Nos. 24-109 and 24-110

In The

Supreme Court of the United States

LOUISIANA,

Appellant,

v.

PHILLIP CALLAIS, *et al.*,

Appellees.

PRESS ROBINSON, *et al.*,

Appellant,

v.

PHILLIP CALLAIS, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA

BRIEF FOR *AMICUS CURIAE* NATIONAL CONFERENCE OF BLACK LAWYERS AND NATIONAL LAWYERS GUILD IN SUPPORT OF THE ROBINSON APPELLANTS

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Table of Contents

STATEMENT OF INTEREST 1

INTRODUCTION 3

SUMMARY OF ARGUMENT 5

ARGUMENT 8

I. TO PRESERVE THE TRUE INTENT AND PURPOSE OF THE RECONSTRUCTION AMENDMENTS *AMICI* URGE THIS COURT TO NOT REPLICATE THE POST CIVIL WAR/RECONSTRUCTION DECISIONS 8

The Civil Rights Cases of 1883 10

II. THE COURT'S DECISION IN *PLESSY* FURTHER UNDERMINED THE TRUE INTENT AND PURPOSE OF THE RECONSTUCTION AMENDMENTS .. 12

III. *PLESSY* WAS OVERRULED BY *BROWN* IN WHICH RACE CONSCIOUS AFFIRMATIVE REMEDIES WERE REQUIRED TO OVERCOME THE IMPACT OF SEGREGATION IN PUBLIC EDUCATION WERE REQUIRED TO ELIMINATE THE EFFECTS OF DISCRIMINATION ROOT AND BRANCH 16

IV. AFFIRMATIVE USE OF RACE CONSCIOUS REMEDIES TO ADDRESS DISCRIMINATION IN HIGHER EDUCATION 18

V. IN VOTING RIGHTS ACT SECTION 2 CASES THE COURTS HAVE LONG

RECOGNIZED THAT SECTION 2 AND PREVIOUSLY SECTION 5 (ON THE BASIS OF NO RETRO-GRESSION) HAVE RECOGNIZED THE NEED TO CREATE MAJORITY MINORITY DISTRICTS 22

A. Voter Dilution Cases 23

B. The Court in Shaw v Reno Sets the Stage 24

CONCLUSION 28

Table of Authorities

Cases

Brown v. Board of Education,
347 U.S. 483 (1954) 7,16, 17, 20, 25

Green v. County School Board,
391 U.S. 430, (1968) 16

Grutter v Bollinger,
539 U.S. 306 (2003) 19

Minor v. Happersett,
88 U.S. 162 (1875) 10

Mobile v. Bolden,
446 U.S. 55 (1980) 23

Parents Involved in Community Schools v. Seattle School District No. 1,
551 U.S. 701 (2007) 17

Plessy v. Ferguson,
163 U.S. 537 (1896) 6, 7, 12, 16, 20

Regents of Univ. of Cal. v. Bakke,
438 U.S. 265, 98 (1978) 19

Slaughter-House Cases,
83 U.S. 36, (1872) 9

Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.,
600 U.S. 181 (2023) 18

Shaw v. Reno
590 U.S. 630 (1993) 24, 25, 27

The Civil Rights Cases of 1883,
109 U.S. 3 (1883) ....*in passim*

Thornburg v. Gingles,
478 U.S. 30 (1986) 23, 26

United Jewish Organizations v Carey,
430 U.S. 144 (1977) 26

United States v. Cruikshank,
92 U.S. 542 (1875) 10

Williams v. New Orleans,
729 F.2d 1554 (1984) 21

Statutes

52 USCS § 10301 24

Other Authorities

Anderson, *Carol "White Rage: The Unspoken Truth of Our Racial Divide"*
Bloomsbury Publishing USA (2016) 9

Kinoy, Arthur, *"The Constitutional Right of Negro Freedom"*
21 Rutgers Law Rev. 387 (1967) 11, 15

STATEMENTS OF INTEREST[1]

NATIONAL CONFERENCE OF BLACK LAWYERS (NCBL), founded in 1968 to serve as the legal arm of the struggle for liberation and self-determination of the African diaspora, is an organization of lawyers, judges, law students and legal workers throughout the United States with members in the Caribbean and several African countries. Throughout its history, NCBL has been actively engaged in the work of fighting repression in the struggle for Black liberation.

Central to the NCBL's mission is supporting measures to ensure the voting rights of Black Americans. In a recent statement regarding the intervention of the United States federal government in the governance activities of the District of Columbia, NCBL stated that "the National Conference of Black Lawyers (NCBL) and its D.C. Chapter, stand committed to the protection of human and civil rights, the defense of Black communities against systemic oppression and government-sanctioned overreach, consistent with its mission to serve as the legal arm of the Movement for Black Liberation…President Donald J. Trump has invoked powers under the District of Columbia Home Rule Act of 1973 to effectuate an unprecedented federal takeover of the D.C. Metropolitan Police Department, that on its face appears racially motivated, undermining local governance and the autonomy of the District's elected leadership.

[1] Pursuant Supreme Court Rule 37.6 counsel for *Amici* state that no counsel for a party authored this brief in whole or in part, and that no persons other than *Amici, its* members or its counsel, made any monetary contribution to the preparation or submission of this brief.

