Nos. 25-273, 25-274

IN THE

# Supreme Court of the United States

WES ALLEN, *etc., et al.*,

*Appellants,*

v.

BOBBY SINGLETON, *et al.*,

*Appellees.*

WES ALLEN, *etc., et al.*,

*Appellants,*

v.

EVAN MILLIGAN, *et al.*,

*Appellees.*

**On Appeal from the United States District Court for the Northern District of Alabama**

## *AMICUS CURIAE* BRIEF FOR JOHN WAHL, CHAIRMAN, ALABAMA STATE REPUBLICAN EXECUTIVE COMMITTEE IN SUPPORT OF APPELLANT ALABAMA SECRETARY OF STATE WES ALLEN

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## STATEMENT OF INTEREST OF *AMICUS CURIAE*

John Wahl is the Chairman of the Alabama State Republican Executive Committee ("ALGOP"). It is composed of over 400 persons who are elected from each of the State's 67 counties, several persons he appoints, and one person chosen separately by each of four named ancillary organizations self-identifying as Republican. ALGOP sends its Chairman, as well as two people, to serve on the Republican National Committee.[1]

For the biennial election of persons from Alabama to the U.S. House, ALGOP certifies through its Chairman the names of persons to be its nominees at the November election for the State's seven districts. The nominees are selected in a government-administered primary election that is open to Alabama voters in each House district. (*See* Ala. Code §§ 17-13-42, 46). (*See also id.* §§ 17-13-40, 17-13-1, 2)(outlining political party eligibility for primary). There is no advanced political party regulation required. To be allowed to cast a ballot in a primary election, a person must be a qualified elector *(See id*. § 17-13-7(a)). If no candidate receives a majority of the vote, there is a second primary election to choose from the two highest vote-getters. *See id.* § 17-13-18. Since 2017, State law bars any elector from the second election who did cast a ballot for candidates of some other political party in the first primary election. (*See id.* § 17-13-7.1

[1] This brief is not authored in whole or in part by counsel for a party, and no party or counsel for any party has made a monetary contribution intended to fund the preparation or submission of the brief, and there is no person other than the amicus ALGOP, its members, or its counsel who have made a monetary contribution funding the preparation or submission of the brief. Counsel of record for Appellees and Appellants in each of these cases received timely notice of intent to file the brief under Rule 37.2.

(codifying Act No. 2017-340)). A political party is allowed to impose other restrictions on voter participation in its own primary election. (*Id*. § 17-13-7(b)), but ALGOP has none.

ALGOP's own members are chosen in the same primary elections, and eligibility is keyed in part to residency in Alabama's seven Congressional districts.

In addition, ALGOP's membership of over 400 persons is allocated among the counties in each House district based on votes cast for Republican nominees. *See* "ALGOP Bylaws."[2] Further, the ALGOP membership includes "bonus" seats, based on the number of Republican nominees elected to the local government of each county in a district. The members of ALGOP for each Congressional district choose a District Chair, who serves on a 21-person Steering Committee with three regional vice chairs, and several other member elected officers, and chairman appointees, and manages policy for ALGOP between the biannual meetings of the full membership. (*Id.*).

There are no racial requirements for, or barriers to, election to the ALGOP, or to its officer positions. ALGOP bylaws do not require racial proportionality for the membership.

In recent years, ALGOP has become the dominant political party in Alabama. Following the 2010 elections through the 2022 elections of Alabama's seven members of the U.S. House, six have been Republican nominees. *See Merrill v. Milligan*, No. 21A375, Amicus Curiae Brief, etc. for John Wahl, Chairman, Exhibit 1

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[2] Available at https://algop.org/wp-content/uploads/2025/Bylaws-of-the-Alabama-Republican-Party-%E2%80%93-Amended-August-2-2025-1.pdf (last visited Oct. 7, 2025)

(U.S. Feb. 2, 2022). Similarly, Republicans held supermajorities in the Alabama legislature's 105-person House and 35-person Senate. Over 100 of 140 legislators were Republican nominees. All current statewide elected officeholders are Republican nominees.

## SUMMARY OF ARGUMENT

Section 2 of the Voting Rights Act should not be understood to bar States from establishing U.S. House district lines to favor political party partisans. The text certainly does not say so on its face. Further, it should be presumed that partisan motives are operating when district lines are being drawn - even though voting may be racially polarized, as in Alabama. Moreover, when the favored partisans are not linked to racial barriers to partisan access, there should be no basis under the Act's "totality of the circumstances" for allowing a judicial remedy.

