No. 22-807

IN THE

Supreme Court of the United States

THOMAS C. ALEXANDER, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE SOUTH CAROLINA SENATE, ET AL.,
Appellants,

v.

THE SOUTH CAROLINA STATE CONFERENCE OF THE NAACP, ET AL.,
Appellees.

On Appeal from the United States District Court for the District of South Carolina

BRIEF OF CONSTITUTIONAL ACCOUNTABILITY CENTER AS *AMICUS CURIAE* IN SUPPORT OF APPELLEES

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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 and freedoms it guarantees. CAC accordingly has a strong interest in the scope of the protections of the Fourteenth and Fifteenth Amendments and in this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

This is a textbook case of racial gerrymandering. In the wake of the 2020 Census, the South Carolina legislature redrew its congressional districts. To suppress the percentage of Black voters in Congressional District ("CD") 1, the mapmakers gratuitously moved over 30,000 Black voters in Charleston County out of the district, upended numerous traditional districting principles, and contravened the mapmaker's goal of preserving the core of the 2011 congressional map—a principle implemented virtually everywhere other than Charleston County. The only consideration that the mapmaker and the legislature refused to sacrifice: the race-based goal of a 17% Black voting-age population

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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* made a monetary contribution to its preparation or submission.

("BVAP"). The resulting district violates the guarantees of equality contained in the Fourteenth and Fifteenth Amendments.

The Fifteenth Amendment establishes a broad prohibition on racial discrimination in voting, "reaffirm[ing] the equality of races at the most basic level of the democratic process, the exercise of the voting franchise. A resolve so absolute required language as simple in command as it was comprehensive in reach." *Rice v. Cayetano*, 528 U.S. 495, 512 (2000). Against the backdrop of a political system divided on racial lines, 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). A broad prohibition on all forms of racial discrimination in voting, both denials and abridgements of the right to vote on account of race, was critical to ensuring "the colored man the full enjoyment of his right." Cong. Globe, 41st Cong., 2d Sess. 3670 (1870). Using a racial target for the purpose of "segregating white and colored voters" violates the Amendment's command as surely as denial of access to the ballot itself. *See Gomillion v. Lightfoot*, 364 U.S. 339, 341 (1960).

Likewise, this Court's cases construing the Fourteenth Amendment's guarantee of equal protection establish that "reapportionment legislation that cannot be understood as anything other than an effort to classify and separate voters by race injures voters" and "threatens to carry us further from the goal of a political system in which race no longer matters—a goal that the Fourteenth and Fifteenth Amendments embody." *Shaw v. Reno*, 509 U.S. 630,

650, 657 (1993) (hereinafter *Shaw I*). When a plaintiff establishes "through circumstantial evidence of a district's shape and demographics or more direct evidence going to legislative purpose, that race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district," *Miller v. Johnson*, 515 U.S. 900, 916 (1995), the racially gerrymandered districting plan must be held invalid unless the government can satisfy strict scrutiny, "our most rigorous and exacting standard of constitutional review," *id.* at 920; *see also Cooper v. Harris*, 581 U.S. 285, 291-92 (2017); *Bethune-Hill v. Virginia State Bd. of Elections*, 580 U.S. 178, 187 (2017).

The district court properly applied these principles, finding that the legislature's "movement of over 30,000 African Americans in a single county" to meet the state's predetermined racial target of 17% BVAP "created a stark racial gerrymander" and "made a mockery of the traditional districting principle of constituent consistency." *See* J.S. App. 26a, 27a. The lower court's unanimous finding that race predominated in the drawing of CD 1 is fully supported by the extensive trial record and this Court's many precedents in this area. *See Cooper*, 581 U.S. at 300-01 (affirming finding of predominance where mapmaker employed "an announced racial target that subordinated other districting criteria and produced boundaries amplifying divisions between blacks and whites"); *Bush v. Vera*, 517 U.S. 952, 961, 973 (1996) (affirming finding of predominance where "the decision to create . . . majority-minority districts was made at the outset of the process and never seriously questioned," even though doing so required drawing lines "essentially dictated by racial considerations"); *Ala. Legislative Black Caucus v. Alabama*, 575 U.S.

