Nos. 25-243, 25-273, 25-274

In The

Supreme Court of the United States

WES ALLEN, ALABAMA SECRETARY OF STATE, ET AL.,
Petitioners,

v.

MARCUS CASTER, ET AL.,
Respondents.

WES ALLEN, ALABAMA SECRETARY OF STATE, ET AL.,
Petitioners,

v.

BOBBY SINGLETON, ET AL.,
Respondents.

WES ALLEN, ALABAMA SECRETARY OF STATE, ET AL.,
Petitioners,

v.

EVAN MILLIGAN, ET AL.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI BEFORE JUDGMENT TO THE U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT AND APPEAL FROM THE U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA

Brief of *Amici Curiae* State Senator Nikki Torres, State Representative Alex Ybarra, and Jose Trevino in Support of Petitioners and Appellants

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IDENTITY & INTEREST OF *AMICI CURIAE*[1]

Amici are residents of, and public officials in, the Yakima region of the State of Washington. For over three years, the Yakima region has been the epicenter of challenges to Washington's state legislative map. See *Palmer* v. *Hobbs ("Palmer I")*, 686 F. Supp. 3d 1213 (WD Wash. 2023) (§2 challenge); *Garcia* v. *Hobbs*, 691 F. Supp. 3d 1254 (WD Wash. 2023) (14th Amendment challenge).[2] Each *Amici* has experienced firsthand the absurdities that current §2 jurisprudence can create when federal judges—at the urging of partisan litigants—mangle §2 into an unrecognizable tool for partisan gain rather than minority protection. *Amici* thus share a commitment to ensuring §2 jurisprudence does not perpetuate racial stereotypes or become a smoke screen for partisan litigants and federal judges to engage in racial or partisan gerrymandering under the guise of protecting minority voting rights.

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[1] Pursuant to Supreme Court Rule 37.2, counsel for all parties were timely notified of *Amici*'s intent to file this amicus brief. Pursuant to Supreme Court Rule 37.6, no counsel for any party authored this brief in whole or in part. The American Redistricting Project, a nonpartisan, nonprofit organization working to strengthen our republic by supporting constitutional redistricting, election transparency, and accountable government, funded the preparation and submission of this brief.

[2] Petitions for writs of certiorari from the Ninth Circuit are forthcoming in these cases. See *Palmer* v. *Hobbs*, No. 23-35595, 2025 U.S. App. LEXIS 22068 (CA9 Aug.27, 2025); *Garcia* v. *Hobbs*, No. 24-2603, 2025 U.S. App. LEXIS 22059 (CA9 Aug. 27, 2025).

Senator Nikki Torres is the Washington State Senator currently representing Washington's 15th Legislative District ("LD-15"). In 2022, LD-15 elected Senator Torres to serve a four-year term under Washington's enacted legislative map. Senator Torres, a Latina Republican, defeated her White Democratic general election opponent 67.7% to 32.1%. Yet a federal district court redistricted her out of her own district after it determined that she could not possibly be the representative of her Hispanic constituents' choice because she is not a Democrat—the party that, in the court's view, Hispanics are supposed to favor. See *Palmer* v. *Hobbs ("Palmer II")*, No. 3:22-cv-05035-RSL, 2024 U.S. Dist. LEXIS 50419 (WD Wash. Mar. 15, 2024). Her district was approximately 52.6% Hispanic citizen voting age population ("HCVAP") based on 2021 population numbers. Yet the court-ordered remedial map attempted to cure alleged Hispanic vote dilution by *lowering* the HCVAP of LD-15 and drawing Senator Torres out of her District.

Representative Alex Ybarra and Jose Trevino are Intervenor-Defendants in the §2 challenge to Washington's legislative map. See *Palmer I*, 686 F. Supp. 3d at 1213.

Representative Alex Ybarra is a current State Representative for LD-13. The Court-ordered remedial map replaced most of the Hispanic voters in Representative Ybarra's district (over 30,000 voters) with White Democrats. Representative Ybarra now faces a costlier and more difficult general election campaign because of the realignment of his district.

Jose Trevino is a Hispanic resident and voter in Granger, Washington. He previously served as the Mayor of Granger. While Trevino was originally placed in enacted LD-15, the court's remedial plan moved him into a new district, remedial LD-14, based predominantly on his race.

