No. 25A___

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.

ON APPLICATION FOR STAY PENDING APPEAL FROM THE
U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA

EMERGENCY APPLICATION FOR STAY AND FOR ADMINISTRATIVE STAY

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PARTIES AND RELATED PROCEEDINGS

Applicants in *Allen v. Milligan* are Wes Allen, in his official capacity as Alabama Secretary of State, and State Senator Steve Livingston and State Representative Chris Pringle, in their official capacities as Senate Chair and House Chair of the Alabama Permanent Legislative Committee on Reapportionment, respectively. Applicants are defendants before the three-judge district court of the U.S. District Court for the Northern District of Alabama. Respondents are Evan Milligan, Shalela Dowdy, Letetia Jackson, Khadidah Stone, Greater Birmingham Ministries, and the Alabama State Conference of the NAACP. Respondents are plaintiffs below.

Applicants in *Allen v. Caster* are Wes Allen, in his official capacity as Alabama Secretary of State, and State Senator Steve Livingston and State Representative Chris Pringle, in their official capacities as Senate Chair and House Chair of the Alabama Permanent Legislative Committee on Reapportionment, respectively. Applicants are defendants before the U.S. District Court for the Northern District of Alabama. Respondents are Marcus Caster, Lakeisha Chestnut, Bobby Lee DeBouse, Benjamin Jones, Rodney Allen Love, Manasseh Powell, and Wendell Thomas. Respondents are plaintiffs below.

Applicants in *Allen v. Singleton* are Wes Allen, in his official capacity as Alabama Secretary of State, and State Senator Steve Livingston and State Representative Chris Pringle, in their official capacities as Senate Chair and House Chair of the Alabama Permanent Legislative Committee on Reapportionment, respectively. Applicants are defendants before the three-judge district court of the

U.S. District Court for the Northern District of Alabama. Respondents are State Senator Bobby Singleton, Leonette Slay, State Senator Rodger Smitherman, and Andrew Walker. Respondents are plaintiffs below.

The relevant orders are:

Milligan v. Allen, No. 2:21-cv-1530 (N.D. Ala. May 26, 2026), Doc. 537 (order granting preliminary injunction and denying stay pending appeal).

Caster v. Allen, No. 2:21-cv-1536 (N.D. Ala. May 26, 2026), Doc. 443 (order adopting *Milligan* and *Singleton* preliminary injunction and denial of stay).

Singleton v. Allen, No. 2:21-cv-1291 (N.D. Ala. May 26, 2026), Doc. 363 (order granting preliminary injunction and denying stay pending appeal).

TABLE OF CONTENTS

PARTIES AND RELATED PROCEEDINGS i

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

BACKGROUND 3

ARGUMENT 8

I. There is a fair prospect that the Court will reverse the district court's intentional discrimination holding. 11

A. The district court discarded the presumption of good faith in finding "direct evidence" of racism and disregarding the State's lawful motives 12

1. The Legislature sought to keep the Gulf Coast together. 14

2. The Legislature was navigating competing hazards of liability when it redistricted in 2023. 17

3. There are obvious partisan explanations. 18

B. The district court erred by finding discriminatory intent without an alternative map. 19

C. *Allen v. Milligan* did not require the Legislature to draw two majority-minority districts in 2023. 20

II. There is a fair prospect that the Court will reverse the district court's §2 holding. 22

A. The district court flouted *Callais* when it discarded permissible districting criteria as "illegitimate" and applied a racial criterion instead. 22

B. The district court did not find racial-bloc voting that cannot also be explained by partisan affiliation. 29

C. The district court had no evidence of present-day intentional discrimination in voting by the State. 31

III. The equities warrant a stay. 33

A. The district court turned *Purcell* on its head by using it as a sword to impose its court-drawn plan on the eve of an election. 33

B. The balance of harms and the public interest warrant a stay. 35

CONCLUSION 36

TABLE OF AUTHORITIES

Cases

Abbott v. LULAC,
146 S. Ct. 418 (2025) 33, 35

Abbott v. LULAC,
No. 25-845, ___ U.S. ___, 2026 WL 1127246 (2026).. 3, 19

Alexander v. SC State Conf. of NAACP,
602 U.S. 1 (2024) 9, 13, 14, 18, 19, 24

Allen v. Milligan,
599 U.S. 1 (2023) 1, 16, 21, 23, 26

Banerian v. Benson,
589 F. Supp. 3d 735 (W.D. Mich. 2022).. 25

Brnovich v. DNC,
594 U.S. 647 (2021) 18, 33

Democratic Nat'l Comm. v. Wis. State Legislature,
141 S. Ct. 28 (2020) 10, 34

Gardner v. Henderson,
No. 2:26-CV-00084-RJS-JCB, 2026 WL 496448 (D. Utah Feb. 23, 2026).............. 33

Hewitt v. United States,
606 U.S. 419 (2025) 34

Holder v. Hall, 512 U.S. 874 (1994) 2

Johnson v. DeSoto Cnty. Bd. of Comm'rs,
204 F.3d 1335 (11th Cir. 2000) 11

Louisiana v. Callais,
146 S. Ct. 1131 (2026) 1-2, 5-6, 8-9, 11-12, 15-33

LULAC v. Perry,
548 U.S. 399 (2006) 23

Miller v. Johnson,
515 U.S. 900 (1995) 13

Perez v. Abbott,
274 F. Supp. 3d 624 (W.D. Tex. 2017) 13

Perry v. Perez,
565 U.S. 1090 (2011) 3

Personnel Adm'r of Mass. v. Feeney,
442 U.S. 256 (1979) 16

Purcell v. Gonzalez,
549 U.S. 1 (2006) 2, 10, 33, 34, 35

Republican Nat'l Comm. v. Democratic Nat'l Comm.,
589 U.S. 423 (2020) 33

Robinson v. Ardoin,
605 F. Supp. 3d 759 (M.D. La. 2022) 32

Rucho v. Common Cause,
588 U.S. 684 (2019) 25

Shaw v. Reno,
509 U.S. 630 (1993) 27

Thompson v. Sec'y of State,
65 F.4th 1288 (11th Cir. 2023) 19

Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.,
429 U.S. 252 (1977) 13, 20, 27

White v. Regester,
412 U.S. 755 (1973) 11, 30

Wis. Legislature v. Wis. Elections Comm'n,
595 U.S. 398 (2022) 3

Statutes

Section Two of the Voting Rights Act,
52 U.S.C. § 10301 .... iii, 1, 3, 5, 8, 9, 11, 12, 20-22, 25, 30, 32

Other Authorities

Alabama House Special Session 2026,
www.youtube.com/watch?v=tptIfi94AWk#t=3h21m44s (May 6, 2026) 6, 18

Alabama Senate Special Session 2026,
www.youtube.com/watch?v=2ecxRAvdl1U#t=1h14m26s (May 8, 2026) 6, 18

To the Honorable Clarence Thomas, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Eleventh Circuit:

This Court should immediately stay the district court's preliminary injunction precluding Alabama from using its congressional districts enacted in 2023 to address this Court's concerns in *Allen v. Milligan*, 599 U.S. 1 (2023). Among other faults, the district court's injunction halts ongoing election preparations for reasons that defy *Louisiana v. Callais*, 146 S. Ct. 1131 (2026).

