No. 25A1229

IN THE SUPREME COURT OF THE UNITED STATES

WES ALLEN, ALABAMA SECRETARY OF STATE, *et al.*,

Petitioners,

v.

MARCUS CASTER, *et al.*,

Respondents.

CASTER RESPONDENTS' OPPOSITION TO EMERGENCY MOTION FOR STAY PENDING APPEAL

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INTRODUCTION

Nearly a year ago, Applicants told the District Court that they would "maintain[] the status quo pending any appeal" in this case by committing to use Alabama's current congressional map—drawn race-blind by a court-appointed special master—for the 2026, 2028, and 2030 congressional elections, "subject to [their] rights on appeal." *Caster* ECF No. 404 ¶¶ 3–4.[1] They repeated that commitment in a joint status report, in open court, and in response to direct questions from the district court judges overseeing this litigation. The District Court relied on those representations in fashioning its remedy. Consistent with their original representations, Applicants appealed the District Court's rulings but deliberately chose not to pursue interim relief from this Court. That appeal remains pending. Now, barely a week before Alabama's primary election date—and nearly a year after noticing their appeal—Applicants ask this Court to grant the very relief they knowingly and intentionally forswore: a last-minute judicial order setting aside Alabama's current map.

That request fails at the threshold. A stay pending appeal is meant to preserve the status quo pending resolution of an appeal, not to upend it. But Alabama's current congressional map *is* the status quo. That point is not even disputed; this case presents the rare instance where *everyone*—Applicants, Respondents, and the

[1] Citations beginning "*Caster* ECF No." refer to docket entries in *Caster v. Allen*, No. 2:21-cv-01536-AMM (N.D. Ala.), while citations beginning "*Milligan* ECF No." refer to docket entries in *Milligan v. Allen*, No. 2:21-cv-01530-AMM (N.D. Ala.). Citations beginning "App." refer to the Appendix to the Petition for Certiorari in *Allen v. Caster*, No. 25-243.

District Court—all agree on what the status quo is. Indeed, Alabama's current map has been in place since October 2023. It governed Alabama's 2024 congressional elections. It is governing Alabama's 2026 congressional elections, which are already underway: candidates have qualified, absentee ballots have been distributed, and votes have been cast. Granting the Application would not preserve the status quo; it would void an ongoing election, undercutting the settled expectations of candidates and voters alike. That alone is reason to deny the Application, but Applicants' own conduct and representations throughout this litigation confirm the point. Promising to maintain the status quo, waiting a year to seek a stay, and now demanding emergency relief in the middle of an election is precisely the kind of chicanery that precludes relief in equity, whether cast in terms of waiver, judicial estoppel, laches, or simple equitable discretion.

Applicants' invocation of *Callais* does not rescue them. They made their representations to the District Court with full knowledge that *Callais* was pending. Nothing about the present posture was unforeseeable when they committed to using Alabama's current map for the duration of their appeal, yet Applicants chose to forego a stay application well-knowing *Callais* might change the legal landscape. That *Callais* has now been decided does not entitle Applicants to a second bite at the apple they long ago chose not to take.

On the merits, Applicants tellingly do not even claim they are likely to prevail, suggesting only that this Court might remand. But a GVR is not a merits determination; it is an invitation for further consideration by the lower court, which

may well reach the same result. And in any event, several prominent features sharply distinguish this case from *Callais*: the remedial districts at issue were drawn race-blind by a court-appointed special master, the District Court made an independent finding of intentional racial discrimination under the Fourteenth Amendment that *Callais* did not address, and *Callais* expressly declined to overrule *Allen*. Applicants' likelihood-of-success showing is, at best, a likelihood of further consideration—not of ultimate relief.

Applicants' irreparable harm showing fares no better. The purported harm they now invoke has existed since this Court declined to stay the District Court's order preliminarily enjoining the 2023 Plan in September 2023—nearly three years ago. Applicants' conduct since belies any claim of urgency or truly irreparable harm. The fact that Applicants apparently believe their merits odds have improved does not substitute for the irreparable harm showing this Court requires.

The equities and public interest point in the same direction. Alabama's primary election is not merely approaching—it is long underway. The *Purcell* principle exists precisely to prevent federal courts from disrupting election machinery already in motion. If that principle means anything, it surely prohibits a federal judicial order voiding an ongoing election conducted under a map that Applicants themselves promised a federal court they would use, absent prevailing on the merits of their appeal. Granting such relief would not only harm the candidates and voters who have organized their participation around the current map; it would engender exactly the type of widespread and severe confusion that *Purcell* is meant to guard

against and deal a serious blow to public confidence in the integrity of the electoral process itself.

The Application should be denied, and this Court should continue to review the appeal in the ordinary course.

BACKGROUND

I. The District Court preliminarily enjoined Alabama's 2021 Plan and this Court affirmed.

The Court is well familiar with the history of this case. Alabama's 2021 Plan cracked Black voters in southern Alabama across three congressional districts—CDs 1, 2, and 3—such that they constituted an ineffective minority in each, while maintaining CD-7 as the lone district in which Black voters had the opportunity to elect their preferred candidates. Plaintiffs sued and the District Court preliminarily enjoined the use of that plan in January 2022. But this Court *in early February* held that Alabama's 2022 elections were already too far underway for Alabama's congressional maps to be changed based on a decision from a federal court, so the Court stayed the District Court's order and allowed Alabama to conduct elections and elect members of Congress using districts that this Court would later hold likely violated the Voting Rights Act. *See Merrill v. Milligan*, 142 S. Ct. 879 (Feb. 7, 2022); *Allen v. Milligan*, 599 U.S. 1 (2023). At the time, Alabama's May 24 primary election day was more than 15 weeks away. But as Alabama then argued, changing the map when "the primary elections begin (via absentee voting) just seven weeks from" the District Court's order was "a prescription for chaos for candidates, campaign

organizations, independent groups, political parties, and voters, among others." *Merrill*, 142 S. Ct. at 879–80 (Kavanaugh, J., concurring).

This Court later affirmed the injunction in full. *Allen*, 599 U.S. at 42. The Court saw no reason "to disturb the District Court's careful factual findings," "upset [its] legal conclusions," or "remake [this Court's] § 2 jurisprudence anew." *Id.* at 23.

II. On remand, Alabama defied the District Court's injunction and the District Court ordered a race-blind remedial plan.

On remand, the District Court gave the Alabama Legislature an opportunity to enact a plan to remedy the likely Section 2 violation that it found and that this Court affirmed. In response, Alabama enacted the 2023 Plan, which, once again, contained only one district in which Black voters had the opportunity to elect their preferred candidates. App.3. The District Court preliminarily enjoined use of the 2023 Plan for failing to remedy the likely Section 2 violation already found and, in the alternative, for likely violating Section 2 in its own right. App.4.

After this Court declined to stay that injunction, *Allen v. Milligan*, 144 S. Ct. 476 (2023) (Mem.), the District Court adopted a plan prepared by a special master and a court-appointed cartographer (the "Special Master Plan"). The plan was prepared "race-blind" and "satisfied all constitutional and statutory requirements while hewing as closely as possible to the Legislature's 2023 Plan." App.16; App.80–81 (describing the parties' stipulation that the Special Master Plan was prepared race-blind). The 2024 elections were conducted under this court-adopted remedial plan, and Alabama's ongoing primary elections are being conducted under this plan.