What may been true in the Alabama of 1965 (when the Democrats dominated and constructed rules to interfere with black voting and electoral success) is no longer true today. Genuine racial obstacles to voter registration and turnout are long gone. Indeed, after the Democratic Party addressed its own poor racial history several decades ago, blacks were elected in substantial numbers as Democrats in local elections statewide, and black Democrats won election to the Alabama Supreme Court. In those days, the Democrats defended partisan gerrymander in this Court. In the 2000's, they won legislative seats in much greater proportion than their statewide votes. In 2008, they won three of Alabama's seven U.S. House seats - using virtually the same lines found problematic under § 2 in 2021 in *Allen v. Milligan*, 599 U.S. 1 (2023).

Republican success has not come from being racially organized, but by the hard work of politics and a shift in values. There is extensive review of the story in *NAACP v. Alabama*, 612 F. Supp. 2d 1232 (M.D. Ala. 2020). It began in 1986 with the election of a Republican Governor. That occurred due to public reaction to the Democratic Party changing the voting rules, after the primary election ballots were cast, to prefer an insider as nominee. Democrats were blamed again for changing the election rules in the general election in 1994, and that resulted in the election of a Republican Chief Justice. Republicans won the bulk of the judicial elections Statewide for appellate court positions thereafter and other Statewide offices in the 2000's. In 2010, after many decades of Democratic control, Republicans won a supermajority of the State legislature. While it is true that few GOP legislators are black, and that most Alabama black citizens vote for Democratic candidates, that should not be cause for a handicap on Republican nominees to the U.S. House, or a basis for the new House districts ordered by the court below.

Section 2 relief here to reset U.S. House lines for a racial group said to have suffered dilution of group voting power is improper because it is too much like non-justiciable partisan-based relief. *See Rucho v. Common Cause*, 588 U.S. 684 (2019). The test of the Act is too vague to put courts in the position of legislators drawing election district lines and assessing candidate voting strength. And there is no clear indication in the text of § 2 that partisan motives by line drawers is not a circumstance that can vitiate the inference of racial results.

Perhaps the most disturbing conclusion of the district court is that race and politics are inseparable, App. 392, and therefore, the racially polarized voting between Democrats and Republicans is due to be deemed under the Act as "on account of race." That conclusion is in stark contrast with the 2020 *NAACP v. Alabama* federal court decision.

If § 2 must be read to allow such unseemly court intervention, it should not be considered "appropriate legislation" under the Fourteenth or Fifteenth Amendment. The proper historical predicate for such a displacement of State sovereign actors using partisanship in drawing district lines is not present in the history of the Act. And, the more contemporary political history of Alabama fails to show anything about the dominant political party's policies that imply a basis for a judicially imposed racial handicap. At most, there are federal judges disagreeing about what is needed in the name of achieving a vague, evolving sense of fairness in allocating electoral power to a racial group.

## ARGUMENT

### I. The 2023 U.S. House district lines adopted by the Alabama legislature do not result in abridgement of the right to vote on account of race, as barred by Section 2 of the Voting Rights Act.

Alabama's 2023 U.S. House district lines are not, in the words of subsection (a) of § 2 of the Voting Rights Act, a voting procedure "which results in. . . . abridgement of the right to vote **on account of race or color** . . . ." 52 U.S.C. § 10301(a) (emphasis added). Moreover, under the text of subsection (b) of the Act, invoking the "totality of the circumstances," it cannot

be said "that the political processes leading to nomination or election in the State . . . are not equally open to participation by members of a class of citizens protected by subsection (a). . . ." *Id.* § 10301(b). In short, the State's 2023 U.S. House district lines do not result in a legally cognizable adverse racial effect on participation in the political processes "on account of race" in violation of § 2 of the Act, *id*. § 10301(a).

Given the text of the Act, the Supreme Court precedents reflected in its legislative history, and the partisan reality in the State, the Alabama legislature acted predictably in 2023. It should not have been expected to to adopt House district plan lines that favored Democrats in the name of racial remediation, as the Court's plan did. *See* App. 16, 1037. *See also Gaffney v. Cummings*, 412 U.S. 735, 753 (1973) ("districting . . . is intended to have substantial political consequences").

Given the text of § 2, partisan losses at the polls are not enough to justify relief, and the expectation of future partisan-linked losses should not mean the legislature's 2023 district lines were deficient. Likewise, the Court's seminal precedent for applying § 2, *Thornburgh v. Gingles*, 478U.S. 30 (1986), does not foreclose a partisan-linked explanation that avoids liability under the "totality of the circumstances."

