No. 22-807

IN THE

Supreme Court of the United States

THOMAS C. ALEXANDER, *et al.*,

Appellants,

—v.—

THE SOUTH CAROLINA STATE CONFERENCE OF THE NAACP, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA

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QUESTIONS PRESENTED

1. Whether the district court clearly erred in finding that Defendants racially gerrymandered South Carolina Congressional District 1 ("CD1") without a compelling governmental interest, in violation of the Fourteenth Amendment.

2. Whether the district court's findings with respect to the racially discriminatory purpose and effect of CD1's design, which established violations of the Fourteenth and Fifteenth Amendments, were clearly erroneous.

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Racial gerrymandering, the sorting of "a significant number" of voters predominantly on the basis of their race, violates the Equal Protection Clause absent a compelling interest. *Ala. Legis. Black Caucus v. Alabama* ("*ALBC*"), 575 U.S. 254, 260, 267, 272 (2015). Using race as the predominant means to sort voters is unconstitutional even if done for partisan goals. *Cooper v. Harris*, 581 U.S. 285, 308 n.7 (2017).

After an eight-day trial featuring testimony from 42 witnesses and 652 exhibits, a three-judge panel unanimously concluded that Defendants engaged in a racial gerrymander of Congressional District 1 ("CD1"). Under the applicable "clear error" standard, that finding must be affirmed as long as it is "plausible." *Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 2348-49 (2021); *Cooper*, 581 U.S. at 299.

It is far more than plausible. Defendants could have equalized population across congressional districts after the 2020 Census by simply shifting approximately 85,000 people from CD1 to CD6. Instead, they moved almost 53,000 people *into* the already overpopulated CD1, and then another 140,000 people out. In doing so, Defendants "bleached" Charleston County of 62% of its Black residents, more than 30,000 people, removing every precinct but one with more than 1,000 Black voters.

Defendants' mapmaker admitted that to excise these voters from their prior district, he abandoned the "least change" redistricting principle applied everywhere else in the State. He

agreed that he instead made "dramatic changes" that created a "tremendous disparity" in the placement of Charleston County residents by race. The new map also made CD1 non-contiguous, split four of its six counties, and disregarded communities of interest.

Despite these dramatic changes, CD1's Black voting age population ("BVAP") remained virtually unchanged at 17%, a figure Defendants believed they needed to secure partisan advantage. The panel correctly found that CD1's remarkably static BVAP was "more than a coincidence." It found that Defendants impermissibly used a racial target and sorted predominantly by race to achieve partisan gain.

Defendants principally object to the panel's factual findings, but they do not come close to demonstrating clear error. The legal errors they assert are equally meritless. This Court should affirm.

STATEMENT OF THE CASE

I. DECISION BELOW

Plaintiffs challenged three of South Carolina's seven congressional districts—CD1, CD2, and CD5, all bordering CD6—both as racial gerrymanders and as adopted with racially discriminatory intent that injured Black voters.

The panel explained that it faced a "'formidable task,'" requiring a "'sensitive inquiry' into all 'circumstantial and direct evidence of intent to assess whether the plaintiffs …

disentangle[d] race from politics.'" JSA.13a [1] (quoting *Cooper*, 581 U.S. at 308). It characterized Plaintiffs' "burden of proof" as "demanding." JSA.13a (quoting *Easley v. Cromartie* ("*Cromartie II*"), 532 U.S. 234, 241 (2001)). It noted "no single piece of evidence proves or disproves" predominance, so its review had to "focus on each individual district and not on the plan as a whole." JSA.14a (citing *ALBC,* 575 U.S. at 264).

The panel rejected Plaintiffs' challenges to CD2 and CD5 but found that race predominated "in the [Defendants'] design of [CD1] and that traditional districting principles were subordinated to race." JSA.33a-34a,39a. It concluded that while one of Defendants' motivations was to achieve Republican advantage in CD1, race was their predominant factor for sorting voters. JSA.22a-23a,25a-26a. Because Defendants made "no showing that they had a compelling state interest in the use of race," CD1 could not "survive [] strict scrutiny review." JSA.42a-43a.

Regarding Plaintiffs' independent intentional discrimination claim, the panel found that CD1 was designed with a racially discriminatory purpose. Specifically, Defendants acted to injure Black voters by unjustifiably sorting them across districts based on their race. JSA.45a.

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[1] Jurisdictional Statement Appendix abbreviated as "JSA"; Supplement to the JSA abbreviated as "JSA.Supp."; Joint Appendix abbreviated as "JA"; and Supplement to the JA abbreviated as "JA.Supp."

II. THE PANEL'S FACTUAL FINDINGS

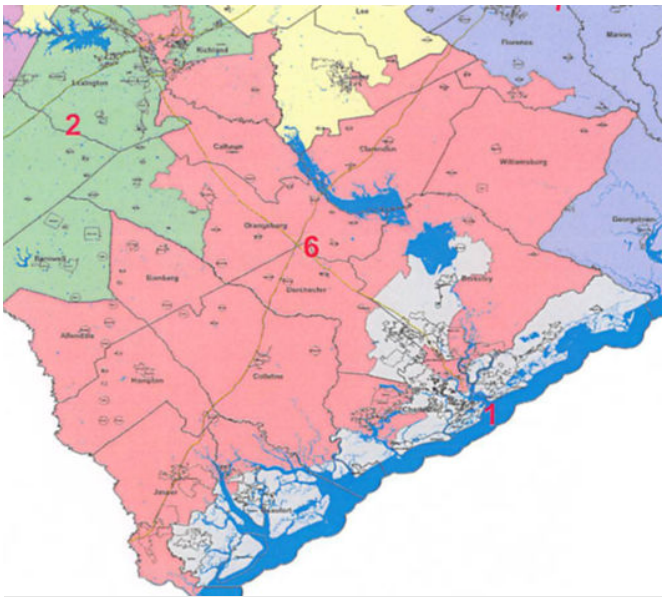
The panel's detailed findings of fact fall into four categories, each supporting its conclusion that CD1 was a racial gerrymander:

> (i) Defendants set a racial target of 17% BVAP with a goal of making CD1 Republican-leaning;
>
> (ii) Defendants implemented the target by sorting a significant number of voters based on race, particularly in Charleston County, and disregarded their own traditional redistricting principles in doing so;
>
> (iii) Defendants' claims that they ignored race were not credible; and
>
> (iv) Unrebutted expert evidence confirmed that race better explained the movement of voters than partisan affiliation.

Each of those findings rests on extensive evidence.

A. Defendants Set a 17% BVAP Target.

Following the 2020 Census, CD1 and CD6 were the only two South Carolina districts with "significant population variances." JSA.17a. CD1's overpopulation (+87,689) closely mirrored neighboring CD6's underpopulation (-84,741). JSA.17a. Below is their 2011 map configuration, before redistricting (CD1 gray; CD6 red):



JA.Supp.122a.

CD1—South Carolina's coastal district—has "long been anchored in Charleston County." JSA.21a. It "consistently elected a Republican" between 1980 and 2022, with the lone exception of 2018. JSA.21a. CD6 sits in the middle of the state and includes much of Columbia, the State capital. JSA.Supp.363a-65a. Represented by Congressman James Clyburn, CD6 was the State's only majority-Black congressional district, before Defendants reduced it to 46.9% BVAP during the 2021 redistricting cycle. JSA.17a.

Although Defendants could have shifted about 85,000 people from CD1 to CD6 to achieve equal population, they instead moved 193,000 people between CD1 and CD6. They moved 52,799 people from CD6 *into* the already-overpopulated CD1. They then moved 140,489 different people from CD1 to CD6, relocating more than twice as

many people as needed to correct the initial population imbalance. JSA.16a-17a,28a-29a; JSA.Supp.368a.

Despite these movements, equal to a quarter of CD1's population, the district's total Black population remained at the same level as the prior map (17.8%). JSA.29a. Its BVAP barely budged (from 17.3% to 17.4%) and is the lowest in the State. JSA.Supp.15a-16a,206a,359a.

After carefully reviewing the legislative record and the evidence, the panel found that CD1's static BVAP was no coincidence. Rather, Defendants created "a target of 17% African American population in [CD1]." JSA.33a. To meet it, "Charleston County was racially gerrymandered and over 30,000 African Americans were removed from their home district." JSA.33a.

The panel further found that Defendants believed this racial target was critical to achieving their partisan ends. Relying in part on Defendants' own analyses of the legislative record, the panel found "a district in the range of 17% African American produced a Republican tilt, a district in the range of 20% produced a 'toss up district,' and a plan in the 21-24% range produced a Democratic tilt." JSA.23a. Defendants' *amicus,* the National Republican Redistricting Trust ("NRRT"), provided redistricting staff maps designed to result in a safe Republican CD1. JSA.108a-09a. Shortly before the Senate released its first draft, Defendants' lead mapmaker, Will Roberts, calculated that the NRRT maps

produced CD1 BVAPs of around 17%. JSA.Supp.327a,330a; JSA.108a.

Roberts also calculated BVAPs and 2020 Biden vote share for seven different proposed maps. JSA.428a-30a,450a-52a; JSA.Supp.303a-05a,307a-10a,312a-14a,316a-44a. As demonstrated below, these analyses showed that a BVAP of more than 17% tended not to produce the desired partisan tilt.

Plan/Sponsor Name	**CD1 BVAP**	**CD1 Biden 2020 Vote**
Initial Senate Staff Plan	16%	45.27%
Enacted Plan (SA 1)(Campsen)(R)	16.72%	45.61%
RC Whole (Sabb)(D)	17.96%	49.15%
Charleston Beaufort Whole (Sabb)(D)	19.87%	51.52%
Bright Matthews (D)	20.57%	51.83%
Harpootlian (SA 2)(D)	20.57%	51.83%
Opperman (League of Women Voters)	22.57%	51.75%

JA.292; JA.Supp.127a,138a,141a,143a,149a; JSA.446a,452a; JSA.Supp.310a,318a,335a,336a,

338a,341a. As the panel noted, Defendants' closing argument highlighted several of these analyses connecting race to electoral performance. JSA.22a-23a.

CD1 also had a BVAP of approximately 17% during the previous census cycle and "consistently elected a Republican," barring a single "major political upset" in 2018, when a Democrat narrowly won. JSA.21a.

Plaintiffs' experts supported the panel's finding that Defendants set a 17% BVAP target to achieve their desired CD1 partisan tilt. Dr. Moon Duchin, a mathematician, examined the BVAPs and electoral performance of twelve separate maps Defendants considered. JSA.Supp.142a; JSA.525a-27a,529a.[2] Dr. Baodong Liu, a political scientist, also compared the BVAPs and electoral performance of five such maps. JSA.Supp.88a-89a.