INTRODUCTION & SUMMARY OF THE ARGUMENT

Current §2 jurisprudence is hopelessly unmoored from §2's original public meaning and constitutional applications. Nothing demonstrates this more clearly than *Amici*'s case. There, under the guise of §2, a single federal district court judge purported to save Hispanic voters in the Yakima region from the stain of race-based vote dilution by stereotyping all Hispanic voters as Democrats, refusing to credit the success of Hispanic public officials like *Amici*, and *purposefully diluting* HCVAP to achieve the court's and the challengers' preferred partisan outcome.

That cannot be overstated. The district court "cured" alleged Hispanic vote dilution by removing Hispanic voters from the district and replacing them with White Democratic voters. Indeed, *Amici*'s case was so bad that Justice Thomas recently acknowledge that it "exemplifies the tendency of the Court's race-obsessed jurisprudence to 'balkanize us into competing racial factions'" and urged this Court to "correct course now" before its §2 jurisprudence "inflicts further damage." *Alexander* v. *South Carolina Conf. of the NAACP*, 602 U.S. 1, 60 (2024) (Thomas, J., concurring) (quoting *Shaw* v. *Reno*, 509 U.S. 630, 657 (1993)).

Now is the time to correct course. *Amici*'s and Alabama's cases demonstrate three ways this Court can better moor §2 to its original understanding and constitutional applications.

First, the Court should reiterate that political lockout is a prerequisite to a §2 remedy. This Court long ago held that §2 was designed to remedy instances where minority voters had less "opportunity to participate" in the electoral process than majority voters. *Whitcomb* v. *Chavis*, 403 U.S. 124, 153 (1971). Congress then amended §2 to expressly adopt that standard. And in *Thornburg* v. *Gingles*, 478 U.S. 30 (1986), this Court established a three-part test to determine when a minority group has been sufficiently locked out of the political process by "submerging it in a larger white voting population." *Growe* v. *Emison*, 507 U.S. 25, 40 (1993). But courts too often blindly apply §2 in cases where minority voters enjoy equal access to the political process as their neighbors, as in *Amici*'s case, where the challenged district was already a majority Hispanic district by HCVAP, and in Alabama's case, where a non-majority-minority district performed for a Black Democrat in 2024.

Second, this Court should hold that §2 analysis must account for polarized voting that is caused by partisan preferences, not race. Both *Gingles* and the totality of the circumstances test require courts to analyze whether voting in the challenged district is racially polarized. See 478 U.S. at 50–51, 57–58. Any such polarization must be "legally significant." *Id.* at 58. Courts must therefore analyze the cause of any alleged polarization to determine whether such

polarization is caused by race or another factor, such as partisanship. See *LULAC* v. *Clements*, 999 F.2d 831, 853–54 (CA5 1993) (en banc). But, as *Amici*'s and Alabama's cases demonstrate, courts too often ignore clear evidence that partisan preferences, not race, correlate with racially polarized voting.

Third, this Court should clarify that §2's totality of the circumstances test must include a causation analysis. Without it, the totality of the circumstances test will remain hopelessly malleable. Because many of the factors considered under the totality of the circumstances test go beyond core cases of *present* political lockout, some courts have adopted guardrails on the extent to which certain factors can support a §2 claim. See, *e.g.*, *Brnovich* v. *DNC*, 594 U.S. 647, 671 (2021); *Smith* v. *Salt River Proj. Agric. Improvement & Power Dist.*, 109 F.3d 586, 595 (CA9 1997). But as *Amici*'s and Alabama's cases demonstrate, courts too often ignore these reasonable guardrails at the urging of partisan litigants, telling minority communities how they should vote and that no progress toward equal opportunity, absent intervention from their judicial saviors, will ever be enough to place them on equal footing with their fellow citizens.

Without these reasonable limitations, current §2 jurisprudence thrusts federal courts into the intersection of two activities this Court has held are *never* within the province of the federal judiciary—engaging in race-based sorting based on racial stereotypes, see *Students for Fair Admissions, Inc.* v. *President & Fellows of Harv. Coll. ("SFFA")*, 600 U.S. 181, 206, 213 (2023), and entering the political thicket of partisan gerrymandering. See *Rucho* v. *Common*

Cause, 588 U.S. 684, 696 (2019). *Amici*'s case makes this clear. In order to purportedly cure Hispanic vote dilution, the district court insisted LD-15 needed to be more Democratic and carved out a swath of Hispanic voters to replace them with White Democrats.

