Nos. 21-1086 & 21-1087

IN THE

Supreme Court of the United States

JOHN H. MERRILL, ET AL.,

Appellants,

v.

EVAN MILLIGAN, ET AL.,

Appellees.

JOHN H. MERRILL, ET AL.,

Petitioners,

v.

MARCUS CASTER, ET AL.,

Respondents.

On Appeal from and Writ of Certiorari to the United States District Court for the Northern District of Alabama

BRIEF OF REPRESENTATIVES TERRI SEWELL, JOYCE BEATTY, GREGORY MEEKS, AND G. K. BUTTERFIELD AS *AMICI CURIAE* IN SUPPORT OF APPELLEES AND RESPONDENTS

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INTEREST OF *AMICI CURIAE* [1]

Representative Terri Sewell represents Alabama's 7th Congressional District, which spans the cities of Birmingham, Montgomery, Tuscaloosa, and Selma, as well as parts of the rural Black Belt. She has served in the U.S. House of Representative for six consecutive terms (since 2011). Representative Sewell is a member of the House Ways & Means Committee and previously served on the House Permanent Select Committee on Intelligence. She also is a member of the Congressional Black Caucus. Before public office, Representative Sewell practiced law in Birmingham and New York and clerked for Chief Judge U.W. Clemon in Birmingham. She graduated from Selma High School (as valedictorian), Princeton University (with honors) Oxford University (as a Marshall Scholar), and Harvard Law School.

Representative Joyce Beatty is the Chair of the Congressional Black Caucus (CBC) and represents Ohio's 3rd Congressional District, which includes the city of Columbus. She has served in the U.S. House of Representatives for five consecutive terms (since 2013). Representative Beatty also serves on the House Committee on Financial Services and is Chair of its Subcommittee on Diversity and Inclusion. Before being elected to Congress she served as Senior Vice President at The Ohio State University as well as in the Ohio House of Representatives for five terms. She

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[1] Pursuant to Supreme Court Rule 37.6, counsel for *amici* curiae states that no counsel for a party authored this brief in whole or in part. No counsel or party made a monetary contribution intended to fund the preparation or submission of this brief, and no person other than *amici* or its counsel made such a contribution. The parties have filed blanket consents to the filing of *amicus* briefs, which are on file with the Clerk.

is a graduate of Central State University and Wright State University.

Representative Gregory Meeks is the Chair of the Congressional Black Caucus Political Action Committee (CBCPAC). He represents New York's 5th Congressional District, which spans most of Queens and the Rockaway Peninsula, and has served in the U.S. House of Representatives for thirteen terms (since 1988). Representative Meeks is also Chairman of the House Foreign Affairs Committee and a senior member of the House Financial Services Committee. Before joining Congress, he served as an Assistant District Attorney, the chief administrative judge for New York State's worker compensation system, and in the New York State Assembly. He is a graduate of Adelphi University and Howard Law School.

Representative G. K. Butterfield represents North Carolina's 1st Congressional District, which includes the city of Greenville and several Black Belt counties. He has served in the House of Representatives for ten consecutive terms (since 2004) and is Chair of the Subcommittee on Elections for the Committee on House Administration. He previously was elected Chairman of the CBC and remains a member. Before joining Congress, he served as Associate Justice of the North Carolina Supreme Court, as Resident Superior Court Judge for the First Judicial Division, and in the United States Army. He is a graduate of North Carolina Central University (NCCU) and NCCU School of Law.

Amici proudly represent a diverse array of constituents in the South, Northeast, and Midwest, who could be affected by this Court's application and interpretation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, and *Thornburg v. Gingles*, 478 U.S. 30 (1986). Representative Sewell hails from a majority-

Black district in the state of Alabama, which is directly implicated in the case at bar. Due to the 1982 VRA amendments, the district she represents was created in 1992 and is the first majority-Black district in Alabama since Reconstruction. Representatives Beatty and Butterfield have led the CBC, which since 1971 has been committed to using the full Constitutional power, statutory authority, and financial resources of the federal government to ensure that African Americans and other marginalized communities have the opportunity to achieve the American Dream. Representative Meeks leads the CBCPAC, which promotes participation of Black Americans in the political process and supports both Black and non-Black candidates who champion the needs of the Black community.

