

Nos. 21-1086 & 21-1087

In the **Supreme Court of the United States**

JOHN H. MERRILL, ET AL.,
Appellants,

v.

EVAN MILLIGAN, ET AL.,
Appellees.

JOHN H. MERRILL, ET AL.,
Petitioners,

v.

MARCUS CASTER, ET AL.,
Respondents.

*On Appeal from and on Writ of Certiorari to the United States
District Court for the Northern District of Alabama*

**BRIEF ON BEHALF OF UCLA SOCIAL SCIENTISTS
AS *AMICI CURIAE* IN SUPPORT OF APPELLEES**

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CASES

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<i>Clerveaux v. E. Ramapo Cent. Sch. Dist.</i> , 984 F.3d 213 (2d Cir. 2021)	15
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<i>NAACP v. E. Ramapo Cent. Sch. Dist.</i> , 462 F. Supp. 3d (2020)	3, 15
<i>Patino v. City of Pasadena</i> , 230 F. Supp. 3d (S.D. Tex. 2017)	14, 15, 17

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<i>Rodriguez v. Harris Cnty.</i> , 964 F. Supp. 2d 686 (S.D. Tex. 2013).	15
<i>Shaw v. Reno</i> , 509 U.S. 630 (1993).	5
<i>Shelby Cnty. v. Holder</i> , 570 U.S. 529 (2013).	4, 5, 14, 19
<i>Thornburg v. Gingles</i> , 478 U.S. 30 (1986).	4, 5, 7, 15, 19
<i>United States v. City of Eastpointe</i> , 378 F. Supp. 3d (E.D. Mich. 2019)	16
<i>White v. Regester</i> , 412 U.S. 755 (1973).	6
<i>Wright v. Sumter Cnty. Bd. of Elections & Registration</i> , 301 F. Supp. 3d (M.D. Ga. 2018), <i>aff'd</i> , 979 F.3d 1282 (11th Cir. 2020)	14

CONSTITUTION AND STATUTES

U.S. Const. amend. XV	4, 19
52 U.S.C. § 10301(b).	7, 15, 19

OTHER AUTHORITIES

Carolyn Abbot & Asya Magazinnik, <i>At-Large Elections and Minority Representation in Local Government</i> , 64 Am. J. Pol. Sci. 717 (2020) . .	6, 14
Alberto Alesina, et al., <i>Public Goods and Ethnic Divisions</i> , 114 Q.J. Econ. 1243 (1999)	16

EDWARD G. CARMINES & JAMES A. STIMSON, <i>ISSUE EVOLUTION: RACE AND THE TRANSFORMATION OF AMERICAN POLITICS</i> (1989)	11
Cases Raising Claims Under Section 2 of the Voting Rights Act, U.S DEP'T OF JUST. (May 25, 2022), https://www.justice.gov/crt/cases-raising-claims-under-section-2-voting-rights-act-0	14
Loren Collingwood, et al., <i>eiCompare: Comparing Ecological Inference Estimates across EI and EIRxC</i> , 8 The R. J. 92 (2016)	8
<i>Commercial Voter Files and the Study of U.S. Politics</i> , PEW RSCH. CTR. (Feb. 15, 2018), https://www.pewresearch.org/methods/2018/02/15/demographic-data [https://perma.cc/R5US-SZ52]	9
Kevin Deluca & John A. Curiel, <i>Validating the Applicability of BISG to Congressional Redistricting</i> (unpublished manuscript), https://electionlab.mit.edu/sites/default/files/2021-07/deluca-curiel_validating_bisg.pdf [https://perma.cc/W6J9-8RYN].	9
Peter K. Eisinger, <i>Black Employment in Municipal Jobs: The Impact of Black Political Power</i> , 76 Am. Pol. Sci. Rev. 380 (1982)	16
Catalina Feder & Michael G. Miller, <i>Voter Purges After Shelby: Part of Special Symposium on Election Sciences</i> , 48(6) Am. Pol. Rsch. 687 (2020).	19

