The Constitutionality of Section 2 of the Voting Rights Act
Understanding Louisiana v. Callais

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Contents

Chapter 1

The Reconstruction Amendments

The 13th Amendment

Passed by Congress January 31, 1865. Ratified December 6, 1865.

> Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.
>
> Section 2. Congress shall have power to enforce this article by appropriate legislation.

The 14th Amendment

Passed by Congress June 13, 1866. Ratified July 9, 1868.

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
>
> Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.
>
> Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

The 15th Amendment

Passed by Congress February 26, 1869. Ratified March 30, 1870.

Section 1. The 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.

Section 2. The Congress shall have the power to enforce this article by appropriate legislation.

Chapter 2

Section 2 of the Voting Rights Act of 1965
as amended

52 U.S.C.A. § 10301
(Formerly cited as 42 U.S.C.A. § 1973)

Effective: September 1, 2014

§ 10301. Denial or abridgement of right to vote on account of race or color through voting qualifications or prerequisites; establishment of violation

(a)

No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 10303(f)(2) of this title, as provided in subsection (b).

(b)

A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided,* That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

Credits

(Pub.L. 89-110, Title I, § 2, Aug. 6, 1965, 79 Stat. 437; renumbered Title I, Pub.L. 91-285, § 2, June 22, 1970, 84 Stat. 314; amended Pub.L. 94-73, Title II, § 206, Aug. 6, 1975, 89 Stat. 402; Pub.L. 97-205, § 3, June 29, 1982, 96 Stat. 134.)

2.1 Markup showing changes from the original 1965 Act

SEC. 2. (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision ~~to deny or abridge~~ in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 10303(f)(2) of this title, as provided in subsection (b).

(b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

2.1.1 The importance of the 1982 amendments

The 1982 amendment to Section 2(a) of the Voting Rights Act prompted the Supreme Court to reverse its prior interpretation of Section 2, shifting from a requirement of intentional discrimination in *City of Mobile v. Bolden*, 446 U.S. 55 (1980), to a discriminatory effects standard in *Thornburg v. Gingles*, 478 U.S. 30 (1986). A key question before the Supreme Court in *Louisiana v. Callais*, No. 24-109 (U.S. argued Mar. 24, 2025) (rearg. sched. Oct. 2025), is whether the Court's longstanding acceptance of this congressionally imposed effects standard is precluded by the Equal Protection Clause of the Fourteenth Amendment, thereby aligning it with the intent requirement in *Washington v. Davis*, 426 U.S. 229 (1976), and potentially with *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023).

Chapter 3

Thornburg v. Gingles, 478 U.S. 30 (1986)

3.1 Detailed Case Facts

North Carolina enacted a legislative redistricting plan in 1982 following the decennial census. Several districts were structured as *multi-member districts* (MMDs), in which multiple legislators would be elected at-large from the same district. MMDs let cohesive majority groups secure all or most of the seats by outvoting minority candidates across the board. This setup dilutes the influence of minorities, who might otherwise win seats in single-member districts where their votes are more concentrated geographically. Black voters challenged these districts, claiming they diluted minority voting power by allowing the white majority to override the political preferences of Black voters.

The case was litigated under Section 2 of the Voting Rights Act of 1965, as amended in 1982. The amendment was critical: it replaced the Supreme Court's requirement of proving discriminatory *intent* (from *City of Mobile v. Bolden*, 446 U.S. 55 (1980)) with a "results test." Under the amended Section 2, plaintiffs could prevail by showing that a law or electoral structure had the *effect*[1] of denying minority voters an equal opportunity to participate in the political process and elect representatives of their choice.

3.2 Procedural History

- 1982: North Carolina enacts new legislative map, including multi-member districts.
- Black voters challenge the plan in federal district court under Section 2.
- The three-judge district court holds that several of the multi-member districts violate Section 2.
- The state appeals directly to the U.S. Supreme Court.
- 1986: Supreme Court affirms the district court in part and establishes a new framework for Section 2 claims.

[1]Note already the tension with Washington v. Davis, 426 U.S. 229 (1976), which had held that violations of the 14th amendment required intentional conduct; discriminatory effect was not enough. There had been thought, however, under Katzenbach v. Morgan, 384 U.S. 641 (1966), the the enforcement provisions of the 14th amendment permitted Congress to remedy situations that were not themselves violations of the equal protection clause. The generosity of Katzenbach v. Morgan would later be questioned in City of Boerne v. Flores, 521 U.S. 507 (1997), but at the time Gingles was decided Katzenbach provided cover for Congress to rely on an effects test.

3.3 Judicial Votes

Majority Opinion: Justice Brennan, joined by White, Marshall, Blackmun, Powell, Stevens; O'Connor joined in part.

Concurring in part: Justice O'Connor (joined by Burger and Rehnquist in parts).

Dissent in part: Chief Justice Burger and Justice Rehnquist expressed concern about proportional representation implications.

3.4 Holding

The Court held that North Carolina's multi-member districts unlawfully diluted Black voting strength under Section 2 of the Voting Rights Act. The Court established the three-part test—later known as the *Gingles preconditions*—for proving vote dilution.

3.5 Analysis of Opinions

3.5.1 Majority (Justice Brennan)

The Court emphasized Congress's shift from an "intent test" to a "results test." Brennan announced three preconditions that plaintiffs must satisfy in order to establish a Section 2 violation:

1. The minority group is sufficiently large and geographically compact to constitute a majority in a single-member district.
2. The minority group is politically cohesive.
3. The majority votes as a bloc strongly enough to usually defeat the minority's preferred candidate.

If these are established, courts then assess the *totality of the circumstances*, referencing factors outlined in the Senate Judiciary Committee report accompanying the 1982 amendments (historical discrimination, racial polarization, candidate slating, responsiveness of officials, etc.).

3.5.2 Concurrence (Justice O'Connor)

Justice O'Connor agreed with the framework but emphasized that Section 2 should not be read to guarantee proportional representation. She warned against race being the "predominant" factor in districting.

3.5.3 Dissent (Rehnquist, Burger)

They expressed concern that the Court's test in practice would pressure states toward proportional representation, contrary to statutory language disclaiming such a requirement.

3.6 Examples: Future Applications

- **Example 1 (Same Side):** A state with a 25% Hispanic population concentrated in one city uses an at-large system preventing Hispanic voters from electing candidates. Result: Section 2 violation.

- **Example 2 (Same Side):** A state draws multi-member districts that consistently submerge a geographically compact Black community, preventing them from electing their preferred candidate. Result: Violation under *Gingles*.
- **Example 3 (Opposite Side):** A minority population is only 10% statewide and geographically dispersed. No compact single-member district could be drawn. Result: No violation (fails the first precondition).
- **Example 4 (Opposite Side):** A minority group is geographically compact but consistently splits its vote among rival candidates. Result: No violation (fails the second precondition).
- **Example 5 (Unclear):** A group comprises 48% of a district, is fairly cohesive, and sometimes succeeds in coalition with white voters. Outcome depends on empirical proof of "usual" defeat and bloc voting patterns.

3.7 Critique

Praise: The decision breathed life back into Section 2 after *Bolden*, making it a powerful tool against discriminatory districting and electoral structures. Scholars view it as essential in protecting minority representation in the post-civil rights era South.

Criticism: Some argue the framework entrenches racial considerations in districting and flirts with proportional representation, despite statutory disclaimers. Others note the difficulty of applying the "totality of circumstances" test, which can produce inconsistent results. Political scientists argue the assumption of cohesive racial voting oversimplifies complex political behavior.

Analytical Note: The *Gingles* framework continues to structure modern Voting Rights Act cases, including *Allen v. Milligan* (2023). The case illustrates the enduring tension between race-conscious remedies and "colorblind" constitutional ideals.

3.8 Key Quotations

- "The essence of a §2 claim is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by Black and white voters." – Brennan.
- "Unless minority voters possess the potential to elect representatives in the absence of the challenged structure or practice, they cannot claim to have been injured by that structure or practice." – Brennan.
- "Section 2 does not guarantee proportional representation for minority groups." – O'Connor, concurring.

Chapter 4

Shaw v. Reno, 509 U.S. 630 (1993)

4.1 Detailed Case Facts

Following the 1990 census, North Carolina submitted a congressional redistricting plan with one majority-Black district. The U.S. Department of Justice, exercising preclearance authority under Section 5 of the Voting Rights Act,[1] objected and requested a second majority-Black district. The state responded by creating an unusually shaped second district, stretching along Interstate 85 for 160 miles and at points no wider than the highway. Critics described it as a "snake-like" district designed almost exclusively to connect disparate Black communities.

Five white voters challenged the district as an unconstitutional racial gerrymander under the Equal Protection Clause of the Fourteenth Amendment. They argued that the district's bizarre shape could only be explained by race-based motives.

4.2 Procedural History

- 1991: North Carolina legislature enacts the new plan with two majority-Black districts.
- Voters challenge in federal district court.
- District court dismisses the complaint, holding no cognizable claim.
- Supreme Court grants certiorari.

4.3 Judicial Votes

Majority: Justice O'Connor, joined by Rehnquist, Scalia, Kennedy, and Thomas.

Dissent: Justice White, joined by Blackmun and Stevens; Justice Souter separately.

[1] Today, section 5, though technically still on the books is essentially unenforceable. This status is a direct result of the Supreme Court's decision in *Shelby County v. Holder*, 570 U.S. 529 (2013). The Court in that case did not strike down §5, the preclearance requirement itself. Instead, it invalidated the coverage formula in §4(b), which specified which jurisdictions were automatically subject to federal oversight based on their history of discrimination. By striking down the formula, the Court left §5 dormant; without a constitutionally valid list of covered jurisdictions, there is no entity to which the preclearance requirement can be broadly applied. The Court left it to Congress to enact a new formula based on current data, which has not occurred. The only remaining mechanism for enforcing preclearance is the 'bail-in' provision of §3(c), which allows a court to subject a specific jurisdiction to federal oversight after a finding of intentional voting discrimination.

4.4 Holding

The Supreme Court held that claims of racial gerrymandering are justiciable under the Equal Protection Clause. A redistricting plan that is "so bizarre on its face that it is unexplainable on grounds other than race" demands strict scrutiny. The case was remanded for further proceedings.

