No. _____

In the
Supreme Court of the United States

GUAM, GUAM ELECTION COMMISSION, and MICHAEL J. PEREZ, ALICE M. TAIJERON, G. PATRICK CIVILLE, JOSEPH P. MAFNAS, JOAQUIN P. PEREZ, GERARD C. CRISOSTOMO, and ANTONIA GUMATAOTAO, in Their Official Capacities as Members of the Guam Election Commission,

Petitioners,

v.

ARNOLD DAVIS, on behalf of himself and all others similarly situated,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Shortly after the end of World War II, Congress extended citizenship to certain inhabitants of Guam through the 1950 Organic Act of Guam, 48 U.S.C. § 1421 *et seq*. Fifty years later, the government of Guam decided to invite that same class of people to express their views on the island's future political relationship with the United States. Under the 2000 Plebiscite Law, "native inhabitants of Guam"—defined as "those persons who became U.S. Citizens by virtue of the authority and enactment of the 1950 Guam Organic Act and descendants of those persons"—can indicate their preference for one of three "political status options": (1) "Independence," (2) "Free Association with the United States of America," or (3) "Statehood." 1 Guam Code Ann. §§ 2102(b), 2110.

The results of this political-status poll are purely advisory. The plebiscite does not select political officials, does not empower the government to take (or refuse to take) a course of action, and does not effectuate any change in the political status quo. The only consequence is that Guam will "promptly transmit" the results of the plebiscite "to the President and the Congress of the United States of America, and to the Secretary General of the United Nations." *Id.* § 2105.

The question presented is:

Whether the Fifteenth Amendment permits Guam to invite only "native inhabitants of Guam" to participate in a potential political-status plebiscite that would yield only a nonbinding, symbolic expression of self-determination preferences.

PARTIES TO THE PROCEEDING

Guam and the Guam Election Commission are petitioners here and were defendants-appellants below.

Michael J. Perez, Alice M. Taijeron, G. Patrick Civille, Joseph P. Mafnas, Joaquin P. Perez, Gerard C. Crisostomo, and Antonia Gumataotao, in their official capacities as members of the Guam Election Commission, are petitioners here and were defendants-appellants below or have been substituted in their official capacities as the successors to former members and defendants-appellants Joseph F. Mesa, Leonardo M. Rapadas, Joshua F. Renorio, Martha C. Ruth, Johnny P. Taitano, and Donald I. Weakley.

Arnold Davis, on behalf of himself and all others similarly situated, is respondent here and was plaintiff-appellee below.

CORPORATE DISCLOSURE STATEMENT

Guam is an unincorporated territory of the United States.

The Guam Election Commission is an autonomous instrumentality and an independent commission of the government of Guam, established and organized pursuant to Guam law.

STATEMENT OF RELATED PROCEEDINGS

Davis v. Guam, et al., No. 17-15719 (9th Cir.) (opinion issued and judgment entered July 29, 2019; mandate issued Aug. 20, 2019).

Davis v. Guam, et al., No. 13-15199 (9th Cir.) (opinion issued and judgment entered May 8, 2015; mandate issued June 2, 2015).

Davis v. Guam, et al., No. 1:11-cv-00035 (D. Guam) (order adopting magistrate judge's report and recommendation and granting defendants' motion to dismiss without prejudice issued Jan. 9, 2013; decision and order granting plaintiff's motion for summary judgment issued Mar. 8, 2017).

There are no additional proceedings in any court that are directly related to this case.

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PETITION FOR WRIT OF CERTIORARI

This petition presents a basic question about territorial rights to self-determination. To date, the inhabitants of Guam have had limited authority over their political status and the future of the island. In 2000, the Guam Legislature took a small step toward remedying this unfortunate history by enacting a Plebiscite Law "to permit the native inhabitants of Guam . . . to exercise the inalienable right to self-determination of their political relationship with the United States of America." 3 Guam Code Ann. § 21000. The law defines "native inhabitants of Guam" by reference to a category that originated with an Act of Congress: the 1950 Organic Act of Guam. Specifically, "native inhabitants of Guam" includes "those persons who became U.S. Citizens by virtue of the authority and enactment of the 1950 Guam Organic Act and descendants of those persons." 1 Guam Code Ann. § 2102(b).

The Plebiscite Law contemplates a targeted, advisory referendum or "political-status plebiscite" by these native inhabitants on their preferred political status: (1) independence, (2) free association, or (3) statehood. *Id.* § 2110. The outcome of any such plebiscite will neither commit the government of Guam to pursuing or advocating for any particular status, nor trigger any direct, formal, or official decision on any public issue. And while Guam may well decide to pursue the particular political status favored in the results, it need not do so. Simply put, the Plebiscite Law contemplates an informational survey of a distinct political group first recognized by an Act of Congress.

In the decision below, however, the Ninth Circuit held that the Fifteenth Amendment categorically prohibits Guam from inviting "native inhabitants of Guam" to participate in a political-status plebiscite. That decision rests on an unprecedented expansion of the Fifteenth Amendment across two dimensions, both of which independently warrant this Court's review.

First, the Ninth Circuit extended the Fifteenth Amendment "right to vote" to include Guam's political-status plebiscite. It is undisputed that the plebiscite "will not, itself, create any change in the political status of the Territory" and, as such, would have an extraordinarily "limited immediate impact." App.13. Indeed, the only action that the Plebiscite Law obligates Guam to take is "to transmit the results of the plebiscite to Congress, the President, and the United Nations." App.13. Accordingly, the results of the plebiscite, if any, would not "decide[]" any "public issue[]" or "select[]" any "public official[]" in the traditional sense of the right to vote. *Rice v. Cayetano*, 528 U.S. 495, 523 (2000) (quoting *Terry v. Adams*, 345 U.S. 461, 468 (1953)). Yet the Ninth Circuit held that the plebiscite is a "vote" within the meaning of the Fifteenth Amendment because its results purportedly "constitute a decision on a public issue for Fifteenth Amendment purposes." App.13.

Second, the Ninth Circuit held that limiting eligible participants to "native inhabitants of Guam"—defined as a category of persons who became U.S. citizens by an Act of Congress and descendants of those persons—created an impermissible race-based classification and thus *per se* violated the Fifteenth

Amendment. App.41. Brushing aside Guam's argument that the Plebiscite Law defines voters solely by *political status*, and a political status created in the first instance by Congress, the court concluded that the law's definition of "native inhabitants of Guam" could "only be sensibly understood as a proxy for . . . racial classification." App.33. And the court held that race-based voting discrimination is always impermissible, so it declined to consider "whether Guam's targeted interest in the self-determination of its indigenous people is genuine or compelling," or whether the Plebiscite Law could satisfy any level of scrutiny. App.41.

