Nos. 24-109, 24-110

In the
Supreme Court of the United States

LOUISIANA,
Appellant,
v.
PHILLIP CALLAIS, *et al.*,
Appellees.

PRESS ROBINSON, *et al.*,
Appellants,
v.
PHILLIP CALLAIS, *et al.*,
Appellees.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA

BRIEF OF *AMICI CURIAE* THE LINCOLN CLUB OF ORANGE COUNTY, AND CALIFORNIA POLICY CENTER IN SUPPORT OF CALLAIS APPELLEES

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I. Interest of *Amici Curiae*[1]

Amici Curiae are the Lincoln Club of Orange County, a 501(c)(6) organization dedicated to building political infrastructure to preserve America, and the California Policy Center, a 501(c)(3) organization dedicated to fostering prosperity of all Californians.

During California's 2021 redistricting, the Lincoln Club of Orange County ("LCOC") devoted substantial time to monitoring the California Independent Redistricting Commission's progress in drawing congressional maps, and educating its members regarding the same, while vigilantly ensuring the Commission's adherence to the U.S. and California Constitutions.

Both *Amici* LCOC and California Policy Center have a strong interest in competitive congressional districts. They have observed that districts designated as VRA-designated seats are rarely competitive, amplifying special interests' influence over elections at the expense of voters. Competitive districts promote voter accountability, whereas VRA districts ultimately harm the voters.

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[1] In accordance with Supreme Court Rule 37.6 *amici* affirm that no counsel for a party authored this brief in whole or in part, and that no person other than *amici* or their counsel made a monetary contribution to its preparation or submission.

II. Summary of Argument

The questions this Court has directed the parties to brief go to the heart of whether race-based redistricting can be reconciled with the Fourteenth and Fifteenth Amendments.

Louisiana, with its six congressional districts drawn by the legislature is not the only state grappling with the complex interplay of the Voting Rights Act ("VRA") and the Fourteenth and Fifteenth Amendments. Despite having very different processes, California, a state with 52 congressional districts crafted by an independent commission, has the same troubling race-driven districting.

Bound by *Thornburg v. Gingles*, 478 U.S. 30 (1986), the California Citizens Redistricting Commission ("Commission") prioritized the creation of Voting Rights Act ("VRA") districts to protect minority voting strength. Yet, its efforts to comply with federal law yielded contorted, gerrymandered districts that fracture communities and elevate race above all else. The Commissioners have had to work under a legal framework that leaves them in a Catch-22: if they follow *Gingles*, they risk unconstitutional racial predominance, but if they deviate, they face potential VRA violations.

California's map exposes a core flaw in Gingles: starting with race produces districts engineered by racial quotas, not genuine communities of interest.

This intentional race-based districting—as evident in California and Louisiana's second majority-minority district—violates the Fourteenth and Fifteenth Amendments' equal-protection guarantees. Amici urge the Court to reconsider Gingles' application and hold that the Constitution forbids race-based redistricting in all forms.

III. California Shows How "VRA Districts" Become Racial Anchors That Distort Maps Nationwide

California's Commission claims to prioritize compactness, county integrity, and communities of interest in creating districts. The trust is that it anchored its congressional map around so-called VRA districts. Once fixed, the VRA districts forced every adjacent district in the state to yield to their priority of interest. This created bizarrely gerrymandered shapes. Even though the commissioners may not have explicitly mentioned race in drawing the surrounding districts' lines, this subordination of neutral criteria to the VRA's racial considerations undermines the constitutional guarantee of equal protection.

Compliance with federal law to draw VRA districts requires the subordination of neutral principles to raw racial arithmetic inevitably producing maps in which race predominates, and communities are fractured. A close review of the Commission's actions

confirms why race cannot constitutionally be the starting point for congressional line-drawing.

a. California's Commission Put Race First — and Every Other Principle Second

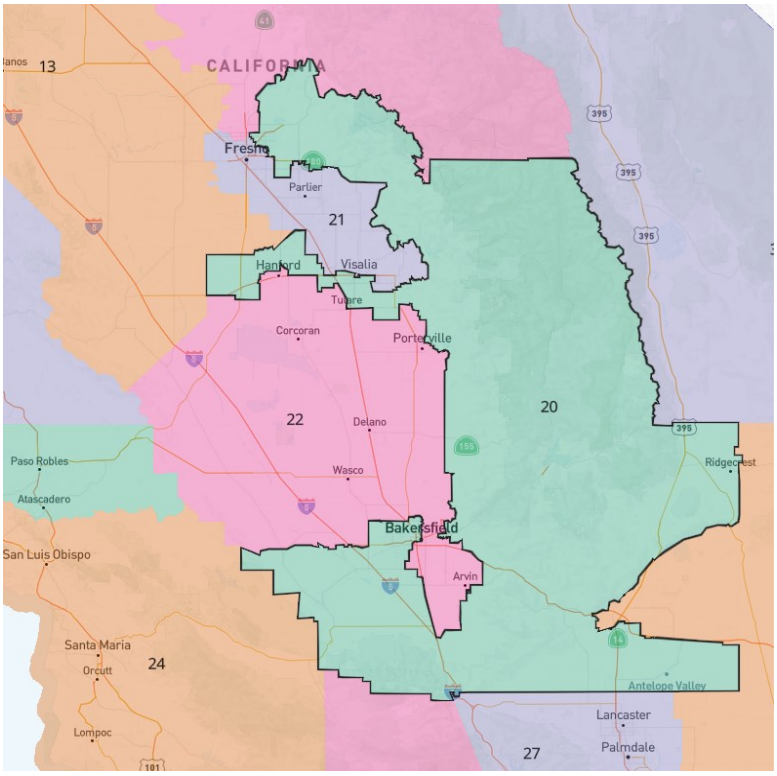
A review of transcripts from the Commission's 18 public meetings on congressional districts reveals that commissioners spent roughly two-thirds of their time discussing race. They repeatedly returned to questions of Latino citizen voting-age population, "performing" or "opportunity" districts, and the boundaries of Voting Rights Act ("VRA") seats. (*See, e.g., Citizens* Redistricting Commission Transcript ("Trans."), Oct. 13, 2021 (examining racial breakdowns approximately 100 times)). This racial focus was systematic, not incidental.

