No. 24-109, 24-110

IN THE

Supreme Court of the United States

LOUISIANA,

Appellant,

v.

PHILLIP CALLAIS, *et al.*,

Appellees.

PRESS ROBINSON, *et al.*,

Appellants,

v.

PHILLIP CALLAIS, *et al.*,

Appellees.

ON REARGUMENT OF APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA

BRIEF OF *AMICI CURIAE* FORMER REPUBLICAN MEMBERS OF CONGRESS IN SUPPORT OF THE ROBINSON APPELLANTS

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INTERESTS OF *AMICI CURIAE*[1]

Amici are former Republican members of the United States Congress Representative Charles Boustany, Jr. (LA, 2005-2017), Representative Tom Coleman (MO, 1976-1993), Representative David Emery (ME, 1975-1983), Representative Wayne Gilchrest (MD, 1991-2009), Representative Steve Gunderson (WI, 1981-1997), Senator Chuck Hagel (NE, 1997-2009), Representative Bob Inglis (SC, 1993-1999, 2005-2011), Representative John LeBoutillier (NY, 1981-1983), Representative Connie Morella (MD, 1987-2003), Representative Tom Petri (WI, 1979-2015), Representative Claudine Schneider (RI, 1981-1991), Representative Christopher Shays (CT, 1987-2009), and Representative Jim Walsh (NY, 1989-2009), who share a strong commitment to the constitutional structure, the separation of powers, and the integrity of Congress's enforcement authority under the Reconstruction Amendments. *Amici* served in Congress for a combined 201 years, representing districts across the United States. Between them, *amici* voted to enact the 1982 amendments to the Voting Rights Act, voted to extend the Voting Rights Act's language access provisions in 1992, co-sponsored the 2006 reauthorization of the Voting Rights Act, and voted to enact that 2006 reauthorization. As former elected legislators serving at the time that Congress amended and/or reauthorized the Voting Rights Act, *amici* are uniquely positioned to address Congress's powers to investigate, legislate, and

1. In accordance with Supreme Court Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part, and that no person other than *amici* or their counsel made a monetary contribution to its preparation or submission.

create durable remedies to secure the fundamental right to vote. *Amici* have a vital interest in ensuring that the judiciary respects the separation of powers by deferring to Congress's legislative judgments and upholding statutory frameworks, like Section 2 of the Voting Rights Act, that have been reexamined, reauthorized, and relied upon by all branches of government for decades. This brief brings to the Court's attention a legislative perspective on Congress's constitutional role in enforcing the Elections Clause and the Fourteenth and Fifteenth Amendments. It further addresses the severe institutional consequences that would follow the nullification of Section 2 of the Voting Rights Act.

INTRODUCTION AND SUMMARY OF ARGUMENT

"[T]he right to vote is the crown jewel of American liberties."[2] These are the words of President Ronald Reagan, spoken as he signed the 1982 amendments of the Voting Rights Act into law. For decades, protecting this fundamental right has not been a partisan cause, but a shared, national commitment. The 1982 amendments that President Reagan signed into law earned overwhelming support from both parties in Congress, securing, after dozens of hearings, 389 of 413 votes cast in the House and 85 of 93 votes cast in the Senate. Ten years later, President George H.W. Bush signed into law an extension of the Voting Rights Act's language access requirements

2. Ronald Reagan Presidential Library & Museum, *Remarks on Signing the Voting Rights Act Amendments of 1982* (June 29, 1982), https://www.reaganlibrary.gov/archives/speech/remarks-signing-voting-rights-act-amendments-1982.

after that law also passed Congress with large bipartisan majorities. Our country's commitment to voting rights continued to transcend party lines when it was time to reauthorize the Voting Rights Act in 2006: 390 of 423 present representatives and all 98 present senators voted in favor of the Act before President George W. Bush signed it into law. Section 2 of the Voting Rights Act, which protects against the denial or abridgement of the right to vote on account of race or color, has been a durable centerpiece of the bipartisan legislation passed to make real our shared, national commitment. It stands as a monument to Congress's ability to act as the Constitution's Framers intended: to identify a national problem, to amass an extensive factual record, and to forge a lasting legislative solution.

The Constitution entrusts Congress with the primary responsibility for securing equal political opportunity for all citizens of the United States. The Enforcement Clauses of the Fourteenth and Fifteenth Amendments are a "positive grant of legislative power," authorizing Congress to enact "appropriate legislation" to eradicate racial discrimination in voting. *See Katzenbach v. Morgan*, 384 U.S. 641, 650–51 (1966); U.S. Const. amends. XIV, § 5; XV, § 2. Consistent with that design, this Court has long recognized that Congress's enforcement authority is broad and prophylactic, permitting it to enact remedies that reach beyond direct constitutional violations to address lingering, structural barriers to equal participation. *South Carolina v. Katzenbach*, 383 U.S. 301, 324 (1966); *City of Boerne v. Flores*, 521 U.S. 507, 518–20 (1997); *Ex parte Virginia*, 100 U.S. 339, 345–46 (1879). The Constitution grants Congress the power to legislate to protect the right to vote through the Elections Clause,

too, as it provides "Congress may at any time by Law make or alter" regulations for the "Times, Places and Manner" of congressional elections. U.S. Const. art. I, § 4, cl. 1. Though Congress of course only needs one source of constitutional authority to lawfully enact new legislation, each of the Fourteenth Amendment, Fifteenth Amendment, and Elections Clause provided Congress with the power to pass a law providing that citizens of all races must have an equal opportunity to participate in Louisiana's U.S. House of Representatives electoral process at issue here.

