Nos. 24-109, 24-110

# In the Supreme Court of the United States

LOUISIANA, APPELLANT
*v.*
PHILLIP CALLAIS, ET AL.

PRESS ROBINSON, ET AL., APPELLANTS
*v.*
PHILLIP CALLAIS, ET AL.

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

## BRIEF FOR *AMICI CURIAE* INDEPENDENT STATE REDISTRICTING COMMISSIONERS IN SUPPORT OF NEITHER PARTY

JUSTIN LEVITT
*919 Albany St.*
*Los Angeles, CA 90015*
*(213) 736-7417*

JOHN A. FREEDMAN
*Counsel of Record*
NANCY L. PERKINS
ARNOLD & PORTER KAYE SCHOLER LLP
*601 Massachusetts Avenue, NW*
*Washington, DC 20001*
*(202) 942-5000*
*john.freedman@arnoldporter.com*

**TABLE OF CONTENTS**

## TABLE OF AUTHORITIES

**Cases—Continued** Page(s)



**Constitutional Provisions and Statutes**

## INTERESTS OF *AMICI CURIAE*[1]

*Amici* are current and former Commissioners of state independent redistricting commissions, affiliated with the Republican Party, the Democratic Party, and with neither. As some of the parties ask this Court to recalibrate the legal landscape facing redistricting bodies, *amici* write to share their experience in drawing lawful district lines subject to state and federal constraints. From *amici*'s perspective, the redistricting process may be challenging but does not present an insuperable set of legal obstacles. Our experience shows that there are multiple ways to draw legally compliant districts without allowing race to predominate; in choosing from among these options, our experience also demonstrates that the final lawful maps in states with independent redistricting commissions will tend to look different from those in states where mapmakers can prioritize partisan or incumbency interests.

Arizona Commissioner Colleen Mathis served in the 2010 redistricting cycle as the Chair of the Arizona Independent Redistricting Commission ("Arizona Commission"). The Arizona Commission, which was established in 2000 pursuant to Proposition 106, is charged with the redrawing of legislative and congressional district lines following each decennial census. The Arizona Commission is composed of five members, of whom no more than two may belong to the same political party, with a fifth member serving as chair who is not affiliated with the same party as any other Commissioner.

---

[1] No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation of or submission of this brief. No one other than the *amici curiae* or their counsel made a monetary contribution to the preparation or submission of this brief.

As required by the Arizona and U.S. Constitutions, the Arizona Commission must draw districts of very nearly equal population. In so doing, pursuant to the Arizona Constitution, the Arizona Commission must consider a broad array of non-partisan criteria, including: compactness and contiguity; respect for communities of interest; incorporation of visible geographic features and city, town, and county boundaries, as well as undivided census tracts; and, where there is no significant detriment to other goals, creation of politically competitive districts. Ariz. Const., art. IV, part 2, § 1(14)(B)-(F). The Arizona Constitution also requires that districts comply with the U.S. Constitution and the federal Voting Rights Act. Ariz. Const., art. IV, part 2, § 1(14)(A). The Commission is limited in its use of political party registration and voting history data, and may not use residences of incumbents and other candidates to create district maps. Ariz. Const., art. IV, part 2, § 1(15). Once the Arizona Commission drafts the new maps, it must publish the drafts and invite comments from the public for at least 30 days. Either or both bodies of the legislature may act within this period to make recommendations to the Arizona Commission, which the Commission must consider before establishing final district boundaries.

California Commissioners Isra Ahmad, Linda Akutagawa, Vincent Barabba, Maria Blanco, Cynthia Dai, Michelle DiGuilio, Alicia Fernández, Jodie Filkins, Ray Kennedy, Gil Ontai, Stanley R. Forbes, Neal Fornaciari, Sara Sadhwani, Connie Archbold Robinson, Pedro Toledo, Trena Turner, and Russell Yee are serving in the 2020 redistricting cycle or served in the 2010 redistricting cycle as members of the California Citizens Redistricting Commission ("California Commission"). The California Commission is authorized, pursuant to initiatives passed by California voters in 2008 and 2010, to draw new district lines for Congress, the state legislature, and the state

Board of Equalization following each decennial census. The California Commission is composed of 14 members: five Republicans, five Democrats and four commissioners who are not affiliated with either party. Pursuant to the California Constitution, the California Commission must draw lines in conformity with strictly non-partisan rules designed to create districts of relatively equal populations to provide fair representation for all California voters.

