

Nos. 21-1086, 21-1087

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In the Supreme Court of the United States

JOHN H. MERRILL, *et al.*,

*Appellants,*

v.

EVAN MILLIGAN, *et al.*,

*Appellees.*

JOHN H. MERRILL, *et al.*,

*Petitioners,*

v.

MARCUS CASTER, *et al.*,

*Respondents.*

On Appeal from the United States District Court for the  
Northern District of Alabama

**BRIEF FOR ALABAMA HISTORIANS AS *AMICI*  
*CURIAE* SUPPORTING APPELLEE-RESPONDENTS**

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## INTEREST OF *AMICI CURIAE*

*Amici* are historians and scholars who have spent their careers studying the history of Alabama and the making of the modern South. *Amici* file this brief to assist the Court in understanding why Alabama’s Black Belt region constitutes an important and discrete “community of interest”—with shared historical, geographical, cultural, and socioeconomic identities—that Plaintiffs’ experts appropriately gave priority in proposing alternative districting plans for Alabama.

A full list of *amici* can be found in the Appendix.<sup>1</sup>

## INTRODUCTION AND SUMMARY OF ARGUMENT

To assert a vote-dilution claim, a plaintiff must show, among other things, that the minority group whose vote allegedly is being diluted is “sufficiently large and geographically compact to constitute a majority in a single-member district.” *Thornburg v. Gingles*, 478 U.S. 30, 50 (1986).<sup>2</sup> This criterion “requires the possibility of creating more than the

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<sup>1</sup> Counsel for all parties filed blanket consents to the filing of *amicus* briefs in these consolidated cases. No party’s counsel wrote this brief in whole or in part; no party’s counsel contributed money for this brief’s preparation or submission; and no person or entity—other than *amici* and their counsel—contributed money for this brief’s preparation or submission.

<sup>2</sup> *Gingles* established three conditions that a plaintiff must satisfy to prove a vote-dilution claim: that (1) the minority group is “sufficiently large and geographically compact”; (2) that it is “politically cohesive”; and (3) that the “white majority votes sufficiently as a bloc to enable it ... usually to defeat the minority’s preferred candidate.” 478 U.S. at 50-51. This brief addresses only the first *Gingles* factor.

existing number of reasonably compact [majority-minority] districts,” while also “tak[ing] into account ‘traditional districting principles,’” including “maintaining communities of interest and traditional boundaries.” *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 430, 433 (2006) (*LULAC*) (quoting *Johnson v. De Grandy*, 512 U.S. 997, 1008 (1994) and *Abrams v. Johnson*, 521 U.S. 74, 92 (1997)). Plaintiffs assert that Alabama’s redistricting plan improperly dilutes the votes of Black Alabamians by “packing” a large portion of the Black voting age population into a single district, and “cracking” the remainder across several other districts. They argued in the district court that Alabama could have drawn a second majority-Black voting district in Alabama’s Black Belt region while also balancing traditional districting criteria. MSA 39 (PI Op.). Plaintiffs’ experts offered several illustrative maps during the proceedings below showing just such alternative districting plans. MSA 41 (PI Op.).

The State of Alabama asserts that Plaintiffs improperly considered only race when crafting their alternative districting plans by setting out to create two majority-minority districts, while subordinating all other traditional redistricting considerations, including maintaining “communities of interest” and traditional districts. App. Br. 30-31. A “community of interest” is a term of art defined by the Alabama Legislature’s redistricting guidelines as “an area with recognized similarities of interests, including but not limited to ethnic, racial, economic, tribal, social, geographic, or historical identities.” MSA 48 (PI Op.). Keeping communities of interest together ensures that voters “with recognized similarities of interests”

are able to express those preferences at the ballot box.  
*Id.*

One significant area of disagreement between the parties is the extent to which Alabama's Black Belt region—a majority Black part of the State—ought to be given priority as a “community of interest” in delineating Alabama's voting districts. MSA 174 (PI Op.). Defendants' witnesses agreed at the preliminary injunction hearing that the Black Belt constitutes a community of interest, JA279 (Hinaman Dep.), JA752 (Bryan Testimony), but Defendants seek to deemphasize the Black Belt compared to other majority-white areas of Alabama. In particular, the State argues that the district court erred in allowing Plaintiffs to keep the Black Belt together at the expense of splitting up other communities across districts, including parts of Mobile County in the Gulf Coast region of the State. App. Br. 60; *see also* MSA 164 (PI Op.).

Plaintiffs argued—and the district court agreed—that the Black Belt region itself is a critical community of interest that warranted priority. MSA 175 (PI Op.). The district court concluded, after considering the parties' extensive evidence, that

[t]he Black Belt stands out . . . quite clearly [as] a community of interest of substantial significance. . . . ‘The Black voters in the Black Belt share a rural geography, concentrated poverty, unequal access to government services, and lack of adequate healthcare.’

*Id.* The court rejected the State's argument that Mobile and Baldwin Counties could not be split

consistent with traditional redistricting criteria. MSA 180 (PI Op.).

The district court got it right. Residents of the Black Belt share myriad “similarities of interest,” including a common history stretching back to Alabama’s earliest days and shared racial and socioeconomic identities. The community shares a unique history going back two centuries. That history has deep roots in slavery and tenant farming, and includes shared experiences such as navigating economic disruption due to outward migration to urban areas, lack of education and access to basic services, and myriad forms of discrimination, subjugation, and rights denial. Indeed, the seedlings of the nation’s civil rights movement, including the very passage of the Voting Rights Act at issue in this case, were cultivated in Alabama’s Black Belt. Moreover, these significant historical ties and commonalities extend to areas of Mobile County, including the city of Mobile, which is deeply linked with the Black Belt community by both heritage and lived experience.

