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 REPUBLICAN FORMER GOVERNORS AS *AMICI CURIAE* IN SUPPORT OF APPELLEES AND RESPONDENTS

ADAM S. GERSHENSON
KIMBERLEY A. BISHOP
COOLEY LLP
500 Boylston Street
Boston, MA 02116

KRISTEN A. JOHNSON
EMILY J. BORN
COOLEY LLP
55 Hudson Yards
New York, NY 10001

CHRISTINE P. SUN
RANJANA NATARAJAN
STATES UNITED DEMOCRACY CENTER
1107 17th Street, NW
Washington, DC 20036

KATHLEEN HARTNETT
Counsel of Record
JULIE VEROFF
COOLEY LLP
3 Embarcadero Center
20th Floor
San Francisco, CA 94111
(415) 693-2000
khartnett@cooley.com

JONATHAN L. WILLIAMS
JONATHAN L. WILLIAMS, P.A.
113 South Monroe Street
1st Floor
Tallahassee, FL 32301

Counsel for Amici Curiae

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D.C. 20002

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

STATUTES Page(s)

OTHER AUTHORITIES

TABLE OF AUTHORITIES—Continued

INTERESTS OF *AMICI CURIAE*[1]

Amici curiae are former Governors and members of the Republican Party. They bring a unique perspective as the chief executives of their respective states and as individuals elected by their entire state's population. Based on that experience, this group of former Governors believes that ensuring fair representation is one of the pillars of our democracy, and that racial gerrymanders profoundly undermine the functions of government and our democratic process. They write to urge the Court to preserve the integrity of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, so as to guard against the harm that minority vote dilution in districting inflicts on our democracy.

Governor Arnold Schwarzenegger was the thirty-eighth governor of California, serving in that role from 2003 until 2011.

Governor William F. Weld was the sixth-eighth governor of Massachusetts, serving in that role from 1991 to 1997.

Governor Christine Todd Whitman was the fiftieth governor of New Jersey, serving in that role from 1994 until 2001.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Voting Rights Act ("VRA") rests on the fundamental principles that fair representation is essen-

[1] No counsel for a party authored this brief in whole or in part, and no person other than amici or their counsel made a monetary contribution to this brief's preparation and submission. All parties have provided blanket consent to this filing.

tial to democracy and that racially discriminatory districting practices threaten both the theoretical underpinnings and practical functioning of democratic government. Racial vote dilution and the suppression of minority voices and power—longstanding, unfortunate features of the political system in Alabama as well as other states across the country—pose a grave threat to fair representation. Section 2 of the VRA guards against racial discrimination in voting, whether intentional or not, and is applied in the redistricting context through the framework this Court set forth in *Thornburg v. Gingles*, 478 U.S. 30 (1986). As Republican former Governors of diverse states, *amici* recognize the important role that *Gingles* plays in protecting minority voters' right to fair representation.

At the same time, *amici*'s experience as state government officials means that they understand that any federal regulation—the VRA included—may impose some burdens. But by constraining state and local authority only when necessary to protect minority representation from dilution, the *Gingles* test is already carefully drawn to respect and protect state and local autonomy. Critically, *Gingles* does not demand that majority-minority districts be created wherever they can be drawn, nor does it dictate precisely how such districts must be drawn. To the contrary, it is only when its four separate requirements are satisfied that *Gingles* requires states and local governments to take such action to protect minority voters' right to adequate representation. For years, this Court and the lower courts have thoughtfully applied *Gingles* across a range of scenarios to determine whether a remedy is warranted. There is thus no need or basis to alter the current operation of *Gingles*. This Court should reject Appellants-

Petitioners' call to do so and affirm the judgment below.

ARGUMENT

I. Fair Representation Is Essential to Democracy.

Our system of republican government rests on the foundational principle that the government is legitimate because it operates on the consent of the governed. *See, e.g.*, *McCulloch v. Maryland*, 17 U.S. 316, 316-17 (1819) ("The government of the Union is a government of the people; it emanates from them; its powers are granted by them; and are able to be exercised directly on them, and for their benefit."); *Reynolds v. Sims*, 377 U.S. 533, 555 (1964) ("The right to vote freely for the candidate of one's choice is of the essence of a democratic society.").

