No. 25A1231

In the Supreme Court of the United States

HON. WES ALLEN,
IN HIS OFFICIAL CAPACITY AS THE ALABAMA SECRETARY OF STATE, ET AL.,
Applicants,

v.

EVAN MILLIGAN, ET AL.,
Respondents.

RESPONSE IN OPPOSITION TO EMERGENCY APPLICATION FOR STAY

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TO THE HONORABLE CLARENCE THOMAS, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE ELEVENTH CIRCUIT:

Alabama can point to no "emergency" warranting a stay. To the contrary, it is granting a stay that would create an emergency for Alabama's ongoing election.

The court-ordered remedial map ("Remedial Map") is the *status quo* and has been for nearly three years since this Court denied a stay of an injunction against Alabama's 2023 Plan with no noted dissents. *Allen v. Milligan*, 144 S. Ct. 476 (2023). People voted under the Remedial Map in 2024. And Alabama voters are *currently* voting under the Remedial Map and have been since early voting began a month ago in the lead up to the statewide primary election on May 19. Ala. Code §§ 17–11–5, 17–11–12 (2025); *see also* 52 U.S.C. § 20310. Unlike in *Callais*, no court has held the Remedial Map to be an illegal racial gerrymander. Rather, all parties stipulated that the Remedial Map was drawn race blind. App.80-81. And Defendants have provided no basis to overturn the District Court's findings that Alabama's 2023 Plan violated the Constitution and the Voting Rights Act ("VRA"), including its finding that the Legislature engaged in intentional racial discrimination in drawing its 2023 plan.

If granted, a stay would upend this *status quo*, contravening the fundamental logic behind *Purcell v. Gonzalez*, 549 U.S. 1 (2006), and its progeny and sowing chaos for candidates, election administrators, and Alabama voters. In 2022, in granting a stay of the District Court's injunction, Justice Kavanaugh noted that it would have taken "heroic efforts" for Alabama to implement a new map "just seven weeks" *before* the start of voting in a primary. *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022)

(Kavanaugh, J., concurring). Today, no level of effort could prevent late-breaking judicial interference with the *status quo* from causing chaos and mass confusion when voting under the Remedial Map *already* commenced *six weeks* ago and Election Day is little more than a week away. *Cf. Abbott v. League of United Latin American Citizens*, 146 S. Ct. 418, 419 (2025) (chastising a district court that "improperly inserted itself into an active primary campaign, causing much confusion"); *Frank v. Walker*, 574 U.S. 929 (2014) (vacating an appellate court's stay of a district court's injunction when absentee ballots had already gone out pursuant to that injunction).

In place of the existing map, which was drawn as a remedy for the unconstitutional 2023 Plan, the State asks for this Court's intervention to switch to that Plan mid-election. Emergency Appl. for Stay at 2, *Allen v. Milligan*, No. 25A1231 (May 8, 2026) ("Appl."). But Alabama *has never used* the 2023 Plan in *any election*. *No one* has ever voted under it. Alabama's bare desire to use the 2023 Plan does not present an emergency. Indeed, Alabama State Senator Greg Albritton, who sponsored the new law that would allow Alabama to hold a "do-over" primary under the 2023 Plan, confirmed that the law presents no emergency: his bill "does nothing more than set up a conditional procedure" whereby "[n]othing will occur . . . , until or unless there's continued action in the courts."[1] Accordingly, while denying a stay would simply maintain the *status quo* for voters, election officials, and candidates in an election

[1] Anna Barrett & Andrea Tinker, *Alabama Lawmakers Advance Primary Bills as Protests Erupt in Committees*, Ala. Reflector (May 7, 2026), https://alabamareflector.com/2026/05/07/alabama-lawmakers-advance-primary-bills-as-protests-erupt-in-committees/.

already underway, granting a stay and changing maps this late would unquestionably and unnecessarily throw Alabama's elections into uncharted chaos.

Alabama has offered no valid basis for a stay. As the District Court recently explained, "this is not an ordinary stay motion filed upon the commencement of an appeal. The Secretary noticed his third appeal to the Supreme Court nearly a year ago, and he did not seek a stay then." Order Denying Stay at 5-6, Dkt. No. 525 (N.D. Ala. May 8, 2026). Rather, the Remedial Map "has been the status quo since [the District Court] and the Supreme Court declined to stay it in September 2023," and the Secretary has used the Remedial Map "for Alabama's 2024 congressional elections and is using it for the 2026 congressional elections that are occurring now." *Id.* Alabama offers no explanation for its long delay in seeking a stay other than the issuance of *Callais*.

The District Court's order, however, rests on Alabama's violations of *both* Section 2 of the VRA *and* the Fourteenth Amendment—an independent legal basis that distinguishes this case from *Louisiana v. Callais*, No. 24-109, 2026 WL 1153054, at *18 (Apr. 29, 2026). The District Court applied a "heavy presumption" of legislative good faith, App.486, and was "painfully aware" that its "holding is a rare one in the modern era," App.527. Still, the District Court concluded that a finding of intentional discrimination is not "a particularly close call" because an "unusual corpus of undisputed evidence" served to "confirm[] th[is] obvious inference," including the Legislature's findings that "define [in ethnic terms] and exalt one community of interest (the Gulf Coast) . . . at the expense of [a] remedial district and other longstanding

communities of interest," App.21-22. In 2021, Alabama "did not defend its map on the ground that it was drawn to achieve a political objective." *Callais*, 2026 WL 1153054, at *18. So too in 2023. The Defendants-Applicants, the Co-Chairs of the Legislative Redistricting Committee, denied any partisan motives, App.98-100, and the Legislature's findings do not mention partisan goals at all, *see* App.543-53.

