

No. 22-807

IN THE
Supreme Court of the United States

THOMAS C. ALEXANDER, IN HIS OFFICIAL
CAPACITY AS PRESIDENT OF THE SOUTH
CAROLINA SENATE, *et al.*,
Appellants,

– v. –

THE SOUTH CAROLINA STATE CONFERENCE
OF THE NAACP, *et al.*,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

**BRIEF OF *AMICI CURIAE* LEAGUE OF WOMEN VOTERS
OF SOUTH CAROLINA, GULLAH GEECHEE CHAMBER
OF COMMERCE, THE CHARLESTON BRANCH OF
THE ASSOCIATION FOR THE STUDY OF AFRICAN
AMERICAN LIFE AND HISTORY, AND THE CIRCULAR
CONGREGATIONAL CHURCH IN SUPPORT OF APPELLEES**

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Cited Authorities

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Division of Research, Moore School of Business, University of South Carolina, <i>The Economic Impact of the South Carolina Ports Authority: A Statewide and Regional Analysis</i> , S.C. STATE LIBRARY DIGITAL COLLECTION, Oct. 2019, at 30, https://dc.statelibrary.sc.gov/handle/10827/33633	11
Jamie W. Moore, <i>The Lowcountry In Economic Transition: Charleston Since 1865</i> , THE SOUTH CAROLINA HISTORICAL MAGAZINE, Apr. 1979.	8
Jeanne A. Calhoun, Martha A. Zierden and Elizabeth A. Paysinger, <i>The Geographic Spread of Charleston's Mercantile Community, 1732-1767</i> , THE SOUTH CAROLINA HISTORICAL MAGAZINE, Jul. 1985	7
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Cited Authorities

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Megan Fernandes, <i>As tourism impact hits record \$12.8B, Charleston seeks to balance visitors, preservation</i> , POST AND COURIER, May 19, 2023, available at https://www.postandcourier.com/business/as-tourism-impact-hits-record-12-8b-charleston-seeks-to-balance-visitors-preservation/article_5dfd6960-f5be-11ed-b7d2736a45ea0d8a.html	13
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South Carolina Regional Economic Project, <i>Gross Domestic Product by County – Charleston County</i> , Dec. 2022, https://south-carolina.reaproject.org/data-tables/gsp-a200n/tools/450019/ (last accessed Aug. 11, 2023)	16
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South Carolina Revenue and Fiscal Affairs Office, <i>Decennial Census 2020 Data Release, Total Resident Population by County</i> , https://rfa.sc.gov/data-research/population-demographics/census-state-data-center/decennial-census-data/decennial-census-2020-data-release (last accessed Aug. 11, 2023)	21
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STATEMENT OF INTEREST OF *AMICI CURIAE*¹

Amici Curiae the League of Women Voters of South Carolina (“LWVSC”), the Gullah Geechee Chamber of Commerce (“GGCC”), the Charleston Branch of the Association for the Study of African American Life and History (“ASALH”), and the Circular Congregational Church (“CCC”) share a mission to empower South Carolina voters and encourage informed participation in the democratic process. *Amici* submit this brief in support of Appellees and in furtherance of their common interest in just representation through fair redistricting.

LWVSC is a nonpartisan, grassroots organization that encourages informed and active participation in government, works to increase understanding of major public policy issues, and influences public policy through education and advocacy. LWVSC is an affiliate of the League of Women Voters of the United States, which was founded in 1920 by leaders of the women’s suffragist movement, six months before the ratification of the Nineteenth Amendment to the Constitution.

In keeping with its mission, LWVSC has long advocated for fair redistricting in South Carolina. Since 2017, LWVSC has conducted detailed redistricting analyses of all voting districts in South Carolina using election data. LWVSC joined other South Carolina voting rights organizations to fight for transparency and accountability throughout the redistricting process, and it supported

1. No counsel for a party authored this brief in whole or in part, and no person other than the *amici curiae* and its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

South Carolina residents during the 2021 redistricting cycle through data analysis, community forums, education, and technical assistance. LWVSC submitted proposals for South Carolina's House of Representatives, Senate, and Congressional maps and provided testimony in both the House and Senate. Currently, LWVSC has fifteen local Leagues with 1181 members around the state.

