ELECTION LAW — VOTING RIGHTS ACT — EIGHTH CIRCUIT HOLDS VOTING RIGHTS ACT DOES NOT CONTAIN A PRIVATE CAUSE OF ACTION TO ENFORCE SECTION 2. — *Arkansas State Conference NAACP v. Arkansas Board of Apportionment*, 86 F.4th 1204 (8th Cir. 2023).

Section 2 of the Voting Rights Act of 1965[1] (VRA), which prohibits voting practices that "result[] in a denial or abridgement of the right of any citizen . . . to vote on account of race or color,"[2] has faced attacks in recent years. While some attacks have aimed to narrow the scope of claims and remedies available under section 2,[3] one recent attack sought to deprive private parties of the right to bring a section 2 claim at all.[4] Recently, in *Arkansas State Conference NAACP v. Arkansas Board of Apportionment*,[5] the Eighth Circuit held that the VRA does not contain a private cause of action to enforce section 2, reserving its enforcement for the Attorney General of the United States alone.[6] Though the holding precludes private parties from bringing a section 2 claim in the Eighth Circuit,[7] private plaintiffs may still use 42 U.S.C. § 1983 to enforce the voting rights guaranteed under section 2 even when the Attorney General declines to do so.[8]

In 2021, the Arkansas Board of Apportionment redrew electoral districts for its House of Representatives.[9] The new map featured only eleven majority-Black districts out of one hundred total districts.[10] Claiming that the legislature could have drawn sixteen "geographically compact, majority-Black" districts,[11] the Arkansas State Conference

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[1] 52 U.S.C. §§ 10301–10314, 10501–10508, 10701–10702.

[2] *Id.* § 10301(a).

[3] *See, e.g.*, Allen v. Milligan, 143 S. Ct. 1487, 1514–17 (2023) (rejecting arguments that section 2 does not apply to single-member redistricting claims or authorize race-based redistricting as a remedy); Brnovich v. Democratic Nat'l Comm., 141 S. Ct. 2321, 2337–40 (2021) (holding that the touchstone of a section 2 vote denial claim is equal openness, not equal opportunity, and adopting five extratextual factors narrowing the scope of such a claim).

[4] *See* Ark. State Conf. NAACP v. Ark. Bd. of Apportionment, 86 F.4th 1204, 1207 (8th Cir. 2023).

[5] 86 F.4th 1204.

[6] *See id.* at 1206–07.

[7] Private parties outside of the Eighth Circuit may still bring section 2 claims. The Fifth, Sixth, and Eleventh Circuits have all expressly recognized such a right. Robinson v. Ardoin, 86 F.4th 574, 587–88 (5th Cir. 2023); Mixon v. Ohio, 193 F.3d 389, 406 (6th Cir. 1999); Ala. State Conf. NAACP v. Alabama, 949 F.3d 647, 651–54 (11th Cir. 2020), *vacated as moot*, 141 S. Ct. 2618 (2021).

[8] One district court in the Eighth Circuit has already found that private parties can use § 1983 to enforce section 2. Turtle Mountain Band of Chippewa Indians v. Jaeger, No. 22-cv-00022, 2022 WL 2528256, at *6 (D.N.D. July 7, 2022).

[9] Ark. State Conf. NAACP v. Ark. Bd. of Apportionment, 586 F. Supp. 3d 893, 897 (E.D. Ark. 2022).

[10] *Ark. State Conf. NAACP*, 86 F.4th at 1207.

[11] *Ark. State Conf. NAACP*, 586 F. Supp. 3d at 896 (citing Memorandum of Law in Support of Plaintiffs' Motion for Preliminary Injunction at 1, *Ark. State Conf. NAACP*, 586 F. Supp. 3d 893 (No. 21-cv-01239)).