Sydnee Fielkow, <i>Shelby County and Local Governments: A Case Study of Local Texas Governments Diluting Minority Votes</i> , 14 Nw. J.L. & Soc. Pol'y 348 (2018)	19
Matthew C. Fellowes & Gretchen Rowe, <i>Politics and the New American Welfare States</i> , 48 Am. J. Pol. Sci. 362 (2004)	17
Bernard L. Fraga, <i>Redistricting and the Causal Impact of Race on Voter Turnout</i> , 78 J. of Pol. (2016).	5
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Michael D. Herron & Daniel A. Smith, <i>Race, Shelby County, and the Voter Information Verification Act in North Carolina</i> , 43 Fla. St. U. L. Rev. 465 (2015).	19
Ben Highton, <i>Prejudice Rivals Partisanship and Ideology When Explaining the 2008 Presidential Vote Across the States</i> , 44 PS: POL. SCI. & POLS. 530 (2011)	12
GARY KING, A SOLUTION TO THE ECOLOGICAL INFERENCE PROBLEM: RECONSTRUCTING INDIVIDUAL BEHAVIOR FROM AGGREGATE DATA (1997).	8
Jonathan Knuckey, <i>Racial Resentment and the Changing Partisanship of Southern Whites</i> , 11 PARTY POLS. 5 (2005)	11

- Ilyana Kuziemko & Ebonya Washington, *Why Did the Democrats Lose the South? Bringing New Data to an Old Debate*, 108 Am. Econ. Rev. 2830 (2018). 12
- Kenneth J. Meier & Robert E. England, *Black Representation and Educational Policy: Are They Related?*, 78 Am. Pol. Sci. Rev. 392 (1984). . 18, 19
- Stephen Menendian, Samir Gambhir & Arthur Gales, *Twenty-First Century Racial Residential Segregation in the United States*, UNIV. BERKELEY: ROOTS OF STRUCTURAL RACISM PROJECT (June 21, 2021), <https://belonging.berkeley.edu/roots-structural-racism> 6
- Dana Ables Morales, *Racial Attitudes and Partisan Identification in the United States, 1980-1992*, 5 Party Pols. 191 (1999). 10
- David Nevin, & Michael E. Solimine, *Representing People and Places: Castaway Voters and the Racial Disparity in Redistricting*, 21 Election L.J. Rules, Pols. & Pol'y 171 (2022) 5
- Mara Cecilia Ostfeld, *The New White Flight?: The Effects of Political Appeals to Latinos on White Democrats*, 41 Pol. Behav. 561 (2019) 13
- Spencer Piston, *How Explicit Racial Prejudice Hurt Obama in the 2008 Election*, 32 POL. BEHAV. 431 (2010). 12

Robert R. Preuhs, <i>Descriptive Representation as a Mechanism to Mitigate Policy Backlash: Latino Incorporation and Welfare Policy in the American States</i> , 60 Pol. Rsch. Q. 277 (2007) . .	18
KEITH REEVES, VOTING HOPES OR FEARS? WHITE VOTERS, BLACK CANDIDATES & RACIAL POLITICS IN AMERICA (1997)	10, 11
Rene R. Rocha & Rodolfo Espino, <i>Racial Threat, Residential Segregation, and the Policy Attitudes of Anglos</i> , 62 Pol. Res. Q. 415 (2009)	6
Richard Skinner & Philip Klinkner, <i>Black, White, Brown and Cajun: The Racial Dynamics of the 2003 Louisiana Gubernatorial Election</i> , 2 The Forum 1 (2004)	10
MICHAEL TESLER & DAVID SEARS, OBAMA'S RACE: THE 2008 ELECTION AND THE DREAM OF A POST-RACIAL AMERICA (2010)	10, 11
Michiko Ueda, <i>The Impact of Minority Representation on Policy Outcomes: Evidence from the U.S. States</i> (Cal. Inst. Of Tech., Social Science Working Paper No. 1284, 2008) . . .	17, 18
U.S. ELECTION ASSISTANCE COMM'N, AVAILABILITY OF STATE VOTER FILE AND CONFIDENTIAL INFORMATION (2020), https://www.eac.gov/sites/default/files/voters/Available_Voter_File_Information.pdf [https://perma.cc/TY5U-WSWE]	9

Nicholas A. Valentino & David O. Sears, <i>Old Times There are not Forgotten: Race and Partisan Realignment in the Contemporary South</i> , 24 Am. J. Pol. Sci. 672 (2005)	10
Sean J. Westwood & Erik Peterson, <i>The Inseparability of Race and Partisanship in the United States</i> , Pol. Behav. 1 (2020)	13

INTEREST OF *AMICI*¹

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¹ No counsel for any party authored this brief in whole or in part, and no person or entity other than *amici* made a monetary contribution to its preparation or submission. Each party provided blanket consent to the filing of *amicus curiae* briefs pursuant to U.S. Supreme Court Rules 37.2(a) and 37.3(a).