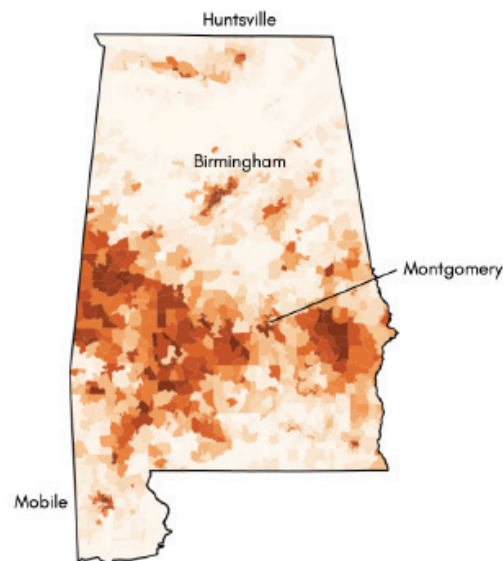
Plaintiffs’ proposed plans may emphasize *different* communities of interest than the State’s plans, but Plaintiffs cannot be said to have failed to respect “communities of interest” by proposing districting plans that keep Black Belt communities together. Voters in the Black Belt share not only racial similarities but also unique, nonracial similarities that make them an important community of interest. Respecting this community of interest was reasonable and consistent with traditional districting principles, in satisfaction of *Gingles*’ requirement of “reasonabl[e] compact[ness].” *LULAC*, 548 U.S. at 430.

## ARGUMENT

### I. THE BLACK BELT IS A COMMUNITY OF INTEREST JOINED BY SOCIOECONOMIC, POLITICAL, AND GEOGRAPHIC FACTORS

The Black Belt runs straight across the State of Alabama. The precise boundaries of the region are a matter of some debate. But the parties agree that the Black Belt includes, at a minimum “the core counties of Barbour, Bullock, Butler, Choctaw, Crenshaw, Dallas, Greene, Hale, Lowndes, Macon, Marengo, Montgomery, Perry, Pickens, Pike, Russell, Sumter, and Wilcox,” and that “Clarke, Conecuh, Escambia, Monroe, and Washington counties are sometimes included within the definition of the Black Belt.” JA155-156 (Joint Stip.).

Each of the counties in this geographically compact region has a majority or near-majority Black voting age population, JA155 (Joint Stip.). The map below depicts the Black voting age population share in 2020:



SJA32 (Duchin Decl.) (explaining that “the Black Belt rural counties are clearly visible running East-West across the state”). The people in these counties share historic and socioeconomic identities dating back to the Antebellum period and continuing through the present.

**A. The Black Belt Population Shares A  
Historic Identity: Slaves Concentrated  
Amidst Extreme Planter Class Wealth**

Ask any Alabamian “where the traditions and prejudices of the Old South are strongest, and it will be, ‘In the Black Belt.’” Herdman F. Cleland, *The Black Belt of Alabama*, 10 GEOGRAPHICAL REV. 375, 375 (1920). The region’s rich black soil and early enslaved population made the Black Belt a place of prosperity for the white planter class—a place “noted for men of wealth, intelligence, and political power.” Gerald R. Webster & Scott A. Samson, *On Defining the Alabama Black Belt: Historical Changes and Variations*, 32 SOUTHEASTERN GEOGRAPHER 163, 163 (1992) (quoting a “1908 public school text on Alabama history”).

The fertile soil meant prime cotton-growing territory. As the white planter class began intensive plantation development—acquiring plots of land often exceeding 1,000 acres—planters brought enslaved peoples to labor in the cotton fields and tend to plantation homes. *See* Cleland, *supra*, at 382; JA155 (Joint Stip.) (“The region has a substantial Black population because of the many enslaved people brought there to work in the antebellum period.”); JA300 (Bagley Supp. Decl.) (“The Black Belt of Alabama became home to not only the wealthiest white plantation owners in the state, but to some of



the wealthiest individuals in the young nation, some of whom held hundreds of people in bondage.”). Even from this early period in Alabama’s history, before emancipation, state politics were divided: at that time, between the rich white population of the south-central Black Belt, and poorer white voters in other parts of the State. *See generally* J. MILLS THORNTON, *POLITICS AND POWER IN A SLAVE SOCIETY: ALABAMA, 1800-1860* (1978).

With roughly one slave for every ten acres, the black population quickly ballooned in the Black Belt. Cleland, *supra*, at 382. The Alabama Black Belt had one of the largest concentrations of Black people in the southern United States. *Id.* at 384. The Black population reached an “all-time high of approximately 73 percent in 1900,” Terance L. Winemiller, *Black Belt Region in Alabama*, *Encyclopedia of Alabama* (Sept. 18, 2009), <https://perma.cc/WJ26-82XY>, creating a pocket of “counties where the black people outnumber the white.” BOOKER T. WASHINGTON, *UP FROM SLAVERY*, ch. 7 at 3 (1901), <https://perma.cc/CK3N-KE27>.

Emancipation offered former slaves more autonomy but not financial freedom. *See generally* MICHAEL W. FITZGERALD, *RECONSTRUCTION IN ALABAMA: FROM CIVIL WAR TO REDEMPTION IN THE COTTON SOUTH* 107-132 (2017). White landowners still needed the Black labor force in the region to tend to the cotton crops. The *Selma Morning Times* explained: “These lands would be worth nothing if the Negroes were moved off of them.” KARLYN FORNER, *WHY THE VOTE WASN’T ENOUGH FOR SELMA* 19 (2017). That land “was never systematically redistributed from white landowners and given to newly freed Black

people.” JA301 (Bagley Supp. Decl.). Black farmers faced “three major obstacles” following emancipation: they “had inherited nothing from slavery with which to purchase land,” the “disorganized state of the credit market” precluded them from borrowing the capital, and the white population was “at best hesitant – and in many cases openly hostile” to Black landownership. ROGER L. RANSOM & RICHARD SUTCH, *ONE KIND OF FREEDOM: THE ECONOMIC CONSEQUENCES OF EMANCIPATION* 81 (2d ed. 2001).