The throughline of the district court's ruling is this: When the State redistricted in 2023, it had *no choice* but to crack the Gulf Coast and segregate white voters from black voters into different districts stretching the width of Alabama. Anything else, the district court has now twice held, would violate not only §2 but also the Constitution. Why? Because the district court believed that its preliminary-injunction ruling about a predecessor plan *required* the State to draw a second majority-minority district in any future redistricting legislation. But nothing in those preliminary proceedings on the 2021 Plan precluded Alabama from trying to navigate the "competing hazards of liability," *Abbott v. Perez*, 585 U.S. 579, 587 (2018), with new legislation. The 2023 Plan addressed this Court's concerns about the State's prioritization of core retention in 2021 at the cost of splitting the Black Belt region. *Allen*, 599 U.S. at 21-22. So in 2023, new legislation split that region as little as possible, while also keeping together the Gulf Coast as the State had done for 50 years.

Callais vindicates Alabama's position on the lawfulness of the 2023 Plan, yet the district court decided in one week that *Callais* changed nothing. The court did not

hold Plaintiffs to their burden to bring alternative maps that "meet all the State's legitimate districting objectives," 146 S. Ct. at 1159, because in its view, Alabama's lawful and longstanding priorities were not "legitimate," App.55. It did not matter to the district court that drawing an additional race-based district came at the cost of sacrificing communities of interest and pairing incumbents. *Id.* If anything is "entirely clearcut after *Callais*," App.12, it is that the 2023 Plan should never have been enjoined in the first place.

Worse, the district court doubled down on its constitutional holding that finds no home in our Constitution: that Alabama intentionally discriminated by refusing to intentionally discriminate. The district court faulted the State for denying "opportunity" to minority voters and "diluting" votes without once acknowledging how *Callais* itself refuted the district court's pre-*Callais* holding on that score. *See Callais*, 146 S. Ct. at 1154-55. It cannot be that the *only* constitutional map for the State to have drawn this redistricting cycle was one where white voters are drawn into white districts and given white representatives and black voters "drawn into 'black districts' and given 'black representatives,'" a scheme "repugnant" to the Constitution itself. *Holder v. Hall*, 512 U.S. 874, 905-06 (1994) (Thomas, J., concurring in the judgment).

A stay is warranted so that Alabama is not again precluded from using its legislatively enacted 2023 Plan based on a decision that defies *Callais*, manipulates the *Purcell* principle, and offends the Constitution's promise of equal protection for all. So that the State can use the 2023 Plan in the 2026 elections, Applicants

respectfully request a decision from this Court before **10 a.m. on June 1, 2026, or as soon as possible thereafter.**[1] Applicants also request an administrative stay as soon as practicable so that the State can resume its ongoing election preparations in the interim, including by assigning voters into districts before the election.

BACKGROUND

Alabama seeks to use its own map to conduct elections this year because "the inability to enforce its duly enacted plans clearly inflicts irreparable harm on the State." *Perez*, 585 U.S. at 602 n.17. The chief obstacle remains the district court's view that the State defied a preliminary injunction regarding a since-repealed redistricting plan when it enacted an entirely new redistricting plan that, by the district court's lights, was a "purposeful attempt to rob Black Alabamians of an equal opportunity under the law to elect candidates of their choice"—all because the State declined to district on the basis of race, persisted in keeping a community of interest whole, and declined to redistrict black voters in Mobile with black voters 200-some miles away. DE490:15-16.[2]

1. In 2021, Alabama redistricted, and litigation ensued immediately. Plaintiffs alleged that the 2021 Plan simultaneously violated §2 of the Voting Rights Act by considering race too little and violated the Constitution by considering race too much. DE107:34-41. The district court granted a preliminary injunction on the ground that

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[1] Applicants also request that this Court construe this Application as a jurisdictional statement and summarily reverse for the 2026 or 2028 elections, or note probable jurisdiction and hear these cases on the merits in the forthcoming term in advance of the 2028 elections. *See, e.g.*, *Perry v. Perez*, 565 U.S. 1090 (2011); *see also, e.g.*, *Abbott v. LULAC*, No. 25-845, ___ U.S. ___, 2026 WL 1127246 (2026) (per curiam) (summarily reversing); *Wis. Legislature v. Wis. Elections Comm'n*, 595 U.S. 398 (2022) (per curiam) (summarily reversing).

[2] "DE" citations refer to entries in *Allen v. Milligan*, No. 2:21-cv-1536, and to the ECF pagination.

the 2021 Plan likely violated §2 and did not reach the constitutional claim. *Id.* at 214-17. This Court upheld the preliminary injunction against the 2021 Plan based on the hasty preliminary injunction record before the Court at that time. 599 U.S. at 42. The Court faulted the 2021 Plan for prioritizing core retention at the cost of splintering the Black Belt region. *See id.* at 21-22.

Rather than continue to litigate the lawfulness of some of those features of the 2021 Plan, the State chose to redistrict in direct response to *Allen*. *See Perez*, 585 U.S. at 614 ("It was entirely permissible for the Legislature to favor a legitimate option that promised to simplify and reduce the burden of litigation."). That 2023 Plan departed from past redistricting plans and reunified the Black Belt in as few districts as possible. At the same time, the State continued to adhere to other nonracial political priorities—namely declining to pair incumbents or to split the Gulf Coast, so as to ensure that a community of interest would remain unified in one district and represented by one voice in Congress as it had for over 50 years. DE481:246. And since it had become a matter of dispute, the Legislature made a record to establish what is obvious to longtime Alabamians and first-time visitors alike: that the Gulf Coast is a unique community of interest. DE490:557-60 (legislative findings).

That wasn't good enough, according to the district court. Section 2 *required* the State to split the Gulf Coast to create an additional majority-minority district "or something quite close to it." DE490:517 (cleaned up). Worse, the State's desire to keep the Gulf Coast unified—while also now keeping the Black Belt unified too—was invidious racial discrimination. Although the district court recognized in earlier

proceedings that keeping the Gulf Coast together accrued "political advantages … for those areas," and although it "expect[ed] that the Legislature [would] assign them great weight" in its next map, DE107:170-71, when the Legislature pursued those advantages and assigned that great weight to the Gulf Coast in the 2023 Plan, the court found *racial animus*. What the district court said it *expected* in 2022, it found "disturb[ing]" in 2023 (DE272:8) and again in 2025 (DE490:429). The legislative findings about the Gulf Coast were deemed evidence of a racist desire "to prescribe a majority-White congressional district" and to "exalt[ ]" it "over every other districting principle, including compliance with federal law." DE490:429-30.

Based on those findings (and before *Callais*), the district court entered judgment against the State for violating §2 and the Equal Protection Clause. As to §2, the court said it was "not [] controlling" that no alternative map could achieve the Legislature's political goals because the alternatives could still be "reasonably configured" even if "they underperform … on various metrics." DE490:333, 525. The court found that black and white voters "consistently prefer[ ] different candidates," *id.* at 373, and that was "dispositive" even without "disentangl[ing] party and race," *id.* at 379. Using the Senate Factors, the district court held that "the totality of circumstances weighs decisively" against the State, *id.* at 380, despite the total absence of present-day intentional discrimination in voting by the State.

As to the constitutional violation, the district court understood the claim to be "not that the Legislature … considered race too much," DE490:499, but that it considered race too little. The court then rejected every possible motive other than

discrimination, including that the Legislature believed the 2023 Plan gave it "a good shot" of prevailing in these lawsuits, *id.* at 521; that it wanted to protect legitimate communities of interest, *id.* at 529-30; that it did not want to adopt a plan in which "race predominated," *id.* at 525, or a racial gerrymander, *id.* at 533-34; that it believed "race-based redistricting [could not] continue in perpetuity," *id.* at 531; and that Alabama's Republican-dominated legislature did not want to "swing an additional congressional district to Democrats," *id.* at 536-38.

