No. 23-40582

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

TERRY PETTEWAY, ET AL.,

Plaintiffs-Appellees,

v.

GALVESTON COUNTY, TEXAS, ET AL.

Defendants-Appellants.

On Appeal from the United States District Court
for the Southern District of Texas, Galveston
Division, No. 3:22-cv-57-JVB (consolidated cases Nos.
3:22-cv-117-JVB and 3:22-cv-93-JVB)

BRIEF OF BREWER STOREFRONT PLLC AS AMICUS CURIAE IN SUPPORT OF PLAINTIFFS-APPELLEES AND AFFIRMANCE

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TABLE OF CONTENTS

TABLE OF AUTHORTIES

CASES **Page(s)**

STATUTES

OTHER AUTHORITIES

CONSTITUTIONAL PROVISIONS

CERTIFICATE OF INTERESTED PERSONS

In accordance with Federal Rule of Appellate Procedure 26.1 and Fifth Circuit Rule 29.2, the Brewer Storefront PLLC (the "Storefront") states it is a nonpartisan Professional Limited Liability Company that provides legal representation to clients with a narrow focus on creating a positive impact on the community at large. The Storefront is a legal affiliate of Brewer, Attorneys and Counselors, which is a Professional Limited Liability Company with offices in Dallas, Texas and New York, New York.

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), the undersigned counsel of record certifies that (i) the Storefront authored the Brief in whole; (ii) no party or party's counsel contributed money that funded the preparation or submission of the Brief; and (iii) no person other than amicus curiae or its members contributed money intended to fund preparing or submitting the Brief.

The undersigned counsel of record further certifies that all parties to this case, the Petteway Plaintiffs, NAACP Plaintiffs, the United States, and Defendants have consented to this filing.

IDENTITY AND INTEREST OF AMICUS CURIAE

Formed in 1995, the Storefront is a leader in broadening access to legal representation to underserved communities and has developed expertise in Voting Rights Act ("VRA") cases. The Storefront uses legal advocacy to promote the most important aspect of citizenship in the United States, the right to vote. The Storefront fights to ensure all Americans have equal and equitable access to the political system. Since its inception, the Storefront represents individuals on a pro bono basis in a wide variety of cases including, but not limited to, voting rights.

Section 2 of the VRA is a mechanism used by the Storefront to fight voting suppression. The Storefront has litigated numerous voting rights cases including *Shafer v. Pearland Independent School District*, Civil Action No. 3:22-cv-00387 (S.D. Tex filed Nov. 3, 2022) (Section 2 lawsuit concerning an electoral system that denies Hispanics and Asian Americans an equal opportunity to elect representatives of their choice); *Tyson v. Richardson Independent School District et al*, Civil Action No. 3:18-cv-00212 (ND. Tex Jan. 26, 2018) (Section 2 lawsuit concerning an electoral system that denies African Americans, Asian Americans, and Latino Americans an equal opportunity to elect representatives of their choice); *Ramos v. Carrollton Farmers Branch Independent School District et al*, Civil Action No. 3:15-cv-01239 (N.D. Tex. Apr. 25, 2015) (Section 2 lawsuit concerning an electoral system that denies Latino Americans an equal opportunity to elect representatives of their choice); *Fabela v. City of Farmers Branch*, Civil Action No. 3:10-CV-1425-D (N.D. Tex.

June 13, 2013) (Section 2 lawsuit concerning an electoral system that denies Hispanic Americans an equal opportunity to elect representatives of their choice); *Rodriguez v. Grand Prairie Independent School District et al*, Civil Action No. 3:13-cv-01788 (N.D. Tex. May 12, 2013) (Section 2 lawsuit concerning an electoral system that denies Hispanic Americans an equal opportunity to elect representatives of their choice).

As such, the Storefront has a direct interest in ensuring Section 2 of the VRA remains an effective mechanism for protecting voting rights and because this case raises important voting rights issues that directly impact the Storefront's mission.

INTRODUCTION

The District Court's decision applied long-standing Fifth Circuit precedent after carefully considering an extensive factual record to conclude that the Galveston County Commissioner maps denied minority voters (a coalition comprised of Black and Latino descent) the opportunity to participate in the political process as guaranteed by Section 2 of the Voting Rights Act ("VRA"). In this appeal, Defendants-Appellants ("Defendants") ask this Court to overrule longstanding precedent by eliminating the protections embodied in Section 2 in violation of *stare decisis*. Put simply, Defendants' position severely limits—or, more accurately, eviscerates—important protections provided by the VRA by removing VRA protections where voting rights are denied to a coalition of minorities, rather than only a single minority group. Amicus writes to oppose Defendants' request to fundamentally reshape the application of Section 2 as it conflicts with the history, text, purpose, and jurisprudence behind the VRA.

First, Defendants omits in its motion that the Fifth Circuit was the ***first*** Federal Circuit to expressly allow minority coalition claims in *LULAC v. Midland ISD* (5th Cir. 1987) and has continued to do so since that decision. Since then, all but one Federal Circuit Court has found that minority coalition claims are available under Section 2 of the VRA based on the plain meaning and legislative purpose of the statute, which is to protect minority voters. Accordingly, pursuant to clear Fifth Circuit precedent and *stare decisis*, minority coalition claims must remain viable under Section 2 of the VRA.