NAACP and the Arkansas Public Policy Panel brought a section 2 claim alleging that the new map diluted the votes of Black residents.[12] The plaintiffs alleged that the Board engaged in two forms of "vote dilution" — drawing district lines that reduce a cohesive racial group's voting impact — in violation of section 2.[13] First, the Board "pack[ed]" Black voters into a few supermajority districts with high concentrations of Black voters even though more majority-Black districts were possible.[14] Second, the Board "crack[ed]" the remaining Black voters by dispersing them into multiple districts that each contained fewer Black voters than other voters.[15] To remedy the alleged section 2 violation, the plaintiffs sought to enjoin the map's use.[16]

Despite acknowledging that the plaintiffs had "a strong merits case,"[17] the district court held that private plaintiffs cannot bring a section 2 claim and dismissed the case.[18] The court decided — sua sponte — only the threshold question of whether the VRA contains a private cause of action to enforce section 2.[19] Under the *Alexander v. Sandoval*[20] test, courts can imply a private right of action in a statute only when Congress (1) used "rights-creating language" in the relevant statutory provision and (2) "provide[d] for a private remedy" in the statute to enforce the provision.[21] Because the statute's "text and structure" must satisfy both prongs to contain a private cause of action, the district court chose to answer only the second prong.[22] The court found that the VRA implicitly excluded a private remedy to enforce section 2 by explicitly conferring section 2 enforcement power on only the Attorney General in section 12.[23] Though the plaintiffs argued that sections 3 and 14 of the VRA implied private enforcement of section 2, the court rejected those arguments.[24] The court reasoned that section 3's mention of actions brought by "aggrieved person[s]" to enforce Fourteenth or Fifteenth Amendment voting rights does not encompass claims under section 2, which extends voting rights protections beyond the

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[12] *Id.* at 895–96.

[13] *Ark. State Conf. NAACP*, 86 F.4th at 1207 (quoting Thornburg v. Gingles, 478 U.S. 30, 46 & n.11 (1986)).

[14] *Id.* (quoting Voinovich v. Quilter, 507 U.S. 146, 153–54 (1993)).

[15] *Id.* (quoting Rucho v. Common Cause, 139 S. Ct. 2484, 2492 (2019)).

[16] The original motion asked the court to bar the map's use during the 2022 election cycle. *Ark. State Conf. NAACP*, 586 F. Supp. 3d at 897–98. The plaintiffs later amended their request to ask the court to permit the challenged map's use for the 2022 elections but to order a special election the following year under a new map. *Id.* at 900.

[17] *Id.* at 897.

[18] *Id.* at 924.

[19] *Id.* at 905, 916 n.127.

[20] 532 U.S. 275 (2001).

[21] *Ark. State Conf. NAACP*, 586 F. Supp. 3d at 906 (citing *Sandoval*, 532 U.S. at 286–88).

[22] *Id.* at 907 (quoting *Sandoval*, 532 U.S. at 288 n.7).

[23] *Id.* at 907–08, 911–12.

[24] *Id.* at 910–11.

constitutional floor.[25] Likewise, the court found that section 14's mention of the "prevailing party" in constitutional voting rights lawsuits does not cover section 2 claims.[26] Holding that the VRA lacked a textual or structural basis for implying a private cause of action to enforce section 2,[27] the court ordered dismissal of the case unless the Attorney General joined as a plaintiff within five calendar days of its order.[28] After the Attorney General failed to act, the case was dismissed.[29]

The Eighth Circuit affirmed.[30] Writing for the panel, Judge Stras concluded that only the Attorney General can bring a section 2 claim because the VRA lacks a private cause of action for section 2 enforcement.[31] Even though the Supreme Court has long assumed that private parties can seek a remedy under the VRA for a section 2 violation,[32] the majority described those assumptions as "mere dicta."[33] Interpreting the VRA de novo,[34] the majority applied the two-pronged *Sandoval* test for an implied private cause of action.[35] The majority declined to answer the first question of whether section 2 is sufficiently "phrased in terms of the persons benefited" to create an individual right.[36] Noting that section 2 focuses on *both* the class of citizens that benefit from its voting rights protections *and* the state actors regulated under its ban on discriminatory voting practices, Judge Stras described the outcome of the individual-right inquiry as "unclear."[37] The majority found that section 2 nonetheless failed the second prong,[38] echoing the district court's analysis to conclude that the VRA does not give private parties the section 2 enforcement power that it explicitly places in the Attorney General under section 12.[39]

The majority also found unconvincing the counterarguments, based on sections 3 and 14 of the VRA, that the district court rejected.[40] Notably, the majority expanded the district court's analysis of why section 3's authorization of certain relief "[w]henever the Attorney General *or an aggrieved person* institutes a proceeding under *any statute* to

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[25] *Id.* at 910 (quoting 52 U.S.C. § 10302).

[26] *Id.* at 910–11 (quoting 52 U.S.C. § 10310(e)).