By contrast, only about one-third of deliberations touched on compactness, county integrity, geography, or communities of interest. Race predominated over all other criteria considered.

Even with an independent commission, race anchored the map and subordinated every other consideration. That is precisely the concern raised by the *Callais* plaintiffs: once race becomes the starting point, it necessarily predominates over all other criteria. (*Callais* Supp. Brief, at 39–40).

b. Once VRA Districts Were Locked In, Communities Were Fractured and Maps Distorted

The Commission set the tone for its process by identifying and locking in the districts it considered VRA seats first. (*See, e.g.,* Trans. Sept. 28, 2021, 139:4-5 (Commissioner Anderson: "You lead with population, VRA, cities, counties, communities of interest.").) Congressional VRA districts were drawn first and treated as fixed, forcing the rest of the map to conform. That choice guaranteed that race would predominate, not only in VRA districts but also in every surrounding district forced to accommodate them. (*See, e.g.,* Trans. Nov. 30, 2021, 6:17-19 (Chair Toledo: "Our focus will be and we'll start off with the VRA districts in Los Angeles County. Those - - those districts will serve as an anchor.").)



Congressional District 20: Central Valley

Commissioners candidly revealed that Voting Rights Act ('VRA') districts as their "top priority." (Trans. Nov. 30, 2021, 10:5-6 (Commissioner Sadhwani).) Their line-drawing was almost exclusively numerical: they scrutinized districts for the "right numbers" of Latino citizen voting-age population ("CVAP") to meet benchmarks. (See, e.g., Trans. Oct. 13, 2021.)

Commissioners acted as if demographic arithmetic alone established both entitlement and compliance.

Yet Section 2 demands more. *Thornburg v. Gingles*, 478 U.S. 30, 50–51 (1986) requires consideration of three factors: (1) geographic compactness; (2) minority political cohesion; and (3) white bloc voting defeating minority-preferred candidates. Commission transcripts show scant (if any) discussion of the second and third factors, failing *Gingles*' test. Numerical targets alone cannot substitute for the full analysis that the VRA and this Court's precedents require.

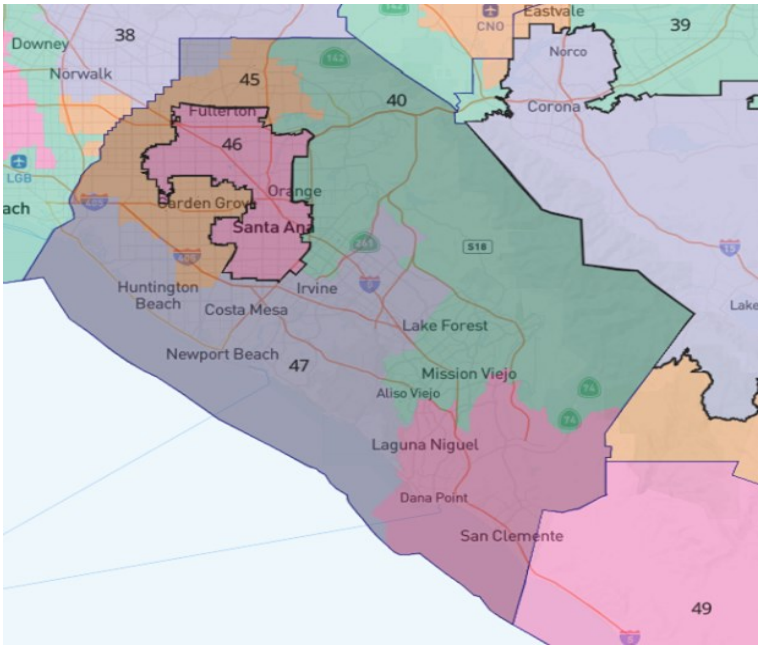
The Commission's redistricting process directly undercuts Robinson's claim that race-conscious line drawing "is not being abused." (*Robinson* Supp. Brief at 33). The Commission's shortcut—racial numbers in, maps out—was not narrowly tailored, even if VRA compliance could be a compelling interest (and it is not). The Commission created maps by way of blunt demographic thresholds, not the individualized analysis strict scrutiny requires.

This Court has held that "[r]acial gerrymandering, even for remedial purposes, may balkanize us into competing racial factions; it threatens to carry us further from the goal of a political system in which race no longer matters—a goal that the Fourteenth and Fifteenth Amendment embody, and to which the Nation continues to aspire." *Shaw v. Reno*, 509 U.S. 630, 657 (1993). This is no less true today than it was thirty years ago when it was penned.

c. Orange County: One Racial District Fractured an Entire County

Orange County provides a clear example of how starting with a racial baseline warped the broader map. The county is large enough and cohesive enough to sustain four congressional districts wholly within its borders. Orange County's economic and cultural communities, centered around industries like tourism, technology, and coastal commerce, makes it a natural candidate for cohesive districts.