Second, Defendants overstate the alleged Circuit split regarding the availability of

minority coalition claims under Section 2. Only the 6th Circuit has rejected minority coalition claims under Section 2, and that decision was rendered before the Supreme Court of the United States, in *Shelby Cnty.*, made Section 2 the ***only*** mechanism to ensure political equity and equality under the VRA. Aside from the 6th Circuit's unique application of the VRA, there has been no intervening contravening authority in the Fifth Circuit regarding the availability of minority coalition claims under Section 2. Indeed, as explained herein, the Supreme Court's VRA cases underscore the importance of Section 2 while recognizing the existence of minority coalition claims. Accordingly, well-settled principles of *stare decisis* mandate the continued viability of minority coalition claims in this Circuit.

Finally, Defendants argue the plain language and legislative history do not support the availability of minority coalition claims. However, the plain language of Section 2 does not contain a limitation against claims brought by coalitions of voters of color. Quite the contrary, Section 2's plain language evidences an inclusive and broad approach allowing a "class of citizens" who suffer from infringements on their right to vote on the account of race, color, or language minority status to bring a suit. The class is defined by membership in the group, regardless of how it is composed. To hold otherwise would be at odds with the purpose of the VRA by arbitrarily restricting protection of minorities based on the composition of the group of minorities being harmed.

The legislative history of the VRA and each subsequent amendment establish Congressional intent to ensure equal access to the ballot box regardless of race. In fact, the

legislative history of the VRA shows that the key question to be answered in a Section 2 suit is whether a minority group, or class, has less opportunity to participate in the political process. The question may be answered in the affirmative for minority groups composed of racial minorities who are politically cohesive like *here*. Thus, nothing in the plain language or legislative history of the VRA requires or implies a preclusion of minority coalitions from bringing claims under Section 2 of the VRA.

This Court should affirm the District Court's order.

I. SECTION 2 IS AN IMPORTANT MECHANISM TO ENSURE POLITICAL EQUALITY AND ACCESS IN AMERICA.[1]

Defendants ask this Court to revisit its well-settled precedent that minority coalition claims are available under Section 2. However, the historical backdrop to the enactment of, and subsequent amendments to, the VRA clearly establish the importance of Section 2 in ensuring equal access to voting processes in Louisiana, Mississippi, Texas, and beyond.[2] Eliminating minority coalition claims is at odds with the purpose of the VRA, because it turns the statute on its head by removing protections where claims are asserted by a group, *i.e.* a

[1] *See*, *e.g.*, *Thornburg v. Gingles*, 478 U.S. 30, 69 (1986) (stating that "Congress intended that the Voting Rights Act eradicate inequalities in political opportunities that exist due to the vestigial effects of past purposeful discrimination."); *Abbott v. Perez*, 138 S. Ct. 2305, 2360 (2018) (stating that "[t]he Equal Protection Clause of the Fourteenth Amendment and § 2 of the Voting Rights Act secure for all voters in our country, regardless of race, the right to equal participation in our political processes."); U.S. Comm'n on Civil Rights, An Assessment of Minority Voting Rights Access in the United States (2018) ["USCCR Rep't"] at 5, https://www.usccr.gov/files/pubs/2018/Minority_Voting_Access_2018.pdf (stating that "[t]he Voting Rights Act works to dislodge and deter the construction of barriers by state and local jurisdictions that block or abridge the right to vote of minority citizens.").

[2] *See*, *e.g.*, *Reynolds v. Sims*, 377 U.S. 533, 558 (1964) (asserting "[t]he conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing—one person, one vote.").

coalition, of minorities rather than a single minority group. Determining whether minorities' rights should be denied based on such a distinction is not supported by the VRA's history or purpose.

A. The Historical Background of the VRA Underscores its Importance to Political Equity and Equality in America.[3]

In 1870, the Fifteenth Amendment was ratified and provides in Section 1 that "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." U.S. Const., Amdt. 15, § 1. Section 2 of the Fifteenth Amendment grants Congress the "power to enforce [the 15th Amendment] by appropriate legislation." *Id.* at § 2. Such legislation was ratified to assist America in transforming from a whites-only regime to a well-functioning multi-racial democracy. *See*, *e.g.*, *South Carolina v. Katzenbach*, 383 U.S. 301, 309-310 (1966). To ensure that the Fifteenth Amendment was properly enforced, Congress quickly passed the Enforcement Act of 1870, which made it a crime for public officers and private persons to obstruct the right to vote. *See id.*

After the enactment of the 15th Amendment, the States became creative in employing methods to suppress the minority vote and otherwise disenfranchise minorities. In fact, States began employing methods, like grandfather clauses, white primaries, literacy tests, and racial

[3] *See*, *e.g.*, *South Carolina v. Katzenbach*, 383 U.S. 301, 308 (1966) (stating that "[t]he constitutional propriety of the Voting Rights Act of 1965 must be judged with reference to the historical experience which it reflects. Before enacting the measure, Congress explored with great care the problem of racial discrimination in voting.").

gerrymandering, to suppress minorities from voting.[4] Such tactics were extraordinarily successful in disenfranchising minorities, especially African Americans. *See Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 2330 (2021). By the mid-1960s, minority registration and voting rates in some States were abysmal. *See*, *e.g.*, *South Carolina*, 383 U.S. 301 at 313. At bottom, despite the ratification of the 15th Amendment and the related effectuating regulations, the right for minorities to vote was heavily suppressed for nearly the next 100 years.[5] *See Brnovich*, 141 S. Ct. at 2330.

