

Louisiana v. Callais

A Constitutional Crossroads (with broken traffic lights)

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The 15th Amendment (1870)

The constitutional anchor for federal voting rights protection, ratified after the Civil War.

Section 1: The Prohibition

"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 Enforcement Power

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

Key Points: This amendment explicitly forbids racial discrimination in voting and grants Congress a specific, affirmative power to pass laws to make that prohibition a reality.

The 14th Amendment: Equal Protection Clause (1868)

The second crucial pillar, providing a broader, more general guarantee of equality.

Section 1 (Relevant Part)

"...No State shall... deny to any person within its jurisdiction the equal protection of the laws."

Section 5: The Enforcement Power

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

This clause is the source of the modern "colorblindness" principle and the basis for the racial gerrymandering claims first recognized in *Shaw v. Reno*.

Early Congressional Action on District Shape

For much of the 19th and early 20th centuries, federal law directly regulated the shape of congressional districts.

- **1842 Apportionment Act:** The first federal intervention, requiring congressional districts to be made of "contiguous territory."
- **1901 & 1911 Acts:** Congress added a compactness requirement, stating that districts should be of "contiguous and compact territory and containing as nearly as practicable an equal number of inhabitants."

Key Takeaway

Congress has a long history of using its Article I power to impose structural requirements on districting. The VRA's focus on racial fairness can be seen as part of this tradition, though using a different constitutional hook (the 15th Amendment).

The End of Federal Compactness Rules

The federal requirement for compactness was abandoned in the early 20th century.

Reapportionment Act of 1929

In an effort to automate the reapportionment process after each census, Congress passed a new law that notably omitted the previous language requiring compactness and contiguity.

Wood v. Broom (1932)

The Supreme Court ruled that Congress's omission of the compactness requirement in the 1929 Act was intentional. This holding effectively repealed the federal standards for district shape.

Since this decision, any requirements for district compactness have come from state constitutions or statutes, not federal law.

Broad Enforcement Power: *Katzenbach v. Morgan* (1966)

This case provided a broad interpretation of Congress's power under §5 of the 14th Amendment, setting a crucial precedent for the VRA.

The Core Holding

Congress has the power to pass "appropriate legislation" to remedy or prevent constitutional violations, even if that legislation outlaws practices that are not, in themselves, unconstitutional.

Key Principles:

- **Prophylactic Power:** Congress can act preventatively to stop discrimination before it occurs.
- **Deference to Congress:** Courts should give significant deference to congressional judgment about what is "appropriate."

The Voting Rights Act of 1965

Considered the most effective piece of civil rights legislation in American history, the VRA was enacted using Congress's enforcement power under the 15th Amendment.

Original Section 2

The initial text largely mirrored the 15th Amendment, prohibiting any "voting qualification or prerequisite to voting, or standard, practice, or procedure... to deny or abridge the right of any citizen... to vote on account of race or color."

For the first fifteen years, the key question remained: Did a Section 2 claim require proof of discriminatory *intent* or was a discriminatory *effect* sufficient?

14th amendment Intent Standard: *Washington v. Davis* (1976)

In the context of the 14th Amendment's Equal Protection Clause, the Court established a clear rule.

Facts & Holding

In a challenge to a police department's hiring test that disproportionately failed Black applicants, the Court held that a law that is neutral on its face and serves a legitimate government purpose is not invalid simply because it has a racially disproportionate impact. A constitutional violation requires proof of a racially discriminatory **purpose or intent**.

This decision set the stage for how the Court would initially interpret Section 2 of the VRA.

Intent Applied to Voting: *City of Mobile v. Bolden* (1980)

The Supreme Court applied the *Davis* intent standard directly to Section 2.

Facts & Holding

In a challenge to an at-large electoral system in Alabama, the Court held that plaintiffs must prove the challenged system was adopted or maintained for a **racially discriminatory purpose**. A discriminatory effect alone was insufficient to prove a violation of either the VRA or the Constitution.

Impact

This ruling severely weakened Section 2 as a tool against vote dilution, as proving the subjective intent of a legislature is extraordinarily difficult.