With few other economic prospects, newly freed slaves continued to work the Black Belt as sharecroppers and tenant farmers—“beholden to their former masters.” JA301 (Bagley Supp. Decl.). Sharecroppers and tenant farmers accounted for more than 60% of farming in Alabama by the early 20th century, with Black residents operating nearly 90% of farms in some counties. *See* Kenneth E. Phillips, *Sharecropping and Tenant Farming in Alabama*, *Encyclopedia of Alabama* (July 28, 2008), <https://perma.cc/TX23-JREB>; FORNER, *supra*, at 19.

Despite their newly freed status, Black farmers remained financially stifled and impoverished. The “way of life of most tenant farmers was inferior to that of many people in medieval Europe,” with Black farmers living in “primitive log cabins” without indoor plumbing or running water and without hard-surface roads for transportation, leaving farmers isolated and “fac[ing] economic ruin if the roads were unusable at harvest time.” Phillips, *supra*.

Exploitative credit practices also trapped many Black farmers in a system of “debt peonage.” ROGER L. RANSOM, *CONFLICT AND COMPROMISE: THE POLITICAL ECONOMY OF SLAVERY, EMANCIPATION, AND*

THE AMERICAN CIVIL WAR 244 (1989). Freedpeople emerged from slavery with no money; and, “[b]ecause they lacked any other physical assets, borrowing against the coming crop was the only hope most freedmen had of obtaining capital for farming.” *Id.* at 246. When the “value of the crop was insufficient” to cover the cost of the loan, however, the farmer “would be obligated to contract again with the same merchant,” thereby creating “a cycle of debt that bound the farmer to the same merchant year after year.” *Id.* at 244.

When white landowners or merchants told Black tenant farmers (truthfully or falsely) at the end of a crop season that they had not produced enough to cover their debts, the farmers had no recourse. FORNER, *supra*, at 21-22. This system became an “exploitive device[] that held blacks in a form of peonage that effectively blocked any hopes of economic advancement by the ex-slaves.” RANSOM, CONFLICT AND COMPROMISE, *supra*, at 246. As one newspaper described it, “[n]ever did a state of serfdom more truly exist in Russia than in some parts of Alabama.” FORNER, *supra*, at 22 (quoting *Emancipator*, a “black weekly newspaper in Montgomery”).

While the white planter class profited from bumper crops and near-free labor, the people of the Black Belt forged a community bonded by want and scarcity. JA755 (Bagley Testimony) (describing the legacy of tenant farming as “very, very long and profound,” as even today the “Black Belt remains characterized . . . by the fact that it is stricken by poverty”).

## **B. The Black Belt Population Experiences Intense Economic Hardship**

The Black Belt region's economic history is unique in the State. In the late 1800s, a series of events sent the Black Belt into "seemingly irreversible decline," and it spiraled from "one of America's richest and most politically powerful regions" into one of the nation's poorest. Allen Tullos, *The Black Belt*, Southern Spaces (Apr. 19, 2004), <https://perma.cc/6B7P-UYFM>. More than a century later, today's Black Belt residents still suffer from the region's sustained economic downfall, with poverty rates far exceeding those in the rest of Alabama and the United States.

Freed slaves first began migrating out of the Black Belt to Alabama's more urban areas, including Mobile, around 1865 in pursuit of better economic opportunities and more freedom—and that outward migration increased dramatically by the turn of the century. JA303 (Bagley Supp. Decl.) ("The historian Wayne Flynt has described a 'massive hemorrhaging of people,' mostly Black people, from the Black Belt, in the early Twentieth Century."). The plantation's labor supply diminished. Those who stayed were "[l]ocked into unfavorable contracts" of tenancy and continued to have their debts increase as production and profits decreased and merchants extended fewer loans. FORNER, *supra*, at 33.

World War I further accelerated migration out of the region by creating a need for thousands of workers in industrial and war-related manufacturing factories in the North. Landowners in the Black Belt, concerned about the "serious situation of labor,"

passed vagrancy laws to “round up idlers and compel them to work in the fields.” FORNER, *supra*, at 43.

The Great Depression deepened the economic struggles of the region. Then, President Roosevelt’s New Deal plan took a hatchet to the tenant farming model of the Black Belt. The Agricultural Adjustment Administration, attempting to keep food prices higher, paid landowners subsidies to reduce total acreage planted, decreasing demand for tenant farmers. See Phillips, *supra*.<sup>3</sup> In addition, rural agriculture in the 1940s saw shifts to cattle farming—which requires less manpower—and the mechanization of cotton production. See J. WAYNE FLYNT, ALABAMA IN THE TWENTIETH CENTURY 142 (2004); FORNER, *supra*, at 104, 108. Tenant farming declined to 37% of all farming in Alabama by the mid-1950s, and opportunities for work in the Black Belt reduced to a trickle. See Phillips, *supra*.

By 1960, 52% of families in the Black Belt’s Dallas County lived in poverty, with 43% of homes classified as “deteriorating or dilapidated.” FORNER, *supra*, at 162. Textile manufacturing became a source of

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<sup>3</sup> In the 1990s, Black farmers would successfully sue the federal government for discrimination by the U.S. Department of Agriculture, resulting in a consent decree giving complainant farmers redress of \$50,000 or more each from the Department of Agriculture in addition to debt forbearance. See *Pigford v. Glickman*, 185 F.R.D. 82, 85 (D.D.C. 1999) (“As the Department of Agriculture has grown, the number of African American farmers has declined dramatically. . . . The United States Department of Agriculture and the county commissioners to whom it has delegated so much power bear much of the responsibility for this dramatic decline.”), *aff’d*, 206 F.3d 1212 (D.C. Cir. 2000), and *enforcement denied sub nom. Pigford v. Schafer*, 536 F. Supp. 2d 1 (D.D.C. 2008).

industrialized jobs in the Black Belt in the 1960s, but conditions in the factories were hard, and efforts to advocate for workers' rights met stringent opposition. *See id.* at 171. By the 1980s, textile jobs had dried up as textile mills closed. *See id.* at 201.

