Nos. 24-109, 24-110

IN THE

Supreme Court of the United States

STATE OF LOUISIANA,

Appellant,

v.

PHILLIP CALLAIS, ET AL.,

Appellees.

PRESS ROBINSON, ET AL.,

Appellants,

v.

PHILLIP CALLAIS, ET AL.,

Appellees.

On Appeal from the United States District Court for the Western District of Louisiana

SUPPLEMENTAL BRIEF OF CONSTITUTIONAL ACCOUNTABILITY CENTER AS *AMICUS CURIAE* IN SUPPORT OF ROBINSON APPELLANTS

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INTEREST OF *AMICUS CURIAE*[1]

Constitutional Accountability Center (CAC) is a think tank and public interest law firm dedicated to fulfilling the progressive promise of the Constitution's text and history. CAC works in our courts, through our government, and with legal scholars to improve understanding of the Constitution and to preserve the rights, freedoms, and structural safeguards that our nation's charter guarantees. CAC has a strong interest in the questions this case raises about the scope of the Fifteenth Amendment's protections and Congress's power to enforce those protections and accordingly has an interest in this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

After a federal district court and two panels of the Fifth Circuit concluded that Louisiana's 2022 congressional map likely violated Section 2 of the Voting Rights Act, the Louisiana Legislature ("Legislature") enacted a new map—SB8—with an additional majority-Black district that all the courts agreed was necessary to remedy the Section 2 violation. The court below, however, held that the Legislature's actions were unconstitutional, concluding that its decision to create a second majority-Black district (as was required to remedy the Section 2 violation), while furthering other permissible redistricting goals, resulted in a racial gerrymander.

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[1] Pursuant to Supreme Court Rule 37.6, *amicus curiae* states that no counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae* or its counsel made a monetary contribution to its preparation or submission.

After briefing and oral argument last Term, this Court ordered supplemental briefing on the question of whether the State's intentional creation of a second majority-minority district violates the Fourteenth or Fifteenth Amendments. The answer is no: it is constitutionally permissible for state mapmakers and other actors to take race into account in drawing maps that comply with the Voting Rights Act, particularly where, as here, the state acts to rectify discriminatory maps that a court has previously found unlawful.

As this Court observed two years ago in *Allen v. Milligan*, 599 U.S. 1 (2023), "for the last four decades, this Court and the lower federal courts have repeatedly applied the effects test of § 2 . . . and, under certain circumstances, have authorized race-based redistricting as a remedy for state districting maps that violate § 2." *Id.* at 41; *see, e.g.*, *id.* at 19 (collecting cases). The unbroken string of this Court's cases making clear that the Act requires state actors to "account for the race of voters so as to prevent the cracking or packing—whether intentional or not—of large and geographically compact minority populations," *id.* at 44 (Kavanaugh, J., concurring), is entirely consistent with the text and history of the Fifteenth Amendment.

Ratified in 1870, the Fifteenth Amendment gave Congress the "power of conferring upon the colored man the full enjoyment of his right" and "enable[d] Congress to take every step that might be necessary to secure the colored man in the enjoyment of these rights." Cong. Globe, 41st Cong., 2d Sess. 3670 (1870). Against the backdrop of a political system divided by race, the Framers of the Fifteenth Amendment recognized that "the black populations in the South would be under siege" and that "political influence and voting power would be their sole means of defense." Vikram David Amar & Alan Brownstein, *The Hybrid Nature of*

Political Rights, 50 Stan. L. Rev. 915, 939 (1998). They drafted the Fifteenth Amendment to give Congress broad power—no less sweeping than Congress's Article I powers—to stamp out every conceivable attempt by the states to deny or abridge the right to vote on account of race.

Congress thus has broad authority under the Fifteenth Amendment to set aside dilutive practices that exploit racially polarized voting to cancel out or minimize the voting strength of communities of color. And it also has broad authority to redress the tragic fact that "whites have ruthlessly, systematically, and pretty much without hindrance gerrymandered African-American voters in this country from Reconstruction to the modern era." Chandler Davidson, *White Gerrymandering of Black Voters: A Response to Professor Everett*, 79 N.C. L. Rev. 1333, 1334 (2001). This authority includes the power to protect the right to vote against all forms of racial discrimination—both heavy-handed and subtle—to ensure "the colored man the full enjoyment of his right," Cong. Globe, 41st Cong. 2d Sess. 3670 (1870), and to "prevent any state from discriminating against a voter on account of race," *id.* at 3663.