[27] *Id.* at 911–12. The court also rejected the use of legislative history because "the inquiry is at an end" once the statute's "text and structure give a clear answer." *Id.* at 911 n.101 (citing *Sandoval*, 532 U.S. at 288 n.7).

[28] *Id.* at 924.

[29] *Ark. State Conf. NAACP*, 86 F.4th at 1208.

[30] *Id.* at 1207.

[31] *Id.* at 1206–07. Judge Stras was joined by Judge Gruender.

[32] *Id.* at 1215–16.

[33] *Id.* at 1215.

[34] *Id.* at 1208.

[35] *Id.* at 1209.

[36] *Id.* (quoting Gonzaga Univ. v. Doe, 536 U.S. 273, 284 (2002)).

[37] *Id.*

[38] *Id.* at 1216.

[39] *See id.* at 1210–11.

[40] *Id.* at 1211–13, 1213 n.4.

enforce the voting guarantees of the [F]ourteenth or [F]ifteenth [A]mendment" does not imply a private right to enforce section 2.[41] Interpreting section 3 to establish guidelines for proceedings initiated under statutes that already provide a cause of action, the majority concluded that section 3 cannot create a cause of action.[42] The majority also reasoned that reading section 3 to authorize private parties *and* the Attorney General to enforce "any statute" would upend a regulatory scheme under which some statutes permit private parties to enforce voting rights when the Attorney General cannot and vice versa.[43] Though the majority identified § 1983 as "[t]he most prominent example" of a statute permitting only private parties to enforce federally recognized rights,[44] it declined to address whether § 1983 permits private parties to enforce section 2.[45] The majority modified the district court's dismissal of the case to be with prejudice, leaving the plaintiffs unable to amend their complaint to plead a § 1983 claim.[46]

Chief Judge Smith dissented, arguing that the majority should have followed decades of judicial precedent assuming private enforcement of section 2, consistent with Congress's longstanding implied approval of such a right, and recognized that the VRA contains a private cause of action to enforce section 2.[47] He also expressed concern that the majority's decision would hamstring section 2 enforcement because the Attorney General has used his or her broad discretion to bring only a handful of section 2 cases over the last few decades.[48]

The Eighth Circuit's decision dealt a blow to the VRA, leaving private parties unable to bring claims under section 2 in that circuit when the Attorney General fails to enforce their equal right to vote. But private plaintiffs facing attacks on voting rights have another line of defense: a private cause of action under § 1983 to enforce section 2. The voting rights that section 2 guarantees to all citizens are privately enforceable under § 1983, which provides a complementary remedy to the VRA's remedies for state and local violations of voting rights.

Section 1983 provides a private cause of action against "[e]very person who, under color of [law] . . . subjects, or causes to be subjected, any . . . person within the [United States's] jurisdiction . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws."[49] Congress enacted § 1983 to provide plaintiffs

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[41] *Id.* at 1211 (second emphasis added) (quoting 52 U.S.C. § 10302(a)).

[42] *See id.*

[43] *Id.* at 1212.

[44] *Id.* at 1212–13.

[45] *See id.* at 1212–13, 1218.

[46] *Id.* at 1218.

[47] *See id.* at 1218–24 (Smith, C.J., dissenting).

[48] *See id.* at 1220 n.8 (noting that the Attorney General brought fewer than ten percent of successful section 2 cases litigated in the last forty years).

[49] 42 U.S.C. § 1983.

with a remedy for violations of federally protected rights after states failed to protect Black citizens' civil rights after the Civil War.[50] Since then, the Supreme Court has clarified that § 1983's reference to "laws" encompasses *all* federal laws and statutes,[51] rejecting attempts to narrow its coverage to federal civil rights laws only.[52]

Section 1983 enables private parties to enforce a federal statute that creates an individual right, even if the statute itself does not contain a private cause of action. An individual right is enforceable under § 1983 when (1) plaintiffs show that the statute's text and structure reflect congressional intent to create an individual right and (2) the opposing party fails to show that the statute reflects congressional intent to foreclose § 1983 enforcement of that right.[53] An individual right exists when the statutory provision "is 'phrased in terms of the persons benefited' and contains 'rights-creating,' individual-centric language with an 'unmistakable focus on the benefited class.'"[54] The first step of the framework for determining whether a federal statute articulates a right enforceable under § 1983 is the same as the first prong of *Sandoval*'s private-cause-of-action test.[55] Because the Eighth Circuit left the first question unanswered,[56] its holding does not preclude private parties from using § 1983 to enforce individual voting rights guaranteed to them under section 2.