Section 2 of the Voting Rights Act is a direct exercise of Congress's three sources of constitutional authority to legislate against discrimination in voting rights, as it bars any voting practice or procedure that denies or abridges the right to vote on account of race or color. In 1982, Congress amended Section 2 to supersede *City of Mobile v. Bolden*, 446 U.S. 55 (1980) (plurality opinion), which had imposed a discriminatory intent requirement ill-suited to modern vote dilution. After compiling an extensive record, Congress adopted a results-based standard tailored to "second generation" barriers that continued to deny equal electoral opportunity. S. Rep. No. 97-417, at 27–29 (1982). The amendments adopting this standard passed both chambers with overwhelming bipartisan support—securing 389 of 413 votes cast in the House and 85 of 93 votes cast in the Senate[3]—before

3. *Amici* Representatives Tom Coleman, David Emery, Steve Gunderson, John LeBoutillier, Tom Petri, and Claudine Schneider were joined by then-present and future Republican congressional leaders Speaker Newt Gingrich; Senate Majority Leader Howard Baker, Jr.; and Senate Majority Leader Bob Dole in voting in favor of the 1982 amendments. *See* 128 Cong. Rec. 23205 (1981)

they were signed into law by President Reagan. This Court unanimously operationalized Section 2's amended standard in *Thornburg v. Gingles*, 478 U.S. 30 (1986), and reaffirmed the framework in *Allen v. Milligan*, 599 U.S. 1 (2023).

Contrary to Appellees' claims, Section 2 is neither a relic nor a racial entitlement. It was designed to be present-focused and self-limiting: the results test applies only when plaintiffs satisfy the rigorous *Gingles* preconditions with current, localized evidence and prevail under the totality of circumstances, demonstrating that minority voters today lack an equal opportunity to participate in the political process. *Gingles*, 478 U.S. at 44–51, 79; *Allen*, 599 U.S. at 18–19, 28–29. Where conditions improve, Section 2 claims fail—obviating any need for a judicial sunset. *See Shelby County v. Holder*, 570 U.S. 529, 557 (2013) (distinguishing Section 2's "permanent, nationwide ban on racial discrimination" from Section 4(b)'s coverage formula for Section 5).

Nor does Section 2 conflict with the Equal Protection Clause. Race-predominant districting triggers strict scrutiny under this Court's holding in *Shaw v. Reno*, 509 U.S. 630, 642–46, 649 (1993), but compliance with Section 2 is a compelling interest when supported by a strong basis in evidence, and narrow tailoring ensures alignment with equal protection principles. *Bush v. Vera*, 517 U.S. 952, 977 (1996) (plurality opinion); *id.* at 990–92 (O'Connor, J., concurring); *Cooper v. Harris*, 581 U.S. 285, 292–93 (2017). Unlike the affirmative action programs this

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(recording House vote); 128 Cong. Rec. 14337 (1982) (recording Senate vote).

Court invalidated in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023) ("*SFFA*"), Section 2 remedies redress a proven legal wrong, establish no suspect racial preferences, and are self-expiring through the *Gingles* predicates and totality of circumstances analysis. *See Johnson v. De Grandy*, 512 U.S. 997, 1017–21 (1994).

Finally, principles of judicial restraint and *stare decisis* compel reaffirming Section 2's constitutionality. Congress compiled exhaustive records—in 1982 and again in 2006—documenting persistent vote dilution. As in 1982, the congressional record in 2006 convinced an overwhelming majority of elected legislators from both parties that the Voting Rights Act needed to be reauthorized, with 390 representatives and all present senators voting in favor of reauthorization before President George W. Bush signed the Act into law.[4] Congress could have, but did not, enact any time limit on Section 2. Congress's considered judgment merits substantial deference. *Rostker v. Goldberg*, 453 U.S. 57, 64 (1981). For nearly forty years, states, courts, and voters have relied on this Court's application of Section

4. *Amici* Representatives Charles Boustany, Wayne Gilchrest, Bob Inglis, Tom Petri, Chritopher Shays, and Jim Walsh, and Senator Chuck Hagel were joined by then-future Vice President Mike Pence (who co-sponsored the reauthorization); then-future Attorney General Jeff Sessions; and then-present and future Republican congressional leaders Speaker John Boehner, Senate Majority Leader William Frist, Senate Majority Leader Mitch McConnell, and Senate Majority Leader John Thune in voting in favor of the 2006 reauthorization. *See* 152 Cong. Rec. H5207 (2006) (recording House vote); 152 Cong. Rec. S8012 (2006) (recording Senate vote).

2 in *Gingles* to structure elections. Overturning that settled framework would destabilize election law and disregard the Constitution's allocation of enforcement power to Congress. In *Allen*, this Court rejected the very arguments Appellees now repeat, emphasizing that "statutory *stare decisis* counsels [the Court's] staying the course" until and unless Congress acts. 599 U.S. at 39. The Court's assessment in *Allen* continues to hold true.

