No. 25A1315

In the Supreme Court of the United States

WES ALLEN, SEC'Y OF STATE, *ET AL.*,

Applicants,
v.

BOBBY SINGLETON, *ET AL.*,

Respondents.

On Application for Stay Pending Appeal from the
United States District Court for the Northern District of Alabama

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RESPONDENTS' OPPOSITION TO APPELLANTS' EMERGENCY APPLICATION FOR STAY AND FOR ADMINISTRATIVE STAY

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INTRODUCTION

The Application for a Stay should be denied for two reasons. *First*, according to the Secretary of State's office, reassigning voters for a Special Primary on August 11, 2026, is impossible administratively at this point, making the Application moot. *Second,* Applicants incorrectly state that the district court required Alabama to draw a race-based congressional plan, and they are incorrect on the merits of (1) all Plaintiffs' claims under Section 2 the Voting Rights Act, and (2) the Milligan and Singleton Plaintiffs' intentional discrimination claim under the Fourteenth and Fifteenth Amendments.

ARGUMENT

I. The Application for a Stay Must Be Denied as Moot Because It Is Too Late for Alabama to Implement the 2023 Plan.

Even if Applicants' incorrect view of the merits of their appeal (as discussed below) were credited, their application for a stay has a showstopping problem: Reassigning voters for a special primary election on August 11, 2026, is administratively impossible at this point.

On May 26, 2026, the district court found as follows:

> On the unique record before us, we determine that enjoining the 2023 Plan will not disrupt Alabama's elections. Requiring the use of the Special Master Plan will forestall an expensive, aggressive, and ***perhaps logistically impossible voter reassignment effort***. We take extremely seriously the Supreme Court's command that federal district courts ordinarily should not intervene on the eve of an election. But the record here is clear: enjoining the unconstitutional 2023 Plan will improve the administrative situation in Alabama, not worsen it.

App.5–6 (emphasis added). On May 26, 2026, the district court enjoined "conducting [Alabama's] 2026 congressional elections according to the 2023 Plan" and ordered

"the Alabama Secretary of State ***to administer all remaining events*** comprising Alabama's 2026 congressional elections ***according to the Special Master Plan***." App.77 (emphasis added). Assuming Applicants have respected and followed the district court's order to administer all remaining events since May 26 according to the Special Master Plan, the voter reassignment effort that was "perhaps logistically impossible" on May 26, is impossible now as of June 1.

Jeff Elrod, the Director of Elections for Alabama's Secretary of State, testified at the preliminary injunction hearing on May 22, 2026, that voter reassignments for the 2023 Plan in Alabama's voter registration database could not begin until May 27 and must be completed by tomorrow, June 2. App.123, 136–37, 139, 167, 179. In fact, June 2 itself appears to be too late: Mr. Elrod testified, "The vendor has communicated to us that once the absentee process begins and absentee ballot is issued [sic], that is when the records are locked. The first day for absentee voting for the June 16th runoff is June the 2nd." App.139. If absentee ballots are issued the morning of June 2, then all changes must be completed by today, June 1. And state and county administrative offices are closed today, June 1, to celebrate the birthday of Jefferson Davis.[1] This leaves a few hours on an Alabama holiday to complete voter reassignment for the 2023 Plan.

Mr. Elrod also testified that the "voter reassignment process is lengthy and requires several steps," including "pre review," "time to make the changes," and "quality checks." App.140. Furthermore, while voters can be reassigned *en masse* in

[1] Office of the Secretary of State, Administrative Calendar, 2026 Statewide Election, https://www.sos.alabama.gov/sites/default/files/election-2026/AdminCalendar%20-2026.pdf.

some counties, they cannot be in Elmore, Covington, and Jefferson Counties, which are split differently in the 2023 Plan and the remedial plan. App.121. Mr. Elrod testified,

> Any time that a split is made, that requires more intentional and manual work on behalf of the registrars. Instead of a mass change, they have to then go in to these political subdivisions at a more granular level, and it requires ensuring that these splits are accurate. It requires review. It requires a more hands-on process from the registrars rather than just moving one whole county or one whole precinct into another. When they have a split, they have to take some more time to make sure that those splits are accurate.