ALGOP's understanding of the Act is reflected in one of the Supreme Court cases cited in the legislative history: *Whitcomb v. Chavis*, 403 U.S. 124, 128-29, 133, 150-52 (1971). There, blacks who voted heavily Democratic in the course of five elections in the 1960's had been unsuccessful four times in electing representatives to the State legislature in a large multi-member district. This Court noted that blacks had not been prevented from registering to vote,

choose a political party to support or participate in its affairs, from being represented when candidates were chosen, or being included on major party slates. *Id*. at 149-50. For persons who have open access to voting and the other forms of political participation, such as associating with partisan groups, they have no basis for relief under the Act against election district structures when they lose. *Id.* at 153 ("Democrats . . suffer [ ] the disaster of losing too many elections."). The circumstances of the last 15 years in Alabama could be compared to the Indiana of the *Whitcomb* case, and they counsel against § 2 relief here.

### A. The success of Black voter-preferred Democratic candidates in Alabama elections in the last three decades counsels strongly against relief here.

Official racial obstacles to voter registration and turnout in Alabama ended decades ago. The practical effect has been noted to be equal *participation* by blacks and whites. App. 286 (95% registration in 2024). *See also Shelby County v. Holder,* 570 U.S. 529, 548 (2013)(2004 voting registration rates virtually equal); *NAACP v. Alabama,* 612 F.Supp.2d 1232,1290 (M.D. Ala. 2020)(2010 registration virtually equal).

Equal participation yielded significant election success for blacks, especially in Democratic Party-controlled areas, despite subsequent Republican dominance and control overall. None of that control can be explained fairly using assumptions about the racial motivations of Republican voters, of Republican nominated office-holders, or even of obstacles to political participation by blacks. For instance, a federal court made findings in 2013, and later in 2017, about State Legislative districts. It wrote that the "totality of the

circumstances does not support the conclusion that the [statutes] would deny black voters an equal opportunity to participate in the political process." *Ala. Legislative Black Caucus v. Alabama*, 989 F. Supp.2d 1227, 1286 (M.D. Ala. 2013)("*ALBCI*"), *vacated and remanded*, 575 U.S. 254 (2015); *Ala. Legislative Black Caucus v. Alabama*, 231 F. Supp. 3d 1026, 1033 (M.D. Ala. 2017)("*ALBCII*").

The *ABLCI* district court explained that, in assessing the totality of the circumstances in Alabama, black voters in Alabama "are highly politically active," and have "successfully elected the candidates their choice in the majority black districts," which are "roughly proportional to the black voting age population in Alabama." 989 F. Supp.2d at 1286. And there was "no evidence of racial appeals in recent political campaigns or of a significant lack of responsiveness to the needs of the black population." *Id.*

Furthermore, despite Republican State legislature electoral dominance in the last 15 years, blacks have held and continue to hold other offices in Alabama in proportion to their part of the population. For instance, since 1993, the Alabama legislature has been composed of at least seven black State Senators out of a total of 35 positions. And, since 1993, in the other body of the Alabama legislature, the House, there have been 27 black members out of a total of 105 positions. All were Democrats. *See Vieth v. Jubelirer*, No. 02-1580, Brief of Amici Curiae Leadership of the Alabama Senate, etc. at 7 (U.S. Oct. 17, 2003).

Not only did black voters elect officials to the legislature in proportion to their population, but the black legislators they elected used their positions in a manner showing they possessed official power. In

2002, when Democrats controlled the State legislature, and the same core Congressional district lines enjoined by the district court were adopted, the Democratic leadership of the legislature thought well of them. They also "touted the [State legislative] districts adopted in 2001 as a lawful partisan gerrymander that enabled black legislators to serve in positions of unprecedented leadership." *ALBCI*, 989 F. Supp. 2d at 1235(noting rejection in early 2000's of partisan gerrymander claim). As noted in the remand proceedings in the *ALBCI* case, Democrats managed to populate the State legislature with 71% of the Senate seats and 60% of the House seats, despite only 52% of the statewide vote supporting Democrats in Senate races, and 51% supporting Democrats in House races. *See ABLCII*, 231 F. Supp.3d at 1036.

In that era before Republicans took majority control of the State legislature, when black legislators shared official leadership as Democrats, there were two Democrats and five Republicans nominees filling Alabama's U.S. House seats. The district lines were regarded as being a result of black State legislators exercising their bargaining power in the Alabama legislature in the process of setting U.S. House lines. In 2008, that Democrat-controlled State legislature established U.S. House lines resulting in the election of a third Democrat nominee. Thus, using the lines rejected by the district court here, the candidates of choice for black voters won 42% of the seats in Congress, but black voters comprised about 25% of the State's population.

