Nos. 25-13007, 25-14131

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

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

v.

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

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

SECRETARY OF STATE'S REPLY IN SUPPORT OF RENEWED MOTION FOR EMERGENCY STAY

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MAY 27, 2026

AMENDED 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
6. *Allen, Hon. Richard – Special Master
7. Allen, Hon. Wes – Secretary of State
8. American Civil Liberties Union – Counsel for Plaintiffs
9. American Civil Liberties Union Foundation – Counsel for Plaintiffs
10. Ashton, Anthony – included in Plaintiffs' CIP
11. Balch & Bingham LLP – Counsel for Secretary of State & Legislators
12. Barnes, Anna-Kathryn – included in Plaintiffs' CIP
13. *Black, Kenneth – Counsel for the Special Master
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51. Livingston, Sen. Steve – former Legislator Defendant

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87. Taunton, Michael P. – Counsel for Secretary of State & Legislators

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102. *Williamson, Victor J. – Counsel for Amicus

103. Wilson, Thomas A. – former Counsel for Secretary of State

104. Woodard, J. Scott – former Counsel for Secretary of State

After the Secretary's May 7, 2026 filing, the CIP was amended to include additional entries and describe roles, to the extent known, and to delete the National Association for the Advancement of Colored People. For this filing, asterisks have been added to reflect the new entries that were not included in the May 7 filing. Additionally, the National Association for the Advancement of Colored People has been added back to the list.

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

Respectfully submitted this 27th day of May, 2026.

s/ Brenton M. Smith
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REPLY

The Secretary satisfies all four requirements to obtain a stay of the injunctions prohibiting him 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 intentionally created an additional "Black-opportunity" Senate district (DE274; DE322). *See Nken v. Holder*, 556 U.S. 418, 426 (2009).

I. The Record is Insufficient to Sustain the District Court's Ruling Under the Updated *Callais* Standard.

First, the Secretary is substantially likely to succeed on the merits of his request—vacatur—because *Callais* fundamentally altered the law that governs §2 cases, and Plaintiffs cannot meet their burden under what they accept as an "updated" §2 standard, Resp.8-9, 23. The Supreme Court already determined that *Callais* required vacatur of the injunctions in the congressional cases to, at a minimum, reassess the record under the correct legal standard. *See* Order, *Allen v. Milligan*, No. 25-274 (U.S. May 11, 2026).[1] And as Plaintiffs acknowledge (at 17), the

[1] The three-judge panel in the congressional districting case, *Milligan v. Allen*, has since reimposed a preliminary injunction on the Secretary following the United States Supreme Court's vacatur just weeks ago of the panel's original injunction. *See Milligan v. Allen*, No. 2:23-cv-01530-AMM, ECF 537 (N.D. Ala. May 26, 2026). The State Defendants have since appealed. *Id.* at ECF 538. That should have no impact on this Court's ruling, however, given that the United States Supreme Court vacated the three-judge panel's initial injunction for further proceedings under the new standard. No such proceedings have yet taken place here. Nor can this Court consider evidence presented solely to that court and not in the record here—evidence on which Plaintiffs now improperly rely, *see* Resp.7, 11.

Supreme Court did so in "every other case arising under Section 2" even where the State did not intend to redistrict and *Callais* did not directly impact the appeal. Neither qualification applies here, yet Plaintiffs want a different result. This Court should follow the Supreme Court because it has already recognized (1) that the district court's decision was based on "existing precedent" and (2) that the Court is "bound to apply the law as it currently stands"—i.e., *Callais*. CA11.DE51-2:4-5.[2]

A quick glance at the district court's opinion shows that the district court's analysis is inconsistent with *Callais*. *See* Op.4. On the first *Gingles* precondition, *Callais* prevents the consideration of race in drawing illustrative maps. *Callais* Op.29. By contrast, the district court instead applied a pre-*Callais* "race predominant" analysis. *E.g.*, Op.172. And critically, the district court determined that Plaintiffs' map drawer "considered race." DE274:173. *Contra* Resp.23 (asserting that the map drawer "did not display or rely on race"). Plaintiffs also admitted that their map drawer used race, DE250:¶255, but argue that he did not use race "as an improper criterion," Resp.23. This argument fails because *Callais* did not hold that race cannot be used improperly, it held that "an illustrative map in which race was used has no value in proving a § 2 plaintiff 's case." *Callais*, 146 S. Ct. at 1159. And here, Plaintiffs' expert used race "as a districting criterion" at the least because he aimed to

[2] The Court decided its previous (2025) stay decision solely on likelihood of success on the merits based on pre-*Callais* law. CA11.DE51-2:5 n.2. *Contra* Resp.3.

draw a new illustrative majority-minority district "without eliminating any of the [ ] existing" ones. DE206-6:33. Under *Callais*, that is dispositive; Plaintiffs did not meet *Gingles* I.

