No. 22-807

In The Supreme Court of the United States

THOMAS C. ALEXANDER, *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 *AMICUS CURIAE* NANCY MACE, JOE WILSON, JEFF DUNCAN, WILLIAM TIMMONS, RALPH NORMAN, AND RUSSELL FRY IN SUPPORT OF APPELLANTS

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STATEMENT OF INTEREST OF *AMICUS CURIAE*[1]

Nancy Mace, Joe Wilson, Jeff Duncan, William Timmons, Ralph Norman, and Russell Fry (collectively "Amici Members"), all Members of Congress representing districts within the state of South Carolina, submit this Amicus Brief in support of Appellants. Amici Members have a vital interest in the law of redistricting generally and this appeal specifically. Amici Members are Members of Congress and so they have a general interest in how congressional districts are drawn and maintained because congressional districts impact their constituents, campaigns, and elections. More importantly, Amici Members represent the very districts at issue in this appeal and any change to these districts would impact them and their constituencies directly. Accordingly, the decision of the lower court and any decision from this Court have widespread and direct implications for Amici Members.

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

SUMMARY OF THE ARGUMENT

In throwing out the duly enacted map drawn by the South Carolina Legislature the three-judge district court below ignored one of the most important traditional districting principles—the preservation of the core of existing districts. The preservation of core districts remains a priority in redistricting because it is essential to a representative government. Constituent services, voter education, the seniority of long serving Members in the House (particularly those serving on committees of interest to the state), and other vital interests are all furthered by the preservation of district cores. Indeed, the Legislature complied with this traditional principle by drawing a map that maintained the cores of existing districts. Nevertheless, the court below, bent on destroying the Legislature's duly enacted and carefully negotiated map, ignored the maintenance of core districts entirely, failing to consider the principle at all in its decision. Moreover, in preserving district cores, the map drawn by the Legislature is substantially similar to one this Court blessed as constitutional a short time ago. By invalidating such a map, the decision of the court below effectively contradicts this Court's precedent and creates uncertainty for legislatures. State legislatures deserve consistency and the ability to rely on a prior court ruling—especially those from federal courts within their State and from this Court. The South Carolina Legislature has complied with traditional redistricting principles, drew a map that preserves the core of previously existing districts, and followed this Court's prior precedent. The court below should

have considered these factors and upheld the South Carolina Legislature's duly enacted map. By doing the opposite, the court below committed an error of law. Therefore, the Court should reverse the three-judge panel's decision and uphold the South Carolina Legislature's enacted plan as constitutional.

ARGUMENT

I. The District Court ignored the South Carolina Legislature's prioritization of traditional redistricting principles including the preservation of district cores.

As required by law, the South Carolina Legislature addressed the population changes in the state by updating their electoral map following the decennial census, and it did so by following traditional redistricting principles. The three-judge panel ignored the South Carolina Legislature's prioritization of traditional redistricting principles, including the preservation of district cores. Instead, the Court disregarded the evidence that the South Carolina Legislature followed traditional redistricting principles and erroneously concluded that race was the predominant factor motivating the South Carolina Legislature.

The judiciary's involvement in South Carolina redistricting is nothing new. In 2011, the South Carolina Legislature passed a new electoral map (the "Benchmark Plan") to account for the changing population numbers revealed by the 2010 Census data. This Court previously heard a challenge to the Benchmark Plan passed by the South Carolina

Legislature in *Backus* v. *South Carolina*, 857 F. Supp. 2d 553 (D.S.C. 2012) (three judge court), summarily aff'd, 568 U. S. 801. In *Backus*, Plaintiffs alleged that the Benchmark Plan constituted (1) racial gerrymandering; (2) a violation of Section 2 of the Voting Rights Act; and (3) illegal vote dilution. 857 F. Supp. 2d at 558. The Benchmark Plan was upheld by a three-judge panel. *Id.*, at 557–70. The three-judge panel held that Plaintiffs failed to establish that race was the predominant factor in the drafting of the Benchmark Plan, and that Plaintiffs "focused too much on changes" in BVAP percentages and not enough on traditional race-neutral redistricting principles. *Id.*, at 565. The three-judge panel stated "[t]his approach risks ignoring that race might have been an unintended consequence of a change rather than a motivating factor." *Id.* Following the decision by the three-judge panel, this Court summarily affirmed. 568 U. S. 801.