To ensure that governing principle holds in practice, voting districts must be drawn fairly. That is, they must be drawn to ensure that voters "choose their representatives, not the other way around." *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 824 (2015); *see also* 2 DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION 257 (J. Elliott ed. 1827) (Alexander Hamilton) ("[T]he true principle of a republic is, that the people should choose whom they please to govern them."). When voters have the opportunity to choose their representatives, they "support candidates who share their beliefs and interests," and in turn, "candidates who are elected can be responsive to those concerns." *McCutcheon v. Fed. Election Comm'n*, 572 U.S. 185, 192 (2014). That relationship is "a central feature of democracy." *Id.*; *see also The Federalist* No. 37, at 223 (James Madison)

(C. Rossiter ed. 1961) ("The genius of republican liberty seems to demand . . . not only that all power should be derived from the people, but that those intrusted with it should be kept in independence on the people.").

The districting process is critical because it determines whether all citizens in a state can fairly elect their chosen representatives. Indeed, "the achieving of fair and effective representation for all citizens is concededly the basic aim of legislative apportionment." *Reynolds*, 377 U.S. at 565-66. When the government undermines fair districting by interfering with citizens' ability to elect their representatives and hold them accountable, thereby enabling representatives to entrench themselves in office, democracy itself is degraded. *See id.* at 555 ("[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.").

Further, all voters have the right to an equal voice in choosing their representatives. If States were to "draw the lines of congressional districts in such a way as to give some voters a greater voice in choosing a Congressman than others . . . [i]t would defeat the principle solemnly embodied in the Great Compromise" reached during the Constitutional Convention—"equal representation in the House for equal numbers of people." *Wesberry v. Sanders*, 376 U.S. 1, 14 (1964).

To ensure fair districts that embody these bedrock principles of American democracy, states typically follow "traditional redistricting principles." *Abrams v. Johnson*, 521 U.S. 74, 84 (1997). These principles account not only for the importance of reasonable geographic boundaries, but also the characteristics of the people within the districts. Thus, "maintaining

communities of interest" is an important component of districting—one that this Court has recognized includes communities whose interests include a common racial identity. *Id.* at 92. It follows that "when members of a racial group live together in one community, a reapportionment plan that concentrates members of the group in one district and excludes them from others may reflect wholly legitimate purposes." *Shaw v. Reno*, 509 U.S. 630, 646 (1993); *see also Miller v. Johnson*, 515 U.S. 900, 920 (1995) ("A State is free to recognize communities that have a particular racial makeup, provided its action is directed toward some common thread of relevant interests."). In this way, traditional redistricting principles call for drawing districts to avoid minimizing or undermining distinct community interests.

Contrary to these principles and basic notions of representative democracy, districts can be drawn in ways that unduly favor one group over another. Partisan gerrymandering—"the drawing of legislative district lines to subordinate adherents of one political party and entrench a rival party in power," *Ariz. State Legislature*, 576 U.S. at 791—is one well-known example. Although this Court has determined that partisan gerrymandering claims arising under the U.S. Constitution are not justiciable by federal courts, *Rucho v. Common Cause*, 139 S. Ct. 2484, 2506-07 (2019), it has repeatedly recognized that "the drawing of legislative district lines to subordinate adherents of one political party and entrench a rival party in power" is "'incompatible with democratic principles,'" *Ariz. State Legislature*, 576 U.S. at 791 (quoting *Vieth v. Jubelirer*, 541 U.S. 267, 292 (2004) (plurality op.)) (cleaned up); *see also Rucho*, 139 S. Ct. at 2506; *Gill v. Whitford*, 138 S. Ct. 1916, 1940 (2018) (Kagan, J.,

concurring); *Vieth*, 541 U.S. at 316-17 (Kennedy, J., concurring in the judgment).

Just as districting may anti-democratically entrench one party's political power by minimizing the strength of voters supporting the opposing party, districts may also be drawn in ways that effectively disenfranchise racial minorities. In *Gingles* itself, the Court emphasized that it had "long recognized that multimember districts and at-large voting schemes may operate to minimize or cancel out the voting strength of racial minorities in the voting population." 478 U.S. at 47 (cleaned up). "[W]here minority and majority voters consistently prefer different candidates, the majority, by virtue of its numerical superiority, will regularly defeat the choices of minority voters," rendering the votes of these minority voters meaningless. *Id.* As with partisan gerrymandering, racial vote dilution prevents minority voters from exercising their right to elect their representatives.