III. After a full trial, the District Court again enjoined the 2023 Plan and Applicants agreed to maintain the status quo pending appeal.

In early 2025, the District Court held an 11-day trial on the 2023 Plan. App.5. In addition to the evidence from the first two preliminary injunction hearings, the District Court heard live testimony from 23 witnesses, received testimony by designation from 28 additional witnesses, and considered 39 pages of stipulated facts and more than 790 exhibits. On May 8, 2025, the District Court permanently enjoined the 2023 Plan, finding that it violated Section 2. App.7. The District Court also found that the 2023 Plan was enacted with discriminatory intent. App.527. Applicants noticed their appeals from the District Court's order nearly a month later, on June 6. *Caster* ECF No. 406; App.1012; App.1015.

Having found that Alabama both violated Section 2 *and* intentionally discriminated against Black voters in violation of the Fourteenth Amendment, the District Court undertook remedial proceedings. In advance of those proceedings, Applicants submitted a statement indicating that "both they and leadership for both chambers of the Alabama Legislature will voluntarily forgo any rights that they may have to attempt to draw an additional congressional district as part of remedial proceedings in this case." *Caster*, ECF No. 404 ¶ 3. They further stated: "While Defendants maintain their arguments about the necessity and constitutionality of any remedial plan, Defendants do not plan to submit any further remedial plan so long as the Special Master's Remedial Plan 3 (the 'Special Master Plan') remains in place, thus *maintaining the status quo pending any appeal*." *Id.* ¶ 4 (emphasis added). And finally, Applicants represented that "neither they nor leadership for either

chamber of the Alabama Legislature have any intention of passing any additional congressional district maps before receiving 2030 census data." *Id.* ¶ 5. These statements were "provided subject to the Defendants' rights to appeal." *Id.* ¶ 6. In advance of the District Court's remedial hearing, the parties submitted a joint status report in which Applicants once again represented to the court "that the Special Master Plan 3 (the 'SM Plan') will remain in place for the 2026, 2028 and 2030 congressional elections . . . subject to Defendants' rights on appeal." *Caster* ECF No. 411 ¶ 1. The District Court held a hearing on remedies on July 29, 2025, at which Applicants repeated these commitments. *See Caster* ECF No. 416 at 65:25–66:3 ("Those representations are to say that the Legislature is out of the map-drawing business outside of the context of this litigation. In other words, the appeal in this case will determine what map is used for the rest of this decade.").

Following these proceedings, the District Court once again permanently enjoined the 2023 Map, and ordered Secretary Allen to administer Alabama's congressional elections using the Special Master Plan until Alabama enacts a new congressional districting plan based on 2030 census data. *Caster* ECF No. 417; App.1036. The District Court explicitly relied on the Applicants' representation "that the Legislature is out of the map-drawing business outside of the context of this litigation." App.1031, 1035. As a result, the same Special Master Plan used in 2024 remains in effect, and Alabama election officials have begun to administer the 2026 congressional election pursuant to that plan. Candidates have already qualified, accepted contributions, and have been certified for the May 19 primary, and absentee

ballots were distributed nearly five weeks ago to overseas voters, while all other absentee voters have been eligible to request and receive ballots since late March.[2]

IV. Following *Callais*, Applicants backtracked on their promise to maintain the status quo pending appeal.

Meanwhile, on April 29, 2026, this Court decided in *Louisiana v. Callais*, Nos. 24-109 & 24-110, 2026 WL 1153054 (U.S. Apr. 29, 2026), that a congressional map enacted by the Louisiana legislature to remedy a Section 2 violation was an impermissible racial gerrymander in violation of the Fourteenth Amendment. That case was first argued *prior* to Applicants' promise to maintain the status quo pending appeal, and the Alabama Attorney General submitted two amicus briefs in support of Louisiana in September 2024 and January 2025. *See* Br. of Ala. & 12 Other States, *Callais*, Nos. 24-109, 24-110 (U.S. Sep. 3, 2024); Br. of Ala. & 13 Other States, *Callais*, Nos. 24-109, 24-110 (U.S. Jan. 28, 2025). Applicants staked their position fully knowing that *Callais* was pending.

Nonetheless, after their appeal had been pending for nearly a year, Applicants here quickly filed a "Motion to Expedite Consideration of Petition for a Writ of Certiorari Before Judgment," arguing that the Court should expeditiously grant their pending Petition for Certiorari, vacate the District Court's injunction in light of *Callais*, and remand for further proceedings. Mot., *Allen v. Caster*, No. 25-243 (U.S. Apr. 30, 2026). *Caster* Respondents submitted responsive briefing the same day. Resp.

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[2] *See* Ala. Sec'y of State, Administrative Calendar: 2026 Statewide Election (rev. Dec. 29, 2025), https://www.sos.alabama.gov/sites/default/files/election-2026/AdminCalendar%20-2026.pdf; 52 U.S.C. § 20302(a)(8).

to Mot. to Expedite, *Allen*, No. 25-243 (U.S. Apr. 30, 2026). That motion—and Applicants' appeal—remains pending.

Applicants now seek a judicial order allowing them to alter Alabama's congressional map while this Court continues to consider the merits of their pending appeals. Their request comes just hours after the Governor of Alabama signed House Bill 1, which authorizes a "special primary election" "in the event a federal court issues or vacates an order affecting the boundaries of Congressional districts in a time frame that allows for a supplemental special primary election during the 2026 General Election cycle."[3]

The District Court denied that same relief on May 8, 2026—exactly a year after it permanently enjoined the 2023 Plan. *Milligan* ECF No. 525; *see Caster* ECF No. 401. It explained that Applicants' pending appeals divested it of jurisdiction "to do anything with [the injunction] other than enforce it." *Milligan* ECF No. 525 at 4–5. The limited exception in Rule 62(d) allowing the District Court to "suspend" or "modify" an injunction during the pendency of an appeal does not apply, the court explained, because such an order must "preserve the status quo pending appeal." *Id.* at 3–4 (quoting *Pettway v. Am. Cast Iron Pipe Co.*, 411 F.2d 998, 1003 (5th Cir. 1969)). The District Court's injunction "is the status quo in Alabama," and "has been the status quo since [the District Court] and [this Court] declined to stay it in September 2023." *Id.* at 5. "Accordingly, a stay would upend Alabama's status quo." *Id.*

[3] H.B. 1, 2026 Gen. Assemb., Spec. Sess. (Ala. 2026), available online at https://arc-sos.state.al.us/ucp/L2143390.AI1.pdf.

LEGAL STANDARD

"A stay is an intrusion into the ordinary processes of administration and judicial review, and accordingly is not a matter of right, even if irreparable injury might otherwise result to the appellant." *Nken v. Holder*, 556 U.S. 418, 426 (2009) (quotation omitted). Such stays are intended to "suspend . . . alteration of the status quo" pending appeal. *Id.* at 429 n.1. Four factors are relevant to granting a stay: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Id.* at 426 (quotation omitted). The first two factors are the "most critical." *Id.* at 434.

ARGUMENT

I. Applicants' stay request would alter a longstanding status quo that Applicants repeatedly promised to maintain pending appeal.