This broad power to legislate prophylactically to safeguard the right to vote from state denials or abridgements was deemed "necessary to neutralize the deep-rooted prejudice of the white race there against the negro." *Id.* at app. 392. Given the intransigence of white-dominated state legislatures, the Framers of the Fifteenth Amendment understood that the "only means" for Black people "to secure [their] dearest privileges are to be found in national legislation." *Id.*

Congress used this express power to enact Section 2 of the Voting Rights Act and then to amend it in 1982 to ensure that citizens of color equally enjoy the right

to choose representatives of their choice. Congress understood that this could not be done without taking account of race. As *Milligan* recognized, "Section 2 itself 'demands consideration of race,'" 599 U.S. at 30-31 (plurality opinion) (quoting *Abbott v. Perez*, 585 U.S. 579, 587 (2018)), to prevent state action "that renders a minority vote unequal to a vote by a nonminority voter," *id.* at 25 (majority opinion).

Appellees' insistence on color-blindness in redistricting thus ignores that race-consciousness is at the Fifteenth Amendment's core. The Framers wrote the Fifteenth Amendment to safeguard equal political opportunity for all because they recognized that the right to vote would empower members of the Black community to "protect themselves in the southern reconstructed States" from attacks on their rights. Cong. Globe, 40th Cong., 3d Sess. 1008 (1869). Moreover, given the persistence of racially polarized voting and the likelihood that white-dominated state legislatures would seek to curtail the power of Black voters, the Fifteenth Amendment was premised on the idea that race matters, and in this respect, "[r]acially polarized voting was a feature—not a bug—in the passage and ratification of the Fifteenth Amendment," Travis Crum, *Reconstructing Racially Polarized Voting*, 70 Duke L.J. 261, 266 (2020).

Accordingly, when Section 2's prohibition on discriminatory results mandates drawing an additional majority-minority district in a given redistricting map, as clearly established law sometimes requires and as seven federal judges agreed was necessary here, a state's creation of such a district is not unconstitutional merely because the remedial mapmakers took race into account along with a host of other legitimate districting factors. On the contrary, drawing remedial districts is sometimes necessary to realize the goal of

the Fifteenth Amendment—a multiracial democracy in which citizens of color have an equal opportunity to elect representatives of their choice. An interpretation of the Reconstruction Amendments that would prohibit all consideration of race in drawing such remedial districts would deprive Congress of the power to remedy a longstanding and pernicious form of racial discrimination in voting and would turn the Constitution on its head. This Court should reject that erroneous view and reverse the judgment of the district court.

ARGUMENT

I. As Its Text and History Demonstrate, the Fifteenth Amendment Gives Congress Broad Enforcement Power to Prevent Impairment of the Right to Vote.

In language "as simple in command as it [is] comprehensive in reach," *Rice v. Cayetano*, 528 U.S. 495, 512 (2000), the Fifteenth Amendment provides 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. amend. XV, § 1. "Fundamental in purpose and effect . . . , the Amendment prohibits all provisions denying or abridging the voting franchise of any citizen or class of citizens on the basis of race." *Rice*, 528 U.S. at 512.

The Fifteenth Amendment forbids both laws that deny the right to vote outright on account of race and those that abridge the right by diluting the voting strength of citizens of color and nullifying the effectiveness of their votes. *See Reno v. Bossier Par. Sch. Bd.*, 528 U.S. 320, 333-34 (2000) (explaining that the "core meaning" of "'abridge'" is "'shorten'" (quoting Webster's New International Dictionary 7 (2d ed. 1950))); Steven G. Calabresi & Andrea Matthews, *Originalism*

and Loving v. Virginia, 2012 B.Y.U. L. Rev. 1393, 1417-18 (2012) (demonstrating that "[t]he word 'abridge' in 1868 meant . . . [t]o lessen" or "to diminish" and that laws that gave "African Americans a lesser and diminished" set of freedoms unconstitutionally abridged their constitutional rights); Crum, *supra*, at 323 ("The Reconstruction Framers' use of the word 'abridged' militates in favor of broadly protecting the right to vote. At the time, dictionaries defined 'abridge' as 'to contract,' 'to diminish,' or '[t]o deprive of.' . . . And since the term 'denied' adequately captures the scenario where a voter is prevented from casting their ballot, the term 'abridge' presumably carries this broader meaning." (citation omitted)).