If that is what current §2 jurisprudence demands, then we have fallen hopelessly astray from §2's original public meaning and its constitutional applications. The Court should "correct course now" before it "inflicts further damage." *Alexander*, 602 U.S. at 60 (Thomas, J., concurring).

ARGUMENT

I. *Amici*'s case, like Alabama's, illustrates the absurdities current §2 jurisprudence creates

Amici's case arises out of a §2 challenge to Washington's state legislative map. Washington's state legislative map is supposed to be drawn exclusively by an independent and bipartisan redistricting commission (the "Commission"). Wash. Const., Art II, § 43(1); U.S. Const., Art. II, § 2.

Following the 2020 Census, the Commission convened and unanimously agreed on a map. Negotiations heavily focused on LD-15. The Democratic and Republican Commissioners disagreed as to whether a majority-minority district was required in the Yakima region. They struck a compromise. The Republican Commissioners agreed to support a district that would be majority HCVAP, and the Democratic Commissioners agreed the

district would be drawn to lean Republican (using a recent State Treasurer election as the metric). The result was LD-15, with an estimated HCVAP of 52.6% using 2021 population figures. All Commissioners and their staffs testified that LD-15 was essential to the map; without it, the Commission would not have agreed on a map. The Legislature adopted the Commission's map with limited amendments and no population changes to LD-15 (the "Enacted Map").

Shortly after, a group of voters challenged the Enacted Map, focusing entirely on LD-15. The challengers demanded novel relief—not a majority Hispanic district, or even a majority Hispanic district by CVAP, which already existed, but a map that guaranteed Democratic candidates would be elected in a different majority-minority district. The district court complied. The district court's opinion cannot be coherently understood except as holding that Hispanic "preferred candidates" means "Democratic candidates" in all circumstances. And to achieve that goal, the court *purposefully reduced* HCVAP in LD-15. Said differently, the district court cured alleged Hispanic vote dilution by removing Hispanic voters from the district and replacing them White Democratic voters. After all, who knows better what Hispanic voters in Central Washington need than White Democrats?

While the case was pending, Washington held its 2022 state Legislature elections under the Enacted Map. LD-15 elected Senator Nikki Torres, a Latina Republican, as State Senator. Senator Torres, in a contested general election, defeated her White, Democratic Party opponent 67.7% to 32.1%, a 35.6%

margin of victory. According to expert testimony presented at trial, Senator Torres won between 32% and 48% of the Hispanic vote.

But despite the facts that LD-15 contained a majority HCVAP and elected a Latina candidate in the only contested election held under the Enacted Map, the district court held that it violated §2. *Palmer I*, 686 F. Supp. 3d at 1221. The district court did not hold that LD-15 was a "façade" majority-minority district, *i.e.*, one where, as in *LULAC* v. *Perry*, the district was drawn to have a nominal voting-age majority "without a citizen voting-age majority." 548 U.S. 399, 441 (2006). Nor could it—LD-15 contained 52.6% HCVAP. Until then, no district court had ever previously held that a majority-minority district violated the VRA without finding that the putative majority was in fact a "façade" or "hollow" and had been upheld on appeal.

The district court held that the challengers satisfied each of the three *Gingles* preconditions. With respect to the second and third *Gingles* preconditions, the court held that the challengers established that "Latino voters overwhelmingly favored the same candidate in the vast majority of" elections in the Yakima region and that White voters voted cohesively to block Hispanic-preferred candidates. *Palmer I*, 686 F. Supp. 3d at 1225. The court declined to analyze the cause of any such cohesion, in particular, whether such cohesion was more attributable to party over race. *Id.* at 1226–27.

The district court also held that the challengers prevailed under the totality-of-the-circumstances

inquiry. The court based its decision on: (i) the general history of discrimination in Washington's past, *id.* at 1227–28; (ii) moderate polarized voting in one kind of election (contested partisan elections with a White Republican candidate), *id.* at 1228; (iii) voting practices of non-Presidential-year senate elections and at-large districts in Washington, *id.* at 1228–29; (iv) the socioeconomic disparities between Whites and Hispanics, *id.* at 1229; (v), one instance of one candidate for local office invoking illegal immigration on a social media post, *id.* at 1230; (vi) past Hispanic electoral success that is less than proportional to the Hispanic population in the Yakima Valley region, *id.* at 1230–31; (vii) hearsay testimony of one-off instances of "white voter antipathy"; and (viii) elected Republicans from the region not supporting all legislation endorsed by a single progressive self-anointed Hispanic advocacy group, *id.* at 1231. Although it acknowledged the outcome, the court did not analyze the only endogenous, contested election to date under enacted LD-15, in which Senator Torres defeated her White, Democrat opponent by a margin greater than 2 to 1. *Id.* at 1230–31.