Hollywood Diversity Report, an analysis of diversity in the film and television industry. He is the author and editor of multiple books on race and the media. He has published articles in several journals including *Amerasia Journal*, *Working USA: The Journal of Labor and Society*, *Journal of Sport and Social Issues*, and *The Sociological Quarterly*.

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The UCLA Social Scientists, as *amici*, are well-positioned to opine on the issues before the Court because of *amici*’s work as social scientists studying race and voting. *Amici* have collectively performed hundreds of racially polarized voting analyses using current court-approved methods. These analyses have been provided as testimony in federal court and accepted as reliable by state and federal courts. See, e.g., *NAACP v. E. Ramapo Cent. Sch. Dist.*, 462 F. Supp. 3d 368 (2020), and *Harding v. Cnty. of Dallas*, 336 F. Supp. 3d 677 (N.D. Tex. 2018).

U.S. Supreme Court Rule 37.1 states that an *amicus* brief that calls the Court’s attention to “relevant matter not already brought to its attention by

the parties may be of considerable help to the Court...”
The UCLA Voting Rights Project submits this brief for this purpose.

SUMMARY OF ARGUMENT

The Voting Rights Act does important work protecting voting rights of all citizens in local political subdivisions throughout the country. Should the Court accept the invitation to undermine Section 2(b), it will have calamitous effects on the right to vote of racial minorities in school districts, counties, cities and other local governmental units. This brief is offered to provide the Court with the latest social science pertaining to racial effects in elections and highlight that any adjustment to the Section 2 effects test, if deemed by the Court necessary at all, should be carefully tailored to ensure Section 2 continues to provide a remedy to citizens suffering in local level electoral systems that prevent them a meaningful opportunity to elect candidates of choice.

The VRA was enacted by Congress in 1965 to remedy historical and ongoing discrimination and to prohibit voting practices that abridge the right of any U.S. citizen to vote on account of race or color. *See Shelby County v. Holder*, 570 U.S. 529, 536-37 (2013). The explicit language of Section 2 of the Fifteenth Amendment grants Congress the authority to enact the VRA. The VRA’s purpose is to eliminate the negative effects of voter based racial discrimination on the electoral opportunities of minorities. *See Thornburg v. Gingles*, 478 U.S. 30, 65 (1986).

After this Court held that the original language of Section 2 only covered intentional race discrimination, *City of Mobile v. Bolden*, Congress amended the statute to explicitly prohibit voting practices that have racially discriminatory effects, regardless of intent. 446 U.S. 55, 62 (1980) (plurality opinion). This Court gave context to the revised Section 2 language in *Gingles*. This standard has been effective at remedying egregious local electoral systems that are racially discriminatory.

The need for Section 2(b) remains. Race and racial animus still play a role in both voting and redistricting. *Shelby County*, 570 U.S. at 536 (2013) (“At the same time, voting discrimination still exists; no one doubts that.”).

Race still guides many voters in their electoral choices. Racially polarized voting remains prominent in areas of the country. As a result, district map drawing cannot avoid racial impacts. Choosing to ignore race in political map drawing *is itself* an intentional choice with known and predictable discriminatory results.²

Indeed, this Court recently noted that map drawers are “always” aware of racial demographics. *Bethune-Hill v. Virginia State Bd. Of Elections*, 137 S. Ct. 788, 797 (2017) (quoting *Shaw v. Reno*, (*Shaw I*), 509 U.S. 630, 646 (1993)). Map drawers are similarly aware of the existence of racially polarized voting in their

² See David Nevin, & Michael E. Solimine, *Representing People and Places: Castaway Voters and the Racial Disparity in Redistricting*, 21 Election L.J. Rules, Pols. & Pol’y 171, 181 (2022); Bernard L. Fraga, *Redistricting and the Causal Impact of Race on Voter Turnout*, 78 J. of Pol. 19, 30 (2016).

community—knowledge that is key to knowing where one’s supporters live. Rendering meaningless Congress’s plain language addition to Section 2 would not result in redistricting becoming race-neutral; it would provide a cover for racially discriminatory electoral systems to persist.