Further, this Court in *Callais* repeatedly emphasized that it has "not overruled *Allen*." 2026 WL 1153054, at *18. Unlike in *Callais*, Alabama itself stipulated that the Remedial Map—as well as the Special Master's other two plans with two majority-Black districts—were drawn without using race as a criterion. App.80-81. The District Court found that the Remedial Map and the other Special Master maps were constitutionally permissible remedies. App.531-32. Indeed, as this Court previously noted, "randomized algorithms" found "plans with two majority-black districts in literally thousands of different ways." *Allen v. Milligan*, 599 U.S. 1, 34 n.7 (2023). Finally, unlike *Callais*, 2026 WL 1153054, at *18, the District Court found that, controlling for partisanship, there was still extensive evidence of racially polarized voting, App.147-49,388-89,391, and that Alabama has an extensive recent history of official intentional racial discrimination in voting and other areas, *see* App.400.

Even if there were some doubt about the merits of the District Court's orders, this Court has previously allowed the use of maps that it later ruled violated federal law where, as here, requests to alter the *status quo* came too close to elections. *See Robinson v. Callais*, 114 S. Ct. 1171 (2024); *Merrill*, 142 S. Ct. at 879. This Court has

declined to intervene in elections to jettison the *status quo* even where, as here, a stay would let a State to use its preferred map. *Moore v. Harper*, 142 S. Ct. 1089 (2022).

Three years ago, this Court declined to stay an injunction against the 2023 Plan when Alabama made nearly the same arguments that it makes today. *See Allen v. Milligan*, 144 S. Ct. 476 (2023). Now, after a full trial with a finding of intentional discrimination and even stronger evidence of discrimination that meets the *Callais* standard, it should again decline Alabama's request. Nearly a year has passed since Alabama noticed its third appeal without seeking a stay. It should again decline Alabama's request. Nothing in *Callais* warrants granting Alabama's much belated request now, when ballots are already being cast.

ARGUMENT

Granting a stay now is exactly the type of late-breaking judicial order that this Court has repeatedly decried because it would inject chaos into an ongoing election. A stay would inflict irreparable harm on Plaintiffs and the public, while forestalling no legitimate irreparable harm to Alabama. And it would do so in conflict with this Court's own holdings and the District Court's extensive findings of intentional discrimination, which *Callais* did not disturb. The application should be denied.

I. *Purcell* and the Equities Strongly Militate Against Late-Breaking Judicial Interference in an Ongoing Election a Week Before it Ends.

With this emergency application, Alabama seeks to disrupt an election already in progress, unsettle settled expectations, and disenfranchise voters. Alabama cannot show any irreparable injury from continuing to run this election under the Remedial Map that has governed elections for years. Even setting aside the merits (where

Defendants stumble further still), those equities alone are sufficient to deny the application. *Cf. Merrill*, 142 S. Ct. at 881 n.2 (Kavanaugh, J., concurring) (declining to disturb the *status quo* where the equities favored withholding remedial relief even where both the parties had "at least a fair prospect of success on appeal").

A. Alabama's Request, and Any Alternation to the *Status Quo*, Comes Too Late.

Granting Alabama's request would insert the Court into an ongoing election where thousands of votes have been cast. It would ignore the Court's denial of a stay three years ago. It would reward Alabama for reversing its prior litigation positions before this Court and for its almost year-long delay in seeking a stay upon initiating its third appeal. And it would violate this Court's precedent. Any one of those reasons alone is enough to require a denial.

1. Alabamians are currently voting in an *ongoing election*. That is enough to deny a stay. Judicial intervention now would result in the disfranchisement of any Alabama voters who have already returned their absentee ballots. Under state law, absentee ballots for the May primary were "deliver[ed] to the absentee election manager[s]" over a month ago, *see* Ala. Code § 17-11-12, and election managers have since given those ballots to qualified voters, *see id.* § 17-11-5; *see also* 52 U.S.C. § 20310 (requiring state officials to send absentee ballots to servicemembers and citizens living abroad by April 4). Thus, the deadline for Alabama to seek a stay before the election ran out long ago. *Cf. Frank*, 574 U.S. at 929 (vacating an appellate court's stay when absentee ballots had been sent out under a district court's injunction).

At this late stage, Alabama requests permission from this Court to disregard the Remedial Map that has been in place since October 2023. Yet, until now, everyone—the State, the courts, the parties, election officials, candidates, and the public—was proceeding on the understanding that the Remedial Map governs the 2026 election. Granting a stay to allow Alabama to change those rules during the election would "insert[]" the Court "into an active primary campaign." *Abbott*, 146 S. Ct. at 419. This would risk this Court "causing much confusion," *id.*, and "assuming political . . . responsibility" for enabling a last-minute process likely to "produce[] ill will and distrust," *Rucho v. Common Cause*, 588 U.S. 684, 704 (2019) (citation modified).

Indeed, just weeks ago, this Court confirmed—in a case where a state legislature stood ready to pass a new map and voting was weeks away—that "'[l]ate judicial tinkering' . . . 'can lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others.'" *Malliotakis v. Williams*, 146 S. Ct. 809, 811 (2026) (Alito, J., concurring) (quoting *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J. concurring)). Alabama's request should be denied for the same reasons.

2. Alabama knows this. Indeed, it once agreed with—and persuaded this Court to craft—these principles. As the State itself explained in January 2022, months before primary election day, granting a stay "at this late hour" would "inflict[] grave harm on the public interest[.]" Emergency Appl. for Administrative Stay at 38, *Merrill v. Milligan*, No. 21A375 (Jan. 28, 2022) ("2022 Stay Appl."). This Court

agreed, accepting the argument that an earlier order from the District Court should be stayed on the basis that "[i]t is best for candidates and voters to know significantly in advance of the petition period who may run where" and the challenged order was issued just two weeks ahead of the candidate-qualifying period and seven weeks before voting began. *Id.* (citation modified).

