Voting Rights and Representation in the Aftermath of *Louisiana v. Callais*

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Introduction

The U.S. Supreme Court's recent decision in *Louisiana v. Callais* dealt serious blows to voting rights and fair representation.[1] The Court's conservative majority[2] gutted Section 2 of the federal Voting Rights Act of 1965, which was a critical safeguard against racial discrimination in voting. While the Court did not declare Section 2 unconstitutional, it set new requirements that are nearly impossible to satisfy, because they require evidence of intentional racial discrimination. The *Callais* Court went on to invalidate a Louisiana congressional map that had been designed to remedy racial discrimination by creating an additional majority-Black district. The Court struck down the map as unconstitutional and, in the process, ignored clear congressional intent and disrupted decades of legal precedent.

Justice Alito's majority opinion disingenuously calls the *Callais* decision a mere update to Section 2's legal standards. In reality, the decision eviscerates Section 2 and reflects the conservative majority's ongoing assault on voting rights law and race-conscious policymaking.[3] As Justice Kagan's dissenting opinion declared, the ruling is just the "latest chapter in the majority's now-completed demolition of the Voting Rights Act."[4]

But the impact of the *Callais* case will be even more far-reaching because of the Supreme Court's prior decisions on partisan gerrymandering—the drawing of electoral districts designed to give one political party an advantage over another. The Court has held that federal courts cannot rule on partisan gerrymandering claims. This effectively gives lawmakers freedom to redraw congressional districts to favor one political party over another. As a result, after *Callais*, districts designed to protect voters of color can be sliced up to draw districts that create partisan advantages, and these gerrymanders will go unchecked.

In the weeks since *Callais* was decided, the decision has already spurred a flurry of mid-decade partisan gerrymandering in key states such as Louisiana, Alabama, Tennessee, and South Carolina, to advance Republican control of the House of Representatives after the 2026 elections.[5] The Louisiana governor went so far as to cancel an active primary election and discard 45,000 already-cast ballots to redraw congressional maps.[6] We can expect that more congressional gerrymandering will occur in advance of the 2028 elections and that federal, state, and local bodies of government will come into play as post-census redistricting begins after 2030.

Yet, this political crisis is also an opportunity. *Callais* has already become a catalyst for mobilizing communities of color and for strengthening their efforts to engage in redistricting and electoral politics.[7] *Callais* highlights the need for immediate-term legislative fixes, such as the John R. Lewis Voting Rights Advancement Act[8] and the Redistricting Reform Act[9], which should be updated and reintroduced in Congress. But more critically, the *Callais* ruling clearly signals that we need new strategies to enhance voter empowerment. Now is the time to enact broader solutions, including state-level voting rights statutes, redistricting reforms, and electoral systems that promote proportional representation.

The Pre-*Callais* Landscape and Vote Dilution

To understand the full impact of the *Callais* decision, a review of pre-*Callais* law is essential. Section 2 is a permanent and nationwide provision of the VRA, with no expiration date or requirement for congressional reauthorization. It is designed to address discrimination that "results in a denial or abridgement of the right of any citizen of the United States to vote"[10] based on race, color, or language minority status.[11]

TABLE 1

Major Provisions of the Voting Rights Act of 1965

Section 2	Prohibits voting qualifications, prerequisites, standards, practices, or procedures that result in denying or abridging the right to vote on account of race, color, or language-minority status
Section 4	Contains a coverage formula for preclearance system in Section 5 (invalidated in 2013 by *Shelby County v. Holder*)
Section 5	Establishes a preclearance system and requirements for federal government's prior approval of electoral changes (inoperative without Section 4 coverage formula invalidated by *Shelby County v. Holder*)
Section 203	Protects language-minority citizens and requires language assistance in covered jurisdictions
Section 208	Protects rights of assistance to vote due to blindness, disability, or inability to read or write

Most "first-generation" claims filed soon after the VRA's enactment in 1965 focused on vote denial: challenging barriers that Black citizens in the South faced in accessing registration and voting, such as literacy tests and voter intimidation.[12] "Second-generation" claims that first developed in the 1970s focused on vote dilution: challenging attempts to weaken the voting strength of minority voters and ensuring that their vote is meaningful.

Minority vote dilution is the harm that voters of color suffer when their votes count for less because of a discriminatory practice.[13] A classic example involves a city with an "at-large" election system in which council members are elected citywide and where Black voters are submerged within the white population.[14] Because council members are elected citywide and white voters outnumber Black voters, the Black community is consistently outvoted and cannot elect candidates of choice. The typical remedy for this type of vote dilution is replacing the at-large system with a district system and creating a single-member district in which voting-eligible Black citizens form a majority of the district—also known as a "majority-minority district" or a "minority-opportunity district."

Minority vote dilution also results from redistricting plans in which communities of color are divided between two or more districts ("cracked") or overconcentrated in a single district ("packed").[15] Cracking splits a community among multiple districts and limits their voting power in each district. Packing, on the other hand, puts an excessive number of minority voters into a district and results in wasted votes; for instance, drawing a district with a 95 percent Black population could lead to the election of a Black candidate in one district, but it would weaken overall Black influence, because voters could have been allocated between two districts originally instead of just one.

Vote dilution standards were refined after Congress amended the VRA in 1982. These amendments came in response to the Supreme Court's decision in *City of Mobile v. Bolden*,[16] a 1980 case that held that Section 2 requires proof of intentional discrimination. The Court ruled that because proof of intent is required in claims under the Fifteenth Amendment, which prohibits discrimination in voting based on race or color, Section 2 also requires proof of intent, since it enforces Fifteenth Amendment rights.

