

Nos. 21-1086, 21-1087

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IN THE  
**Supreme Court of the United States**

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JOHN H. MERRILL, ALABAMA SECRETARY OF STATE, *et al.*,  
*Appellants,*

—v.—

EVAN MILLIGAN, *et al.*,  
*Appellees.*

JOHN H. MERRILL, ALABAMA SECRETARY OF STATE, *et al.*,  
*Petitioners,*

—v.—

MARCUS CASTER, *et al.*,  
*Respondents.*

ON APPEAL FROM AND ON WRIT OF CERTIORARI TO THE UNITED STATES  
DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA

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**BRIEF FOR *AMICI CURIAE* THE SOUTHERN POVERTY LAW  
CENTER, THE LEAGUE OF WOMEN VOTERS OF ALABAMA,  
THE LEAGUE OF WOMEN VOTERS OF THE UNITED STATES,  
AND STAND-UP MOBILE IN SUPPORT OF AFFIRMANCE**

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## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	ii
INTERESTS OF <i>AMICI CURIAE</i> .....	1
SUMMARY OF THE ARGUMENT .....	3
ARGUMENT .....	6
I.    The Relevance of Communities of Interest Under this Court’s Jurisprudence.....	6
II.   Mobile and the Black Belt Constitute a Community of Interest. ....	8
A.   Mobile and the Black Belt Share Similar Socioeconomic Characteristics. ....	8
B.   Mobile and the Black Belt Face Limited Access to Healthcare.....	12
C.   Mobile and the Black Belt Suffer from Food Insecurity. ....	17
D.   Mobile and the Black Belt Need Improvements in Education. ....	22
III.  Race-Correlated Factors Properly Inform the Communities of Interest Analysis.....	24
CONCLUSION.....	32

TABLE OF AUTHORITIES

	Page(s)
<b>Cases</b>	
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## INTERESTS OF *AMICI CURIAE*

The Southern Poverty Law Center (“SPLC”)<sup>1</sup> is a nonprofit organization dedicated to protecting the civil rights of society’s most vulnerable members. Founded in 1971 and headquartered in Montgomery, Alabama, SPLC has played a central role in dismantling the vestiges of Jim Crow in Alabama and the South, including voter suppression. SPLC participated in many of the most significant cases challenging the unlawful curtailment of voting rights in Alabama. SPLC has an interest in ensuring every citizen is afforded an equal opportunity to elect the representatives of their choice, equal access to the ballot box, and an equal voice in our democracy.

The League of Women Voters of Alabama (“LWVAL”) and the League of Women Voters of the United States are nonpartisan, grassroots organizations that encourage informed and active participation in government, work to increase understanding of major public policy issues, and influence public policy through education and advocacy. They are dedicated to encouraging their members and the people of Alabama to exercise their right to vote. The LWVAL, which has nine local leagues across Alabama, conducted an analysis of all voting districts in the state and actively supported Alabamians during the 2021 redistricting through community forums, education, and technical assistance.

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<sup>1</sup> No counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. The parties have filed blanket consent waivers with the Court consenting to the filing of all *amicus* briefs.

Stand-Up Mobile is a nonprofit, nonpartisan organization based in Mobile, Alabama committed to bringing the power of the Black vote to elections at all levels through voter registration and education efforts. Stand-Up Mobile believes that it is important that all people have their voices heard, especially those that are too often excluded from the political, economic, and social institutions that shape their lives. The organization's co-founders have been active in numerous business, civic, religious, and charitable organizations in Mobile and the Black Belt for decades. One is a Mobile resident for over 30 years and directly engaged with Black Belt families through a residential school located in Mobile. The other moved to Mobile from Marengo County in the Black Belt with her family at a young age, and today splits her time between Marengo County and Mobile.

*Amici* submit this brief to address the application to this case of the first prong of the test for Section 2 vote dilution claims set forth in *Thornburg v. Gingles*, 478 U.S. 30 (1986) ("*Gingles I*"), and, in particular, to call to the Court's attention the strong community of interest shared by counties in the Black Belt and portions of Mobile County that could become part of the majority-Black congressional district to be created pursuant to the decisions below.



## SUMMARY OF THE ARGUMENT

For decades, Black Alabamians have been systematically deprived of their right to elect candidates of their choice to represent their interests in Congress. Over the past 100 years, encompassing four decennial censuses conducted before the passage of the Voting Rights Act of 1965 (“VRA”) and six after, the Legislature of Alabama has drawn 10 maps of congressional districts containing, in the aggregate, 77 separate districts.<sup>2</sup> Not once over all those decades has the Legislature, of its own volition, seen fit to design a single district with a majority of Black voters, even though Black people have comprised anywhere from more than a quarter to more than a third of the statewide population throughout that period.<sup>3</sup> The only majority-Black district that exists in Alabama (District 7) was created following a federal lawsuit under the VRA. *See Wesch v. Hunt*, 785 F. Supp. 1491 (S.D. Ala.) (three-judge court), *aff’d sub nom. Camp v. Wesch*, 504 U.S. 902 (1992).

In a state with extreme patterns of racially polarized voting, the existence of only a single majority-Black district has continued to deprive Black Alabamians of a fair opportunity to elect members of Congress who prioritize their interests. Yet the Legislature, given three opportunities to rectify this inequality since 1992, failed each time, continuing to “crack” the Black vote among several majority-white

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<sup>2</sup> *Historical Apportionment Data (1910-2020)*, U.S. CENSUS BUREAU (Apr. 26, 2021), <https://www.census.gov/data/tables/time-series/dec/apportionment-data-text.html>.

<sup>3</sup> *Alabama’s Population By Race 1800-2000*, BIRMINGHAM PUB. LIB. (Mar. 10, 2016), <http://www.bplonline.org/resources/government/AlabamaPopulation.aspx>.

districts. Recognizing this reality, the three-judge court below held that the Legislature’s 2021 districting plan improperly diluted the votes of Black Alabamians and directed the Legislature to fashion a remedial plan that complies with the VRA.

In a thorough and well-reasoned opinion based on an extensive evidentiary record, the court below found that Black voters as a group are sufficiently large and compact to constitute a majority in a second congressional district in Alabama, thus satisfying the *Gingles* I precondition. MSA 146.<sup>4</sup> It cited several illustrative maps submitted by plaintiffs’ experts showing that a second majority-Black district could easily be drawn by joining several Black Belt counties and a portion of Mobile County including the City of Mobile (“Mobile”). MSA 161-62; S.J.A. 27, 99-109. The court further found that plaintiffs’ plans would respect traditional districting criteria, including maintaining communities of interest, at least as much as, and likely more than, the State’s enacted plan. MSA 173.

