Louisiana v. Callais and the Future of Section 2

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The Voting Rights Act of 1965 (VRA)[1] has been, without question, one of the most successful pieces of legislation on record. "[L]argely because of the Voting Rights Act, voting tests were abolished, disparities in voter registration and turnout due to race were erased, and African-Americans attained political office in record numbers."[2] But from the beginning, the Supreme Court recognized that the VRA pushed constitutional boundaries in a way few other statutes had.[3] This tension led to constant litigation over the Act's boundaries, of which the *Callais* decision is only the most recent example.

Two substantive provisions of the VRA have garnered the most attention: Section 2's nationwide prohibition of discrimination in voting[4] and Section 5's requirement that certain covered jurisdictions (as defined in Section 4(b)) submit any changes in election law for federal preclearance.[5] Section 5's story is largely over—in *Shelby County*, the Supreme Court found that the "exceptional conditions" that justified such a departure from the usual rule of state sovereignty could no longer support maintaining the same coverage formula that existed then, largely because conditions in the covered Southern states had improved substantially.[6] As a result, Section 2 has taken the spotlight in recent years.

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1 Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (1965).

2 Shelby County v. Holder, 570 U.S. 529, 553 (2012).

3 South Carolina v. Katzenbach, 383 U.S. 301, 334 (1966) (describing the Act's preclearance mechanism as perhaps "an uncommon exercise of Congressional power" but justified by "exceptional conditions").

4 52 U.S.C. § 10101.

5 52 U.S.C. §§ 10303(b), 10304.

6 *Shelby County*, 570 U.S. at 552–53, 557. Congress, of course, could enact a more tailored coverage formula, but that appears quite unlikely.

Section 2 is a broad-based prohibition on racial discrimination in voting. When enacted, its text mirrored the Fifteenth Amendment, stating that "[n]o voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color."[7] Like the Reconstruction Amendments, Section 2's language protects the individual right to vote, not the right of groups to vote collectively.[8]

However, this understanding began to break down immediately. For example, although it was understood that a violation of the Fifteenth Amendment required proof of discriminatory intent, courts began to loosen that requirement for Section 2. Most famously, in *White v. Regester*,[9] the Supreme Court affirmed an order invalidating multimember state legislative districts in two Texas counties without any finding of intentional discrimination. According to the Court, the plaintiff's burden under Section 2 was not to show intent, but "to produce evidence to support findings that the political processes leading to nomination and election were not equally open to participation by the group in question—that its members had less opportunity than did other residents of the district to participate in the political processes and to elect legislators of their choice."[10] This test introduced group-based language—particularly the idea that a collective could have "legislators of their choice."[11]

The Court ultimately backed away from *White*. Following *Washington v. Davis*,[12] which held that proof of discriminatory intent is necessary

[7] Pub. L. 89-110, 79 Stat. 437 (1965).

[8] *See* Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 227 (1995) ("[T]he Fifth and Fourteenth Amendments to the Constitution protect *persons*, not *groups*."); Brnovich v. Democratic Nat'l Comm., 594 U.S. 647, 656 (2021) ("As originally enacted, §2 closely tracked the language of the Amendment it was adopted to enforce.").

[9] 412 U.S. 755 (1973).

[10] *Id*. at 766.

[11] Of course, the very idea that a group of voters can have a legislator of its choice is antithetical to the individual rights the Constitution protects. Later, the Supreme Court would reject the idea that "members of the same racial group . . . think alike, share the same political interests, and will prefer the same candidates at the polls." Shaw v. Reno, 509 U.S. 630, 647 (1993); *see also* Schuette v. Coal. to Defend Affirmative Action, 572 U.S. 291, 308 (2014) (plurality opinion) (rejecting the proposition that "all individuals of the same race think alike" as "not serious"); Students for Fair Admissions Inc. v. President & Fellows of Harvard Coll., 600 U.S. 181, 220–21 (2023).