The court entered an order retaining jurisdiction through 2030. *See* DE509.

2. Alabama asked this Court to summarily reverse or grant plenary review of the injunctions precluding the use of the 2023 Plan. Nos. 25-243, 25-273, 25-274. After the Court's decision in *Callais*, the State moved for expedited consideration because *Callais* confirmed the district court should have required Plaintiffs to account for the State's redistricting priorities before enjoining use of the 2023 Plan. Around the same time, the Legislature passed a law to provide for a special primary election in the event that injunctions against the 2023 Plan were lifted. In addition to citing traditional districting principles and political goals, legislators defending the 2023 Plan explained that it had been "drawn in a partisan way" to "benefit Republicans,"[3] and that it gave a better "opportunity for the Republicans to win."[4]

[3] Alabama Senate Special Session 2026, www.youtube.com/watch?v=2ecxRAvdl1U#t=1h14m26s (May 8, 2026) (Senator Albritton).

[4] Alabama House Special Session 2026, www.youtube.com/watch?v=tptIfi94AWk#t=3h21m44s (May 6, 2026) (Representative Pringle).

On May 11, 2026, this Court granted the State's motion to expedite, vacated the injunctions, and issued its judgment forthwith. *See, e.g.*, Order, *Allen v. Milligan*, No. 25-274 (U.S. May 11, 2026).

3. With the injunctions vacated, the Governor announced a special primary election under the 2023 Plan for affected districts. App.113. The Secretary of State notified the public, posted the 2023 Plan on the office's official government webpage, and began communicating with vendors and local election officials. App.113-14. The Governor issued a new administrative calendar for the primary. App.114-15. Candidates qualified to run for Congress under the 2023 Plan. App.115. And the local boards of registrars in each county began the work to understand which voters would need to be moved to comply with the 2023 Plan. App.115-17, 123-25.

Meanwhile, the district court believed that by granting the State's motion to expedite, this Court wanted it to "immediately" consider enjoining the 2023 Plan anew. DE528:2. It entered a scheduling order, requiring preliminary-injunction motions by Friday, May 15; the State's response by Monday, May 18; replies by Tuesday, May 19; and a hearing on Friday, May 22 at which the Secretary of State's Director of Elections, Jeff Elrod, was ordered to appear and testify. DE528.

Director Elrod testified that the State could implement the 2023 Plan. He acknowledged that "[w]hile it is an aggressive timeline, I think it is safe to say that registrars could get done with what they have assigned." App.236. All but three of the affected counties can reassign their voters by "mass change"—*i.e.*, all voters in the county would be reassigned simultaneously to the new district. App.120-21.

Director Elrod testified that even the three split counties could complete their assignments in time, adding that computerized mapping systems and vendor support are more common today than just a few years ago. App.121-23, 130. Alabama has the tools and capacity to accomplish the reassignment process.

4. Nonetheless—with no new evidentiary showing after *Callais*—the district court yesterday entered an order again preliminarily enjoining the use of the 2023 Plan. *See* App.1-102. The district court found Plaintiffs likely to succeed on their constitutional claim that the State intentionally diluted minority votes because Alabama declined in 2023 to enact an additional majority-minority district, which would have required sacrificing nonracial redistricting priorities. As for *Callais*, the court concluded "Alabama cannot use *Callais* to legitimize its pre-*Callais* decision[.]" App.44. Even after yesterday's order, it remains undisputed that an additional majority-minority district cannot be drawn without spitting the Gulf Coast and separating that region's black voters and white voters. App.32. To the district court, that failure of proof was just evidence that the State's criteria were not "legitimate," so it granted preliminary relief on §2 grounds as well. App.55.

ARGUMENT

In its jurisdictional statement last year, following the trial on the 2023 Plan and permanent injunction, Alabama stressed that §2 cannot constitutionally require a State to sacrifice its districting principles. *Allen v. Milligan*, No. 25-274, J.S. 7, 10-14. In *Callais*, the Court held that §2 claims require alternative maps that "meet all the State's legitimate districting objectives … just as well." 146 S. Ct. at 1159. Nevertheless, the district court has found again that the 2023 Plan was

discriminatory *at the time*—even if not today, after *Callais*. App.43-44. But it's the same Constitution. The 2023 Plan was lawful then, and it is lawful now.

I. The State did not intentionally discriminate by declining to intentionally discriminate. *Callais* just reaffirmed that any finding of vote dilution requires the court to first account for the State's nonracial priorities, 146 S. Ct. at 1159, just as the court would have to account for nonracial priorities in the gerrymandering context, *see Alexander v. SC State Conf. of NAACP*, 602 U.S. 1, 10-11 (2024). But here, the district court wrote off the State's non-racial priorities as discriminatory pretext, which abandons entirely the required presumption of good faith. Nothing in *Allen*, addressing a since-repealed Alabama redistricting plan in a preliminary injunction posture, compels a departure from these elementary constitutional principles in Alabama.

II. The 2023 Plan does not violate §2. The district court enjoined it without putting Plaintiffs to the evidentiary test that *Callais* says is now required to "ensure[ ] that § 2 of the Voting Rights Act does not exceed Congress's authority under § 2 of the Fifteenth Amendment." *Callais*, 146 S. Ct. at 1156. After a full trial in 2025, it is undisputed that no alternative to the State's map "achieve[s] all the political goals of the Legislature." DE490:525; *see also* DE490:345. Those goals included (1) drawing the Gulf Coast counties in one district; (2) reunifying the Black Belt region by placing the Black Belt counties in as few districts as possible; and (3) avoiding contests between incumbents. The first has been a goal of the Legislature for 50 years. The second became a goal after the district court held it was "important"

in January 2022. DE107:155; *see id.* at 156, 164-65, 169. And the third is a "traditional" factor, *Callais*, 146 S. Ct. at 1156, especially where threatened incumbents share their party with the redistricting legislature. The district court threw all that out the window—substituting its own prerogatives for those of the legislature. *E.g.*, App.55 (refusing to treat the Gulf Coast, even though a conceded community of interest, as a "'legitimate' objective that an illustrative plan must meet"). As to the remainder of the updated *Gingles* test, the district court refashioned the trial record but could not close the gap between what Plaintiffs brought to trial before *Callais* and what *Callais* now demands.

III. The equitable factors compel a stay. There is no excuse for the district court's manipulation of *Purcell* as a doctrine to entrench a court-drawn map for yet another election. *Purcell* concerns "federal intrusion on state lawmaking processes," *Democratic Nat'l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 28 (2020) (Roberts, C.J., concurring), and there is no doubt that the upcoming special primary using the 2023 Plan was the result of state lawmaking—both in 2023 and 2026. The district court's view that the State would save time and money by returning to the court's map, App.8-11, is irrelevant at best. At worst, it turns *Purcell* on its head. *Purcell* is no sword to preclude a State from using its own legislatively enacted plan simply because a district court finds some logistical advantage to using a court-drawn map. *Contra* App.11-13. "It is one thing for state legislatures to alter their own election rules in the late innings and to bear the responsibility for any unintended consequences. It is quite another thing for a federal district court to swoop in and

alter carefully considered and democratically enacted state election rules when an election is imminent." *DNC*, 141 S. Ct. at 31 (Kavanaugh, J., concurring).

