Nos. 24-109, 24-110

IN THE

Supreme Court of the United States

STATE OF LOUISIANA,

Appellant,

v.

PHILLIP CALLAIS, ET AL.,

Appellees.

PRESS ROBINSON, ET AL.,

Appellants,

v.

PHILLIP CALLAIS, ET AL.,

Appellees.

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

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

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INTEREST OF *AMICUS CURIAE*[1]

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

INTRODUCTION AND SUMMARY OF ARGUMENT

After three separate federal courts held that Louisiana's congressional map likely violated Section 2 of the Voting Rights Act, the Louisiana Legislature ("Legislature") enacted its current congressional map—SB8—to redress that violation, while also accomplishing other political objectives. The court below, however, held the Legislature's actions unconstitutional, concluding that its decision to create a second majority Black district (as was required to remedy the Section 2 violation), while furthering other permissible redistricting goals, resulted in a racial gerrymander. This result is at odds with this Court's precedents and undermines effective enforcement of Section 2 and the Fifteenth Amendment.

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

The Legislature's enactment of SB8 is a quintessential example of a state legislature's redistricting discretion in action. After years of litigation on the Robinson Appellants' Section 2 challenge to the Legislature's 2022 congressional map ("*Robinson* litigation"), the Fifth Circuit directed the Legislature to enact a map to redress the Section 2 violation. *See Robinson v. Ardoin*, 86 F.4th 574, 601 (5th Cir. 2023). The Fifth Circuit also instructed the *Robinson* district court to set the case for trial and, if necessary, impose a remedial map before the 2024 election if the Legislature failed to enact a map to redress the Section 2 violation. *See id.* at 602. The Legislature chose the course that "promised to simplify and reduce the burden of litigation," *Abbott v. Perez*, 585 U.S. 579, 614 (2018), and enacted SB8.

SB8 checked a lot of boxes: it complied with Section 2 and resolved the *Robinson* litigation by following the federal courts' guidance to add another majority Black district, *see* Robinson Appellants J.S. App. ("J.S. App.") 393a; it preserved the congressional seats of the U.S Representatives whom the Legislature wanted to protect, *see id.* at 392a-93a; and it respected communities of interest, *see, e.g.*, *id.* at 421a. Simply put, the Legislature used its redistricting "flexibility," *Bush v. Vera*, 517 U.S. 952, 978 (1996) (plurality), to enact a remedial map that also achieved its other permissible redistricting objectives.

In reviewing that map and concluding that it was an unlawful racial gerrymander, the court below made three fundamental errors, thereby usurping the Legislature's prerogative to enact a remedial map. *First*, the district court treated the Legislature's stated intention to create a second majority Black district (as three federal courts had said it was required to do under Section 2) as virtually decisive evidence of racial

predominance. In doing so, the court erroneously made the Legislature's goal of complying with Section 2 inherently constitutionally suspect. This is irreconcilable with this Court's repeated assertions that the consciousness of race required to create a Section 2 district does not automatically trigger strict scrutiny. *See Allen v. Milligan*, 599 U.S. 1, 33 (2023); *Vera*, 517 U.S. at 958 (plurality). As *Milligan* reaffirmed, "Section 2 itself 'demands consideration of race.'" *Milligan,* 599 U.S. at 30-31 (plurality) (quoting *Abbott*, 585 U.S. at 587).

Second, the district court dismissed the Legislature's clearly stated political goals as not credible. As the record makes clear, the Legislature chose SB8 over alternative Section 2-compliant maps because SB8 preserved the seats of certain U.S. Representatives. And as this Court underscored earlier this year, "[i]f either politics or race could explain a district's contours," race did not predominate. *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 10 (2024). Thus, the district court was wrong to ignore the Legislature's political aims, thereby stamping out the Legislature's discretion to enact a remedial map that furthered its other permissible redistricting objectives while also complying with Section 2.

