

Nos. 25-13007, 25-14131

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**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

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ALABAMA STATE CONFERENCE OF THE NAACP, et al.,  
*Plaintiffs-Appellees,*

v.

SECRETARY OF STATE FOR THE STATE OF ALABAMA,  
*Defendant-Appellant.*

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On Appeal from the United States District Court  
for the Northern District of Alabama  
Case No. 2:21-cv-1531

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**SECRETARY OF STATE'S OPENING BRIEF**

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## CERTIFICATE OF INTERESTED PERSONS

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1-1(a)(3) and 26.1-2(b), undersigned counsel certifies that the following listed persons and parties may have an interest in the outcome of this case:

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3. Alabama Attorney General’s Office – Counsel for Secretary of State
4. Alabama State Conference of the NAACP - Plaintiff
5. Allen, Amanda N. – Counsel for Plaintiffs
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11. Balch & Bingham LLP – Counsel for Secretary of State & Legislators
12. Barnes, Anna-Kathryn – included in Plaintiffs’ CIP
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103. Woodard, J. Scott – former Counsel for Secretary of State

No publicly traded company or corporation has an interest in the outcome of the case or appeal

Respectfully submitted this 19th day of May, 2026.

s/ A. Barrett Bowdre  
A. Barrett Bowdre  
*Counsel for Secretary of State Wes Allen*

**STATEMENT REGARDING ORAL ARGUMENT**

The Court stayed briefing in this appeal pending the Supreme Court’s decision in *Louisiana v. Callais*, No. 24-109. *See* CA11 No. 25-13007 DE61.<sup>1</sup> That made sense because, as the Secretary of State noted at the time, the *Callais* decision would “likely address the ongoing validity or contours of the *Gingles* test and the appropriateness of race-based remedies, such as the one the district court required in this case” pursuant to Section 2 of the Voting Rights Act. CA11 DE56:3. That is exactly what happened: On April 29, 2026, the Supreme Court issued its decision in *Callais* and significantly “update[d] the *Gingles* framework” to “realign it with the text of §2 and constitutional principles.” Slip Op. at 29, No. 24-109 (U.S. Apr. 29, 2026).

The most obvious course in light of this intervening authority is to vacate and remand, just as the U.S. Supreme Court did in similar challenges to Alabama’s congressional districts. *See* Order, *Allen v. Milligan*, No. 25-274 (U.S. May 11, 2026). And just as the Supreme Court did, this Court should expedite that process so that Alabama may be afforded “the same opportunity as other States to use a lawfully enacted congressional map free of an injunction that cannot be reconciled with Section 2 of the Voting Rights Act ‘as properly construed’ in *Callais*.” *See* Mot. to

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<sup>1</sup> Unless otherwise noted, citations to this Court’s docket are to appeal number 25-13007.

Expedite Consideration of Jurisdictional Statement, *Allen v. Milligan*, No. 25-274 (U.S. Apr. 30, 2026). Alternatively, this Court should reverse.

In the interest of haste, oral argument is not requested.

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## INTRODUCTION

The Secretary of State respectfully requests that this Court vacate the injunctions the district court entered prohibiting the Secretary from conducting elections pursuant to the State’s 2021 Plan for its Senate districts and requiring the Secretary to use a court-ordered map that created an additional “Black-opportunity” Senate district. DE274 (liability injunction; “Op.”); DE322:21 (remedial map).<sup>2</sup> When the district court entered its injunctions, it did not have the benefit of the Supreme Court’s decision in *Louisiana v. Callais*, which significantly “update[d] the *Gingles* framework” to “realign it with the text of §2 and constitutional principles.” Slip Op. at 29, No. 24-109 (U.S. Apr. 29, 2026) (“*Callais* Op.”). Because Plaintiffs have not met (and cannot meet) their burden under *Callais*, the Court should vacate the lower court’s injunctions.

There are two good options for doing that: (1) vacate and remand, or (2) reverse. Vacating and remanding is the norm, as the Supreme Court just demonstrated in vacating and remanding similar challenges brought under §2 to Alabama’s congressional districts. *E.g.*, *Allen v. Milligan*, No. 25-274 (U.S. May 11, 2026) (vacating and remanding injunctions and remedial maps “for further consideration in light of *Louisiana v. Callais*”); *see also Dillard v. City of Greensboro*, 74 F.3d 230, 236 (11th Cir. 1996) (“Because the district court did not have the benefit of *Miller [v.*

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<sup>2</sup> Docket entry (“DE”) and Op. citations are to the ECF-stamped pagination.

*Johnson*, 515 U.S. 900 (1995)] when it adopted the challenged redistricting plan, we [vacate and] remand the case to allow the district court to reevaluate the plan under *Miller*.”). Indeed, “[a] court errs when it refuses to modify an injunction ... in light of such changes” in the “decisional law.” *Agostini v. Felton*, 521 U.S. 203, 215 (1997).

Vacating and remanding can also be done quickly, because the Court need not dive into the minutiae of this case; it is enough to know that the district court applied a standard that has since been drastically altered by Supreme Court precedent. For this reason, the Secretary respectfully asks that the Court immediately vacate and remand and simultaneously issue its mandate so that Alabama may have the opportunity to use its enacted map this election cycle if possible.<sup>3</sup> After *Callais*, the Alabama Legislature passed and the Governor signed Alabama Act 2026-613, which authorizes a special primary “[i]n the event” that “a federal court, by issuing a judgment or by vacating an injunction, permits the reinstatement of the last legislatively enacted State Senate Districts.” No doubt timing is tight, but the Supreme Court already weighed these equities in the congressional cases and granted the Secretary’s motion to expedite, vacate, and remand in light of *Callais*—and issued its judgment “forthwith”—so that Alabama may have the “same opportunity as other States to

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<sup>3</sup> In the alternative, the Secretary asks the Court to grant his pending motion to stay the injunctions for similar reasons.

use a lawfully enacted” map “free of an injunction that cannot be reconciled with Section 2 of the Voting Rights Act” as construed in *Callais*. See Secretary’s Mot. to Expedite, *Milligan*, *supra* (U.S. April 30, 2026); Order, *Milligan*, *supra* (granting motion). In doing so, the Supreme Court necessarily rejected the plaintiffs’ arguments that it was too late to act and that vacating the injunctions would run afoul of the *Purcell* principle. See Milligan Respondents’ Opp. to Mot. to Expedite, *Milligan*, *supra* (U.S. Apr. 30, 2026). This Court should do the same.

If the Court does not immediately vacate and remand (or if it grants the Secretary’s pending motion to stay the injunctions), the Secretary asks the Court to reverse on the merits. Plaintiffs cannot win under *Callais*, and this Court can determine that just as easily as the lower court (and just as the Supreme Court itself did in *Callais*). Either way, the district court’s injunctions should be vacated.

### STATEMENT OF JURISDICTION

Plaintiffs sued in the district court seeking relief under 42 U.S.C. § 1983. DE1:40; DE126:43. The district court exercised jurisdiction under 28 U.S.C. § 1331. After a trial on the merits, the district court permanently enjoined the Secretary from conducting future elections under the 2021 Plan (Op.3-4) and later enjoined the Secretary to administer elections for state Senate until the Legislature adopts a new plan after the 2030 Census using a court-drawn remedial map (DE322:25). This Court thus has jurisdiction under 28 U.S.C. § 1291(a)(1).

## STATEMENT OF THE ISSUES

The district court's injunctions under §2 depended on its application of *Thornburg v. Gingles*<sup>4</sup>—the controlling test for forty years. DE302:5. But after the court entered its injunction, the Supreme Court issued its decision in *Callais*, significantly updating the *Gingles* framework to realign it with the text of §2 and constitutional principles. The issues on appeal are:

1. Whether to immediately vacate and remand where (1) *Callais* changed the governing standard and (2) the equities warrant expedition to afford Alabama the same opportunity as other States to conduct its elections using its lawfully enacted map.
2. Whether reversal on the merits is warranted where the evidence presented at trial is insufficient to establish a §2 violation under *Callais*.