GGCC is a nonpartisan, grassroots organization with a mission to promote economic and environmental justice and create global awareness, profitability, and sustainability of African American businesses. GGCC, whose members are the descendants of enslaved Africans, was founded upon a tradition of advocacy for Black civil rights, including the right to a fair vote. The heart of GGCC's mission is in South Carolina and specifically in U.S. Congressional District One. GGCC has long advocated for economic justice through voting rights, education, and fair redistricting in South Carolina. Since 2018, the GGCC has conducted the "Gullah Geechee Environmental & Energy Conference," through which it encourages voter registration and educates community members on their ability to influence environmental and economic policy on the local, state, and federal levels.

The Charleston Branch of ASALH is a non-profit and non-partisan organization whose mission is to promote, research, preserve, interpret, and disseminate information about the life, history, and culture of Black residents of the greater Charleston area. Founded over a century ago by Dr. Carter G. Woodson and other Black scholars, ASALH works to provide an accurate historical account of the lived experiences and thoughts of people of African descent, including advocating for fair and accurate

representation of Black communities in the redistricting process.

CCC is a historic congregational church located on the Charleston Peninsula with a longstanding commitment to civil rights and racial justice. CCC participates in the Charleston Area Justice Ministry, through which it empowers marginalized persons in Charleston County through research, education, and advocacy. Political empowerment through voter registration, voter education, and voter support stand at the heart of this mission.

INTRODUCTION AND SUMMARY OF ARGUMENT

Fifty-five million years ago, the Atlantic Ocean and South Carolina's coast converged in the Midlands, more than one-hundred miles from the state's modern-day shoreline. Not since that time has Columbia held interests resembling those of Charleston County. Nevertheless, in 2021, the South Carolina General Assembly needlessly deepened the split of Charleston County between Congressional District Nos. 1 and 6 and, for the first time ever, lumped together in a single district the whole of the Charleston Peninsula and downtown Columbia, which are separated by several rural counties and more than half the state's length. The General Assembly's fragmentation of Charleston County and amalgamation of communities with disparate interests typify the Enacted Plan's disregard for traditional redistricting principles and demonstrate the predomination of race as the General Assembly's primary redistricting consideration.

After an eight-day trial, and "[a]fter carefully weighing the totality of evidence in the record and

credibility of witnesses,” a three-judge panel held that “race was the predominant motivating factor in the General Assembly’s design of Congressional District No. 1 and that traditional districting principles were subordinated to race.” Juris. Stat. App. (“JSA”) 33a. The traditional race-neutral districting principles that Defendants subordinated to race include, among others, “respect for political subdivisions or communities defined by actual shared interests.” JSA.12a–13a (quoting *Miller v. Johnson*, 515 U.S. 900, 911 (1995)).

In asking this Court to reverse the panel’s decision, Defendants assert that “the Enacted Plan, including in District 1 and Charleston County, adheres to—and even outperforms all of Plaintiffs’ alternatives on—several traditional criteria the General Assembly elevated, such as . . . maintenance of communities of interest . . .” Defs.’ Jurisdictional Statement at 4; *see also* Defs.’ Merits Br. at 2–3. Defendants are wrong.

In fact, Charleston County is the community of interest (“COI”) that Defendants most conspicuously disregarded and subordinated to race when drawing Congressional District 1 (“CD 1”). Despite receiving overwhelming public support for making Charleston County whole in CD 1, Defendants “went in exactly the opposite direction, doubling down on the racial division of Charleston County by the movement of 62% of the African American residents of Congressional District No. 1 into Congressional District No. 6.” JSA.27a (panel opinion); *see also* 26a (“The movement of over 30,000 African Americans in a single county from Congressional District No. 1 to Congressional District No. 6 created a stark racial gerrymander of Charleston County.”).