I. There is a fair prospect that the Court will reverse the district court's intentional discrimination holding.

The district court describes the constitutional violation as follows: "the Legislature knew" that the 2023 Plan amounted to "unlawful vote dilution, and did it anyway." App. 29. That constitutional holding assumes—even after *Callais*—that a State offends the Constitution by declining to draw an additional majority-minority district, even when it is *conceded* that the State could not do so without sacrificing longstanding and commonplace redistricting priorities. *Callais* confirms that federal law requires no such thing because the Constitution would not allow it. *See Callais*, 146 S. Ct. at 1155-57. The very concept of vote dilution requires accounting for a State's "permissible criteria," whether "avoid[ing] splitting counties" or "protect[ing] some or all incumbents" or any other nonracial consideration. *Id.* at 1154-55.

The district court asserted that its holding was "undisturbed by *Callais*," App.29, but §2 *must* be closely related to its counterpart in the Equal Protection Clause because "Congress took th[e] language" for defining vote dilution "almost verbatim from … *White v. Regester*, 412 U.S. 755 (1973), which involved a [constitutional] 'vote dilution' claim." *Callais*, 145 S. Ct. at 1145. Thus, it is "doubt[ful] that *any* plaintiff … can establish a constitutional vote dilution claim where his section 2 claim has failed." *Johnson v. DeSoto Cnty. Bd. of Comm'rs*, 204 F.3d 1335, 1344 (11th Cir. 2000). If the 2023 Plan survives under *Callais*, there was no vote dilution and no constitutional violation either. *See infra* §II.

In its effort to immunize its holding from *Callais*, the district court repeats its view that the State defied that court's order and this Court's decision in *Allen* when enacting the 2023 Plan. App.43. Fundamentally, this narrative ignores that *Allen* affirmed a preliminary finding against the predecessor 2021 Plan on the preliminary record before it. Nowhere in *Allen* did this Court say that the State could not try to enact new legislation that simultaneously maintained its political priorities and addressed this Court's concerns in *Allen* regarding core retention and the splitting of the Black Belt, while also abiding by this Court's many precedents that race cannot predominate in redistricting. However "unusual" that legal position seemed to the district court (*e.g.*, App.4), it was not racist or defiance to try to "persuade" the courts that drawing racial lines is not necessary to avoid an alleged §2 problem (DE490:14). Recognizing that the 2023 Special Session was an "opportunity for the Legislature" to improve its litigation position (App.38) should have led the district court to the most obvious motive of all: *to prevail in these ongoing lawsuits* by enacting districts that complied with §2 *and* the Constitution. That aim is incompatible with the district court's refrain—and crux of its constitutional holding—that the State set out to *refuse* to do "what federal law required." App.32.

A. The district court discarded the presumption of good faith in finding "direct evidence" of racism and disregarding the State's lawful motives.

When a court assesses whether a duly enacted statute was motivated by discriminatory intent, "the good faith of the state legislature must be presumed.'" *Perez*, 585 U.S. at 603. The presumption serves important ends, such as encouraging judicial restraint before intruding on "vital [ ] local functions" and recognizing that

redistricting is "complex" and "difficult." *Miller v. Johnson*, 515 U.S. 900, 915-16 (1995). The presumption "reflects … due respect for the judgment of state legislators, who are similarly bound by an oath to follow the Constitution," and it seeks to avoid accusations "that the legislature engaged in 'offensive and demeaning' conduct." *Alexander*, 602 U.S. at 11.

In the main, the district court committed the same errors this Court reversed in *Abbott v. Perez*, where a lower court found discrimination because Texas's 2013 plan had not sufficiently addressed problems in its originally enjoined 2011 plan, *Perez*, 585 U.S. at 610-12, and faulted the legislature for what the court saw as departures from procedural norms, *Perez v. Abbott*, 274 F. Supp. 3d 624, 650 (W.D. Tex. 2017). Following "*Arlington Heights* virtually to a tee," *Perez*, 585 U.S. at 642 (Sotomayor, J., dissenting), the district court had found a "taint of discriminatory intent," *see Perez*, 274 F. Supp. 3d at 645-52. But it was not "strong enough to overcome the presumption of legislative good faith." *Perez*, 585 U.S. at 610.

So too here. The district court claimed to find "direct evidence of discriminatory intent," but what it found was substantial evidence of *how important* the Alabama Legislature deemed its policy prerogatives. The "direct evidence" of discriminatory intent was almost entirely centered on the Legislature's effort to keep the Gulf Coast whole and together, as it had done for decades, DE481:246. The Legislature instructed the mapmaker to achieve that goal, App.32, developed testimony about the history of the region, App.33, and described its significance in detail in legislative findings, App.37. At the same time, Republican legislators "turned away from" a plan

that was more favorable to Democrats and enacted the one that most favored Republicans. App.32-35. None of this is surprising, and none of it amounts to an "express acknowledgement," a "confession," *Alexander*, 602 U.S. at 8, or smoking-gun proof of an illicit racial purpose. While straining to see racial animus in the legislative findings, the district court overlooked numerous lawful explanations. Only by presuming bad faith could the district court transform those lawful explanations into the most odious form of discrimination.

1. The Legislature sought to keep the Gulf Coast together.

The district court derogated the presumption of good faith when it faulted the Legislature for "exalt[ing] of the Gulf Coast" as a region to be kept in one district and deemed that goal "pretext for an unconstitutional end." App.42. The Legislature's desire to keep the Gulf Coast community of interest together in a single district the same way it has done for the past 50 years is a *quintessential* political goal. The district court itself recognized in 2022 that maintaining the Gulf Coast district accrued "political advantages … for those areas," and it "expect[ed] that the Legislature [would] assign them great weight" in its next map after the initial preliminary injunction ruling. DE107:170-71. In 2025, the district court agreed that "the Gulf Coast is a community of interest." DE490:353. It did not dispute the facts that the Gulf Coast has a distinctive geography, economy, and culture. DE490:351 (describing legislative findings); DE106:114-15 (describing testimony).

And as the court also recognized, the State had only one congressman representing the Gulf Coast from 1972 until this litigation. *See, e.g.*, DE490:473. Former Congressman Bradley Byrne, who represented District 1, testified to "the

political advantages" for the region "if they are able to be kept together." DE107:170-71; *see id.* at DE107:114 (testimony that it would be "difficult … for one member of Congress to represent portions of both the Gulf Coast and the Wiregrass"); *id.* (crediting "helpful" testimony). In addition to these political advantages, a unified Gulf Coast serves multiple *other* traditional districting principles, chiefly not splitting the State's major political subdivisions of the City of Mobile and Mobile County. *Accord Callais*, 146 S. Ct. at 1155.

The State's longstanding prioritization of a Gulf Coast district among its congressional districts did not become discriminatory in 2023. But that is what the district court held: The "Legislature's emphasis on the Gulf Coast" was "illegitimate because it was used for an unconstitutional purpose." App.42. Although "the Gulf Coast is a community of interest," the court held that "the Legislature misused it" by insisting it be kept together as a community of interest. *Id.* This rationale is perplexing, for the Legislature "used" the Gulf Coast the same way it had for decades. The difference seems to be the district court's view that because a new majority-minority district could not be drawn without splitting up the Gulf Coast, App.32, and because the Legislature's findings were "unusual," App.41, the Gulf Coast must be subordinated to Plaintiffs' racial goals.

But reading animus into the legislative findings about the Gulf Coast and Black Belt regions only to deem those stated policy goals as "illegitimate" exemplifies a presumption of *bad* faith. Again, it was neither odd nor evidence of racism that the Legislature focused on the Gulf Coast after the community's existence was deemed

"poorly supported" at the preliminary-injunction stage. *Allen*, 599 U.S. at 21. Same for the Legislature devoting fewer words to other communities that were not disputed in that first round of litigation against the 2021 Plan. As the district court realized, "the Legislature chose to define" only "three communities of interest … in an apparent reference to this ongoing litigation," DE490:326 n.56, which should have dispelled any inference that the Legislature intended to "exalt" one "heritage" over others, *contra* App.36. Likewise, it was error to find that the Legislature gave priority to the "majority-White" Gulf Coast over the "majority-Black" Black Belt, App.37-38, when the 2023 Plan gave both communities equal status. The legislative findings entitle *both* communities to be split among the fewest districts possible. DE490:556.