If implementing a new map *four months before* a primary election and before the close of the candidate-qualifying period amounted to impermissible "[l]ate judicial tinkering," *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J. concurring), then any stay issued now—after the candidate qualifying period closed, after early ballots have been cast, and *within eight days of* Election Day— would be something else entirely. Changing the rules in such a manner "squarely implicates *Purcell*." 2022 Stay Appl. at 40.[2]

3. Granting the requested stay would set a dangerous precedent: it would turn *Purcell* on its head, making proximity to an election a reason for, rather than a barrier to, judicial intervention. That is the very development this Court has warned would undermine the reliance interests of voters and candidates, burden election officials with impossible administrative tasks, and invite disruption and unanticipated and unfair consequences.

But Alabama attempts to distinguish *Purcell*, arguing that it does not apply when state legislatures are seeking to reconfigure "their own election rules" or when

[2] For the same reason, Alabama has failed to show that this Court is likely to note probable jurisdiction and reverse. *Cf. Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam). A merits ruling would do nothing to assuage the serious timing concerns inherent in the State's request.

the state seeks a stay, rather than an injunction. Appl. at 24. Both of those arguments are wrong.

First, Alabama already had a stay denied in 2023 and, rather than again seeking a stay in 2025, it waited until an ongoing election to file its application.

Second, this Court's decision to deny a stay in *Moore v. Harper* governs this case. *See* 142 S. Ct. 1089 (2022). There, a state legislature asked for exactly the same thing Alabama wants here—for this Court to stay a court order requiring a state to use a court-drawn remedial map. This Court correctly denied the request. As Justice Kavanaugh explained in a concurrence, the request was properly denied because the state legislature was "asking this Court for extraordinary interim relief." *Id.* at 1089. "In light of the *Purcell* principle" and the "timing of the impending primary elections," "it [was] too late for the federal courts" to intervene and permit changes to a court-drawn plan—"just as it was too late for the federal courts to do so" when it was voters who requested such relief in other cases. *Id.* (Kavanaugh, J., concurring) (citing *Merrill*, 142 S. Ct. at 879). Likewise, here, but for action by this Court, the *status quo* will remain in place. This is not a situation where voters seek a last-minute injunction against a state map, but one where Alabama seeks emergency relief from this Court to *alter the status quo*. If *Purcell* does not apply here, the doctrine has no consistent meaning.

4. Alabama's additional handwaving at the timing problem changes nothing. Appl. at 24. In an effort to justify its lengthy delay in seeking a stay, Alabama points to this Court's recent decision in *Callais* as demanding the extraordinary relief that

the State belatedly seeks. But *Callais* does no such thing. *See* 2026 WL 1153054, at *18 ("We have not overruled *Allen*."). Regardless, the timing problem remains.[3]

As Alabama itself has repeatedly represented in this litigation, no changes to an existing districting plan can be made so close to an election, particularly one that is well underway. *Cf. Abbott*, 146 S. Ct. at 419. Judicial intervention at this point will cause mass confusion and raise serious constitutional concerns by changing voting rules after voting has already begun. Alabama's request is contrary to the public interest, and this Court should deny it as such.

B. The Public Interest Weighs Against a Stay Because Alabama's Request Would Sow Confusion and Disenfranchise Voters, and Alabama Faces No Harm Justifying a Stay.

As set out above, Alabama's request comes when the election is already underway, absentee ballots have been mailed, and every relevant deadline under state and federal law has long since passed. Granting a stay now therefore would upend settled expectations, destabilize an active election, and inflict precisely the voter confusion and administrative chaos this Court has repeatedly warned against—all while inviting more of the same.

[3] In its district court papers, Alabama relied on this Court's decision to issue formal judgment in *Callais* early as authorization to displace the 2023 Remedial Plan in the middle the primary election. *See* Order, *Callais v. Louisiana*, No. 25A1197 (U.S. May 4, 2026) (*Callais* Judgment Order). That is wrong for two reasons. *First,* this Court did not purport to apply the stay factors, nor did the order say anything to suggest that it should override the *Purcell* principle in any upcoming elections. Instead, the Court noted only that it granted because the party who opposed the motion purportedly failed to "express[] any intent to ask this Court to reconsider its judgment" (obviating the need to wait the full 32 days under Rule 45.3). *See Callais* Judgment Order. *Second*, even assuming that this Court believed it would be proper for Louisiana to redraw its maps at this late stage, that has nothing to do with Alabama. In *Callais*, the Court declared that the challenged Louisiana map "was an unconstitutional racial gerrymander." 2026 WL 1153054, at *4. But there is no such finding in this case. To the contrary, the District Court had "no concern" that race played any role in the drawing of the remedial maps. *See*, *e.g.*, App.532. For both reasons, Alabama's (perhaps abandoned) attempt to ride Louisiana's coattails would be wrong.

In contrast, Alabama would not face irreparable harm by conducting an election under the court-sanctioned Remedial Map.

First, Alabama waited nearly a year after noticing its appeal to seek a stay in the middle of a primary election. This long delay and late-stage effort to seek judicial intervention weigh heavily against any finding that Alabama faces harm.

Second, Alabama stipulated (and the District Court found) that the Remedial Plan was "prepared race-blind" in accordance with Alabama's redistricting guidelines and "without reference to any illustrative or proposed plan," App.531-32. Despite Alabama's arguments, Appl. at 23, and unlike in *Callais*, 2026 WL 1153054 at *4, no court has ever found that the race-blind Remedial Plan is an unconstitutional racially gerrymander or that race was used at all in its creation.