Charleston County, which is anchored by the City of Charleston and the Charleston Peninsula, has long been united by common cultural, economic, geographic, environmental, and historic interests. Moreover, the factors that make Charleston County an important and unique COI have grown stronger over the past decade as Charleston County's population has grown. Nevertheless, the Enacted Plan excises the entire Charleston Peninsula from CD 1 for the first time in history and places it in the Midlands district of Congressional District 6 ("CD 6"), which is anchored by Columbia, a city located 100 miles inland from Charleston that is culturally, economically, geographically, environmentally, and historically distinct from Charleston County. Notably, under the Enacted Plan, CD 1 becomes a non-contiguous district because the Midlands district of CD 6 slices from the state capital, which was moved from the coast to the middle of the state in 1790, all the way through the coastal region until it reaches the Atlantic Ocean.²

Thus, while a legislature may "defeat a claim that a district has been gerrymandered on racial lines" by showing that race-neutral considerations, such as respect for communities of interest, are the basis for the new map, *Miller*, 515 U.S. at 916–17, Defendants can make no such showing here. Rather, like the congressional district that this Court deemed an unconstitutional racial gerrymander in *Miller*, the Enacted Plan created districts with "fractured political, social, and economic interests[.]" *Id.* at 919. District lines that divide communities of

2. While contiguity by water is traditionally accepted to accommodate islands and other isolates, the Enacted Plan abuses this concept to artificially isolate portions of the Charleston County COI from areas with which it shares COI-defining attributes.

interest weaken communities' representation, dilute citizens' voting power, and discourage participation in the democratic process. That harm is especially prevalent in Charleston County under the Enacted Plan.

This Amicus Brief identifies the strong, unique, and often interdependent interests that exist in Charleston County, discusses the harm to Charleston County voters that will result from implementation of the Enacted Plan, and summarizes evidence from trial demonstrating that Defendants disregarded the Charleston County COI when creating the Enacted Plan.

ARGUMENT

I. Standard of Review

The panel's determination that CD 1 under the Enacted Plan is an unconstitutional racial gerrymander "warrants significant deference on appeal to this Court." *Cooper v. Harris*, 581 U.S. 285, 293 (2017). The panel's "findings of fact—most notably, as to whether racial considerations predominated in drawing district lines—are subject to review only for clear error." *Id.* ("A finding that is 'plausible' in light of the full record—even if another is equally or more so—must govern.").

II. Charleston County is an Important COI Bound Together by Shared Historic, Economic, Cultural Environmental, and Educational Interests.

The South Carolina Senate's 2021 Redistricting Guidelines define COIs as "[a]reas defined by geographic, demographic, historic or other characteristics that cause people to identify with one another, including economic,

social, cultural, language, political, and recreational activity interests common to the area's population." JSA.426a. Under this definition, which is similar to the definition used by other state legislatures, Charleston County is undeniably a COI.

The shared characteristics and interests that unite the citizens of Charleston County have a history of more than three centuries. From its founding at Charles Towne Landing in 1670, the Charleston community has been economically anchored by and dependent upon its port. Charleston's earliest residents established merchant wharves on the Charleston Peninsula; however, port facilities have long been spread across the greater Charleston area, which now encompasses the Charleston County COI: the largest of four major early shipyards in eighteenth-century Charleston was established at Hobcaw Point in Christ Church Parish, now the city of Mt. Pleasant. See John H. Tibbetts, *Rise and Fall and Rise . . . South Carolina's Maritime History*, COASTAL HERITAGE, Fall 2002, at 3, available at <https://www.scseagrant.org/rise-and-fall-and-rise-south-carolinas-maritime-history/>.

As agricultural productivity flourished in Carolina during the eighteenth century, the Port of Charleston became one of only a few major shipping centers in the American Colonies and the largest trading hub of the pre-American South. See Jeanne A. Calhoun, Martha A. Zierden and Elizabeth A. Paysinger, *The Geographic Spread of Charleston's Mercantile Community, 1732-1767*, THE SOUTH CAROLINA HISTORICAL MAGAZINE, Jul. 1985, at 182-192. In the post-Civil war period, Charleston's economy remained dominated by agriculture and trade and therefore principally reliant on its port; by 1895, Charleston's port had realized significant infrastructure

enhancements, like harbor jetties and channelization, to accommodate a different driving economic force: industry. See Jamie W. Moore, *The Lowcountry In Economic Transition: Charleston Since 1865*, THE SOUTH CAROLINA HISTORICAL MAGAZINE, Apr. 1979, at 156–1159. The modernization of the Port of Charleston during this era would ensure its place at the center of Charleston’s economy through the present, more than a hundred years later.