Despite this, the Commission prioritized a Latino VRA district in central Orange County (now CD 46) as a racial anchor. This forced all other district lines to conform, fracturing the county. Transcripts show that roughly sixty percent of commissioner deliberations about Orange County focused on racial considerations, particularly whether Asian-American and Latino populations could be combined into coalition districts. The Commission ultimately settled on a single VRA district—CD 46. (*See Report on Final Maps*, 2020 California Citizen Redistricting Comm'n, Dec. 26, 2021, p. 45).



Congressional District 46: Orange County

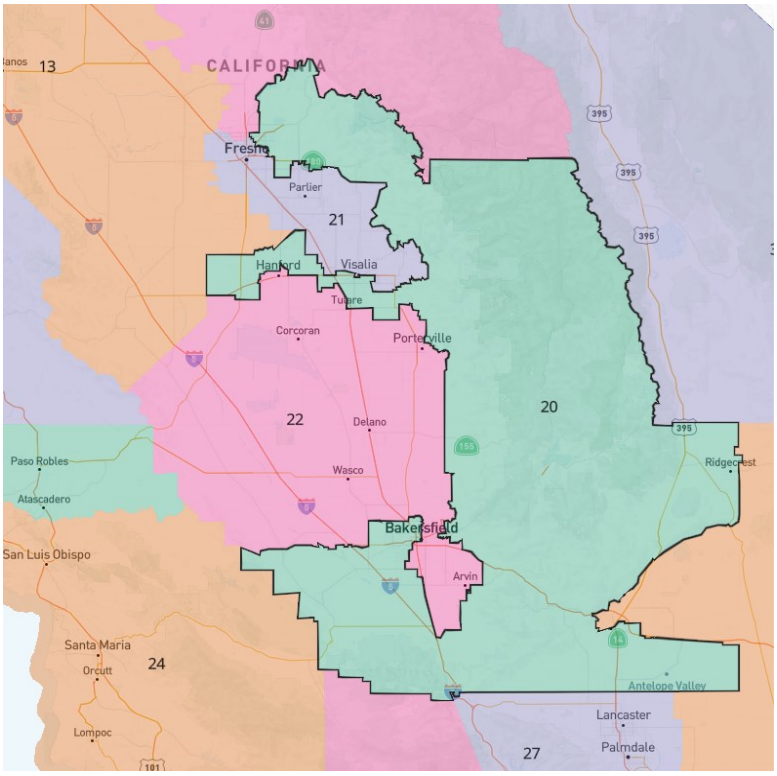
The cost was fragmentation for Orange County's natural communities of interest: only two congressional districts remained wholly within Orange County, while the other four cross other county lines—including two into Los Angeles County. The county was splintered into six districts, rather than the four intact districts it could have sustained.

d. Central Valley: Three VRA Districts Overrode Communities and Economy

In the Central Valley, the racial focus was even more pronounced. A review of the transcripts of the

Commission's public meetings reveal that racial considerations dominated roughly 75% of commissioners' discussion time. The Commission ultimately mandated the Valley contain three VRA districts. (*See Report on Final Maps*, 2020 California Citizen Redistricting Comm'n, Dec. 26, 2021, p. 45).

Because Congressional Districts 13, 21, and 22 were drawn as VRA districts, this produced District 20—a contorted district spanning multiple counties and municipalities. Commissioners made fine-grained adjustments to pick up pockets of Latino residents, while paying little attention to agricultural or water-based communities of interest that define the Valley's economy. County integrity and geographic coherence were consistently subordinated to racial arithmetic.



Congressional District 20: Central Valley

The Commission assumed that hitting numerical targets satisfies VRA obligations. In reality, this shaped Central Valley congressional districts by racial metrics, not the region's natural contours—distorting shapes and hindering voters' ability to elect representatives responsive to shared economic and environmental concerns.

This gets to the fundamental purpose of geographic and population-based representation. Members of the House of Representatives are

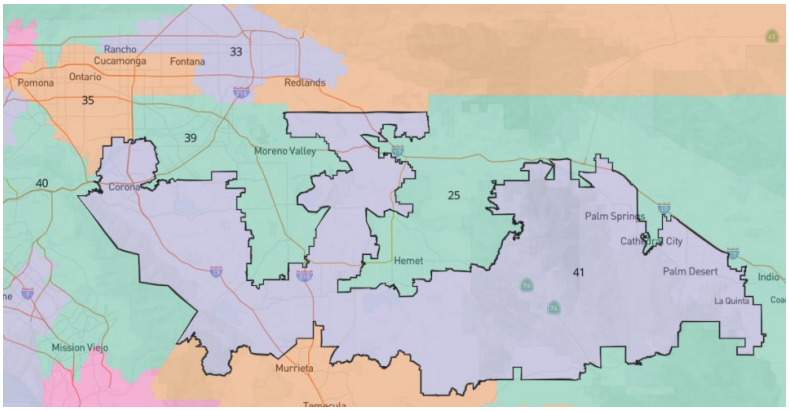
supposed to represent the interests of the people of a given area, not arbitrary conglomerations of citizens based primarily on skin color. In Central Valley districting, race was not merely one factor among many; it was the predominant factor which supplanted all other considerations.

e. Inland Empire: Racial Targets Produced Highly Irregular Districts

Commission transcripts show racial considerations dominated about seventy percent of commissioner comments about the Inland Empire. The Commission ultimately drew three VRA districts in the Inland Valley as a part of their stated effort to sustain Latino CVAP numbers. This produced some of the most irregular shapes in the congressional map. (*See Report on Final Maps*, 2020 California Citizen Redistricting Comm'n, Dec. 26, 2021, p. 45).