ARGUMENT

I. THE RECONSTRUCTION AMENDMENTS AND ELECTIONS CLAUSE EMPOWER CONGRESS TO SECURE EQUAL POLITICAL OPPORTUNITY, AND SECTION 2 IS A VALID EXERCISE OF THAT POWER.

Fidelity to the Constitution requires robust enforcement of the right to vote. The Reconstruction Amendments were not merely aspirational; they fundamentally changed the structure of our federal system, granting Congress the affirmative power and duty to enforce their guarantees through appropriate legislation. *Morgan*, 384 U.S. at 650–51; *Ex parte Virginia*, 100 U.S. at 345–46 (the Reconstruction Amendments are "limitations on the power of the States and enlargements of the power of Congres[s]"). That enforcement authority under the Fifteenth Amendment, in particular, is broad and remedial: "As against the reserved powers of the States, Congress may use any rational means to effectuate the constitutional prohibition of racial discrimination in voting." *South Carolina v. Katzenbach*, 383 U.S. at 324; *see also City of Rome v. United States*, 446 U.S. 156, 177 (1980) ("[W]e hold that the [Voting Rights] Act's ban on

electoral changes that are discriminatory in effect is an appropriate method of promoting the purposes of the Fifteenth Amendment, even if it is assumed that § 1 of the Amendment prohibits only intentional discrimination in voting."); *Lopez v. Monterey County*, 525 U.S. 266, 269 (1999) ("Congress enacted the Voting Rights Act under its authority to enforce the Fifteenth Amendment's proscription against voting discrimination.").[5] When acting under the Fourteenth Amendment, this Court has held that Congress must have "wide latitude" in determining what measures will "remedy or prevent unconstitutional actions" and that Congress may enact prophylactic laws so long as there is "congruence and proportionality" between the injury and the remedy. *See City of Boerne,* 521 U.S. at 518–20.

Section 2 of the Voting Rights Act is a paradigmatic exercise of this authority under both the Fourteenth and Fifteenth Amendments, as it prohibits any "voting qualification or prerequisite to voting or standard, practice, or procedure" that "results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." 52 U.S.C. § 10301(a).

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5. Louisiana assumes, without explanation, that the "congruence and proportionality" test that this Court announced to govern Congress's Fourteenth Amendment enforcement authority in *City of Boerne* also applies to the Fifteenth Amendment. *See, e.g.*, La.'s Suppl. Br. 42. This Court has never so held, and the "any rational means" standard announced in *South Carolina v. Katzenbach* remains the applicable standard for Congress's Fifteenth Amendment authority. *See, e.g.*, *Lopez*, 525 U.S. at 283 (applying *South Carolina v. Katzenbach* to uphold provision of Voting Rights Act as exercise of Congress's Fifteenth Amendment authority after *City of Boerne*).

By mirroring the language of the Fifteenth Amendment, Section 2 provides the necessary statutory tools to make the Constitution's promise of equal suffrage a reality for all Americans. When the Court required proof of discriminatory intent—a standard nearly impossible to meet—Congress acted decisively to amend Section 2. The 1982 amendment, superseding *Bolden's* intent standard for vote dilution claims, adopted an effects-based "results test" precisely to make the Fifteenth Amendment's promise that "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude," U.S. Const. amend. XV, § 1, effective against modern structural discrimination. S. Rep. No. 97-417, at 27–29; *see Gingles*, 478 U.S. at 43–45 (explaining the statutory standard). Section 2's near-matching of the Fifteenth Amendment's language is certainly a "rational means" of enforcing the Constitution's promise, as well as a "congruen[t] and proportional[]" mechanism for ensuring equal protection and preventing abridgment of the right to vote under the Fourteenth Amendment. Congress, of course, was enacting this language just two years after this Court had ruled in *City of Rome* that "under the Fifteenth Amendment, Congress may prohibit voting practices that have only a discriminatory effect." 446 U.S. at 175. And just two years ago in *Allen*, this Court flatly dismissed the contention that the Fifteenth Amendment "does not authorize race-based redistricting as a remedy for § 2 violations," explaining that a district that is drawn for the purpose of remedying a Section 2 violation is not a racial gerrymander simply because it is race-conscious. 599 U.S. at 24, 41; *id.* at 30–31 (plurality opinion).

Moreover, for federal elections like the U.S. House of Representatives elections that the redistricting at

issue here will govern, Congress's authority to enact Section 2 was not limited to its enforcement powers under the Reconstruction Amendments. The Constitution itself, in Article I, provides an independent and even more sweeping source of power. The Elections Clause authorizes Congress to "at any time by Law make or alter" the regulations governing the "Times, Places and Manner" of congressional elections. U.S. Const. art. I, § 4, cl. 1. For those committed to the Constitution's text and original structure, this is not a suggestion; it is a plenary grant of authority. This power over the mechanics of House elections is comprehensive, and, as this Court has recognized, was granted to Congress by the Framers of the Constitution to empower Congress to "counter state legislatures set on undermining fair representation, including through malapportionment." *Rucho v. Common Cause*, 588 U.S. 684, 697–98 (2019). Louisiana now stresses its purported power to draw districts however it pleases, Louisiana's Supplemental Brief 13, without ever acknowledging that the Elections Clause expressly subrogates the states' power to prescribe the manner of congressional elections to Congress's power to "at any time by Law make or alter such Regulations," U.S. Const. art. I, § 4, cl. 1. In fact, Louisiana does not acknowledge the Elections Clause at all, even as it argues that Section 2 is unconstitutional under Louisiana's interpretation of a "unified constitutional scheme." La.'s Suppl. Br. 36–37. Louisiana is incorrect that the Fourteenth Amendment prohibits the Fifteenth Amendment from authorizing Section 2, *see supra* 7-9, but, even more fundamentally, it is not possible to draw any conclusion about what a "unified constitutional scheme" permitted Congress to do while ignoring an applicable grant of authority right within Article I. Section 2's prohibition