The California Constitution sets forth the specific criteria the California Commission must use when redrawing district lines. Cal. Const., art XXI. The criteria, ranked by priority, include a broad array of non-partisan factors: population equality, contiguity, geographic integrity of cities or census-designated areas, geographic integrity of local neighborhoods or local communities of interest, and compactness. *Id.* The California Constitution also requires compliance with the federal Voting Rights Act and the U.S. Constitution. Cal. Const., art. XXI, § 2(d). And the California Constitution expressly states that "[t]he place of residence of any incumbent or political candidate shall not be considered in the creation of a map [, and d]istricts shall not be drawn for the purpose of favoring or discriminating against an incumbent, political candidate, or political party." Cal. Const., art XXI, § 2(e). In the course of redrawing district lines, the California Commission conducts an intensive process to ensure public awareness, input into, and acceptance of the ultimately adopted maps. For example, during the redistricting cycle in 2021, the California Commission held 196 public meetings, received 3,870 verbal comments, and received 32,410 written comments, all of which it considered in finalizing the new district maps.

Colorado Commissioners Samuel Greenidge, Amber McReynolds and Carlos Perez are members of the Colorado Independent Legislative Redistricting

Commission charged with redrawing the lines for the state legislative districts (together with the Colorado Independent Congressional Redistricting Commission, charged with redrawing the lines for congressional districts, collectively, "Colorado Commissions"). The Colorado Commissions were established in 2018 pursuant to Amendments Y and Z to the Colorado Constitution, which transferred the responsibility for redrawing congressional and legislative districts from the Colorado legislature and the Reapportionment Commission to the newly created independent Commissions. Each Commission is composed of four Democrats, four Republicans, and four commissioners unaffiliated with either major party.

Under the Colorado Constitution, congressional and state legislative district lines must be drawn to protect fair and effective representation of constituents using politically neutral criteria. The specific criteria set forth in the Colorado Constitution include: population equality, geographic integrity of local communities of interest and political subdivisions, compactness, and political competitiveness. Col. Const., art. V, §§ 44.3(1)-(3), 48.1(1)-(3). The Colorado Constitution also requires the Colorado Commissions to comply with the federal Voting Rights Act of 1965. Col. Const., art. V, §§ 44.3(1)(b), 48.1(1-3). The Colorado Constitution further provides that no map may be approved if it "has been drawn for the purpose of protecting" one or more incumbent members or declared candidates, or any political party. Col. Const., art. V, §§ 44.3(4), 48.1(4). Once the Colorado Commissions and their staffs have drafted maps, the Commissioners request alternate maps or amendments to the maps in a public meeting open to all Colorado voters. Members of the public can also submit maps and written comments, and can testify in person or remotely before the Colorado Commissions.

## INTRODUCTION AND SUMMARY OF ARGUMENT

The process of drawing district lines to foster equitable representation of community members requires mapmakers to consider and reconcile several different criteria. Inevitably, mapmakers familiar with underlying political geography will be aware of the demographics of particular communities, including race and ethnicity. Sometimes, under specific local conditions subject to rigorous factual proof, laws like the Voting Rights Act will require consideration of race or ethnicity to dismantle discrimination in discrete and limited ways, alongside other state and federal constraints.

Balancing all of the considerations and legal conditions placed on the redistricting process can certainly be challenging, but the process does not amount to an impossible Catch-22 for those who sincerely attempt to achieve compliance. This is as true in the consideration of race pursuant to the Voting Rights Act as in any other aspect of the process. Redistricting bodies often have multiple options for drawing maps that comply with legitimate state and federal legal requirements — including the Voting Rights Act — and can achieve compliance without allowing race to predominate.

In choosing from among those options, *amici* note that mapmakers in states with independent redistricting bodies will tend to make different choices from mapmakers permitted or incentivized to protect partisan or incumbent interests. And *amici* also note that, in their experience, because the contours of a district depend on numerous factors, it is not possible to conclude what motivations resulted in the contours of any particular district, including an irregularly shaped district, simply by superficial observation of its shape.

## ARGUMENT

### I. MAPMAKERS CAN AND ROUTINELY DO COMPLY WITH THE VOTING RIGHTS ACT WITHOUT RACE PREDOMINATING IN THE REDISTRICTING PROCESS

This Court has repeatedly emphasized that federal courts must "exercise extraordinary caution in adjudicating claims that a State has drawn district lines on the basis of race." *Alexander v. S.C. State Conf. of NAACP*, 602 U.S. 1, 7 (2024) (quoting *Miller v. Johnson*, 515 U.S. 900, 915–916 (1995)). This is due, in part, to the fact that redistricting is about representation.

To draw districts that foster meaningful representation, mapmakers must be familiar with the communities in the state. That includes familiarity with the racial and ethnic composition of those communities, regardless of whether localized facts in a particular region present the potential for liability under the Voting Rights Act. *See Thornburg v. Gingles*, 478 U.S. 30, 47 (1986); *see also Shaw v. Reno*, 509 U.S. 630, 646 (1993) (*Shaw I*); *Miller*, 515 U.S. at 916 ("Redistricting legislatures will … almost always be aware of racial demographics; but it does not follow that race predominates in the redistricting process.").