Farmers remaining in the Black Belt region faced resistance when they attempted to make major economic gains. In 1967, for example, Black farmers obtained a grant from the U.S. Office of Economic Opportunity ("OEO") to form a cooperative association to sell produce in bulk. With the co-op, farmers sold more produce for more money than any had seen in the past. *See FORNER, supra*, at 175-76. But some powerful interests could not stand for Black people to have even that small level of success. A delegation of Black Belt "leading officials" flew to Washington to ask the OEO to rescind the grant; when that didn't work, state troopers impounded trucks full of vegetables for traffic violations and "besieged" the co-op's office with "nonstop investigations." *Id.* at 176.

With the demise of farming and lack of alternative job sources in the region, Black Belt residents were faced with few economic prospects. What few jobs did exist were plagued by discrimination and segregation. By the 1980s, major Black Belt cities like Selma still had soaring poverty and unemployment rates. Unemployment rates remained "chronically in double digits" through the 1980s," and "[c]hild poverty rates often climbed above 50 percent." FLYNT, *supra*, at 143. And, throughout the 1990s and continuing to the present day, the region was described as an "economic backwater." Webster & Samson, *supra*, at 163. Today, the percentage of Black Belt residents living below the poverty level far exceeds the average in the rest of

Alabama—and the national average too. Andrew A. Zekeri, *Community Action in Alabama's Black Belt Timber-Dependent Communities*, 39 SOCIAL INDICATORS RESEARCH 203, 211 (1996). Nine out of the ten poorest counties in Alabama are in the Black Belt. Winemiller, *supra*.

The population of the modern-day Black Belt suffers from economic hardship not experienced by most Alabamians. The region has been compared to “developing nations in both Latin America and sub-Saharan Africa,” both for the nature of the extractive economy and workforce and the conditions of the workers in those economies. Winemiller, *supra*; see also ALLEN TULLOS, ALABAMA GETAWAY: THE POLITICAL IMAGINARY AND THE HEART OF DIXIE 163 (2011) (*Birmingham News* referring to the Black Belt as “Alabama’s Third World”). In 2017, Selma, a hub in the western Black Belt, was described as a place of “boarded-up buildings and abandoned houses mix[ed] with weary-looking homes” and “[p]ayday loan stores.” FORNER, *supra*, at 3. Fifty-six percent of Black residents in Selma lived in poverty, with 27% of Black residents out of work. *Id.* at 232-33.

### **C. Black Belt Residents Lack—and Have Lacked For More Than A Century—Access To Basic Social Services, Including Healthcare and Education**

As the Black Belt economy stagnated through the 20th century, access to basic social services and infrastructure remained woefully inadequate—and it remains so today. The Black Belt community shares “limited non-agricultural economic opportunities,” “comparatively high rates of poverty and unemployment,” “comparatively low levels of

educational attainment,” and “comparatively low levels of community health including higher rates of infant mortality.” Gerald Webster & Jerrod Bowman, *Quantitatively Delineating the Black Belt Geographic Region*, 48 SOUTHEASTERN GEOGRAPHER 3, 5-6 (2008).<sup>4</sup>

Take healthcare to start. The residents of the Black Belt community lack access to basic necessities and services for healthy living. Black women living in the Black Belt have been shown to have nutrient deficiencies during pregnancy, with some resorting to eating dirt to access nutrients. FLYNT, *supra*, at 188. Water quality in the Black Belt is notoriously poor. Research from 2017 showed that more than a third of residents in Lowndes County who were tested for hookworm had the illness. In this respect, very little has changed since the early 20th century, when diets of cornbread, condensed milk, and salt pork “made hookworm, pellagra, and tuberculosis common.” FORNER, *supra*, at 20. “[E]mergency rooms remain few and distant.” TULLOS, ALABAMA GETAWAY, *supra*, at 47.

At least 40% of households in Lowndes County in 2017 had an inadequate septic system or none at all. Alexis Okeowo, *The Heavy Toll of the Black Belt’s Wastewater Crisis*, THE NEW YORKER (Nov. 23, 2020), <https://perma.cc/EZ77-T4VW>. Meanwhile, the Black Belt remains home to the Chem Waste toxic waste site, a site so large that it dubbed Alabama “the

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<sup>4</sup> The Governor of Alabama created a Black Belt Action Commission in 2004 to address the region’s “high rates of poverty, illiteracy, and infant mortality.” Alabama Executive Order No. 22 by Gov. Bob Riley (Aug. 11, 2004). The State recognized in doing so that the Black Belt was “the most economically depressed area” in the State.” *Id.*



nation's chemical septic tank." TULLOS, ALABAMA GETAWAY, *supra*, at 126. In 2017, the United Nations Special Rapporteur on Extreme Poverty and Human Rights reported on the lack of adequate sewage treatment and the unreliability of electricity in the Black Belt, concluding that the sewage failure was "very uncommon in the First World." Connor Sheets, *UN poverty official touring Alabama's Black Belt: 'I haven't seen this' in the First World*, AL.COM (Dec. 8, 2017), <https://perma.cc/E2AX-RWH4>; *see also* JA240 (Bagley Decl.).

The Black Belt population also faces unique barriers to access to education not experienced by other Alabamians. Schooling, social organizations, churches, and parks have all been *de facto* and *de jure* segregated since the fall of Reconstruction. *See* Zekeri, *supra*, at 219-220; Cleland, *supra*, at 385. Attempts to erase those dividing lines have been unsuccessful. Early 20th-century executives "worried openly that too much education might spoil the 'tractable' labor force." FLYNT, *supra*, at 115.