## STATEMENT OF THE CASE

### A. Alabama enacts the 2021 State Senate Map (SB1).

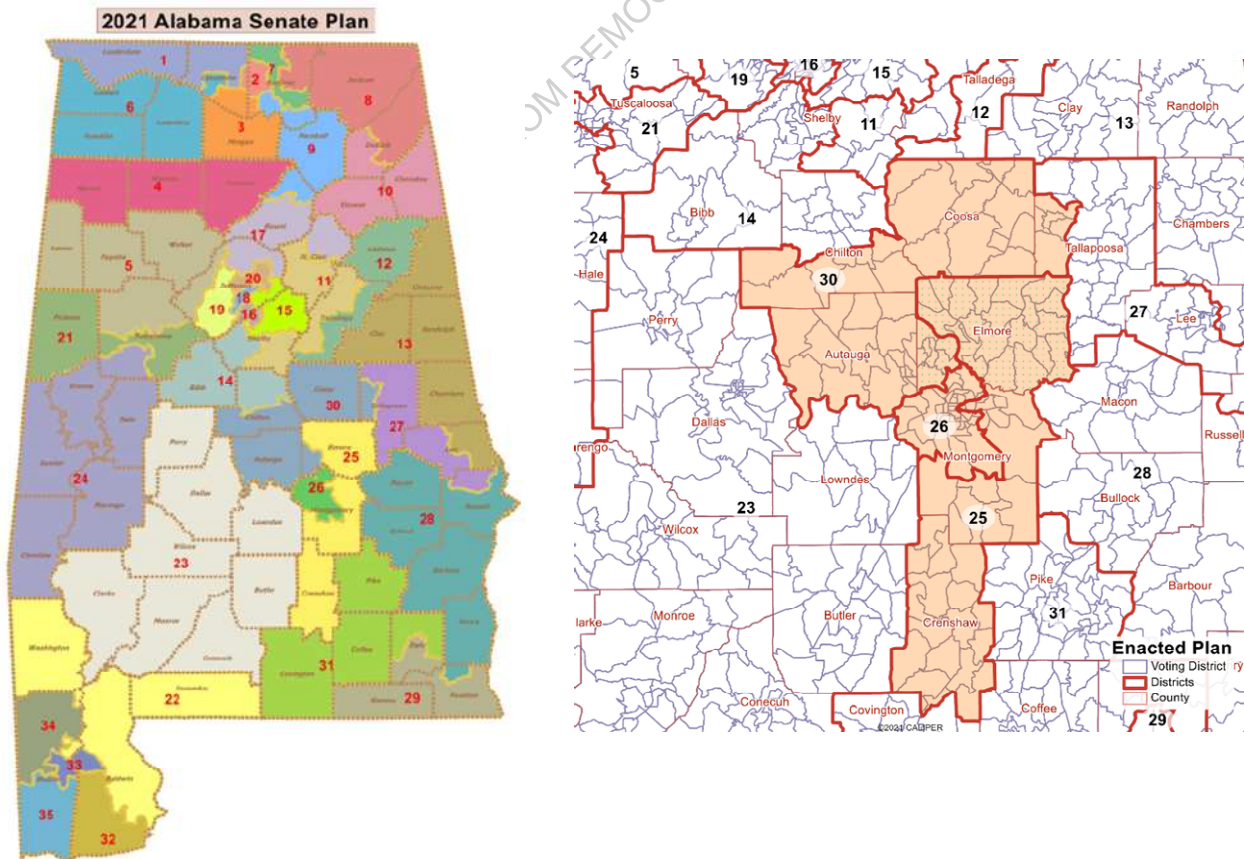
After the 2020 Census, the Alabama Permanent Legislative Committee on Reapportionment met to enact new guidelines for the 2021 redistricting cycle and to draw new districts for state and federal offices. DE230 ¶¶17, 29. In September 2021, the Committee held 28 public hearings across the State. *Id.* ¶31. Governor Kay Ivey

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<sup>4</sup> 478 U.S. 30 (1986).

called a Special Legislative Session on redistricting to begin in October 2021. *Id.* ¶33.

On November 1, 2021, the Senate passed the State Senate map along party lines. DE230 ¶47. On November 4, 2021, Governor Ivey signed into law SB1 of the 2021 Second Special Session of the Alabama Legislature. *Id.* ¶¶46, 48; *see* Ala. Act No. 2021-558 (“2021 Plan”). That law provides for the electoral districts of the Alabama Senate, depicted below. *See* Ala. Code §29-1-2.3. SB1 has eight majority-black Senate districts. DE126 ¶172. The 2021 Plan and the districts directly at issue in this appeal (SD25 and SD26) appear as follows:



DE195-19; DE312-4.

**B. Plaintiffs raise racial-gerrymandering claims, abandon them, and proceed to trial on §2 claims only.**

Plaintiffs filed suit twelve days after the enactment of SB1, alleging 21 State House Districts and 12 Senate Districts were racially gerrymandered in violation of the Fourteenth Amendment of the U.S. Constitution. DE1 ¶¶139-148.

A three-judge court was empaneled. DE5. Three months later, Plaintiffs amended their complaint to add a vote-dilution claim under Section 2 of the Voting Rights Act, alleging that black voters were “sufficiently numerous and geographically compact enough to form nine majority-BVAP Alabama Senate districts.” DE54 ¶234.<sup>5</sup> Plaintiffs sought an additional majority-BVAP Senate District located in the Montgomery area. *Id.* ¶6. On July 10, 2023, Plaintiffs filed a third amended complaint that (1) dropped their constitutional challenges to 8 State House and 6 State Senate and (2) maintained their claim that Section 2 of the Voting Rights Act required “nine majority-BVAP Alabama Senate districts.” DE83 ¶207.

Six months later, Plaintiffs filed the operative complaint—the fourth amended complaint. DE126. They voluntarily dismissed their constitutional claims but

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<sup>5</sup> There will be much more to say later, but for context, the *Gingles* test consists of three preconditions, often called *Gingles* I, II, and III, followed by a totality of the circumstances analysis. The allegations in the text about the number and location of black voters go to *Gingles* I.

alleged for the first time that SB1 diluted black voting power by not including “*ten* Alabama Senate Districts in which Black voters constitute the majority.” DE126 ¶172 (emphasis added). Plaintiffs amended their VRA claim to seek another majority-BVAP Senate District located in the Huntsville region in addition to maintaining their claim to another such district in the Montgomery region. *Id.* ¶¶2-4.

With the constitutional claims gone, the three-judge court was dissolved. DE127. The action returned to “the district judge to whom the case was originally assigned.” *Id.* at 1.

In 2024, the district court held a trial to determine whether Alabama’s 2021 Plan violates §2 for failing to add additional majority-black Senate districts in the Montgomery and Huntsville areas.

### **C. The district court enjoins use of the 2021 State Senate Plan.**

On August 22, 2025, the district court held that Alabama’s 2021 State Senate Plan—specifically the configuration of Districts 25 and 26 in the Montgomery area—violated §2. Op.1-5. The district court rejected Plaintiffs’ challenges to districts in the Huntsville area.

1. The court’s opinion recounts how the State’s Senate plan has had eight majority-black districts since the 1990s, Op.10, and how a three-judge court found that the Senate plan enacted after the 2010 census did not violate §2, Op.10-11, 34-35 (citing *Ala. Legislative Black Caucus v. Alabama*, 989 F. Supp. 2d 1227, 1280-87

(M.D. 2013)).<sup>6</sup> As especially relevant here, the *ALBC* district court held that plaintiffs could not satisfy the totality of the circumstances portion of the *Gingles* test in 2013 because (1) “black voters in Alabama are highly politically active,” (2) “black voters have successfully elected the candidates of their choice in the majority-black districts,” (3) “the majority-black districts are roughly proportional to the black voting-age population in Alabama,” and (4) “the record contains no evidence of racial appeals in recent political campaigns or of a significant lack of responsiveness to the needs of the black population.” *Id.* at 1286. In sum, “the overwhelming evidence” showed “that black voters have an equal opportunity to participate in the political process the same as everyone else.” *Id.* at 1287. And (after remand and additional

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<sup>6</sup> Although the Supreme Court vacated and remanded that initial decision as to the racial gerrymandering claim—concluding that §5 did not require the anti-retrogression standard that the district court and Alabama had applied (i.e., that the Legislature must “maintain, where feasible, the existing number of majority-black districts and not substantially reduce the relative percentages of black voters in those districts”)—the Court did not “pass upon” the §2 holding and the district court readopted that holding and its findings supporting it upon remand. *See Ala. Legislative Black Caucus v. Alabama*, 575 U.S. 254, 275-79 (2015) (emphasis removed); *Ala. Legislative Black Caucus v. Alabama*, 231 F. Supp. 3d 1026, 1043 (M.D. Ala. 2017) (readopting “those portions of our previous final judgment that decided the claim of vote dilution brought under section 2 and the claim of intentional discrimination brought under section 2, the Fourteenth Amendment, and the Fifteenth Amendment” and “our previous findings of fact on all claims other than racial gerrymandering, as well as our previous findings about historical fact and witness credibility”). And at no point did any court make a finding of invidious discriminatory purpose. *ALBC III*, 231 F. Supp. 3d at 1043; *ALBC II*, 575 U.S. at 302 (Thomas, J., dissenting) (recounting that “the 2006 amendments to §5 ... created an inflexible definition of ‘retrogression’ that Alabama understandably took as requiring it to maintain the same percentages of minority voters in majority-minority districts”).

proceedings related to a constitutional claim) the *ALBC* district court ultimately blessed the State’s remedial plan in 2017, which formed the core of the districts in the 2021 State Senate Plans—including, specifically, those in the Montgomery area. *See* ECF 372, *ALBC*, 12-cv-00691-WKW-MHT-WHP (M.D. Ala. Oct. 12, 2017).