Thus, it is well established that the redistricting process may and frequently does, consistent with the Fourteenth Amendment, take race into account, *i.e.*, the process does not have to be race-blind. *See Shaw I*, 509 U.S. at 646; *see also Miller,* 515 U.S. at 916. For example, in its seminal decision in *Shaw v. Reno*, the Court recognized that "the legislature always is aware of race when it draws district lines, just as it is *aware* of age, economic status, religious and political persuasion, and a variety of other demographic factors. That sort of race consciousness does not lead inevitably to impermissible race discrimination." 509 U.S. at 646, 658. The Court reemphasized this principle in *Allen v. Milligan*, 599 U.S.

1 (2023), stating that "we have made clear that there is a difference 'between being aware of racial considerations and being motivated by them.'" *Milligan*, 599 U.S. at 30 (citing *Miller*, 515 U.S. at 916); *see also North Carolina v. Covington*, 585 U.S. 969, 978 (2018). This Court has repeatedly held that mapmakers may take race into account in the redistricting process without violating the U.S. Constitution. *See Milligan*, 599 U.S. at 30; *Bush v. Vera*, 517 U.S. 952, 958 (1996) ("Strict scrutiny does not apply merely because redistricting is performed with consciousness of race."); *Abbott v. Perez*, 585 U.S. 579, 587 (2018) (noting the Court's consistent assumption that even when race may predominate, narrowly tailored compliance with the Voting Rights Act satisfies strict scrutiny). Indeed, to dismantle existing discriminatory dilution, sometimes mapmakers must consider race. *See White v. Regester*, 412 U.S. 755, 765-70 (1973). And the *Milligan* Court confirmed that "the contention that mapmakers must be entirely 'blind' to race has no footing in our § 2 case law. The line that we have long drawn is between consciousness and predominance." *Milligan*, 599 U.S. at 33.

That is, racial awareness is a concern of constitutional significance, provoking strict scrutiny, when mapmakers subordinate traditional redistricting criteria to racial considerations: when race is the "dominant and controlling" consideration in deciding to place a significant number of particular voters "within or without a particular district." *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 260 (2015); *see also Alexander*, 602 U.S. at 7. Stated differently, so long as mapmakers do not subordinate traditional race-neutral districting principles, consideration of race without invidious intent — pursuant to the Voting Rights Act or otherwise — is perfectly proper and consistent with the Fourteenth Amendment, and need not provoke heightened scrutiny.

*Miller*, 515 U.S. at 913; *see also Shaw v. Hunt*, 517 U.S. 899, 905 (1996); *Abrams v. Johnson*, 521 U.S. 74, 81 (1997); *Ala. Legis. Black Caucus*, 575 U.S. at 260, 272; *Cooper v. Harris*, 581 U.S. 285, 291–92 (2017); *Rucho v. Common Cause*, 588 U.S. 684, 711 (2019); *Alexander*, 602 U.S. at 4. To upend this consistent precedent would either require mapmakers to unlearn the demographics of their own States, or subject every district in the country — federal, state, and local — to heightened constitutional review and potential revision by federal courts.

As this Court has recognized, "districting involves myriad considerations," *Milligan*, 599 U.S. at 35, that a mapmaker "must balance as part of its redistricting efforts…." *Alexander*, 602 U.S. at 24. Drawing district lines requires "a delicate balancing of competing considerations." *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 187 (2017) (cleaned up). The Voting Rights Act is a familiar and appropriate part of this balance. *See Gingles*, 478 U.S. at 47. Indeed, the constitutions of *amici*'s respective States expressly require compliance with the Voting Rights Act.[2] And even

[2] Similar requirements are found in other states' laws and guidelines. *See*, *e.g.*, Ala. Code 1975 § 17-14-70.1(2) (2023) ("The Legislature's intent in adopting the congressional plan in Act 2023-563 is to comply with federal law, including the U.S. Constitution and the Voting Rights Act of 1965, as amended."); North Carolina G.S.A. § 120-30.9A (1985) ("The purpose of this Article is to ensure compliance with … the Voting Rights Act of 1965 …."); Mich. Const., art. IV, § 6(13) ("Districts … shall comply with the voting rights act and other federal laws."); Mo. Const., art. III, § 3(b)(2) ("Districts shall be established in a manner so as to comply with all requirements of … applicable federal laws, including, but not limited to, the Voting Rights Act of 1965 (as amended)."); Utah Code § 20A-20-302(4) ("The commission shall ensure that … each map recommended by the commission … complies with … all applicable federal laws, including Section 2 of the Voting Rights Act …."); Va. Const., art. II, § 6 ("Every electoral district shall be drawn in