A. The Application would upend the status quo in Alabama, rather than preserve it.

The Application is fundamentally improper because it asks for judicial alteration of the status quo, rather than "to preserve the status quo pending an appeal." *Virginian Ry. Co. v. United States*, 272 U.S. 658, 669 (1926); *accord Nken*, 556 U.S. at 428–29; *see also Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 844 (D.C. Cir. 1977) (A stay pending appeal is "preventative, or protective; it seeks to maintain the status quo pending a final determination of the merits of the suit."). To be sure, identifying the relevant status quo is sometimes challenging or subject to dispute. *See Labrador v. Poe*, 144 S. Ct. 921, 930 (2024)

(Kavanaugh, J., concurring). But this is not such a case: Applicants, Respondents, and the District Court *all agree* that Alabama's *current* congressional map constitutes the status quo. *Caster* ECF No. 404 ¶ 4; *Milligan* ECF No. 525 at 5.

Indeed, prior to the judgment and permanent injunction now on appeal, Alabama's current map governed the State's 2024 congressional elections, after this Court denied a similar stay application three years ago. *See Allen v. Caster*, 144 S. Ct. 476 (2023) (Mem.). As the District Court observed in denying the present stay request, Alabama's current map has been the status quo since 2023, resulting in that map's use "for Alabama's 2024 congressional elections and . . . for the 2026 congressional elections that are occurring now." *Milligan* ECF No. 525 at 5. The Application thus demands precisely what judicial stays are intended to avoid: "upend[ing] Alabama's status quo . . . in the middle of an election." *Id.* at 6; *see also Nat'l Urb. League v. Ross*, 977 F.3d 698, 701 (9th Cir. 2020) ("Accordingly, on the facts of this case, staying the preliminary injunction would upend the status quo, not preserve it.").[4]

Members of this Court have previously rejected such disruptive requests for interim relief, even when presented under the guise of a stay application. In *Columbus Board of Education v. Penick*, Justice Rehnquist stayed the Sixth Circuit's mandate requiring the city of Columbus to undertake a disruptive systemwide school

[4] At minimum, a stay that *disrupts* a settled and undisputed status quo should be subject to the heightened standards that typically govern more intrusive orders, such as injunctions pending appeal. *Cf. Turner Broad. Sys., Inc. v. FCC*, 507 U.S. 1301, 1301 (1993) (Rehnquist, C.J., in chambers) (discussing the heightened showing required to obtain "an order *altering* the legal status quo").

desegregation plan. *See* 439 U.S. 1348, 1350 (1978). In a parallel case in Dayton, however, Justice Stewart *denied* a similar request because Dayton had already been operating under a similar desegregation plan for several years. *See Dayton Bd. of Educ. v. Brinkman*, 439 U.S. 1357, 1357 (1978). As Justice Stewart explained, the "crucial distinction" between the two cases was that "Columbus had never been the subject of a school desegregation remedy; the Dayton system, by contrast, will enter its third year under the current plan on September 7." *Id.* Thus, "[i]n *Columbus* the status quo was preserved by granting a stay," but in *Dayton* it could "be preserved only by denying one," lest the Court "disrupt[] the school system during [its] consideration of the case." *Id.* Two days after Justice Stewart's denial, Dayton renewed its request to Justice Rehnquist—who also denied it. He expressed "complete agreement" with Justice Stewart "that there is a difference between the status quo in the Dayton school system and that in the Columbus school system." *Dayton Bd. of Educ. v. Brinkman*, 439 U.S. 1358, 1358–59 (1978) (further explaining that "maintenance of the status quo is an important consideration in granting a stay"); *cf. Holtzman v. Schlesinger*, 414 U.S. 1304, 1310, 1315 (1973) (Marshall, J.) (denying application where it was "difficult to justify a stay for the purpose of preserving the status quo" and explaining such cases "must follow the regular appellate procedures"). This case resembles *Dayton*, particularly given that Alabama's current map has been in place for nearly three years—just like the remedial plan at issue in *Dayton*.

These basic principles about preserving the status quo would apply even if the timing of Applicants' stay request—made 11 days before Alabama's primary

election—was dictated by the timing of the District Court's injunction. But Applicants themselves are solely responsible for the current posture, in which they ask this Court to authorize the voiding of an ongoing election *nearly a full year* after Applicants noticed their appeal. *See* App.1012; App. 1015; *Caster* ECF No. 406. That is a breathtaking request under any circumstances, but particularly via a *stay request* filed a year after the order on review. As the District Court rightly observed, "this is not an ordinary stay motion filed upon the commencement of an appeal." *Milligan* ECF No. 525 at 5. "The Secretary noticed his third appeal to the Supreme Court nearly a year ago, and he did not seek a stay then." *Id.* "Two appellate motions are now fully briefed and pending in [the Supreme] Court." *Id.* at 5–6. Applicants thus ask this Court to disrupt an ongoing election under Alabama's status quo map in order to short-circuit pending merits review.

Applicants have no excuse for this contrived timing. While they point to *Callais*, the issuance of that decision offers no basis for a second bite at the apple. *Callais* was first argued to this Court on March 24, 2025—well before the orders on appeal here even issued—and then reargued approximately two months after the District Court issued its permanent injunction. The Alabama Attorney General—who represents Secretary Allen here—submitted multiple amicus briefs in *Callais*, raising similar arguments to what Applicants now raise on the merits here.[5] Even so, Applicants *repeatedly* represented to the District Court that they would "maintain[] the status

[5] *See* Br. of Ala. & 15 Other States, *Callais*, Nos. 24-109, 24-110 (U.S. Sep. 24, 2025); Br. of Ala. & 13 Other States, *Callais*, Nos. 24-109, 24-110 (U.S. Jan. 28, 2025); Br. of Ala. & 12 Other States, *Callais*, Nos. 24-109, 24-110 (U.S. Sep. 3, 2024).

quo pending any appeal." *Caster* ECF No. 404 ¶¶ 3–4. Nothing about the present posture of the case was unforeseeable when Applicants committed to using Alabama's current map for the duration of their merits appeal.

B. Applicants' own past commitments to preserve the status quo independently warrant denying their belated Application.

Indeed, Applicants' past representations to the District Court, on their own, warrant denying their request. *See supra* Background § III. Regardless of how it is labelled (waiver, estoppel, laches, inequitable conduct, or unclean hands), Applicants should not be permitted to tell the District Court one thing and then—after sitting on their hands for a year—tell this Court another, based solely on (mis)perceived advantage.

Start with waiver. Having told the District Court that they intended to use the current map pending appeal—and then sitting idly while the usual time for seeking a stay came and went—Applicants have certainly engaged in "the intentional relinquishment or abandonment of a known right." *Kontrick v. Ryan*, 540 U.S. 443, 458 n.13 (2004) (internal quotation marks and citation omitted). Applicants apparently now regret that deliberate choice, but this Court "is not at liberty . . . to bypass, override, or excuse [Applicants'] deliberate waiver." *Wood v. Milyard*, 566 U.S. 463, 466 (2012); *cf. FTC v. Elite IT Partners, Inc.*, 91 F.4th 1042, 1047 (10th Cir.) (observing that "a party can freely waive the right to invoke the court's jurisdiction or equitable authority"), *cert. denied,* 145 S. Ct. 150 (2024).