Given this backdrop and by utilizing the authority conferred by Section 2 of the Fifteenth Amendment, Congress enacted the VRA to ensure minorities were able to exercise their fundamental right to vote.[6] *See*, *e.g.*, *South Carolina*, 383 U.S. at 308. The VRA and its amendments in the 1970s prohibited many practices then in use to suppress minority voting.[7] At "[t]he heart of the [VRA] is a complex scheme of stringent remedies aimed at areas where

[4] *See*, *e.g.*, *Guinn v. United States*, 238 U.S. 347, 360-365 (1915) (grandfather clause); *Smith v. Allwright*, 321 U.S. 649, 659-666 (1944) (white primaries); *Davis v. Schnell*, 81 F. Supp. 872, 874 (S.D. Ala. 1949) (constitutional knowledge test); and *Gomillion v. Lightfoot*, 364 U.S. 339, 347 (1960) (racial gerrymandering).

[5] *See* Davidson & Grofman, *The Voting Rights Act and the Second Reconstruction, in Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965–1990*, at 378, 379 (1994) (stating that VRA was enacted with the failure of the 15th Amendment to effectively protect minorities right to vote since enactment in 1870, nearly 100 years before).

[6] *See* Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437– 446 (codified as amended at 52 U.S.C. §§ 10301 – 10314, 10501 – 10508, 10701, 10702).

[7] *See* §§ 4(a), (c), 79 Stat. 438–439; § 6, 84 Stat. 315; § 102, 89 Stat. 400, as amended, 52 U.S.C. §§ 10303(a), (c), 10501 (prohibiting the denial of the right to vote in any election for failure to pass a test demonstrating literacy, educational achievement or knowledge of any particular subject, or good moral character); *see also* § 10, 79 Stat. 442, as amended, 52 U.S.C. § 10306 (declaring poll taxes unlawful); § 11, 79 Stat. 443, as amended, 52 U.S.C. § 10307 (prohibiting intimidation and the refusal to allow or count votes).

voting discrimination has been most flagrant." *South Carolina*, 383 U.S. at 308. Section 2 of the VRA "was enacted to forbid, in all 50 states, any right of any citizen of the United States to vote on account of race or color."[8] 79 Stat. 437. Section 2 is violated if:

> based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a [racial minority group] in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

52 U.S.C. § 10301(b).

The Supreme Court of the United States has long recognized that Section 2 forbids instruments of outright vote denial and methods of districting-based vote dilution. *See*, *e.g.*, *Wisconsin Legis. v. Wisconsin Elections Comm'n*, 142 S. Ct. 1245, 1248 (2022) (stating that Section 2 has been construed "to prohibit the distribution of minority voters into districts in a way that dilutes their voting power."); *Bartlett v. Strickland*, 556 U.S. 1, 28 (2009) (internal citations omitted) (stating that "Section 2 of the VRA prohibits districting practices that resul[t] in a denial or abridgement of the right of any citizen of the United States to vote on account of race."). More specifically, the phrase "standard, practice, or procedure" is a term of art used in both Section 2 and Section 5 of the VRA. *See*, *e.g.*, 52 U.S.C. §§ 10301(a), 10303(f)(2). This phrase has been held, as used in Section 2 and Section 5, to encompass vote dilution claims and Congress has ratified such interpretation on various occasions. *See*, *e.g.*,

[8] *See*, *e.g.*, *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224 (4th Cir. 2014) (stating that Section 2 "forbids any 'standard, practice, or procedure' that 'results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color.").

Holder v. Hall, 512 U.S. 874, 885-886 (1994).[9]

Additionally, Section 4 of the VRA was enacted and "set forth the criteria for identifying the jurisdictions covered under the preclearance provisions [*e.g.,* Section 5]." USCCR Rep't at 27. The formula was originally enacted in 1965 and subsequently updated four times. *See*, *e.g.*, *id.* Section 5 of the VRA includes the preclearance provisions. Functionally, Section 5 "was enacted in 1965 to freeze any changes in election practices or procedures within jurisdictions covered under Section 4(b), until the practice was reviewed through administrative review by the Attorney General or by a federal district court." *Id.* at 27-28. Congress designed Section 5 to "ensure that voting changes in covered jurisdictions could not be implemented [or] used until a favorable determination has been obtained [from the Attorney General or federal district court].". U.S. Dep't of Justice, *About Section 5 of The Voting Rights Act*, https://www.justice.gov/crt/about-section-5-voting-rights-act [hereinafter DOJ Section 5] (last accessed Feb. 16, 2024). At bottom, Section 4 and Section 5 of the VRA worked together to block "changes that put minority voters in a position that was worse than before." USCCR Rep't at 28.

Ultimately, Congress utilized the VRA to attempt "to rid the country of racial

[9] *See*, *e.g.*, *United States v. Board of Comm'rs of Sheffield*, 435 U.S. 110, 134 (1978) (stating that "Congress is treated as having adopted that interpretation, and this Court is bound thereby."); Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, Pub. L. No. 109-246, § 2(b)(8), 120 Stat. 577, 578 (stating Congress' conclusive understanding that Section 2 properly extends to vote dilution); *Reynolds v. Sims*, 377 U.S. 533, 555 (1964) (stating that "the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.").

discrimination in voting." *South Carolina*, 383 U.S. at 315. As the Supreme Court of the United States has acknowledged race-based discrimination in voting is still a pressing issue. *See*, *e.g.*, *Bartlett*, 556 U.S. at 25 (stating that "racial discrimination and racially polarized voting are not ancient history."). Accordingly, "[m]uch remains to be done to ensure that citizens of all races have equal opportunity to share and participate in our democratic processes and traditions; and § 2 must be interpreted to ensure that continued progress." *Bartlett*, 556 U.S. at 25.

Against this backdrop, it is clear that the VRA is intended to broadly protect minority voting rights, including coalition claims, not limit protections of certain minority groups based on the composition of the group facing disenfranchisement.