254, 267, 273 (2015) (finding state's "policy of prioritizing mechanical racial targets above all other districting criteria (save one-person, one-vote)" provided "strong, perhaps overwhelming, evidence that race did predominate as a factor"). On this record, the drawing of CD 1 cannot be squared with this Court's racial gerrymandering precedents.

South Carolina's primary argument in defense of CD 1 is that it drew the district's lines to advantage Republican candidates. Appellants' Br. 27-32. This argument fails as a matter of both constitutional text and history and precedent. The Framers of the Fifteenth Amendment, well aware of partisan divisions along racial lines and the likelihood that white-dominated state legislatures would seek to curtail the power of Black voters, guaranteed the right to vote free from discrimination as a bulwark that would empower Black voters "to protect themselves in the southern reconstructed States" from attacks on their rights. Cong. Globe, 40th Cong., 3d Sess. 1008 (1869).

If mere invocation of a partisan goal were sufficient to insulate racial gerrymandering from attack, states could make an end-run around the Fourteenth and Fifteenth Amendments. That is not the law. Where, as here, "race is used as a proxy for political characteristics, a racial stereotype requiring strict scrutiny is in operation." *Bush*, 517 U.S. at 968; *see Cooper*, 581 U.S. at 308 n.7 ("[I]f legislators use race as their predominant districting criterion with the end goal of advancing their partisan interests . . . their action still triggers strict scrutiny."). "[T]he promise of the Reconstruction Amendments[] that our Nation is to be free of state-sponsored discrimination," *Bush,* 517 U.S. at 968, demands no less. And because South Carolina does not even attempt to satisfy strict

scrutiny, CD 1 is unconstitutional. The judgment below should be affirmed.

ARGUMENT

I. The Fourteenth and Fifteenth Amendments Forbid Racially Gerrymandered Districts.

In language "as simple in command as it [is] comprehensive in reach," *Rice*, 528 U.S. at 512, 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.

Recognizing that "[i]t is difficult by any language to provide against every imaginary wrong or evil which may arise in the administration of the law of suffrage in the several States," Cong. Globe, 40th Cong., 3d Sess. 725 (1869), the Framers chose sweeping language requiring "the equality of races at the most basic level of the democratic process, the exercise of the voting franchise," *Rice*, 528 U.S. at 512. The Fifteenth Amendment equally forbids laws that explicitly deny the right to vote on account of race, as well as 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 Parish 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, 1416 (demonstrating that "[t]he word

'abridge' in 1868 meant . . . [t]o lessen" or "to diminish" and that laws that give "African Americans a lesser and diminished" set of freedoms unconstitutionally abridged their constitutional rights); Travis Crum, *Reconstructing Racially Polarized Voting*, 70 Duke L.J. 261, 323 (2020) ("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 Fifteenth Amendment's sweeping guarantee of equal political opportunity would empower Black citizens to participate in the political process as equals, refusing to consign them to what Frederick Douglass called "emasculated citizenship." Frederick Douglass, *Reconstruction,* Atlantic Monthly (Dec. 1866), *in* 2 *The Reconstruction Amendments: Essential Documents* 296 (Kurt T. Lash ed., 2021). Without the right to participate in our democracy on equal terms, equal citizenship was illusory. As Douglass insisted, "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 Fifteenth Amendment rejected that form of second-class citizenship. 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).

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 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 take away their rights.