when States have not expressly codified a mandate for compliance with the Voting Rights Act, it is clear that Section 2 of the Voting Rights Act applies nationwide. *See Milligan*, 599 U.S. at 19 ("[W]e have applied *Gingles* in one § 2 case after another, to different kinds of electoral systems and to different jurisdictions in States all over the country.") As is most relevant here, in 2021, the Louisiana House and Senate passed Joint Rule No. 21, requiring that each redistricting plan submitted for consideration must "comply with … Section 2 of the Voting Rights Act of 1965, as amended; and all other applicable federal and state laws." Joint Rule No. 21, 2021 Leg. Reg. Sess. (La. 2021).

*Amici* have personal experience integrating the Voting Rights Act into the mix of their work. In deciding whether to place specific voters "within or without" particular districts in their respective States, each of the *amici's* commissions indeed do consider a myriad of factors in addition to compliance with the Voting Rights Act. For example, the California Commission considers population equality, contiguity, geographic integrity of cities or census-designated places, geographic integrity of local neighborhoods or local communities of interest, and compactness as well as compliance with the Voting Rights Act. The Arizona Commission considers equal population, compactness, contiguity, respect for communities of interest, incorporation of visible geographic features and municipal boundaries, and political competitiveness in addition to compliance with the Voting Rights Act. And the Colorado Commission considers population equality, geographic integrity of local communities of interest and political subdivisions, compactness, and political

---

accordance with the requirements of federal and state laws that address racial and ethnic fairness, including … provisions of the Voting Rights Act of 1965, as amended, and judicial decisions interpreting such laws."); Va. Code § 24.2-304.04(2) (same).

competitiveness, in addition to compliance with the Voting Rights Act. These are not merely theoretical guardrails: in *amici*'s work as Commissioners, we work to reconcile these distinct priorities and distinct evidence pointing in different directions with respect to each priority, necessarily considering multiple factors in concert in designing the districts we draw.

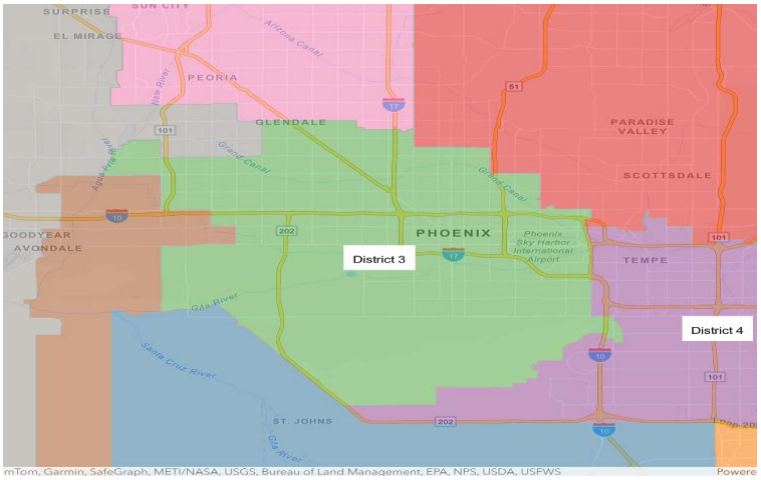
When we have considered race, we have done so based on localized facts, data, and history rather than stereotype, and integrated with other considerations that yield the effective representation of local communities of interest. *Amici* and their Commissions' staff are "aware of and sensitive to the Census data and demographics of the areas under review — particularly in areas with sizeable minority populations, evidence of racially polarized voting, and a history of discrimination." 2020 California Citizens Redistricting Commission's Report on Final Maps (Dec. 26, 2021) ("CCRC Report") at 32. These data and demographics contribute to the Commissions' work as part of a "district-specific, functional analysis" to ensure, where the Voting Rights Act indicates particular need, that minority voters also have an equitable opportunity to elect candidates of choice "without unnecessarily packing the district or violating redistricting criteria such as consideration for political subdivision boundaries and compactness." 2021-2030 Arizona Independent Redistricting Commission Overview of Decennial Redistricting Process and Maps (Jan. 2022) ("AIRC Report") at 30–31.