B. Section 2 is Paramount to the Efficacy of the VRA.

If Defendants are successful in this appeal, coalitions of minority litigants will have no meaningful opportunity to challenge demonstrably discriminatory practices that abridge their right to vote or dilute the power of their votes across the Fifth Circuit. Such action would frustrate Congress' clearly stated purpose for enacting the VRA in 1965 and subsequently reauthorizing it 5 times over the next 40 years—effectively gutting the VRA as to a wide array of minorities.[10]

[10] *See*, *e.g.*, Pub.L. No. 89-110, 79 Stat. 437 (codified as amended at 42 U.S.C. §§ 1971, 1973 to 1973bb-1) (1965 Act); Pub.L. No. 91-285, § 3, 84 Stat. 314, 315 (1970 Amendments); Pub.L. No. 94-73, § 101, 89 Stat. 400, 400 (1975 Amendments); Pub.L. No. 97-205, § 2(b)(8), 96 Stat. 131, 133 (1982 Amendments); Pub. L. No. 102-344, 106 Stat. 921 (1992 Amendments); Pub. L. No. 109-246, § 2(b)(8), 120 Stat. 577, 578 (2006 Amendments).

During the most recent reauthorization of the VRA, over 20 hearings were held and 14,000 pages of record evidence describing continued discrimination in voting.[11] This crystalized for Congress that "without the continuation of the Voting Rights Act of 1965 protections, racial and language minority citizens [would] be deprived of the opportunity to exercise their right to vote, or [would] have their votes diluted, undermining the significant gains made by minorities in the last 40 years." *Shelby Cnty. v. Holder*, 570 U.S. 529, 565 (2013). Prior to *Shelby Cnty*, Section 2 and Section 5[12] of the VRA worked hand-in-hand to provide robust mechanisms to challenge enacted discriminatory election practices nationwide, and, in jurisdictions with a history of discrimination, for preventing certain discriminatory measures before enactment, respectively. More specifically, Section 2 functions as a "nationwide prohibition against discrimination in voting that requires bringing an affirmative case." USCCR Rep't at 30 (citing 52 U.S.C. § 10301). Section 5, on the other hand, thwarted "discriminatory measures in certain covered jurisdictions with history of discrimination before they could be enacted." *Id.* (citing 52 U.S.C. § 10304(a)). At bottom, Section 2 addressed discrimination in voting in jurisdictions that were not covered by Section 5's preclearance. *See*, *e.g.*, USCCR Rep't at 31.

However, in 2013, the Supreme Court of the United States decision in *Shelby Cnty.*

[11] USCCR Rep't at 60-82.

[12] USCCR Rep't at 27-28 (stating that "[t]he preclearance provisions are in Section 5 of the VRA. Section 5 was enacted in 1965 to freeze any changes in election practices or procedures within jurisdictions covered under Section 4(b), until the practice was reviewed through administrative review by the Attorney General or by a federal district court.")

precluded the operation of certain parts of the VRA, and thus narrowed the statutory mechanism to halt discriminatory election procedures, making the scope of the private right of action under Section 2 even more important. *In Shelby Cnty.,* the Supreme Court eliminated Congress' ability to use historical data to determine which jurisdictions must seek federal approval to change their voting laws, which effectively gutted the preclearance process that was put in place to curb discriminatory voting measures enacted in certain places with a statistically validated history of discrimination. *See*, *e.g.*, USCCR Rep't at 9. In practice, while *Shelby Cnty.* "did not find that Section 5 was unconstitutional, by ruling that the formula in Section 4 was unconstitutional, the decision removed the mechanism for carrying out preclearance.". *Id.* Accordingly, *Shelby Cnty.* effectively invalidated Section 5 of the VRA with the understanding that its "decision in no way affects the permanent, nationwide ban on racial discrimination in voting found in § 2." *Shelby Cnty.*, 570 U.S. at 557.

The broad takeaway is that Section 2 is now the *singular* way to remedy voter discrimination and suppression under the VRA.[13] In fact, Section 2 lawsuits have increased fourfold since the *Shelby Cnty.* decision. *See*, *e.g.*, USCCR Rep't at 9. This makes it particularly problematic that if Defendants prevail on this appeal, they will effectively eviscerate the rights of wide swathes of minorities under Section 2. Without Section 2,

[13] 42 U.S.C. §§ 1973 to 1973bb-1; 52 U.S.C. § 10301 (Section 2); U.S. Dep't of Justice, Statutes Enforced by the Voting Section, https://www.justice.gov/crt/statutes-enforced-voting-section#vra (last accessed Feb 8, 2024) (stating that election practices need not be intentionally discriminatory to be prohibited under Section 2, as practices that are shown to have a discriminatory result are also prohibited.).

coalitions of minority citizens across the Fifth Circuit will have no viable recourse to fight against vote dilution and/or deprivation.

II. A COALITION OF MINORITY VOTERS CAN ASSERT A CLAIM UNDER SECTION 2.[14]

Defendants ask this Court to vacate its longstanding precedent that minority coalition claims, like the claims at bar, are permissible under Section 2 of the VRA. *See*, *e.g.*, Defs.' Br. at 18; *see also*, *e.g.*, Defs.' Supp. Br. at 13. However, Defendants fail to provide a colorable rationale to overturn this longstanding position and on that basis their request offends well-settled principles of *stare decisis*.