Of further importance in the "totality of the circumstances," the number of black office holders in Alabama at all levels of government had grown

dramatically. *See* C.S. Bullock, III & R.K. Gaddie, *An Assessment of Voting Rights Progress in Alabama* tbl.4 (Am. Enter. Inst. 2005).[3] Much of the expansion came in the wake of the class action litigation initiated under the then new "results" test of § 2 of the Voting Rights Act, and captioned as *Dillard v. Crenshaw County*, 640 S. Supp. 1347 (M.D. Ala. 1986). The affected local governments resolved claims largely by consent decrees that ordered the creation of single member districts and an increase in the number of officeholders used in local governance. Though this Court later rejected the idea that vote dilution could be remedied by a court order requiring an increase in the number of elected officeholders in *Holder v. Hall*, 512 U.S. 874 (1994), and thus called into doubt the *Dillard* remedial orders, *see generally, Nipper v. Smith*, 39 F. 3d 1494, 1532–33 (11th Cir. 1994) (*en banc*), there was no retrenchment. Instead, in 2006, the legislature and its Democrat majorities, still composed of black members in leadership positions, eventually ratified the court orders by State statute. *See* Ala. Act No. 2006-252 (codified at Ala. Code §11-80-12).

The Democratic Party electoral setbacks of the last 15 years have meant reduction in electoral success for black voters. But the current circumstances are far removed from the pre-1965 era, when the notorious Democratic Party hegemony that often explained itself and public policy in racial terms justified adoption of the Act. *See*, *e.g.*, *Hunter v. Underwood*, 471 U.S. 222 (1985)(1901 Constitution provisions barring vote by

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[3] Available at https://www.aei.org/wp-content/uploads/2011/10/-executive-summary-of-the-bullockgaddie-expert-report-on-alabama_134411621012.pdf?x91208 (last visited April 27, 2022)

perpetrators of domestic violence and other crimes); *Dillard v. Crenshaw County*, 647 F. Supp. at 1358 (noting black and white voter "populist" coalition before 1901). *See also,* Ala. Const., art. VIII § 177 (Amendment No. 579)(1996 repeal of 1901 Constitution voting restrictions).

The critique of events in the late 19th Century to the last decade of the 20th Century in Alabama history, often-repeated by historians, is used in cases like the *Dillard* proceedings. But it refers to a time when the Republican Party had been ousted from power after 1875, depended mostly on federal government patronage, and had few or no State legislators.[4] That of course bears little or no resemblance to the Alabama of today.

The district court here focused on "the reality that Black candidates have enjoyed zero success in statewide elections in Alabama since 1994." App. 6, 19, 48, 394. But there is no dispute about statewide success for black candidates in elections for Supreme Court justice in 1988 and 1994. *See NAACP v. Alabama*, 612 F. Supp. 3d at 1297. Likewise, Democrat candidates preferred by black voters won Statewide judicial elections in 2000, and 2006, *id.* The Democrats also prevailed statewide in 2017 in a special U.S. Senate election. App. 227. In that 2017 election, the GOP candidate was held by the district court to have made racial appeals, App. 413, but the black-preferred candidate prevailed. The district court was also moved

[4] Available at https://algop.org/our-party/history-of-algop/ at 1–2 (last visited Sept. 27, 2025)

by the "near-zero success in legislative elections outside of Black-opportunity districts protected by federal law." App. 394. Recent success in 2021, and again in 2022 by a Black Republican in a majority-white legislative district was deemed a "unicorn." App. 394. Yet, that success followed the 2018 success in the same majority-white county of a Black Republican seeking to the office of school superintendent. *See Merrill v. Milligan,* No. 21-1086 (U.S.) Amicus Curiae Brief for John Wahl, etc. at 18 (citing SJA 144-45) (May 2, 2022). This Court might also take judicial notice of the electoral success in 1998, and 2004 of a Black Republican in majority white Jefferson County, the State largest.[5] More recent Black Republican successes include a circuit judge Lewis in majority white Elmore County in 2018, App. 386, and circuit judge Huntley in majority white Madison County. *See* Alabama Secretary of State.[6]

Though statistically small, those successes signal the openness of ALGOP without regard for race. In contrast, the Democratic Party has racially oriented policies. *See* State Democratic ... Amended and Restated Bylaws (passed Feb. 3. 2024), art. II, sec. 2, art I, sec. 4 (https://aldemocratcs.org (Last visited Sept. 3, 2025) (membership adjustments for "prevailing racial