Alabama's attempt to characterize the map as a racial gerrymander is a baseless: The parties *stipulated* that the Remedial Plan was drafted "without reference to any illustrative or proposed plan" and that the Special Master's cartographer "did not display racial demographic data . . . while drafting his remedial proposals," including for the Remedial Plan. App.80-81. Alabama also conceded that the Special Master "drew his proposals . . . based on nonracial characteristics and criteria related to communities of interest and political subdivisions." App.81. Based on those stipulations, the District Court concluded it had "no concern" that race predominated in the preparation of the Remedial Plan. App.532.

"Stipulations must be binding" and serve as an "express waiver" of the "truth of some alleged fact" and "on the parties. *Standard Fire Ins. Co. v. Knowles*, 568 U.S.

588, 592 (2013) (citation modified). "This Court has refused to consider a party's argument that contradicted a joint stipulation entered at the outset of the litigation." *Amgen Inc. v. Connecticut Ret. Plans & Tr. Funds*, 568 U.S. 455, 470 n.6 (2013) (citation modified). Similarly, judicial estoppel prevents Alabama from "playing fast and loose with the courts," especially where "judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or the second court was misled." *New Hampshire v. Maine*, 532 U.S. 742, 750 (2001) (citation modified).

Accordingly, because they have not even come close to establishing that the Remedial Map constitutes a racial gerrymander as in *Callais,* Defendants cannot rely on that decision to obtain a stay here—particularly when the District Court found that the 2023 Plan intentionally discriminated on the basis of race. *See City of Richmond v. United States*, 422 U.S. 358, 378 (1975) ("An official action . . . taken for the purpose of discriminating against Negroes on account of their race has no legitimacy at all under our Constitution or under the [VRA].").

C. Respondents Would Be Irreparably Harmed by a Stay.

Unlike Alabama's unsubstantiated harms, Respondents and the public face an immediate and irreparable harm of the election being thrown into disarray and confusion if the Court grants a stay of the existing Remedial Map during an election. *Cf. Abbott*, 146 S. Ct. at 419. "Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls." *Purcell*, 549 U.S. at 7. Alabama's delay in seeking a stay and the unique circumstances in this case weigh heavily in demonstrating irreparable

harm to Respondents, voters, candidates, and election officials statewide that would come from a stay.

Further, Respondents unquestionably would face irreparable harm from this Court intervening to permit Alabama to conduct an election under a plan that the District Court found amounted to "intentional racial discrimination," App.21, because any loss of constitutional rights is presumed to be an irreparable injury, *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Indeed, "[t]o the extent that a citizen's right to vote is debased, he is that much less a citizen." *Reynolds v. Sims*, 377 U.S. 533, 590 (1964). Because the 2023 Plan constitutes "an intentional effort to dilute Black Alabamians' voting strength," App.21, it is Respondents—not Alabama—who would suffer from "offensive and demeaning" conduct if a stay is granted. *Miller v. Johnson*, 515 U.S. 900, 912 (1995).

II. Applicants Have Not Demonstrated the Strong Likelihood of Success Required for the "Extraordinary Relief" of a Stay.

A. Because the District Court Did Not Clearly Err in Finding that Alabama's 2023 Plan is Intentionally Discriminatory, Applicants Have Not Shown a Strong Likelihood of Success on Appeal.

As Respondents explain in their motion to affirm, Mot. to Affirm at 33-39, No. 25-274 (Oct. 20, 2025), the District Court correctly determined that Alabama's 2023 Plan violated the Fourteenth Amendment based on robust evidence that, after this Court found a Section 2 violation, the Alabama Legislature intentionally "double[d] down on the dilution of Black Alabamians' votes." App.492. This intentional discrimination finding was based on a "constellation" of evidence. App.504.

Here, the Legislature's findings, which were "the product of a vote of the entire body," App.509, are replete with damning admissions that the Legislature intended to (and did in fact) subject predominately Black and White communities to disparate treatment based on the race of their residents. App.504-05; *cf. Flowers v. Mississippi*, 588 U.S. 284, 315 (2019) (finding that "dramatically disparate" treatment was evidence of intent). The Legislature's findings are explicitly racial in that they justify "the exaltation of this majority-White community of interest above all other communities of interest (and above all other traditional districting principles)" based on "the singular reference to the heritage of th[is] majority-White community." App.504. The Legislature's "findings exalt and extol one community of interest above others, describing the community of interest in the Gulf Coast for pages," App.501, emphasizing "the 'French and Spanish colonial heritage' of one community of interest (the Gulf Coast) while remaining silent on the heritage of all other communities of interest in Alabama (including the Black Belt)[,]" App.502, and "describing the longstanding and well-grounded community of interest in the Black Belt in [just] a couple of short paragraphs," App.501. While the Legislature chose to prioritize and note the Gulf Coast's heritage, it simultaneously "eliminated from the findings any reference to nondilution of minority voting strength," and failed to mention the Black Belt's "heritage of enslavement." App.500-02; *cf. Allen*, 599 U.S. at 21 (noting that many Black Belt residents have a "lineal connection to 'the many enslaved people brought there to work in the antebellum period'") (citation modified). The Legislature's "inconsistent treatment" of these Black and White communities is

"significant evidence" of a § 2 violation, *Johnson v. De Grandy*, 512 U.S. 997, 1015 (1994), and its selective reference to ethnicity supports the conclusion that the 2023 Plan was "an intentional official effort to entrench [ ] vote dilution." App.504.