The district court's detailed and fact-intensive conclusion that Alabama's Congressional districting map violates Section 2 of the Voting Rights Act, and its order that the Alabama legislature redraw its Congressional map to comply with Section 2, are of great practical importance to *amici*, and, in particular, to Representative Sewell's continued work as part of the Alabama Congressional delegation. Together, *amici* have an interest in preserving the opportunities of Black Alabamians, and Black Americans in other states, to elect the candidates of their choice. Additionally, *amici* are intimately familiar with the discriminatory effects of voting systems, including redistricting plans, and the vital role that Section 2 (and redistricting plans drawn in compliance with it) plays in relegating those systems to history.

SUMMARY OF ARGUMENT

The redistricting plan at the center of this litigation is of considerable importance to the people of Alabama

and their representation in the United States Congress. Moreover, this case has broad national significance because Appellants and some of their *amici* seek either to strike down Section 2 as applied to single-member districts or to read Section 2 so narrowly that the 1982 amendments have no effect. Such outcomes would upend redistricting processes and maps nationwide and would undermine the representation of Black Americans and other minorities in Congress, state legislatures, and other representative bodies throughout the country.

In their eagerness to strike down or neuter Section 2, Appellants and their *amici* employ overheated rhetoric suggesting that the district court and Appellees are advocating "racial segregation," "laundering their preferred racial gerrymanders through a statute designed to remedy racial discrimination," and exacerbating racial division and tensions. *Amici* urge this Court to decline Appellants' misguided invitation to equate Section 2 with segregation and instead to take a levelheaded look at the practices and political participation that majority-minority districts foster. Additionally, *amici* offer their perspective, as longstanding elected representatives from Alabama and beyond, about how their districts have promoted cross-racial communication, integration, and bipartisan cooperation, in addition to markedly improving the political participation and opportunities of Black Americans.

ARGUMENT

I. SECTION 2 OF THE VOTING RIGHTS ACT PROTECTS THE POLITICAL PARTICIPATION OF AMERICANS OF ALL RACES.

Amici agree with Appellees' merits arguments that the district court's factual findings in this case establish a violation of Section 2 and that Appellants' objections are contrary to the text of Section 2, to established precedent, and to the record. Br. for Milligan Appellees 30-53 (hereinafter "Milligan Br."). *Amici* also agree with Appellees that Section 2's application to single-member districts is consistent with the Constitution. *Id.* at 54-58.

In addition, *amici* here address the tectonic shift in law that Appellants seek, the wildly inaccurate claims they make to support that goal, and the consequences for minority communities' ability to participate in the political process were this Court to endorse Appellants' arguments. Specifically, Appellants contend that "Section 2, as currently applied by many federal courts to single-member districting schemes, raises serious constitutional questions," and urge this Court to either profoundly reshape it or strike it down as "unconstitutional as applied to single-member districts." Br. for Appellants/Petitioners 71 (hereinafter "App. Br.").[2] Under Appellants' argument that a Section 2 violation does not occur unless a map "deviates from a race-neutral benchmark for reasons that can be explained only by race," *id.* at 75, Alabama might have *no* majority-Black congressional districts. Such a purportedly "race-neutral" map in Alabama, a

[2] As Appellees demonstrate in detail, many of Appellants' claims rest on significant misrepresentations of the record. *See, e.g.*, Milligan Br. at 48-51.

state with overwhelming racial bloc voting, MSA 154-187, 183, a large proportion of Black residents for two centuries,[3] and a long history of anti-Black discrimination, *see* JA 192-255; MSA 191-98, would deny Black Alabamians any say at all in their congressional representation. More broadly, such a reading of Section 2 would return Alabama, and much of the rest of the country, to conditions that can foster and maintain racial subordination.[4] *See, e.g.,* JA 194-95; MSA 194-98.

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[3] *See, e.g.*, AL.com, *Alabama's population: 1800 to the modern era*, AL.com (Dec. 28, 2019), https://www.al.com/news/2019/12/alabamas-population-1800-to-the-modern-era.html.