Following the release of the 2020 census data, it became clear that Congressional District ("CD") No. 1 and CD No. 6 had significant differences in populations from the ideal population for a congressional district in South Carolina. Juris. Stat. App. ("JSA").16a–17a. CD No. 1 had an excess population of 87,689 people. JSA.17a. CD No. 6 had a deficiency in population of 84,741 people. *Id.* To remedy these discrepancies, the South Carolina Legislature passed its plan for congressional reapportionment, S.865 (the "Enacted Plan") in 2022, which borrowed 140,489 people from CD No. 1 and gave them to CD No. 6. JSA.439a-445a. Appellees challenged CD Nos. 1, 2, and 5 alleging the districts were racially gerrymandered. JSA.10a.

The three-judge panel held that CD No. 1 was a racial gerrymander and entered judgment for Appellants regarding the challenge to CD No. 2 and CD No. 5. JSA.48a.

The three-judge panel erred as a matter of law in holding that CD No. 1 was a racial gerrymander. There are numerous race-neutral redistricting principles recognized in South Carolina, including: "(1) recognizing communities of interest; (2) preserving the cores of existing districts; (3) respecting political boundaries, such as county and municipal boundaries, as well as geographical boundaries; and (4) keeping incumbents' residencies in districts with their core constituents." *Backus*, 857 F. Supp. 2d at 560. The South Carolina Legislature did its job. It addressed the one-person, one-vote issues created by significant population changes while following race-neutral, traditional redistricting principles in enacting the Enacted Plan. The three-judge panel below failed to adequately contemplate these principles and analyze the South Carolina Legislature's adherence to them.

A. The Enacted Plan is vastly more effective in preserving the core of the districts in the Benchmark Plan previously enacted.

The Enacted Plan preserves the core of each district in the Benchmark Plan at an extremely high rate. CD No. 1 in the Enacted Plan is remarkably similar to the same district in the Benchmark Plan, previously approved by this Court. Under the Enacted Plan, the core retention percentages of each district in comparison to the Benchmark Plan are as follows: CD No. 1 is 92.78; CD No. 2 is 96.75; CD No.

3 is 94.75; CD No. 4 is 98.09; CD No. 5 is 95.04; CD No. 6 is 77.41; and CD No. 7 is 99.51. JSA.153a, 439a–445a. The lowest core retention percentage in the Enacted Plan is in CD No. 6, which retained 77.41 percent of the same district in the Benchmark Plan. See *supra.* However, this was most likely due to CD No. 6 having a significant deficiency in population of 84,741 people. See *supra.* Therefore, many people had to be added into CD No. 6 to comply with one-person, one vote. See *supra.*

Appellees offered multiple alternative plans. First, there is House Plan 2 Senate Amendment 2a, where the core retention percentage of each district is as follows: CD No. 1 is 73.39; CD No. 2 is 65.71; CD No. 3 is 70.38; CD No. 4 is 74.35; CD No. 5 is 55.23; CD No. 6 is 54.34; and CD No. 7 is 55.83. JSA.453a–458a. Then, there is NAACP Congressional 1 plan, where the core retention percentage of each district is as follows: CD No. 1 is 52.23; CD No. 2 is 71.69; CD No. 3 is 75.30; CD No. 4 is 83.00; CD No. 5 is 57.15; CD No. 6 is 45.53; and CD No. 7 is 36.48. JSA.461a–467a. Next, there is NAACP_Congressional_2 plan, where the core retention percentage of each district is as follows: CD No. 1 is 72.46; CD No. 2 is 51.52; CD No. 3 is 86.34; CD No. 4 is 87.51; CD No. 5 is 79.85; CD No. 6 is 46.35; and CD No. 7 is 99.30. JSA.468a–477a. Lastly, there is LWV plan, where the core retention percentage of each district is as follows: CD No. 1 is 76.04; CD No. 2 is 64.09; CD No. 3 is 91.54; CD No. 4 is 97.50; CD No. 5 is 81.61; CD No. 6 is 50.70; and CD No. 7 is 83.46. JSA.479a–485a.

What do each of these congressional districts in each of the alternative plans have in common? They all preserve a drastically lower percentage of the

core of the districts in the Benchmark Plan than the Enacted Plan. Particularly, the Enacted Plan's CD No. 1 preserved 92.78 percent of the district's core and the absolute best any of the alternative maps do is 76.04 percent. See *supra*. One of the proposed alternative plans would only preserve 52.23 percent of the Benchmark Plan's CD No. 1. JSA.461a–467a. Even in CD No. 6, where a substantial number of people had to be moved into the district, Appellants still preserved more of the district's core than any of the alternatives. See *supra*.