The Ninth Circuit's sweeping decision distorts the Fifteenth Amendment beyond this Court's precedents and has dire consequences for Guam. The opinion effectively erases a distinct political group of native inhabitants. Although that group is readily identifiable by their shared experiences under colonization and their unique political relationship with the United States, the court reduced them to a crude racial category. This judicial substitution puts the island and its inhabitants in an impossible position. Now that the Ninth Circuit has converted a political class—a class of people created by an Act of Congress in the first place—into a racial one, it will be incredibly difficult for them to speak with a common voice about the island's ongoing political relationship with the United States. The decision below thus nullifies the island's distinct political history and prevents Guam from hearing from inhabitants who have never been able to exercise their right to self-determination and who are now prohibited from even symbolic expression of that right.

The Court should grant certiorari to review the Ninth Circuit's decision and provide much-needed clarity on the contours of the Fifteenth Amendment "right to vote," including what constitutes a "vote" and what types of classifications are prohibited. The Fifteenth Amendment issue is clearly and cleanly presented in the decision below, and it allows this Court to address these important issues in a case of great significance to the people and government of Guam.

OPINIONS BELOW

The Ninth Circuit's operative summary-judgment opinion is reported at 932 F.3d 822 and reproduced at App.1–42, and its prior opinion on appeal from the motion to dismiss is reported at 785 F.3d 1311 and reproduced at App.78–94. The district court's summary-judgment opinion is unreported but available at 2017 WL 930825 and reproduced at App.43–77, and its prior opinion granting Guam's motion to dismiss is unreported but available at 2013 WL 204697 and reproduced at App.95–117.

JURISDICTION

The Ninth Circuit issued its opinion on July 29, 2019. On November 6, 2019, Justice Kagan extended the time for filing a petition for certiorari to and including December 26, 2019. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifteenth Amendment provides, in relevant part: "The 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.

Under 48 U.S.C. § 1421b(u), the Fifteenth Amendment has "the same force and effect" in Guam as in the United States. Section 1421b(u) is reproduced in full at App.118.

The relevant provisions of the Guam Code and the 1950 Organic Act of Guam are reproduced at App.118–24.

STATEMENT OF THE CASE

A. Historical and Political Context

1. Throughout the course of Guam's history, its native inhabitants have been unable to exercise the right to determine their own political status. Spain colonized Guam in the 1500s and maintained control over the island until the end of the Spanish-American War. App.3. Following the war, the 1898 Treaty of Paris gave Guam to the United States, and the U.S. Navy controlled Guam from then until 1950, except for an interlude of Japanese occupation during World War II. App.3.

Throughout the colonial period, Guam's population consisted mostly of an indigenous group known as the "Chamorro," who had no autonomy in the governance of Guam under either Spain or U.S. control. *See* App.3. As of the 1950 census, 45.6% of Guam residents were Chamorro, 38.5% were white, and the remainder belonged to other races. App.5.

2. In 1950, Congress passed the Organic Act of Guam, which established a tripartite government for Guam and extended U.S. citizenship to three groups: (1) individuals born before April 11, 1899, who lived in

Guam on that date as Spanish subjects, and who continued to reside in some part of the United States thereafter; (2) individuals born in Guam before April 11, 1899, who lived in Guam on that date, and who continued to reside in some part of the United States thereafter; and (3) individuals born in Guam on or after April 11, 1899. App.32–33 (citing 8 U.S.C. § 1407 (1952)).

Congressional reports on the Organic Act emphasized the importance of "confer[ring] upon the people of Guam the measure of self-government and civilian administration to which they have long been entitled." S. Rep. No. 81-2109 (1950), *reprinted in* 1950 U.S.C.C.A.N. 2840, 2848. The Senate Report accompanying the bill also noted that "the United States has . . . treaty obligations with respect to Guam as a non-self-governing territory" and, in particular, an affirmative duty "to develop self-government" in the territory. S. Rep. No. 81-2109 (1950), *reprinted in* 1950 U.S.C.C.A.N. 2840, 2841. As a statement by the Secretary of the Interior explained, the Act "would contribute toward fulfillment of the obligation assumed by the United States under . . . the United Nations charter to promote the political, economic, social, and educational advancement of the inhabitants of the non-self-governing Territories." S. Rep. No. 81-2109 (1950), *reprinted in* 1950 U.S.C.C.A.N. 2840, 2848.

In 1952, Congress enacted the Immigration and Nationality Act ("INA"), which repealed the citizenship provisions of the Organic Act and instead extended citizenship to all persons born in Guam after the INA's passage. App.5.

3. In 1996, the Guam legislature passed "An Act to Establish the Chamorro Registry" ("the Registry Act"), which instituted a registry of "Chamorro individuals, families, and their descendants." Guam Pub. L. No. 23-130, § 1 (1996) (codified as amended at 3 Guam Code Ann. §§ 18001–31, *repealed in part by* Guam Pub. L. No. 25-106 (2000)). The Registry Act defined "Chamorro" as (1) inhabitants of Guam as of April 11, 1899 who were Spanish subjects and afterwards continued to reside in Guam or elsewhere in the United States, (2) persons born in Guam who resided there on April 11, 1899 and afterwards continued to reside there or elsewhere in the United States, and descendants of either of these two categories of people. Guam Pub. L. No. 23-130, § 2.

4. In 1997, the Guam legislature passed an act establishing the "Commission on Decolonization for the Implementation and Exercise of Chamorro Self-Determination" with the purpose of "ascertain[ing] the desire of the Chamorro people of Guam as to their future political relationship with the United States." Guam Pub. L. No. 23-147, § 5 (1997) (codified at 1 Guam Code Ann. §§ 2101–15, *repealed in part by* Guam Pub. L. No. 25-106 (2000)). Among other provisions, that law called for a "political status plebiscite." Guam Pub. L. No. 23-147, § 10. Only "Chamorro people," defined as "[a]ll inhabitants of Guam in 1898 and their descendants who have taken no affirmative steps to preserve or acquire foreign nationality," *id.* § 2(b), would be permitted to participate in the plebiscite, which would ask a single question:

> In recognition of your right to self-determination, which of the following political status options do you favor? (Mark ONLY ONE):
>
> 1. Independence ( )
> 2. Free Association ( )
> 3. Statehood ( )

Id. § 10. This plebiscite never occurred.