[12] 426 U.S. 229 (1976).

to demonstrate a violation of the Equal Protection Clause, the Court in 1980's *Bolden* case recast *White*'s totality of the circumstances test as "consistent with 'the basic equal protection principle that the invidious quality of a law claimed to be racially discriminatory must ultimately be traced to a racially discriminatory purpose.'"[13] Yet at the same time, the Court rejected *White*'s focus on the past, noting that "past discrimination cannot, in the manner of original sin, condemn governmental action that is not itself unlawful."[14] Ultimately, *Bolden* required a showing of discriminatory intent to prove a violation of Section 2.[15]

But Congress disagreed. It amended Section 2, adding what became known as the "results test."[16] Additionally, Section 2(b) adopted much of the language from *White*'s holding. It now instructs that a violation of Section 2 occurs when, "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" (whom Section 2 protects), such 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."[17] The amendment includes the disclaimer that it is not meant to establish "a right to have members of a protected class elected in numbers equal to their proportion in the population."[18]

The amended Section 2 is not a picture of clarity. This left quite a bit of interpretive work for courts. The conflicting language required them to choose between interpreting Section 2 as primarily protecting the individual right to vote (more in the tradition of a disparate-*treatment* statute) or safeguarding the voting power of racial groups (in the tradition of a disparate-*impact* statute).

Ultimately, two species of Section 2 claims emerged in the wake of the amended Section 2—so-called "vote denial" and "vote-dilution"

[13] City of Mobile v. Bolden, 446 U.S. 55, 69 (1980) (quoting *Davis*, 426 U.S. at 240).

[14] *Id.* at 74.

[15] *Id.*

[16] Thornburg v. Gingles, 478 U.S. 30, 35 (1986). *See* Pub. L. 97-205, 96 Stat. 131 § 3 (1982) (now codified at 52 U.S.C. § 10301(b) (1982)) (amending Section 2(a) of the VRA to prohibit voting practices that "result[] in a denial or abridgment" of the right to vote).

[17] *See* 52 U.S.C. § 10301(b).

[18] *Id.*

claims.[19] As we will see, lower courts initially leaned toward the disparate-impact interpretation in both contexts. However, the Supreme Court has intervened in both lines of cases in the most recent decade, ultimately endorsing a disparate-treatment type analysis for both. It is instructive to view the histories of these claims alongside each other.

I. *Brnovich* and "Vote Denial" Claims

The less frequent Section 2 claim is the "vote denial" variety.[20] A vote denial case challenges an election practice that is alleged to disproportionately deny the opportunity to vote to members of a particular racial group.[21] Examples of practices challenged as vote denial in recent years are voter ID requirements,[22] restrictions or cutbacks on early voting,[23] elimination of practices such as same-day registration,[24] and requirements that voters vote in their proper precinct on election day.[25]

When these cases started to become more common in the 2010s, the Courts of Appeals behaved as if they were working on a blank slate.[26] Armed with Section 2(b)'s opaque text and the Supreme Court's early instruction that "[t]he essence of a § 2 claim is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives,"[27] several circuits endorsed a group-centric reading that required little more than a bare statistical disparity. Under this test, if the challenged

[19] *See, e.g.*, Ohio Democratic Party v. Husted, 834 F.3d 620, 636–37 (6th Cir. 2016); Veasey v. Abbott, 830 F.3d 216, 244 (5th Cir. 2016) (distinguishing between the two types of claims).

[20] *Husted*, 834 F.3d at 636 ("The majority of cases interpreting Section 2 arose in the vote-dilution context, epitomized by the Supreme Court's decision in [*Gingles*].").

[21] *See* Johnson v. Governor of Fla., 405 F.3d 1214, 1227 n.26 (11th Cir. 2005).

[22] *See, e.g.*, *Veasey*, 830 F.3d at 225.

[23] *Husted*, 834 F.3d at 623; League of Women Voters of N.C. v. North Carolina, 769 F.3d 224, 234 (4th Cir. 2014).

[24] *League of Women Voters*, 769 F.3d at 232–33.

[25] *Id*. at 233–34; *Brnovich*, 594 U.S. 647 (2021).

[26] *See, e.g.*, *Husted*, 834 F.3d at 636 ("[N]umerous courts and commentators have noted that applying Section 2's 'results test' to vote-denial claims is challenging, and a clear standard for its application has not been conclusively established.").

