Nos. 24-109, 24-110

IN THE

Supreme Court of the United States

STATE OF LOUISIANA,

Appellant,

v.

PHILLIP CALLAIS, ET AL.,

Appellees.

PRESS ROBINSON, ET AL.,

Appellants,

v.

PHILLIP CALLAIS, ET AL.,

Appellees.

On Appeal from the United States District Court for the Western District of Louisiana

Brief of the Public Interest Legal Foundation and eight Louisiana State legislators as *Amici Curiae* in Support of Appellees

J. CHRISTIAN ADAMS
Counsel of Record
PUBLIC INTEREST LEGAL FOUNDATION
107 S. West St., Ste. 700
Alexandria, VA 22314
(703) 745-5870
adams@publicinterestlegal.org

Table of Contents

Table of Authorities

Cases

Constitutions and Statutes

INTERESTS OF *AMICI CURIAE*[1]

The Public Interest Legal Foundation, Inc. ("Foundation") is a non-partisan, public interest 501(c)(3) organization whose mission includes working to protect the fundamental right of citizens to vote and preserving the constitutional balance between states and the federal government regarding election administration procedures. The Foundation has sought to advance the public's interest in balancing state control over elections with Congress' constitutional authority to protect the public from racial discrimination in voting.

Rep. Beryl Amedeem, Rep. Kathy Edmonston, Rep. Dodie Horton, Rep. Charles Owen, Rep. Raymond Crews, Rep. Danny McCormick, Rep. Rodney Schamerhorn, and Sen. Valarie Hodges are Louisiana State legislators who are opposed to the use of race in redistricting. They were participants in the debates and are aware of the racial purpose of the new maps and their constitutionality.

Amici seek to ensure that the Constitution and federal election laws are preserved and followed as the drafters intended.

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[1] No counsel for a party authored this brief in whole or in part, nor did any person or entity, other than *amici curiae* and their counsel, make a monetary contribution intended to fund the preparation or submission of this brief.

SUMMARY OF ARGUMENT

This case can be decided under the Fifteenth Amendment and not reach any other issue.

No words in the Constitution were purchased with the staggering amount of blood and treasure as the Civil War Amendments were. American lives and fortunes were destroyed so that the promise of equality before law could become law. Black and white, North and South, free and slave, all suffered the chaos and carnage.

All three Civil War Amendments were a rainbow after the storm, but particularly so the Fifteenth Amendment.

It contained the simple elegant promise that the right to vote, to allocate power, could never be allocated again using the wicked tool of race.

Where the Thirteenth Amendment extinguished the evil of slavery, and the Fourteenth Amendment enshrined the command that Americans should treat their neighbors as themselves, it was the Fifteenth that secured a peaceable future. The Fifteenth Amendment prevented any return to the wickedness that had animated human relations since the dawn of history – the allocation of power based on immutable characteristics. The age of factions using race to secure power for themselves, or block power to other races, was finally at an end.

Or so the authors of the Fifteenth Amendment thought.

The sacrifices of the Wheatfield, Antietam, and Combahee Ferry were hardly a memory when the dream of the Fifteenth Amendment began to wither

in state capitals, registration offices and in the gunfire of Wade Hampton's Red Shirts.

American Constitutional law has endured a battle over the meaning of the Civil War Amendments and the promise of equality before law ever since. Efforts to realize the dream of the Civil War Amendments saw moments of hope, such as the passage of the Voting Rights Act of 1965, collapse into race based legislative line drawing of the sort challenged here.

But one thing has not changed, the simple, clear and reverential command of the Fifteenth Amendment: Power may not be allocated based on race.

Yet that is exactly what happened here, and the legislative sponsors in Baton Rouge said so. A Congressional district in Louisiana was drawn wholly to allocate power based on skin color. Who would hold that second "black" seat did not matter. All that mattered is the winner of the election would be the chosen candidate of black voters. The advocates for the map proudly said so on the floor of the Louisiana Legislature.

The legislative supporters admitted it, the challenged Congressional map was drawn "on account of race." The district court made a factual finding that race motivated the draw. One hundred and fifty-five years after the enactment of the Fifteenth Amendment, this Court can complete the "unfinished work" of the Fifteenth Amendment and end the allocation of power based on skin color.

ARGUMENT

I. Any Racial Purpose in a Legislative Map Violates the Fifteenth Amendment.

Ratified in 1870, "after a bloody Civil War" the Fifteenth Amendment "promised unequivocally that the right of citizens of the United States to vote shall not be denied or abridged . . . on account of race." *Shaw v. Reno*, 509 U.S. 630, 639 (1993) (citation modified).

The "design of the [Fifteenth] Amendment is to reaffirm the equality of the races at the most basic level of the democratic process, the exercise of the voting franchise." *Rice v. Cayetano*, 528 U.S. 495, 512 (2000).

The design and the simplicity of the Fifteenth Amendment has importance in this case.