Racial gerrymandering and racial vote dilution are harmful not only because minority voters do not get to choose the candidates that represent them, but also because when a representative does not depend on minority groups for support, the representative can ignore such groups' interests. *See, e.g.*, *Rogers v. Lodge*, 458 U.S. 613, 623 (1982) ("Voting along racial lines allows those elected to ignore black interests without fear of political consequences."). In such circumstances, minority groups are not truly "represented" in any meaningful sense, and our representative democracy is undermined. Drawing lines that perpetuate a majority group's power and insulate representatives from having to respond to competing interests and voices is an affront to both the core concept of democracy and its very operation, promot-

ing factionalism and weakening responsiveness to constituents. *See, e.g.*, Corbett A. Grainger, *Redistricting and Polarization: Who Draws the Lines in California*, 53 J.L. & Econ. 545, 564 (2010); John D. Griffin, *Electoral Competition and Democratic Responsiveness: A Defense of the Marginality Hypothesis*, The Journal of Politics, Vol. 68, No. 4 (Nov. 2006), pp. 911-921.

As former Governors of diverse States, *amici* are acutely attuned to the need to avoid the disastrous effects that unfair districting practices wreak on common-sense governing.

Given these harms, it is essential that the political branches and the judiciary use their authority to prevent unfair districting practices. As *amici* next explain, this duty is especially clear in the context of minority vote dilution, which has damaged our democracy for generations. And unlike with partisan gerrymandering, Congress gave the judicial branch the tools to root out racial vote dilution when it responded to this history decades ago by enacting the Voting Rights Act.

II. The Voting Rights Act Responds to a Long History of Suppressing Minority Political Participation that Alabama Exemplifies.

One of the primary and enduring threats to our country's ability to fully achieve its vision of republican government is a long history of suppressing minority voices in the political process.

This Court has consistently acknowledged our Nation's history of racial discrimination in the political process. *See, e.g.*, *South Carolina v. Katzenbach*, 383 U.S. 301, 310-11 (1966) (collecting U.S. Supreme

Court cases condemning "the variety and persistence of [tests] and similar institutions designed to deprive Negroes of the right to vote."). In "a substantial number of voting jurisdictions," the "past reality" of those "reprehensible practices" included "ballot box stuffing, outright violence," and "the poll tax." *Johnson v. De Grandy*, 512 U.S. 997, 1018 (1994). Following "the adoption of the Voting Rights Act, some jurisdictions have substantially moved from direct, overt impediments to the right to vote to more sophisticated devices that dilute minority voting strength." *Id.* (cleaned up).

In Alabama, racial discrimination in voting is a feature of both the past and the present. The State has a "lengthy and infamous history of racial discrimination in voting." *United States v. McGregor*, 824 F. Supp. 2d 1339, 1346 (M.D. Ala. 2011) (collecting cases); *see also* Appendix to Emergency Application for Stay ("App.") 182 ("Alabama's extensive history of repugnant racial and voting-related discrimination is undeniable and well documented."); *Whitfield v. Oliver*, 399 F. Supp. 348, 355-57 (M.D. Ala. 1975) (cataloging Alabama's history of official racial discrimination in the political process and social and economic life). This history includes manipulating political boundaries to disenfranchise Black voters. *See, e.g.*, *Gomillion v. Lightfoot*, 364 U.S. 339, 341 (1960) (analyzing state law redrawing boundaries of Tuskegee, Alabama from a square to a 28-sided figure that removed all but four or five of Tuskegee's Black residents).

Over the past five decades, federal courts have repeatedly found Alabama's districting efforts to be racially discriminatory. "Between 1982 and 2005, Alabama had one of the highest rates of successful § 2

suits, second only to its VRA-covered neighbor Mississippi." *Shelby Cnty., Ala. v. Holder*, 570 U.S. 529, 582 (2013) (Ginsburg, J., dissenting). For example, in 2017, a federal court determined that certain Alabama House and Senate Districts were unconstitutional racial gerrymanders. *Ala. Legis. Black Caucus v. Alabama,* 231 F. Supp. 3d 1026, 1348-49 (M.D. Ala. 2017) (W. Pryor, J.); *see also, e.g.*, *People First of Ala. v. Merrill*, 491 F. Supp. 3d 1076, 1176 (N.D. Ala. 2020) (holding that an absentee ballot witness requirement violated Section 2 because it made it such that "Black voters [did] not have equal access to safely vote during COVID-19"); *Harris v. Siegelman*, 695 F. Supp. 517 (M.D. Ala. 1988) (holding that Alabama's policy of hiring only White poll workers and other policies had racially discriminatory results and violated Section 2); *Buskey v. Oliver*, 565 F. Supp. 1473, 1483-85 (M.D. Ala. 1983) (holding that Montgomery's city council redistricting plan diluted Black voting strength in violation of Section 2 of the VRA); *Burton v. Hobbie*, 561 F. Supp. 1029, 1035 (M.D. Ala. 1983) (finding that legislature engaged in "unnecessary fragmentation of minority communities" in "the configuration of certain Black Belt districts"); *Sims v. Amos*, 336 F. Supp. 924, 936 (M.D. Ala. 1972) (rejecting a districting plan because of its "discriminatory effect" on Black voters); *Sims v. Baggett,* 247 F. Supp. 96, 108-09 (M.D. Ala. 1965) (holding that "the Legislature intentionally aggregated predominantly Negro counties with predominantly white counties for the sole purpose of preventing the election of Negroes to [State] House membership.").