While the functions of the Port of Charleston have evolved and expanded over Charleston County’s history—it has housed United States Naval facilities, erected new shipping terminals, and accommodated cruise ships—Charleston’s economic interests still flow predominantly through its port.

No economic history of Charleston County as a COI can omit the central role of its Black residents. Charleston’s early economic successes in agriculture and maritime trade were the fruits of forced labor by Enslaved Persons. And the Slave Trade, itself, was a significant and lucrative industry in pre-Civil War Charleston. As many as 40% of all enslaved Africans who entered North America during the trans-Atlantic slave trade did so through the Port of Charleston. *African Passages, Lowcountry Adaptations*, THE LOWCOUNTRY DIGITAL HISTORY INITIATIVE, https://ldhi.library.cofc.edu/exhibits/show/africanpassageslowcountryadapt/sectionii_introduction (last accessed Aug. 15, 2023). A significant number of those Enslaved Persons were sold to property owners in Charleston and the surrounding area, where they cultivated plantation fields and harvested “cash crops,” like Carolina Gold Rice, which remains

an important food product in Charleston culture. *Id.* By 1860, African Americans made up 57% of South Carolina's population. Brian Hicks, *Slavery in Charleston: A chronicle of human bondage in the Holy City*, POST AND COURIER, Feb. 11, 2020, available at https://www.postandcourier.com/news/special_reports/slavery-in-charleston-a-chronicle-of-human-bondage-in-the-holy-city/article_54334e04-4834-50b7-990b-f81fa3c2804a.html. Charleston's slave trade forced Enslaved Persons through its port and onto its plantations and, in so doing, entrenched Charleston's Black community as the backbone of its economy.

Charleston County's social and cultural commonalities, too, arise from and have been shaped by shared experiences and local features. Charleston County's cultural interests are inherently coastal. As Sen. Bright Matthews referenced in her testimony before the panel, Charleston County residents play on its beaches and fish in its creeks. Tr. 793:12–18. Further, Charleston County's culture includes customs, artforms, and social institutions that arose from the shared experience of Enslaved Persons. Brian Hicks, *Slavery in Charleston: A chronicle of human bondage in the Holy City*, Post and Courier, Feb. 11, 2020, available at https://www.postandcourier.com/news/special_reports/slavery-in-charleston-a-chronicle-of-human-bondage-in-the-holy-city/article_54334e04-4834-50b7-990b-f81fa3c2804a.html. And politically, Charleston County's government has united and served its residents since 1785. As the panel heard Lynn Teague of the LWVSC testify, Charleston County is “very much [an] integrated community” going back to the late 1600s. Tr. 690:20–691:12.

III. Defendants Harmed South Carolina Citizens by Splitting the Charleston County COI

Charleston County shares economic, environmental, political, and social interests unique from interests held in other parts of the state. Protecting and furthering those interests often requires advocacy at the federal level. By splitting Charleston County through its center, the Enacted Plan also splits the voice of Charleston County's residents and dilutes their voting power with respect to shared community interests, in direct conflict with the South Carolina Senate's 2021 Redistricting Guidelines. JSA.426a (stating that COIs "should be considered" in drawing district maps). Further, by artificially uniting communities of disparate interests, the Enacted Plan diminishes the representative power of both citizens of Charleston County and citizens of other South Carolina counties impacted by the split.

The Enacted Plan splits Charleston County by extending CD 6 from downtown Columbia, through the rural Midlands and "Upper Low Country" for more than one hundred miles, through the northwest portion of Charleston County, and down the entirety of the Charleston Peninsula. It excises the City of Charleston from CD 1, where Defendants' expert admitted it had anchored the district for over 120 years. *See* Tr.1637:12–18, 1679:11–1680:1.