App.121–22. Mr. Elrod admitted on cross-examination that it is "uncertain" whether reassignments could be made from May 27 to June 2, App.198, and he appeared to concede on redirect that assignments could not be made in time:

> Q: … [I]n order to conduct the August 11th special primary election, it's your opinion that we already need to have a map in place?
>
> A: Yes; I would say that's correct.

App.226. Now May 27 has passed; instead of a week, there are only hours to reassign voters. Accordingly, the evidence in the record shows that Alabama cannot administer its special primary election under the 2023 Plan, even with a stay entered today, June 1. Applicants previously won relief from this Court with an argument that it would cause chaos to implement "new districts days before the candidate qualifying deadline and less than two months before absentee voting is to begin." Emergency Appl. for Admin. Stay & Stay at 39, *Allen v. Milligan*, No. 21-1086 (U.S. Jan. 28, 2022). There is significantly less time to implement new districts now.

Because a stay would not provide Applicants the relief they seek (an opportunity to run the 2026 congressional election with the 2023 Plan), the

application must be denied as moot. "[I]f an event occurs while a case is pending on appeal that makes it impossible for the court to grant any effectual relief whatever to a prevailing party, the appeal must be dismissed." *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992) (internal quotation marks omitted).

Alabama's quixotic attempt to condense a monthslong process into a few hours is not harmless. If county registrars complete only part of their work on June 1 or June 2, the voter registration database will lock in a plan that is not the 2023 Plan and not the Special Master's remedial plan, but some hybrid of the two that no statute or court authorizes Alabama to use, and one that could violate the "one person, one vote" principle required by *Reynolds v. Sims*, 377 U.S. 533 (1964). Under the circumstances, a lawful special primary could not be held on August 11, and no candidates would have qualified to run in four of Alabama's seven congressional districts due to the Legislature's voiding of the May 19 primary elections. Under these circumstances, there would be no way to conduct a general election using the 2023 Plan. As the district court recognized, the solution to this problem is simple: proceed with the Special Master's remedial plan for the 2026 election. Granting a stay would not resolve an emergency; it would create one.

II. The Fundamental Premise of the Application for a Stay Is Demonstrably False.

The Singleton Plaintiffs would like to focus this Court's attention on the linchpin of this Application: Applicants' repeated assertion that the district court

required Alabama to draw a race-based congressional plan.[2] This false premise is not new: In Applicants' Jurisdictional Statement in their prior appeal, three of the four questions presented depended on this false premise,[3] and so did their Motion to Expedite.[4] Despite being told by Respondents over and over that they were making material misrepresentations to this Court, Applicants continue to rely on this false premise in their Application for a Stay. *E.g.*, Application at 1 ("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."); *id.* ("[T]he 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."); *id.* at 8, 11, 15, 21, 32 (similar). **The district court never held that Section 2 required Alabama to adopt a majority-Black district or otherwise draw districts on the basis of voters' race.**[5] The district court's remedial plan is proof positive: it does

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[2] The Singleton Respondents join the arguments of the Caster and Milligan Respondents that the District Court's decision was correct and Applicants are not entitled to a stay.

[3] "1. Does §2 require Alabama to segregate a conceded community of interest to combine black voters from that community with black voters elsewhere to form a majority-black district? 2. Whether §2 can require Alabama to intentionally create a second majority-minority district without violating the Fourteenth or Fifteenth Amendments to the U.S. Constitution? … 4. Did Alabama violate the Fourteenth Amendment by declining to draw a race-based plan?" *Allen v. Singleton*, No. 25-273, Jurisdictional Statement at i. The only question presented that did not depend on this premise was "3. Does §2 create a privately enforceable right?" *Id.*

[4] *E.g.*, *Allen v.* Singleton, No. 25-273, Motion to Expedite at 2 (falsely stating that the district court "imposed a court-drawn plan with a second majority-minority district"); *id.* at 3 (falsely stating that "[t]he district court's equal protection ruling was based entirely on Alabama's position that Section 2 did not require it to enact a map with two majority-black districts").