Without Section 2(b) protections, at-large and multimember election schemes—known for diluting minority votes—will continue and proliferate in local elections. These electoral systems have long been recognized by the Court to have discriminatory effects. *See, e.g., White v. Regester*, 412 U.S. 755, 765 (1973). These practices remain common in important, local elections like school board, city council, and other local governments, and those local elections have large impacts on the everyday lives of citizens.³

At the same time, the nation’s citizens continue to reside in racially segregated communities.⁴ In fact, literature suggests that racial housing segregation is

³ Carolyn Abbot & Asya Magazinnik, *At-Large Elections and Minority Representation in Local Government*, 64 Am. J. Pol. Sci. 717, 718, 727 (2020) (“Governing bodies elected at-large—city councils, school boards, and municipal boards—make decisions about how education is funded, where roads are built, and how water and sanitation services are delivered; they determine housing, economic development, transportation, and urban planning policies that shape their constituents’ daily lives.”); Rene R. Rocha & Rodolfo Espino, *Racial Threat, Residential Segregation, and the Policy Attitudes of Anglos*, 62 Pol. Res. Q. 415, 423 (2009).

⁴ Stephen Menendian, Samir Gambhir & Arthur Gales, *Twenty-First Century Racial Residential Segregation in the United States*, UNIV. BERKELEY: ROOTS OF STRUCTURAL RACISM PROJECT (June 21, 2021), <https://belonging.berkeley.edu/roots-structural-racism>.

getting worse, not better.⁵ As long as significant housing segregation remains, and racially polarized voting exists, political map makers will construct maps that have discriminatory effects.

In this brief, *amici* provide the Court important context for the decision it will issue. Recent social science measuring the effect of racial attitudes in voting is offered. Some recent Section 2(b) cases concerning local jurisdictions are provided. Finally, the scientific literature surveyed demonstrates the importance of nondiscriminatory election systems in the operation of local political subdivisions.

ARGUMENT

I. Race Plays a Significant Role in Elections.

Race-neutral redistricting by state legislatures and other local jurisdictions does not exist. While technological advances may allow for computer production of race-blind redistricting maps, the people choosing and implementing the final maps are not.

Racially polarized voting (“RPV”) evidence is the keystone of the *Gingles* analysis. It allows a court to objectively analyze voting patterns for the racially discriminatory effect. When RPV is severe, a court is required by the VRA to determine, “based on the totality of circumstances, [whether] 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....” 52 U.S.C. § 10301(b). RPV evidence proves the existence

⁵ *Id.*

of racially motivated voting, as well as the link between the seemingly race-neutral partisanship and racial animus.

Courts should not ignore racially polarized voting evidence. Ignoring racially polarized voting and racial effects evidence does not lead to a race neutral panacea. Turning a blind eye makes nothing disappear.

Polarized voting analysis uses ecological inference, a statistical methodology that allows social scientists to examine aggregate units and sort out patterns within the data.⁶ Ecological inference is a well established scientific tool. It is used in the fields of economics, statistics, epidemiology, sociology, and political science.⁷ For political science purposes, when social scientists lack perfect information on how individuals behave, they can attempt to infer that behavior by examining patterns in larger aggregate units.⁸

Ecological inference is used by the scientist to determine the racial makeup of voters. Racial voting patterns are information political map drawers and policy makers intuitively know from their experience as members of the community. Because race is not

⁶ Loren Collingwood, et al., *eiCompare: Comparing Ecological Inference Estimates across EI and EI: RxC*, 8 The R. J. 92, 94 (2016).

⁷ GARY KING, A SOLUTION TO THE ECOLOGICAL INFERENCE PROBLEM: RECONSTRUCTING INDIVIDUAL BEHAVIOR FROM AGGREGATE DATA 5 (1997).