And *third*, the district court required SB8 to satisfy the first *Gingles* precondition in its narrow tailoring analysis, *see* J.S. App. 177a-78a, 182a; *see also Thornburg v. Gingles*, 478 U.S. 30, 50 (1986) (explaining that, to state a Section 2 vote dilution claim, plaintiffs must first "demonstrate that [the minority group] is sufficiently large and geographically compact to constitute a majority in a single-member district"). While *Gingles* is relevant to Section 2 liability, it is irrelevant to the lawfulness of a remedial map. In fact, this Court has never required a remedial map to independently

meet the *Gingles* requirements to overcome narrow tailoring. This is because state legislatures have "broad discretion" to draw Section 2 districts, *Shaw v. Hunt*, 517 U.S. 899, 917 n.9 (1996) (hereinafter *Shaw II*), including the discretion to create noncompact remedial districts to advance their political goals.

The cumulative effect of these errors was to make it virtually impossible for the Legislature to consider the "complex interplay of forces" at play when redistricting and to tie the Legislature's hands as it sought to comply with Section 2. *Miller v. Johnson*, 515 U.S. 900, 915-16 (1995); *id.* at 915 (noting that when a state legislature undertakes the complicated task of redistricting, it "must have discretion to exercise the political judgment necessary to balance competing interests"). The decision of the court below cannot be squared with this Court's repeated emphasis on the importance of legislative discretion over redistricting and its longstanding preference for legislatively-enacted maps over court-imposed ones. *See League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 416 (2006) (plurality) (hereinafter *LULAC*).

And by undermining the Legislature's ability to redress Section 2 violations, the court below also frustrated Section 2's ability to further the Fifteenth Amendment's promise of equal opportunity in voting. Congress passed Section 2's prohibition on vote dilution to enforce the Fifteenth Amendment's ban on racial discrimination in voting and prevent states from using redistricting to weaken the voting strength of voters of color. *See Milligan*, 599 U.S. at 17-18. The Legislature in turn enacted SB8 to comply with Section 2 and give Black Louisianans the ability to elect congressional candidates of their choice under the new map.

By invalidating SB8, the district court undermined Section 2's ability to redress vote dilution and threatened to weaken the Fifteenth Amendment's power to prevent "contrivances by a state to thwart equality in the enjoyment of the right to vote . . . regardless of race or color." *Lane v. Wilson*, 307 U.S. 268, 275 (1939). The judgment of the district court should be reversed.

ARGUMENT

I. The District Court's Conclusion that SB8 Is a Racial Gerrymander Is Irreconcilable with this Court's Precedents and Would Tie the Hands of State Legislatures Seeking to Comply with the Voting Rights Act.

When a federal court finds a constitutional or Section 2 violation in a redistricting plan, state legislatures must be given the opportunity to enact a remedial map to cure the violation of federal law, and they should be afforded discretion in determining how best to cure that violation. Here, by treating the Legislature's stated intention to create a second majority Black district as virtually decisive evidence of racial predominance, disregarding the Legislature's political motivations in drawing the map, and requiring it to satisfy a condition that is only relevant to Section 2 liability, the court below ran afoul of this Court's precedents and inappropriately tied the Legislature's hands, replacing the flexibility to which it was entitled with a "straight-jacket," J.S. App. 192a (Stewart, J., dissenting).

A. Because "the Constitution vests redistricting responsibilities foremost in the legislatures of the States and in Congress, a lawful, legislatively enacted plan should be preferable to one drawn by the courts." *LULAC*, 548 U.S. at 416 (plurality). Thus, "[a]bsent

evidence that [a state] will fail timely to perform [its redistricting] duty, a federal court must neither affirmatively obstruct state reapportionment nor permit federal litigation to be used to impede it." *Growe v. Emison*, 507 U.S. 25, 34 (1993); *see Wise v. Lipscomb*, 437 U.S. 535, 540 (1978) (opinion of White, J.) ("When a federal court declares an existing apportionment scheme unconstitutional, it is therefore, appropriate, whenever practicable, to afford a reasonable opportunity for the legislature to meet constitutional requirements by adopting a substitute measure rather than for the federal court to devise and order into effect its own plan.").

