No. 25-274

IN THE
Supreme Court of the United States

WES ALLEN, ALABAMA SECRETARY OF STATE, ET AL.,
Appellants,
v.
EVAN MILLIGAN, ET AL.
Appellees.

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

MOTION TO AFFIRM

DAVIN M. ROSBOROUGH
SOPHIA LIN LAKIN
THERESA J. LEE
DAYTON CAMPBELL-HARRIS
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad St.
New York, NY 10004

CECILLIA D. WANG
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
425 California St., Suite 700
San Francisco, CA 94104

JESSICA L. ELLSWORTH
JO-ANN TAMILA SAGAR
HOGAN LOVELLS US LLP
555 Thirteenth St., NW
Washington, DC 20004

DEUEL ROSS
Counsel of Record
VICTOR OLOFIN
NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC.
700 Fourteenth St., NW
Washington, DC 20005
(202) 682-1300
dross@naacpldf.org

JANAI NELSON
SAMUEL SPITAL
STUART NAIFEH
KATHRYN SADASIVAN
BRITTANY CARTER
COLIN BURKE
NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC.
40 Rector St., 5th Floor
New York, NY 10006

Counsel for Appellees

Additional counsel listed on inside cover

DAVID DUNN
SHELITA STEWART
MICHAEL J. WEST
AMANDA N. ALLEN
HOGAN LOVELLS US LLP
555 Thirteenth St., NW
Washington, DC 20004

MICHAEL TURRILL
HARMONY A. GBE
JAY ETTINGER
HOGAN LOVELLS US LLP
1999 Avenue of the Stars,
Suite 1400
Los Angeles, CA 90067

JOHANNAH CASSEL-WALKER
HOGAN LOVELLS US LLP
4 Embarcadero Center,
Suite 3500
San Francisco, CA 94111

CHARNICE CULMER
HOGAN LOVELLS US LLP
1735 Market St., Floor 23
Philadelphia, PA 19103

ALISON MOLLMAN
LAUREL HATTIX
ACLU OF ALABAMA
PO Box 6179
Montgomery, AL 36106

SIDNEY M. JACKSON
NICKI LAWSEN
WIGGINS CHILDS PANTAZIS FISHER
& GOLDFARB, LLC
301 19th St. North
Birmingham, AL 35203

QUESTIONS PRESENTED

1. Whether the three-judge court properly applied this Court's settled precedents in finding that Alabama violated §2 of the Voting Rights Act in enacting a congressional districting plan that, contrary to the preliminary injunction ordered by the same court and affirmed by this Court in *Allen* v. *Milligan*, 599 U.S. 1 (2023), did not contain a second district in which Black voters have an opportunity to elect a representative of their choice.

2. Whether, as this Court recognized only two Terms ago in *Milligan*, §2 of the Voting Rights Act is constitutional.

3. Whether §2 of the Voting Rights Act, which has principally been enforced by private plaintiffs since its enactment, creates a privately enforceable right.

4. Whether Alabama violated the Fourteenth Amendment by intentionally enacting a districting plan that "minimize[d] . . . the voting potential of" Black Alabamians. *Alexander* v. *S.C. State Conf. of the NAACP*, 602 U.S. 1, 38-39 (2024).

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INTRODUCTION

Alabama's jurisdictional statement seems like déjà vu because it is.

Two Terms ago, this Court upheld a three-judge district court's order concluding that Alabama likely violated §2 of the Voting Rights Act (VRA). *See Allen* v. *Milligan*, 599 U.S. 1, 9-17 (2023). That dispute concerned Alabama's 2021 congressional plan, in which Alabama maintained the core of an early-1970s map and unlawfully diluted Black voting power by cracking the historic "Black Belt" community and separating it from the City of Mobile. In 2021 (as today), Alabama expressly prioritized keeping together two coastal counties because of their "French and Spanish colonial heritage." Then (as now) intensely racially polarized voting—where most White Alabamians refuse to

vote for Black candidates, regardless of their political party—combined with Alabama's "well documented" and recent history of "repugnant" discrimination, *id*. at 22 (citation omitted), to make it impossible for Black voters to elect their preferred candidates beyond one district. This Court affirmed the district court's "understandabl[e]" view that the evidence was "insufficient to sustain Alabama's overdrawn argument that there can be no legitimate reason to split" two counties. *Id*. at 21 (citation modified).

This appeal from final judgment is nearly identical to the last one. Alabama has again enacted a map that cracks the Black vote—this time in defiance of the injunction affirmed by this Court. Alabama largely repeats the arguments rejected in *Milligan.* It adds only an effort to immunize its 2023 map from review with "legislative findings," which again prioritize keeping Mobile and Baldwin Counties together. But *Defendants' own testimony* undermines the propriety of these "findings," which legislators neither requested, nor wrote. Instead, the state Solicitor General authored and inserted the "findings" into the bill with the 2023 plan at "the very last minute." App.22. Defendant Representative Pringle refused to put his name on that bill due to his concern that the 2023 plan violated the VRA. App.421. Further, the undisputed evidence is that Alabama split Baldwin and Mobile Counties for a century and united them in the 1970s to fracture the Black vote after the VRA's passage. After a 12-day trial, the three-judge court held that Alabama's 2023 map violated §2 and the Fourteenth Amendment on the same grounds underlying *Milligan*.