That is, *amici* weigh these factors along with "a host of traditional, race-neutral redistricting criteria, including balancing population, maintaining the geographic integrity of cities, counties, neighborhoods, and communities of interest, and considering natural topography, ecological zones, transportation corridors, and industrial/economic interests that define

communities." CCRC Report at 32. In adhering to their respective States' redistricting principles, including respecting the requirements of the Voting Rights Act, *amici* follow a careful process that involves an analysis of voting patterns in areas with sufficiently sizable minority populations and an understanding of historical and present context. Where local factual conditions demonstrate that existing districts work in discriminatory fashion and create a responsibility under the Voting Rights Act to ensure equal opportunity to participate in the political process as defined by this Court, *Milligan*, 599 U.S. at 25, we have endeavored to provide that opportunity — not alone, not in predominant fashion, but while also considering other criteria in arriving at the ultimate shape of a district that necessarily furthers multiple goals. This is apparent in *amici*'s own maps, which satisfy multiple race-neutral criteria while complying with the Voting Rights Act.

For example, while redrawing California's Congressional District Twenty-One in 2021 (see map below), the California Commission noted that this district was located in areas where "there are obligations under Section 2 of the Voting Rights Act." CCRC Report at 81. But the Commission also noted that, together with meeting those obligations, it was the Commission's responsibility to address "communities of interest," including "the Valley's major transportation corridors" and common interests in "agriculture, water [and] air quality." *Id.*

While redrawing Arizona's Congressional Districts in 2022, the Arizona Commission understood that Congressional District Three (pictured below) would allow minority voters facing a legacy of discrimination to have the opportunity to elect their candidates of choice in compliance with the federal Voting Rights Act. But the Commission also drew the district in a manner fulfilling the Arizona Constitution's redistricting goals of keeping communities of interest together and creating competitive districts. AIRC Report app. A at 1, 11.



Nothing in the United States Constitution or in this Court's previous holdings make these types of consideration unconstitutional or impermissible.

To be clear, neither compliance with the Voting Rights Act nor awareness of race means that the *amici*'s commissions allow race to be the predominating factor in their redistricting decisions. Additionally, and notably, even when considering race in the context of the Voting Rights Act, *amici* do not consider race as a stereotype, or for its own sake. That is, our proper consideration of race in the context of the Voting Rights Act would satisfy strict scrutiny even if we allowed it to predominate. In *amici*'s experience, compliance with the Voting Rights Act is necessarily and relentlessly localized and data-driven; the federal statute requires the consideration of race in the final design of districts only in the context of a history of discrimination connected to present conditions, and only when specific electoral evidence demonstrates that the state would otherwise be perpetuating discriminatory maps.

In short, in *amici*'s experience, consideration of race in conjunction with compliance with the Voting Rights Act is compatible and consistent with the Fourteenth Amendment. As emphasized above, the primary relevant question in reviewing district lines for purposes of the Fourteenth Amendment, and the necessary threshold to constitutional concern and therefore heightened scrutiny, is whether race *predominated* over other equally legitimate and appropriate factors in deciding to place certain individuals within or without particular district lines. Some *amici* have found it helpful to think of such predominance by reference to how the operator of a motor vehicle manages the multiple factors involved with driving a car:

> It is certainly possible for a driver to obsess over her speed, subordinating all other inputs — and likely

> leading to a crash. But most careful drivers monitor a sizable set of factors at once, including the directions to get to a destination, the location of other vehicles, weather conditions, potential hazards, fuel volume, vehicle performance, signage, lane designators, signaling responsibilities, passenger activity, internal temperature, road trip soundtrack — and also speed. The fact that the driver may glance down from time to time to check that her speed is still within an acceptable range does not mean that speed has predominated, subordinating all other factors in determining how the car proceeds from point A to point B. And that remains true even if the driver has a specific target speed firmly in mind, and even if it remains an extremely high priority to avoid a ticket for speeding. So too with the consideration of race.

Justin Levitt, "Race, Redistricting, and the Manufactured Conundrum," 50 Loy. L. A. L. Rev. 555, 568 (2017).

By analogy, *amici* understand that mapmakers' efforts to comply with the Voting Rights Act do not imply that the resulting maps reflect a subordination of all other relevant factors to race. A mapmaker can be aware of race while still evaluating the multitude of other factors that must be considered. By taking race into account in order to comply with the Voting Rights Act while considering an array of districting criteria unrelated to race, mapmakers strike the "delicate" balance this Court requires. Therefore, consideration of race in the context of ensuring compliance with the Voting Rights Act is entirely compatible and consistent with the Fourteenth Amendment.