When creating remedial maps, "'[s]tates retain broad discretion in drawing districts to comply with the mandate of § 2,' and . . . § 2 itself imposes 'no *per se* prohibitions against particular types of districts.'" *LULAC*, 548 U.S. at 506 (Roberts, C.J., concurring in part, concurring in the judgment in part, and dissenting in part) (citations omitted) (quoting *Shaw II*, 517 U.S. at 917 n.9, and *Voinovich v. Quilter*, 507 U.S. 146, 155 (1993)); *Vera*, 517 U.S. at 978 (plurality) ("the States retain a flexibility that federal courts enforcing § 2 lack"). Also, because "[l]egislators are almost always aware of the political ramifications of the maps they adopt," *Alexander*, 602 U.S. at 6, "States must have discretion to exercise the political judgment necessary to balance competing interests" when redistricting, *Miller*, 515 U.S. at 915, including when crafting remedial maps.

When assessing a state's redistricting map, courts must therefore "be sensitive to the complex interplay of forces that enter a legislature's redistricting calculus." *Id.* at 915-16. Indeed, "federal courts are bound to respect the States' apportionment choices unless those choices contravene federal requirements."

Voinovich, 502 U.S. at 156; *see North Carolina v. Covington*, 585 U.S. 969, 979 (2018) (per curiam) ("a legislature's 'freedom of choice to devise substitutes for an apportionment plan found unconstitutional, either as a whole or in part, should not be restricted beyond the clear commands' of federal law" (quoting *Burns v. Richardson*, 384 U.S. 73, 85, 86 (1966))).

B. Notwithstanding the discretion the Legislature should have enjoyed in deciding how best to redress the Section 2 violation, the court below treated the Legislature's stated intention to create a second majority Black district as virtually decisive evidence of racial predominance.

According to the court below, when it came to choosing SB8, "the State first made the decision to create a majority-Black district and, only then, did political considerations factor into the State's creation of District 6." J.S. App. 174a. In other words, according to the district court, any stated compliance with the Voting Rights Act, particularly when a legislature acts to remedy a Section 2 violation, constitutes racial predominance. *Cf.* Callais Mot. 18, 20 (arguing that because Louisiana drew SB8 with two majority Black districts as a result of the *Robinson* litigation, "race predominated").

This reasoning is irreconcilable with this Court's repeated recognition that the race consciousness required to adhere to Section 2's command—as states must do under federal law—does not automatically trigger strict scrutiny, even if a legislature decides to create a majority-minority district as a result. As a plurality of this Court put it most recently, "[w]hen it comes to considering race in the context of districting, we have made clear that there is a difference 'between being aware of racial considerations and being motivated by them.'" *See, e.g.*, *Milligan*, 599 U.S. at 30

(plurality) (quoting *Miller*, 515 U.S. at 916); *Vera*, 517 U.S. at 958 (plurality) (citations omitted) ("Strict scrutiny does not apply merely because redistricting is performed with consciousness of race. Nor does it apply to all cases of intentional creation of majority-minority districts."); *id.* at 962 ("the decision to create a majority-minority district [is not] objectionable in and of itself"); *Shaw v. Reno*, 509 U.S. 630, 646 (1993) (hereinafter *Shaw I*) (explaining that awareness of race in redistricting "does not lead inevitably to impermissible race discrimination"). That is because "[t]he question whether additional majority-minority districts can be drawn"—a crucial part of the inquiry demanded by the Voting Rights Act—"involves a 'quintessentially race-conscious calculus.'" *Milligan*, 599 U.S. at 31 (plurality) (quoting *Johnson v. De Grandy*, 512 U.S. 997, 1020 (1994)).

Under this Court's case law, to establish racial predominance, plaintiffs must prove that "race for its own sake, and not other districting principles, was the legislature's dominant and controlling rationale in drawing its" district lines, *Miller*, 515 U.S. at 913, such that the map's contours are "unexplainable on grounds other than race," *Hunt v. Cromartie*, 526 U.S. 541, 546 (1999) (hereinafter *Cromartie I*) (quoting *Shaw I*, 509 U.S. at 644). In other words, "circumstantial evidence of a district's legislative shape and demographics or more direct evidence going to legislative purpose" must establish "that race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 266-67 (2015) (hereinafter *ALBC*) (quoting *Miller*, 515 U.S. at 916).