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[5] Available at Alabama Secretary of State, Election Data Downloads - 1998, 2004, sos.alabama.gov, htpps://www.sos.alabama.gov/alabama-votes/voter/election-data (last visited Sept. 25, 2025). See also, Carol Robinson, *Longtime Jefferson County judge hanging up robe after 20 years on the bench* (Sept. 14, 2017, at 8:00 p.m. CST) https://www.al.com.news.birmingham/2017/09/longtime_jefferson_county_judge.html

[6] Available at 23JudicialCircuit.org, Hon. Claude E. Hundley, III, https://23judicialcircuit.org/?page_id=135 (Last visited Oct. 7, 2025)

minority" defined as "Black members of the SDEC") *See Kelley v. Harrison,* 2021 WL 3200989 (M.D. Ala. July 28, 2021 (consent decree setting racial proportions). The district court, to its credit, concluded that three examples of election communications by ALGOP nominees that could be understood as "racial appeals" did not reflect any systematic election conduct, or limited access to ALGOP processes. App. 413-14.

However, through all this political history, there is an irony in the lower court decision. It applied the Act to favor the nominees of the political party that remains organized racially because the nominees of the other political party - *not organized racially* - has succeeded, after decades of struggle. Even if it could be rationalized in the name of the "totality of the circumstances," that outcome is hard to square with this Court's well-recognized commitment to ending racial-based decision-making. *See Students for Fair Admissions v. Harvard*, 600 U.S. 181, 208 (2023).

### B. Decades of Alabama political history indicate that partisan election struggle for Republicans, and not use of race, accounts for their recent success.

The district court lacked the evidence it needed to conclude that Alabama's 2023 House districts were not the result of pursuing goals "on account of" partisanship, and instead were "on account of race." The court therefore should have concluded the "totality of the circumstances" failed to show the district lines violate § 2 of the Act. The district court's finding of an implicit linkage of partisan objectives to illicit racial ones is ill-conceived.

The district court's canvas of factors recognized as bearing on the § 2 inquiry here led to rejection of the State's argument that racially polarized voting should be regarded as something other than race-based decision-making. Thus, the court was unwilling to conclude that the pattern of blacks and whites supporting different candidates was "attributable to politics." App. 372-92.

It was wrongly indifferent to the exhaustive findings in the 2020 Alabama district court decision rejecting a § 2 challenge to at-large elections for Alabama appellate judges. App. 387-88 (quoting, *NAACP v. Alabama*, 612 F. Supp. 2d at 1291("virtually impossible for Democrats — of any race — to win statewide . . . in the past two decades."). Deeming that case to have a record not present here, the court discounted the findings and said they "do[ ] not stand for the broad proposition that racially polarized voting in Alabama is simply party politics." (App. 387-88).

This recent history is hardly in dispute, even if the full story is not in the record. As noted in *NAACP v. Alabama,* the Alabama Democratic Party is in a "fractured state." *Id.* at 1293. (citing *Ala. Democratic Party v. Gilbert*, No. CV-2019-000531 (15th Jud, Cir., Ala. Oct. 30, 2019)).

The *NAACP v. Alabama* decision also reviews older Alabama political history in deciding "Whether Party is a Proxy for Race." 612 F. Supp. 2d at 1298; *id.* at 1298 - 1306 (concluding that black-preferred candidates, are not losing Alabama elections "on account of race"). For instance, the catalyst for large scale Alabama voter abandonment of the Democratic Party was in the 1980's when it repudiated primary runoff election results for Governor. *Id*. at 1305 (testimony of NAACP leader). That occurred because Republicans primary

voters had cast ballots in the Democratic runoff - despite not having enforced a rule against such crossover voting in previous elections, and not pre-cleared crossover voting. *See Henderson v. Graddick*, 641 F. Supp. 1192 (M.D. Ala. 1986) (3-judge court) (barring candidate who used office to urge non-cleared crossover voting). The result was a Republican Governor. Another major event was the 1994 general election for Chief Justice where Democratic officeholders and judges were blamed for changing the vote-counting rules after ballots were cast in an effort to set asidea Republican victory. *See NAACP v. Alabama*, 612 F. Supp. 2d at 1303-05 (reciting the history of excessive jury verdicts, GOP-organized judicial challenges, and the vote-counting "misconduct in the Chief Justice election disclosed in *Roe v. Alabama*, 68 F. 3d 404 (11th Cir. 1995)). In addition to those issues, the *NAACP v. Alabama* decision identified policy positions on "right to work," the Second Amendment, traditional marriage and family, and anti-abortion views as attracting Alabama voters to Republican candidates for office. *Id.* at 1301. The trend culminated in 2010, as ALGOP nominees gained majority control of both houses of the Alabama State legislature. *ALBCI,* 989 F. Supp. 2d at 1244. In sum, in 2020, the decision concluded that Alabama has become a "ruby red state" and the Statewide candidates preferred by most black voters tend to lose because those candidates are Democrats, and not "on account of race." *NAACP v. Alabama*, 612 F.Supp. 2d at 1291.