Congress rejected this requirement. Members of Congress understood that proving intent could be extremely difficult because officials engaging in redistricting rarely leave smoking-gun evidence of intentional discrimination and because they can maintain that their districting choices arise solely from political motivations, such as protecting incumbents or gaining partisan advantages. Congress's 1982 amendments to the VRA revised Section 2 so that policies which *result* in the denial or abridgment of the right to vote—also known as discriminatory

impact or discriminatory *effects*—could violate the VRA. Section 2 thus protected voters who "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice."[17]

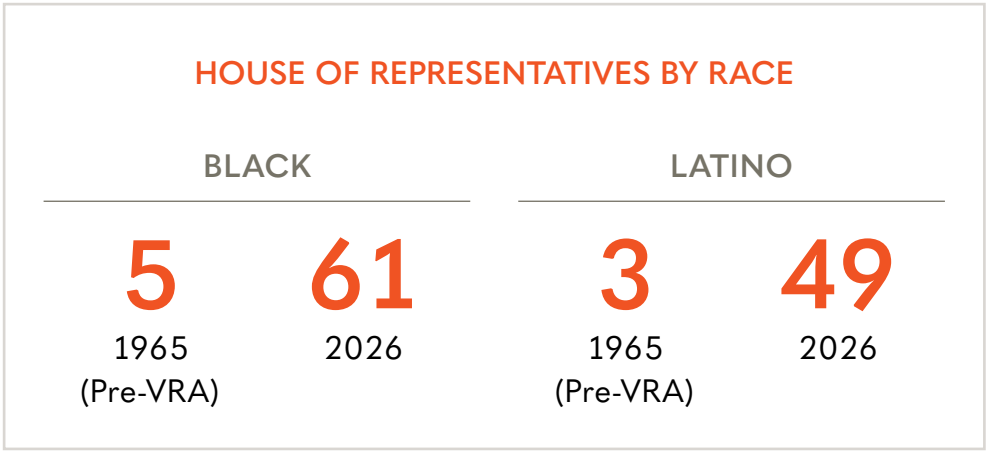
After Congress rejected the Supreme Court's attempt to require proof of intentional discrimination, the court established the core test to prove vote dilution under the amended Section 2 in *Thornburg v. Gingles*.[18] The three-part *Gingles* test, as it is commonly known, has focused on demographics, voting patterns, and racial polarization. First, the minority group must be geographically compact and large enough to form a majority of eligible voters within a single-member district.[19] Second, the minority group must be politically cohesive, showing that most minority members will vote for the same candidate. Third, majority voters (i.e., white voters) must vote as a bloc, so that their vote usually leads to the defeat of a minority group's candidate of choice.[20]

The original *Gingles* test also required extensive evidence of local context to support the VRA's requirement that the "totality of circumstances" demonstrate a Section 2 violation. This evidence is essential to show that the election practice resulted in denying the protected group an equal opportunity to participate in the process and elect a candidate of choice. Totality-of-circumstances evidence—many examples of which are included in a Senate report accompanying the 1982 amendments—can include histories of discrimination in elections and in other settings, racial appeals in past campaigns, and underrepresentation in the legislature.[21] Vote dilution claims have never been easy to win, however, and proving violations of Section 2 have required extensive historical and empirical evidence, as well as expert witnesses and statistical analyses to satisfy *Gingles*.

For over four decades, the *Gingles* standards have been central to litigation to convert at-large systems to district systems and to remedy discriminatory redistricting plans. *Gingles* has also been pivotal in preventative work to create minority-opportunity districts designed to forestall violations of the VRA. And, as recently as 2023, the Supreme Court fully endorsed the *Gingles* test in *Allen v. Milligan*,[22] which involved a VRA challenge to Alabama's congressional map. Currently, hundreds of districts created for Congress and state legislatures are majority-Black or majority-Latino, as well as smaller numbers that are majority-Asian or majority-Native American at the state level. Even more exist at the local

level, including offices for county commissions, city councils, school boards, and utility districts. There are nearly 150 majority-minority districts in the House of Representatives—just over one-third of all House districts—many of which were the direct result of Section 2.[23] Many of these districts are now at risk after *Callais*.[24]

The more recent growth in the number of Black and Latino members of the House is tied to increases in the number of majority-minority districts as well.[25] The number of Black representatives has grown from five in 1965 when the VRA was enacted to 61 in the current House; the number of Latino representatives has grown from three in the 1965 to 49 in the current House. And clear growth occurred following decennial redistricting cycles: For instance, after the 1990 redistricting cycle, with *Thornburg v. Gingles* in place, the number of Black representatives grew by over 50 percent, and that growth has been correlated with the advent of majority-minority districts.[26] These gains in representation are now also at risk.[27]



The Supreme Court's Role in the Rise of Partisan Gerrymandering

Callais is not just the Supreme Court's latest opinion on the meaning of a civil rights statute or on the scope of congressional powers to enforce the Constitution. It is the culmination of a series of decisions that limit enforcement of the VRA and clear the pathways for partisan gerrymandering.

First, the Supreme Court set strong constitutional limits on race-conscious districting that can undermine Section 2 remedies. In *Shaw v. Reno* (1993),[28] *Miller v. Johnson* (1995),[29] and later cases challenging majority-minority districts, the Court has ruled that if a district is drawn with race as the "predominant factor," then the plan is subject to "strict scrutiny"—the toughest standard to satisfy in constitutional law and the one most likely to lead to a law being struck down. Under strict scrutiny, the plan can survive only if it serves a "compelling interest" and is "narrowly tailored" to that interest. In cases in which the Supreme Court found that race predominated in the drawing of a district, the Court assumed that compliance with Section 2 is a compelling interest;[30] however, the Court struck down remedial maps where majority-minority districts were too sprawling and irregular—often trying to combine distant communities of color in different parts of the state—and therefore not "narrowly tailored."[31]

While closely policing racial gerrymandering as a check on majority-minority districts, the Supreme Court has taken the opposite approach to partisan gerrymandering. Doing so has allowed party politics to eclipse the voting rights of people of color. In 2019, the Court ruled in *Rucho v. Common Cause*[32] that lawsuits to address the constitutionality of partisan gerrymanders involve "political questions" that are not justiciable. Nonjusticiable means that federal courts cannot hear these cases at all, with the Court concluding that there are no clear legal standards for courts to assess the gerrymanders. As a practical matter, this means redistricting bodies have a license to engage in all sorts of gerrymandering—and to use partisanship as a justification—unless there are state-level limits or prohibitions.[33]

Five years after *Rucho*, in *Alexander v. South Carolina State Conference of the NAACP*,[34] Justice Alito's majority opinion concluded that legislators are entitled to a presumption of good faith, even when drawing lines for partisan advantage. Under this logic, the Court rejected a race-based constitutional challenge to South Carolina's congressional redistricting in which Republican legislators **deliberately moved roughly 30,000 Black voters out of a district** to bolster Republican control. In effect, officials were given a free license to engage in partisan gerrymandering.