4.5 Analysis of Opinions

4.5.1 Majority (O'Connor)

The Court emphasized that race-based districting, even when designed to enhance minority representation, may stigmatize individuals by making race the predominant factor in political decision-making. O'Connor distinguished between compliance with the Voting Rights Act (permissible) and using race as the dominant motive (constitutionally suspect). The "bizarre shape" of the district suggested race predominated over traditional districting principles, triggering strict scrutiny.

4.5.2 Dissent (White)

Justice White argued that the plaintiffs lacked standing and had not alleged any concrete injury. He warned that the majority's approach undermined efforts to remedy historic racial exclusion from the political process. Justice Souter similarly criticized the majority for elevating form (district shape) over substance (representational fairness).

4.6 Examples: Future Applications

- **Example 1 (Same Side):** A state draws a bizarrely shaped district connecting distant Black communities, ignoring compactness and contiguity. Court applies strict scrutiny under *Shaw*.
- **Example 2 (Same Side):** A legislature creates a winding district linking scattered Hispanic populations while ignoring political subdivisions. Plaintiffs succeed in alleging racial predominance.
- **Example 3 (Opposite Side):** A state creates a compact majority-minority district centered in a geographically cohesive community. Court upholds it as consistent with traditional criteria.
- **Example 4 (Opposite Side):** A district is oddly shaped due to geographic features (rivers, mountain ranges) or partisan gerrymandering, not race. Court finds no Equal Protection violation.
- **Example 5 (Unclear):** A district is moderately irregular and explained by both racial considerations (to comply with the Voting Rights Act) and political motivations. Whether strict scrutiny applies depends on evidence of racial predominance.

4.7 Critique

Praise: The decision recognized limits to race-conscious districting, affirming the principle of equal protection and preventing racial stereotyping in political line drawing.

Criticism: Scholars argue that *Shaw* undermined the Voting Rights Act by chilling efforts to create minority-opportunity districts. By treating racial identity as inherently suspect, the Court equated remedial race-conscious districting with invidious racial classifications. Critics contend that the ruling prioritized aesthetic concerns about "bizarre" shapes over substantive representation.

Analytical Note: *Shaw* inaugurated the "racial gerrymandering" line of cases, later refined in *Miller v. Johnson* (1995) and subsequent decisions. It created a legal environment in which states must carefully balance VRA compliance with Equal Protection limits, while defendants often justify unusual districts on grounds of partisanship or incumbency.

Analytical Note: Some may wonder whether gerrymandering is covered by section 2 of the Voting Rights Act at all. That provision certainly does not explicitly prohibit it. But it did not explicitly prohibit multimember district either. In *Growe v. Emison*, 507 U.S. 25 (1993), the court unanimously found that section 2 applied to gerrymandering. Justice Scalia, writing for the court, said, "It would be peculiar to conclude that a vote-dilution challenge to the (more dangerous) multimember district requires a higher threshold showing than a vote-fragmentation challenge to a single-member district. Certainly the reasons for the three Gingles prerequisites continue to apply ..." The Court did not discuss the concept that Congress had explicitly required districts to be compact (i.e. not gerrymandered) in laws passed in the first part of the Twentieth Century and certainly could have done so again as part of the Voting Rights Act. Perhaps Congress did not want to prohibit non-racial gerrymandering, which was certainly occurring for a variety of reasons, including partisan considerations, in much of the nation.

4.8 Key Quotations

- "A reapportionment plan that includes in one district individuals who belong to the same race, but who are otherwise widely separated by geographical and political boundaries, and who may have little in common with one another but the color of their skin, bears an uncomfortable resemblance to political apartheid." – O'Connor, majority.
- "Redistricting legislation that is so bizarre on its face that it is unexplainable on grounds other than race demands the same strict scrutiny applied to other state laws that classify citizens by race." – O'Connor, majority.
- "The Court today finds standing and recognizes injury where none exists." – White, dissent.

4.9 Reconciling Thornburg v. Gingles and Shaw v. Reno

The apparent tension between *Thornburg v. Gingles* (1986) and *Shaw v. Reno* (1993) arises from the dual commands of the Voting Rights Act and the Equal Protection Clause. Although both cases remain "good law" for now, it is hardly clear that the truce is stable or intellectually coherent.

Section 2 of the Voting Rights Act, as interpreted in *Gingles*, requires states to create a minority opportunity district under certain circumstances. Specifically, if a minority group is sufficiently large, geographically compact, and politically cohesive, and if white bloc voting usually defeats the minority's preferred candidates, then Section 2 obligates the state to draw a district in which minority voters have a fair opportunity to elect representatives of their choice. To perform this inquiry, states necessarily must take account of race.

At the same time, the Equal Protection Clause limits how race may be used. In *Shaw*, the Court held that if race is the predominant factor in districting, and if the district takes on a bizarre shape that cannot be explained by traditional districting criteria such as compactness, contiguity, and respect for political subdivisions, then the plan is subject to strict scrutiny. Under that standard, the state must show a compelling interest and narrow tailoring. Compliance with the Voting Rights Act can serve as such a compelling interest, but the use of race must not go further than necessary.

Thus, the synthesis is as follows: Section 2 sometimes requires states to be race-conscious when drawing districts, but the Constitution requires that this be done in a manner that does not elevate race above all else. If a state can create a compact, traditional majority-minority district to comply with Section 2, the plan will be upheld. If compliance produces a highly irregular district that appears driven almost entirely by race, the plan must survive strict scrutiny or be struck down.

In short, *Gingles* describes when race must matter, while *Shaw* describes when race cannot matter too much. The doctrine places legislatures in a narrow channel: use race enough to avoid liability under the Voting Rights Act, but not so much that the Equal Protection Clause is violated.

Chapter 5

Miller v. Johnson, 515 U.S. 900 (1995)

5.1 Detailed Case Facts

After the 1990 census, Georgia created an additional majority-Black congressional district under pressure from the Department of Justice during the preclearance process mandated by Section 5 of the Voting Rights Act. The resulting Eleventh District was highly irregular in shape, stretching 260 miles to connect disparate Black communities. White voters challenged the plan as a racial gerrymander under the Equal Protection Clause.

5.2 Procedural History

- 1992: Georgia enacts the Eleventh District plan.
- White voters sue, alleging unconstitutional racial gerrymandering.
- District court strikes down the district.
- Supreme Court affirms in 1995.

5.3 Judicial Votes

Majority: Kennedy, joined by Rehnquist, O'Connor, Scalia, Thomas. **Dissent:** Stevens, Ginsburg, Breyer, Souter (partial).

5.4 Holding

The Court held that race was the predominant factor in drawing Georgia's Eleventh District. Because traditional districting principles were subordinated to racial considerations, strict scrutiny applied. Georgia's plan failed strict scrutiny because it was not narrowly tailored to comply with the Voting Rights Act.

5.5 Analysis of Opinions

5.5.1 Majority (Kennedy)

The Court reaffirmed *Shaw v. Reno*: racial gerrymandering claims are cognizable when race predominates in district design. Kennedy stressed that compliance with the Voting Rights Act cannot justify bizarre districts when drawn primarily by race. The DOJ's aggressive preclearance demands did not excuse unconstitutional racial predominance.

5.5.2 Dissent (Stevens)

Stevens argued the majority undervalued the remedial purpose of the Voting Rights Act. He emphasized deference to legislatures attempting to remedy historical exclusion of Black voters, warning that the decision chilled legitimate race-conscious districting.

5.6 Examples: Future Applications

- **Example 1 (Same Side):** A state draws a serpentine district connecting distant minority populations; plaintiffs prevail under *Miller*.
- **Example 2 (Opposite Side):** A compact minority-majority district is drawn in a geographically cohesive community; upheld as valid.
- **Example 3 (Unclear):** A district mixes motives—race and incumbency protection. Court's outcome depends on which factor predominates.

5.7 Critique

Praise: *Miller* reinforced constitutional limits on race-based districting, balancing VRA compliance with Equal Protection principles.

Criticism: Scholars argue the Court misread the VRA's requirements and hampered efforts to secure minority representation. The decision elevated "racial predominance" analysis in ways that gave states cover to justify racialized maps as partisan.

5.8 Key Quotations

- "The Constitution forbids the State from sorting citizens into districts on the basis of race without sufficient justification." – Kennedy, majority.
- "The State must show that its districting legislation is narrowly tailored to achieve a compelling interest." – Kennedy.
- "By striking down this plan, the Court discourages compliance with the Voting Rights Act." – Stevens, dissent.

Chapter 6

Rucho v. Common Cause, 588 U.S. 684 (2019)

6.1 Detailed Case Facts

After the 2010 census, North Carolina's Republican-controlled legislature enacted a congressional redistricting plan in 2016 that produced a 10–3 Republican advantage, despite the state being politically competitive. Plaintiffs, including Common Cause and the League of Women Voters, challenged the map as an unconstitutional partisan gerrymander.

The case implicated multiple constitutional provisions. Plaintiffs alleged violations of the First Amendment (retaliation against voters based on political association), the Equal Protection Clause (discriminatory treatment of voters based on party affiliation), and Article I's guarantee of fair congressional elections.

The case raised the broader question of whether federal courts could adjudicate claims of partisan gerrymandering at all, or whether such disputes are inherently political questions reserved for the political branches.

6.2 Procedural History

- 2016: North Carolina enacts new congressional map after prior map struck down as a racial gerrymander.
- 2018: A three-judge district court holds that the 2016 plan was an unconstitutional partisan gerrymander under the First and Fourteenth Amendments.
- State legislators appeal directly to the Supreme Court.
- 2019: Supreme Court reverses, holding partisan gerrymandering claims are non-justiciable political questions.

6.3 Judicial Votes

Majority: Chief Justice Roberts, joined by Thomas, Alito, Gorsuch, and Kavanaugh.

Dissent: Justice Kagan, joined by Ginsburg, Breyer, and Sotomayor.

6.4 Holding

Partisan gerrymandering claims present political questions beyond the reach of federal courts. The Constitution does not provide a judicially manageable standard to determine when partisan gerrymandering goes "too far." Regulation of such practices is left to state courts, state constitutions, and Congress.