The court then proceeded to the remedial phase and imposed a horrifically racially gerrymandered remedial map that purported to cure Hispanic vote dilution by *purposefully decreasing* HCVAP in LD-15. All five of the challengers' proposed remedial maps reduced HCVAP in LD-15. The court ultimately adopted the challengers' "Map 3B," finding that the map remedied the §2 violation by (1) "unit[ing] the Latino community of interest in the region"; and (2) making it "*substantially more Democratic* than its LD 15 predecessor." *Palmer II*, 2024 U.S. Dist. LEXIS

50419, at *10, *15 (emphasis added). The court admitted that "the Latino citizen voting age population of [new LD-15] in the adopted map is less than that of the enacted district," but justified such dilution as necessary for Hispanic voters to "elect candidates of their choice"—in the court's view, Democrats—"to the state legislature." *Id.* at *7. The court also needlessly adopted down-stream changes to other districts—adjusting partisan performance metrics to favor Democrats. See *id.* at *16.

In sum, under the guise of §2, a single district court judge purported to save Hispanic voters in the Yakima region from the stain of race-based vote dilution by stereotyping all Hispanic voters as Democrats, refusing to credit the success of Hispanic public officials like *Amici*, and *purposefully diluting* HCVAP to achieve the court's and the challengers' preferred partisan outcome. If that is what current §2 jurisprudence demands, then we have fallen hopelessly astray from §2's original public meaning and its constitutional applications.

II. Section 2 was originally understood to remedy political lockout

This Court has long recognized that §2 is designed to ensure minority voters equal opportunity to participate in the political process and to elect representatives of their choice. See *Gingles*, 478 U.S. at 43. Unequal access to the political process—or, "political lockout"—is thus a necessary element of a §2 claim. Whether proof of political lockout is a prerequisite to a §2 claim, folded into the *Gingles* factors, or analyzed under totality of the

circumstances, *Amici*'s and Alabama's cases demonstrate the necessity of starting from this §2 first principle.

Section 2's text makes this clear: To prove §2 vote dilution, a plaintiff must show that minorities "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 52 U.S.C. § 10301(b). And importantly, "nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population." *Id.*

Section 2, as amended, was "intended to 'codify' the 'results' test employed in *Whitcomb* v. *Chavis* and *White* v. *Regester*." *Gingles*, 478 U.S. at 83–84 (O'Connor, J., concurring in judgment). In *Whitcomb*, the Court upheld a multimember districting scheme in Indiana, holding it "discovered nothing in the record or in the [trial] court's findings indicating that" minority voters had less "opportunity to participate in and influence the selection of candidates and legislators." 403 U.S. at 149, 153. For example, plaintiffs failed to show that minority voters "were not allowed to register to vote, to choose the political party they desired to support, to participate in its affairs or to be equally represented on those occasions when legislative candidates were chosen." *Id.* at 149. "The mere fact that one interest group or another concerned with the outcome of . . . elections has found itself outvoted and without legislative seats of its own provides no basis for invoking [§2] remedies where, as here, there is no indication that this segment of the

population is being denied access to the political system." *Id.* at 154–55.

White shows what political lockout looks like. In that case, the Court invalidated a multimember districting scheme where barriers like a poll tax, restrictive voter registration, and racial campaign tactics prevented minority voters from accessing the political process on an equal footing with their White neighbors. 412 U.S. 755, 766–67 (1973).

Minority voters in both *Whitcomb* and *White* suffered socioeconomic hardships, historical discrimination, and persistent political defeat. But the political process was closed to the voters in *White* but not the voters in *Whitcomb*. It was that lockout that triggered §2 protections. And ever since, this Court has unsurprisingly held that the ultimate right of §2 is "*equality of opportunity*, not a guarantee of electoral success for minority-preferred candidates of whatever race." *Johnson* v. *DeGrandy*, 512 U.S. 997, 1014 n.11 (1994) (emphasis added); see also *Pierce* v. *North Carolina State Bd. of Elections*, 97 F.4th 194, 217 (CA4 2024) (majority-minority district not required where "State lacked evidence that such districts were necessary for Black-preferred candidates to win").