of discriminatory results in congressional districting falls squarely within the Elections Clause's broad, affirmative grant of constitutional authority to Congress, representing the Framers' vision for a functional and fair national government. Section 2 is accordingly on sound constitutional ground pursuant to Congress's Fourteenth Amendment, Fifteenth Amendment, or Elections Clause authority.

II. CONGRESS DESIGNED SECTION 2 AS A PERMANENT, SELF-LIMITING REMEDY TARGETING CURRENT, LOCALIZED VOTE DILUTION.

From the perspective of former legislators tasked with crafting durable solutions to protect constitutional rights, Section 2 is a model of sound governance. Contrary to the Appellees' claim, Section 2 is neither a relic of the past nor a perpetual racial entitlement. From its inception, Congress meticulously designed Section 2 to operate as an enduring, nationwide safeguard against discriminatory voting practices whose reach is determined by current, localized evidence. Unlike backward-looking measures tethered to historic conditions, Section 2 is inherently self-limiting: it applies only where plaintiffs can prove that present electoral structures deny minority voters an equal opportunity to participate in the political process. This built-in, case-by-case framework ensures that Section 2 remains tightly focused on remedying actual, ongoing vote dilution—obviating any need for a judicially imposed expiration date. This tailored scope of Section 2 speaks to the broad bipartisan support that the Voting Rights Act won in both chambers of Congress in 1982, 1992, and 2006: no member of Congress should

want to see some of his or her constituents shut out or denied equal access to the electoral process. This Court should respect the separation of powers and refrain from disturbing Congress's considered judgment that Section 2 is an appropriate ongoing measure to enforce the Constitution's promise that the right to vote shall not be denied or abridged on account of race or color.

A. Section 2's "Results Test" Safeguards Equal Opportunity, Not Proportional Representation.

Section 2 prohibits voting practices that "result[] in a denial or abridgement of the right *** to vote on account of race," evaluated under "the totality of circumstances" to determine whether minorities have "less opportunity than other members of the electorate to participate *** and to elect representatives of their choice." 52 U.S.C. § 10301(a)–(b). The usual remedy for abridgment of the right to vote through vote dilution is an "opportunity district"—a single-member district that affords minority voters an equal chance to elect preferred candidates. *See Cooper*, 581 U.S. at 301–02 (describing remedy for a Section 2 violation); *Allen*, 599 U.S. at 41 (reaffirming that race-conscious redistricting can be a permissible remedy).

The 1982 amendment to Section 2, led by Republican Senator Bob Dole, was a masterclass in pragmatic legislating. It created a workable standard to address real-world discriminatory results while explicitly guarding against the creation of a system of racial quotas. The statute itself declares: "[N]othing in [Section 2] establishes a right to have members of a protected class elected in numbers equal to their proportion in the population." 52 U.S.C. § 10301(b). This provision is a crucial guardrail. It ensures that Section 2 is a tool for equalizing opportunity, not guaranteeing electoral outcomes.

B. Section 2's Design Ensures Remedies Address Only Current, Localized Vote Dilution, Eliminating Any Need for a Judicial Sunset.

Far from being a roving mandate for racial proportionality, Congress drafted Section 2 to operate through an "intensely local appraisal" and a "searching practical evaluation of the past and present reality," ensuring that any remedy responds to current conditions. *Gingles*, 478 U.S. at 79 (internal quotations omitted); *Allen*, 599 U.S. at 19 (quoting *Gingles*). *Gingles* set forth the now-familiar preconditions that cabin Section 2 vote-dilution claims. A plaintiff must prove: (1) the minority group is sufficiently large and geographically compact to form a majority in a single-member district, (2) the minority group is politically cohesive, and (3) the majority votes sufficiently as a bloc to usually defeat the minority's preferred candidates. *Gingles*, at 50–51; *see Growe v. Emison*, 507 U.S. 25, 39–41 (1993) (applying *Gingles* to single-member district claims); *Bartlett v. Strickland*, 556 U.S. 1, 13–15 (2009) (plurality opinion) (minority group must be able to form a majority in a reasonably compact district).

These predicates require contemporary demographic and electoral evidence; historical discrimination alone is insufficient. *See Gingles*, 478 U.S. at 50–51; *Allen*, 599 U.S. at 18–19, 29. And even once the preconditions are met, plaintiffs must still prove, under the totality of circumstances (including factors set forth in the Senate Report for the 1982 amendments), that minority voters presently lack equal electoral opportunity. *Gingles*, 478 U.S. at 44–45, 79; *see* S. Rep. No. 97-417, at 28–29 (listing the "typical factors" to be considered, such as

the extent of racially polarized voting; socioeconomic disparities in areas like education, employment, and health that hinder political participation; the use of racial appeals in campaigns; and whether the policy underlying the challenged practice is tenuous). This totality of the circumstances inquiry applies on a non-partisan basis to states of all political leanings. As the Robinson Appellants describe in their Supplemental Brief, successful Section 2 claims have required the redrawing of maps created by Democrat-controlled legislative bodies as well as those created by Republican-controlled legislative bodies like Louisiana's. Robinson Appellants' Suppl. Br. 35 n.2.