6.5 Analysis of Opinions

6.5.1 Majority (Roberts)

Roberts emphasized that while extreme partisan gerrymanders are "incompatible with democratic principles," there is no judicially discoverable and manageable standard to adjudicate them under the Constitution. He distinguished between racial gerrymandering, which is justiciable under the Equal Protection Clause, and partisan gerrymandering, which lacks a constitutional anchor. The opinion pointed to state-level reforms—independent commissions, state constitutional provisions, and congressional power under Article I—as avenues for relief.

6.5.2 Dissent (Kagan)

Justice Kagan, in a passionate dissent, argued that partisan gerrymandering violates both equal protection and First Amendment rights by entrenching one party in power and retaliating against voters based on viewpoint. She asserted that workable standards existed, drawing from expert evidence and lower court precedents, and accused the majority of abdicating judicial responsibility in the face of a profound democratic threat.

6.6 Examples: Future Applications

- **Example 1 (Plaintiffs argue racial gerrymander):** Plaintiffs challenge a bizarrely shaped district, framing it as race-based rather than partisan. Because racial gerrymandering claims remain justiciable, this strategy allows courts to scrutinize maps even when partisan advantage is the underlying motivation.

- **Example 2 (Defendants emphasize partisanship):** States defend irregular maps by asserting incumbency protection or partisan advantage as the predominant motive. Since *Rucho* shields partisan gerrymanders from federal review, this defense can insulate maps from Section 2 or Equal Protection challenges unless plaintiffs prove race predominated.

- **Example 3 (State court venue):** Plaintiffs bring partisan gerrymander claims under state constitutions (e.g., Pennsylvania, North Carolina) with greater success. This reflects the Supreme Court's directive that state law, not federal law, governs such disputes.

- **Example 4 (Congressional action):** In theory, Congress could legislate uniform redistricting standards under Article I, but partisan divisions make this unlikely, leaving the issue primarily to states.

- **Example 5 (Hybrid claim, unclear):** Plaintiffs allege a district both dilutes minority voting strength and entrenches partisan power. If evidence of racial predominance is ambiguous, courts may struggle to categorize the case—potentially justiciable as racial, non-justiciable as partisan.

6.7 Critique

Praise: Some scholars and jurists support the ruling as consistent with the political question doctrine. They argue that federal courts lack expertise to distinguish permissible from impermissible partisan considerations and that political remedies—through state constitutions and congressional legislation—are more appropriate.

Criticism: The decision is widely criticized as an abdication of judicial duty in protecting democratic governance. Critics argue that workable standards (e.g., efficiency gap, partisan symmetry) had been developed and could have guided courts. By closing the federal courthouse doors, *Rucho* entrenches partisan gerrymandering and incentivizes states to justify racial gerrymanders in partisan terms.

Analytical Note: The case creates a strategic landscape: plaintiffs increasingly frame challenges as racial gerrymanders (justiciable), while defendants invoke partisan or incumbency-based justifications (non-justiciable). This doctrinal fork magnifies the importance of how claims are pleaded and how motives are characterized.

6.8 Key Quotations

- "Excessive partisanship in districting leads to results that reasonably seem unjust. But the fact that such gerrymandering is incompatible with democratic principles does not mean the solution lies with the federal judiciary." – Roberts, majority.
- "Of all the times to abandon the Court's duty to declare the law, this was not the one. The practices challenged in these cases imperil our system of government." – Kagan, dissent.

Chapter 7

Allen v. Milligan, 599 U.S. 1 (2023)

7.1 Detailed Case Facts

Following the 2020 census, Alabama redrew its congressional districts, preserving only one majority-Black district out of seven, despite a Black voting-age population exceeding 27%. Plaintiffs, including NAACP local branches and individual voters led by Evan Milligan, challenged the new map under Section 2 of the Voting Rights Act of 1965 and the Fourteenth Amendment. They argued that the map diluted Black political power by "packing" and "cracking" Black communities, especially those in Alabama's historic Black Belt.

Section 2 prohibits any voting law or practice that results in the denial or abridgment of the right to vote on account of race or color. The challenge was grounded in the three-part test from *Thornburg v. Gingles*, 478 U.S. 30 (1986), which requires: (1) the minority group is sufficiently large and geographically compact to constitute a majority in a single-member district; (2) the group is politically cohesive; and (3) the majority votes sufficiently as a bloc to defeat the minority's preferred candidate.

7.2 Procedural History

- Jan 2022: Three-judge district court grants preliminary injunction, finding plaintiffs likely to succeed under Section 2.
- Feb 2022: Supreme Court grants Alabama's application for a stay and agrees to hear the case.
- Oct 2022: Oral argument before the Supreme Court.
- June 2023: Supreme Court affirms the district court's injunction, ordering Alabama to create a second Black-opportunity district.
- Sept 2023 – May 2025: Alabama resists compliance; federal court reaffirms need for a compliant map, citing continued Section 2 and Fourteenth Amendment violations.

7.3 Judicial Votes

Majority Opinion: Chief Justice Roberts (except Part III-B-1), joined by Justices Sotomayor, Kagan, Jackson; Justice Kavanaugh joins all but Part III-B-1.

Concurrence: Justice Kavanaugh (except Part III-B-1).

Dissent:

- Justice Thomas (joined in parts by Gorsuch, Alito, Barrett).
- Justice Alito (joined by Gorsuch).

7.4 Holding

The Supreme Court held that Alabama's 2021 congressional redistricting plan likely violated Section 2 of the Voting Rights Act by diluting Black voting strength. The Court affirmed the lower court's injunction and ordered Alabama to adopt a plan with a second Black-opportunity district.

7.5 Analysis of Opinions

7.5.1 Majority (Roberts)

The Court reaffirmed the *Gingles* framework and found the plaintiffs met all three prongs. It rejected Alabama's argument that Section 2 does not require race-based districting and emphasized that the law allows race to be considered when necessary to remedy vote dilution. Roberts emphasized that Alabama's Black population was sufficiently large and compact to support a second majority-Black district and that Black voters were politically cohesive.

7.5.2 Concurrence (Kavanaugh)

Justice Kavanaugh joined the majority but expressed concern about the long-term constitutionality of race-conscious remedies. He suggested that while Section 2 currently authorizes such remedies, there may be constitutional limits over time—a signal that future race-based redistricting may not be indefinitely permissible.

7.5.3 Dissent (Thomas)

Justice Thomas argued that Section 2 does not require proportional representation and that it cannot constitutionally mandate race-based districting. He viewed the majority's interpretation as inconsistent with equal protection principles and warned against judicially compelled racial classifications.

7.5.4 Dissent (Alito)

Justice Alito emphasized that the majority's interpretation risked elevating race above other districting principles and that judicial enforcement of proportional outcomes is beyond the statute's original intent.

7.6 Examples: Future Applications

- **Example 1 (Same Side):** A state with 30% Hispanic voters but only one district with a 20% Hispanic population. The population is compact and politically cohesive. Result: Section 2 violation.
- **Example 2 (Same Side):** A map splits a large, cohesive Black community across three districts, preventing them from electing a representative. Result: Violation; second opportunity district required.
- **Example 3 (Opposite Side):** A minority group is dispersed across the state with no possibility of forming a compact majority district. Result: No Section 2 violation.

- **Example 4 (Opposite Side):** A proposed map creates a second minority district by violating traditional districting principles (e.g., extreme gerrymandering). Result: Remedy fails; state's plan upheld.
- **Example 5 (Unclear):** A minority group comprises 49% in one district and 48% in another. Political cohesion is uncertain. Result: Likely litigated; outcome depends on detailed factual findings.

7.7 Critique

Legal scholars broadly praised the decision for reaffirming Section 2 and halting a trend of judicial erosion of the Voting Rights Act post-*Shelby County v. Holder*. However, concerns remain about the narrowness of the ruling and Kavanaugh's signaling of future constitutional limits.

From a critical perspective, the majority sidestepped deeper equal protection concerns and failed to provide clarity on how long race-conscious redistricting can remain permissible. The decision leaves unresolved tensions between anti-discrimination statutes and colorblind constitutional doctrines.

7.8 Key Quotations

- "This Voting Rights Act case is not close." – Chief Justice Roberts
- "We are deeply troubled that the State enacted a map that the State readily admits does not provide the remedy we said federal law requires." – Roberts, on Alabama's noncompliance
- "Even if race-based redistricting is permissible now, the authority to conduct such redistricting cannot extend indefinitely into the future." – Justice Kavanaugh
- "The Constitution does not permit federal judges to reengineer state electoral maps on the basis of race." – Justice Thomas, dissent

Chapter 8

Students for Fair Admissions v. President and Fellows of Harvard College, 600 U.S. 181 (2023)

8.1 Detailed Case Facts

Students for Fair Admissions (SFFA), a nonprofit organization led by Edward Blum, challenged the admissions policies of Harvard College and the University of North Carolina (UNC). Both institutions used race as one factor among many in holistic admissions, consistent with prior Supreme Court precedents such as *Grutter v. Bollinger* (2003). SFFA alleged that these policies violated Title VI of the Civil Rights Act (for Harvard, as a private institution receiving federal funds) and the Equal Protection Clause of the Fourteenth Amendment (for UNC, a public university).

Evidence showed that Harvard's admissions practices systematically disadvantaged Asian-American applicants relative to similarly qualified applicants of other racial backgrounds.

8.2 Procedural History

- 2014: SFFA files suit against Harvard and UNC.
- District courts uphold both admissions systems as consistent with precedent.
- First Circuit affirms Harvard's plan; UNC case proceeds.
- Supreme Court grants certiorari and consolidates the cases.
- 2023: Supreme Court rules for SFFA, striking down both admissions systems.

8.3 Judicial Votes

Majority: Roberts, joined by Thomas, Alito, Gorsuch, Kavanaugh, Barrett. **Concurrences:** Thomas, Gorsuch, Kavanaugh. **Dissents:** Sotomayor (joined by Kagan and Jackson, except in Harvard where Jackson recused), Jackson (in UNC only).