Though the Eighth Circuit perfunctorily concluded that "[i]t is unclear what to do when a statute focuses on both" who it *benefits* and who it *regulates*,[57] the current doctrine yields a clear answer. A statute containing language focusing on *both* the benefited class *and* the regulated entity creates an individual right, as the Supreme Court recently held in *Health & Hospital Corp. of Marion County v. Talevski*.[58] As the Court explained, a statute "secure[s] rights" even when "it considers, alongside the rights bearers, the actors that might threaten those rights."[59] For example, the Court noted that the Fourteenth Amendment contains individual rights even though it restricts state

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[50] *See* Health & Hosp. Corp. of Marion Cnty. v. Talevski, 143 S. Ct. 1444, 1452–53 (2023); *see also* Monroe v. Pape, 365 U.S. 167, 174–75 (1961) ("It was . . . the failure of certain States to enforce the laws with an equal hand that furnished the powerful momentum behind [§ 1983].").

[51] Maine v. Thiboutot, 448 U.S. 1, 5 (1980); *Talevski*, 143 S. Ct. at 1462 ("By its terms, § 1983 is available to enforce every right that Congress validly and unambiguously creates . . . .").

[52] *Talevski*, 143 S. Ct. at 1453–55 (declining to carve out an exemption under § 1983 for federal statutes enacted under Congress's Spending Clause power).

[53] Gonzaga Univ. v. Doe, 536 U.S. 273, 283–85, 284 n.4 (2002).

[54] *Talevski*, 143 S. Ct. at 1457 (quoting *Gonzaga*, 536 U.S. at 284, 287).

[55] *See Gonzaga*, 536 U.S. at 285 ("[T]he initial inquiry — determining whether a statute confers any right at all — is no different from the initial inquiry in an implied right of action case . . . .").

[56] *Ark. State Conf. NAACP*, 86 F.4th at 1209–10 (describing the outcome of the private-right inquiry as "unclear," *id.* at 1209).

[57] *See id.* at 1210.

[58] 143 S. Ct. 1444, 1457–59 (2023); *see also The Supreme Court, 2022 Term — Leading Cases*, 137 HARV. L. REV. 290, 387 (2023).

[59] *Talevski*, 143 S. Ct. at 1458.

actors from denying equal protection.[60] Accordingly, the Eighth Circuit should have followed *Talevski* and found that section 2 creates an individual right.[61]

Under the Supreme Court's guidance, section 2's text creates an individual right. Section 2 protects against any "voting qualification . . . standard, practice, or procedure . . . result[ing] in a denial or abridgement of the *right of any citizen* . . . to vote on account of race or color."[62] This provision contains "rights-creating" language with an "unmistakable focus on the benefited class" of citizens who hold the equal right to vote.[63] That individual right does not disappear when the statute also "establish[es] who it is that must respect and honor the[] statutory right[]."[64] Even pre-*Talevski*, the Fifth and Eleventh Circuits held that another VRA provision stating that "[n]o person acting under color of law shall . . . deny the right of any individual to vote,"[65] focuses sufficiently on the benefited class of voters to create an individual right regardless of its additional focus on regulating other persons.[66] Likewise, section 2 focuses unmistakably on the individual citizens whose voting rights it protects even though it also restricts state actors from "impos[ing] or apply[ing]" discriminatory voting procedures.[67] Thus, section 2 guarantees equal voting rights to individual citizens.

Though state actors might argue that section 2 claims have an "aggregate" focus that cannot create an "individual" right,[68] section 2's textual recognition of individual voting rights rebuts this argument. Courts ask only whether a statute's *text and structure* reflect Congress's intent to create an individual right.[69] It is of no consequence that *courts* assessing section 2 vote dilution claims ask whether district lines treat racial groups unequally,[70] or that a section 2 vote denial claim generally alleges that the challenged practice has a disparate impact on racial groups that arises from its interaction with other discriminatory conditions.[71] What matters is that section 2(a)'s *text* protects the "right of *any*

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[60] *Id.* n.12.

[61] *See The Supreme Court, 2022 Term — Leading Cases*, *supra* note 58, at 386–87.