In this Court, Alabama, joined by its *amicus*, principally attacks the three-judge court’s *Gingles* I factual findings by claiming that Baldwin and Mobile Counties constitute a united community of interest that should not be split apart. The district court carefully considered and properly rejected this argument. As the court found, the State’s argument is far “less compelling” than the “important community of interest” that undeniably exists among the several

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<sup>4</sup> “MSA” refers to the *Milligan* Stay Appendix, which the State earlier filed in booklet form. “J.A.” refers to the Joint Appendix and “S.J.A.” refers to the Supplemental Joint Appendix. “Br.” refers to the Brief for Appellants dated April 25, 2022.

counties comprising the Black Belt. MSA 166, 170.<sup>5</sup> This community of interest was torn asunder by the Legislature’s plan, which divided the Black Belt up among four different districts, robbing it of the cohesiveness necessary for it to wield effective political power under the Legislature’s districting scheme.

This is reason enough to reject the State’s myopic community of interest argument. But there is an additional reason why the State’s argument must fail: The Black Belt not only constitutes a community of interest within itself, but also shares a strong community of interest with the relevant portions of Mobile County, especially Mobile. As explained further below:

1. As a factual matter, the “needs and interests” of residents of Mobile and the Black Belt are closely aligned due to marked similarities in their “socio-economic status, education, employment, health, and other characteristics.” *League of United Latin American Citizens v. Perry (LULAC)*, 548 U.S. 399, 424 (2006). These areas have long been intertwined; migration from the Black Belt accounts for much of today’s population of Mobile, and strong connections persist as evidenced by family ties and common business and community organizations. Voters in the Black Belt share interests with voters in Mobile across a wide range of issues that are heavily influenced by federal government policy: access to health care, educational opportunity, and anti-hunger and other anti-poverty programs, to name just a few. Fusing

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<sup>5</sup> The parties stipulated that the Black Belt consists of eighteen “core counties” in addition to five counties that are “sometimes included within the definition of the Black Belt.” MSA 37. Mobile County neighbors those counties.

these shared interests together in a single geographically contiguous congressional district would advance the goal of protecting communities of interest. Breaking them apart, as the State proposes to do, would be inimical to that goal, as well as to the VRA's goal of ensuring equal opportunity for Black voters to participate in the political process.

2. As a legal matter, affording due recognition to the community of interest that exists between and among the Black Belt counties and Mobile does not amount to improper race-conscious districting, as the State erroneously contends. This is true even to the extent that some of the common economic and other circumstances may be attributable to the similar racial make-up of these areas. It offends no Equal Protection value to take account of shared interests that may be correlated by race. Such shared interests militate in favor of common congressional representation just as much as do shared interests that are not correlated by race. Indeed, the State's community-of-interest counterarguments equally rely on race-correlated shared interests on the part of white voters. Contrary to the State's tacit suggestion, the VRA does not dictate that the shared interests of Black voters be subordinated to the shared interests of white voters. Such an approach would stand the VRA on its head.

## ARGUMENT

### I. The Relevance of Communities of Interest Under this Court's Jurisprudence.

A state violates VRA §2 "if its districting plan provides 'less opportunity' for racial minorities [than for other members of the electorate] 'to elect representatives of their choice.'" *Abbott v. Perez*, 138

S. Ct. 2305, 2315 (2018). A §2 vote dilution claim focuses on whether the plaintiff has established that the three threshold conditions of *Gingles* are satisfied, beginning with *Gingles* I: that “the minority group is sufficiently large and geographically compact to constitute a majority in a . . . district.” *Gingles*, 478 U.S. at 50.

A federal court evaluating a vote dilution claim will often “take into account ‘traditional districting principles such as maintaining communities of interest and traditional boundaries’” to confirm a proposed district is sufficiently “compact.” *LULAC*, 548 U.S. at 433 (quoting *Abrams v. Johnson*, 521 U.S. 74, 92 (1997)); see *Bush v. Vera*, 517 U.S. 952, 977 (1996) (plurality opinion). This inquiry serves §2’s ultimate goal of providing equal opportunity by examining the issues that motivate actual voters. See *LULAC*, 548 U.S. at 430. In that regard, identifying communities of interest is relevant both in evaluating *Gingles* I and in conducting the separate analysis of the “totality of the circumstances” required by this Court’s precedent. See *Abbott*, 138 S. Ct. at 2330-31 (citing *Gingles*, 478 U. S. a 47-51).

The test of *Gingles* I, as relevant here, is whether it is *possible* for the Legislature to draw a reasonably compact district that would achieve equal openness and opportunity for Black Alabamians. *Abbott*, 138 S. Ct. at 2331 (citing *LULAC*, 548 U.S. at 430). Compactness, for *Gingles* I purposes, “refers to the compactness of the minority population, not to the compactness of the contested district.” *LULAC*, 548 U.S. at 433.

Many different factors help identify which citizens share “characteristics, needs, and interests”

that would allow them to collectively constitute the majority of a single-member district. *LULAC*, 548 U.S. at 402. The dimensions that are the most meaningful align with the concerns these communities will look to their elected representative to address. *E.g.*, *Prosser v. Elections Bd.*, 793 F. Supp. 859, 863 (W.D. Wisc. 1992) (per curiam) (three-judge court) (“To be an effective representative, a legislator must represent a district that has a reasonable homogeneity of needs and interests; otherwise the policies he supports will not represent the preferences of most of his constituents.”).

## **II. Mobile and the Black Belt Constitute a Community of Interest.**

The district court properly conducted this analysis and found that the Black Belt is a community of interest and that plaintiffs’ illustrative plans respected it more than the challenged plan did. MSA 166-74. The district court correctly rejected the State’s argument that uniting the Black Belt was “merely a blunt proxy for skin color,” relying on the “substantial argument and evidence” plaintiffs developed “about the shared history and common economy (or lack thereof) in the Black Belt; the overwhelmingly rural, agrarian experience; the unusual and extreme poverty there; and major migrations and demographic shifts that impacted many Black Belt residents, just to name a few examples.” MSA 168-69. Many of these dimensions also connect Mobile to the Black Belt and show that they too share a community of interest.

### **A. Mobile and the Black Belt Share Similar Socioeconomic Characteristics.**

Mobile grew into a prosperous city because it sits at the confluence of many rivers, including the

Tombigbee, Black Warrior, Coosa, Cahaba, Tallapoosa, and Alabama Rivers, which flow from the Black Belt to Mobile. Terance L. Winemiller, *Black Belt Region in Alabama*, ENCY. OF ALA. (Dec. 19, 2019), <http://encyclopediaofalabama.org/article/h-2458>. In the antebellum period, these waters transported cotton to fabric houses, and also carried countless Black Alabamians to the Black Belt. *Id.* In the 20th century, their free descendants moved into cities seeking opportunity. For example, during World War II, “10 percent of Alabama’s rural whites and more than 25 percent of the state’s rural Blacks moved into towns.” Allen T. Cronenberg, *World War II and Alabama*, ENCY. OF ALA. (2014), <http://encyclopediaofalabama.org/article/h-1348>. “The greatest increase in urban growth occurred in Mobile, where some 90,000 people surged into the city in search of employment.” *Id.*

Many Mobilians maintain their family ties to the Black Belt, continuing to knit the region together. “Many Black families in Mobile are Black Belt migrants or the[ir] descendants.” J.A. 303. As just one example, Captain Shalela Dowdy testified in the district court that she is a lifetime resident of Mobile but traces her family to several Black Belt counties. J.A. 288. Plaintiff Milligan of Montgomery “routinely returned to our family cemetery in Lowndes County” and “[m]ost Black families in Montgomery who are originally from this area have similar stories.” *E.g.*, J.A. 295, 518-19.