Defendants claim that in drawing maps, Roberts did not use racial data—only political data, Br.10, specifically, results from the 2020 presidential election, privately sourced from a consultant. JSA.92a-94a. But that data was known to have major flaws. Dale Oldham, counsel retained to advise Senate Republicans on State Senate redistricting, testified that he told Defendants' staff their private data was "inferior," "less accurate," "almost worthless," and "badly

[2] Defendants assert "no such 'analyses' exist anywhere" in Duchin's report. Br.33-34. The panel miscited Charts 2.1 and 2.2 as being in her initial report. *See* JSA.23a. They appear in her supplemental report. JSA.525a-26a.

skewed." JSA.Supp.414a-22a; Dkt.499 ¶¶54-55; JA.Supp.72a,74a-76a. He said so, in part, because the consultant data did not accurately allocate 2020 absentee ballots, which outnumbered in-person votes or consider voter history. JSA.Supp.414a-22a.[3]

Roberts acknowledged this political data was inaccurate and conflicted with Defendant South Carolina Election Commission's own data. JSA.241a. He could not explain a 14,000-vote discrepancy between the consultant's data and official election returns. JSA.241a-42a.

Expert testimony likewise showed that results from a single presidential election, even if accurate, are less reliable than using multiple cycles to assess voting behavior in future congressional elections. JA.111-12,134-36. [4] Turnout in 2020 was unusually high—much higher than typical off-year congressional elections. JA.134-36. In presidential elections, voters frequently vote for a presidential candidate from a different party than other candidates on their ballot. *Id.* As a result, White voters' presidential vote often does not reliably predict their general partisan leaning. JA.134-36.

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[3] S.C. Election Commission, Absentee Voting History 1998-2022, https://scvotes.gov/wp-content/uploads/2022/12/Absentee-Voting-History-1998-2022.pdf.

[4] Defendants seemingly recognized looking at multiple elections was beneficial to assessing voting patterns. They tried to use the consultant's 2016 data also, but it was unusable. JSA.94a.

In contrast, legislators and staff confirmed that they believed racial data can reliably predict electoral outcomes. Roberts said he had "no doubt" election results in South Carolina were racially polarized. JSA.232a-33a. And the Enacted Plan's sponsor, Senator George Campsen, testified: "you see that [race and party are correlated] in the numbers." JSA.380a-81a; *see also* JA.Supp.78a.

That correlation is especially true for Black South Carolina voters, who tend to support Democratic candidates by large margins.[5] And Black voters' preferences were a more stable indicator of voter preferences than looking at a single-election snapshot. JSA.Supp.73a-83a, JA.105-06,111-12,134-36; JA.Supp.5a. White voters in CD1, for example, were divided between Trump and Biden in 2020, but Black voters supported Biden at very high levels. JSA.Supp.77a,82a; JA.111-12; JA.Supp.5a.

B. Defendants Achieved Their 17% BVAP Target by Splitting Charleston County Along Racial Lines.

The panel found that after Defendants moved several heavily Republican areas into CD1, total BVAP for the district would have risen to about 20%, which Defendants believed would threaten the Republican tilt they sought. JSA.24a-25a. Defendants therefore offset that increase by

[5] Duchin and Liu testified that racial data tends to be a durable proxy for multi-cycle voting behavior because voting in the State is consistently and highly racially polarized. JSA.Supp.73a-83a; JA.105-06,111-12,134-36.

expelling a significant number of Black voters in Charleston County to maintain their racial target. JSA.29a.

1. Racial sorting

In drawing CD1, Defendants included all of Berkeley and Beaufort Counties in the district, as well as much of Dorchester County. These were majority White, "strong Republican performing counties" meant to produce "a stronger Republican lean" in CD1 after close elections in 2018 and 2020. JSA.21a-22a. But the additions had a BVAP of 20.3%, which would have raised CD1's Black population to about 20%. JSA.24a-25a. To get back to 17%, the panel found, Defendants offset virtually every Black voter added to CD1 from Beaufort, Berkeley, and Dorchester by expelling a Black Charlestonian from CD1 to CD6. JSA.24a-26a.

Defendants removed 62% of Black Charlestonians from CD1 into CD6. JSA.25a,27a. Changes in the City of Charleston "were even more stark," with "only 15% of the City's African American population" remaining in CD1, "a drop of 77%." JSA.27a n.10. As the panel found, Defendants moved from CD1 to CD6 all but one of the voting tabulation districts ("VTD") with more than 1,000 Black Charlestonians. JSA.25a-26a,31a-32a; *see also* JSA.508a-09a.

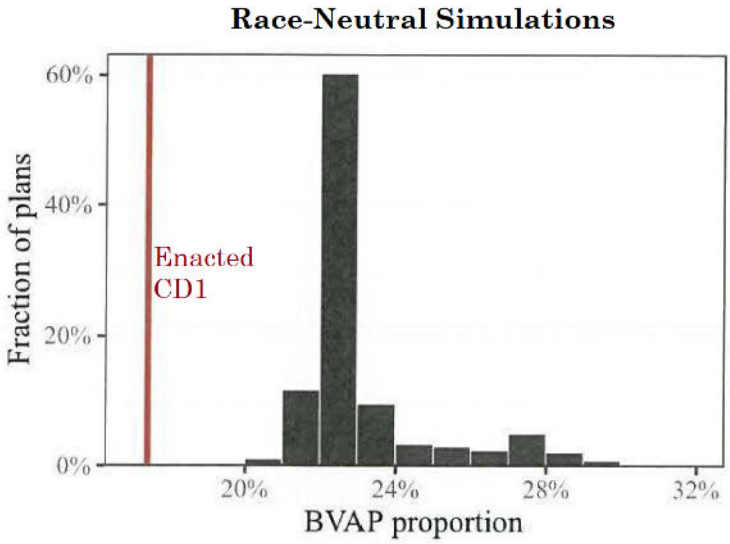
Even as Defendants' proposed maps evolved substantially through the legislative process, and despite multiple reconfigurations of Charleston County's district lines, CD1's BVAP remained around 17% from the Senate's initial November 2021 draft through final passage on January 26,

2022. From that first draft, Defendants ultimately moved 48 VTDs containing over 87,000 people, with BVAP barely changing. *See* JSA.Supp.306a,315a,318a; JSA.450a-52a; JA.Supp.132a-35a; Dkt.473-1. CD1's BVAP remained at 17% even though neighboring CD6's BVAP was reduced by 5.6%, as Black voters in CD6 were scattered across other districts. JSA.Supp.141a-43a; JA.293.

House Defendants initially proposed their own plan with a CD1 BVAP over 20%, but after Senator Campsen complained that the House plan would make CD1 "a Democratic district," they abandoned that plan for one that adhered to the 17% target. JSA.332a; JSA.Supp.319a. House staff admitted they viewed racial data in real time as they revised the map. JSA.Supp.401a-02a,407a.

Expert analysis confirmed that CD1's BVAP is unusually low and would have been impossible to achieve without racial sorting. Dr. Kosuke Imai, a statistician, simulated maps using algorithms that ignored racial data but required equal or better performance than the Enacted Plan on traditional redistricting principles—including compactness, respect for county boundaries, and avoiding pairing incumbents. JSA.Supp.22a,29a-30a. One analysis focused exclusively on redrawing the CD1 and CD6 border. Another focused on redrawing the segment of that border within Charleston County. JSA.Supp.30a. Both froze all other map boundaries in place, forcing simulations to match the Enacted Plan outside of CD1 and Charleston County, respectively. JSA.Supp.29a-30a; JA.Supp.41a.

The first analysis shows CD1's BVAP is 5.8 percentage points lower than it would be if drawn without considering race data:



JSA.Supp.36a. The second analysis showed that Defendants' Enacted Plan assigned almost 10,000 fewer Black Charleston County voters to CD1 than the average simulation. JSA.Supp.38a. Imai testified that the low BVAP in the Enacted CD1 was "astronomically" unlikely to occur, if, as Defendants claim, the mapdrawer never considered race data. JA.Supp.55a.

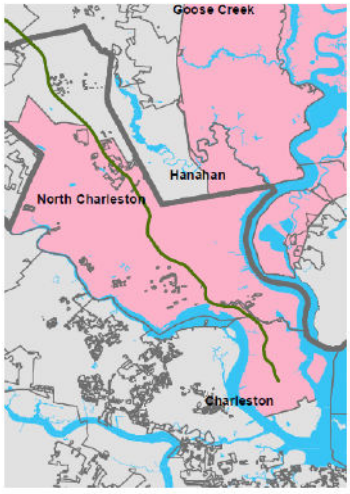
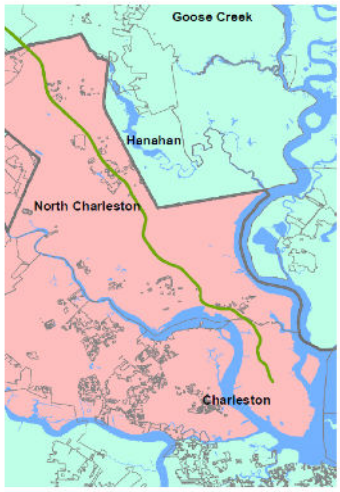
2. Subordination of traditional redistricting principles

The panel found that Defendants' efforts to sort CD1 voters by race predominated over traditional redistricting principles applied elsewhere in the Enacted Plan. JSA.27a,29a,33a.

Traditional principles were identified in 2021 redistricting criteria that the Senate and House

each adopted. Senate guidelines identified "requirements" such as contiguity. They also included "considerations" such as respecting communities of interest; maintaining constituent consistency; minimization of county, municipal, and VTD divisions; and compactness. JSA.423a-27a. The House's guidelines were similar. JSA.539a-44a.

Roberts testified that his priority was "to create a 'least change' plan." JSA.23a. But he admittedly "abandoned" that "approach" in CD1, making "dramatic changes" that "created tremendous disparity" in the treatment of Charleston County's Black and White residents. JSA.25a. The before/after maps are clear:

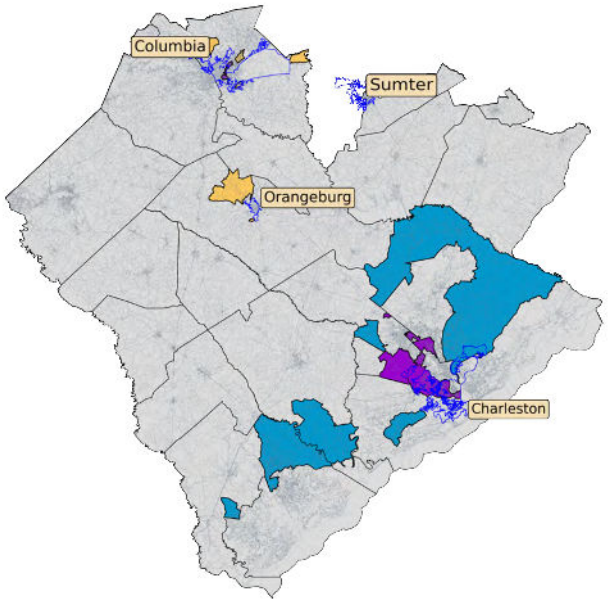
ECF 323-1 at 2 (2011 Congressional Map) (Gray = CD1; Pink = CD6)	Supp.App.306a (Sen. Am. 1, which became the Enacted Plan) (Green = CD1; Pink = CD6)
	

Roberts confirmed that CD1 previously was "an overwhelmingly Charleston County district."

JSA.258a-59a. But the Enacted Plan excised almost the entire City of Charleston from CD1, ending Charleston's 120-year tenure as CD1's "anchor." *See* JA.206-07. The panel found this "made a mockery of the … principle of constituent consistency." JSA.26a-28a.