The Supreme Court has also systematically undermined other major sections of the VRA and limited nondilution claims under Section 2 in the leadup to *Callais*. In 2013, in *Shelby County v. Holder*,[35] the Supreme Court eviscerated the VRA's "preclearance" system, which required certain states and localities with a history of racist voting practices to obtain prior federal approval before making any changes to their electoral policies.

Preclearance was the VRA's most efficient tool for ensuring voting rights compliance, particularly in Southern states with long histories of anti-Black discrimination. Nonetheless, by relying on cherry-picked data and ignoring the obvious effects of preclearance on preventing discrimination, the *Shelby County* Court maintained that widespread discrimination had become a relic of the past. The Court concluded that the coverage formula under section 4(b)[36] of the VRA used to determine which states and localities had to go through the preclearance system was outdated and declared it unconstitutional. As Justice Ginsburg's famous dissent in *Shelby County* explained, "Throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet."[37] Thirteen years later, Congress has yet to restore preclearance.

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>
> JUSTICE GINSBURG,
> *SHELBY COUNTY* DISSENT

In 2021, in *Brnovich v. Democratic National Committee*,[38] the Supreme Court took another swing at weakening Section 2 by making it much harder to challenge voter suppression policies that regulate the "time, place, or manner" of elections. Rather than focusing on racial disparities that result from discriminatory voting policies, the Court created a balancing test that weighs various "guideposts," including the burden on voters, the historical context, the size of the disparities, opportunities to vote in the entire system of voting, and the government's interests. Although there were significant disparities resulting from two separate Arizona policies at issue in the case, the Court upheld both, concluding in each case that the burdens to voters of color were not serious and were outweighed by the state's interest in maintaining the integrity of its elections. Because government interests are weighted so heavily, *Brnovich* makes it very difficult for plaintiffs to win under Section 2, unless they can show that voters of color have been greatly overburdened or denied the opportunity to vote outright.

Viewed in this timeline, *Callais* is just the latest decision in the Supreme Court's systematic dismantling of legal protections for voters of color.

The New Standard Set by *Callais* and the Court's Race-Blind Agenda

Callais started out much like any other VRA lawsuit. Plaintiffs challenged Louisiana's congressional redistricting as vote dilution—only one of the state's six House districts was majority-Black, even though roughly one out of every three voters in Louisiana is Black. A federal court took in extensive evidence, applied the *Gingles* test, and ruled that the plan likely violated Section 2. After appeals, the state legislature developed a new map with a second majority-Black district. White plaintiffs attacked the plan in a separate lawsuit as a racial gerrymander; minority voters were then added to the litigation to defend the remedial map. A three-judge court eventually ruled that the new map was unconstitutional, and the appeals were taken up by the Supreme Court in its 2024–2025 term.

The Supreme Court could have ruled on whether the remedial plan was a racial gerrymander, which was all that the parties in the case disputed, and left it at that. But the Court decided to put the constitutionality of Section 2 itself into play and ordered additional briefing and oral arguments for its next term, even though none of the parties had previously raised that issue. The new focus of the case revealed the depth of the conservative majority's agenda to further undermine the VRA.

With rhetoric suggesting that Section 2 needed saving from itself, Justice Alito's *Callais* opinion is insincere.[39] The Court declared the Louisiana remedial map unconstitutional, but it did not invalidate Section 2. Instead, the Court proposed that a race-conscious map drawn as a Section 2 remedy could be constitutional only if the plaintiffs first satisfied a new version of the *Gingles* test—one that the Louisiana vote-dilution plaintiffs could not satisfy and one that future plaintiffs could likely never satisfy.[40]

The major premise of the *Callais* Court's reboot of *Gingles* began by harkening back to *City of Mobile v. Bolden* and resurrecting the intent standard as a requirement for Section 2. Flouting the VRA's plain language and clear congressional intent, the *Callais* Court changed the *Gingles* test and ruled that plaintiffs would

need to prove that "circumstances give rise to a strong inference that intentional discrimination occurred."[41] Without requiring a strong inference of intent in Section 2, the Court said, Congress would be exceeding its constitutional powers to enforce the Fifteenth Amendment.

The *Callais* Court also proposed that revising the *Gingles* test was needed because several "developments" had occurred since *Gingles* was first decided.[42] One assumption was the same as in the *Shelby County* case: Extensive discrimination in voting is largely a thing of the past. But the Court once again relied on cherry-picked data and ignored more recent data showing that discrimination is worse because of the Court's gutting of the preclearance system.[43] The Court also noted how party politics and race have closely aligned in contemporary politics—Black voters in much of the South, for instance, tend to vote heavily Democrat. The Court assumed, therefore, that race and party need to be disentangled to isolate race as the source of intentional discrimination.

The *Callais* Court also cynically assumed that some plaintiffs might try to use Section 2 litigation as a pretext to challenge partisan gerrymandering, which the Court had previously held in *Rucho* was out of the federal courts' jurisdiction. The Court asserted that Section 2 needed to be reined in to prevent such attempts to sidestep its prior decision with VRA litigation. Finally, the Court assumed that advances in computer technology would allow plaintiffs to draw alternative maps that "improve" on the official maps, although what counts as an improvement is unclear, and such a map may not even be theoretically possible.

Armed with these assumptions, the *Callais* majority stated that it was "appropriate to update the *Gingles* framework and realign it with the text of Section 2 and constitutional principles."[44] Under the first *Gingles* inquiry, plaintiffs must show that there is a large and compact minority population to form a majority of a district; under *Callais*, they must also show that their alternative map satisfies all the same goals (including partisan ones) and traditional criteria as the government's map and improves upon that map. The Court also stated that "in drawing illustrative maps, plaintiffs *cannot use race as a districting criterion*."[45] How plaintiffs could possibly generate such a map is a mystery that the Court did not address, even in

theoretical terms. Redistricting officials, of course, can always contend that no alternative map serves their goals better than their own map and that any changes would inevitably result in an inferior map.[46]

Under the second and third *Gingles* inquiries, where plaintiffs must demonstrate racially polarized voting, the Court added a requirement that plaintiffs' evidence of voting patterns must control for party affiliation, presumably to isolate racially discriminatory intent. The Court did not, however, provide guidance on any statistical tests or on how expert witnesses should go about proving intent. Nor did the Court indicate how controlling for party affiliation would work with nonpartisan offices, such as city councils and school boards, where data on the candidates' party affiliations would be lacking.