In daily life, the footprint of local supermarket chains maps this community of interest, spanning Mobile and the Black Belt. *E.g.*, Locations, GREER’S GROCERY (last visited July 18, 2022), <https://www.greers.com/storelocator>; *Number of*

*Piggly Wiggly locations in the United States in 2022*, SCRAPEHERO (June 22, 2022), <https://www.scrapehero.com/location-reports/Piggly%20Wiggly-USA/>. Additionally, while the city of Mobile is urban, it and the other portions of Mobile County likely to constitute a congressional district here share the character typical of the Black Belt: where “anchor cities” dot the landscape and give way quickly to rural environs. J.A. 520-22.

The Black Belt counties have the highest proportion of Black Alabamians in the State. While the statewide population is 27.2% Black,<sup>6</sup> the Black Belt averages 56.9%, ranging from 25.5% in Crenshaw County to 82.2% in Greene County. *See* U.S. Census Bureau, *Alabama Population Grew 5.1% Since 2010, Surpassing 5 Million* (Aug. 25, 2021), <https://www.census.gov/library/stories/state-by-state/alabama-population-change-between-census-decade.html>. Mobile is 50.7% Black. *Id.* By contrast, the remainder of Mobile County is 24.7% Black, and Baldwin County is only 9.0% Black. *See id.*

Poverty rates in Mobile and the Black Belt also exceed the statewide average (14.9%). “The eleven Majority-Minority counties in Alabama (all located in the Black Belt) have an average poverty rate of 25.3%.” Stephen G. Katsinas et al., *Poverty, Housing, & GDP in Alabama’s Black Belt*, UNIV. ALA., Issue Brief No. 58, at 2 (Mar. 2022), [http://edpolicy.ua.edu/wp-content/uploads/2022/03/220329\\_poverty-housing-gdp-black-belt.pdf](http://edpolicy.ua.edu/wp-content/uploads/2022/03/220329_poverty-housing-gdp-black-belt.pdf). The poverty rate in Mobile is similar at 20.1%. By contrast, the rest of

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<sup>6</sup> Consistent with the district court’s findings below, this brief relies on the “Black or African-American alone or in combination” metric. MSA 146.



Mobile County has a 15.6% poverty rate and neighboring Baldwin County is a world apart at only 8.9%. *QuickFacts, Alabama*, U.S. CENSUS BUREAU (last visited July 18, 2022), <https://www.census.gov/quickfacts/fact/table/mobilecountyalabama,mobilecityalabama/IPE120220>.

Median income tracks the same pattern. Statewide median income amounts to \$50,536 (and a mere \$33,928 among Black households), but is significantly lower in Mobile and the Black Belt. Am. Cmty. Survey, *S1903 Median Income in the Past 12 Months in 2020 Inflation-Adjusted Dollars*, U.S. CENSUS BUREAU, <https://data.census.gov/cedsci/table> (navigate to S1903). The Black Belt counties share especially low incomes, with marked racial disparities. *E.g., id.* (Greene County: \$24,145 overall, \$55,208 white, \$18,356 Black; Lowndes County: \$30,036 overall, \$61,552 white, \$23,519 Black; Hale County: \$34,046 overall, \$57,364 white, \$24,165 Black). Mobile likewise falls well below the state norm, with overall median income of \$43,456 (\$60,472 if white, \$32,177 if Black). *Id.* In Baldwin County, however, overall median income stands at \$61,756, more than 22% above the state average. *Id.*

The second largest population center in northern Mobile County, the City of Prichard, likewise shares more in common with the Black Belt. Median income in Prichard, which is 91.1% Black, is only \$30,464, and the city's poverty rate is 30.8%. *QuickFacts, Prichard City, Alabama*, U.S. CENSUS BUREAU (last visited July 18, 2022), <https://www.census.gov/quickfacts/prichardcityalabama>.

In sum, Baldwin County is overwhelmingly a white and relatively affluent area, while Mobile (and northern Mobile County generally) are disproportionately Black and lower income, with high rates of poverty. Mobile is thus far more similar to the Black Belt than to Baldwin County along socioeconomic dimensions. These common characteristics and family ties help give rise to a community of interest that Mobile and the Black Belt share on a number of issues.

### **B. Mobile and the Black Belt Face Limited Access to Healthcare.**

Access to healthcare represents a critical issue for residents of the Black Belt. Emily Jacobs et al., *Healthcare: A Key Challenge in Alabama's Black Belt*, EDUC. POL'Y CTR. (Oct. 2020), [http://edpolicy.ua.edu/wp-content/uploads/2020/10/201014\\_healthcare-challenge-al-black-belt.pdf](http://edpolicy.ua.edu/wp-content/uploads/2020/10/201014_healthcare-challenge-al-black-belt.pdf). In many instances, the nearest healthcare facility can be hours away. *Id.* “Black Belt counties have fewer primary care physicians, dentists, and mental health providers per resident than other counties.” Anna Maria Barry-Jester, *The Health Care System Is Leaving the Southern Black Belt Behind*, FIVETHIRTYEIGHT (June 28, 2017), <https://fivethirtyeight.com/features/the-health-care-system-is-leaving-the-southern-black-belt-behind>; see *Selected Health Status Indicators*, BLACK BELT ACTION COMM'N (2007), <https://www.alabamapublichealth.gov/ruralhealth/assets/BBACData.pdf>. There are only about 1.5 doctors per 1,000 residents across the Black Belt counties. *Prenatal Care in the Black Belt*, DEMOPOLIS TIMES (Dec. 17, 2010), <https://www.demopolistimes.com/2010/12/17/prenatal-care-in-the-black-belt>. In terms of hospital

beds, all of the Black Belt counties lag behind the state average, and four Black Belt counties have no beds at all. Adam Powell, *EPC Report: Black Belt Lacks Access to Healthcare*, SELMA TIMES J. (Oct. 13, 2020), <https://www.selmatimesjournal.com/2020/10/13/epc-report-black-belt-lacks-access-to-healthcare>.