⁸ See Bernard Grofman, *Multivariate Methods and the Analysis of Racially Polarized Voting: Pitfalls in the Use of Social Science by the Courts*, 72 SOC. SCI. Q. 826, 827 (1991).

recorded in most voter records,⁹ the scientific community turned to ecological inference and other tools to scientifically measure racial voting patterns. Using ecological inference, political scientists take precinct-by-precinct election results and correlate how precinct votes were cast and the racial or ethnic demographics of the voters within a given precinct.¹⁰

Racially polarized voting, however, does not occur in a vacuum. Social science research has documented extensively that the underlying catalysts triggering bloc voting are racial attitudes and stereotypes. Studies

⁹ Kevin Deluca & John A. Curiel, *Validating the Applicability of BISG to Congressional Redistricting* 1, 3 (unpublished manuscript), https://electionlab.mit.edu/sites/default/files/2021-07/deluca-curiel_validating_bisg.pdf [<https://perma.cc/W6J9-8RYN>] (“Many states do not collect individual race data in their voter files – including states like Texas, Pennsylvania, and Wisconsin, which are often subjects of contentious gerrymandering litigation.”) (last visited Oct. 14, 2021); U.S. ELECTION ASSISTANCE COMM’N, AVAILABILITY OF STATE VOTER FILE AND CONFIDENTIAL INFORMATION (2020), https://www.eac.gov/sites/default/files/voters/Available_Voter_File_Information.pdf [<https://perma.cc/TY5U-WSWE>] (listing the information that each voter file contains, including states that provide racial demographic information); *Commercial Voter Files and the Study of U.S. Politics*, PEW RSCH. CTR. (Feb. 15, 2018), <https://www.pewresearch.org/methods/2018/02/15/demographic-data> [<https://perma.cc/R5US-SZ52>] (“In 16 states or portions of states, largely in the South, the Voting Rights Act of 1965 mandated that states list voters’ race on the state voter rolls. However, in states where this information is not available, vendors attempt to use information from other sources such as identifying common surnames or if someone lives in an area that is densely populated by a particular race.”).

¹⁰ See Bernard Grofman, *Multivariate Methods and the Analysis of Racially Polarized Voting: Pitfalls in the Use of Social Science by the Courts*, 72 SOC. SCI. Q. 826, 827 (1991).

have shown that partisan ideology alone cannot explain away this link.¹¹

Indeed, an abundance of published research in leading academic publications finds racial animus is a leading indicator of vote preference and party affiliation among whites.¹² Scholarly research has produced several significant findings showing that prejudice and discriminatory attitudes towards minorities persists today and that it is one of the *strongest* predictors of party attachment among whites.¹³

For example, in a large-scale study of racial attitudes and voting, Keith Reeves finds that “a significant number of whites harbor feelings of antipathy toward black Americans as a categorical group— feelings and sentiments that are openly and routinely expressed.... And where such prejudices are

¹¹ See Dana Ables Morales, *Racial Attitudes and Partisan Identification in the United States, 1980-1992*, 5 Party Pols. 191, 197 (1999); Nicholas A. Valentino & David O. Sears, *Old Times There are not Forgotten: Race and Partisan Realignment in the Contemporary South*, 24 Am. J. Pol. Sci. 672, 682 (2005); KEITH REEVES, VOTING HOPES OR FEARS? WHITE VOTERS, BLACK CANDIDATES & RACIAL POLITICS IN AMERICA 74 (1997); MICHAEL TESLER & DAVID SEARS, OBAMA’S RACE: THE 2008 ELECTION AND THE DREAM OF A POST-RACIAL AMERICA 61 (2010).

¹² See, e.g. Morales, *supra* note 11, at 196-97; Valentino & Sears, *supra* note 11, at 685.

¹³ Richard Skinner & Philip Klinkner, *Black, White, Brown and Cajun: The Racial Dynamics of the 2003 Louisiana Gubernatorial Election*, 2 The Forum 1, 7-8 (2004).

excited.... they constitute the critical linchpin in black office-seekers' success in garnering white votes.”¹⁴

Writing more than 10 years later about the 2008 presidential election, Michael Tesler and David Sears find the same pattern. Even after controlling for the independent effects of partisanship and ideology, they find “[t]he most racially resentful were more than 70 percentage points more likely to support McCain in March 2008 than were the least racially resentful.”¹⁵ Tesler and Sears conclude that the Obama era unfortunately reshaped partisan affiliation in contemporary America almost entirely through the lens of racial attitudes.¹⁶

In what comes close to a consensus in published, empirical political science studies, scholarly work supports the finding that discriminatory attitudes and racial prejudice play a central role in driving racial party identification, and this is especially strong in states previously covered by Section 5 of the VRA.¹⁷

In his analysis of the white vote for Obama in Southern states, Ben Highton noted that “at the state level, the influence of prejudice on voting was comparable to the influence of partisanship and

¹⁴ Reeves, *supra* note 11, at 74.