The Fifteenth Amendment gave "live expression" to the right of Black citizens "to have a voice in the government" by enabling the Black voter "to choose from among his fellow-citizens the man who suits him for his representative," Cong. Globe, 40th Cong., 3d Sess. 1626 (1869), so that "their voices may be heard in your halls, and their votes recorded upon public measures," Rufus Bullock, *Governor's Message to the*

General Assembly, Ga. House J. 601 (1869), *in* 2 *The Reconstruction Amendments*, *supra*, at 556.

Tragically, 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 I,* 509 U.S. at 641 (quoting *Allen v. State Bd. of Elections*, 393 U.S. 544, 569 (1969)). As this Court noted in *Shaw I*, one of the "weapons in the States' arsenal was the racial gerrymander—'the deliberate and arbitrary distortion of district boundaries . . . for [racial] purposes.' In the 1870's, for example, opponents of Reconstruction in Mississippi 'concentrated the bulk of the black population in a 'shoestring' Congressional district running the length of the Mississippi River, leaving five others with white majorities.'" *Id.* at 640 (citations omitted). The state's manipulation of district boundaries, as one congressman observed, was designed for the purpose of "gerrymandering all the black voters as far as possible into one district so that the potency of their votes might not be felt as against the potency of white votes in the other districts." 13 Cong. Rec. H3442 (daily ed., Apr. 29, 1882). White-dominated state legislatures sought to thwart emerging Black political power at the very moment Black voters sought to exercise their Fifteenth Amendment rights.

Other states, too, relied on racial gerrymandering in order, in the words of one Texas newspaper, "to disenfranchise the blacks by indirection." Weekly Democratic Statesman (Austin, Tex.), Feb. 3, 1876, at 1, https://texashistory.unt.edu/ark:/67531/metapth27

7561/m1/1/. In the 1870s, North Carolina mapmakers packed African Americans into a single district—known as the Black Second—"effectively confin[ing] black control in a state that was approximately one-third African American to a maximum of one district in eight or nine." J. Morgan Kousser, *Colorblind Injustice: Minority Voting Rights and the Undoing of the Second Reconstruction* 26 (1999). In Alabama, in 1875, the state legislature "gerrymandered five of the most populous counties into the fourth district so that it was composed entirely of the [five] black counties," while "[t]he other black counties of central Alabama were distributed into districts where white voters outnumbered blacks." Sarah Woolfolk Wiggins, *The Scalawag in Alabama Politics, 1865-1881*, at 104 (1977). In 1882, the South Carolina legislature created a district, known as the "boa constrictor" district, that snaked across the state to include "all the precincts of black voters that could be strung together with the faintest connection of contiguous territory." *Flaws in the Solid South*, N.Y. Times, July 13, 1882, https://nyti.ms/3YcDFC6.

Throughout the South, state governments packed and cracked communities of color into gerrymandered districts in order to undercut the Fifteenth Amendment's guarantee of equal political opportunity. *See* Chandler Davidson, *White Gerrymandering of Black Voters: A Response to Professor Everett*, 79 N.C. L. Rev. 1333, 1334 (2001) ("Briefly put, whites have ruthlessly, systematically, and pretty much without hindrance gerrymandered African-American voters in this country from Reconstruction to the modern era."). "Gerrymandering in its various forms was the most effective tactic used by sympathetic legislatures . . . to keep them in the hands of white Democrats." Howard

N. Rabinowitz, *Race Relations in the Urban South, 1865-1890*, at 270 (1978).

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), equally forbidding laws that deny the right to vote outright on account of race as well as those that abridge it. The Fifteenth Amendment, as construed by this Court, "nullifies sophisticated as well as simple-minded modes of discrimination." *Id.* at 275.