As enacted, CD1 is also non-contiguous, completely severed by CD6. JA.164-65. One cannot drive from Sullivan's Island in the northeast to James Island in the southwest without going through CD6. JA.214-15. For the first time in South Carolina's history, the Enacted Plan carved the entire Charleston Peninsula from CD1, with the district line cutting across all four bridges to the peninsula. JA.162,164.

As to compactness, the Plan's reconfiguring of Dorchester and Charleston Counties in CD1 occurred in "scattered chunks and shards." JSA.Supp.155a. Changes were not "aimed at healing key splits of cities and communities," but at surgically removing Black Charlestonians from CD1. JSA.Supp.155a. Depicted below, blue areas were moved from CD6 to CD1. Purple areas are those moved into CD6:



JSA.Supp.155a.

Defendants' expert admitted that CD1 and CD6 are less compact under most statistical measures than all other districts in the Enacted Plan. JSA.Supp.370a, tbl.5; JA.210-11; JA.Supp.34a. The Plan as a whole is also less compact than other maps before the Legislature. JA.97; JSA.Supp.146a-47a & tbl.3, 203a-05a.

The Enacted Plan also disregards widely known communities of interest. JSA.29a. Rather than healing the split of Charleston County (as Defendants' guidelines prioritized), Defendants exacerbated the fissure by exiling many more residents—particularly in heavily Black North Charleston—from their economically integrated coastal community, as just one example of shared interests. JA.Supp.27a-28a. As a result, thousands more Black Charlestonians were reassigned to CD6, a district anchored more than

100 miles away in Columbia. At trial, Defendants could only identify proximity to an interstate highway as a shared interest. JSA.26a,29a. Charleston County is now split along stark racial lines. JSA.26a-28a; JSA.Supp.138a-40a,155a-57a,212a-13a; JA.89-91,153-56; JA.Supp.6a.

The Enacted Plan also fails to respect political boundaries. JSA.Supp.148a-51a. By splitting four of CD1's six counties, Defendants failed to minimize splits. JSA.Supp.203a-05a. Defendants could have made Charleston County whole in CD1 along with Beaufort County as a coastal community of interest. JA.Supp.7a,9a,10a-12a,128a-31a,136a,139a,145a-47a. Instead, they made predominantly White political subdivisions whole, such as Beaufort and Sun City, while splitting areas with substantial Black populations, such as Charleston and North Charleston. JSA.Supp.201a,204a; JA.165-66,168,170-71,212; *see* Br.18-19. And they split CD1 precincts in a striking, racialized manner, with "the higher Black population [portions of the precincts] … end[ing] up in CD6." JA.98-99,167-69; JSA.Supp.115a-16a.

C. The Panel Discredited Defendants' Testimony That They Did Not Consider Race.

Considering these facts and after hearing Defendants' witnesses, the panel found Defendants' testimony that they did not consider race "rings hollow." JSA.29a-30a.

The panel rejected the claim that Roberts "did not consider race in drawing [CD1]." *Id.* First, it found Roberts "produced an identical African

American population in the 2022 plan of 17.8%"—the exact number he started with under the 2011 plan. JSA.29a-30a. Achieving that 17% target was "no easy task," because, as noted, combining Beaufort, Berkeley, and parts of Dorchester with CD1's existing Black population pushed CD1's BVAP to 20%. JSA.25a. The panel found that reducing the number of Black Charlestonians "so low as to bring the overall black percentage in [CD1] down to the 17% target was … effectively impossible" without systematically identifying and removing Black people by race from the district. JSA.25a.

Second, Roberts could not explain why only CD1's design departed from his overall "least change" approach or his purported reliance on a partial map, which focused on CD6, that Congressman Clyburn's office provided. JSA.25a,29a. As the panel found, that partial map differs dramatically from the Enacted Plan in how it treats Charleston County. *Id*. And contrary to Defendants' suggestion, Br.17,48,54, the Clyburn sketch did not specify any BVAP level in CD1.[6] JA.Supp.155a.

Third, Roberts prepared racial demographic data and analyzed BVAP for every proposed map. JSA.428a-30a,450a-52a; JSA.Supp.303a-05a,307a-10a,312a-14a,316a-44a,391a,398a-

[6] Defendants' claim that Congressman Clyburn's version of CD1 has a lower BVAP than the Enacted Plan, Br.17,48,54 is misleading. They cite the BVAP from the "Milk Plan," generated by Roberts, *not* Clyburn's office. *See* Br.11. CD1 differs significantly between the two. *Compare* JA.Supp.155a *with* JA.Supp.156a.

99a,429a-432a. And the panel noted that he was able to provide , "off the top of his head," "highly accurate" and specific figures for the "racial breakdown" of heavily Black communities that he moved from CD1 to CD6. JSA.28a & n.12.

Fourth, Roberts admitted that he "definitely" was aware of BVAP data on mapping software "as [he] mov[ed] district lines in real time," and that BVAP data was "displayed … at the bottom of the screen the entire time [he was] drawing." JSA.207a-08a. The panel also found not credible Campsen's denial that he considered racial data while drawing the Enacted Plan. *See* JSA.29a. Campsen, a lifelong Charlestonian, conceded that he (i) requested and reviewed racial data; (ii) "assume[d]" that staff would be "looking at and having discussions about BVAP," JSA.384a; (iii) "can't help but know" "where the concentrations of Black voters are," even without racial data; and (iv) included a "racial breakdown" when presenting maps to other lawmakers. JSA.102a,313a,376a-77a; JSA.Supp.377a,380a,384a-85a. And he expressly referred to BVAP numbers during Senate debate. JSA.384a-85a; JSA.Supp.261a-62a.

Eight other witnesses confirmed that Defendants considered racial data. For example:

- Breeden John, Senate counsel and mapmaker, testified that Campsen "asked us to take a closer look at … who was actually being moved in the Charleston area … in terms of race." JSA.Supp.398a-99a.

- Charles Terreni, Senate outside counsel, explained how staff "monitored [plans'] BVAP" as they drew, looked "at the racial impact of different permutations or different plans," and "were certainly aware of [BVAP]" in the drawing process. JSA.Supp.429a-32a.
- Paula Benson, Senate counsel, testified that BVAP "certainly was considered in looking at" draft maps. JSA.Supp.391a.

House Redistricting Chair Weston Newton, Speaker Chief of Staff Patrick Dennis, House Demographer Thomas Hauger, Senate Judiciary Committee Member Scott Talley, and Senate Committee Staff Director Andy Fiffick also acknowledged that they and others considered and relied upon racial data. JSA.Supp.402a,404a,407a,410a-12a,427a.

Campsen testified it was a "coincidence" that CD1's BVAP remained the same, despite shuffling 193,000 people between CD1 and CD6. JSA.399a. Based on the evidence, the panel disagreed: it found that CD1's frozen BVAP "was more than a coincidence and was accomplished only by the stark racial gerrymander of [CD1's] Charleston County portion." JSA.29a.

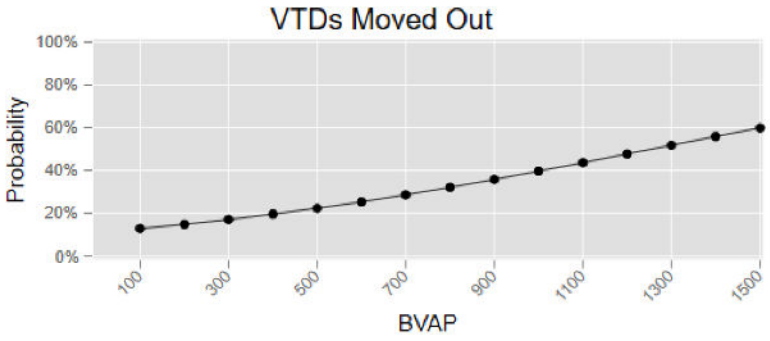
D. Expert Testimony Confirmed That Race Better Explained Voter Movement Than Party Affiliation.

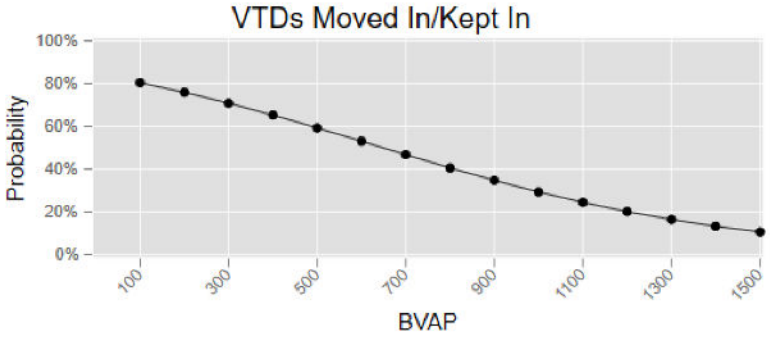
The panel found that Plaintiffs' expert testimony "provided further support for a finding that race predominated over all other factors in [CD1's] design." JSA.30a. Two experts examined

the relative impact of race and party-performance data in sorting voters and both concluded that race better explained CD1.

Dr. Jordan Ragusa, a political scientist, examined which precincts were moved in, moved out, or kept in CD1. JSA.503a-04a. To determine which precincts were moved out, Ragusa examined the VTDs in the 2011 version of CD1. *Id.* To analyze precincts moved or kept in, Ragusa identified an "envelope" of "the region from which [] mapmakers could have drawn the district's population"—a methodology relied upon in *Cooper*, 581 U.S. at 315. JSA.502a-03a. He then used multivariate regression to disentangle race from other factors such as political performance and precinct size.

Controlling for each VTD's partisan composition and precinct size, Ragusa found Black voters were "significantly more likely to be moved out of [CD1]" and "significantly *less* likely to be moved into [CD1]." JSA.508a-09a,514a; JA.180-81. Those trends, he found, "cannot be explained away as a proxy effect of partisanship." JSA.505a-06a.





JSA.514a. Ragusa concluded "VTDs with 100 Black voters had only a 13% chance of being moved out of [CD1] compared to 60% for VTDs with 1500 Black voters." JSA.508a-09a,514a. Conversely, "VTDs with 100 Black voters had an 80% chance of being moved into or kept in [CD1] … compare[d to] 11% for VTDs with 1500 Black voters." *Id.*; JA.175-76.

Ragusa also found VTDs with higher BVAPs were more likely to be moved out of CD1 (62%) than precincts with higher numbers of Democratic voters (41%). JSA.Supp.14a; JA.184-87.

Dr. Liu presented two analyses assessing the relative importance of party affiliation and race.

Using a virtually identical methodology as plaintiffs' expert in *Cooper*, Liu found that White Democrats (69%) were far more likely than Black Democrats (51%) to be assigned to CD1. JA.139-40; JSA.Supp.100a & tbl.9. Liu's analyses confirm the robustness of Ragusa's findings that race is more significant than party affiliation in CD1's design.

Liu also looked at each precinct moved into, retained in, or moved out of CD1. He found that the allocation of Black Democrats differed significantly from that of White Democrats, confirming that race better explained movements than party. JSA.Supp.93a-96a,100a; JA.136-39.