5. In 2000, the Guam legislature replaced the earlier law with the 2000 Plebiscite Law, which is at issue here. Guam Pub. L. No. 25-106 (2000) (codified at 3 Guam Code Ann. §§ 21000–31, 1 Guam Code Ann. §§ 2101–15). The 2000 Plebiscite Law provides that "native inhabitants of Guam," defined as "those persons who became U.S. Citizens by virtue of the authority and enactment of the 1950 Guam Organic Act and descendants of those persons," 1 Guam Code Ann. § 2102(b), may participate. The purpose of this targeted plebiscite is "to permit the native inhabitants of Guam . . . to exercise the inalienable right to self-determination of their political relationship with the United States of America." 3 Guam Code Ann. § 21000.

In enacting the Plebiscite Law, the Guam legislature recognized that this "inalienable right to self-determination" had "never been afforded the native inhabitants of Guam, its native inhabitants and land having themselves been overtaken by Spain, and then ceded by Spain to the United States of America during a time of war, without any consultation with the native inhabitants of Guam." *Id.* The legislature also stressed that "[t]he intent of

[the law] shall not be construed nor implemented by the government officials effectuating its provisions to be race based, but founded upon the classification of persons as defined by the U.S. Congress in the 1950 Guam Organic Act." *Id.*

The plebiscite is nonbinding; its results have no legal effect and do not require Guam to adopt any official or desired political relationship with the United States. The only direct consequence is that "the Commission [on Decolonization] shall promptly transmit [the results of the plebiscite] to the President and the Congress of the United States of America, and to the Secretary General of the United Nations." 1 Guam Code Ann. § 2105.

B. Procedural History

1. Respondent Arnold Davis, who is not a "native inhabitant of Guam," challenged the 2000 Plebiscite Law. App.10–11. He sued for declaratory and injunctive relief, on behalf of himself and others similarly situated, against Guam, the Guam Election Commission, and the Commission's members in their official capacities, App.96, alleging that the 2000 Plebiscite Law violated the Fourteenth and Fifteenth Amendments to the Constitution, the Voting Rights Act of 1965, and the 1950 Organic Act of Guam, App.11.

2. Defendants moved to dismiss under Federal Rule of Civil Procedure 12(b)(1), arguing that "there was no case or controversy." App.103. The district court agreed, ruling that Davis could not demonstrate standing or ripeness. App.109, 116–17. Accordingly, it dismissed the complaint without prejudice. App.117.

Davis appealed and the Ninth Circuit reversed, holding that, although the plebiscite had not yet been scheduled at the time Davis sued, he had alleged present unequal treatment by the law's registration requirements. App.84–85.

3. On remand, both parties moved for summary judgment. The district court sided with Davis and permanently enjoined Guam from conducting a plebiscite restricted to "native inhabitants of Guam" as defined by the 2000 Plebiscite Law (with reference to the 1950 Organic Act). App.44. In reaching this result, the court determined that the Plebiscite Law violated both the Fifteenth Amendment and the Equal Protection Clause of the Fourteenth Amendment. App.60, 69–75. On the Fifteenth Amendment issue, the district court rejected defendants' argument that the plebiscite "is not an election within the meaning of the Fifteenth Amendment because 'no public official will be elected, nor will any issue of state law or policy be decided.'" App.68. It also concluded that the 2000 Plebiscite Law's definition of "native inhabitants of Guam" impermissibly used ancestry as a proxy for race to exclude non-Chamorro residents. App.60.

4. The Ninth Circuit affirmed, basing its entire decision on the Fifteenth Amendment. Like the district court, the Ninth Circuit concluded that the plebiscite constituted a "vote" under the Fifteenth Amendment. App.17–18. The Ninth Circuit relied primarily on *Terry v. Adams*, 345 U.S. 461 (1953), and *Rice v. Cayetano*, 528 U.S. 495 (2000), and extrapolated a rule that "the Amendment includes any government-held election in which the results commit a government to a particular course of action."

App.12–18. While it candidly acknowledged that Guam's plebiscite "will not, itself, create any change in the political status of the Territory" and will have only a "limited immediate impact" by obligating Guam "to transmit the results of the plebiscite," it decided that this consequence was significant enough to make the political-status plebiscite a "vote." App.13.

The Ninth Circuit then concluded that the 2000 Plebiscite Law, although facially neutral, impermissibly used "native inhabitants of Guam" as a "proxy for race." App.41. The court dismissed defendants' argument that "native inhabitants of Guam" is fundamentally a *political* classification rooted in an Act of Congress, not an ancestry- or race-based status. App.38–41. The Ninth Circuit made "no judgment about whether Guam's targeted interest in the self-determination of its indigenous people is genuine or compelling." App.41. The court thought this inquiry irrelevant because "established Fifteenth Amendment principles . . . single out voting restrictions based on race as impermissible whatever their justification." App.41.

REASONS FOR GRANTING THE PETITION

The decision below turns on a critical question that this Court has never addressed in this context: What are the limits of the Fifteenth Amendment in an advisory plebiscite implicating the self-determination of a U.S. territory?

The Ninth Circuit held that Guam's 2000 Plebiscite Law, which is effectively a targeted survey of public opinion that neither selects government officials nor directs public policy, is nonetheless a "vote" within the meaning of the Fifteenth

Amendment. That interpretation extends the reach of the Fifteenth Amendment beyond this Court's precedent, has no basis in history, and destroys Guam's ability to ask its native inhabitants about important political-status issues. All of this Court's Fifteenth Amendment precedents implicate the right to vote in traditional elections, such as those involving the selection of public officials. Those decisions neither imply nor support a holding that the term "vote" includes more than that. The history of the Fifteenth Amendment also suggests that the drafters and ratifying states understood it to affect traditional elections with direct political consequences, and indicates that the "right to vote" would not cover a nonbinding political-status plebiscite.

In addition to radically expanding the Fifteenth Amendment "right to vote," the Ninth Circuit's decision overreaches across a second dimension by adding a new protected class. The text of the Fifteenth Amendment forbids discrimination only "on account of race, color, or previous condition of servitude." U.S. Const. amend. XV, § 1. Guam's 2000 Plebiscite Law uses a category of people defined by reference to, and incorporation of, a political status conferred by an Act of Congress in 1950: the Organic Act of Guam. 1 Guam Code Ann. § 2102(b). Yet the Ninth Circuit held that "native inhabitants of Guam" is an impermissible proxy for race. Its decision thus broadens the classifications protected by the Fifteenth Amendment and eviscerates Guam's ability to hear from a category of people who have never been permitted to exercise their right to self-determination.