The ratification of the Fifteenth Amendment was the culmination of a long campaign to ensure that Black Americans could participate in the political process as equal citizens and were not consigned to what Frederick Douglass called "emasculated citizenship." Frederick Douglass, *Reconstruction,* Atlantic Monthly (Nov. 1866), *in* 2 *The Reconstruction Amendments: Essential Documents* 296 (Kurt T. Lash ed., 2021). Indeed, conventions of Black Americans had long demanded the right to vote, insisting that the right to vote was "the keystone to the arch of human liberty," *see Proceedings of the Nat'l Convention of Colored Men, Held in the City of Syracuse, N.Y.* 60 (1864), and the only true "safe-guard for our protection," *see Proceedings of the Convention of the Colored People of VA., Held in the City of Alexandria* 9 (Cowing and Gillis 1865). As they recognized, without the right to participate in our democracy on equal terms, equal citizenship was illusory. As Douglass put it, "to tell me that I am an equal American citizen, and, in the same breath, tell me that my right to vote may be constitutionally taken from me by some other equal citizen or

citizens, is to tell me that my citizenship is but an empty name." *See* James M. McPherson, *The Struggle for Equality: Abolitionists and the Negro in the Civil War and Reconstruction* 355 (1964) (quoting Douglass's writings).

The Amendment's drafters in Congress agreed, explaining that a constitutional prohibition on state denial and abridgement of the right to vote on account of race was necessary because "[t]he ballot is as much the bulwark of liberty to the black man as it is to the white," Cong. Globe, 40th Cong., 3d Sess. 983 (1869), and because "[n]o man is safe in his person or his property in a community where he has no voice in the protection of either," *id.* at 693; *id.* at 912 ("Suffrage is the only sure guarantee which the negro can have . . . in the enjoyment of his civil rights. Without it his freedom will be imperfect, if not in peril of total overthrow."); *id.* at 983 ("Without the ballot . . . [h]e is powerless to secure the redress of any grievance which society may put upon him."). The right to vote, the Framers of the Fifteenth Amendment understood, was "preservative of all rights." *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886); *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964) ("Other rights, even the most basic, are illusory if the right to vote is undermined."). In this respect, the Framers viewed the right to vote as "kindred to that which belongs under natural law to the right of self-defense." Cong. Globe, 39th Cong., 1st Sess. 174 (1866). The Fifteenth Amendment thus gave Black citizens a critical weapon to protect themselves from white-dominated legislatures seeking to roll back their rights.

With its ratification, congressmen hailed that "[t]he negro race, downtrodden and long held in chattel slavery, has at last been placed by the Fifteenth Amendment on the same platform with other citizens."

Cong. Globe, 41st Cong., 2d Sess. app. 393 (1870). Frederick Douglass celebrated that the Fifteenth Amendment "means that we are placed upon an equal footing with all other men" and that "liberty is to be the right of all." 4 *The Frederick Douglass Papers* 270-71 (J. Blassingame & J. McKivigan eds., 1991).

To make the Fifteenth Amendment's guarantee a reality, the Framers explicitly invested Congress with a central role in protecting the right to vote against all forms of racial discrimination. They did so by providing that "[t]he Congress shall have power to enforce this article by appropriate legislation." U.S. Const. amend. XV, § 2. By adding this language, "the Framers indicated that Congress was to be chiefly responsible for implementing the rights created" by the Amendment and that Congress would have "full remedial powers to effectuate the constitutional prohibition against racial discrimination in voting." *South Carolina v. Katzenbach*, 383 U.S. 301, 325-26 (1966).