Estoppel is equally appropriate. "Where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter,

simply because his interests have changed, assume a contrary position." *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001). Yet that is precisely what Applicants do here—not only with respect to their promise to adhere to the current map pending a favorable ruling on the merits, but also as to timing. Applicants previously took the view that "chaos" would ensue if this Court effectuated new districts "days before the candidate qualifying deadline and less than two months before absentee voting is to begin," Emergency Appl. for Admin. Stay & Stay at 38–39, *Merrill v. Milligan*, No. 21-1087 (U.S. Jan. 28, 2022)—a view they apparently now abandon in their rush to have this Court bless the use of new maps three and a half months after the candidate qualifying deadline and over a month after absentee voting has begun. *See also Caster* ECF No. 71 at 28, 120–23 (making similar arguments).

Applicants now take "clearly inconsistent" positions, *New Hampshire*, 532 U.S. at 750 (quotation omitted), arguing that the current map be set aside in the middle of an election and before this appeal is resolved on the merits. Applicants take these novel positions notwithstanding that both this Court and the District Court previously credited their contradictory views. *See, e.g.*, *Merrill*, 142 S. Ct. at 880 (Kavanaugh, J., concurring) (crediting Applicants' arguments that it would have taken "heroic efforts" to implement new maps "just seven weeks" before the first day of absentee voting); *Caster* ECF No. 416 at 65:25–66:3 ("Those representations are to say that the Legislature is out of the map-drawing business outside of the context of this litigation. In other words, the appeal in this case will determine what map is used for the rest of this decade."); *accord New Hampshire*, 532 U.S. at 750–51. And

Applicants plainly would derive "unfair advantage" from such vacillation, *id.* at 751, using their promises of adherence to the current map pending appeal to avoid extended judicial oversight, only to later ask this Court for interim relief from that same map. Judicial estoppel, which serves "to protect the integrity of the judicial process by prohibiting parties from deliberately changing positions according to the exigencies of the moment, *id.* at 749–50 (internal quotation marks and citation omitted), applies with full force here. So, too, do the principles behind other equitable doctrines, like laches and unclean hands. *E.g.*, *City of Sherrill, N.Y. v. Oneida Indian Nation of N.Y.*, 544 U.S. 197, 217 (2005) ("It is well established that laches, a doctrine focused on one side's inaction and the other's legitimate reliance, may bar long-dormant claims for equitable relief."); *Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 814 (1945) (explaining "unclean hands" doctrine "closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief").

Applicants halfheartedly address their flipflopping in a half-page footnote that does nothing to justify their conduct. *See* Application at 10 n.5. That footnote does *not* dispute that Applicants previously recognized that Alabama's current map is the "status quo," *Caster* ECF No. 404 ¶ 4—a point nowhere addressed in the Application. It does *not* dispute that Applicants promised to "maintain" that status quo "pending appeal." *Id*. It does *not* dispute that, in response to a question from the District Court, Applicants agreed in open court that they had "no intent" to "make any changes to the Special Master map" unless "the defendants *prevail on appeal*." *Caster* ECF No.

416 at 37:22–38:6 (emphasis added). And, to be clear, what Applicants now seek—a "stay *pending appeal*," Application at 25 (emphasis added)—would not be "prevail[ing] on appeal." Applicants' footnote likewise offers no answer to the fact that Applicants, in response to a question from the District Court, assured the court they would "comply" with the present injunction even if the Legislature enacted new districts. *Caster* ECF No. 416 at 42:6–11 (explaining it "doesn't matter what maps they pass"). Nor do Applicants dispute the fact that the District Court relied upon these representations in choosing not to subject Alabama to preclearance. *See Caster* ECF No. 417 at 13. In view of these now abandoned and silently renounced representations, the Court has a veritable buffet of doctrines to choose from in declining the extraordinary equitable relief sought by Applicants.

At bottom, granting a stay is always a matter of equitable discretion. *E.g.*, *Nken*, 556 U.S. at 432; *Scripps-Howard Radio v. FCC*, 316 U.S. 4, 10 (1942). Applicants' own representations and choices throughout this litigation supply the Court with ample basis to deny their belated and disruptive stay request.

II. Applicants are unlikely to succeed on the merits of their appeal.

On the merits, Alabama hangs its hat on the Court's recent decision in *Louisiana v. Callais*, but the issues in this case are not identical to the issues in *Callais*, and the result here, as in 2022, is not preordained. Among much else, unlike in *Callais*, the remedial districts at issue here were drawn ***race-blind*** by a court-appointed special master "without any particular difficulty." App.514, 531–32. And they were adopted to remedy a Section 2 violation nearly identical to the one that this Court affirmed on the merits in *Allen*, 599 U.S. 1; *see* App.3–4. Indeed, *Callais*

expressly did "not overrule[] *Allen*," *Callais*, 2026 WL 1153054, at *18, the reasoning of which continues to govern this case, *see Allen*, 599 U.S. at 21.

A. *Callais* does not require vacatur of the District Court's Section 2 finding.

Callais revised the first *Gingles* precondition, which requires plaintiffs to submit illustrative maps with an additional opportunity district. *Callais*, 2026 WL 1153054, at *15. Under the revised standard, (1) "plaintiffs cannot use race as a districting criterion"; and (2) the "illustrative maps must meet all the State's legitimate districting objectives, including traditional districting criteria and the State's specified political goals." *Id.* The record below and the District Court's careful findings of fact more than suffice to satisfy even this revised standard.

First, Plaintiffs "submitted more than a dozen" maps showing "that it is *possible* to draw a reasonably configured remedial district." App.363. Indeed, this Court already determined that Plaintiffs satisfied the first *Gingles* precondition at the preliminary injunction phase by presenting 11 illustrative maps "contain[ing] two majority-black districts that comported with traditional districting criteria." *Allen*, 599 U.S. at 20; *see Callais*, 2026 WL 1153054, at *18 ("[W]e have not overruled *Allen*."). Contrary to Applicants' suggestions, Application at 16, there is no impropriety in "screen[ing] out . . . the maps that did not contain two Black-majority districts." App.359. The "entire point" of *Gingles* 1, even after *Callais*, is to show "that an additional majority-minority district *could* be drawn." *Allen*, 599 U.S. at 33. And the Alabama Legislature *itself* identified "the non-dilution of minority voting strength" as a "traditional redistricting principle." App.359–60; App.534 ("[A] redistricting plan

shall have neither the purpose nor the effect of diluting minority voting strength." (internal quotation omitted)).

But even if the proposed districts submitted by the Plaintiffs were not enough, the remedial districts proposed by the Special Master more than satisfy the first *Gingles* precondition as revised by *Callais*. Those were undisputedly drawn *race-blind* by the court-appointed special master "without any particular difficulty." App.514. The parties stipulated that the Special Master's cartographer "drafted the Special Master Plan without reference to any illustrative or proposed plan," "did not display racial demographic data within the mapping software, Maptitude, while drawing his remedial proposals," and "drew his proposals based on other nonracial characteristics and criteria." App.531–32 (citation modified). That should be the end of the matter.