## II. MAPS CAN HAVE ODD-SHAPED DISTRICTS FOR A MYRIAD OF REASONS, AND SUCH SHAPES DO NOT DEMONSTRATE THAT RACE PREDOMINATED IN DETERMINING THE DISTRICTS' BORDERS

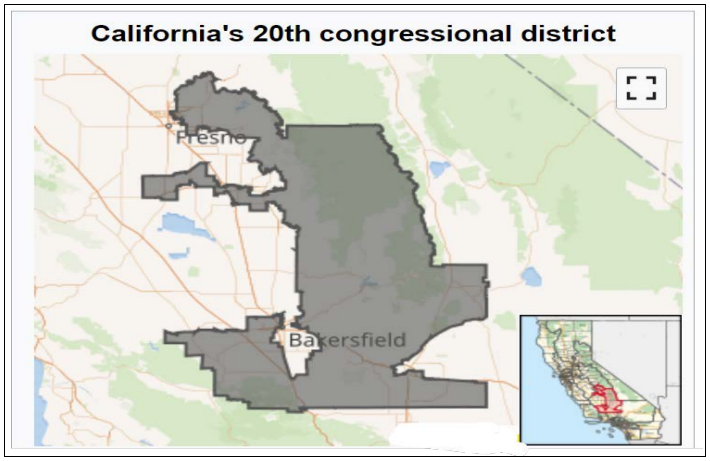
*Amici* are familiar with the editorial-page disdain that the shape of a particular district in the abstract may engender. But as this Court has repeatedly emphasized, external appearances can be misleading. It is impossible to conclude that a district has violated federal law simply by looking at a map. Redistricting principles are "numerous and malleable." *Bethune-Hill*, 580 U.S. at 190. Therefore, it is unsurprising that districts may come in a variety of shapes and sizes based on the numerous factors a mapmaker must consider. As this Court has found, a "highly irregular" shape of a district is not sufficient to determine whether a district is the product of racial predominance because "a bizarre shape … can arise from a 'political motivation' as well as a racial one" and "political and racial reasons are capable of yielding similar oddities in a district's boundaries." *Cooper*, 581 U.S. at 308.

Indeed, whether as a result of considering race in constitutional ways — for example, in choosing among different ways to satisfy the Voting Rights Act — or by virtue of consideration of the sort of community or geographic criteria that *amici* pay attention to, or the sort of partisan or incumbent-protective criteria that other mapmakers may prioritize, district maps may end up looking oddly shaped (even "bizarre").

This reality is reflected in *amici*'s own maps. In general, compliance with the Voting Rights Act will not require drawing a "bizarre" district shape. But whether or not compliance with the Voting Rights Act is a key factor of consideration, *amici* have occasionally produced district maps that might, to some eyes, appear geometrically unusual when lifted out of context, not because race predominates, but because the districts

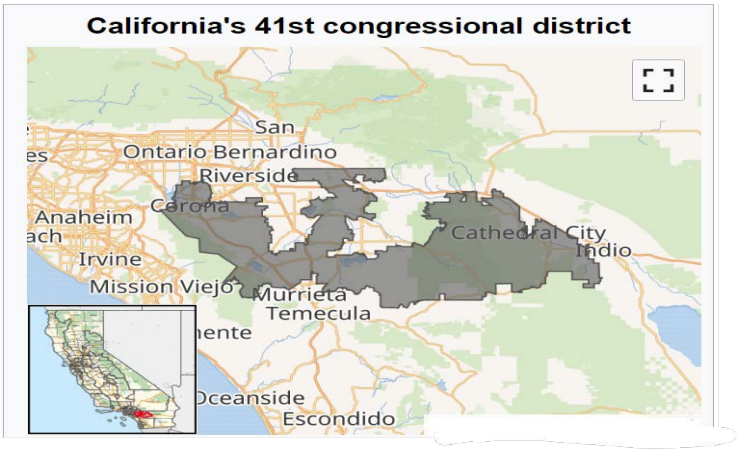
attend to distinct communities or geographic and municipal bounds, as they are required to do.

For example, consider California's Twentieth Congressional District in the 2021 cycle:




In drawing this district, the California Commission emphasized that "Communities within this district share common socio-economic characteristics and are primarily rural and suburban… and share environmental concerns related to water, air quality, and public lands." CCRC Report at 81.

Similarly, consider California's Forty-First Congressional District in the 2021 cycle:

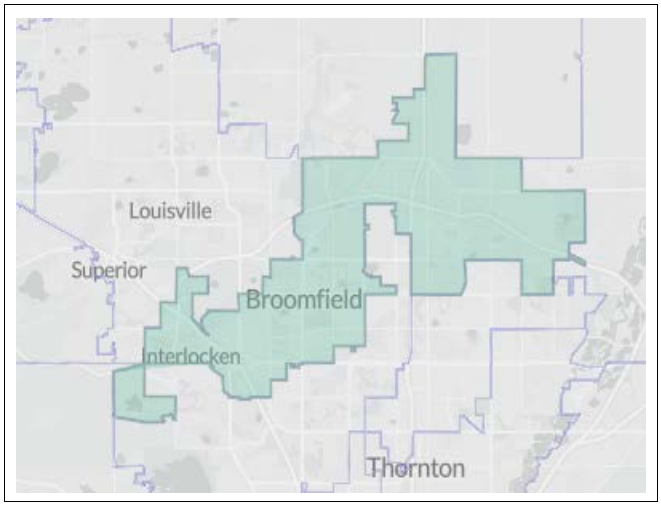


In drawing this district, the California Commission noted that the "district is characterized by common interests and issues related to tourism, tribal lands, low desert geography, and housing [and communities] are connected by Interstate 15 and State Route 74." CCRC Report at 85.