Alabama's political subdivisions have also used political devices like at-large elections to suppress the voting strength of Black citizens. *See, e.g.*, *Jones v. Jefferson Cnty. Bd. of Educ.*, No. 2:19-CV-01821-

MHH, 2019 WL 7500528, at *3 (N.D. Ala. Dec. 16, 2019) (finding that at-large election system for local school board was chosen "at least in part for the purpose of limiting the influence of Black voters in Board elections"); *Dillard v. Crenshaw Cnty.*, 640 F. Supp. 1347, 1357 (M.D. Ala. 1986) (finding that "laws requiring that candidates run for numbered places" were enacted for "racially inspired" reasons); *Brown v. Bd. of Sch. Comm'rs of Mobile Cnty.*, *Ala.*, 542 F. Supp. 1078, 1094 (S.D. Ala. 1982), *aff'd*, 706 F.2d 1103 (11th Cir. 1983), *aff'd*, 464 U.S. 1005, 1105-1107 (1983) (holding that the at-large election system for the Mobile County school board discriminated against Black voters). Indeed, *City of Mobile, Ala. v. Bolden*, 446 U.S. 55 (1980)—the case that prompted Congress to amend Section 2 of the VRA to eliminate the "unnecessarily divisive" need to prove intentional discrimination "on the part of individual officials or entire communities," *Gingles*, 478 U.S. at 43-44—involved at-large elections in an Alabama city.

Voting in Alabama has also long been racially polarized, with Black and White voters supporting different candidates. That proposition is so uncontroversial that the *Milligan* parties stipulated in the District Court that "[n]umerous federal courts in Alabama have found that the state's elections were racially polarized at the time and locations at issue in their respective cases." App. 70 (citing, *e.g.*, *Ala. State Conf. of NAACP v. Alabama*, No. 2:16-CV-731-WKW, 2020 WL 583803, at *17 (M.D. Ala. Feb. 5, 2020) (accepting the undisputed statistical evidence proving the existence of racially polarized voting statewide); *Jones,* 2019 WL 7500528, at *2 (finding that voting is racially polarized in Jefferson County, Alabama's most populous county); *McGregor*, 824 F. Supp. 2d at 1345–

46 & n.3 (finding that voting is racially polarized across Alabama)).

When voting is racially polarized and minority voters have no districts in which they form a majority, "the majority, by virtue of its numerical superiority, will regularly defeat the choices of minority voters." *Gingles*, 478 U.S. at 48. This is not a theoretical concern. In Alabama, prior to 1992, when the State utilized a new redistricting plan drawn in response to Section 2 litigation, no district in the State had elected a Black congressperson "in over 90 years." App. 29; *see also, e.g.*, Christian R. Grose, Congress in Black and White: Race and Representation in Washington and at Home (2011).

Plus, suppressing minority voices in the political process "allows those elected to ignore minority interests without fear of political consequences," thus "leaving the minority effectively unrepresented." *Gingles*, 478 at 48 n.14 (cleaned up). Tools that appropriately protect minority representation against unfair racial vote dilution are therefore necessary under such circumstances to ensure fair representation and legitimate, functional democratic governance.

Against the backdrop of our Nation's long history of racial discrimination, Congress enacted the VRA to guarantee that the political process would be "equally open" to all. 52 U.S.C. § 10301(b). Congress designed the VRA "to banish the blight of racial discrimination in voting, which has infected the electoral process in parts of our country for nearly a century." *Katzenbach*, 383 U.S. at 308. In crafting the VRA, Congress recognized that representative democracy requires that every person be provided an equal say in the election of their representatives, and that racial vote dilution prevents minority voters from exercising

their right to participate equally in the political process.