NCBL's long standing history of work in the reparations arena is demonstrative of its strong interest in the issues presented by the case before this Court. Voting demographics are fundamental to the autonomy and self-determination necessary to effectuate Black liberation, specifically to determine outcomes of elections to achieve those and other goals in the public interest. The NCBL defends the rights of Black citizens' electoral decisions, most accurately demonstrated in its previous work to vindicate the rights of Chokwe Lumumba, the former mayor of Jackson, Mississippi. Indeed, unsurprisingly, the NCBL's most concentrated work is done in geographic areas with high percentages of Black people, such as Atlanta, Georgia; Washington, D.C.; and North Carolina. It follows that NCBL holds a strong interest in voting rights arising from the state of Louisiana, a jurisdiction with a high population and percentage of Black people.

NATIONAL LAWYERS GUILD The National Lawyers Guild (NLG) is a non-profit corporation founded in 1937 as the first racially integrated voluntary national bar association with a mandate to advocate for the protection of constitutional human and civil rights. It was one of the non-governmental organizations selected to represent the American people at the founding convention of the United Nations in 1945. Its members helped draft the Universal Declaration of Human Rights and have brought such cases as *Hansberry v Lee,* 311 U.S. 32 (1940) which struck down Jim Crow laws in Chicago, and *Dombrowski v Pfister* 380 U.S. 479 (1965) halting discriminatory and retaliatory criminal proceedings against, civil rights activists in the South. The National Lawyers Guild has been involved in supporting voting rights issues throughout its history. In 2013 the NLG filed an amicus brief in this Court in

Shelby County v Holder, 570 U.S. 529 (2013) arguing much as is argued here that Section Five of the Voting Rights Act should be preserved. The arguments in that brief are similar to those herein. In addition the NLG argued that the Court had an obligation under two ratified treaties, the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Elimination of all Forms of Racial Discrimination (CERD) to interpret our laws consistently with our international obligations. Most particularly the NLG argued that under the CERD, race conscious measures implemented to overcome the effects of past discrimination were not considered illegal discrimination. The NLG submits this brief in support of the Robinson Appellants to request the Court find the creation of a second majority minority district in Louisiana constitutional.

INTRODUCTION

This Court's August 1, 2025, question to the parties for supplemental briefs raises serious concerns for *Amici*. This Court should find Louisiana's creation of a second majority-minority district under Section 2 of the Voting Rights Act is constitutional under the Fourteenth Amendment's Equal Protection Clause and the Fifteenth amendment, in order to uphold African Americans' access to vote and to participate in meaningful ways to make laws that ultimately affect them. This Court should not perversely use "race" and the Reconstruction Amendments to roll back racial progress. (*Amici* refer to the Thirteenth, Fourteenth and Fifteenth Amendments as the Reconstruction Amendments and/or the Civil War Amendments.)

Amici respectfully directs the Court's attention to the following two statements:

> "As the record reveals, Section 2 is abused to set racial quotas and elevate some groups over others." Appellee's Brief p. 38. (January 21, 2025)

> "When a man has emerged from slavery and by the aid of beneficent legislation has shaken off inseparable commitments of that state, there must be some stage in the process of his elevation when he takes the rank of a mere citizen and ceases to be the special favorite of the laws ..." *Civil Rights Cases of 1883,* 109 U.S. 3, 25 (1883).[2]

Although separated by 142 years, the sentiment of both of these statements is the same. That is, Black people in America have come far enough. It is time to stop further advancement, and to turn back the clock. African Americans should stop seeking help from the Courts. Such is the import of Appellee's argument, which seeks to use the Reconstruction Amendments to justify the deprivation of Constitutional protections of those Amendments to African American citizens.

There is an unfortunate history of this Court abandoning racial progress which *Amici* urge the Court not to replicate. There is no question that the creation of a second majority-minority district is constitutional under both the Fourteenth and the Fifteenth Amendments as remedial measures for discriminatory exclusion which the Robinson Plaintiffs showed in the District Court, and which the

[2] A similar message was stated by President Johnson when he vetoed the Civil Rights Acts of 1866 by saying that: "they establish for the security of the colored race safeguards which go infinitely beyond any that the General Government has given the white race. In fact, the distinctions of race and color is by the bill made to operate in favor of the colored race against the white race.

Fifth Circuit affirmed. Prior and recent precedent of this Court affirms this, *cf. Allan v Milligan.* 599 U.S.1 (2023). The question is whether the Court will stand up to forces seeking to once again roll back gains of African Americans who suffered through two hundred and fifty years of unpaid labor as enslaved persons building the incredible wealth of this nation; who sacrificed their lives in the Civil War; who fought in two World Wars even while being subjected to Klan and White supremacist terror and a stamp of inferiority coincident to *de jure* segregation; who were beaten, trampled and lost lives in the Civil Rights movements to remove the vestiges of enslavement, and to end their exclusion from the economy and the political arena. *Amici* urge this Court not to endorse the message that African Americans have come far enough, that it is time to "lower their sights". The Court should not agree that their vote be diluted, or that they must accept a limit on the numbers of African Americans and other people of color who will be able to walk through State Houses and Congressional doors.

Will the Court once again use the promises of racial progress inherent in the Reconstruction Amendments to not only stop that progress but also roll back hard-fought gains? *Amici* in their arguments review the history of this Court's interpretations which turn rights guaranteed to the newly freed slaves in the Reconstruction Amendments into their opposite, a restriction on the ability of the country to make steady progress toward a vibrant multi racial democracy.