Even so, eight years after the *ALBC* court blessed the remedial plan, the district court here held that the State’s failure to draw a second majority-black district in the Montgomery area violated §2.<sup>7</sup> *See* Op.3-4. On *Gingles* I, the court held that “Black voters comprise[] a voting-age majority in plaintiffs’ Montgomery-area illustrative district” and that the district was “reasonably configured.” Op.4. It rejected the Secretary’s argument that race predominated in the drawing of the illustrative district. *Id.* On *Gingles* II and III, the court held that “patterns of racially polarized voting are apparent in Alabama elections” and rejected the Secretary’s argument that these voting patterns “are attributable *only* to voters’ political party affiliations, divorced from considerations of race.” *Id.* And on the totality of the circumstances, the district court found that that too “supports Section Two relief.” *Id.*

2. In ruling against the Secretary on §2 in Montgomery, the district court ignored a mountain of evidence presented at trial that should be dispositive under *Cal-lais*.

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<sup>7</sup> The district court held that Plaintiffs failed to establish a §2 violation near Huntsville, and that ruling is not before this Court. Op.3.

For the first *Gingles* precondition, the district court believed that it was permissible for Anthony Fairfax, Plaintiffs’ map drawer, to use race in developing the illustrative plan, *see* Op.171-72, so long as “race did not predominate,” Op.174. Looking only for evidence of racial *predominance*, the court discarded as immaterial evidence of Fairfax’s *use* of race throughout the process. *See, e.g., id.* at 173 (“Further, Mr. Fairfax testified that he “tend[s] to not consider race as much as the other [redistricting] criteria....” (alteration in original)); *id.* (recounting Mr. Fairfax’s testimony that he reviewed race “at the beginning of the process ... but then turned it off” except to “later check[]” it “periodically ‘to see if he met the sufficiently large component’”) (citation modified). It also ignored Fairfax’s stated goal of producing an illustrative plan that added majority-black districts “without eliminating any of the eight existing majority Black Senate Districts.” DE206-6:¶55.

For *Gingles* II and III, the district court believed that “controlling precedent” did not require it to “disentangle party and race.” Op.183. Thus, it said, “the Secretary’s argument that patterns of racially polarized voting in Alabama [being] attributable more to political party affiliations than to race” was irrelevant. *See id.* at 182-83. And the district court was unconcerned that Dr. Liu—Plaintiffs’ expert on racially polarized voting—examined only biracial elections in which the black candidate was running as a Democrat and the white candidate was running as a Republican. DE253:92-93, 117, 1459; DE189-1:¶25. The Secretary presented evidence that

party identity was “the single biggest determinant of vote choice in American politics,” *id.* ¶22, and that Dr. Liu failed to control for political party despite agreeing that racially polarized voting could have multiple causes that have little to do with race or discrimination, DE253:97.

On the totality of the circumstances, the Secretary emphasized black Alabamians’ present-day participation in the political process and contested Plaintiffs’ predominant focus on evidence of historic discrimination and socioeconomic disparities. The Secretary noted that Plaintiffs’ expert, Dr. Traci Burch, found that, in 2022, in Montgomery County “the Black voter registration rate was 1.3 percentage points *higher* than the White registration rate.” DE206-11:5 (emphasis added). The Secretary noted that the black voter registration rate had grown from 23.5% in 1965 to 95.2% as of 2024. Op.133-34; DE189-5:22. He noted that there were zero black legislators in 1965, but 33 today. Op.133; DE189-5:23. He noted that each of Plaintiffs’ witnesses had long been able to participate in the political process in Alabama. Op.210. And he noted that the socioeconomic disparities identified by Plaintiffs existed in every State with a substantial black population—regardless of geography, political alignment, or any other variable—and that, in many cases, Alabama’s disparities were smaller than the average. Op.216; DE189-5:20.

None of that mattered to the district court, which instead gave substantial weight to instances of discrimination that occurred some time ago and

socioeconomic disparities it said were “traceable to Alabama’s lengthy history of official discrimination.” Op.215-16. The court “emphatically rejected” the Secretary’s evidence of modern political participation by black Alabamians as irrelevant to the analysis lest such evidence be viewed as “giv[ing] punitive effect to the political participation of Black Alabamians who have personally suffered the ill effects of official discrimination and responded with civic engagement in the democracy that discriminated against them.” Op.210. It gave weight to instances of discrimination from decades ago. Op.206-08. It held against the *State* instances of discrimination by political *subdivisions*. Op.206-08. And it found Plaintiffs’ experts testimony regarding the lingering effects of discrimination and their impact to be both substantial and “near-obvious.” Op.215.<sup>8</sup>

3. The court permanently enjoined the Secretary of State from conducting future elections under the 2021 Plan and ordered remedial proceedings regarding a new Senate plan. Op.4-5. The court set a racial target for fixing the problem: a plan that “include[s] an additional district in the Montgomery area in which Black voters either comprise a voting-age majority or something quite close to it.” Op.5.

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<sup>8</sup> Despite finding many of those assertions to be “near-obvious,” the district court also made sure to clarify that it “did not make findings” about all of Plaintiffs’ experts’ testimony on those issues, but “only those findings necessary to reach a conclusion about these Senate Factors.” Op.215.

The Secretary asked the district court to stay remedial proceedings because the Supreme Court’s decision in *Callais* would soon be providing “critical guidance” for judging Alabama’s map. DE278:1. The district court denied the motion “without prejudice to his opportunity to renew it as appropriate.” DE302:1. As the district court explained, “[t]he legal test this Court applied in that injunction has been the controlling test for forty years, *see Thornburg v. Gingles*, 478 U.S. 30 (1986),” and “[i]f the Supreme Court changes the law, the Secretary may renew his stay application.” *Id.* at 5. The district court also noted that this case “involve[es] substantial evidentiary overlap” with the congressional redistricting litigation, which proceeded with a remedial map drawn by the same special master the district court planned to appoint here. *Id.* at 5-6.<sup>9</sup> The Secretary appealed the court’s ruling regarding Montgomery and asked this Court for a stay pending appeal, which this Court denied on October 30, 2025. CA11.DE51-2.

**D. The district court requires Alabama to use a court-imposed map.**

The district court thus went forward with remedial proceedings. It appointed a special master, DE302, and the Special Master accepted public comments. The Special Master’s report and recommendation included three proposed remedial

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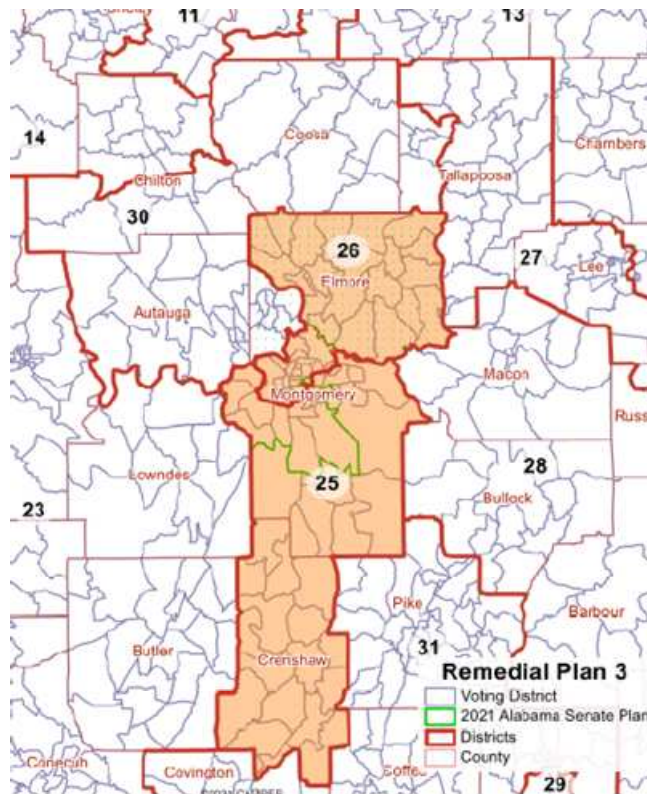
<sup>9</sup> Indeed, the district judge below was part of the 3-judge panel in the congressional case (along with Judge Marcus and Judge Moorer), and the trial transcript from this case regarding the testimony of eight witnesses was introduced as evidence in the congressional case. *See* DE490:202, *Singleton v. Allen*, No. 2:21-cv-01291 (N.D. Ala. May 8, 2025) (3-judge court).

plans, two of which were drawn by the Special Master’s cartographer and one of which was submitted by a then-anonymous member of the public, “DD.” DE312:11-14.<sup>10</sup> The Secretary objected that “[e]ach of the three proposed plans is a racial gerrymander” because each “was drawn with a racial target” since the district court instructed the Special Master to submit three plans that “include[] either an additional majority-black Senate district in the Montgomery area, or an additional district there in which Black voters each have an opportunity to elect a Senator of their choice.” DE317:1; DE307; *accord* DE322:15. Ultimately, the district court imposed DD’s map, which the Secretary rated the “least bad of several bad options” because it required the fewest changes to the Legislature’s map. DE317:6.

