Americans with
9 Disabilities Act against the backdrop of a
10 world that was generally not accessible to
11 people with disabilities, and so it was
12 discriminatory in effect because these folks
13 were not able to access these buildings.

14 And it didn't matter whether the
15 person who built the building or the person
16 who owned the building intended for them to be
17 exclusionary. That's irrelevant.

18 Congress said the facilities have
19 to be made equally open to people with
20 disabilities if readily possible.

21 I guess I don't understand why that's
22 not what's happening here. The idea in Section
23 2 is that we are responding to current-day
24 manifestations of past and present decisions
25 that disadvantage minorities and make it so

1 that they don't have equal access to the voting
2 system, right? They're -- they're disabled.
3 In fact, we used the word "disabled" in
4 Milligan. We say that's a way in which you see
5 that these processes are not equally open.

6 So I don't understand why it matters
7 whether or not the state intended to do that.
8 What Congress is saying is if it is happening,
9 which Section 2 gives us the tools to
10 determine, you've got to fix it.

11 MR. GREIM: The -- the difference is
12 that the remedy under the ADA and other
13 antidiscrimination laws is not stereotyping.
14 It -- we don't then --

15 JUSTICE JACKSON: It's not race-based.
16 I take your point. I take your point. But
17 you're saying then that if the problem of no
18 access is about race, it's just too bad because
19 you can't have a remedy that relates to race.

20 MR. GREIM: Absolutely not, Your
21 Honor.

22 JUSTICE JACKSON: Okay.

23 MR. GREIM: It's not whether it
24 relates to race. It's whether the remedy that
25 relates to race involves stereotyping voters

1 and making assumptions about their politics and
2 their views and their thoughts based on their
3 race. And that's the problem.

4 It doesn't exist in those other civil
5 rights statutes.

6 JUSTICE JACKSON: So why do we have to
7 change Section 2? Okay, so fine, you say if
8 it's a remedy problem, why aren't we just
9 focused on whether the -- whether the remedy
10 here, the particular map in Louisiana is
11 predominant -- you know, using race and, if so,
12 strict scrutiny applies. And did they narrowly
13 tailor it?

14 I mean, that seems to me to be the
15 problem that you're identifying. The remedy
16 here, you say, is overbroad, it's not using the
17 right factors, it's using race in a
18 stereotypical way. What does that have to do
19 with Section 2 and changing its criteria and
20 adding intent there?

21 MR. GREIM: Well, Your Honor, you have
22 to break the link between only using effects,
23 on the front end, and, on the back end, using
24 race and stereotyping. That's what you have to
25 break.

1 And so, I mean, this Court warned
2 about that problem, this problem, in --

3 JUSTICE JACKSON: Okay. I don't see
4 the link, but I'm out of time. Thank you.

5 CHIEF JUSTICE ROBERTS: Thank you,
6 counsel.

7 MR. GREIM: All right.

8 CHIEF JUSTICE ROBERTS: Mr. Mooppa.

9 ORAL ARGUMENT OF HASHIM M. MOOPPA
10 FOR THE UNITED STATES, AS AMICUS CURIAE,
11 SUPPORTING THE APPELLEES

12 MR. MOOPPA: Mr. Chief Justice, and
13 may it please the Court:

14 I think this Court's predominance
15 standard will help clarify a lot of the issues
16 that have been discussed this morning and will
17 also show why the arguments we're pressing here
18 were neither raised nor rejected in Milligan.

19 So, first, under the Constitution, the
20 problem is not the mere consideration of race
21 in districting. The problem is when race
22 subordinates traditional neutral principles and
23 is the factor that cannot be compromised.

24 Second, the problem with Section 2 and
25 Gingles is not that it's an effects test. The

1 problem with those -- with the statute is, as
2 construed in Gingles, it's reaching far beyond
3 anything that can reasonably present a risk of
4 intentional discrimination as, in fact, making
5 race predominant is requiring states to
6 subordinate their principles to find a result.

7 The Robinson litigation perfectly
8 exemplifies this. The Robinson plaintiffs
9 could not show a denial of equal openness for
10 Black Democrats. What they could show is that
11 Democrats in Louisiana lost a seat.

12 I -- I welcome this Court's questions.

13 JUSTICE THOMAS: You -- in one of your
14 suggestions in your brief, you mention
15 decoupling race and party. One, is there a
16 correlation, particularly among Black voters,
17 and, two, how do you decouple them?

18 MR. MOOPPAN: So there generally is.
19 The way you would decouple them is you look at
20 primary elections, right? You look to see in
21 the Democratic primary, do white Democrats and
22 Black Democrats vote differently. And that did
23 not happen here.

24 If you look at the Robinson district
25 court opinion, when they do steps 2 and 3 of

1 Gingles and they analyze racially polarized
2 voting, the court expressly said that they
3 didn't need to try to decouple race, and they
4 did that because in Gingles the court never
5 resolved the issue. Justice Brennan said you
6 didn't need to do it, but Justice White refused
7 to join that part of the opinion.

8 And so that's part of the problem
9 here, is that what's going on under Gingles now
10 is it's not actually figuring out whether
11 there's an unfair effect based on race. It's
12 figuring out whether there's an unfair effect
13 based on party. And, again, the Robinson case
14 perfectly illustrates this.

15 Justice Alito, as you pointed out,
16 incumbency protection has long been recognized
17 as a traditional race-neutral principle, while
18 the plaintiffs' illustrative maps in Robinson
19 totally departed from incumbency protection
20 because every map they provided would take the
21 state from a 5-1 map to a 4-2 map and require
22 displacing some Republican incumbent.

23 JUSTICE SOTOMAYOR: Counsel --

24 CHIEF JUSTICE ROBERTS: Counsel --

25 JUSTICE SOTOMAYOR: We're -- Justice

1 Kavanaugh pointed to page 24, 25 of your brief
2 as well. We didn't grant cert on redoing
3 Gingles. We granted cert on a totally
4 different question. And we have said over and
5 over again that statutory precedents are
6 entitled to far greater stare decisis
7 protection.

8 Our -- whatever mistakes we have in
9 Gingles, Congress has had 40 years to fix them,
10 and it hasn't done it. In fact, when they
11 thought we did something wrong, they overruled
12 it and passed Section 2. I don't know how we
13 get to redo Gingles when this case didn't
14 involve Gingles. The district court in this
15 case didn't apply Gingles. It was a district
16 court in the Robinson's case. And it's not the
17 Robinson's case that's before us; it's this
18 case.

19 And so I'm a little bit confused. How
20 do we enter redoing Gingles?

21 MR. MOOPPAN: So the -- the reason
22 you're there --

23 JUSTICE SOTOMAYOR: Then --

24 MR. MOOPPAN: -- is -- so -- so you
25 asked two questions. One is why it's relevant,

1 and the second is can you do it under stare
2 decisis. So let me address those in turn.

3 JUSTICE SOTOMAYOR: You -- you can do
4 it in whatever order.

5 MR. MOOPPAN: Okay. So --

6 JUSTICE SOTOMAYOR: Tell me, did the
7 district court here apply Gingles?

8 MR. MOOPPAN: No, because this case
9 comes up as a racial gerrymandering case
10 brought by the Callais plaintiffs. They showed
11 that race predominated, at which point --

12 JUSTICE SOTOMAYOR: But that has
13 nothing to do with what the court did here.

14 MR. MOOPPAN: It does. The reason it
15 does is because once they showed that race
16 predominated, the burden flipped to the
17 Robinson appellants to show that they had a
18 compelling interest.

19 JUSTICE SOTOMAYOR: Right.

20 MR. MOOPPAN: They asserted the
21 compelling interest with Section 2, but if they
22 misapplied Section 2 --

23 JUSTICE SOTOMAYOR: But we --

24 MR. MOOPPAN: -- then they don't have
25 a compelling interest.

1 JUSTICE SOTOMAYOR: But we have said
2 over and over again that the compelling
3 interest is in a state believing that it should
4 remedy something, and it can be wrong.

5 MR. MOOPPAN: Not as --

6 JUSTICE SOTOMAYOR: We have --

7 MR. MOOPPAN: -- a matter of law, no.

8 JUSTICE SOTOMAYOR: -- said that -- we
9 have said that over and over again.

10 Counsel, you're wrong sometimes on a
11 factual basis, sometimes on a legal basis.
12 Wrong is wrong. Whatever you think might be
13 the error, if you still think that it's
14 something that's in your best interest to do,
15 you do it.

16 MR. MOOPPAN: Your Honor, that's
17 contrary to this Court's holdings in Miller, in
18 Shaw II, and in Cooper. This Court has
19 repeatedly said that if you have an incorrect
20 reading of Section 2, that -- or Section 5 of
21 the Voting Rights Act, that is not a compelling
22 interest.

23 The Court has applied the good faith
24 standard on strict scrutiny to errors of fact,
25 not errors of law. In -- in Miller and Shaw,

1 the DOJ browbeat states into creating multiple
2 majority-minority districts, and they all
3 thought they were doing it under Section 5.
4 They were acting in good faith. The DOJ was
5 browbeating them. But this Court said that was
6 not a compelling interest because DOJ was wrong
7 about what --

8 JUSTICE SOTOMAYOR: Well, but --

9 MR. MOOPPAN: -- Section 5 meant.

10 JUSTICE SOTOMAYOR: -- that hasn't
11 been the allegation here.

12 MR. MOOPPAN: That is the allegation
13 here. The allegation here is that the Robinson
14 court was wrong about what Section 2 meant.
15 They completely misapplied Section 2, even
16 actually under Gingles -- under Milligan, let
17 alone under the proper way to interpret Section
18 2.

19 Again, Justice Alito, three points:

20 First, they ignored incumbency
21 protection. If you look at what the district
22 court said, they said they protected incumbency
23 because Julia Letlow could live in her
24 district. She would lose, but she could still
25 live there. That's not incumbency protection.

1 Two, they did the exact thing that
2 this Court held in LULAC is not a compact
3 district. As you said, they took Blacks from
4 Baton Rouge and Blacks at the north of the
5 state and jammed them together. Yeah, it's a
6 nice rectangular district, it's very pretty,
7 but it's not compact.

8 And then, third, they didn't control
9 for racially polarized voting. So they just
10 said that Blacks vote differently from whites,
11 which just basically means Democrats in
12 Louisiana vote differently from Republicans in
13 Louisiana. That's not racially polarized
14 voting.

15 That is not the proper interpretation
16 of Section 2, and it is exactly why Section 2
17 is leading to racially predominant results
18 where you're essentially using Section 2 to
19 undo political outcomes. And that is an
20 unconstitutional reading of the statute.

21 And so the reason, to get to your
22 first part of your question, why should you
23 revisit Gingles, because we don't think it's
24 consistent with stare decisis to say, well, we
25 misinterpreted the statute 40 years ago, so now

1 the statute is unconstitutional. Stare decisis
2 is about respect for Congress and respect for
3 stability.

4 If this Court has created a
5 constitutional problem with the statute, this
6 Court should fix it.

7 JUSTICE JACKSON: Can you say more
8 about why there's a constitutional problem with
9 the statute?

10 MR. MOOPPAN: Yes. For -- so, as I
11 was saying, the problem here is Gingles, as it
12 has been interpreted, essentially imposes
13 liability based on making the state take race
14 and predominate over race-neutral criteria.
15 Again, using Robinson as an example.

16 JUSTICE JACKSON: I don't understand.
17 I'm sorry.

18 MR. MOOPPAN: So incumbency protection
19 is a traditional neutral principle. Robinson
20 found liability by requiring the State to
21 discard their race-neutral --

22 JUSTICE JACKSON: But I thought you
23 said Robinson was wrong. So then we just
24 change that understanding. Why does -- why
25 does that create a constitutional problem?

1 MR. MOOPPAN: So the -- no. It's --
2 it's -- the way it was wrong is it required the
3 State to subordinate race-neutral principles to
4 race.

5 And let me use Milligan --

6 JUSTICE JACKSON: And you say Gingles
7 requires that?

8 MR. MOOPPAN: So the way --

9 JUSTICE JACKSON: So it was -- it
10 was -- it was consistent with Gingles and
11 Gingles is wrong or it was inconsistent with
12 Gingles and that we should say that?

13 MR. MOOPPAN: It's the interpretation
14 of Gingles that was adopted in this -- in
15 Milligan is the real problem here. And so this
16 is the -- the pages in our brief that Justice
17 Kavanaugh has cited a couple times.

18 The fundamental problem is when this
19 Court said in Milligan that as long as the
20 plaintiffs illustrative map is roughly
21 equivalent to the state's map, that's enough to
22 satisfy Gingles.

23 What that meant is you're basically
24 telling the state that you have to subordinate
25 your weighing of your neutral principles and go

1 a different direction just because of race.

2 Let me give you an analogy I -- I

3 think will make this a little bit clearer.

4 Imagine if Congress had passed a statute that

5 said LSU, if you have a white student and a

6 Black student who are roughly equivalent on

7 your admissions criteria, you must pick the

8 Black student. Of course that would be

9 unconstitutional. That would be subordinating

10 their --

11 JUSTICE JACKSON: Yeah, but do you

12 agree with my view that under Section 2, you're

13 not alone mandating a particular result, that

14 Section 2 is just about identifying the

15 problem.

16 MR. MOOPPAN: And my -- I agree with

17 that but the --

18 JUSTICE JACKSON: If that's the case

19 then it doesn't matter that the Section 2

20 analysis is showing you that there could be

21 another way to do this. It's -- it's -- go

22 ahead.

23 MR. MOOPPAN: It depends what you

24 define as the problem. And the problem with

25 Section 2 as construed in Gingles and Milligan

1 is they are defining as a problem that there's
2 another way of drawing the district that would
3 help Blacks, even though there's no reason to
4 think that it's either intentionally
5 discriminatory or even a significant risk of
6 intentional discrimination.

7 JUSTICE JACKSON: But why is
8 intentional discrimination the bedrock? We're
9 not just -- you're -- you're reducing what is
10 happening to Section 2 to something that I
11 don't think is consistent with what Gingles is
12 actually requiring.

13 MR. MOOPPAN: Because the Constitution
14 prohibits intentional discrimination and
15 Justice Barrett, as you pointed out, this is
16 enforcement legislation. So we agree it's not
17 an intent test.

18 But it has to at least be smoking out
19 conduct that presents a significant risk of
20 intentional discrimination. That's the phrase
21 that this Court's used in Boerne. It's the
22 phrase that this Court used in -- in Katzenbach
23 too.

24 Again, one way of thinking about this
25 is when you -- if you think there's a problem

1 here, white Democrats in West Virginia, they
2 don't get districts drawn for them. White
3 Democrats have zero representation in West
4 Virginia, even though they're a significant
5 percentage of the state.

6 The reason why Section 2 as be -- as
7 it's being construed in Gingles is a problem is
8 it's saying that you have to create a district
9 for Black Democrats that you would never create
10 for white Democrats in a Republican state.
11 It's essentially being used as a reverse
12 partisan gerrymander on purely racial grounds.

13 CHIEF JUSTICE ROBERTS: Thank --

14 MR. MOOPAN: And that is a
15 constitutional problem. And the test we have
16 identified in our brief would solve that
17 problem.

18 JUSTICE JACKSON: Thank you.

19 CHIEF JUSTICE ROBERTS: Thank you,
20 counsel.

21 You began, if I'm remembering
22 correctly, suggesting that Milligan was
23 consistent with your position in this case.
24 And then of course you've mentioned its
25 discussion of Gingles is not.

1 MR. MOOPPAN: Yeah.

2 CHIEF JUSTICE ROBERTS: I wonder if
3 you could explain that a little further, to
4 what extent it's consistent and to what extent
5 it's not.

6 MR. MOOPPAN: Yeah. So most of the
7 arguments we're making in this case were not
8 made in that case and were not rejected in that
9 case. There is one aspect of our argument that
10 is inconsistent with Gingles -- with Milligan.

11 The -- one aspect that's inconsistent
12 is what I was discussing earlier. The part of
13 Milligan where it said that it's reasonably
14 configured so long as it's roughly equivalent.

15 We think that that is wrong. And we
16 think that that aspect of the opinion is what
17 causes all the racial predominance because,
18 again, if you take a step back and think about
19 two possibilities, possibility 1 is the
20 plaintiffs come in and their map is superior to
21 the state's map on the state's own principles.

22 Then we think it's okay to have a
23 results test because in that circumstance,
24 you're not telling the state they have to
25 subordinate their race-neutral principles.

1 You're essentially enforcing their own
2 race-neutral principles in a situation where
3 there is either intentional discrimination or
4 at least a significant risk of intentional
5 discrimination.

6 CHIEF JUSTICE ROBERTS: Thank you.

7 MR. MOOPPAN: But conversely in the
8 situation where it's equivalent, you're
9 basically telling the state, look, you could
10 have done this either way. You want to do it
11 way A? You have to do it way B. Why? Only
12 because of race. That's what makes it
13 predominant. And that was -- that's the one
14 aspect of Milligan that we disagree with.

15 But --

16 CHIEF JUSTICE ROBERTS: Thank -- thank
17 you. Justice Thomas?

18 Justice Alito?

19 JUSTICE ALITO: Well, I think you may
20 be me too hard on Milligan because Alabama in
21 Milligan did not argue that it had drawn those
22 maps based on seeking partisan advantage,
23 right?

24 MR. MOOPPAN: I agree, Your Honor.
25 And that's why I started my answer to the Chief

1 Justice by saying all the arguments we're
2 making here were not made by Alabama. Alabama
3 made a series of much broader arguments about
4 how you can't consider race at all, the
5 plaintiffs have to draw their maps race blind.
6 You ultimately have to find intent. We're not
7 arguing any of that.

8 And I agree with you, Alabama for
9 whatever reason didn't argue that incumbency
10 protection and partisan advantage were the
11 reasons for their map. And after Rucho, it's
12 clear that those are traditional race-neutral
13 principles that cannot be subordinated by
14 Section 2.

15 JUSTICE ALITO: Yeah. And I think
16 that's consistent with the fundamental analysis
17 in Milligan for reasons that I tried to bring
18 out during my questioning of Ms. Nelson.

19 The first Gingles precondition, as
20 described correctly in Milligan, is that the --
21 the -- the minority group must be sufficiently
22 large and geographically compact to constitute
23 a majority in a reasonably configured district
24 and the district is reasonably configured if it
25 comports with traditional districting criteria.

1 And since Rucho seeking a partisan
2 manages a permissible legislative objective
3 just like a partisan -- just like incumbent
4 protection, so, therefore, that should figure
5 in the first Gingles precondition.

6 MR. MOOPPAN: It absolutely should and
7 in this case -- in Robinson in particular,
8 the -- the state did argue incumbency
9 protection. And if you look at what the
10 Robinson District Court said, it actually said
11 that oh, we've satisfied the incumbency
12 protection. She still lives in the district.
13 She's going to lose but she still lives there.
14 That can't possibly be right.

15 JUSTICE ALITO: And then again on
16 block voting, again, the Rucho issue was not
17 involved in -- in Milligan, but if Black --
18 if -- if block voting is understood properly to
19 mean voting on the basis of race but not on the
20 basis of partisan politics, then -- then that
21 must also be considered under Gingles, right?

22 MR. MOOPPAN: Absolutely. And this is
23 -- it matters, right, because on our position,
24 again, we agree that Section 2 can have a
25 constitutional scope. And our view of the

1 results test would apply in exactly the
2 situation where racially polarized voting
3 properly understood exists.

4 So think of an area like Harlem, for
5 example. You've got white Democrats, Black
6 Democrats and Hispanic Democrats who all live
7 around the same area and who probably have at
8 least sometimes different candidates of choice.

9 If the State of New York was to draw a
10 map in a way that departs from their normal
11 principles and favors one of those racial
12 groups, that's the sort of situation where
13 Section 2 could come in and say well, there's
14 racially polarized voting, you've departed from
15 traditional principles, there's a reason to be
16 worried. And this isn't just a partisan thing.
17 You can imagine the same thing on the
18 Republican side. Imagine Florida.

19 If you have a part of Florida where
20 you have white Republicans and Hispanic
21 Republicans and same thing, the Florida
22 legislature draws it in a way that departs from
23 traditional principles and favors one or the
24 other racial group.

25 But what you can't have is merely the

1 showing that a Republican legislature favored
2 Republicans with whether or not they're white
3 or Black. And there's just no reason in the
4 world to think that the Louisiana legislature
5 would have done anything different in this case
6 if every Black democrat in Louisiana was a
7 white democrat.

8 JUSTICE ALITO: Let me ask you about
9 congruence and proportionality. So the
10 Fifteenth Amendment pretty clearly requires
11 intentional discrimination. And the 1982
12 amendment to the Voting Rights Act walked away
13 from intentional discrimination.

14 But my reading of your position is
15 that Congress's enforcement power under Section
16 2 of the Fifteenth Amendment allows it to go
17 beyond intentional discrimination for -- for
18 this reason, proving intentional discrimination
19 is difficult in part because it's really hard
20 -- it's always hard to figure out what
21 legislative intent is. What was the intent of
22 the legislature in enacting a map? Do you look
23 at stray statements here or there by
24 legislators? Plus a finding of intentional
25 discrimination accuses the state of a serious

1 wrongdoing.

2 So it's permissible to go beyond
3 intentional discrimination to this extent, to
4 identify factors that strongly support a
5 finding of intentional discrimination. And
6 that's what was involved in White versus
7 Regester, which figure very prominently in the
8 drafting of the 1982 amendment.

9 So to that -- to -- if that's what
10 you're doing, it is congruent and proportional
11 in that respect. Is that correct
12 understanding?

13 MR. MOOPPAN: That is. And if I can
14 say -- amplify a couple of points. So we
15 agree, the Constitution prohibits intent.
16 Congress's enforcement power can let them go
17 beyond that, an in effect test, a properly
18 tailored one that gets at a significant risk.
19 And that avoids a lot of the difficulties of
20 actually having to prove intent by a
21 preponderance of the evidence.

22 And if it is actually tailored, if the
23 statute itself is tailored, to things that have
24 a significant risk, then we don't actually
25 think you necessarily need to have a temporal

1 limit in the statute itself. So that's why,
2 Justice Sotomayor, for example, the bans on
3 tests, literacy tests. We think those are fine
4 even though there's no end date in that statute
5 because those are well-known, highly likely to
6 be intentional discriminatory laws, even if
7 they're not always.

8 But the problem we have here is that
9 the way Section 2 has been construed under
10 Gingles and its progeny is so far from the
11 things that are likely intentionally
12 discriminatory, and indeed are affirmatively
13 compelling gerrymanders that are
14 unconstitutional. If that is ever permissible,
15 it could only have been based on the centuries'
16 worth of discrimination that existed in 1965 --

17 JUSTICE ALITO: One -- one final
18 question. I'm -- I'm sorry to take up so much
19 time, but I would like you to address the --
20 what the Solicitor General Aguiñaga said about
21 the practical problems he fears your approach
22 would take -- would -- would cause.

23 MR. MOOPPAN: So I'm not sure I really
24 understand what his concerns are. I think the
25 -- the way we've articulated the test, the

1 plaintiffs have to come in and show that they
2 have a map that is superior on -- to the
3 state's map on the state's own race-neutral
4 principles, including its political objectives.

5 I think the thing that the solicitor
6 general primarily focused on is confusion about
7 what it means to be predominant. We -- I think
8 we agree completely with them that the phrasing
9 of the standard is, is race a criteria that
10 could not be compromised? Have you
11 subordinated race to traditional principles?

12 And if you apply that test, I'm not
13 saying that there won't be difficulties on the
14 margins of how to apply it. There will be new
15 cases. You know, Your Honor wrote the opinion
16 for this Court in Brnovich. It was the first
17 time that the Court had ever adopted the test
18 for vote denial under Section 2. I'm sure
19 there were cases afterwards, but that test was
20 well tailored to the text of the statute and
21 its purposes.

22 And what we are essentially saying in
23 this case is you should do to Section 2 as
24 opposed to vote dilution what the Court has
25 already done as applied to vote denial. It

1 should adopt a test that's tailored.

2 JUSTICE ALITO: Thank you.

3 CHIEF JUSTICE ROBERTS: Justice
4 Sotomayor?

5 JUSTICE SOTOMAYOR: The bottom line is
6 just get rid of Section 2, because the test
7 you're providing doesn't do anything for the
8 effects test that Congress identified. We have
9 said in Katzenbach, we've said it repeatedly,
10 that legislation need only be plainly adapted
11 to addressing discrimination --
12 discrimination practices in voting, right?

13 MR. MOOPPAN: Yes.

14 JUSTICE SOTOMAYOR: All right. The
15 standard that you're setting is a much
16 different one. It has to substantially be
17 addressing this issue.