This Court should grant certiorari to clarify the scope of the Fifteenth Amendment and reject the Ninth Circuit's unprecedented expansion of Fifteenth Amendment protections. Guidance from this Court on these important issues will bring much-needed clarity to the law and ensure proper, consistent enforcement of the Fifteenth Amendment.

I. The Court Should Grant Certiorari To Reverse The Ninth Circuit's Novel Extension Of The Fifteenth Amendment "Right To Vote."

A. The Ninth Circuit Erred in Holding that a Nonbinding Political-Status Plebiscite Is a "Vote" for Purposes of the Fifteenth Amendment.

The Ninth Circuit erred in extending the Fifteenth Amendment "right to vote" beyond the text and purpose of the Amendment and the precedent of this Court. To date, decisions in the Fifteenth Amendment context have naturally arisen in (and addressed) only traditional voting issues, such as the selection of public officials and participation in general elections. Indeed, the Court's clearest statement of what counts as a vote—"any election in which public issues are decided or public officials selected"—comes from a case involving the election of state officials who "compose[d] the governing authority of a state agency." *Rice*, 528 U.S. at 498–99, 523; *see also id.* at 514. Existing precedent thus fails to answer the dispositive question here: Whether the Fifteenth Amendment "right to vote" covers a nonbinding political-status plebiscite that has no direct legal consequence and simply provides information about

the self-determination preferences of a segment of the populace. This case thus presents a clean opportunity to reconcile almost 150 years of case law and clarify the boundaries of the Fifteenth Amendment "right to vote," including whether a mere poll of public opinion is a "vote."

From the very beginning, this Court's Fifteenth Amendment jurisprudence has developed in the context of the "right to vote" in traditional elections with direct political consequences. In 1875, five years after ratification, *Minor v. Happersett* relied in part on the Fifteenth Amendment in rejecting the Fourteenth Amendment claim of a woman who wished to vote "for electors for President and Vice-President of the United States, and for a representative in Congress, and for other officers," but was precluded from doing so by a state statute restricting the franchise to men. 88 U.S. 162, 163 (1875).[1] The Court noted that the Fifteenth Amendment would have been unnecessary had the Fourteenth Amendment created an affirmative right to vote. *Id.* at 175. The very next year, *United States*

[1] This Court referenced the Fifteenth Amendment in four cases before *Minor*, but those cases were not resolved on Fifteenth Amendment grounds. *See Hornbuckle v. Toombs*, 85 U.S. (18 Wall.) 648, 656 (1874) (mentioning the Fifteenth Amendment only in passing); *Wash., Alexandria & G.R.R. Co. v. Brown*, 84 U.S. (17 Wall.) 445, 447 (1873) (mentioning the Fifteenth Amendment only in passing in the statement of the case, not in the Court's opinion); *The Slaughter-House Cases*, 83 U.S. (16 Wall.) 36, 71 (1873) (discussing the historical context of the Fifteenth Amendment and noting that black citizens "could never be fully secured in their person and their property without the right of suffrage"); *White v. Hart*, 80 U.S. (13 Wall.) 646, 648 (1872) (mentioning the Fifteenth Amendment only in passing).

v. Reese rejected a criminal indictment accusing two election officials of "refusing to receive and count . . . the vote of [a black] citizen," 92 U.S. 214, 215 (1875), in a municipal election "for members of the . . . city council," *id.* at 224 (Clifford, J., concurring). The Court held that the enabling statute exceeded Congress's authority under the Fifteenth Amendment. *See id.* at 217–18.

Less than a decade later, the Court approved the validity of an indictment alleging that several individuals had assaulted a black man for exercising his "right and privilege of suffrage in the election of a lawfully qualified person as a member of the [C]ongress of the United States of America." *Ex parte Yarbrough*, 110 U.S. 651, 656 (1884); *see also id.* at 656–67. And in 1915, the Court held in *Guinn v. United States* that an amendment to Oklahoma's state constitution imposing a combined literacy test and grandfather clause was "void in so far as it attempted to debar [qualified black citizens] from the right or privilege of voting for a qualified candidate for a member of Congress in Oklahoma." 238 U.S. 347, 356–57, 368 (1915).

So too for this Court's decisions from the mid-twentieth century. Those cases articulated a broader view of *who* must comply with the Fifteenth Amendment (*i.e.*, quasi-governmental political organizations), but they did not expand *what kinds* of "votes" the Amendment covers beyond the traditional election-centric categories. *Smith v. Allwright*, for example, held that the Democratic Party of Texas could not exclude black voters from voting in primaries for "nominees for a general election." 321

U.S. 649, 664–65 (1944). And *Terry v. Adams*, one of the two main cases that the Ninth Circuit relied upon below, similarly required a dominant political association to open its primary elections to black voters. 345 U.S. 461, 469–70 (1953) (plurality opinion). Neither case broadened the Fifteenth Amendment's scope beyond the selection of political officials or suggested that the Fifteenth Amendment applies to any variety of census, poll, advisory referendum, or survey. In fact, both decisions stressed the significant political ramifications of the relevant elections. *See id.* at 469 ("The only election that has counted in this Texas county for more than fifty years has been that held by the [political association] . . . ."); *id.* at 484 (Clark, J., concurring) (explaining that the association was "the decisive power in the county's recognized electoral process"); *Smith*, 321 U.S. at 664 (noting that the primary election was "part of the machinery for choosing officials, state and national").

This Court's more recent precedents likewise do not support expanding the Fifteenth Amendment "right to vote" beyond traditional elections. *Rice*, the other case that the Ninth Circuit heavily cited below, concerned the selection of Hawaiian public officials who managed state finances. 528 U.S. at 498–99. The Court emphasized that the "vote" in that case was directly related to the election of quasi-public officials: "[I]t is . . . apparent that [the agency] remains an arm of the State." *Id.* at 521. And *Rice* repeatedly stressed the practical consequences of the Hawaiian election. For example, the Court explained that "a State [may not] fence out whole classes of its citizens from *decisionmaking in critical state affairs*," and that "[a]ll citizens, regardless of race, have an interest in

selecting officials who make policies on their behalf." *Id.* at 522–23, 535 (emphases added). Nothing in the opinion indicates that the Fifteenth Amendment covers more than concrete political choices.