The distance a patient has to travel to receive care has meaningful health consequences. While this is particularly acute in emergencies like heart attacks and car accidents, distance also limits preventive care and access to pharmacies to fill prescriptions. Barry Jester, *supra*. Pregnant women in the Black Belt must often travel more than an hour for an ultrasound or to deliver their babies. *Id.* “[O]nly one hospital in the Black Belt provides obstetric care.” Alexa Gardner, *Perry County to Tuscaloosa: A 70-Minute Drive for Rural Women Seeking Obstetrics Care*, GEO. UNIV. HEALTH POLICY INST. (2018), <https://ccf.georgetown.edu/2018/07/23/perry-county-to-tuscaloosa-a-70-minute-drive-for-rural-women-seeking-obstetrics-care>. Some women give “birth in the car while making the drive to a hospital.” Barry Jester, *supra*.

With care unavailable where they live, Black Belt residents frequently must go to Mobile to find care. *E.g.*, Eddie Burkhalter, *Mayor fights to save Black Belt hospital from closing*, ALA. POLITICAL REPORTER (Apr. 13, 2022), <https://www.alreporter.com/2022/04/13/mayor-fights-to-save-black-belt-hospital-from-closing/> (the Thomasville hospital that opened in March 2020 may close absent federal relief funds, requiring residents to once again travel “more than 100 miles to Mobile”).

However, Mobile is ill equipped to handle this influx, as the city itself has one of the worst urban healthcare systems in the nation. Samuel Stebbins & Evan Comen, *25 U.S. Cities Where You Don't Want to Get Sick*, USA TODAY (Oct. 11, 2019), <https://www.usatoday.com/story/money/2019/10/11/us-health-care-by-city-hospitals/40284501>. There are only “about 66 primary care physicians for every 100,000 people” in Mobile, *id.*—a figure that overlooks that Mobile provides healthcare services for neighboring areas outside the city. As in the Black Belt, the lack of primary care physicians makes it more difficult for Mobile residents to seek “necessary preventive and primary care” and leads to “an over-reliance on hospitals,” where 13.2% of Medicare patients die within 30 days of hospitalization. *Id.*

Black Alabamians bear the brunt of the region’s healthcare failures. Racial disparities are deeply intertwined with the struggling healthcare system in Mobile and the Black Belt. Sydney Cromwell & Michelle Love, *Health Care Disparities: ZIP Code, Race Predict Lifelong Health Inequities*, BIRMINGHAMWATCH (July 12, 2020), <https://birminghamwatch.org/zip-code-race-predict-lifelong-health-inequities>. Lack of access to healthcare in these regions is strongly correlated with both race and higher poverty rates, as Black and poorer residents of the Black Belt and Mobile are less likely to be insured, less likely to have transportation to get treatment, and less likely to be able to afford treatment even if they can access it. *Id.*; Barry-Jester, *supra*; Ramsey Archibald, *One in 10 Alabamians is Without Health Insurance. But Rates Vary by County*, AL.COM (Mar. 1 2020), <https://www.al.com/news/2020/03/one-in-10-alabamians-are-without-health->

insurance-but-rates-vary-by-county.html (finding Black Alabamians are less likely to have health insurance than their white counterparts); Lars E. Peterson et al., *County-Level Poverty is Equally Associated with Unmet Health Care Needs in Rural and Urban Settings*, 26 J. RURAL HEALTH 373 (2010).

Alabama's alarmingly high maternal and infant mortality rates offer one concrete, and tragic, illustration. See Carlos Ballesteros, *Alabama Has A Higher Infant Mortality Rate than Sri Lanka, Ukraine and Many Other Developing Countries*, NEWSWEEK (Dec. 12, 2017), <https://www.newsweek.com/alabama-poverty-infant-mortality-rate-745512>; Anna Claire Vollers, *Alabama Has the Third-Highest Death Rate of Mothers in the Nation, New Federal Report Says*, AL.COM (Feb. 18, 2020), <https://www.al.com/news/2020/02/alabama-has-third-highest-death-rate-of-mothers-in-the-nation-new-federal-report-says.html>. Mobile and the Black Belt are among the statewide leaders in this troubling trend. See Tanner Gilliland, *Health Alert: New Alabama Infant Mortality Rates Released*, NBC 15 NEWS (Dec. 11, 2019), <https://mynbc15.com/news/local/health-alert-infant-mortality> (Mobile's infant mortality rate is the second-highest in the State); *Grassroots Medicine*, UAB MAG. (2022), <https://www.uab.edu/uabmagazine/summer2007/features/grassroots> (Black Belt counties have high rates of infant mortality). Even in this context, the racial disparities in health outcomes astound. *E.g.*, *Black Women over Three Times More Likely to Die in Pregnancy, Postpartum than White Women, New Research Finds*, PRB (2021), [15](https://popresearchcenters.org/research-highlights/black-women-over-three-times-more-likely-to-die-in-</a></p></div><div data-bbox=)

pregnancy-postpartum-than-white-women-new-research-finds/ (finding maternal death rate for Black women is 3.5 times that of white women).

Community organizations recognize the common healthcare needs of Mobile and the Black Belt. The Franklin Health Center provides a full range of primary care services, especially for “uninsured and underserved people” who would otherwise have nowhere to go. *History*, FRANKLIN PRIMARY HEALTH CENTER INC., <https://franklinprimary.org/history/> (last visited July 18, 2022). Dr. Marilyn Aiello founded the Center in 1975 to fill gaps in care in Mobile. But the Center now has locations in six counties around Mobile, including locations reaching into the Black Belt. *Id.*; *Locations*, FRANKLIN PRIMARY HEALTH CENTER, INC., <https://franklinprimary.org/locations> (last visited July 18, 2022).

Federal policy, including the availability of Medicaid funding and financial aid for struggling hospitals, has an enormous impact on access to healthcare and healthcare outcomes. As Dr. John Waits, who runs the only rural family medicine residency in Alabama, says: “Nothing happens without Medicaid. It’s the No. 1, the No. 2, it is the top 10 solutions.” Barry-Jester, *supra*. Thinking back to his own residency, by contrast, he did not meet “a single patient for whom a health savings account will solve anything.” *Id.*

Improvements to healthcare quality and access would benefit citizens throughout the Black Belt and Mobile. Captain Dowdy noted in her testimony before the District Court that the Black Belt and Mobile share the same concerns with respect to access to

healthcare and insurance, and that legislation to advance these interests is a shared objective. J.A. at 288-89. A representative selected by, and responsive to the needs of, the Mobile-Black Belt community could promote legislation to aid the region's struggling healthcare system. Access to care throughout the region would benefit all of its people, reduce the strain on providers in Mobile, and support this significant sector of Mobile's economy. *See Healthcare*, MOBILE AREA CHAMBER OF COMMERCE (2021), <https://mobilechamber.com/work-live/healthcare> ("Nearly 15 percent of Mobile's workforce is employed in the health care sector").