A. The Plain Meaning of Section 2 Supports Plaintiffs' Ability to Assert a Coalition Claim under Section 2.[15]

The plain language of Section 2 supports the right of minority coalitions to bring claims. In the Fifth Circuit, "in any case requiring statutory construction, the High Court has instructed [the Fifth Circuit] to adhere to the plain language of the law unless literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters." *Chapman v. Powermatic, Inc.*, 969 F.2d 160, 164 (5th Cir. 1992).[16] On that basis,

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[14] *See League of United Latin American Citizens, Council No. 4386 v. Midland Indep. Sch. Dist.*, 812 F.2d 1494 (5th Cir. 1987), reh'g granted, 818 F.2d 350 (5th Cir. 1987), and vacated on other grounds, 829 F.2d 546 (5th Cir. 1987) (the Fifth Circuit becomes the First Circuit to explicitly accept minority coalitions for Section 2 claims.).

[15] *See*, *e.g.*, *United States v. Spurlin*, 664 F.3d 954, 964 (5th Cir. 2011) (stating that in the Fifth Circuit "[t]he first step in statutory interpretation—and the only step needed here—is to look at the plain meaning of the statutory language."); *Pierce v. Underwood*, 487 U.S. 552, 576 (1988) (stating that the Supreme Court "begins, as is proper, with the plain meaning of the statutory language.").

[16] *See*, *e.g.*, *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982) (internal quotations omitted) (stating that "[n]evertheless, in rare cases the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters, and those intentions must be controlling. We have

if the Court finds that the statutory language is clear, then it is bound to follow it.[17] *See*, *e.g.*, *id.* Terms not defined are to be given their ordinary and natural meaning and should be interpreted according to the overall policies and objectives of the statute at issue. *See*, *e.g.*, *U.S. v. Shabazz*, 633 F.3d 342, 345 (5th Cir. 2011).

Here, the plain language of Section 2(a) expressly prohibits qualifications, prerequisites, standards, practices, or procedures "applied by any State or political subdivision[18] in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color" or language minority status[19]. 52 U.S.C. § 10301(a). Section 2(b), in addition, provides:

> [a] violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

52 U.S.C. § 10301(b).

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reserved some scope for adopting a restricted rather than a literal or usual meaning of its words where acceptance of that meaning . . . would thwart the obvious purpose of the statute.").

[17] *See*, *e.g.*, *U.S. v. Shabazz*, 633 F.3d 342, 345 (5th Cir. 2011) (asserting that "[w]hen interpreting a statute, we are bound to "follow the plain and unambiguous meaning of the statutory language."); *United States v. Kay*, 359 F.3d 738, 742 (5th Cir. 2004) (same).

[18] *Holloway v. City of Va. Beach*, 531 F. Supp. 3d 1015, 1043 (E.D. Va. 2021) (stating that "the most common type of political subdivision in the country is the single member district, a district drawn to enable the voters residing there to elect one representative to the legislative body. Multi-member districts are one means of meeting the Supreme Court's 'one person, one vote' standard, particularly in large or heavily populated districts.")

[19] Pursuant to 52 U.S.C. § 10303(f)(2), which is cross-referenced in 52 U.S.C. § 10301, "language minority status" is protected by Section 2.

Section 2 when given its plain meaning establishes that a claim lies when a given practice or procedure "results in a denial or abridgement of the right … to vote on account of race, color" or language minority status. Accordingly, a citizen of the United States who has suffered vote dilution based on their minority group status may prove such by becoming a part of a "class of citizens" to show they have "less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 52 U.S.C. § 10301(b). Interpretively, "class" means "[a] group of people … that have common characteristics or attributes." Class, Black's Law Dictionary (11th Ed. 2019). Accordingly, the statutory language of Section 2 makes the only prerequisite for membership in a "class of citizens" that they are "protected by subsection (a)," (i.e., that they suffer abridgment or denial of the right to vote "on account of" race, color, or language-minority status). 52 U.S.C. § 10301.

The text of Section 2 defines the relevant "class of citizens" as those who suffer a denial or abridgment of the right … to vote on account of" race, color, or language-minority status in a particular "state or political subdivision." 52 U.S.C. § 10301. Nothing in Section 2 requires, or even reasonably implies, that every member of the "class of citizens" must share the same race, belong to the same language-minority group, or must be expressly listed as Defendants urge. *See*, *e.g.*, Defs. Supp. Br. at 32-33; *see also*, *e.g.*, Defs. Br. at 25. To the contrary, Section 2 protects any citizen from the denial of voting rights on "account of race or color" or language minority status, and Section 2 establishes that "class of citizens" is an

inclusive term that includes any citizens that suffering a denial or abridgement of their right to vote on account of race, color, or language minority status in a particular state or political subdivision.

At bottom, the plain language of Section 2 does not limit claims brought by minority coalitions. Section 2's language evidences an inclusive approach to allow a "class of citizens" who suffer from infringements on their right to vote on the account of race, color, or language minority status. 52 U.S.C. § 10301. The class is defined by membership in the group, regardless of how it is composed. Thus, nothing in the plain language of the statue requires or implies a preclusion of minority coalitions. This reading is supported by the rules of interpretation for the VRA, which "should be interpreted in a manner that provides 'the broadest possible scope' in combatting racial discrimination." *Chisom v. Roemer*, 501 U.S. 380, 403 (1991).

Even more, if Defendants' contention of the plain language were correct (it is not)[20], the Court should still not apply such interpretation because it will produce a result demonstrably at odds with Congressional intent in implementing the VRA.[21] *See*, *e.g.*,

[20] Defendants' plain meaning argument boils down to an argument that the absences of the phrase minority coalition claims in Section 2 must mean they are not available; however, Courts are dubious of such strained readings of statutes. *See*, *e.g.*, *Holloway v. The City of Va. Beach*, 42 F.4th 266, 293 (4th Cir. 2022) (asserting that "the absence of any express reference to coalition claims in the text of Section 2 is not dispositive to our interpretation of the provision."); *Bostock v. Clayton County*, 140 S. Ct. 1731, 1747 (2020) (stating that there is no "such thing as a "canon of donut holes," in which Congress's failure to speak directly to a specific case that falls within a more general statutory rule creates a tacit exception. Instead, when Congress chooses not to include any exceptions to a broad rule, courts apply the broad rule.").