[62] 52 U.S.C. § 10301(a) (emphasis added).

[63] *Talevski*, 143 S. Ct. at 1457 (quoting Gonzaga Univ. v. Doe, 536 U.S. 273, 284, 287 (2002)).

[64] *Id.* at 1458.

[65] 52 U.S.C. § 10101(a)(2).

[66] Vote.org v. Callanen, 89 F.4th 459, 475 (5th Cir. 2023); Schwier v. Cox, 340 F.3d 1284, 1296 (11th Cir. 2003) (noting that "the focus of the text is . . . the protection of each individual's right to vote" even if "[t]he subject of the sentence is the person acting under color of state law").

[67] *See* 52 U.S.C. § 10301(a) (emphasis added).

[68] *See Talevski*, 143 S. Ct. at 1457 (quoting *Gonzaga*, 536 U.S. at 290); *see also id.* at 1455 ("Statutory provisions must *unambiguously* confer individual . . . rights [to be enforceable under § 1983]." (citing *Gonzaga*, 536 U.S. at 280)).

[69] *See Gonzaga*, 536 U.S. at 286.

[70] *See* Heather K. Gerken, *Understanding the Right to an Undiluted Vote*, 114 HARV. L. REV. 1663, 1683–84 (2001).

[71] *See* Nicholas O. Stephanopoulos, *Disparate Impact, Unified Law*, 128 YALE L.J. 1556, 1570 (2019).

citizen . . . to vote."[72] Even section 2(b)'s reference to groups serves to establish that a violation of this individual voting right occurs when "political processes . . . are not equally open to . . . a *class of citizens*" such that "its *members* have less opportunity . . . to elect representatives of their choice."[73] These guidelines go beyond a mere "yardstick . . . to measure the *systemwide* performance" of the political process to assess instead whether there is a violation of the "*individual* entitlement" to voting rights under section 2(a).[74] The text of section 2 confers individual voting rights that are presumptively enforceable under § 1983.

Turning to the second prong of the § 1983 analysis, defendants are unlikely to rebut the presumption that section 2 voting rights are enforceable under § 1983. The presumption is rebutted only when "Congress 'specifically foreclosed a remedy under § 1983.'"[75] Specific foreclosure occurs only when the statute precludes § 1983 enforcement either explicitly or implicitly through "a 'comprehensive enforcement scheme that is incompatible with individual enforcement under § 1983.'"[76] Explicit foreclosure does not pose an issue here, because "[a]ny mention of . . . private remedies . . . is missing" from the VRA's text, as the Eighth Circuit recognized.[77]

At this step, an argument of "implicit preclusion" — that the VRA's remedial framework is "incompatible" with using § 1983 to enforce section 2[78] — also fails. The Supreme Court has found implicit preclusion in only three cases.[79] In those cases, the statutes (1) required compliance with specific procedures or exhaustion of remedies under the statute before bringing a claim and (2) offered fewer remedies than § 1983.[80] The VRA lacks the first feature because section 12(f) permits federal district courts to hear VRA claims "without regard to whether a person . . . shall have exhausted any administrative or other remedies."[81] Thus, private plaintiffs would not "'circumvent[]' the [VRA's] presuit procedures" by using § 1983 to enforce section 2.[82] The second consideration of the remedies available under § 1983 and the VRA also weighs

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[72] *See* 52 U.S.C. § 10301(a) (emphasis added).

[73] *See id.* § 10301(b) (emphasis added). The Supreme Court has also discussed section 2's language in terms of individual rights, noting that a violation "occurs where *an individual* is disabled from 'enter[ing] into the political process in a reliable and meaningful manner.'" Allen v. Milligan, 143 S. Ct. 1487, 1507 (2023) (emphasis added) (quoting White v. Regester, 412 U.S. 755, 767 (1973)).

[74] *See Gonzaga*, 536 U.S. at 281 (quoting Blessing v. Freestone, 520 U.S. 329, 343 (1997)).

[75] *See id.* at 284 n.4 (quoting Smith v. Robinson, 468 U.S. 992, 1004 n.9 (1984)).

[76] Health & Hosp. Corp. of Marion Cnty. v. Talevski, 143 S. Ct. 1444, 1460 (2023) (emphasis omitted) (quoting Fitzgerald v. Barnstable Sch. Comm., 555 U.S. 246, 252 (2009)).

[77] *Ark. State Conf. NAACP*, 86 F.4th at 1210.