SUMMARY OF ARGUMENT

Amici in this brief discuss the pivotal message that the Court will be sending this country and the world about the United States' willingness to fulfill the promises of equality inherent in the Reconstruction

Amendments. In fact, this case brings to the fore the opinions of this court in *Dred Scott v Sandford, The Civil Rights Cases of 1883* and *Plessy v Ferguson*, in particular the debates between Justice Bradley and the first Justice Harlan in the *Civil Rights Cases* and in the first Justice Harlan's dissent in *Plessy*. The Court in *Dred Scott*, set forth a full-throated defense of slavery based on the ideology of white supremacy, which meant that Black people were enslaved for their own benefit, and had no rights that white people were bound to respect.

Amici first address the Reconstruction and post-Reconstruction cases, most notably the *Civil Rights Cases of 1883, supra* and *Plessy v Ferguson* 163 U.S. 537 (1896). In the *Civil Rights Cases Amici* allege that the now discredited views of Justice Bradley that any form of racial remediation was a form of "special privileges" stood in stark contrast to the position of the first Justice Harlan who understood the very point of the Civil War/Reconstruction Amendments was to abolish all forms of racial subjugation and caste and to grant practical equality to the newly freed slaves. Amici ask the Court not to replicate the abandonment of civil rights progress as this Court did in the post Reconstruction decisions.

Secondly, *Amici* show how the Court's failure in the *Civil Rights Cases* and *Plessy* to heed the words of the first Justice Harlan's dissent, plunged this country into a dark period where rampant and permissible white supremacy allowed African Americans to be lynched for wanting to vote or even advance in a profession. The cruel irony of the "separate but equal" doctrine advanced by the Court in *Plessy* was the fact that it was justified by an interpretation of the Civil War Amendments which were ratified to do the

opposite-to prevent stripping of rights from newly freed slaves.

Amici thirdly address the aftermath of *Plessy* wherein the Court in 1954 recognized that separate but equal was inherently unequal in the case of *Brown v Board of Education*, 344 U.S.1. (1954) The Courts thereafter set forth a standard of eliminating the effects of discriminatory segregation "root and branch" which meant that school districts not only had to end intentional segregation but also had an affirmative duty to stamp out all vestiges of that discrimination from top to bottom and replace dual racially segregated school systems with racially desegregated unitary school districts. This meant that the remedy of achieving a quality integrated education applied to Black people and racial minorities as a group, not as individual victims of illegally segregated public schools. *Amici* point out the white resistance to public school desegregation caused Courts to cut back on remedies. Despite limiting remedies, this Court never officially repudiated the requirement of eliminating the effects of illegal racial segregation "root and branch".

Fourthly, *Amici* argue that one form of the white resistance to this Court overruling "separate but equal" was the continual requests to the Courts to limit meaningful remediation of the real-world present manifestations of historical forms of entrenched racial discrimination. It may be permissible to impose strict scrutiny on forms of racial preferences to ensure that illegitimate considerations are not in play, but what Louisiana asks for here goes beyond any tailored jurisprudence around race. It harkens back to what should be the discarded jurisprudence of Justice Bradley's articulated intent to avoid any of remediation of racism. The Appellants here do not ask

for special rights, but seek, consistent with the equal protection clause, that their votes are not diluted due to race.

Fifthly *Amici* argue that the legacy of *de jure* and *de facto* segregation and white resistance to desegregation caused disparities in educational opportunities for racial minorities in higher education. Rather than applying the "root and branch" approach to rooting out the discriminatory impact of segregated public schools, and endorsing race conscious remedies, the Court has moved down a path to halt progress towards true diversity in higher education. The Court's recent decisions in the Harvard and University of North Carolina cases are but another example of the Court wrongly using the Civil War /Reconstruction Amendments to invalidate racial progress in higher education by claiming that the goals of educating students to live in a diverse world are too amorphous to survive strict scrutiny.

Sixth and lastly, *Amici* argue that the record developed in the District Court, affirmed by the Fifth Circuit, and the record and findings in the case regarding state legislative districts (*Nairne v Landry)* along with the long line of precedents in similar cases provide the Court with ample reasons not to change course and use the Reconstruction Amendments to roll back racial progress in our legislative branches.

I. TO PRESERVE THE TRUE INTENT AND PURPOSE OF THE RECONSTRUCTION AMENDMENTS *AMICI* URGE THIS COURT TO NOT REPLICATE THE POST CIVIL WAR/RECONSTRUCTION DECISIONS.

Ratification of the Thirteenth Amendment was followed in 1868 by ratification of the Fourteenth

Amendment, and in 1870 by the Fifteenth Amendment. With the passage of these Reconstruction Amendments this country not only abolished slavery, and its odious badges and incidents, it committed to recognize birthright citizenship and equal protection of the laws and the franchise. Accordingly, Congress created the legal structure to begin to atone for America's "original sin of slavery"[3] These Amendments, however, were opposed by President Andrew Johnson, and passed over his objections by the "Radical Republicans" whom Johnson sought to unseat.

The Supreme Court, however, succeeded in dismantling this structure. The Court, under the guise of "strict constitutionalists" analyzed these amendments, not animated by the rights of the newly freed slaves they were designed to protect, but from the perspective of whether State governments were subordinated to Washington's control and whether the rights in the Constitution could be enforced in the States. The result was that the Supreme Court developed a legal framework within which to remove federal protections of and limitations on the rights contained in these Amendments. The cases, during Reconstruction, *i.e.* prior to the Hayes-Tilden Compromise, and the removal of Federal troops from the South, recognized the purposes of the Reconstruction Amendments were to protect the newly freed slaves. But in cases such as the *Slaughter House*

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[3] Anderson, Carol "*White Rage: The Unspoken Truth of Our Racial Divide"* p. 42, and citations therein. The thesis of this book is that the mistreatment African Americans have suffered over the years, based on an ingrained white supremacist ideology means that any advances made in the course of struggle by Black people over time have been met with "White rage" and resentment which has resulted in the Courts and other institutions, stopping progress, and eliminating those gains.

cases of 1873, 83 U.S. 36 and *Minor v Happersett*, 86 U.S. 162 (1875) the Court limited the reach of the Privileges and Immunities clause of the Fourteenth Amendment.