Because Section 2 applies only where current conditions warrant, it is inherently self-limiting. As this Court explained in *Shelby County*, invalidating the Voting Rights Act's Section 4(b) coverage formula "in no way affect[ed] the permanent, nationwide ban on racial discrimination in voting found in § 2," which addresses present day discrimination. 570 U.S. at 557. When polarization subsides or minority populations disperse, Section 2 claims fail. *Allen*, 599 U.S. at 28–29. In this way, Section 2 carries its own sunset: it lies dormant wherever and whenever racial discrimination no longer hinders a minority community's opportunity to participate in the political process. This is exactly as its bipartisan authors intended it to operate. If it foreclosed Section 2 from applying where plaintiffs have the ability to prove a claim, this Court would be protecting racially discriminatory conditions for congressional elections despite the clear command of legislation enacted by multiple generations of legislators, including *amici*, that such discriminatory conditions should be eliminated.

C. Imposing a Judicial Sunset on Section 2 Would Usurp Congress's Role and Create an Unprincipled Limitation.

Appellees ask the Court to declare Section 2 effectively expired, engrafting a time limit on Congress's enforcement power. Appellees' Br. 37–38. The Court must decline this invitation to usurp the role of the legislature. The Reconstruction Amendments assign to Congress—not the courts—the judgment of whether and what legislation is "appropriate" to enforce their guarantees. U.S. Const. amends. XIV, § 5; XV, § 2; *Ex parte Virginia*, 100 U.S. at 345–46 ("It is the power of Congress which has been enlarged."). Nothing in the Constitution or this Court's precedents licenses the judiciary to impose expiration dates on concededly "appropriate" legislation that Congress has left in place. *See Morgan*, 384 U.S. at 650–51. For the Court to impose an expiration date on a law Congress designed to be permanent is not judicial review, it is an unprincipled rewriting of the statute. The judicial role is to "apply, not amend, the work of the People's representatives." *Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 89–90 (2017).

Nor is there any principled standard to decide when Section 2 has become too old. As President George W. Bush noted in signing the 2006 reauthorization and committing to enforce the Voting Rights Act and defend it in court, "[i]n four decades since the Voting Rights Act was first passed, we've made progress toward equality, yet the work for a more perfect union is never ending."[6] Just a few years

6. Press Release, Off. of the Press Sec'y, *President Bush Signs Voting Rights Act Reauthorization and Amendments Act*

ago, in *Brnovich v. Democratic National Committee*, the Court underscored that "Section 2 of the Voting Rights Act provides vital protection against discriminatory voting rules, and no one suggests that discrimination in voting has been extirpated." 594 U.S. 647, 678 (2021). Appellees have provided no evidence to suggest that discrimination in voting has been eliminated in the intervening years (nor could they). And, the Court has imposed no re-justification requirement on other long-standing statutes. Just this Term, for example, the Court interpreted provisions of both the Employee Retirement Income Security Act of 1974 and the Foreign Sovereign Immunities Act of 1976 without questioning their constitutionality based on their age. *See Cunningham v. Cornell University*, 145 S. Ct. 1020, 1024 (2025); *CC/Devas (Mauritius) Ltd. v. Antrix Corp. Ltd.*, 145 S. Ct. 1572, 1576 (2025). This is the correct approach: it is for Congress, not the courts, to determine if and when a statute needs to be amended or reauthorized. As the Fifth Circuit recently explained in a related case, Appellees' theory lacks any "limiting principle" and "would impose a limitless obligation on Congress to continually refresh its legislative record for any statute enacted under the Fourteenth or Fifteenth Amendments—including laws like the Family and Medical Leave Act, Title II of the Americans with Disabilities Act, and the Fair Housing Act." *Nairne v. Landry*, No. 24-30115, __ F. 4th __, 2025 WL 2355524, at *23 (5th Cir. Aug. 14, 2025).[7]

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of 2006 (July 27, 2006), https://georgewbush-whitehouse.archives.gov/news/releases/2006/07/20060727.html.

7. Invalidating Section 2 absent periodic reenactment would also invite the very destabilizing, perpetual litigation this Court has cautioned against, as litigants would be encouraged

As *amici* know from their combined 201 years serving in Congress, this kind of continual record refresh requirement is unworkable given the resources required to build such a comprehensive record as supported the 1982 amendments and 2006 reauthorization of the Voting Rights Act, and Congress's competing legislative priorities each session. Such a requirement would also leave Congress in a state of perpetual uncertainty as to what this Court would require to uphold Congress's exercises of its constitutional authority, and render it unable to craft the durable remedies necessary to address enduring constitutional violations. Imposing such a burden on a coequal branch would undermine the very "enlarge[ment]" of the "power of Congress" that the Reconstruction Amendments granted. *Ex parte Virginia*, 100 U.S. at 345.