¹⁵ Tesler & Sears, *supra* note 11, at 61.

¹⁶ *Id.* at 60-61.

¹⁷ See generally Jonathan Knuckey, *Racial Resentment and the Changing Partisanship of Southern Whites*, 11 PARTY POLS. 5, 11 (2005); EDWARD G. CARMINES & JAMES A. STIMSON, *ISSUE EVOLUTION: RACE AND THE TRANSFORMATION OF AMERICAN POLITICS* 132 (1989).

ideology. Racial attitudes explain support for Obama and shifts in Democratic voting between 2004 and 2008.”¹⁸ This finding is corroborated by Spencer Piston’s individual-level analysis of voter attitudes and support for Barack Obama in Southern states, drawing a direct link between racial attitudes and voting, independent of partisanship.¹⁹ Piston asserted that “[n]egative stereotypes about blacks significantly eroded white support for Barack Obama,” concluding that “white voters punished Obama for his race rather than his party affiliation.”²⁰

Another important piece of scholarship on this point is the detailed and comprehensive study presented by Kuziemko and Washington. Their paper disentangles antipathy toward Black people from other factors that motivate white Americans to support the Republican party, such as conservative principles, support for reduced government intervention, and other policy preferences.²¹

The findings in political science are not limited to racial views towards Blacks, but increasingly today white partisanship is influenced by views towards

¹⁸ Ben Highton, *Prejudice Rivals Partisanship and Ideology When Explaining the 2008 Presidential Vote Across the States*, 44 PS: POL. SCI. & POLS. 530, 530 (2011).

¹⁹ Spencer Piston, *How Explicit Racial Prejudice Hurt Obama in the 2008 Election*, 32 POL. BEHAV. 431, 431 (2010).

²⁰ *Id.*

²¹ See generally Ilyana Kuziemko & Ebonya Washington, *Why Did the Democrats Lose the South? Bringing New Data to an Old Debate*, 108 Am. Econ. Rev. 2830, 2861 (2018).

Latinos and immigrants. Recent research demonstrates that when Democratic political elites make campaign appeals to Latinos, it results in partisan defections from the Democratic party toward the Republican party on part of white Americans.²²

In their 2020 published paper “The Inseparability of Race and Partisanship in the United States,” Sean Westwood and Erik Peterson demonstrate that although partisanship and race are highly correlated with one another, white Americans’ viewpoints toward racial minority groups directly affects their attachment to either the Democratic or Republican Party, and vice versa.²³ In other words, a negative evaluation of Blacks or Latinos translates into a negative evaluation of Democrats in general, and positive evaluation of whites translates into positive evaluations of Republicans in general, and vice versa. They conclude that racial discrimination is intimately linked to partisan discrimination, and their research finds these two concepts to be “inseparable.”²⁴

Given what the science has revealed about racial voting patterns, redistricting based on supposed race-neutral partisan lines is anything but. Eliminating effects-based protection for racial discrimination in voting while allowing map drawers to safe harbor their

²² Mara Cecilia Ostfeld, *The New White Flight?: The Effects of Political Appeals to Latinos on White Democrats*, 41 Pol. Behav. 561, 576 (2019).

²³ Sean J. Westwood & Erik Peterson, *The Inseparability of Race and Partisanship in the United States*, Pol. Behav. 1, 12 (2020).

²⁴ *Id.* at 20.

intentions by claiming partisanship, guarantees racially discriminatory maps without legal remedy.

II. The Section 2(b) Protections Remain Vitally Necessary to Protect Voters in Local Governments.

Appellants acknowledge the obstacle at-large and multimember election schemes places on successful minority voting and representation, but incorrectly imply that most such schemes have been “dismantled.” Br. Appellants 37. This is plainly untrue at the local level.