The next step in removing federal protection from the newly freed slaves occurred in *United States v Cruikshank*, 92 U.S. 542 (1875). There the Court virtually nullified the effectiveness of the Enforcement Act of 1870 and granted total impunity to the perpetrators of the Colfax Massacre in which it is believed more than 150 African Americans were killed by white supremacists. The few who were convicted challenged the constitutionality of their prosecution. Reading the Court's decision, one would not know that the Colfax Massacre, or any massacre for that matter was at issue. The decision was reduced to whether the criminal charges could be asserted under the Constitution and whether the indictments were specific enough to implicate the Constitution or the Enforcement Act.

In reducing the Colfax massacre to a matter of pleading deficiency, the Court obscured the deprivation of the rights of African Americans in its analysis. The decision sent a message to the newly freed slaves that the Federal government would not protect their rights under the Constitution or the Enforcement Acts.

The *Civil Rights Cases of 1883*

In *Civil Rights Cases of 1883* the Court placed at issue the constitutionality of the 1875 Civil Rights Acts. These laws prohibited racial discrimination in places of public accommodations, amusement, theaters, etc. and made discrimination based on race by private parties illegal.

Professor Arthur Kinoy provides critical insight on this issue. In his seminal 1967 Law Review article "The Constitutional Right of Negro Freedom" [4] he wrote about the pivotal nature of these 1883 decisions and the refusal by Justice Bradley writing for the majority to recognize what the first Justice Harlan did. That is, that these civil rights laws were necessary to overcome the stamp of inferiority imposed by slavery and protected by the Thirteenth Amendment which all agreed not only outlawed slavery, but also its badges and incidents. Professor Kinoy stated that Justice Harlan's analysis:

> is the proposition that in eliminating the institution of chattel slavery the nation had enacted a new national constitutional right-the right of the black man in America to be free; that this right of Negro freedom carried with it the right of the race of freedmen to be free from the stamp of inferiority imposed by the badges and indicia of the institution of human slavery - the right of black men to enjoy equally all of the rights, privileges and immunities previously enjoyed by white men and the right of black men to assume their position as equal "persons" among the political community, established by the founders, of the "people of the United States." at p. 388

Justice Bradley's majority opinion held that the 1875 Civil Rights Acts were unconstitutional under the Fourteenth Amendment because Congress could not directly legislate individual private conduct in the States but could only correct offending state action. While Bradley agreed that the Thirteenth Amendment did reach private conduct, he so narrowly construed

[4] 21 Rutgers Law Rev. 387 (1967)

what constituted "badges and incidents" of slavery, that the Civil Rights Acts of 1875 could not be Constitutional under the Thirteenth Amendment.

This decision was clearly a choice by the Bradley majority to make sure that Black people did not achieve any form of equality and to withdraw any Federal protection for private acts of race discrimination against them. It was a conscious choice by the majority to stop any progress made by Black people after the Civil War. Based on the dissent, the 1875 Civil Rights laws should never have been considered unconstitutional under the Reconstruction Amendments. Clearly in Justice Harlan's analysis the Civil Rights Acts of 1875 were constitutional under both the Thirteenth and Fourteenth Amendments.

II. THE COURT'S DECISION IN *PLESSY* FURTHER UNDERMINED THE TRUE INTENT AND PURPOSE OF THE RECONSTUCTION AMENDMENTS

The *Civil Rights Cases* set the stage for the Court's full abandonment of civil rights progress in *Plessy v. Ferguson,* 163 U. S. 537 (1896). In *Plessy*, the Petitioner, who was considered "colored" under the law, was prosecuted for violating the Louisiana law requiring him to ride in a train car designated for colored people. He refused and was arrested and prosecuted. As part of his defense, he challenged the law making it illegal to require separation in these railroad cars on the basis of his race on both Thirteenth and Fourteenth Amendment grounds.

With respect to Plessy's Thirteenth Amendment argument, the Court relied on the Bradley opinion in the *Civil Rights Cases* and his narrow reading of the badges and incidents of slavery to reject this theory.

As to the Fourteenth Amendment, and Plessy's claim that the separate train cars cannot be considered equal as forced separation implies that he and African Americans are inferior. The Court stated:

> "We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it."

In other words, African Americans feelings of inferiority, by being forcibly segregated, were a figment of their imagination. The Court held the law requiring segregation was a reasonable exercise of the State's power adding:

> Legislation is powerless to eradicate racial instincts or to abolish distinctions based upon physical differences, and the attempt to do so can only result in accentuating the difficulties of the present situation. If the civil and political rights of both races be equal, one cannot be inferior to the other civilly or politically. If one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane.

Justice Harlan's dissent, which is often quoted to tout the colorblindness of the United States' Constitution, was in actuality, a plea to the majority to strike down the Louisiana segregation law. Justice Harlan referenced the norm of colorblindness not in the abstract, but as a means to eliminate the intentionally directed subjugation of African Americans and to take affirmative judicial measures

to bring African Americans out of their legally-sanctioned caste status. Justice Harlan wrote:

> "In the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved. It is, therefore, to be regretted that this high tribunal, the final expositor of the fundamental law of the land, has reached the conclusion that it is competent for a State to regulate the enjoyment by citizens of their civil rights solely upon the basis of race.