As the Framers of the Fifteenth Amendment recognized, "the remedy for the violation" of the Fifteenth Amendment, like the remedies for the violation of the other Reconstruction Amendments, "was expressly not left to the courts. The remedy was legislative, because . . . the amendment itself provided that it shall be enforced by legislation on the part of Congress." Cong. Globe, 42d Cong., 2d Sess. 525 (1872). The enforcement power "was born of the conviction that Congress—no less than the courts—has the duty and the authority to interpret the Constitution." Michael W. McConnell, Comment, *Institutions and Interpretation: A Critique of* City of Boerne v. Flores, 111 Harv. L. Rev. 153, 183 (1997). And Congress refused to leave the right to vote "to the unchecked discretion of the Supreme Court that decided *Dred Scott v. Sanford*."

Douglas Laycock, *Conceptual Gulfs in* City of Boerne v. Flores, 39 Wm. & Mary L. Rev. 743, 765 (1998).

The Fifteenth Amendment's express grant of power to enact "appropriate legislation" gives Congress wide discretion to enact whatever measures it deems "appropriate" for achieving the Amendment's objective of ensuring that "[t]he right of citizens of the United States to vote shall not be denied or abridged . . . by any State on account of race." U.S. Const. amend. XV. The Enforcement Clause gives Congress a broad "affirmative power" to secure the right to vote. Cong. Globe, 40th Cong., 3d Sess. 727 (1869). The Framers of the Fifteenth Amendment feared that without an expansive enforcement power, the constitutional guarantee of equal voting rights would not be fully realized. "Who is to stand as the champion of the individual and enforce the guarantees of the Constitution in his behalf as against the so-called sovereignty of the States? Clearly no power but that of the central Government is or can be competent for their adjustment . . . ." *Id.* at 984.

In 1870, the same year the Fifteenth Amendment was ratified, Congress employed the Amendment's Enforcement Clause to enact federal voting rights legislation. As the debates over the Enforcement Act of 1870 reflect, the Fifteenth Amendment "clothes Congress with all power to secure the end which it declares shall be accomplished." Cong. Globe, 41st Cong., 2d Sess. 3563 (1870). The Amendment's Enforcement Clause, Senator Oliver Morton explained, was "intended to give to Congress the power of conferring upon the colored man the full enjoyment of his right. We so understood it when we passed it." *Id.* at 3670. "[T]he second section was put there," he went on to explain, "for the purpose of enabling Congress to take every step that might be necessary to secure the

colored man in the enjoyment of these rights." *Id.* Thus, "the colored man, so far as voting is concerned, shall be placed on the same level and footing with the white man and . . . Congress shall have the power to secure him that right." *Id.*

In the months following ratification of the Fifteenth Amendment, "[l]egislators anticipated that the majority of whites, who harbored virulent ill-will toward their former slaves, would engage in racial bloc voting; only the votes of the black masses could offset this white political aggression." Amar & Brownstein, *supra*, at 941. The grim reality that "[t]he States can invent just as many requirements [for voting] as you have fingers and toes" made it "essential to provide "proper machinery . . . for enforcing the fifteenth amendment." Cong. Globe, 41st Cong., 2d Sess. 3658 (1870). Congressmen insisted that "it is our imperative duty . . . to pass suitable laws to enforce the fifteenth amendment" because, without them, "the fifteenth amendment will be practically disregarded in every community where there is a strong prejudice against negro voting." *Id.* at 3568. The only means to safeguard equal political opportunities and ensure the multiracial democracy the Fifteenth Amendment promised, Congressmen insisted, "are to be found in national legislation. This security cannot be obtained through State legislation," where "the laws are made by an oppressing race." *Id.* at app. 392. Stringent national safeguards were needed to "neutralize the deep-rooted prejudice of the white race there against the negro" and "secure his dearest privileges" at the ballot box. *Id.*

The Fifteenth Amendment thus gave Congress a significant new power. As the next Section shows, Congress used this power in passing the Voting Rights Act to set aside dilutive electoral practices, like

Louisiana's 2022 congressional map, which have long been used to undercut the Fifteenth Amendment's guarantee of equal political opportunity.