Moreover, basic separation-of-powers principles counsel judicial restraint. As Justice Scalia cautioned, the Court is "ill advised to adopt or adhere to constitutional rules that bring [it] into constant conflict with a coequal branch of Government." *Tennessee v. Lane*, 541 U.S. 509, 558 (2004) (Scalia, J., dissenting). This Court has consistently avoided creating such conflict with respect to Section 2 in recent years. Just two Terms ago, in *Allen*, the Court reaffirmed the *Gingles* framework against arguments that it was outdated, concluding that the proper judicial role was to "stay[] the course" and leave any changes to Congress. 599 U.S. at 39. Congress has chosen not to disturb Section 2 since, and this Court should not now usurp its power to do so.

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to challenge and re-challenge the constitutionality of other civil rights statutes enacted under the Fourteenth Amendment. *See Wilkie v. Robbins*, 551 U.S. 537, 561 (2007).

III. Section 2's Remedies Are Fully Reconcilable with the Equal Protection Clause Under Settled Strict-Scrutiny Principles.

Appellees argue that Section 2's results test compels race-conscious redistricting and thus violates the Equal Protection Clause. But that claim misreads both constitutional doctrine and the structure of Section 2 itself. The Equal Protection Clause is a shield against racial subjugation, not a sword to strike down remedies for proven discrimination. For decades, this Court's precedents have provided a clear, workable framework that harmonizes the two. Under that framework, complying with the Voting Rights Act is a compelling interest that can be satisfied through a narrowly tailored remedy, fully consistent with a principled application of strict scrutiny.

A. Race-Predominant Districting Triggers Strict Scrutiny, But Compliance with the Voting Rights Act Is a Compelling Interest That Can Justify Opportunity Districts.

The Equal Protection Clause forbids intentional racial gerrymandering, but it does not forbid all consideration of race in redistricting. This Court's precedents draw a crucial distinction between racial classifications that lack justification and those employed to remedy constitutional or statutory violations. When a state's redistricting "subordinate[s] traditional race-neutral districting principles *** to racial considerations," this Court has held that strict scrutiny is triggered. *Miller v. Johnson*, 515 U.S. 900, 916, 920 (1995). However, strict scrutiny's purpose is to distinguish illegitimate uses of race from permissible ones; it is not an automatic death knell.

Adarand Constructors, Inc. v. Peña, 515 U.S. 200, 237 (1995) ("strict scrutiny" is not "strict in theory, but fatal in fact").

In the context of voting rights, this Court has long assumed that a state's effort to comply with Section 2 of the Voting Rights Act is a compelling interest that, if pursued in a narrowly tailored way, satisfies strict scrutiny. *See, e.g.*, *Bush v. Vera*, 517 U.S. at 977 (plurality opinion) (recognizing that a "creat[ing] majority-minority districts *** satisfies strict scrutiny" when needed to remedy a potential Section 2 violation); *Cooper*, 581 U.S. at 301–02. *Gingles* and its progeny have proceeded on the premise that Section 2's mandate to create an opportunity district in certain circumstances is fully compatible with the Constitution, so long as the districting is done to remedy identified vote dilution rather than to impose racial proportionality for its own sake. This harmony between the Voting Rights Act and Equal Protection rests on the understanding that the Fourteenth Amendment does not condemn legislative actions taken to break down discriminatory voting procedures and ensure racial equality. *See Cooper*, 581 U.S. at 292–93 ("When a State invokes the VRA to justify race-based districting, it must show *** that it had 'a strong basis in evidence' for concluding that the statute required its action.").

Section 2's design inherently respects this constitutional line. By requiring proof of persistent racial bloc voting and minority political cohesion, Section 2 remedies are tied strictly to eliminating barriers that prevent minority voters from enjoying the same political opportunity as others. A court-ordered or legislatively enacted majority-minority district under Section 2 is not

a racial preference; it is a tailored cure prescribed by Congress for a specific, diagnosed injury to our democratic process.

Notably, in *Allen*, the Court again rejected the assertion that Section 2 cannot be squared with the Fourteenth Amendment, noting "nearly forty years" of consistent application. 599 U.S. at 26. Viewed together, Equal Protection and Section 2 are complementary: the Voting Rights Act helps realize the Equal Protection Clause's guarantee of equal political opportunity, and strict scrutiny ensures that Voting Rights Act-driven districts do not stray beyond what is necessary to secure that opportunity.

B. The "Strong-Basis-in-Evidence" Standard Affords States Necessary Breathing Room and Avoids a Constitutional Catch-22.

This Court has recognized that states need not await a judicial decree before acting to comply with Section 2. Instead, they may adopt race-conscious remedies when they have a "strong basis in evidence"—or "good reasons"—to believe Section 2 requires such action. *See, e.g.*, *Cooper*, 581 U.S. at 292–93. This standard is crucial for harmonizing Section 2 and the Equal Protection Clause, as it gives legislatures the necessary breathing room to avoid an impossible dilemma—risk liability under Section 2 if they do not remedy vote dilution, or risk an Equal Protection violation if they do.

By giving state legislatures "breathing room" to act on evidence before protracted litigation begins, the "strong basis" standard provides a workable equilibrium.

Bethune-Hill v. Virginia State Board of Elections, 580 U.S. 178, 196 (2017). To eliminate this flexibility, as Appellees urge, would force states into a Hobson's choice: violate the Voting Rights Act or violate the Constitution. This Court has repeatedly refused to endorse such a chaotic result, instead promoting a standard that fosters responsible self-governance.