Alabama claims, however, that this desire to protect the "heritage" of this White community is non-racial. Appl. at 6. While the District Court gave great weight to the "presumption of legislative good faith," it correctly declined to apply that presumption as "free passes for state legislatures to evade court orders or invisibility cloaks that obscure searching judicial review." App.526; *see also Flowers*, 588 U.S. at 313–15 (examining the State's actions to test the veracity of the assertion of good faith); *Foster v. Chatman*, 578 U.S. 488, 513-14 (2016) (rejecting the State's assertion that it had not engaged in discrimination where direct evidence "plainly belie[d] the State's claim"). The Court found that the "heavy presumption of good faith in favor of the Legislature[,]" App.486, was overcome by the evidence that Alabama "intentionally t[ook] steps to make [a majority-Black district] mathematically impossible[.]" App.526. The 2023 Plan sought to "crack the Black vote in South Alabama [so as to] submerge much of the Black Belt in one majority-White district and submerge the Black Alabamians in Mobile in a different majority-White district[,]" and, in doing so, intentionally discriminated in violation of the Fourteenth Amendment. App.489.

Moreover, despite Alabama's claim that connecting the City of Mobile with the Black Belt would have required "subordinating state interests," Appl.20-21, the Legislature has repeatedly split Mobile and Baldwin counties in creating maps for

the State Board of Education districts, and the Legislature did so at the same time it first drew a congressional plan in 2021. App.351-52. Indeed, the Legislature split the Mobile and Baldwin counties into separate districts from 1875 until 1972. App.349. And the District Court credited unrebutted expert testimony that, in the 1970s, Alabama reunited Baldwin and Mobile counties for the racial purpose of limiting the political influence of Black voters. App.349; *see also* App.462. The District Court also gave "very little weight" to Alabama's expert who testified against splitting the Mobile and Baldwin counties based on websites like Wikipedia and Reddit. App.379-80, 297.

This Court previously distinguished this case from *Callais* because, in *Allen*, "the State did not defend its map on the ground that it was drawn to achieve a political objective." *Callais*, 2026 WL 1153054, at *18. That was true in 2021 and remained true in 2023. Despite Alabama's attempt to have this Court re-weigh the evidence to infer that "partisan politics were at work," Appl. at 21, the Legislature's findings do not mention partisanship, App.543-51, and no legislators (including Defendants) testified to partisan motives, App.524. Rather, both of the Co-Chairs of the Redistricting Committee unequivocally denied that calls from the Republican Speaker of the U.S. House about the slim Republican majority had influenced the 2023 Plan's passage. App.524. And, in private text messages between Defendant-Applicant Senator Livington and a political consultant, the political consultant focused on the *racial* makeup of the 2023 Plan's District Two (asking the Senator if a

BVAP of 41.6% would "work"), not the district's partisan composition. App.465; *see also* App.99-100 (Livingston referring to Montgomery as "monkey town").

Furthermore, even if Alabama had sought to protect the Gulf Coast and pursue partisan goals (which it did not), it could have enacted either the Community of Interest Plan, which the Alabama House passed in 2023 with the support of Defendant Representative Pringle, App.494, or the Singleton Plan. Both the Singleton Plan, App.105-06, and the Community of Interest Plan put the Black Belt in two districts while keeping Mobile and Baldwin counties together in one, App.92. And the Community of Interest Plan would have maintained the partisan makeup of Alabama congressional delegation. App.464-65; *see also* Ex. 14 of Rep. & Recommendation of the Special Master at 3, Dkt. No. 296-14 (N.D. Ala. Sept. 25, 2023) (showing that, on average, Republicans would have won District Two by a margin of over six points). These facts told the Court that "the Legislature did not accidentally stumble into a racially discriminatory districting plan." App.499. Alabama's 2023 Plan arose from intentional racial discrimination, not partisan preference.

Applicants blatantly misrepresent the nature of their well-documented defiance of the District Court's orders, this Court's orders, and the Constitution itself. The district court explained in great detail how the Legislature "intentionally refused to create an additional Black-opportunity district for the purpose of entrenching what it knew from federal court orders was very likely discriminatory vote dilution." App.527. Nothing in this Court's decision in *Callais* makes Alabama's "deliberate

decision to ignore, evade, and strategically frustrate requirements spelled out in a court order" for the purpose of diluting Black voting power any less a violation of the Fourteenth Amendment today. App.25, 455-56; *see also* John Roberts, C.J., 2024 Year End Report on the Federal Judiciary at 8 (Dec. 31, 2024) (noting the need to "soundly reject[]" the "dangerous" suggestions of "elected officials from across the political spectrum" who "have raised the specter of open disregard for federal court rulings").

For that reason, Alabama's motion rests on the false premise that it should be allowed to defy this Court's order, enact a plan that expressly prioritizes a White community based on its "heritage" over a Black one, and then still be allowed to upend an ongoing election to use that discriminatory plan. Alabama is simply wrong.

B. Applicants Have Not Shown a Strong Likelihood of Success on their Section 2 Appeal.

This Court made clear that in *Callais* that it had "not overruled *Allen*." 2026 WL 1153054, at *18. Accepting the Court's pronouncement (as Respondents must), Respondents maintain that the Court should not reverse the order on the Section 2 claim. But, even if Respondents are wrong, the constitutional finding would be enough to succeed on the merits. And, even aside from the merits of that constitutional finding, the equities still require the Court to deny a stay here.

1. Defendants Have Not Carried Their Burden of Showing that Respondents' Illustrative Maps Do Not Meet the State's Legitimate Districting Objectives, Including the State's Stated Political Goals.

Alabama contends that Respondents' illustrative maps under the first *Gingles* precondition do not survive this Court's recent decision in *Callais*, asserting that none of them met "all the State's legitimate districting objectives, including traditional

districting criteria and the State's specified political goals." *Callais*, 2026 WL 1153054, at *15. That argument has two fatal flaws. First, it ignores the District Court's findings that Respondents' illustrative maps met the State's *permissible* districting criteria as legislators contemporaneously described them when they drew and enacted the 2023 Plan. Second, Respondents are not required to show that their illustrative maps met any of the State's *impermissible* districting criteria, as "[t]he Constitution imposes some important restrictions on the States' exercise of this power" to draw districts. *Id.* at *13. Here, as detailed above, the District Court found and the record reflects that the Legislature elevated its pursuit of a unified Gulf Coast district and incumbent protection to "nonnegotiable" status, at least in part, "for the purpose of entrenching what it knew from federal court orders was very likely discriminatory vote dilution." App.527.