8.4 Holding

The Supreme Court held that Harvard's and UNC's race-conscious admissions programs violated the Equal Protection Clause. The Court ruled that the Fourteenth Amendment requires race-blindness in admissions and that universities may not use race as a factor in evaluating applicants.

8.5 Analysis of Opinions

8.5.1 Majority (Roberts)

Chief Justice Roberts emphasized that the Equal Protection Clause requires eliminating racial classifications, declaring that "eliminating racial discrimination means eliminating all of it." He found that the universities' programs failed strict scrutiny: they did not offer sufficiently measurable or limited objectives, relied on stereotypes, and operated without meaningful end points. The majority stressed that "race neutrality" is constitutionally mandated.

8.5.2 Concurring (Thomas, Gorsuch, Kavanaugh)

- Justice Thomas reiterated his long-standing view that affirmative action constitutes unconstitutional racial discrimination. - Justice Gorsuch emphasized that Title VI incorporates the same nondiscrimination principles as the Equal Protection Clause. - Justice Kavanaugh highlighted the temporal limits implicit in *Grutter*, arguing that affirmative action had already exceeded any permissible duration.

8.5.3 Dissent (Sotomayor, Jackson)

Justice Sotomayor argued that the majority distorted the Fourteenth Amendment, which was historically intended to remedy racial inequality. Justice Jackson stressed that race-conscious admissions addressed real and ongoing racial disparities and that race-blindness ignores entrenched inequality.

8.6 Examples: Future Applications

- **Example 1 (Same Side):** A university awards admissions points explicitly for minority racial status. Struck down as unconstitutional.
- **Example 2 (Same Side):** A public law school uses racial preferences in admissions to increase diversity. Invalid under the new rule.
- **Example 3 (Opposite Side):** A university adopts socioeconomic-based admissions preferences that disproportionately benefit minority students. Upheld as race-neutral.
- **Example 4 (Opposite Side):** A state university implements geographic diversity preferences (e.g., rural areas) that indirectly boost minority enrollment. Upheld as facially neutral.
- **Example 5 (Unclear):** A school allows applicants to discuss how race has shaped their life in essays, and admissions officers may consider that narrative. The Court left this question somewhat open, but stressed any use of race as a plus factor is impermissible.

8.7 Critique

Praise: The decision enforces a strong version of colorblind constitutionalism, aligning with a long-standing conservative view that the Fourteenth Amendment forbids all racial classifications.

Criticism: Scholars argue the ruling ignores historical context, undermines efforts to achieve substantive racial equality, and effectively overturns decades of precedent (e.g., *Grutter*, *Fisher*). Critics note that by demanding race-blindness, the Court risks entrenching systemic inequalities that race-conscious policies sought to redress.

8.8 Key Quotations

- "Eliminating racial discrimination means eliminating all of it." – Roberts, majority.
- "Our constitutional history does not tolerate a classification that treats any individual as simply the product of their race." – Roberts.
- "With let-them-eat-cake obliviousness, today, the majority pulls the ripcord and announces colorblindness for all, by legal fiat." – Sotomayor, dissent.

8.9 Why is SFFA v. Harvard even relevant to voting rights cases?

Though it may seem far afield from voting rights, the Supreme Court's 2023 decision in Students for Fair Admissions (SFFA) v. Harvard is highly relevant to the future constitutionality of Section 2. The SFFA ruling was grounded in the principle that the Equal Protection Clause demands race-blindness and that any deviation must be temporary. The Court declared that all race-conscious remedies must have a "logical end point." This creates a direct constitutional challenge to Section 2, which has operated for decades without any such sunset provision.

This precedent makes it difficult—though not impossible—to reconcile how explicit race-consciousness can be impermissible when admitting a student to college but permissible when drawing a legislative district. The core tension is this: if the Constitution requires near-absolute colorblindness in education, how can it tolerate a statutory scheme in voting that requires states to be acutely aware of race to avoid diluting the votes of a racial minority?

Defenders of Section 2 would argue there are crucial distinctions. In education, the Court viewed race as a "plus factor" for one applicant that became a "minus factor" for another in a zero-sum competition for a limited number of university seats. In voting, however, Section 2 is not about individual competition but about remedying a specific, structural harm—organized racial bloc voting that nullifies the collective political power of an entire community. Furthermore, the Fifteenth Amendment provides a more explicit, text-based constitutional authority for Congress to legislate on the issue of race in voting. Despite these distinctions, SFFA provides the clear constitutional framework and the precise "durational limit" language that challengers are now using to argue that Section 2's time has run out.

Chapter 9

The Serpentine Path of Louisiana v. Callais

9.1 Introduction: The Louisiana Muddle

When the Supreme Court granted certiorari in *Louisiana v. Callais*, observers expected a decision that would, at the very least, clarify the treacherous waters states must navigate between the Voting Rights Act of 1965 (VRA) and the Equal Protection Clause of the Fourteenth Amendment. The case presented a near-perfect legal paradox. A federal court in one case, *Robinson v. Ardoin*, had effectively ordered Louisiana to draw a second majority-Black congressional district to comply with Section 2 of the VRA. In response, the state legislature, seeking to protect its high-profile incumbents like the Speaker of the House, drew a bizarre, serpentine district that stretched 250 miles across the state to connect disparate Black populations. Immediately, a second group of plaintiffs sued in a new case, *Callais*, arguing this new district was itself an unconstitutional racial gerrymander. Louisiana's lawyer, J. Benjamin Aguiñaga, perfectly captured the state's exasperation during oral argument: "Louisiana would rather not be here... we would rather not be caught between two parties with diametrically opposed visions of what our congressional map should look like. But this has became life as usual for the states under this Court's voting cases". The stage was set for a landmark ruling on the interplay between VRA compliance and racial predominance. Instead, on June 27, 2025, the Court did something far more dramatic: it punted. In a terse, unsigned order, it announced the cases would be "restored to the calendar for reargument". This time, however, the focus would not be on the narrow facts of Louisiana's map, but on the foundational constitutional question that has simmered for decades: Does Section 2 of the VRA, as currently interpreted, exceed Congress's authority and violate the Constitution? The decision to rehear the case, and the sharp dissents it provoked from Justices Jackson and Thomas, provides a crucial window into the Court's internal fractures on voting rights. These two dissents, one from a procedural order and one from the re-argument order, reveal two profoundly different judicial philosophies and sets of concerns—one focused on the practical realities of election law and judicial process, the other on resolving what it sees as a festering and intolerable constitutional conflict. For law students seeking to understand the stakes when *Callais* returns to the docket, these opinions are the essential prologue.

9.2 Process and Pragmatism: Justice Jackson's Dissent from the Stay

Long before the Court ordered re-argument, it first intervened in the case through its emergency docket. In May 2024, the Court granted a stay, halting a lower court order that would have replaced the state's "snake-

like" map with a court-drawn one for the 2024 elections. Justice Ketanji Brown Jackson dissented from this initial intervention, and her reasoning was grounded not in grand constitutional theory, but in judicial pragmatism and procedural order. Her dissent framed the issue before the Court as "far more quotidian" than the weighty questions of racial equality that animated the litigation. The only real question, she argued, was one of timing: "When does Louisiana need a new map for the November 2024 election?". She took issue with the majority's reliance on the *Purcell* principle, which cautions against courts changing election rules close to an election to avoid "voter confusion". For Justice Jackson, this was a misapplication of the doctrine. With the election still months away, she saw little risk of confusion and argued the Court had often allowed redistricting orders to proceed on similar or even tighter timelines. The core of her dissent was a deep respect for the institutional role of the district court. The lower court, having held a full trial, was in the best position to manage the remedial process, including adjusting deadlines if administrative problems arose. The Supreme Court, she argued, had waded in prematurely. Her conclusion was a model of judicial restraint:

> Rather than wading in now, I would have let the District Court's remedial process run its course before considering whether our emergency intervention was warranted.

Justice Jackson's concern was not with the ultimate rightness of Louisiana's map or the constitutionality of the VRA. It was with the proper functioning of the judicial system. Her dissent champions a bottom-up approach, where trial courts are given the deference to find facts and fashion remedies, and the Supreme Court intervenes only when absolutely necessary. It reflects a view of the Court as a supervisor of the legal system, one that should prioritize stability, procedural regularity, and allowing a full record to develop before making momentous decisions.

9.3 Principle and Impatience: Justice Thomas's Dissent from Reargument

If Justice Jackson's dissent was about process, Justice Clarence Thomas's dissent from the re-argument order was about first principles. It was a broadside against the Court's entire VRA jurisprudence, radiating an impatience that bordered on indignation. For Justice Thomas, the Court's decision to delay was an abdication of its most fundamental duty. "Congress requires this Court to exercise jurisdiction over constitutional challenges to congressional redistricting," he began, "and we accordingly have an obligation to resolve such challenges promptly". He argued that the *Callais* case perfectly crystallized an "intractable conflict" between the Court's interpretation of VRA §2 and the Equal Protection Clause. The Court, in his view, has allowed its VRA jurisprudence to drift so far from its original purpose that it now actively compels the very racial sorting the Constitution forbids. He was especially critical of the Court's 2023 decision in *Allen v. Milligan*, which he said "placed the VRA in direct conflict with the Constitution" by blessing a standard that effectively requires racial proportionality in redistricting whenever it is computationally feasible. Justice Thomas's opinion reads as a culmination of over three decades of his own writings on the issue. He declared that the Court's "§2 jurisprudence is broken beyond repair" and is the latest installment in a "'disastrous misadventure'". He saw no reason to wait for new arguments or developments, because the core issue was simple and unchanging: "The Constitution is supreme over statutes... and no intervening developments will change that". His proposed resolution was just as direct:

> I would make clear that where this Court's interpretation of §2 breaches the Constitution's equal protection guarantee, the Constitution controls.

This dissent is unconcerned with the "quotidian" details of election administration. Its focus is entirely on the substantive law. It reflects a judicial philosophy that prioritizes constitutional structure and principle over statutory precedent or procedural deference. Justice Thomas sees a clear constitutional error and believes the Court has not only the power but an urgent obligation to correct it immediately, regardless of the procedural posture. He is not interested in letting a remedial process "run its course" when he believes the legal foundation for that entire process is rotten.