18 Number two, what you're suggesting is
19 that people of one race, of Blacks in
20 Louisiana, who, will have to be 51 percent of
21 the population before they'll be able to elect
22 another Black candidate, because what you're
23 saying is partisanship is non-negotiable. You
24 have to create maps where you're going to have
25 six districts out of seven always white because

1 that's our partisanship. That means Blacks
2 never have a chance, no matter what their
3 number is, until they reach more than
4 51 percent.

5 MR. MOOPPAN: So I don't think that's
6 true for a lot of reasons, Your Honor. So the
7 first is, as I think the general pointed out,
8 even without Section 2, there's no reason to
9 assume that states are going to try to crack
10 every single --

11 JUSTICE SOTOMAYOR: No, this --

12 MR. MOOPPAN: -- majority-minority
13 district. And the reason --

14 JUSTICE SOTOMAYOR: This -- the
15 illustrative maps show that a map drawn without
16 looking at race and partisanship together would
17 have created two districts.

18 MR. MOOPPAN: Your Honor --

19 JUSTICE SOTOMAYOR: Compact in all
20 traditional ways, it would have been District 2
21 and District 6 around the Baton Rouge and two
22 other counties that were tied historically and
23 otherwise. And politics, you say, not race, is
24 what led the state not to give them another
25 district.

1 MR. MOOPPAN: So I'll say several
2 things, Your Honor. First, I don't agree with
3 your characterization that the illustrative
4 maps were compact. They combined Blacks in
5 different parts of the state, just the way this
6 Court said you can't do that.

7 JUSTICE SOTOMAYOR: No, you're talking
8 about the last -- the State's chosen map.

9 MR. MOOPPAN: No, I'm not.

10 JUSTICE SOTOMAYOR: The map that --
11 the map --

12 MR. MOOPPAN: It's the illustrative
13 map. If you look at District 5 --

14 JUSTICE SOTOMAYOR: The illustrative
15 map was better -- the illustrative map, 2 and 6
16 were combined, but 2, even in the original map,
17 was not all that compact -- compact.

18 MR. MOOPPAN: Justice Sotomayor,
19 you're, as Justice Alito pointed out, I'm not
20 disputing the compactness of the district. I
21 agree they drew a very pretty rectangle. The
22 problem is that in the very pretty rectangle,
23 the Blacks lived in the south and the north.
24 And they took two very different groups of
25 Black --

1 JUSTICE SOTOMAYOR: Well --

2 MR. MOOPPAN: -- people and put them
3 together.

4 JUSTICE SOTOMAYOR: -- the problem is
5 that all of this map is that way. North and
6 south, east and west.

7 MR. MOOPPAN: Right, but they did it
8 for racial reasons, and the State did it for
9 non-racial reasons.

10 JUSTICE SOTOMAYOR: Well, really, in
11 excluding the Blacks, they did it for racial
12 reasons.

13 MR. MOOPPAN: No, Your Honor. There's
14 no argument for that, as Justice Alito pointed
15 out. The State's maps have been pre-cleared
16 twice by the Department of Justice. So the
17 suggestion that the fact that the prior maps
18 were 5-1 maps is not -- there's no basis to say
19 that that was for racial reasons.

20 And, again, West Virginia, zero
21 Democratic districts. There is a lot of white
22 Democrats in -- in West Virginia. There's just
23 no reason to assume that because there's a
24 large Democratic population in Louisiana that
25 doesn't have a district, that that's a racial

1 reason, rather than a partisan reason.

2 JUSTICE SOTOMAYOR: If you can't
3 separate out the two, it's impossible.

4 MR. MOOPPAN: But you can separate out
5 the two. You can control for party and you can
6 require them to draw a map that meets the
7 political objectives.

8 And, again -- and the last thing that
9 you said earlier, that means Section 2 has no
10 effect, that's not true. The examples I gave
11 you earlier about areas like Harlem and in
12 Florida where you have, of the same party and
13 of the state that controls that party,
14 differences in the races, that's where Section
15 2 does work.

16 And, by the way, that was sort of in
17 Gingles. In Gingles, there was a showing that
18 you could control for partisan effect. There
19 was racially polarized voting even within the
20 Democratic Party. That's where Section 2
21 matters, where you have a reason to think --

22 JUSTICE SOTOMAYOR: Counsel, you have
23 some of that here too.

24 MR. MOOPPAN: -- that a racial group
25 is being treated --

1 JUSTICE SOTOMAYOR: You have proof of
2 that here too.

3 MR. MOOPPAN: No, you don't. What you
4 have is Republicans and Democrats are
5 different. There's no --

6 JUSTICE SOTOMAYOR: No, you have some
7 that -- even white Republicans or white
8 Democrats won't -- won't vote for Black
9 candidates.

10 MR. MOOPPAN: Right, but if these were
11 white Democrats, there's no reason to think
12 they would have a second district. None. And
13 so what is happening here is their argument is
14 because these Democrats happen to be Black,
15 they get a second district. If they were all
16 white we all agree they wouldn't get a second
17 district.

18 That is literally the definition of
19 race subordinating traditional principles.

20 CHIEF JUSTICE ROBERTS: Justice Kagan?

21 JUSTICE KAGAN: Mr. Mooppan, just a
22 quick possibly digressive question. You're --
23 you're not contesting that if a state uses and
24 predominantly uses race-based criteria in order
25 to achieve partisan goals, that that's

1 impermissible?

2 MR. MOOPPAN: Agreed. That's
3 impermissible under Cooper and a bunch of
4 cases.

5 JUSTICE KAGAN: Okay.

6 MR. MOOPPAN: And we agree with that.

7 JUSTICE KAGAN: That's all I wanted to
8 know.

9 CHIEF JUSTICE ROBERTS: Justice
10 Gorsuch?

11 JUSTICE GORSUCH: Just a couple of
12 questions about the practical implications that
13 Justice Alito is touching on, and some of your
14 colleagues have as well.

15 How do we control for state political
16 objectives? I mean, you say, well, that's easy
17 to do. Is it the number of incumbent seats
18 that they want to protect? Is it the level at
19 which they think protection is appropriate?
20 Say, I need 55 percent of the population to be
21 registered Republicans or Democrats? Do they
22 get to say that? Does the state get to say I
23 not only want five incumbents protected but I
24 want them really protected?

25 That's one example. You know, does a

1 state have to say that when it's legislating or
2 can it come in later in the litigation and say
3 that? Can a court -- and I'm just spitting out
4 a few things for you.

5 MR. MOOPPAN: Sure.

6 JUSTICE GORSUCH: You can just respond
7 to them how you want. Can a court second-guess
8 those and say how those are not really the
9 state's purposes, that they're -- they're just
10 litigation positions? How do we -- how is a
11 court supposed to handle that? And then I've
12 got some more for you.

13 MR. MOOPPAN: So the same way this
14 Court already handles that in racial
15 gerrymandering cases like Alexander. Yes, the
16 state can come in with whatever their political
17 objectives are. If they want to say it's not
18 just a 6-1 map, it's a 6-and-1 map with a
19 certain percentage because we want to make sure
20 certain people are safe, really safe, and we're
21 willing to tolerate a little bit more risk
22 elsewhere, it's up to them to set what their
23 political objectives are as long as they are
24 race-neutral.

25 Now, can a court second-guess that?

1 Yes. If -- if -- if they say, look, these are
2 our interests, and the map as drawn is
3 inconsistent with that in a bunch of ways, a
4 court could say we don't believe that the --

5 JUSTICE GORSUCH: Well, what if the
6 map is consistent with it? Can I still try and
7 disprove it?

8 MR. MOOPPAN: Well, no. It --

9 JUSTICE GORSUCH: So it wasn't -- I
10 mean, that's -- that's what the map does, but
11 that's not really what they were after.

12 MR. MOOPPAN: So if -- if you -- you
13 could try if -- you could try to bring an
14 intentional discrimination case --

15 JUSTICE GORSUCH: Okay.

16 MR. MOOPPAN: -- and say that it's
17 pretextual.

18 JUSTICE GORSUCH: How about cohesion?
19 Right? You know, you -- you say, well, you've
20 got to segregate out members of one race or
21 another based on their party affiliations and
22 crossover voting and how much they really won't
23 vote for somebody of the other race, even if
24 they're the same party.

25 How much cohesion is enough? I mean,

1 you never -- very rarely is it going to be that
2 there's zero crossover voting and 100 percent
3 cohesion, and vice versa. It's going to be
4 areas of gray. And are we then into the
5 business perhaps of stereotyping?

6 MR. MOOPPAN: So the Court has never
7 made clear what level of cohesion --

8 JUSTICE GORSUCH: I know.

9 MR. MOOPPAN: -- is necessary. I
10 think the right way --

11 JUSTICE GORSUCH: That's why I'm
12 asking you.

13 MR. MOOPPAN: Right. I think the
14 right way to think about it analytically is if
15 the plaintiffs have an illustrative map that
16 satisfies our first criteria, right, that they
17 are --

18 JUSTICE GORSUCH: No, this is another
19 criteria.

20 MR. MOOPPAN: Right. Right. So
21 assuming they've satisfied that, then the
22 question is: Is there enough Black
23 cohesiveness that they can win the district?
24 So you would have to look to see how much Black
25 cohesion is there and how much white crossover

1 voting is there, and if, together, they can
2 predictively and safely win the district, then
3 they've satisfied --

4 JUSTICE GORSUCH: What's predictive --
5 predictably and safely? I mean, those are nice
6 qualifying words. I mean, does it have to be
7 just 50 plus one, does it have to be 60, you
8 know, I mean --

9 MR. MOOPPAN: Well, so I think --

10 JUSTICE GORSUCH: -- and how does a
11 judge make that decision?

12 MR. MOOPPAN: -- I think the courts,
13 what they've usually done is looked at how the
14 map would have performed in prior elections.
15 You don't just look at one because there can be
16 outlier --

17 JUSTICE GORSUCH: Oh, you can run
18 thousands of these things. I mean, we've got
19 computers now. I mean, goodness, of course.
20 And you're going to have data points all over
21 the place.

22 But a judge is going to have to draw a
23 line, and I'm wondering how the judge draws
24 that line.

25 MR. MOOPPAN: So we have lots of

1 concerns with how Gingles is applied over time,
2 but this isn't one of them. This seems to have
3 been a --

4 JUSTICE GORSUCH: Well, this will be
5 the next problem if we go your way is all I'm
6 saying.

7 MR. MOOPPAN: I don't -- I don't think
8 so, Your Honor. And I -- if your concern is,
9 well, instead, let's just scrap Section 2
10 entirely --

11 JUSTICE GORSUCH: No, I'm not asking
12 that. That isn't my question. I'm asking --
13 I -- I -- I -- I'm listening to everything
14 everybody is telling me. I'm asking you about
15 your proposal.

16 MR. MOOPPAN: Right. Right. And so,
17 if -- I guess my point is, if the concern with
18 our proposal is that you will have to answer
19 cohesiveness questions that require some amount
20 of empirical showing, what's the alternative?

21 JUSTICE GORSUCH: Okay.

22 MR. MOOPPAN: And --

23 JUSTICE GORSUCH: I got it. It's
24 always the bear. It's -- I'm just -- I'm
25 outrunning a bear. I got it. Okay.

1 Predominance, what does that mean? I
2 know it's throughout our case law, and I know
3 you say it can't be compromised.

4 Is that a but-for causation test? Is
5 that a proximate causation test? What is it?

6 MR. MOOPPAN: I don't think it's
7 but-for. I think --

8 JUSTICE GORSUCH: Well, but-for can't
9 be compromised. It means it's an essential
10 component, it wouldn't have happened but-for.
11 Okay. So it's not but-for.

12 MR. MOOPPAN: It's not but-for. The
13 way the Court has described it as --

14 JUSTICE GORSUCH: Is it a proximate
15 cause?

16 MR. MOOPPAN: I don't think that's the
17 right way of thinking about it.

18 JUSTICE GORSUCH: It's not a proximate
19 cause? So what is it?

20 MR. MOOPPAN: I -- I think the -- the
21 way the Court has described it is it's the
22 factor that -- a factor that could not be
23 compromised and where race-neutral principles
24 were subordinated to it.

25 So this case is a very easy case to

1 analyze that because the race-neutral
2 principles of incumbency protection were --

3 JUSTICE GORSUCH: I -- I -- I'm not
4 worried --

5 MR. MOOPPAN: Okay.

6 JUSTICE GORSUCH: I'm focusing on your
7 test going forward.

8 MR. MOOPPAN: Yes.

9 JUSTICE GORSUCH: Not this case.

10 MR. MOOPPAN: So let me help you this
11 way then because I think the question is when
12 is it -- when is predominance not satisfied
13 where race is considered.

14 Here's -- I'll give you two examples.

15 JUSTICE GORSUCH: Yeah. I mean, under
16 our normal equal protection jurisprudence, we
17 don't ask --

18 MR. MOOPPAN: Sure.

19 JUSTICE GORSUCH: -- whether race
20 predominates. We say you don't discriminate on
21 the basis of race, period.

22 MR. MOOPPAN: Right. So let me give
23 you two examples where race is considered but,
24 under the predominance test, it wouldn't be
25 satisfied. And that's why, for example, this

1 Court has said that the intentional creation of
2 a majority-minority district does not alone
3 show predominance, and we agree with them about
4 that.

5 So here is one example. The map
6 drawer doesn't consider race at all, uses
7 race-neutral principles. The computer spits
8 out two maps that are totally equivalent. To
9 pick between them, they say: Okay. We'll use
10 the one that has the majority-minority.

11 JUSTICE GORSUCH: But that gives rise
12 to an inference of intentional discrimination.
13 There's no other explanation that can be
14 provided in your hypothetical. That's
15 intentional discrimination. That's not
16 predominance. That's -- that's choosing on the
17 basis of race.

18 MR. MOOPPAN: Again, the -- neither of
19 this Court's formulations of predominance are
20 met on that fact pattern. You can't say that
21 race-neutral principles were subordinated.
22 They weren't. And you can't say that the race
23 was non-negotiable. It wasn't. So that's one
24 example.

25 Another example would be if you use

1 race-neutral principles and the best map
2 happens to be a majority-minority district, and
3 then someone tries to say: Don't draw that
4 map, draw a different map for some other
5 reason. And they say: No, we don't want to do
6 that. We don't want to get rid of a Black
7 district.

8 JUSTICE GORSUCH: That's intentional
9 as well. Okay. All right.

10 MR. MOOPPAN: Again, I -- I agree with
11 you. My whole point is what this Court has
12 said again and again and again.

13 JUSTICE GORSUCH: Oh, I know what it
14 said. I just don't know what it means.

15 (Laughter.)

16 MR. MOOPPAN: I think it means exactly
17 what I'm saying, that it -- it's not enough for
18 it to be intent.

19 JUSTICE GORSUCH: Okay.

20 MR. MOOPPAN: It has to be that race,
21 race-neutral principles are subordinated to
22 race.

23 JUSTICE GORSUCH: Thank you.

24 CHIEF JUSTICE ROBERTS: Justice
25 Kavanaugh?

1 JUSTICE KAVANAUGH: Well, I'm going to
2 pick up right there because I had a lot of
3 questions about your use of the word
4 "predominance" as well, which the amicus briefs
5 on your side say that word has been hopeless, I
6 think, in trying to figure out what it means.

7 What I've understood it to mean over
8 time in the jurisprudence in this area is that
9 race does not predominate if the district, even
10 though drawn based on race, is reasonably
11 configured and compact.

12 Is that what you think?

13 MR. MOOPPAN: Yes and no, right?

14 So --

15 (Laughter.)

16 JUSTICE KAVANAUGH: That's not -- not
17 as helpful.

18 MR. MOOPPAN: I know. And so here is
19 the issue. This Court has recognized -- the
20 test is whether race-neutral principles are
21 subordinated to race.

22 If you don't comply with traditional
23 principles, then, clearly, you have
24 subordination. But what this Court held in
25 cases like Bethune-Hill and Cooper, and we

1 agree with that, is, if you just are dead set
2 on drawing a 55 percent Black district, but you
3 manage to do it in a way that's consistent with
4 traditional principles, that is still racial
5 subordination.

6 But here is the really important point
7 for this case. We are not arguing, absolutely
8 not arguing what Alabama argued in Milligan,
9 which is that the plaintiffs can't consider
10 race and that the plaintiffs can't have
11 55 percent.

12 JUSTICE KAVANAUGH: I understand that.

13 MR. MOOPPAN: And what does matter to
14 what the Court --

15 JUSTICE KAVANAUGH: But it -- but it
16 seems like your position is you can use -- the
17 State can use race a little bit.

18 MR. MOOPPAN: If we're talking about
19 the State acting --

20 JUSTICE KAVANAUGH: It's kind of like
21 the Bakke kind of thing. It's race -- race --

22 MR. MOOPPAN: Yes, if you're talking
23 about the --

24 JUSTICE KAVANAUGH: Some -- some --

25 MR. MOOPPAN: If you're talking about

1 the State acting in the first instance wholly
2 apart from Section 2, yes, our position and
3 this Court's position has been you can consider
4 race, and the reason why is because
5 redistricting is a complicated multi-factor
6 inquiry where lots of the permissible factors
7 highly correlate to race.

8 And if you don't have a standard like
9 predominance, as this Court recognized in
10 Alexander, every partisan gerrymander case will
11 become a racial gerrymander case because they
12 will always come in and say: Aha, you must
13 have considered --

14 JUSTICE KAVANAUGH: But where it
15 predominates, I'm repeating myself now, is
16 where the district becomes not compact, not
17 reasonably configured basic -- basically?

18 MR. MOOPPAN: That is one -- that is
19 one way it becomes -- race doesn't predominate.
20 The other way is if they just set out to say:
21 I'm going to draw a 55 percent Black district
22 and then they backfill from there because --

23 JUSTICE KAVANAUGH: That's race
24 predominated.

25 MR. MOOPPAN: Exactly.

1 JUSTICE KAVANAUGH: Yeah.

2 MR. MOOPPAN: But importantly for our
3 purposes, in a Section 2 case, when we say that
4 race can't predominate in the step 1 of
5 Gingles, we are not focused on what the
6 plaintiffs do.

7 JUSTICE KAVANAUGH: Right.

8 MR. MOOPPAN: The plaintiffs can
9 absolutely consider race.

10 JUSTICE KAVANAUGH: Okay. I got that.

11 MR. MOOPPAN: The Court has to
12 conclude that their map is better than the
13 State's map.

14 JUSTICE KAVANAUGH: Okay.

15 MR. MOOPPAN: And then you avoid
16 predominance.

17 JUSTICE KAVANAUGH: I got that. Okay.
18 So then what I viewed as the real innovation of
19 your brief that we have not considered before,
20 as you point out, is this -- the material on
21 page 25, the political objectives.

22 MR. MOOPPAN: Yes.

23 JUSTICE KAVANAUGH: And that strikes
24 me as new, but also new because we haven't
25 considered it before.

1 MR. MOOPPAN: So I think that's right.
2 I don't think this Court has ever squarely
3 considered it. I think part of the reason the
4 Court has not --

5 JUSTICE KAVANAUGH: What's the
6 rationale for why it's consistent for what we
7 have allowed before?

8 MR. MOOPPAN: Because it is another
9 traditional race-neutral principle. It is one
10 that hasn't been urged as frequently, in part
11 because it was unclear whether partisan
12 gerrymandering --

13 JUSTICE KAVANAUGH: Because of Rucho.
14 I mean, pre-Rucho.

15 MR. MOOPPAN: Right, pre-Rucho.

16 But post-Rucho, it is totally clear
17 that that is a permissible criteria. Indeed,
18 in Rucho, the Court described it as ignoring
19 the good-faith inference that the legislatures
20 do to not consider their political objectives.

21 JUSTICE KAVANAUGH: Got it. And is it
22 also, though, part of constitutional avoidance?

23 MR. MOOPPAN: Yes. Again, because --

24 JUSTICE KAVANAUGH: So there are
25 two things. There's it hasn't been considered

1 before and it avoids constitutional problems if
2 we fold page 25.

3 MR. MOOPPAN: That's absolutely right.
4 Again, I think one thing to remember here is
5 Gingles was written in 1985. It was 10 years
6 before this Court wrote Shaw and Miller and all
7 the predominance cases. There is just no way
8 Gingles would have ever been written the way it
9 was if it was decided after those cases.

10 JUSTICE KAVANAUGH: Okay.

11 MR. MOOPPAN: That is an intervening
12 change in law that has created constitutional
13 issues, and I think the Court should modify
14 Gingles to reflect that.

15 JUSTICE KAVANAUGH: Got it.

16 Two more. Sorry.

17 Do you agree with Louisiana on the
18 Constitution?

19 MR. MOOPPAN: In part but not
20 entirely. We --

21 JUSTICE KAVANAUGH: Can you explain
22 that?

23 MR. MOOPPAN: Yeah. So we don't think
24 that it is unconstitutional for Congress to
25 have any results test or that the current

1 results test can't survive if it's construed
2 the way we've proposed it.

3 JUSTICE KAVANAUGH: What if it were
4 not construed the way you want it to be
5 construed?

6 MR. MOOPPAN: Then we think that --

7 JUSTICE KAVANAUGH: What is your
8 position on the temporal point?

9 MR. MOOPPAN: So, if it was construed
10 differently than we have proposed, we do think
11 it's unconstitutional both because of the
12 temporal point and because of its scope just to
13 begin with, right?

14 JUSTICE KAVANAUGH: And to be clear,
15 you're not saying Section 2 is
16 unconstitutional. Section 2 as applied to
17 redistricting, to the extent it requires the
18 intentional use of race to create districts,
19 if there's no change in Gingles, that's your
20 position?

21 MR. MOOPPAN: I agree with all that
22 except, instead of the word "intentional," I
23 would say use the word "predominant." But,
24 with that caveat, yes.

25 JUSTICE KAVANAUGH: Yes. Got that.

1 Okay. Last, this is picking up on
2 Justice Gorsuch, I think your Harlem hypo is
3 very challenging because, I mean, you get into
4 elections and you're micro-analyzing the data.
5 White Democrats and Black Democrats are not
6 necessarily -- there's going to be a lot of
7 times differences in that, and you say that
8 triggers the finding of polarization, correct?

9 MR. MOOPPAN: Yeah. If there is
10 different --

11 JUSTICE KAVANAUGH: I mean, how big
12 a difference does it have to be?

13 MR. MOOPPAN: Again, I think the right
14 way of --

15 JUSTICE KAVANAUGH: Like, a 10-point
16 difference?

17 MR. MOOPPAN: I think the right way of
18 thinking about it is if you start with their
19 step 1, which is what would the map look like
20 if they had done it on race-neutral grounds,
21 and then say is there enough polarization that
22 the minority group who would have been in that
23 district could have won, then they can satisfy
24 steps 1 and 2.

25 JUSTICE KAVANAUGH: Thank you.

1 MR. MOOPPAN: If there's one last
2 point I can make, Your Honor?

3 JUSTICE KAVANAUGH: Yeah.

4 MR. MOOPPAN: I would say you had
5 asked a question earlier about the practical
6 consequence of our opinion --

7 JUSTICE KAVANAUGH: Yes.

8 MR. MOOPPAN: -- position. I just do
9 want to emphasize one thing about that, which
10 is if you look at Congress today, there are
11 roughly 60 Black representatives. If you look
12 at the districts, there are only 15
13 majority-Black districts. So even if Section
14 -- we're not even urging Section 2 to be
15 eliminated, but if you eliminated Section 2
16 entirely, fully 75 percent of the Black
17 congressmen in this country are in districts
18 that are not protected by Section 2. So it is
19 simply not the case that adopting any of the
20 positions on this side, let alone our position
21 --

22 JUSTICE KAVANAUGH: Just to be fair,
23 they're not arguing for eliminating Section 2
24 entirely. I think they would disagree with --

25 MR. MOOPPAN: Right.

1 JUSTICE KAVANAUGH: -- that
2 characterization.

3 MR. MOOPPAN: But under any view of
4 it, none of these positions can -- is going to
5 lead to there being no Black representation in
6 Congress or anything remotely approaching that.

7 JUSTICE KAVANAUGH: Thank you.

8 CHIEF JUSTICE ROBERTS: Thank you,
9 counsel.

10 Justice Barrett?

11 JUSTICE BARRETT: Mr. Mooppan, I have
12 one, hopefully very straightforward question.
13 It's really just to clarify.

14 You've -- you've said, and you said
15 just now to Justice Kavanaugh, and, you know, I
16 take this to be in your brief too, that your
17 position would require a modification of
18 Gingles. Is that necessarily true? Is there a
19 way to say it's a clarification of Gingles?

20 I mean, Gingles is a, you know,
21 40-year-old precedent.

22 MR. MOOPPAN: So --

23 JUSTICE BARRETT: Big ask to -- to
24 change it.

25 MR. MOOPPAN: Yes. So most of what we

1 are urging I think could be described as
2 clarification.