Because Congressional Districts 25, 35, and 39 were drawn as VRA districts, and because Orange County's VRA district 47 cracked Orange County forcing Congressional District 40 out into the Inland Empire, the Commission had to create the gerrymandered District 41. District 41 exemplifies the problem: it links disparate areas like Corona and Moreno Valley (Los Angeles commuter suburbs) and Palm Springs (a desert resort and retirement community hours from Los Angeles), unified not by

geographic continuity or economic ties, but by racial demographics. Commissioners repeatedly adjusted lines to hit numerical benchmarks, again at the expense of other factors deemed less important.



Congressional District 41: Inland Empire

The irregular boundaries of District 41, weaving through unrelated communities, stand as a stark testament to the Commission's prioritization of race over traditional redistricting principles. The Commission fractured organic communities to build three VRA districts around District 41.

f. Statewide: Anchoring to Race Distorted the Entire Map

By prioritizing VRA districts and relying solely on demographic counts for compliance, the Commission ensured racial predominance across California's congressional map. Each VRA district served as a fixed anchor, distorting adjacent ones—fragmenting

counties, crossing lines unnecessarily, and fracturing communities of interest. Across 18 days of deliberation, race predominated the commissioners' conversation. (*See, e.g.*, Trans. Oct. 13, 2021 (racial breakdowns discussed 100 times).) The result was fourteen VRA districts statewide and several coalition districts besides which have the practical consequence of diminished accountability statewide for all affected districts. Voters are represented by districts drawn to satisfy racial math, not to reflect genuine communities or shared interests. That undermines representative government: the very harm the Fourteenth and Fifteenth Amendments were meant to prevent.

This singular focus is even more striking given California's demographics. Latinos are not a minority, they are the state's plurality. (*See* U.S. Census Bureau, 2020 Census Demographic and Housing Characteristics File, Table P2, Cal. (2021) (Population: 39.2 million, Latino: 40.4%, White-not Hispanic or Latino: 34.3%)). Yet the Commission treated Latino census data as a minority requiring constant protection, drawing VRA districts for what is the state's largest group of voters. The Commission's actions show how deeply race controlled the process.

The point is underscored by Latino electoral success statewide. Latino voters have consistently demonstrated the ability to elect candidates of their

choice. (*See, e.g.,* Cal.Sec'y of State, Cal. Roster of Pub. Officials pt. II, at 1-2 (2025 ed.)). Yet the Commission acted as if the state's plurality group required extraordinary protection, devoting the majority of its congressional line-drawing to securing opportunity districts. (*See Report on Final Maps*, 2020 California Citizen Redistricting Commission, Dec. 26, 2021, p. 45).

In contrast, the Commission's Transcripts reveals the Commissioners did not devote any substantial dialog as to the second and third *Gingles* factors. The Commission assumed raw numbers were enough, and it organized the map of the nation's largest state around those numbers. As this Court has recognized, "where the State assumes from a group of voters' race that they 'think alike, share the same political interests, and will prefer the same candidates at the polls,' it engages in racial stereotyping at odds with equal protection mandates." *Miller v. Johnson*, 515 U.S. 900, 920 (1995).

The California Commission demonstrates that VRA compliance can collapse into numbers-only arithmetic, that coalition districts extend racial predominance further, and that real communities of interest are fractured rather than preserved. A State may not set a racial target absent evidence § 2 demands it in that place; misreading § 2 is not a compelling interest, *Cooper v. Harris*, 581 U.S. 285, 302–08 (2017), and mechanically "maximizing"

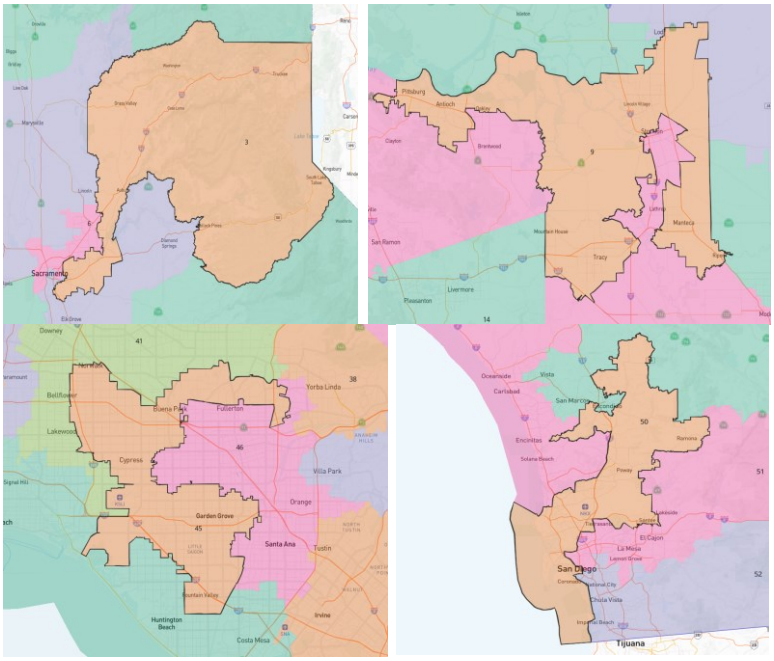
minority percentages or relying on racial targets untethered to *Gingles* is unconstitutional. *Bush v. Vera*, 517 U.S. 952, 977, 979.