In addition, the *Callais* Court explicitly limited the evidence that could be introduced to support the *Gingles* "totality of circumstances" requirement. Underscoring its assumption that widespread racial discrimination is all in the past, the Court ruled that the evidence must rely heavily on present-day intentional discrimination. Discrimination that occurred "some time ago"[47] and present-day racial disparities would be accorded only minimal weight.

TABLE 2

Comparison of Pre-*Callais* and Post-*Callais* Section 2 Requirements

Thornburg v. Gingles Requirements	Pre-*Callais*	Post-*Callais*
Element #1: Large and Compact Minority	Minority group must be sufficiently large and geographically compact to constitute a majority in a single-member district. Challengers can show an alternative map containing a majority-minority district.	Satisfy pre-*Callais* standard, plus challengers must create a strong inference of racially discriminatory intent through an alternative map. Challengers' map cannot use race as a districting criterion and must meet all the state's legitimate districting objectives, including traditional criteria and political goals.
Element #2: Minority Political Cohesion	Minority group must be politically cohesive.	Satisfy pre-*Callais* standard but must provide analysis that controls for partisan affiliation. Evidence of inter-party polarization is insufficient.
Element #3: Majority Bloc Voting	White voters vote sufficiently as a bloc to usually defeat the minority group's preferred candidates.	Satisfy pre-*Callais* standard but must provide analysis that controls for partisan affiliation. Evidence of inter-party polarization is insufficient.
Requirement: Evidence of Totality of Circumstances	Multiple types of evidence, including any or all of the factors listed in Senate Report No. 97-417 accompanying the 1982 VRA amendments.[48]	Same as pre-*Callais* but must focus on evidence of present-day intentional racial discrimination in voting. Discrimination from "some time ago" and present-day disparities receive much less weight.

Only a few weeks after its *Callais* ruling, the Supreme Court reinforced the severity of the new standards. In *Allen v. Milligan*, which involves both VRA and constitutional claims that challenge Alabama's congressional map, the Supreme Court sent the case back to the district court for reconsideration in light of the new *Callais* standards. The district court then reached the same conclusions under the new standards, again finding extensive evidence of intentional discrimination and likely violations of Section 2; the district court issued a preliminary injunction to prevent that map from going into effect.[49]

However, the Supreme Court stayed the lower court's order and allowed Alabama's map, which has only one majority-Black district, to be used in upcoming elections. In doing so, the Court stated that the lower court had not properly applied the new *Gingles/Callais* standards[50] and that the Alabama legislature was entitled to a presumption of good faith when determining if it had committed intentional discrimination.[51] As a result of its *Allen v. Milligan* order, the Supreme Court further cemented *Callais* and extended its standards to vote dilution claims under the Fourteenth Amendment.

Callais is not a death knell for every possible VRA claim, but with the Court's resurrection of the intentional discrimination requirement, it comes close to a fatal blow for Section 2. It also reflects a broader shift over several years in cases such as *Shaw v. Reno, Shelby County*, and *Brnovich*. The Court is intent to use a race-blind approach to voting rights law, seemingly more worried about state officials being hamstrung and accused of bad faith than they are about protecting voting rights.

Short-Term and Long-Term Effects of *Callais*

> *"…the groundwork for the largest reduction in minority representation since the era following Reconstruction."*
>
> JUSTICE KAGAN, *CALLAIS* DISSENT

Justice Kagan's blistering dissent, joined by Justices Sotomayor and Jackson, captured the devastating impacts of requiring intent and reworking *Gingles*—what she labeled the "*Callais* contrivance."[52] The dissent stated: "Under cover of 'updat[ing]' and 'realign[ing]' this greatest of statutes, the majority makes a nullity of Section 2 and threatens a half-century's worth of gains in voting equality."[53] And commenting on the likely demise of many minority-opportunity districts, the dissent stated that the Court had laid "the groundwork for the largest reduction in minority representation since the era following Reconstruction."[54]

Without question, the *Callais* ruling has permanently damaged the VRA, but it is the intersection of *Callais* with *Rucho* that will produce the most disastrous effects on fair representation. Without the guardrails of the VRA, communities of color can be treated as fodder to advance partisan goals, and the Supreme Court has rendered all federal courts powerless to check partisan gerrymandering. This is especially problematic in areas where there are no state-level limits on partisan gerrymandering or, as is the case in states such as California and Florida, existing checks have been cast aside to make way for mid-decade redistricting that has no purpose other than redrawing lines to gain partisan advantage.[55]

There have already been several efforts to engage in post-*Callais* gerrymandering by dismantling minority-opportunity districts to strengthen Republican districts. The Supreme Court even accelerated the finalizing of the *Callais* judgment to permit these rushed efforts to undo minority-opportunity districts before the Louisiana primary elections.[56] We can expect that more pro-Republican gerrymandering will be wrought in the South going into the 2028 elections. But gerrymandering will not be confined to Republican-controlled states. With mid-decade redistricting becoming an arms race for control of the House of Representatives, both Republicans and Democrats can be expected to try to pick up as many congressional seats as possible through gerrymandering—and to use splintered minority-opportunity districts as building blocks for gerrymanders across the country.