Thus, even though "the line between racial predominance and racial consciousness can be difficult to

discern," *Milligan*, 599 U.S. at 31 (plurality), courts must find it. The district court here did not even attempt to do so. Contrary to this Court's precedents, the court did not conduct a careful analysis of district lines. Instead, the court assumed that the bare fact that the Legislature drew an additional majority-minority district meant that race necessarily predominated. In doing so, it erroneously elevated the Legislature's desire to follow the federal courts' instructions that it create a second majority Black district to comply with Section 2 into decisive evidence of racial predominance and failed to conduct the "sensitive inquiry" necessary to assess the Legislature's motivations. *Cromartie I*, 526 U.S. at 546 (quoting *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977)).

The upshot of the district court's reasoning is that the Legislature's decision to enact a remedial map was inherently constitutionally suspect and susceptible to another round of federal court litigation. This is at odds with this Court's repeated assertions that a "legislatively enacted plan should be preferable to one drawn by the courts." *LULAC*, 548 U.S. at 416 (plurality). If the district court were right, then any remedial map drawn by a state legislature in response to judicial findings of a Section 2 violation would trigger strict scrutiny. That is plainly incorrect and would upend this Court's well-settled Voting Rights Act jurisprudence, recently reaffirmed in *Milligan*, which imposes on states the duty to take account of race to ensure fair maps that give citizens of all races equal opportunity to elect candidates of their choice. *See Milligan*, 599 U.S. at 33 (rejecting dissent's view that drawing a majority Black district would prove racial predominance because that result would require overruling the established Section 2 framework).

C. In addition to limiting the Legislature's ability to consider the need to redress the Section 2 violation—and, indeed, the federal courts' directions about how to redress that violation—the court below also discredited the political motivations that drove the Legislature's selection of SB8 and thereby frustrated the Legislature's ability to pursue its non-remedial goals when drawing the remedial map.

In mixed-motive racial gerrymandering cases where, as here, "the State has articulated a legitimate political explanation for its districting decision," *Easley v. Cromartie*, 532 U.S. 234, 242 (2001) (hereinafter *Cromartie II*), courts must "[rule] out the competing explanation that political considerations," rather than race, "dominated the legislature's redistricting efforts." *Alexander*, 602 U.S. at 9-10. "If either politics or race could explain a district's contours, the plaintiff has not cleared its bar." *Id.* at 10.

Political considerations in fact do explain the borders of CD6, the majority Black district created by SB8. Senator Womack explained again and again that SB8 created a majority Black district in CD6 to safeguard the congressional seat of an incumbent representative, Julia Letlow. *See, e.g.*, J.S. App. 392a, 420a, 441a. Indeed, SB8 was enacted over a more compact alternative that also contained two majority Black districts precisely because only SB8 furthered the Legislature's political goal of protecting Representative Letlow's seat. *Id.* at 395a. An amendment to further secure Representative Letlow's seat was passed, *see id.* at 401a, and an amendment that increased the Black voting age population of CD2 and CD6 "for no particular reason other than to do so" failed, *see id.* at 115a. Simply put, the Legislature enacted SB8 to accomplish its political goals, while also complying with the *Robinson* district court's ruling. Under this Court's

decision in *Alexander*, this readily apparent political motivation precludes a racial predominance finding. Indeed, it shows that the Legislature considered and took account of a wide variety of districting factors, seriously undercutting the court's view that race drove the Legislature's decisionmaking.

The court below, however, cast aside the Legislature's political aims, opining that "it is not credible that Louisiana's majority-Republican Legislature would choose to draw a map that eliminated a Republican-performing district for predominantly political purposes." J.S. App. 173a. Because the court found it "difficult to fathom that Louisiana Republicans would intentionally concede a seat to a Democratic candidate," it concluded that "District 6 was drawn primarily to create a second majority-Black district," and "[t]hus, it is clear that race was the driving force and predominant factor behind the creation of District 6." *Id.* at 173a-74a.