II. Congress Used Its Express Power to Enforce the Fifteenth Amendment to Prohibit Dilutive Practices that Nullify the Effectiveness of Black Votes.

Tragically, the Fifteenth Amendment "proved little more than a parchment promise." *Milligan*, 599 U.S. at 10. The passage of the Voting Rights Act—after nearly a century of efforts to flout the Fifteenth Amendment's mandate—was necessary precisely because the Fifteenth Amendment alone was insufficient to ensure that citizens of color in fact enjoyed equal opportunity "to participate in the political process and to elect representatives of their choice." 52 U.S.C. § 10301(b).

Efforts to circumvent the Fifteenth Amendment's broad mandate of equality emerged almost immediately. "Manipulative devices and practices were soon employed to deny the vote to blacks," *Rice*, 528 U.S. at 513, or to "reduce or nullify minority voters' ability, as a group, 'to elect the candidate of their choice,'" *Shaw v. Reno*, 509 U.S. 630, 641 (1993) (quoting *Allen v. State Bd. of Elections*, 393 U.S. 544, 569 (1969)). Throughout the South, "[g]errymanders were the paradigm of the dilution strategy." J. Morgan Kousser, *Colorblind Injustice: Minority Voting Rights and the Undoing of the Second Reconstruction* 26 (1999). State governments packed and cracked Black voters into gerrymandered districts to undercut the Fifteenth Amendment's guarantee of equal political opportunity. *See* Davidson, *supra*, at 1334 ("Briefly put, whites have ruthlessly, systematically, and pretty much without hindrance gerrymandered African-American voters in this country from Reconstruction to the modern era.").

This Court has since made clear that the Fifteenth Amendment prohibits any "contrivances by a state to thwart equality in the enjoyment of the right to vote by citizens of the United States regardless of race or color," *Lane v. Wilson*, 307 U.S. 268, 275 (1939), including weakening the voting strength of voters of color through racial gerrymandering, *see Gomillion v. Lightfoot*, 364 U.S. 339, 346 (1960) ("[w]hen a legislature thus singles out a readily isolated segment of a racial minority for special discriminatory treatment, it violates the Fifteenth Amendment"). However, in *City of Mobile v. Bolden*, 446 U.S. 55 (1980), a plurality of this Court stated that a challenge to a municipality's at-large election system, whether brought under the Fourteenth or Fifteenth Amendment, failed absent proof of a "racially discriminatory motivation," which the plurality insisted was a "necessary ingredient of a Fifteenth Amendment violation." *Id.* at 62. And because the national prohibition on racial discrimination in voting contained in Section 2 of the Voting Rights Act "no more than elaborates upon . . . the Fifteenth Amendment," the plurality insisted that "it was intended to have an effect no different than the Fifteenth Amendment itself." *Id.* at 60, 61.

Congress responded by amending Section 2 of the Voting Rights Act, employing its express power to enforce the right to vote free from racial discrimination "to make clear that certain practices and procedures that *result* in the denial or abridgement of the right to vote are forbidden even though the absence of proof of discriminatory intent protects them from constitutional challenge." *Chisolm v. Roemer*, 501 U.S. 380, 383-84 (1991). Congress recognized that "the right to vote can be affected by a dilution of voting power as well as by an absolute prohibition on casting a ballot" and acted to eliminate all "discriminatory election

systems or practices which operate, designedly or otherwise, to minimize or cancel out the voting strength and political effectiveness of minority groups." S. Rep. No. 97-417, at 6, 28 (1982); *see id.* at 19 ("There is more to the right to vote than the right to mark a piece of paper and drop it in a box or the right to pull a lever in a voting booth. The right to vote includes the right to have . . . the vote counted at full value without dilution or discount."). Significantly, state practices, including districting schemes, that exploited racially polarized voting to dilute the voting strength of communities of color and nullify the effectiveness of their votes were paradigmatic examples of state practices that *resulted* in the denial or abridgment of the right to vote. *See Milligan*, 599 U.S. at 40 (stressing that "Congress adopted the amended § 2 in response to . . . a case about *districting*").