REPRESENTATION CUTS POST-*CALLAIS*

33%

Congressional Black Caucus (estimated)

But the most lasting effects of *Callais* will be seen after the 2030 census. Every decade following the census, House of Representatives seats are reallocated based on population changes. In the next decennial reapportionment process, we are likely to see losses in seats for California and New York and gains for Southern states such as Texas, Florida, and Georgia.[57] The redistricting wars can be expected to become even more heated. More broadly, state legislatures, state appeals courts, and local government bodies at the county, city, and school board levels, among many others, will all have to engage in redistricting after the next census. What we are likely to see is the dismantling of hundreds of minority-opportunity districts nationwide and vast reductions in the number of officials of color.[58] For instance, post-*Callais* redistricting threatens to result in cuts in the Congressional Black Caucus's membership by one-third, and there will likely be comparable impacts on Black officials at the state and local levels.[59]

Responses and Third-Generation Voting Rights After *Callais*

Despite the gravity of the *Callais* ruling, voting rights advocacy is not futile. Legal challenges to gerrymandering continue to be essential to hold officials accountable and to check for evidence of discriminatory intent. Registration drives, get-out-the-vote efforts, and election monitoring also remain as important as ever to prevent vote denial.

Moreover, the *Callais* ruling is a wake-up call: Our existing system of political representation is not working for Black and brown people. Litigation and piecemeal legislation are critical stopgaps, but we also need to redesign our system to ensure fair political representation for everyone.

To begin with, *Callais* makes it abundantly clear that we need robust **court reforms**, including term limits for judges, an enforceable judicial code of ethics, and stronger institutional limits on the power of the U.S. Supreme Court.[60] Supreme Court members cannot go unchecked when they baldly engage in the advancement of political agendas—whether conservative or progressive—and ignore decades of precedent, clear statutory language, and congressional intent.

The *Callais* ruling also demonstrates that partisan politics has gained primacy over the protection of voters of color. Federal legislative responses that both protect minority voting rights and limit partisan gerrymandering offer a clear path for advocacy.[61] The most basic solution is enacting the **John R. Lewis Voting Rights Advancement Act of 2025**[62] with specific amendments to the act to address the *Callais* Court's revision of the *Gingles* test. The act would already restore and strengthen the VRA by, among other things, undoing the *Brnovich* balancing test and updating the preclearance system sidelined by *Shelby County*. In addition, partisan gerrymandering and redistricting arms races that threaten communities of color could be checked by legislation such as the **Redistricting Reform Act of 2025**,[63] which would ban mid-decade redistricting and mandate independent redistricting commissions for congressional redistricting in all states.[64]

At the state level, **state voting rights acts** have already been employed to augment the federal VRA for state and local elections and continue to gain momentum.

In the last five years, state VRAs have been enacted in states such as Maryland, Colorado, Minnesota, Connecticut, and New York, and these laws contain vote dilution standards that relax the original *Gingles* test, as well as preclearance systems in some of the states.[65] Unlike the federal VRA, these laws do not rely on the Fifteenth Amendment—and its embedded intent standard—as a source of power but instead draw on state-level powers, including protections for the basic right to vote contained in almost every state constitution. State VRA legislation has been introduced in several more states, including Michigan, New Jersey, and Southern states such as Alabama, Georgia, and Mississippi.

Redistricting reforms can also provide checks on partisan gerrymandering that help stave off minority vote dilution. States such as Michigan and California have adopted comprehensive reforms that include 1) strong transparency and public input requirements, 2) redistricting criteria that prohibit partisan advantage and protect communities of interest (including communities defined in part by race and ethnicity), and 3) an independent commission structure that limits the partisanship and promotes the diversity of its members.[66] These reforms are not entirely immune from politics—in California, for instance, voters approved a constitutional amendment in 2025 to suspend its commission-drawn House map until after the next census to create a pro-Democrat gerrymander,[67] despite the commission plans having been widely hailed as fair and protective of communities of color.[68]

Yet, voting rights restorations and redistricting reforms go only so far. The *Callais* decision reflects a deep, destructive trend that has animated many court decisions, as well as federal and state policies: the advancement of race-blind political agendas that threaten to erase histories of discrimination and provide little or no recourse for ongoing discrimination. If there is to be a "third generation" of voting rights enforcement, the Court's near-erasure of vote dilution claims must be confronted by advocacy that is explicitly race-conscious and documents past and present discrimination. At the same time, third-generation solutions may have to shift focus away from majority-minority districting to race-conscious policies that are more universal and change underlying systems of representation.[69] The focus should instead be on changes to core democratic structures that promote political empowerment and secure voting rights for people of color.

Among the most basic of structural changes is **expanding the size of the House of Representatives**, which has been frozen at 435 members for nearly 100 years.[70]

Each member of the House represents, on average, over 760,000 people, with some districts approaching one million because of population variances and growth. Fair representation is compromised with overly large districts—legislators can lose touch with constituencies, the costs of campaigns can be preemptively high, and voters of color have a greater chance of experiencing vote dilution.[71] Through congressional legislation, the House size could be pegged to a lower per-district population, such as 500,000 (e.g., Equal Voices Act[72]), or the size of the House could be increased by a fixed number, such as 150 (e.g., REAL House Act from 2023[73]). With reduced district size, these voting blocs would have more influence and power.

Electoral reforms promoting greater **proportional representation** are another viable long-term reform.[74] Single-member district systems that are winner-take-all are a common system in the U.S., and, since 1967, members of the House of Representatives can be elected only from single-member districts. **Multimember districts**, which are electoral districts in which two or more members are sent to the legislature, were often used by states to send members to Congress from 1789 to 1842, and a number of state legislatures employ multimember districts for some or all of the legislature's lower house.[75] Multimember districts can limit gerrymandering (as the districts are geographically larger) and provide some degree of representation where none might be available because of winner-take-all structures. For example, if a community of color is roughly one-third of the population of a multimember district and the district contains four seats, then they can vote as a bloc to gain at least one seat, compared to a single-member district where they might not gain any seats because of gerrymandering.