The district court should not have second-guessed the Legislature's clearly stated political objectives based simply on its own conjecture, especially when the record makes clear that SB8 was chosen precisely because it achieved those political objectives. The court's outright dismissal of the Legislature's express political aims is a far cry from the "extraordinary caution" that this Court has instructed federal courts to take when adjudicating mixed-motive cases. *Alexander*, 602 U.S. at 7 (quoting *Miller*, 515 U.S. at 915-16).

And that error was compounded by the fact that the court did not require Appellees to provide an alternative map that "show[ed] at the least that the legislature could have achieved its legitimate political objectives in alternative ways that are comparably consistent with traditional districting principles" and "that those districting alternatives would have

brought about significantly greater racial balance." *Cromartie II*, 532 U.S. at 258; *Alexander*, 602 U.S. at 35 ("A plaintiff 's failure to submit an alternative map . . . should be interpreted by district courts as an implicit concession that the plaintiff cannot draw a map that undermines the legislature's defense that the districting lines were 'based on a permissible, rather than a prohibited, ground.'" (quoting *Cooper v. Harris*, 581 U.S. 285, 317 (2017))).

Even more, by failing to give proper weight to the Legislature's permissible political goals that motivated the enactment of SB8, the court below undercut the Legislature's prerogative to advance its political priorities while drawing a remedial map.

D. Finally, the district court erroneously required SB8 to meet the *Gingles* requirements, which concern requirements for Section 2 liability, and are not relevant to the lawfulness of a remedial map. Specifically, the court erred when it concluded that SB8 was not narrowly tailored because, in its view, the map failed to satisfy *Gingles*.

This Court has never required a map enacted to remedy a Section 2 violation to independently meet the *Gingles* requirements. Instead, as long as the legislature has good reasons to believe that a majority-minority district is necessary under Section 2, it has "broad discretion in drawing districts to comply with [Section 2's] mandate." *Shaw II*, 517 U.S. at 917 n.9. Importantly, Section 2 does not "impos[e] a freestanding compactness obligation on the States." *LULAC*, 548 U.S. at 506 (Roberts, C.J., concurring in part, concurring in the judgment in part, and dissenting in part). A district drawn to comply with Section 2 can be noncompact, *see id.* at 430 (plurality), and it need not win "beauty contests" against a plaintiff's preferred map, *Vera*, 517 U.S. at 977 (plurality); *see id.* at 999

(Kennedy, J., concurring) ("While § 2 does not require a noncompact majority-minority district, neither does it forbid it, provided that the rationale for creating it is proper in the first instance. Districts not drawn for impermissible reasons or according to impermissible criteria may take any shape, even a bizarre one."). Legislatures must only be cautious "not [to] subordinate traditional districting principles to race substantially more than is 'reasonably necessary' to avoid § 2 liability." *Id.* at 979 (plurality).

Unlike cases in which this Court assessed whether a proposed map satisfied *Gingles* to determine whether a state did, in fact, have a strong basis in evidence that its redistricting was required to comply with the Voting Rights Act, *see, e.g.*, *Cooper*, 581 U.S. at 302, here, three federal courts had *already concluded* that Section 2 and *Gingles* likely required a second majority Black congressional district, judgments to which the Legislature acquiesced. The district court therefore had no reason to require that SB8 independently meet the *Gingles* test.

Instead, to determine whether CD6 was narrowly tailored, the district court only had to evaluate whether, in drawing the district's lines to comply with Section 2, the Legislature subordinated traditional redistricting factors to race as opposed to lawful redistricting aims. Here, the Legislature chose CD6 and SB8 over other alternatives to further the Legislature's political goals. That should have ended the narrow tailoring inquiry.

* * *

In sum, this district court's conclusion that SB8 is an unlawful racial gerrymander is completely at odds with this Court's precedents. And as a result of those errors, the district court nullified the Legislature's

"discretion to exercise the political judgment necessary to balance competing interests" when drawing remedial maps. *Miller*, 515 U.S. at 915. It also undermined Section 2's ability to realize the promise of the Fifteenth Amendment, as the next Section describes.