3 So we have three key points in our
4 brief. One is about how you do reasonably
5 configured. The second is about how you do
6 racially polarized voting. And the third is
7 how do you the totality-of-circumstances
8 inquiry.

9 The last two I think can fairly be
10 described as a clarification because the Court
11 has never really grappled with exactly how the
12 totality works, and it has expressly left open
13 the question of racially polarized voting.

14 As to the first part, the reasonably
15 configured, most of what we're saying is
16 consistent with most of this Court's cases, but
17 after Milligan, I do have to acknowledge that
18 that aspect of what we're urging, that it can't
19 -- it's not enough that it be reasonably
20 equivalent, that the plaintiffs now has to be
21 superior, that is undoubtedly a modification.

22 But I would say it is no greater of a
23 modification than for example what this Court
24 did in Kisor when it retained Auer but tweaked
25 it in various ways.

1 (Laughter.)

2 MR. MOOPPAN: So I certainly think
3 it's consistent with stare decisis.

4 JUSTICE BARRETT: Okay. Thank you.

5 CHIEF JUSTICE ROBERTS: Justice
6 Barrett --

7 JUSTICE KAGAN: I was tweaking.

8 (Laughter.)

9 CHIEF JUSTICE ROBERTS: Sorry, Justice
10 Jackson.

11 JUSTICE JACKSON: The Plaintiffs' map
12 has to be superior in your view under this new
13 part insofar as it's race -- it uses
14 race-neutral criteria. Is that what you mean?

15 MR. MOOPPAN: Yes.

16 JUSTICE JACKSON: And that's what was
17 asked for by Alabama, and so you'd be saying
18 that that would require a change to what we
19 said.

20 MR. MOOPPAN: No, Alabama didn't argue
21 that. The problem with what Alabama argued is
22 Alabama basically said the plaintiffs have to
23 come up in court and, without considering race
24 at all, somehow magically show up with a
25 50 percent district. We're not arguing that.

1 It didn't make much sense, so it's not
2 surprising --

3 JUSTICE JACKSON: Oh, I thought they
4 were saying you had to have race-neutral
5 drawing that was the whole thing about the
6 computers and --

7 MR. MOOPPAN: Yeah. So they had some
8 weird thing about computers, which, again, is
9 not what we're arguing.

10 JUSTICE JACKSON: No, but -- but it's
11 crucial to this point. Their weird thing about
12 computers was you have to demonstrate as the
13 plaintiff that you have a race-neutral map.
14 And that's what you're saying right now.

15 MR. MOOPPAN: It's a very different
16 thing. Yes, they both used the word
17 "race-neutral," but what Alabama did was
18 something about computers that I frankly don't
19 understand. What we are arguing is simply
20 under the state's own principles --

21 JUSTICE JACKSON: Right.

22 MR. MOOPPAN: -- their map has to be
23 better. That, I do understand.

24 JUSTICE JACKSON: All right. And then
25 my final question just goes to that point

1 because I'm struck by your -- the degree to
2 which your analysis relies on the state's
3 departing from traditional principles. You say
4 you get to Section 2 when they -- a Section 2
5 violation when they do that.

6 And I guess I just wonder why that
7 doesn't leave us in a position where you really
8 cannot remedy the effects of race
9 discrimination operating in a district based on
10 past discriminatory choices.

11 In other words, we -- we -- you're
12 still bringing in intent because you're saying
13 you have to intentionally depart from your
14 traditional principles on the basis of race,
15 and that's what's going to trigger Section 2.
16 And I have, for example, the Louisiana
17 historians' brief where it talks about how the
18 reason why you have Blacks in different places
19 is because the residential patterns in the
20 state are still reflective of where enslaved
21 communities lived along this particular river
22 system, and that residential segregation, along
23 with disparities in political power, economic
24 status, health outcomes, all of these things
25 are existent today because they reflect

1 institutional choices that are traceable to Jim
2 Crow and reproduced through contemporary
3 practices. That last part is a quote from
4 them.

5 So I appreciate that you want to say
6 when the state comes with their new map, we
7 have to look at the extent to which, in drawing
8 it, they have departed from particular -- from
9 traditional principles on racial grounds. What
10 I'm suggesting is what do we do with the
11 situation in which the state keeps presenting
12 the same map? They're not departing. Their
13 map looks fine, but because of all of these
14 race-based effects, because of the history of
15 Jim Crow, which I appreciate happened a long
16 time ago, but I'm positing and Gingles allows
17 for us to see where those effects are still
18 occurring.

19 I hear your test not allowing us to
20 solve for that problem when the state is
21 continuing to present the same map under
22 circumstances in which people are not actually
23 being able to have equal electoral opportunity.

24 MR. MOOPPAN: So I guess I'll say
25 three things about that, Your Honor. The first

1 is, again, our position does not require
2 intent. I agree that at step 1 we're saying
3 you have to consider race-neutral principles,
4 but if they've departed from them, we think you
5 could find liability based on the effect
6 without making a finding that they did it for
7 intentional discriminatory reasons.

8 Now, second, you pointed to the fact
9 that it's possible that there are -- these
10 effects stem from long distance, and --

11 JUSTICE JACKSON: Can I just ask you,
12 why do they have to depart? What if they just
13 keep on doing the same thing? They're not
14 changing the map. I thought Section 2's whole
15 point was that you've got to offer a remedy,
16 you've got to have a remedy where this thing is
17 happening.

18 So the -- the well-intentioned state,
19 with no intent to discriminate, says the census
20 has changed, this is where people live, but
21 we're just going to provide our same map. And
22 if we can determine that that map under those
23 circumstances is not providing for electoral
24 opportunity, regardless of whether they
25 departed from traditional principles, I thought

1 you -- you had to solve for that.

2 MR. MOOPPAN: And I guess our point is
3 you don't.

4 JUSTICE JACKSON: You don't. It's
5 only where they depart from traditional
6 principles?

7 MR. MOOPPAN: It's only where you
8 could say that it's either intentionally or
9 likely intentionally discriminatory.

10 JUSTICE JACKSON: So intent does come
11 in?

12 MR. MOOPPAN: You don't have to prove
13 it by a preponderance of the evidence.

14 JUSTICE JACKSON: I see.

15 MR. MOOPPAN: It's any other results
16 test.

17 JUSTICE JACKSON: Thank you.

18 MR. MOOPPAN: Thank you, Your Honor.

19 CHIEF JUSTICE ROBERTS: Thank you,
20 counsel.

21 Rebuttal, Ms. Nelson?

22 REBUTTAL ARGUMENT OF JANAI NELSON
23 ON BEHALF OF APPELLANTS PRESS ROBINSON, ET AL.

24 MS. NELSON: Twenty-eight months ago,
25 this Court made it pellucidly clear that

1 Section 2 is constitutional and that there need
2 not be a race-neutral map that is presented as
3 part of the illustrative maps. Many questions
4 that are presented by my opponents on the other
5 side have been asked and answered in Milligan.

6 What is also clear is that Louisiana
7 is emblematic of the ongoing need for Section
8 2. For example, we're talking about how close
9 this may come to intent or results. If we look
10 simply at the evidence here in Louisiana, we
11 see that Louisiana had shifting justifications
12 for its map. Whenever it was presented with a
13 map that met or beat its criteria and gave
14 Black voters an equal opportunity to
15 participate in the process, it rejected those
16 maps.

17 The court in Robinson also relied on
18 the fact that there has never been a Black
19 candidate elected on a statewide basis. Even
20 when white Democrats won an election in 2019,
21 Black Democrats lost. My opponents here would
22 like to make this a partisan issue because they
23 believe the case law will enable their case to
24 prevail. But it does not. This is about race.
25 Section 2 in the Voting Rights Act is

1 laser-focused on eliminating racial
2 discrimination from our electoral process
3 regardless of party. And if we look at many of
4 the Black Congress people who were elected,
5 they came out of Section 2 opportunity
6 districts. They don't have to be
7 majority-minority districts. Many of them are
8 crossover districts.

9 And so, if we remove Section 2, we
10 also recognize that there will likely be a
11 resurgence of discrimination because Section 2
12 plays a deterrent effect. States are drawing
13 maps with Section 2 in mind. In fact, local
14 Rule 21 in Louisiana says that the State must
15 comply with Section 2. The fact that HB1,
16 which was the original map, was pre-cleared by
17 the Department of Justice means very little.
18 Retrogression is an entirely different standard
19 from what Section 2 is looking at.

20 Retrogression means the State of
21 Louisiana cannot go backwards. Section 2 is
22 talking about whether there is active
23 discrimination right now preventing the
24 additional opportunities for Black voters who
25 meet all of the Gingles preconditions to have

1 an equal opportunity to participate in the
2 process.

3 Requiring plaintiffs to control for
4 party is helpful if that evidence exists, and
5 it did to some extent in Robinson, where we put
6 on evidence about democratic elections and the
7 preferences of white voters that still
8 preferred white Democrats over Black Democrats.
9 But that is not the only question.

10 If that evidence is available and I
11 will remind the Court, it's not often available
12 if there aren't primary elections or if we are
13 looking at more down-ballot elections, not just
14 the congressional elections at issue here, that
15 evidence is useful but if there is significant
16 racially polarized voting, that has already
17 been shown to be probative of intentional -- of
18 discrimination that comes very close to
19 intentional discrimination.

20 What Congress did in Section 2 was
21 strike a very careful balance of using factors
22 like White v. Regester, like the Zimmer factors
23 to bring us as close to a finding of intent
24 without making the full accusation and without
25 requiring that conclusion on the part of

1 courts.

2 So we should not downplay, as my
3 opponents have, the robust nature and exacting
4 requirements of a Gingles test and also remind
5 ourselves that the City of Rome in 1980 made
6 very clear that Congress can address effects
7 beyond what the Fifteenth Amendment requires.

8 I'll close by saying that in *Bush v.*
9 *Vera*, this Court said that it must be
10 particularly concerned about changing its
11 decisions or rejecting *stare decisis* in cases
12 that involve a sensitive political context like
13 the one -- like this one.

14 That calls the Court's legitimacy into
15 question in a new unique way. My opponents
16 here have not done the labor of showing that
17 precedents should be overturned. They haven't
18 addressed *Janus*. They haven't addressed *Ramos*.
19 They've simply said that we should overturn or
20 tweak the precedent that governs Section 2.

21 And I would say that there's no record
22 to support that in this case and this Court
23 would be remiss to not require that if it is
24 entertaining any significant modifications of
25 Section 2.

1 Any further neutering of Section 2
2 would resurrect the Fifteenth Amendment as a
3 mere parchment promise and we ask the Court to
4 remand. Thank you.

5 CHIEF JUSTICE ROBERTS: Thank you,
6 counsel. The case is submitted.

7 (Whereupon, at 12:35 p.m., the case
8 was submitted.)

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Official - Subject to Final Review

1 1 [7] 49:22 59:13 115:19 143:4 147:19,24 155:2 10 [3] 64:22 97:17 145:5 10-point [1] 147:15 10:04 [2] 1:20 4:2 100 [1] 133:2 102 [1] 3:15 11 [1] 11:1 12:35 [1] 161:7 15 [2] 1:16 148:12 156 [1] 3:18 18 [1] 50:1 1930s [1] 59:21 1962 [1] 86:23 1965 [2] 98:12 122:16 1980 [1] 160:5 1980s [2] 52:23 54:11 1982 [9] 20:20 23:15 54:3 86:23 96:11 97:8 98:10 120:11 121:8 1985 [1] 145:5 1986 [1] 15:6 1990s [1] 73:3 1994 [1] 40:25	21 [2] 7:4 158:14 228 [1] 52:24 24 [1] 105:1 24-109 [1] 4:4 25 [6] 16:10 40:12 68:2 105:1 143:21 145:2 26 [1] 68:2 3 3 [2] 3:5 103:25 30 [1] 54:22 33 [1] 52:21 4 4(e) [1] 20:21 4-2 [1] 104:21 40 [4] 49:3 97:9 105:9 109:25 40-year-old [1] 149:21 40s [1] 59:21 48 [1] 3:8 4A [1] 98:12 5 5 [7] 19:17 55:7 95:22 107:20 108:3,9 126:13 5-1 [2] 104:21 127:18 50 [6] 25:6 29:18 51:19,21 134:7 151:25 50s [1] 59:21 51 [2] 124:20 125:4 55 [4] 130:20 141:2,11 142:21 58 [1] 4:23	absolutely [10] 10:25 23:24 24 24:19 48:2 100:20 118:6,22 141:7 143:9 145:3 acceptable [3] 35:19 37:16 82:17 access [4] 24:7 99:13 100:1,18 accessible [1] 99:10 according [1] 49:4 account [2] 9:3 89:12 accusation [2] 33:8 159:24 accuses [1] 120:25 achieve [2] 56:3 129:25 acknowledge [1] 150:17 acknowledged [3] 11:7 40:5 86:10 across [6] 5:17 30:12 34:3 42:3 59:17 61:22 Act [12] 19:17 20:20,21 22:8,24 23:1 34:6 93:23 99:9 107:21 120:12 157:25 acted [1] 51:21 acting [3] 108:4 141:19 142:1 action [4] 40:11,14 72:7 99:4 actionable [1] 55:11 active [1] 158:22 actor [1] 38:1 actors [1] 33:6 actual [1] 92:7 actually [11] 22:8 45:3 98:15 104:10 108:16 113:12 118:10 121:20,22,24 154:22 ad [1] 31:10 ADA [2] 99:7 100:12 adapted [1] 124:10 add [2] 59:22 93:18 added [1] 41:5 adding [1] 101:20 addition [1] 19:9 additional [2] 17:8 158:24 address [9] 5:20 18:20 19:7 23:5,8 67:12 106:2 122:19 160:6 addressed [6] 30:21 31:13 66:19 71:8 160:18,18 addresses [3] 23:6 43:6 94:4 addressing [3] 42:1 124:11,17 adjudicated [1] 43:1 admissions [3] 32:2 72:12 112:7 admitted [1] 83:19 adopt [3] 5:19 66:3 124:1 adopted [2] 111:14 123:17 adopting [1] 148:19 advance [3] 40:16 41:15 72:17 advantage [6] 12:9,19,20,22 116:22 117:10	adversaries [1] 31:10 affect [2] 22:4,9 affects [1] 93:7 affiliation [2] 13:3 86:12 affiliations [1] 132:21 affirm [1] 83:4 affirmative [2] 40:11,13 affirmatively [1] 122:12 affirmed [6] 4:18,19 20:19,19 43:16 45:20 afforded [1] 78:21 affords [1] 19:12 afoul [1] 44:22 African [3] 53:18 86:25 87:5 afterwards [1] 123:19 ago [10] 4:12 10:22 65:7 66:16,16 67:7 89:15 109:25 154:16 156:24 agree [22] 11:23 71:13 72:4 75:11 112:12,16 113:16 116:24 117:8 118:24 121:15 123:8 126:2,21 129:16 130:6 138:3 139:10 141:1 145:17 146:21 155:2 Agreed [1] 130:2 AGUIÑAGA [52] 2:4 3:7 48:8,9,11 49:21 51:6 52:15 54:2 56:8 57:1,6,11,24 58:14 59:8 60:9,16,22 61:7,18 63:1,7,22 64:4,9,15 65:2 66:18 67:8 68:16,19 69:20,23 71:14 72:19 73:20 75:19 77:1 78:7 79:6,10,14,20,22 80:9,18 81:12,20 82:1,3 122:20 Aha [1] 142:12 ahead [2] 36:18 112:22 AL [8] 1:6,9,12 2:3 3:5,19 4:9 156:23 Alabama [13] 9:17 10:13 54:25 116:20 117:2,2,8 141:8 151:17,20,21,22 152:17 Alabama's [4] 8:9,19,25 54:21 Alexander [2] 131:15 142:10 ALITO [43] 11:13 12:6,16,24 13:2,16,18 14:2 15:7,10 27:24,25 28:25 29:5,7,19,22 42:15 60:3,4,10,11,17,18,22 61:3,8,9,19,25 92:19 104:15 108:19 116:18,19 117:15 118:15 120:8 122:17 124:2 126:19 127:14 130:13 allayed [1] 18:25 allegation [4] 33:5 108:11,12,13 alleged [2] 51:14 76:20 allegedly [1] 77:5 Allen [7] 4:12 8:7 9:8,12 11:10 67:1,14	allow [5] 40:3 52:19 63:8 88:24 92:3 allowed [1] 144:7 allowing [1] 154:19 allows [2] 120:16 154:16 almost [3] 5:12 54:25 78:12 alone [7] 34:11 82:20,25 108:17 112:13 138:2 148:20 already [6] 36:12 44:6,8 123:25 131:14 159:16 alternative [2] 5:20 135:20 alternatives [2] 27:14 39:9 although [3] 29:23 97:23 98:5 amended [1] 75:5 Amendment [29] 19:10 22:6 23:6,8 26:9 39:23,24 42:12 65:15,20,22 72:24 73:8 92:24 93:20,21 94:1,3,14 95:22 96:2,18,25 120:10,12,16 121:8 160:7 161:2 Amendment's [1] 12:14 amendments [5] 23:15 32:5 82:23 96:11,14 America [1] 82:14 American [2] 82:22 87:1 Americans [4] 53:19 72:3 87:6 99:8 amicus [6] 2:10 3:14 25:4 69:18 102:10 140:4 among [3] 62:13 96:6 103:16 amount [1] 135:19 amplify [1] 121:14 analogy [1] 112:2 analysis [10] 15:23 17:14 59:18 62:22,25 63:3 64:5 112:20 117:16 153:2 analytical [1] 70:6 analytically [1] 133:14 analyze [2] 104:1 137:1 analyzed [1] 15:11 announcement [1] 77:22 another [17] 14:4 32:15,19 40:12,13 45:19 77:12 80:8,12 112:21 113:2 124:22 125:24 132:21 133:18 138:25 144:8 answer [15] 22:4 39:2 44:14 50:17 66:25 67:13,19,19 69:20 78:3 80:1,3 91:13 116:25 135:18 answered [3] 11:2,10 157:5 answering [2] 67:4 68:13 answers [2] 39:18 65:10 antecedent [1] 67:9 antidiscrimination [2] 12:5 100:13 anybody [3] 58:22 73:1,10 anyone's [1] 51:13 anytime [1] 70:22
--	--	--	---	---

Official - Subject to Final Review

apart ^[1] 142:2 appeal ^[3] 29:9 30:4 45:16 APPEARANCES ^[1] 2:1 appears ^[2] 88:21,22 Appellant ^[4] 1:4 2:5 3:8 48:10 Appellants ^[8] 1:10 2:3 3:4,18 4:9 81:22 106:17 156:23 Appellants' ^[1] 69:25 appellate ^[1] 4:19 Appellees ^[12] 1:7,13 2:7,11 3:11,15 10:25 82:9,12,15 83:2 102:11 application ^[2] 8:9 21:6 applications ^[1] 76:12 applied ^[5] 97:13 107:23 123:25 135:1 146:16 applies ^[2] 75:9 101:12 apply ^[11] 9:1 22:14 28:10 30:4 84:4 97:14 105:15 106:7 119:1 123:12,14 applying ^[3] 39:21 76:25 86:7 appreciate ^[3] 81:8 154:5,15 approach ^[4] 8:10 43:2 68:12 122:21 approaching ^[1] 149:6 appropriate ^[7] 18:8 31:1 53:21 95:25 97:2,3 130:19 area ^[10] 29:14,16 62:10 68:25 84:10 87:19 98:13 119:4,7 140:8 areas ^[5] 56:23 62:19 79:13 128:11 133:4 aren't ^[2] 101:8 159:12 argue ^[5] 30:1 116:21 117:9 118:8 151:20 argued ^[3] 42:20 141:8 151:21 arguing ^[8] 76:22 117:7 141:7,8 148:23 151:25 152:9,19 argument ^[23] 1:19 3:2,6,9,12,16 4:4,8 11:6 36:16 48:9 49:20 54:8 64:5 66:20 82:8 91:25 92:2 102:9 115:9 127:14 129:13 156:22 arguments ^[9] 65:8,12 67:5 74:25 75:18 102:17 115:7 117:1,3 around ^[5] 36:7 46:7 87:19 119:7 125:21 articulable ^[1] 59:24 articulate ^[2] 58:20 71:11 articulated ^[1] 122:25 as-applied ^[1] 5:15 aside ^[2] 91:11,12 aspect ^[6] 21:9 115:9,11,16 116:14 150:18 asserted ^[1] 106:20 assign ^[1] 70:25 assume ^[9] 22:16,17,21 48:22 75:7,21 76:2 125:9 127:23 assumed ^[2] 42:8 66:21 Assuming ^[7] 22:18,18,22 31:5 43:2 92:21 133:21 assumption ^[1] 50:4 assumptions ^[3] 87:20,22 101:1 attacking ^[1] 76:7 attempted ^[1] 54:3 Auer ^[1] 150:24 augment ^[2] 48:19 57:18 Austin ^[1] 52:24 authorize ^[2] 65:22 66:12 authorized ^[1] 4:15 automatic ^[2] 75:24 78:5 available ^[3] 27:14 159:10,11 avoid ^[3] 44:19 83:21 143:15 avoidance ^[1] 144:22 avoiding ^[3] 42:23 43:25 45:2 avoids ^[2] 121:19 145:1 aware ^[1] 5:23 awareness ^[2] 18:1,11 away ^[6] 14:18 15:1 29:16 81:6 93:13 120:12	back ^[17] 28:3 50:8 62:5,11 63:21 72:21 78:9 85:19 91:23 94:23 95:17 96:3,3,7 99:1 101:23 115:18 backdrop ^[1] 99:9 backfill ^[1] 142:22 backwards ^[1] 158:21 bad ^[5] 59:15,20 70:23 72:23 100:18 Bakke ^[1] 141:21 balance ^[3] 33:2 38:4 159:21 balancing ^[1] 49:17 ban ^[3] 92:22,25 95:25 bans ^[1] 122:2 bare ^[1] 25:12 BARRETT ^[29] 19:21 21:21,23 22:16,20 30:23 39:22 42:7,8,14 43:19 44:7,11 45:21,25 74:22,23 75:20 76:21 77:2,8 78:3 98:24 113:15 149:10,11,23 151:4,6 based ^[31] 7:5 8:20 10:2 13:13,14,23 43:8 60:19 67:4 82:22 87:21,23,24 89:11,20,21,23 90:23 91:1 94:19 97:25 101:2 104:11,13 110:13 116:22 122:15 132:21 140:10 153:9 155:5 baseline ^[1] 66:6 basic ^[2] 68:14 142:17 basically ^[6] 84:9 109:11 111:23 116:9 142:17 151:22	basis ^[24] 17:5 35:10,22 36:19,24 37:18 38:6,17,19 43:12 71:1 79:5 107:11,11 118:19,20 127:18 137:21 138:17 153:14 157:19 Baton ^[6] 2:4 62:10 84:11,15 109:4 125:21 bear ^[3] 41:7 135:24,25 beat ^[2] 28:22 157:13 become ^[1] 142:11 becomes ^[5] 18:4 22:11 25:2 142:16,19 bedrock ^[1] 113:8 began ^[2] 8:7 114:21 begin ^[1] 146:13 beginning ^[5] 17:24 46:11 78:18,19 90:12 behalf ^[12] 2:2,5,7 3:4,8,11,18 4:9 48:10 63:17 82:9 156:23 behavior ^[1] 13:17 behind ^[1] 53:10 believe ^[5] 29:7 31:22 40:23 132:4 157:23 believes ^[2] 27:11 47:13 believing ^[1] 107:3 bells ^[1] 73:8 Belt ^[1] 9:19 BENJAMIN ^[3] 2:4 3:7 48:9 Bernie ^[1] 33:12 best ^[3] 58:9 107:14 139:1 Bethune-Hill ^[1] 140:25 better ^[3] 126:15 143:12 152:23 between ^[15] 16:4,7 18:7,10 20:9 28:15 31:24 36:12 38:11 62:12 68:14 86:11 88:19 101:22 138:9 beyond ^[11] 22:6 23:6 40:12 75:3,15 76:25 103:2 120:17 121:2,17 160:7 big ^[4] 28:15 29:9 147:11 149:23 bit ^[6] 9:7 83:10 105:19 112:3 131:21 141:17 Black ^[60] 4:21 5:3 6:10 9:17,18,19,25 10:3 15:12,13,16 16:1,4,24 17:4,7 18:16 29:11 34:1 48:23,23,24 55:5 56:15,22 61:19,21 62:23 73:13 85:8 93:14 103:10,16,22 112:6,8 114:9 118:17 119:5 120:3,6 124:22 126:25 129:8,14 133:22,24 139:6 141:2 142:21 147:5 148:11,16 149:5 157:14,18,21 158:4,24 159:8 blackletter ^[1] 73:6 Blacks ^[10] 109:3,4,10 113:3 124:19 125:1 126:4,23 127:11 153:18 blind ^[1] 117:5	block ^[11] 13:5,10,13,21 18:14 85:7,11 86:17 87:2 118:16,18 blocked ^[1] 18:13 board ^[1] 59:18 body ^[1] 9:1 Boerne ^[5] 22:2,14,23 97:20 113:21 both ^[5] 32:13 64:22 84:21 146:11 152:16 bottom ^[2] 59:2 124:5 boundaries ^[1] 38:10 bounds ^[1] 36:14 break ^[2] 101:22,25 breathing ^[5] 38:2,15,16,18,20 Brennan ^[1] 104:5 brief ^[18] 11:1 16:11 25:4 49:23 50:2 52:21 64:18 68:3 69:25 70:1 103:14 105:1 111:16 114:16 143:19 149:16 150:4 153:17 briefing ^[5] 63:23 68:23,23 76:10 77:7 briefly ^[2] 57:9 59:6 briefs ^[3] 69:18 70:17 140:4 bring ^[5] 47:6 90:11 117:17 132:13 159:23 bringing ^[3] 25:21 92:15 153:12 brings ^[3] 25:18 41:17 69:1 Brnovich ^[1] 123:16 broad ^[2] 7:25 58:18 broader ^[2] 38:1 117:3 broadly ^[1] 42:3 Brooks ^[1] 5:5 brought ^[3] 60:5 61:13 106:10 browbeat ^[1] 108:1 browbeating ^[1] 108:5 building ^[2] 99:15,16 buildings ^[1] 99:13 built ^[4] 70:18 76:5 98:12 99:15 bunch ^[2] 130:3 132:3 burden ^[1] 106:16 Bush ^[1] 160:8 business ^[2] 56:10 133:5 but-for ^[6] 136:4,7,8,10,11,12 BVAP ^[1] 29:18	candidates ^[14] 13:9,20 15:14,15,17,18 16:1 17:5 49:1 56:19,19 87:6 119:8 129:9 candor ^[1] 50:16 cannot ^[13] 14:18 15:1 16:12,14,21 25:9 37:23 68:5,7 102:23 117:13 153:8 158:21 cared ^[1] 92:9 careful ^[2] 62:22 159:21 Case ^[90] 4:4,6,13 6:15,23 8:7,14,15,17,19 9:10,13,17 15:24 18:17 20:14,15,18 24:12 25:4 27:1,10 28:2 30:2,25 31:15,24,24 32:21 35:6 43:11 46:8 48:3 49:23,24 50:3 56:13 57:2 58:16,23 71:25 73:23 74:1 75:22,24 81:6 83:9,14 85:13 86:5,15,15 88:24 89:25 90:5,12,15 93:15 94:22 104:13 105:13,15,16,17,18 106:8,9 112:18 114:23 115:7,8,9 118:7 120:5 123:23 132:14 136:2,25,25 137:9 141:7 142:10,11 143:3 148:19 157:23,23 160:22 161:6,7 cases ^[30] 17:25 19:23 20:1 23:5 25:5,20 31:6 32:18 43:12 66:22 69:11 70:5,19 71:21 72:22 80:10 81:3 86:1,9 94:10 97:25 123:15,19 130:4 131:15 140:25 145:7,9 150:16 160:11 catastrophic ^[1] 33:24 catch ^[1] 94:16 categorical ^[1] 51:5 causation ^[2] 136:4,5 cause ^[3] 122:22 136:15,19 causes ^[1] 115:17 causing ^[1] 91:20 caveat ^[2] 72:22 146:24 caveats ^[1] 73:2 cease ^[1] 33:19 census ^[1] 155:19 center ^[1] 5:9 centuries' ^[1] 122:15 cert ^[2] 105:2,3 certain ^[6] 4:14 24:5 77:16 98:13 131:19,20 certainly ^[2] 80:10 151:2 challenge ^[4] 6:17 8:20 9:14 47:16 challenges ^[1] 5:15 challenging ^[1] 147:3 chance ^[1] 125:2 change ^[12] 5:24 10:10 23:2 51:24 52:10 96:18 101:7 110:24 145:12 146:19 149:24 151:18 changed ^[3] 49:5 51:23 155:20 changes ^[1] 90:4
--	---	---	---	--