### **C. Mobile and the Black Belt Suffer from Food Insecurity.**

The Mobile-Black Belt region is also linked together in the degree to which hunger and food insecurity are prevalent. Food insecurity is the "lack of consistent access to enough food for an active, healthy life." Understand Food Insecurity, *What is Food Insecurity?*, FEEDING AM. (last visited July 18, 2022), <https://hungerandhealth.feedingamerica.org/understand-food-insecurity/>.

A contributing factor to food insecurity in Mobile and the Black Belt is the high incidence of food deserts. The U.S. Department of Agriculture ("USDA") defines a food desert as the areas where at least 500 people or 33% of the population (whichever is greater) live farther than 1 mile (in urban areas) or 10 miles (in rural areas) from the nearest supermarket. Jessica Caporuscio, *What Are Food Deserts, And How Do They Impact Health?*, MEDICALNEWSTODAY (June 22, 2020),

<https://www.medicalnewstoday.com/articles/what-are-food-deserts>.

Figure 1 from the USDA's Economic Research Service (the "USDA ERS") below highlights the low-income neighborhoods around the City of Mobile that the USDA classified as food deserts. *Low Income & Low Access Layers 2019*, U.S. DEP'T OF AGRIC. ECON. RSCH SERV. (2019), <https://www.ers.usda.gov/data-products/food-access-research-atlas/go-to-the-atlas/>.

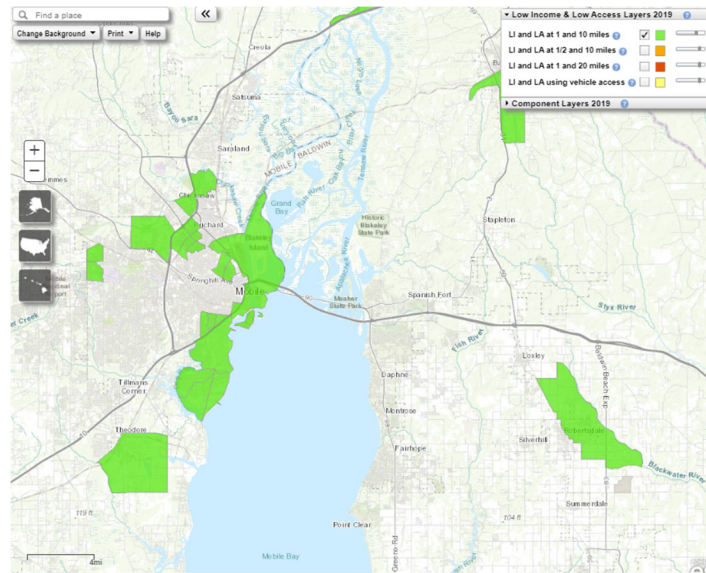


Figure 1

Lack of access to grocery stores is a widespread problem throughout the Black Belt as well. Harrison Chan, *Health Effects of Food Deserts on the Black Belt of Alabama*, ALA. COLL. OF OSTEOPATHIC MED. (Nov. 18, 2021) [https://kaltura.com/media/t/1\\_sedvlyyv/235174473](https://kaltura.com/media/t/1_sedvlyyv/235174473). This study identified 59 food deserts across 17 Black Belt counties, exposing 140,000 people to food insecurity. *Id.*



Figure 2 from the USDA ERS below shows that food deserts across the State are concentrated throughout the Black Belt.

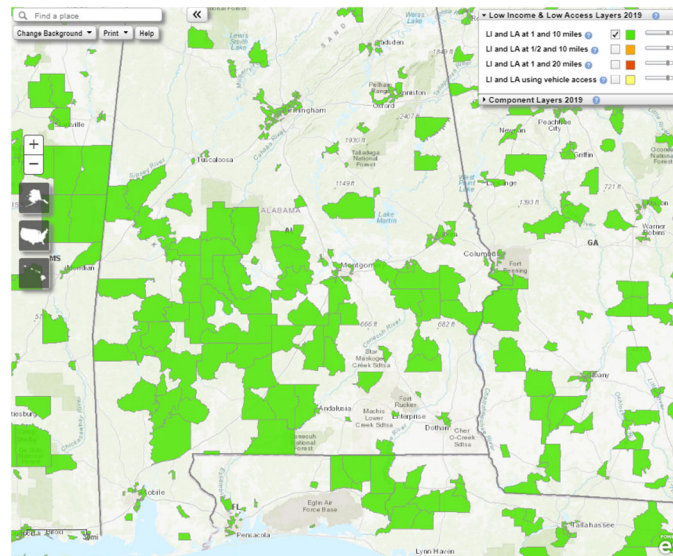


Figure 2

Food deserts flourish in low-income communities. Julie Beaulac, *A Systematic Review of Food Deserts, 1966-2007*, NAT'L LIBRARY OF MED. (June 15, 2009), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2722409/>. As noted above, in both Mobile and the Black Belt, Black populations are significantly more likely to live below the poverty line. J.A. 851. The intersection of poverty and food deserts here means that Black Alabamians face the most food insecurity. J.A. 852-53.

Living in a food desert can significantly impact individual health. Opinion, *'Food Deserts' Contribute To Health Problems In Alabama*, CINCINNATI.COM (Apr. 17, 2015), <https://eu.cincinnati.com/story/opinion/editorials/2015/04/17/food-deserts-contribute-health-problems-alabama/25936945/>. Food insecurity

is directly linked to chronic illnesses such as heart disease, diabetes, and cancer, which are among the leading causes of death in the United States. Amber Charles, *What Are Food Deserts? All You Need to Know*, HEALTHLINE MEDIA (June 14, 2021), <https://www.healthline.com/nutrition/food-deserts>. This is particularly meaningful in the context where Black Americans already suffer the highest rates of disease and mortality, including diabetes and high blood pressure, which the highly processed foods most readily accessible in food deserts only exacerbate. *Id.*

Figure 3 demonstrates clearly how food deserts are concentrated in the City of Mobile and the Black Belt but rare in Baldwin County and the remainder of Mobile County. *Food Deserts*, ARCGIS ONLINE, <https://www.arcgis.com/apps/MapJournal/index.html?appid=f578f459e971430393d2e39c96fae677> (last visited July 18, 2022).

