Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

ALLEN, ALABAMA SECRETARY OF STATE, ET AL. *v.* MILLIGAN ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA

No. 21–1086. Argued October 4, 2022—Decided June 8, 2023*

The issue presented is whether the districting plan adopted by the State of Alabama for its 2022 congressional elections likely violated §2 of the Voting Rights Act, 52 U. S. C. §10301. As originally enacted in 1965, §2 of the Act tracked the language of the Fifteenth Amendment, providing that "[t]he right of citizens of the United States to vote shall not be denied or abridged . . . on account of race, color, or previous condition of servitude." In *City of Mobile* v. *Bolden*, 446 U. S. 55, this Court held that the Fifteenth Amendment—and thus §2—prohibits States from acting with a "racially discriminatory motivation" or an "invidious purpose" to discriminate, but it does not prohibit laws that are discriminatory only in effect. *Id.*, at 61–65 (plurality opinion). Criticism followed, with many viewing *Mobile*'s intent test as not sufficiently protective of voting rights. But others believed that adoption of an effects test would inevitably require a focus on proportionality, calling voting laws into question whenever a minority group won fewer seats in the legislature than its share of the population. Congress ultimately resolved this debate in 1982, reaching a bipartisan compromise that amended §2 to incorporate both an effects test and a robust disclaimer that "nothing" in §2 "establishes a right to have members of a protected class elected in numbers equal to their proportion in the population." §10301(b).

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*Together with No. 21–1087, *Allen, Alabama Secretary of State, et al.* v. *Caster et al.*, on certiorari before judgment to the United States Court of Appeals for the Eleventh Circuit.

Syllabus

In 1992, §2 litigation challenging the State of Alabama's then-existing districting map resulted in the State's first majority-black district and, subsequently, the State's first black Representative since 1877. Alabama's congressional map has remained remarkably similar since that litigation. Following the 2020 decennial census, a group of plaintiffs led by Alabama legislator Bobby Singleton sued the State, arguing that the State's population growth rendered the existing congressional map malapportioned and racially gerrymandered in violation of the Equal Protection Clause. While litigation was proceeding, the Alabama Legislature's Committee on Reapportionment drew a new districting map that would reflect the distribution of the prior decade's population growth across the State. The resulting map largely resembled the 2011 map on which it was based and similarly produced only one district in which black voters constituted a majority. That new map was signed into law as HB1.

Three groups of Alabama citizens brought suit seeking to stop Alabama's Secretary of State from conducting congressional elections under HB1. One group (*Caster* plaintiffs) challenged HB1 as invalid under §2. Another group (*Milligan* plaintiffs) brought claims under §2 and the Equal Protection Clause of the Fourteenth Amendment. And a third group (the *Singleton* plaintiffs) amended the complaint in their ongoing litigation to challenge HB1 as a racial gerrymander under the Equal Protection Clause. A three-judge District Court was convened, and the *Singleton* and *Milligan* actions were consolidated before that District Court for purposes of preliminary injunction proceedings, while *Caster* proceeded before one of the judges on a parallel track. After an extensive hearing, the District Court concluded in a 227-page opinion that the question whether HB1 likely violated §2 was not "close." The Court preliminarily enjoined Alabama from using HB1 in forthcoming elections. The same relief was ordered in *Caster*.

Held: The Court affirms the District Court's determination that plaintiffs demonstrated a reasonable likelihood of success on their claim that HB1 violates §2. Pp. 9–22, 25–34.

(a) The District Court faithfully applied this Court's precedents in concluding that HB1 likely violates §2. Pp. 9–15.

(1) This Court first addressed the 1982 amendments to §2 in *Thornburg* v. *Gingles*, 478 U. S. 30, and has for the last 37 years evaluated §2 claims using the *Gingles* framework. *Gingles* described the "essence of a §2 claim" as when "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." *Id.*, at 47. That occurs where an "electoral structure operates to minimize or cancel out" minority voters' "ability to elect their preferred candidates." *Id.*, at 48. Such a risk is greatest "where minority and majority

voters consistently prefer different candidates" and where minority voters are submerged in a majority voting population that "regularly defeat[s]" their choices. *Ibid.*

To prove a §2 violation under *Gingles*, plaintiffs must satisfy three "preconditions." *Id.*, at 50. First, the "minority group must be sufficiently large and [geographically] compact to constitute a majority in a reasonably configured district." *Wisconsin Legislature* v. *Wisconsin Elections Comm'n*, 595 U. S. ___, ___ (*per curiam*). "Second, the minority group must be able to show that it is politically cohesive." *Gingles*, 478 U. S., at 51. And third, "the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it . . . to defeat the minority's preferred candidate." *Ibid.* A plaintiff who demonstrates the three preconditions must then show, under the "totality of circumstances," that the challenged political process is not "equally open" to minority voters. *Id.*, at 45–46. The totality of circumstances inquiry recognizes that application of the *Gingles* factors is fact dependent and requires courts to conduct "an intensely local appraisal" of the electoral mechanism at issue, as well as a "searching practical evaluation of the past and present reality." *Id.*, at 79. Congress has not disturbed the Court's understanding of §2 as *Gingles* construed it nearly 40 years ago. Pp. 9–11.

(2) The extensive record in these cases supports the District Court's conclusion that plaintiffs' §2 claim was likely to succeed under *Gingles*. As to the first *Gingles* precondition, the District Court correctly found that black voters could constitute a majority in a second district that was "reasonably configured." The plaintiffs adduced eleven illustrative districting maps that Alabama could enact, at least one of which contained two majority-black districts that comported with traditional districting criteria. With respect to the compactness criteria, for example, the District Court explained that the maps submitted by one expert "perform[ed] generally better on average than" did HB1, and contained no "bizarre shapes, or any other obvious irregularities." Plaintiffs' maps contained equal populations, were contiguous, and respected existing political subdivisions. Indeed, some of plaintiffs' proposed maps split the same (or even fewer) county lines than the State's.