[27] *Gingles*, 478 U.S. at 47.

procedure disparately affects a particular group—such as a finding that more white than black voters possess qualifying IDs—a court need only link that with a "history of state-sponsored discrimination" that caused "disparities in education, employment, housing, and transportation" to find a Section 2 violation.[28]

This makes it nearly impossible for a state to limit any voting mechanism favored by a particular minority group without violating Section 2. Unfortunately, most (if not all) jurisdictions have some history of official discrimination and present socioeconomic disparities. The result was the remaking of Section 2 as a disparate-impact statute. This trend peaked in 2020 when the *en banc* Ninth Circuit invalidated Arizona's restriction on counting out-of-precinct votes and third-party ballot collection.[29] This triggered the Supreme Court's intervention to decide the scope of Section 2 in vote denial cases for the first time.

The Court in *Brnovich v. Democratic National Committee*[30] emphatically rejected the group-centric, disparate-impact-only reading of Section 2. It instead embraced Seventh Circuit Judge Frank Easterbrook's view that "[i]t is better to understand §2(b) as an equal-treatment requirement . . . than as an equal-outcome command."[31] Although the Court was careful not to endorse a rigid test for vote-denial claims,[32] it emphasized that Section 2 guarantees "everyone an equal 'opportunity' to vote."[33] And it rejected the group-centric, disparate-impact reading as a "radical project" that would "undo . . . the compromise that was reached between

[28] *Veasey*, 830 F.3d at 259, 264–65; *see also League of Women Voters*, 769 F.3d at 244–46 (applying the same test to find that a state's elimination of same day registration and requirement that voters vote in their assigned precincts on election day likely violate Section 2); Ohio State Conf. of NAACP v. Husted, 768 F.3d 524, 555 (6th Cir. 2014), *vacated as moot*, 2014 WL 10384647 (6th Cir. Oct. 1, 2014) (finding that a reduction from 35 to 28 days of early voting likely violates Section 2).

[29] Democratic Nat'l Comm. v. Hobbs, 948 F.3d 989, 1032, 1037 (9th Cir. 2020) (en banc).

[30] 594 U.S. 647 (2021).

[31] Frank v. Walker, 768 F.3d 744, 754 (7th Cir. 2014). The Sixth Circuit had also clarified (if not totally repudiated) its own expansive reading of Section 2 in *Husted*. 834 F.3d at 637–38.

[32] *Brnovich*, 594 U.S. at 665–66.

[33] *Id*. at 674.

the House and Senate when §2 was amended in 1982."[34] Ultimately, the Court sustained both Arizona provisions under its opportunity-based interpretation of the statute.[35]

II. *Callais* and Vote-Dilution Claims

The other type of Section 2 claim is a vote-dilution claim. The basic theory of vote dilution is that a particular mechanism allowing for the election of representatives—such as a single-member district, at-large voting, or a multimember district—is organized such that it would reduce the voting power of a particular racial group.[36] In the modern era, most of these cases (like *Callais* itself) have been challenges to the drawing of single-member districts, a practice generally known as gerrymandering.[37]

For decades, *Gingles* was the seminal vote-dilution case. Consistent with the then-dominant mode of statutory interpretation,[38] *Gingles* treated the Senate report from the bill that amended Section 2 as tantamount to the text, incorporating eight factors that the Senate committee set out as being the main considerations in the totality of the circumstances inquiry.[39] These included factors such as "the history of voting-related discrimination" in the jurisdiction, whether voting there is "racially polarized," and "the extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health."[40]

[34] *Id.* at 674–75.

[35] *See id.* at 678–82 (out of precinct ballots); 683–87 (third-party collection).

[36] *See* Louisiana v. Callais, 146 S. Ct. 1141, 1145 (2026) (defining a vote-dilution claim as "a claim that a districting scheme impermissibly lessens the weight of the votes of minority voters").

[37] Multimember districts are largely extinct today. *See* Thomas F. Schaller, *Multi-Member Districts: Just a Thing of the Past?*, Center for Politics, Mar. 21, 2013, https://centerforpolitics.org/crystalball/multi-member-legislative-districts-just-a-thing-of-the-past/. The Supreme Court found it too difficult to figure out the benchmark outside the districting context. *See* Holder v. Hall, 512 U.S. 874, 885 (1994) (plurality opinion) (finding that "a plaintiff cannot maintain a § 2 challenge to the size of a government body" because of the lack of an appropriate benchmark).