Gingles itself confirms this reading of §2. Each of the three *Gingles* preconditions speaks primarily to electoral opportunity. See 478 U.S. at 50–51; *id.* at 88 (O'Connor, J., concurring in judgment). This Court has emphasized that the *Gingles* factors "are needed to establish that the challenged districting thwarts a distinctive minority vote by *submerging it in a larger*

white voting population." *Growe*, 507 U.S. at 40 (emphasis added). Thus, a minority group that has been locked out of the political process is a prerequisite to *Gingles*. "Unless these points are established, there neither has been a wrong nor can be a remedy." *Id.* at 40–41. Said differently, a statistical minority by CVAP is a prerequisite to finding a plaintiff satisfies the *Gingles* factors. A racial/ethnic group that is a majority CVAP in a district *is not* a "minority" group for purposes of the *Gingles* analysis.

The totality of the circumstances test likewise, at its core, addresses political lockout. As this Court recognized in *Chisom* v. *Roemer*, "the inability to elect representatives of their choice is not sufficient to establish a violation unless, under the totality of the circumstances, it can also be said that the members of the protected class have less opportunity to participate in the political process." 501 U.S. 380, 397 (1991).

Whether addressed as a prerequisite to the *Gingles* factors, as part of the second and third *Gingles* factors, or under the totality of the circumstances, it is clear that §2 plaintiffs must establish that they have been locked out of the political process to succeed on a §2 claim.

In *Amici*'s case, Hispanic voters already held a majority in LD-15 based on CVAP. By definition, Hispanic voters thus possessed equal access to the political process—they were not locked out. And they possessed *more* opportunity to elect candidates of their choice by virtue of outnumbering their White

neighbors. In the only election held under enacted LD-15, the district elected Senator Torres, a Latina Republican.

Nevertheless, the district court dubiously concluded that Hispanic voters in LD-15 constituted a "bare, ineffective majority." *Palmer I*, 686 F. Supp. 3d at 1234. The only evidence cited for this putative ineffectiveness was that Democrats did not typically win. *Id.* at 1225–26. The district court further reasoned that the majority-minority district was not "effective" because "past discrimination, current social-economic conditions, and a sense of hopelessness keep Latino voters from the polls in numbers significantly greater than white voters." *Id.* at 1234. But Plaintiffs failed to put forward a single Washington Hispanic voter that had trouble voting, nor could any witnesses identify anyone they knew that had difficulty voting in a State election. The court's analysis erroneously demands that §2 produce particular electoral outcomes rather than guarantee equal "opportunity" and "open[ness]" to participation." 52 U.S.C. § 10301(b). Whether voters avail themselves of the equal opportunities mandated by §2 is a question of electoral *outcomes* that §2 does not regulate.

Alabama's case is similar. The Special Master Plan the court adopted to govern the 2024 elections did not create a second majority-Black district but rather a crossover district. District 2 was 48.69% BVAP. Pet.App.81. But in 2024, enough White voters crossed over to vote for the Black-preferred candidate that District 2 elected Shomari Figures, a Black Democrat, in 2024. See Pet.App.11. The 2024 results

thus showed that a majority-Black district is not needed for Black-preferred candidates to win, see *Pierce*, 97 F.4th at 217, and that Black voters were thus not locked out of the political process.

III. Polarized voting due to party, not race, is insufficient for a §2 claim

Section 2 likewise becomes unhinged when courts refuse to analyze whether polarized voting results from partisanship instead of race. This Court requires racially polarized voting ("RPV") to be "legally significant." See *Gingles*, 478 U.S. at 55–56. Lower courts have held that RPV exists when the "minority group has expressed clear political preferences that are distinct from those of the majority." *Gomez* v. *Watsonville*, 863 F.2d 1407, 1415 (CA9 1988). That is, racially polarized voting alone does not satisfy the *Gingles* preconditions; it needs more to meet the "legally significant" and "clear" thresholds.

Courts therefore should "undertake the additional inquiry into the reasons for, or causes of," RPV "in order to determine whether they were the product of 'partisan politics' *or* 'racial vote dilution,' 'political defeat' *or* 'built-in bias.'" *LULAC*, 999 F.2d at 853–54 (citation omitted). This baseline causation requirement flows from the text of §2 itself, which prohibits only practices that result in the denial or abridgement of the right to vote "*on account of race or color*." 52 U.S.C. § 10301(a) (emphasis added). Where challenged practices are caused by partisanship, rather than race, they necessarily are outside of §2's scope. See, *e.g.*, *Nipper* v. *Smith*, 39 F.3d 1494, 1525 (CA11 1994) ("Electoral losses that are attributable to

partisan politics . . . do not implicate the protections of § 2."). Courts, therefore, must analyze whether the aggregate cause of differences in voting is the political identity of the minority-preferred candidate, *i.e.*, the "candidate who receives sufficient votes to be elected if the election were held only among the minority group in question." *Ruiz* v. *City of Santa Monica*, 160 F.3d 543, 552 (CA9 1998).