[4] *Amici* Alabama Representatives are deeply misguided when they suggest that ensuring Black voters opportunity to elect the candidates of their choice is comparable to ensuring proportional representation of Republicans in Massachusetts and the elderly in Florida. *See* Brief for United States Representatives from Alabama as *Amici Curiae* in Support of Appellants / Petitioners at 2 (hereinafter "Alabama Representatives Br."). First, of course, there is no history of discrimination and legal subordination of either of those groups that is even remotely comparable to the long history of racial subordination and exclusion of Black Americans from access to the franchise and other forms of political participation, including in Alabama itself. *See* JA 192-228. Moreover, unlike those groups, Black Alabamians do not have anything like "uniform distribution throughout the state." Alabama Representatives Br. at 5. To the contrary, the record contains a wealth of evidence demonstrating the actual distribution of Black voters and their strong concentration in particular areas of the state. *See, e.g.*, SJA26; MSA175.

In fact, if Black voters were so evenly distributed throughout the state that it would be "mathematically impossible to draw a congressional district" to contain a majority of such voters, *see* Alabama Representatives Br. at 5, then this Section 2 lawsuit would have been over at the outset. The complaint would have failed the first *Gingles* precondition, which asks whether a majority-minority district can be drawn and thus ensures that Section 2 is *not* focused on proportionality alone. Milligan Br. at

Finally, *amici* strongly object to Appellants and their *amici*, in particular, five of the seven members of the Alabama Congressional delegation, equating VRA compliance with "segregation." *See* Alabama Representatives Br. at 3 ("plaintiffs' maps are all premised on racial segregation"), 7 ("set about to segregate Alabama"), 19 ("[s]tarting with segregation"). *See also* App. Br. 19 ("segregating white Alabamians in District 1 from black Alabamians in District 2"), 74 ("[r]acially segregating Alabama's congressional districts is not "appropriate" enforcement"). These *amici* also refer to VRA compliance as "racial manipulation," Alabama Representatives Br. at 3, a "fixation with race," *id.* at 17, and even suggest that Appellees—which include the Alabama State Conference of the NAACP—are resurrecting *Plessy v. Ferguson*, 163 U.S. 537 (1896), *id.* at 8 ("once segregated by race, citizens were treated equally. *Cf. Plessy*").

This rhetoric is as erroneous as it is overheated. First, there is no segregation. Under any map, there will be both Black and white Alabamians in both District 1 and District 2, as well as in every other district in the state. And in fact, creating a second majority Black district (or crossover district) will necessarily decrease the percentage of Black voters and increase the percentage of white voters in District 7, Representative Sewell's district, which currently

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26, 43-44 (describing plaintiffs' legal burden). Nowhere, much less in the portions of the district court opinion that the Alabama Representatives cite, does the district court suggest that the percentage of Black voters in Alabama and the proportionality of their representation alone are dispositive of the case. *See, e.g.,* MSA 4-5, 205-06.

has more than 55% Black voting age population.[5] JA93. VRA compliance in Alabama is in fact the opposite of segregation.

Second, redistricting in compliance with the district court's order will recognize a specific community of interest—the Black Belt—that is currently divided among four different Congressional districts. *See* MSA 177. The district court explicitly found that the Black Belt forms a community of interest characterized by "many, many more dimensions than" race, including its "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 178.

This view of the Black Belt as a community of interest is well-accepted. Representative Sewell, who grew up in the Black Belt and whose current district includes a portion of it, was joined by almost every other Member of Congress from Alabama (including four of the five who joined the Alabama Representatives' amicus brief) in seeking federal recognition of the Black Belt's unique character by sponsoring a bill to create the Alabama Black Belt National Heritage Area. H.R. 3222 (117th Cong., 1st Sess.).[6] Taking this community of interest into account in drawing district lines is not segregation.

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[5] Plaintiffs have sought such a change in District 7's population from the outset of this litigation. *See, e.g.*, Milligan Doc. 1 at ¶ 7 (alleging that Alabama's map "pack[ed] one-third of Black Alabamians into CD 7 in numbers unnecessary to assure them an equal opportunity to elect their preferred candidates").

[6] *See* GovTrack, *H.R. 3222: Alabama Black Belt National Heritage Area Act*, https://www.govtrack.us/congress/bills/

Third, the district court's order expressly gives the Alabama legislature the option to create two crossover districts rather than two majority-minority districts. MSA 6. A crossover district is one in which "minority voters make up less than a majority of the voting-age population" but where "the minority population, at least potentially, is large enough to elect the candidate of its choice with help from voters who are members of the majority and who cross over to support the minority's preferred candidate." *Bartlett v. Strickland*, 556 U.S. 1, 13 (2009) (plurality opinion). As the *Bartlett* plurality explained, crossover districts can "encourag[e] minority and majority voters to work together" and "can lead to less racial isolation." *Id.* at 23. Section 2 of the VRA thus promotes cross-racial communication and collaboration, not segregation.