Similarly, consider Arizona's Second Congressional District in the 2000 cycle:


In drawing the district, the Arizona Commission sought to accommodate the request of one community of interest to be in a congressional district distinct from another with "historical and present-day, opposing federal interests": the Hopi Tribe asked to be in a different district than the majority of Navajo Nation residents. *Ariz. Min. Coalition for Fair Redistricting v. Ariz. Ind. Redistricting Comm'n*, 121 P.3d 843, 866-68 (Ariz. Ct. App. 2005). The Commission accommodated this request by using visible geographic features, as required by state law, like the Colorado River. *Id.* at 869.

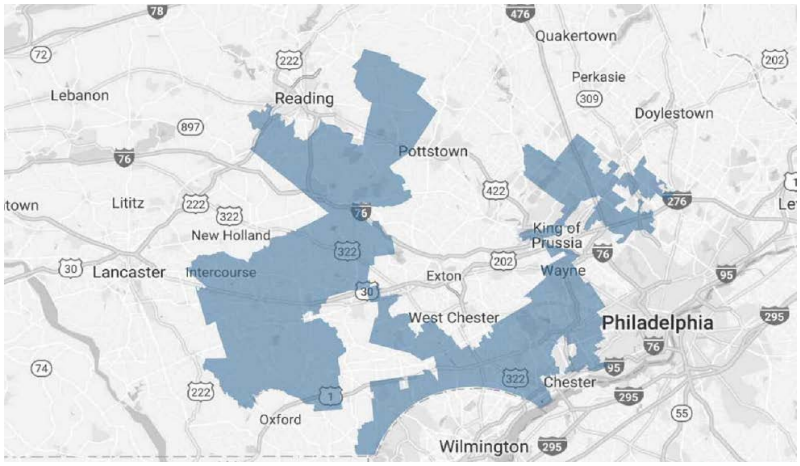
Also similarly, Colorado's Thirty-Third State House Districts in the 2021 cycle:




In drawing the district, the Colorado Commissions emphasized that the district encompassed Broomfield County — the state's newest county — as well as a portion of Thorton, in the neighboring county. *In re Colo. Indep. Legis. Redistricting Comm'n,* No. 21-SA-305, Ex. 4 at 5 (Colo. Oct. 15, 2021) (Final Legislative Redistricting Plan). Broomfield County itself contains an area in the southwest that is contiguous with the rest of the county only at one point; that county boundary is reflected in the State House district's shape as well.

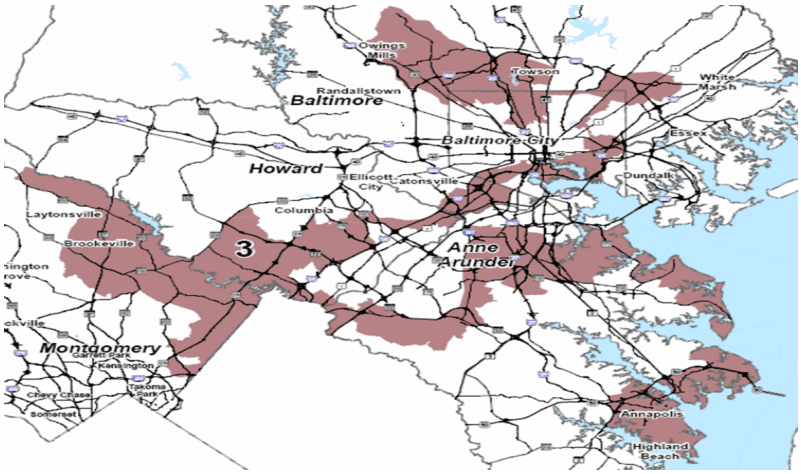
The commissions on which *amici* have served do not draw districts for partisan or incumbent-protective purposes. But *amici* understand that when mapmakers do draw for such purposes, it is not unusual to expect some of the districts to take on shapes that are more unusual still. Those shapes may reflect partisan or incumbent-protective choices among different options to comply with the Voting Rights Act, or partisan or incumbent-protective choices that have nothing to do with Voting Rights Act considerations. As indicated by the graphic examples below, many maps that may be described as having a "bizarre" shape were largely based on partisan politics — not predominately racial considerations.