Table 9: Enacted CD 1 and Assignments of Voters—race v. party

Party Primary	Number of Voters in Envelope	Number of Voters in District	(% of Group That is in District)
White_ DEM	24,083	16,614	68.99
Black_ DEM	25,397	12,864	50.65
White_ REP	85,108	68,716	80.74
Black_ REP	2,053	1,697	82.67

JSA.Supp.100a.

Defendants proffered no compelling justification for racial sorting. Instead, they merely denied using race to redistrict.

SUMMARY OF ARGUMENT

I. The panel correctly found that Defendants moved "a significant number of voters" in and out of CD1 on the basis of race and did so with no compelling interest. *ALBC*, 575 U.S. at 260, 267, 272.

A. Sorting voters by race is presumptively unconstitutional even if "legislators use race … with the end goal of advancing their partisan interests." *Cooper*, 581 U.S. at 308 n.7. This Court reviews a racial-predominance finding for clear error. *Id.* at 293. It affirms if it "is 'plausible' in light of the full record." *Id.* (citation omitted).

B. Defendants set a cap of 17% BVAP in CD1 for partisan advantage and met it by "bleaching" Charleston County, exiling some 30,000 Black Charlestonians from the district. JSA.27a. While the finding of a racial target is not necessary—as all Plaintiffs need show is that a "significant number of voters" were sorted predominantly by race, *Cooper*, 581 U.S. at 291—a target is significant evidence that race predominated, *Miller v. Johnson*, 515 U.S. 900, 917 (1995).

1. Defendants do not contest that they could have equalized population by simply moving 85,000 people from CD1 to CD6 but instead moved almost 53,000 people *into* already-overpopulated CD1, and then another 140,000 people out, into CD6. Nor do Defendants contest that despite moving a quarter of CD1's population and making "dramatic changes" to Charleston County, CD1's BVAP remained frozen at 17%. JSA.25a. The panel rejected as not credible Defendants' claims that this was mere "coincidence."

The panel found that Defendants sought a 17% BVAP target because they believed there is a close relationship between CD1's BVAP and its partisan lean. The mapdrawer and other decisionmakers feared that raising BVAP above that range would tend to make CD1 competitive and therefore analyzed the BVAP of every proposed map, maintaining CD1's BVAP near 17% throughout multiple map configurations.

Defendants decided to include all of the "strong Republican performing," majority-White Berkeley and Beaufort Counties and much of Dorchester County in CD1. JSA.22a. But those counties' Black population, combined with Black residents already in CD1, would have raised CD1's BVAP to 20%, imperiling Defendants' partisan advantage. To offset this increase, Defendants expelled a Black Charlestonian from CD1 for virtually every Black person added from Beaufort, Berkeley, and Dorchester.

2. The panel correctly found that Defendants split Charleston County along stark racial lines, targeting precincts with the largest numbers of Black voters and removing from CD1 all but one Charleston precinct with more than 1,000 Black voters. In all, Defendants removed 62% of Black Charlestonians or almost 30,000 people from CD1, shifting the distribution of Black Charlestonians from a 50-50% CD1/CD6 split to a 20-80% split. Once done, only 15% of the City of Charleston's Black population remained in CD1, "a drop of 77%." JSA.27a & n.10.

To achieve this, Defendants' mapmaker admitted to selectively abandoning for CD1 the

"least change" principle followed everywhere else. Instead, he acknowledged making "dramatic changes" that "created tremendous disparity" in the racial placement of Charlestonians. JSA.25a. Defendants subordinated other traditional districting principles to meet their racial target, including making CD1 non-contiguous, splitting four of its six counties, and disregarding communities of interest.

3. The panel rested its racial-predominance finding on witness credibility determinations owed "singular deference" on appeal. *Cooper*, 581 U.S. at 309. That includes rejecting witnesses' assertions that they used only political-performance—not racial—data to gerrymander Charleston County.

The panel found that Defendants moved large numbers of Black voters so precisely that it could not have been done without considering race. It relied on evidence that Defendants: had and used racial data in the map-drawing process; understood the connection between racial data and political leanings; and showed extensive knowledge of Charleston's racial geography. And the record showed that Defendants' political-performance data was an unreliable predictor of future congressional elections because it was incomplete, error-ridden, and limited to a single presidential election.

4. The panel correctly credited and relied on unrebutted expert testimony showing that race was a far better predictor than partisan affiliation of how Defendants shuffled people into and out of

CD1. Defendants' sole expert did not even try to rebut these conclusions.

II. Most of Defendants' objections are factual. But "[i]f the district court's view of the evidence is plausible in light of the entire record," the Court does "not reverse even if" it "would have weighed the evidence differently." *Brnovich*, 141 S. Ct. at 2349. Because the panel's findings here are far more than plausible, Defendants have not shown clear error.

A. The mapmaker's admission that he made "dramatic changes" to Charleston County undermines Defendants' "least change" argument. Their claim that Plaintiffs lacked direct evidence that Defendants considered race ignores the ten defense witnesses who admitted they considered racial data.

B. Defendants' critiques of Plaintiffs' experts similarly demonstrate no clear error. Defendants do not contest the panel's determination that their only expert's testimony was unpersuasive.

III. The panel applied settled caselaw and did not commit legal error.

A. *Cooper* forecloses Defendants' alternative-map argument. Racial gerrymandering can be proved by direct or circumstantial evidence, and there is no unique evidentiary rule for such claims.

B. Defendants' contention that the panel failed to afford them a "presumption of good faith" is factually unfounded. The panel imposed the proper "demanding" burden on Plaintiffs and

found that only one of the three challenged districts was racially gerrymandered.

C. Defendants' argument that the panel did not analyze CD1 as a "whole" is also factually unfounded. The panel found a districtwide BVAP target and subordination of traditional redistricting principles. It is also wrong as a legal proposition: racial sorting of a "significant number of voters" violates equal protection, whether or not other voters in the district are so treated. *Cooper*, 581 U.S. at 291.

D. Defendants' objection that the panel's fleeting reference to *Shelby County v. Holder*, 570 U.S. 529 (2013), is legal error misrepresents its opinion, which did not rest on that case.

IV. Finally, based on the record, the panel did not clearly err in finding that Defendants acted with discriminatory intent in a manner that injured Black voters.

ARGUMENT

I. THE DISTRICT COURT CORRECTLY FOUND THAT CD1 IS A RACIAL GERRYMANDER.

A. Sorting Voters Predominantly by Race Violates Equal Protection Unless It Is Narrowly Tailored to Further a Compelling Interest.

The sorting of voters predominantly by race presumptively violates the Equal Protection Clause. *Shaw v. Reno*, 509 U.S. 630, 653 (1993) ("*Shaw I*"). Absent a compelling interest, states may not "place[] a significant number of voters

within or without a district predominately because of their race." *Cooper*, 581 U.S. at 308 n.7 (quotation marks omitted). That is true "regardless of their ultimate objective in taking that step," even if "legislators use[d] race … with the end goal of advancing their partisan interests." *Id.*; *see also Cromartie II*, 532 U.S. at 266 (Thomas, J., dissenting) ("[T]he District Court was assigned the task of determining *whether*, not *why*, race predominated."); *Miller*, 515 U.S. at 914.

As the panel explained, to show racial predominance, plaintiffs must meet a "demanding" burden. *Cromartie II*, 532 U.S. at 241; JSA.13a. They may rely on "'direct evidence' of legislative intent, 'circumstantial evidence of a district's shape and demographics,' or a mix of both." *Cooper*, 581 U.S. at 291 (citation omitted).

This Court reviews the panel's factual findings for clear error. *Id.* at 293; *see also Allen v. Milligan*, 143 S. Ct. 1487, 1506 (2023). It affirms if the racial-predominance finding "is plausible in light of the full record," and even if it would have decided differently *ab initio*. *Cooper*, 581 U.S. at 293 (quoting *Anderson v. Bessemer City*, 470 U.S. 564, 573-74 (1985)). Defendants suggest that "racial gerrymandering cases" are unique, Br.45-46, but Fed. R. Civ. P. 52(a) "does not make exceptions or … exclude certain categories of factual findings" from clear-error review. *Anderson*, 470 U.S. at 574.

Credibility findings are owed "singular deference." *Cooper*, 581 U.S. at 309. But "even when [the panel's] findings … are based [] on

physical or documentary evidence or inferences from other facts," this Court does not "duplicate" the lower court's role. *Anderson,* 470 U.S. at 573-74.

B. Defendants Imposed a 17% Racial Target with a Goal of Ensuring a Partisan Advantage in CD1 and Sorted Voters Along Racial Lines to Achieve It.

The record supports the panel's findings that Defendants devised a 17% racial target and "bleach[ed]" the Charleston County portion of CD1 to meet it. JSA.27a-28a,33a. Uncanny consistency in a district's racial composition—when accompanied by knowledge of racial voting patterns and major racialized, population dislocations—is strong evidence of a racial gerrymander. For example, *ALBC* noted the legislature's "remarkable" efforts to "maintain existing racial percentages" as evidence of racial gerrymandering. 575 U.S. at 273-74. The same happened here.

1. *The panel did not clearly err in finding that Defendants employed a 17% racial target in CD1.*

First, Defendants admitted to making "dramatic" changes to CD1, yet its BVAP remained frozen at 17%. JSA.33a-34a. Defendants began with 17% Black population in the 2011 plan. JSA.29a. They then added large parts of Beaufort, Berkeley, and Dorchester Counties, moving White, Republican voters and their Black neighbors into CD1. Those areas'

Black communities, combined with CD1's existing Black population in Charleston County, would have pushed CD1's Black population to 20%, which Defendants believed would imperil the "Republican tilt" they sought. JSA.21a,24a-25a. To offset that increase, Defendants targeted high-BVAP VTDs in Charleston and systematically removed them until the CD1 Black population dropped back to 17%. JSA.25a-26a. That is a classic racial gerrymander.

Overall, Defendants shuffled 193,000 people in and out of CD1—25% of the district's population and more than twice as many people as needed to equalize CD1's population. JSA.Supp.359a,368a. Yet, after all this change, the percentage of CD1's Black population remained identical. JSA.29a; JSA.Supp.15a-16a.

Second, the panel correctly found that Defendants believed CD1's BVAP is related to its partisan tilt. JSA.23a. According to analyses considered during the legislative process that Defendants cited in their own summation, CD1 tended to favor Republicans at 17% BVAP, while a BVAP of about 20% yielded a competitive district. *Id.* (citing undisputed statistics); *see also supra* Statement II.A.

By contrast, Defendants knew that their 2020 partisan performance data was inaccurate and based on a single and atypical presidential election. *See supra* Statement II.A. It was therefore unlikely to reliably predict future congressional elections. Meanwhile, Defendants recognized that Black voters in South Carolina consistently voted for Democratic candidates at

high numbers. Defendants had racial data at their fingertips and regularly reported on it during the redistricting process. *See supra* Statement II.C.

Third, under the 2011 plan, which had a BVAP of approximately 17%, Republicans prevailed in CD1 in every congressional election except the outlier 2018 midterm—"a major political upset"—before CD1 "returned to form in 2020." Br.8.