The issue before the Court is whether a legislature may draw a legislative map where the explicit purpose is to allocate legislative seats on the basis of skin color or race. That was what happened here. The authors of the Fifteenth Amendment were resolved to end that practice entirely. "A resolve so absolute required language as simple in command as it was comprehensive in reach." *Id.*

The simplicity and comprehensiveness of the Fifteenth Amendment provides the Court with a simpler path to decide this case as compared with the balancing and scrutiny analysis required by the Fourteenth Amendment.

Indeed, the Ninth Circuit adopted that approach in affirming summary judgment against Guam under the Fifteenth Amendment in *Davis v. Guam*, 932 F.3d

822, 824 (9th Cir. 2019). The district court struck down a status plebiscite in Guam that restricted the franchise to "native inhabitants" and their blood descendants. *Davis v. Guam*, 2017 U.S. Dist. LEXIS 34240, *17-19 (D. Guam, Mar. 8, 2017). The district court invalidated the eligibility requirement both under the Fourteenth Amendment and the Fifteenth Amendment.

The district court analysis under the Fourteenth Amendment took a roundabout path through compelling state interests, narrow tailoring, facial neutrality, and even international obligations. *Id.* at *31-35.

The district court's roundabout Fourteenth Amendment path eventually arrived at a Fourteenth Amendment violation. *Id.* at *35.

But the district court noted, as this Court should, that the Fifteenth Amendment offered a simpler path. "[T]his court has already made a finding that discriminatory purpose exists under the Fifteenth Amendment and therefore finds it unnecessary to further discuss it under the Fourteenth Amendment." *Id.* at *31.

The Ninth Circuit, affirming, followed the shorter, simpler and more sweeping Fifteenth Amendment path to the challenged statute's unconstitutionality. *Davis*, 932 F.3d at 824 n.1. "Because we affirm the district court on Fifteenth Amendment grounds, we do not address Davis's arguments that the 2000 Plebiscite Law violates the Fourteenth Amendment, the Voting Rights Act, and the Organic Act of Guam." *Id.*

The Ninth Circuit did not need to reach questions under the Fourteenth Amendment or any statutory challenges because the simplicity and comprehensiveness of the Fifteenth Amendment provided the simplest path to invalidation. The Fifteenth Amendment provides the most direct path to invalidating the challenged map here.[2]

If a legislative map was enacted with a racial purpose, it violates the Fifteenth Amendment. An election law may violate the Fifteenth Amendment but not the Fourteenth Amendment. The Fourteenth Amendment analysis engages in additional questions that the Fifteenth Amendment analysis never does. Put another way, the Fifteenth Amendment has a lower hurdle to find a constitutional violation than does the Fourteenth Amendment.

Although the "immediate concern" of the Fifteenth Amendment was to ensure freed slaves had the right to vote, "the Amendment goes beyond it. Consistent with the design of the Constitution, the Amendment is cast in fundamental terms, terms transcending the particular controversy which was the immediate impetus for its enactment." *Rice,* 528 U.S. at 512.

The Fifteenth Amendment's prohibition on racially motivated voting rules is both fundamental and absolute. *Shaw v. Reno*, 509 U.S. at 639-640. *See Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 277 (1979) ("Discriminatory intent is simply not amenable to calibration. It either is a factor that has influenced

[2] *See Prejean v. Foster,* 227 F.3d 504, 519 (5th Cir. 2000) ("Unlike the Fourteenth Amendment claim, there is no room for a compelling state interest defense, as the Fifteenth Amendment's prohibition is absolute.")

the legislative choice or it is not.") Here, there is no mystery about what motivated the challenged maps. Racial line drawing was the express purpose.

II. Legislative Supporters of the Map Were Explicit: Racial Line Drawing Was the Purpose.

Like the racial voting qualification struck down in *Rice*, the supporters of the challenged map did not leave much to the imagination on the floor of the Louisiana Legislature. Like the voting qualifications in *Rice*, the purpose of the maps "now before us is neither subtle nor indirect." *Rice*, 528 U.S. at 514.

In a transparent floor debate, the advocates for the challenged maps explicitly said the purpose was to create racial set aside districts.[3] Creating a "black" district was expressly the goal of the challenged map. Their candor dooms these maps under the Fifteenth Amendment.

The district court provides a factual basis to invalidate the challenged map under the Fifteenth Amendment:

- Representative Lyons, Chairman of the House and Governmental Affairs Committee, stating "the mission we have here is that we have to create two majority-Black districts."
- Representative Amedee: "[i]s this bill intended to create another black district?"

[3] Courts have noted the rarity of this situation as "discriminatory intent is rarely susceptible to direct proof." *Hayden v. Paterson*, 594 F.3d 150, 163 (2d Cir. 2010).