9.4 The Oral Argument: A Preview of the Conflict

The oral argument on March 24, 2025, served as a public stage for the very tensions reflected in the dissents. The state's lawyer articulated the practical dilemma, emphasizing that after federal courts told them what the VRA "likely requires," the state made the "politically rational decision" to draw its own map to protect its powerful incumbents. This practical argument resonated with justices like Sotomayor and Kagan, who pressed the challenger on what else the state could have done. Yet, the undercurrent of a deeper, constitutional challenge was unmistakable. Justice Alito repeatedly questioned the validity of the underlying *Robinson* decision, suggesting it was "plainly wrong" for combining disparate populations and asking how the failure to do so could possibly be considered "cracking". The most prescient exchange, however, came from Justice Kavanaugh. He pivoted from the specifics of the Louisiana map to the Appellees' broader constitutional argument. Zeroing in on a specific section of their brief, he asked:

> On equal protection law, we've, of course, said... that race-based remedial action must have a logical end point, must be limited in time... How does that principle apply to Section 2?

This was the moment the subtext became text. While other justices focused on whether Louisiana had a "good reason" under existing precedent, Justice Kavanaugh put the viability of that precedent itself on the table. He was the one who publicly aired the very question the Court would later set for re-argument. Counsel for the state acknowledged that Louisiana was, in a separate case, already arguing that Section 2 was unconstitutional as applied to it, confirming that the state itself was teeing up this fundamental challenge.

9.5 Conclusion: A Showdown Deferred Becomes a Showdown Defined

The Jackson and Thomas dissents, read together, represent the two poles of the debate the Court must now confront. Justice Jackson represents the path of judicial minimalism and procedural caution, urging the Court to decide only what it must on the record before it. Justice Thomas represents the path of constitutional maximalism, demanding that the Court seize the opportunity to correct what he sees as a grave and long-standing error. For years, the Supreme Court has managed the tension between the VRA and the Equal Protection Clause through a complex web of multi-part tests and standards of review, from the *Gingles* preconditions to the "racial predominance" inquiry. It has given states "breathing room" while simultaneously subjecting their maps to strict scrutiny. The decision to rehear *Callais* on the constitutionality of Section 2 signals that the Court may be ready to abandon this delicate balancing act. The questions are no longer just about the shape of one district in Louisiana. They are about the future of the Voting Rights Act itself. Justice Kavanaugh's questions at oral argument were not an outlier; they were a harbinger. The Court is now poised to decide whether one of the most consequential civil rights statutes in American history has finally reached its constitutional end point.

Chapter 10

The Consequences of a Post-Section 2 America

For six decades, Section 2 of the Voting Rights Act of 1965 has served as the cornerstone of American voting rights jurisprudence. As the primary legal tool for challenging racially discriminatory election laws and district maps, its influence on the nation's political geography is difficult to overstate. Now, as the Supreme Court has signaled a willingness to re-examine the law's fundamental premises in cases like Louisiana v. Callais, the once-unthinkable prospect of Section 2 being found unconstitutional has entered the realm of possibility. Such a ruling would not merely alter the landscape of American election law; it would fundamentally reshape the distribution of political power, redefine the relationship between federal and state governments, and effectively close the primary legal avenue for challenging racial discrimination in voting. It represents a monumental shift with profound, deeply contested consequences, the full measure of which can only be understood by examining the competing ideological visions for American democracy that animate the debate.

10.1 The Practical Upheaval: From an Effects Test to an Intent Standard

The most immediate and dramatic consequence of striking down Section 2 would be the elimination of the "effects test" for racial vote dilution. This legal standard, established by Congress in 1982 and operationalized by the Supreme Court in Thornburg v. Gingles, has allowed plaintiffs to challenge an electoral map or voting rule by demonstrating that it results in diminished political opportunity for minority voters, regardless of the lawmakers' intent. The end of this standard would instantly halt all pending lawsuits that allege "cracking" (splitting a cohesive minority community into several districts) or "packing" (concentrating a minority community into a single district to waste its votes).

Freed from the constraints of Section 2, state legislatures in diverse states would possess an almost entirely free hand to redraw congressional and state-level maps. Districts that were specifically created to comply with the VRA—often referred to as majority-minority or "opportunity" districts—would become immediate targets for elimination. The legal battleground would then shift to the far more difficult terrain of the Fourteenth and Fifteenth Amendments, which require plaintiffs to prove that lawmakers acted with discriminatory intent. This is a seismic change. It transforms the central legal question from "Does this map have a racist result?" to "Are these lawmakers racist?" Proving the latter is a notoriously high evidentiary bar, requiring a kind of direct evidence of motive that is rarely available in the legislative record. This same logic applies beyond redistricting; challenges to other voting rules, like restrictive voter ID laws or polling place closures in minority neighborhoods, would also become nearly impossible to win in federal court without proof of explicit racial animus.

10.2 The Liberal Democratic View: A Democratic Crisis

From a liberal and Democratic perspective, this practical upheaval represents a democratic crisis and a grievous blow to the nation's multi-racial democracy. In this view, the end of Section 2 would trigger a rapid and significant realignment of political power in favor of the Republican Party. Given that majority-minority districts overwhelmingly elect Democrats, their elimination through partisan map-drawing would translate directly into fewer Democratic representatives in Congress and state legislatures. This is seen not as a procedural change, but as an intentional disenfranchisement of a growing segment of the American electorate.

This perspective warns of the political nullification of demographic growth. In states like Texas, Georgia, and Arizona, where population growth is driven almost entirely by minority communities, the end of Section 2 would allow map-drawers to absorb these new populations into existing districts without creating new opportunities for representation. The result would be a state that grows more diverse in its population while its political leadership becomes less so. This leads to the creation of highly durable, uncompetitive gerrymanders where a minority of the electorate can maintain majority control for a decade or more, making the government increasingly unresponsive to the will of the people. This outcome is viewed as a retreat from the promises of the Civil Rights Movement, forcing advocates into a defensive, uphill battle in state courts and through grassroots organizing to reclaim protections that were once guaranteed by federal law.

10.3 The Republican Conservative View: Restoring Constitutional Principles

Conversely, from a Republican and conservative perspective, the demise of Section 2 would be hailed as a landmark restoration of core constitutional principles. The central tenet of this view is that the Constitution, particularly the Equal Protection Clause, demands race-blindness. Section 2, by requiring states to be race-conscious and sort voters into racial blocs to create majority-minority districts, is seen as a perversion of that principle—a form of state-sponsored racial gerrymandering in itself. Striking it down would thus be a triumph for the idea that every citizen should be treated as an individual, not as a member of a racial group. They would contend that, whatever may have been the case in the past, these days neither party really cares about the race of the representatives. What they care about is their allegiance to the principles of the party. The growing number of Black Republican leaders fortifies that point. And they would then point to the shield provided by Rucho v. Common Cause and say that partisan gerrymandering, regardless of its *effect* on the racial composition of elective bodies is simply not justiciable in federal court.

This perspective also champions the decision as a profound victory for federalism. The Constitution grants states the authority to run their own elections, and Section 2 is viewed as a form of federal overreach that has allowed unelected judges to dictate local political outcomes for too long. Returning this power to democratically elected state legislatures is seen as a restoration of the Founders' original design. The political consequences, in this view, are not a power grab but a move toward fairer and more competitive elections. By "unpacking" artificially concentrated districts, map-drawers would force both parties to appeal to a broader and more diverse coalition of voters, rewarding moderation over extremism. The ensuing political debates would be resolved through the proper democratic process—at the ballot box and in state capitols—rather than through endless, costly litigation.

10.4 The Impenetrable Fortress: How Rucho and the End of Section 2 Combine

To fully grasp how much "worse" gerrymandering could become, one must synthesize the impact of losing Section 2 with the legal reality created by the Supreme Court's 2019 decision in Rucho v. Common Cause.

In Rucho, the Court declared that partisan gerrymandering is a "political question" that is non-justiciable in federal court. This ruling provided state legislatures with a powerful legal shield: they could openly declare that their motive for drawing a map was to maximize their party's political advantage, and federal courts could do nothing about it.

This created a dynamic of plausible deniability in racial gerrymandering cases. A state could dismantle a majority-Black district and defend its actions by claiming its motive was not racial but purely partisan—it was targeting Democrats, not Black voters, and the high correlation between the two was merely incidental. While this defense is powerful, Section 2 has, until now, served as an indispensable guardrail. Because Section 2 is primarily a results-based test, it creates an affirmative obligation that operates regardless of a lawmaker's stated motive. If a plaintiff could prove the Gingles preconditions—that a compact, cohesive minority community's vote was being diluted—the state's map would be illegal, its partisan excuse notwithstanding.

The end of Section 2 would remove this guardrail. The plausible deniability of a partisan motive would transform from a strong legal shield into an impenetrable fortress. With Rucho protecting the partisan motive and no Section 2 to check the racial result, there would be no viable federal legal theory left to challenge an extreme gerrymander in a diverse state. A map-drawer could surgically dismantle every minority opportunity district with impunity, armed with the unassailable, court-approved excuse that their goal was simply "politics." This combination is what makes the loss of Section 2 so profound; it would remove the last meaningful federal check on the drawing of electoral maps.

10.5 Can Congress Rehabilitate Section 2?

In the aftermath of such a seismic ruling, the immediate question would be whether Congress could pass new legislation to "rehab" the core idea of Section 2. The answer is almost certainly no – at least not directly. First, any such effort would face insurmountable political hurdles, including the Senate filibuster and deep partisan opposition. But more fundamentally, it would face a constitutional dead end. The hypothetical Supreme Court ruling would likely be based on the premise that a race-conscious "effects test" violates the Equal Protection Clause. Congress cannot overrule a constitutional interpretation by simply passing another statute. Any new law would have to be based on the "intent" standard of the 14th and 15th Amendments, but a cause of action on that basis already exists. Congress would be constitutionally boxed in, unable to recreate the unique power of Section 2. The battleground for voting rights, for the first time in generations, would shift decisively and perhaps permanently away from the federal courts and back to the uncertain terrain of state-by-state political struggle.