Courts must also analyze the probative value of any identified polarization. "An election pitting a minority against a non-minority . . . is considered more probative and accorded more weight." *Id.* In contrast, "non-minority elections . . . do not fully demonstrate the degree of racially polarized voting in the community." *Id.* at 552–53. Indeed, "they may reveal little" and are "comparatively less important." *Id.* at 553.

But too often courts ignore clear evidence that polarized voting is the result of party, not race. In *Amici*'s case, for example, the trial established two truths about voting in the Yakima region. First, RPV existed only for one kind of election—contested partisan contests between a White Democrat and a White Republican. It existed in no others. Notably, when a Latina Republican—Senator Torres—faced a White Democrat in the district in 2022, she won in a 35-point landslide.[3] RPV also disappeared in nonpartisan races, even when one of the candidates

[3] Neither the district court nor any experts below were able to analyze how election contests performed with a Hispanic Democratic candidate, because no such election existed—Hispanic candidates in central Washington have only run as Republicans.

was Hispanic, and in races between two Democrats (a general election possibility under Washington's "top two" primary system). Second, a candidate's partisan identity was *the* cause of the detected polarization—not race.

But the district court refused to address these facts, insisting that partisan causation need not be meaningfully analyzed because "a minority [does not] waive[] its statutory protections simply because its needs and interests," in the court's view, "align with one partisan party over another." *Palmer I*, 686 F. Supp. 3d at 1235. The court failed to consider Senator Torres's 2022 victory as part of the *Gingles* analysis at all. See *id.* at 1223–27. And it refused to acknowledge—let alone *analyze*—the actual vote margins from 2022, rather than the bare outcome. *Id.* at 1230–31. Ignoring this "most probative evidence" of RPV's cause in the Yakima region, see *Ruiz*, 160 F.3d at 553, the court fixated on hypothetical elections that never occurred—essentially political science experiments—and the binary results of ten exogenous elections as evidence that White voters in the region vote cohesively to block Hispanic-preferred candidates. See *id.* at 1226–27. But six of those elections were decided by exceedingly close margins and none involved the same probative evidence as the only contested election to occur within LD-15 in which a Hispanic candidate defeated a White candidate by a landslide. See *id.*

Alabama's case is similar. There, the court insisted that *Gingles* does not "require that we fully disentangle party and race." Pet.App.371–72. Section 2's text begs to differ. See 52 U.S.C. § 10301(a) ("*on*

account of race or color" (emphasis added)). Nevertheless, the court proceeded to address partisan causation in its totality of the circumstances analysis. Yet, the court refused to credit evidence that the prevalence of straight-ticket voting in Alabama suggests voters are motivated by political party, not candidate. Pet.App.386. And the court ignored a sister court's finding that Alabama is a "ruby red" state that made it "virtually impossible for Democrats—of any race—to win statewide in Alabama in the past two decades" and that "the notion that African-American candidates lose solely because of their skin color [was] not supported by the evidence." Pet.App.387–88 (quoting *Alabama State Conf. NAACP* v. *Alabama*, 612 F. Supp. 3d 1232, 1291, 1293 (MD Ala. 2020)). Instead, the court focused on the "evidentiary record about the importance of race in Alabama politics." Pet.App.391. But importance is not causation.

IV. Section 2's totality of the circumstances test must analyze causation

Without tethering §2 to cases of political lockout, the totality of the circumstances test, as currently applied, is hopelessly malleable and prone to manipulation for partisan ends. The test is ostensibly designed to determine whether minority voters in the district have less or equal opportunity to participate in the political process and elect representatives of their choice. *Chisom*, 501 U.S. at 297. But many of those factors go beyond just *present* political lockout. See *Gingles*, 478 U.S. at 36–37 (factors include "history of official discrimination" and

"discrimination in such areas as education, employment and health").

Recognizing this, courts have imposed guardrails on the extent to which certain factors can support a §2 claim. In *Brnovich*, this Court recognized that "courts must consider the opportunities provided by a State's entire system of voting" because §2 refers to the "collective concept of a State's 'political process' as a whole." 594 U.S. at 671.