Fourth, the 17% target endured through the legislative process. Over the evolution of Defendants' proposed maps in the Senate beginning in November 2021 until passage in January 2022, CD1's BVAP stayed at about 17% despite a massive reconfiguration. *See supra* Statement II.B(1). House mapmakers initially proposed a plan with a CD1 BVAP over 20%, but quickly abandoned it for one adhering to the 17% BVAP target. JSA.Supp.319a; JA.293. House staff admitted they viewed racial data in real time as they revised that plan. JSA.Supp.401a,407a.

CD1's 17% BVAP remained static notwithstanding dramatic changes in Charleston County, and even as Defendants redistributed a significant percentage of neighboring CD6's BVAP, which fell by 5.6% under the Enacted Plan.

Fifth, Plaintiffs' expert Dr. Imai confirmed that CD1's BVAP is much lower than expected when compared against simulated maps drawn without using race data. *See supra* Statement II.B(1). He concluded that CD1's depressed BVAP is "astronomically" unlikely to occur unless mapdrawers used racial data. JA.Supp.55a.

On that record, the panel had ample reason to reject Senator Campsen's self-serving testimony that it was "just a coincidence" that CD1's BVAP remained the same after 193,000 people were displaced. JSA.29a,399a. As one judge aptly observed, "when you see a turtle on top of a fence post, you know someone put it there." JSA.421a.

2. The panel did not clearly err in finding Defendants met the 17% target by sorting voters along racial lines and subordinating traditional redistricting principles to race.

The panel did not clearly err in finding that Defendants moved "a significant number" of Black voters out of CD1 predominantly based on their race. *Cooper*, 581 U.S. at 291; *see also id.* ("plac[ing] a significant number of voters within or without a particular district" is racial gerrymandering); *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 190 (2017) (same). Defendants "stark[ly] racial[ly] gerrymander[ed] [] Charleston County," CD1's historic anchor. JSA.26a; *see supra* Statement II.B. The panel explained that moving significant (and disproportionate) numbers of Black Charlestonians out of CD1 as Defendants did was "effectively impossible" without breaking traditional principles. JSA.25a.

Cooper deemed it "significant" that new district lines needlessly took "in tens of thousands of additional African-American voters." 581 U.S. at 291, 300, 310. Here, the panel likewise found that Defendants moved far more voters than needed to achieve equipopulation. That included moving more than 30,000 Black Charlestonians

from CD1 to CD6, "leaving only 18,463 African Americans in the Charleston portion of" CD1. JSA.25a. With only one exception, every Charleston County VTD containing 1000 or more Black voters in CD1 was moved into CD6. JSA.32a. The panel noted Defendants' lone expert had no response to these facts, and "ignored the movement of more than 30,000 African American residents out of the Charleston County portion" of CD1 and the County's "resulting stark racial gerrymander." JSA.33a.

"As a result of these changes, 79% of Charleston County's African American population was placed into [CD6] and 21% was placed into [CD1]." JSA.27a. That is a drastic change from the 2011 plan, in which Charleston County's Black population was equally split among CD1 and CD6. JSA.26a. Such a stark racial divide was precisely what this Court found suspect in *Cooper*: "[w]ithin the same counties, the portions that fall inside District 1 have black populations two to three times larger than the portions placed in neighboring districts." 581 U.S. at 300.

The panel also correctly found that Defendants' disregard of their own redistricting principles when it came to CD1 underscored that race predominated.

- *Constituent consistency*: Defendants admitted to selectively "abandon[ing]the principles of 'least change,'" constituent consistency, and core preservation in CD1 alone by making "dramatic" changes and "treat[ing] Charleston County in a fundamentally different way than the rest

of the state." JSA.33a-34a; *see supra* Statement II.B(2); *infra* Argument III(D).

- *Communities of interest*: Defendants assigned tens of thousands of Black Charlestonians to a district whose heart was far away. JSA.26a. The only "shared interests" other than race that Defendants could name between Charlestonians and Columbia residents was "proximity to Interstate I-26, albeit over 100 miles apart." JSA.26a & n.8 (noting "odd[] reminiscen[ce]" of "I-85 district" defense in *Shaw I*); *cf. League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 435 (2006) (rejecting plan that ignored communities of interest where communities were separated by "enormous geographical distance," and "only common index [was] race").

- *Respect for political boundaries*: Four of CD1's six counties are split, and CD1 splits more municipalities and counties than other alternatives and does so in a manner that disproportionately fractures areas with significant Black population. *See supra* Statement II.B(2).

- *Contiguity*: CD1 is non-contiguous and requires traversing CD6 in order to cross from one end of the district to the other. *See supra* Statement II.B(2).

- *Compactness*: CD1 has a bizarre shape and is far less compact than alternatives available to Defendants. *See supra*

Statement II.B(2); *Shaw v. Hunt* ("*Shaw II*"), 517 U.S. 899, 906 (1996) (finding racial gerrymander based on "serpentine" shape).

Defendants' selective violation of their own redistricting guidelines in CD1 further supports the panel's determination that race was the predominant factor used to sort Charleston County voters.

3. The panel did not clearly err in declining to credit Defendants' inconsistent story at trial.

The panel rightly found not credible self-serving and inconsistent testimony from mapmaker Roberts and Enacted Plan sponsor, Campsen.

First, the panel found that Roberts' claim that he never considered race "rings hollow," given the "striking evidence" of racial sorting. JSA.29a-30a; *see North Carolina v. Covington*, 138 S. Ct. 2548, 2553 (2018) ("[I]nsistence that the [] legislature did not look at racial data … does little to undermine the District Court's conclusion [of] unconstitutional[] sort[ing] [of] voters on the basis of race."). It was "effectively impossible" for Roberts to shift as many Black people as he did without making race his predominant factor, especially given "dramatic" changes that departed from the "least change" principle he prioritized everywhere else. JSA.25a.

The panel had many reasons to doubt Roberts' testimony. On the witness stand, Roberts could recall "highly accurate" racial statistics from memory, "down to the individual precinct

level." JSA.28a & n.12, 29a-30a. Defendants challenge this finding, Br.49-50, but the transcript speaks for itself:

> JUDGE GERGEL: But you know there was a significant African-American presence in those Deer Park precincts?
>
> THE WITNESS: Yes. I believe the racial breakdown for Deer Park is approximately 10,000 Whites to 8,500 African Americans.
>
> JUDGE GERGEL: So, it's higher than the 17 percent?
>
> THE WITNESS: Yes.

JSA.257a.

Roberts' disavowal of racial data was particularly difficult to credit given his concession that racial data was "displayed" on his screen "the entire time" he drew maps. JSA.207a-08a. "Whether the racial make-up of the county was displayed on his computer screen or just fixed in his head," the panel thus had reason to be "unpersuaded" by Defendants' assertion that the "decisive" movements "of black voters [were] an accident." *Cooper*, 581 U.S. at 315-16.

For similar reasons, the panel did not err in rejecting Campsen's testimony that it was "just a coincidence that the BVAP in CD1" stayed at 17%. JSA.29a,399a. And it was plausible for the panel to conclude that only a deliberate effort could have "produced an identical African American population in the 2022 plan of 17.8%" given extensive changes to the district. JSA.29a.

Campsen's testimony that he only "look[ed] at political numbers" also conflicted with his own statements. JSA.345a-46a. While denying that he personally considered racial data, he admitted expecting staff to look at BVAP. JSA.384a. And despite his denials, he referred to BVAP numbers during Senate debate. JSA.384a-85a; JSA.Supp.261a-62a.

Those were not defense witnesses' only inconsistent statements. Campsen and other participants publicly claimed that districting principles were equally applied statewide, only to testify that they selectively suspended particular principles in drawing CD1. *Compare* JSA.Supp.238a (Campsen: redistricting principles carry "equal weight"); JSA.326a-27a (Campsen: public feedback carries equal weight); JA.Supp.65a (Breeden John: similar) *with* JA.Supp.120a-21a ("County lines are more important in some places than others."); JSA.Supp.367a (CD1 has lowest core retention),370a (CD1 less compact).

The record overwhelmingly supports these credibility determinations. As noted, eight other witnesses testified that race played a role in redistricting. *See supra* Statement II.C. Defendants disclaimed using race for a lawful purpose such as complying with the Voting Rights Act ("VRA") or the U.S. Constitution. *See Milligan*, 143 S. Ct. at 1512; *Shaw I*, 509 U.S. at 656. Expert evidence provided further support to find Defendants' self-serving denials not credible. Dr. Imai testified that CD1's unchanged BVAP was "astronomically" unlikely absent racial

sorting. *See supra* Argument I.B(1); *see also supra* Statement II.B(1).

4. The panel did not clearly err in crediting evidence disentangling racial sorting from partisan sorting.

All the evidence above—the 17% target, the severe departure from redistricting principles in Charleston County, the greater reliability of racial data for partisan purposes, Defendants' shifting rationales, the moving of far more people than necessary to balance population, and the focus on removing VTDs with high Black population—support the panel's conclusion that Defendants sorted by race, not party affiliation, in redistricting CD1.

But additionally, unrebutted expert testimony, using methodologies this Court relied on in *Cooper*, supported the panel's finding that voters were sorted predominantly based on race, not party affiliation.

Dr. Ragusa analyzed whether particular VTDs were (i) moved in, (ii) moved out, or (iii) retained in CD1 based on their racial composition. JSA.498a-520a. He performed multivariate regression analysis to control for factors such as precinct size and number of votes for President Biden in 2020 and predicted VTD assignments based on racial composition. JA.Supp.13a. This methodology mirrors the study *Cooper* credited as "circumstantial support [for] the plaintiffs' race-not-politics case." 581 U.S. at 315.

The panel found that Ragusa's analysis showed that "the racial composition of a VTD was

a stronger predictor of whether it was removed from [CD1] than its partisan composition." JSA.31a-32a. Even controlling for 2020 Biden vote share, VTDs with 1500 Black voters were 4.5 times more likely to be moved out of CD1 than VTDs with just 100 Black voters. JSA.508a-10a. Similarly, VTDs with 100 Black voters were seven times more likely to be kept in CD1 than VTDs with 1500 Black voters. JSA.508a-09a; JA.175-176. The significantly higher likelihood of Black voters being moved out of CD1 and correspondingly lower likelihood of Black voters being moved into CD1, Ragusa explained, "cannot be explained away as a proxy effect of partisanship." JSA.505a-06a,508a-09a.

Plaintiffs' expert Dr. Liu also performed a verification study, which showed that White Democrats (69%) were significantly more likely to be assigned to CD1 than Black Democrats (51%). JSA.Supp.100a & tbl.9.

As in *Cooper*, the panel correctly credited analysis showing that, after controlling for partisan affiliation, race predominated in the movement of CD1 voters. 581 U.S. at 315-16; *see also Bethune-Hill v. Va. State Bd. of Elections*, 326 F. Supp. 3d 128, 175 (E.D. Va. 2018) (crediting analysis showing "race rather than party predominated … because 'the effect of race is much larger than that of party in the assignment of VTDs to challenged districts'").

Defendants, by contrast, offered *no evidence* that racial disparities in voter movements were an unintentional byproduct of manipulations based on partisan-performance data. Their lone

expert, Sean Trende, never did a race-versus-party analysis—nor did he rebut Liu's or Ragusa's studies.