To be sure, this Court's Fifteenth Amendment jurisprudence also includes decisions concerning general race-based obstacles to voting in traditional elections, including discriminatory voting qualification or registration requirements. *See generally, e.g.*, *Louisiana v. United States*, 380 U.S. 145 (1965) (voter-registration tests); *Gomillion v. Lightfoot*, 364 U.S. 339 (1960) (municipal boundaries); *United States v. McElveen*, 180 F. Supp. 10 (E.D. La. 1960) (purge of voter-registration rolls), *aff'd sub nom. United States v. Thomas*, 362 U.S. 58 (1960) (per curiam); *Lane v. Wilson*, 307 U.S. 268 (1939) (voter-registration time limits); *Myers v. Anderson*, 238 U.S. 368 (1915) (voter qualifications). But while those cases clarify that the Fifteenth Amendment is not limited to election-day harms, they do not expand *what kinds* of "votes" the Amendment covers. Indeed, the laws at issue in those cases plainly impaired the ability of black citizens to vote in the type of traditional political elections at the core of the Fifteenth Amendment "right to vote." *See, e.g.*, *Louisiana*, 380 U.S. at 148–49 (discussing the primary system and, in particular, the Democratic Party primary election); *Gomillion*, 364 U.S. at 341 (right to vote in municipal elections); *Myers*, 238 U.S. at 375–77 (same); *Lane*, 307 U.S. at 270–71 & n.1 (registration for Oklahoma's general election); *McElveen*, 180 F. Supp. at 12 (voter-registration requirements applicable to "any election in the State of Louisiana").

The Court's reasoning matches its election-centric jurisprudence. Several cases imply that the Fifteenth Amendment is most concerned with traditional elections that have direct political ramifications. For example, in twin 1875 decisions—fresh in the wake of the Fifteenth Amendment's 1870 ratification—the Court described the Fifteenth Amendment as prohibiting "discrimination *in the exercise of the elective franchise*." *United States v. Cruikshank*, 92 U.S. 542, 543 (1875) (emphasis added); *see also Reese*, 92 U.S. at 218 (referring to the right the Fifteenth Amendment protects as "exemption from discrimination *in the exercise of the electoral franchise*" (emphasis added)); *id.* at 220 (similar).[2] Notably, the majority in *Reese* declined to adopt the broader view espoused in Justice Hunt's dissenting opinion—*i.e.*, that the Fifteenth Amendment protects the right to vote "not at specified elections or for specified officers, not for Federal officers or for State officers, but the right to vote in its broadest terms." *Id.* at 248 (Hunt, J., dissenting). Tellingly, however, even Justice Hunt's "broadest terms" did not stretch the Fifteenth Amendment beyond elections; instead, his conception of "the right to vote in its broadest terms" was broad only *within* the context of traditional elections: he would have held the Amendment applied to all "elections held for state or municipal as well as for federal officers . . . at all elections by the people,—

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[2] This early formulation is consistent with later Fifteenth Amendment decisions. *See, e.g.*, *McPherson v. Blacker*, 146 U.S. 1, 38 (1892) ("The fifteenth amendment exempted citizens of the United States from discrimination in the exercise of the elective franchise . . . .").

state, county, town, municipal, or of other subdivision." *Id.* at 248–49.

More recent decisions have a similar theme. Both the *Terry* plurality and *Rice* majority described the Fifteenth Amendment "right to vote" in terms of "election[s] in which public issues are *decided* or public officials *selected*." *Terry*, 345 U.S. at 468 (emphases added); *see also id.* at 467 (forbidding "discriminat[ion] against . . . voters in elections to *determine* public governmental policies or to *select* public officials" (emphases added)); *Rice*, 528 U.S. at 514, 523.

Relatedly, this Court has often framed the importance of voting rights around the need to select public officials. For example, *Yarbrough* explained that "[i]t is . . . essential to the successful working of [a republican] government that the great organisms of its executive and legislative branches should be the free choice of the people." 110 U.S. at 666. And *Smith* similarly emphasized that "[t]he United States is a constitutional democracy [whose] law grants to all citizens a right to participate *in the choice of elected officials* without restriction . . . because of race." 321 U.S. at 664 (emphasis added); *cf. United States v. Classic*, 313 U.S. 299, 317 (1941) (explaining that Congress's power over federal elections includes the power to "regulate primary elections when . . . they are a step in the exercise by the people of their choice of representatives"); *Reynolds v. Sims*, 377 U.S. 533, 555 (1964) ("The right to vote freely for the candidate of one's choice is of the essence of a democratic society . . . ."). Simply stated, "voting" is of constitutional significance precisely because it has concrete political consequences.

In sum, this Court's decisions support the most plausible reading of the Fifteenth Amendment's text, purpose, and history: that it applies only to "votes" with direct political consequences. Existing precedent offers no support for the Ninth Circuit's ruling that a nonbinding political-status plebiscite that neither selects government officials nor determines public policy is a "vote" within the meaning of the Fifteenth Amendment. That extension of the Fifteenth Amendment warrants certiorari review.

B. Historical Context Confirms that a Nonbinding Political-Status Plebiscite Is Not a "Vote."

History further supports what this Court's jurisprudence directs: a nonbinding political-status plebiscite is not a "vote" under the Fifteenth Amendment. The political discourse surrounding the creation and ratification of the Fifteenth Amendment contained two recurring themes: (1) the preservation of Republican strength through the enfranchisement of black voters, and (2) the goal of giving black voters electoral power in their states and communities. *See* William Gillette, *The Right to Vote: Politics and the Passage of the Fifteenth Amendment* 22, 47–50, 74, 77–78, 165 (1965); *cf.* Earl M. Maltz, *The Coming of The Fifteenth Amendment: The Republican Party And The Right To Vote In The Early Reconstruction Era*, 69 Cath. U. L. Rev., 4–5 (2019) (forthcoming). This historical context—which the Ninth Circuit overlooked—reinforces that the "right to vote" is concerned only with elections that have tangible political effects.

In the months before the ratification of the Fifteenth Amendment, the voting rights of black Americans across the nation were inconsistent and unstable. By 1869, blacks could vote in just a few northern states, but (because of recent federal statutes) could vote in the former-confederate states. *See* Gillette, *supra*, at 26–27, 80; *see also* Gabriel J. Chin, *Reconstruction, Felon Disenfranchisement and the Right to Vote: Did the Fifteenth Amendment Repeal Section 2 of the Fourteenth Amendment?*, 92 Geo. L.J. 259, 270–71 (2004). This patchwork situation created incentives for a heavily Republican Congress to pass a constitutional amendment forbidding racial discrimination in voting. On one hand, nationwide enfranchisement would shore up Republican power in northern states, many of which had recently refused to voluntarily enfranchise black Americans. *See* Gillette, *supra*, at 26–27, 46–48, 80. And on the other, a constitutional amendment would permanently entrench race-neutral voting rights in the South and insulate enfranchisement laws from repeal by a future pro-confederacy Congress. *See id.* at 44, 49, 52, 73; *cf.* Chin, *supra*, at 272.