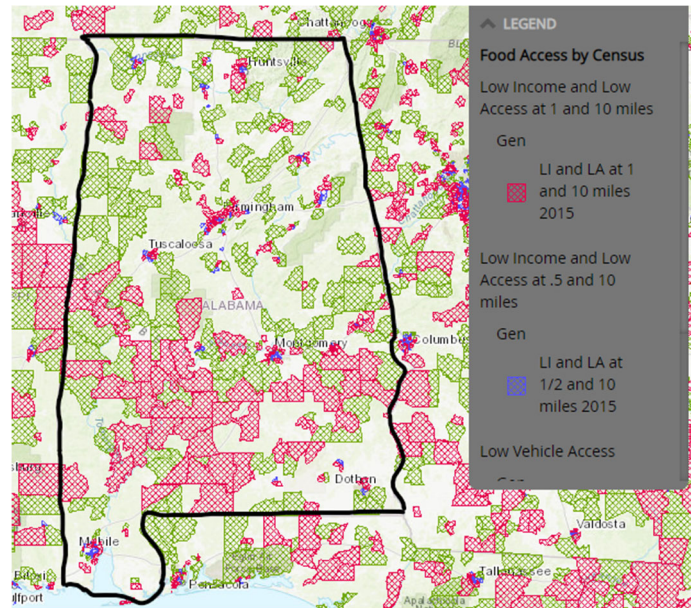


Figure 3

In 2019, Feeding America, the largest domestic hunger-relief organization in the United States, found that 65,300 residents of Mobile County suffered from food insecurity and were 18% more likely to suffer from food insecurity compared to residents of Baldwin County. *Food Insecurity in Alabama*, FEEDING AM. (last visited July 18, 2022), <https://map.feedingamerica.org/county/2019/overall/alabama>. Indeed, 57% of the population of Mobile County is eligible for Supplemental Nutrition Assistance Program benefits. *Id.* These and other federally funded programs meaningfully improve food security, especially for children and families. *Initiatives to Make SNAP Benefits More Adequate Significantly Improve Food Security, Nutrition, and Health*, FOOD RSCH. & ACTION CTR. (Feb. 2019), <https://frac.org/wp-content/uploads/snap-initiatives-to-make-snap-benefits-more-adequate.pdf>.

The stark difference in food security between the Black populations in Mobile and the Black Belt compared with the majority white neighborhoods in Baldwin and Mobile Counties that became popular destinations during the “white flight” of the mid-20th century following desegregation is evident. J.A. 305.

Accordingly, Mobile has far more in common with the Black Belt in this regard than it does with Baldwin County and the rest of Mobile County. *See* Figs. 2, 5, *supra*. As a result, the Mobile-Black Belt region experiences a serious problem of food insecurity and would benefit from federal policies addressing this common interest.

#### **D. Mobile and the Black Belt Need Improvements in Education.**

For the past decade, the State Legislature has approved districts for the State Board of Education that split Mobile County in half to combine Mobile and the Black Belt. MSA 171. The same reasons that support connecting the region for State education policy equally support a common representative in the U.S. House of Representatives.

Education District 5 joins Mobile (and the northern half of Mobile County) with 14 other counties all the way north to Sumter County and east to Macon County, including Selma and Montgomery. *See* Ala. Dep't of Educ., *School Board Districts* (last visited July 18, 2022), <https://www.alabamaachieves.org/state-board-of-education/school-board-districts/>.

Education District 1 includes Baldwin County, the southern half of Mobile County, and six counties to the east. *Id.* The Legislature approved the current education districts simultaneously with the congressional districts at issue. MSA 171. All of the representatives of Education District 5 since at least 2001 have been Black. In 2012, the State redrew this district to include Mobile, “Selma and much of the impoverished Black Belt.” Rena Havner Philips, *State school board member Ella Bell visits Mobile schools in redrawn district*, AL.COM (May 12, 2012), [https://www.al.com/live/2012/05/state\\_school\\_board\\_member\\_ella.html](https://www.al.com/live/2012/05/state_school_board_member_ella.html). Education District 4 is also majority-Black, uniting certain Black Belt counties with Birmingham. S.J.A. 93-95.

Math and science proficiency levels in the Mobile-Black Belt region lag the rest of the State. The University of Alabama Education Policy Center found

that math proficiency levels in both Mobile (16.9%) and the Black Belt (average 11%, ranging 0.8% to 20.5%) are far below that of Baldwin County (33.5%), which has the third highest score of all the counties in the State. Ramsey Archibald, *Black Belt K-12 students perform far worse in math, science than rest of Alabama*, AL.COM (Mar. 8, 2022), <https://www.al.com/news/2022/03/black-belt-k-12-students-perform-far-worse-in-math-science-than-rest-of-alabama.html>; Sean O'Brien et al., *K-12 STEM Education in Alabama's Black Belt*, UNIV. ALA., Issue Brief No. 56, at 3 (Mar. 2022), [https://www.alreporter.com/wp-content/uploads/2022/03/STEM-in-K-12-Brief\\_Black-Belt-2022.pdf](https://www.alreporter.com/wp-content/uploads/2022/03/STEM-in-K-12-Brief_Black-Belt-2022.pdf). None of the Black Belt counties (average 22%, range 5.4% to 31.3%) meet the State average for science proficiency (34%). O'Brien, *supra*, at 4. Mobile is similar (32.5%) and trails Baldwin County (47.3%), which leads the State. Archibald, *supra*; *see also* Ala. Dep't of Educ., *School Performance* (last visited July 18, 2022), <https://www.alabamaachieves.org/reports-data/school-performance/> (providing school-level data).

In these areas, Black students are much more likely to attend public schools. With few exceptions, private school attendance within the Black Belt is overwhelmingly white. *See Best Alabama Private Schools*, PRIVATE SCH. REV. (2022), <https://www.privateschoolreview.com/alabama>. In fact, in six of the 18 Black Belt counties, private school enrollment of students of color is at or below 2%, and, in all but three counties, substantially below the Black population in that county. *Id.* Mobile County is the same, where students of color make up only 24% of private school enrollment, and yet 43.7% of the under-18 population is Black. *Id.*; *see* Ala., Annual County

Resident Population Estimates by Age, Sex, Race, and Hispanic Origin: April 1, 2020 to July 1, 2021, U.S. CENSUS BUREAU, (June 27, 2022), <https://www2.census.gov/programs-surveys/popest/datasets/2020-2021/counties/asrh/cc-est2021-alldata-01.csv> (quotient of the sums of AGEGRP 1-4 for BAC\_MALE and BAC\_FEMALE over TOT\_POP).

Federal policy has significant influence over local educational outcomes. The U.S. Department of Education carries out numerous programs and activities to support elementary, secondary, and postsecondary education, often through substantial funding allocated to States. *E.g.*, Cong. Research Serv., *A Summary of Fed. Educ. Laws Administered by the U.S. Dep't of Educ.*, CONGRESS.GOV, at 1 (Jan. 23, 2019), <https://crsreports.congress.gov/product/pdf/IF/IF10551>. Additional programs intersect with education and support children's learning, like free and reduced lunch programs. *Id.* The Elementary and Secondary Education Act, passed in 1965 and reauthorized in 2015, provides grants to local school districts that are low-achieving or low-income. *Id.* Congress' budget appropriations thus have a substantial impact on the initiatives public schools can undertake to improve education outcomes.