[38] *See Brnovich*, 594 U.S. at 667 ("In *Gingles* . . . the Court quoted the text of amended §2 and then jumped right to the Senate Judiciary Committee Report, which focused on the issue of vote dilution.").

[39] *Gingles*, 478 U.S. at 44–45.

[40] *Id.*

Similar to the vote-denial cases, the problem with these factors is that they are ubiquitous. Therefore, if one assumes that the proper benchmark is a "fair" distribution of seats,[41] applying the factors will lead to finding a Section 2 violation almost any time the system does not lead to proportional representation (despite Section 2(b)'s disclaimer against such a requirement).[42] This is true even with the threshold "preconditions" that a Section 2 plaintiff must prove before reaching the totality of the circumstances inquiry, which ensure that vote-dilution claims may exist only where "a bloc voting majority" can "*usually* . . . defeat candidates supported by a politically cohesive, geographically insular minority group."[43] After all, Congress enacted the VRA specifically *because* some jurisdictions had a sordid history of voting discrimination, and racially polarized voting persists in many of these places.[44]

This trend toward *de facto* proportional representation is what happened in practice. Although the Supreme Court rarely made an affirmative finding of vote dilution,[45] the doctrine made a startling impact on the legislative landscape. The specter of vote-dilution claims led jurisdictions to draw districts designed to elect black or Hispanic candidates, believing Section 2 to require that result.[46]

[41] As Justice Sandra Day O'Connor wrote in her concurring opinion in *Gingles*, "any theory of vote dilution must necessarily rely to some extent on a measure of minority voting strength that makes some reference to the proportion between the minority group and the electorate at large." *Gingles*, 478 U.S. at 84.

[42] Justice Clarence Thomas has observed that the Court's "expansive readings" of both Section 2 and Section 5 of the VRA led to a "system of race-based redistricting" that pursues "maximized minority voting power." Ala. Legis. Black Caucus v. Alabama, 575 U.S. 254, 296–98 (2015) (Thomas, J., dissenting).

[43] *Gingles*, 478 U.S. at 49. The Court later derived three requirements for a minority group seeking Section 2 protection: "compactness/numerousness, minority cohesion or bloc voting, and majority bloc voting." Johnson v. De Grandy, 512 U.S. 997, 1011 (1994).

[44] *Callais*, 146 S. Ct. at 1158 ("[I]n a state where both parties have substantial support and where race is often correlated with party preference, a litigant can easily exploit §2 for partisan purposes by 'repackag[ing] a partisan-gerrymandering claim as a racial-gerrymandering claim.'" (quoting Alexander v. S.C. State Conf. of NAACP, 602 U.S. 1, 21 (2024))).

[45] After *Gingles*, the Court sustained only two more vote-dilution claims on the merits: *League of United Latin American Citizens v. Perry*, 548 U.S. 399 (2006), and *Allen v. Milligan*, 599 U.S. 1 (2023).

[46] Indeed, the Supreme Court confirmed that under long-standing vote-dilution doctrine, "§2 can require the creation" of majority-minority districts. Bartlett v. Strickland, 556 U.S. 1, 13 (2009).

These districts were no doubt drawn *because of* race, something the Fourteenth Amendment typically would not permit.[47] But the Court held racial gerrymandering claims to a higher standard, requiring the challenger to prove that race was the "predominant" factor in drawing district lines.[48] The result was that an entire species of racial gerrymandering was created under the guise of complying with Section 2.

All of which led up to the *Callais* case, which was filed when a set of plaintiffs brought a vote-dilution claim against Louisiana's congressional map. The district court preliminarily enjoined the map after an exhaustive *Gingles* analysis.[49] The district court's analysis of the Senate factors followed the typical pattern: decades-old evidence of racial discrimination, present racial disparities, and a lack of proportional representation add up to a Section 2 claim.[50] The result was that Louisiana had to draw "an additional majority-Black congressional district."[51]

Louisiana reluctantly drew a new, compliant map to avoid adopting a court-drawn map.[52] The *Callais* plaintiffs then challenged the new map as a racial gerrymander.[53] And it was. The entire point of the new map was to draw a second majority-black district. Even under the heightened standard for racial gerrymandering claims, surely race was the predominant factor in drawing the maps.[54] So the question

47 Even assuming that the drawing of district lines is facially neutral, when government uses race as a factor in decisionmaking, it triggers strict scrutiny. *See* Village of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 265 (1977) (race need only be a "motivating factor"); Personnel Administrator v. Feeney, 442 U.S. 256, 279 (1979) (the relevant question is whether the decisionmaker acted "'because of,' not merely 'in spite of'" race).