The 1982 Congressional Amendments

Congress acted swiftly and decisively to overturn the *Bolden* decision by amending Section 2 of the VRA.

The Purpose

The explicit goal of the 1982 amendments was to eliminate the intent requirement imposed by the Supreme Court and establish a statutory "results test."

Legislative History

The Senate Judiciary Committee report accompanying the amendments is a key source of legislative intent. It clarified the new standard and listed several factors (the "Senate Factors") for courts to consider.

Text of the Amended Section 2

Subsection (a)

"No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied... in a manner which **results in a denial or abridgement** of the right of any citizen... to vote on account of race or color..."

Subsection (b) - The "Results Test"

"A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes... are not equally open to participation... 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 *Gingles* Framework - Overview

In *Thornburg v. Gingles* (1986), the Court created a two-stage framework to operationalize the 1982 "results test." The case involved multi-member districts, not gerrymandering.

The Threshold Inquiry

Before a court can find a violation based on the "totality of circumstances," plaintiffs **must** satisfy three preconditions. This creates a structured, rigorous analysis rather than an open-ended inquiry.

This framework became the blueprint for all Section 2 vote dilution litigation for the next four decades.

Gingles Precondition 1: Size and Compactness

The Requirement

The minority group must be "sufficiently large and geographically compact to constitute a majority in a single-member district."

In Plain English: Is it mathematically and geographically possible to draw a reasonably configured district where the minority group would have a fair chance to elect its preferred candidate? Notice that the more geographically dispersed minorities are, the harder it will be to (a) satisfy this standard but (b) have racial gerrymandering in the first place.

How it's Proven: Plaintiffs typically use expert witnesses and "illustrative maps" to demonstrate to the court that such a district is feasible without being bizarrely shaped.

Gingles Precondition 2: Political Cohesion

The Requirement

The minority group must be "politically cohesive."

In Plain English: Do members of the minority group generally vote for the same candidates?

How it's Proven: Through statistical analysis of election results (e.g., ecological inference) to show that minority voters have a clear, preferred candidate who is distinct from the preference of majority voters.

Gingles Precondition 3: Majority Bloc Voting

The Requirement

The white majority must vote "sufficiently as a bloc to enable it... usually to defeat the minority's preferred candidate."

In Plain English: Does racially polarized voting exist, where the white majority consistently outvotes the cohesive minority, preventing them from electing their candidate of choice?

The Crux of the Claim: It is the interaction of the challenged practice with historical and social conditions of racial bloc voting that causes the discriminatory result.

Gingles Stage 2: Totality of Circumstances

If and only if the three preconditions are met, the court then moves to the second stage.

The Analysis

The court assesses the "totality of circumstances" to see if the minority group has less opportunity to participate and elect. This involves the "Senate Factors," including:

- A history of official discrimination in the jurisdiction.
- The extent to which voting is racially polarized.
- Use of candidate slating processes that exclude minorities.
- Lingering effects of discrimination in areas like education, employment, and health.
- Use of overt or subtle racial appeals in political campaigns.

The Equal Protection Limit: *Shaw v. Reno* (1993)

Just as the *Gingles* framework was solidifying, the Court created a constitutional check on race-conscious redistricting under the 14th Amendment.

Facts

To comply with a DOJ preclearance objection under the VRA, North Carolina created a second majority-Black district that was long and unusually shaped. White voters sued, claiming it was an unconstitutional racial gerrymander.

Holding

A redistricting plan that is "so bizarre on its face that it is unexplainable on grounds other than race" is subject to strict scrutiny.

The "Racial Predominance" Test: *Miller v. Johnson* (1995)

The Court refined the *Shaw* standard, moving away from a focus on bizarre shape to a focus on legislative motive.

Facts

Georgia, under pressure from the DOJ, created a sprawling majority-Black district stretching 260 miles to connect disparate Black communities.

Holding

Strict scrutiny applies whenever **race is the "predominant factor"** in placing voters into or out of a district. This means the legislature subordinated traditional race-neutral districting principles (like compactness, contiguity, respect for political subdivisions) to racial considerations.