The district court held otherwise only by assuming that the way to "respect" the Black Belt is to place it in a majority-Black district, DE490:491, 510, 529-30, but that treats a nonracial community as a racial one, which the State could never do. *See Allen*, 599 U.S. at 32 n.5 (plurality) (emphasizing that the Black Belt was treated as a *nonracial* community of interest in preliminary-injunction proceedings challenging the 2021 Plan). The 2023 Plan treats these distinct communities of interest alike, and this Court's precedents require nothing more. *See Callais*, 146 S. Ct. at 1154-55; *Allen*, 599 U.S. at 20 (observing how there was a split community of interest in both the 2021 Plan and the illustrative plans); *cf. Personnel Adm'r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979).

2. The Legislature was navigating competing hazards of liability when it redistricted in 2023.

Callais validated the State's concern that it would have risked constitutional liability by subordinating its interests to connect black voters in Mobile with rural black voters on the other side of the State—some "250 miles" away. *Callais*, 146 S. Ct. at 1152. Had Alabama adopted one of the illustrative maps in 2023, plaintiffs could have challenged it as an unconstitutional racial gerrymander just as plaintiffs successfully challenged Louisiana's map in *Callais*. Indeed, though omitted in yesterday's decision, Plaintiffs *in these cases* had already challenged the 2021 Plan as racially gerrymandered, and those same Plaintiffs reminded legislators drawing the 2023 Plan that their claims were "still pending." DE319-25:144-45.

Callais also proves that a State is not insulated from liability when it draws a remedial plan pursuant to a court order. Just the opposite: "[Louisiana's] intentional compliance with the court's demands constituted an 'express acknowledgment that race played a role in the drawing of district lines.'" *Callais*, 146 S. Ct. at 1161. But by the district court's logic here, Louisiana had no choice, for declining to adopt a gerrymander would have had the "purpose of entrenching what it knew from federal court orders was very likely discriminatory." DE490:539. On this view, Louisiana was constitutionally *required* to draw the districts *Callais* held it was *prohibited* from drawing. This resurrects the twin hazards of liability *Callais* put to rest—forcing States to choose between using race (risking liability for racial gerrymandering) or not using race (risking liability for intentional vote dilution).

3. There are obvious partisan explanations.

It strains credulity to say there's "zero evidence" of a partisan motive for the 2023 Plan. App.45. The 2023 Plan was "passed along party lines" and notably *not* racial lines. DE490:83. The evidence was that Democrats were excluded from the "map drawing room," DE490:494; that Republican legislators spoke about a "Republican opportunity plan" and having "seven Republican congressm[e]n," DE490:493; that a consultant texted a Republican legislator that a proposed map was "[n]ot ideal for Moore," then the Republican incumbent in District 2, DE490:72; and that the Republican Speaker of the U.S. House of Representatives "expressed [to Alabama legislators] his desire to keep a Republican majority in the House," DE490:90. True, *two legislators*—one of whom elsewhere publicly spoke about Republican motivations, DE490:493—downplayed partisan intent in their testimony, but they cannot make the whole legislative body their "cat's paw." *Brnovich v. DNC*, 594 U.S. 647, 689 (2021). The district court was required "to draw the inference that cuts in the legislature's favor when confronted with evidence that could plausibly support multiple conclusions." *Alexander*, 602 U.S. at 10.[5]

As long as the district court was considering individual remarks by lawmakers, it should have considered too the indicia of partisanship at the 2026 special session. One Senator explained that the push to use the 2023 Plan has "to do with our partisanship" and "ideology when it comes to politics."[6] A Representative (and

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[5] The district court tries to cast this as a new position, App.45-46, but the State clearly preserved the argument that it was trying to achieve partisan goals well before *Callais*. *See* DE481:289-95.

[6] Alabama Senate Special Session 2026, www.youtube.com/watch?v=2ecxRAvdl1U (May 8, 2026), at 26:26-26:33, 35:44-36:36 (Senator Albritton).

Defendant here) argued that the 2023 Plan gave a better "opportunity for the Republicans to win."[7] Even Senator Singleton—a Plaintiff and the Democratic Senate Minority Leader—admitted that the 2023 Plan was drawn to be "partisan."[8] The court ignored all that—calling it "post-hoc," App.47—but it both confirms the Legislature's non-discriminatory intent when enacting the map in 2023 and when enacting legislation to use the map in 2026. Whatever "taint" the district court thought was present in 2023 had been removed by a new and wholly race-neutral democratic process that effectively ratified the 2023 map in 2026. *Cf. Perez* 585 U.S. at 584; *Thompson v. Sec'y of State*, 65 F.4th 1288, 1298 (11th Cir. 2023).

B. The district court erred by finding discriminatory intent without an alternative map.

In *Alexander*, this Court held that plaintiffs must account for a State's nonracial considerations, most simply with an alternative map, before a plan is judged a gerrymander. 602 U.S. at 10. In *Callais*, this Court held that plaintiffs must account for a State's nonracial considerations, again with an alternative map, before a plan is deemed to dilute minority votes. 146 S. Ct. at 1159. In *Abbott*, this Court summarily reversed for failure to hold plaintiffs to that burden. 2026 WL 1127246. Here too, there is no way for the district court to have concluded that Plaintiffs proved intentional discrimination without first requiring Plaintiffs to disentangle nonracial redistricting priorities from supposed racial ones. Whether a claim of

[7] Alabama House Special Session 2026, www.youtube.com/watch?v=tptIfi94AWk (May 6, 2026), at 3:21:44-54 (Representative Pringle).

[8] *See, e.g.*, Alabama Senate Special Session 2026, www.youtube.com/watch?v=2ecxRAvdl1U (May 8, 2026), at 1:15:28-33 (Senator Singleton); *see also id.* at 17:00-17:06, 34:27-32, 50:38-50:42.

unconstitutional gerrymandering or unconstitutional vote dilution, the first step of Plaintiffs' case was to prove the State acted with forbidden *racial* purpose. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977). But here, the district court relieved Plaintiffs of that "disentanglement burden" to prove vote dilution, *contra Callais*, 146 S. Ct. at 1157, little different than the Texas court relieved Plaintiffs of their disentanglement burden to prove racial purpose for the constitutional claims in *Abbott*, 146 S. Ct. at 419. But "[w]ithout an alternative map, it is difficult for plaintiffs to defeat [the] starting presumption that the legislature acted in good faith." *Alexander*, 602 U.S. at 10. The district court could not preliminarily enjoin the 2023 Plan without first requiring Plaintiffs to identify an alternative map that would have achieved the Legislature's nonracial goals, particularly keeping the Gulf Coast and Black Belt within the minimal number of districts possible; avoiding incumbency contests; protecting the six Republicans and one Democrat in the congressional delegation; and avoiding a meritorious gerrymandering suit.