Since the VRA was enacted through the present day, leaders of both parties have recognized its enduring importance. *See, e.g.*, President Ronald Reagan, *Remarks on Signing the Voting Rights Act Amendments of 1982* (June 29, 1982), https://www.reaganlibrary.gov/archives/speech/remarks-signing-voting-rights-act-amendments-1982 ("This act ensures equal access to the political process for all our citizens"); President George W. Bush, *President Bush Signs Voting Rights Act Reauthorization and Amendments Act of 2006*, (July 27, 2006), https://georgewbush-whitehouse.archives.gov/news/releases/2006/07/20060727.html ("The Voting Rights Act [] broke the segregationist lock on the ballot box . . . . For some parts of our country, the Voting Rights Act marked the first appearance of African Americans on the voting rolls since Reconstruction. And in the primaries and elections that followed the signing of this act, many African Americans pulled the voting lever for the first time in their lives."); Senators Lisa Murkowski and Joe Manchin III, Bipartisan Voting Rights Act Reauthorization Letter (May 17, 2021), https://www.murkowski.senate.gov/imo/media/doc/05.17.21%20Bipartisan%20Voting%20Rights%20Act%20Reauthorization%20Letter.pdf (discussing "the positive impact [the VRA] has had on individual Americans' ability to exercise their most fundamental right—the right to vote—and the strength of our democracy writ large"). *Amici* share the views of these public officials regarding the essential values embodied in, and protected by, the VRA.

The VRA was enacted to provide a remedy to our Nation's long history of racial discrimination. Unfortunately, the realities that made the VRA a necessity continue in places like Alabama to this day. To ensure that the VRA continues to serve the role that Congress intended, the Court must not weaken its protections against racial vote dilution.

III. Section 2 As Applied Through the *Gingles* Framework Safeguards Minority Voting Rights Without Unduly Restricting State and Local Governments' Control Over Districting.

The VRA serves as an important safeguard to ensure that states and local governments do not dilute minority voters' political representation. The *Gingles* framework ensures that the implementation of Section 2 is carefully tailored to protect against the subordination of minority groups in the political process, while also allowing state and local autonomy over districting. As Senator Joseph Tydings, one of the VRA's primary sponsors, explained, Section 2 "is a practical and effective answer to the problem of racial discrimination in voting" and achieves the "restrained" and "appropriate" remedy called for by the Act. *See* 111 Cong. Rec. 8369 (1965) (statement of Sen. Joseph Tydings).

As currently applied, *Gingles* is already restrained and appropriate. It does not require majority-minority districts whenever they can be drawn—far from it. Instead, the *Gingles* framework includes a series of limiting principles such that majority-minority districts are required only when necessary to ensure that distinct minority viewpoints are represented. Even when the first prerequisite of a sufficiently large

and geographically compact minority community is satisfied, *Gingles* does not require a majority-minority district unless the minority group is politically cohesive, in that its members tend to vote similarly, and the majority group usually votes as a bloc to defeat the minority group's chosen candidate. *See Cooper v. Harris*, 137 S. Ct. 1455, 1472 (2017). And even when all three of those threshold requirements are satisfied, a fourth remains—*Gingles* still does not require a majority-minority district unless the "totality of circumstances" shows that the political process is not "equally open to minority voters." *Wisc. Legislature v. Wisc. Elections Comm'n*, 142 S. Ct. 1245, 1249 (2022) (citation omitted).[2] As a result, under *Gingles*, only when a minority group demonstrates shared interests through its voting patterns *and* the majority group votes to defeat that group's chosen candidate *and* the totality of the circumstances supports a finding of vote dilution—as the three-judge District Court concluded was the case here—does Section 2 of the VRA require a remedy. In the absence of any one of those factors, Section 2 does not constrain states and local governments from drawing districts as they wish.[3]

These high thresholds mean that courts frequently reject *Gingles* claims under existing doctrine. *See e.g.*,

---

[2] Courts looks look to nine non-exhaustive "Senate Factors" in evaluating the totality of the circumstances. *Gingles*, 478 U.S. at 44-45.

[3] Importantly, the *Gingles* analysis provides critical guardrails against discrimination while remaining flexible and responsive to changing conditions. Unlike Section 4's formula for preclearance coverage, which is set by Congress and therefore can become static and outdated, Section 2 as applied through *Gingles* embodies a dynamic inquiry that allows courts to take account of contemporary and jurisdiction-specific considerations.