Official - Subject to Final Review

changing ^[4] 98:7 101:19 155:14 160:10 chaos ^[1] 5:17 characterization ^[2] 126:3 149:2 chasm ^[1] 16:4 check-in ^[1] 24:2 CHIEF ^[54] 4:3,10 8:6,18,24 9:5 17:17 27:21 30:7 31:5 33:17 35:2 38:23 42:6 45:22 48:6,11 57:10,19 60:3 62:1 65:5 67:23 74:21 77:9 82:3,5,10 92:16 94:25 95:2,4,8,11 98:21 102:5,8,12 104:24 114:13,19 115:2 116:6,16,25 124:3 129:20 130:9 139:24 149:8 151:5,9 156:19 161:5 choice ^[2] 87:7 119:8 choices ^[2] 153:10 154:1 chooses ^[2] 21:14 82:14 choosing ^[1] 138:16 chose ^[2] 10:3,15 Chosen ^[2] 22:8 126:8 Circuit ^[6] 29:8 30:4 43:17 45:17,17,20 circumstance ^[5] 9:23 14:19 36:2 98:9 115:23 circumstances ^[18] 4:15 14:20 17:3 18:19 21:19 24:5,6,9 36:5 39:3 51:13 59:10,11 75:23 77:20 79:3 154:22 155:23 cited ^[1] 111:17 citizens ^[2] 56:10 83:2 City ^[7] 2:6 22:2 33:12 96:3 97:20,21 160:5 civil ^[2] 99:5 101:4 claim ^[8] 6:8 7:3 16:15 43:10 68:7 78:19 85:4 92:14 clarification ^[3] 149:19 150:2,10 clarify ^[2] 102:15 149:13 clarifying ^[1] 74:24 clarity ^[4] 68:24 69:1,15 70:5 class ^[1] 71:4 classification ^[1] 77:4 Clause ^[5] 31:3 39:21 41:10 44:23 70:21 clauses ^[1] 59:16 clear ^[28] 9:20 10:4,17 15:24 19:14 26:20,21 31:16 32:7,8,20 33:14 36:7 46:20 47:21 49:13 51:10 60:4 88:23 96:12,15 117:12 133:7 144:16 146:14 156:25 157:6 160:6 clearer ^[1] 112:3 clearly ^[4] 11:3 59:24 120:10 140:23 close ^[4] 157:8 159:18,23 160:8 closed ^[1] 11:12	cohesion ^[5] 132:18,25 133:3,7,25 cohesive ^[1] 18:15 cohesiveness ^[2] 133:23 135:19 colleagues ^[3] 26:18 55:13 130:14 college ^[1] 72:11 colloquy ^[2] 50:8 51:16 color-blind ^[1] 82:18 combined ^[3] 29:17 126:4,16 come ^[13] 35:6 86:5 88:11 89:8 115:20 119:13 123:1 131:2,16 142:12 151:23 156:10 157:9 comes ^[6] 12:12 51:8 87:4 106:9 154:6 159:18 coming ^[3] 51:1,1 75:12 comment ^[1] 16:9 common ^[3] 71:23 72:1 96:5 commonality ^[2] 62:8,22 communities ^[4] 62:11,12,13 153:21 community ^[4] 9:18 55:18 62:23 87:16 compact ^[20] 28:8,14,20 29:2,3,13 30:16,17 61:16,17,24 109:2,7 117:22 125:19 126:4,17,17 140:11 142:16 compactness ^[3] 28:16,17 126:20 compelling ^[23] 36:18 42:11,23 43:3,24 45:1,10,14 46:1 47:23 50:5 66:24 79:12 80:2 81:24 83:1 106:18,21,25 107:2,21 108:6 122:13 completely ^[4] 61:2 72:4 108:15 123:8 compliance ^[3] 43:2 50:5 66:23 complicated ^[3] 44:12 46:10 142:5 comply ^[5] 27:15 41:8 44:9 140:22 158:15 complying ^[1] 42:10 component ^[1] 136:10 comports ^[2] 11:21 117:25 comprising ^[1] 43:24 compromised ^[6] 84:18 102:23 123:10 136:3,9,23 computer ^[1] 138:7 computers ^[5] 134:19 152:6,8,12,18 conceded ^[2] 44:6,9 conceive ^[2] 58:9 61:23 concentration ^[1] 84:14 concept ^[2] 36:24 93:9 conception ^[1] 75:11 concern ^[5] 18:23,25 19:14 135:8,17	concerned ^[1] 160:10 concerns ^[5] 33:3 38:4 69:17 122:24 135:1 concessions ^[1] 45:9 conclude ^[1] 143:12 concluded ^[1] 6:16 conclusion ^[2] 59:7 159:25 conditions ^[11] 34:25 51:22 52:1,2,8 86:22,23,24 89:20,21,23 conduct ^[3] 23:5,8 113:19 conducted ^[1] 15:24 confession ^[1] 33:8 configured ^[10] 11:18,21 28:9 115:14 117:23,24 140:11 142:17 150:5,15 confirm ^[1] 5:6 confused ^[1] 105:19 confusion ^[2] 90:8 123:6 Congress ^[42] 5:23 19:14,16 21:13 22:7 23:3 24:6 26:21 33:1 39:20,20,24 40:2,18 51:21 53:7,14 54:3 65:15 75:5 92:8 93:22 94:11 95:20 96:10,15,23 97:16 98:10 99:8,18 100:8 105:9 110:2 112:4 124:8 145:24 148:10 149:6 158:4 159:20 160:6 Congress's ^[7] 21:25 32:4 46:13 72:7 75:8 120:15 121:16 congressional ^[5] 4:25 8:4 33:25 54:11 159:14 congressmen ^[1] 148:17 congruence ^[5] 22:25 30:24 54:7 97:16 120:9 congruence-and-proportionality ^[2] 75:9 97:12 congruent ^[7] 22:3,11 39:23 97:4,7,9 121:10 consciousness ^[2] 18:2 24:15 consequence ^[2] 76:4 148:6 consider ^[11] 18:18 40:9,21 55:19 117:4 138:6 141:9 142:3 143:9 144:20 155:3 consideration ^[1] 102:20 considerations ^[2] 9:2 18:2 considered ^[14] 8:9 11:20 12:1 23:9 45:17 76:13 118:21 137:13,23 142:13 143:19,25 144:3,25 considering ^[3] 8:19 10:8 151:23 consistent ^[11] 109:24 111:10 113:11 114:23 115:4 117:16 132:6 141:3 144:6 150:16 151:3 consolidated ^[1] 4:5	constitute ^[3] 11:17 28:8 117:22 Constitution ^[17] 5:21 13:24 14:17 26:10 27:12,16 46:3,13 48:14 49:16 58:3 82:18 92:9 102:19 113:13 121:15 145:18 constitutional ^[24] 5:4 7:9 11:4 23:9 31:17 33:14 36:14 38:9,10 41:4 70:13 71:5 77:6 92:13 95:19 110:5,8,25 114:15 118:25 144:22 145:1,12 157:1 constrained ^[1] 36:6 constraints ^[1] 36:12 constructing ^[2] 9:24 27:13 construction ^[1] 47:19 construed ^[9] 67:22 103:2 112:25 114:7 122:9 146:1,4,5,9 contact ^[1] 83:18 contaminate ^[1] 14:15 contemporary ^[1] 154:2 contesting ^[1] 129:23 context ^[7] 10:9 43:4 67:17 70:9 72:11,12 160:12 contexts ^[2] 19:24 72:12 contiguous ^[1] 84:14 continue ^[6] 12:3 26:23 34:12,17 69:10 82:19 continued ^[1] 7:2 continuing ^[1] 154:21 contrary ^[2] 48:14 107:17 control ^[6] 4:24 109:8 128:5,18 130:15 159:3 controlling ^[1] 32:13 controls ^[1] 128:13 conversely ^[1] 116:7 convert ^[1] 41:20 Cooper ^[5] 66:22 84:5 107:18 130:3 140:25 core ^[1] 12:3 correct ^[29] 7:9,12 8:13 9:4 10:25 23:25 24:20 25:16 26:8 30:5,13,18,19 39:3,13,14 42:13 45:19 46:5 48:1 52:15 53:24 60:16 61:7,12 65:25 77:1 121:11 147:8 correctly ^[3] 60:14 114:22 117:20 corrects ^[1] 34:24 correlate ^[3] 16:25 17:1 142:7 correlation ^[3] 16:6 85:25 103:16 cost ^[1] 12:13 Counsel ^[21] 6:3 8:6 27:22 30:9 48:7 54:15 56:13 57:20 63:15 65:4 82:6 92:17 102:6 104:23,24 107:10 114:20 128:22 149:9 156:20 161:6 counsels ^[1] 6:1	counties ^[1] 125:22 country ^[2] 5:17 148:17 County ^[1] 51:20 couple ^[8] 31:4 41:1 60:5 65:6 79:6 111:17 121:14 130:11 course ^[15] 6:1 8:8 41:7 42:20 68:13 69:2 72:5 76:15 79:14,22 88:9 89:4 112:8 114:24 134:19 COURT ^[172] 1:1,19 4:11,14 5:22 7:5,21,23,25 8:14 9:19 10:16 11:2,10,15 14:22 15:5 16:11 17:23 18:17 22:23 24:9 26:20 27:11,20 28:4,10,11,20 29:2 30:3 31:16,20 32:8,16,21,24 33:9,13 35:9,21,25 36:7 37:6,9,17 39:6 40:9,10,14,19,21 43:8,15,17,22 44:3,4,17,18 45:6,12,19 47:3,7,15 48:3,12,21 49:22,25 50:1,3,17 51:8 52:23 53:9,14 54:23 61:14 62:6,21 63:11 66:17,19,21,24 67:1,6,9,11,14,15,18,22 68:4 72:21 73:5 74:16 76:13,19 77:23 79:15 80:13 81:4,7,22 82:11,13,24 83:4,5 88:8 89:1 90:16,16 94:2 97:5 102:1,13 103:25 104:2,4 105:14,16 106:7,13 107:18,23 108:5,14,22 109:2 110:4,6 111:19 113:22 118:10 123:16,17,24 126:6 131:3,7,11,14,25 132:4 133:6 136:13,21 138:1 139:11 140:19,24 141:14 142:9 143:11 144:2,4,18 145:6,13 150:10,23 151:23 156:25 157:17 159:11 160:9,22 161:3 court's ^[33] 7:17 19:23 37:4 43:23 47:10,12,22 49:14,18 50:14 58:23 63:8,13 64:2,18 70:4,19 71:20 73:4 75:20 76:1 77:2,22 78:8 89:3 102:14 103:12 107:17 113:21 138:19 142:3 150:16 160:14 court-imposed ^[1] 44:19 court-ordered ^[1] 20:12 courtroom ^[1] 52:12 courts ^[15] 37:15 38:6,8 43:20 58:3,7 63:8 69:10 70:3 76:24 78:11 86:7,13 134:12 160:1 covering ^[1] 87:13 crack ^[1] 125:9 cracked ^[6] 4:21 9:17,18,18 54:23 87:16 cracking ^[1] 6:10 crafting ^[1] 33:2 create ^[12] 7:18 8:1 16:17 20:6 34:13 35:13 68:10
--	---	--	---	---

Official - Subject to Final Review

110:25 114:8,9 124:24 146:18 created [6] 6:19 19:18 34: 15 110:4 125:17 145:12 creating [2] 55:8 108:1 creation [5] 5:1 6:5 34:4 63:18 138:1 credible [1] 14:24 criteria [18] 10:10,11 11:22 12:2,8 28:22,23 101:19 110:14 112:7 117:25 123: 9 129:24 133:16,19 144:17 151:14 157:13 critical [2] 21:17 70:4 criticized [1] 48:22 Croson [1] 32:9 cross-purposes [1] 32:18 crossover [4] 132:22 133: 2,25 158:8 Crow [2] 154:2,15 crucial [2] 34:19 152:11 culminating [1] 77:3 cure [1] 7:20 curiae [3] 2:10 3:15 102:10 current [11] 52:1,2 54:17 86:22,24 89:21,23 90:23 91:1,22 145:25 current-day [1] 99:23 currently [4] 52:11 74:6 85: 24 86:20 cycle [1] 26:5 D D.C [2] 1:15 2:9 dangerous [2] 41:7 74:13 data [3] 85:10 134:20 147:4 data-obsessive [1] 25:17 date [1] 122:4 dating [1] 72:20 day [2] 70:14,24 De [1] 40:25 dead [1] 141:1 deal [1] 55:15 dealing [2] 54:15,16 deals [1] 32:5 debate [1] 83:11 decade [2] 25:5 60:8 decades [7] 20:1 27:3 49: 12 66:7 67:6 72:20 73:9 decennially [1] 5:13 decide [1] 66:25 decided [5] 8:15 44:16 65: 7 88:1 145:9 decidedly [2] 19:19 31:25 decides [1] 40:19 deciding [3] 42:9 47:18 66: 22 decision [10] 32:16 44:10 45:20 47:10,12 48:2 53:9 88:22 97:21 134:11 decisions [5] 32:14 55:13 89:3 99:24 160:11 decisis [7] 6:1 105:6 106:2 109:24 110:1 151:3 160:	11 declare [1] 31:12 declining [2] 4:24 27:1 decouple [3] 103:17,19 104:3 decoupling [1] 103:15 decreased [1] 25:6 decreasing [1] 25:4 dedication [1] 49:14 defer [1] 39:20 deferring [2] 39:24 40:1 define [2] 88:21 112:24 defined [1] 23:4 defining [1] 113:1 definition [1] 129:18 degree [1] 153:1 delegation [1] 8:4 deliberate [1] 21:7 demand [1] 49:11 demanded [1] 57:12 demands [1] 41:9 Democrat [5] 16:25 74:5,6 120:6,7 Democratic [8] 13:9 15:13, 15 103:21 127:21,24 128: 20 159:6 Democrats [28] 13:8 15:13, 25 16:2 103:10,11,21,22 109:11 114:1,3,9,10 119:5, 6,6 127:22 129:4,8,11,14 130:21 147:5,5 157:20,21 159:8,8 demonstrate [2] 91:19 152:12 denial [3] 103:9 123:18,25 denied [1] 81:6 deny [1] 17:2 depart [3] 153:13 155:12 156:5 departed [5] 104:19 119: 14 154:8 155:4,25 departing [2] 153:3 154:12 Department [4] 2:9 60:15 127:16 158:17 departs [2] 119:10,22 depends [2] 36:1 112:23 deprived [1] 88:15 Deputy [1] 2:8 derived [1] 32:3 described [7] 33:20 117: 20 136:13,21 144:18 150:1, 10 desegregation [1] 72:11 deserve [1] 80:19 designed [1] 50:21 desire [1] 96:7 details [1] 84:22 determination [3] 7:11 10: 21 46:13 determine [5] 24:17 77:15 79:3 100:10 155:22 determined [1] 27:4 determines [2] 23:22 37:1 deterrent [1] 158:12	development [2] 57:23 83: 16 difference [6] 28:15 29:9 62:14 100:11 147:12,16 differences [5] 62:15,19 68:14 128:14 147:7 different [20] 14:9 21:8 31: 15 46:8,9 50:3 70:25 105: 4 112:1 119:8 120:5 124: 16 126:5,24 129:5 139:4 147:10 152:15 153:18 158: 18 differently [4] 103:22 109: 10,12 146:10 difficult [1] 120:19 difficulties [2] 121:19 123: 13 digressive [1] 129:22 diluted [2] 80:17 93:13 dilutes [1] 93:22 dilution [15] 18:17 33:20 52:2 59:23 65:19,24 85:4 88:6,6 90:22 91:16 92:7, 14 93:25 123:24 dilutive [1] 10:6 diminish [2] 48:16 57:16 direct [1] 83:4 direction [3] 24:24 84:21 112:1 Disabilities [3] 99:9,11,20 disabled [2] 100:2,3 disadvantage [1] 99:25 disagree [4] 37:20 62:24 116:14 148:24 disagreeing [1] 63:5 disagreement [2] 46:25 70:2 disagrees [1] 40:18 discard [1] 110:21 disconnect [1] 78:6 discretion [1] 8:1 discrimination [1] 124: 11 discriminate [12] 35:22 36: 1,19 37:24 38:6,16,19 39:1 53:24 98:6 137:20 155:19 discriminates [2] 35:10 37:18 discriminating [1] 36:24 discrimination [83] 5:2 12: 4,15 13:25 14:1 17:15 23: 10 26:12,24 27:6 31:18 32: 6,10,23,25 33:3,16 36:25 38:21 49:12,15 50:24 51:2, 9 53:1,2,5,6,7,10 54:4,6 55:2 56:1,2 59:14,25 60: 20,21 65:16 66:12 72:9 75: 4,16 76:15 79:16 80:5 81: 15,18 91:3,7 92:5 93:16 94:5,21 95:20 98:3,8 103: 4 113:6,8,14,20 116:3,5 120:11,13,17,18,25 121:3, 5 122:16 124:12 132:14 138:12,15 153:9 158:2,11,	23 159:18,19 discriminatory [15] 53:13, 17,25 60:12 95:25 98:16 99:2,4,12 113:5 122:6,12 153:10 155:7 156:9 discussed [2] 50:9 102:16 discussing [1] 115:12 discussion [3] 76:6 83:10 114:25 disparities [1] 153:23 dispersed [1] 61:22 displacing [1] 104:22 disprove [1] 132:7 dispute [1] 89:6 disputes [1] 72:1 disputing [1] 126:20 disregard [2] 16:13 68:5 dissolve [3] 19:3 20:17,24 distance [1] 155:10 distinction [2] 20:8 32:7 distinctions [1] 31:23 district [117] 5:1 7:19 9:24 10:2 11:18,20 16:12,18 28: 9,12,14,17 29:3,11,17 30:3, 15 34:2,8 37:6,9,15,17 38: 5,8 39:6 43:8,20,21,23 44: 3,4,17 45:12 55:8,18,19,21 56:14,16 57:8,12,13,15,16 58:5,15,23,25 59:12,19 61: 14,17 62:5,7,21 63:2,10,19 64:1 68:5,10 74:7,7 75:25 76:18 77:12 78:2 80:13,20, 23 81:14 83:5,11,12,20,24 84:20 85:17 87:10,12 103: 24 105:14,15 106:7 108:21, 24 109:3,6 113:2 114:8 117:23,24 118:10,12 125: 13,20,21,25 126:13,20 127: 25 129:12,15,17 133:23 134:2 138:2 139:2,7 140:9 141:2 142:16,21 147:23 151:25 153:9 districting [14] 4:16,16 11: 22 12:1,8 18:3 33:21 41:6 51:1 54:4,7 88:20 102:21 117:25 districts [34] 4:25 20:6 21: 8 30:11 34:5,10,15 41:19, 20,21,22,25 56:10,22 62: 16,17 71:1 73:17 74:7,12 82:17 87:24 108:2 114:2 124:25 125:17 127:21 146: 18 148:12,13,17 158:6,7,8 diversifying [1] 34:20 diversity [2] 32:1 34:2 divide [2] 41:3 71:22 dividing [1] 18:10 doctrinal [3] 69:4,21 70:10 doctrine [1] 91:22 doing [12] 9:11 24:23 55:4 56:12,22 71:19 74:11 83: 25 96:10 108:3 121:10 155:13 DOJ [3] 108:1,4,6	done [13] 30:1 41:15 55:6 95:10,12,15 105:10 116:10 120:5 123:25 134:13 147: 20 160:16 doubt [1] 63:1 down [1] 30:11 down-ballot [1] 159:13 downplay [1] 160:2 drafting [1] 121:8 draw [21] 7:8 10:1 32:25 43: 6 44:20 45:6 55:20 58:4 74:3 76:18 78:1 83:19 84: 19 90:18 117:5 119:9 128: 6 134:22 139:3,4 142:21 drawer [2] 36:9 138:6 drawing [11] 48:17 57:15 63:25 81:23 87:10,24 113: 2 141:2 152:5 154:7 158: 12 drawn [10] 6:13 36:9 43:13 83:12 84:22 114:2 116:21 125:15 132:2 140:10 draws [2] 119:22 134:23 drew [5] 58:5 64:13,15 88: 19 126:21 driving [1] 16:7 durational [6] 18:20 19:15, 16 20:12 40:7,22 during [2] 83:22 117:18 duty [1] 50:15 E each [2] 65:11 66:9 earlier [9] 39:18 41:18 42: 16 76:7 83:13 115:12 128: 9,11 148:5 easier [1] 86:15 easily [1] 15:11 east [3] 84:11,15 127:6 easy [4] 15:18 27:9 130:16 136:25 eclipse [1] 17:13 economic [1] 153:23 education [1] 62:14 EDWARD [3] 2:6 3:10 82:8 effect [14] 8:3 30:15 54:24 55:1,3 93:24 99:12 104:11, 12 121:17 128:10,18 155:5 158:12 effects [19] 53:7,13,17 54: 20 80:5 82:20 94:12,16 95: 23,25 96:12 101:22 102:25 124:8 153:8 154:14,17 155:10 160:6 effects-based [2] 65:18 98:1 effectuate [1] 26:11 either [6] 65:25 85:9 113:4 116:3,10 156:8 elect [4] 9:25 17:4 87:6 124:21 elected [8] 8:4 17:7 34:1,8, 10 73:15 157:19 158:4 election [1] 157:20
---	--	---	---	---