The numbers laid out above are stark. And they illustrate that the South Carolina Legislature has made its best effort to preserve the core of each of the districts in the Benchmark Plan—a plan this Court and a three-judge panel in South Carolina has already blessed as constitutional. Whereas each of Appellees' alternative maps has essentially reimagined the way these congressional districts should be constituted with little to no regard for the previous districts in the Benchmark Plan. In doing so, the proposed alternative plans essentially subordinate the most important traditional districting criteria.

B. Appellants' Enacted Plan is more effective at preserving political subdivisions and reducing county splits.

The Enacted Plan is not only more effective at preserving the cores of previously established districts, it also is more effective at preserving political subdivisions and reducing county splits. The Enacted Plan splits fewer counties and voting districts than the Benchmark Plan—better applying

traditional redistricting principles than a map already upheld by this Court. It is difficult to imagine how this would make the Enacted Plan somehow *less* constitutional than the previously approved Benchmark Plan.

For example, the Benchmark Plan splits a total of 12 counties and 65 voting districts. JSA.432a. Whereas the Enacted Plan splits a total of 10 counties and only 13 voting districts. JSA.447a. The Enacted Plan splits two fewer counties and *fifty-two* fewer voting districts. See JSA.432a, 447a. The Enacted Plan repairs the split of Beaufort County, Berkeley County, and Newberry County, while splitting Jasper County. See JSA.432a, 447a.

Additionally, the Enacted Plan splits Charleston County. See JSA.447a. The three-judge panel seems to take issue with the continued split of Charleston County, stating that this Court's decision in *Shelby County* raised the question of whether the continued "racial division" of Charleston County between CD No. 1 and CD No. 6 was "legally justifiable." See JSA.27a. As illustrated in the above numbers, the Enacted Plan splits fewer counties and significantly fewer voting districts. See *supra*. It is unclear why Charleston County should receive more deference than other counties and communities of interest in South Carolina. Nevertheless, the split of Charleston County is a continuation of previous plans. Charleston County has been split in South Carolina for many years. See *Colleton Cnty. Council* v. *McConnell*, 201 F. Supp. 2d 618, 666 n.29 (D.S.C. 2002); see also JSA.432a. Moreover, the Court previously approved the Benchmark Plan, which maintained the previous split of Charleston County. See *Backus*, 857 F. Supp. 2d 553; aff'd, 568 U. S. 801.

The split of Charleston County is nothing new. Over many years and multiple challenges, the split of Charleston County has not had a negative impact on any map's constitutionality. There is no reason for the split of Charleston County, in conjunction with the thorough application of traditional districting principles by the South Carolina Legislature, to now have a detrimental impact on the constitutionality of the Enacted Plan.

II. The preservation of cores of established districts furthers important interests.

As established above, the Enacted Plan passed by the South Carolina Legislature is vastly more effective at preserving core districts than any of the proposed alternatives, and preserving the cores of established districts is important.

This Court has previously held that maintaining core districts and communities of interest can be important considerations when redistricting. See *Abrams* v. *Johnson*, 521 U. S. 74, 100–01 (1997); see also *Karcher* v. *Daggett*, 462 U. S. 725, 740 (1983) (where the Court held that "preserving the cores of prior districts" is a "consistently applied legislative polic[y]"). Also, the South Carolina federal district court has previously stated that "preserving the cores of prior districts" is a legitimate state policy. *McConnell*, 201 F. Supp. 2d at 630. "This includes maintaining county and municipal boundaries where possible, and protecting the cores of existing districts by altering old plans only as necessary to achieve the requisite goals of the new plan." *Id.*, at 647 (citation omitted).

Additionally, preserving core districts has the added benefit of serving to protect incumbent legislators, which is another traditional redistricting principle in South Carolina. See *Backus*, 857 F. Supp. 2d at 561 ("Reasonable efforts shall be made to ensure that incumbent legislators are not placed into districts where they will be compelled to run against the incumbent members of the South Carolina House of Representatives.") (quoting 2011 Guidelines and Criteria for Congressional and Legislative Redistricting, ¶ VII). "Maintaining the residences of the incumbents who serve those core constituents within the district is also a districting principle that historically has been observed in South Carolina." *McConnell*, 201 F. Supp. 2d at 647. "[W]e view the principle as more accurately protecting the core constituency's interest in reelecting, if they choose, an incumbent representative in whom they have placed their trust." *Id.* Also, this Court has recognized incumbency protection as a legitimate state interest. See *Bush* v. *Vera*, 517 U. S. 952, 964 (1996) ("And we have recognized incumbency protection, at least in the limited form of 'avoiding contests between incumbent[s],' as a legitimate state goal.") (citing *Karcher*, 462 U. S., at 740; *White* v. *Weiser*, 412 U. S. 783, 797 (1973); *Gaffney* v. *Cummings*, 412 U. S. 735, 751–54 (1973)).