These factors help define a community of interest in the Mobile-Black Belt region, which would benefit from an assertive public education advocate in Congress. J.A. 448-50.

### **III. Race-Correlated Factors Properly Inform the Communities of Interest Analysis.**

Across the dimensions traced above and many others, Mobile and the Black Belt are deeply connected. These connections cut across racial and

ethnic lines. Many white Mobilians migrated from the Black Belt and retain family ties there; white residents as well as Black residents suffer from a lack of adequate health care and educational opportunity, food insecurity, and limited anti-poverty programs. At the same time, the shared socioeconomic characteristics and interests of Mobile and the Black Belt are, to some degree, correlated with the high percentage of Black residents, and in particular poor Black residents, in both areas. Contrary to the State's argument, however, Br. at 31, the Equal Protection Clause does not require such race-correlated factors to be excluded from the community of interest analysis under §2.

A State cannot draw districts simply *assuming* voters “think alike, share the same political interests, and will prefer the same candidates at the polls” because of their race. *LULAC*, 548 U.S. at 433 (quoting *Miller v. Johnson*, 515 U.S. 900, 920 (1995), and *Shaw v. Reno*, 509 U.S. 630, 647 (1993)). But where, as here, the *evidence* shows that members of the same racial group live in proximity to one another and are bound by a community of interest, it is “wholly legitimate” for a districting plan to concentrate the members of that group in the same district. *Miller*, 515 U.S. at 920 (quoting *Shaw v. Reno*, 509 U.S. at 646).

As this Court has recognized, “in many cases, race correlates strongly with manifestations of community of interest (for example, shared broadcast and print media, public transport infrastructure, and institutions such as schools and churches).” *Vera*, 517 U.S. at 964 (plurality opinion). “A State is free to recognize communities that have a particular racial makeup, provided its action is directed toward some

common thread of relevant interests.” *Miller*, 515 U.S. at 920. This Court “accept[s] that in some cases members of a racial group in different areas—for example, rural and urban communities—could share similar interests and therefore form a compact district if the areas are in reasonably close proximity.” *LULAC*, 548 U.S. at 435.

That is precisely the situation here. In that respect, this case is fundamentally different from the proposed majority-minority district rejected in *LULAC*. There, this Court found that the proposed district combined “two farflung segments of a racial group with disparate interests” where the “only common index is [the] race” of the two populations and the result of the combination “will be to cause internal friction.” *Id.* at 433-35. Here, by contrast, the needs, interests and socio-economic characteristics of Mobile and the Black Belt are aligned, not disparate; the areas are in close geographic proximity and historically intertwined; and their combination will enable them to achieve their common political goals, just as the VRA envisions.

Significantly, the more that voting is racially polarized, the higher the correlation will be between the issues voters care about and those voters’ race. Polarized voting is addressed by the *Gingles* II and *Gingles* III preconditions, which ask whether Black Alabamians vote cohesively but are regularly defeated by a white-majority bloc, and also by the Senate Factors. *E.g.*, *LULAC*, 548 U.S. at 401, 427. Here, the three-judge district court concluded that the “record supports only one finding: that voting in Alabama, and in the districts at issue in this litigation, is racially polarized.” MSA 177. This conclusion, which the State does not dispute, confirms that the second majority-



Black district ordered by the court below will be based on actual shared communities of interest and not (as in *LULAC*) on racial stereotypes.

Taking race-correlated factors into account in the community of interest analysis thus does not violate Equal Protection. Indeed, the Alabama Legislature's own redistricting guidelines acknowledge as much: they explicitly define "communities of interest" to include any "area with recognized similarities of interest, including but not limited to ethnic, racial, economic, tribal, social, geographic, or historical identities." MSA 33.

Despite their professed allegiance to the purportedly race-neutral principles they assert must control the §2 analysis, an examination of the arguments advanced by the State and *amicus* Coastal Alabama Partnership ("CAP") reveals that they too rely on race-correlated factors that overwhelmingly reflect the views and interests of white Alabamians.

The State and CAP begin their stories with when "the Old World" first "staked" a "claim" in what is now Alabama, when the French "planted their flag" in Mobile. Br. at 21; CAP Br. at 5, 9. They go on to recount the exploits of Spanish and British colonizers, and assert that current District 1 "looks as it does because" of the "contributions" of the French and other white settlers. CAP Br. at 10-11, 24.

While this narrative relates one important part of Mobile's history, it does not tell the full story. The Choctaw and Muscogee Creek lived on this land for millennia before Europeans arrived. The "Black soil" of the Black Belt hosted legions of enslaved people, many first arriving by ship at Mobile before traveling up the rivers. *See* MSA 36-37, 166. Nowhere does the

State or CAP mention Black Mobilians or their heritage. To them, Mobile is a place of Mardi Gras festivals celebrating the influence of the white French and Spanish settlers alone. Br. at 21; CAP Br. at 9-11, 16-17. But the many contributions of Black Alabamians to the development of Mobile are equally important and cannot be erased.

CAP's portrayal of the present economic priorities of the region is similarly distorted. For example, CAP attaches special importance to the commercial fishing industry. CAP at 6, 14-15. But only 1.5% of the workers this industry employs across Alabama and the other Gulf Coast states are Black, while 79.2% are white. Ben Posadas, *Know more about the commercial fishermen in the Gulf of Mexico states*, MISS.-ALA. SEA GRANT CONSORTIUM (Jan. 18, 2018), <https://masgc.org/news/article/know-more-about-the-commercial-fishermen-in-the-gulf-of-mexico-states>. CAP also highlights shipbuilding, but the number of people employed in that industry pales in comparison to other sectors, such as (for example) healthcare and education. *Compare Occupational Emp. and Wage Stats., May 2021 State Occupational Emp. and Wage Estimates: Ala.*, U.S. BUREAU OF LABOR STATS. (2021), [https://www.bls.gov/oes/current/oes\\_al.htm#25-0000](https://www.bls.gov/oes/current/oes_al.htm#25-0000) (estimating 131,260 persons are employed as healthcare practitioners and in technical occupations and 65,550 as healthcare support workers in Alabama); *Budget Fact Book FY 2021*, ALA. LEGIS. SERVS. AGENCY: FISCAL DIV., at 38 (Jan. 4, 2022), [https://www.legislature.state.al.us/pdf/lssa/Fiscal/BudgetFactBook/2021\\_Budget\\_Fact\\_Book.pdf](https://www.legislature.state.al.us/pdf/lssa/Fiscal/BudgetFactBook/2021_Budget_Fact_Book.pdf) (noting that there are 46,942 certified teachers and 36,595 support personnel in Alabama), *with* U.S. Dep't of Transp. Maritime Admin.