Many local jurisdictions still utilize at-large election systems.²⁵ Numerous Section 2 lawsuits in the past decade sought to remedy at-large voting systems.²⁶ Hybrid election districts and single member districts maps (some of them newly imposed after this Court’s *Shelby County* decision) that had discriminatory effects were also challenged under the Section 2 effects test. See, e.g., *Wright v. Sumter Cnty. Bd. of Elections & Registration*, 301 F. Supp. 3d 1297, 1326 (M.D. Ga. 2018), *aff’d*, 979 F.3d 1282 (11th Cir. 2020), *Luna v. Cnty. of Kern*, 291 F. Supp. 3d 1088, 1142, 1144 (E.D. Cal. 2018), *Patino v. City of Pasadena*, 230 F. Supp. 3d

²⁵ Carolyn Abbot & Asya Magazinnik, *At-Large Elections and Minority Representation in Local Government*, 64 Am. J. Pol. Sci. 717, 717 (2020).

²⁶ See e.g., Cases Raising Claims Under Section 2 of the Voting Rights Act, U.S. DEP’T OF JUST. (May 25, 2022), <https://www.justice.gov/crt/cases-raising-claims-under-section-2-voting-rights-act-0>.

667, 718 (S.D. Tex. 2017), *Pope v. Cnty. of Albany*, 94 F. Supp. 3d 302, 351 (N.D.N.Y. 2015).

In all cases, the exacting *Gingles* standard places a high burden on plaintiffs. Indeed, often the plaintiffs have shown racially discriminatory harm, but fail to meet the rest of the *Gingles* framework and therefore are denied relief. *See, e.g., Rodriguez v. Harris Cnty.*, 964 F. Supp. 2d 686, 804 (S.D. Tex. 2013), *aff'd sub nom. Gonzalez v. Harris Cnty.*, 601 Fed. App'x 255 (5th Cir. 2015) (while Plaintiff's failed to meet the first *Gingles* prong, the "Court is troubled by evidence of the range and prevalence of voter suppression tactics employed against members of the Latino community."), *Cisneros v. Pasadena Indep. Sch. Dist.*, No. 4:12-CV-2579, 2014 U.S. Dist. LEXIS 58278, at *63-65 (S.D. Tex. 2014).

Gingles requires proof of not only a discriminatory electoral map or system but also a detailed, intricate, and scientific look at the segregation, polarization, and discriminatory practices of the community. Section 2 correctly provides a legal remedy when the totality of the circumstances demonstrates that voter racial attitudes are working within an electoral system that results in some voters, based on their race, "hav[ing] less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 52 U.S.C. § 10301(b).

Recent rulings in local jurisdiction cases demonstrate the egregious conditions that Section 2(b) continues to remedy. *See E. Ramapo Cent. Sch. Dist.*, 462 F. Supp. 3d at 417 *aff'd sub nom. Clerveaux v. E. Ramapo Cent. Sch. Dist.*, 984 F.3d 213 (2d Cir. 2021),

and *United States v. City of Eastpointe*, 378 F. Supp. 3d 589, 614 (E.D. Mich. 2019), and *Missouri State Conf. of the NAACP v. Ferguson-Florissant Sch. Dist.*, 201 F. Supp. 3d 1006 (E.D. Mo. 2016), *aff'd* 894 F.3d 924, 941 (8th Cir. 2018).

III. Non-Discriminatory Voting Systems and District Maps in Local Elections Have Important Benefits That Congress Appropriately Protected.

Racial representation, or the lack of it, is a key determinant in the adoption and execution of government policy.²⁷ Examples of the link between racial bias and policy outcomes occur in city government spending patterns. “[S]pending on productive public goods – education, roads, sewers and trash pickup – in U.S. cities . . . [are] inversely related to the city’s . . . ethnic fragmentation.”²⁸ Jurisdictions with a majority of white voters, “choose lower public goods when a significant fraction of tax revenues collected on one ethnic group are used to provide public goods shared with other ethnic groups.”²⁹ Among those public goods, spending on core goods like education and roads has been found to be lower in more ethnically diverse jurisdictions.³⁰

²⁷ Peter K. Eisinger, *Black Employment in Municipal Jobs: The Impact of Black Political Power*, 76 Am. Pol. Sci. Rev. 380, 381 (1982).

²⁸ Alberto Alesina, et al., *Public Goods and Ethnic Divisions*, 114 Q.J. Econ. 1243, 1243 (1999).

²⁹ *Id.* at 1244.

³⁰ *Id.* at 1274.