First, Alabama does not contest that Respondents submitted illustrative plans that met all the Legislature's goals as stated in its redistricting guidelines adopted at the start of the 2023 special session in which it drew the 2023 map. Defendant Representative Pringle, the Reapportionment Committee Co-Chair, testified that the guidelines "cover all the bases"—that is, they comprehensively list the legislature's goals. App.101. The guidelines state that equal population, contiguity, reasonable compactness, and compliance with state and federal law were the highest priorities, App.533-43, and listed additional factors to be "observed to the extent that they do not subordinate" the enumerated top priorities or violate federal or state law. *Id.* The district court found that "Respondents have offered at least one illustrative plan that

contains only equipopulous and contiguous districts that are reasonably geographically compact; respects existing political subdivisions; [and] protects important and overlapping communities of interest." App.363.

Notably, the guidelines include *not a single* reference to partisanship. Yet Alabama now argues that there is also "more than enough" in the record "to suggest that partisan politics were at work," citing three pieces of evidence. Appl. at 21. Rather than showing clear error in the District Court's rejection of those explanations, they merely reinforce the Court's findings. Alabama first cites the fact that the Reapportionment Co-Chairs received a call from "the Republican Speaker of the House." *Id.* But both Representative Pringle and Senator Livingston testified that they did not "act on those conversations, or even that they seriously considered acting on them." App.524. Indeed, Senator Livingston, a Defendant-Applicant here, testified under oath that the cited conversation "really didn't play into [his] efforts." App.98. Alabama also cites one member of the Legislature wanting to pursue a "Republican opportunity plan," Appl. at 21, but this isolated statement by a single member provides "no evidence that the legislature as a whole was imbued with [partisan] motives." *Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 689 (2021). Finally, Alabama cites the last-minute addition of incumbency protection as a "non-negotiable" principle as evidence of partisan intent. Appl. at 21. But this assertion conflicts with Defendant-Applicant Representative Pringle's assertion in the District Court that he had supported the Community of Interest Plan, even though the "Black-preferred [Democrat] candidate would win two out of four modeled elections."

App.101-02.

Second, Alabama has two other new, designed-for-litigation arguments about Respondents' illustrative maps: (a) that "[n]o alternative map preserved the two Gulf Coast counties . . . in a single district; and (b) that the illustrative maps "fared worse at protecting incumbents." Appl. at 11. But the District Court made findings of fact that the last-minute assertion of these goals—elevating the Gulf Coast community above others and making incumbent protection "non-negotiable"—contradicted the legislature's "stated political goals" in the redistricting Guidelines and, viewed in light of reams of other unrebutted evidence, were a pretextual means "to discriminate against Black Alabamians." App.510.

As discussed above, these late-breaking "non-negotiable" requirements were not present in the Committee redistricting guidelines and were only inserted into the process as "legislative findings" hours before the 2023 Plan's passage by Alabama's then-Solicitor General. Those "findings were not requested by the Committee chairs, who did not know why they were placed in the bill, had never seen them before (and thus, had never studied them), and had never seen anything like them in any redistricting legislation." App.498. Besides the unusual way they appeared and their lack of precedence in Alabama, the contents of the findings make clear that they were not employed as actual political goals but rather bore the indicia of discrimination.

As to the elevation of three communities of interest above others—the Gulf Coast, the Black Belt, and the Wiregrass—Respondents' expert Dr. Moon Duchin provided unrebutted testimony that it was "mathematically impossible" to keep all

three of these communities together, and any map-drawer would be forced to choose between splitting the Wiregrass or Black Belt but not the Gulf Coast, despite the supposed prioritization of all three. App.526. And this was not a racially neutral choice: Again, the District Court's findings highlight the legislature's explicit privileging of the "French and Spanish Colonial heritage" of the Gulf Coast counties, in contrast to its "silence about the heritage of the Black Belt, which is one of enslavement." App.503. Moreover, by prioritizing the Gulf Coast counties over others, this criterion "come[s] close to prescribing" a majority-White congressional district in the Gulf Coast "as a matter of mathematical necessity"—a district that would "submerge[ ]" the City of Mobile." App.347. Together, this direct evidence "plainly belie[s]" any argument that the Legislature prioritized the Gulf Coast region "in a 'color-blind' manner." *Foster*, 578 U.S. at 513; *see also Flowers*, 588 U.S. at 311 (citing disparate treatment despite alleged non-racial motives as evidence of "discriminatory intent").

As to incumbency, the district court recognized that protecting incumbents can be a legitimate districting consideration. *See* App.75; *see also Callais*. 2026 WL 1153054, at *13. But the record here shows that—while a legitimate districting factor in the abstract—the Legislature sought to use incumbent protection to "immunize from challenge a new racially discriminatory redistricting plan simply by claiming that it resembled an old racially discriminatory plan." *Allen*, 599 U.S. at 21–22. The insistence in the "legislative findings" that no incumbents be paired whatsoever contradicted the Legislature's actual 2023 guidelines used to draw the map, which

made incumbent protection a lower-level priority. *See* App.535. In doing so, the Legislature's findings ensured that the map could not split the Gulf Coast counties, thereby intentionally "submerg[ing] much of the Black Belt in one majority White district and submerg[ing] the Black Alabamians in Mobile in a different majority-White district," App.489—preventing any connection between Mobile and the Black Belt despite their many "meaningful connections," App.342.