The one thing Congress might do is to use its power under Article I section 4 of the Constitution to require that Congressional districts be compact (i.e. not irregularly shaped). or several decades in the late 19th and early 20th centuries, federal law explicitly required congressional districts to be compact. The Apportionment Act of 1901 (and its successor in 1911) stated that congressional districts should be of "contiguous and compact territory and containing as nearly as practicable an equal number of inhabitants."[1]

The federal requirement for compactness disappeared with the Reapportionment Act of 1929. When Congress passed this act, it automated the process of reapportioning the number of seats per state after each census, but it notably omitted the language requiring districts to be compact and contiguous. In the 1932 Supreme Court case *Wood v. Broom*, 287 U.S. 1 (1932) the Court ruled that this omission was intentional. It held that by passing the 1929 Act without the previous standards, Congress had effectively repealed the federal compactness and contiguity requirements.

Since then, there has been no binding federal law requiring compactness. Any such requirements today come from individual state constitutions or state statutes. It is hard to imagine, however, today's Congress overcoming a filibuster (and the fact that many of its incumbents benefit greatly from gerrymanders) passing a new compactness requirement that might possibly restore partisan proportionality in Congress.

[1] This requirement did not exist for the first several decades of the country's history. The first federal intervention into the shape of districts came with the Apportionment Act of 1842, which required districts to be made of "contiguous territory." The explicit compactness requirement was added only later.

Chapter 11

Callais v. Louisiana—Section 2 at a Constitutional Crossroads: Congruence-and-Proportionality, Colorblindness, and an Administrable Path Forward

Abstract

The Supreme Court's decision to restore *Callais v. Louisiana* for reargument turns what might have been a familiar *Shaw/Miller* dispute into a genuinely foundational case about how Section 2 of the Voting Rights Act should operate in a world where geography is stubborn, parties are polarized, and the Court now speaks regularly in the key of colorblindness. For four decades, *Thornburg v. Gingles* has translated Congress's 1982 "results" amendment into a two-stage framework. That framework has always insisted that plaintiffs prove size and compactness, cohesion, and usual defeat before the court turns to the totality of circumstances. But we also know what happens in practice. In jurisdictions with substantial minority populations and entrenched racial polarization, the *Gingles* machine—while disavowing proportional representation—often pushes toward something like rough opportunity proportionality. The pressure is not absolute and not universal, but it is real, and it creates tension with the Court's racial-predominance line. Add to this *Rucho*'s withdrawal from partisan-gerrymandering review, which effectively encourages line-drawers to explain maps in partisan terms even where party and race are tightly correlated; and then overlay *Students for Fair Admissions*, which condemns sustained race-conscious decision-making in admissions and insists on measurable endpoints. We have, in short, a statute that explicitly takes race seriously in the core of the political process, equal-protection doctrine that reacts badly to race predominance, and a political environment in which partisanship does much of the sorting work that race once did alone.

This chapter does not offer a magic solvent. Instead, it tries to make the tangle intelligible and then proposes a rule that is as simple as the domain will allow. The upshot is a disciplined *Gingles* 2.0 that preserves Section 2 as appropriate Fifteenth Amendment enforcement yet tightens administration through compactness that actually constrains, remedies that are the least race-intrusive that will work, and a proof structure that uses neutral baselines to separate race from party where they can be separated, and that candidly acknowledges correlation where they cannot. Even if the Court were to import *City of Boerne*'s congruence-and-proportionality vocabulary into the Fifteenth Amendment context, a refined Section 2 should satisfy it: the problem is documented, and the remedy is proportionate, geographically honest, and tied to

the record. That is the path that can be explained to lower courts without euphemism, and to the public without drama.

Roadmap

The puzzle does not require mystery. A statute about race meets a Constitution that flinches at racial sorting, and they collide inside a political system that sorts by race because it sorts by party. *Callais* is the collision site. I begin with a short account of how we got here, focusing on the drift inside *Gingles* and the counter-pressure from *Shaw*/*Miller*. I then develop the realistic decisional paths and explain why the sound course keeps Section 2, refuses proportional representation, disciplines compactness and remedy, and uses neutral ensembles and alternative maps as the proof architecture that courts and lawyers can actually run. I take seriously the colorblindness objection; I engage the *Washington v. Davis* impulse to demand intent; and I say plainly why a return to intent alone would be an engraved invitation to evasion in a post-*Rucho* world. The chapter closes with a concrete administrative script, a short implications analysis, and a final section about legitimacy that does not hide the ball.

11.1 The Doctrinal Puzzle and Why It Matters

11.1.1 A small case that grew up, and why it matters beyond Louisiana

Callais began as a remedial quarrel in a single state. After a district court in *Robinson v. Ardoin* concluded that Louisiana likely violated Section 2 by failing to draw a second Black-opportunity district, the legislature returned with a map that, as these things sometimes go, enacted a district whose shape even its defenders called unusual. The critics' claim was familiar: race predominated; traditional districting criteria were subordinated; strict scrutiny applies; and the plan should fall unless it is narrowly tailored to a compelling interest. The state's reply was equally familiar: we faced likely Section 2 liability; *Gingles* preconditions were satisfied; and the shape, however awkward on a postcard, was the least-intrusive way to preserve an actual opportunity to elect.

Up to that point, nothing novel. But when the Court set the case for reargument, it sent the signal that this was no longer just about a single district's curvature. The Court seemed to be reaching for the larger architecture: can the present interpretation of Section 2, with its effects test and its practical pressure toward opportunity districts, be administered without requiring unconstitutional race sorting? And if the answer is "not quite," should the Court adjust *Gingles*'s administration, import the language of congruence and proportionality from the Fourteenth Amendment context into the Fifteenth, or say something much harder about the statute itself? The significance of those questions is obvious. We are not deciding a course schedule. We are deciding how the nation's primary federal protection against structural vote dilution operates after *Shelby County* trimmed preclearance and after *Rucho* redirected partisan fights toward the race channel.

11.1.2 How we actually got here: from *Bolden* to *Gingles* to the present

The story is short enough to tell in a few paragraphs and long enough to reward care. The Fifteenth Amendment does two things no one disputes: it forbids the denial or abridgment of the right to vote on account of race, and it empowers Congress to enforce that command by appropriate legislation. The Court's decision in *City of Mobile v. Bolden* read the Constitution to require intent for vote-dilution claims. Congress responded in 1982 by amending Section 2 to adopt a results test and a "totality of circumstances" inquiry that looks past intent to effect. *Thornburg v. Gingles* gave the statutory language doctrinal shape: plaintiffs first show a sufficiently large and compact minority population, political cohesion, and usual defeat at the hands of bloc voting. Only then does the court move to the Senate factors and the broader context.

Running alongside *Gingles* is a second line, beginning with *Shaw v. Reno* and *Miller v. Johnson*, that owes less to the statute and more to the Equal Protection Clause. These cases insist that race-predominant line-drawing offends the Constitution unless the state can satisfy strict scrutiny. That requirement did not exempt VRA compliance. *Bush v. Vera* and later *Cooper v. Harris* teach that even remedial lines must be narrowly tailored; VRA compliance is compelling, but it cannot be a talisman. And when *Shelby County* invalidated the coverage formula for preclearance, the center of gravity shifted to Section 2. The practical result was to move more of our fights into a statutory channel that tolerates effects proof just as the Court withdrew from federal adjudication of partisan gerrymandering in *Rucho*. If one wanted to design a world in which mapmakers would justify choices as "partisan" and challengers would reply "racial," one could hardly do better.

11.1.3 The *SFFA* gust and the temptation to treat the domains as the same

Students for Fair Admissions added a strong gust to the discussion, and it is worth saying what it changes and what it does not. The opinions treat sustained race-conscious decision-making in university admissions as incompatible with equal protection, particularly where the asserted goals are unmeasurable and the regime lacks an endpoint. The language of colorblindness is emphatic. But districting is not admissions, and not because districting is less important. In admissions, the government is allocating a finite number of individual seats. The hook is the Fourteenth Amendment alone, the harm is individualized, and the Court demands measurable ends and endpoints.

Section 2 addresses something different: group-level opportunity to elect in the core of the political process, in a domain where the Fifteenth Amendment specifically names race. The remedy is a map, not a seat, and the core question is whether the structure of elections, as drawn, systematically denies minority voters an equal opportunity to elect their preferred candidates. That said, the colorblindness rhetoric does not float away. When a map seems to make race do too much of the work, *Shaw*/*Miller* ensure that strict scrutiny applies. The way to square the circle is the same as it has always been: make sure the *Gingles* showing is real, and then ensure that the remedy is narrow—the least race-intrusive configuration that still preserves a functional opportunity district. The point is not to avoid all race awareness; it is to avoid gratuitous race sorting.

11.1.4 The thing we only half-say: rough opportunity proportionality

It is worth being candid about the practical pull of *Gingles*. The statute disclaims proportional representation and no one should pretend otherwise. But in jurisdictions with sizable minority populations and durable racial polarization, the *Gingles* preconditions and the totality inquiry operate together as a machine that tends to push toward what one might call rough opportunity proportionality. *Johnson v. De Grandy* acknowledged the gravitational presence of proportionality and declared it relevant but not dispositive. That is the right doctrinal formulation. Still, anyone who has watched these cases understands the persistent normative worry: why should race be the axis along which we measure opportunity when religion, wealth, and gender are also salient identities? The answer is not that those other identities are unimportant. It is that the Constitution we have names race in the Fifteenth Amendment, and the statute Congress wrote implements that specific command. We could imagine a world in which Congress chose a different instrument. We do not live in it.

11.1.5 Louisiana as a microcosm and a limit case

Because *Callais* is not a clean-slate exercise, it helps to dwell on the facts that are not genuinely contested and on the ones that are. Louisiana's Black population is large enough that a second opportunity district is not a statistical fantasy. There is meaningful cohesion in Black voting and persistent bloc voting in opposition. That combination means the first *Gingles*–stage pressure is present. But geography is not a spreadsheet. Communities of interest do not always sit adjacent to one another. Parish lines do not always

arrange themselves in tidy polygons. The core dispute is whether the second opportunity district can be drawn in a way that is recognizably compact and respectful of traditional criteria or whether the only way to do the job is a shape that, while contiguous, relies on narrow connectors and long, thin corridors. If the former, the constitutional objection loses force. If the latter, the constitutional concerns become acute and strict scrutiny's tailoring prong does real work.