[5] To be sure, the district court recognized that "as a practical reality, based on extensive evidence of intensely racially polarized voting in Alabama, any remedial plan would need to include two districts in which Black voters either comprise a voting-age majority or something quite close to it." *Singleton v. Merrill*, 582 F.Supp.3d 924, 936 (N.D. Ala. 2022) (three judge court) (internal quotation marks

not contain a second majority-Black district, and it was "**drawn race-blind**." App.18 (emphasis in original).[6]

Moreover, Applicants refuse to acknowledge that if the proper approach to redistricting after *Callais* is to pursue traditional redistricting principles without classifying or intentionally discriminating against voters by race, then the Alabama Legislature repeatedly rejected opportunities to do so. Applicants never tried to prove in the district court that it was impossible to provide two opportunity districts while satisfying Alabama's legitimate redistricting principles. To the contrary, it repeatedly rejected one plan introduced during the 2023 special session (and again in the 2026 special session) that demonstrates that such an outcome clearly is possible. Applicant

omitted). But the remedy the district court required, as opposed to what it acknowledged as a practical reality, demanded no thresholds for racial demographics or district lines based on race: "a districting plan that includes either an additional majority-Black district, *or an additional district in which Black voters otherwise have an opportunity to elect a representative of their choice*." App.15 (emphasis added). An opportunity district need not have a particular racial composition to avoid liability under Section 2. *Cooper v. Harris*, 581 U.S. 285, 305–06 (2017). As described below, all three Applicants admitted that the Black-preferred candidate would have won most elections in a proposed district whose Black Voting Age Population was less than 40%.

[6] Applicants have never offered any evidence that would call into question the district court's finding that the Special Master's map was drawn race-blind, but they describe that map as a "laundering of Plaintiffs' race-based formula" and "a court-drawn racially gerrymandered map." Application at 27, 35. The Special Master's map was not based on any of Plaintiffs' illustrative maps; it was based on the Alabama Legislature's 2023 Plan, with as few changes as necessary to create an opportunity district. App.17–18 ("The Special Master Plan satisfied all constitutional and statutory requirements while hewing as closely as possible to the Legislature's 2023 Plan."). If Applicants are admitting that the 2023 Plan was an unconstitutional racial gerrymander, then the Singleton Respondents accept that admission.

Senator Bobby Singleton introduced a race-neutral plan with no majority-Black districts (the "Singleton Plan") that kept the Gulf Coast intact:

Applicants admitted that in the 28 statewide contested elections from 2012 to 2022, the Black-preferred candidate received the most votes 22 times in District 6 of the Singleton Plan (which had a Black Voting Age Population of less than 40%), and all 28 times in District 7.[7] Based on these admissions alone, it is untenable for Applicants to deny that the Singleton Plan contains two opportunity districts while keeping Mobile and Baldwin Counties together.

Moreover, the Singleton Plan better comports with the Legislature's contrived "legislative findings" than the enacted 2023 Plan does. Besides keeping the Gulf Coast intact and providing two opportunity districts, the Singleton Plan satisfies

[7] Secretary Allen admitted this fact in response to a request for admission. *Singleton v. Allen*, No. 21-cv-1291 (N.D. Ala.), Doc. 180-1 at 5–6. Senator Livingston and Representative Pringle made the same admission in separate responses, which were not introduced as exhibits in the district court.

every legitimate redistricting principle contained in the Legislature's findings. It has minimal population deviation, it is contiguous, it is at least as compact as the 2023 plan, it keeps Alabama's four largest counties intact (which the 2023 plan fails to do), it splits no more than six county lines, it does not pair incumbents,[8] and it keeps together communities of interest. Specifically, it keeps the Gulf Coast intact, and it puts 16 of the 18 core Black Belt counties in the same district—the highest number mathematically possible. It also keeps the Wiregrass intact except for two counties that are also core Black Belt counties (Crenshaw and Pike), which are placed in the Black Belt district.[9]

The Singleton Plan demonstrates that keeping counties whole could provide a race-neutral "benchmark" for determining whether, given "Alabama's geography or demography," districts can be drawn "without resorting to a racial gerrymander." *See Allen v. Milligan*, 599 U.S. 1, 65–66 (2023) (Thomas, J., dissenting). As the district court said on remand from *Reynolds v. Sims*, 377 U.S. 533 (1964), preventing gerrymandering is one of the purposes for Alabama's whole-county requirements for state House and Senate districts in the Alabama Constitution. *Sims v. Baggett*, 247 F. Supp. 96, 101 (1965) (three-judge court).