Finally, to the extent that Alabama now argues that any illustrative map must meet all of its redistricting goals without compromise, the record shows that this is not possible and did not occur in *any map*—not the 2023 Plan, not the Community of Interest Plan, and not Respondents' plan: This is because every expert, including Alabama's expert, "along with the State's longtime cartographer, testified that redistricting always involves tradeoffs between traditional districting principles." App.336. For that reason, it is enough that Respondents' maps are "comparably consistent" with the enacted plan. *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 10 (2024) (citation modified); *cf. also Flowers*, 588 U.S. at 311-12 (comparators need only be "similar").

Alabama's attempts to re-engineer its districting priorities to match the *Callais* guidelines and to ignore the racial factors baked into Alabama's communities of priority reveal that they were neither "stated political goals" nor "legitimate" ones.

2. The District Court Did Not Clearly Err in Concluding that the Record Contained Multiple Proper Maps that Were Drawn Race-Blind.

Applicants also accuse Respondents' expert Dr. Duchin of impermissibly using race as a districting criterion because she "screen[ed] out maps lacking two majority-

black districts." Appl. 16. First, as the District Court found below, Dr. Duchin "testified without contradiction," *id.*, "that she 'just did not look at race'" as a criterion during her process for drawing illustrative maps. *Singleton v. Allen*, 782 F. Supp. 3d 1092, 1168 (N.D. Ala. 2025). Rather, she only viewed racial data after drawing her illustrative map to determine if it "cross[ed] that threshold in order to submit the map to the Court—*i.e.*, comply with *Bartlett*. *Id.*

This is exactly what Section 2 plaintiffs are *required* to do under *Bartlett v. Strickland*, which remains the law after *Callais*. In *Bartlett*, this Court held that plaintiffs must pass a strict racial threshold as part of their proof under the first *Gingles* precondition: A "party asserting § 2 liability must show by a preponderance of the evidence that the minority population in the potential election district is greater than 50 percent." 556 U.S. 1, 19-20 (2009) (plurality). Rather than eliminate the *Bartlett* requirement in *Callais*, this Court reaffirmed the baseline requirement that plaintiffs must show "a community of minority voters [that is] sufficiently numerous and compact to constitute a majority in a reasonably configured district." *Callais*, 2026 WL 1153054, at *15. Thus, while *Callais* forbids the "use [of] race as a districting criterion," an illustrative map still must meet *Bartlett*'s majority-minority requirement for remedial districts. *Id.* As this Court explained in *Allen*, "[t]he very reason a plaintiff adduces a map at the first step of Gingles is precisely because of its racial composition—that is, because it creates an additional majority-minority district that does not then exist." 599 U.S. at 34 n.7.

Illustrating how these imperatives can be reconciled, this Court endorsed the

propriety of checking the racial demographics of a map *after* drawing it just two years ago in *Alexander*, 602 U.S. at 22. There, it criticized the district court for placing "too much weight on the fact that several legislative staffers . . . viewed racial data at some point during the redistricting process," and found no constitutional issue with the map-drawer "consider[ing] the relevant racial data only *after* he had drawn the Enacted Map." *Id.* at 22. The same is true here.

Indeed, this Court already recognized in *Allen*—which, again, this Court did "not overrule[ ]" in *Callais*, 2026 WL 1153054, at *18—that Respondents' expert, Dr. Duchin, had used "randomized algorithms" that "found plans with two majority-black districts in literally thousands of different ways," which meant it was "certainly possible" to draw reasonably configured illustrative maps "in a race-blind manner." *Milligan*, 599 U.S. at 34 n.7; *see also Callais*, 2026 WL 1153054, at *13 (citing *Allen* approvingly for this proposition).

Moreover, Applicants ignore the evidence from the remedial phase that offered additional examples of acceptable "race blind" maps. The Court retained as special master Richard Allen, who "served as Chief Deputy Attorney General under four Alabama Attorneys General . . . and retired from military service with the rank of Brigadier General." App.73-74. Mr. Allen presented the Court with three plans "prepared race-blind," with the map-drawer not "display[ing] racial demographic data while drawing districts or examining others' proposed remedial plans within the mapping software," App.76.

The record shows that Respondents have already satisfied the "race-blind"

Gingles I requirement many times over.

3. The District Court Did Not Clearly Err in Finding Significant Racially Polarized Voting Even After Controlling for Partisanship, and that Race, much more than Party, Fuels Polarized Voting.

This Court's decision in *Callais* does not disturb the district court's findings that voting patterns in Alabama are "starkly and intensely racially polarized[.]" App.384. Alabama argues that the District Court below erred by relying on evidence of inter-party racial bloc voting. Appl. at 17. But this argument both misunderstands the *Callais* standard and misrepresents the District Court's findings. In *Callais*, this Court required that plaintiffs "provide an analysis that controls for party affiliation." *Callais*, 2025 WL 1153054, at *15. Accordingly, this Court faulted the *Robinson* court for relying *exclusively* on an inter-party racial block voting analysis. *Id*. at *17. Under the updated *Callais* standard, plaintiffs must provide evidence of both intra-party and inter-party racial bloc voting to meet their burden under *Gingles* II and III. Respondents here did. And the District Court credited Respondents' "overwhelming" evidence of "the importance of race in Alabama politics[.]" App.391.