In any event, the panel found Trende's "testimony and reports" on CD1, which lack race-versus-party analysis, "unpersuasive" because, among other things, he "ignored the movement of more than 30,000" Black people out of CD1. JSA.33a. Thus, this case resembles the inverse of *Cromartie II*, which featured compelling evidence that the legislature sorted voters based on voting patterns over multiple elections rather than race. *See* 532 U.S. at 244-45; *see also* Appellants' Br., *Hunt v. Cromartie*, 2000 WL 1280369 at *3-4, 10 & n.7 (2000) (summarizing evidence before the legislature). In reversing summary judgment to the plaintiffs, this Court credited expert testimony explaining that, with respect to precincts at the border of the challenged congressional district, "the State included more heavily Democratic precinct[s]" in the district "much more often than the more heavily black precinct[s]." *Hunt v. Cromartie* ("*Cromartie I*"), 526 U.S. 541, 549 (1999). By contrast, here there is compelling evidence of a racial explanation and no evidence supporting Defendants' assertion that they moved voters based on party. "This Court's job" in such a situation is "generally easier. It affirms [the] trial court's factual finding as to racial predominance so long as the finding is 'plausible.'" *Cooper*, 581 U.S. at 309.

The panel's findings are not merely plausible. They are firmly rooted in a wide range of evidence and consistent with Plaintiffs' presentation. All of it reinforces the conclusion that Defendants

predominantly sorted Charleston County voters by race.

II. DEFENDANTS HAVE IDENTIFIED NO CLEAR ERROR IN THE PANEL'S FACTUAL FINDINGS.

While they sometimes try to package their arguments as legal error, nearly all of Defendants' objections are factual. Defendants do not come close to showing clear error. *See* Br.30-42. They tell "one side" of the story, *Cooper*, 581 U.S. at 307 n.6, ignore the panel's credibility findings, and cherry-pick the record without deference to the factfinder. Defendants cannot identify even a single implausible finding.

A. Defendants Identify No Clear Error in the Panel's Finding That the 17% Racial Target Predominated in CD1's Design.

1. Defendants argue that their plan "change[d] the boundaries of the [Benchmark Districts] only as needed to comply with the one person, one-vote mandate and to achieve other desired ends." Br.2 (citation omitted). That ignores the 193,000 people they moved in and out of CD1 to address an 85,000-person imbalance. Even their lead mapmaker, Roberts, admitted to making "dramatic changes" in Charleston County, a disproportionately Black area of CD1. JSA.25a.

2. Defendants contend that "even 'dramatic' changes" do not prove racial predominance. Br.49. But a racial gerrymander can be shown if race explains the placement of "a significant

number of voters within or without a particular district." *Cooper*, 581 U.S. at 291. *Cooper* did not ask whether *most* of a district's population was affected; purposefully moving 25,000 Black voters on racial grounds sufficed. *Id*. at 314. So too here. Defendants moved 30,000 Black Charlestonians out of CD1 to achieve a 17% BVAP target and subordinated redistricting principles they prioritized elsewhere. That is "a significant number" sorted by race. JSA.13a,28a & n.11.

3. Defendants claim Plaintiffs "offered no direct evidence that race motivated the Enacted Plan," and assert that the plan was in fact "race-neutral." Br.2,3,10. But the evidence that voters were sorted predominantly by race, recounted above, was overwhelming, and moreover, there is no legal distinction between direct and circumstantial evidence. *See infra* Argument III.A. Ten different defense witnesses—including the map's creator and its sponsor—acknowledged that they considered race. Roberts admitted that his computer displayed racial data as he drew, and that he produced dozens of racial analyses during the process—and not for any legitimate reason, such as VRA compliance. Those admissions, coupled with the stark racial division, disproportionate and dramatic changes in Charleston County, make the panel's finding more than plausible.

4. Defendants claim they had no need to sort by race because partisan performance data "perfectly" predict electoral outcomes. Br.4,35. But they tellingly cite no evidence to claim that the (flawed) consultant-generated 2020 presidential data they had would predict voting

behavior in congressional results for the next decade. *Id.* To the contrary, Defendants knew (i) that their political data was woefully incomplete, error-ridden, and unreliable; (ii) election data from a single presidential election poorly predicts voting patterns in future congressional elections; and (iii) that South Carolina racial data is a far more consistent and potent predictor. *See supra* Argument I.B(1); Statement II.A.

5. Defendants claim "nothing in the record" indicates that a 17% racial target was needed for a Republican tilt. Br.47. But that ignores Roberts' analysis that shows when CD1's BVAP rose above 17%, the district's Republican edge tended to evaporate. JSA.428a-30a,450a-52a; JSA.Supp.303a-05a,307a-10a,312a-14a,316a-344a; JA.292; JA.Supp.124a,127a,138a,141a,143a,149a. *See generally* Statement II.A (chart). And it ignores Plaintiffs' experts' corroborative analysis to the same effect. JSA.525a-27a; JSA.Supp.87a-89a.

6. Defendants argue that a 17% racial target would have "harmed" Republican interests, because CD1 elected a Democrat in 2018. Br.36. But had Defendants followed traditional redistricting principles and respected Charleston County as a political subdivision worth preserving, CD1 would have had a higher BVAP—of 20% or more—even after adding voters from predominantly White Beaufort County. JSA.Supp.36a,308a,337a,341a. Instead, Defendants prioritized their 17% BVAP target and disregarded principles implemented everywhere else to carve up Charleston County.

7. Defendants insist race could not predominate because more White than Black voters were moved. That is a non-sequitur. Br.17,32. The issue is not whether more Black or White voters were moved, but whether a "significant number" were sorted because of race. *Cooper*, 581 U.S. at 291. The panel also rejected this argument: It found (and Roberts confirmed) that achieving a racial target depends on the moved VTDs' *relative* BVAP, i.e., "the inclusion of a [35% BVAP] VTD … would adversely impact the 17% objective," even though it is majority White. JSA.28a.

8. Defendants claim that on "net," only 17.5% of the people moved from CD1 to CD6 were Black, which approximates CD1's overall BVAP. Br.17. But focusing on net movement elides the unexplained fact that tens of thousands of Black citizens were unnecessarily swapped in and out of CD1.

Moreover, the fact that the net 17.5% Black population figure "virtually mirrored the racial composition of Benchmark District 1," *id.*, supports the panel's finding of a racial target. Moving Black voters in "lockstep" with the district's overall demographics, Br.38, is what enabled Defendants to *freeze* the district's BVAP. Had Defendants moved a different ratio of Black voters, CD1's BVAP would have, by definition, *changed*. The fact that BVAP remained fixed despite "dramatic" changes in Charleston County and the shuffling of 193,000 voters between CD1 and CD 6 further confirms that race predominated.

9. Finally, Defendants are simply wrong to claim that the panel contrived "a racial target theory." Br.3,4. CD1's frozen BVAP was a consistent theme in Plaintiffs' case. Plaintiffs (i) presented expert testimony indicating that Defendants created an artificially low CD1 BVAP, JSA.Supp.36a-38a,165a-66a; JSA.522a-23a; (ii) confronted Senator Campsen about how BVAP could remain the same even though 193,000 voters moved in and out of the district, JSA.399a; (iii) submitted proposed findings that "the fact [] CD1's BVAP remained essentially unchanged, increasing from 17.3% to 17.4%, despite nearly 200,000 people (many of whom were Black) being moved between CD 1 and CD 6, *is indicative of a racial target*," JA.Supp.151a-52a (emphasis added); and (iv) argued that CD1's BVAP did not "change[] meaningfully" under the Enacted Plan, which indicated Defendants "precision engineer[ed]" that outcome, JA.Supp.62a-63a.

B. The Panel's Credibility Findings Are Not Clearly Erroneous.

The panel found Defendants' denials that they relied on racial data were not credible. Defendants object to that finding, but fail to meet the demanding "clear error" standard on appellate review, much less the especially demanding standard for credibility determinations.

1. Defendants claim that every time Roberts drew a plan, "he noted political data, [] *never* racial data," Br.47-48, and that it "makes no sense" to rely on the latter when 2020 partisan performance data was available. But the panel plausibly found otherwise. Roberts demonstrated

clear recall of the racial composition of heavily Black VTDs he relocated and admitted to racial data being displayed as he drew maps, and he generated dozens of BVAP analyses. *See supra* Argument I.B(3); Statement II.B(2), II.C. And it ignores the testimony of other witnesses that Defendants considered racial data at each step.

Moreover, as explained, Defendants knew that their political data—2020 presidential results—was flawed, limited, and unlikely to reliably predict voting behavior in future congressional elections absent a racial target.

2. Defendants object to the finding that Roberts "abandoned his 'least change' approach," in Charleston County and made "dramatic" changes that "'created tremendous disparity' in the placement of African Americans within [CD1 and CD6] in Charleston County." Br.48-49. The testimony is self-explanatory:

> JUDGE GERGEL: But Charleston is actually different, is it not?
>
> THE WITNESS: It is. It's where most of the change occurred.
>
> ***
>
> THE WITNESS: It was roughly a hundred and some odd thousand people moved from CD 1 to 6.
>
> JUDGE GERGEL: But that's not a least-changed plan, is it?
>
> THE WITNESS: Not for Charleston County, no, sir.
>
> ***

JUDGE GERGEL: But they substantially affected the African-American placement in CD 1 and CD 6, did they not?

THE WITNESS: It did increase the African-American percentage.

JUDGE GERGEL: It created tremendous disparity between CD 1 and CD 6 that had not been consistent, correct?

THE WITNESS: In Charleston County, yes.

JSA.258a-262a.

3. Defendants chide the panel for "ignor[ing]" testimony of two witnesses—Senator Shane Massey and Representative Wallace Jordan—that CD1 was meant to achieve partisan advantage. Br.30-31. But the panel admitted and considered testimony from 42 witnesses; it did not need to itemize each piece of evidence. *See Anderson*, 470 U.S. at 573-74. In any event, the panel *agreed* with Defendants that they had a goal of creating a stronger Republican tilt, JSA.21a-22a, despite direct evidence that they denied a partisan explanation during the legislative session. It was the *means* used to get that "tilt" that makes CD1 a racial gerrymander.[7]

[7] Regardless, the testimony that the panel allegedly "ignored" is inconsequential. Br.30-31. Representative Jordan denied that the process was partisan in nature and admitted partisanship advantage was not a redistricting criterion. JA.Supp.35a-38a. Neither he nor Senator Massey had significant roles in creating the Enacted Plan. JA.218-19; JSA.298a-301a. And their testimony contradicted more

C. The Panel's Findings Concerning Plaintiffs' Experts Are Not Clearly Erroneous.

The panel properly credited Plaintiffs' experts and found Defendants' lone expert unpersuasive. Expert methodology assessments are squarely within the trial court's "broad latitude." *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 139 (1999). Defendants rehash unsuccessful pre-trial *Daubert* motions but again identify no clear error. *See* Dkts.344,346,393; Br.20-22.