Justice Harlan feared that the decision of the majority, would in time, prove to be quite as pernicious as the decision made by the Court in *Dred Scott v. Sandford,* 60 U.S. (19 How.) 393 (1857)

Harlan concluded:

> Sixty millions of whites are in no danger from the presence here of eight millions of blacks. The destinies of the two races, in this country, are indissolubly linked together, and the interests of both require that the common government of all shall not permit the seeds of race hate to be planted under the sanction of law. What can more certainly arouse race hate, what more certainly create and perpetuate a feeling of distrust between these races, than state enactments, which, in fact, proceed on the ground that colored citizens are so inferior and

> degraded that they cannot be allowed to sit in public coaches occupied by white citizens? That, as all will admit, is the real meaning of such legislation as was enacted in Louisiana. Id. at 560.

Justice Harlan's words were unfortunately prophetic. After *Plessy*, the conditions of many Black people in the South were barely distinguishable from what they had been during slavery.

In summary, the effect of these cases ensured that the Reconstruction Amendments were basically neutered by the Court. Not only did they fail to protect the intended beneficiaries, but the Courts ensured that whatever progress toward equal participation in all aspects of life gained during Reconstruction by Black people was halted through the imposition of Black Codes and Jim Crow. It took until 1954 to begin to recover from these odious rulings.[5]

This case presents an opportunity for the Court to remedy the discredited Bradley majority in the *Civil Rights Cases* compounded by the majority in *Plessy* to state affirmatively that the rights of Black people, and

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[5] *Amici* again reference Professor Kinoy's article *supra,* which remains relevant to this day. The thesis of his article is that we are living with the failure of the Courts from the time of the Harlan-Bradley debates in the *Civil Rights Cases* and later in *Plessy* to fully recognize the wide breadth of the rights created by the Thirteenth Amendment in not only outlawing slavery but also striking down the badges and incidents that were connected to the White supremacist ideological underpinnings of slavery articulated by Judge Taney in *Dred Scott v Sanford supra.* Fundamentally, Kinoy argued, an interpretation of the Fourteenth Amendment Equal Protection Clause and the Fifteenth Amendment cannot be valid if such interpretation is used to strike down or invalidate efforts to remedy the discrimination against African Americans.

indeed, all racial minorities, in this Country to vote and have meaningful participation in the political arena, requires this Court to remedy a likely violation of the Voting Rights Act which in this case the evidence presented to the District Court showed that State proposed Congressional map diluted the votes of Black residents of Louisiana and denied them a meaningful opportunity to vote for candidates of their choice.

III. *PLESSY* WAS OVERRULED BY *BROWN* IN WHICH RACE CONSCIOUS AFFIRMATIVE REMEDIES WERE REQUIRED TO OVERCOME THE IMPACT OF SEGREGATION IN PUBLIC EDUCATION AND WERE REQUIRED TO ELIMINATE THE EFFECTS OF DISCRIMINATION ROOT AND BRANCH

In 1954, in *Brown v Board of Education* 347 U.S. 483 (1954), the Supreme Court overruled *Plessy,* finding that separate is inherently unequal, ending the fiction that equality could ever result from forced *de jure* or *de facto* segregation. The harm of public school segregation required a remedy which was not just to stop segregation but to affirmatively dismantle dual school systems.

In *Green v. County School Board*, 391 U.S. 430, (1968) this Court forcefully stated:

> "*Brown II* was a call for the dismantling of well-entrenched dual systems tempered by an awareness that complex and multifaceted problems would arise which would require time and flexibility for a successful resolution. School boards such as the respondent then operating state-compelled dual systems were nevertheless clearly charged with the affirmative duty to

> take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch. See *Cooper* v. *Aaron, supra*, at 7; *Bradley* v. *School Board*, 382 U.S. 103; cf. *Watson* v. *City of Memphis*, 373 U.S. 526. The constitutional rights of Negro school children articulated in *Brown I* permit no less than this; and it was to this end that *Brown II* commanded school boards to bend their efforts Id, at 437-438.

While the Courts required school systems to eliminate the vestiges of segregation "root and branch," white resistance and challenges to Court orders to end segregation forced the Court, without officially repudiating the "root and branch" standard for desegregating dual school systems, to limit the available race conscious remedies. Efforts to end public school segregation without a court order finding a dual school system was deemed unconstitutional in 2007 in *Parents Involved in Community Schools v. Seattle School District No. 1,* 551 U.S. 701 (2007).

The case law is replete with efforts of white communities to prevent school children of all races from sharing a classroom. White resistance to civil rights progress in equalizing access to quality education for African American students, was and remains a legacy of segregation and the stamp of inferiority which was judicially blessed by the Supreme Court in *Plessy*.

IV. AFFIRMATIVE USE OF RACE CONSCIOUS REMEDIES TO ADDRESS DISCRIMINATION IN HIGHER EDUCATION.

The *de jure* and *de facto* segregation of public school education was reflected in disparities between Black and White students having access to higher education, colleges and professional schools. Affirmative action to address that imbalance was met by the same resistance from white applicants who alleged they were being blocked from admission to various schools due to such affirmative action programs. While affirmative action was implemented in part to overcome the impact of racially segregated public schools, rather than see these programs as an extension of the need to eliminate the effects of discrimination root and branch, the Courts entertained these cases from the perspective of whether race conscious remedies in the public sector violated the Fourteenth Amendment. Resistance to affirmative action programs led to a series of cases challenging admissions to institutions of higher education. The Appellees draw their constitutional analysis in large part from these affirmative action cases, in particular the case of *Students for Fair Admissions, Inc. (SFFA) v. Pres. & Fellows of Harvard Coll.*, 600 U.S. 181 (2023). Appellees are using the reasoning from this case to subject the creation of a second majority minority district in Louisiana to the strictest of scrutiny that no rationale, including complying with the Voting Rights Act can apparently overcome.