[21] *See*, *e.g.*, *Voinovich v. Quilter*, 507 U.S. 146, 152 (1993) (internal quotations omitted) (asserting that "Congress enacted § 2 of the Voting Rights Act of 1965, 42 U.S.C. § 1973, to help effectuate the Fifteenth Amendment's guarantee that no citizen's right to vote shall be denied or abridged . . . on account of race,

Morgan v. Huntington Ingalls, Inc., 879 F.3d 602, 609 (5th Cir. 2018) (internal quotations omitted) (stating that the Fifth Circuit will "comply with the plain language unless literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters."); *Matter of England*, 975 F.2d 1168, 1173 (5th Cir. 1992) (asserting that the Fifth Circuit "must adhere to the plain language of the law unless doing so demonstrably conflicts with the intentions of the drafters."); *In re Meyerland Co.*, 960 F.2d 512, 516 (5th Cir. 1992) (same). Congressional intent in implementing the VRA was plainly to protect minority voting rights, not to eliminate protections by parsing which particular minority group (or group of minorities) are impacted by discrimination.

B. The Legislative History of the VRA Further Establishes that Congress Intended for Coalition Claims to be Available under Section 2.[22]

From the outset, the legislative history of the VRA shows Congressional intent for minorities to have their voting rights broadly protected.[23] *See*, *e.g.*, *Chisom v. Roemer*, 501

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color, or previous condition of servitude, U.S. Const., Amdt. 15."); *Allen v. State Board of Elections*, 393 U.S. 544, 546 (1969) (establishing that the VRA "was aimed at the subtle as well as the obvious state regulations which have the effect of denying citizens their right to vote because of race."); *Naacp v. New York*, 413 U.S. 345, 350 (1973) (stating that "Section 2 of the Voting Rights Act of 1965, 42 U.S.C. § 1973, clearly indicates that the purpose of the [VRA] is to assist in the effectuation of the Fifteenth Amendment, even though that Amendment is self-executing, and to insure that no citizen's right to vote is denied or abridged on account of race or color.").

[22] *See*, *e.g.*, *Holloway v. United States*, 526 U.S. 1, 7 (1999) (stating that "the meaning of statutory language, plain or not, depends on context."); *Brown v. Gardner*, 513 U.S. 115, 117 (1994) (same); *Edwards v. Aguillard*, 482 U.S. 578, 594 (1987) (stating that"[t]he plain meaning of the statute's words, enlightened by their context and the contemporaneous legislative history, can control the determination of legislative purpose."); *Edwards*, 482 U.S. at 594 (stating that "[m]oreover, in determining the legislative purpose of a statute, the Court has also considered the historical context of the statute.").

[23] *See*, *e.g.*, *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 229 (4th Cir. 2014) (stating that Congressional intent was "to further ensure equal access to the ballot box by passing the Voting Rights

U.S. at 403 (1991) (internal quotations omitted) (stating that "Congress enacted the Voting Rights Act of 1965 for the broad remedial purpose of rid[ding] the country of racial discrimination in voting."); *South Carolina v. Katzenbach*, 383 U.S. 301, 315 (1966) (same).

The legislative history from both the 1975 and 1982 Reauthorizations of the VRA supports the recognition of minority coalition claims under Section 2. For example, the Senate Judiciary Committee found that discrimination against Hispanics was evident in "almost every facet of life," paralleling the barriers faced by African Americans. *See*, *e.g.*, S. REP. NO. 94-295 at 25-29 (1975). The Senate explicitly relied upon precedent involving a minority coalition claim consisting of Hispanics and Blacks and observed how at-large voting schemes in Texas denied both minority groups access to electoral representation in an inextricable way with no suggestion that such coalition claims should not be protected under the VRA. *Id.* at 27-28.[24] Congress' 1975 Reauthorization and the related legislative history shows a recognition of and a plan to address the reality that members of different minority groups, including Asian Americans and Hispanic Americans, face similar discrimination and

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Act, which was aimed at preventing "an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives."); *Holloway v. The City of Va. Beach*, 42 F.4th 266, 294 (4th Cir. 2022) (stating that "[e]ven if it were ambiguous whether the text of Section 2 protects a coalition of minority voters from discrete minority groups, the legislative history of Section 2 and broad remedial purpose of the VRA both support recognizing such claims."); *Holloway v. City of Va. Beach*, 531 F. Supp. 3d 1015, 1054 (E.D. Va. 2021) (asserting that "the legislative history of the VRA shows that Congress intended for broad protection of minorities as a group of citizens.").

[24] *See*, *e.g.*, S. Rep. No. 94-295, at 25, 28–29 (1975), as reprinted in 1975 U.S.C.C.A.N. 774, 791 ("Language minority citizens, like [B]lacks throughout the South, must overcome the effects of discrimination as well as efforts to minimize the impact of their political participation.... Evidence before the Subcommittee documented that Texas also has a long history of discriminating against members of [the Black and Hispanic minority communities] in ways similar to the myriad forms of discrimination practiced, against [B]lacks in the South.").

barriers to participation in the political process as African Americans, again with no questions raised regarding the viability of coalition claims. *See*, *e.g.*, *Holloway*, 42 F.4th at 294.