Thus, in *Gomillion v. Lightfoot*, 364 U.S. 339 (1960), this Court struck down racial gerrymandering by the City of Tuskegee, Alabama, as a violation of the Fifteenth Amendment. The city had attempted to redefine its boundaries "from a square to an uncouth twenty-eight-sided figure" for the purpose of "segregating white and colored voters." *Id.* at 340, 341. This Court had little difficulty concluding that "the inescapable human effect of this essay in geometry and geography is to despoil colored citizens, and only colored citizens, of their theretofore enjoyed voting rights." *Id.* at 347. *Gomillion* held that "the Fifteenth Amendment does not simply guarantee the individual's right to vote; it also limits the States' power to draw political boundaries." *City of Mobile v. Bolden*, 446 U.S. 55, 85 (1980) (Stevens, J., concurring); *see Holder v. Hall*, 512 U.S. 874, 958 (1994) (opinion of Stevens, J.) (observing that "the Court's first case addressing a voting practice other than access to the ballot arose under the Fifteenth Amendment").

Gomillion rested on the Fifteenth Amendment, but its result was equally "compelled by the Equal Protection Clause of the Fourteenth Amendment."

Bolden, 446 U.S. at 86 (Stevens, J., concurring). Since *Gomillion*, this Court's cases have read the Fourteenth Amendment's more general requirement of equal protection to complement the Fifteenth Amendment's specific prohibition on all forms of racial discrimination in voting. *See Rogers v. Lodge*, 458 U.S. 613 (1982) (vote dilution); *Shaw I*, 509 U.S. at 642-49 (racial gerrymandering); *cf. Bartlett v. Strickland*, 556 U.S. 1, 24 (2009) (plurality opinion) ("[I]f there were a showing that a State intentionally drew district lines in order to destroy otherwise effective crossover districts, that would raise serious questions under both the Fourteenth and Fifteenth Amendments."). Indeed, *Shaw I* was quite explicit in drawing on *Gomillion* and other "voting rights precedents" interpreting the Fifteenth Amendment. *Shaw I*, 509 U.S. at 644.

This Court's cases, whether decided under the Fourteenth Amendment or the Fifteenth Amendment, have repeatedly affirmed that the Constitution does not tolerate racial discrimination in voting or the drawing of district lines. *See Rice*, 528 U.S. at 517 ("[T]he use of racial classifications is corruptive of the whole legal order democratic elections seek to preserve."); *Shaw I*, 509 U.S. at 645 ("[D]istrict lines obviously drawn for the purpose of separating voters by race require careful scrutiny under the Equal Protection Clause regardless of the motivations underlying their adoption."); *Gomillion*, 364 U.S. at 346 ("When a legislature thus singles out a readily isolated segment of a racial minority for special discriminatory treatment, it violates the Fifteenth Amendment."). As the next Section shows, the South Carolina legislature ran afoul of these principles in drawing CD 1.

II. South Carolina Moved Tens of Thousands of Black Voters out of Their Home District to Meet a Racial Target and Therefore Must Satisfy Strict Scrutiny.

Under this Court's precedents, to bring a racial gerrymandering claim, a plaintiff must "'show, either through circumstantial evidence of a district's shape and demographics or more direct evidence going to legislative purpose, that race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district.'" *Ala. Legislative Black Caucus*, 575 U.S. at 266-67 (quoting *Miller*, 515 U.S. at 916). "[T]he 'predominance' question concerns *which* voters the legislature decides to choose, and specifically whether the legislature predominately uses race as opposed to other, 'traditional' factors when doing so." *Id.* at 273. When a state legislature uses race as the predominant factor, the districting plan must be held invalid unless the government can satisfy strict scrutiny, "our most rigorous and exacting standard of constitutional review." *Miller*, 515 U.S. at 920.

In *Alabama Legislative Black Caucus*, this Court elaborated on when the use of race is a predominant factor, making strict scrutiny applicable. There, the state legislature drew districts that sought to maintain the "existing racial percentages in each majority-minority district." 575 U.S. at 273. This Court held that the state's use of "a policy of prioritizing mechanical racial targets above all other districting criteria (save one-person, one-vote)" was "strong, perhaps overwhelming, evidence that race did predominate" in the drawing of district lines. *Id.* at 267, 273. As this Court noted, the line-drawers surgically moved African American citizens into majority-minority districts to comply with the state's

chosen mechanical racial target. *Id.* at 274 (observing that "[o]f the 15,785 individuals that the new redistricting laws added to the population of District 26, just 36 were white—a remarkable feat given the local demographics").