48 Hunt v. Cromartie, 526 U.S. 541, 547 (1999) ("[I]n this context, strict scrutiny applies if race was the 'predominant factor' motivating the legislature's districting decision.").

49 Robinson v. Ardoin, 605 F. Supp. 3d 759 (M.D. La. 2022).

50 *Id.* at 844–51.

51 *Id.* at 766. *Robinson* granted a preliminary injunction that ended up essentially unappealable because the state's appeal was delayed until after the 2022 election. *See* Robinson v. Ardoin, 86 F.4th 574, 599–600 (5th Cir. 2023) (vacating the preliminary injunction on these grounds).

52 *Callais*, 146 S. Ct. at 1150.

53 *Id.* at 1151–52.

54 *See id.* at 1161 ("Louisiana's enactment of SB8 triggered strict scrutiny because the State's underlying goal was racial.").

became whether Louisiana[55] could justify the new map as necessary to comply with Section 2.[56] Forty years after *Gingles*, the Court would get the chance to reframe the scope of vote-dilution precedent.

Like *Brnovich*, the *Callais* Court framed Section 2 as an individual right to equal opportunity.[57] It rejected the disparate-impact approach as inconsistent with Congress's remedial power to enforce the Fifteenth Amendment.[58] And without overruling *Gingles*, the Court updated the framework to make it more consistent with the opportunity-based reading of Section 2.[59]

To do so, the Court focused on the *Gingles* preconditions. Without scrapping the framework, the Court reimagined preconditions to account for significant changes since *Gingles*: the advent of computer-generated maps, the rise of genuine two-party systems in Southern states, and the Court's recognition in *Rucho v. Common Cause*[60] that political gerrymandering suits are not justiciable in federal court.[61] As a whole, the updated framework made it so that generic conditions existing in most Southern states can no longer trigger the totality of the circumstances inquiry. Now, a plaintiff who overcomes the preconditions is well on his way to mounting enough evidence to allow for "a strong inference of racial discrimination."[62]

The first precondition is "that a community of minority voters must be sufficiently numerous and compact to constitute a majority

[55] Louisiana initially defended the new map, but later flipped its position in the Supreme Court. *Compare* the State's February 2025 brief defending the map, available at https://www.supremecourt.gov/DocketPDF/24/24-109/344268/20250220161434063_24-109%20Reply%20Brief.pdf, *with* its September 2025 supplemental brief seeking affirmance of the judgment that the map was a racial gerrymander, https://www.supremecourt.gov/DocketPDF/24/24-109/370895/20250827134212077_Callais%20-%20Supplemental%20Opening%20Merits%20Brief.pdf.

[56] The Supreme Court had previously avoided the question of whether compliance with Section 2 would be a sufficiently compelling interest to justify racial gerrymandering. *See, e.g.*, Bethune-Hill v. Va. State Bd. of Elections, 580 U.S. 178, 193 (2017).

[57] *See Callais*, 146 S. Ct. at 1154–55, 1157 (Section 2 "imposes liability only when the evidence supports a strong inference that the State intentionally drew its districts to afford minority voters less opportunity because of their race.").

[58] *Id*. at 1155.

[59] *See id.* at 1159 ("[I]t is appropriate to update the *Gingles* framework and realign it with the text of §2 and constitutional principles.").

[60] 588 U.S. 684 (2019).

[61] *Callais*, 146 S. Ct. at 1158–59.