The Court finds unpersuasive the State's argument that plaintiffs' maps were not reasonably configured because they failed to keep together the Gulf Coast region. Even if that region is a traditional community of interest, the District Court found the evidence insufficient to sustain Alabama's argument that no legitimate reason could exist to split it. Moreover, the District Court found that plaintiffs' maps were reasonably configured because they joined together a different community of interest called the Black Belt—a community with a high

proportion of similarly situated black voters who share a lineal connection to "the many enslaved people brought there to work in the antebellum period."

As to the second and third *Gingles* preconditions, the District Court determined that there was "no serious dispute that Black voters are politically cohesive, nor that the challenged districts' white majority votes sufficiently as a bloc to usually defeat Black voters' preferred candidate." The court noted that, "on average, Black voters supported their candidates of choice with 92.3% of the vote" while "white voters supported Black-preferred candidates with 15.4% of the vote." Even Alabama's expert conceded "that the candidates preferred by white voters in the areas that he looked at regularly defeat the candidates preferred by Black voters." Finally, the District Court concluded that plaintiffs had carried their burden at the totality of circumstances stage given the racial polarization of elections in Alabama, where "Black Alabamians enjoy virtually zero success in statewide elections" and where "Alabama's extensive history of repugnant racial and voting-related discrimination is undeniable and well documented." The Court sees no reason to disturb the District Court's careful factual findings, which are subject to clear error review and have gone unchallenged by Alabama in any event. Pp. 11–15.

(b) The Court declines to remake its §2 jurisprudence in line with Alabama's "race-neutral benchmark" theory.

(1) The Court rejects the State's contention that adopting the race-neutral benchmark as the point of comparison in §2 cases would best match the text of the VRA. Section 2 requires political processes in a State to be "equally open" such that minority voters do not "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." §10301(b). Under the Court's precedents, a district is not equally open when minority voters face—unlike their majority peers—bloc voting along racial lines, arising against the backdrop of substantial racial discrimination within the State, that renders a minority vote unequal to a vote by a nonminority voter. Alabama would ignore this precedent in favor of a rationale that a State's map cannot "abridge[]" a person's right to vote "on account of race" if the map resembles a sufficient number of race-neutral alternatives. But this Court's cases have consistently focused, for purposes of litigation, on the specific illustrative maps that a plaintiff adduces. Deviation from that map shows it is *possible* that the State's map has a disparate effect on account of race. The remainder of the *Gingles* test helps determine whether that possibility is reality by looking to polarized voting preferences and the frequency of racially discriminatory actions taken by the State.

The Court declines to adopt Alabama's interpretation of §2, which

would "revise and reformulate the *Gingles* threshold inquiry that has been the baseline of [the Court's] §2 jurisprudence" for decades. *Bartlett* v. *Strickland*, 556 U. S. 1, 16 (plurality opinion). Pp. 15–18.

(2) Alabama argues that absent a benchmark, the *Gingles* framework ends up requiring the racial proportionality in districting that §2(b) forbids. The Court's decisions implementing §2 demonstrate, however, that when properly applied, the *Gingles* framework itself imposes meaningful constraints on proportionality. See *Shaw* v. *Reno*, 509 U. S. 630, 633–634; *Miller* v. *Johnson*, 515 U. S. 900, 906; *Bush* v. *Vera,* 517 U. S. 952, 957 (plurality opinion). In *Shaw* v. *Reno*, for example, the Court considered the permissibility of a second majority-minority district in North Carolina, which at the time had 12 seats in the U. S. House of Representatives and a 20% black voting age population. 509 U. S., at 633–634. Though North Carolina believed §2 required a second majority-minority district, the Court found North Carolina's approach an impermissible racial gerrymander because the State had "concentrated a dispersed minority population in a single district by disregarding traditional districting principles such as compactness, contiguity, and respect for political subdivisions." *Id.*, at 647.

The Court's decisions in *Bush* and *Shaw* similarly declined to require additional majority-minority districts under §2 where those districts did not satisfy traditional districting principles.

The Court recognizes that reapportionment remains primarily the duty and responsibility of the States, not the federal courts. Section 2 thus never requires adoption of districts that violate traditional redistricting principles and instead limits judicial intervention to "those instances of intensive racial politics" where the "excessive role [of race] in the electoral process . . . den[ies] minority voters equal opportunity to participate." S. Rep. No. 97–417, pp. 33–34. Pp. 18–22.

(c) To apply its race-neutral benchmark in practice, Alabama would require plaintiffs to make at least three showings. First, Alabama would require §2 plaintiffs to show that the illustrative maps adduced for the first *Gingles* precondition are not based on race. Alabama would next graft onto §2 a requirement that plaintiffs demonstrate, at the totality of circumstances stage, that the State's enacted plan contains fewer majority-minority districts than what an "average" race-neutral plan would contain. And finally, Alabama would have plaintiffs prove that any deviation between the State's plan and a race-neutral plan is explainable "only" by race. The Court declines to adopt any of these novel requirements.

Here, Alabama contends that because HB1 sufficiently "resembles" the "race-neutral" maps created by the State's experts—all of which lack two majority-black districts—HB1 does not violate §2. Alabama's reliance on the maps created by its experts Dr. Duchin and Dr. Imai is

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