On November 17, 2025, the district court ordered the Secretary “to administer Alabama’s 2026 and 2030 state Senate elections, as well as any special and other elections for the state Senate that occur before the Legislature passes a districting plan based on the 2030 census, according to” DD’s remedial map, which adjusted the boundaries of Montgomery-area Senate Districts 25 and 26 to make both districts “Black-opportunity districts.” DE322:25. The relevant portion of the remedial map is produced below, with the district lines of the 2021 Plan superimposed in green.

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<sup>10</sup> The media since identified DD as Daniel DiDonato, a freshman at the University of Alabama. Anna Barrett, *University of Alabama freshman draws state’s court-ordered Senate map*, Alabama Reflector (Nov. 21, 2025), <https://alabamareflector.com/2025/11/21/alabamas-court-ordered-senate-map-was-drawn-by-a-ua-freshman/> (last visited May 19, 2026).



DE312-3.

The Secretary appealed the injunctions and asked this Court to hold the appeals in abeyance until the Supreme Court issued its opinion in *Callais* because “[n]o matter how the Supreme Court decides that case, it will provide guidance about how Section 2 should apply here.” CA11.DE60:10. The Court agreed on February 12, 2026, consolidating the appeals and staying the cases “until a decision is issued in *Louisiana v. Callais*.” CA11.DE61-1.

**E. The Supreme Court decides *Callais v. Louisiana*, and the Secretary seeks immediate vacatur or a stay pending appeal in this case and the congressional cases.**

The Supreme Court issued its decision in *Callais* on April 29, 2026. As predicted, the Court provided guidance about how to apply §2, significantly “updat[ing] the [*Gingles*] framework so it aligns with the statutory text and reflects important developments since [the Court] decided *Gingles* 40 years ago.” *Callais* Op. 26.

The Secretary immediately moved the Supreme Court to expedite consideration of his pending appeals and petition in the congressional cases and vacate and remand in light of *Callais*. See Secretary’s Mot. to Expedite, *Milligan*, *supra*. The plaintiffs in those cases opposed the Secretary’s motion, arguing that because “the 2026 primary election day is less than three weeks away, on May 19,” the Court should not “expedite consideration and thereby enable a mid-election change of districts.” Caster Respondents’ Opp. to Mot. to Expedite at 1-2, *Allen v. Caster*, No. 25-243 (U.S. Apr. 30, 2026); Milligan Respondents’ Opp., *supra*, at 4-5. They also argued that “the issues in [the congressional] case are not identical to the issues in *Callais*” because “unlike in *Callais*, the remedial districts at issue here were drawn race-blind by a court-appointed special master.” Caster Opp., *supra*, at 2 (emphasis omitted).

On May 11, the Supreme Court granted the Secretary’s motion, vacated and remanded the congressional cases in light of *Callais*, and ordered the Clerk to issue

the judgments “forthwith” under Rule 45.3, causing the injunctions to be immediately lifted. Order, *Milligan*, *supra*. While Justice Sotomayor in dissent echoed the plaintiffs’ concerns that “vacating the District Court’s injunction will immediately replace the current map with Alabama’s 2023 Redistricting Plan,” which she thought was not “appropriate” “because Alabama’s congressional primary election is next week,” *id.* at 4 (Sotomayor, J., dissenting), the Supreme Court rejected those arguments and ordered that its ruling vacating the injunctions take effect immediately.

Parallel with his efforts before the Supreme Court in the congressional cases, the Secretary also moved this Court to vacate and remand the injunctions here in light of *Callais* or, in the alternative, to stay the injunctions. *See* CA11.DE65-1. Plaintiffs argued, as their counsel had done before the Supreme Court in *Milligan*, that it was too late to grant the Secretary relief and that doing so would “violat[e] *Purcell*.” *See* CA11.DE67:14. They also argued that vacatur was inappropriate because they believed they could win “[e]ven under the *Callais* standard.” *Id.* at 20.

About two hours before the Supreme Court vacated and remanded the congressional cases, a motions panel of this Court denied the Secretary’s requests for relief on procedural grounds. *See* CA11.DE72-2:3. As to vacatur, the panel explained that, “as a motions panel,” it was “not authorized to enter such a merits-based judgment on the pending appeals.” *Id.* at 3. As for the Secretary’s alternative request for a stay, the panel denied the motion without prejudice to require the

Secretary the opportunity to seek relief from the district court. *Id.* The panel noted that “other circuits have held that a district court does not have the power to *dissolve* a permanent injunction while that injunction is on appeal,” so, “[i]n an abundance of caution,” the panel “relinquish[ed] jurisdiction to the district court so that it can address the Secretary’s expected forthcoming motion for vacatur and/or for a stay and, if warranted, modify, stay, or dissolve the injunction.” *Id.* at 5.

The next day, the Secretary filed a motion with the district court, asking it to vacate or stay the injunctions in light of *Callais*. DE342. On May 18, the district court denied the Secretary’s motion for a purported lack of jurisdiction, despite “[t]he Circuit’s invitation” for the district court “to consider the Secretary’s request.” DE347:7.

### SUMMARY OF ARGUMENT

*Callais* fundamentally altered the law that governs §2 cases—so much so that an injunction against Louisiana’s 2022 map and affirmed by the Fifth Circuit in 2023 had become “easily” wrong under “the updated *Gingles* framework.” *Callais*.Op.33. *Callais* addressed issues that Alabama has raised in this litigation but had “never [been] decided” until now. *Id.* at 9. “In light of [ ] significant developments” guiding the interpretation of “§2 and constitutional principles,” the Supreme Court updated *every element* of the *Gingles* test. *Id.* at 29-31. The district court’s injunctions cannot survive.

## STANDARD OF REVIEW

This Court will vacate and remand a lower court’s decision when the lower court “applie[s] the law extant at the time it considered” the case, but “since the district court issued its order,” a “subsequent case[] in the Supreme Court” “substantially altered the landscape.” *Thomas v. Att’y Gen., Fla.*, 795 F.3d 1286, 1291 (11th Cir. 2015).

A district court abuses its discretion if it “applies the incorrect legal standard.” *United States v. Jordan*, 316 F.3d 1215, 1249 (11th Cir. 2003). And in that circumstance, its factual findings are no longer “insulated by clear-error review.” *United States v. Brown*, 934 F.3d 1278, 1307 (11th Cir. 2019) (citing *Holton v. City of Thomasville Sch. Dist.*, 490 F.3d 1257, 1261 (11th Cir. 2007)). “Vacatur and remand are warranted when we cannot say whether an incorrect legal standard affected or influenced the district court’s factual conclusion.” *Id.* (quoting *United States v. Kendrick*, 22 F.3d 1066, 1069 (11th Cir. 1994)).