[62] *Id*. at 1162.

in a reasonably configured district."[63] As the Court noted, in the past, courts allowed challengers to clear this precondition by simply providing a map "with their desired number of majority-minority districts."[64] But such a map proves "only that the State *could* create an additional majority-minority district, not that the State's failure to do so violated §2 of the Voting Rights Act."[65] So the Court clarified that any illustrative map a plaintiff submits to prove this "must meet all the State's legitimate districting objectives, including traditional districting criteria and the State's specified political goals."[66]

In a similar vein, the Court emphasized that any analysis of the remaining two preconditions—"politically cohesive voting by the minority and racial-bloc voting by the majority"[67]—must "control[] for party affiliation."[68] Because a State is entitled to consider politics in districting, when race and party are highly correlated, it is difficult to infer racial discrimination from the mere fact that the legislature failed to draw an additional majority–minority district.[69] A challenger is only entitled to that inference of racial discrimination where he can disentangle the effects of race and party affiliation.[70]

These simple changes make it much more difficult for Section 2 to operate as a proportional representation guarantee.[71] They force challengers to isolate race from the many legitimate districting criteria—including political advantage and incumbent protection. That way, Section 2 does not mandate that a state draw a majority–minority

[63] *Id.* at 1159.

[64] *Id.*

[65] *Id.*

[66] *Id.*

[67] *Id.*

[68] *Id.*

[69] *See id.* at 1159–60.

[70] As the Court noted, these inferences were often much easier to make because almost all white and black voters in Southern states were Democrats, so when changes favored white Democrats over black Democrats, it did not require a leap to figure out that race was involved. *See id.* at 1159 ("This type of intra-party racial-bloc voting pattern helps to demonstrate that the minority plaintiffs have 'less opportunity' than their majority counterparts because of race, not just because of partisan affiliation.").

[71] The Court also emphasized that lower courts cannot continue to rely on decades-old discrimination and socioeconomic disparities not linked to recent discrimination in the totality of the circumstances inquiry. *Id.* at 1160. In the event a plaintiff satisfies the three preconditions, this will prevent courts from automatically finding that the lack of proportionality interacts with social and historical conditions to violate Section 2.

district whenever it *could* do so to make the group's representation proportional to its share of the population. Instead, it might mandate drawing that additional district only where it could be drawn *even accounting for* the legislature's political goals.

The Court's move away from reading Section 2 as a proportional-representation statute returns the focus to the individual's right to vote. As Section 2(b) recognizes, no group has a right to representation merely on account of race. Instead, individuals have a right to be free from racial discrimination in voting. The updated preconditions allow Section 2 vote-dilution suits to vindicate that individual right, but raise the evidentiary bar to eliminate claims based on little more than lack of proportional group representation.

In *Callais* itself, the Court held that because "the State did not need to create a new majority-minority district to comply with" Section 2, Louisiana had no compelling interest that would justify the racial gerrymander.[72] Applying the updated preconditions, the Court found that the *Robinson* illustrative maps did not account for Louisiana's legitimate political objectives[73] and that the evidence of racially polarized voting did not isolate race from politics.[74] Absent any compelling interest in complying with Section 2, the Court held that the new map was "an unconstitutional racial gerrymander, and its use would violate the plaintiffs' constitutional rights."[75]

III. The Future of Section 2

Both *Brnovich* and *Callais* provoked strong reactions. The dissents in both cases decried the Court's opinions as gutting the VRA.[76] Commentators followed suit.[77] The disparate-impact and

[72] *Id.* at 1161.

[73] *Id.*

[74] *Id.* at 1161–62.

[75] *Id.* at 1162.

[76] *Id.* at 1164–66 (Kagan, J., dissenting); *Brnovich*, 594 U.S. at 691–92 (Kagan, J., dissenting).

[77] *See, e.g.*, Carolyn Shapiro, *Fighting Back After the Gutting of the Voting Rights Act*, SCOTUSBlog (May 12, 2026), https://www.scotusblog.com/2026/05/fighting-back-after-the-gutting-of-the-voting-rights-act-/ (arguing that *Callais* "eviscerated Section 2 of the Voting Rights Act"); Guy-Uriel E. Charles & Luis E. Fuentes-Rohwer, *The Court's Voting-Rights Decision Was Worse Than People Think*, The Atlantic (July 8, 2021), https://www.theatlantic.com/ideas/archive/2021/07/brnovich-vra-scotus-decision-arizona-voting-right/619330/ (arguing that *Brnovich* will "sideline" Section 2 "permanently").

proportional-representation readings of Section 2 had been so deeply engrained in court opinions and the public discourse that many were shocked that an alternative existed. But far from gutting the VRA, the *Brnovich* and *Callais* opinions refocused the Act on equality of opportunity rather than equality of outcome.