The "Narrow Channel": Reconciling *Gingles* and *Shaw*

This doctrinal tension created what is often called the "narrow channel" that legislatures must navigate.

Gingles Requires States To:

- Be conscious of race.
- Analyze voting patterns by race.
- Draw districts to provide minority opportunity when the 3 preconditions are met.

Shaw/Miller Forbid States To:

- Allow race to be the *predominant* factor.
- Subordinate traditional criteria to race.
- Engage in racial sorting beyond what is necessary for VRA compliance.

Limiting Congress's Power: *City of Boerne v. Flores* (1997)

The Court placed a major limit on Congress's enforcement power under §5 of the 14th Amendment.

Facts

Congress passed the Religious Freedom Restoration Act (RFRA) to overrule a Supreme Court decision and impose a stricter standard on laws burdening religion.

Holding

The Court struck down RFRA as applied to the states, holding that Congress's enforcement power is purely remedial. It cannot change the substantive meaning of constitutional rights. For legislation to be a valid exercise of this power, it must be "congruent and proportional."

Boerne on the Voting Rights Act vs. RFRA

- Contrasted VRA with RFRA as valid Section 5 enforcement legislation.
 - VRA upheld in *South Carolina v. Katzenbach* (1966) for targeting flagrant voting discrimination with literacy test bans, federal examiners.
 - Endorsed *City of Rome* (1980): Section 5 preclearance proportional for jurisdictions with intentional discrimination histories.
 - VRA's remedies backed by extensive evidence of widespread, century-long voting rights violations.
 - RFRA lacked comparable evidence of religious discrimination, making its broad strict scrutiny disproportionate.
 - VRA's targeted measures (e.g., bailout clauses, periodic reauthorization) ensured congruence and proportionality, unlike RFRA's sweeping scope.

"Congruence and Proportionality" Explained

The Test

For prophylactic legislation to be valid, there must be "a congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end."

In Plain English: The legislative "fix" must be a reasonable fit for the constitutional "problem." Congress needs a documented record of constitutional violations to justify a broad preventative remedy.

A central question in *Callais* is whether this test, developed for the 14th Amendment, should apply to Congress's 15th Amendment power.

Gutting Preclearance: *Shelby County v. Holder* (2013)

The Preclearance Regime

Section 5 of the VRA required certain jurisdictions with a history of discrimination (including Louisiana) to get federal approval ("preclearance") for any voting change. **Section 4(b)** was the formula that determined which jurisdictions were covered.

The Holding

The Court struck down the Section 4(b) coverage formula as unconstitutional because it was based on decades-old data.

Impact: This effectively ended preclearance, leaving Section 2 as the primary remaining tool for challenging discriminatory voting laws.

Impact of *Shelby County* on Louisiana

The Supreme Court's 2013 decision fundamentally altered the landscape of voting rights in Louisiana.

Before *Shelby County*

Louisiana was a fully covered jurisdiction under Section 5. Any change to its voting laws, including new redistricting maps, required federal preclearance from the Department of Justice or a federal court in D.C. This acted as a powerful check on potentially discriminatory actions.

After *Shelby County*

The preclearance requirement was immediately eliminated. This meant that the 2020 redistricting cycle would be the first in decades where Louisiana could enact a new map without federal oversight, shifting the entire burden onto plaintiffs to challenge a map after the fact via Section 2 litigation.

The Partisan Gerrymandering Shield: *Rucho v. Common Cause* (2019)

The Holding

The Court declared that claims of partisan gerrymandering present non-justiciable "political questions" beyond the reach of federal courts.

Impact:

- There is no federal constitutional limit on how partisan a map can be.
- This gives states a powerful defense in race cases: they can claim their motive was "just politics," not race.

The combination of *Shelby County* and *Rucho* puts immense pressure on Section 2.

The Race/Party Conundrum after *Rucho*

Rucho complicates Section 2 litigation because race and party are so highly correlated in American politics.

The Defense

A state can dismantle a majority-Black, heavily Democratic district and claim its motive was purely partisan—to gain a political advantage by targeting Democrats, not Black voters.