C. *Allen v. Milligan* did not require the Legislature to draw two majority-minority districts in 2023.

Nothing in this Court's decision about Alabama's since-repealed 2021 Plan in *Allen v. Milligan*, 599 U.S. 1 (2023), is fodder for the district court's startling finding that the State's 2023 Plan amounted to intentional racial discrimination. *Allen*—addressing only that since-repealed predecessor plan and only in a preliminary-injunction posture on a preliminary record—had no occasion to "address the central issue" in *Callais* and what is now the central issue with respect to Alabama's 2023

Plan: when, if ever, does federal law compel the *State* itself to draw an additional majority-minority district in a way that is reconcilable with the Constitution. *Callais*, 146 S. Ct. at 1160; *see Allen*, 599 U.S. at 30 (plurality op.). Accordingly, the district court's staunch position that the Legislature "underst[ood] [ ] [that] federal law required" two majority-minority districts is mistaken. App.32. It was reasonable then—and even more reasonable in retrospect—for the Legislature to believe that "§2 never requires adoption of districts that violate traditional redistricting principles." *Allen*, 599 U.S. at 30 (cleaned up). The district court's contrary interpretation of *Allen* would mean there was only one way forward for any future redistricting legislation: to draw an additional majority-minority district even when, after a full trial on the merits, there was no dispute that would always come at the cost of cracking the Gulf Coast and combining black voters in distinct regions of the State in a district some 200 miles wide. That would make the district court's *preliminary* findings functionally final. And when state officials redistrict in that way, this Court calls that gerrymandering. *See Callais*, 146 S. Ct. at 1162. But when Alabama declined to redistrict in that way, the district court called it "purposefully refusing to remedy the vote dilution." App.35. Alabama, no different than Louisiana, may stick to its neutral political and policy goals. That's not intentional racial discrimination.

II. There is a fair prospect that the Court will reverse the district court's §2 holding.

A. The district court flouted *Callais* when it discarded permissible districting criteria as "illegitimate" and applied a racial criterion instead.

Under the updated *Gingles* framework, Plaintiffs must bring illustrative maps that "meet all the State's legitimate districting objectives, including traditional districting criteria and the State's specific political goals." *Callais*, 146 S. Ct. at 1159. They did not. As the district court found in 2025, no alternative in the record achieved the State's objectives. *E.g.*, DE490:345, 525. They all failed to keep the Gulf Coast in one congressional district, and they failed to protect incumbents. They sacrificed those goals to combine so-called "Black Mobile" (DE272:158) with parts of the Black Belt to form a new majority-black district. Lacking comparator maps, Plaintiffs could not begin to show discrimination, and their alternatives could not have been adopted by the State. But as if *Callais* never happened, the district court held that plaintiffs had drawn "an additional reasonably configured majority-Black district," even if that meant cracking the Gulf Coast and ignoring the State's other political goals including not pairing incumbents. App.54.

1. The Gulf Coast. It is undisputed that keeping the Gulf Coast together in a congressional district is one of "the State's specified political goals," *Callais*, 146 S. Ct. at 1159, and that no alternative to the 2023 Plan meets that goal. The district court cannot ignore its earlier findings (*supra* §I.C.1) to transform a well-established and long-held goal of the Legislature into a "novel and exacting instruction [ ]" cooked up to defy the courts. App.38. To the contrary, "maintaining communities of interest"

falls well within the class of "traditional districting principles." *LULAC v. Perry*, 548 U.S. 399, 433 (2006). And "§2 never requires adoption of districts that violate traditional redistricting principles." *Allen*, 599 U.S. at 30. Consider: If the State had *abandoned* this commitment in order to "combine[ ] two farflung segments of a racial group," *LULAC*, 548 U.S. at 433, it would have found itself in the same position as Louisiana, which violated the Constitution by drawing a "second majority-minority district … [that] stretche[d] some 250 miles" across the State. *Callais*, 146 S. Ct. at 1152. Declining to *prioritize* race, the 2023 Plan did not violate §2.

The district court's shifting rationales fail. As an initial matter, the court "accept[ed] that the Gulf Coast is a community of interest" in 2025, DE490:353, and its attempts to run from that finding should be viewed with extreme skepticism. At last week's hearing, the court suggested that "day-to-day life" is "fairly similar" in the "northwest," the "southeast," and "southwest part of the state," App.279-80, as if communities of interest don't exist. And it resisted that "because the state says … keeping the Gulf Coast together is a legitimate interest, [federal courts] have to accept that." App.276. This exchange—echoing the court's earlier derision that the Gulf Coast is a "so-called most important … criteria," DE490:530—lays bare the belief that a federal court can override the State's priorities. But that belief runs headlong into *Callais*: Whatever "permissible criteria the legislature chooses to use" *are* up to the Legislature, and "whatever opportunity results" is the only opportunity that "voters can expect." *Callais*, 146 S. Ct. at 1155.

Left intact, the district court's preliminary-injunction opinion will become the roadmap for evading *Callais*: In just *two paragraphs*, the district court discarded the Legislature's goal on the ground that it "was the linchpin of a calculated effort to discriminate based on race." App.55. This new opinion accuses the State of "'offensive and demeaning' conduct," even though federal courts "should not be quick to hurl such accusations at the political branches." *Alexander*, 602 U.S. at 11. The accusation is also false: The Gulf Coast has been kept together for *50 years*, and it was one of the State's primary defenses when this lawsuit was first filed in 2021; it was not "adopted … for unconstitutional purposes" in 2023. App.55. And if the court was not willing to "accuse any legislator of racism," App.31, it should have been even more loathe to accuse the *whole Legislature* of racial animus. There can be no comparison between the Legislature's interest in giving a unified voice to the Gulf region and "clos[ing] public schools" in 1964 to thwart "desegregat[ion]." App.56.

In the end, the Legislature adopted this political goal long before the 2021 Plan, readopted it in the 2021 and 2023 Plans, and has maintained a consistent position throughout this litigation that the Gulf Coast is a nonracial community of interest. That shouldn't even be controversial, and certainly should be entitled to some deference by a federal court under the presumption of good faith. When the Louisiana district court re-defined what it meant to protect an incumbent, this Court held that it had "missed the point" of Louisiana's political goal. *Callais*, 146 S. Ct. at 1161. And if federal courts can re-interpret the State's goals at-will, then they will again be involved in distributing "a fair share of political power and influence, with

all the justiciability conundrums that entails." *Rucho v. Common Cause*, 588 U.S. 684, 709 (2019). While the district court decided for itself that splitting the Gulf Coast wouldn't "necessarily harm [it]," DE490:355, that's a political question for a political body. *Accord Banerian v. Benson*, 589 F. Supp. 3d 735, 738 (W.D. Mich. 2022).

2. Incumbent Protection. A second criterion which the 2023 Plan achieved but alternatives did not was protecting incumbent representatives whom "the legislature sought to protect." *Callais*, 146 S. Ct. at 1161; *see* App.88 (SB5) ("The congressional districting plan shall not pair incumbent members of Congress within the same district."); DE490:86 (State's mapmaker: "I was looking at … not pairing incumbents, which, obviously we had incumbents that could have been paired there in terms of Barry Moore in Coffee County and Jerry Carl in Mobile[.]"). In its 2025 injunction, the district court refused to give "weight" to incumbency because it thought that would "defeat the Voting Rights Act." DE490:361. In its 2026 injunction, the district court found that illustrative maps were good enough because they "protect[ ] all incumbents *except one*." App.56-57 (emphasis added).

But §2 liability cannot be proven with an illustrative map that "fail[s] to meet the State's political goals, including incumbency protection." *Callais*, 146 S. Ct. at 1161. This failure caused a direct and undeniable harm to the State, as one of its incumbents "was not reelected to Congress." DE490:361. As in *Callais*, "because the [ ] illustrative maps failed to protect all the incumbents that the State sought to shield, the plaintiffs did not meet their burden on [the first *Gingles*] precondition." *Callais*, 146 S. Ct. at 1161.