As this Court instructed, the District Court found "intra-party racial-bloc voting pattern[s]" indicating that Black Alabamians "have 'less opportunity' than their majority counterparts because of race, not just because of partisan affiliation." *Callais*, 2026 WL 1153054, at *15 (quoting 52 U.S.C. § 10301(b)). Alabama's expert concurred that "race remains the primary driver of party politics" in the South today. App.390–391. Another "agreed that [Respondents' expert's] ecological inference analysis established 'that White voters in Alabama support White Democrats more than they support Black Democrats[.]'" App.367. Further, in several *general* elections,

White Democrats supported White Republicans over Black Democrats. *See, e.g.*, App.388-89. In recent primaries for Democrats, App.147–48, and Republicans, App.389; *see also* App.230, White voters supported White candidates over Black ones. For instance, in the 2024 Republican primary for remedial congressional district 2 (in which 95.9% of the voters were White), the four Black candidates combined only received 6.2% of the vote. App.146. All four of the Black candidates finished behind a young White candidate with less political experience. App.163. The record also includes evidence that voting remains racially polarized in nonpartisan elections. App.147. Even after controlling for party, race better explains voting in Alabama.

In addition to showing intra-party racially polarized voting, Respondents showed that despite White and Black Alabamians sharing similar views on manyissues, that agreement was not reflected in their respective voting records. *See, e.g.*, App.170-71. Based on undisputed evidence that most Black Alabamians self-identify as conservative, Christian, and oppose same-sex marriage and abortion, App.170-71, the District Court concluded that race, rather than policy differences, drives polarization, App.390-91. The Court found that, if policy issues rather than race drove polarization, Black Alabamians would "cast their votes for Republican candidates – particularly conservative Christian Republican candidates – far more than the evidence tells us that they do." App.391-92. On policy, White candidates—regardless of party—refused to meet with the Alabama NAACP to discuss civil-rights issues. App.202-03. Unlike Black Democrats, the White Democrats elected to Congress from Alabama failed to support civil rights bills as recently as 2009.

Milligan Pls.' Trial Br. at 270 ¶ 708, Dkt. No. 485 (N.D. Ala., Mar. 19, 2025). And every White Republican in the Alabama congressional delegation voted against the First Step Act—a 2018 law passed by a Republican-controlled congress and signed by President Trump intended to reduce racial disparities in sentencing. *Id.* at 269-70 ¶ 707. Black Republican voters were also disappointed in White Republican politicians' lack of support for this reform. *Id.* Because White politicians across parties have declined to support issues important to Black voters, polarized voting in Alabama cannot be explained by the parties' appeals to policy. Respondents have more than met their burden under the *Callais* standard.

The same is true regarding the district court's analysis of the totality of circumstances. Contrary to Alabama's spurious claim that the "district court did not focus on 'intent to discriminate' because (it said) 'intent is not an element,'" Appl. at 18, the District Court relied on multiple findings of intentional discrimination "issued in the last ten years by federal judges who remain in service today" and a "pervasive and protracted history of official discrimination" evidenced by cases running "well into the present era." App.400-01.

For example, in 2011, a federal court found that Alabama State legislators had conspired to depress Black voter turnout by keeping a referendum issue popular among Black voters (whom the Senators called "Aborigines") off the ballot. App.400 (citing *United States v. McGregor*, 824 F. Supp. 2d 1339 (M.D. Ala. 2011)). And, in 2017, Black voters and legislators successfully challenged twelve state legislative districts as unconstitutional racial gerrymanders. App.400 (citing *Ala. Legis. Black*

Caucus v. Alabama, 231 F. Supp. 3d 1026 (M.D. Ala. 2017)). The District Court found also that several local voting systems created by the Legislature had recently been enjoined to address "their alleged racially discriminatory purpose or effect." App.398.

This is in sharp contrast to this Court's criticism in *Callais* that there was an absence of any recent evidence of intentional discrimination in Louisiana. 2026 WL 1153054, at *17-18.

In this case, the District Court made findings based on "current data" about "current political conditions." *Callais*, 2026 WL 1153054, at *16 (quoting *Shelby County v. Holder*, 570 U.S. 529, 552-53 (2013). And so, this Court's concern in *Callais* about the use of "decades-old data relevant to decades-old problems" is not present here. *Id.* at *19 (quoting *Shelby County*, 570 U.S. at 553). In Alabama, unlike in Louisiana, the District Court noted that, in the last decade, there have been findings of intentional racial discrimination in education. App.399 (citing *Stout ex rel. Stout v. Jefferson Cnty. Bd. of Educ.*, 882 F.3d 988, 1000, 1009 (11th Cir. 2018) (Pryor, C.J.)). And the Court credited testimony that nearly half (38.6%) of voters in the 2020 election were school-age in 1970 when Alabama still maintained separate and unequal schools. App.408-09. Indeed, multiple courts ordered Alabama to remedy the vestiges of unconstitutional discrimination that remained prevalent across its schools into the 1990s and 2000s. App.399-400.

These findings of ongoing intentional discrimination in voting and education directly resulted in *current* conditions, including that "in the Black Belt" where the "illiteracy rate[] [is] as high as 30 percent." App.344. The District Court also found

that neglect from politicians of both political parties had resulted in Black Belt residents continuing to face "[s]qualid living conditions," a "lack of proper sewage disposal" in the Black Belt resulted in "entire households at a time" suffered from E. Coli and hookworm; that in some counties, children cannot play outside after it rains; and "[b]asic communication infrastructure such as broadband internet access – and even cell service – [being] unavailable in many parts of the rural Black Belt[.]" App.343-44.

Living conditions and health disparities for Black people living in the Black Belt are nothing short of dire. Black communities in the Black Belt live in "primitive conditions," "suffer unusual health difficulties and lack of even the most basic services." App.404. A United Nations Report deemed the "extreme poverty conditions in the Black Belt" to be "very uncommon in the First World," and that residents "lacked proper sewage and drinking water systems and had unreliable electricity[.]" App.404.

Thus, the district court relied on current data and current conditions that resulted from *recent* intentional discrimination to find that these circumstances resulted in a political system not equally open to Black Alabamians in the Black Belt.

CONCLUSION

For the foregoing reasons, this Court should deny the Secretary's application for a stay.

Respectfully submitted,

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