In the Harvard case, SFFA alleged that Harvard's use of multiple admission criteria and multi layered review of all applications, that had resulted in a drop in admissions of Asian American Students. The Court

determined this was the result of Harvard considering race as a positive factor designed to meet its stated goals in educating the next generation to interact in a diverse world. The Court found even the positive use of race could not be justified.

SFFA was not the first time the Supreme Court wrestled with affirmative action programs. The first major case was *Regents of the University of California v Bakke* 438 U.S. 265 (1978). However, in SFFA Justice Roberts writing for the majority criticized Justice Powell's decision in *Bakke* as well as the four Justices who would have upheld the race conscious set aside of seats at the Davis Medical School as permissible to overcome the effects of past societal discrimination. The Court in SFFA acted as if past societal discrimination was non-existent or too amorphous to justify a remedy. Justice Powell did find that promoting student diversity was a compelling interest that universities and while finding UC Davis' set aside of 16 seats for racial minorities was unconstitutional, that using race as one positive factor did not violate the Equal Protection Clause if the purpose was to promote diversity in the student body and the benefits which came from students being exposed to variety of people and ideas.

Justice Roberts in SFFA made similar critiques of the decision in *Grutter v Bollinger*, 539 U.S. 306 (2003) especially since it came twenty-five years after *Bakke*, and the considering race as one factor in admissions to the University of Michigan Law School, did not have an end date. The lack of an end date was one of Justice Roberts' main complaints. He was most disturbed that neither Harvard nor the University of North Carolina had an end date by which they would stop seeking a

diverse student body which the college viewed as beneficial to its goals to educate the next generations.[6]

Justice Roberts in SFFA stated emphatically that "race-based admissions systems that respondents employed also fail to comply with the twin commands of the Equal Protection Clause that race may never be used as a "negative" and that it may not operate as a stereotype. It is hard to know what the court meant by stereotype in this context. While Justice Roberts cited the shibboleths that judging people based on their race is demeaning, and that not all members of the same minority group share the same views so as to take issue with the Schools' desires to admit a more a diverse student body, Justice Roberts never addressed

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[6] While Justice Roberts did review some of the history of the Court abandoning the attempts by African Americans to achieve actual equality after the Civil War, mentioning that history, however is not the same as acknowledging the impact the Courts abandonment of legal protections for African Americans has had on Civil Rights progress in this country. He did not acknowledge that there were almost one hundred years between Chief Justice Roger Taney in *Dred Scott v Sandford*, embracing white supremacy and declaring Black people were enslaved for their own benefit, and had no rights that white men were bound to respect. He also failed to mention the Courts decision in *Brown v Board of Education* after fifty-eight years of *de jure* segregation judicially imposed by the Court in *Plessy,* that the forced separation of the races was inherently unequal and the relentless white resistance to desegregation that exists to this day. The impact the white supremacist ideology articulated in *Dred Scott* and which impacted the Supreme Court's decisions in the *Civil Rights Cases* and *Plessy*, had had on this country cannot be overstated. Every day one sees signs of white leaders appealing to white supremacy to justify their actions not only to block needed civil rights progress but also to turn back the clock. Racial intolerance is on the rise. High-ranking officials in the current administration infer all Black people and immigrants are criminals. Those who seek racial progress and any desire for social justice face dismissive responses.

the legacy of white supremacy which to this day pervades much of white society along with the view that African Americans, and other people of color should advance no further. *Amici* contend that the Court intentionally shutting down racial progress should be viewed as illegal retrogression

It is further noted that Justice Thomas who concurred in the result of SFFA sought in his decision to provide a history lesson on the Constitution being color-blind. His concurrence leaves out that the first Justice Harlan in his dissent in *Plessy* was pleading with the majority not to put its judicial stamp of approval on the color-based concept of "separate but equal." Justice Thomas does not mention Harlan's dissent in the 1883 *Civil Rights Cases*. Justice Thomas invokes color blindness to prevent race conscious remedies which were at issue in SFFA, and now in Louisiana in response to a claim of voter dilution in violation of Section 2 of the Voting Rights Act. In response to the appeal for colorblindness *Amici* refer this Court to Justice John Minor Wisdom's compelling dissent in *Williams v. New Orleans*, 729 F.2d 1554 (1984) wherein he states,

> "Color-blindness is not constitutional dogma … when faced with our society's systemic racial discrimination against blacks as a class, an effective remedy must be color conscious. The Constitution *is* race-conscious. Under the thirteenth amendment, the Constitution contemplates, and the equal protection clause of the fourteenth amendment does not prohibit, race-conscious, class-based, prospective relief in a unit of state government in the appropriate case. The appropriate case is one in which discrimination in a state governmental unit is system-wide, institutional, and the product of a

> long history of discrimination against blacks as a group to continue what amounts to a caste system."