Official - Subject to Final Review

elections [8] 83:6 103:20 134:14 147:4 159:6,12,13, 14 electoral [23] 14:15 16:23 17:9 24:7 25:14 33:4 34:18 41:16 46:4,15,17,22 47:25 56:5 77:15 78:21 79:4 80:16,23 81:5 154:23 155:23 158:2 electorate [1] 4:24 elegant [1] 27:9 element [2] 19:10 20:17 eliminated [3] 92:24 148:15,15 eliminating [3] 49:14 148:23 158:1 elsewhere [1] 131:22 embarks [1] 41:6 Embedded [1] 48:20 emblematic [1] 157:7 emphasize [2] 21:17 148:9 emphasized [1] 37:10 empirical [1] 135:20 employing [1] 77:4 enable [1] 157:23 enacted [1] 60:6 enacting [1] 120:22 enacts [1] 47:13 encouraging [1] 24:2 end [14] 20:3,4 49:3 59:22 64:17 67:16,20 70:14,24 77:21 87:12 101:23,23 122:4 ending [1] 17:15 endorse [2] 36:21,23 endure [1] 40:11 enforce [2] 94:17 95:20 enforced [1] 34:12 enforcement [12] 22:1 32:4 75:6,8 94:17,18 96:16,24 97:2 113:16 120:15 121:16 enforcing [1] 116:1 engaged [1] 71:2 enlarged [1] 23:3 enough [11] 48:15,18 73:10 84:13,13 111:21 132:25 133:22 139:17 147:21 150:19 enshrined [1] 26:10 enslaved [1] 153:20 ensure [3] 5:2 16:22 23:10 ensuring [2] 26:22 36:8 entails [1] 21:7 enter [1] 105:20 entertained [1] 14:22 entertaining [1] 160:24 entire [4] 17:14 20:16 54:25 89:4 entirely [8] 7:14 31:15 96:7 135:10 145:20 148:16,24 158:18 entitled [2] 91:18 105:6	entrenched [1] 4:24 equal [24] 5:3 12:13 16:15 31:2 34:21 39:21 41:9 44:22 46:12,21 47:1 68:8 70:20 72:2 77:15 78:21 80:15 86:25 100:1 103:9 137:16 154:23 157:14 159:1 equally [6] 16:22 34:17 46:4,17 99:19 100:5 equivalent [6] 111:21 112:6 115:14 116:8 138:8 150:20 era [1] 59:15 error [1] 107:13 errors [3] 43:21 107:24,25 especially [1] 76:14 ESQ [5] 3:3,7,10,13,17 ESQUIRE [2] 2:2,6 essence [1] 45:24 essential [1] 136:9 essentially [8] 85:4,8 96:6 109:18 110:12 114:11 116:1 123:22 establish [2] 25:13,19 established [2] 36:25 90:17 ET [8] 1:6,9,12 2:3 3:5,19 4:9 156:23 ethnic [1] 55:18 even [28] 11:7 16:6 18:2 23:9 25:22 28:22 31:11 32:17 47:21 88:10 95:18 97:3,14 108:15 113:3,5 114:4 122:4,6 125:8 126:16 128:19 129:7 132:23 140:9 148:13,14 157:19 events [1] 72:24 everybody [3] 46:24 78:4 135:14 everything [1] 135:13 evidence [14] 7:6 8:10 9:1 25:19 45:18 47:6 52:25 121:21 156:13 157:10 159:4,6,10,15 evidentiary [3] 8:21 9:2 43:8 Ex [2] 5:5 23:4 exact [1] 109:1 exacting [2] 25:17 160:3 exactly [11] 20:4 60:9 61:18 63:12 83:17 84:3 109:16 119:1 139:16 142:25 150:11 example [21] 14:22 20:18 22:25 31:25 33:25 34:3,11 40:9 48:22 99:6 110:15 119:5 122:2 130:25 137:25 138:5,24,25 150:23 153:16 157:8 examples [3] 128:10 137:14,23 except [2] 30:17 146:22 excessive [2] 37:25 39:12 excluding [1] 127:11	exclusionary [1] 99:17 exclusively [1] 73:15 exemplifies [1] 103:8 exercise [2] 21:25 75:6 exercises [1] 97:22 exist [6] 24:5,10 34:25 54:12 74:6 101:4 existed [1] 122:16 existent [1] 153:25 existing [2] 8:8 9:3 exists [8] 53:25 57:25 58:9 59:5 69:12 89:10 119:3 159:4 expanded [1] 98:14 experts [1] 25:18 explain [3] 14:18 115:3 145:21 explained [1] 15:1 explaining [1] 18:12 explanation [2] 71:20 138:13 explicit [1] 41:5 explicitly [1] 71:11 explored [1] 77:13 expound [1] 9:7 express [1] 48:20 expression [1] 40:17 expressly [3] 70:18 104:2 150:12 extend [1] 40:3 extent [8] 60:7 78:24 115:4,4 121:3 146:17 154:7 159:5 extraordinarily [1] 26:21 extreme [3] 4:20 14:24 34:25	Family [2] 20:20 62:12 far [6] 30:11 69:19 80:7 103:2 105:6 122:10 fashion [2] 37:25 98:17 favor [3] 4:23 31:22 74:17 avored [1] 120:1 favors [2] 119:11,23 fears [1] 122:21 features [1] 14:12 federal [11] 35:9 37:5,8,15,16 38:5,8 39:5 43:16 58:6 68:15 feels [1] 40:21 felt [2] 8:2 83:19 ferreting [1] 17:15 few [2] 65:13 131:4 Fifteenth [23] 12:14 19:10 22:6 23:6,8 26:9 39:22 65:14,19,22 82:23 93:20,21 94:3,14 96:2,14,18,24 120:10,16 160:7 161:2 Fifth [6] 29:8 30:3 43:16 45:16,17,19 figure [7] 24:13 43:22 78:6 118:4 120:20 121:7 140:6 figures [1] 13:6 figuring [2] 104:10,12 final [3] 87:12 122:17 152:25 finally [3] 19:13 43:1 66:25 find [4] 29:2 103:6 117:6 155:5 finding [22] 6:4,6,11 27:17 43:7,15,23 51:8 58:14,22 59:23,25 60:19 61:10,11 62:24 76:4 120:24 121:5 147:8 155:6 159:23 findings [6] 4:18,19 58:13 59:7 82:20 97:17 Fine [6] 47:8 81:4 96:20 101:7 122:3 154:13 finish [2] 37:12 57:8 firm [1] 30:2 firmly [2] 51:7 60:23 first [26] 4:4 5:8 11:15 19:1 22:14 28:6 37:21 43:11 49:9 58:10 66:20 85:15 87:11,15 102:19 108:20 109:22 117:19 118:5 123:16 125:7 126:2 133:16 142:1 150:14 154:25 five [1] 130:23 five-day [1] 7:3 fix [3] 100:10 105:9 110:6 flesh [1] 77:19 flipped [1] 106:16 Florida [4] 119:18,19,21 128:12 focused [8] 17:14 59:20 76:10,17 77:7 101:9 123:6 143:5 focusing [1] 137:6 fold [1] 145:2 folks [1] 99:12	follow [2] 21:24 76:3 followed [1] 60:7 following [1] 60:20 follows [1] 63:24 forbids [2] 13:25 72:24 force [1] 22:7 forced [1] 34:4 forecast [1] 40:12 foremost [2] 19:1 37:21 forever [1] 40:3 form [2] 11:8 70:16 forms [1] 25:18 formulation [1] 37:21 formulations [1] 138:19 forth [3] 28:23 37:22,23 forward [3] 23:5 66:10 137:7 fought [1] 58:1 found [8] 7:5 9:20 14:23 15:5 36:17 45:18 54:23 110:20 four [1] 27:3 Fourteenth [6] 39:24 42:12 72:23 73:8 82:23 96:14 framework [1] 70:6 frankly [1] 152:18 frequently [1] 144:10 friends [3] 49:4 52:17 57:6 front [2] 69:7 101:23 fulfilling [1] 71:6 full [2] 7:11 159:24 Fullilove [1] 32:9 fully [1] 148:16 fundamental [2] 111:18 117:16 fundamentally [2] 48:14 66:14 further [4] 27:23 68:6 115:3 161:1
F				
face [2] 4:20 10:4 facial [1] 5:15 facially [2] 76:8 98:5 facie [1] 18:17 facilities [1] 99:18 fact [26] 8:13 9:9 10:25 11:7 16:24 17:2 18:22 23:1,3 31:21 41:22 42:3 45:12 55:15 81:15 99:3 100:3 103:4 105:10 107:24 127:17 138:20 155:8 157:18 158:13,15 35:8 59:13 64:21 88:12 102:23 136:22,22 factors [10] 52:25 64:22 81:7 93:10,11 101:17 121:4 142:6 159:21,22 facts [3] 5:7 45:9 57:2 factual [3] 60:5 97:25 107:11 fail [1] 25:20 fails [1] 52:7 fair [3] 76:14,16 148:22 fairly [1] 150:9 faith [2] 107:23 108:4 fall [2] 51:4 74:19				
G				
game [2] 76:14,16 gave [6] 7:23,25 8:1 65:10 128:10 157:13 General [12] 2:4,8 18:11,23 50:19 51:17 65:6 68:3 84:24 122:20 123:6 125:7 general's [2] 16:10 68:12 generally [2] 99:10 103:18 generation [1] 40:13 geographically [4] 28:7,20 29:13 117:22 geography [1] 10:2 gerrymander [4] 6:20 114:12 142:10,11 gerrymandering [4] 83:2 106:9 131:15 144:12 gerrymanders [1] 122:13 gets [3] 35:4 85:13 121:18 getting [2] 29:18 33:3 Gingles [7] 5:11 10:10,22 11:15 13:6 14:11 15:6 25:16,21,22,22 28:6 36:13 38:11 49:4 51:10,18,24 52:20				

Official - Subject to Final Review

54:18 63:3 66:5,14 69:1 70:16,17 77:18 85:21 86:6 87:11 91:23 93:10,11 102: 25 103:2 104:1,4,9 105:3,9, 13,14,15,20 106:7 108:16 109:23 110:11 111:6,10,11, 12,14,22 112:25 113:11 114:7,25 115:10 117:19 118:5,21 122:10 128:17,17 135:1 143:5 145:5,8,14 146:19 149:18,19,20 154: 16 158:25 160:4 give [1] 4:23 31:4 38:2,3 50:16 69:13 73:23 112:2 125:24 137:14,22 given [8] 8:9 35:20 53:19 72:6,7 77:19 86:15,15 gives [4] 32:24 90:16 100:9 138:11 giving [1] 55:8 glad [2] 37:9,10 goal [6] 41:15 47:1 72:2,5,7 84:17 goals [3] 55:23 56:4 129: 25 good-faith [1] 144:19 goodness [1] 134:19 Gorsuch [46] 35:3,4,15,18 36:15 37:5,11,14 38:5,12, 14,22 40:5 67:24 98:22 130:10,11 131:6 132:5,9, 15,18 133:8,11,18 134:4, 10,17 135:4,11,21,23 136: 8,14,18 137:3,6,9,15,19 138:11 139:8,13,19,23 147: 2 Gorsuch's [1] 42:10 got [22] 36:18 44:12 62:16 77:25 81:24 87:20,21,23 100:10 119:5 131:12 132: 20 134:18 135:23,25 143: 10,17 144:21 145:15 146: 25 155:15,16 government [2] 56:9 70: 25 government's [3] 68:15 70:15 77:4 government-mandated [1] 49:17 governmental [1] 45:15 governs [1] 160:20 grandfather [1] 59:16 Grandy [1] 40:25 grant [1] 105:2 granted [1] 105:3 grappled [1] 150:11 gray [1] 133:4 great [1] 71:20 greater [3] 41:23 105:6 150:22 GREIM [39] 2:6 3:10 82:7,8, 10 83:17 84:4,9,23 85:14 87:8 88:17 89:13,16,24 90: 6,9,25 91:8,21 92:2,13 93:	2 94:2,8,15,22,24 95:9,14 96:15,22 97:1,20 100:11, 20,23 101:21 102:7 ground [7] 33:22 51:11,22 69:9 71:24 72:1 96:5 grounded [2] 20:14,15 grounds [4] 82:13 114:12 147:20 154:9 group [13] 11:16 28:5,6,16 29:2 61:15 63:11 77:17 87: 1 117:21 119:24 128:24 147:22 group's [1] 56:4 groups [5] 41:17 46:15 57: 17 119:12 126:24 Grutter [1] 40:10 guard [1] 5:7 guess [17] 23:16 38:25 42: 22 43:22 46:6 47:9,21 51: 13 69:16 75:12 87:3 99:2, 21 135:17 153:6 154:24 156:2 guessing [1] 21:9 guidance [2] 40:8,20 H half [1] 70:13 handle [1] 131:11 handles [1] 131:14 hang-up [1] 39:1 happen [5] 33:21 74:4 91: 20 103:23 129:14 happened [4] 44:14 86:23 136:10 154:15 happening [9] 25:14 47:5 54:19 81:2 99:22 100:8 113:10 129:13 155:17 happens [2] 14:3 139:2 Happy [1] 31:14 hard [4] 86:14 116:20 120: 19,20 Harlem [3] 119:4 128:11 147:2 harmony [1] 41:23 Harris [1] 66:23 Harvard [1] 30:25 HASHIM [3] 2:8 3:13 102:9 HB1 [2] 60:6 158:15 health [1] 153:24 hear [3] 4:3 81:16 154:19 hearing [1] 7:3 heavily [1] 44:25 held [9] 8:14 9:9,10 17:23 22:23 94:3 97:5 109:2 140: 24 help [6] 55:16 56:3 78:5 102:15 113:3 137:10 helpful [3] 23:17 140:17 159:4 hesitant [1] 71:17 high-profile [1] 74:12 highly [2] 122:5 142:7 hints [1] 69:24 Hispanic [2] 119:6,20	historians' [1] 153:17 historically [1] 125:22 history [7] 54:16,25 59:14 62:8 72:7,9 154:14 hold [4] 16:11 56:7 68:4 82: 25 holding [1] 6:4 holdings [1] 107:17 holds [1] 97:21 honest [1] 50:17 Honor [30] 49:21 50:7 51:6 57:6 59:8 63:1,22 67:8 71: 15 72:20 73:11,20 79:14 80:9 85:14 94:2,15 100:21 101:21 107:16 116:24 123: 15 125:6,18 126:2 127:13 135:8 148:2 154:25 156: 18 hopefully [1] 149:12 hopeless [1] 140:5 housing [1] 49:6 However [1] 12:2 humble [1] 56:9 hundreds [1] 74:5 hurry [1] 95:14 hypo [1] 147:2 hypothetical [1] 138:14 I idea [5] 17:11 20:16 51:18 99:5,22 identical [2] 4:13 9:13 identifiable [1] 67:16 identification [1] 47:22 identified [12] 26:3 47:15 50:22,23 69:17,19 72:17 80:25 81:14,19 114:16 124:8 identify [7] 61:21 72:1 79: 12,20,21 80:6 121:4 identifying [6] 77:20 79:24 81:1 91:15 101:15 112:14 ignore [1] 88:12 ignored [1] 108:20 ignoring [1] 144:18 II [3] 25:22 70:17 107:18 III [2] 25:22 70:18 illogical [1] 32:15 illustrates [1] 104:14 illustrative [25] 10:4 16:12 28:2,12,14,19 29:12,21,23, 25 37:23 64:12 68:5 89:2 90:11,14 104:18 111:20 125:15 126:3,12,14,15 133: 15 157:3 Imagine [3] 112:4 119:17, 18 impermissible [4] 63:14 70:20 130:1,3 implications [1] 130:12 important [7] 8:16 20:8 23: 19 34:11 71:25 85:18 141: 6 importantly [1] 143:2	impose [1] 45:6 imposes [1] 110:12 impossible [2] 49:10 128: 3 improper [1] 8:21 inability [1] 17:4 inappropriate [1] 27:19 incision [1] 37:2 include [1] 19:15 included [1] 19:16 including [4] 17:4 33:10 96:6 123:4 income [1] 62:14 inconsistent [4] 111:11 115:10,11 132:3 incorrect [1] 107:19 incumbency [10] 104:16, 19 108:20,22,25 110:18 117:9 118:8,11 137:2 incumbent [9] 11:23,25 12: 3,7,7 55:20 104:22 118:3 130:17 incumbents [4] 62:17 63: 21 74:12 130:23 indeed [2] 122:12 144:17 indefinite [3] 5:8 18:24 20: 2 indefinitely [2] 22:10 82: 19 indicating [1] 7:1 indicia [1] 17:8 individuals [1] 46:20 inference [3] 32:24 138:12 144:19 inform [1] 55:23 information [2] 90:24 91:2 initial [5] 10:19 47:1,22 78: 17 91:13 injunction [7] 6:12,24 7:1 9:15 42:19 43:14 61:6 injury [2] 89:25 90:1 innovation [1] 143:18 inquiry [4] 66:5,15 142:6 150:8 insist [1] 88:11 insofar [6] 50:12 68:22 75: 2,15 76:18 151:13 instance [2] 58:10 142:1 instead [2] 135:9 146:22 institutional [1] 154:1 instructed [1] 7:8 integral [1] 88:14 intellectual [1] 55:14 intended [3] 82:19 99:16 100:7 intent [19] 26:19 41:3 94: 11 99:2,4 101:20 113:17 117:6 120:21,21 121:15,20 139:18 153:12 155:2,19 156:10 157:9 159:23 intent-based [1] 96:8 intentional [54] 20:6 21:7 32:25 33:1 40:4 52:25 53: 2,4,6,9 54:4,6,6 55:11 56:	2 75:3,16 76:15 79:16 81: 14,18 91:2,6 92:5,11 93:19, 24,25 94:4 103:4 113:6,8, 14,20 116:3,4 120:11,13, 17,18,24 121:3,5 122:6 132:14 138:1,12,15 139:8 146:18,22 155:7 159:17,19 intentionally [13] 35:10,21, 25 37:18 38:16,19 39:2 91: 20 113:4 122:11 153:13 156:8,9 interaction [1] 86:11 interest [26] 36:18 42:11, 23 43:3,25 45:1,11,15 46:1 47:24,24 50:6 66:24 79:12 80:3,4 81:23,24 83:1 106: 18,21,25 107:3,14,22 108: 6 interested [1] 55:22 interests [5] 30:16 38:4 48: 25 62:23 132:2 interpret [1] 108:17 interpretation [3] 66:3 109:15 111:13 interpreted [2] 77:18 110: 12 interrupt [1] 21:5 intervene [1] 40:18 intervening [1] 145:11 intervention [1] 34:19 inundated [1] 69:10 involve [2] 105:14 160:12 involved [5] 32:1 73:1,10 118:17 121:6 involves [2] 24:15 100:25 involving [1] 32:2 irrelevant [1] 99:17 isn't [10] 11:5 12:9,20 34: 23 35:7 36:10 60:8 119:16 135:2,12 isolate [1] 15:18 issue [15] 19:20 41:11 46:9 77:6 79:2 80:8 86:16 89: 19,20 104:5 118:16 124:17 140:19 157:22 159:14 issued [2] 32:14,16 issues [5] 30:21 52:8 55: 21 102:15 145:13 itself [16] 23:21 24:16 26:4 34:24 58:2 61:17 75:6,14, 15 76:8,23 89:11 94:1,11 121:23 122:1 J JACKSON [72] 9:6 10:7,14, 18 21:20,22 23:14,16 24:1, 21 25:7,11,24 26:7,14 39: 19 45:23,24 46:6 48:5 72: 2 77:10,11 78:7,15 79:7,8, 11,17,21,23 80:14,21 81: 13,17,25 82:2 87:14 90:3,7, 10 91:4,11,24 92:6 98:25 99:1 100:15,22 101:6 102: 3 110:7,16,22 111:6,9 112:
---	--	--	--	--