Legislation such as the **Fair Representation Act**[76] attempts to incorporate multimember districts into a package of reforms designed to promote greater proportional representation and to limit gerrymandering. The act would, among other things, require states that have been apportioned six or more House representatives to use multimember districts with three to five members each; states with five or fewer representatives would use an at-large district with multiple winners. The act would also require the use of independent redistricting commissions and prohibit gerrymandering that favors or disfavors any political party. And the act would require that all congressional elections use **proportional ranked-choice voting**, a system in which voters rank their top choices for the office and which

promotes greater proportional representation. Ranked-choice voting is already in use in many parts of the country, including Alaska, Maine, and nearly 40 cities and counties; it is also recognized as a remedy for minority vote dilution in many state VRAs.[77]

At the state and local level, **alternative electoral systems** such as ranked-choice voting are a viable option to empower communities of color, and some systems already have a successful history in VRA enforcement. During the 1980s, many at-large election systems in Southern cities were converted to **cumulative voting** or **limited voting** systems as remedies.[78] Cumulative voting allows voters to combine multiple votes (e.g., five votes per voter in an election) in support of one candidate rather than splitting the votes (e.g., all five go to a single candidate of choice). Limited voting offers voters fewer votes than seats (e.g., two votes per voter for five seats), allowing minority voters to maintain consistent votes for candidates of choice but limiting the ability of majorities to outvote them. These types of "bullet voting" systems allow voters of color to concentrate their votes more effectively. And there are numerous other electoral systems that are used in advanced democracies, such as **party lists in a multimember system** that elect a slate of candidates in proportion to the number of votes, that could be emulated in partisan elections to promote greater minority representation.[79]

Finally, unlike almost every state constitution, the U.S. Constitution contains no explicit right to vote, only prohibitions on voting discrimination based on race, sex, and age for those 18 or older.[80] A federal **constitutional amendment guaranteeing the right to vote**[81] could clarify fundamental voting rights and limit governmental action at all levels, including rulings of the U.S. Supreme Court that abridge that right. Enshrining the right to vote would establish a baseline for voting rights nationwide, could limit state and local election subversion, could reduce unnecessary litigation, and could prevent various voter suppression and gerrymandering policies from going into effect, including those injuring voters of color.

With the *Callais* decision and other recent cases stripping core protections from the federal Voting Rights Act, advocacy to restore those rights and to push for viable solutions that go beyond the VRA are essential to empower communities of color.

Endnotes

1 Louisiana v. Callais, Nos. 24–109 & 24–110, slip op. (U.S. Apr. 29, 2026).

2 The *Callais* case was decided by a 6-3 vote. Justice Alito wrote the majority opinion and was joined by Chief Justice Roberts and Justices Thomas, Gorsuch, Barrett, and Kavanaugh. Justice Thomas, joined by Justice Gorsuch, wrote a concurring opinion. Justice Kagan, joined by Justices Sotomayor and Jackson, wrote a dissenting opinion.

3 Outside of voting rights and redistricting, the Supreme Court's most recent attacks on race-conscious policymaking have been in higher education admissions. In 2023, the Court effectively overruled decades of precedent allowing race to be considered as a plus factor in diversity-based admissions and struck down race-conscious policies at Harvard University and the University of North Carolina. Students for Fair Admissions, Inc. v. President and Fellows of Harvard College, 600 U.S. 181 (2023).

4 Louisiana v. Callais, Nos. 24–109 & 24–110, slip op. at 6 (U.S. Apr. 29, 2026) (Kagan, J., dissenting).

5 *See* Shirin Ali, *The Seven Biggest Ongoing Gerrymandering Fights*, Slate (May 14, 2026), https://slate.com/news-and-politics/2026/05/supreme-court-analysis-tennessee-louisiana-alabama-gerrymandering.html.

6 Jim Saksa, *Louisiana Governor: Discarding 45,000 votes "Not a Big Deal" and "Not My Fault,"* Democracy Docket (May 12, 2026), https://www.democracydocket.com/news-alerts/louisiana-governor-discarding-45000-votes-not-a-big-deal-and-not-my-fault/.

7 *See*, e.g., Roxanne Szal, *Civil Rights Groups Launch Southern Voting Rights Mobilization Following Supreme Court's Callais Decision*, Ms. (May 11, 2026), https://msmagazine.com/2026/05/11/civil-voting-rights-protest-south-supreme-court-louisiana-v-Callais-missouri-alabama-mississippi-louisiana/.

8 H.R. 14, 119th Cong. § 1 (2025).

9 H.R. 5449; S. 2885, 119th Cong. § 1 (2025).

10 52 U.S.C. § 10301(a).

11 Language minorities under the Voting Rights Act include "persons who are American Indian, Asian American, Alaskan Natives or of Spanish heritage." 52 U.S.C. § 10310(c)(3).

12 *See, e.g.*, Lani Guinier, *The Triumph of Tokenism: The Voting Rights Act and the Theory of Black Electoral Success*, 89 Mich. L. Rev. 1077, 1093 (1991) ("[F]irst generation [barriers are] direct impediments to electoral participation [and include] registration and voting barriers. Once [first-generation] obstacles were surmounted…the focus shifted to second-generation, indirect structural barriers such as at-large, vote-diluting elections.").

13 *See Racial Gerrymandering vs. Racial Vote Dilution, Explained*, Democracy Docket (Aug. 17, 2022), https://www.democracydocket.com/analysis/racial-gerrymandering-vs-racial-vote-dilution-explained/.

14 This happens when 1) the Black community is a numerical minority in the city as a whole, 2) their community is geographically concentrated (also known as being "compact," but likely traceable to segregation), and 3) voting is polarized along racial lines—Black voters support Black candidates, and white voters support white candidates.

15 *See* Michael Li, *Gerrymandering Explained*, Brennan Center for Justice (August 10, 2021, updated May 14, 2026), https://www.brennancenter.org/our-work/research-reports/gerrymandering-explained.

16 City of Mobile v. Bolden, 446 U.S. 55 (1980).

17 52 U.S.C. § 10301(b). However, while Congress rejected an intent requirement, the amendments created a limitation on Section 2, stating that the VRA does not create a right to proportional representation in a legislature based on a minority group's population. *Id.*

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

19 This element assesses how power is concentrated within a potential district and whether the group has the numbers to elect a candidate of choice.

20 Together, the second and third elements of the *Gingles* test determine whether there is significant racial polarization in the electorate.