## ARGUMENT

Vacatur is appropriate where, as here, “a subsequent case[] in the Supreme Court” “substantially alter[s] the landscape” after a court enters its order. *Thomas*, 795 F.3d at 1291. This Court’s decision in *Dillard v. City of Greensboro*, 74 F.3d 230 (11th Cir. 1995), illustrates the point. There, after the Middle District of Alabama entered a remedial plan pursuant to §2 and the case was on appeal, the Supreme

Court issued its decision in an important redistricting case out of Georgia, *Miller v. Johnson*, 515 U.S. 900 (1995). See *Dillard*, 74 F.3d at 233. Because “[t]he Supreme Court’s decision in *Miller* govern[ed]” this Court’s “analysis of this case,” *id.*, and “[b]ecause the district court did not have the benefit of *Miller* when it adopted the challenged redistricting plan,” *id.* at 231, this Court “vacate[d] the decision of the district court and remand[ed] th[e] case for a reevaluation of the proposed redistricting plans in light of *Miller*,” *id.* at 236. The Supreme Court regularly vacates and remands for reconsideration, including after major redistricting decisions. See, e.g. *Ala. Leg. Black Caucus v. Alabama*, 575 U.S. 254, 273-75 (2015) (vacating and remanding where the district court’s conclusions “might well have been different” but for its “contrary view of the law”).<sup>11</sup>

Indeed, the Supreme Court just vacated the injunctions in Alabama’s congressional redistricting cases—where witnesses, evidence, and arguments substantially overlapped with this case—and remanded in light of *Callais*. Even though the

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<sup>11</sup> See also, e.g., *Simpson v. Thurston*, 144 S. Ct. 2602 (2024) (Mem.) (vacate-and-remand in light of *Alexander v. S.C. State Conf. NAACP*); *Chatfield v. League of Women Voters of Mich.*, 589 U.S. 1031 (2019) (Mem.) (vacate-and-remand in light of *Rucho v. Common Cause*); *Chabot v. Ohio A. Philip Randolph Inst.*, 589 U.S. 901 (2019) (Mem.) (same); *Rucho v. Common Cause*, 585 U.S. 1012 (2018) (Mem.) (vacate-and-remand in light of *Gill v. Whitford*); *Dickson v. Rucho*, 581 U.S. 1004 (2017) (Mem.) (vacate-and-remand in light of *Cooper v. Harris*); *Cantor v. Personhuballah*, 575 U.S. 931 (2015) (Mem.) (vacate-and-remand in light of *ALBC v. Alabama*); *Texas v. Holder*, 570 U.S. 928 (2013) (Mem.) (vacate-and-remand in light of *Shelby County v. Holder*).

plaintiffs there had argued that the cases were distinguishable from *Callais* and that the equities counseled against quick action due to the pending election, the Supreme Court rejected those arguments, expedited its consideration, vacated the injunctions in light of *Callais*, and immediately issued its judgments so that the injunctions would be lifted “forthwith.” *See Order, Milligan, supra.*<sup>12</sup>

And it is easy to see how *Callais* warrants vacatur of the injunctions here. Even if the district court had properly applied “the law extant at the time it considered” the case, *Thomas*, 795 F.3d at 1291, the *Callais* Court significantly updated the *Gingles* framework and rejected the interpretations of §2 and the Constitution embraced by the district court. Thus, although Plaintiffs’ §2 claims and the court-drawn map will not survive *Callais*—and this Court has the power to say so now—it is the Court’s ordinary practice to vacate and remand after a significant intervening change in law so that the district court can apply the new test in the first instance. Under the circumstances, the Secretary also prefers that course of action because—as explained in his motion to expedite or to stay—it can be done quickly, and absent swift action, Alabama will be forced to conduct the 2026 elections under an

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<sup>12</sup> Unprompted, the Fifth Circuit Court of Appeals also swiftly vacated-and-remanded in Louisiana’s state congressional cases. *See* CA11 DE69-1 (notice of supplemental authority concerning *Nairne v. Landry*, No. 24-30115 (5th Cir. May 7, 2026)).

injunction and with a court-drawn map even though *no court* has determined that Plaintiffs have met their burden under *Callais*, or even that they're likely to do so.

With that said, if the Court does not expedite, vacate, and remand as the Supreme Court did in Alabama's congressional cases, then it should reverse on the merits because Plaintiffs' evidence cannot establish a §2 violation under *Callais*.

**I. The District Court's Injunctions Must At Least Be Vacated In Light Of *Callais*.**

*Callais* rejected every test the district court applied to impose its injunctions. Whether the *Callais* Court applied “the plain text of §2” and simply “updated [the] *Gingles* framework” (as the majority put it, *Callais*.Op.33) or radically “transform[ed] it” (as the dissenters said, *id.* at 23 (Kagan, J., dissenting)), the upshot is the same: Even if the district court had perfectly applied §2 precedent as it existed before *Callais*, that precedent can no longer support the injunctions it entered.

<i>NAACP Opinion</i>	<i>Callais Opinion</i>
<b><i>Gingles I: Numerosity and Compactness</i></b>	
<p style="text-align: center;"><b><i>THERE WILL BE TRADE-OFFS BETWEEN DISTRICTING OBJECTIVES</i></b></p> <p>“To determine whether the plaintiffs satisfy this requirement, the Court compares the [Enacted] Plan with each illustrative plan provided by the plaintiffs. Further comparisons are not required; a Section Two district that is reasonably compact and regular, taking into account traditional districting principles, need not also defeat a rival compact district in a beauty contest.” Op.32 (citations and quotation marks omitted) (cleaned up).</p>	<p style="text-align: center;"><b><i>ALL LEGITIMATE DISTRICTING OBJECTIVES MUST BE MET</i></b></p> <p>“[I]llustrative maps <b>must meet all the State’s legitimate districting objectives</b>, including traditional districting criteria and the State’s specified political goals. If the State’s aims in drawing a map include a target partisan distribution of voters, a specific margin of victory for certain incumbents, ... the plaintiffs’ illustrative maps must achieve these goals just as well. If not, the plaintiffs would fail to demonstrate that the State’s chosen map was driven by racial considerations rather than permissible aims. Only by meeting all the State’s legitimate objectives can the illustrative maps help to ‘disentangle race’ from politics and other constitutionally permissible considerations.” <i>Callais</i>.Op.29-30 (emphasis added).</p>

<i>NAACP Opinion</i>	<i>Callais Opinion</i>
<b><i>Gingles I: Numerosity and Compactness</i></b>	
<p data-bbox="219 394 782 430"><b><i>RACE MAY NOT PREDOMINATE</i></b></p> <p data-bbox="203 480 799 732">The Court allowed Plaintiffs to satisfy <i>Gingles</i> with illustrative plans that made “tradeoffs,” “balance[d]” districting criteria, and did not use “race as much” as other criteria. Op.173; <i>see id.</i> at 176 (finding “trade-offs” “permitted”).</p> <p data-bbox="203 779 799 1199">“Because the Voting Rights Act in itself <i>demand</i>s consideration of race, map drawers in Section Two cases will be aware of racial demographics[.] ... While race consciousness is permissible, <b>race may not be the predominant factor in drawing district lines</b> unless there is a compelling reason.” Op.30-31 (citations and quotation marks omitted) (cleaned up) (emphases added).</p>	<p data-bbox="836 394 1399 430"><b><i>RACE CANNOT BE CONSIDERED</i></b></p> <p data-bbox="820 480 1416 1073">“First, in drawing illustrative maps, <b>plaintiffs cannot use race as a criterion</b>. If a plaintiff can produce an additional majority-minority district only by using race—a process that would be unconstitutional if a State engaged in such mapmaking—that illustrative map sheds no light on whether the State acted unconstitutionally by <i>not</i> adopting such a map. Thus, <b>an illustrative map in which race was used has no value in proving a §2 plaintiff’s case.</b>” <i>Callais</i>. Op.29 (citation omitted) (emphases added).</p>

<i>NAACP</i> Opinion	<i>Callais</i> Opinion
<b><i>Gingles</i> II &amp; III – Racially Polarized Voting</b>	
<p style="text-align: center;"><b><i>RACE AND POLITICS DO NOT NEED TO BE DISENTANGLED</i></b></p> <p>“[T]he second and third <i>Gingles</i> preconditions <b>do not require that the Court disentangle party and race.</b>” Op.183 (emphasis added).</p> <p>“[A]cknowledging that race plays a key role in party attachments keeps the controlling legal standard honest and workable.... As the Court understands it, <i>Gingles</i> accounts for partisanship based on race in its demand for political cohesion among the minority group, which will be absent in times or places where party affiliations are driven primarily by something other than race.” <i>Id.</i> at 201.</p>	<p style="text-align: center;"><b><i>RACE AND POLITICS MUST BE DISENTANGLED</i></b></p> <p>“To satisfy the second and third preconditions—politically cohesive voting by the minority and racial-bloc voting by the majority—the plaintiffs must provide an analysis that <b>controls for party affiliation.</b> In other words, they must show that voters engage in racial bloc voting that cannot be explained by partisan affiliation. This is, once again, <b>critical for disentangling race and politics.</b>” <i>Callais</i>.Op.30 (quotation marks and citation omitted) (cleaned up) (emphases added).</p>