Representative Beaullieu: "[y]es, ma'am, and to comply with the judge's order."[4]

- SB 8's sponsor, Senator Womack, also explicitly admitted that creating two majority-Black districts was "the reason why District 2 is drawn around the Orleans Parish and why District 6 includes the Black population of East Baton Rouge Parish and travels up the I-49 corridor to include Black population in Shreveport."
- Representative Josh Carlson stated, even in his support of SB 8, that "the overarching argument that I've heard from nearly everyone over the last four days has been race first" and that "race seems to be, at least based on the conversations, the driving force behind the redistricting plan."
- Senator Jay Morris also remarked that "[i]t looks to me we primarily considered race."
- Senator Gary Carter went on to express his support for SB 8 and read a statement from Congressman Troy Carter on the Senate floor:

  > My dear friends and colleagues, as I said on the steps of the capital, I will work with anyone who wants to create two majority-minority districts.

Callais v. Landry, 732 F. Supp. 3d 574, 588-589, 604-605 (W.D. La. 2024) (citation modified).

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[4] In fact, no such final judgment existed. There was no active, live, mandatory final judgment requiring such a draw. The record does not make clear why legislators labored under this false assumption.

The racial purpose of the map was common knowledge in Baton Rouge. "The record includes audio and video recordings, as well as transcripts, of statements made by key political figures such as the Governor of Louisiana, the Louisiana Attorney General, and Louisiana legislators, all of whom expressed that the primary purpose guiding SB 8 was to create a second majority-Black district due to the *Robinson* litigation." *Id.* at 604.

Had legislators instead said the purpose of the map was "to remedy violations under the Voting Rights Act," they would have been on firmer constitutional ground. Section 2 of the Voting Rights Act and its elaborate and complex elements under *Thornburg v. Gingles*, 478 U.S. 30 (1986) and *Allen v. Milligan*, 599 U.S. 1 (2023) are remedial in nature.[5] The three preconditions and Senate Factors catalog a plaintiff's heavy burden to establish a violation under the results prong of Section 2 of the Voting Rights Act. 52 U.S.C. § 10301(b).

If only the sponsors on the floor of the legislature said the only purpose of the map was to remedy a Section 2 violation, these congressional maps might possibly survive a Fifteenth Amendment challenge and would enjoy even greater odds to survive a Fourteenth Amendment challenge. If only.

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[5] *See generally*, *Prejean v. Foster*, 227 F.3d at 519 ("It is difficult to hypothesize a denial or abridgement of the right to vote effected by the remedial subdistricting of a multimember legislative body. Indeed, the Supreme Court has rejected application of the Fifteenth Amendment to vote dilution causes of action.")

Instead, the map advocates roused a purpose from a time gone by: race. They said so. They said the map was intended to allocate power based on skin color. Like a floor debate from another era, race was the purpose, race was aim, and power was to be allocated to a favored race.

III. The District Court Made Factual Findings that Racial Line Drawing Was the Map's Purpose.

Legislators rarely provide direct evidence that race was front and center in a map draw, but they did here. The district court made factual findings that race was a motivating factor in the drawing of the challenged map. This violates the Fifteenth Amendment.

> However, considering the circumstantial and the direct evidence of motive … the Court finds that racially motivated gerrymandering had a qualitatively greater influence on the drawing of the district lines than politically motivated gerrymandering. As in *Shaw II* and *Vera*, the State first made the decision to create a majority-Black district and, only then, did political considerations factor into the State's creation of District 6.

Callais v. Landry, 732 F. Supp. 3d at 606.

IV. The Fifteenth Amendment Provides the Singular and Best Basis to Invalidate the Map.

Though the district court below eventually conducted strict scrutiny analysis under the Fourteenth Amendment, it was not necessary. The Fifteenth Amendment alone invalidates the maps based on the factual findings that the drawing of the map was racially motivated.[6] When the drawing of a legislative map is found to be motivated by race, as in the case here supported by extensive factual findings, the map is invalid under the Fifteenth Amendment, period. Like the Ninth Circuit in *Davis v. Guam*, this Court need not even engage the higher hurdles in the Fourteenth Amendment, and should affirm.

The district court below began its opinion with a quote from Winston Churchill, "[t]hose that fail to learn from history are doomed to repeat it." *Callais*, 732 F. Supp. 3d at 582. While this quote is liable to overuse or hyperbole, it befits this dispute. This nation has a long and often bloody history fighting over the issues woven into this case. That bloody history, with its "same indignities, and the same resulting tensions and animosities the [Fifteenth] Amendment was designed to eliminate," is a reminder of the stakes. *Rice*, 528 U.S. at 523-524.

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[6] A draw to remedy or avoid Section 2(b) liability does not necessarily engage in a racially motivated draw merely by assessing whether the first *Gingles* precondition is satisfied. There is a distinction between acting in a remedial capacity regarding a Section 2 violation compared to a racially motivated map draw. That no final judgment, or even trial, was conducted to assess Section 2 liability in *Robinson*, appellants cannot assert the false premise that any court compelled the challenged map.

CONCLUSION

For these reasons, *Amici* respectfully request that this Court affirm.

Respectfully submitted,

J. CHRISTIAN ADAMS
Counsel of Record
PUBLIC INTEREST LEGAL FOUNDATION
107 S. West St., Ste. 700
Alexandria, VA 22314
(703) 745-5870
adams@publicinterestlegal.org

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