Contemporaneous statements by politicians and the public alike confirm that the pragmatic desire motivating the Fifteenth Amendment was to let black citizens cast meaningful ballots in elections. In congressional debates, for example, politicians emphasized that the Republican party "need[ed] votes in Connecticut . . . [and] Pennsylvania," Gillette, *supra*, at 48, and that the "loyal state governments in the South" created during reconstruction "would collapse without loyal [black] voters to support [them]," *id.* at 50. Newspapers echoed these

observations, explaining that "where [black] men vote, there the cause of Republicanism is entirely safe," and that black suffrage "would make [several Northern] states safely Republican." *Id.* at 43.

The nationwide ratification debates also focused heavily on the same practical and "strategic" consequences of giving black Americans influence over concrete political decisions. *Id.* at 79–80; *see also id.* at 159; *cf. id.* at 81 (noting that the debates were "the same in . . . substance . . . throughout the country"). In the former confederacy, for example, many legislatures readily adopted the Fifteenth Amendment precisely because it *did not* appear to dramatically alter the political status quo. *Id.* at 92–93, 103. Congress had already expanded the franchise by federal statute in these states, so "[w]hite southerners from every political faction believed that the Fifteenth Amendment did not have a practical effect in the South." *Id.* at 93. Moreover, the sporadic commentary on the Amendment's potential effect often focused on political power. For example, the Republican Governor of North Carolina "urged ratification primarily because a guarantee . . . would be placed in the federal constitution, 'where no future change or convulsion [could] destroy it.'" *Id.* at 93 (citation omitted). And some Republicans who objected to the Amendment did so because they thought it did not do enough to secure real influence for black Americans, given that it neither conferred a right to hold office nor banned poll taxes and literacy tests. *Id.* at 94, 102.

Similarly, the reactions of southern Democrats often turned on simple questions of political power.

Some thought that the Amendment could be turned to the Democratic Party's advantage because "force and bribery would bring [black] voters into the Democratic camp." *Id.* at 95. Others thought that the Amendment would be irrelevant because Congress would not enforce it, *id.*, or because states could still bar black Americans from office and impose property, tax, and education requirements, *id.* at 98.

Parallel pragmatic themes echoed across the country, including in the border states, the mid-Atlantic region, and the American west. In the border states, Democrats often opposed the Fifteenth Amendment because it threatened to "change the balance of power," *id.* at 105; *cf. id.* at 109, while some Republicans saw it as an opportunity "to preserve Republican control . . . and secure domination," *id.* at 106, 108. In the mid-Atlantic, "[p]oliticians of both parties recognized the practical effect of the enfranchisement of [black voters]." *Id.* at 113; *cf. id.* at 126, 130. Mid-Atlantic newspapers also discussed "the balance of power" and "the practical effect of ratification." *Id.* at 114–15. The "whole effect of this Fifteenth Amendment," declared one paper, "is merely to confer the ballot upon [black Americans] scattered through the Northern States." *Id.* at 115. Accordingly, Democrats vigorously fought ratification in several of these states. *Id.* at 116–17, 124–25. In the Midwest, Republicans weighed the political risks of ratification against the prospects of enfranchising new Republican voters, *id.* at 132–33, 138–40, 146, while Democrats wanted to preserve the political status quo, *see id.* at 133, 147. And on the west coast, some Republicans claimed that opposition to

ratification was motivated by Democratic desire to "keep . . . control of the legislature." *Id.* at 156.

Finally, additional historical evidence shows that the Fifteenth Amendment "right to vote" refers only to traditional elections with direct political consequences. In 1867, Congress enacted several conditions for former-confederate states to satisfy before they could resume participation in the federal government. *See generally* The Military Reconstruction Act of 1867, 14 Stat. 428–29 (Mar. 2, 1867). Relevant here, the former-confederate states were required to draft new constitutions "provid[ing] that the elective franchise shall be enjoyed by all such persons" "of whatever race, color, or previous condition [of servitude]" and submit these constitutions for congressional approval. 14 Stat. 429, § 5. To comply with this federal mandate, several states adopted constitutions that framed voting rights in terms of concrete political choices. South Carolina's constitution, for example, provided that "every [qualified] inhabitant . . . shall have an equal right *to elect officers* and be elected to fill public office." S.C. Const. Art. 1, § 31 (Apr. 16, 1868) (emphasis added). This phrasing confirms that the "right to vote" was understood as the right to participate in concrete political decisionmaking.

In short, the Fifteenth Amendment's history is deeply intertwined with concerns of practical political power. While some politicians and members of the public who supported the Amendment surely were motivated by loftier goals of social equality rather than pure expediency, *see, e.g.*, Gillette, *supra*, at 81, 85, the overriding theme of contemporaneous political

debate was the practical consequences for future elections. In light of this historical understanding, it was incorrect to assume—as the Ninth Circuit did—that the "right to vote" extends to *any* government assessment of public opinion, even if it is purely advisory and informative.

II. The Court Should Grant Certiorari To Reverse The Ninth Circuit's Decision That Forbids Guam From Relying On A Political Classification.

By its terms, the Fifteenth Amendment forbids discrimination "on account of race, color, or previous condition of servitude." U.S. Const. amend. XV, § 1. Guam's 2000 Plebiscite Law concerns none of these classifications. Rather, the law draws distinctions based solely on *political* status: the term "native inhabitants of Guam" includes individuals (and their descendants) who became U.S. citizens in 1950 by virtue of an Act of Congress. 1 Guam Code Ann. § 2102(b). Despite this clear-cut political classification based on a category of people memorialized in time by a transformational Act of Congress, the Ninth Circuit held that the definition of "native inhabitants of Guam" was a race-based distinction that triggered fatal Fifteenth Amendment scrutiny. This conclusion conflicts with both this Court's voting precedents and Guam's political history.

Critical here is an accurate understanding of what the political-status plebiscite seeks to accomplish. The prospective participants ("native inhabitants of Guam") represent a historically, politically, and socially distinct class of individuals—a class that has endured nearly 500 years of colonial

occupation, suffered Japanese occupation in World War II, and, most recently, exists at the political whims of the U.S. government. Indeed, "native inhabitants of Guam" is a class of people defined *entirely by reference to a law imposed by Congress*. 1 Guam Code Ann. § 2102(b).