Second, the District Court found that "Plaintiffs' illustrative plans often do meet or beat the 2023 Plan" on Alabama's own stated criteria. App.329. The same is true of the Special Master's plans. App.78–81. Applicants, consistent with their pre-*Callais* arguments, object that "[n]o alternative map preserved the two Gulf Coast counties." Application at 11. But *Callais* requires that illustrative maps meet "all the state's *legitimate* districting objectives." 2026 WL 1153054, at *15 (emphasis added). The District Court here made a factual finding that Alabama's so-called "non-negotiable" criteria, including maintaining the Gulf Coast in one district, were specifically designed to make it impossible to draw an additional majority-Black district. *See* App.504–05. The District Court found that, "[f]or the first time that

anyone involved in these cases can remember or find, the Legislature included in the state law with the map extensive legislative findings," including several "non-negotiable" criteria that made it "mathematically impossible" to draw an additional Black opportunity district. App.417–418. In fact, "counsel for the State conceded in closing argument that he is 'not aware of a way to draw two majority-Black districts without going against the Legislature's priority of keeping Mobile and Baldwin County whole.'" App.347. A purportedly neutral redistricting criterion that is intentionally designed to make the drawing of an additional Black opportunity district impossible is not a "legitimate" criterion by any definition.

This is not the first time Applicants have asked this Court to prioritize their preferred Gulf Coast community of interest over Section 2 of the Voting Rights Act. *See Allen*, 599 U.S. at 20-21. This Court already rejected Applicants' argument "that plaintiffs' maps erred by separating [the Gulf Coast region] into two different districts," as "not … persuasive." *Id.* at 20. The Court further held that "[e]ven if the Gulf Coast did constitute a community of interest, . . . [t]he District Court concluded—correctly, under our precedent—that it did not have to conduct a 'beauty contest[]' between plaintiffs' maps and the State's." *Id.* at 21 (quotation omitted); *see also id.* ("The District Court understandably found [the PI record] insufficient to sustain Alabama's overdrawn argument that there can be no legitimate reason to split the Gulf Coast region." (citation modified)). And Applicants' contention that the Gulf Coast is now somehow inviolable is further belied by its State Board of Education Plan, which splits the Gulf Coast in the very same way that Applicants now say is

"non-negotiable." App.357. In fact, Alabama placed Mobile and Baldwin Counties in different congressional districts for nearly 100 years and only placed them together in the 1970s to prevent the reelection of a Black incumbent. App.349.

Applicants' insistence on the inviolability of the Gulf Coast continues to fail for the same reason this Court rejected their "related argument based on 'core retention.'" *Allen*, 599 U.S. at 21; *see* Br. for Appellants at 60 ("*Merrill* Appellants' Br."), *Merrill v. Milligan*, Nos. 21-1086, 21-1087 (U.S. Apr. 25, 2022) (defending Alabama's "longstanding interests in maintaining the Gulf Coast and respecting the existing district"). Like core retention, Alabama's Gulf Coast criterion has the practical effect of entrenching CD-2 as a majority-White district, precluding the creation of a second majority-Black district. App.347. "No document, testimony, or lawyer disputes ... this point." App.347. And as with core retention, "this Court has never held that a State's adherence to a previously used" majority-White district "can defeat a § 2 claim. If that were the rule, a State could immunize from challenge a new racially discriminatory redistricting plan simply by" mandating the preservation of a predominantly-White community that was prioritized in "an old racially discriminatory plan." *Allen*, 599 U.S. at 22. "That is not the law: § 2 does not permit a State to provide some voters 'less opportunity . . . to participate in the political process'" simply by proclaiming one community of interest paramount to all others. *Id.* (quoting 52 U.S.C. § 10301(b)).

The same is true of Alabama's pretextual insistence on splitting the Black Belt into two districts instead of three. The problem of cracking is not the *number* of districts into which a community is split, but the *effect* of that dispersal—that it

leaves the community in "districts in which they constitute an ineffective minority of voters." *Thornburg v. Gingles*, 478 U.S. 30, 46 n.11 (1986); *cf. Gill v. Whitford*, 585 U.S. 48, 67 (2018) (noting that vote dilution harm "arises from the particular composition of the voter's own district, which causes his vote—having been packed or cracked—to carry less weight than it would carry in another, hypothetical district").

Alabama does not dispute that, under the 2023 Plan, Black voters in southern Alabama are dispersed into two districts—CDs 1 and 2—in which they constitute an *ineffective* minority of voters, or that CD-7 remains the sole district in which Black voters have the opportunity to elect their preferred candidates. App.35; *see also* App.417 (explaining that the State "sent a lawyer into court to concede that the 2023 Plan has only one Black-opportunity district"). "This evidence—and concession—undermine the State's assertion that the 2023 [P]lan remedies the cracking of Black voting strength in the Black Belt simply by splitting the Black Belt into fewer districts." App.355. Whether Black Belt voters are fragmented to form a minority of two or three districts makes no difference; it is the denial of an additional opportunity district that matters.

Applicants' complaint that the illustrative plans failed to protect incumbent representatives is utterly circular. The *entire point* of a Section 2 claim is to provide minority voters a district in which they have an opportunity to elect their candidate of choice. It *requires* a showing that minority voters prefer different candidates than their White counterparts. If such a claim requires illustrative districts in which *the same representatives will win re-election*, then Section 2 is well and truly meaningless.

It would make the mere invocation of "incumbent protection" a kill switch. And it has nothing to do with disentangling race and politics because it would immunize both racial and partisan gerrymanders. Even a hypothetical illustrative district composed of a majority of Black Republicans who prefer different candidates from their White Republican counterparts for purely racial reasons would not satisfy Applicants' incumbency-protection criteria.[6]

Ultimately, a "reasonably configured" *Gingles* 1 illustrative district cannot be rendered "unreasonable" just because the legislature chooses to elevate a particular community of interest—or any other criterion—as especially important. To rule otherwise would let states evade Section 2 by gerrymandering their redistricting criteria to match their preferred districts. *See Allen*, 599 U.S. at 21.

Finally, the District Court here has already done the work of "disentang[ling]" race and politics, as *Callais* requires. 2026 WL 1153054, at *15. Applicants argued extensively to the District Court that Alabama's admittedly "stark[] and intense[]" racial polarization—and resulting "nearly invariant" electoral losses for Black-preferred candidates—is merely the consequence of partisan differences. App.271; App.384. But despite Applicants' best efforts, the District Court found "no evidence that only party politics are at work." App.385. To the contrary, the District Court

[6] To the extent Applicants' complaint is that the all the illustrative plans paired incumbents in the same district, that is false. At least one plan, Cooper Plan 5, "pairs no incumbents." App.904; App.871. Moreover, "because two paired incumbents live[d] in the same county just miles apart, a plan would have to split that county to avoid pairing those incumbents." App.839.

found there was an "overwhelming evidentiary record about the importance of race in Alabama politics." App.391. The result of such stark racial polarization is that "Black Alabamians enjoy virtually zero success in statewide elections," *Allen*, 599 U.S. at 22 (quotation omitted), or at the state or federal level outside of majority-Black districts prescribed by § 2, *regardless of their partisan affiliation*. App.393–94.

These are not "cherry-pick[ed] findings," Application at 17—Applicants' *own experts* dispel their claim. Applicants offered Dr. Trey Hood to testify to Alabama's purportedly race-blind politics, but his testimony was "widely inconsistent" with his own scholarly work, including several articles that "directly refute his litigation opinions." App.375–76. Contrary to Applicants' position, Dr. Hood's published scholarship "spanning nearly a decade" "repeat[edly]" concludes that "race remains the dominant political influence in Southern politics today." App.385. Where the very scholarship that *qualifies* Dr. Hood as an expert explicates "[t]oday's racialized partisan cleavage," App.377 (quotation omitted), Applicants can hardly contend otherwise. *See* App.385 ("Ultimately, Dr. Hood's opinions support the Plaintiffs more than the State on the issue of racially polarized voting.").