In *Cooper*, this Court affirmed a lower court's finding of predominance where the State's mapmakers "purposefully established a racial target" and manipulated the district's borders to "tak[e] in tens of thousands of additional African-American voters," resulting in "a district with stark racial borders" that did "not respect county or precinct lines." *Cooper*, 581 U.S. at 300. The *Cooper* Court found that race predominated in a second district, relying both on legislative testimony and objective evidence of how the legislature had changed the contours of the district to add Black voters and subtract white ones. *Id.* at 310 ("[T]he General Assembly incorporated tens of thousands of new voters and pushed out tens of thousands of old ones. And those changes followed racial lines.").

As the evidence recounted by the district court confirms, the same predominant focus on race above all else occurred here. As the court below found, the state's mapmakers set a racial target of 17% BVAP, and to meet that pre-set target, those in charge of drawing CD 1 "deliberately moved black voters," *Ala. Legislative Black Caucus*, 575 U.S. at 265, out of CD 1 in dramatic fashion. As the district court recounted, despite the mapmaker's previously expressed commitment to make the least change possible to the prior congressional map, he "mov[ed] ten of the eleven [voting districts] with an African American population of 1,000 persons or greater out of Congressional District No. 1, which included a move of over 11,300 African Americans from North Charleston and nearly

17,000 from the St. Andrews area." J.S. App. 26a. All told, the state's mapmaker "ultimately moved 62% (30,243 out of the 48,706) of the African American residents formerly assigned to Congressional District No. 1 to District No. 6" in a staggering departure from the mapmaker's announced priorities. *Id.* at 25a; *see also id.* at 32a (finding "particularly probative" expert testimony that "the racial composition of a [voting district] was a stronger predictor of whether it was removed from Congressional District No. 1 than its partisan composition"); Appellees' Br. at 30-35, 42-46.

Here, "[r]ace was the criterion that, in the State's view, could not be compromised." *Shaw v. Hunt*, 517 U.S. 899, 907 (1996); *see also Allen v. Milligan*, 143 S. Ct. 1487, 1510 (2023) ("Race predominates in the drawing of district lines . . . when 'race-neutral considerations [come] into play only after the race-based decision had been made.'" (quoting *Bethune-Hill* 580 U.S. at 189)). The choice to adopt a pre-set racial target and move Black voters en masse out of CD 1 "was made at the outset of the process and never seriously questioned," even when doing so required drawing lines that were "essentially dictated by racial considerations." *Bush*, 517 U.S. at 961, 973. Overwhelming evidence supports the district court's finding of racial predominance.

In its brief, South Carolina offers an "I didn't do it" defense, claiming that race and racial data were not determinative in drawing the congressional map. Appellants' Br. 26. But the district court's finding of racial predominance is reviewed for clear error, and "[u]nder that standard of review, [this Court] affirm[s] the court's finding so long as it is 'plausible'; [it] reverses only when 'left with the definite and firm conviction that a mistake has been committed.' And in deciding which side of that line to come down on, [this

Court] give[s] singular deference to a trial court's judgments about the credibility of witnesses." *Cooper*, 581 U.S. at 309 (quoting *Anderson v. Bessemer City,* 470 U.S. 564, 573-74 (1985)).