Since the early 1900s, funds for education in the Black Belt region have disproportionately benefitted white students. The funding system ratified by Alabama's 1901 Constitution "entrenched a system of educational funding" built on "raiding black students' portion of the public school fund" to further white children's educations. *Knight v. Ala.*, 787 F. Supp. 1030, 1090-91 (N.D. Ala. 1991). By 1930, Black children in Lowndes County received \$5 for every \$96 spent on white children. FLYNT, *supra*, at 223; *see also* Horace Mann Bond, *Negro Education: A Debate in the Alabama Constitutional Convention of 1901*, 1 J. NEGRO EDUC. 49, 49 (1932) ("in the year 1929-1930,

Negro children received only 36 per cent of a fair distribution” of Alabama’s state educational funds, “while white children received 164 per cent”). This funding gap was reflected in severely curtailed school calendars for Black children in rural areas. FLYNT, *supra*, at 225. During the 1919-1920 school year, Black rural schools were open only an average of 87 days per year, compared to 123 days for white rural schools, and 174 days for white urban schools. *Id.*; see also HORACE MANN BOND, NEGRO EDUCATION IN ALABAMA: A STUDY IN COTTON AND STEEL 258 (1939) (In 1930, nine counties in the Black Belt “had no four-year high school”). It was not until 1942 that the Alabama legislature nominally extended the Black school year to eight months, a “vast improvement over the three- or four-month terms typical for rural schools.” FORNER, *supra*, at 111.

The Black Belt ignored *Brown v. Board* and made no strides at integrating schools for *fifteen additional years*. It wasn’t until 1969, when thirty school systems received federal court orders requiring them to integrate schools, that they finally began to desegregate. See FORNER, *supra*, at 178. In the 1960s, most Black residents in Dallas County did not have more than a fifth-grade education. See *id.* at 162. Accounts describe children attending one-room schoolhouses heated by a potbelly stove—in the 1970s. See TULLOS, ALABAMA GETAWAY, *supra*, at 190.

Faced with begrudging desegregation in the late 1960s and early 1970s, white families in the region opened private academies and offered white children tuition cuts to attend. See FORNER, *supra*, at 178. Around the same time, Alabama passed a series of tax measures that placed caps on tax collection and

significantly undervalued farm and timber land, and resulted in “chronic underfunding of schools,” particularly in rural areas. FLYNT, *supra*, at 18.

Today, segregated education “remains a common practice,” with white citizens putting their children into private Christian academies that the region’s Black residents can ill afford. Tullos, *Black Belt, supra*; see also TULLOS, ALABAMA GETAWAY, *supra*, at 190. In Selma, for example, public schools are “almost entirely” Black, while white children attend the private John T. Morgan Academy or Meadowview Christian School. FORNER, *supra*, at 3. Alabama maintains a list of “failing schools”—comprising the bottom six percent of the State’s schools: For the 2020-2021 school year, all 75 schools on the list were majority Black, and most were in majority-Black school systems in the Black Belt, Birmingham, Montgomery, or Mobile. JA250 (Bagley Decl.) The Black Belt faced additional barriers to educational access during the COVID-19 pandemic, as Black children in Alabama were more likely to lack access to the internet or to the technology necessary to participate in remote classes. JA232 (Bagley Decl.)

**D. In Response to Impoverished Conditions,  
the Black Belt Communities Developed A  
Shared Commitment to Civil Rights that  
Transcended Alabama’s Boundaries**

The shared history of Black Belt residents includes a unique legacy of oppression combined with fights for civil rights. Until the late 20th century, save for a brief window during and immediately after Reconstruction, Black residents were not “participants in political decision making”—community decisions on social services including “taxes, school policy, or community

development were carried out by all-white elected officials with no tie to the African American community.” Zekeri, *supra*, at 209; Tullos, *Black Belt, supra*. As one civil rights attorney put it, “for a hundred years” after the Civil War, “the Black Belt dominated state politics and the big landowners dominated the Black Belt.” Tullos, *Black Belt, supra* (quoting J. L. Chestnut).

After emancipation, Black men earned the right to vote. For close to a decade, Black Belt residents became an influential part of the State’s political process, voting in large numbers. During the period from 1867 to 1874, the Black Belt region overwhelmingly supported Reconstruction, providing the backbone for Republican majorities statewide. Black Belt majorities elected three Black Congressmen, two of whom were formerly enslaved, and dozens of state representatives. The Black Belt’s political support for Republican Reconstruction policies contributed to efforts to bolster Alabama’s economic development, spearheaded the creation of Alabama’s public-school system, and supported expansion of numerous public services. See FITZGERALD, RECONSTRUCTION IN ALABAMA, *supra*, at 143-173.

After Reconstruction was overthrown, however, the majority white areas of Alabama mobilized to strip newly freed slaves of their voting power. A group of Southern Democrats, known as “The Redeemers,” engaged in a violent campaign to disenfranchise Black voters. The Redeemers effectively formalized white-voting-bloc dominance through the passage of Alabama’s 1901 Constitution, still operative today, which legalized myriad disenfranchisement

techniques. The numerous ways in which the 1901 Constitution caused disenfranchisement of the Black population of Alabama are hardly a secret: poll taxes, literacy tests, gainful employment requirements, and more. *See* Peyton McCrary et al., “Alabama,” in QUIET REVOLUTION IN THE SOUTH, THE IMPACT OF THE VOTING RIGHTS ACT, 1965-1990 44 (Chandler Davidson & Bernard Grofman, eds. 1994); JA108 (*Milligan* Complaint). And they worked: After adoption of the 1901 Constitution, the number of Black registered voters plummeted from over 180,000 to fewer than 3,000. *See* McCrary, *supra*, at 44; WALTER L. FLEMING, CIVIL WAR AND RECONSTRUCTION IN ALABAMA 806-07 (1905).

The Redeemers further disenfranchised Black voters through the adoption of “white primaries,” after turning the Democratic primary—rather than the general election—into the real vote of consequence. To exclude Black voters, the Democrats then closed off membership in the Party to Black citizens under the theory that the Democratic and Republican Parties were private groups. *See generally* MICHAEL PERMAN, STRUGGLE FOR MASTERY: DISFRANCHISEMENT IN THE SOUTH, 1888–1908 (2001); *see also* JA197 (Bagley Decl.) (describing how “the Alabama Democratic Party adopted the ‘white primary,’ whereby membership was limited, as in a club, to white people, thus barring Black people from participating in what had become the only election that mattered”). The “white primary” lasted in Alabama until 1944, when this Court held the practice unconstitutional in *Smith v. Allwright*, 321 U.S. 649 (1944). JA171 (Joint Stip.).