Other courts have held that statistical disparities alone do not suffice unless the challenger demonstrates "a causal connection between the challenged voting practice and a prohibited discriminatory result." *Smith*, 109 F.3d at 595; see also *Ortiz* v. *City of Philadelphia Off. of the City Comm'rs*, 28 F.3d 306, 315 (CA3 1994); *Irby* v. *Virginia State Bd. of Elections*, 889 F.2d 1352, 1358–59 (CA4 1989); *Salas* v. *Southwest Tex. Junior Coll. Dist.*, 964 F.2d 1542, 1556 (CA5 1992); *Wesley* v. *Collins*, 791 F.2d 1255, 1262 (CA6 1986).

In this same vein, other factors, such as modern legislative efforts to remedy past harms to a minority group, *should* count towards political opportunity.

But too often lower courts leap over these reasonable guardrails—particularly in the redistricting context—at the urging of partisan litigants, telling minority communities how they should vote and that no progress toward equal opportunity, absent intervention from their judicial saviors, will ever be enough to place them on equal footing with their fellow citizens.

Amici's and Alabama's cases are cases-in-point. In *Amici*'s case, the district court ignored clear evidence that Hispanic representation in Washington's legislature exceeds HCVAP. See *Palmer I*, 686 F. Supp. 3d at 1230–31. The court also ignored modern efforts to ameliorate past discrimination. See *id.* at 1227–28. The court elevated decades-old miscarriages of justice and emphasized socioeconomic disparities without identifying a causal connection between those factors and present opportunity. *Id.* at 1228. The court incorrectly elevated hearsay testimony of an alleged racial remark by a member of the general public—not a racial appeal by a political campaign—as evidence of racial appeals. Finally, the court diminished Hispanic electoral success in LD-15 and the surrounding region simply because those Hispanic elected officials do not belong to the political party a single federal district court judge feels Hispanic voters in central Washington are supposed to prefer, and it cast aside a robust record of responsiveness to Hispanic communities by those Hispanic officials. See *id.* at 1230–31.

Alabama's case is similar. While purportedly heeding to this Court's command that "[p]ast discrimination cannot, in the manner of original sin, condemn governmental action that is not itself unlawful," Pet.App.395 (quoting *Abbott* v. *Perez*, 585 U.S. 579, 603 (2018)), the court elevated Alabama's sordid but past history of official racial discrimination while diminishing modern progress toward remedying those harms. The court also credited lay witness testimony about Alabama's history of slavery and segregation, despite the fact the each of the witnesses were *presently* politically active.

Pet.App.401–03. And the court focused on socioeconomic disparities tied to past discrimination without meaningfully discerning a causal link between those disparities and any current, or even recent, discriminatory voting practices. See Pet.App.409 (concluding simply that those disparities hinder "political participation" but not political *access*). Finally, the court found that Alabama's failure to enact a second majority-Black district itself was evidence of a lack of responsiveness to the needs of Black Alabamians, without considering any evidence of responsiveness outside the redistricting context. Pet.App.423–25.

V. Without these reasonable constraints, §2 authorizes federal courts to unconstitutionally engage in racial and partisan gerrymandering

If §2 remains unmoored from cases of political lockout, instances of polarized voting caused only by race and not partisanship, and circumstances that actually cause lost political opportunity, it will perpetuate racial sorting for partisan gain at the hands of the federal judiciary. Current §2 jurisprudence thus thrusts federal courts into the intersection of two activities this Court has held are *never* within the province of the federal judiciary—engaging in race-based sorting based on racial stereotypes and entering the political thicket of partisan gerrymandering.

This Court has long recognized that "[r]acial classifications of any sort pose the risk of lasting harm to our society." *Shaw*, 509 U.S. at 657; see also

Edmonson v. *Leesville Concrete Co.*, 500 U.S. 614 (1991) ("Racial discrimination [is] invidious in all contexts."). "Racial classifications with respect to voting carry particular dangers" because they "may balkanize us into competing racial factions" and threaten to "carry us further from the goal of a political system in which race no longer matters." *Shaw*, 509 U.S. at 657.