Applicants' other expert on this issue, Dr. Christopher Bonneau, conceded that the data on racial voting patterns "established 'that White voters in Alabama support White Democrats more than they support Black Democrats.'" App.367 (quoting Trial Tr. 1789); App.386. This is consistent with the undisputed data demonstrating that White Alabamians of *both* major parties are less willing to support minority candidates. For instance, in 2008, White Democrats in Alabama supported Senator

John McCain over then-Senator Barack Obama. App.389. And in 2024, the four Black candidates in the CD-2 Republican primary finished behind the four White candidates, together amassing only 6% of the primary vote. App.389.

Moreover, while Black and White Alabamians both consider themselves to be ideologically conservative and hold similar views on important social issues, their voting patterns do not reflect those shared values. The district court heard and credited extensive testimony on this issue from both fact and expert witnesses. *See, e.g.* App.171 (expert testimony of Dr. Joseph Bagley); App.247 (lay testimony of Dr. Valtoria Jackson). Indeed, "no one dispute[d]" Dr. Maxwell Palmer's testimony that "race drives party attachments" in Alabama. App.390. And that testimony "fits with the lay testimony [the District Court] heard from multiple Black voters" who explained that "racial concerns drive" their party affiliation. App.391. "[A]s other witnesses explained, the position of the Democratic Party on both racial issues and other issues that are important to Black Alabamians overrides the obvious alignment between these voters' conservative Christian beliefs and the Republican Party." App.391.

Ultimately, Alabama's asserted partisan explanation for racial polarization is directly at odds with the "political reality" borne out in the evidentiary record. App.389. As the District Court found based on its "intensely local appraisal," *Allen*, 599 U.S. at 19 (quotation omitted), "it denies reality for us to say that at the end of the day, all of that is just party politics." App.391.

Nor did the district court inappropriately rely on Alabama's history of discrimination to the exclusion of more contemporary evidence. In accordance with the Court's precedent, the District Court declined to "assign Alabama's shameful history dispositive weight." App.395. Instead, the court "carefully considered an extensive record about both past and present discrimination"—including documented incidents of official discrimination found "in the last ten years by federal judges who remain in service today," the bail-in of three Alabama jurisdictions in the last decade, and ongoing school desegregation litigation in three major school districts, App.395–412—to conclude that "under all the circumstances in Alabama *today*, Black Alabamians have less opportunity than other Alabamians to elect representatives of their choice," App.7 (emphasis added). And if there were any remaining doubt that Black Alabamians suffer "present-day intentional racial discrimination regarding voting," *Callais*, 2026 WL 1153054, at *16, the District Court's independent intentional discrimination finding dispels it. *Infra* § II.B.

B. The District Court's intentional discrimination finding is unaffected by *Callais*.

Callais also has no bearing on the District Court's independently sufficient determination that the 2023 plan amounted to intentional race discrimination in violation of the Fourteenth Amendment—a claim not at issue in *Callais*. *See* App.21 (concluding "the 2023 Plan" cannot be understood "as anything other than an intentional effort to dilute Black Alabamians' voting strength"); *see Alexander v. S.C. State Conf. of NAACP*, 602 U.S. 1, 38 (2024) ("A vote-dilution claim is analytically distinct from a racial-gerrymandering claim and follows a different analysis."

(citation omitted)). Thus, unlike the litigants in *Callais*, Applicants' liability turns on their "deliberate decision to ignore, evade, and strategically frustrate requirements spelled out in a court order" affirmed by the Supreme Court in *Allen*. App.25.

Applicants' retrospective argument that, in light of *Callais*, the district court "applied the wrong standard," Application at 20, does nothing to undermine the District Court's factual findings in that regard. Applicants cannot simply ignore federal injunctions grounded in settled law simply because they anticipate that the law might change. And in any event, Applicants' premise is wrong: this Court "ha[s] not overruled *Allen*." *Callais*, 2026 WL 1153054, at *18.

Applicants' argument that they ignored the District Court's order because they feared "litigation risk" had they "drawn lines based on race to create a second race-based district," Application at 21, ignores that the Special Master Plan was drawn *blind to race.* And Alabama had assurance from both this Court and the district court that it was possible to draw a remedial district that did not give undue consideration to race. *Allen*, 599 U.S. at 33; App.114. It also ignores the District Court's factual finding that "the purpose of the design of the 2023 Plan was to crack Black voters across congressional districts in a manner that makes it impossible to create two districts in which they have an opportunity to elect candidates of their choice." App.22. In other words, Alabama went out of its way to *avoid* creating a second Black-opportunity district. In any event the District Court "ha[d] no evidence that the Legislature was specifically concerned about potential gerrymandering liability when

it enacted the 2023 Plan." App. 522. And Applicants have not pointed to any evidence that the District Court allegedly overlooked.

C. Alabama never defended its map as a partisan gerrymander.

Callais also does nothing to support Applicants' belated claim that the 2023 Plan was driven by partisanship. The District Court found "precious little evidence to support the State's claim." App.524. To the contrary, Alabama adamantly insisted—in detailed legislative findings and legal arguments—that the 2023 Plan was grounded in its desire to preserve the predominantly White Gulf Coast community, rooted in White colonial heritage. App.346–48. And while Applicants now complain that Plaintiffs did not produce "an alternative map that achieves all the State's objectives—including partisan advantage and any of the State's other political goals," Application at 21–22 (citation omitted), **Applicants *did not put forth* partisan advantage as a defense**. *See Callais*, 2026 WL 1153054, at *18 (acknowledging that, like with the 2023 map, Alabama "did not defend its [2021] map on the ground that it was drawn to achieve a political objective").

D. The mere prospect of vacatur does not suffice to establish a likelihood of success on the merits.

Tellingly, Applicants argue that they are "highly likely to succeed in its pending motion that this Court vacate the injunctions and remand the cases in light of *Callais*"—not that they are likely to succeed on the ultimate merits. Application at 1. That distinction is important because merely obtaining reconsideration of the District Court's injunction is not the same as achieving success on the merits. This Court routinely remands matters without opining on the ultimate merits. *E.g.*, *Tyler*

v. Cain, 533 U.S. 656, 666 n.6 (2001) (explaining that "remand[] for further consideration" in light of intervening authority is "not a 'final determination on the merits'" (quoting *Henry v. Rock Hill*, 376 U.S. 776, 777 (1964) (per curiam)); *Rock Hill*, 376 U.S. at 777 (explaining an "earlier remand did not amount to a final determination on the merits"); *Villa v. Van Schaick*, 299 U.S. 152, 155 (1936) (per curiam) (remanding while "express[ing] no opinion as to the merits"). And that is *all* that Applicants seek here and in their pending motion to expedite. Such a vacatur is not a determination on the merits.