First, Defendants criticize Drs. Ragusa and Liu for "ignor[ing]" certain traditional districting principles in their analyses. Br.20-21,50-51. But Ragusa testified that these criteria were "all embedded in the analysis" he conducted, JA.197, and that he used multivariate regression analysis "to statistically disentangle the effect of each factor," JSA.504a-05a. Regardless, Defendants do not explain why experts must consider factors like compactness when the task is to disentangle race from partisan performance. Also, Defendants' expert offered no criticism of Liu on this point.

Second, Defendants criticize Ragusa for including "every VTD in a county contained at least partially in a district" as "available to be included in the district—regardless of the VTD's location or proximity to the district line." Br.21. But Ragusa's method mirrors the analysis

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critical witnesses who represented that the map was not a partisan gerrymander, including Senators Campsen and Luke Rankin, Senate Redistricting Subcommittee Chair. JSA.Supp.286a,425a.

credited in *Cooper*, 581 U.S. at 315, and he explained why the methodology accurately represents districting choices "available to mapmakers." JA.191-92. The "envelope" consists of "geographically proximate" VTDs to CD1's 2011 borders, which, "if selected, would comply with compactness and contiguity." JA.Supp.15a.

Indeed, the Enacted Plan contains examples of Defendants reaching across a county to "grab precincts on the edge" of adjacent borders, including adding large portions of Beaufort and Berkeley. *See* JA.191-92. Even were this criticism valid, it is inapplicable to Ragusa's analysis of VTDs moved out of CD1—the one featured in the panel's findings—which did *not* "use the county envelope concept," but analyzed only "precincts … already in the district." JA.Supp.16a-17a.

Third, Defendants argue the panel was "clearly wrong" when it explained that "ten of the eleven VTDs with African American populations of 1,000 or more were moved [from CD1] to [CD6]," Br.51 (citing JSA.32a), because—they claim—three of the ten VTDs "*already* were in District 6." Br.51-52. But the three VTDs Defendants identify are *not* among those cited by the panel. *Compare* Br.51 *with* JSA.26a & n.7. In fact, the panel specifically identified ten VTDs moved from CD1 to CD6, JSA.26a & n.7, and the record confirms that those VTDs were moved, JSA.548a-52a; JA.Supp.153a. If anything, the actual number of re-assigned Charleston County VTDs with 1000+ Black population is at least 11, which means that the panel understated

Defendants' racial gerrymander.[8] JA.Supp.153a-54a.

Criticism of Dr. Imai's work is similarly unfounded. Imai showed CD1's BVAP was "unusually low" and "5.8 percentage points" lower than his simulations based on Defendants' purported race-neutral criteria. JSA.Supp.23a,36a. Defendants complain that he did not account for some redistricting criteria. Br.50. Not so. Imai's two local analyses (including the Charleston County analysis the panel cited) adopted the Enacted Plan's lines for the entire statewide map, *except* either the CD1/CD6 border (in one) or the CD1/CD6 border within Charleston County alone (in another). Accordingly, Imai *exactly* replicated Defendants' decisions (including "politics and core preservation") everywhere other than the hyperlocal focus of his study.[9]

Defendants also misread *Milligan*, 143 S. Ct. 1487, which nowhere says that simulations must "control for all [] factors involved in redistricting," or "weigh" them to "approximate [the weights] accorded by the General Assembly." Br.50. *Milligan* simply concluded that simulations are

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[8] The panel's list omits two Charleston County VTDs with 1,000+ Black residents moved from CD1 to CD6. *See* JSA.26a & n.7 (omitting St. Andrews 20 and St. Andrews 28),545a-64a; JA.Supp.153a-54a.

[9] Defendants also complain that Imai's simulations allow a population deviation of 0.1%. Br.20. Imai explained why that deviation is inconsequential, JA.Supp.42a-45a, and Defendants' expert testified that Imai's methodology is widely accepted. JA.Supp.30a-33a.

not useful for purposes of discriminatory *results* claims; but they may still be probative of intentional discrimination. *See Milligan,* 143 S. Ct. at 1518 (Kavanaugh, J., concurring). Here, Imai's simulations were designed to test the likelihood that the maps were drawn using only traditional redistricting principles and without racial data. That is, they were used to test the credibility of the State's claim of race-blindness.

Imai also calibrated his algorithm's weights to ensure his simulations approximated the Enacted Plan's level of compliance with certain traditional and state-created redistricting principles. JSA.Supp.22a,29a-30a. Defendants unsuccessfully argued otherwise below, citing *Backus v. South Carolina*, 857 F. Supp. 2d 553 (D.S.C.), *aff'd*, 568 U.S. 801 (2012), which upheld the previous version of CD6 against a constitutional challenge.[10] Dkt.344, at 7-8. As they did below, Defendants argue that *each* of Plaintiffs' experts had to discuss *all* traditional districting criteria for their testimony to aid the panel's inquiry. *Id.* But Defendants misread *Backus*—as they do *Milligan*—and the panel correctly rejected their *Daubert* motion, particularly since, unlike the *Backus* expert, Imai did not offer an ultimate opinion on racial predominance. Dkt.393.

[10] Defendants are wrong to suggest *Backus* upheld or concerned "South Carolina's prior *plan*." Br.2 (emphasis added). *Backus* only concerned CD6. *See* 857 F. Supp. 2d at 564 (recognizing testimony as to CD6 only because plaintiffs lacked standing to challenge other districts).

In short, Defendants have shown no error in the panel's factual findings or credibility determinations, much less met the demanding "clear error" required on appellate review.

III. THE DISTRICT COURT DID NOT COMMIT LEGAL ERROR.

A. The Panel Correctly Rejected an Alternative Map Requirement.

Defendants argue that, without direct evidence of racial sorting, Plaintiffs must produce an alternative map that achieves Defendants' partisan goals. Br.4,28-30. This ignores all the evidence that racial data played a role in drawing maps and CD1 residents were sorted on the basis of race. *See supra* Argument I.B(3); Statement II.A & II.B(1). Moreover, there is no basis for such a legal requirement. "[I]n no area of ... equal protection law" has this Court "forced plaintiffs to submit one particular form of proof to prevail." *Cooper*, 581 U.S. at 319.

Cooper spoke clearly: "[a] plaintiff's task … is simply to persuade the trial court—*without any special evidentiary prerequisite*—that race … was the 'predominant consideration in deciding to place a significant number of voters within or without a particular district.'" 581 U.S. at 318 (quoting *ALBC*, 575 U.S. at 263) (emphasis added). The Court has accordingly refused to impose categorical factual predicates in racial gerrymandering cases. *See Bethune-Hill*, 580 U.S. at 190 ("[C]onflict … between the enacted plan and traditional redistricting criteria is not a threshold requirement."); *Miller*, 515 U.S. at 912-

14 ("bizarre shape" not needed to prove racial gerrymandering).

Cooper rejected the very alternative map rule Defendants advance, concluding that such a map can *at most* be "an evidentiary tool." 581 U.S. at 319. "[N]either its presence nor its absence can itself resolve a racial gerrymandering claim." *Id.* Plaintiffs met their burden of showing predominance, and nothing more was needed.

In any event, Defendants' argument that an alternative map should be required, unless Plaintiffs have direct evidence, contradicts "clear and deep rooted" practice; this Court has never "restrict[ed] a litigant to the presentation of direct evidence absent … directive in a statute." *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 100 (2003). Circumstantial evidence "is not only sufficient, [it] may also be more certain, satisfying, and persuasive than direct evidence." *Id*. Indeed, racial gerrymandering claims "usually turn upon circumstantial evidence." *Covington*, 138 S. Ct. at 2553.

The "inflexible map requirement" Defendants push also distorts *Cromartie II*. *Cooper*, 581 U.S. at 321. *Cromartie II* criticized plaintiffs for lacking an alternative map only where, unlike here, they had otherwise failed to disentangle racial from political sorting. 532 U.S. at 246-50. The case stands merely for the proposition that when defendants credibly claim they moved voters because of party affiliation and plaintiffs do not meaningfully rebut that claim, an alternative map may be useful evidence. *Id.*

Thus, *Cooper* interpreted *Cromartie II* to say that an alternative map may be necessary where "plaintiffs had meager direct evidence ... *and* needed to rely on evidence of foregone alternatives." 581 U.S. at 322 (emphasis added).

But there is no such "need" here. The panel had unrebutted expert evidence, of the kind *Cooper* endorsed, to disentangle racial from partisan sorting, as well as *direct* evidence that racial data was considered in drawing maps. *See supra* Argument I.B(3); Statement II.C.

Defendants' proposed rule also requires impossible proof where, as here, legislators do not "identif[y] with [] specificity *which* 'legitimate political objectives' any alternative plans ought to have 'achieved.'" *Covington v. North Carolina*, 316 F.R.D. 117, 139 n.21 (M.D.N.C. 2016) (emphasis added), *aff'd,* 137 S. Ct. 2211 (2017).

Until trial, key legislators denied that the Enacted Plan aimed to make CD1 "more reliably [R]epublican." JSA.Supp.424a-25a; JA.Supp.35a-38a,66a-68a,70a,80a,96a-97a; JSA.423a,539a; JSA.Supp.424a-25a. Indeed, Campsen stated it was "not the case" that Defendants engaged in "partisan gerrymandering." JSA.Supp.286a. At no point have Defendants specified which "political objective[s]" alternative maps ought to have met. Br.28-29. They vaguely suggest making CD1 more Republican, without identifying a required vote-share or the relative weights of traditional redistricting principles. Plaintiffs should not be held to an evidentiary requirement unveiled late and only in amorphous terms.

B. The Panel Properly Applied the Presumption of Legislative Good Faith.

Defendants charge that the panel failed to presume their good faith. Br.3,26,34-35. That is false. In fact, the panel properly applied that presumption, which means only that the "challenger" bears the "burden of proof." *Abbott v. Perez*, 138 S. Ct. 2305, 2324-25 (2018). The presumption yields when "a showing sufficient to support" allegations of racial predominance is made, "either through circumstantial evidence of a district's ... demographics or more direct evidence going to legislative purpose." *Miller*, 515 U.S. at 915-16.

The panel correctly articulated the presumption. Citing *Miller*, it explained the standard: "'federal court review of districting legislation represents a serious intrusion on the most vital of local functions' and [] the courts 'must exercise extraordinary caution in adjudicating claims that a state has drawn district lines on the basis of race.'" JSA.44a (quoting 515 U.S. at 915-16).

The panel then faithfully applied the presumption. It found *against* Plaintiffs in two of three challenged districts, concluding that they failed to carry their "demanding" and "formidable" burden. JSA.13a (quoting *Cromartie II*, 532 U.S. at 241, and *Cooper*, 581 U.S. at 308),36a-41a. By contrast, the panel found for Plaintiffs in CD1 because of "striking evidence" of racial gerrymandering. JSA.29a.

Defendants complain that the panel credited Plaintiffs' witnesses over theirs. But the good-faith standard is not a "super-charged, pro-State presumption on appeal, trumping clear-error review." *Cooper*, 581 U.S. at 309 n.9 (citation omitted). And it does not matter that the panel did not incant the words "good faith." "[A] district court, writing after a bench trial, is not required to use 'magic words.'" *Burrell v. Bd. of Tr. of Ga. Mil. Coll.*, 125 F.3d 1390, 1395 (11th Cir. 1997); *see* U.S.Br.24.