11,18 113:7 114:18 151:10, 11,16 152:3,10,21,24 155: 11 156:4,10,14,17 jammed ^[1] 109:5 JANAI ^[5] 2:2 3:3,17 4:8 156:22 Janus ^[1] 160:18 Jim ^[2] 154:1,15 Johnson ^[2] 18:6 40:25 join ^[2] 30:10 104:7 judge ^[7] 13:13,13 42:23 75:7 134:11,22,23 judges ^[1] 4:19 Julia ^[1] 108:23 jurisprudence ^[4] 66:7 71: 9 137:16 140:8 Justice ^[449] 2:9 4:3,11 6:3, 14,22 7:10,13,21 8:5,6,18, 24 9:5,6 10:7,14,18 11:13 12:6,16,24 13:2,16,18 14:2 15:7,10 16:9 17:17 19:20, 21,22 20:7,25 21:4,20,21, 22,23,24 22:4,4,16,20 23: 14,16 24:1,21 25:7,11,24 26:7,14 27:21,23,24,25 28: 25 29:5,7,19,22 30:7,7,9, 14,20,23 31:9 33:13,17,17, 18 34:7 35:1,2,2,4,15,18 36:15 37:5,11,14 38:5,12, 14,22,23,23,25 39:5,11,15, 19,22 40:5,10,24,24 42:5,6, 6,8,10,14,15,16 43:19 44:7, 11,20 45:21,22,22,24,25 46:6 48:5,6,12 49:19 50:8, 18,19 51:15,17 52:15 53:3, 4 54:2,14,18 56:8,12 57:1, 3,10,19,21,22,24 58:11,12, 21 59:6,14 60:2,3,3,4,10, 11,15,17,18,22 61:3,7,9,19, 25 62:1,1,3 63:5,9,15 64:3, 6,10,16,23 65:3,5,5,6 66: 18 67:3,23,23,25 68:1,17, 19 69:14,22 70:10 71:7,23 72:2 73:12,13 74:20,21,21, 23 75:4,20 76:21 77:1,8,9, 9,11 78:3,7,15 79:7,8,11, 17,21,23 80:1,14,21 81:13, 13,17,25 82:2,4,5,10 83:8 84:2,6,23 86:8 87:14,25 88:17 89:5,14,18 90:3,7,10, 23 91:4,11,24 92:6,16,18, 19,20,21 93:5 94:6,9,20,24, 25 95:1,2,3,4,4,6,8,8,11,15, 16 96:19,23 97:6 98:20,21, 21,23,24,25 99:1 100:15, 22 101:6 102:3,5,8,12 103: 13 104:5,6,15,23,24,25,25 105:23 106:3,6,12,19,23 107:1,6,8 108:8,10,19 110: 7,16,22 111:6,9,16 112:11, 18 113:7,15 114:13,18,19 115:2 116:6,16,17,18,19 117:1,15 118:15 120:8 122:2,17 124:2,3,3,5,14	125:11,14,19 126:7,10,14, 18,19 127:1,4,10,14,16 128:2,22 129:1,6,20,20,21 130:5,7,9,9,11,13 131:6 132:5,9,15,18 133:8,11,18 134:4,10,17 135:4,11,21, 23 136:8,14,18 137:3,6,9, 15,19 138:11 139:8,13,19, 23,24,24 140:1,16 141:12, 15,20,24 142:14,23 143:1, 7,10,14,17,23 144:5,13,21, 24 145:10,15,21 146:3,7, 14,25 147:2,11,15,25 148: 3,7,22 149:1,7,8,10,11,15, 23 151:4,5,5,7,9,9,11,16 152:3,10,21,24 155:11 156: 4,10,14,17,19 158:17 161: 5 justices ^[1] 73:14 justification ^[1] 54:13 justifications ^[1] 157:11 justify ^[1] 82:21 K Kagan ^[38] 33:17,18 35:1 50:19 51:17 52:16 53:3,4 54:2,18 65:5,6 66:18 67:3 73:13 75:4 84:23 86:8 87: 25 88:17 89:5,14,18 90:23 94:24 95:1,3,8,16 96:19,23 97:6 98:20 129:20,21 130: 5,7 151:7 Kagan's ^[1] 80:1 Kansas ^[1] 2:6 Katz ^[1] 25:4 Katzenbach ^[6] 20:22 94: 23 96:3 97:21 113:22 124: 9 KAVANAUGH ^[64] 16:9 19: 20,22 20:7,25 21:4 38:24, 25 39:5,11,15 40:24 42:5 44:21 50:8 67:25 68:1,17, 20 69:14,22 70:11 71:7,23 73:12 74:20 98:23 105:1 111:17 139:25 140:1,16 141:12,15,20,24 142:14,23 143:1,7,10,14,17,23 144:5, 13,21,24 145:10,15,21 146: 3,7,14,25 147:11,15,25 148:3,7,22 149:1,7,15 Kavanaugh's ^[2] 21:24 22: 5 keep ^[5] 36:13 55:17 70:15 98:6 155:13 keeping ^[1] 56:15 keeps ^[1] 154:11 Kennedy ^[1] 40:25 kept ^[2] 55:7 98:8 key ^[3] 26:22 66:20 150:3 kind ^[15] 42:14 51:19 55:21 57:14 59:18 85:19 88:5,6 89:19 97:6,15 98:11 99:6 141:20,21 kinds ^[3] 91:16 92:8 95:23	Kisor ^[1] 150:24 knowing ^[1] 26:22 knows ^[2] 73:2 78:4 L label ^[1] 96:20 labor ^[1] 160:16 lack ^[4] 16:15 46:21 68:7 69:15 laid ^[1] 70:16 large ^[5] 11:17 28:7 60:7 117:22 127:24 laser-focused ^[1] 158:1 last ^[11] 49:20 54:22 63:16 65:1 83:8 126:8 128:8 147: 1 148:1 150:9 154:3 late-breaking ^[1] 5:14 later ^[4] 51:19,21 97:10 131:2 latitude ^[2] 8:1 38:3 Laughter ^[5] 95:13 139:15 140:15 151:1,8 law ^[16] 20:14,15 23:22 24: 1,12 32:21 43:21 50:23 68: 25 73:6 94:22 107:7,25 136:2 145:12 157:23 laws ^[3] 99:5 100:13 122:6 lead ^[1] 149:5 leadership ^[1] 34:20 leading ^[1] 109:17 least ^[6] 18:16 23:17 75:24 113:18 116:4 119:8 Leave ^[2] 20:20 153:7 led ^[2] 59:7 125:24 leeway ^[1] 38:1 left ^[6] 28:1 67:2,10,14,15 150:12 legal ^[2] 17:21 107:11 legislate ^[1] 65:15 legislating ^[1] 131:1 legislation ^[2] 113:16 124: 10 legislative ^[4] 34:9 50:10 118:2 120:21 Legislators ^[2] 55:17 120: 24 legislature ^[11] 12:10 59:3 60:24 74:2,2,10,16 119:22 120:1,4,22 legislatures ^[1] 144:19 legitimacy ^[1] 160:14 legitimate ^[1] 45:10 legitimately ^[1] 12:10 less ^[4] 25:2,2 41:23 62:18 Letlow ^[1] 108:23 level ^[2] 130:18 133:7 liability ^[7] 6:11 7:7,7 27: 17 110:13,20 155:5 life ^[1] 26:4 likelihood ^[2] 6:7 58:24 likely ^[13] 7:2,6 16:16 43:9 58:16,17,24 61:11 68:9 122:5,11 156:9 158:10 likes ^[1] 5:25	likewise ^[1] 13:18 limit ^[18] 18:20 19:15,16 20: 11,12,13 21:10,12,13,16 24:22 25:25 26:13 39:16 40:8,22 72:14 122:1 limited ^[4] 32:10 36:3 66: 11 93:20 line ^[10] 18:7,10 23:4 36:8 59:3 88:19 89:4 124:5 134: 23,24 lines ^[4] 14:23 31:4 76:18 84:22 lingering ^[3] 54:20 55:3 56: 1 link ^[2] 101:22 102:4 listening ^[1] 135:13 literacy ^[7] 59:16 92:22,25 98:5,13,15 122:3 literally ^[1] 129:18 litigation ^[18] 7:15,17 34:4 42:18 43:18 44:13 45:5 50: 10 58:2 61:5 69:7 70:8 80: 11 81:1 83:13 103:7 131:2, 10 little ^[8] 9:7 73:25 105:19 112:3 115:3 131:21 141: 17 158:17 live ^[8] 56:11,14 62:9 85:6 108:23,25 119:6 155:20 lived ^[2] 126:23 153:21 lives ^[2] 118:12,13 local ^[1] 158:13 logical ^[3] 49:3 67:16,20 long ^[15] 17:24 20:1 39:12, 17 48:21 62:12 66:21 73: 10 89:7 104:16 111:19 115:14 131:23 154:15 155: 10 longer ^[3] 27:5 34:16 82:21 longstanding ^[2] 50:4,9 look ^[26] 14:8,11,19 24:8 54:21 57:2 61:19 79:3 87: 18 103:19,20,24 108:21 116:9 118:9 120:22 126: 13 132:1 133:24 134:15 147:19 148:10,11 154:7 157:9 158:3 looked ^[4] 62:6,7 84:12 134:13 looking ^[10] 8:25 13:11 22: 1 24:4 81:7 91:14 93:11 125:16 158:19 159:13 looks ^[2] 33:9 154:13 Lopez ^[1] 33:12 lose ^[3] 59:17 108:24 118: 13 lost ^[2] 103:11 157:21 lot ^[12] 47:6 69:16 70:2,4 73:21 76:6 102:15 121:19 125:6 127:21 140:2 147:6 lots ^[2] 134:25 142:6 LOUISIANA ^[54] 1:3 2:5,5 3:8 4:5,18,20 6:9 7:8,24 9: 22,23 15:1,23 16:5 17:5,7,	10 31:1,19 33:24 34:7,11 42:19 44:16 47:13 48:10 49:6,20 52:22 57:8,12 59: 20 60:24 61:20 62:16 73: 14 74:1 90:14 101:10 103: 11 109:12,13 120:4,6 124: 20 127:24 145:17 153:16 157:6,10,11 158:14,21 Louisiana's ^[1] 5:1 Louisianans ^[1] 5:3 lower ^[5] 15:14,17 43:15 63:8 70:3 LSU ^[1] 112:5 LULAC ^[2] 91:23 109:2 M made ^[17] 10:4,21 31:16 33: 13 45:9 65:8 75:1 84:20 85:22,25 99:19 115:8 117: 2,3 133:7 156:25 160:5 magically ^[1] 151:24 main ^[3] 62:6 84:14 89:25 maintain ^[1] 40:6 majority ^[10] 11:17 28:8 48: 16 55:8 66:16 74:6 84:13 85:23 86:4 117:23 majority-Black ^[7] 57:13, 16 58:4,25 80:13,19 148: 13 majority-minority ^[18] 16: 17 28:13 34:15 41:22 68: 10 73:16,16 75:25 81:23 83:20,24 84:20 108:2 125: 12 138:2,10 139:2 158:7 manage ^[1] 141:3 manages ^[1] 118:2 mandate ^[1] 77:12 mandated ^[2] 76:2,19 mandating ^[1] 112:13 manifestations ^[1] 99:24 manner ^[1] 46:23 many ^[19] 5:19 17:25 25:18, 20 26:17 27:14,19 29:16 31:23 41:18 43:12 56:22 62:8 67:6 81:3,3 157:3 158:3,7 map ^[102] 5:12 6:5,13,18 7: 9,19,22 8:2,3 9:24 28:2,12, 14 29:12,23,25 30:14 35:6, 8,9,13,22 36:9,20 37:17 43: 6,13 44:19,20 45:6 47:13, 16,20 50:10 54:22,24 55:1 60:7,12,13,19,20 64:12 74: 4 75:14 83:5 88:3 89:2,2,9 90:18 101:10 104:20,21,21 111:20,21 115:20,21 117: 11 119:10 120:22 123:2,3 125:15 126:8,10,11,13,15, 15,16 127:5 128:6 131:18, 18 132:2,6,10 133:15 134: 14 138:5 139:1,4,4 143:12, 13 147:19 151:11 152:13, 22 154:6,12,13,21 155:14, 21,22 157:2,12,13 158:16
---	--	--	---	--

Official - Subject to Final Review

maps ^[31] 4:16,22 5:17,20 10:4 28:19,22 29:21 30:10 37:15,23,23 38:9 42:21 54: 22 64:12 88:24 90:11 104: 18 116:22 117:5 124:24 125:15 126:4 127:15,17,18 138:8 157:3,16 158:13 March ^[1] 50:9 marching ^[1] 59:4 margins ^[1] 123:14 Marshall ^[1] 33:13 material ^[1] 143:20 materials ^[1] 83:9 matter ^[10] 1:18 64:20 69: 12 70:23 71:15 99:14 107: 7 112:19 125:2 141:13 matters ^[3] 100:6 118:23 128:21 maximize ^[2] 12:17 74:3 maximizing ^[1] 74:11 mean ^[50] 10:19 15:10 26:8 42:22 43:20 44:1,11 46:6, 19,24 51:15,17 58:8 59:10 61:20 71:16 73:21 75:13, 20 77:2,13 84:3,4,6 87:25 89:1,17 93:8 94:24 96:16, 19 101:14 102:1 118:19 130:16 132:10,25 134:5,6, 8,18,19 136:1 137:15 140: 7 144:14 147:3,11 149:20 151:14 meaningful ^[1] 62:20 means ^[14] 11:14 12:22 69: 8 74:9 109:11 123:7 125:1 128:9 136:9 139:14,16 140:6 158:17,20 meant ^[5] 17:22 58:25 108: 9,14 111:23 measure ^[5] 13:22,23 24:4, 17 26:4 measuring ^[1] 13:15 mechanism ^[4] 19:18 23: 22 77:14 91:15 Medical ^[1] 20:20 meet ^[2] 27:15 158:25 meets ^[1] 128:6 member ^[1] 33:25 members ^[4] 48:15,18 71: 2 132:20 membership ^[1] 71:3 mention ^[2] 26:16 103:14 mentioned ^[6] 19:5 27:8 30:24 39:13 41:18 114:24 mere ^[3] 4:12 102:20 161:3 merely ^[2] 93:14 119:25 merits ^[1] 7:11 met ^[3] 28:21 138:20 157: 13 method ^[1] 96:1 micro-analyzing ^[1] 147:4 Middle ^[7] 57:7,12 58:15 59:12,19 63:2 81:14 might ^[17] 21:12 24:24 29: 20 37:11 40:13 45:3 51:22	54:7 55:17,18,20,22,23 75: 14 78:1,2 107:12 miles ^[1] 29:16 Miller ^[5] 18:6 72:21 107: 17,25 145:6 Milligan ^[50] 4:13 5:5,22 8: 7,15,16 9:8,12 10:9,20 11: 11,14,15 14:23 18:7 28:4 30:5 32:12,16 33:11 35:14 46:20 65:7,21 88:1,2,18 89:14 94:10 95:18,24 100: 4 102:18 108:16 111:5,15, 19 112:25 114:22 115:10, 13 116:14,20,21 117:17,20 118:17 141:8 150:17 157: 5 mind ^[6] 41:8 44:7 46:7 58: 23 84:8 158:13 mindful ^[1] 33:4 minimizes ^[1] 46:23 minorities ^[1] 99:25 minority ^[23] 11:16 14:16 28:5,6,13,16 29:2 34:18,21 46:15 48:18 60:25 61:15 63:11 77:12,17 78:2 84:11, 13 85:23 86:4 117:21 147: 22 misapplied ^[2] 106:22 108: 15 misinterpreted ^[1] 109:25 missing ^[1] 41:14 Missouri ^[1] 2:6 mistakes ^[1] 105:8 modification ^[3] 149:17 150:21,23 modifications ^[1] 160:24 modify ^[1] 145:13 moment ^[1] 31:16 money ^[1] 62:18 month ^[1] 32:17 months ^[2] 97:18 156:24 MOOPAN ^[1] 114:14 MOOPPAN ^[127] 2:8 3:13 102:8,9,12 103:18 105:21, 24 106:5,8,14,20,24 107:5, 7,16 108:9,12 110:10,18 111:1,8,13 112:16,23 113: 13 115:1,6 116:7,24 118:6, 122 121:13 122:23 124:13 125:5,12,18 126:1,9,12,18 127:2,7,13 128:4,24 129:3, 10,21 130:2,6 131:5,13 132:8,12,16 133:6,9,13,20 134:9,12,25 135:7,16,22 136:6,12,16,20 137:5,8,10, 18,22 138:18 139:10,16,20 140:13,18 141:13,18,22,25 142:18,25 143:2,8,11,15, 22 144:1,8,15,23 145:3,11, 19,23 146:6,9,21 147:9,13, 17 148:1,4,8,25 149:3,11, 22,25 151:2,15,20 152:7, 15,22 154:24 156:2,7,12, 15,18	Morgan ^[1] 20:22 morning ^[2] 4:4 102:16 most ^[10] 33:10 41:4,6 59: 11 61:10 68:24 115:6 149: 25 150:15,16 motion ^[1] 43:14 motivate ^[1] 36:8 motivating ^[1] 18:5 motivation ^[1] 18:11 motivations ^[1] 86:3 Ms ^[82] 4:7,10 6:6,16,25 7: 12,16,23 8:13,23 9:4,12 10: 12,16,24 11:25 12:12,21, 25 13:11,17,22 14:8 15:8, 22 16:19 17:23 20:7 21:2, 15 22:13,18,22 23:14,15, 24 24:19 25:1,9,16 26:6,8, 15 28:18 29:4,6,19 30:13, 19 31:8,14 33:18,23 35:12, 17,24 36:23 37:8,13,20 38: 8,13,18 39:4,7,14 40:6 41: 13 42:13 43:5 44:5,8 45: 14 46:5 48:1 61:14 72:13 73:13 77:14 117:18 156: 21,24 much ^[11] 43:23 55:5 97:23 117:3 122:18 124:15 132: 22,25 133:24,25 152:1 Mulligan ^[1] 31:6 multi-factor ^[1] 142:5 multiple ^[1] 108:1 must ^[14] 11:16 19:2 27:18 28:7 40:21 41:8 48:23 92: 4 112:7 117:21 118:21 142:12 158:14 160:9 myself ^[1] 142:15 N nail ^[1] 58:1 Nairne ^[1] 15:24 narrowly ^[2] 36:10 101:12 natural ^[1] 76:3 nature ^[1] 160:3 near ^[1] 62:9 nearly ^[3] 4:13 9:13 34:9 necessarily ^[4] 30:17 121: 25 147:6 149:18 necessary ^[7] 11:9 19:7 23:23 40:23 41:7 75:8 133: 9 need ^[22] 23:7 24:22,24 26: 4 30:1 34:16 40:7,11,13 66:14 78:25 81:17 88:21 91:4,13 104:3,6 121:25 124:10 130:20 157:1,7 needed ^[4] 27:5 32:22 39:7, 8 needs ^[2] 37:1 64:14 neither ^[4] 30:16 33:7 102: 18 138:18 NELSON ^[87] 2:2 3:3,17 4: 7,8,10 6:6,16,25 7:12,16, 23 8:13,23 9:4,12 10:12,16, 24 11:25 12:12,21,25 13:	11,17,22 14:8 15:8,22 16: 19 17:23 20:7 21:2,15 22: 13,18,22 23:14,15,24 24: 19 25:1,9,16 26:6,8,15 28: 18 29:4,6,19 30:13,19 31:8, 14 33:18,23 35:12,17,24 36:23 37:8,13,20 38:8,13, 18 39:4,7,14 40:6 41:13 42:13 43:5 44:5,8 45:14 46:5 48:1 61:14 72:13 73: 13 77:14 117:18 156:21,22, 24 neutering ^[1] 161:1 neutral ^[4] 98:5 102:22 110:19 111:25 never ^[22] 7:10 17:6 20:22 44:7 49:9 58:10 59:15 66: 19 82:19,25 94:3 97:5,11, 13,15 104:4 114:9 125:2 133:1,6 150:11 157:18 New ^[16] 2:2,2 6:12 63:25 69:7,8,11 87:24 99:5 119: 9 123:14 143:24,24 151:12 154:6 160:15 next ^[2] 81:10 135:5 nice ^[2] 109:6 134:5 non-dilutive ^[1] 4:22 non-discrimination ^[2] 19:9 72:6 non-majority-minority ^[1] 41:20 non-negotiability ^[1] 64: 20 non-negotiable ^[6] 63:25 64:8,21,22 124:23 138:23 non-racial ^[1] 127:9 none ^[3] 98:18 129:12 149: 4 nonetheless ^[1] 46:1 nonpartisanship ^[1] 64:8 nor ^[3] 29:8 33:8 102:18 normal ^[2] 119:10 137:16 north ^[5] 30:11 62:18 109:4 126:23 127:5 northwest ^[3] 29:15 52:24 84:16 note ^[1] 30:10 noted ^[2] 4:14 5:22 nothing ^[3] 49:5 93:4 106: 13 notice ^[3] 40:17 73:3,10 number ^[7] 12:17 14:12 17: 6 26:19 124:18 125:3 130: 17 numbers ^[1] 15:8 numerous ^[1] 33:10 O O'Connor ^[1] 40:10 objecting ^[1] 50:21 objective ^[4] 12:10,16 71: 11 118:2 objectives ^[9] 16:13 68:6 123:4 128:7 130:16 131:	17,23 143:21 144:20 obligation ^[1] 46:2 obtain ^[1] 52:8 obviously ^[2] 80:3 86:12 occasions ^[1] 33:10 occurring ^[3] 79:5,13 154: 18 occurs ^[1] 85:16 October ^[1] 1:16 od ^[1] 130:11 oddly ^[1] 63:20 offer ^[2] 80:24 155:15 offices ^[1] 17:6 official ^[1] 59:13 often ^[4] 34:16 36:16 39:8 159:11 Okay ^[26] 13:16 24:13 35:8 38:22 44:7 94:12 100:22 101:7 102:3 106:5 115:22 130:5 132:15 135:21,25 136:11 137:5 138:9 139:9, 19 143:10,14,17 145:10 147:1 151:4 old ^[1] 86:22 older ^[1] 97:23 once ^[6] 28:3 32:22 36:17 51:11 90:17 106:15 one ^[69] 4:23 5:19 11:24 14: 3,4 21:14 27:13 31:1,15 32:14,19 33:25 35:16 36: 16,16 45:7 51:20 54:21 55: 8,18 56:18 59:1 64:11,21, 21 65:11 69:23 72:15,16 73:24 74:17 75:13 77:19 80:24 81:19 83:17 85:17 103:13,15 105:25 113:24 115:9,11 116:13 119:11,23 121:18 122:17,17 124:16, 19 130:25 132:20 134:7,15 135:2 138:5,10,23 142:18, 19 144:9 145:4 148:1,9 149:12 150:4 160:13,13 one's ^[2] 56:15,16 ongoing ^[1] 157:7 only ^[30] 14:11 34:2,24 36: 2 38:1,9 49:11 53:11 55:7, 11 57:25 63:9 65:16 85:24 86:16 88:12 91:5,14,17 94: 16 96:17 101:22 116:11 122:15 124:10 130:23 148: 12 156:5,7 159:9 onslaught ^[1] 70:7 open ^[11] 16:22 34:17 46:4, 17 67:10,14,15 71:12 99: 19 100:5 150:12 opening ^[2] 49:22 64:17 openness ^[3] 16:15 68:8 103:9 operate ^[3] 33:19 52:11 78: 12 operates ^[1] 46:22 operating ^[1] 153:9 opinion ^[6] 73:4 103:25 104:7 115:16 123:15 148:
--	---	--	--	---

Official - Subject to Final Review

6 opponents [5] 31:23 157:4,21 160:3,15 opponents' [1] 5:14 opportunities [3] 34:13 53:20 158:24 opportunity [32] 5:3 7:18, 19,24 10:1 24:7 25:13 34:1,5,8,22 41:19,21 43:13,17 44:20 46:21 47:2 72:3 73:17 77:16 78:22 79:5 80:16 81:5 86:25 90:18 154:23 155:24 157:14 158:5 159:1 opposed [5] 15:20 21:2 29:3,20 123:24 options [1] 27:20 oral [9] 1:19 3:2,6,9,12 4:8 48:9 82:8 102:9 order [17] 7:18,22 23:9 37:2,15,17 38:3,9 53:24 59:4 83:5 86:20 88:4 89:9 96:13 106:4 129:24 ordering [1] 6:12 ordinarily [1] 76:17 origin [1] 60:13 original [5] 49:22 50:2 68:22 126:16 158:16 other [34] 8:24 14:12 17:20 24:23 25:18 26:18 27:19 32:11 33:6 44:13 45:6 48:24 49:5 52:17 57:7 62:18 64:12 73:22 76:12 85:18 87:1 91:16 94:4 100:12 101:4 119:24 125:22 132:23 138:13 139:4 142:20 153:11 156:15 157:4 Others [3] 30:25 31:9 57:18 otherwise [2] 40:15 125:23 ourselves [1] 160:5 out [46] 6:19,19 8:21 17:15 24:13 27:6 43:22 44:14 46:23 51:11 54:19 55:14 56:16,21 60:6,25 61:13 69:8 70:6,16 71:17 78:6 86:2,14 88:5 102:4 104:10,12,15 113:15,18 117:18 120:20 124:25 125:7 126:19 127:15 128:3,4 131:3 132:20 138:8 140:6 142:20 143:20 158:5 outcomes [2] 109:19 153:24 outlier [1] 134:16 outrun [1] 59:15 outrunning [1] 135:25 outset [1] 27:9 outsized [4] 17:9,18,19,22 over [20] 4:25 27:2 29:18 34:24 61:20 67:6 69:7 72:20 98:7 105:4,5 107:2,2,9,9 110:14 134:20 135:1	140:7 159:8 overbroad [1] 101:16 overhaul [1] 66:14 overrides [1] 18:15 overriding [1] 41:9 overruled [1] 105:11 overstated [1] 73:25 overtly [1] 71:18 overturn [1] 160:19 overturned [1] 160:17 overwhelm [1] 56:24 overwhelmingly [3] 13:8, 20 14:4 own [10] 19:3 22:7 38:21 40:20 44:20 90:18 115:21 116:1 123:3 152:20 owned [1] 99:16 P p.m [1] 161:7 pack [1] 55:3 packed [4] 4:21 9:18 54:24 87:17 packing [2] 6:9 56:23 PAGE [9] 3:2 11:1 16:10 50:1 52:21,24 105:1 143:21 145:2 pages [3] 49:22 68:2 111:16 panel [2] 27:11 45:20 panels [1] 43:16 paradigmatic [3] 22:24 97:22 99:6 parchment [1] 161:3 parishes [1] 62:6 parrot [1] 23:7 part [35] 10:8 13:1 14:12 29:15 39:15,17 49:8 51:3 55:10,11,12 71:10 76:22 86:6 87:11 88:14 90:12,21 92:11 94:16 104:7,8 109:22 115:12 119:19 120:19 144:3,10,22 145:19 150:14 151:13 154:3 157:3 159:25 parte [2] 5:6 23:4 participate [5] 5:4 34:22 46:21 157:15 159:1 participating [1] 56:17 participation [1] 56:5 particular [13] 7:22 8:20 11:6 12:18 21:6,9 56:4 98:1 101:10 112:13 118:7 153:21 154:8 particularly [3] 55:22 103:16 160:10 parties [4] 10:18 11:11 14:5 78:11 partisan [25] 12:9,19,22 13:3 14:7 15:21 55:23 64:14,15 86:3,3,12 114:12 116:22 117:10 118:1,3,20 119:16 128:1,18 129:25 142:10 144:11 157:22 partisanship [3] 124:23	125:1,16 parts [2] 66:20 126:5 party [22] 12:18 13:12,13 14:1,18 15:2,25 16:7,21 17:12,12 65:7 103:15 104:13 128:5,12,13,20 132:21,24 158:3 159:4 pass [1] 58:10 passed [4] 83:24 99:8 105:12 112:4 past [9] 25:5 27:3 52:20 54:20 56:1 59:14 89:20 99:24 153:10 pattern [1] 138:20 patterns [2] 49:6 153:19 pause [1] 74:18 pellucidity [1] 156:25 people [22] 14:3 21:8 29:14,16 30:10 47:19 53:18,20 55:16 85:6 88:15 92:14 93:12 98:15 99:11,19 124:19 127:2 131:20 154:22 155:20 158:4 people's [1] 89:22 percent [15] 4:23,25 15:4,9 25:6 29:18 124:20 125:4 130:20 133:2 141:2,11 142:21 148:16 151:25 percentage [3] 17:22 114:5 131:19 perfectly [2] 103:7 104:14 performance [1] 13:15 performed [1] 134:14 perhaps [1] 133:5 period [3] 19:25 20:1 137:21 permanent [2] 19:11 34:23 permanently [1] 26:9 permissibility [1] 36:5 permissible [8] 12:8 19:25 33:15 118:2 121:2 122:14 142:6 144:17 permit [1] 55:24 permits [1] 65:15 permitted [3] 58:4 65:19 73:7 perpetuate [1] 12:4 perpetuating [1] 60:21 persist [1] 72:25 person [4] 17:7 78:19 99:15,15 persons [1] 41:3 perspective [1] 13:12 PHILLIP [2] 1:6,12 phrase [2] 113:20,22 phrasing [1] 123:8 pick [4] 27:25 112:7 138:9 140:2 picked [3] 64:11,11 90:15 picking [3] 42:9,15 147:1 place [7] 49:9 53:15 61:21 82:16 84:25 98:8 134:21 placed [1] 49:10	places [1] 153:18 plainly [1] 124:10 plaintiff [5] 35:5 75:21 76:14 87:15 152:13 plaintiffs [26] 16:14 25:8,20 37:22 56:13,14 58:16 68:7 80:12 88:3 89:8 90:11 103:8 106:10 111:20 115:20 117:5 123:1 133:15 141:9,10 143:6,8 150:20 151:22 159:3 Plaintiffs' [4] 16:12 68:4 104:18 151:11 play [3] 6:5 44:22 57:23 played [1] 88:13 playing [3] 14:14 17:8,18 plays [3] 51:10 69:8 158:12 please [4] 4:11 48:12 82:11 102:13 plurality [2] 73:4 88:18 Plus [2] 120:24 134:7 pockets [1] 61:21 point [33] 20:3,5 22:11 40:2 44:25 49:3 52:17 56:9 63:9 64:16,17 67:16,20 69:21 83:18 89:6 94:18 97:24 99:2 100:16,16 106:11 135:17 139:11 141:6 143:20 146:8,12 148:2 152:11,25 155:15 156:2 pointed [8] 54:19 104:15 105:1 113:15 125:7 126:19 127:14 155:8 pointing [1] 24:23 points [6] 60:5 85:15 108:19 121:14 134:20 150:3 polarization [2] 147:8,21 polarized [23] 4:21 13:14 14:10,19,25 15:3,20,21 17:2,13 25:3 41:24 52:6,19 104:1 109:9,13 119:2,14 128:19 150:6,13 159:16 political [22] 14:5 16:13 17:16 38:4 48:25 68:6 71:21 73:24 74:3,12,14,17 109:19 123:4 128:7 130:15 131:16,23 143:21 144:20 153:23 160:12 politically [2] 18:15 71:18 politics [8] 5:10 16:15 65:1 68:8 86:3 101:1 118:20 125:23 poll [4] 59:15 92:22,23 98:4 population [9] 10:3 29:11 34:16 61:20,24 84:11 124:21 127:24 130:20 positing [1] 154:16 position [17] 45:3 50:9,11 63:23 114:23 118:23 120:14 141:16 142:2,3 146:8,20 148:8,20 149:17 153:7 155:1 positions [3] 131:10 148:20 149:4	positive [1] 57:4 possibilities [2] 39:9 115:19 possibility [2] 45:11 115:19 possible [3] 36:2 99:20 155:9 possibly [3] 51:4 118:14 129:22 post-Rucho [1] 144:16 potential [1] 33:5 potentially [1] 18:4 power [14] 22:1 56:11 75:6,8 94:13,17,19 96:17,17,24 97:2 120:15 121:16 153:23 powers [2] 23:3 32:4 practical [10] 69:4,5,12,15,23 70:23 71:14 122:21 130:12 148:5 practically [1] 84:7 practice [4] 93:22,23 94:1,21 practices [3] 88:7 124:12 154:3 pre-cleared [3] 60:14 127:15 158:16 pre-Rucho [3] 71:16 144:14,15 Precedent [11] 5:5,16,24 8:8,11 9:3 19:2 36:7 37:4 149:21 160:20 precedents [14] 31:6 35:21 49:25 52:9,10 63:8,14 67:10 75:21 76:1 77:2 78:9 105:5 160:17 precise [1] 37:2 precondition [6] 11:16 13:7 25:21 28:6 117:19 118:5 preconditions [5] 51:12 52:20 59:9 75:22 158:25 predicament [1] 49:23 predicate [1] 85:20 predict [1] 55:21 predictably [1] 134:5 predictive [1] 134:4 predictively [1] 134:2 predominance [17] 63:24 64:4,19 70:3 89:8 102:14 115:17 136:1 137:12,24 138:3,16,19 140:4 142:9 143:16 145:7 predominant [7] 35:7 101:11 103:5 109:17 116:13 123:7 146:23 predominantly [1] 129:24 predominate [7] 63:18 84:21 88:25 110:14 140:9 142:19 143:4 predominated [6] 64:25 83:25 84:3 106:11,16 142:24 predominates [6] 55:12 64:25 85:16 90:1 137:20
---	--	---	---	--