g. Proposition 50 Confirms the Pattern: Even Legislators Treated VRA Seats as Immovable Racial Targets

The problem is not confined to 2021 commission cycle. California's new Proposition 50 process, which is attempting to shift the redistricting authority back to the legislature, reveals the same racial focus. Lawmakers began with the same premise as the Commission—that the state must treat race as the most important consideration by preserving the existing number of VRA districts, all other considerations be damned. The proposed 2025 maps under Proposition 50, adopted by the legislature via Assembly Bill 604 and awaiting voter approval in the November 4th special election "includes 16 majority-minority districts; the same number as the current map." Hailey Wang, *Will Your Congressional District Shift Left or Right in Newsom's Proposed Map?* L.A. Times, Aug. 27, 2025 (available at https://www.latimes.com/california/story/2025-08-27/proposed-california-congressional-district-map-democrats-republicans).

However, in redistributing the remaining portions of the state around these fixed racial anchors, the

legislature has generated even more irregular districts than the Commissions. Proposition 50's gerrymandered districts underscore the distorting, balkanizing effects of a race-based districting process. California's persistent pattern of using race as the organizing factor for drawing voting lines underscores why this Court must reaffirm that race may not predominate absent a genuine and narrowly tailored legal necessity.



Proposed Congressional Districts 3 (Elephant Head), 9 (Hammer-head Shark on a Horse's Body), 45 (Snoopy), & 50 (Pouncing Puppy)

IV. The Fourteenth and Fifteenth Amendments Secured a Color-Blind Constitution

Bruen reaffirmed that constitutional rights "are enshrined with the scope they were understood to have when the people adopted them." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 4 (2022) (quoting *District of Columbia v. Heller*, 554 U.S. 570, 634 (2008)). The Reconstruction Amendments demand the same originalist reading. Their text, history, contemporaneous press reception, and early judicial construction confirm Justice Harlan's principle: "Our Constitution is color-blind, and neither knows nor tolerates classes among citizens." *Plessy v. Ferguson*, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting). The Fourteenth and Fifteenth Amendments abolished caste, barred class legislation, and guaranteed equal rights for all. *Plyler v. Doe*, 457 U.S. 202, 213 (1982) ("[t]he Equal Protection Clause was intended to work nothing less than the abolition of all caste-based and invidious class-based legislation"); *Romer v. Evans*, 517 U.S. 620, 623 (1996) (the equal protection clause ensures "the law's neutrality where the rights of persons are at stake.")

The Reconstruction Amendments do not authorize states to establish racial hierarchies in voting—even under the guise of a remedial purpose. Laws that weight one race's interests as more important than

another's are an anathema to the Fourteenth and Fifteenth Amendments purpose of eradicating the legacy of slavery and its attendant racial hierarchies.

a. The Fourteenth Amendment: Equality for All, Not Privilege for Some

The Fourteenth Amendment targeted post-Civil War Black Codes and discrimination that kept freedmen in "practical servitude." *Civil Rights Cases*, 109 U.S. 3, 43-44 (1883) (Harlan, J., dissenting) (recounting that between the Thirteenth Amendment and the proposal of the Fourteenth, "the statute books of several of the States … had become loaded down with enactments which, under the guise of Apprentice, Vagrant, and contract regulations, sought to keep the colored race" subordinate). Congress recognized that state-dependent equal rights would fail, necessitating national guarantees. *Slaughter-House Cases*, 83 U.S. 36, 70-72 (1872) (explaining that the post-war "circumstances" forced upon national leaders the conviction that new constitutional guarantees were essential).

The debates over the Fourteenth Amendment confirm that its framers sought to enshrine a universal rule of equality. An initial draft presented by Representative Thomas T. Davis secured "to all persons in the several states equal protection of life,

liberty and property." Cong. Globe, 39th Cong., 1st Sess. 1083 (1866). That language was not limited to freedmen or to racial minorities, it extended protection to *all persons*.

Echoing this sentiment, Representative Giles Hotchkiss declared that "I have no doubt that I desire to secure every privilege and every right to every citizen in the United States…[*Representative Bingham's*] object in offering this resolution and proposing this amendment is to provide that no State shall discriminate between its citizens and give one class of citizens greater rights than it confers upon another," because the new Constitution had to "restrict the power of the majority and … protect the rights of the minority." *Id.* at 1095. He expressed that the danger was not just oppression of blacks by whites, but of *any class* of citizens by another. *Id.* Representative Thaddeus Stevens, the floor leader of Reconstruction, further stated that Section 1 guaranteed that "the law which operates upon one man shall operate equally upon all." *Id.* at 2459. Future President James Garfield praised the Amendment for holding over "every American citizen, without regard to color, the protecting shield of law." *Id.* at 2462. And introducing the Amendment in the Senate, Senator Jacob Howard stated: Section 1 was "a general prohibition" against States "denying to any person within the jurisdiction of the State the equal protection of its laws." *Id.* at 2765.