Defendants also cast unfounded aspersions at a panel member who remarked that he had "figured it out." Br.22. But that is the definition of fact-finding. And they criticize the panel for noting that it knew and had previously relied on Roberts, *id.*, a fact Defendants themselves touted in their favor at trial. *See* Dkt.503 at 72:21-23 ("Roberts is no stranger to this Court. He's assisted this Court on at least four prior occasions."). None of that is error. The judges' close knowledge of South Carolina only aided the "intensely local appraisal" required in redistricting cases. *White v. Regester*, 412 U.S. 755, 769-70 (1973).

C. The Panel Properly Considered the Actions of Key Actors in the Redistricting Process in Finding Racial Predominance.

Defendants argue that the panel erred in failing to find that *every* legislator acted with the same intent, and instead looked, in crucial part, to the statements and actions of the Enacted Plan's key mapmakers and architects. Br.3,35-36.

But key decisionmakers' statements and actions (and those of their staff) have long been deemed probative of a legislature's intent in redistricting cases. This Court has affirmed racial-predominance findings on evidence regarding "State[] mapmakers," including redistricting committee chairs, and "hired mapmaker[s]." *Cooper*, 581 U.S. at 295, 300, 307, 311, 313, 316. And it has found predominance relying on such key actors as "the plan's principal draftsman" in *Shaw II*, 517 U.S. at 906, and the redistricting software's "operator" in *Miller*, 515 U.S. at 918; *see also ALBC*, 575 U.S. at 273 ("legislators in charge of creating the redistricting plan").

Brnovich casts no doubt on this principle. Defendants invoke a single sentence in which the Court rejected the "cat's paw" theory to attribute one legislator's discriminatory purpose to the whole legislature. Br.36; *Brnovich*, 141 S. Ct. at 2349-50. But that is irrelevant to racial gerrymandering claims, which focus on whether a challenged plan relied on "race as a basis for separating voters into districts." *Miller*, 515 U.S. at 911. Nothing in *Brnovich* alters the longstanding practice of inferring legislative intent from the actions and statements of those centrally involved in mapmaking. *See* 141 S. Ct. at 2350; *see also* U.S.Br.25-26.

That is all the more reasonable here because the panel relied on the Enacted Plan's author and sponsor (Campsen) and its lead creator (Roberts). *See, e.g.*, JSA.23a,25a,29a-30a,315a,335a; JA.Supp.27a. Defendants themselves proffered these witnesses to explain the Enacted Plan, JSA.23a, and introduced evidence that the

General Assembly deferred to them, JSA.82a-83a,272a,299a-300a. The panel committed no error in relying on the Enacted Plan's design and its architects' actions and statements to ascertain intent.

D. The District Court Properly Found That CD1, as a Whole, Is a Racial Gerrymander.

Defendants argue that the panel improperly focused on Charleston County instead of CD1 as a whole. Br.38. In fact, the panel considered CD1 as a whole, viewed Charleston County in its proper context as the district's historical core, and concluded that compliance with redistricting principles elsewhere could not justify departure from them in a critical part of CD1. JSA.21a,23a,33a. That is not error.

First, the panel found Defendants employed a districtwide racial target of 17%. JSA.23a. That finding applied to CD1 as a whole.

Second, Defendants claim that CD1 maintains constituent consistency "as a whole," because it purportedly retains 92.78% of the population previously assigned to CD1. Br.18,38,48-49; JSA.38a. But that figure is clearly wrong and cannot be squared with the movement of 25% of the population in and out of CD1. Defendants' own expert testified that the Enacted Plan's movement of 140,489 people out of CD1 resulted in a core retention percentage of just 82.84%—markedly *lower than every other district*—confirming that Defendants abandoned their

least-change approach in CD1. JSA.Supp.367a-68a.

Indeed, Defendants moved more than twice as many people as needed to balance population between CD1 and CD6 and excised the city of Charleston from CD1, ending Charleston County's century-long status as CD1's anchor. *See supra* Argument I.B(1)-(2); Statement II.A. And even if Defendants had adhered to core retention as a CD1 principle, that would not immunize the map from liability. *See Covington*, 138 S. Ct. at 2551 (holding that core retention did not immunize plan from racial gerrymandering challenge). This is because core preservation "is not directly relevant to the origin of the new district inhabitants." *ALBC*, 575 U.S. at 274.

Third, Charleston's dramatic overhaul was instrumental to CD1's overall racial gerrymander. *Cooper* cited the movement of 25,000 Black voters in one county as having "'played a major role' in achieving a [districtwide] racial target." JSA.28a n.11 (citing 581 U.S. at 314). The disproportionate and stark movement of 30,000 Black Charlestonians was similarly critical to Defendants' 17% target: Absent Black Charlestonians' expulsion from CD1, it would have been practically "impossible" for Defendants to reduce the district's BVAP to 17%. JSA.25a,33a. So while Charleston County has been split since 1994, Br.39, the *way* the Enacted Plan split Charleston County is unprecedented and reflects sorting voters by race.

Finally, compliance with traditional districting principles in one area of a district

cannot absolve racial sorting of a significant number of voters elsewhere. *Bethune-Hill*, 580 U.S. at 192 ("[A] legislature's race-based decisionmaking may be evident in a notable way in a particular part of a district."). Just as an employer is not exempt from discrimination claims in one department's hiring because it does not discriminate in others, a legislature cannot sort thousands of voters by race in one county and evade review by following traditional principles in other parts of the State.

E. The Panel's Limited Citation to *Shelby County v. Holder* Is Not Legal Error.

Defendants claim that the panel "misinterpreted *Shelby County*." Br.5,24,26,41-45. But *Shelby County* was immaterial to the panel's decision.

The panel mentioned *Shelby County* only in passing. It observed that *Shelby County* and other decisions have been decided since the 2011 redistricting, JSA.19a, and that CD6 was no longer majority-minority in the Enacted Plan. JSA.20a n.5. It was therefore a "fair question … whether the continued racial division of Charleston County residents between [CD1 and CD6] was legally justifiable," JSA.27a, but the panel observed that Defendants "went in exactly the opposite direction," moving "62% of the [remaining] African American residents of [CD1] into [CD6]." JSA.27a.

In other words, references to *Shelby County* merely underscored that the legal justification for splitting Charleston County under the 2011 map

no longer exists, so a purported "least change" rationale could not, alone, explain whether the current Charleston County split is permissible. JSA.18a-19a. But that is *dicta*, because, as the panel found, and as Roberts admitted, Defendants dramatically departed from the "least change" principle in CD1. The panel did not rely on *Shelby County* in finding racial gerrymandering and instead looked to a wide range of direct and circumstantial evidence to find that Defendants sorted a significant number of voters predominantly based on race.

IV. THE DISTRICT COURT CORRECTLY FOUND THAT DEFENDANTS ACTED WITH DISCRIMINATORY INTENT.

Because the racial gerrymandering violation alone is enough to affirm, the Court need go no further. But the panel correctly found an independent ground for invalidating CD1—namely, that it was drawn with discriminatory intent to diminish Black voters' electoral power.

Racial gerrymandering claims are agnostic as to electoral results or group voting strength. They focus on whether a significant number of voters were sorted by race, "regardless of [] motivation[]" and regardless of effect on voting power. *Shaw I*, 509 U.S. at 645. By contrast, classic intentional vote dilution claims consider whether the state purposefully "enacted a particular voting scheme … 'to minimize or cancel out the voting potential of racial or ethnic minorities.'" *Miller*, 515 U.S. at 911 (citation omitted). The two claims are "'analytically distinct.'" *Id.* (citation omitted); *see also* U.S.Br.30. Regardless of minority group size,

the government violates the Equal Protection Clause when it acts with a discriminatory purpose to harm voters of a particular race. *See, e.g.*, *City of Pleasant Grove v. United States*, 479 U.S. 462, 471 n.11 (1987).

The *Arlington Heights* framework governs discriminatory purpose claims. Challengers must show, using either direct or circumstantial evidence, *Rogers v. Lodge*, 458 U.S. 613, 618 (1982), that racial discrimination was "a motivating factor," not *the* "sole[]" or even "primary" motive for the government's decision. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265-66 (1977); *see also Milligan,* 143 S. Ct. at 1514. A voting scheme that purposefully minimizes "the voting strength of racial minorities [is] subject to the standard of proof generally applicable to Equal Protection Clause cases." *Rogers*, 458 U.S. at 617 (citations omitted). Plaintiffs must show discriminatory purpose and an injury.

The panel's findings make clear that both elements were satisfied here. As detailed, Defendants intentionally exiled more than 30,000 Black Charlestonians from CD1 predominantly because of their race. JSA.22a,24a-25a,33a. The evidence establishes that the Enacted Plan was motivated, at least in part, by discriminatory intent. Other evidence that this Court has recognized as significant to the *Arlington Heights* inquiry confirms it: the legislative process was rushed, non-transparent, and departed from procedural norms. *See generally* JA.299-400. Key legislators like Campsen professed public redistricting guidelines were given equal weight,

JSA.Supp.237a-38a, but Roberts confirmed that they were selectively jettisoned, and that public input played almost no role. *See* JSA.25a,29a,76a-78a,102a-03a,260a-62a; *see also* JA.120a-21a. Black legislators were shut out of the legislative process or denied opportunity to review drafts. JA.49. And contrary to Senate policy, *none* of the maps that *amicus* NRRT submitted suggesting the 17% CD1 BVAP target were made publicly available. JA.Supp.84a,87a-89a,103a-05a.

Nor did the panel ignore discriminatory effect, as Defendants and the United States maintain. *See* Br.53,55; U.S.Br.33. The panel noted recent CD1 elections "were close, with less than one percent separating the candidates," so increasing the district's Black population to 20% "would produce a 'toss up' district." JSA.21a,25a,33a. Defendants' surgical removal of Black Charlestonians from CD1, JSA.33a, reduced Black voters' electoral opportunity in the district. JA.106-10; JSA.Supp.88a-89a & tbl.4, 170a-71a & tbls.6-7. Dr. Duchin's effectiveness analysis, for example, found that the Enacted Plan is "unusually extreme in denying opportunity" to Black voters in elections with Black candidates on the ballot (as compared to White candidates of either party), which partisan advantage cannot explain. JA.108.

Defendants claim the Enacted Plan affects Black and White Democrats in "the exact the same way." Br.55. But the panel had good reason to disagree: The Enacted Plan treats Black voters differently than White voters, even when those voters voted for the same political party. JSA.32a;

see supra Argument I.B(4); Statement II.B(1) & II(D).

In short, the record showed discriminatory intent and impact, and *any* discriminatory impact suffices when invidious motive is involved. *Pleasant Grove*, 479 U.S. at 471 n.11. Defendants' argument that an unspecified threshold of affected voters or degree of impact is needed, Br.53-55, "is unquestionably wrong." *Chisom v. Roemer*, 501 U.S. 380, 409 (1991) (Scalia, J. dissenting).[11]

[11] The appropriate remedy for intentional discrimination is not at issue at this liability phase. But at minimum, any remedial district must be drawn in a process not affected by intentional discrimination.

CONCLUSION

The Court should affirm.

Respectfully submitted,

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