Incumbents, particularly ones who are long serving, generally have seniority in the House, serve in leadership positions, or hold senior positions on key committees. For example, Representative Clyburn has served in the House from South Carolina since 1993 and has held senior leadership positions in the House, including as Majority Whip,

and is currently serving as Assistant Democratic Leader. Other members serve on Committees such as Armed Services, Veterans Affairs, Energy and Commerce, and Foreign Affairs, among others. Incumbent members currently serve as chairs of various subcommittees as well.

Representatives not only represent the people that voted for them, but they represent everyone in their district. Representatives have relationships with their constituents and are attuned to the specific problems facing them. *See* Nathaniel Persily, *Reply: In Defense of Foxes Guarding Henhouses: The Case for Judicial Acquiescence to Incumbent-Protecting Gerrymanders*, 116 Harv. L. Rev. 649, 671 (2002) ("Voters develop relationships with their representatives. Long-term representatives have a chance to learn about and understand the unique problems of their districts and to pursue legislation that remedies those problems."). Plans that maintain district cores effectively—like the Enacted Plan—allow more constituents to develop and benefit from their relationships with their existing representatives—like the Amici Members.

Lastly, preserving the cores of previously established districts avoids the confusion of changing boundaries, candidates, and polling places. This Court has previously held that a state has a legitimate interest in avoiding voter confusion. See *Tashjian v. Republican Party*, 479 U. S. 208, 221 (1986).

Here, it appears the South Carolina Legislature has made a concerted effort to protect the core of CD No. 1 in the Benchmark Plan by altering the district only as necessary to achieve their goal in the Enacted Plan. See *supra*; see also *McConnell*, 201 F.

Supp. 3d at 647. In fact, the Enacted Plan preserves more of Benchmark Plan CD No. 1 than any of the proposed alternatives. See *supra*. Regardless of the politics of the district, 92.78 percent of the voters there will live in the same district as they did previously. 92.78 percent of the voters there will retain a representative who already knows their needs and presumably has been working to address those needs. 92.78 percent of voters will not have to adjust to a new district, voting rules, politicians that they have not met or may not be familiar with at all, or new polling places.

The benefit of preserving the core of the district is an important consideration and has a substantial impact on voters regardless of who they voted for. This consideration should not be devalued by this Court, as it was ignored by the three-judge panel below. Preserving the cores of previously established districts is a traditional, race-neutral, and consistently applicable redistricting principle that must be followed in South Carolina and has been recognized by this Court as a legitimate state interest in redistricting.

III. This Court has already ruled that a substantially similar map passes constitutional muster and there is no reason to disturb that ruling now.

State legislatures must be able to rely on previous orders from this Court in similar circumstances. Ten years ago, this Court affirmed that a map passed by the South Carolina Legislature was a constitutional exercise of its authority to regulate elections. Now, a remarkably similar map,

with the same tired claim of racial predominance, is before the Court. As it did previously, the Court should uphold the Enacted Plan as constitutional.

A. A substantially similar legal challenge to a map passed by the South Carolina Legislature was heard 10 years ago.

A decade ago, both this Court and a three-judge district court upheld the Benchmark Plan in the face of a racial gerrymandering claim under the Equal Protection Clause of the Fourteenth Amendment. See *supra*. Now, we're back. The South Carolina Legislature's Enacted Plan, which is remarkably similar to the Benchmark Plan as illustrated in the above discussion of the preservation of core districts, is again being challenged as a racial gerrymander in violation of the Equal Protection Clause of the Fourteenth Amendment. See *supra*.