Finally, *amici* Alabama Representatives' arguments rest on a repeated claim that Appellees and their expert prioritized race to the exclusion of other redistricting principles. *See, e.g.,* Alabama Representatives Br. at 7, 12-14, 20. This claim dramatically misrepresents the record. *See, e.g.,* MSA 337-38 (expert testimony about the variety of redistricting priorities she considered); Milligan Br. at 46-47 (summarizing such testimony). *Amici* Alabama Representatives, like Appellants themselves, can make this claim only by relying on non-record studies that used census data from 2010, not 2021, and that did not take into account the numerous redistricting priorities considered by the experts testimony in this case. *See* Alabama Representatives Br. at 7 (citing M. Duchin & D. Spencer, *Models, Race, and the Law*, 130 Yale L.J.F. 744, 764 (2021)); Milligan Br. at 48-50

117/hr3222/cosponsors (last visited July 18, 2022) (listing co-sponsors from Alabama and other states).

(explaining why reliance on this study is misleading and inapposite).

II. MAJORITY-MINORITY AND CROSS-OVER DISTRICTS HELP ADVANCE CROSS-RACIAL COLLABORATION, INTEGRATION, AND BIPARTISANSHIP.

Representatives Sewell, Meeks, Beatty, and Butterfield respectfully but strongly urge the Court to reject Appellees and their *amici*'s misguided equation of VRA compliance with segregation and to instead focus on how majority-minority districts and crossover districts actually operate in practice. Over the course of seventy (70) collective years of Congressional experience, spanning urban and rural districts in the South, Northeast, and Midwest, Representatives Sewell, Beatty, Butterworth, and Meeks have represented both majority-minority districts and majority-white districts alike and worked at the highest levels of Congress to increase electoral opportunities for Black communities.

The core take-away of these Representatives' collective experience is this: majority-minority districts and crossover districts can and do advance cross-racial communication and integration, and they can give rise to bipartisanship among elected officials. Such districts are not—contrary to Appellants' and their *amici*'s claims—a bastion of ever-accelerating political isolation and racial tension that serve no purpose other than to promote "segregation." To the contrary, they yield meaningful benefits for minority and majority communities alike—and ultimately help

the country move forward along the path to equality and away from racial strife.[7]

A. Integration and Cross-Racial Communication

"Despite the[] criticisms," against majority-minority districts—including that they "perpetuate racial divisions"—"what is undeniable by opponents and supporters alike is the transformative effect majority-minority districts have had on the face of U.S. politics."[8] For one thing, the existence of majority-minority districts and the service of their representatives has helped address racial tensions at the institutional and legislative levels. In the Halls of Congress, Members of Congress who are minorities, including *amici* here, regularly share their own experiences and concerns related to race with their colleagues—on both sides of the aisle and of various races. These conversations happen in public committee meetings and in the private confines of cloakrooms. They are not always easy or immediately fruitful. Indeed, recent years have only laid bare the nation's continued struggle to overcome racial discrimination.

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[7] Some members of this Court have similarly criticized majority-minority districts as having the potential to "exacerbate racial tensions," *Holder v. Hall*, 512 U.S. 874, 907 (1994) (Thomas, J., concurring in judgment), but such criticism is not evidence. *See generally* Darren Lenard Hutchinson, *Preventing Balkanization or Facilitating Racial Domination: A Critique of the New Equal Protection*, 22 Va. J. Soc. Pol'y & L. 1 (2015) (arguing that race-consciousness does not necessarily cause balkanization and criticizing Supreme Court justices for making such claims without empirical evidence).

[8] Janai Nelson, *White Challengers, Black Majorities: Reconciling Competition in Majority-Minority Districts with the Promise of the Voting Rights*, 95 Geo. L.J. 1287, 1296 (2007).