Senator Howard famously explained that the Equal Protection Clause "establishes equality before the law, and . . . gives to the humblest, the poorest, and most despised . . . the same rights and the same protection before the law as it gives to the most powerful, the most wealthy, or the most haughty." Cong. Globe, 39th Cong., 1st Sess. 2766 (1866). Indeed, Howard's speech was so closely followed that "public discussion of the Fourteenth Amendment commonly referred to the proposal as the 'Howard Amendment.'" Kurt T. Lash, *The Constitutional Referendum of 1866: Andrew Johnson and the Original Meaning of the Privileges or Immunities Clause,* 101 Geo. L.J. 1275, 1299-1300 (2013).

Additionally, the country at large understood the Amendment in the same way as was widely reported "in major newspapers across the country," *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 832 (2010) (Thomas, J., concurring)("News of Howard's speech was carried in major newspapers across the country, including the New York Herald, *see* N.Y. Herald, May 24, 1866, p. 1, which was the best-selling paper in the Nation at that time, *see* A. Amar, The Bill of Rights: Creation and Reconstruction 187 (1998)). The New York Times carried the speech as well, reprinting a lengthy excerpt of Howard's remarks, including the statements quoted above. N.Y. Times, May 24, 1866, p. 1.), *see also* Charles Fairman, Does the Fourteenth

Amendment Incorporate the Bill of Rights?, 2 STAN L. Rev. 5, 72-75 (1949) (discussing press coverage).

In an article entitled "The Constitutional Amendment," published shortly after Congress sent the Fourteenth Amendment to the states for ratification, the Cincinnati Commercial explained that the Fourteenth Amendment wrote into the Constitution "the great Democratic principle of equality before the law," invalidating all "legislation hostile to any class." Cincinnati Commercial, June 21, 1866, at 4. Quoted in David H. Gans, *Perfecting the Declaration: The Text and History of the Equal protection Clause of the Fourteenth Amendment* 12-13 & nn. 51-52 (Constitutional Accountability Ctr. 2011), https://www.theusconstitution.org/wp-content/uploads/2017/12/Perfecting_the_Declaration.pdf. It continued, "[w]ith this section engrafted upon the Constitution, it will be impossible for any Legislature to enact special codes for one class of its citizens . . ." *Id*. (quoting *Cincinnati Commercial*, June 21, 1866, at 4). In short, the Amendment provided that "every body – man, woman, and child – without regard to color, should have equal rights before the law," Cincinnati Commercial, Sept. 29, 1866, at 1 (quoting speech of Sen. John Sherman), quoted in Grans, *supra*, at 13 & n. 55, writing the protection of equality affirmed in the Declaration explicitly into the Constitution.

Press coverage in the Chicago Tribune emphasized that the Amendment "put in the fundamental law the declaration that all citizens were entitled to equal rights in this Republic," Chicago Tribune, Aug. 2, 1866, p.2, quoted in Gans, *supra*, at 17 & n. 53, placing all "throughout the land upon the same footing of equality before the law, in order to prevent unequal legislation . . . ." Cincinnati Commercial, Aug. 20, 1866, p.2, quoted in Gans, *supra*, at 18 & n. 54.

The press thus unequivocally confirmed what had been repeated by lawmakers: Equal Protection was not a race-specific principle, but a universal guarantee of rights regardless of race.

Legal scholars agreed too. Famed Southern litigator George Paschal explained that "the existence of laws in the States where the newly-emancipated negroes resided, which discriminated with gross injustice and hardship against them as a class, was the end to be remedied by this clause, and by it such laws are forbidden." George W. Paschal, *The Constitution of the United States: Defined and Carefully Annotated* 504 (1882). New Hampshire lawyer and politician Timothy Farrar similarly stated: "Origin, caste, color, descent, or any other distinction among men, has no effect here. Descendants of Europeans and Africans stand on equal ground." Timothy Farrar, *Manual of the Constitution of the United States of America* 62 (3d ed.

1872). Both men recognized that the Clause was not designed to privilege one group, but to abolish distinctions altogether.

Early judicial decisions confirmed this understanding. Just a decade after passage, the Supreme Court interpreted the Fourteenth Amendment as "extend[ing] its protection to races and classes, and prohibit[ing] any State legislation which has the effect of denying to any race or class, or to any individual, the equal protection of the laws." *The Civil Rights Cases*, 109 U.S. 3, 24 (1883). And its guarantees are "universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality." *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886). In *Strauder v. West Virginia*, this Court explained that the Fourteenth Amendment required that the law "shall be the same for the black as for the white." 100 U.S. 303, 307–08 (1880). As Senator Howard stated plainly, the Equal Protection Clause "abolishes all class legislation in the States and does away with the injustice of subjecting one caste of persons to a code not applicable to another." Cong. Globe, 39th Cong., 1st Sess., 2766 (1866).

The evidence points in one direction: the Fourteenth Amendment was understood as a universal guarantee of equality before the law. It was meant to remove the power of government to divide citizens into superior and inferior classes.

b. The Fifteenth Amendment: The Capstone of Universal Suffrage

The same principle animated the Fifteenth Amendment. Representative Elijah Ward called it "the capstone in the great temple of American freedom." *See* Cong. Globe, 40th Cong., 3d Sess. 724 (1869). Senator Henry Wilson echoed that it would "make every citizen equal in rights and privileges." *Id*. at 672. Supporters understood it as the final step in cementing the colorblind Constitution. *See, e.g., Id*. at 668 (Sen. Stewart: "It is the only measure that will really abolish slavery. It is the only guarantee against peon laws and against oppression. It is that guarantee which was put in the Constitution of the United States originally, the guarantee that each man shall have a right to protect his own liberty. It repudiates that arrogant, self-righteous assumption, that one man can be charged with the liberties and destinies of another.); *Id.* at 981 (Rep. Abbott: "it is absolutely right and expedient that suffrage be bestowed upon all men within this nation… We have now conferred citizenship upon nearly all of this nation. Let us go on and complete the work, until we shall really have a Government by the people, of the people, and for the people").