Those conclusions are consistent with the decision 25 years earlier in *SCLC v. Sessions*, 56 F. 3d 1281 (11th Cir. 1995) (*en banc*), when Democrats still dominated Alabama. There, the circuit court affirmed a finding that "factors other than race, such as party politics and the availability of qualified candidates"

were driving the election results for judges. *Id.* at 1293–94. In that era, one expert analyzed 353 judicial elections beginning in 1976 (and 3 involving a black Supreme Court justice who won two Statewide general elections and served until the early 1990's), and found that the preferred candidate of black voters won over 76 percent of the time. 56 F. 3d at 1291 & n.18.

While it may be true that, in Alabama today, there are vastly fewer Republican nominees and elected officials that identify as black compared to Democrat nominees, ALGOP contends the difference is not driven by any race-based ALGOP policy. ALGOP sees its voters as casting ballots more likely on ideological grounds than on the basis of race - despite general academic opinions interpreting voting statistics in other States. *See, e.g.,* App. 373-82 (discussing expert opinions from App. 279-306, and criticizing State witnesses).

The district court saw some of its justification for a remedial order here in certain recent specific forms of alleged "official discrimination." App. 396-401. In a pointed irony, it saw the finding that, after the 2010 census, the legislature adopted "unconstitutional racial gerrymanders" in twelve State legislative districts. App. 400-01 (citing *ALBCI*, 231 F. Supp.3d at 1348–49). Yet, as the cited decision notes, those legislatively adopted racial gerrymanders themselves had been established in the name of the Act. They used fixed racial targets aimed at securing approval under § 5 of the Act, *see id.*, 231 Supp. 3d at 1061–64, before the coverage formula for § 4 of the Act was held to be unconstitutional in *Shelby County v. Holder*, *supra*. (*See* 52 U.S.C. §§ 10303, 10304). They were not based on a determination that the legislature had diluted black voting strength by packing blacks into a limited

number of districts. *See* 231 F. Supp.3d at 1043. Instead of finding that the requirements of § 2 are susceptible to being misunderstood and therefore cause erroneous use of racial thinking, the district court here ploughed ahead as if the *ALBCI* decision supported relief.

### C. Lawful partisan motives for election district lines should be presumed and not deemed inseparable from racial motives inferred from racially polarized voting data.

ALGOP objects to being handicapped in the 21st century by Alabama's distant history under Democratic Party hegemony. Thus, when voters have no unique obstacles on account of race to registering to vote, to casting ballots, or to functioning in a political party, the "totality of the circumstances" indicate "the political processes leading to nomination or election" are "equally open to participation" by all citizens. As explained more below, when § 2 claimants seek relief against election district lines as *de facto* vote "dilution," they should be required to show that partisan alignment does not explain a challenged district configuration. The academic abstract statistical opinions - used by the lower court - that a voter's partisan affiliation cannot be separated from "racial considerations," App. 392, 390, should not be enough. Nor should the testimony of one plaintiff that "racial concerns drive his affiliation with the Democratic Party," App. 391 (Caster). Nor should it be enough that an expert "could not rule out that Black candidates were penalized at the polls on account of race." App. 387. It is as if the district court wrongly expected the academics to infer that racial motive explained a partisan result. App. 392, 384-92 (canvassing expert opinions).