[78] *See Talevski*, 143 S. Ct. at 1460 (emphasis omitted) (quoting *Fitzgerald*, 555 U.S. at 252).

[79] *Id.* (citing City of Rancho Palos Verdes v. Abrams, 544 U.S. 113, 120–23, 127 (2005); *Smith*, 468 U.S. at 1008–13; Middlesex Cnty. Sewerage Auth. v. Nat'l Sea Clammers Ass'n, 453 U.S. 1, 6–7, 19–20 (1981)).

[80] *Id.* at 1461.

[81] *See* 52 U.S.C. § 10308(f).

[82] *See Talevski*, 143 S. Ct. at 1461 (quoting *Fitzgerald*, 555 U.S. at 254).

heavily against implicit preclusion. Section 1983 offers injunctive relief,[83] damages, and attorney's fees and costs as authorized by 42 U.S.C. § 1988.[84] The VRA explicitly authorizes fines and injunctive relief for section 2 violations.[85] Attorney's fees and costs are also available under the VRA for successful claims that "enforce the voting guarantees of the [F]ourteenth or [F]ifteenth [A]mendment."[86] This fee provision covers section 2, which the Supreme Court has recognized as enforcing the Fifteenth Amendment.[87] Though the VRA does not authorize damages for section 2 claims, the default remedy for voting wrongs is injunctive relief except in rare vote denial or voter intimidation cases.[88] Even if plaintiffs sought damages in a § 1983 claim to enforce section 2, they would be unsuccessful nearly every time due to the availability of absolute and qualified immunity to civil damages under § 1983.[89] Accordingly, § 1983 offers largely the same "tangible benefits"[90] as the VRA: injunctive relief and attorney's fees and costs. Thus, § 1983 "complement[s]" but does not "supplant" the VRA's enforcement scheme, and private parties can use § 1983 to enforce section 2.[91]

Section 1983 ensures that private individuals and groups can bring a cause of action to enforce their section 2 voting rights in the absence of any Attorney General action. Plaintiffs pleading § 1983 claims to enforce section 2 need only prove the same merits of a vote dilution or denial claim brought under section 2 itself.[92] Section 1983 provides a viable mechanism for plaintiffs and advocates to continue fighting before the courts to protect equal voting rights against antidemocratic attacks.

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[83] Note, *Interpreting Congress's Creation of Alternative Remedial Schemes*, 134 HARV. L. REV. 1499, 1501 (2021).

[84] *See Rancho Palos Verdes*, 544 U.S. at 123 (citing Maine v. Thiboutot, 448 U.S. 1, 9 (1980)).

[85] 52 U.S.C. § 10308(a), (c)–(d).

[86] *Id.* § 10310(e).

[87] *See* Allen v. Milligan, 143 S. Ct. 1487, 1516 (2023) (recognizing that section 2's ban on voting practices with discriminatory *effects* "is an appropriate method of promoting . . . the Fifteenth Amendment," even if the Fifteenth Amendment only bars discriminatory *purpose* (quoting City of Rome v. United States, 446 U.S. 156, 177 (1980))).

[88] Note, *Voting Wrongs and Remedial Gaps*, 137 HARV. L. REV. 1182, 1194 (2024).

[89] Legislators who enact discriminatory maps and other electoral practices can claim absolute immunity from civil damages under § 1983. *See* Bogan v. Scott-Harris, 523 U.S. 44, 49 (1998). Government officials can also claim qualified immunity to civil liability under § 1983 unless they "violate[d] clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). Under this demanding test to defeat qualified immunity, a showing that prior electoral practices or maps violated section 2 is unlikely to clearly establish that the currently challenged map or practice violates section 2.

[90] Fitzgerald v. Barnstable Sch. Comm., 555 U.S. 246, 254 (2009).

[91] *See* Health & Hosp. Corp. of Marion Cnty. v. Talevski, 143 S. Ct. 1444, 1461 (2023) (quoting City of Rancho Palos Verdes v. Abrams, 544 U.S. 113, 122 (2005)).

[92] Courts apply the standard under the statutory provision that § 1983 enforces, because "[s]ection 1983 'is not itself a source of substantive rights,' but merely provides 'a method for vindicating federal rights elsewhere conferred.'" Albright v. Oliver, 510 U.S. 266, 271 (1994) (quoting Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979)).