Disenfranchisement tactics continued throughout the 20th century through the “discriminatory administration of neutral laws” in order to exclude Black candidates, including “abolition of the office; extension of the term of the white incumbent; substitution of appointment for election; increase in filing fees; raising of requirements for independent candidates; increase in property qualifications; withholding information on how to qualify”; and the “time-honored practices of gerrymandering, county consolidation, [and] switching to at-large elections.” Chandler Davidson, *The Recent Evolution of Voting Rights Law Affecting Racial and Language Minorities*, in QUIET REVOLUTION, *supra*, at 24 (quoting GERALD N. ROSENBERG, THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE? 81 (1991)); *see also* JA171 (Joint Stip.).

In response to more than a century of substandard treatment, the Black Belt community in southern Alabama played a monumental role in the founding of the nation’s civil rights movement—including the adoption of civil rights laws and the very Voting Rights Act of 1965 under which this case arises. That legacy—and sense of pride for the community’s role in fighting oppression—binds this unique community in a distinct way not shared by the rest of the State.

The Black Belt did not become cradle to the Nation’s civil rights movement overnight. Incremental changes sowed the seeds. The 1938 Fair Labor Standards Act, which called for minimum-wage standards, was decried by white landowners in the Black Belt as a “threat to the personal liberties of the farmer,” FORNER, *supra*, at 89, even though the Act provided only limited benefits to Black farmers. *See*,

*e.g.*, Marc Linder, *Farm Workers and the Fair Labor Standards Act: Racial Discrimination in the New Deal*, 65 TEX. L. REV. 1335, 1335-36 (1987) (explaining that the FLSA's exclusion of farm workers from maximum hour and overtime provisions was the result of a political compromise to "obtain modifications of New Deal legislation that preserved the social and racial plantation system in the South").

In 1941, the first Black pilots—who trained at the Tuskegee Institute in the heart of the Black Belt—were admitted to the U.S. military. Jesse Greenspan, *How the Tuskegee Airmen Became Pioneers of Black Military Aviation*, HISTORY.COM (Mar. 18, 2016), <https://perma.cc/TW4G-V4D4>. The 992 pilots who completed the Tuskegee program made history and "helped lay the foundation for President Harry S. Truman's decision to desegregate the armed forces in 1948." *Id.* They did so in the face of resistance from the local white population lamenting the Institute's use of lands that should be reserved for "expansion for white citizens of Tuskegee." *Id.*

Some of the most significant moments in Black civil rights history occurred in the Black Belt. Rosa Parks was in the heart of the region when she refused to give up her bus seat in Montgomery County on December 1, 1955, sparking the movement that led to this Court's bus desegregation order in *Gayle v. Browder*, 352 U.S. 903 (1956) (per curiam).

The Voting Rights Act of 1965 would not be law today if not for activism rooted in the Black Belt, a history that ties the community into the very fabric of modern-day Alabama. Dr. Martin Luther King, Jr.'s organization, the Southern Christian Leadership Conference (SCLC), made voting rights a priority

because of the prolonged efforts in Alabama to “protect[] white supremacy at the polls.” FORNER, *supra*, at 110 (quoting the *Selma Times-Journal*). By 1964, only 19% of the Black voting-age population in Alabama, a significant portion of which resided in the Black Belt, was registered to vote. That was the lowest percentage in the South (save for Mississippi), which already had the lowest percentages in the nation. McCrary, *supra*, at 38. The SCLC made Selma a testing ground, based on the “strength and determination of black Dallas County citizens” who had been mobilizing and had a “history of voting rights activism.” FORNER, *supra*, at 152.

After the fatal shooting of Jimmie Lee Jackson in the Black Belt’s Perry County on February 18, 1965, the SCLC proposed the symbolic and now infamous 54-mile march through the heart of the region: from Selma to the Governor’s office in Montgomery. The “Bloody Sunday” beating made national headlines and propelled voting discrimination to the national stage. See HASAN KWAME JEFFRIES, BLOODY LOWNDES: CIVIL RIGHTS AND BLACK POWER IN ALABAMA’S BLACK BELT 44 (2009). President Johnson responded to images of the attacks with an unequivocal message on voting rights, shortly before laying out a new voting rights bill: “It is wrong, deadly wrong, to deny any of your fellow Americans the right to vote in this country.” FORNER, *supra*, at 155. Two weeks later, more than three thousand people successfully marched across the Edmund Pettus Bridge, with federalized Alabama National Guard members flanking them on either side for protection. *Id.* The National Historic Trail runs through Dallas, Lowndes, and Montgomery Counties—all in the Black Belt. See Tullos, *Black Belt*, *supra*.



The fight for voting equality continued in the Black Belt even after passage of the Voting Rights Act of 1965. The National Democratic Party of Alabama (“NDPA”) was formed in 1967 to enroll Black and white voters who “officially supported the Democratic Party’s national candidates.” JEFFRIES, *supra*, at 218 (2009). But it had little success in getting NDPA-supported candidates in office, so it “harness[ed] the voting strength of the rural Black Belt.” *Id.* In Lowndes County, Black candidates won “prominent government positions” in 1970 “[f]or the first time since Reconstruction.” *Id.* at 222. Three years later, the Southern Poverty Law Center (SPLC) was founded in Montgomery, Alabama, by two civil-rights lawyers with roots in the Black Belt to push courts to enforce newly enacted civil rights legislation. *See* Katie Day, *Southern Poverty Law Center*, Encyclopedia of Alabama (July 23, 2007), <https://perma.cc/U8AF-HCZ3>. The SPLC gained national attention in 1979 when it brought (and won) litigation against the Ku Klux Klan following the Klan’s attack on a peaceful civil-rights march in northern Alabama. *See id.*

The Black Belt focus on civic activism also has made the Black Belt community a leader in court-ordered change. The litigation that shaped the legal terms of the Voting Rights Act largely originated in the Black Belt of Alabama. Tuskegee, in Macon County, was the birthplace of both the concept of racial gerrymandering condemned in *Gomillion v. Lightfoot*, 364 U.S. 339, 341 (1960) and the freezing principle that led to Section 5 of the Voting Rights Act in *United States v. Alabama*, 192 F. Supp. 677, 678 (M.D. Ala. 1961), *aff’d*, 304 F.2d 583 (5th Cir. 1962), *aff’d*, 371 U.S. 37 (1962). *See* generally BRIAN K.