In the end, white resistance to any form of civil rights progress in reaction to this Court overruling "separate but equal" and seeking to remedy the history of racial discrimination which the Reconstruction were intended to correct, this Court is being continually asked to and in fact accedes to requests to limit meaningful remediation of the real-world present manifestations of historical forms of entrenched racial discrimination. It may be permissible to impose strict scrutiny on forms of racial preferences to ensure that illegitimate considerations are not in play, but what Louisiana asks for here goes beyond any tailored jurisprudence around race. It harkens back to what should be the discarded jurisprudence of Justice Bradley's articulated intent to avoid any of remediation of racism. The Appellants here do not ask for special rights but rather the right to make sure their votes are not illegally diluted due to their race.

V. IN VOTING RIGHTS ACT SECTION 2 CASES THE COURTS HAVE LONG RECOGNIZED THAT SECTION 2 AND PREVIOUSLY SECTION 5 (ON THE BASIS OF NO RETROGRESSION) HAVE RECOGNIZED THE NEED TO CREATE MAJORITY MINORITY DISTRICTS.

Emblematic of post Reconstruction suppression of Black people in the South was the elimination of Black people from the voter rolls and the use of violence and terror and other means to prevent Black people from registering, and if they did register, preventing them from voting. The right to vote and participate in the government that made laws affecting their lives was a major demand of the Civil Rights movement. But the

protection of the right to vote was not addressed in the Civil Rights Acts of 1964. In 1965 the Selma to Montgomery march to demand voting rights was interrupted by the beatings and trampling of marchers after they crossed the Edmund Pettis bridge on "Bloody Sunday". The national horror at that violence by police on horseback beating and crushing non-violent marchers, shocked the conscience of the nation to such a degree that the Voting Rights Act of 1965 was passed shortly thereafter. Immediately Black citizens especially in the Southern States, registered to vote in huge numbers.

A. Voter Dilution Cases

One of the ways States discriminated against Black voters was to change voting boundaries in such a way to dilute the voting strength of minorities who wanted to vote. In *Mobile v. Bolden,* 446 U.S. 55 (1980) the Supreme Court ruled a section 2 violation could not be proven if the plaintiffs did not prove that the boundary change was made with a discriminatory intent/purpose. In the 1982 reauthorization of the VRA, Congress established that a violation of Section 2 could be proven by showing that an electoral practice had the effect of denying or abridging the right to vote on account of race, color, or minority status—no proof of intent was required.

After the 1982 reauthorization, the Supreme Court in *Thornburg v. Gingles*, 478 U.S. 30 (1986) recognized that Section 2 of the Voting Rights Act could require the creation of a majority-minority district. In *Gingles*, the Court interpreted the 1982 amendments to Section 2, to prohibit not just intentional discrimination but also practices that had the effect of diluting minority voting strength. The Court stated:

> "Subsection 2(a) prohibits all States and political subdivisions from imposing *any* voting qualifications or prerequisites to voting, or any standards, practices, or procedures which result in the denial or abridgment of the right to vote of any citizen who is a member of a protected class of racial and language minorities. Subsection 2(b) establishes that § 2 has been violated where the "totality of circumstances" reveal that "the political processes leading to nomination or election . . . are not equally open to participation by members of a [protected class] . . . in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." See, 52 USC 10301.

To find such violations, the Court established preconditions and the use of the Senate Report supporting reauthorization to provide guidance with respect to determining the totality of circumstances[7].

B. The Court in *Shaw v Reno* Sets the Stage

In *Shaw v Reno* 590 U.S. 630 (1993) the Court addressed the creation of a second majority minority

[7] After this Court's letter to the parties on August 1, 2025 the Fifth Circuit on August 14, 2025 affirmed the merits determination in *Nairne v Landry.* 24-30115, which is the case which proved VRA section 2 was violation with respect to Louisiana's state legislative districts. These findings were after a trial and the merits and proved the Plaintiffs' case of a Section 2 violation. Since the Louisiana maps challenged by the Plaintiffs in *Nairne* proved violate section 2, should this Court declare creation of remedial districts unconstitutional in the face of a Section 2 violation, then States in the future will have total immunity and impunity and suffer no consequences for violating the VRA and diluting the votes of African American voters.

district in the context of redistricting. The case arose in North Carolina where a proposed map was rejected by the Justice Department under section 5 of the VRA on a theory of retrogression, i.e. that the map cut back on the voting strength of minority voters. The map which was approved was subject to challenge by white voters as in this case.

Shaw v Reno provides a clear example of the confusion over remedies for past harms not resolved in the post Reconstruction cases, or for that matter *Brown v Board of Education.*

In writing for the majority in *Shaw* Justice O'Connor, recognized that manipulation of district lines could violate Section 2 of the Voting Rights Act. The Court said:

> But it soon became apparent that guaranteeing equal access to the polls would not suffice to root out other racially discriminatory voting practices. Drawing on the "one person, one vote" principle, this Court recognized that "the right to vote can be affected by a *dilution* of voting power as well as by an absolute prohibition on casting a ballot." *Allen* v. *State Bd. of Elections*, 393 U.S. 544, 569, 22 L. Ed. 2d 1, 89 S. Ct. 817 (1969) (emphasis added). Where members of a racial minority group vote as a cohesive unit, practices such as multimember or at large electoral systems can reduce or nullify minority voters' ability, as a group, "to elect the candidate of their choice." *Ibid*. Accordingly, the Court held that such schemes violate the Fourteenth Amendment when they are adopted with a discriminatory purpose and have the effect of diluting minority voting strength. See, *e.g., Rogers* v. *Lodge*, 458 U.S. 613, 616-617, 73 L. Ed. 2d 1012, 102 S. Ct. 3272 (1982); *White* v.