A 2004 study by Matthew Fellowes and Gretchen Rowe on the passage of the Personal Responsibility and Work Opportunities Reconciliation Act (“PRWORA”) and subsequent distribution of the Temporary Aid to Needy Families (“TANF”) and Aid for Families with Dependent Children (“AFDC”) programs found that as states become more diverse, welfare policies become stricter because of underlying racist attitudes among government officials.³¹ Indeed, across several factors tested, “only race has a significant effect on the majority of welfare [policies] analyzed.”³² The trend shows that as minorities increase in proportion of program recipients, the strictness of program entry requirements increases. It is likewise true that when a minority community grows large enough to threaten the political majority, many local officials move to change the electoral system. *See e.g., Patino v. City of Pasadena*, 230 F. Supp. 3d at 718.

The inclusion and integration of members of underrepresented communities serves as a remedy to the racially inequitable implementation of public policies. Studies have found that “the political representation of African Americans is associated with a more equitable allocation of state aid to school districts.”³³ “In states where African Americans gained greater representation, high minority enrollment

³¹ Matthew C. Fellowes & Gretchen Rowe, *Politics and the New American Welfare States*, 48 Am. J. Pol. Sci. 362, 370 (2004).

³² *Id.* at 362.

³³ Michiko Ueda, *The Impact of Minority Representation on Policy Outcomes: Evidence from the U.S. States*, 1 (Cal. Inst. Of Tech., Social Science Working Paper No. 1284, 2008).

districts saw a greater increase in aid compared to high minority enrollment districts in states where African Americans remained underrepresented in the state legislature.”³⁴ Similarly in local education policy, racial representation on school boards was associated with equitable representation in teaching staff, Black student college acceptance rates, and more Black students admitted in gifted and enriched classes.³⁵

According to social science literature, increased government responsiveness is a proven effect of racial representation on all levels of politics and for multiple racial groups.³⁶ Studies on descriptive representation show that “increases in Latino representation and legislative incorporation offset the negative effects of Latino population size on social welfare policy.”³⁷

Minority representation counteracts the policy inequities instituted in racially homogeneous environments. There exists a clear relationship between minority representation in government positions and increases in municipal employment opportunities for Black and Latino people. According to Dye and Renick, “[f]or Blacks and Hispanics, employment in top city jobs appears to be a function of

³⁴ *Id.* at 5–6.

³⁵ Kenneth J. Meier & Robert E. England, *Black Representation and Educational Policy: Are They Related?*, 78 Am. Pol. Sci. Rev. 392, 397 (1984).

³⁶ Robert R. Preuhs, *Descriptive Representation as a Mechanism to Mitigate Policy Backlash: Latino Incorporation and Welfare Policy in the American States*, 60 Pol. Rsch. Q. 277, 279 (2007).

³⁷ *Id.* at 277.

political power as it is reflected in city council representation.”³⁸ Throughout multiple streams of research, the key determinant of equitable policy outcomes (increased government responsiveness and healthy constituent-public service relationships), is meaningful racial representation.

Turning a blind eye to the discriminatory effects of voting systems and district maps is an intentional choice to permit “political processes” that “are not equally open to participation by members” of racial groups who do not form a political majority. 52 U.S.C. § 10301(b). If this Court were to render Congress’ Section 2 effects language meaningless, racially discriminatory policy changes will be swift in local communities throughout the country. In the aftermath of the *Shelby County*, various states and numerous local governments made drastic and discriminatory changes to their voting procedures.³⁹

The Framers of the Fifteenth Amendment delegated to Congress the power to enforce the guarantee of that article. Congress spoke through the VRA and this Court filled in details in with *Gingles*. In the more than three decades since, Congress has not adjusted

³⁸ Meier & England, *supra* note 35, at 394.

³⁹ Catalina Feder & Michael G. Miller, *Voter Purges After Shelby: Part of Special Symposium on Election Sciences*, 48(6) Am. Pol. Rsch. 687, 691 (2020); Michael D. Herron & Daniel A. Smith, *Race, Shelby County, and the Voter Information Verification Act in North Carolina*, 43 Fla. St. U. L. Rev. 465 (2015); Sydnee Fielkow, *Shelby County and Local Governments: A Case Study of Local Texas Governments Diluting Minority Votes*, 14 Nw. J.L. & Soc. Pol’y 348 (2018).

this policy. The current conditions described in the above-referenced scientific literature demonstrate the continued wisdom of that decision.

CONCLUSION

For the foregoing reasons, *Amici* respectfully requests this Court affirm the district court.

Respectfully submitted,

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