11.1.6 The statutory–constitutional dialectic in plain terms

When we are talking about Section 2 and equal protection in the same breath, we are not talking about a statute and a freestanding Constitution that never meet. We are talking about a statute that tolerates proof by effect in a domain the Constitution names, and a constitutional doctrine that punishes race-predominant remedies unless they are necessary and tightly drawn. It is a running conversation. Section 2 pushes against structural exclusion; *Shaw/Miller* pull against gratuitous racial sorting; and the job of courts is to manage the tension without pretending either force can be nullified. That is the spirit in which the rest of this chapter proceeds.

11.2 What the Court can do, and what it should do

11.2.1 Minimalism done properly

The narrowest path decides *Callais* as a *Shaw/Miller* case. Nothing in the statute changes; nothing in the constitution is reannounced. The Court would ask whether Louisiana used race as the predominant factor and, if so, whether it had good reasons to believe it faced Section 2 liability and whether the chosen map was the least race-intrusive way to preserve a bona fide opportunity district. This version of minimalism only works if the analysis is done for real. The Court cannot say "least restrictive means" and leave the phrase hanging. It must say what kind of alternatives the state should have considered, how compactness and community integrity count, and how to evaluate claims that race and party are confounded. Minimalism that merely shrugs at those questions is not restraint. It is abdication with a soft voice.

11.2.2 A refined statute without a constitutional rupture (*Gingles* 2.0)

The better course preserves Section 2 and tells lower courts how to administer it in a way that respects both political geography and equal protection. The premise is straightforward. Compactness must constrain. Plaintiffs at step one should present more than a single exotic illustrative map; they should show that opportunity districts exist under workable, traditional constraints—reasonable compactness indices; respect for counties or parishes where feasible; non-opportunistic communities of interest that track lived life rather than litigation needs. States, for their part, should be allowed and expected to present race-neutral alternative maps that preserve opportunity while improving adherence to traditional criteria. Where the parties disagree about whether "opportunity" is preserved, courts should look to functional political performance rather than seat counts. They should also allow ensemble analysis—not because it is magic, but because it establishes a neutral baseline: when drawn under neutral constraints, how often do opportunity districts arise?

If the answer in a given jurisdiction is "often," then the claim that race predominated in a remedial map loses force. If the answer is "rarely," then the state's insistence that odd shapes are unjustified gains strength. The point is to make the argument about reasons rather than hunches: you cannot simply say "snake" and win; you must say why less contorted shapes will not preserve a genuine opportunity to elect. Plaintiffs cannot simply say "cohesion" and win; they must show cohesion in elections that matter, explained in a way that a generalist judge can follow. The court remains the umpire, but the strike zone is drawn in ink.

11.2.3 As-applied constitutional narrowing

A third path says that, in places like Louisiana where geography and party–race correlation mean the only way to create another opportunity district is to draw a district that is race-predominant and seriously non-traditional, Section 2 cannot compel the state to do it. That conclusion would be framed as a constitutional limit on the statute as applied rather than a statement about the statute's validity in all its applications. The appeal of this path is its modesty. The risk is that it is modest only in form. If adopted as a widely available defense, it would in practice raise thresholds in many jurisdictions and increase the rate at which Section 2 claims fail in the real world, especially where cohesion and bloc voting are present but geography is inconvenient.

11.2.4 The earthquake

The fourth path is to question the effects test itself as beyond Congress's enforcement power or as incompatible with modern equal-protection doctrine. This is the option with the sharpest edges. One could imagine the Court saying that an effects standard that requires race-conscious line-drawing in perpetuity is not "appropriate legislation." One could also imagine the Court insisting, via *SFFA*-style rhetoric, on endpoints that *Gingles* never promised and that no one can credibly specify across the states. An effects-test overhaul of this sort would not simply change litigation incentives; it would render a great deal of current litigation irrelevant and return the country to a world where intent is the coin of the realm.

11.2.5 Congruence and proportionality: if the Court insists on that vocabulary

The Supreme Court has never squarely applied *City of Boerne*'s congruence-and-proportionality test to Congress's Fifteenth Amendment power. It could decide to do so here. If it does, there are two plausible flavors. A strict transfer would treat the words "appropriate legislation" as identical across the Reconstruction Amendments and demand a tight fit between the prophylaxis Congress enacted and recent, geographically specific constitutional violations. That test would be difficult for Section 2 to satisfy as administered today, and it would pull the doctrine toward the intent floor or toward a more grudging statute. A tailored transfer would acknowledge the identical text while recognizing that voting sits at the core of representative government, that the Fifteenth Amendment names race, and that prophylaxis there should be measured with an instrument better suited to the domain: compactness that actually constrains, a least race-intrusive remedy requirement, and a proof structure that disciplines, rather than abolishes, the effects test. If the Court insists on the C&P vocabulary, the tailored version is the one that can be squared with both text and history.

11.3 Consequences and administrability, without euphemism

11.3.1 What legislatures and commissions will do the morning after

The least theorized part of these cases is often the most important: how human beings with deadlines will respond. Minimalism teaches cartographers to be more careful about snakes; it leaves the rest of the game intact. A refined Section 2 induces different behavior. When plaintiffs know that step one requires multiple, constraint-respecting illustrative maps, they will begin with compactness and communities rather than treat them as afterthoughts. When states know that rebuttal maps matter, they will invest in showing that neutral alternatives preserve opportunity and look more like the state. And when both sides understand that ensembles will be taken seriously as neutral baselines rather than as Rube Goldberg devices, they will spend less energy arguing about edge cases and more energy explaining what the baseline tells us in ordinary English.

11.3.2 Error costs and predictability

The real virtue of a refined statute is the reduction in error-cost variance. We do not abolish false positives or false negatives; we drive down both by making the axes of decision—compactness, communities, least-intrusive remedies, neutral baselines—visible in advance. The point is not to crush judgment under metrics. It is to make judgment disciplined and replicable. Where geography naturally produces an opportunity district under neutral constraints, litigation will be easier for plaintiffs. Where it does not, litigation will be harder. Where the line-drawing problem is genuinely hard, the least-intrusive remedy constraint pushes everyone away from gratuitous race salience and toward maps that can be defended without embarrassed silence.

11.3.3 Administrative feasibility for courts

The good news, which is sometimes forgotten, is that district courts already do most of this work. They hear expert testimony about cohesion and bloc voting; they evaluate compactness with the help of indices and eyeballs; they read about communities of interest; they make findings about predominance. What has been missing is a coherent script that takes these tools out of the realm of ornament and turns them into constraints. "Least race-intrusive" is more than a slogan. It is an instruction: if there is a configuration that preserves opportunity and better respects traditional criteria, use it. If there is not, explain why not in a way that can be cited and applied the next time.

11.3.4 Information costs and the proof architecture

There are three pieces of proof that deserve elevation. First, ensembles: not as talismans, but as a way of creating a neutral baseline and addressing the recurrent *Rucho* problem. If the jurisdiction's political geography produces an opportunity district in a large share of neutral maps, then the claim that a remedial plan is race-predominant loses credibility. If opportunity districts are rare in neutral ensembles, then plaintiffs carry a heavier burden to justify shapes that depart from traditional criteria. Second, alternative maps: both sides should produce them, and courts should prefer the plan that achieves the lawful objective with the least racial salience and the greatest respect for traditional criteria. Third, ecological inference and election analysis: not just the presentation of a number, but the explanation of how sensitive the result is to plausible modeling choices, using elections that reflect the actual coalitions at issue. The proof architecture is not a magic incantation. It is an agreement about what counts as a reason.

11.4 Evidence and institutional competence

11.4.1 What the record usually has, and what it usually lacks

In many § 2 cases, the records are strong on the top-line features: population size, cohesion, usual defeat. They are weaker where the rubber meets the road: whether the opportunity district can be drawn with traditional criteria in view; whether a contorted shape is necessary or simply chosen; whether communities of interest are genuine or improvised. Those thinner parts of the record are where strict scrutiny should do its work. A court can properly insist that a plaintiff who wants a serpentine district explain why less serpentine configurations will not preserve a real opportunity to elect; and a state that wants to keep a strikingly nontraditional line should explain which community it honors, which county split it avoids, and why the alternatives fail.

11.4.2 Who decides what, and why that division matters

Congress wrote the statute and chose effects-based enforcement for voting. The Court responded with *Gingles* and with *Shaw/Miller*. Lower courts implement both. This division should not be treated as an invitation to maximalism. A court that respects Congress's role will not read Section 2 into a ghost of itself. A court that respects the Constitution will not bless gratuitous race sorting just because the word "VRA" appears in the brief. The best version of judicial modesty here is not distributive indifference; it is a healthy insistence on justifications that a judge can read twice and then apply the next day.

11.4.3 Minimalism, maximalism, and the middle path that is not mush

There are virtues to minimalism. There are vices, too, when minimalism becomes a way to avoid the hard part of the job. The maximalist alternative—the effects-test earthquake—would be clean in the sense that it makes many questions disappear. But it would do so at a cost to Congress's enforcement power and to the real-world protection against structural exclusion that Section 2 supplies. The middle path I have tried to describe is not a compromise for its own sake. It is a recognition that the courts are good at some things and bad at others. They are good at applying administrable rules to complicated facts; they are less good at reverse engineering legislative intent when the legislature tells them what it is not thinking about. The refined statute plays to the judicial strength.

11.5 Legitimacy and constitutional settlement

11.5.1 Separation of powers and the enforcement power we actually have

There are arguments for importing congruence-and-proportionality from the Fourteenth Amendment context into the Fifteenth, and there are arguments against. The words are the same. The domain is not. Voting sits at the core of the polity; the Fifteenth Amendment names race, and Section 2 is the central federal enforcement tool left after *Shelby County*. A strict transfer of *Boerne*'s test would misread that context and, in the process, risk turning Congress's enforcement power into a narrow tunnel that cannot accommodate modern tactics of structural exclusion. A tailored transfer recognizes the special status of voting while insisting on disciplined administration—compactness that constrains, remedies that are least race-intrusive, proof that uses neutral baselines rather than gut feeling. If the Court wants to speak in the C&P vocabulary, this is the way to make the nouns match the verbs.