Despite this clear historical and political context, the Ninth Circuit's decision below effectively nullifies these shared political experiences and erases nearly half a millennium of history. It is not enough, according to the Ninth Circuit, that the "native inhabitants of Guam" are connected by a common history of colonialization and a shared political identity forced upon them by the federal government. Instead, the Ninth Circuit equated this carefully drawn and targeted class of people to the most pernicious cases of race-based line-drawing. That conclusion badly misunderstands both the law and Guam's political history. Worse yet, it puts Guam's native inhabitants in an impossible position. On one hand, these inhabitants lack fundamental political rights and protections because of their tenuous relationship with the United States. Although they are nominally U.S. citizens, they cannot vote for federal political leaders or exert direct influence over the federal government that controls them. But on the other, they cannot join together as a political body to express their opinions on the status quo or the territory's future political relationship with the United States. This Court should step in to restore balance to the situation by clarifying the longstanding rule that the Fifteenth Amendment does not apply to classifications based on political status.

As a preliminary matter, this Court has never held that the Fifteenth Amendment prohibits discrimination on the basis of political status. After all, the plain language of the Amendment addresses only "race, color, or previous condition of servitude." U.S. Const. amend. XV, § 1. Political status is not on this list, so governments presumably may discriminate on that basis. *See City of Mobile v. Bolden*, 446 U.S. 55, 62 (1980) (plurality opinion) ("[R]acially discriminatory motivation is a necessary ingredient of a Fifteenth Amendment violation."); *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 217 (2009) (Thomas, J., concurring) ("The Fifteenth Amendment . . . renders unconstitutional any federal or state law that would limit a citizen's access to the ballot *on one of the three bases enumerated* in the Amendment." (emphasis added)).

Longstanding precedent confirms that the Fifteenth Amendment protects only against enumerated forms of discrimination. *Reese*, for example, rejected the criminal indictment of two election officials who had been charged under a federal voting-rights law that was not explicitly limited to the enumerated forms of discrimination. 92 U.S. at 216–17. Because the statute was broader than the Amendment, this Court held that it was not "appropriate legislation" under Congress's Fifteenth Amendment enforcement power. *Id.* at 218–22; *see also* U.S. Const. amend. XV, § 2. *Cruikshank* likewise rejected an indictment charging several individuals with assaulting black voters because it failed to allege "that the intent of the defendants was to prevent [the victims] from exercising their right to vote *on account of their race*." 92 U.S. at 556 (emphasis added). And

more recently, this Court has approved "literacy test[s given] to all voters irrespective of race or color." *Lassiter v. Northampton Cty. Bd. of Elections*, 360 U.S. 45, 50 (1959).

To be sure, classifications beyond those listed in the Fifteenth Amendment—such as political categories and ancestry—may occasionally be impermissible "prox[ies]" for race. *See Rice*, 528 U.S. at 514–15. But despite the Ninth Circuit's best efforts to link the Plebiscite Law's political basis to a racial classification, there is no such proxy here. *See* App.33 (deciding that the Plebiscite Law "can only be sensibly understood as a proxy for . . . racial classification"); App.37–40. Rather, any link between politics and race is a byproduct of *Congress's* historical decision to confer citizenship on a particular group of people, and not the result of present invidious discrimination by Guam lawmakers. In other words, although race and political status may overlap for the majority of "native inhabitants of Guam," that connection is incidental and unavoidable because of Guam's unique past and political relationship with the United States. *Cf. Rice*, 528 U.S. at 515 ("'[R]acial discrimination' is that which singles out 'identifiable classes of persons . . . *solely* because of their ancestry or ethnic characteristics.'" (emphasis added; ellipses in original) (quoting *Saint Francis Coll. v. Al-Khazraji*, 481 U.S. 604, 613 (1987))). Indeed, that connection was *created by* an Act of Congress.

This case is nothing like those in which this Court has identified unlawful racial proxies. *Guinn*, for example, struck down Oklahoma's literacy test, which exempted individuals (and their descendants) who

could vote "on January 1, 1866"—"a date which preceded the adoption of the 15th Amendment." 238 U.S. at 357, 363. The Court stressed that the *only possible reason* for the 1866 cutoff was "the continuance of [the conditions] which the 15th Amendment prohibited." *Id.* at 365. Specifically, the Court was "unable to discover how, unless the prohibitions of the 15th Amendment were considered, the *slightest reason* was afforded for basing the classification upon a period of time prior to the 15th Amendment." *Id.* (emphasis added).

In contrast to the pernicious 1866 cutoff in *Guinn*, the year 1950 has an overwhelmingly *non-racial* significance: it is when thousands of Guam's residents first became U.S. citizens by an Act of Congress. Because these are the very same people who have "never been afforded" the "inalienable right to self-determination, . . . having themselves been overtaken by Spain, and then ceded by Spain to the United States of America during a time of war, without any consultation," 3 Guam Code Ann. § 21000, it makes perfect sense to use 1950 as a benchmark to allow those people to express their political preferences. There is no more appropriate way for Guam to empower those that have been systematically ignored.

Beyond their special political relationship to the United States by virtue of the Organic Act, these "native inhabitants of Guam" share additional non-racial characteristics. For example, the 1950 inhabitants had long lived under colonial management, and they had recently experienced Japanese occupation during World War II. In light of all these significant political markers, it beggars belief

to say that Guam's decision to use the 1950 Organic Act as a reference point is akin to "transparent racial exclusion[s]." *Rice*, 528 U.S. at 513 (citing *Guinn*, 238 U.S. at 364–65).

A simple hypothetical illustrates the point. Imagine that if in 1951, one year after the Organic Act, Congress decided to survey the people to whom it had just granted citizenship to see whether they were satisfied with the arrangement. Under the Ninth Circuit's view of the Fifteenth Amendment, Congress could not do so. This bizarre result creates a paradox: governments may create distinct political groups, but must then immediately cease to recognize them.

Comparison to other Fifteenth Amendment precedents further confirms that the political group captured by the Plebiscite Law is not a racial gerrymander. In *Gomillion*, for example, the Court reversed the dismissal of a claim that the Alabama legislature had "alter[ed] the shape of [a city] from a square to an uncouth twenty-eight-sided figure" to cut out black voters. 364 U.S. at 340. Although this action did not explicitly deny the right to vote based on race, the Court explained that "statutes that . . . *obviously discriminate* against colored citizens" may still be unconstitutional. *Id.* at 342 (emphasis added). Indeed, Alabama had "*never suggested* . . . any countervailing municipal function which [the redistricting was] designed to serve." *Id.* (emphasis added). And in *Lane*, the Court rejected Oklahoma's decision to give previously unregistered voters—*i.e.*, predominately black voters—just twelve days to register in the aftermath of the Court's earlier invalidation of the state's grandfather clause. 307

U.S. at 271, 276–77. *Lane* emphasized that, under these circumstances, there was "*no escape* from the conclusion that the means chosen as substitutes for the invalidated 'grandfather clause' were themselves invalid." *Id.* at 277 (emphasis added). The plainly invidious laws of *Gomillion* and *Lane* are nothing like the carefully crafted political classification here.