Cooper, 137 S. Ct. at 1470-72 (holding that there was no requirement to draw majority-minority district where plaintiff could not "demonstrate the third *Gingles* prerequisite—effective white bloc-voting"); *Voinovich v. Quilter*, 507 U.S. 146 (1993) (holding that Ohio reapportionment plan did not violate Section 2 because the evidence did not support a finding of racially polarized voting); *Bartlett v. Strickland*, 556 U.S. 1 (2009) (rejecting Section 2 claim where a reasonably compact majority-minority district could not be drawn); *Abrams v. Johnson*, 521 U.S. 74 (1997) (holding that court-ordered Georgia redistricting plan did not violate Section 2 because Black population was not sufficiently compact for a second majority-Black district and there was insufficient racial polarization); *Johnson v. De Grandy*, 512 U.S. 997 (1994) (holding that Florida House districts did not violate Section 2 where, in spite of continuing discrimination and racial bloc voting, minority voters formed effective voting majorities in a number of House districts roughly proportional to their respective shares of the voting-age population); *see also Abbott v. Perez*, 138 S. Ct. 2305 (2018) (holding that under *Gingles* three Texas districts should not have been invalidated under Section 2 but that one district was properly found to be an impermissible racial gerrymander).

Even in Alabama—a State characterized by extreme racial polarization and a judicially recognized history of racial discrimination, *see supra* Section II—courts have denied Section 2 claims under *Gingles*. *See, e.g.*, *Dillard v. Baldwin Cnty. Comm'rs*, 376 F.3d 1260 (11th Cir. 2004) (holding that a Section 2 vote dilution claim failed because the protected minority group was too small to elect candidates of choice); *S. Christian Leadership Conf. of Ala. v. Sessions*, 56 F.3d 1281, 1293-94 (11th Cir. 1995) (holding that appellants

failed to show that racially polarized voting left minority voters with "less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice" (citation omitted)).

In this case, however, the three-judge District Court unanimously found, based on voluminous evidence, that Black Belt voters share a community of interest; that voting was extremely racially polarized; that White voters' candidates of choice regularly and frequently defeated Black voters' candidates of choice; and that the totality of circumstances established that Black voters were denied an equal opportunity to elect their candidate of choice. Based on those findings, the District Court properly held that Alabama's districting plan diluted the votes of Black Alabamians in violation of Section 2, and appropriately concluded that Alabama could draw a second majority-Black opportunity district that accords with traditional districting principles.

Thus, as these cases and many others demonstrate, courts are well-equipped to carefully apply *Gingles* as it is currently stands to assess both whether Section 2 has been violated and what remedy is appropriate. Courts regularly do so across a dynamic range of circumstances, including in response to claims arising from places with and without long histories of extremely racially polarized voting. And they do so in a way that preserves state and local control in redistricting, while still protecting minority rights to representation. *Amici*, who have participated in—and won—multiple elections in multiple states across the country, understand the value of these protections as an essential part of the democratic process. This Court should maintain the current *Gingles* framework as

it stands. There is no need—or basis—to upend it in this case.

CONCLUSION

Section 2 of the Voting Rights Act is essential to protecting against racial vote dilution and the suppression of minority voices in our political process. Given the circumscribed but critical role that *Gingles* plays in accomplishing these objectives, the Court should not further limit *Gingles* as Appellants-Petitioners propose. To the contrary, the Court should affirm the judgment of the District Court and retain the sound *Gingles* framework as currently constituted.

Respectfully submitted,

ADAM S. GERSHENSON
KIMBERLEY A. BISHOP
COOLEY LLP
500 Boylston Street
Boston, MA 02116

KRISTEN A. JOHNSON
EMILY J. BORN
COOLEY LLP
55 Hudson Yards
New York, NY 10001

CHRISTINE P. SUN
RANJANA NATARAJAN
STATES UNITED
DEMOCRACY CENTER
1107 17th Street, NW
Washington, DC 20036

KATHLEEN HARTNETT
Counsel of Record
JULIE VEROFF
COOLEY LLP
3 Embarcadero Center
20th Floor
San Francisco, CA 94111
(415) 693-2000
khartnett@cooley.com

JONATHAN L. WILLIAMS
JONATHAN L. WILLIAMS, P.A.
113 South Monroe Street
1st Floor
Tallahassee, FL 32301

Counsel for Amici Curiae

July 18, 2022