"[P]artisan motives are not the same as racial motives." *Brnovich v. Democratic National Committee*, 594 U.S. 647, 689 (2021) (allowing mail-in ballot restrictions), at least not without extraordinary proof. *See also*, *Cooper v. Harris*, 581 U.S. 285, 332 (2017)(Alito, J., dissenting in part); *Solomon v. Liberty Cnty Comm'rs*, 221 F. 3d 1218, 1225 (11th Cir. 2000) (*en banc*)). Partisan favoritism in drawing district lines is not the kind of dilution of partisan power that § 2 was meant to reach. If race cannot be separated from political party affiliation of voters, without more proof than academic opinions, then the text of § 2 is being expanded to overreaching, unlikely levels. As matter of common sense, racial category does not bind a person implicitly to partisan policy positions. If the "results" of partisan-inspired lines are condemned "on account of [racially correlated political affiliation]," Congress surely would have said so. It certainly knows how to establish partisan balance by law. *See* 52 U.S.C. § 30106(a)(1) (Federal Election Commission). In insisting that race and political affiliation are inseparable, the district court is construing the Act to reach more broadly than is "appropriate." This Court itself has noted that federal courts have not been "authorized to apportion political power as a matter of fairness." *Rucho v. Common Cause*, 588 U.S. at 686. Without a clearer statement from Congress than is present in the § 2 text that race neutral, partisan activity is being restricted, that construction should be avoided. *See Miller v. Johnson*, 515 U.S. 900, 926-27 (1995) (rejecting construction requiring districts to "maximize" racial group power).

Nothing in the precedents upholding the constitutionality of the Act indicates that the results of partisan goals are meant to be displaced in the

name of "appropriate legislation" implementing the Constitution. *See*, *e.g.*, *Allen v. Milligan,* 599 U.S. 1, 41 (2023). The expansive language of § 2 provides no clear textual indication that it addresses claims that district lines merely result in an inadequate allocation of partisan political power. The text gives no indication how, once access to the ballot is achieved, the judges should evaluate the fairness of political power. *See, e.g., Holder v. Hall*, 512 U.S. 874, 892 (1994) (Thomas, J.,) ("hopeless project of weighing questions of political theory"). Nor does any majority opinion in *Thornburgh v. Gingles*, *supra*, hold that partisan motives in district line-drawing by States cannot be allowed. Rather, the good faith of the State legislature is presumed, even when the election districts reflect partisan bias. *See Alexander v. South Carolina NAACP*, 602 U.S. 1, 10-11 (2024).

The Act should not deem the effect of ALGOP nominees in attracting voters away from Democratic candidates to be the racial discrimination due a remedy under the Act. ALGOP has no race-based policies regarding membership or participation in its nominating process. The district court erred in finding partisan-linked success to be submerged in the *Gingles* test for "political cohesion of black voters," and not a separate inquiry. App. 391-93. In the district court's perspective, circumstances that show a stark partisan polarization in voting correlated by race not subject to a further separate partisan evaluation under the "totality of the circumstances," App. 392. That seems a most unlikely way to read the Act, and contrary to usual rules of construction requiring a clear statement to that effect. *See Gregory v. Ashcroft*, 501 U.S. 452, 467 (1991). *See also Northwest Austin Mun. Utility Dist. v. Holder*, 557 U.S. 193 (2009). Given the presence of the *Whitcomb* decision in the legisla-

tive history of § 2 of the Act, House lines that cause partisan losses are not improper.

Not only is the district court's conclusion that partisanship as inseparable from race in district line-drawing wrong under this Court's precedent, partisanship seems likely present. Indeed, a presumption of partisanship in district line-drawing should be allowed to control the "totality of the circumstances" in resolving § 2 claims against relief. As implied in previous discussion, in Alabama, polarization boils down to finding that § 2 will be applied only when the majority racial population refuses to support Democrats.

That's why the language of the Act should not likely be understood as attempting to call for courts to remedy districts that can be understood to be based in partisanship. *See Rucho*, 588 U.S. at 709-10 & n.1 (noting Framers poor opinion of partisans as weighing against judicial role, and essential difference between vote dilution and "racial gerrymandering").

The better approach is not to presume that race neutral partisan motives are absent in drawing district lines; construe such partisan-linked results not subject to relief under the Act.

## II. Section 2 is not "appropriate legislation" under the Constitution when, to end racial discrimination, it is construed to allow control of the voting strength of non-racially organized partisan groups.

Section 2 should not be deemed "appropriate legislation" to enforce the Fourteenth or Fifteenth Amendments of the Constitution if it calls for partisan voting to be deemed proxy for intentional racial discrimination. The era when that assumption was

plausible is long gone. *See Smith v. Allwright*, 321 U.S. 649 (1944)(Texas). The courts no longer assume, given the old political history, that State partisan political organizations, set up in a race neutral way, need federal supervision to assure against racially disproportionate results. *Compare Shelby County,. supra* (Act's § 4 coverage formula outdated), *with*, *Morse v. Virginia Republican Party*, 517 U.S. 186 (1996)(State party delegate filing fee).