C. Remedies for Vote Dilution Are Fundamentally Different from Racial Preferences in University Admissions.

Appellees and the State of Louisiana strain to liken Section 2 remedies to the affirmative action programs struck down in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College ("SFFA")*, 600 U.S. 181 (2023). That analogy is fundamentally flawed.[8] There is a categorical legal and factual difference between remedying governmental discrimination in the electoral system under a statutory scheme enacted by Congress and using race as a plus-factor in college admissions. The principles that this Court determined rendered racial preferences in university admissions unconstitutional are the same principles that affirm the validity of Section 2.

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8. Louisiana repeatedly quotes Justice Sotomayor's dissent in *SFFA* to argue that Section 2's remedy for vote dilution is "[j]ust like" the affirmative action programs that were held to be unconstitutional in *SFFA*. *See, e.g.*, La.'s Suppl. Br. 3, 18, 24. Despite its extensive reliance on *Shaw*, Louisiana omits that, in the sentence it repeatedly quotes, Justice Sotomayor was citing that case for its holding that "race consciousness does not inevitably lead to impermissible race discrimination," and arguing that *Shaw*'s conclusion should apply to the admissions context as it does in the redistricting context. *SFFA*, 600 U.S. at 361, n.34 (Sotomayor, J., dissenting) (quoting *Shaw*, 509 U.S. at 646).

First, a Section 2 remedy addresses a group-level harm by restoring equal access to the political process, whereas the policies in *SFFA* involved individualized racial preferences. *Id.* at 218, 220. A remedial district does not guarantee any individual a seat or deprive any individual of a defined opportunity; it simply ensures that voters in a community denied equal access to the electoral process have an equal chance "to elect their preferred candidates." *Gingles*, 478 U.S. at 48.

Second, a Section 2 remedy is, by definition, a response to a proven legal wrong for which overwhelming majorities in Congress have repeatedly recognized the need for an actionable remedy. The admissions policies in *SFFA* were untethered to any specific, legally cognizable act of discrimination by the universities. *See SFFA*, 600 U.S. at 216, 228. By contrast, Section 2 remedies are available only after a judicial finding—or a state's determination that there is a "strong basis in evidence"—that vote dilution has occurred. The rigorous *Gingles* framework ensures that such remedies are grounded in current, real-world evidence of a legally cognizable harm.

Finally, Section 2 contains the "logical end point" that the *SFFA* Court found lacking in university admissions. *Id.* at 221. A Section 2 remedy is not arbitrary or permanent; its application is strictly constrained by the three evidentiary preconditions: a minority group must be sufficiently large and compact, politically cohesive, and face a majority bloc vote that usually defeats its preferred candidates. Because these are contemporary, factual predicates, the remedy is available only as long as they are satisfied. This carefully cabined statutory scheme is a valid exercise of Congress's enforcement authority under the Fifteenth

Amendment—designed not to award preferences, but to restore the equal opportunity that a discriminatory map has denied. *See South Carlina v. Katzenbach*, 383 U.S. at 308–09 (describing Congress's authority to employ "sterner and more elaborate measures" to "banish the blight of racial discrimination in voting"); *City of Rome*, 446 U.S. at 173–78.

IV. PRINCIPLES OF JUDICIAL RESTRAINT AND *STARE DECISIS* SUPPORT UPHOLDING SECTION 2'S ENFORCEMENT OF VOTING RIGHTS.

For nearly four decades, this Court has interpreted Section 2 to permit narrowly tailored, race-conscious remedies for proven vote dilution—and Congress has repeatedly ratified that interpretation with strong, bipartisan support. All this time, legislatures, courts, and voters have relied on that interpretation in drawing district lines. To detonate a forty-year-old legal standard relied upon by every state in the Union is the opposite of judicial conservatism; it is radical disruption. Where both branches have spoken with such consistency for so long, principles of judicial deference, separation of powers, and *stare decisis* all weigh overwhelmingly against upending the established legal framework.

A. Congress's Judgment in Enacting Section 2 Is Entitled to Deference.

As President Reagan described in presiding over the swearing-in ceremony of Chief Justice Rehnquist and Justice Scalia, the Framers "settled on a judiciary that would be independent and strong, but one whose

power would also, they believed, be confined within the boundaries of a written Constitution and laws. *** The judicial branch interprets the laws, while the power to make and execute those laws is balanced in the two elected branches. And this was one thing that Americans of all persuasions supported."[9] This Court accordingly affords "great weight to the decisions of Congress" when assessing the constitutionality of federal statutes, recognizing that "Congress is a coequal branch of government whose Members take the same oath [the Justices] do to uphold the Constitution of the United States." *Rostker*, 453 U.S. at 64. Deference is at its apex for legislation enacted under the Reconstruction Amendments, which empower Congress—the branch best equipped to amass evidence and make national policy judgments—to enforce equality guarantees nationwide. *See Morgan*, 384 U.S. at 650–51; *City of Rome*, 446 U.S. at 177–78; *Lane*, 541 U.S. at 519–33.