This split fractures the voice of Charleston County, weakens community representation, dilutes the voting power of its citizens, and discourages citizen participation in the democratic process by alienating potential voters. With diminished voting power, the residents of Charleston

County have a diminished capacity to affect policy on issues that have an outsized local impact. The effect is especially harmful to Charleston County residents excised from CD 1 to CD 6, who will be forced to compete with communities of disparate interests, like Columbia, the rural Midlands, and the rural Upper Low County, for adequate representation on issues of community import. In other words, the Enacted Plan tasks one single federal representative with identifying, addressing, and advocating on behalf of the varied and numerous concerns of Charleston County, South Carolina's rural Midlands and Upper Low Country, and Columbia. That outcome benefits no one.

The Enacted Plan splinters Charleston County's voice on economic issues critical to the livelihood of its residents. The Port of Charleston is the economic engine that fuels Charleston County and the primary contributor to South Carolina's gross domestic product. The South Carolina Ports Authority ("SCPA") operates two marine terminals: the Port of Charleston and the significantly smaller and less profitable Port of Georgetown. The SCPA's port facilities in Charleston provide the southeastern United States a gateway to global trade. In 2019, economic activity stemming from South Carolina's ports provided residents of the Low Country region 27,781 jobs and over \$1.5 billion in labor income. *See* Division of Research, Moore School of Business, University of South Carolina, *The Economic Impact of the South Carolina Ports Authority: A Statewide and Regional Analysis*, S.C. STATE LIBRARY DIGITAL COLLECTION, Oct. 2019, at 30, <https://dc.statelibrary.sc.gov/handle/10827/33633>. The same year, the SCSA had a \$7.8 billion economic output in the region. *Id.*

Federal representation is a critical component of advocacy on behalf of the Port of Charleston. Federal funding—like that provided in the Infrastructure Investment and Jobs Act of 2021—supports improvements and expansions of port facilities. As recently as 2020, the U.S. Department of Transportation granted significant federal funding for infrastructure improvements at the Port of Charleston. John McDermott, *Nearly \$20M in federal funding granted for Port of Charleston upgrades*, POST AND COURIER, Feb. 11, 2020, available at https://www.postandcourier.com/business/nearly-20m-in-federal-funding-granted-for-port-of-charleston-upgrades/article_31c3bc4e-4cf9-11ea-8788-3bb563fd7108.html#newsletter-popup. All infrastructure improvements, along with any construction over navigable waters, are governed by federal laws and regulations, and carefully overseen by federal agencies. Federal issues also permeate the Port of Charleston’s primary labor force. The International Longshoremen’s Association, the union of maritime workers that provides stevedores to the Port of Charleston, is governed by federal law, including the Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 401, et seq., and overseen by the U.S. Department of Labor. Federal economic policy, too, impacts the Port of Charleston through federal taxes, tariffs, and administrative fees. And, of course, federal rules heavily regulate interstate travel and international trade.

The Enacted Plan cleaves the Port of Charleston, splitting its representative power with respect to these issues. The port’s two largest terminals—the Wando Welch Terminal and the Hugh K. Leatherman Terminal—though only three miles apart, are divided between CDs 1

and 6. As a result, those most concerned with the success and sustainability of Charleston's port are separated into two congressional districts and must appeal to two different representatives. Most of the Port of Charleston's facilities are located on the peninsula and therefore in CD 6, meaning that those who work for and live near those facilities must compete with citizens of Columbia to have their concerns addressed.

Charleston County also shares an economic interest in the other engine that drives its economy: tourism. The tourism industry had a \$12.8 billion economic impact on the greater Charleston area in 2022. Megan Fernandes, *As tourism impact hits record \$12.8B, Charleston seeks to balance visitors, preservation*, POST AND COURIER, May 19, 2023, available at https://www.postandcourier.com/business/as-tourism-impact-hits-record-12-8b-charleston-seeks-to-balance-visitors-preservation/article_5dfd6960-f5be-11ed-b7d2736a45ea0d8a.html. By placing the entirety of the Charleston Peninsula into CD 6 and most of its suburbs into CD 1, the Enacted Plan separates the heart of Charleston County's tourism industry from most of its citizens. In other words, most residents of Charleston County, who reside in CD 1, will have no representation with respect to the area that fuels their home's economy, which the Enacted Plan places in CD 6.