Some Senators initially worried that the draft Fifteenth Amendment implied "colored persons" enjoyed superior rights over other citizens. John Mabry Mathews, *Legislative and Judicial History of*

the Fifteenth Amendment 24 (1909) (citing Cong. Globe, 40th Cong., 3d Sess. 1427 (1869)). After extensive debate in both houses, Congress referred the text to conference committees, which revised it to resolve these concerns—yielding the final language used today. *Id.* at 34. The consensus held that this version clearly invested "all human beings with political rights," not preferred rights to one race above others. *Id.* at 35. The Fifteenth Amendment was heralded by supporters as forming "the capstone in the great temple of American freedom," "consummate the important work of regenerating the country," and "assur[ing] the peace and prosperity of the whole nation." *Id.* at 24.

Constitutional scholars again confirmed the point. Paschal explained that although the Fifteenth Amendment was cast in negative form, in substance it "confers a positive right which did not exist before." Paschal, *supra*, at 513, *see also United States v. Cruikshank*, 25 F. Cas. 707, 712 (C.C.D. La. 1874), *aff'd*, 92 U.S. 542 (1875). He continued: "The amendment does not confer the right of suffrage upon any one. It prevents the States or the United States, however, from giving preference, in this particular, to one citizen of the United States over another, on account of race, color, or previous condition of servitude." Paschal, *supra*, at 514. And "[i]t follows that the amendment has invested the citizen of the United States with a new constitutional right…[—]

exemption from discrimination in the exercise of the elective franchise, on account of race, color, or previous condition of servitude." *Id.*

The judiciary quickly agreed. In *United States v. Reese*, this Court recognized that while it is true that the "Fifteenth Amendment does not confer the right of suffrage upon any one," it "has invested the citizens of the United States with a new constitutional right. … That right is exemption from discrimination in the exercise of the elective franchise, on account of race, color, or previous condition of servitude." *United States v. Reese*, 92 U.S. 214, 217–18 (1876)**.** The Court understood the Amendment the same way Congress, the press, and commentators did: it created a universal right, not a racial preference.

The Fifteenth Amendment thus carried forward the same theme as the Fourteenth. Both Amendments barred caste. Both forbade class legislation. Both guaranteed equal protection of the laws and equal access to the ballot without regard to race or color.

c. The Historical Record Forbids Race-Based Districting

The historical record could not be clearer. The Fourteenth and Fifteenth Amendments were universally understood to abolish caste, forbid class legislation, and guarantee equal rights to all.

Legislators declared it. Newspapers reinforced it. Treatise writers and courts confirmed it. Modern scholarship affirms it. These Amendments were adopted to secure a colorblind Constitution, not to authorize government in dividing citizens by race. Any interpretation of these Amendments that permits or requires racial classifications in redistricting contradicts their original purpose and undermines the principle of equality they were designed to protect.

California's Commission did precisely what the Reconstruction framers forbade. It began by identifying VRA districts and locking them in place, subordinating every traditional criterion to race. That is not faithful adherence to the Fourteenth and Fifteenth Amendments; it is their inversion. A Constitution written to forbid caste and class cannot be read to require them.

V. Pre-VRA Cases Show that the Constitution is Sufficient to Police Any Problems With Race-Based Districting, Without the VRA

The Fourteenth and Fifteenth Amendments, as written and as enforced for more than a century, are fully sufficient to police racial discrimination in redistricting. Long before Congress enacted the Voting Rights Act, this Court repeatedly applied the Constitution itself to invalidate state practices that

denied, diluted, or conditioned franchise on account of race. Those decisions, spanning grandfather clauses, white primaries, redistricting, registration schemes, and electoral structures, demonstrate that the Constitution supplies both the substantive rule (no race-based burdens on voting) and the judicially enforceable remedy (injunctions and invalidation), without need for additional statutory layers.

The equal-protection guarantee forbids States from "pick[ing] out certain qualified citizens or groups of citizens and deny[ing] them the right to vote at all," and it would "also prohibit a law that would expressly give certain citizens a half-vote and others a full vote." *Colegrove v. Green*, 328 U.S. 549, 569 (1946) (Black, J., dissenting) (citing *Nixon v. Herndon*, 273 U.S. 536, 541 (1927); *Nixon v. Condon*, 286 U.S. 73 (1932)). That rule is reinforced and, as to race, made categorical by the Fifteenth Amendment, which was adopted "to secure to a lately enslaved population protection against violations of their right to vote on account of their color or previous condition." *United States v. Reese*, 92 U.S. 214 (1875). The Constitution thus *already* invalidates any state device that denies or abridges the franchise for racial reasons.

While the Supreme Court chose to abstain from a racial gerrymander in *Colegrove*, the Court reversed its course in *Gomillion v. Lightfoot*, when it determined that "Acts generally lawful may become unlawful when done to accomplish an unlawful end."