Particularly, the three-judge panel held that CD No. 1 was a racial gerrymander. JSA.48a. However, CD No. 1 in the Enacted Plan is almost the same as the district in the Benchmark Plan, previously approved by this Court. Under the Enacted Plan, the core retention percentages of each district in comparison to the Benchmark Plan are as follows: CD No. 1 is 92.78; CD No. 2 is 96.75; CD No. 3 is 94.75; CD No. 4 is 98.09; CD No. 5 is 95.04; CD No. 6 is 77.41; and CD No. 7 is 99.51. JSA.153a, 439a–445a. As discussed above, Appellees never offered a plan that preserved more than 76.04 percent of CD No. 1. See *supra*.

Additionally, the results of the elections under the Benchmark Plan remain consistent with the presumed results under the Enacted Plan. Since the

Benchmark Plan was passed, there has generally been a 6-1 Republican-Democrat congressional delegation in South Carolina. CD No. 6 has been a majority black district since 1992 and is represented by Congressman James Clyburn. JSA.17a. There was a single exception, when in 2018 a Democrat won CD No. 1 in "what was regarded then as a major political upset." JSA.21a. In 2020, Republicans took the seat back in another close election. *Id.* Presumably to avoid the opportunity for another "political upset" in CD No. 1, Republicans in the South Carolina Legislature set out to give the district a "stronger Republican tilt," and maintain the 6-1 Republican-Democrat congressional delegation in South Carolina. JSA.21a.

B. Based on the similarities with the Enacted Plan and the Benchmark Plan, and the Court's prior ruling, the Court should rule the South Carolina Legislature's Enacted Map is constitutional.

Consistency is important. State legislatures should be able to rely on an order from this Court for guidance when exercising their duties. The South Carolina Legislature passed a map with minimal changes to the Benchmark Plan to address the population changes in their state, a map this Court already said passed constitutional muster. However, the Enacted Plan was struck down by a three-judge panel and now the South Carolina Legislature finds itself in front of this Court again ten years later.

This Court's precedent should be honored, and similar matters should be adjudged similarly. "A

precedent of this Court should not be treated like a disposable household item—say, a paper plate or napkin—to be used and then tossed in the trash." *Cooper* v. *Harris*, 581 U. S. 285, 327–28 (2017) (Alito, J., concurring in judgment in part and dissenting in part). The Court's "legitimacy requires, above all, that [it] adhere to *stare decisis*, especially in such sensitive political contexts as the present, where partisan controversy abounds." *Bush*, 517 U. S. at 985. The Court should avoid "junk[ing] a rule adopted in a prior, remarkably similar challenge to" a substantially similar map. See *Cooper*, 581 U. S., at 328 (Alito, J., concurring in judgcment in part and dissenting in part). Otherwise, the minority party will be allowed to "deny the majority its political victory by prevailing on a racial gerrymandering claim" that has already been litigated a decade prior. See *id.*, at 335.

As discussed *supra*, the Enacted Plan is remarkably similar to the Benchmark Plan in that it preserves 92.78 percent of the core of CD No. 1 and performs the same as the Benchmark Plan with a 6-1 Republican-Democratic congressional delegation. See *supra.* Appellees and the three-judge panel now contest the Enacted Plan's CD No. 1 is an unconstitutional racial gerrymander, even though it preserves 92.78 percent of the Benchmark Plan's CD No. 1 core. No one has offered an alternative plan that preserves more of the district's core. Basically, Appellees now ask this Court to rule that the Enacted Plan, which based on the information before us will almost certainly be more similar to the Benchmark Plan than any other map offered, is unconstitutional.

The Court has essentially already addressed issues of this appeal when it ruled on the Benchmark Plan a decade ago. If the Court affirms the three-judge panel's decision to strike down the Enacted Plan, the South Carolina Legislature has a legitimate question of what to do next and what to do again a decade from now. It looks as if the South Carolina Legislature has made a concerted effort to comply with this Court's previous ruling—and the state's traditional districting principles—and passed a map based on a least change principle. Based on the minimal changes to the constitutional Benchmark Plan in the Enacted Plan, the Court should reverse the three-judge panel and rule the Enacted Plan passes constitutional muster as well.

The Court should decline to give Appellees a second bite at the apple. A challenge to a substantially similar CD No. 1 was already litigated a decade ago. A "stronger Republican tilt" should not warrant this Court revisiting the constitutionality of CD No. 1. The Court should honor its previous guidance to the South Carolina Legislature and confirm the Enacted Plan passes constitutional muster.

CONCLUSION

For the foregoing reasons, this Court should reverse the three-judge panel's decision and affirm the South Carolina Legislature's Enacted Plan as a constitutional map.

Respectfully submitted,

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