Section 2 as a Guardrail

Until now, the Section 2 effects test has served as a guardrail. Even if a state claims a partisan motive, if the *result* is that a cohesive minority community's voting strength is diluted, the map is still illegal under the VRA. Striking down the effects test would remove this guardrail.

Gingles Reaffirmed: *Allen v. Milligan* (2023)

Facts & Holding

In a 5-4 decision authored by Chief Justice Roberts, the Court rejected Alabama's invitation to radically reinterpret or strike down Section 2. It held that Alabama's map, which had only one majority-Black district out of seven despite a 27% Black population, likely violated the VRA under a traditional *Gingles* analysis.

The decision was a surprising affirmation of existing precedent and was seen as a major victory for voting rights advocates.

The Colorblindness Principle: *SFFA v. Harvard* (2023)

The Court's decision striking down affirmative action in university admissions injected a powerful new theme into constitutional law.

Key Holdings

- "Eliminating racial discrimination means eliminating all of it."
- The Equal Protection Clause demands race-neutrality.
- Race-conscious remedies must have a "logical end point" and cannot last forever."

Allen v. Milligan: Kavanaugh's Concurrence

Justice Kavanaugh, who provided the crucial fifth vote in *Milligan*, wrote a separate concurrence that contained a clear warning.

Key Quote

"Even if race-based redistricting is permissible now, the authority to conduct such redistricting **cannot extend indefinitely into the future.**"

Significance:

- He directly imported the "logical end point" language from the affirmative action cases.
- He signaled that while he felt bound by precedent for now, the long-term constitutionality of Section 2 was an open question.
- This concurrence effectively tee'd up the fundamental challenge now being heard in *Callais*.

The Constitutional Challenge from *SFFA* to Section 2

The ruling in *SFFA* created a direct constitutional challenge to the VRA.

The Core Tension

If the Constitution requires near-absolute colorblindness and temporal limits in education, how can it tolerate a statutory scheme in voting that *requires* states to be acutely aware of race and has operated for over 40 years with no sunset provision?

The Counterargument

Defenders argue voting is different. The 15th Amendment explicitly names race, and Section 2 remedies a structural, group-level harm (bloc voting) rather than allocating individual spots in a zero-sum competition.

Louisiana Redistricting 2011: Pre-*Shelby County*

- **Map Enacted:** Following the 2010 census, the Louisiana Legislature passed a congressional map with six districts.
- **Configuration:** The map maintained the existing configuration of one majority-Black district out of six.
- **Preclearance:** Because Louisiana was still a covered jurisdiction under Section 5 of the VRA, the state had to submit the plan for federal preclearance. It was granted by the DOJ on August 1, 2011.
- **Key Dynamic:** The preclearance requirement acted as a significant deterrent, forcing legislators to consider what the DOJ would approve.

Louisiana Redistricting 2022: Post-*Shelby County*

- **New Census Data:** The 2020 Census showed Louisiana's Black population had grown to approximately one-third of the state's total.
- **Legislative Action:** The Republican-controlled legislature enacted a new map (HB 1) that once again contained only one majority-Black district.
- **Gubernatorial Veto:** Democratic Governor John Bel Edwards vetoed the map on March 9, 2022, arguing it diluted Black voting power and violated the VRA.
- **Veto Override:** The legislature convened a special session on March 30, 2022, and overrode the governor's veto, making the map law.

HB 1: The Republican Map

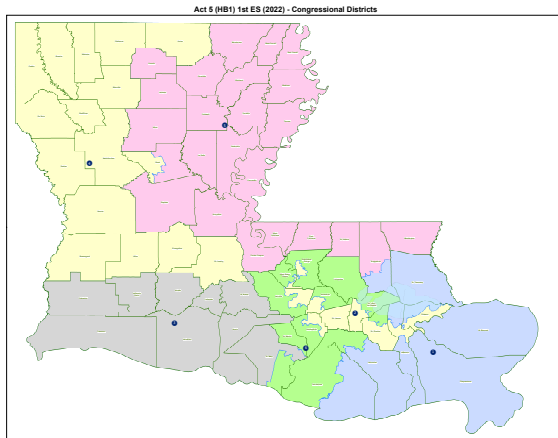


Figure: The Republican Map

Litigation Pt. 1: *Robinson v. Ardoin* (2022)