In both 1982 and again in 2006, Congress compiled an extraordinary evidentiary record that justifies the statute's results test. The 2006 reauthorization alone was based on over 15,000 pages of testimony and reports documenting the persistence of subtle, "second-generation" barriers to voting. H.R. Rep. No. 109-478, at 2–3, 5, 11–12 (2006); S. Rep. No. 109-295, at 2–4, 15 (2006).[10] Based on this massive record, Congress made

9. Ronald Reagan Presidential Library & Museum, *Remarks at the Swearing-in Ceremony for William H. Rehnquist as Chief Justice and Antonin Scalia as Associate Justice of the Supreme Court of the United States* (Sept. 26, 1986), https://www.reaganlibrary.gov/archives/speech/remarks-swearing-ceremony-william-h-rehnquist-chief-justice-and-antonin-scalia.

10. For a salient example of the evidence before Congress of barriers to voting, *see* Debo P. Adegbile, *Voting Rights in Louisiana: 1982-2006*, 17:2 RLSJ, S. Cal. Rev. of L. and Soc.

the empirical judgment that Section 2 remained necessary to combat racial vote dilution. Congress chose not to impose an expiration date on that provision of law. In an astounding show of congressional consensus, more than 93% of congressmembers voting in 2006 supported reauthorization and therefore reaffirmed Section 2 as a permanent, nationwide bar on racial discrimination that infringes upon voting rights. When Congress acts with near unanimity to enforce a Reconstruction Amendment, the judiciary's role is to respect that judgment, not second-guess it. Appellees now improperly ask this Court to re-weigh the legislative facts that led Congress to that decision—a task for which Congress, not the courts, is institutionally suited. The Court should decline that request.

B. Nullifying Section 2 Would Leave the Statute Without Effect and Betray the Fifteenth Amendment.

The Fifteenth Amendment was not a suggestion; it was a command, and Congress provided remedies to enforce it. Appellees ask this Court to foreclose the key remedy Congress designed, contending that a state that draws a majority-minority district to cure vote dilution violates Equal Protection. For this Court to nullify the key remedy Congress created would be to arrogate a power the Constitution commits to the legislature, betraying

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Justice 413, 433–35, 441–42 (2008). That report was fully incorporated into the Congressional Record. *See* 1 Voting Rights Act: Evidence of Continued Need, Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary, 109th Cong. 1592 (Mar. 8, 2006) (Adegbile report attached as appendix to the Statement of Wade Henderson).

the Fifteenth Amendment's guarantee that citizens of all races have their votes count equally—an outcome this Court has long rejected. If plaintiffs who have prevailed on their Section 2 claim cannot get a remedial map that elevates minority voters from token influence to real opportunity, then Section 2 would be reduced to a purely declaratory statute. *See Marbury v. Madison*, 5 U.S. 137, 163 (1803). This, of course, is not the law that *amici* and their congressional colleagues enacted.

The Court's precedents confirm that race-conscious redistricting is the proper remedy for a proven Section 2 violation. *See, e.g.*, *Allen*, 599 U.S. at 41 ("[F]or the last four decades, this Court and the lower federal courts *** have authorized race-based redistricting as a remedy for state districting maps that violate § 2."). Undercutting that remedy now would be an abrupt break with this unbroken line of authority, effectively overruling *Gingles* and decades of cases applying it. Such a move defies *stare decisis* principles, which have "enhanced force" in statutory cases where Congress remains free to amend the law but has chosen not to. *See Kimble v. Marvel Entertainment LLC*, 576 U.S. 446, 456 (2015).

C. Overturning Section 2's Framework Would Disrupt Decades of Reliance by States, Courts, and Voters, Destabilizing a Cornerstone of American Election Law.

The *Gingles* framework is not merely doctrinally sound; it is woven into the fabric of our electoral system. For nearly forty years and across four redistricting cycles, legislatures, courts, and voters have relied on the *Gingles* framework to structure elections. Likewise, local

jurisdictions and federal courts have invested enormous resources applying the well-known *Gingles* criteria. To abandon or drastically rework the framework now would shatter these profound reliance interests and flout the doctrine of *stare decisis*, which applies with special force here. *Kimble*, 576 U.S. at 456.

Reversing course now would invite the very electoral chaos this Court has long cautioned against and sought to avoid: widespread confusion, a flood of litigation, and destabilized elections nationwide. *See Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006) (per curiam). That caution is especially warranted here, where the Court is being asked not merely to adjust precedent, but to upend a core mechanism of one of the most important civil rights statutes in American history. As former members of Congress elected in orderly federal elections, *amici* urge this Court to reject Appellees' invitation to disrupt our national election system, especially as the 2026 midterm elections rapidly approach. The Court applied this exact principle of promoting stability two years ago in *Allen*. Presented with the same arguments Appellees make today, the Court decisively rejected them, providing a textbook reaffirmation of statutory *stare decisis*: "[C]ongress is undoubtedly aware of our construing § 2 to apply to districting challenges. It can change that if it likes. But until and unless it does, statutory *stare decisis* counsels our staying the course." *Allen*, 599 U.S. at 39. Appellees offer no special justification to support their request for such a stark departure from recent precedent. The answer today should be the same as it was in *Allen*: "stay the course" and avoid invalidating or weakening a statute that Congress had three sources of constitutional authority to enact.

CONCLUSION

The judgment of the district court should be reversed.

Dated: September 3, 2025 Respectfully submitted,

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