If, in order to avoid a claim that district lines result in a Section 2-prohibited "vote dilution" of a racial group, the burden of making distinct proof of partisan motives is cast on State officials, that is unwarranted. Given the absence of any history that partisan objectives require a ongoing national statutory remedy against "vote dilution" in election districts, the Court should find § 2 of the Act not an "appropriate" legislation "to enforce the Constitution." *See City of Boerne v. Flores*, 521 U.S. 507, 525-28 (1997) (historical predicate absent). It would be strange to find a bar on partisan-based district assignment of voters - well recognized as a defense to charges of race-based assignment - to be a proper use of Congressional power to enforce the Fourteenth or Fifteenth Amendments. *See e.g., Easley v. Cromartie,* 532 U.S. 234 (2001); *Hunt v. Cromartie,* 526 U.S. 541, 551 (1999) ("political gerrymandering" allowed "even if . . . the most loyal Democrats happen to be black Democrats").

Regular procedure of a legislature acting in good faith would imply that partisan motives are present under the totality of the 21st century circumstances when election district lines are being shuffled. In short, the district court was wrong to chart a different course.

This calibration of political power is known to be difficult for the Judicial Department of the government. A grievance complaining of inadequate group voting power is too generalized to be suited for judicial resolution. *See Gill v. Whitford,* 585 U.S., 48 (2018); *Spokeo, Inc. v. Robins,* 578 U.S. 330 (2016). If Plaintiff has failed to allege that the lines cannot be explained in partisan, political terms, and the voters and political parties are not organized explicitly for the purpose of excluding people racially, the Act cannot warrant judicial inquiry. Efforts by courts to do merely *something* — in the name of preventing racial misconduct — put courts in a position of being seen as playing partisan favorites.

Judicial intervention to calibrate racial group voting strength should be warranted only in the most rare, unlikely circumstance. The district court application of Section 2 is inadequately respectful of "party politics," the very thing that Art. I, § 4 of the Constitution expects. *See Vieth v. Jubelirer*, 541 U.S. 267, 285 (2004) (Scalia, J.). Legislation that thrusts federal judges into decision-making about the strength of partisans should not be "appropriate." Given that decisions such are so susceptible to charges of partisan favoritism, the time has passed to find justification in § 5 of the Fourteenth and Fifteenth Amendments.

## CONCLUSION

For these reasons, ALGOP urges the Court to find jurisdiction and reverse the district court.

Respectfully submitted,

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Nos. 25-273, 25-274

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WES ALLEN, *etc., et al.*,

*Appellants,*

v.

BOBBY SINGLETON, *et al.*,

*Appellees.*

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WES ALLEN, *etc., et al.*,

*Appellants,*

v.

EVAN MILLIGAN, *et al.*,

*Appellees.*

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AFFIDAVIT OF SERVICE

I HEREBY CERTIFY that on October 9, 2025, three (3) copies of the *AMICUS CURIAE* BRIEF FOR JOHN WAHL, CHAIRMAN, ALABAMA STATE REPUBLICAN EXECUTIVE COMMITTEE IN SUPPORT OF APPELLANT ALABAMA SECRETARY OF STATE WES ALLEN in the above-captioned case were served, as required by U.S. Supreme Court Rule 29.5(c), on the following:

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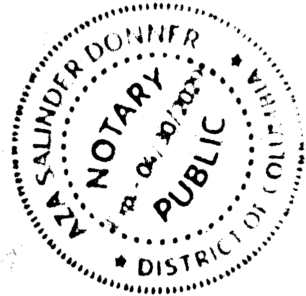

Nos. 25-273, 25-274

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**Supreme Court of the United States**

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**On Appeal from the United States District Court for the Northern District of Alabama**

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**_AMICUS CURIAE_ BRIEF FOR JOHN WAHL, CHAIRMAN, ALABAMA STATE REPUBLICAN EXECUTIVE COMMITTEE IN SUPPORT OF APPELLANT ALABAMA SECRETARY OF STATE WES ALLEN**

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## CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the document contains 5,985 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

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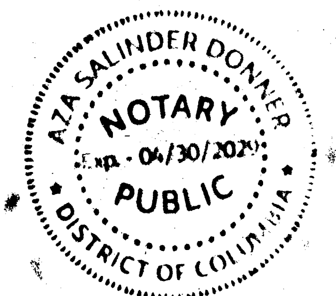


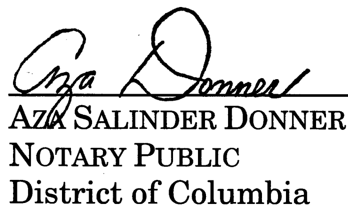

AZA SALINDER DONNER
NOTARY PUBLIC
District of Columbia

My commission expires April 30, 2029.