But over time—in big ways and small—the representation, mutual respect, and dialogue fostered by majority-minority districts can lead to meaningful communication, awareness, and changes in perspective in Congress and beyond. Along similar lines, several members of this Court have acknowledged how simply hearing about another's different life experiences expanded their own knowledge and perspective.[9]

As legislators and leaders, *amici* actively address issues of integration and inclusion, including in public schools and housing.[10] And contrary to the intimation

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[9] Byron R. White, *A Tribute to Justice Thurgood Marshall*, 44 Stan. L. Rev. 1215,1215-16 (1992) (Justice Marshall "told us much that we did not know due to the limitations of our own experience."); Barbara A. Perry, *A "Representative" Supreme Court, The Impact of Race, Religion and Gender on Appointments* 137 (1991) (interviewing Justice Powell) ("a member of a previously excluded group can bring insights to the Court that the rest of its members lack."); Sandra Day O'Connor, *Thurgood Marshall: The Influence of a Raconteur*, 44 Stan. L. Rev, 1217-20 (1992) ("At oral arguments and conference meetings, in opinions and dissents, Justice Marshall imparted not only his legal acumen but also his life experiences, constantly pushing and prodding us to respond not only to the persuasiveness of legal argument but also to the power of moral truth."); William. J. Brennan, *A Tribute to Justice Thurgood Marshall*, 105 Harv. L. Rev. 23, 25 (1991) (Justice Marshall "spoke from first-hand knowledge of the law's failure to fulfill its promised protections for so many Americans).

[10] *See, e.g.*, Congressional Black Caucus, *We Have a Lot to Lose: Solutions to Advance Black Families in the 21st Century* 36 (2017) (discussing "proactive steps to support residential integration to reverse the historic effects of segregation"), https://cbc.house.gov/uploadedfiles/2017.03.22_cbc_we_have_a_lot_to_lose_v5.pdf; Congressional Black Caucus, *In Letter to Carson, CBC Criticizes Proposed Change to HUD's Mission Statement* (Mar. 9, 2018), https://cbc.house.gov/news/

that Black members of Congress somehow listen to the political concerns of *only* their Black constituents, *e.g.*, *Holder*, 512 U.S. at 907 (Thomas, J., concurring in judgment), *amici* consistently provide high-quality constituent services to all of their constituents, regardless of race. Indeed, in this very case, Representative Byrne, a former Republican Congressman from Alabama, testified to Representative Sewell's "effective" and "excellent" service to her entire district. JA848, 857.

Nor are elected representatives from majority-minority districts always minorities themselves (e.g., Representatives Steven Cohen (TN-09), Ed Case (HI-01), Michael Cloud (TX-27)). Some are Democrats; others are Republicans (e.g., Representatives Michael Cloud (TX-27), David Valadao (CA-21), and former Representative Joseph Cao (LA-2)). This diversity of representatives from majority-minority districts demonstrates yet another way these districts help foster cross-racial communication. Far from being "segregated," legislatures that include representatives who minority voters have had the opportunity to elect, and the districts those legislators represent, are where much real and sometimes painstaking work of

documentsingle.aspx?DocumentID=849 (discussing the removal anti-discrimination language about the need to create "inclusive communities and quality affordable homes for all."); Ari Berman, *Fifty Years After Bloody Sunday in Selma, Everything and Nothing Has Changed*, The Nation (Feb. 25, 2015), https://www.thenation.com/article/archive/fifty-years-after-march-selma-everything-and-nothing-has-changed/ ("Six hundred white students were pulled out of public schools by their parents and never returned. Selma High became 99 percent black. The school system never recovered, and last year it was taken over by the state because of poor performance. 'It's resegregated,' says [Representative] Sewell, the first black valedictorian at Selma High.").

integration and cross-racial collaboration takes place—even as those legislators address all of the issues that matter to their constituents, including those that directly involve race and those that do not.

Finally, to compare the 118th Congress or Alabama's next House delegation to true "segregation" blinkers history. Indeed, there was a long stretch of American history when not a single African American served in Congress, where all-white primaries operated brazenly, where Black people were categorically "excluded from the main public restaurant in the House of Representatives" and where minority staff and visitors were literally forced to eat in the basement in a small separate space.[11] That is segregation—and that is precisely what Section 2 seeks to uproot.

B. Bipartisan Cooperation

Contrary to the unsupported assertions of Appellants and their *amici,* majority-minority districts do not necessarily give rise to political or racial "balkaniz[ation]." *Cf.* Alabama Representatives Br. at 27. In practice, minority Members of Congress like Representative Sewell regularly reach across the aisle and forge bipartisan collaboration—not only on issues specifically related to race and civil rights, but also more generally. The Alabama Congressional and Senate delegations, for example, worked hand-in-hand, as part of what Senator Richard Shelby called a "bipartisan and bicameral effort,"[12] to strengthen

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[11] *See* United States Capitol Historical Society, *Part V, Segregation Exclusion and Discrimination at the Capitol*, https://uschs.org/explore/from-freedoms-shadow-segregation-representation/ (last visited July 18, 2022).