11.5.2 Anti-classification and anti-subordination without slogans

It has become fashionable to run the equality debate through the anti-classification/anti-subordination dichotomy. The impulse is understandable. It is also easy to turn into a slogan. Section 2 is intelligible as an anti-subordination measure in a specific domain: it tries to prevent a predictable pattern in which racial polarization ensures that minority-preferred candidates usually lose unless political geography is allowed to do its work honestly. *Shaw/Miller* operate as anti-classification brakes to prevent that project from becoming race sorting for its own sake. The least race-intrusive remedy requirement is the point of contact. It says: do not abandon the effort to protect equal political opportunity; do not indulge race more than is necessary to do it.

11.5.3 Public justification you can say aloud

The legitimacy of any rule is partly a function of whether one can say it aloud without wincing. A rule that keeps Section 2, disciplines its administration, and insists on compactness and narrow tailoring, is the sort of rule that can be explained to a generalist audience in a paragraph: we prevent structural exclusion, but

we do so with maps that look like the state and with evidence that does not treat race as a talisman. A rule that abolishes the effects test or reduces it to an intent regime would also be simple to describe, and that is part of its appeal. But simplicity is not the only value. Stability matters; so does fidelity to the Reconstruction choice Congress made. The refined statute is not the easiest story to tell. It is the right one.

11.6 Recommended disposition

11.6.1 The holding, without adornment

The Court should reaffirm Section 2 of the Voting Rights Act as appropriate legislation enforcing the Fifteenth Amendment and clarify how it is to be administered. Plaintiffs at the first stage should be required to show, with more than a single exotic exhibit, that a reasonably compact opportunity district is feasible under traditional constraints—including reasonable compactness metrics, respect for counties or parishes where feasible, and genuine communities of interest that correspond to lived life. If those showings are made and a violation is found, the remedy must be the most traditional, least race-intrusive configuration that still preserves the opportunity to elect. States may rebut the plaintiff's case or justify their own plans by offering race-neutral alternative maps that preserve minority opportunity while better honoring traditional criteria. Courts may consider ensemble analysis and ecological inference, but they should demand transparent sensitivity checks and should resist the urge to declare victory merely because the word "ensemble" appears in a brief. The question, always, is whether the same lawful objectives can be achieved with less racial salience; if they can, use those maps.

11.6.2 Why this rule works in the law and in the world

The recommended rule aligns the statute with the Constitution without treating either as an afterthought. It keeps the courthouse door open in jurisdictions where racial polarization and population patterns would otherwise predict systematic defeat of minority-preferred candidates. It reduces the incentive to draw bizarre shapes in the name of compliance. It gives trial courts an intelligible script to run and incentives for litigants that track what we actually want: maps that respect traditional criteria unless there is no way to do so without sacrificing genuine opportunity. And if the Court insists on the language of congruence and proportionality, the rule satisfies it. The problem is documented in the record; the remedy is proportionate to the problem; and the burden on state autonomy is reduced by an insistence on compactness, narrow tailoring, and the use of neutral baselines.

11.7 Two objections that deserve a straight answer

"If race is taboo in admissions, why is it demanded in districting?"

Because the law speaks differently to different domains. Admissions is the individualized allocation of seats in an institution; the wrong, as the Court has framed it, is treating the individual differently because of race without measurable ends or endpoints. Districting is the drawing of maps that structure the collective act of choosing representatives. The Fifteenth Amendment names race in this domain; the statute implements that choice. That does not mean race predominance is ever fine. It means that race awareness at the map level is sometimes necessary to prevent structural exclusion—and that when it is, the courts should demand the least race-intrusive configuration that still does the job.

"Isn't intent the rule, and won't *Rucho* let everyone call it 'partisan' anyway?"

Intent is the constitutional default. Congress went further in a statute. The reason is intelligible: modern exclusion often wears partisan clothing. If the law demanded intent, post-*Rucho* line-drawers would say they pursued partisan advantage, and in many jurisdictions they would be telling the truth. The correlation between party and race would do the rest, and plaintiffs would lose not because the exclusion ended but because the doctrine closed its eyes to the way it now works. The refined effects regime I have described is not wishful thinking. It is an attempt to ask the neutral question first—under neutral constraints, does an opportunity district arise?—and to build remedies that are necessary and narrow only when the answer to that question makes it unavoidable.

Implications, in full sentences

Different doctrinal choices will predictably reshape incentives. A narrow *Shaw*/*Miller* decision will trim the most aggressive remedial shapes and teach cartographers to avoid certain lines without providing much rule-like guidance. The result will be another cycle of district-specific fights and a fair amount of variance across courts. A refined Section 2 will feel different. Plaintiffs will arrive with multiple, constraint-respecting maps and a cleaner compactness record. States will respond with neutral alternatives that preserve opportunity with fewer departures from traditional criteria, or else they will say why that is not possible and show their work. Judges will say a little less about snakes and a little more about reasons. As-applied constitutional narrowing will reduce the number of maps in which a second opportunity district is judicially compelled, especially where geography is difficult and party–race correlation is high. An effects-test overhaul will transform the field: most federal vote-dilution cases will vanish, state constitutions and politics will take center stage, and minority representation will likely decline where polarization persists. A strict congruence-and-proportionality transfer would do similar work by a different route; a tailored transfer would largely converge with the refined Section 2 described here.

A narrative doctrinal timeline

The Voting Rights Act of 1965 addressed practices that denied or abridged the right to vote through devices both blunt and baroque. By 1980, *Bolden* had told us that the Constitution demanded intent for vote-dilution claims. Congress responded by amending Section 2 to adopt an effects test, and *Gingles* in 1986 translated that choice into a doctrine that has governed for almost forty years. The 1990s brought *Shaw*, *Miller*, and *Vera*, which installed equal-protection brakes on race-predominant line-drawing even in service of the VRA. *De Grandy* made proportionality relevant but not dispositive, *LULAC* and *Bartlett* supplied refinements, and *NAMUDNO* avoided the constitutional question while making plain that preclearance raised serious concerns. *Shelby County* invalidated the coverage formula, shifting the weight of federal protection to Section 2. *Rucho* closed the federal courthouse to partisan-gerrymandering claims, increasing the incentive to argue race and to defend with partisanship. *Cooper* reminded everyone that VRA compliance is not a talisman and that narrow tailoring matters. *Milligan* reaffirmed *Gingles* as a statutory matter in 2023, and, also in 2023, *SFFA* announced a more insistent version of colorblindness in admissions. *Callais* is where these strands—statute, constitution, geography, party—finally meet.

What lawyers and courts should actually do

If one wanted to design a way to waste judicial time, one would start with a world in which plaintiffs arrive with a single contorted map, defendants reply with a bare assertion of partisanship, and the court throws up its hands. The better script is familiar but not yet universal. Plaintiffs begin with compactness: multiple illustrative maps, not one, that meet reasonable indices, minimize county or parish splits, and respect

communities of interest that are identified in the record before the litigation posture settles into place. The cohesion and usual defeat showings are built out with recent, relevant elections and ecological inference that is explained rather than incanted. Defendants respond with race-neutral alternatives that either preserve minority opportunity with better adherence to traditional criteria or that demonstrate why the plaintiff's map is not necessary to preserve opportunity in any meaningful sense. Both sides situate their claims in ensembles—again, not as talismans but as neutral baselines that show how often the geography produces what the law asks for without optimization for race. Courts make explicit findings about predominance, compactness, communities, and narrow tailoring. When a court approves an awkward shape, it says why less contorted alternatives will not preserve opportunity, and it cites the record rather than intuition. When a court rejects an awkward shape, it identifies the neutral alternative that will do the job or candidly acknowledges that no such alternative exists and explains why the statute does not require the contortion. And everyone, finally, builds a record that would survive a tailored congruence-and-proportionality review should the Court someday insist on that vocabulary.

Implications Table (for reference only; see text)

Candidate Ruling	**Incentives**	**Error Costs**	**Administrability**	**Likely Systemic Effect**
Narrow *Shaw*/*Miller*	Avoid snakes; litigation remains case-specific	Mixed; variance persists	Familiar but variable	Marginal seat shifts; continued doctrinal drift
Refined § 2 (*Gingles* 2.0)	Build compactness records; prefer least race-intrusive maps	Fewer false positives/negatives	High; clear script	Stable opportunity districts where justified; fewer contortions
As-applied narrowing	Resist new opportunity districts where geography is hard	Higher false negatives	Moderate; threshold fights	Fewer court-ordered districts; status quo advantage
Effects-test overhaul	Maximize partisan aims; cloak in partisanship	Very high false negatives	Simple for courts; costly for democracy	Declines in minority representation where polarization persists
Strict C&P transfer	Similar to as-applied, but broader	Fewer false positives; many false negatives	Some clarity; front-end record wars	Entrenchment where party–race correlation is high
Tailored C&P transfer	Incentivize disciplined records; preserve targeted prophylaxis	Balanced; depends on guardrails	High if guardrails adopted	Converges with refined § 2; trims excesses

Closing: law that can be followed

There are times when the best legal rule is not the tidiest one in theory but the one that can be followed by ordinary people with deadlines and the one that can be explained to citizens without a footnote. Section 2 as refined here is that kind of rule. It says, with a straight face, that we will not stumble into proportional representation by another name, but we will not pretend that structural exclusion has vanished simply because its authors learned to speak in partisanship. It says that when race must be part of the remedy, it will be so only as much as necessary and never more. It says that maps should look like the places they represent, and that evidence should look like reasons. And it says, finally, that the Constitution we have—including the amendment that names race—can live with a statute that does its job if the courts insist that it be done with care.

Further reading and citation notes

Cases are cited in Bluebook form on first mention above; short forms thereafter. Compactness metrics such as Polsby–Popper and Reock are employed as evidentiary guideposts, not jurisdictional thresholds. The Supreme Court has never squarely applied *City of Boerne*'s congruence-and-proportionality test to the Fifteenth Amendment; any discussion of that test here is predictive of live arguments rather than declarative of settled law. When local facts matter—say, the definition of a community of interest in Louisiana—the record should do the talking, not the rhetoric.