In 1982, Congress reiterated Section 2's general protections of the "right of minority voters to be free from elections practices, procedures or methods, that deny them the same opportunity to participate in the political process as other citizens enjoy." S. Rep. No. 97-417 at 28 (1982). Many of the references to Black and Hispanic voters describe their political cohesiveness.[25] Additionally, Congress developed the totality-of-the-circumstances test as it considered the rights and shared struggles of distinct racial and language minorities. *See*, *e.g.*, S. REP. NO. 97-417, at 28–29 (1982). As stated by the *Holloway* Court, "[a]bsent an explicit omission by Congress, a coalition group bringing the claim should merely be one circumstance considered in the totality." *Holloway*, 531 F. Supp. 3d at 1055.

Additionally, "[w]hen Congress amended Section 2 in 1982, it was aware that more than one minority group could be considered to constitute one plaintiff class in determining the availability of Voting Rights Act protection." *Holloway*, 42 F.4th at 294 (internal quotations omitted); *Nixon v. Kent County*, 76 F.3d 1381, 1395 (6th Cir. 1996) (Keith, D., dissenting) (stating that "the absence of an explicit prohibition of minority coalition claims

[25] S. Rep. No. 97-417 at 5-7 (referencing Black people in the context of the history of the VRA); 11 (referencing Black and Latino voters in the context of Section 5 preclearance decisions); 22 (discussing Black and Latino voters in the context *of White v. Register*); 64-65 (discussing the need bilingual elections for language minority groups, including Latinos); *see also*, *e.g.*, *League of United Latin Am. Citizens, Council No. 4836 v. Midland Indep. Sch. Dist.*, 648 F. Supp. 596, 606 (W.D. Tex. 1986) (stating that "that Blacks and Mexican Americans are racially and culturally distinct. However, it is also clear that the two groups share common experiences in past discriminatory practices. Whereas the two groups may not always have the same political goals, it is clear that the two groups have political goals that are inseparable.")

compels a construction of Section 2 which allows them" given Congress awareness that more than one minority group could be considered to constitute one plaintiff.).

The legislative history of the VRA demonstrates that Congress intended for broad protections for minorities as a group of citizens. *See*, *e.g.*, *Holloway,* 531 F. Supp. 3d at 1054. Congress has continually shown this intention by repeatedly expanding the scope of the VRA. *See*, *e.g.*, *id.* Additionally, Congress has "recognized that distinct racial minorities share common struggles of voter dilution and disenfranchisement which were to be redressed with the VRA." *Id.* Ultimately, the legislative history of the VRA evidence that "the most critical inquiry of Section 2 is whether a minority group, or class, has less opportunity to participate in the political process – which may be true for a minority group composed of various racial minorities who face the same barriers to voting." *Id.* Reversing long-standing precedent by eliminating coalition claims is directly at odds with that history.

C. Consistent with the Plain Language of Section 2, Coalition Claims Under the VRA Have Long Been Permissible in the Fifth Circuit.

Coalition claims have consistently been authorized under Section 2 of the VRA in the Fifth Circuit, including before *en banc* panel.[26] In fact, the 5th Circuit

[26] *See*, *e.g.*, *LULAC, Council No. 4434 v. Clements*, 999 F.2d 831, 864 (5th Cir. 1993) (en banc) (emphasis added) ("If blacks and Hispanics vote cohesively, ***they are legally a single minority group***, and elections with a candidate from this single minority group are elections with a viable minority candidate."); *LULAC, Council No. 4386 v. Midland Indep. Sch. Dist.*, 812 F.2d 1494, 1500–02 (5th Cir. 1987) (the 5th Circuit becomes the first Circuit Court in the United States to explicitly accept minority coalitions for Section 2 claims); *Campos v. City of Baytown*, 840 F.2d 1240, 1244 (5th Cir. 1988) (finding Hispanic and Black voters "a protected aggrieved minority" under Section 2), reh'g denied, 849 F.2d 943 (1988); *Brewer v. Ham*, 876 F.2d 448, 453 (5th Cir. 1989) (holding that while "minority groups may be aggregated for the purposes of asserting a Section 2 violation" plaintiffs had to show that they were politically cohesive.); *Overton v. City of Austin*, 871 F.2d 529, 536 (5th Cir. 1989) (finding that while minority groups could bring a Section 2

was the ***first Circuit Court*** to explicitly accept minority coalitions for Section 2 claims. *See*, *e.g.*, *Holloway v. City of Va. Beach*, 531 F. Supp. 3d 1015, 1048 (E.D. Va. 2021) (stating that the Fifth Circuit "was the first circuit court to explicitly accept minority coalitions for Section 2 claims.").

D. The Doctrine of Stare Decisis Requires Minority Coalition Claims Be Available Under Section 2 in This Circuit.

As has long been the case in the Fifth Circuit, the doctrine of *stare decisis*[27]:

> forbids that judicial decisions deliberately rendered should be set aside, unless they are clearly wrong and violative of sound principle or social morality. It expresses the conservatism of the law, and underlies its entire structure. If it be disregarded there can be no system of law, but only chaos reflecting the vacillating opinions of the judges who come and go.

Hampton v. City of Jacksonville, Florida, 304 F.2d 320, 330 (5th Cir. 1962). Stare decisis has been applied broadly in this Circuit to require adherence to "not only … the holdings of … prior cases, but also to their explications of the governing rules of law." *Gochicoa v. Johnson*, 238 F.3d 278, 287 n.11 (5th Cir. 2001). In fact, the Fifth Circuit is so committed to principles of stare decisis and orderliness, it will not depart from settled law in the absence intervening contrary authority. *See*, *e.g.*, *Robinson v. Parsons*, 560 F.2d 720, 721 n.2 (5th Cir. 1977).