21 The totality-of-circumstances test relies on a wide range of evidence, many types of which are listed in the Senate Judiciary Committee's report accompanying the 1982 amendments. S. Rep. No. 97-417, 97th Cong., 2d Sess. (1982), at 28-29. These factors include the history of official voting-related discrimination in the state or political subdivision; the extent to which voting in the elections of the state or political subdivision is racially polarized; the extent to which the state of political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority-vote requirements, and prohibitions against bullet voting; the exclusion of members of the minority group from candidate slating processes; the extent to which minority group members bear the effects of discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process; the use of overt or subtle racial appeals in political campaigns; and the extent to which members of the minority group have been elected to public office in the jurisdiction. The Senate report also noted that a court could consider additional factors, such as whether there is a lack of responsiveness on the part of elected officials to the needs of minority group members or where the policy underlying the challenged standard, practice, or procedure is tenuous.

22 Allen v. Milligan, 599 U.S. 1 (2023). In *Allen*, the Court upheld a lower court's injunction against an Alabama congressional map that contained only one majority-Black district, concluding that the challenge was likely to satisfy all the elements of *Gingles*.

23 *See* Abby Ward, *Callais decision threatens to stall diversity gains in House*, Brookings (May 6, 2026), https://www.brookings.edu/articles/Callais-decision-threatens-to-stall-diversity-gains-in-house/.

24 *Id.*

25 *Id.*

26 *Id. See generally* David Lublin, *The Paradox of Representation* (1999).

27 For estimates of potential losses in Black and Latino elected officials after *Callais,* see Louisiana v. Callais: *Protecting Black Political Power*, Black Voters Matter, https://blackvotersmatterfund.org/louisiana-v-Callais/.

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

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

30 The *Callais* Court ruled that compliance with Section 2 could be a compelling interest, but only if plaintiffs have satisfied a revised *Gingles* test that is based on proof of intentional discrimination.

31 Although highly consequential, the *Shaw/Miller* standards have also been problematic. It has never been entirely clear, for instance, who is actually injured by a racial gerrymander, leading some to call it an "expressive harm" that offends notions of constitutional colorblindness more than an injury to particular voters. *See* Richard H. Pildes & Richard G. Niemi, *Expressive Harms, "Bizarre Districts," and Voting Rights: Evaluating Election-District Appearances After Shaw v. Reno*, 92 Mich. L. Rev. 483 (1993).

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

33 For a compilation of state redistricting criteria, including prohibited factors, see *Redistricting Criteria*, National Conference of State Legislatures, https://www.ncsl.org/elections-and-campaigns/redistricting-criteria.

34 Alexander v. South Carolina State Conference of the NAACP, 602 U.S. 1 (2024).

35 Shelby County v. Holder, 570 U.S. 529 (2013).

36 52 U.S.C. § 10303(b).

37 *Shelby County*, 570 U.S. at 590 (Ginsburg, J., dissenting).

38 Brnovich v. Democratic Nat'l Comm., 594 U.S. 647 (2021).

39 As Justice Kagan's dissent noted: "Under the guise of 'updat[ing]' the *Gingles* framework, the majority transforms it—and in so doing, betrays Congress's choice." Louisiana v. Callais, Nos. 24–109 & 24–110, slip op. at 23 (U.S. Apr. 29, 2026) (Kagan, J., dissenting) (citations omitted). More specifically, the dissent stated: "Let's first drop the majority's misleading label. What the majority gives us today is not an 'updated *Gingles* framework.' It is its own thing, deserving of its own name. Maybe the *Callais* contrivance? Or if that seems too immediately pejorative, just say that what the majority does today is to impose the *Callais* requirements." *Id.* at 24 (citations omitted).

40 The Court did this by ruling on an issue that had been assumed in prior cases: that complying with Section 2 is a compelling interest under strict scrutiny. The *Callais* Court ruled that compliance would be compelling only with a heightened *Gingles* test.

41 Louisiana v. Callais, Nos. 24–109 & 24–110, slip op. at 23 (U.S. Apr. 29, 2026).

42 *Id.* at 26.

43 *See Effects of Shelby County v. Holder on the Voting Rights Act*, Brennan Center for Justice (June 21, 2023), https://www.brennancenter.org/our-work/research-reports/effects-shelby-county-v-holder-voting-rights-act.

44 Louisiana v. Callais, Nos. 24–109 & 24–110, slip op. at 29 (U.S. Apr. 29, 2026).

45 *Id.* at 29 (emphasis added).

46 Even if it were theoretically possible to develop "superior" maps with the help of algorithmic line drawing and advanced computers, challengers would have to wait until an official map (or draft map) was published to understand all of its goals and nuances and to develop alternatives. It is not clear how advocates would be able to read the minds of redistricting bodies—many of which lack transparency and do not publish draft maps—to develop alternative maps to *prevent* Section 2 violations.

47 Louisiana v. Callais, Nos. 24–109 & 24–110, slip op. at 30 (U.S. Apr. 29, 2026).

48 S. Rep. No. 97-417, 97th Cong., 2d Sess. (1982) at 28-29.

49 Singleton v. Allen, No. 2:21-cv-01530-AMM (N.D. Ala. May 26, 2026) (preliminary injunction order), https://redistricting.lls.edu/case/singleton-v-allen/.

50 Specifically, the Supreme Court ruled that the lower court did not adhere to the *Gingles/Callais* standards under both the VRA and constitutional claims: The lower court incorrectly concluded that the plaintiffs' alternative map performed "just as well" as the state's map, and the lower court did not properly isolate race from partisan voting patterns. Allen v. Milligan, No. 25A1314, slip op. at 3 (Jun. 2, 2026) (per curiam), available at https://www.supremecourt.gov/opinions/25pdf/25a1314_7m58.pdf.

51 *Id.*

52 Louisiana v. Callais, Nos. 24–109 & 24–110, slip op. at 24 (U.S. Apr. 29, 2026) (Kagan, J., dissenting).

53 *Id.* at 34.

54 *Id.*

55 Article XXI, section 2 of the California Constitution states that districts "shall not be drawn for the purpose of favoring or discriminating against an incumbent, political candidate, or political party." In Florida, the Fair Districts Amendments (Article III, sections 20 and 21) state that no district "shall be drawn with the intent to favor or disfavor a political party or an incumbent."