Residents of Charleston County also share a compelling interest in conserving South Carolina's coastal resources and responding to environmental crises that disparately threaten coastal communities. This is especially true with respect to issues of national and international scale. Combating the effects of climate change, for example, depends upon federal policy and

federal resources made available to local governments. Charleston County also has an elevated interest in the protection of endangered species and the cleanliness of the nation's waters. Those interests, too, depend upon federal governance—specifically, the enforcement of the Endangered Species Act, 16 U.S.C. § 1531 et seq., and the Clean Water Act, 33 U.S.C. § 1251 et seq.

At trial, the panel received evidence regarding the harm the Enacted Plan inflicts upon the Charleston County COI. *See, e.g.*, Tr. 500:22–504:10 (Plaintiff Taiwan Scott testifying about the harm caused by the split of Charleston County); Tr. 87:2–88:17, 91:9–15; 93:20–96:9 (Anjene Davis, a Black resident of North Charleston, testifying on the split's harm to Charleston County's Black residents); Tr. 780:3–793:11, 820:12–820:18 (Sen. Matthews testifying about the split's harm to Black voters in Charleston County). Overwhelming trial evidence demonstrates the General Assembly's disrespect for communities of interest and supports the panel's conclusion that Defendants subordinated traditional districting principles to considerations of race.

Further, splitting the Charleston County COI does more than minimize the voice of one fractured community; it also harms citizens beyond that community through the forced union of disparate interests.

The Enacted Plan cuts large portions of Charleston County—namely, the Charleston Peninsula and the St. Andrews/West Ashley community—from CD 1 and places them into CD 6. Charleston County is a mostly urban, well-developed, coastal county. It is home to two public universities, one private university, and a public medical

university. In 2021, Charleston County’s gross domestic product (“GDP”) totaled \$3,640,450,700. South Carolina Regional Economic Project, *Gross Domestic Product by County – Charleston County*, Dec. 2022, <https://south-carolina.reaproject.org/data-tables/gsp-a200n/tools/450019/> (last accessed Aug. 11, 2023). And the median annual household income of its residents was \$71,755. South Carolina Revenue and Fiscal Affairs Office, *Median Household Income by County*, <https://rfa.sc.gov/data-research/population-demographics/census-state-data-center/mhi-county-2011-2020> (last accessed Aug. 11, 2023).

Compare those characteristics to the characteristics of other counties that now share CD 6 with Charleston County. Bamberg, Calhoun, and Clarendon counties, for example, are inland communities defined by rural poverty. In 2021, the GDPs of those counties totaled \$39,403,100; \$69,686,500; and \$74,816,300, respectively, or between one and two percent of Charleston County’s GDP. South Carolina Regional Economic Project, *Gross Domestic Product by County – Bamberg County* (Dec. 2022), <https://south-carolina.reaproject.org/data-tables/gsp-a200n/tools/450009/> (last accessed Aug. 11, 2023); South Carolina Regional Economic Project, *Gross Domestic Product by County – Calhoun County* (Dec. 2022), <https://south-carolina.reaproject.org/data-tables/gsp-a200n/tools/450017/> (last accessed Aug. 11, 2023); South Carolina Regional Economic Project, *Gross Domestic Product by County – Clarendon County* (Dec. 2022), <https://south-carolina.reaproject.org/data-tables/gsp-a200n/tools/450027/> (last accessed Aug. 11, 2023). Median annual household incomes in those counties, respectively, were \$37,906; \$39,476; and \$41,240. South Carolina Revenue and Fiscal Affairs Office, *Median Household Income*

by County – Charleston County, <https://rfa.sc.gov/data-research/population-demographics/census-state-data-center/mhi-county-2011-2020> (last accessed Aug. 11, 2023).

These counties—like the geographic majority of CD 6—lie in an area known as the “corridor of shame,” where primary concerns include underdevelopment, cyclical poverty, lagging access to quality healthcare, high incarceration rates, and a grossly underfunded and struggling public school system. *See* Toby Moore and Sara Lawrence, *Creating Greater Opportunity in South Carolina’s I-95 Corridor: A Human Needs Assessment* 12–16 (2009), available at <http://www.scsu.edu/files/I95Corridor.pdf>. Federal solutions could help alleviate the problems plaguing these counties. *Id.* at 1–2, 10 (noting the need to “act as a unified political block”), 12 (noting the need to attract “resources from federal programs” and to seek “federal aid for school infrastructure”), 13 (noting the need to seize “federal funding opportunities” and “leverage federal funding sources.”). But doing so would require representative power at the federal level.