Here, prior cases in the Fifth Circuit make clear that minority coalition claims are

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claim, they need to show they are politically cohesive as a threshold matter.).

[27] It is important to note that stare decisis does not apply to the decisions of other Federal Circuit Courts. *See*, *e.g.*, *Gulf Inland Corp. v. United States*, 570 F.2d 1277, 1278 (5th Cir. 1978) (stating that "*Stare decisis*, however, does not apply, and the decision of one Court of Appeals does not bind that of another.").

available under Section 2.[28] *See*, *e.g.*, *LULAC, Council No. 4434*, 999 F.2d at 864. Additionally, there is no intervening contrary authority on the availability of minority coalition claims under Section 2 of the VRA from the Supreme Court of the United States or an en banc Court of this Circuit. Indeed, the primary intervening authority from the Supreme Court of the United States, i.e. *Shelby Cnty*, emphasizes the importance of a broad application of Section 2 by limiting potential VRA claims to Section 2 claims. Accordingly, well settled principles of *stare decisis* in this Circuit stand for the availability of minority coalition claims under Section 2 of the VRA.

E. Circuits Across the United States Recognize the Viability of Minority Coalition Claims Under Section 2.

Circuits across the United States have found that minority coalitions claims are cognizable under Section 2 of the VRA.[29] In fact, the Fourth Circuit opined in *Holloway* that

[28] *See*, *e.g.*, *LULAC, Council No. 4386 v. Midland Indep. Sch. Dist.*, 812 F.2d 1494, 1500–02 (5th Cir. 1987) (the 5th Circuit becomes the first Circuit Court in the United States to explicitly accept minority coalitions for Section 2 claims); *Campos v. City of Baytown*, 840 F.2d 1240, 1244 (5th Cir. 1988) (finding Hispanic and Black voters "a protected aggrieved minority" under Section 2), reh'g denied, 849 F.2d 943 (1988); *Brewer v. Ham*, 876 F.2d 448, 453 (5th Cir. 1989) (holding that while "minority groups may be aggregated for the purposes of asserting a Section 2 violation" plaintiffs had to show that they were politically cohesive.); *Overton v. City of Austin*, 871 F.2d 529, 536 (5th Cir. 1989) (finding that while minority groups could bring a Section 2 claim, they need to show they are politically cohesive as a threshold matter.).

[29] *See Concerned Citizens of Hardee Cty. v. Hardee Cty. Bd. of Comm'rs*, 906 F.2d 524, 526 (11th Cir. 1990) (holding that "[t]wo minority groups ... may be a single section 2 minority if they can establish that they behave in a politically cohesive manner.") (first citing *Campos v. City of Baytown*, 840 F.2d 1240, 1244 (5th Cir. 1988); then citing *LULAC, Council No. 4386 v. Midland Indep. Sch. Dist.*, 812 F.2d 1494, 1499–502 (5th Cir. 1987), reh'g granted, 818 F.2d 350 (5th Cir. 1987), and vacated on other grounds, 829 F.2d 546 (5th Cir. 1987)); *Romero v. City of Pomona*, 883 F.2d 1418 (9th Cir. 1989) (the 9th Circuit hearing voter dilution claims by a coalition of Black and Hispanic voters without questioning their right to aggregate); *Badillo v. City of Stockton*, 956 F.2d 884 (9th Cir. 1992) (same); *Bridgeport Coalition v. City of Bridgeport*, 26 F.3d 271 (2d Cir. 1994) (allowing minority coalition claims).

"nearly every other circuit to consider the issue, … [holds that] Section 2 encompasses coalition claims." *Holloway v. The City of Va. Beach*, 42 F.4th 266, 293 (4th Cir. 2022). Indeed, only the Sixth Circuit has held otherwise. *See Nixon v. Kent*, 76 F.3d 1381, 1386-92 (6th Cir. 1996).

Defendants' reliance on *Bartlett v. Strickland*, 556 U.S. 1 (2009) in an effort to overcome this overwhelming volume of precedent is misplaced, because *Bartlett* had a materially different coalition—i.e., white and minority voters—from the typical minority coalition endorsed by almost every Circuit Court, including the Fifth Circuit. *See Bartlett*, 556 U.S. at 13-14. A coalition of minority voters, such as the coalition of Plaintiffs here, consists of minority groups protected under the VRA by its plain language and its legislative history. A group of minority voters and white, i.e. "majority," voters, such as the coalition presented in *Bartlett*, raises entirely inapposite issues related to the viability of VRA claims. The *Bartlett* court itself recognized this distinction. *Id.* at 13-14 (noting distinction between "crossover districts" consisting of minority and majority voters and coalition districts consisting of minority groups). And *Bartlett* warned that the different types of coalitions should not be "confus[ed]." *Id.* Thus, *Bartlett* provides no basis for this Court reversing its long-standing precedent.

CONCLUSION

For the foregoing reasons, this Court should affirm the Findings of Facts and Conclusions of Law of the district court.

CERTIFICATE OF COMPLIANCE WITH FRAP 32

1. This Brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this Brief contains 7,039 words, excluding the parts exempted by Fed. R. App. P. 32(f).

2. This Brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Times New Roman font in 14 point type.

s/ William A. Brewer III
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CERTIFICATE OF SERVICE

I hereby certify that on February 21, 2024, I electronically filed the Brief of Amici Curiae with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. I certify that all participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

s/ William A. Brewer III
William A. Brewer III