Plaintiffs fail to meet *Gingles* I for a second reason. *Callais* requires that an illustrative map "must meet *all* the State's legitimate districting objectives" "just as well" as the State's plan does. *Callais* Op.29 (emphasis added). But the district court continued to apply a race-predominance standard, permitting Plaintiffs to make "tradeoffs" of the State's political goals (which go beyond partisanship, *contra* Resp.24, so long as they did not "prioritize race over other factors." Op.173. It acknowledged that Plaintiffs' map drawer only "attempted" to follow many "criteria found in the Legislature's redistricting guidelines." Op.172-73. Nevertheless, the district court improperly determined that Plaintiffs' illustrative map satisfied *Gingles* I because race did not predominate over the consideration of other districting criteria.

On the second and third *Gingles* preconditions, *Callais* requires the plaintiff to "provide an analysis that controls for party affiliation" and thus to "disentangle" race and politics. *Callais*, 146 S. Ct. at 1159. The district court said that disentanglement was "not require[d]" under pre-*Callais* authority. Op.183. So the district court did not take issue with the fact that Plaintiffs' racially polarized voting analysis neglected to control for party, even though Plaintiffs summed up the evidence by

summarily stating that voting patterns "cannot be explained by mere partisan affiliation and are better explained by … race." DE250:¶488.

Plaintiffs repeat that tune, Resp.25, but *Callais* says they must show racial bloc voting patterns that "cannot be explained by partisan affiliation." *Callais*, 146 S. Ct. at 1159. The district court flipped the burden onto the Secretary to prove that party, not race, was controlling. *See, e.g.*, Op.193 (explaining that it saw "no evidence that *only* party politics are at work" (emphasis added)). Most significantly, the district court understood the evidentiary record "as indicating that the Court *cannot* separate voters' racial considerations from their party affiliations," Op.201 (emphasis added)—but evidence that race and politics "cannot" be separated does *not* meet Plaintiffs burden to produce evidence that "disentangle[s] race from politics." *Callais*, 146 S. Ct. at 1159. The district court's conclusion that it cannot disentangle the two means that Plaintiffs fail as to *Gingles* II and III.

Additionally, Plaintiffs' argument that "the record demonstrates—and the Court found—that Plaintiffs showed that race, more than partisan politics, drives polarization in Alabama" is insufficient to satisfy *Gingles* II and III under *Callais* because Plaintiffs failed to present a racially polarized voting analysis that controls for party. *Compare* Resp.25, *with Callais*, 146 S. Ct. at 1162 ("To show racially polarized voting, the *Robinson* plaintiffs offered evidence that black and white voters consistently supported different candidates, but their analysis did not control for

partisan preferences.") (emphasis added); *see also* Op. 123 ("Dr. Bonneau also criticized Dr. Liu for failing to analyze an election in his initial report that controlled for race or party. Tr. 1420. He testified that Dr. Liu's analysis of nonpartisan elections may not effectively control for party because voters can know the partisan affiliation of a candidate even when the candidate does not run on a party platform.").

Last, on the totality of the circumstances, *Callais* interpreted §2 to require greater weight on *present*-day discrimination in voting over historical instances of social disparity. *Callais*, 146 S. Ct. at 1160. The district court inverted this inquiry. Instead of focusing on "present-day intentional racial discrimination regarding voting," 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 are entitled to very little weight under *Callais*. *Contra Callais*, 146 S. Ct. at 1160; *see* Op.192-216. And the "official discrimination in voting rights" Plaintiffs say the district court found was mostly (1) not "present-day," *contra Callais*, 146 S. Ct. at 1160; (2) not about voting, or (3) about a few localities rather than the State itself. *See* Op.206-09. *Contra* Resp.9 ("ample evidence").

Meanwhile, the district court gave *no* weight to the openness of the political process to black Alabamians today or the significant gains since 1965—95.2% black voter registration and roughly proportional representation in the Alabama Legislature. Op.133-34 (acknowledging the voter-registration evidence, which it did not

address in its later analysis). *Contra Callais*, 146 S. Ct. at 1160; *see also Ala. Legis. Black Caucus v. Alabama*, 989 F. Supp. 2d 1227, 1286-87 (M.D. Ala. 2013) (three-judge court). As a result, the district court's *Gingles* analysis cannot stand under *Callais*.

It is for these reasons that Plaintiffs are not likely to show a strong inference of intentional discrimination warranting a section 2 remedy. Accordingly, a stay of the injunctions prohibiting the Secretary from conducting elections pursuant to the State's 2021 Plan and requiring the Secretary to use the court-ordered map should be granted.[3]

II. Absent a Stay, the State Would Be Irreparably Harmed, and the Public Interest and Equities Weigh Strongly In Favor of A Stay.