(MARAD), *The Economic Importance of the U.S. Private Shipbuilding and Repairing Industry*, MARITIME.DOT.GOV, at 21 (Mar. 30, 2021) (estimating that shipbuilding industry supports only 11,510 jobs in Alabama, directly and indirectly).<sup>7</sup>

There is no reason to prioritize the interests white Alabamians hold in common over the interests that, as demonstrated above, both Black and white Alabamians in Mobile and the Black Belt face together each day. This Court’s precedent indicates that communities of interest arise from the actual interests people share. The State and CAP’s arguments about the Gulf Coast are far “less compelling,” MSA 170, than the strong and important community of interest that exists in and between the Black Belt and Mobile.<sup>8</sup>

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<sup>7</sup> CAP’s emphasis on Gulf Coast tourism (CAP Br. at 13-14) is even more baffling. The organization to whose website it refers focuses on “beach tourism.” There are no beaches in Mobile. The beaches in Mobile County are in the county’s southern half, and would remain part of the same congressional district along with Baldwin County under most of the illustrative maps plaintiffs introduced.

<sup>8</sup> Although CAP claims that its interests “transcend partisan politics and race” (CAP Br. at 5), it is notable that only *one* of the 24 members of its board, founding entities council, and executive team is African-American (and only two are women). *See Leadership, Board of Directors & Founding Entities*, COASTAL ALA. P’SHP (last visited July 18, 2022), <http://coastalalabama.org/leadership/>. The chairman of the CAP board is the former vice-chairman of the Baldwin County Republican Party, and CAP’s CEO and two of its board members formed a PAC in 2020 specifically to raise money for the current incumbent Republican House member representing District 1, Jerry Carl. Todd Stacy, *Super PAC forms to help Carl in AL-1 runoff*, ALA. DAILY NEWS (June 17, 2020), <https://www.aldailynews.com/super-pac-forms-to-help-carl-in-al-1-runoff/>. CAP’s affiliated entity Coastal 150 also endorsed Carl

The State and CAP’s insistence on maintaining the *status quo* district encompassing Mobile and Baldwin Counties (Br. at 21; CAP Br. at 17) likewise inherently favors the interests of white Alabamians. By 2020, the Black population in Alabama increased by 6.5% over its 2010 level, while the white population continued to fall, from 73.6% in 1990 to 63.1% in 2020. MSA 194. To deny an effective second majority-Black district—that the district court confirmed was possible and proper to draw—simply because it did not exist before would ignore this data and the Constitution’s direction that States update their maps at least every ten years to give effect to present conditions. *Reynolds v. Sims*, 377 U.S. 533, 583-84 (1964).<sup>9</sup>

It would also be deeply ironic, given that—contrary to CAP’s depiction of Mobile and Baldwin Counties as inextricably bound at the hip for all of Alabama’s history (CAP Br. at 9)—the two counties were *separated* in Alabama’s congressional maps for virtually the entire time from the 1870s to the 1970s. During that period, Mobile County was instead paired with several Black Belt counties (Washington,

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and almost always endorses Republican candidates for office (for instance, 90% of its endorsements in the last statewide general election in 2018 went to Republicans). See *Coastal 150 Voter Guide - General Election November 6, 2018*, COASTAL 150 (Oct. 26, 2018), <https://www.coastal150.com/single-post/2018/10/26/coastal-150-voter-guide-general-election-november-6-2018>.

<sup>9</sup> CAP’s further argument that plaintiffs’ illustrative maps are improper because they “combine[] minority communities from urban and rural areas” (CAP Br. at 25) is simply wrong. As noted above, this Court has expressly recognized that members of the same racial group located in “rural and urban communities” *can* form a compact district where, as here, they share common interests. *LULAC*, 548 U.S. at 435.

Choctaw, Clark, Monroe, Marengo, and sometimes Wilcox). *See* Ala. Cong. Dists., 1822-2021, Doc. 57-7, *Singleton v. Merrill*, No. 2:21-cv-01291-AMM (N.D. Ala. Dec. 15, 2021) (Baldwin and Mobile Counties separated 1875-1917, 1933-1972). It was only when Blacks began registering in greater numbers following enactment of the VRA, which raised the prospect of the Mobile-Black Belt congressional district becoming a majority-Black district, that the Alabama Legislature, in 1972, split off Mobile County from the Black Belt and combined it with Baldwin County. *Id.* In this way, the voting power of Mobile remained harnessed in service of a majority-white district.

Alabama's extensive and ongoing history of racial discrimination in voting, which SPLC has recently documented,<sup>10</sup> should not be brushed aside. Alabama resisted creating even one district where Black voters could elect a candidate of their choice until a federal lawsuit established District 7 in 1992. *Wesch*, 785 F. Supp. at 1493. On the state level, Alabama did not reapportion its Legislature since adopting its current constitution in 1901 until a federal court, in a case SPLC brought, ordered that relief. *Sims v. Amos*, 336 F. Supp. 924, 930-31 (M.D. Ala.) (per curiam), *aff'd*, 409 U.S. 942 (1972); *see also Reynolds*, 377 U.S. at 539-40, *on remand to Sims v. Baggett*, 247 F. Supp. 96, 105-06 (M.D. Ala. 1965) (per curiam). Justice delayed is no reason to deny justice.

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<sup>10</sup> SPLC, Report to the House Judiciary Comm., U.S. House of Representatives, *Selma, Shelby County, & Beyond: Alabama's Unyielding Record of Racial Discrimination in Voting, the Unwavering Alabamians Who Fight Back, & the Critical Need to Restore the Voting Rights Act* (Aug. 16, 2021), [https://www.splcenter.org/sites/default/files/splc\\_alabama\\_voting\\_rights\\_report\\_with\\_exhibits\\_final.pdf](https://www.splcenter.org/sites/default/files/splc_alabama_voting_rights_report_with_exhibits_final.pdf).

*McGirt v. Oklahoma*, 140 S. Ct. 2452, 2474, 2479-82 (2020) (“Unlawful acts, performed long enough and with sufficient vigor, are never enough to amend the law.”).

Section 2’s “vital protection” is necessary medicine. *Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2343 (2021). “[I]t is a special wrong when a minority group has 50 percent or more of the voting population and could constitute a compact voting majority but, despite racially polarized bloc voting, that group is not put into a district.” *Bartlett v. Strickland*, 556 U.S. 1, 19 (2009) (plurality opinion).

The district court found that two sets of plaintiffs satisfied this showing and ordered the Alabama Legislature to create a map giving effect to two districts in which Black Alabamians have the opportunity to elect the representatives of their choice. The district court’s ruling, firmly anchored in the evidence, is faithful to the VRA’s command, to this Court’s precedent, to the values underlying the Equal Protection Clause and to the goal of ensuring equal opportunity in voting to all citizens.

### CONCLUSION

The decisions of the district court should be affirmed.

Respectfully submitted,

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