LANDSBERG, FREE AT LAST TO VOTE: THE ALABAMA ORIGINS OF THE 1965 VOTING RIGHTS ACT (2007). Since the passage of the Civil Rights Act of 1957, only one State—the much larger State of Texas—has produced more successful voting rights cases and Section 5 objections than Alabama. A disproportionate number of the successful challenges came from the Black Belt (calculated from a database prepared by *amicus* Prof. J. Morgan Kousser for his testimony before the House Judiciary Committee, Oct. 17, 2019, summarized in H.R. Rep. No. 116-317, at 53-56 (2019)). The historic and ongoing struggle—and shared history of civil-rights activism—makes Alabama’s Black Belt unique and one of the most historically rich regions in the southern United States—a quintessential community of interest.<sup>5</sup>

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<sup>5</sup> Shared cultural traditions provide a bright spot in the Black Belt’s shared history, further tying the community together through art. Specifically, Blues music and quilting became popular in the early 20th century and persist into the modern day as common expressions of culture in the rural Black Belt, more so than other areas of Alabama. See JA521 (Milligan Testimony). Today, the Black Belt Blues flow through rural Alabama. See *Alabama Black Belt Blues*, ALABAMA PUBLIC TELEVISION, (Oct. 20, 2020) at 36:00-38:00, <https://perma.cc/B64M-8VQA>. The most rural Black Belt communities also found commonality and financial stability in hard times through the art of quilting. What began as a simple way to stay warm or earn some extra money was elevated to an art form by the Gee’s Bend community in the Black Belt. See J.R. Moehringer, *Crossing Over*, L.A. TIMES (Aug. 22, 1999), <https://perma.cc/S2YY-EPPA>. The Gee’s Bend quilts were brought to national attention through the “Freedom Quilting Bee,” a cooperative founded in 1966 to sell quilts in order to supplement the quilters’ incomes after white county officials cut off ferry service to the town, isolating the community. FLYNT, *supra*, at 524-25.

## II. THE BLACK BELT'S COMMONALITY EXTENDS TO PARTS OF MOBILE AND OTHER URBAN AREAS

The State's primary criticism of Plaintiffs' proposed redistricting plans is that they split Mobile County in order to keep Black Belt communities together and to create two majority-minority Black voting districts. App. Br. 21. The State overlooks the significant historical ties and commonalities that areas of Mobile County share with the Black Belt. The outward migration from the Black Belt following the Civil War flowed to Mobile, where the Black population grew for decades. Many residents of Mobile County, particularly in areas like Prichard and the City of Mobile, have far more socioeconomic and cultural links today to the Black Belt population than to the rest of Mobile County.

### A. Outward Migration from the Black Belt Intermingled Black Belt Populations with Coastal Counterparts

As the Black Belt experienced the waves of outward migration described above, many former Black Belt residents moved toward urban centers in Alabama, including Mobile. In the immediate aftermath of the Civil War, Mobile received a "huge influx" of Black migrants, primarily "poverty-stricken rural refugees." MICHAEL W. FITZGERALD, URBAN EMANCIPATION, POPULAR POLITICS IN RECONSTRUCTION MOBILE 21, 22 (2002). The Black population of Mobile "increased from 8,400 in 1860 to 13,900 in 1870," accounting for more than 43% of the city's population in 1870—up dramatically from pre-war numbers. *Id.* at 24.

During the 1880s, 1890s, and early 20th century, “many who left the farms and the small towns of the Black Belt went to cities of Alabama,” with Mobile attracting “many” of these residents. J. Sullivan Gibson, *The Alabama Black Belt: Its Geographic Status*, 17 ECONOMIC GEOGRAPHY 1, 16 (1941). Mobile’s Black population continued to grow throughout that period. In 1910, Mobile had 51,521 residents, of whom 22,763 (44.2%) were Black. U.S. BUREAU OF THE CENSUS, 1910 U.S. CENSUS, vol. II, 60 (1913), <https://perma.cc/XM33-4XBF> (also reporting that, as of 1900, Mobile City had a population of 38,469, with Black residents accounting for 44.3% of the total).

The Great Depression and the New Deal continued this trend. As the New Deal’s agricultural reforms “displaced much of the state’s tenant population,” residents were drawn to cities by “abundant manufacturing jobs.” FLYNT, *supra*, at 401. Mobile, specifically, saw rapid migration, as “Mobile contained 29,000 black residents in 1940 and 46,000 10 years later.” *Id.*; *see also* U.S. BUREAU OF THE CENSUS, 1950 U.S. CENSUS, vol. II, 2-54 (1953), <https://perma.cc/AQF7-GCS6> (as of 1950, the city of Mobile had a population of 129,009, of which 35.5% was Black).

The City of Mobile grew in large part out of the Black Belt. Many Mobile residents who came from that community have historical, familial, and cultural ties to the rural regions of Alabama. *See, e.g.*, JA288-289 (Dowdy Decl.) (explaining that she, “along with other Black people in both the City of Mobile and Mobile County, can trace our family roots back to the Black Belt,” and that “many Black people in the

Mobile area hav[e] family ties to the Black Belt”); JA531 (Milligan Testimony) (noting the “shared family and cultural and historical features that bind those black communities in Prichard and Mobile County to their relatives throughout the Black Belt”); JA756 (Bagley Testimony) (“[B]lack people have left in large numbers in a couple of different waves the Black Belt for the city of Mobile, and they share then the current residents of the urban core of Mobile that history with black people in the Black Belt. And it’s not just the migration. It’s not just ancestry and heritage. It’s cultural, and it’s multifaceted when it comes to the history.”).