II. The District Court's Decision Thwarts Section 2's Ability to Enforce the Guarantees of the Fifteenth Amendment.

By prohibiting maps that dilute the voting strength of communities of color, Section 2 enforces the Fifteenth Amendment's ban on racial discrimination in voting and thereby strengthens our nation's multiracial democracy. Here, the district court's repudiation of a legislatively-enacted map expressly designed to remedy a judicial finding of vote dilution undercuts the effective enforcement of Section 2 and, in turn, the Fifteenth Amendment.

"Fundamental in purpose and effect . . . , the [Fifteenth] Amendment prohibits all provisions denying or abridging the voting franchise of any citizen or class of citizens on the basis of race." *Rice v. Cayetano*, 528 U.S. 495, 512 (2000). "In the century that followed [its ratification], however, the Amendment proved little more than a parchment promise" as states employed various devices to disenfranchise Black voters and gerrymandered jurisdictions to weaken Black voting power. *Milligan*, 599 U.S. at 10. In 1965, Congress stepped in and used its broad Fifteenth Amendment enforcement power to pass the Voting Rights Act of 1965, "the most successful civil rights statute in the history of the Nation." *Id.* (quoting S. Rep. No. 97-417 at 111 (1982)).

Section 2 of the Voting Rights Act plays a crucial role in enforcing the Fifteenth Amendment's promise of a democracy free from racial discrimination. As

amended in 1982, Section 2 prohibits state practices that "result[] in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." 52 U.S.C. § 10301(a). This includes redistricting plans that dilute the voting strength of voters of color by "minimiz[ing] or cancel[ing] out minority voters' ability to elect their preferred candidates." *Milligan*, 599 U.S. at 18 (internal quotation marks omitted). By banning vote dilution, Section 2 enforces the Fifteenth Amendment's ban on racial discrimination and advances its promise of equal political opportunities for all citizens.

The court below, however, severely undermined Section 2's ability to remedy vote dilutive practices and fulfill the goals of the Fifteenth Amendment. Section 2's efficacy depends on state legislatures having the flexibility they need to comply with Section 2's requirements while pursuing other redistricting goals. The faithful application of this Court's precedents ensures that state legislatures have the leeway they need while also making clear that, if state legislatures fail to comply with federal law, federal courts will step in to enforce Section 2's vital protections for voters of color.

Here, after three federal courts agreed that Louisiana's previous map likely violated Section 2, the Legislature acted to remedy the violation and created a second majority Black district, as those federal courts had said Section 2 required. SB8 gives Black Louisianans the ability to elect candidates of their choice and furthers Section 2's goal of eradicating dilutive practices that minimize the voting strength of communities of color. *See id.* at 17-18. Remedial maps like SB8 are critical to enforcing Section 2.

The district court's many legal errors, however, effectively stunted the Legislature's ability to redress Section 2 violations and, in turn, undermined Section

2's ability to advance the guarantees of the Fifteenth Amendment. The court's reasoning encourages future plaintiffs to pursue meritless satellite litigation challenging Section 2 remedial maps, adding unnecessary delay to the vindication of the Voting Rights Act. This Court has given state legislatures substantial leeway to comply with Section 2 without running afoul of the Fourteenth Amendment so that the law does not "lay a trap" for state legislatures. *ALBC*, 575 U.S. at 278. The district court failed to recognize that. Indeed, absent this Court's stay, Black Louisianans would have had to wait even longer to vote under a fair map that gave them the opportunity to elect candidates of their choice.

The district court's ruling, if allowed to stand, would make it unnecessarily difficult for jurisdictions to comply with Section 2 and would substantially threaten Section 2's ability to protect voters of color, like the Robinson Appellants here, against vote dilution. That result would be irreconcilable with Section 2's crucial role in fulfilling the Fifteenth Amendment's promise of voting equality.

CONCLUSION

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

Respectfully submitted,

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