The Enacted Plan slashes the federal representative power of Bamberg, Calhoun, and Clarendon counties by forcing voices in those counties to compete with voices in Charleston County. Indeed, the panel received evidence about the harm the Enacted Map inflicts upon residents outside of Charleston County. *See, e.g.*, Tr. 1266:7–1266:14 (South Carolina NAACP President Brenda Murphy testifying that the Enacted Plan would lead to harmful outcomes for Black rural communities, especially in terms of opportunity for quality healthcare, economic development, and educational resources). Thus, the Enacted Plan harms both residents of Charleston County

and all disparately interested citizens artificially united by the Enacted Plan.

IV. Defendants Ignored Public Testimony Regarding the Charleston County COI.

The General Assembly was well acquainted with these harms when it adopted the Enacted Plan and fractured the Charleston County COI.

The South Carolina Senate's 2021 Redistricting Guidelines provide that COIs "should be considered" in drawing district maps. JSA.426a. Further, the Senate and House held public hearings where representatives solicited input from South Carolina voters about the redistricting process, including the public's input on what constitute important COIs. *See, e.g.*, JA.350 ("The mission of these public hearings is to receive testimony and gather information about how people see the areas in which they live and what factors need to be considered when the Senate Districts and the Congressional Districts are redrawn.").

In fact, Senator Luke Rankin explained that the Senate specifically intended to gather information about COIs from South Carolina's public during these public hearings. SDX No. 224a at 9:8–12; SDX No. 224a at 8:19–25 (encouraging attendees at a public hearing in Columbia to inform the Senate about their shared interests, "whether they're economic, cultural, recreational or historical, that create communities of interest that you want us to consider."); SDX No. 231a at 7:12–14 (assuring the audience of a Charleston public hearing, "We're here to hear you and to listen to you as you tell us what you

believe these communities of interest would be.”); SDX No. 225a at 6:22–24 (announcing at a public hearing in Sumter, “Tonight we want to hear from you as to what you consider your communities of interest are.”).

At these public hearings, voters emphasized the importance of Charleston County as a COI and expressed support for making Charleston County whole in CD 1. *See, e.g.*, JA.89–90 (State Representative Cobb-Hunter, who reviewed over a thousand pages of the transcripts of public testimony discussing COI, testifying that Charleston County was a COI); JA.153–55 (LWVSC VP Lynn Teague, who listened to a majority of the public hearings in the House and some in the Senate, testifying that “[a] lot of the concerns that I heard around Charleston were that Charleston was being split,” and that voters “really were baffled through their testimony as to why they were being placed, again, over a hundred miles away in Richland County, with a Richland-based district, in comparison to being connected to the—I guess it would be the 1st Congressional District. There were several concerns. And that’s what I heard over and over again.”); JA.380 (“Rep. Garvin stated that he had watched all of the public hearings and that he recalled a preponderance of people saying that the Committee ought to make Charleston whole.”); Tr. 877:13–877:22 (Sen. Harpootlian explaining that “everybody from the Charleston area was outraged,” and that “[a]lmost everybody [the Senate Committee] heard from, wanted Charleston kept whole and talked about how this split the county on a racial basis”); Tr. 877:13–877:22 (Sen. Harpootlian: “I don’t remember any other community being as vociferous or vocal as Charleston.”); JSA.191a (“And I can assure you, living here, that North Charleston is much more intertwined

with Charleston and the Lowcountry than it is with the Midlands.”); JSA.192a (“I urge you to consider [Charleston] county a community of interest and not split it so many ways While I appreciate the idea of the coast as a group of residents with shared interests, I believe we would be better served by districts that don’t split so many county lines – residents of these coastal counties typically all care about our coastal resources – so their voice will not be diluted.”).