Yesterday, the district court addressed incumbents in one sentence, finding that the State's allegedly "calculated effort to discriminate based on race [ ] also included a novel categorical bar on pairing incumbents." App.55. Of course, incumbent protection was hardly novel in 2023. *See, e.g.*, DE107:220 (2021 guidelines). The court clarified in a footnote that other States can constitutionally "protect[ ] incumbents" but not Alabama "on these unique facts and in the unique posture of these cases." App.56 n.17. This inexplicable holding contradicts *Callais*; nothing supports a finding that the Legislature's desire to protect Rep. Jerry Carl and Rep. Barry Moore was "pretext for an unconstitutional end" or otherwise "intentionally discriminat[ory]." App.56.

3. The Black Belt. After the 2021 Plan was preliminarily enjoined in part because "[t]here would be a split community of interest" in the Black Belt, *Allen*, 599 U.S. at 21, the Legislature made it a non-negotiable priority to put the Black Belt in as few districts as possible. The district court erred by crediting *Gingles* maps that failed on this score and by transforming this nonracial criterion into a racial one.

The district court reaffirmed its racialized approach to the Black Belt yesterday, claiming that the Legislature did not "treat[] the Black Belt and Gulf Coast equally" because "half the Black Belt Counties were placed in majority-White districts." App.35. In 2025, it described "respect" for the Black Belt in terms of "Black voting strength." DE490:360-61. It cast aside the Gulf Coast objective on the ground that splitting a "majority-White district" "precipitates no such racially discriminatory harm." *Id.* Not only was this reasoning circular—under *Callais*, "Black voting

strength" (*id.*) cannot be used to define the "baseline … chance" to elect one's preferred candidates, *Callais*, 146 S. Ct. at 1154—it clearly turned the State's nonracial districting criterion into a racial one. *See* App.34 (criticizing in its *Arlington Heights* analysis the fact that the 2023 Plan "placed nine of the eighteen Black Belt counties in majority-White districts"); *accord Milligan* J.S. 22-23 (arguing that using such double standards is unconstitutional).

4. The district court places extraordinary weight on its belief that Plaintiffs' experts and the Special Master did not draw "boundaries … on the basis of race" or "display racial demographic data while drawing districts." App.18; *see* App.50-54. It says with confidence that "there is no world in which we … demanded the State do anything noxious." App.43; *see Shaw v. Reno*, 509 U.S. 630, 643 (1993) (recognizing racial gerrymanders as "odious"). But even if the Special Master's "race-blind" laundering of Plaintiffs' race-based formula were credited, that merely shows "that the State *could* create an additional majority-minority district." *Callais*, 146 S. Ct. at 1158. The district court was wrong to think that just because a "race-blind" map *could* be drawn, that "disproves that anything unconstitutional was required." App.43.

Here, the alternative maps are unconstitutional because they advance a racial goal at the expense of the State's nonracial goals. The process may be called "race-blind" in the narrow sense that the mapmakers attested they did not look at the racial demographics of voting precincts—although that means little if, for example, they looked at other race-based maps that already provided the formula—but they still used race as an unbending and non-negotiable criterion. *See, e.g.*, DE590:325

(recounting Dr. Duchin's testimony that "race is a consideration" of hers but just "doesn't dominate others"); App.52 (noting that Dr. Duchin "periodically checked" the racial parameters of the plan as she was drawing, just emphasizing it wasn't part of her "granular" process). Plaintiffs and the district court *directed* their mapmakers to draw a map with two majority-minority congressional districts, even after it was conceded that two such districts could be achieved only by jettisoning the State's nonracial goals. *But see Callais*, 146 S. Ct. at 1159.

Consequently, the district court's assurance that Plaintiffs had not offered (and it was not ordering) a racial gerrymander was built on a faulty premise. That Dr. Duchin could draw "literally thousands" of maps with two majority-minority districts *without holding constant* the State's race-neutral principles is legally meaningless. App.52; *see Callais*, 146 S. Ct. at 1159. She trained her algorithms to hit a racial target before hitting the State's nonracial targets. *Contra Callais*, 146 S. Ct. at 1159. With those parameters set, the allegedly "race-blind" process was not race blind at all. Just like in *Robinson*, race was baked into the process because the requirement to "configure [a district] to achieve a black voting-age population over 50%" was an "express acknowledgment that race played a role in the drawing of district lines." *Callais*, 146 S. Ct. at 1161.

That was error, even if it could be believed that the mapmakers just happened to pluck the black voters in Mobile out of District 1 to join them with voters on the other side of the State in District 2. Although the State need not prove that the mapmakers used race at a "granular" level, App.52, this case *is just like* "in Louisiana,

where the geographic dispersion of the Black population required a remedial district to 'slic[e] through' multiple metropolitan areas to scoop up pockets of predominantly Black populations," *contra* App.54-55. There was no other reason to draw lines around "Black Mobile" (DE490:263) and connect it with Montgomery and the eastern border of the State hundreds of miles away.

B. The district court did not find racial-bloc voting that cannot also be explained by partisan affiliation.

In 2025, the district court found that it "cannot separate voters' racial considerations from their party affiliations" based on "this evidentiary record." DE490:401. Recounting the same evidence in 2026, the district court found that it *could* disentangle party and race. App.57-61. That was clear error, because it continues to infer racial bloc voting from analysis of just a few elections spanning decades. Its new holding committed legal error too. Even if there were some racial effect in some elections—after controlling for party—the effect of partisan affiliation to drive voting dwarfs it. There is no evidence that a white majority votes "as a bloc … to defeat" black candidates as was the case when the Voting Rights Act was enacted. *Callais*, 146 S. Ct. at 1146.

The district court did not seriously commit itself to disentangling race and politics as *Callais* directed. From the jump, it wrote that the factor is "racially polarized voting"—as it used to be before *Callais*—and cited evidence about the electoral success of black candidates *without controlling for party*. App.20; App.57-58 ("We adhere to our earlier findings about the evidence of these patterns."). But evidence that "most Black Alabamians are Democrats[ ] and the Republican Party is

Alabama's dominant political party," App.61, is not "substantial evidence that Black Alabamians have less opportunity than other Alabamians to elect representatives of their choice," App.20. That conflation of race and politics does not survive *Callais*. 146 S. Ct. at 1159-60.

The district court's quick attempt to disentangle race and politics, on the heels of *Callais* without any new evidence, was on the most threadbare record. The court cited a CNN exit poll from the 2008 presidential election. App.58. It cited results from the 2024 Republican primary in which white candidates outperformed black candidates—without acknowledging or controlling for any other factors that could have explained that outcome. *Id.* It cited two mayoral runoffs and a single democratic congressional primary. *Id.* This is the sum total of the empirical evidence it used to find a "stark pattern[ ]" that *white voters* vote *as a bloc* to defeat black candidates for purposes of declaring the State's congressional districts unlawful, App.61, while waiving away the election of black Republicans in majority white districts, App.59, n.18, among other substantial additional evidence presented by the State. DE481:125-50. This was clear error. Plaintiffs must prove that polarization "cannot be explained by partisan affiliation," not that there exists *some* polarization in *some* elections across multiple decades that *might* be explained by race. *Callais*, 146 S. Ct. at 1159. If it worked that way, the existence of a handful of racist voters would be enough to satisfy *Gingles*. But that would not at all reflect "circumstances [ ] comparable to those in *White [v. Regester]*." *Callais*, 146 S. Ct. at 1162.