Finally, analogous decisions in the due-process context underscore that political classifications are acceptable even if they incidentally overlap with racial markers. For example, this Court in *Morton v. Mancari* upheld a statutory provision "accord[ing] an employment preference for qualified Indians in the Bureau of Indian Affairs," and expressly rejected the argument that the "preference constitutes invidious racial discrimination." 417 U.S. 535, 537, 551, 553 (1974). The Court explained that the program was "not even a 'racial' preference" in the first place, because it was "not directed towards a 'racial' group consisting of 'Indians'" and "instead . . . applie[d] only to members of 'federally recognized' tribes . . . . In this sense, *the preference [was] political rather than racial in nature*." *Id.* at 553 n.24 (emphasis added). Simply put, the government may sometimes permissibly single out political classes for special treatment, even when the selected group is strikingly similar to a racial bloc.

Rather than employ these principles, the Ninth Circuit held that a few facts, plucked out of context, show racial-discrimination-by-proxy. But none of this evidence so obviously establishes a violation of the Fifteenth Amendment to warrant summary judgment. Indeed, the Ninth Circuit looked at *other* Guam

statutes that supposedly use "express racial classification[s]." App.33. Specifically, the Registry Act, which "established an official list of 'Chamorro people,'" "tied the definition of Chamorro to the race-neutral language of the Organic Act," and laws governing the Chamorro Land Trust Commission defined "Native Chamorro" to include "any person who became a U.S. citizen [because] of the Organic Act of Guam or descendants of such person." App.35. Similarly, the court cited an earlier, since-repealed-and-replaced version of the Plebiscite Law, which "called for a plebiscite limited to the 'Chamorro people of Guam.'" App.35. But just because *some* statutes define a racial group in terms of a political event does not mean that *every* statute that references the same political event is inextricably linked to race and fatally flawed under the Fifteenth Amendment.

The Ninth Circuit also emphasized the "timing of the 2000 Plebiscite Law's enactment," App.38, noting that Guam finalized the new version of the law, which omitted reference to the Chamorro people, "just one month" after this Court held in *Rice* that Hawaii could not limit participation in the election of public officials to "descendant[s] of the aboriginal peoples inhabiting the Hawaiian Islands . . . in 1778, and which peoples thereafter have continued to reside in Hawaii," 528 U.S. at 509 (quoting Haw. Rev. Stat. § 10-2 (1993)). According to the Ninth Circuit, this timing is proof positive that the Guam legislature intended to evade *Rice*. But that is pure speculation. The more likely explanation is that the Guam legislature decided that the better focus of a potential political-status plebiscite about the island's political relationship with

the United States was the distinct political class of residents most affected by that relationship.

In sum, the decision below effectively precludes Guam from *ever* passing a law that references the class of U.S. citizens created by the 1950 Organic Act. This is unprecedented, extends the Fifteenth Amendment far beyond its text, history, and existing jurisprudence, and improperly makes a transformative event in the island's history categorically off-limits.[3]

III. This Case Presents An Exceptionally Important Question And Is An Ideal Vehicle.

This Court gets few opportunities to explore the outer bounds of the Fifteenth Amendment, and this case presents a clean opportunity and maximum flexibility to provide much-needed guidance. Indeed, the correct resolution is critical to Guam's political future.

In most cases involving the Fifteenth Amendment, any Fifteenth Amendment issue is

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[3] After deciding that the 2000 Plebiscite Law creates a race-based classification, the Ninth Circuit struck down the law without considering whether it could satisfy strict scrutiny. The court relied on a single quote from *Rice*—that "[t]here is *no room* under the Amendment for the concept that the right to vote in a particular election can be allocated based on race," App.18 (quoting *Rice*, 528 U.S. at 523)—to conclude that "[t]he Fifteenth Amendment's prohibition on race-based voting restrictions is both fundamental and absolute," so "the levels of scrutiny applied to other constitutional restrictions are not pertinent," App.18. But *Rice* said nothing of the sort; indeed, its language is similar to this Court's description of other rights amenable to a scrutiny-based analysis. This presents yet another reason to grant certiorari.

hopelessly entangled with Fourteenth Amendment, Voting Rights Act, or other claims that may render it an afterthought. *See* Maltz, *supra*, at 2; *cf. Smith*, 321 U.S. at 658 (noting cases decided just on Fourteenth Amendment grounds). This case, however, contains no distractions. The decisions below cleanly resolved the Fifteenth Amendment claim, and this issue is outcome-determinative because the Ninth Circuit ruled only on Fifteenth Amendment grounds. App.1–2 & n.1.

As an additional benefit, this case also includes several Fifteenth Amendment issues in one neat package. The Ninth Circuit expansively defined the term "vote" and decided that a political classification is a racial one. It also held that Fifteenth Amendment scrutiny is absolute. *See supra* n.3. This court can address any (or all) of these issues in this case.

For example, even if the Court agrees that the Plebiscite Law calls for a "vote" and contains a race-based classification, the Court should hold the law still satisfies constitutional scrutiny. The law clearly furthers a "compelling state interest" in allowing native inhabitants—who have long been excluded from the governance of their own home—to finally express their political preferences. This is the sort of interest alluded to in *Cipriano v. City of Houma*, which left open whether, "in some circumstances," a state might "constitutionally limit the franchise to qualified voters who are . . . 'specially interested' in the election." 395 U.S. 701, 704 (1969) (citation omitted). Guam's singular past makes its native inhabitants "specially interested" in communicating their views about the territory's relationship with the United

States. And the law is narrowly tailored: Guam cannot determine the political preferences of its native inhabitants without identifying and asking these individuals.

* * *

The right to self-determination is fundamental to democracy. Yet because of centuries of colonialism, this "right has never been afforded [to] the native inhabitants of Guam." 3 Guam Code Ann. § 21000. The decision below perpetuates that oppressive history and continues to deny Guam's native inhabitants a voice in their political future. This Court should grant certiorari, restore the Fifteenth Amendment to its proper scope, and permit Guam to vindicate its native inhabitants' expressive rights to self-determination through political-status plebiscite.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for certiorari.

Respectfully submitted,

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