[12] U.S. Senator Richard Shelby, *Alabama Delegation Supports Port of Mobile Improvements* (Sept. 10, 2018),

infrastructure projects that would significantly expand Alabama's major seaport.[13]

In fact, Representative Sewell is a leader in bipartisanship. The Lugar Center, which conducts an independent ranking of Congressional bipartisanship, ranked Representative Sewell in the top 20% of all members of the House.[14] She regularly works with the rest of the Alabama Congressional delegation—which is otherwise all-Republican and all-white—on a range of issues of great importance to their constituents and to the state of Alabama. As Representative Byrne testified at trial in this case, Representative Sewell "would call on the other [Republican] members of the [House] delegation to help her, and we always did, 100 years ago percent of the time. And she always helped us. We all worked together." JA853.

In addition, Representatives Byrne and Sewell co-chaired a major new bipartisan initiative to "promote and protect the nation's historically black colleges and universities (HBCUs)" and create a "Congressional HBCU Caucus."[15] *Accord* JA835-36 (Representative

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https://www.shelby.senate.gov/public/index.cfm/newsreleases?ID=79F5579B-9703-411C-B2AA-D0C18F7CC459.

[13] *Deep and Wide: Alabama delegation unanimous in support of Mobile channel improvements*, Alabama Daily News (Sept. 10, 2018), https://www.aldailynews.com/deep-and-wide-alabama-delegation-unanimous-in-support-of-mobile-channel-improvements/.

[14] The Lugar Center, *The Lugar Center – McCourt School of Bipartisan Index, 2021 House Scores*, https://www.thelugarcenter.org/ourwork-Bipartisan-Index.html (last visited July 18, 2022).

[15] Tiffany Thomas Smith, *Alabama congressional delegates join bipartisan effort to boost HBCUs*, Alabama Today (Apr. 28, 2015), https://altoday.com/archives/1401-alabama-congressional-delegates-join-bipartisan-effort-to-boost-hbcus.

Byrne discussing HBCUs and how the award he received from the Thurgood Marshall Fund for his co-chairmanship of the HBCU Caucus is "one of the awards that I am the most proud of."). Representatives Sewell, Martha Robby (AL-2), and the late John Lewis (GA-5) also co-hosted a bipartisan delegation to Birmingham to reflect on the history and importance of civil rights—which Representative Byrne also participated in. As Representative Sewell emphasized at the time, it was "a bipartisan delegation of Democrats and Republicans, and they say there is no civility in Washington. We are here to prove that wrong."[16] At trial in this case, Representative Byrne testified that he and Representative Sewell "could get up and tell the people from all the other parties of America here's a Democrat and Republican, black woman and white man working together on issues that matter to the people of Alabama, in particular, matters that revolve around Civil Rights." *Accord* JA833. That bipartisan and cross-racial collaboration could not be further from "segregation."

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All told, in the fifty-six years since it was enacted, Section 2 of the Voting Rights Act has helped the United States make significant strides towards a more representative and integrated society. The creation and continuation of majority-minority and crossover districts are essential to this progress.

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[16] Justin Averette, *Bipartisan congressional delegation tours Alabama civil rights site*, Alabama Newscenter (Mar. 1, 2019), https://alabamanewscenter.com/2019/03/01/bipartisan-congressional-delegation-tours-alabama-civil-rights-site/.

Alabama is a prime example of the historic importance of majority-minority districts. In the 202 years since it became a state, Alabama has had a Black congressional representative during only two periods in its history, despite the Black population comprising nearly a majority of the state (45%) on the eve of the Civil War,[17] and a sizable proportion ever since (e.g., 27% Black in the 2020 Census).[18] The first period was a short window during the Reconstruction Era (three representatives from 1871-1877). That era ended with "a campaign of violence" waged by white Alabamians "aimed at . . . gaining back control of the state government. At the heart of that effort was the disenfranchisement of Black citizens." JA 194. That disenfranchisement was successful and lasted for a century or more.