56 The Court accelerated its judgment in *Callais* by finalizing it immediately upon the request of the State of Louisiana rather than wait the normal 32 days after announcing its decision. *See Callais v. Louisiana*, SCOTUSblog, https://www.scotusblog.com/cases/Callais-v-louisiana/. This allowed Louisiana to prepare new maps more quickly in advance of its 2026 primary elections. The Court also granted an appeal by the State of Alabama that vacated the lower court rulings in *Allen v. Milligan* to comply with *Callais*. Order, Allen v. Caster, No. 25-243 (May 11, 2026), https://www.supremecourt.gov/opinions/25pdf/25-243_f20h.pdf. In doing so, the Court acted contrary to a general principle limiting the Court's alteration of electoral policies or district maps too close in time to an upcoming election. *See* Erwin Chemerinsky, *Rethinking a Supreme Court principle used to undermine the Voting Rights Act*, SCOTUSblog (May 19, 2026), https://www.scotusblog.com/2026/05/rethinking-a-supreme-court-principle-used-to-undermine-the-voting-rights-act/.

57 *See* Michael Li, *How States' Seats in the U.S. House Could Change After the Next Census*, Brennan Center for Justice (January 28, 2026), https://www.brennancenter.org/our-work/analysis-opinion/how-states-seats-us-house-could-change-after-next-census.

58 For a summary of post-*Callais* effects on recent Section 2 litigation, see Hansi Lo Wang, *Why the Supreme Court's voting rights ruling could play a big role at the local level*, NPR (May 18, 2026), https://www.npr.org/2026/05/18/nx-s1-5812837/supreme-court-voting-rights-act-state-local-redistricting.

59 *See* David A. Graham, *The Coming War on Local Black Political Power*, The Atlantic Daily (May 14, 2026), https://www.theatlantic.com/newsletters/2026/05/vra-local-black-political-power/687179/.

60 For a more in-depth discussion of recent decisions and the need for court reform, see Ashley Tjhung and Phi Nguyen, *The Case for Supreme Court Reform: An Analysis of the 2023-2024 Term,* Dēmos (August 5, 2024), https://www.demos.org/policy-briefs/case-supreme-court-reform.

61 For an overview of recent legislation, see Neda Khoshkhoo and Phi Nguyen, *Protecting Our Democracy: The Urgent Need for the John Lewis Voting Rights Advancement Act*, Dēmos (March 11, 2024), https://www.demos.org/policy-briefs/protecting-our-democracy-urgent-need-john-lewis-voting-rights-advancement-act.

62 H.R. 14, 119th Cong. § 1 (2025).

63 H.R. 5449; S. 2885, 119th Cong. § 1 (2025).

64 Even if these laws were passed—and they face major hurdles with the current president and Congress—their constitutional status could still be in question, at least with the current membership of the Supreme Court. Undoing the intent standard through federal legislation might only result in the Court's striking down the law as exceeding congressional powers under the Constitution. This is why court reform must also be part of the mix.

65 For an overview of state VRA legislation, see *State Voting Rights Acts: Protecting Access to the Ballot Box State by State*, Legal Defense Fund, https://www.naacpldf.org/state-voting-rights-acts/.

66 *See We Draw the Lines*, California Citizens Redistricting Commission, https://wedrawthelines.ca.gov/; Michigan Independent Citizens Redistricting Commission, https://www.michigan.gov/micrc.

67 For the text and analysis of Proposition 50 (2025) in California, see *Proposition 50*, California Legislative Analyst's Office (November 4, 2025), https://lao.ca.gov/BallotAnalysis/Proposition?number=50&year=2025.

68 *See Redistricting Commissions in the 2021 Redistricting Cycle: Case Studies and Lessons Learned for 2031 and Beyond*, Campaign Legal Center (2024), https://campaignlegal.org/sites/default/files/2024-06/CLC_RedistrictingComm_Report_WEB_FINAL.pdf.

69 *See generally* Guy-Uriel E. Charles et al., *Callais Confusion, Power-Sharing, and the Inevitability of Proportional Representation*, 135 Yale L.J. Forum 654 (2026).

70 The size was capped by the Permanent Apportionment Act of 1929. *See Expanding the House of Representatives, Explained*, Protect Democracy (Jan. 24, 2025), https://protectdemocracy.org/work/expanding-the-house-of-representatives-explained/.

71 *See* Lee Drutman et al., *The Case for Enlarging the House of Representatives*, American Academy of Arts and Sciences (2021), https://www.amacad.org/news/new-academy-report-makes-case-enlarging-house-representatives.

72 H.R. 4125, 119th Cong. § 1 (2025).

73 H.R. 622, 118th Cong. § 1 (2023).

74 *See generally* Nicholas O. Stephanopoulos, *Proportional Representation and the Voting Rights Act* (August 2024), https://protectdemocracy.org/wp-content/uploads/2024/08/Proportional-Representation-and-the-Voting-Rights-Act.pdf.

75 *See Nested and Multi-Member State Legislative Districts*, National Conference of State Legislatures (October 23, 2025), https://www.ncsl.org/redistricting-and-census/nested-and-multi-member-state-legislative-districts.

76 H.R. 4632, 119th Cong. § 1 (2025).

77 For an overview of the mechanics of ranked-choice voting and reform efforts, see *Ranked Choice Voting, FairVote*, https://fairvote.org/our-reforms/ranked-choice-voting/.

78 *See* Richard L. Engstrom, *Cumulative and Limited Voting: Minority Electoral Opportunities and More*, 30 St. Louis U. Pub. L. Rev. 97 (2010).

79 *See* Nicholas O. Stephanopoulos, *Ranked-List Proportional Representation*, 2025 Wis. L. Rev. 561 (2025).

80 The Nineteenth Amendment prohibits voting discrimination on the basis of sex. U.S. Const. amend. XIX. The Twenty-Sixth Amendment prohibits discrimination on the basis of age for those 18 or older. U.S. Const. amend. XXVI.

81 *See generally* Richard L. Hasen, *A Real Right to Vote* (2024).

About Dēmos

Dēmos is a non-profit public policy organization working to build a just, inclusive, multiracial democracy and economy. We work hand in hand to build power with and for Black and brown communities, forging strategic alliances with grassroots and state-based organizations.

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