<i>NAACP Opinion</i>	<i>Callais Opinion</i>
<b>Totality of the Circumstances</b>	
<p style="text-align: center;"><b><i>PAST DISCRIMINATION AND SOCIO-ECONOMIC DISPARITIES, ARE GIVEN SUBSTANTIAL WEIGHT</i></b></p> <p>“[The totality of the circumstances] inquiry... requires ... a searching practical evaluation of the past and present reality.... In this step, the court considers the Senate Factors, which include: <b>the history of voting-related discrimination</b> in the State or political subdivision; [and] ... the extent to which minority group members bear the effects of <b>past discrimination....</b>” Op.32-33 (citations and quotation marks omitted) (emphases added).</p>	<p style="text-align: center;"><b><i>PAST DISCRIMINATION AND SOCIO-ECONOMIC DISPARITIES ARE GIVEN “MUCH LESS WEIGHT”</i></b></p> <p>“[T]he ‘totality of circumstances’ inquiry must focus on evidence that has more than a remote bearing on what the Fifteenth Amendment prohibits: present-day intentional racial discrimination regarding voting. <b>Discrimination 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.</b> Far more germane are current data and current political conditions that shed light on current intentional discrimination. In large part <i>because of</i> the Voting Rights Act, our Nation has made great strides in eliminating racial discrimination in voting. And if, as a result of this progress, it is hard to find pertinent evidence relating to intentional present-day voting discrimination, that is cause for celebration. <i>Callais</i>.Op.30-31 (cleaned up and emphasis added).</p>

In *Callais*, the Supreme Court held that §2, “properly construed,” begins with the text of §2 and the Fifteenth Amendment. The Court held that, today, “the focus of §2 must be enforcement of the Fifteenth Amendment’s prohibition on *intentional*

racial discrimination.” *Callais*.Op.23. “While that interpretation does not demand a finding of intentional discrimination,” the Court explained, §2 “imposes liability only when the circumstances give rise to a strong inference that intentional discrimination occurred.” *Id.* Such an inference would be proper, for example, when “application of a State’s districting algorithm yields numerous maps with districts in which the members of a minority group constitute a majority” and the “State cannot provide a legitimate reason for rejecting all those maps and eliminating all majority-minority districts.” *Id.*

Under *Callais*, §2 plaintiffs thus have the burden of “disentangle[ing] race from politics”—a burden the district court explicitly relieved Plaintiffs from having to meet, e.g., Op.183 (“[T]he second and third *Gingles* preconditions do not require that the Court disentangle party and race.”). This showing can only be made “by offering an alternative map that achieves all the State’s objectives—including partisan advantage and any of the State’s other political goals—at least as well as the State’s map,” and by “provid[ing] a racially polarized voting analysis that controls for party affiliation.” *Id.* at 25, 29-30 (quotation omitted). “Properly understood,” the Supreme Court concluded, “§2 thus does not intrude on States’ prerogative to draw districts based on nonracial factors.” *Id.* at 24.

Without the benefit of *Callais*, and therefore relying on an obsolete §2 standard, the district court’s analysis—and Plaintiffs’ evidence—cannot survive the

Supreme Court’s holding. To begin, while *Callais* made clear that §2 focuses solely on remedying strong inferences of *intentional* discrimination, the district court declined to analyze racial intent because it thought that “[i]ntent is not an element of a Section Two violation.” Op.13. And the district court’s application of *Gingles* and the totality of the circumstances is plainly at odds with the updated framework post-*Callais*. Thus, even if the district court had correctly applied §2 precedent as interpreted before *Callais*, that precedent can no longer support the lower court’s injunction.

**A. The District Court’s *Gingles* Analysis Conflicts With *Callais*.**

In *Gingles*, the Supreme Court “set out three threshold requirements for proving a §2 vote-dilution claim, plus a non-exhaustive list of factors to be considered in making a final decision as to whether the State had violated §2,” that is, the totality of the circumstances. *Callais*.Op.8. The *Callais* Court “update[d]” that framework to align it “with the statutory text and reflect[] important developments since [the Court] decided *Gingles* 40 years ago.” *Id.* at 26. In light of *Callais*, the district court’s analysis is fatally flawed.

- 1. The district court’s *Gingles* I holding conflicts with *Callais* because the court did not require Plaintiffs to draw maps without using race or to meet “all” the State’s legitimate redistricting objectives.**

“The first *Gingles* precondition is that a community of minority voters must be sufficiently numerous and compact to constitute a majority in a reasonably

configured district.” *Callais*.Op.29. While before *Callais* many §2 plaintiffs purported to meet this requirement by offering “illustrative maps with their desired number of majority-minority districts,” *Callais* held that such maps “are not alone sufficient” and “prove only that the State *could* create an additional majority-minority district, not that the State’s failure to do so violated §2.” *Id.* at 29. Thus, the Supreme Court clarified that to satisfy *Gingles* I, (1) “in drawing illustrative maps, plaintiffs cannot use race” because “an illustrative map in which race was used has no value in proving a §2 plaintiff’s case” since States could not constitutionally draw such a map, and (2) “illustrative maps must meet all the State’s legitimate districting objectives, including traditional districting criteria and the State’s specific political goals.” *Id.* A map that fails to do so “fail[s] to demonstrate that the State’s chosen map was driven by racial considerations rather than permissible aims” and thus cannot prove a §2 claim. *Id.* The district court applied a very different standard.

**a. Plaintiffs impermissibly used race to draw illustrative maps.**

Relying on pre-*Callais* interpretations of *Gingles* I, the district court considered the “use” of race in drawing an illustrative map permissible so long as “race did not predominate,” Op.172—which, it said, occurs “when race-neutral considerations [come] into play only after the race-based decision had been made,” *id.* (alteration in original and quotation omitted). Thus, it blessed Plaintiffs’ aim to draw a new

majority-black district “without eliminating any of the [ ] existing” ones, DE251:43 (quoting PX6 ¶55), thereby making “race [ ] a districting criterion,” *Callais*.Op.29.

Likewise, given its incorrect understanding, the district court did not blink when Plaintiffs’ expert Anthony Fairfax admitted that he used race when drawing Plaintiffs’ illustrative maps:

Mr. Fairfax testified that he *reviewed race at the beginning of the process* to see “where the minority community exists” but then “turn[ed] it off.” *He acknowledged that he later checked the minority BVAP and BCVAP periodically* “to see if [he] me[et] th[e] sufficiently large component.”

Further, Mr. Fairfax testified that he “tend[s] to not consider race *as much* as the other [redistricting] criteria” and “always use[s] the other criteria labels more than race.” Mr. Fairfax testified that when he prepared the illustrative plans he was not “toggling race and compactness” only, but “look[ed] at all of the criteria and trading off those,” and he *considered race only to see “where the minority community exists.”*

*Id.* at 173 (alterations in original, citations omitted, and emphases added).

Despite these admissions, the district court concluded that “nothing in Mr. Fairfax’s explanation of his map-drawing process causes the Court concern that he considered race-neutral criteria only after he made race-based decisions.” *Id.* at 173-74. “Rather,” the district court found, “his testimony about his order of operations supports a finding that his map-making process was *race-aware to the degree the law allows.*” *Id.* at 174 (emphasis added). But *Callais* does not leave room for the use of race by map drawers, even if it did not “predominate.” *See Callais* Op. 29. It made clear that there is no “degree” to which “the law allows” race to be used when

drawing an illustrative map: “If a plaintiff can produce an additional majority-minority district only by using race—a process that would be unconstitutional if a State engaged in such mapmaking—that illustrative map ... has no value in proving a §2 plaintiff’s case.” *Id.* (citation omitted). The district court’s holding to the contrary cannot survive *Callais*.

**b. Plaintiffs failed to meet all of the State’s legitimate districting objectives.**

The district court continued the pre-*Callais*, “race predominant” theme when analyzing whether Plaintiffs considered the State’s legitimate districting objectives. While the *Callais* Court emphasized that an illustrative map “must meet *all* the State’s legitimate districting objectives,” *Callais* Op.29 (emphasis added)—that it “must achieve these goals *just as well*” as the State’s plan, *id.* (emphasis added)—the district court permitted Plaintiffs to make constant “tradeoffs” of the State’s political goals, so long as the consideration of race did not “predominate.”