C. The district court had no evidence of present-day intentional discrimination in voting by the State.

The district court also erred in rehashing its Senate Factors analysis to conclude that there is "present-day intentional racial discrimination regarding voting." *Callais*, 146 S. Ct. at 1160. This Court held that "[d]iscrimination that occurred some time ago, as well as present-day disparities that are characterized as the ongoing 'effects of societal discrimination,' are entitled to much less weight." *Id.* at 30-31. Yet again, the district court placed great weight on evidence that is not "germane," *id.*, and the result is a §2 that goes beyond what is required to enforce the Fifteenth Amendment.

At Senate Factor 2, the district court repeated its view that "voting in Alabama is intensely racially polarized," App.63, which is not unique to Alabama among Republican States, nor does it suggest intentional discrimination by the State in enacting the 2023 Plan. The same goes for Senate Factor 7, which asks whether black candidates have had much success in statewide elections. And the court failed to disentangle when it found "substantial evidence that race, not politics, is at work," App.63-64, because it is impossible to say without knowing the denominator—*i.e.*, how many black candidates have run as Republicans in recent years. And that is a question the court did not answer. As for Senate Factor 6, the district court counted against the State what it found to be "subtle racial appeals" by political candidates dating to 2011. App.67. This factor is a Rorschach test, not a legal test.

The supposed "substantial evidence of official race discrimination" reaches back "twenty years" and cannot be fairly imputed to the State Legislature. App.63-

64. When towns of fewer than 10,000 people choose to settle rather than litigate redistricting cases against well-heeled voting-rights groups, that is not evidence of intentional discrimination in the 2023 Plan. One of the cases cited involved a suburb trying to create its own school district. Another involved a racial remark by a former state senator over fifteen years ago. This is the same kind of hodgepodge presented in *Robinson v. Ardoin*, 605 F. Supp. 3d 759, 806-15 (M.D. La. 2022), which the Court just ruled did not "c[o]me close to showing an objective likelihood that the State's challenged map was the result of intentional racial discrimination." *Callais*, 146 S. Ct. 1162; *see* Supp. Br. for *Robinson* Appellants 46-47, No. 24-109 (Aug. 27, 2025).

The district court then recited copious facts about disparities in "education, employment, and health" in Alabama, which it gave "less weight." App.65-67. But "less weight" was still too much weight in light of the paucity of any actual present-day discrimination by the State Legislature related to voting.

Finally, the district court "weighed strongly" its Senate Factor 9 finding that the policies underlying the 2023 Plan were "tenuous." App.68. This finding trampled over the Legislature's stated goals, discussed *supra*. The court also repeated its view that the Legislature was "required" to draw a second majority-minority district, *id.*, which is circular because that's what the §2 analysis needs to *prove*—not take as a given. The suggestion of a "lack of responsiveness on the part of elected officials to the particularized needs of Black voters" likewise assumed the court's §2 conclusion and failed to disentangle party and race. DE490:430-33.

The "totality of the circumstances" inquiry does not turn on generalized disparities, decades-old history, or critical analysis of campaign ads. Nor should the district court have discounted the State's arguments about the present "parity in rates of voter registration and turnout," *e.g.*, DE490:417, which go to the heart of "equal opportunity to vote," *Brnovich*, 594 U.S. at 671; *see Callais* at 34-35. If §2 remains as unconstrained at the totality-of-circumstances stage as the district court would have it, its use of race would be unconstitutional.

III. The equities warrant a stay.

A. The district court turned *Purcell* on its head by using it as a sword to impose its court-drawn plan on the eve of an election.

The district court declined to apply *Purcell* on the ground that there would be administrative advantages and cost savings to using the court-drawn plan because local registrars had not yet reassigned voters in accordance with the 2023 Plan. App.8-11. But *Purcell* is a shield for legislatively enacted election rules, not court-imposed ones. It *precludes* "lower federal courts" from "alter[ing] the election rules on the eve of an election." *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U.S. 423, 424 (2020); *Purcell v. Gonzalez*, 549 U.S. 1 (2006). Recognizing that States, not courts, have the expertise to set election rules, *Purcell* requires federal courts to stay their hand. *See Abbott v. LULAC*, 146 S. Ct. 418, 419 (2025) ("The District Court improperly inserted itself into an active primary campaign, causing much confusion and upsetting the delicate federal-state balance in elections."); *Gardner v. Henderson*, No. 2:26-CV-00084-RJS-JCB, 2026 WL 496448, at *16 (D. Utah Feb. 23, 2026) (3-judge court) (Tymkovich, J., concurring) (explaining that "*Purcell*, while commonly

justified by anti-disruption principles, is also grounded in a federalism principle—protecting states' constitutional interest under the Elections Clause in governing their own elections").

"It is one thing for state legislatures to alter their own election rules in the late innings and to bear the responsibility for any unintended consequences. It is quite another thing for a federal district court to swoop in and alter carefully considered and democratically enacted state election rules when an election is imminent." *DNC*, 141 S. Ct. at 31 (Kavanaugh, J., concurring). Thus, because *Purcell* applies to counter "federal intrusion on state lawmaking processes," *id.* at 28 (Roberts, C.J., concurring), the district court cannot use its distaste for the "money and hardship" involved in those existing processes as a ground for intervention. *Contra* App.9. The court found it "difficult to imagine a case" that "more clearly counsel[s]" against applying *Purcell* (App.13), but it is easy to imagine—any case where claims are ruled upon more than *a few weeks* before ballots were set to go out.

The 2023 Plan is a duly enacted Alabama statute. Ala. Code § 17-14-70. When this Court vacated the district court's injunction, the 2023 Plan had full legal force—"as though the vacated order never occurred," *Hewitt v. United States*, 606 U.S. 419, 431 (2025). State officials, local officials, parties, candidates, and voters understood the ramifications immediately because the Legislature had already enacted a law providing for a special election under just this circumstance. *See* Ala. Act No. 2026-612. By proclamation the day after this Court's vacatur orders, the Governor announced a special primary and issued a writ of election. There were new qualifying

deadlines. Candidates may have stopped campaigning in their old districts—anticipating the new August primary under new district lines; voters may not have voted or may have voted differently in the May primary with the understanding that it would not count. And the district court (despite acknowledging that last week's primary results were void) left to the State's discretion how to address "the remaining events in Alabama's 2026 congressional elections" despite no clear state-law authority as to how the State should proceed. DE537:76-77. There were preparations and expectations that the August special primary election would be conducted under the 2023 Plan—until the district court stepped in.

It was always going to be a challenge for state election officials to hold a special primary, but *that was the Legislature's and the Governor's choice*. If *Purcell* means anything, it means the federal judiciary cannot pick and choose the logistical costs the State is not entitled to accept.

B. The balance of harms and the public interest warrant a stay.

Alabama and the public face irreparable harm unless a stay issues because they will be unable to use the State's "duly enacted plans" for the 2026 election. *Perez*, 585 U.S. at 602 n.17. Worse still, voters will be forced to vote under a court-drawn racially gerrymandered map that does not meet Alabama's legitimate districting goals. The balance of the equities thus favor staying the district court's last-minute intrusion into Alabama's election. *See LULAC*, 146 S. Ct. at 419. They also favor an immediate administrative stay so that the State can resume its necessary election preparations to be able to use its duly enacted 2023 Plan.

CONCLUSION

The Court should enter an administrative stay and a stay pending appeal of the injunctions barring the State from using the 2023 Plan. In the alternative, the State respectfully requests that the Court construe this stay application as a jurisdictional statement and summarily reverse for the 2026 or 2028 elections, or note probable jurisdiction and consider these cases on the merits in October Term 2026 in advance of the 2028 elections.

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