Official - Subject to Final Review

142:15 preexisting ^[1] 42:2 prefer ^[2] 14:4 48:25 preferences ^[1] 159:7 preferred ^[2] 9:25 159:8 prefers ^[1] 63:12 preliminary ^[7] 6:11,24 7:1 9:15 42:19 43:14 61:5 premise ^[2] 22:20 51:7 preponderance ^[2] 121:21 156:13 present ^[3] 99:24 103:3 154:21 presented ^[5] 26:18 28:19 157:2,4,12 presenting ^[1] 154:11 presents ^[2] 49:24 113:19 PRESS ^[6] 1:9 2:3 3:4,18 4:9 156:23 pressing ^[1] 102:17 pretextual ^[1] 132:17 pretty ^[7] 25:11,12 33:24 109:6 120:10 126:21,22 prevail ^[2] 82:12 157:24 prevent ^[1] 33:20 prevented ^[1] 96:10 preventing ^[1] 158:23 prima ^[1] 18:16 primarily ^[2] 73:15 123:6 primary ^[3] 103:20,21 159:12 Principal ^[1] 2:8 principle ^[5] 12:5,13 104:17 110:19 144:9 principles ^[30] 102:22 103:6 111:3,25 115:21,25 116:2 117:13 119:11,15,23 123:4,11 129:19 136:23 137:2 138:7,21 139:1,21 140:20,23 141:4 152:20 153:3,14 154:9 155:3,25 156:6 prior ^[6] 60:8,12,13,21 127:17 134:14 probably ^[3] 69:6 71:15 119:7 probative ^[1] 159:17 problem ^[56] 26:2 42:2 47:17,23 70:14 71:5 77:6,25 78:17 79:4,13,25 80:24 81:1,9,13,18 87:8,9 89:10,16 90:13,22 91:23 92:7 100:17 101:3,8,15 102:2,2,20,21,24 103:1 104:8 110:5,8,11,25 111:15,18 112:15,24,24 113:1,25 114:7,15,17 122:8 126:22 127:4 135:5 151:21 154:20 problems ^[4] 49:8 91:16 122:21 145:1 process ^[18] 5:4 14:15 16:23 17:9,16 18:3 28:24 32:2 34:18,22 41:16 46:4,16 56:17 88:14 157:15 158:2 159:2	processes ^[4] 25:14 33:4 46:18 100:5 producing ^[1] 42:2 progeny ^[1] 122:10 prohibiting ^[1] 95:23 prohibition ^[5] 12:14 26:11 53:11 95:19,21 prohibitions ^[1] 98:2 prohibits ^[2] 113:14 121:15 prominently ^[1] 121:7 promise ^[1] 161:3 promoting ^[1] 96:1 proof ^[1] 129:1 proper ^[4] 5:18 17:19 108:17 109:15 properly ^[3] 118:18 119:3 121:17 prophylactically ^[1] 43:7 proportional ^[6] 22:3,12 97:4,7,9 121:10 proportionality ^[6] 22:25 30:24 39:23 54:8 97:17 120:9 propose ^[6] 68:21 69:6 70:12 71:9 135:15,18 proposals ^[1] 26:17 proposed ^[2] 146:2,10 propositions ^[1] 66:9 protect ^[2] 63:20 130:18 protected ^[4] 108:22 130:23,24 148:18 protecting ^[2] 12:2 62:17 protection ^[24] 11:24,25 12:7,13 19:12 31:3 39:21 41:9 44:23 46:12 70:20 104:16,19 105:7 108:21,25 110:18 117:10 118:4,9,12 130:19 137:2,16 protest ^[1] 58:5 prove ^[6] 75:22 86:21 93:6,6 121:20 156:12 proved ^[5] 50:22,23 51:2 52:12 89:22 proven ^[2] 61:4 81:8 provide ^[4] 34:17 46:3,17 155:21 provided ^[5] 43:12 46:15 77:16 104:20 138:14 providing ^[4] 34:20 47:1 124:7 155:23 proving ^[2] 6:8 120:18 proximate ^[3] 136:5,14,18 proxy ^[1] 13:3 purely ^[1] 114:12 purple ^[1] 74:13 purported ^[1] 63:2 purpose ^[3] 29:17 57:14,15 purposeful ^[4] 65:16 66:11 95:20 98:3 purposely ^[1] 98:6 purposes ^[7] 13:24 42:12 96:1,13 123:21 131:9 143:3	3 pursue ^[3] 7:2 27:20 40:22 pursuing ^[1] 28:24 put ^[7] 30:15 37:22,23 53:14 55:1 127:2 159:5 putting ^[1] 66:10 Q QP ^[2] 50:14 76:9 qualified ^[1] 72:22 qualifier ^[1] 93:18 qualifying ^[1] 134:6 question ^[50] 11:3,14 13:4 16:6 18:21 21:24 22:5,9,21 23:19 28:12 29:1,1,10,12 37:12 44:15 50:15,17 66:25 67:1,9,13,15,19 71:12 74:24 78:23 79:1 80:2 81:10 82:24 85:20 87:13,14 90:25 91:13 105:4 109:22 122:18 129:22 133:22 135:12 137:11 148:5 149:12 150:13 152:25 159:9 160:15 questioned ^[1] 47:23 questioning ^[3] 60:6 61:13 117:18 questions ^[16] 6:2 11:9,12 41:5 42:10,16 46:9 49:18 64:19 83:7 103:12 105:25 130:12 135:19 140:3 157:3 quick ^[2] 69:21 129:22 quite ^[1] 83:10 quote ^[1] 154:3 quoting ^[1] 66:4 R race ^[164] 5:8,9 11:4,8 12:14,21 13:2,2,10,14,23,25 14:3,4,14 15:18 16:7,7,16 17:8,15 18:1,2,5,8,8,24 19:4,5 20:6,17 21:8 23:10 24:15 26:11 31:2,18 32:9,22 33:15 35:7,11,13,23 36:3,6,8,10,13,19,24 37:2,19,24 38:6,17,20,20 39:3 40:4 41:4,16 44:21,25 47:18 48:16,18 55:9,9,12,15 57:4 63:17,24 64:14,20 68:9 71:1,3 76:18 78:10,16,20,25 79:5 81:21,22 82:22 83:25 84:2,20 85:5,10,16 86:11 87:19,23 88:12,13,16,25 89:11,12 90:1 93:17 100:18,19,24,25 101:3,11,17,24 102:20,21 103:5,15 104:3,11 106:11,15 110:13 111:4 112:1 116:12 117:4,5 118:19 123:9,11 124:19 125:16,23 129:19 132:20,23 137:13,19,21,23 138:6,17,22 139:20,22 140:9,10,21 141:10,17,21,21 142:4,7,19,23	143:4,9 146:18 151:13,23 153:8,14 157:24 race's ^[1] 36:11 race-based ^[32] 4:15 19:24 20:10 21:18 23:2 41:6 48:13 49:7 50:12,20,25 52:13 53:23,23 54:9 65:23 66:13 67:17,21 76:11 78:13 88:4,10,20 89:10 91:9,15 92:3,4 100:15 129:24 154:14 race-conscious ^[1] 88:19 race-neutral ^[24] 104:17 110:14,21 111:3 115:25 116:2 117:12 123:3 131:24 136:23 137:1 138:7,21 139:1,21 140:20 144:9 147:20 151:14 152:4,13,17 155:3 157:2 race-predominant ^[2] 88:10,20 races ^[3] 14:9 93:7 128:14 racial ^[50] 6:20 12:20 13:15 14:6 18:1 25:19 26:23 27:6 32:10 41:17,23 48:21 49:12,15,17 50:24 52:4,5 57:17 63:13,23 64:19 70:3,18 71:4,22 72:5,23 73:6 77:3 80:5 85:7 86:11 89:8 93:3 106:9 114:12 115:17 119:11,24 127:8,11,19,25 128:24 131:14 141:4 142:11 154:9 158:1 racialized ^[1] 5:10 racially ^[30] 4:20 13:14 14:19,25 15:3,20 17:2,13 25:2 41:23 52:6,19 53:24,25 82:15 83:1 85:11 86:11,17 87:2 104:1 109:9,13,17 119:2,14 128:19 150:6,13 159:16 racism ^[2] 33:5,8 raised ^[2] 20:8 102:18 raises ^[1] 41:4 Ramos ^[1] 160:18 rampant ^[1] 26:23 range ^[1] 39:9 rare ^[1] 36:5 rarely ^[1] 133:1 rate ^[2] 15:14,17 rates ^[2] 52:17,18 rather ^[3] 16:16 68:8 128:1 rationale ^[2] 32:2 144:6 re-up ^[1] 97:16 reach ^[2] 82:24 125:3 reached ^[1] 82:25 reaching ^[1] 103:2 reaction ^[1] 41:2 readily ^[1] 99:20 reading ^[3] 107:20 109:20 120:14 reaffirmed ^[1] 18:7 real ^[2] 111:15 143:18 reality ^[2] 73:24 74:18 really ^[21] 15:20 21:11 42:	25 45:4 46:7 64:7 71:8 81:2 99:4 120:19 122:23 127:10 130:24 131:8,20 132:11,22 141:6 149:13 150:11 153:7 reargument ^[3] 30:23 50:14 76:9 reason ^[36] 16:16 17:12 41:3 43:6 49:24 57:25 68:9 69:3,4,5,5 70:10 71:7 78:8 85:18 88:13 105:21 106:14 109:21 113:3 114:6 117:9 119:15 120:3,18 125:8,13 127:23 128:1,1,21 129:11 139:5 142:4 144:3 153:18 reasonably ^[12] 11:18,20 28:9 103:3 115:13 117:23,24 140:10 142:17 150:4,14,19 reasons ^[11] 18:25 61:12 64:16 117:11,17 125:6 127:8,9,12,19 155:7 reauthorization ^[1] 19:18 REBUTTAL ^[3] 3:16 156:21,22 recall ^[1] 62:5 receiving ^[1] 80:15 recently ^[2] 33:11 73:4 reckless ^[1] 27:3 recognize ^[2] 11:11 158:10 recognized ^[5] 79:15 98:10 104:16 140:19 142:9 recollection ^[1] 30:2 reconcilable ^[1] 32:12 Reconstruction ^[1] 32:5 record ^[10] 7:4 43:9 48:3 54:3,5,11 62:4 97:25 98:11 160:21 record-less ^[1] 5:15 recourse ^[1] 5:18 rectangle ^[2] 126:21,22 rectangular ^[1] 109:6 redistricting ^[20] 5:12 28:21,24 41:8 48:13 49:7 50:13,20,21 54:9 55:10 65:23 66:13 67:17,21 73:2 76:11 89:3 142:5 146:17 redo ^[1] 105:13 redoing ^[2] 105:2,20 reduce ^[1] 56:4 reduces ^[1] 42:3 reducing ^[1] 113:9 reevaluate ^[1] 49:25 referring ^[3] 29:20,22,24 reflect ^[3] 56:19 145:14 153:25 reflective ^[1] 153:20 reformulate ^[1] 66:5 refusal ^[2] 16:17 68:10 refused ^[1] 104:6 regardless ^[5] 13:9 15:25 82:13 155:24 158:3
--	---	--	---	--

Official - Subject to Final Review

Register [2] 121:7 159:22 registered [3] 13:8,19 130:21 reject [1] 36:21 rejected [12] 4:22 65:9,12, 17 66:1,8,15,19 67:5 102:18 115:8 157:15 rejecting [1] 160:11 related [2] 13:4 28:1 relates [3] 100:19,24,25 relevant [3] 9:9,10 105:25 relied [1] 157:17 relies [1] 153:2 rely [1] 82:14 remain [1] 76:13 remaining [2] 26:16 84:10 remains [1] 76:16 remand [3] 5:19 27:13 161:4 remedial [10] 11:8 32:1 35:9,22 36:20 83:5 87:10 88:24 89:2 99:3 remedied [1] 27:18 remedies [8] 5:9 19:24 20:9,13 38:7 72:9 93:3 98:19 remedy [7] 4:16 5:2 6:22 11:5 19:4 20:10,18 21:3, 19 22:9 23:2,21,23 24:11, 14,14,17 26:1 27:19 31:18 32:10 34:23 35:5,13 36:3 37:3,6 38:21 40:19 47:14, 18 50:22 51:2 52:14 53:21, 22 54:9 56:1,6 57:5 65:23 66:13 75:14,16,24 76:11, 20 77:5,24 78:5,11,25 79:16,18,25 80:7,24 81:18 85:16 87:9 89:9 91:9,12,18 92:4,7,10 100:12,19,24 101:8,9,15 107:4 153:8 155:15,16 remedying [7] 32:6 33:15 78:24 80:4 81:11 91:6 93:16 remember [4] 60:14 73:25 74:4 145:4 remembering [2] 62:4 114:21 remind [2] 159:11 160:4 remiss [1] 160:23 remodeling [1] 68:25 remotely [2] 73:1 149:6 remove [1] 158:9 removed [1] 49:3 repeated [2] 65:11,25 repeatedly [2] 107:19 124:9 repeating [1] 142:15 replaced [1] 5:13 reply [1] 50:2 report [1] 23:12 representation [2] 114:3 149:5 representatives [4] 12:18 34:9 73:14 148:11	reproduced [2] 73:6 154:2 Republican [11] 13:19,20 15:16 17:1 30:18 74:1,2 104:22 114:10 119:18 120:1 Republicans [9] 13:19 15:16 109:12 119:20,21 120:2 129:4,7 130:21 require [14] 19:4 21:18 23:2 26:12 39:10 49:7 93:3 104:21 128:6 135:19 149:17 151:18 155:1 160:23 required [6] 19:6 24:11,18 59:1 86:6 111:2 requirement [1] 46:12 requirements [2] 85:3 160:4 requires [17] 14:11 22:7 33:7 36:9 46:16 48:15,17 50:12,16,16 59:25 90:16 92:9 111:7 120:10 146:17 160:7 requiring [7] 24:2 79:25 103:5 110:20 113:12 159:3,25 residential [7] 5:10 25:3 52:5,18 85:5 153:19,22 residents [1] 62:9 resist [2] 51:7 60:23 resolved [1] 104:5 respect [7] 26:1 52:7 63:16 92:12 110:2,2 121:11 respectfully [1] 51:7 respond [4] 26:2 51:23 73:19 131:6 responding [1] 99:23 response [10] 7:17 40:5 45:25 53:8 63:10 68:20 72:18,19 73:12 92:4 responses [1] 79:7 responsibility [1] 16:21 result [4] 41:24 47:12 103:6 112:13 results [15] 11:3 26:22 33:2,9,14,22,23 73:17 109:17 115:23 119:1 145:25 146:1 156:15 157:9 resurgence [1] 158:11 resurrect [2] 26:19 161:2 retained [1] 150:24 retention [1] 12:3 Retrogression [2] 158:18, 20 reversal [1] 5:16 reverse [1] 114:11 review [1] 55:20 revise [1] 66:4 revised [1] 10:23 revisit [3] 10:21 43:18 109:23 revisiting [1] 50:4 rhetoric [1] 73:22 rid [3] 98:13 124:6 139:6 ridding [1] 41:16	Rights [14] 19:17 20:21 22:8,24 23:1 34:5 88:16 89:11,23 99:5 101:5 107:21 120:12 157:25 rise [1] 138:11 risk [10] 45:5 74:10,14 103:3 113:5,19 116:4 121:18, 24 131:21 river [1] 153:21 ROBERTS [47] 4:3 8:6,18, 24 9:5 17:17 27:21 30:7 33:17 35:2 38:23 42:6 45:22 48:6 57:10,19 60:3 62:1 65:5 67:23 74:21 77:9 82:5 92:16 94:25 95:2,4,8, 11 98:21 102:5,8 104:24 114:13,19 115:2 116:6,16 124:3 129:20 130:9 139:24 149:8 151:5,9 156:19 161:5 ROBINSON [67] 1:9 2:3 3:4,18 4:9,13 6:4,6,16,19,23 8:17 14:21 27:17 28:2,10, 11,20 29:1 31:20 42:18 43:4,18 44:10,15,17 45:19 47:3,7,10,12,14,22 48:2 54:23 57:23,25 58:1,11,13,15 59:13,20 61:5 69:25 80:11,25 81:21 83:14,16,21,21 103:7,8,24 104:13,18 106:17 108:13 110:15,19,23 118:7, 10 156:23 157:17 159:5 Robinson's [2] 105:16,17 robust [7] 4:4 43:8 160:3 role [7] 6:5 14:14 17:9,19 44:21 57:22 83:15 Rome [4] 33:12 96:4 97:21 160:5 room [6] 17:21 38:3,15,16, 19,20 routing [1] 27:6 Rouge [6] 2:4 62:10 84:12, 15 109:4 125:21 roughly [4] 111:20 112:6 115:14 148:11 routinely [1] 67:10 Rucho [7] 12:9 71:10 117:11 118:1,16 144:13,18 rule [2] 51:5 158:14 rules [1] 74:16 run [5] 51:11 56:18 63:2 65:13 134:17 running [2] 44:22 59:9 runway [1] 40:16 rural [1] 29:14	132:24 154:12,21 155:13, 21 satisfactory [2] 8:2 27:10 satisfied [5] 118:11 133:21 134:3 137:12,25 satisfies [1] 133:16 satisfy [5] 5:11,21 64:1 111:22 147:23 saw [1] 59:3 saying [33] 21:12,15,16 22:2 23:20 31:10,11 37:16 45:25 53:8 55:25 74:17 80:19 81:8 91:25 100:8,17 110:11 114:8 117:1 123:13,22 124:23 135:6 139:17 146:15 150:15 151:17 152:4,14 153:12 155:2 160:8 says [9] 24:9 47:7 77:24 81:4 88:8 90:23 96:18 155:19 158:14 SB8 [19] 5:18 6:5,19,22 7:13,16 27:10,13,18 29:20, 24 57:23,25 58:6,9,10 59:5 83:11,16 scheduled [1] 83:23 school [2] 62:10 72:11 scope [2] 118:25 146:12 scrap [1] 135:9 scrutiny [8] 18:9 36:6 39:13,16,17 97:23 101:12 107:24 seat [1] 103:11 seats [2] 74:3 130:17 Second [27] 5:9 7:19 10:1 13:5,6 28:13 58:4 59:1 67:1,13 78:2 80:19,23,23 81:23 83:12,20,24 84:19 85:19 102:24 106:1 129:12,15, 16 150:5 155:8 second-guess [2] 131:7, 25 Section [181] 4:17 5:9,20, 24 6:8,9,10 7:20 9:16,21 10:10 13:24 16:14,20 17:14 18:22 19:6,7,12,17,19 20:12,19,21 21:18 22:15 23:21 24:8,10,16 25:5 26:3,3,10 27:1,2,4,15 31:25 32:24 33:7,19 34:12 35:6, 19 36:17 37:1,3,3,7 40:22 41:14,24 42:1,11,21,24,25 43:3,6,10,25 45:2,4 46:3, 14 47:4 50:5,11 51:25 52:3 53:5,6,11,12,16 55:7,7 58:17,24 65:17,24 66:3,6, 10,23 67:21 68:7 69:7,11 70:8 75:2,10,22 76:7,13,20, 23 77:11,14,22 78:12,20 79:2,24 81:3 82:20,25 85:3 86:21 88:18 90:4 91:14 95:21,22 96:13 98:12 99:22 100:9 101:7,19 102:24 105:12 106:21,22 107:20, 20 108:3,9,14,15,17 109:	16,16,18 112:12,14,19,25 113:10 114:6 117:14 118:24 119:13 120:15 122:9 123:18,23 124:6 125:8 128:9,14,20 135:9 142:2 143:3 146:15,16 148:13,14, 15,18,23 153:4,4,15 155:14 157:1,7,25 158:5,9,11, 13,15,19,21 159:20 160:20, 25 161:1 see [25] 15:12,19 25:2 34:3 41:23 44:1 54:11 59:5 68:13 69:6,15,24 70:7,8 74:24 81:7 87:3 93:19 100:4 102:3 103:20 133:24 154:17 156:14 157:11 seeing [1] 86:1 seek [3] 5:16 12:11,22 seeking [5] 12:9,19,19 116:22 118:1 seems [4] 65:10 101:14 135:2 141:16 seen [1] 72:10 segregate [1] 132:20 segregation [7] 5:10 25:3 52:5,5,18 85:5 153:22 self-limiting [1] 18:22 Senate [2] 23:12 59:13 sense [2] 55:19 152:1 sensitive [1] 160:12 separate [6] 7:14 78:23 86:2,14 128:3,4 series [1] 117:3 serious [4] 29:5,10 41:4 120:25 set [7] 28:23 77:20 91:11, 11 131:22 141:1 142:20 setting [1] 124:15 seven [4] 4:22 10:4 28:18 124:25 several [6] 17:18 18:24 65:8 66:7 86:9 126:1 SFFA [14] 5:6 31:14,16,21, 24 32:1,8,11,16 40:15 59:24 73:5 77:3 79:15 SG [3] 11:7 63:16 96:6 shakes [1] 70:6 shaped [1] 63:20 share [1] 48:24 Shaw [14] 17:24 32:8 36:13 38:11 47:17 72:21 78:10 89:4,25 90:4,12 107:18,25 145:6 She's [1] 118:13 Shelby [1] 51:20 shifting [1] 157:11 shouldn't [3] 21:11,13 64:20 show [16] 17:11 27:1 52:2 58:16 76:14 78:15 86:21 88:5 102:17 103:9,10 106:17 123:1 125:15 138:3 151:24 showed [3] 31:20 106:10,
--	---	--	--	---