"Eliminating racial discrimination means eliminating all of it." *SFFA*, 600 U.S. at 206. As this Court recognized in *SFFA*, that means that race may never be used "as a stereotype or negative" and "at some point," racial classifications "must end." *Id.* at 213. Thus, to the extent current §2 jurisprudence perpetually authorizes federal courts to engage in racial stereotyping and participate in the "sordid business [of[divvying us up by race," it must end. *LULAC*, 548 U.S. at 511 (Roberts, C.J., concurring in part and dissenting in part).

This Court has also held that there is no "appropriate role for the Federal judiciary in remedying the problem of partisan gerrymandering." *Rucho*, 588 U.S. at 696 (internal quotations omitted). It necessarily follows that there is no appropriate role for the federal judiciary to *engage in* partisan gerrymandering. Indeed, the Framers "entrust[ed] districting to political entities," and "[a]t no point was there a suggestion that federal courts had a role to play." *Id.* at 701, 699. A jurisprudence that permits federal courts to engage in partisan gerrymandering to purportedly remedy race-based discrimination commits federal courts "to unprecedented

intervention in the American political process." *Id.* at 703–04.

This Court and others have long warned of the dangers of allowing §2 to become a partisan tool. Section 2 "is a balm for racial minorities, not political ones." *Baird* v. *Consolidated City of Indianapolis*, 976 F.2d 357, 361 (CA7 1992). As Justice Alito observed, "Unless courts 'exercise extraordinary caution' in distinguishing race-based redistricting from politics-based redistricting, they will invite the losers in the redistricting process to seek to obtain in court what they could not achieve in the political arena." *Cooper* v. *Harris*, 581 U.S. 285, 335 (2017) (Alito, J., concurring in part and dissenting in part) (internal citations omitted)).

But when it comes to redistricting, federal courts too often overstep their judicial role, engaging in blatantly unconstitutional racial sorting and impermissibly entering the political thicket of partisan gerrymandering, as in *Amici*'s and Alabama's cases.

Indeed, *Amici*'s case "exemplifies the tendency of the Court's race-obsessed jurisprudence to 'balkanize us into competing racial factions.'" *Alexander*, 602 U.S. at 60 (Thomas, J., concurring) (quoting *Shaw*, 509 U.S. at 657). The court "concluded that Hispanic voters in a majority-Hispanic district lacked an opportunity to elect the candidate of their choice, even though the district elected a Hispanic Republican." *Id.* The court then "purported to correct the lack of Hispanic opportunity by imposing a remedial map that made the district 'substantially more

Democratic,' but slightly less Hispanic." *Id.* (quoting *Palmer II*, 2024 U.S. Dist. LEXIS 50419, at *15).

This never-before-seen VRA remedy cannot be overstated. The district court purported to cure dilution of Hispanic voting strength by affirmatively lowering HCVAP. Specifically, the court lowered HCVAP in LD-15 from 52.6% to 50.2% in 2021 population numbers to, in the court's words, make the district "substantially more Democratic." *Palmer II*, 2024 U.S. Dist. LEXIS 50419, at *15. The court replaced Hispanic voters with White and Native American Democrats because those voters supposedly voted for candidates that Hispanic voters, in the courts view, are supposed to vote for. See *id.* at *6. To accomplish this, the court drew a horrifically racially gerrymandered district that resembled an octopus slithering along the ocean floor. See *id.* And the court went even further—gratuitously changing 13 out of 49 districts, altering the partisan composition of 10 districts (including flipping partisan control of two), and displacing multiple incumbents. See *id.*

All this from a single federal judge. In Washington, the state Democratic Party was thus able to achieve through a federal court what it could not achieve through the constitutionally mandated bipartisan redistricting process—more favorable Democratic districts in central Washington. Indeed, *Amici*'s case is so troubling that it led Justice Thomas to urge this Court to "correct course now" before its §2 jurisprudence "inflicts further damage." *Alexander*, 602 U.S. at 60.

Alabama's case is no better. There, the court split part of Mobile County and combined it with part of the Black Belt, two very different regions with very different interests, solely because the voters there were Black. See Pet.App.1037. And the court refused to credit clear evidence that White voters in District 2 do not vote as a monolith, as shown by the 2024 election of Shomari Figures, a Black Democrat, in a District with only 48.69% BVAP. See Pet.App.370–71.

Under the guise of §2, federal judges in both *Amici*'s and Alabama's cases engaged in blatant racial and partisan gerrymandering. This Court should return §2 to its original moors to prevent the further degradation of the judicial role.

CONCLUSION

For the foregoing reasons, the Court should grant certiorari and note probable jurisdiction.

Respectfully submitted,

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