The Court acknowledged that Fairfax “testified that he followed five traditional redistricting criteria when drawing the plans,” but only merely “attempted” to follow “other criteria found in the Legislature’s redistricting guidelines.” Op.172-73. “[T]here are always tradeoffs’ when drawing a map,” he explained, *id.* at 173, and thus failed to “achieve” “all the State’s legitimate objectives” with his map in which he needed to draw a majority-black district, even at the expense of the State’s neutral redistricting goals, *Callais*.Op.29. By way of example, the Alabama

Legislature aimed to protect incumbents and their districts, *see* Op.18, so that voters are “familiar with those people running for office,” DE235-1:35; *see id.* at 23, 31-32, 34-35; DE235-2:33. Plaintiffs, however, did not, which was a clear failure of their presented maps under *Callais*. The Supreme Court emphasized this repeatedly, and it was ultimately dispositive of its *Gingles* I analysis. *See Callais* Op.22 (recognizing that “aim[ing] to protect some or all incumbents” is a valid legislative goal that plaintiffs must match.); *id.* at 29 (“If the State’s aims in drawing a map include ... a specific margin of victory for certain incumbents, or any other goal not prohibited by the Constitution, the plaintiffs’ illustrative maps must achieve these goals just as well.”); *id.* at 33 (“The most obvious deficit in the plaintiffs’ illustrative maps was the failure to meet the State’s political goals, including incumbency protection.”); *id.* at 34 (“The *Robinson* court erroneously concluded that the plaintiffs’ illustrative maps protected incumbents because the maps left all six Representatives ‘in the district where they currently live’ and ‘could avoid incumbent pairing.’ That observation missed the point: An incumbent is not protected if he or she will lose reelection. And because the plaintiffs’ illustrative maps failed to protect all the incumbents that the State sought to shield, the plaintiffs did not meet their burden on this precondition.” (citation omitted)). Plaintiffs’ failure here was a similarly “obvious deficit,” *id.* at 33, that kept Plaintiffs’ from “meet[ing] their burden on this precondition.”

Further, while the State opposed further city splits, DE251:¶153, Plaintiffs’ map “created a new city split in Prattville in Senate District 26,” Op.174.<sup>13</sup> Plaintiffs’ maps also subordinated “communities of interest” by connecting “isolated rural black populations throughout the countryside that have little, if anything, in common with the urban Montgomery population,” DE251:¶¶154-56; *see* DE235:1:34. Although the district court found this to be a “logical choice” by Mr. Fairfax, *see* Op.175, this was in direct contrast to the State’s specified political goal of respecting communities of interest. Last, the 2021 Plan was a least-change map that “prioritized preserving the cores of the existing districts,” *see* Op.21—a constitutionally permitted traditional districting factor, *Callais*.Op.24, that Mr. Fairfax did not follow explicitly (at best, he perhaps “attempted to follow” it), *see* Op.45.

Under *Callais*, this kind of map cannot “demonstrate that the State’s chosen map was driven by racial considerations rather than permissible aims.” *Callais*.Op.29. “Only by meeting all the State’s legitimate objectives can the illustrative maps help ‘disentangle race’ from politics and other constitutionally permissible

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<sup>13</sup> The district court countered that Mr. Fairfax “made the town of Pike Road whole in Proposed District 25,” Op.174, but the district court was not entitled to force the State to make that trade. Because keeping Prattville wholly within one district is a “constitutionally permissible consideration” for the State, Plaintiffs must meet the same objective. *Callais*.Op.30. Treating Prattville and Pike Road as exchangeable, moreover, is an essentially political judgment; it involves distributing “political power” among different political subdivisions, which is nonjusticiable. *See Rucho v. Common Cause*, 588 U.S. 684, 709 (2019).

considerations.” *Id.* at 29-30. Any holding that finds Plaintiffs satisfied *Gingles I* thus cannot be reconciled with *Callais*.

**2. The district court’s *Gingles II* and *III* holdings conflict with *Callais* because the court did not require Plaintiffs to “disentangle” race and political affiliation.**

“To satisfy the second and third preconditions—politically cohesive voting by the minority and racial-bloc voting by the majority—the plaintiffs must provide an analysis that controls for party affiliation.” *Callais*.Op.30. This is not simply one of many “factors” to be analyzed as part of the “totality of the circumstances,” but is now “critical” to analyzing the *Gingles* preconditions themselves. *Id.* “In other words, [plaintiffs] must show that voters engage in racial bloc voting that cannot be explained by partisan affiliation.” *Id.*

The reason for this is simple. As the *Callais* Court explained “[w]hen the vast majority of voters, regardless of race, favors the same political party, a map that is disadvantageous for members of one racial group cannot be explained on the ground that it was drawn to favor a particular political party.” *Id.* at 27. “But in a State”—like Alabama—“where both parties have substantial support and where race is often correlated with party preference, a litigant can easily exploit §2 for partisan purposes by ‘repackag[ing] a partisan-gerrymandering claim as a racial-gerrymandering claim.’” *Id.* (quoting *Alexander v. S.C. State Conf. of NAACP*, 602 U.S. 1, 21 (2024)). Thus, “simply pointing to *inter*-party racial polarization proves nothing,

because ‘a jurisdiction may engage in constitutional political gerrymandering, even if it so happens that the most loyal Democrats happen to be black Democrats and even if the State were *conscious* of that fact.’ *Id.* (quotation omitted). Therefore, *Callais* reiterated, a §2 plaintiff’s inability to “disentangle race and politics” is dispositive to its claim. *Id.* (cleaned up).

That is the case here. The Secretary offered expert testimony “that the voting patterns in Alabama are attributable to political party, not race,” Op. 73-74—and that “in general elections most black voters prefer Democratic candidates, and most white voters in both the challenged areas prefer Republicans,” *id.* at 178 (alterations omitted). But relying on pre-*Callais* interpretations, the district court found it could ignore this evidence because, it thought, “the second and third *Gingles* preconditions do not require that the Court disentangle party and race.” Op.183. The court thus declined to look at partisan affiliation as part of its *Gingles* II and III analysis, even as it acknowledged that Plaintiffs’ expert on polarized voting, Dr. Liu, did not even *attempt* to disentangle party and race: “he was not concerned with voters’ motivations for selecting candidates, only whether the voting patterns were racially polarized.” *Id.* at 74.

Indeed, Dr. Liu’s initial RPV analysis examined only biracial elections in which the black candidate was running as a Democrat, and the white candidate was running as a Republican. But not only does a biracial election featuring a black

Democrat against a white Republican fail to control for party, it can give the false impression of “what appears to be bloc voting on account of race” when in reality, it may “be the result of political or personal affiliation of different racial groups with different candidates.” *Solomon v. Liberty Cnty. Comm’rs*, 221 F.3d 1218, 1225 (11th Cir. 2000). This “leads to” the exact type of “selection bias and potentially erroneous conclusions,” DE189-1 at ¶25, that *Callais* intends to prevent. *Callais* Op.34. Under the updated *Gingles* II and III standard, Dr. Liu’s analysis “proves nothing.” *Callais*.Op.30.

Nor did the district court hold Plaintiffs to *their* burden of disentangling race from politics when analyzing racially polarized voting under Senate Factor 2 in its totality of the circumstances analysis. First, the district court improperly placed the burden on the Secretary to demonstrate that “only party politics are at work.” Op.274. *Callais* makes clear, however, that this burden falls on “the plaintiffs [to] provide an analysis that controls for party affiliation. In other words, [*Plaintiffs*] must show that voters engage in racial bloc voting that cannot be explained by partisan affiliation.” *Callais* Op.30. The district court flipped this burden by only examining whether *the Secretary* had presented substantial evidence that *only* party politics was at work. Op.274.

Second, pursuant to *Callais*, the district court’s Senate Factor 2 analysis should have been dispositive of Plaintiffs’ claims given the district court’s affirmative position that race could *not* be disentangled from politics:

When the Court considers the whole picture, it cannot understand the patterns it sees as merely party politics. It acknowledges the well-known reality that party affiliations drive voting patterns, but it understands this evidentiary record as indicating that *the Court cannot separate voters’ racial considerations from their party affiliations*, and that it must not ignore the role that voters’ race plays in their partisan attachments.

Op.273 (emphasis added). When viewed in light of the updated standard that *requires* Plaintiffs to separate voters’ racial considerations from their party affiliation, *Callais* Op.29, the Court’s finding that the two *could not* be separated is dispositive of Plaintiffs’ claim.

**B. The district court’s totality-of-circumstances holding conflicts with *Callais* because the court did not focus on evidence of “present-day intentional racial discrimination regarding voting.”**

The *Callais* Court also updated the “totality of the circumstances” inquiry, which focuses on the Senate factors derived from legislative history. This inquiry must now focus on “present-day intentional racial discrimination regarding voting.” *Callais*.Op.30. “Discrimination 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.

Here, however, the district court gave great weight to decades-old history and socioeconomic data with little-to-no “bearing on what the Fifteenth Amendment prohibits: present-day intentional racial discrimination regarding voting.” *Callais* Op. 30; see Op.192-216. It spent several pages detailing examples of Alabama’s distant past, crediting trial testimony from Alabamians “who attended segregated public schools” many years ago, and opining that present-day disparities in income and educational attainment “are inseparable from (and in large part the result of) the state’s history of official discrimination.” Op.206-16. The district court focused on Plaintiffs’ evidence “dat[ing] all the way back to Reconstruction,” *id.* at 196, and gave substantial weight to “stark racial socioeconomic disparities that (1) are *clearly traceable to Alabama’s lengthy history* of official discrimination, and (2) unsurprisingly hinder Black Alabamians’ political participation.” *Id.* at 210 (emphases added).