S

safe [3] 74:11 131:20,20
safely [2] 134:2,5
sake [1] 36:11
same [23] 29:23 32:17,17 34:10,16 45:18 48:24,25 53:18,19 72:6 80:18 98:11 119:7,17,21 128:12 131:13

Official - Subject to Final Review

15 showing ^[20] 8:22 25:8,10, 12 32:23 85:21,21,24 86:2, 6 90:13,19,21 91:2 94:19 112:20 120:1 128:17 135: 20 160:16 shown ^[2] 61:12 159:17 shows ^[4] 25:5 53:12 85: 10 87:15 Shudy ^[1] 73:5 side ^[12] 26:18 35:5,9 49:5 52:17 57:7 69:18 73:22 119:18 140:5 148:20 157: 5 sides ^[1] 49:20 significant ^[12] 16:4 17:21 19:13 25:12 113:5,19 114: 4 116:4 121:18,24 159:15 160:24 similar ^[1] 9:13 Similarly ^[1] 9:22 simple ^[1] 72:20 simply ^[14] 12:17 13:12 19: 3 20:17 23:7 27:5 28:11 48:23 71:3 76:24 148:19 152:19 157:10 160:19 since ^[5] 17:25 49:20 73:3 96:11 118:1 single ^[2] 9:24 125:10 single-member ^[1] 82:16 situation ^[14] 14:6 24:10 25:15 47:4,8 53:25 54:17 56:6 90:22 116:2,8 119:2, 12 154:11 situations ^[1] 49:11 Six ^[4] 4:19 56:13 97:18 124:25 size ^[2] 10:12 17:20 sky ^[1] 74:19 sky-is-falling ^[1] 73:22 slew ^[1] 94:10 smoking ^[1] 113:18 society ^[1] 42:4 solely ^[1] 76:10 Solicitor ^[8] 2:4,8 16:10 68: 2,12 84:24 122:20 123:5 solution ^[2] 27:9 70:13 solve ^[3] 114:16 154:20 156:1 solves ^[1] 69:16 somebody ^[1] 132:23 somehow ^[4] 20:16 27:4 32:18 151:24 someone ^[1] 139:3 sometimes ^[13] 19:25 35: 16 37:6,14,16 38:13 43:20 53:23 78:1,2 107:10,11 119:8 somewhere ^[1] 74:8 sorry ^[12] 4:19 8:23 21:4 37:9 54:14 94:25 95:3,9 110:17 122:18 145:16 151: 9 sort ^[8] 21:8 40:16 63:13	85:17 97:22,22 119:12 128:16 sorting ^[1] 41:2 sorts ^[2] 52:24 70:18 Sotomayor ^[61] 30:8,9,14, 20 31:9 54:14 56:8,12 57: 1,3 62:2,3 63:5,9,15 64:3, 6,10,16,23 65:3 92:20,21 93:5 94:6,9,20 95:5,6,15 104:23,25 105:23 106:3,6, 12,19,23 107:1,6,8 108:8, 10 122:2 124:4,5,14 125: 11,14,19 126:7,10,14,18 127:1,4,10 128:2,22 129:1, 6 sounding ^[1] 73:9 South ^[3] 34:3 126:23 127: 6 specific ^[4] 50:22,23 51:2, 9 specifically ^[3] 53:8 65:9 67:5 specified ^[4] 31:18 32:23 60:1 94:13 spits ^[1] 138:7 spitting ^[1] 131:3 spoke ^[1] 84:24 squarely ^[2] 50:14 144:2 stability ^[1] 110:3 stages ^[1] 46:8 staggering ^[1] 5:16 standard ^[10] 26:20 30:5 84:5,18 102:15 107:24 123:9 124:15 142:8 158: 18 stare ^[7] 6:1 105:6 106:1 109:24 110:1 151:3 160: 11 start ^[2] 69:24 147:18 started ^[1] 116:25 starting ^[1] 10:20 state ^[87] 4:16 6:8 7:8,24 9: 16 10:12 11:1 15:1,23 24: 13 27:12 28:23 29:15 30: 12 31:19 33:6 37:1 42:24 44:4,5,8,24 45:10,12,15 46: 2 49:19 50:10,24 51:9 52: 7 53:12 54:1 56:21 60:24 61:23 63:17 65:8,21 68:24 74:1 77:23 78:1 79:12 80: 2 83:18 84:10,12 88:2 90: 16 91:7,19 92:11 100:7 104:21 107:3 109:5 110: 13,20 111:3,24 114:5,10 115:24 116:9 118:8 119:9 120:25 125:24 126:5 127: 8 128:13 129:23 130:15,22 131:1,16 141:17,19 142:1 153:20 154:6,11,20 155:18 158:14,20 state's ^[20] 16:13,17 28:22 30:10 45:3 46:22 51:3 68: 6,9 111:21 115:21,21 123: 3,3 126:8 127:15 131:9	143:13 152:20 153:2 statements ^[1] 120:23 STATES ^[25] 1:1,20 2:10 3: 14 16:21 33:6 37:22 38:2, 2,3,7,14 43:5 46:17 49:10 65:16 71:10,16 72:10 79: 15 102:10 103:5 108:1 125:9 158:12 States ^[1] 68:3 statewide ^[3] 17:5,7 157: 19 statistics ^[2] 15:12 87:21 status ^[2] 6:14 153:24 statute ^[21] 19:2 20:9,16 21:5,6 32:1,3 46:16 75:15 76:5 103:1 109:20,25 110: 1,5,9 112:4 121:23 122:1,4 123:20 statutes ^[2] 20:23 101:5 statutorily ^[1] 76:2 statutory ^[2] 5:25 105:5 stayed ^[1] 8:14 staying ^[1] 6:1 stem ^[1] 155:10 step ^[7] 80:10,11 90:20 115: 18 143:4 147:19 155:2 steps ^[2] 103:25 147:24 stereo ^[1] 93:2 stereotype ^[1] 89:19 stereotyped ^[2] 82:16 98: 19 stereotypes ^[3] 48:21 70: 19 71:2 stereotypical ^[1] 101:18 stereotyping ^[21] 49:2 63: 13 72:23 73:7 82:21 84:24, 25 85:1,6,9,13,15 87:4 89: 24 91:9 93:4,9 100:13,25 101:24 133:5 still ^[18] 14:6 31:11,17 45: 14 52:13 70:7 82:15 84:14 107:13 108:24 118:12,13 132:6 141:4 153:12,20 154:17 159:7 stop ^[2] 93:22 95:6 stopping ^[3] 56:16,18,21 straightforward ^[1] 149: 12 stray ^[1] 120:23 strength ^[5] 46:24 48:17, 19 57:17,18 strict ^[7] 18:9 36:6 39:13, 15,17 101:12 107:24 strictly ^[1] 33:9 strike ^[1] 159:21 strikes ^[1] 143:23 striking ^[1] 48:15 strip ^[1] 44:14 strong ^[1] 97:25 strongest ^[1] 84:10 strongly ^[1] 121:4 struck ^[1] 153:1 structure ^[1] 46:22 student ^[3] 112:5,6,8	subject ^[1] 51:4 submerge ^[1] 14:15 submission ^[1] 67:18 submissions ^[2] 68:14,15 submitted ^[2] 161:6,8 subordinate ^[4] 103:6 111: 3,24 115:25 subordinated ^[6] 117:13 123:11 136:24 138:21 139: 21 140:21 subordinates ^[1] 102:22 subordinating ^[2] 112:9 129:19 subordination ^[2] 140:24 141:5 substantial ^[1] 18:14 substantially ^[1] 124:16 succeed ^[3] 7:2,6 43:9 succeeding ^[1] 6:7 success ^[1] 27:2 successful ^[1] 27:6 suddenly ^[1] 97:8 sufficient ^[1] 72:8 sufficiently ^[7] 11:17 28:7 48:16,19 61:16,17 117:21 suggest ^[2] 14:14 19:2 suggested ^[6] 7:25 20:23 30:25 40:10 60:11 72:13 suggesting ^[4] 51:5 114: 22 124:18 154:10 suggestion ^[8] 8:25 10:20 16:10,19 60:24 61:4 91:5 127:17 suggestions ^[1] 103:14 suggests ^[1] 6:18 suits ^[1] 51:25 sunset ^[1] 92:25 superior ^[4] 115:20 123:2 150:21 151:12 supplemental ^[6] 11:1 63: 23 64:18 68:23 70:1,17 support ^[6] 31:7 48:4 56: 19 69:18 121:4 160:22 supporting ^[5] 2:10 3:15 23:13 31:22 102:11 supports ^[2] 32:21 37:4 supposed ^[2] 39:25 131: 11 SUPREME ^[2] 1:1,19 surprising ^[1] 152:2 surrounding ^[1] 83:11 survive ^[1] 146:1 sustain ^[1] 54:8 swallow ^[1] 16:20 switch ^[1] 49:20 system ^[5] 47:25 49:2,16 100:2 153:22 T table ^[1] 26:17 tailor ^[1] 101:13 tailored ^[6] 36:10 121:18, 22,23 123:20 124:1 talked ^[1] 93:25	talks ^[2] 94:1 153:17 tape ^[2] 24:3 26:4 targeting ^[1] 60:25 targets ^[1] 48:20 task ^[1] 86:13 taught ^[1] 18:6 taxes ^[4] 59:15 92:22,23 98: 4 tease ^[1] 55:14 tees ^[1] 50:15 tells ^[1] 24:8 temporal ^[5] 39:16 72:14 121:25 146:8,12 term ^[1] 32:17 terminology ^[1] 58:19 terms ^[2] 77:22 88:22 terrible ^[1] 73:18 territory ^[1] 18:10 test ^[40] 10:22 11:4 14:11, 13 22:2 25:17,23 32:24 33: 2 65:18 69:8,11 70:22 75: 9 96:12 97:12 98:13 102: 25 113:17 114:15 115:23 119:1 121:17 122:25 123: 12,17,19 124:1,6,8 136:4,5 137:7,24 140:20 145:25 146:1 154:19 156:16 160: 4 testimony ^[1] 14:22 tests ^[5] 59:16 98:5,15 122: 3,3 text ^[1] 123:20 themselves ^[2] 20:24 88:4 there's ^[57] 6:17 12:25,25 16:5 17:6,25 27:8 28:15 29:9,10 31:17 46:25 47:24 48:3 61:23 62:18 69:4 70: 1,5 71:25 72:16 73:21 78: 8 84:25 85:4 86:10,17,25 87:2,5 89:4,6,7 104:11,12 110:8 113:1,3,25 119:13, 15 120:3 122:4 125:8 127: 13,18,22,23 129:5,11 133: 2 138:13 144:25 146:19 147:6 148:1 160:21 therefore ^[3] 11:5 71:12 118:4 they'll ^[1] 124:21 They've ^[7] 55:4,6 133:21 134:3,13 155:4 160:19 thinking ^[8] 23:18 42:17 74:24 84:8 99:3 113:24 136:17 147:18 thinks ^[3] 44:4 45:12 63:12 Third ^[4] 5:12 13:6 109:8 150:6 THOMAS ^[25] 6:3,14,22 7: 10,13,21 8:5 27:23 49:19 50:18 57:21,22,24 58:11, 12,21 59:6,14 60:2 83:8 84:2,6 92:18 103:13 116: 17 Thomas's ^[2] 42:16 51:15 Thornburg ^[1] 15:5
--	---	--	---	---

Official - Subject to Final Review

though ^[8] 7:14 87:9 88:10 113:3 114:4 122:4 140:10 144:22 thoughts ^[2] 68:11 101:2 thousands ^[2] 74:5 134:18 threat ^[1] 58:6 three ^[11] 5:7 32:14 51:12 62:6 66:16 67:6 72:20 89:15 108:19 150:3 154:25 threshold ^[2] 66:5,15 thrilled ^[1] 70:12 throughout ^[1] 136:2 throw ^[1] 5:17 tied ^[3] 78:10,16 125:22 ties ^[1] 62:12 Title ^[1] 20:19 today ^[14] 6:21 9:11 52:22 54:5,12,19 59:5 70:8 79:1 83:3 86:2 97:3 148:10 153:25 today's ^[1] 82:14 together ^[6] 41:17 59:22 109:5 125:16 127:3 134:1 tolerate ^[2] 49:16 131:21 took ^[4] 8:8 10:19 109:3 126:24 tool ^[2] 24:3 80:6 tools ^[1] 100:9 tooth ^[1] 58:1 top-line ^[1] 68:20 totality ^[8] 14:20 17:3 18:18 51:12 59:10,11 75:23 150:12 totality-of-circumstances ^[1] 150:7 totality-of-the-circumstances ^[2] 14:13 25:23 totally ^[5] 70:12 104:19 105:3 138:8 144:16 touching ^[1] 130:13 traceable ^[1] 154:1 traditional ^[2] 11:21 12:1 28:21 102:22 104:17 110:19 117:12,25 119:15,23 123:11 125:20 129:19 140:22 141:4 144:9 153:3,14 154:9 155:25 156:5 transform ^[1] 14:5 treated ^[2] 71:21 128:25 trends ^[1] 52:16 trial ^[3] 47:6 83:21,22 tried ^[2] 96:9 117:17 tries ^[1] 139:3 trigger ^[3] 70:4 91:10 153:15 triggered ^[1] 34:25 triggers ^[1] 147:8 true ^[7] 62:15 71:15 76:9 94:7 125:6 128:10 149:18 trump ^[2] 12:5 16:21 trust ^[1] 80:22 try ^[6] 55:17 104:3 125:9 132:6,13,13 trying ^[7] 43:22 46:7 55:13	56:18 61:1 63:19 140:6 turn ^[1] 106:2 turned ^[1] 8:21 turning ^[1] 74:11 turns ^[1] 77:23 tweak ^[1] 160:20 tweaked ^[1] 150:24 tweaking ^[1] 151:7 Twenty-eight ^[1] 156:24 Twenty-Sixth ^[1] 92:24 Twice ^[2] 60:16 127:16 two ^[24] 4:12 10:22 43:16 52:16 66:16,19 85:14,15 103:17 105:25 109:1 115:19 124:18 125:17,21 126:24 128:3,5 137:14,23 138:8 144:25 145:16 150:9 type ^[1] 40:20 U ultimately ^[6] 7:7 8:3 9:19 40:14 41:19 117:6 umpteenth ^[1] 95:17 unanimously ^[1] 45:18 unclear ^[1] 144:11 unconstitutional ^[11] 12:23 31:12 50:13 76:23 109:20 110:1 112:9 122:14 145:24 146:11,16 unconstitutionality ^[1] 30:22 uncorrected ^[1] 23:11 uncrack ^[1] 55:5 under ^[54] 4:14 6:11 8:11 9:3 10:19 12:8 24:10 26:3 30:5 32:4 34:5 35:19 36:25 46:2,3,14 47:4 53:12,12 58:5 65:19 67:21 69:11 70:20 73:7 77:22 78:20 82:17 91:22 95:21,21 96:24 98:12 100:12 102:19 104:9 106:1 108:3,16,16,17 112:12 118:21 120:15 122:9 123:18 130:3 137:15,24 149:3 151:12 152:20 154:21 155:22 underlying ^[1] 58:20 understand ^[20] 11:2 23:20 35:18,20 36:15 38:12 47:9 56:25 76:22 80:1 82:2 93:9 96:5 99:21 100:6 110:16 122:24 141:12 152:19,23 understanding ^[8] 8:12,17 10:11 41:14 45:8 77:13 110:24 121:12 understood ^[11] 8:16 47:11 59:4 76:19 78:12 90:10 97:11,15 118:18 119:3 140:7 undetected ^[1] 23:11 undeterred ^[1] 23:12 undisturbed ^[1] 27:18 undo ^[2] 87:18 109:19	undoubtedly ^[2] 5:23 150:21 unequal ^[4] 24:7 25:13 47:25 79:4 unfair ^[2] 104:11,12 unfounded ^[1] 61:2 unique ^[2] 98:9 160:15 UNITED ^[7] 1:1,20 2:10 3:14 68:3 72:10 102:10 university ^[1] 32:3 unlawful ^[1] 18:4 unless ^[5] 5:25 14:19 21:13 70:5 92:10 unsatisfactory ^[1] 5:18 until ^[3] 5:25 8:15 125:3 unusual ^[1] 63:4 up ^[24] 18:21 21:24 22:24 24:13 27:25 35:6 42:9,15 50:15 60:4 62:7 75:22 78:10,16 86:9 87:12 97:21 106:9 122:18 131:22 140:2 147:1 151:23,24 upheld ^[1] 33:10 upshot ^[1] 69:9 urban ^[1] 29:16 urged ^[1] 144:10 urging ^[3] 148:14 150:1,18 usage ^[1] 25:2 useful ^[1] 159:15 uses ^[5] 36:10 129:23,24 138:6 151:13 using ^[18] 55:9 58:18 80:6 94:11,12,18 96:16 98:4,15,16 101:11,16,17,22,23 109:18 110:15 159:21 V valid ^[1] 57:15 values ^[1] 53:10 variety ^[2] 19:23 72:12 various ^[2] 95:23 150:25 venture ^[1] 71:17 Vera ^[1] 160:9 versa ^[1] 133:3 versus ^[12] 4:5,12 9:8,12 11:10 15:5 18:6 20:22 40:25 66:22 71:21 121:6 vice ^[1] 133:3 view ^[9] 32:20 36:21,22 83:15 91:17 112:12 118:25 149:3 151:12 viewed ^[1] 143:18 views ^[3] 56:20 68:2 101:2 VII ^[1] 20:19 vindicate ^[1] 96:13 vindicated ^[1] 53:11 violate ^[2] 4:17 89:3 violated ^[3] 6:9 27:12 45:4 violates ^[3] 14:16 31:2 42:25 violation ^[33] 5:21 7:20 9:16,20 19:8 25:19 36:17 37:3,7 42:21,24 43:25 45:2 47:14 50:22 51:14 58:17,	18,20,25 61:4,10,11 76:4,20 77:5 82:22 86:17,21 89:10,22 90:17 153:5 violations ^[2] 11:5 65:24 violative ^[1] 52:3 Virginia ^[6] 5:6 23:4 114:1,4 127:20,22 virtue ^[1] 71:3 vote ^[36] 13:9,20 14:9,10 15:13,16 16:5 18:14,15,17 33:20 52:2 59:23 61:1 65:18,23 85:3,8,23 87:23 88:6,6 90:21 91:15 92:8,14 93:12,13 103:22 109:10,12 123:18,24,25 129:8 132:23 voter ^[2] 48:23 55:21 voters ^[36] 4:22 6:10 14:9 16:5,22,24,25 18:13,16 30:18 34:18,21 48:24 54:24 55:4,5 56:15,22 60:25 61:22 70:25 74:5 82:14,22 84:13 85:17,22,23 86:4 87:1,19 100:25 103:16 157:14 158:24 159:7 votes ^[2] 14:16 80:16 voting ^[81] 4:21 12:15 13:5,10,13,14,17,21,23,23,25 14:6,7,25 15:4,20,21 16:1,25 17:1,3,13 19:17 20:21 22:8,24 23:1,10 25:3 26:12,24 27:7 34:5 41:24 46:24 48:17,19 49:6,25 52:6,19 53:20 56:11,17 57:17,18 67:10 72:22 78:9 85:7,11 86:18 87:2 88:14,15 89:11,23 93:23,25 97:13,14 100:1 104:2 107:21 109:9,14 118:16,18,19 119:2,14 120:12 124:12 128:19 132:22 133:2 134:1 150:6,13 157:25 159:16 VRA ^[4] 34:1,8 41:19,21 W Wait ^[1] 79:8 walked ^[3] 57:7,11 120:12 walking ^[1] 63:21 wane ^[1] 5:11 wanted ^[7] 21:23 44:18,19 49:9 55:3,5 130:7 wants ^[3] 40:19 74:2,10 warned ^[1] 102:1 warning ^[1] 73:8 Washington ^[2] 1:15 2:9 way ^[64] 14:10,16 30:11 31:2 32:10 33:19 36:9 50:25 51:23 55:14 58:9 59:24 61:23 66:11 75:17 76:24 78:9 80:18 81:21 83:12 86:6 88:5 89:7 93:20 95:22 97:13 100:4 101:18 103:19 108:17 111:2,8 112:21 113:2,24 116:10,11,11 119:10,22 122:9,25 126:5 127:5 128:	16 131:13 133:10,14 135:5 136:13,17,21 137:11 141:3 142:19,20 145:7,8 146:2,4 147:14,17 149:19 160:15 ways ^[5] 57:4,5 125:20 132:3 150:25 Wednesday ^[1] 1:16 weeks ^[1] 32:14 weighing ^[1] 111:25 weight ^[1] 43:23 weighting ^[1] 44:25 weird ^[2] 152:8,11 welcome ^[4] 6:2 49:18 83:7 103:12 well-intentioned ^[1] 155:18 well-known ^[1] 122:5 West ^[5] 114:1,3 127:6,20,22 Whatever ^[8] 24:16 45:9 97:18 105:8 106:4 107:12 117:9 131:16 Whenever ^[1] 157:12 Whereupon ^[1] 161:7 whether ^[36] 10:9 14:9 15:12,12,15,19 16:1 22:10 23:23 24:4 29:10 35:16 47:18 52:1 61:15,16 67:15 70:23 76:7 79:4 80:7 93:12 99:14 100:7,23,24 101:9,9 104:10,12 120:2 137:19 140:20 144:11 155:24 158:22 white ^[37] 4:24 15:13,15,15,18,25 16:4,25 18:13 30:18 53:20 55:4 56:14 85:22 103:21 104:6 112:5 114:1,2,10 119:5,20 120:2,7 121:6 124:25 127:21 129:7,7,11,16 133:25 147:5 157:20 159:7,8,22 whites ^[3] 56:24 85:8 109:10 whole ^[6] 16:20 46:11 80:25 139:11 152:5 155:14 wholly ^[2] 71:6 142:1 wide ^[3] 8:1 38:3 39:9 widespread ^[1] 82:21 will ^[21] 5:11 11:20 14:21 18:9 24:14 36:4 47:14 63:4 92:25 102:15,16 112:3 123:14 124:20 135:4,18 142:10,12 157:23 158:10 159:11 willing ^[1] 131:21 win ^[2] 133:23 134:2 within ^[6] 29:11 32:14 36:14 48:20 94:13 128:19 without ^[10] 42:9 44:22 58:11 66:22 125:8,15 151:23 155:6 159:24,24 witnesses ^[1] 7:4 won ^[4] 9:14 95:19 147:23 157:20
--	--	---	--	--

wonder ^[3] 23:17 115:2
 153:6
wondering ^[4] 36:20 85:1,
 12 134:23
word ^[7] 39:1 100:3 140:3,
 5 146:22,23 152:16
words ^[7] 8:25 17:20 23:12
 35:25 93:21 134:6 153:11
work ^[6] 24:23 32:18 41:15
 59:12 62:10 128:15
working ^[1] 31:21
works ^[1] 150:12
world ^[4] 91:14 96:8 99:10
 120:4
worried ^[3] 24:6 119:16
 137:4
worse ^[1] 52:22
worth ^[2] 50:4 122:16
worthy ^[1] 91:6
wrap ^[1] 46:7
written ^[3] 33:12 145:5,8
wrongdoing ^[1] 121:1
wrote ^[2] 123:15 145:6

Y

years ^[18] 4:12 10:22 40:12
 49:3 51:19,21 54:22 65:7
 66:16,16 67:6 89:15 95:17
 97:10,17 105:9 109:25
 145:5
yellow ^[3] 52:21 69:25 70:1
yep ^[1] 24:9
York ^[3] 2:2,2 119:9
yourself ^[2] 56:3 76:22

Z

zero ^[5] 80:10,11 114:3 127:
 20 133:2
Zimmer ^[1] 159:22