364 U.S. 339, 347 (1960). In *Gomillion*, the Court struck down an attempt by the City of Tuskegee to redraw itself from a square into a 28-sided figure to fence out virtually all Black voters. *Id.* at 340–41. Even when the Court declined to reach apportionment merits, it recognized that "gross inequality" in districting that yields discrimination can invoke the Fourteenth Amendment. *Colegrove*, 328 U.S. at 569 (Black, J., dissenting). While not a racial case, this Court determined that apportionment claims could be adjudicated under the Equal Protection Clause in the landmark case of *Baker v. Carr*. 369 U.S. 186 (1962). These decisions confirm that the Constitution enables the federal courts to police racially discriminatory districting.

In *Wright v. Rockefeller*, the three-judge court noted that *Gomillion* and *Baker* had prompted numerous lawsuits across the country. *Wright v. Rockefeller*, 211 F.Supp. 460, 466 (S.D. N.Y. 1962). Some of these cases involved racial discrimination but most focused on malapportionment. The lower courts were able to examine these claims and ascertain whether valid constitutional violations in redistricting had occurred. *See*, *e.g.*, *Wright*, 211 F.Supp. at 468 (finding no constitutional violation) aff'd, 376 U.S. 52 (1964); *Honeywood v. Rockefeller*, 214 F.Supp. 897, 903 (E.D. N.Y. 1963) (finding no constitutional violation) aff'd, 376 U.S. 222 (1964); *Buckley v. Hoff*, 234 F.Supp. 191, 200 (D. Vt. 1964)

(finding Vermont's Constitution violated the equal protection clause) aff'd as modified, 379 U.S. 359 (1965); and *Butterworth v. Dempsey*, 229 F.Supp. 754, 764 (D. Conn. 1964) (finding Connecticut's apportionment violated equal protection) aff'd and remanded, 378 U.S. 564 (1964).

Beyond redistricting, the same constitutional rule invalidated other major modes of racial exclusion. When Oklahoma used a grandfather clause to exempt white voters from literacy requirements, this Court struck it down. *Guinn v. United States*, 238 U.S. 347, 368 (1915). When the State tried again with a neutral-sounding 12-day registration window, the Court saw through it. *Lane v. Wilson*, 307 U.S. 268, 277 (1939). Texas's white primary schemes fell one after another: first a statute (*Herndon*, 273 U.S. at 541), then party rules (*Condon*, 286 U.S. at 89), then even a purportedly private pre-primary preselection scheme (*Terry v. Adams*, 345 U.S. 461, 470 (1953)). The Court also recognized constitutional protection against conspiracy to intimidate a voter from exercising "his right to vote." *Ex parte Yarbrough*, 110 U.S. 651, 657 (1884). And in *United States v. Classic*, 313 U.S. 299, 328 (1941), the Court concluded that the federal government may prosecute state election officials who alter and falsify ballots in a primary election for federal office. Across every form, the Court enforced the Constitution itself.

These precedents confirm that the Constitution sufficiently provides the governing standard and the judicially enforceable remedy for race-based discrimination. *Guinn*, 238 U.S. at 364–68; *Lane*, 307 U.S. at 275; *Smith v. Allwright*, 321 U.S. 649, 661–66 (1944); *Yarbrough*, 110 U.S. at 665. The judiciary's ability to apply purpose-based analysis sensitive to "The (Fifteenth) Amendment nullifies sophisticated as well as simple-minded modes of discrimination," *Lane*, at 275, cited by, *Gomillion*, 364 U.S. at 342 meant constitutional litigation could evolve as fast as the stratagems did.

For more than half a century before the Voting Rights Act, the Constitution alone did the work. The Amendments' text and this Court's decisions leave no gap for race-based voting discrimination to occupy. The Fourteenth and Fifteenth Amendments already supply both the rule and remedy. The Constitution has long prohibited, and courts have long enforced, a color-blind command. And the Equal Protection Clause "does not permit the states to pick out certain qualified citizens … and deny them the right to vote at all." *Colegrove*, 328 U.S. at 569 (Black, J., dissenting) (citing *Herndon*, 273 U.S. at 541; *Condon*, 286 U.S. 73).

Even after enactment of the Voting Rights Act, this Court made clear that, when race is the predominant factor in drawing congressional districts, the maps are unconstitutional. *See Shaw v.*

Reno, 509 U.S. 630, 658 (1993) (holding the district was "so irrational on its face that it can be understood only as an effort to segregate voters into separate voting districts because of their race."); *Miller v. Johnson*, 515 U.S. 900, 920 (1995) (holding that, when race is the predominant factor, the redistricting plan cannot be upheld); and *Bush v. Vere*, 517 U.S. 952, 986 (1996) (holding that the "Equal Protection Clause prohibits a State from taking any action based on crude, inaccurate racial stereotypes.").

VI. Conclusion

The question before this Court is whether the intentional creation of majority-minority districts to comply with the VRA violates the Fourteenth or Fifteenth Amendments. California's experience demonstrates the answer. California treated VRA districts as immovable anchors. Once race became the starting point, it consumed the process, fractured communities, and subordinated every neutral principle.

That is precisely what the Reconstruction Amendments forbid. The Fourteenth and Fifteenth Amendments secure a principle of universal equality. They do not tolerate line-drawing that elevates race above all else. And as this Court's pre-VRA decisions confirm, the Constitution itself supplies both the rule and the remedy.

This Court should hold that intentional racial districting violates the Fourteenth and Fifteenth Amendments, find for Callais, and remand with instructions that Louisiana redraw its congressional districts in a manner faithful to the Constitution's guarantee of equality for all.

Respectfully submitted,

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