But that kind of evidence has only a “remote bearing” on the question *Callais* asks: whether there exists “present-day intentional racial discrimination regarding voting.” *Callais*.Op.30. Indeed, Plaintiffs’ evidence resembles more the “sordid history” the §2 plaintiffs brought in *Callais* and rejected by the Supreme Court. See *Callais* Op. 34. There, the Court found that the plaintiffs’ evidence, such as low numbers in the amount of black Louisianians elected to Congress in recent decades, failed to “disentangle race from politics” and

thus failed to “show even a plausible likelihood of intentional discrimination by the State,” *Callais*.Op.34 (holding that “none of the historical evidence presented by plaintiffs came close to showing an objective likelihood that the State’s challenged map was the result of intentional discrimination.”); *cf.* Supp. Br. for Robinson Appellants 46-47, *Callais*, No. 24-109 (U.S. Aug. 27, 2025).

By contrast, the State presented considerable evidence that black Alabamians are fully able to vote and otherwise participate in the political process. The “circumstances” today are not at all “comparable to those in *White [v. Regester*, 412 U.S. 755 (1973)],” which involved districting schemes that had an invidious purpose and effect to diminish minority participation. *Callais*.Op.35. Plaintiffs’ expert, Dr. Traci Burch, found that in 2022 in Montgomery County “the Black voter registration rate was 1.3 percentage points higher than the White registration rate.” DE206-11:5. The Secretary showed that the black voter registration rate had grown from 23.5% in 1965 to 95.2% as of 2024. Op.133-34; DE189-5:22. The Secretary showed that there were zero black legislators in 1965, but 33 today. Op.133; DE189-5:23. The Secretary showed that the socioeconomic disparities identified by Plaintiffs existed in every State with a substantial black population—regardless of geography, political alignment, or any other variable—and that, in many cases, Alabama’s disparities were smaller than the average. Op.216; DE189-5:20. And the Secretary further showed that each of Plaintiffs’ witnesses—including those who had experienced

segregated education or other specific instances of discrimination—had long been able to participate in the political process in Alabama. Op.210.

But the district court gave this evidence the back of the hand. It “emphatically rejected” evidence of modern political participation as irrelevant, lest it be seen as “giv[ing] punitive effect to the political participation of Black Alabamians who have personally suffered the ill effects of official discrimination and responded with civic engagement in the democracy that discriminated against them.” Op.210. And it further suggested that the significant gains in voter registration and the number of black legislators should not be credited because they may have come about because of federal law. *See* Op.133-34 (“And Dr. Hood acknowledged that ‘[a]t least some of the changes in [B]lack representation in Alabama over the last few decades’ are due to ‘[l]itigation that created majority-[B]lack districts.’”).

*Callais* emphatically rejected the district court’s approach. Rather than downgrade the weight that such gains should receive, the Court made clear that they should be extolled. *Callais* recognized that “‘in large part *because of* the Voting Rights Act, our Nation has made great strides’ in eliminating racial discrimination in voting.” *Callais* Op.31 (quoting *Shelby County v. Holder*, 570 U.S. 529, 548-49 (2013)) (citation modified). “And if, as a result of this progress, it is hard to find pertinent evidence relating to intentional present-day voting discrimination, that is cause for celebration.” *Id.* Far from celebrating gains in black Alabamians’ political

participation—including those resulting from the successes of the VRA—the district court refused to even credit them. But in doing so, it again got the inquiry backwards.

That’s all the more confusing because *Callais* did not invent this inquiry: a three-judge district court in Alabama had applied it correctly in just the previous redistricting cycle. *See Ala. Legislative Black Caucus v. Alabama*, 989 F. Supp. 2d 1227, 1280-87 (M.D. 2013)).<sup>14</sup> The *ALBC* district court—considering §2 and constitutional challenges to Alabama legislative districts, just like this case—considered evidence of black Alabamians’ political participation to be especially probative, ultimately holding that it foreclosed those plaintiffs’ ability to show the totality of the circumstances. Specifically, it credited that: (1) “black voters in Alabama are highly politically active,” (2) “black voters have successfully elected the candidates of their choice in the majority-black districts,” (3) “the majority-black districts are roughly proportional to the black voting-age population in Alabama,” and (4) “the record contains no evidence of racial appeals in recent political campaigns or of a significant lack of responsiveness to the needs of the black population.” *Id.* at 1286. In sum, “the overwhelming evidence” showed “that black voters have an equal opportunity to participate in the political process the same as everyone else.” *Id.* at 1287. And to the extent the situation today is much different than 2013 (or 2017, when the

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<sup>14</sup> *See supra* n.6.

*ALBC* court readopted its findings), it has only improved—not backslid. The district court here erred in disregarding such evidence.

As the Supreme Court explained, “[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. *Callais*.Op.30 (cleaned up). Any analysis that “cast[s] aside as ‘irrelevant’ the lack of” present-day intentional discrimination, such as the district court’s here, “ha[s] its priorities backwards.” *Id.* at 34-35. Because it again inverted the inquiry against the Secretary, the district court’s injunctions cannot stand.

\* \* \*

*Callais* clarified how §2 claims are to be assessed and made clear that intentional discrimination must be at the center of that analysis. The district court applied a very different “effects” test, and as a result came to a very different conclusion than the one *Callais* requires. Because that holding must be reconsidered in light of *Callais*, this Court should vacate its injunctions.

## **II. Alternatively, The Court Should Reverse.**

If the Court does not quickly vacate and remand, it should reverse on the merits on any of the grounds raised above. *Callais* compels that result as well for at least three reasons.

First, at *Gingles I*, *Callais* prevents consideration of race in drawing the illustrative map. *Callais* Op.29. But Plaintiffs admit (and the district court found, DE274:172-74) that Mr. Fairfax “considered race” while developing plans that illustrate the first *Gingles* precondition can be met. DE250:¶255. The Court may conclude that Plaintiffs’ claims fail as a matter of law because their maps were produced using race, and there is nothing further to be decided on remand.

Second, for *Gingles II* and III, *Callais* requires the plaintiff to “provide an analysis that controls for party affiliation.” *Callais*.Op.30. Plaintiffs summed up the evidence as being that voting patterns “cannot be explained by mere partisan affiliation and are better explained by ... race.” DE250:¶488. Rather than requiring Plaintiffs disentangle race from politics, the district court looked to the Secretary to demonstrate that party, not race, was in control. *See* Op. 274. That is not only insufficient under *Callais*, but it also improperly flips the burden—Plaintiffs must prove that voting patterns are *not* attributable to politics. That is what the Supreme Court meant by disentanglement. Likewise, the district court found that Dr. Liu “was not concerned with voters’ motivations for selecting candidates, only whether the voting patterns were racially polarized.” DE274:74. But that analysis also fails to control for partisanship; if white Alabamians tend to vote Republican and black Alabamians—like black voters nationally—vote for Democrats, then proof of racial polarization looks a lot like political polarization and does not move the needle toward

establishing a §2 violation. Most critically, the district court ultimately found that, based on the evidence in this case, race cannot be disentangled from politics. Op. 274. Such an admission is dispositive of Plaintiffs' claims under *Callais*.

Third, the district court inverted the totality of the circumstances inquiry. It gave substantial weight to “[d]iscrimination that occurred some time ago, as well as present-day disparities that are characterized as the ongoing ‘effects of societal discrimination,’” which, the Supreme Court has clarified, are entitled to very little weight. *Contra Callais* Op.30-31. And the district court gave *no* weight to the openness of the political process to black Alabamians today or the significant gains since 1965—95.4% black voter registration and roughly proportional representation in the Alabama Legislature. *Contra id.*; see also *ALBC I*, 989 F. Supp. 2d at 1286-87. Such gains are to be celebrated, not cast aside. This significant evidence of black political participation is likewise enough to sink Plaintiffs' ability to demonstrate the totality of the circumstances under *Callais*.

## CONCLUSION

Because *Callais* eliminates the basis for the district court's injunctions (DE274 & 322) and eviscerates Plaintiffs' ability to succeed on the merits, the Secretary respectfully asks the Court to (1) vacate those injunctions or (2) reverse on the merits. Either way, the Secretary respectfully asks the Court to act quickly and immediately issue its mandate.

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## CERTIFICATE OF COMPLIANCE

1. I certify that this brief complies with the type-volume limitations set forth in Fed. R. App. P. 32(a)(7)(B)(i). This brief contains 10,067 words, including all headings, footnotes, and quotations, and excluding the parts of the response exempted under Fed. R. App. P. 32(f).

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