To be sure, after *Brnovich*, plaintiffs will no longer be able to attack every state law that alters any procedure that minority voters used more than white voters. Likewise, after *Callais*, plaintiffs will not be able to attack nearly every map that does not draw a proportional amount of majority–minority seats. But these were not the evils the VRA was designed to eradicate. After all, the Voting Rights Act did not alter the basic reality that states have the primary responsibility for running elections and for drawing maps. The VRA instead sought to eradicate racial discrimination in voting.

The VRA serves this purpose as well now as ever. As our society has rejected the systematic racial discrimination that characterized Southern election administration in the first century after the Civil War, it is natural that there should be fewer successful VRA claims. The Court's decisions to keep Section 2's focus on individual discrimination will certainly mean that. But where the government's actions do raise a strong inference of discrimination, *Brnovich* and *Callais* do not give the government carte blanche to violate Section 2.

The equal-opportunity requirement is a touchstone of fair, nondiscriminatory treatment. In the vote-denial context, when the government denies some individuals the same opportunity to vote as others on account of race, Section 2 will protect voters against this treatment.[78] The same is true if the government made it "needlessly hard" to register or vote, denying equal opportunity to voters who were unable to complete the process.[79] But a system that guarantees the same, ample opportunity for everyone to register and vote will not violate Section 2 merely because a state limits the number of days of early voting or requires that voters who vote on election day turn up in the proper precinct.[80]

[78] *See* Brooks v. Gant, No. CIV-12-5003-KES, 2012 WL 4482984, at *1, *6–7 (D.S.D. Sept. 27, 2012) (finding a likely Section 2 violation where counties with high Native American populations maintained far fewer early voting days than majority-white counties).

[79] *Frank*, 768 F.3d at 753.

[80] *See Brnovich*, 594 U.S. at 679–80 (discussing how Arizona gives voters many options, reducing the impact of the out-of-precinct rule).

Likewise, it is still possible to plead a vote-dilution claim. If a map exists that satisfies the state's districting criteria with another majority–minority district (the first *Callais* precondition), that is some evidence that the state's map might be denying equal opportunity on the basis of race. The same is true if a plaintiff can show that black and white voters from the same political party are treated differently (the second and third *Callais* preconditions). But the fact remains that, before *Callais*, explicit racial gerrymandering in modern times (as opposed to partisan gerrymandering) was done mostly *in the name of compliance with Section 2*.[81] *Callais* should thus reduce the salience of race in the districting process, a goal we should all share.[82]

Before *Callais*, Section 2 caselaw amounted to a federal requirement to draw districts based on race. With the proportional-representation view of Section 2 cleared away, it is no longer necessary to shield some race-based districting from Equal Protection scrutiny. So the focus might turn back to the standard for showing racial gerrymandering under the Equal Protection Clause. Should the Court revisit the "predominance" standard for racial gerrymandering claims and allow them to go forward on the same basis as other challenges to facially race-neutral government action, this would further reduce the use of race in districting.

In summary, far from destroying the VRA, *Brnovich* and *Callais* have recentered it on protecting the all-important individual right to vote. By moving away from a group-centric view of the right to vote, the two cases ensure that federal law is concerned with the prohibition of discrimination, rather than the enforcement of proportionality or equal outcomes. Together, they should reduce the salience of race in government decisionmaking. *Brnovich* and *Callais* are good news for everyone who believes that "[i]n the eyes of the government, we are just one race here. It is American."[83]

[81] The map struck down as a racial gerrymander in *Callais* is exemplary—a map drawn based on race entirely, because of Section 2.

[82] *See Adarand*, 515 U.S. at 229 (arguing that racial classifications will ultimately "delay the time when race will become a truly irrelevant, or at least [an] insignificant, factor").

[83] *Id.* at 239 (Scalia, J., concurring in part and concurring in the judgment).