Under that deferential standard of review, Appellants cannot come close to impugning the district court's well-supported factual findings. As the finder of fact, the district court was well within its authority to find, based on the objective evidence, that race predominated in the drawing of CD 1's lines and to disbelieve the mapmaker's "asserted indifference" to the staggering shift of Black voters necessary to produce CD 1's "racial composition." *Id.* at 314; Appellees' Br. 35-38, 46-48; U.S. Br. at 15-23; *see North Carolina v. Covington*, 138 S. Ct. 2548, 2553 (2018) ("The defendants' insistence that the 2017 legislature did not look at racial data in drawing remedial districts does little to undermine the District Court's conclusion—based on evidence concerning the shape and demographics of those districts—that the districts unconstitutionally sort voters on the basis of race."). There is no legal basis to second-guess the three-judge court's intensely local appraisal that race predominated in the drawing of CD 1.

III. A State May Not Use Race Predominantly to Achieve Partisan Ends.

South Carolina argues that its new map is constitutionally permissible because it drew CD 1's lines to advantage Republican candidates. Appellants' Br. 27-32. This Court's racial gerrymandering precedents foreclose this argument.

As *Shaw I* makes clear, "district lines obviously drawn for the purpose of separating voters by race require careful scrutiny under the Equal Protection Clause regardless of the motivations underlying their

adoption." 509 U.S. at 645. A partisan aim does not justify a return to the "egregious racial gerrymanders of the past" or erecting "tortured . . . boundary line[s] . . . to exclude black voters." *Id.* at 641, 647; *Cooper*, 581 U.S. at 308 n.7 ("[I]f legislators use race as their predominant districting criterion with the end goal of advancing their partisan interests . . . their action still triggers strict scrutiny.").

Otherwise, state legislatures would have a free pass to make an end-run around the Fourteenth and Fifteenth Amendments and enact racially gerrymandered maps whenever it would be politically advantageous to do so—as they did in the wake of Reconstruction. *See Cooper*, 581 U.S. at 319 n.15 (noting that state lawmakers "may resort to race-based districting for ultimately political reasons, leveraging the strong correlation between race and voting behavior to advance their partisan interests" or "to suppress the electoral power of minority voters"); *Shaw I*, 509 U.S. at 640 (discussing use of racial gerrymanders during and after Reconstruction to flout the Fifteenth Amendment's promise of political equality).

That racial gerrymandering might be used to try to obtain partisan advantage would not have surprised the Framers of the Fifteenth Amendment because they confronted a political system sharply divided along racial lines. *See* Crum, *supra*, at 310 (observing that "Black citizens voted as a near-unform bloc for Republicans" and that "White southerners leaned heavily in favor of the Democratic Party, and that these political realities were acknowledged and well-known during Reconstruction"). They nonetheless prohibited any denial or abridgment of the right to vote on the basis of race because they viewed the Fifteenth Amendment's guarantee of equal political

opportunity as critical to ensure "the colored man the full enjoyment of his right," Cong. Globe, 41st Cong., 2d Sess. 3670 (1870), and to stamp out state abuses that would deny or abridge the right of Black voters "to choose from among his fellow-citizens the man who suits him for his representative," Cong. Globe, 40th Cong., 3d Sess. 1626 (1869). The Framers understood that the Fifteenth Amendment's protections, coupled with a congressional enforcement power, 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. Cong. Globe, 41st Cong., 2d Sess. app 392 (1870).

In short, South Carolina may not use race predominantly to achieve a partisan objective. While the goal of pursing partisan gain may be a legitimate political objective, it may not be achieved through constitutionally illegitimate means. That is precisely what happened here. Use of a pre-set racial target to remove tens of thousands of Black voters from their home district and to separate Black and white voters on account of race is constitutionally suspect under the Fourteenth and Fifteenth Amendments. Where, as here, "race is used as a proxy for political characteristics, a racial stereotype requiring strict scrutiny is in operation." *Bush*, 517 U.S. at 968. Because South Carolina does not even attempt to satisfy strict scrutiny, CD 1 is an unconstitutional racial gerrymander, and the court below was correct to hold it unconstitutional.

CONCLUSION

For the foregoing reasons, this Court should affirm the judgment of the district court.

Respectfully submitted,

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