The only way the Singleton Plan falls short of the 2023 plan is that it does not preserve the cores of existing districts, but this cannot be a nonnegotiable principle

[8] Representatives Terri Sewell and Gary Palmer would both have resided in District 6 in the Singleton Plan, but Representative Sewell also has a residence in District 7 and could have run in that district, which encompasses many of the same counties as her previous district.

[9] For further description of the Singleton Plan and its performance on various metrics, see *In re Redistricting 2023*, No. 23-mc-1181 (N.D. Ala.), Doc. 5 at 6–19.

in the context of remedial redistricting: "[T]his Court has never held that a State's adherence to a previously used districting plan can defeat a § 2 claim. If that were the rule, a State could immunize from challenge a new racially discriminatory redistricting plan simply by claiming that it resembled an old racially discriminatory plan." *Milligan*, 599 U.S. at 22.

Although the Singleton Plan complied with the district court's directives and performed well on every legitimate districting principle the Legislature identified, including keeping the Gulf Coast together, the Legislature rejected it. It is impossible to reconcile the existence of the Singleton Plan with the Applicants' (incorrect) position that the district court required Alabama to split the Gulf Coast in order to comply with Section 2.[10]

The Singleton Plan is not the only race-blind potential remedial plan the Legislature rejected. Contrary to their position now, two of the three Applicants testified that it may have been possible to do what they now claim is impossible. During the 2023 special session, Applicants Steve Livingston and Chris Pringle (and their attorney) instructed cartographer Randy Hinaman to draw a map that contains two opportunity districts and keeps Mobile and Baldwin Counties together. App.32. Mr. Hinaman was not instructed to target a minimum Black voting-age population, nor did he do so. *Milligan v. Allen*, No. 21-cv-1530 (N.D. Ala.), Doc. 459-7 at 16. Mr.

[10] To be clear, Singleton Respondents do not claim that the Legislature or the district court was required to adopt the Singleton Plan; they highlight the Singleton Plan to show that a fundamental premise of Applicants' argument for a stay is wrong.

Hinaman drew what came to be called the Community of Interest plan, which kept Mobile and Baldwin Counties intact and together:

Representative Pringle testified that he supported the Community of Interest plan because Dr. Trey Hood (one of the Applicants' expert witnesses) determined that the Black-preferred candidate would have received the most votes in the second opportunity district in two of the four races he modeled. App.33; *Milligan*, Doc. 459-20 at 41 ("I thought it proved that the community of interest plan would comply with what the Supreme Court ordered and would provide an opportunity for minority citizens to elect a candidate of their choosing."). Senator Livingston testified that "the Community of Interest plan 'might have' 'provided a fair opportunity for African

American voters to elect preferred candidates' in District 2," the second opportunity district. *Singleton v. Allen*, 782 F. Supp.3d 1092, 1152 (N.D. Ala. 2025) (three-judge court). Although the Community of Interest plan passed the House, the Legislature ultimately rejected it in favor of one that Applicants conceded did not contain a second opportunity district. While it is unknown whether the district court would have concluded that the Community of Interest plan contained two opportunity districts, both testifying Applicants believed that it might have, and that testimony squarely contradicts the premise of their application.

Because the Legislature rejected race-neutral plans that they believed might provide a second opportunity district, and adopted a plan it knew would not do so, Applicant's position crumbles. They claim, falsely, that the Legislature "had *no choice* but to crack the Gulf Coast and segregate white voters from black voters into different districts stretching the width of Alabama." Application at 1. The fact is, in 2023 the Alabama Legislature was aware that the 2021 plan likely violated Section 2 (which was and still is the law of the case), this violation required a remedy, any remedy would require a second opportunity district, and the Legislature could create one while keeping Mobile County intact, but it "purposefully and admittedly refused to provide that remedy." *Singleton*, 782 F. Supp. 3d at 1338. That fact, along with the "unusual corpus of undisputed evidence that confirms the obvious inference from the Legislature's conduct," *id.* at 1116, supports the district court's holding that the Legislature violated the Fourteenth Amendment, and that holding is consistent with the constitutional standards announced in *Callais*.

CONCLUSION

Entering a stay so that Alabama can at the last minute replace a lawful plan with an unlawful and unconstitutional one would create chaos and would reward Applicants for their repeated false statements to this Court. The application for a stay should be denied.

Respectfully submitted,

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