To effectuate its goal of prohibiting state practices that resulted in the denial or abridgment of the right to vote, Congress chose language designed to enforce the constitutional guarantee of equal political opportunities for all citizens regardless of race and strike at the full range of state practices that limit the ability of citizens of color "to participate in the political process and to elect representatives of their choice." 52 U.S.C. § 10301(b). As this Court has repeatedly held, Section 2 covers instances in which state mapmakers exploit racially polarized voting by packing and cracking communities of color to dilute the effectiveness of their votes. *See, e.g.*, *Milligan*, 599 U.S. at 38-39; *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 438-42 (2006); *Johnson v. De Grandy*, 512 U.S. 997, 1007 (1994); *Voinovich v. Quilter*, 507 U.S. 146, 153-54 (1993); *Thornburg v. Gingles*, 478 U.S. 30, 47-51 (1986).

When amending Section 2, Congress understood that race had to be taken into account to determine whether an electoral practice violated Section 2. In "communities in our Nation where racial politics . . . dominate the electoral process," Congress explained, "a particular election method can deny minority voters equal opportunity to participate meaningfully in elections." S. Rep. No. 97-417, at 33. Thus, to identify and remedy Section 2 violations, Congress knew that mapmakers had to be conscious of how a districting map intersected with racially polarized voting to ensure that the map does not "minimize or cancel out the voting strength and political effectiveness of minority groups." *Id.* at 28. Put differently, for Congress, the consideration of race was essential to fulfilling Section 2's aim of equal opportunity for voters of color.

Courts have applied Section 2 to districting maps "in an unbroken line of decisions stretching four decades." *Milligan*, 599 U.S. at 38. As this Court explained in *Milligan*, "[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." *Id.* at 17 (quoting *Gingles*, 478 U.S. at 47). The "risk" that "an 'electoral structure operates to minimize or cancel out' minority voters' 'ability to elect their preferred candidates'" is "greatest 'where minority and majority voters consistently prefer different candidates' and where minority voters are submerged in a majority voting population that 'regularly defeat[s]' their choices." *Id.* at 17-18 (quoting *Gingles*, 478 U.S. at 48). As *Milligan* reaffirmed, "[a] district is not equally open, in other words, when minority voters face—unlike their majority peers—bloc voting along racial lines, arising against the backdrop of substantial racial discrimination within the State, that

renders a minority vote unequal to a vote by a nonminority voter." *Id.* at 25.

To determine whether an electoral map violates Section 2, courts apply the longstanding *Gingles* test. *See id.* at 19 ("*Gingles* has governed our Voting Rights Act jurisprudence since it was decided"). Under *Gingles*, courts and mapmakers must take race into account by asking, for example, whether the minority group is "sufficiently large and [geographically] compact to constitute a majority in a reasonably configured district." *See id.* at 18 (internal quotation marks omitted); *see also id.* (explaining the *Gingles* preconditions and the totality of the circumstances inquiry, both of which consider race); *id.* at 30-31 (plurality opinion) ("Section 2 itself 'demands consideration of race.'" (quoting *Abbott*, 581 U.S at 587)). At the same time, *Gingles*, together with the Fourteenth Amendment's prohibition of racial predominance in redistricting, *see Shaw v. Hunt*, 517 U.S. 899, 907 (1996), protects against the excessive use of race in drawing district lines. *See* Robinson Appellants Supp. Br. 25; *Milligan*, 599 U.S. at 26-28; *id.* at 43-44 (Kavanaugh, J., concurring).

The *Gingles* test, particularly its totality of the circumstances inquiry, demands an "'intensely local appraisal' of the electoral mechanism at issue, as well as a 'searching practical evaluation of the past and present reality.'" *Milligan*, 599 U.S. at 19 (quoting *Gingles*, 468 U.S. at 79). Courts applying *Gingles* must thus pay close attention to whether the "effect of the[] [State's] choices" is to "deny[] equal opportunity" to voters of color. *League of United Latin Am. Citizens*, 548 U.S. at 441-42; *see Johnson*, 512 U.S. at 1018 (explaining that "[t]he need for such 'totality' review springs from the demonstrated ingenuity of state and

local governments in hobbling minority voting power").