The remaining stay factors support the Secretary. It is well established that "the inability to enforce its duly enacted plans clearly inflicts irreparable harm on the State." *Abbott v. Perez*, 585 U.S. 579, 602 n.17 (2018). Denying a stay guarantees that inability. *Contra* Resp.15. Finally, on the equities, the Supreme Court did not accept Plaintiffs' counsel's arguments in the congressional cases that it was too late to act and that vacating the injunctions would run afoul of the *Purcell* principle. *See*

[3] Despite Plaintiffs' arguments that the Secretary has "abandoned" arguments regarding the propriety of the remedial map, the Secretary has consistently challenged the legal basis for imposing that map. *Contra* Resp.27.

Milligan Respondents' Opp. To Mot. to Expedite, *Allen v. Milligan*, No. 25-274 (U.S. Apr. 30, 2026).

In any event, this Court's precedent forecloses Plaintiffs' reverse-*Purcell* arguments. *League of Women Voters of Fla. v. Fla. Sec'y of State*, 32 F.4th 1363 (11th Cir. 2022) (per curiam). While *Purcell* imposes a "'heightened' burden" on a party seeking injunctive relief affecting elections, it also "serves to *lower* the state's bar" when seeking to stay (or otherwise opposing) such an injunction. *Id.* at 1372. So, a State "need not show, for instance—as a plaintiff would to obtain a 'late-breaking injunction' in the first place—that its position is 'entirely clearcut'" but instead "need only show that plaintiffs' position is *not*." *Id. Purcell* applies no litigation burden at any time on a State seeking to vindicate State law. Applying that logic here, Plaintiffs cannot saddle the State with a heightened burden by invoking *Purcell*.

The *Purcell* doctrine thus limits courts, not States. As Justice Kavanaugh wrote, "It is one thing for state legislatures to alter their own election rules in the late innings and to bear the responsibility for any unintended consequences. It is quite another thing for a federal district court to swoop in and alter carefully considered and democratically enacted state election rules when an election is imminent." *Democratic Nat'l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 31 (2020) (Kavanaugh,

J., concurring). *Purcell* was never intended to prevent a state from changing its own laws.[4]

It is not "federal *intrusion*," *contra* Resp.14 (emphasis added), for this Court to allow Governor Ivey the opportunity to determine whether a State Senate race impacting three counties can be added to the August 11 special election. *See* Ala. Act No. 2026-613. It may be that the State no longer has enough time to act—but it deserves the opportunity to make that determination for itself. The Supreme Court's late-hour ruling in *Callais*—not the Secretary—triggered the tight timing here. Now that the Supreme Court has ruled, though, it would be inequitable to perpetuate an injunction against the State's legislatively enacted map when no findings have been made against the State under the *Callais* standard. And Plaintiffs' reliance on testimony from Director Elrod in the congressional cases regarding deadlines, *see*

[4] To the extent Plaintiffs argue that the Court should intervene because of fears of some type of *Anderson-Burdick* injury or a claim under the Alabama Constitution, *see* Resp.12, 14-15, there are (at least) three problems with those theories. First, there are no such claims in the complaint. *Gilmour v. Gates, McDonald & Co.*, 382 F.3d 1312, 1315 (11th Cir. 2004) (The only "proper procedure for plaintiffs to assert a new claim is to amend the complaint."). Second, as to the *Anderson-Burdick* due-process argument, no Plaintiff's vote would be "thrown out" by selecting nominees in the Special Primary Election—they would simply vote again. And third, as to the Alabama constitutional arguments, Plaintiffs cannot bring state-law claims cloaked as equitable considerations. *See, e.g.*, *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 98 (1984). In any event, Ala. Const. art. IV, § 111.08 limits only the "implementation date" of bills implemented by the Legislature and only as to the conduct of *general*—not primary—elections. And, as Plaintiffs acknowledge, the special primary bill triggers "only if *a court* changes the district lines" anyway, not the Legislature. Resp.15 (emphasis added).

Resp.5, is improper (it is not part of the record in this case) and inaccurate as to the deadlines in this case for Alabama State Senate given different burdens and deadlines.[5]

CONCLUSION

The Secretary respectfully asks for a stay of the district court's injunction prohibiting the State from implementing its 2021 Plan for State Senate (DE274 & 232) as soon as possible.

Respectfully submitted,

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[5] Plaintiffs' judicial-estoppel argument similarly fails because it isn't "clearly inconsistent" (or inconsistent at all) to argue (1) that *Purcell* instructs courts not to *impose* an injunction and a new map amidst an election (as the Secretary has argued before) and (2) that *Purcell* does not prohibit courts from *lifting* an injunction amidst an election (as the Secretary argues now).

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MAY 27, 2026

CERTIFICATE OF COMPLIANCE

1. I certify that this brief complies with the type-volume limitations set forth in Fed. R. App. P. 27(d). This document contains 2,175 words, including all headings, footnotes, and quotations, and excluding the parts of the response exempted under Fed. R. App. P. 32(f).

2. In addition, this response complies with the typeface and type style requirements of Fed. R. App. P. 32(a)(5) and (6) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in 14-point Times New Roman font.

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CERTIFICATE OF SERVICE

I certify that on May 27, 2026, I electronically filed this document using the Court's CM/ECF system, which will serve counsel of record.

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