- **Lawsuit Filed:** Hours after the veto override, Black voters and the NAACP filed *Robinson v. Ardoin*, arguing the map violated Section 2.
- **Preliminary Injunction:** On June 6, 2022, U.S. District Judge Shelly Dick granted an injunction, ruling the map likely violated the VRA and ordering the state to draw a new map with two majority-Black districts for the 2022 elections.
- **Supreme Court Stay:** On June 28, 2022, the Supreme Court stayed Judge Dick's order, pending its decision in the similar Alabama case, *Allen v. Milligan*. Louisiana used the challenged one-district map in the 2022 elections.

Litigation Pt. 2: Post-*Milligan* Revival (2023)

- **Milligan Decided:** On June 8, 2023, the Supreme Court reaffirmed the *Gingles* framework.
- **Louisiana Appeal Dismissed:** On June 26, 2023, the Court dismissed Louisiana's appeal in *Robinson*, effectively sending the case back to the lower courts to proceed under the *Milligan* standard.
- **Fifth Circuit Ruling:** On November 10, 2023, the Fifth Circuit affirmed that the legislature's map likely violated the VRA and gave the state a deadline of January 15, 2024, to pass a new, compliant map.

The 2024 Special Session & The "Serpentine" District

- **Legislative Action:** Under court order, the legislature convened a special session in January 2024.
- **New Map (SB 8):** The legislature passed a new map creating a second majority-Black district (the new District 6).
- **District Shape:** The new district was highly irregular, stretching approximately 250 miles to connect disparate Black populations in Baton Rouge, through Alexandria, and up to Shreveport. It was drawn to comply with the court order while protecting incumbents.

District 6

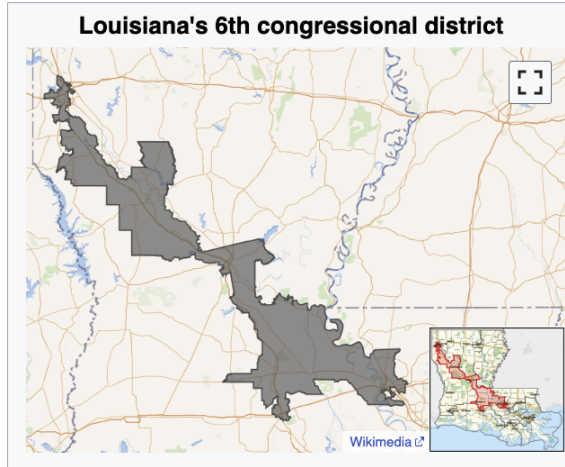


Figure: Louisiana District 6

Litigation Pt. 3: *Callais v. Landry* (2024)

- **The New Lawsuit:** Shortly after SB 8 was enacted, a group of self-identified "non-African American" voters filed *Callais v. Landry*.
- **The Claim:** The new map was an unconstitutional racial gerrymander under the Equal Protection Clause of the 14th Amendment. They argued race was the predominant factor in drawing the bizarrely shaped district, thus violating *Shaw v. Reno*.
- **Lower Court Ruling:** In April 2024, a divided three-judge panel agreed with the *Callais* plaintiffs and blocked the new two-district map.

The Louisiana Paradox

The state found itself caught between contradictory legal commands, perfectly illustrating the tension in the Court's voting rights jurisprudence.

Damned If You Don't

If Louisiana fails to draw a second majority-Black district, it is successfully sued under **Section 2 of the VRA** for vote dilution.

As the state's lawyer argued, Louisiana was "caught between two parties with diametrically opposed visions."

Damned If You Do

When Louisiana draws the court-ordered district, it is successfully sued under the **14th Amendment** for creating an unconstitutional racial gerrymander.