Thus, although a Section 2 remedy does not always require the creation of a majority-minority district, *see* Robinson Appellants Supp. Br. 24, if *Gingles*' "exacting requirements" are satisfied, *Milligan*, 599 U.S. at 30, courts have, "under certain circumstances, . . . authorized race-based redistricting as a remedy for state districting maps that violate § 2," *id.* at 41, including the creation of a majority-minority district if necessary. Indeed, this Court did just that in *Milligan* when it affirmed the district court's ruling, including its holding that a second majority-Black district would likely be necessary to remedy the Section 2 violation. *See id.* at 42; *see also Allen v. Milligan*, 144 S. Ct. 476, 476 (2023) (mem.) (denying Alabama's application to stay an injunction barring the state from conducting elections under a remedial map that did not include a second majority-Black district). Courts have continued to do so in the years since *Milligan*. *See, e.g.*, *Nairne v. Landry*, -- F.4th --, 2025 WL 2355524, at *1 (5th Cir. Aug. 14, 2025); *White v. State Bd. of Election Comm'rs*, No. 22-cv-62, 2025 WL 2406437, at *54 (N.D. Miss. Aug. 19, 2025); *Singleton v. Allen*, Nos. 21-cv-1291, 21-cv-1530, 2025 WL 1342947, at *4 (N.D. Ala. May 8, 2025). And significantly, over the nearly four decades during which courts have applied *Gingles*, "Congress and the President have not disturbed *Gingles*, even as they have made other changes to the Voting Rights Act." *Milligan*, 599 U.S. at 42 (Kavanaugh, J., concurring).

In sum, Section 2 is a vital tool for fulfilling the Fifteenth Amendment's promise of a multiracial democracy free from discrimination. And for Section 2 to have any force when applied to redistricting, race must be taken into account to ensure that voters of color

have an equal opportunity to elect candidates of their choice.

III. Race-consciousness Is Baked into the Text and History of the Fifteenth Amendment.

Appellees contend that the Legislature's intentional creation of an additional majority-Black district to comply with the Voting Rights Act is unconstitutional. The district court agreed and treated the Legislature's decision to draw such a district as virtually decisive evidence of racial predominance under the Fourteenth Amendment. *See* J.S. App. 174a. In the view of the district court, the consideration of race that is required to comply with Voting Rights Act, particularly when a legislature acts to remedy a Section 2 violation, constitutes racial predominance.

Appellees' insistence on race-blind districting cannot be squared with this Court's precedents, *Milligan*, 599 U.S. at 41 ("we are not persuaded by Alabama's arguments that § 2 as interpreted in *Gingles* exceeds the remedial authority of Congress," including when *Gingles* "authorize[s] race-based redistricting as a remedy" for Section 2 violations), or the text and history of the Fifteenth Amendment. Those who wrote and ratified the Fifteenth Amendment did not view the world through rose-tinted, colorblind glasses. They confronted a political system sharply divided along racial lines, and they viewed the Fifteenth Amendment's guarantee of equal political opportunity as an essential "bulwark of liberty" that would enable Black people "to protect themselves in the southern reconstructed States." Cong. Globe, 40th Cong., 3d. Sess. 983, 1008 (1869). The Fifteenth Amendment guaranteed the right to vote free from racial discrimination not only because the right to participate in the political process was a matter of basic liberty, dignity, and self-governance, *see id.* at app. 95 ("It is absurd to speak of

self-government as belonging to one who is denied the ballot, for without the ballot no man governs himself."), but also because "[B]lack people needed the right to vote in order to be able to protect themselves against the enactment of pernicious laws by white southerners," Amar & Brownstein, *supra*, at 939. Without the equal right to vote, Black citizens would be "without . . . power" and "in constant danger from the cupidity of men who have been and expect again to be his masters." Cong. Globe, 40th Cong., 3d Sess. 983 (1869). Race mattered in politics and that made the right to vote essential.

The Fifteenth Amendment gave Congress a broad enforcement power precisely because of the reality of an electoral system divided along racial lines. The Amendment's Framers recognized that congressional enforcement was vital to "neutralize the deep-rooted prejudice of the white race there against the negro" and "secure his dearest privileges" at the ballot box. *Id.* at app. 392. And they understood that the persistence of racially polarized voting would "provide an incentive for intentional discrimination in the regulation of elections." *N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204, 222 (4th Cir. 2016). In this respect, race-consciousness is baked into the text and history of the Fifteenth Amendment.