As one voter from Charleston County persuasively explained at a public hearing:

I’m glad the one gentleman bought up the maps of Charleston County, because as far as the U.S. Congressional District is concerned, that shape is crazy. Charleston County deserved to be in one U.S. Congressional District. North Charleston problems, North Charleston interests should be considered with the rest of Charleston County and not with Columbia. That’s where our airport is. That’s where our tourists are coming into town. They’re sleeping in those hotels. They’re shopping at Tanger Outlets. There’s really no reason that they shouldn’t be considered in our same U.S. Congressional District. So I would also advocate for that.

JSA.190a.

Defendants, however, ignored this public testimony and carved up Charleston County so that the Charleston Peninsula and portions of North Charleston and West

Ashley are in Midlands CD 6. Indeed, William Roberts, the cartographer who prepared the maps adopted in the Enacted Plan and attended all of the Senate Redistricting Committee's public hearings, testified at trial that the public testimony was not helpful to him for purposes of identifying COI. JSA.77a ("There was a lot of people complaining, complaining about the process, a lot of people asking for maps to be drawn politically fair. We didn't—from a cartography standpoint, we didn't get a lot of information that we were looking for such as communities of interest."). Further, Roberts conceded that Black residents living in the City of Charleston have a very close community of interest with other Charleston County residents and have far more in common with them than residents of Columbia, an inland community 125 miles away. JSA.261a. When asked what "community of interest" North Charleston residents have with Columbia residents, Roberts could not identify any other than their proximity to Highway I-26, an interstate highway that diagonally bisects the whole of South Carolina from the state's coast through its border with North Carolina. JSA.255a–256a.

Because Defendants ignored the public testimony regarding Charleston County being an important COI and ignored the well-known facts demonstrating that Charleston County shares cultural, economic, social, educational, and environmental interests, Defendants cannot possibly show that respect for COI, rather than race, motivated the map of CD 1 in the Enacted Plan.

V. *Backus* Does Not Somehow Demonstrate that COI, Rather Than Race, Were the Basis for the Enacted Plan.

Defending the Legislature's failure to make Charleston County whole in CD 1, Defendants rely in part on *Backus v. South Carolina*, 857 F. Supp. 2d 553, 560 (D.S.C.), *aff'd*, 568 U.S. 801 (2012), in which a panel rejected a racial gerrymandering challenge to the 2011 redistricting plan, even though Charleston County was not whole in that plan. *See* Defs.' Juris. Statement at 3–4. But in *Backus*, the plaintiffs did not challenge the 2011 redistricting plan on the basis that race predominated over respect for COI. To the contrary, the only discussion of COI in *Backus* relates to the plaintiffs' expert's failure to even consider COI. *Id.*, 857 F. Supp. 2d at 562. Further, *Backus* only concerned CD 6; whereas the issue before the Court is a challenge to CD 1. *See* 857 F. Supp. 2d at 564 (recognizing testimony as to CD 6 only because plaintiffs lacked standing to challenge other districts). Thus, *Backus* has no relevance to whether Defendants relied on COI, rather than race, in creating CD 1 in the Enacted Plan in 2020.

Moreover, Charleston County has grown significantly since *Backus*, making Defendants' failure to make Charleston County whole in CD 1 in the Enacted Plan even more disrespectful to the Charleston County COI. Between 2010 and 2020, Charleston County experienced a 16.57% population growth, from 350,209 residents to 408,235 residents. South Carolina Revenue and Fiscal Affairs Office, *Decennial Census 2020 Data Release, Total Resident Population by County*, <https://rfa.sc.gov/data-research/population-demographics/census-state-data-center/decennial-census-data/decennial-census-2020->

data-release (last accessed Aug. 11, 2023). Charleston County's shared interests have grown in strength and number since the panel's decision in *Backus*, and preserving the Charleston County COI has never been more critical to protecting its residents' voting power.³

CONCLUSION

For the foregoing reasons, this Court should affirm the three-judge panel's decision.

Respectfully submitted,

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3. Defendants argue that splitting Charleston County is helpful to Charleston County voters because it provides them with two congressional representatives. Defs.' Merits Br. at 13. This is an attempt to turn the race-neutral factor of COI on its head. Taken to its logical conclusion, this argument would require the Court to remove respect for COI as a race-neutral traditional districting principle.