The Reargument Order & The Foundational Question

- SCOTUS first granted an emergency stay to allow the two-district map to be used for the 2024 elections.
- After an initial oral argument, the Court issued a dramatic order on June 27, 2025: it punted on the narrow question and set the case for reargument.
- The Court directed the parties to focus on a foundational constitutional question...

The Question Presented

Does Section 2 of the Voting Rights Act, as interpreted and applied, exceed Congress's enforcement powers under the Reconstruction Amendments?

Arguments Against Section 2's Constitutionality

- **It Mandates Racial Sorting:** The effects test, in practice, compels states to sort citizens by race to create "opportunity districts," violating the Equal Protection Clause's demand for colorblindness.
- **It Lacks an "End Point":** The *SFFA* decision requires race-conscious remedies to be temporary. Section 2 has been operating for over 40 years with no sunset provision, making it unconstitutional.
- **It's Not "Congruent and Proportional":** The 15th Amendment forbids *intentional* discrimination. Section 2's effects test is a remedy that is disproportionately broad compared to the constitutional violation it is meant to prevent, thus exceeding Congress's power under *Boerne*.

Arguments For Section 2's Constitutionality

- **Stare Decisis**
- **15th Amendment is Unique:** The 15th Amendment is an explicit, text-based grant of power to legislate on race and voting. This domain is different from education or religion. "Appropriate legislation" grants Congress broad power.
- **It's "Appropriate Legislation":** Congress reasonably determined that an effects test was a necessary prophylactic measure to enforce the 15th Amendment, especially since discriminatory intent is easily hidden behind partisan justifications post-*Rucho*.
- **It Remedies Structural Harms:** Section 2 is not about individual competition like university admissions; it's about remedying the structural harm of organized racial bloc voting that nullifies a community's political power.

Potential Outcomes & The Stakes

- **Narrow Ruling:** Decide the case on *Shaw* grounds only, striking down Louisiana's map but leaving Section 2 intact for now.
- **Refine Section 2 ("Gingles 2.0"):** Keep the effects test but add new, stricter requirements for plaintiffs (e.g., higher compactness standards).
- **As-Applied Narrowing:** Rule that Section 2 cannot compel states to draw race-predominant districts where geography is difficult.
- **The "Earthquake":** Strike down the effects test entirely, returning to the difficult-to-prove intent standard from *Bolden*.

The Stakes

If the effects test falls, federal vote dilution claims become nearly impossible. Combined with *Rucho*, there would be virtually no federal judicial check on racial or partisan gerrymandering.

Rucho: the unseen force

The Supreme Court's 2019 decision in *Rucho v. Common Cause* is the central, unseen force shaping the entire conflict in *Louisiana v. Callais*. By declaring partisan gerrymandering a non-justiciable "political question," *Rucho* created an impenetrable legal shield for state legislatures. Now, map-drawers—whether motivated by pure partisan advantage or by racial discrimination—can justify any map, no matter how skewed, on the unreviewable grounds of partisanship. They can crack a heavily Democratic Black community and legally claim their only motive was to disadvantage Democrats, a defense federal courts are powerless to question.

Gingles/Milligan as the antidote to Rucho

Section 2 of the Voting Rights Act, with its "effects test," is the only remaining countermeasure to this shield. It allows plaintiffs to challenge a map based on its discriminatory result, irrespective of the legislature's stated motive. In essence, the effects test pierces the partisan shield by making the motive irrelevant if the outcome is racial vote dilution. This dynamic, however, allows many partisan gerrymanders to be recast as racial ones, but only for certain groups.

The Asymmetry

This leads to a profound legal asymmetry. A cohesive community of Black Democrats in Louisiana, whose votes are diluted by a partisan gerrymander, can sue under Section 2 and potentially win an "opportunity district" because the map has a discriminatory racial effect. They have a federal remedy. In contrast, a cohesive community of white Democrats in West Virginia, equally submerged by a partisan gerrymander, has no such recourse. Their injury is purely political, and Rucho has barred their claim. Section 2 thus creates a powerful tool to fight gerrymandering, but only for groups that fall within its racial protections. The core question in Callais is whether this powerful, asymmetric countermeasure to Rucho is constitutionally permissible.