> *Regester*, 412 U.S. 755, 765-766, 37 L. Ed. 2d 314, 93 S. Ct. 2332 (1973). Congress, too, responded to the problem of vote dilution. In 1982, it amended § 2 of the Voting Rights Act to prohibit legislation that *results* in the dilution of a minority group's voting strength, regardless of the legislature's intent. 42 U.S.C. § 1973; see *Thornburg* v. *Gingles*, 478 U.S. 30, 92 L. Ed. 2d 25, 106 S. Ct. 2752 (1986) (applying amended § 2 to vote-dilution claim involving multimember districts); see also *Voinovich* v. *Quilter*, 507 U.S. 146, 155, 122 L. Ed. 2d 500, 113 S. Ct. 1149 (1993) (single-member districts). *Id.* 640-641.

Notwithstanding this, the Court allowed the Plaintiffs' claim to go forward stating:

> "Today we hold only that appellants have stated a claim under the Equal Protection Clause by alleging that the North Carolina General Assembly adopted a reapportionment scheme so irrational on its face that it can be understood only as an effort to segregate voters into separate voting districts because of their race, and that the separation lacks sufficient justification. If the allegation of racial gerrymandering remains uncontradicted, the District Court further must determine whether the North Carolina plan is narrowly tailored to further a compelling governmental interest."

In his strong dissent joined by three other justices, Justice White stated:

> "The Court today chooses not to overrule, but rather to sidestep, *UJO*.[8] It does so by glossing over the striking similarities, focusing on surface differences, most notably the

[8] *United Jewish Organizations v Carey*, 430 U.S. 144 (1977)

> (admittedly unusual) shape of the newly created district, and imagining an entirely new cause of action. Because the holding is limited to such anomalous circumstances, *ante*, at 649, it perhaps will not substantially hamper a State's legitimate efforts to redistrict in favor of racial minorities. Nonetheless, the notion that North Carolina's plan, under which whites remain a voting majority in a disproportionate number of congressional districts, and pursuant to which the State has sent its *first* black representatives since Reconstruction to the United States Congress, might have violated appellants' constitutional rights is both a fiction and a departure from settled equal protection principles. Seeing no good reason to engage in either, I dissent."

The unfortunate outcome of the majority decision in *Shaw v Reno* is that Appellees herein have distorted the ruling to claim that any use of race, regardless of its remedial purpose, to show compliance with Section 2 will not suffice as a compelling interest to justify remedying voter dilution. *Amici* submit the common sense approach articulated by Justice White is more consistent with preserving the rights in Section 2 and the Reconstruction Amendments. Under these circumstances there is no compelling reason for this court to find the creation of a second majority minority district is unconstitutional under the Fourteenth and Fifteenth amendments.

The brief of the Robinson Appellants and the amicus briefs supporting their claims in the courts show a history of precedents since *Shaw v Reno* that have been relied on by many litigants to prove Section 2 violations in voter dilution claims and the Courts have imposed remedies including creation of second

majority-minority districts. The Court by its question seems willing to overrule that precedent and again use the Civil war/Reconstruction Amendments as the justification for halting and rolling back racial progress in the right to vote. The Court seems to be invoking Justice Bradley's statement in the *Civil Rights Cases* that it is time that African Americans become mere citizens. The damage that statement caused in 1883 is still with us today. If this Court decides to strike down Section 2 remedies, it is a conscious choice to stop and reverse racial progress in this country. *Amici* submit that, if the Court should decide that the creation of a second majority-minority district violates these Amendments it would be yet another instance of using amendments designed to promote racial progress, to end that progress.

CONCLUSION

Amici ask this Court to consider what a different world we would have if Justice Harlan had written the majority opinion in the *Civil Rights Cases* and *Plessy*. This Court is presented with the same choice made by the Court in 1883 and 1896. No one today would seriously claim that the *Civil Rights Cases* and *Plessy* were correctly decided. All should admit that these decisions held back civil and human rights progress for decades. These decisions, which may have been in sync with the racist views held by most white Americans, and especially those in the South who had fought to preserve and expand chattel slavery, were not legally correct. They turned the promises of the Reconstruction Amendments into a sword against progress. They were on the wrong side of history.

Today this Court is faced with the same choice. A majority of the Court may want to believe that racism is in the past, after all a Black president was elected. Anyone who saw the Confederate flags at the Capitol

on January 6, 2021 and hear daily appeals from many quarters to white grievance and white supremacy, knows better.

If the United States is to be a truly diverse country *Amici* submit that this Court must not allow loud voices to rewrite history, to strike down gains made in the Civil Rights Movements by claiming it would be unconstitutional for Louisiana to create a second majority minority district.

This Court has a choice. *Amici* urge the Court to make the right one and to uphold the creation of a second majority minority district in Louisiana.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Case Nos. 24-109 and 24-110

Caption: *Louisiana v. Callais*

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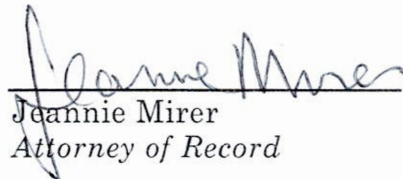

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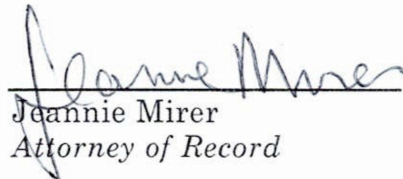

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Case Nos. 24-109 and 24-110

Caption: *Louisiana v. Callais*

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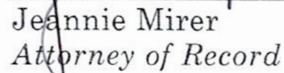

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