This is also true when the Court grants certiorari, vacates a lower court decision, and remands for further proceedings (GVR). *See Wellons v. Hall*, 558 U.S. 220, 225–26 (2010) (per curiam) (explaining GVR "assists this Court by procuring the benefit of the lower court's insight before we rule on the merits" (quoting *Lawrence v. Chater,* 516 U.S. 163, 167 (1996) (per curiam)). As numerous circuit courts have recognized, this Court's issuance of a "GVR [order] makes no decision as to the merits of a case." *Diaz v. Stephens*, 731 F.3d 370, 378 (5th Cir. 2013) (citing *Tyler*, 533 U.S. at 666 n.6); *see also United States v. M.C.C. of Fla., Inc.*, 967 F.2d 1559, 1562 (11th Cir. 1992) (explaining a GVR "merely requires further consideration in light of a new Supreme Court decision"); *In re Whirlpool Corp. Front-Loading Washer Prods. Liab. Litig.*, 722 F.3d 838, 845 (6th Cir. 2013) ("The GVR order is not equivalent to reversal on the merits, nor is it an invitation to reverse" (citation modified) (citing *Tyler*, 533 U.S. at 666 n.6)); *Texas v. United States*, 798 F.3d 1108, 1116 (D.C. Cir. 2015) ("[I]t is well-settled that a GVR has no precedential weight and does not dictate how the lower

court should rule on remand."); *United States v. Norman*, 427 F.3d 537, 538 n.1 (8th Cir. 2005) ("The GVR is not the equivalent of a reversal on the merits, however. Rather, the Court remands for the sake of judicial economy-so that the lower court can more fully consider the issue with the wisdom of the intervening development."); *Hughes Aircraft Co. v. United States*, 140 F.3d 1470, 1473 (Fed. Cir. 1998) ("Vacatur and remand by the Supreme Court, however, does not create an implication that the lower court should change its prior determination."); *Gonzalez v. Justs. of Mun. Ct. of Bos.*, 420 F.3d 5, 7 (1st Cir. 2005) ("The GVR order itself does not constitute a final determination on the merits; it does not even carry precedential weight.").

Vacatur and remand in such cases "is neither an outright reversal nor an invitation to reverse; it is merely a device that allows a lower court that had rendered its decision without the benefit of an intervening clarification to have an opportunity to reconsider that decision and, if warranted, to revise or correct it." *Gonzalez*, 420 F.3d at 7. That Applicants here merely raise the prospect of remand—but stop short of even asserting a probability of success on the merits—dooms their stay request.

III. Applicants fail to show irreparable harm.

"The authority to grant stays has historically been justified by the perceived need 'to prevent irreparable injury to the parties or to the public' pending review." *Nken*, 556 U.S. at 432 (quoting *Scripps-Howard Radio*, 316 U.S. 9). Thus, an "applicant for stay first *must* show irreparable harm if a stay is denied," *Rubin v. United States*, 524 U.S. 1301, 1301 (1998) (Rehnquist, C.J., in chambers) (emphasis added), and "[i]f the moving party has not demonstrated irreparable harm, then this

Court can avoid delving into the merits." *Labrador*, 144 S. Ct. at 929 (Kavanaugh, J., concurring).

Applicants make only a fleeting effort to show irreparable harm, rooted principally in the fact that Alabama is enjoined from using "its lawfully enacted 2023 plan" and that the current map is possibly unlawful. Application at 23. But that allegedly irreparable harm first arose *nearly three years ago* when this Court declined to stay the district court's preliminary injunction, *see Caster*, 144 S. Ct. at 476, resulting in use of the current congressional map since. In the intervening three years, the District Court issued its merits ruling (one year ago) and entered judgment and a permanent injunction (nine months ago). App.1; App.1022. Applicants promptly appealed those orders, but otherwise sought no interim relief from this Court, belying the notion that their harm is truly irreparable. After all, irreparable harm exists only when a movant is "*immediately* in danger of sustaining some direct injury." *Los Angeles v. Lyons,* 461 U.S. 95, 102 (1983) (emphasis added) (quotation omitted). There is nothing "immediate" about Alabama's inability to use the 2023 map, which has never been used in an election and which has been enjoined for nearly three years. And Applicants' pending Petition for Certiorari does not argue that the Special Master Plan is an unlawful racial gerrymander. *See* Petition, *Allen v. Caster*, No. 25-243 (U.S. Aug. 26, 2025).

Applicants' unexcused delay reinforces the point, particularly in the stay context. *See Wreal, LLC v. Amazon.com, Inc.*, 840 F.3d 1244, 1248 (11th Cir. 2016) (explaining that a delay of "even only a few months . . . militates against a finding of

irreparable harm"). Any purported need to protect the State's sovereign interests should have been apparent the moment the injunction was entered. Indeed, this Court has previously said that a party's request for a stay "20 days after filing their certiorari petition" reflected "delay in . . . seeking a stay [that] vitiates much of the force of their allegations of irreparable harm." *Beame v. Friends of the Earth*, 434 U.S. 1310, 1313 (1977). Likewise, Justice Blackmun denied a stay application because, among other reasons, the EPA Administrator sought it "7 weeks after the District Court issued its amended judgment," and that "failure to act with greater dispatch tend[ed] to blunt his claim of urgency and counsel[ed] against the grant of a stay." *Ruckelshaus v. Monsanto Co.*, 463 U.S. 1315, 1317–18 (1983); *cf. Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J.) (weighing Maryland's "eight-week delay in applying for a stay" as undercutting its claim to irreparable harm). Here, Applicants waited nearly a year after noticing their appeal to seek interim relief, and more than six months after their petition for certiorari became fully briefed—a posture that reflects less a sincere desire for a stay and more a demand that the Court resolve the merits on Applicants' preferred timeline. Indeed, as *Nken* recognized, "the dilemma stays" ordinarily address is "what to do when there is insufficient time to resolve the merits and irreparable harm may result from delay." 556 U.S. at 432. That is not the "dilemma" here at all, where Applicants' petition has been fully briefed and pending adjudication in the ordinary course for six months. Applicants just want a do-over.

Further undercutting Applicants is the fact that they have previously demonstrated the ability to seek prompt relief from this Court *in this same litigation*.

When the district court preliminarily enjoined Alabama's 2021 map on January 24, 2022, Applicants managed to seek relief from this Court by *January 28*—light speed compared to their torpid pace here. *See Merrill*, 142 S. Ct. at 879. The difference is that Applicants *chose* to forego seeking a stay this time around—until they believed their odds improved. But that offers no excuse for an out-of-time stay application that could have been brought nearly a year earlier. *See Gomez v. U.S. Dist. Ct. for N. Dist. of Cal.*, 503 U.S. 653, 654 (1992) (per curiam) (noting that the "last-minute nature of an application" or an applicant's "attempt at manipulation" of the judicial process may be grounds for denial of a stay). And Applicants' perceived view that their *merits* odds have improved—right or wrong—says little about their purported harm, which has not changed in character since Applicants opted to voluntarily forego a stay last year.[7] After all, equitable relief "will generally not be granted in favor of one who, with full knowledge of what is being done or with the means of acquiring such knowledge, acquiesces or delays in asserting rights until" the point at which the status quo can be "alter[ed] only with great damage." 42 Am. Jur. 2d Injunctions § 44 (2025) (footnote omitted).