The second period did not start until 1992, when, following the 1982 VRA amendments, Alabama's Congressional plans began to include a majority-minority district for the first time.[19] In 1992, District 7 was created as a majority-Black district, and over the years, it has elected three African-American Representatives.[20] Altogether, of the approximately

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[17] Alabama Humanities Alliance, *The Encyclopedia of Alabama*, http://encyclopediaofalabama.org/article/h-2369 (last updated Aug. 22, 2017).

[18] *See* AL.com, *supra* note 3.

[19] *See* Office of Art & Archives, Office of the Clerk, U.S. House of Representatives, *Black-American Members by State and Territory*, https://history.house.gov/Exhibitions-and-Publications/BAIC/Historical-Data/Black-American-Representatives-and-Senators-by-State-and-Territory/ (last visited July 18, 2022); U.S. Census Bureau, *QuickFacts: Alabam*a (2021), https://www.census.gov/quickfacts/AL (last visited July 18, 2022).

[20] Office of Art & Archives, *supra* note 19.

188 members of the House ever elected from Alabama since the year 1819, only six (6) have been Black.[21] Representative Sewell, is the most recent of the six.

Nationally, majority-minority and crossover districts play a critical role in increasing meaningful representation, advancing racial integration, and remedying past discrimination. Today, there are approximately 22 congressional districts with an African-American majority, and they span the country and its rich diversity: from urban to rural; southern, northern, and midwestern; and "blue" states and "red" states alike.[22] Indeed, despite the insinuation that majority-minority districts are equivalent to segregation, "they are often the most [internally] racially diverse electoral districts in a given region."[23] Across these districts, and regardless of the race or party of the Members of Congress they elect, one common denominator is that these Representatives undertake a solemn duty to represent communities that have long been under-served or expressly excluded, to chip away at the present and historic forms of discrimination, and to simultaneously address the concerns and needs of all of their constituents.[24]

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[21] *See* Wikipedia, *List of United States representatives from Alabama*, https://en.wikipedia.org/wiki/List_of_United_States_representatives_from_Alabama (last updated July 1, 2022).

[22] *Id.*

[23] Nelson, *supra* note 8, at 1296 n.45 (citing Pamela S. Karlan, *Still Hazy After All These Years: Voting Rights in the Post*-Shaw *Era*, 26 Cumb. L. Rev. 287, 293 (1995); Laughlin McDonald, *The Counterrevolution in Minority Voting Rights*, 65 Miss. L.J. 271, 289 (1995)).

[24] Appellants' *amici* Alabama Representatives argue that redistricting in compliance with the district court's order will

At bottom, *amici* ask this Court to put aside the hyperbolic rhetoric about 'segregation' and take a sober look at how majority-minority districts function. Progress in ensuring that racial minorities can fully participate in the political process and self-governance is not guaranteed—nor is it necessarily steady or irreversible. "Yet our tradition is to go beyond present achievements, however significant, and to recognize and confront the flaws and injustices that remain." *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 787 (2007) (Kennedy, J., concurring in part and concurring in the judgment). This Court should uphold Section 2 of the VRA and the *Gingles* framework and should affirm the district court's application of that framework to Alabama's Congressional redistricting map.

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disrupt "core retention," moving voters from one district to another, which they insinuate will depress voter engagement, particularly among African Americans. *See* Alabama Representatives Br. at 11 (citing D. Hayes & S. McKee, *The Intersection of Redistricting, Race, and Participation*, 56 Am. J. Pol. Sci. 115, 115 (2010)). But any suggestion that the creation of two majority-Black or crossover districts in Alabama will necessarily or likely have an overall negative effect on Black voters' engagement is speculative at best, disingenuous at worst. Indeed, the very research *amici* rely on shows that any Black voter disengagement caused by redistricting is mitigated when a Black incumbent is on the ballot. Hayes & McKee, *supra* at 127. And more recent research demonstrates that African American voter turnout increases along with the size of the African American population in a congressional district, regardless of the race of the candidates. Bernard L. Fraga, *Candidates or Districts? Reevaluating the Role of Race in Voter Turnout,* 60 Am. J. Pol. Sci. 97, 98 (2016). Finally, and more specific to this case, *amici* Alabama Representatives ignore almost all of the district court's discussion of why core retention cannot justify the Alabama map, including that core retention is not the primary criterion of the Alabama legislature's own guidelines. MSA 182.

CONCLUSION

For the foregoing reasons, this Court should affirm the preliminary injunction.

Respectfully submitted,

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