#### **B. The City of Mobile Shares Common Characteristics with the Black Belt**

Although Mobile is an urban rather than rural setting, the Black population of Mobile faced much of the same discrimination, poverty, and political repression that faced the Black Belt throughout the 20th century. As Mobile’s population swelled in the years preceding and during World War II, housing and job shortages disproportionately affected Black residents. “Bad problems for white residents were far worse for black Mobilians.” AARON BRENNER ET AL., *THE ENCYCLOPEDIA OF STRIKES IN AMERICAN HISTORY* 131 (2015). Although the National Housing Agency built 14,000 public housing units for white residents of Mobile, it built only 934 units for Black residents. Private Black housing often lacked sewage systems or running water. *Id.* On the employment side, the two major employers in Mobile during this period either avoided hiring Black employees altogether or limited Black workers to unskilled positions. *Id.*

Politics in Mobile were also engineered to prevent Black participation. Starting in 1870, Mobile conducted “at-large” elections, which “were utilized to negate black influence.” *Bolden v. City of Mobile*, 542 F. Supp. 1050, 1064 (S.D. Ala. 1982), *on remand from City of Mobile v. Bolden*, 446 U.S. 55 (1980). Single-member districts were briefly reinstated in 1907—by which point the 1901 Constitution had already effectively disenfranchised Black voters across the board—but Mobile returned to at-large elections in 1911, further eliminating even the possibility of Black voting influence, and maintained that system until it was successfully challenged under the Voting Rights Act in 1982. *See id.* at 1076. Mobile’s at-large electoral system was adopted because “it was clear to the Alabama Legislature and to Mobile’s white leaders that the at-large form would ensure that the black minority in 1911 and earlier in 1874 would never be able to elect a black representative.” *Id.* As a result, not a single Black candidate had been elected to municipal government in Mobile between 1874 and 1982. *See id.* at 1054. Only in 1985, after Mobile (following a ruling by a federal court) adopted a mayor-city council system, was Mobile’s Black population able to elect Black representatives to the city government. *See* Caroline Rand Herron & Michael Wright, *The New Order in Mobile*, N.Y. TIMES (July 14, 1985) <https://perma.cc/UVC8-7SND>.

Education in Mobile was also highly segregated. Although *Brown v. Board of Education* was handed down in 1954, Mobile, like many Black Belt counties, refused to integrate its schools for years. *See Bd. of Sch. Comm’rs of Mobile Cnty. v. Davis*, 84 S. Ct. 10, 11 (1963) (Black, J., in Chambers) (“[T]he first Brown decision was rendered in 1954—nine years ago. . . .

Yet this record fails to show that the Mobile Board has made a single move of any kind looking towards a constitutional public school system.”).

In 1963, the parents of 23 Black students filed a lawsuit against Mobile County, which led the Fifth Circuit to issue an order requiring the Mobile County Board of School Commissioners to make a desegregation plan. That case, *Davis v. Board of School Commissioners of Mobile County*, would remain active for 34 years as the litigants contested the policies and implementation of desegregation. See, e.g., 402 U.S. 33, 36, 38 (1971) (rejecting desegregation plan that treated the “eastern part of metropolitan Mobile, in isolation from the rest of the school system,” when “94% of the Negro students in the metropolitan area live on the east side”).

At the same time, the unequal conditions in Mobile gave rise to sustained civil rights activism. John L. LeFlore, a native of Mobile, helped found the Mobile chapter of the NAACP in 1926 and led the group for decades. After the NAACP was banned in Alabama, he founded a local group to continue civil rights work in Mobile. See Kevern Verney, “*Every Man Should Try*”: John L. LeFlore and the National Association for the Advancement of Colored People in Alabama, 1919-1956, 66 ALA. REV. 186, 187 (2013). LeFlore and other local leaders, including Joseph Lowery and R.W. Gilliard, played a key role in working to secure rights both within and beyond the City of Mobile. The long-running but ultimately successful legal challenges to both electoral repression and educational segregation in Mobile further reflect the civic activism of Black Mobilians.

Black residents of Mobile have also faced much of the same socioeconomic stratification that has characterized the Black Belt—further tying them more closely to the Black Belt communities than to the white population of Mobile. By 1989, Black residents accounted for 38.9% of the total population of the city. For those 76,510 Black residents, the per capita income was \$6,572, with 41.9% of Black residents falling below the poverty line. In sharp contrast, the 116,872 white residents of Mobile had a per capita income of \$16,502, with only 9.3% below the poverty line. U.S. BUREAU OF THE CENSUS, 1990 U.S. CENSUS CP-2-2, Alabama, 37, 40 (1993), <https://perma.cc/8SDN-6X8Q>. And residents of Mobile County, like those of the Black Belt, face significant health threats from toxic waste and pollution. *See, e.g.*, Dennis Pillion, *Two Alabama rivers named among 10 most endangered in the country*, AL.com (Apr. 21, 2022), <https://perma.cc/K2YQ-3EF4> (noting that the Mobile River was recently named the “third most endangered American river” due to a coal ash storage site containing 21 million tons of waste located next to the river); Ivan Penn, “*We Cannot Breathe: A poor Alabama town has lived with the rotten egg stench of gas for 8 years*,” L.A. TIMES (Oct. 15, 2016), <https://perma.cc/9YV9-ZLJA> (describing the lasting effects of a 2008 chemical spill in Eight Mile, Mobile County).

The common experiences of Mobile residents and residents of the Black Belt, in addition to their intertwined histories, continue to link the Black population in Mobile to the broader Black Belt community.



\* \* \* \* \*

The voters in the Black Belt share not only racial similarities but also key nonracial characteristics that make them a community of interest. Many of these characteristics are also shared by voters in Mobile. The district court correctly concluded that Plaintiffs' plans established the possibility of creating an additional "reasonably compact" majority-minority voting district while also respecting traditional districting criteria.

### CONCLUSION

This judgment of the three-judge district court should be affirmed.

Respectfully submitted.

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