Congress's broad power to enforce the Fifteenth Amendment plainly allows Congress to require states to take race and the continuing persistence of racially polarized voting into account to ensure that citizens of color, like their white counterparts, can participate in the political process and elect representatives of their choice. Neither Congress nor states need turn a blind eye to the fact that "racial discrimination and racially polarized voting are not ancient history." *Bartlett v. Strickland*, 556 U.S. 1, 25 (2009).

Nothing in the text and history of the Fifteenth Amendment supports the assertion that states must be blind to race and cannot intentionally create a majority-minority district when such a district is necessary to comply with the Voting Rights Act. Indeed, color-blindness arguments were invoked to oppose the Fifteenth Amendment and prevent congressional efforts to enforce it. States opposed ratification of the Fifteenth Amendment on the ground that it "single[d] out the colored races as its especial wards and favorites." Tenn. House J. 185-88 (1869-70), *in* 2 *The Reconstruction Amendments*, *supra*, at 579.

After ratification, opponents of the Fifteenth Amendment claimed that enforcement legislation, such as the Enforcement Act of 1870, that sought to prevent efforts to intimidate and hinder Black citizens from voting was a form of "class legislation against the great white race to which we all belong." Cong. Globe, 41st Cong., 2d Sess. 3874 (1870). Democratic opponents of congressional efforts to ensure that the right to vote was actually enjoyed by persons "to whom the right of suffrage is secured or guaranteed by the fifteenth amendment," *see* Act of May 31, 1870, ch. 114, § 5, 16 Stat. 140, 141, insisted that providing safeguards to ensure that Black citizens could exercise their right to vote "discriminate[d] in favor of the black and against the white" in violation of the Fifteenth Amendment. Cong. Globe, 41st Cong., 2d Sess. app. 400 (1870). Opponents decried enforcement efforts as "giv[ing] the negro rights, safeguards, and remedies which are withheld from the white man." *Id.* at 3874.

For the Reconstruction Framers, the Fifteenth Amendment's touchstone was empowering Black voters to ensure equal political opportunities, not the colorblind notion that race could not be considered. As the debates over the Enforcement Act of 1870 reflect,

nothing in the Fifteenth Amendment requires Congress or states to ignore the "deep rooted prejudice of the white race there against the negro" in securing to Black citizens their "just and constitutional position" as equal citizens. *Id.* at app. 392-93. In enforcing the Fifteenth Amendment, Congress can require states to take account of race and how our political system remains divided along racial lines in order to ensure that Black, as well as white, citizens can enjoy the Fifteenth Amendment's promise of equal political opportunity. That, as Representative Washington Townsend observed, "does not elevate one race above another; it gives no exclusive privileges, but in obedience to the Constitution it secures equality under the Constitution to all." *Id.* at app. 393.

Louisiana's 2022 congressional map packed and cracked communities of color to minimize Black voting strength and to nullify the effectiveness of their votes. If this Court were to accept Appellees' claim that, after three federal courts concluded that the map likely violated the Voting Rights Act, the state could not revise its map to create a second district in which Black voters could elect representatives of their choice, it would license the kind of gerrymandering that state mapmakers have long employed to dilute Black voting strength and would turn the Fifteenth Amendment on its head.

The Voting Rights Act helps enforce the Fifteenth Amendment's guarantee of equality by ensuring that Black citizens, like their white counterparts, can participate in the political process as equals and elect representatives of their choice. *See United States v. Marengo Cnty. Comm'n*, 731 F.2d 1546, 1561 (11th Cir. 1984) ("Section 2 is not meant to create race-conscious voting but to attack the discriminatory results of such voting where it is present."). The race-consciousness

required to create majority-minority districts that ensure equal political opportunity under the Voting Rights Act raises no constitutional concern.

CONCLUSION

For the foregoing reasons, this Court should reverse the judgment of the court below.

Respectfully submitted,

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