For example, Pennsylvania's Seventh Congressional District from 2012-2017:



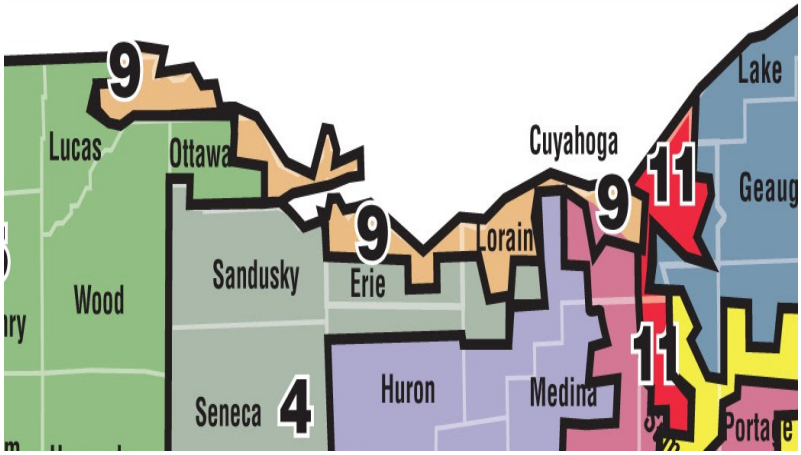

The Pennsylvania Supreme Court wrote that this district — "referred to as resembling 'Goofy kicking Donald Duck'" — reflected "the starkest example … of the [Pennsylvania legislature's] subordinat[ion of] traditional redistricting criteria in the service of partisan advantage." *League of Women Voters v. Commonwealth*, 178 A.3d 737, 818–19 (Pa. 2018).

Similarly, Maryland's Third Congressional District drafted in 2011:



In describing this district, a three-judge panel noted it was a "Rorschach-like eyesore … almost impossible to describe. It includes a snippet of Baltimore City, portions of Baltimore County, a small segment of Montgomery County, a large chunk of Anne Arundel County, and an isolated snippet that includes Annapolis that is detached from the rest of the district and can only be reached by water" and reflected that "the incumbent Congressman lives in Baltimore County, but still wanted to continue to represent the capital city Annapolis." *Fletcher v. Lamone*, 831 F.Supp.2d 887, 906 (D. Md. 2011) (three-judge court) (opinion of Titus, D.J.) (internal punctuation omitted), *aff'd* 567 U.S. 930 (2012).

Also similarly, Ohio's Ninth Congressional District drafted in 2011:




In evaluating the legality of this proposed district, a three-judge panel observed it is "a thin strip along the southern coast of Lake Erie, stretching from Toledo in Lucas County in the west to Cleveland in Cuyahoga County in the east [and] has earned it the nickname 'the Snake on the Lake' [and reflects] that the map drawers intentionally packed Democratic voters into District 9, splitting up communities of interest along the way…."

*Ohio A. Philip Randolph Inst. v. Householder*, 373 F. Supp. 3d 978, 1122-23 (S.D. Ohio 2019) (three-judge court), *vacated* 140 S. Ct. 102 (2019).

As these examples indicate and as this Court has repeatedly understood, the pull of partisan or incumbent-protective motivation can readily distort the shape of districts that might otherwise be drawn in conformity with traditional redistricting principles, even beyond the natural twists and turns of communities or geographic features. That observation is entirely consistent with *amici*'s experience.

* * * * *

**CONCLUSION**

*Amici* take no position on the merits of the instant dispute. But *amici* urge this Court to decide this matter consistent with three key principles this Court has repeatedly emphasized and which *amici* and other mapmakers regularly incorporate in their own work. First, mapmakers must practically take race into account.

Second, mapmakers may take race into account without provoking strict scrutiny under the U.S. Constitution. *Amici*'s commissions comply with the Voting Rights Act every redistricting cycle without race predominating in the process.

Third, districts may look as they do, including appearing to have "distorted" shapes, for a variety of reasons that reflect particular goals, such as heeding community or geographic boundaries, or (for other mapmakers) protecting partisan or incumbent interests. These considerations may drive the shape of districts that are also drawn to comply with the Voting Rights Act; it is not possible to conclude from the shape of a district alone that the mapmakers who drew that shape threatened, much less transgressed, constitutional imperatives.

Respectfully submitted.

JUSTIN LEVITT
*919 Albany Street*
*Los Angeles, CA 90015*
*(213) 736-7417*

JOHN A. FREEDMAN
*Counsel of Record*
NANCY L. PERKINS
ARNOLD & PORTER
KAYE SCHOLER LLP
*601 Massachusetts Avenue, NW*
*Washington, DC 20001*
*(202) 942-5000*
*john.freedman@arnoldporter.com*

DECEMBER 2024