[7] Much as a party is typically bound by an election of remedy, choosing to forego seeking interim stay relief after filing an appeal should, in the ordinary course, "preclude [a party] thereafter from going back and electing again." *Robb v. Vos*, 155 U.S. 13, 41 (1894); *cf. Hendrickson v. Hinckley*, 58 U.S. 443, 447 (1854) (discussing principle of election of remedy and explaining a party, after electing relief at law, "cannot come into a court of equity and ask to be allowed to make a different determination, and to be restored to the right which he has once voluntarily waived").

And rest assured, granting equitable relief at this eleventh hour *would* result in great damage—to Respondents and (as addressed *infra* § IV) the public generally. Applicants wave this away, insisting that Respondents are entitled to no more than what the Legislature elected to grant them in 2023. *See* Application at 24 (citing *Callais*, 2026 WL 1153054, at *12). That remarkable assertion ignores the District Court's finding—absent from *Callais*—that the 2023 map was unlawful for the independent reason that it reflected "an intentional effort to dilute Black Alabamians' voting strength and evade the unambiguous requirements of court orders standing in the way." App.21. Such an effort "amounted to intentional racial discrimination in violation of the Fourteenth Amendment's Equal Protection guarantee"—a finding supported by an "unusual corpus of undisputed evidence" confirming the point. App.21. It goes without saying that Respondents would be grievously harmed by being forced—via a belated stay application no less—to vote under such a map.

Finally, regardless of whether *Callais* informs this Court's view of the merits, *but see supra* § II, it should not excuse Applicants' failure to seek timely relief from what they now belatedly label as irreparable harm. Applicants cite no authority for the notion that improved odds on the merits can obviate the requirement to prove irreparable harm. The opposite is true: "When considering success on the merits and irreparable harm, courts cannot dispense with the required showing of one simply because there is a strong likelihood of the other." *Nken*, 556 U.S. at 438 (Kennedy, J., concurring). Regardless of whether Applicants are right or wrong about the impacts of *Callais* on the merits, they "cannot rely solely on [their perceived] likelihood of

success on the merits . . . to establish a likelihood of irreparable harm." *Hoop Culture, Inc. v. GAP Inc.*, 648 F. App'x 981, 985 (11th Cir. 2016) (collecting authority); *see also United States v. Lambert*, 695 F.2d 536, 540 (11th Cir. 1983) (explaining that "success in establishing a likelihood it will prevail on the merits does not obviate the necessity to show irreparable harm"). Applicants' bare reliance on *Callais* as a source of irreparable harm simply confirms the opportunism of their stay application, rather than bona fide harm warranting intrusion into this appeal.

IV. The equities weigh firmly against judicial intervention to facilitate voiding an ongoing election.

The remaining equities likewise cut against a stay. For one, Applicants have done little to show they are likely to prevail on the merits, meaning there is little reason to doubt this Court's conclusion that Alabama's 2023 map reflects "an intentional effort to dilute Black Alabamians' voting strength and evade the unambiguous requirements of court orders standing in the way." App.21. It is beyond cavil that the public interest is best served by holding elections free from such discrimination, particularly given that the current map was drawn blind to race. App.76; *cf. Rice v. Cayetano*, 528 U.S. 495, 512 (2000).

Relatedly, Alabama's regularly scheduled primary election is already underway. Candidates and voters alike are already actively participating in that election, where candidates have been certified, ballots printed, campaign funds raised, and votes cast. These individuals all have an important stake in avoiding Applicants' effort to void an ongoing election. *See, e.g.*, *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (explaining the "public interest" favors avoiding

"substantial risk that citizens will be disenfranchised"); *Obama for Am. v. Husted*, 697 F.3d 423, 437 (6th Cir. 2012) (explaining "[t]he public interest therefore favors permitting as many qualified voters to vote as possible"); *cf. Duke v. Massey*, 87 F.3d 1226, 1233 (11th Cir. 1996) (observing that "burdens on candidate access to the ballot directly burden the voters' ability to voice preferences"). Indeed, permitting Applicants to carry out their ploy to nix elections under a congressional map they previously swore to use would do severe harm to the public's confidence in the electoral system. *See First Nat'l Bank of Bos. v. Bellotti*, 435 U.S. 765, 788–89 (1978) (recognizing importance of "[p]reservation of the individual citizen's confidence in government," in addition to maintaining the "integrity of the electoral process").

Finally, it bears emphasis that Applicants' current request is directly at odds with their past arguments against preliminary relief. When Respondents sought such relief in December 2021, Applicants fretted that amending Alabama's congressional map at that time would "almost certainly obstruct the State's upcoming elections," *Caster* ECF No. 71 at 28, which were then proceeding on the same election calendar as the 2026 elections. They insisted such a course would "throw the current election into chaos and leave insufficient time for maps to be redrawn, hundreds of thousands of voters to be reassigned to new districts, and thousands of new signatures to be obtained by candidates and political parties seeking ballot access." *Id.* at 120. Applicants admonished the district court that "the critical date for having maps in place is not May 24, 2022, when the primary election will be held, nor even March 30 when absentee voting will begin, but months earlier still." *Id.* at 123. Applicants then

raced to this Court to block this Court's preliminary injunction—which issued *four months before* the May primary—based on concerns about implementing "new districts days before the candidate qualifying deadline and less than two months before absentee voting is to begin." Emergency Appl. for Admin. Stay & Stay at 39, *Milligan*, No. 21-1086 (U.S. Jan. 28, 2022).

Applicants offer no explanation for their past representations, even though they now ask for relief similar to what they sought to block then—a last minute change to Alabama's congressional map via judicial order—months after when they previously claimed such relief was unworkable under Alabama's election calendar. And contrary to Applicants' casual aside that "election day in Alabama is fast approaching," Application at 24, Alabama's primary elections are in fact *ongoing*. With "election machinery . . . already in motion, the public interest weighs strongly in favor" of preserving the status quo. *Veasey v. Perry*, 769 F.3d 890, 896 (5th Cir. 2014). If the *Purcell* principle means anything, it surely prohibits federal courts from swapping a State's congressional maps in the middle of an actual election. *See Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U.S. 423, 424 (2020) (explaining the Court "has repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election" (emphasis added)). Indeed, in no less seminal a case than *Reynolds v. Sims*, this Court stressed that "where an impending election is imminent and a State's election machinery is already in progress, equitable considerations might justify a court in withholding" the

requested relief, even if the applicants are ultimately entitled to it. 377 U.S. 533, 585 (1964). Here, the election is not simply imminent, it is already happening.

Applicants attempt to wave away these *Purcell* concerns because they are not seeking a new injunction and are instead seeking a stay to allow the state legislature to change their own election rules. But that semantic distinction does not change the fact that what Applicants now seek is nothing less than a judicial alteration of what *all agree* is the "status quo." The Alabama legislature has enacted legislation that will take effect *only* if this Court grants Applicants relief—the ball, so to speak, is in this Court. That is precisely the sort of "[l]ate judicial tinkering with election laws [that] can lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others." *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring). Rather than suborn such gamesmanship, the Court should take Applicants at their own word that changing the map now would "throw the current election into chaos," *Caster* ECF No. 71 at 120, a result that is decidedly not in the public interest and the avoidance of which is central to *Purcell*. None of Applicants' scant theories on the equities dislodge the commonsense conclusion that the public's interest is best preserved by holding Alabama's congressional elections under the very maps that Applicants promised a federal court they would use.

CONCLUSION

The Application should be denied.

Respectfully submitted,

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