This Court previously rejected Alabama's request to stay the district court's ruling that the 2023 map likely violated §2. *Allen* v*. Milligan*, 144 S. Ct. 476 (2023). Alabama again asks this Court to jettison the decision below. This Court

should again decline that invitation. On remand, the district court faithfully applied this Court's decision in *Milligan* and anchored its analysis in well-supported factual findings and credibility determinations.

Recognizing this, Alabama urges this Court to cast aside *Milligan* and §2 as unconstitutional based on *Students for Fair Admissions* v. *President and Fellows of Harvard College* ("*SFFA*"), 600 U.S. 181 (2023). But *SFFA* was decided concurrently with *Milligan*. They were consistent then and remain consistent now. Unlike the admissions processes in *SFFA*, remedial redistricting sometimes allows a limited awareness of race only where there is evidence of official discrimination and significant racially polarized voting. Neither of these evidentiary showings rests on stereotypes. And, unlike the *SFFA* admissions processes, all remedial maps have inherent sunset dates with each new decennial census.

Critically, here, the court's remedial map was drawn "race blind" *without considering race or racial targets at all*. *No one* was classified or assigned to districts based on race. Further, the court's plan explicitly expires after the 2030 census. Finally, unlike the *SFFA* plans' nonremedial "diversity" goal, the court's *remedial* map is a time-limited order that enforces §2, a federal law enacted by Congress using its broad powers under the Reconstruction Amendments.

Alabama's arguments against the district court's intentional discrimination ruling also fail. Alabama violated the Fourteenth Amendment when it "enacted a particular voting scheme as a purposeful device to minimize or cancel out the voting potential of racial or ethnic minorities." *Alexander* v. *S.C. State Conf. of the NAACP*, 602 U.S. 1, 38-39 (2024) (citation modified). Despite a preliminary injunction directing the creation of

a second opportunity district, Alabama rejected alternative maps that *could have* provided such a district in favor of a map Alabama *knew* lacked one. Alabama justifies its defiance by referencing the state Solicitor General's unsolicited "legislative findings," which "exalt and extol one" community "above others" based on its European "heritage" while cracking the Black Belt. App.501-502. These "findings" starkly prove that Alabama intentionally diluted Black voters' rights. While the district court agreed that it is "unusual" to succeed on an intentional discrimination claim, the court found that this is not "a particularly close call." App.21-22. Rather, the "unusual corpus of undisputed evidence [] confirms th[is] obvious inference." *Id*.

It has now been four years since Alabama first violated the voting rights of Black Alabamians after the 2020 census. Every court thus far has rejected that effort. This Court should do so again and affirm the decision below.

STATEMENT

A. This Court Affirms the District Court's Preliminary Injunction Against Alabama's 2021 Congressional Map.

In 2021, Alabama enacted a congressional plan that included "only one district in which black voters constituted a majority of the voting age population." *Milligan*, 599 U.S. at 16. This Court affirmed a three-judge district court's holding that the map likely violated §2.

This Court agreed that the record supported the district court's conclusion that Plaintiffs' §2 claim was likely to succeed. *Id.* at 23. The district court "correctly found that black voters could constitute a majority in a second district that was 'reasonably configured'" under the first *Gingles* precondition. *Id.* at 19; *see Thornburg* v. *Gingles*, 478 U.S. 30, 50 (1986). And there was "no serious dispute that

Black voters are politically cohesive, nor that the challenged districts' white majority votes sufficiently as a bloc to usually defeat Black voters' preferred candidate" under the second and third preconditions. *Milligan*, 599 U.S. at 22 (citation modified). The Court also credited the district court's "careful factual findings" at the totality-of-circumstances stage, including its findings about "Alabama's extensive history of repugnant" discrimination. *Id.* at 22-23 (citation modified).

The Court then rejected Alabama's request to "remake . . . § 2 jurisprudence anew" by holding that the mere awareness of race in drawing illustrative-district lines would trespass constitutional boundaries. *Id.* at 23. The Court also rejected Alabama's request to hold §2 and any related "race-based" remedies unconstitutional. *Id*. at 41.

This Court instead explained that §2 is consistent with the Fourteenth and Fifteenth Amendments. Regarding the Fourteenth Amendment, this Court noted that "in case after case," it has "rejected districting plans that would bring States closer to proportionality when those plans violate traditional districting criteria," illustrating that "[f]orcing proportional representation is unlawful and inconsistent with this Court's approach to implementing § 2." *Id.* at 28-29 & n.4. Regarding the Fifteenth Amendment, this Court noted that "for the last four decades," this Court had applied §2's results test and, "under certain circumstances, [had] authorized race-based redistricting as a remedy," and held that §2 "is an appropriate method of promoting the purposes of the Fifteenth Amendment." *Id.* at 41 (citation modified).

Justice Kavanaugh's concurred, agreeing that §2 does not "exceed[] Congress's remedial or preventive authority under the Fourteenth and Fifteenth Amendments." *Id.* at 45 (Kavanaugh, J., concurring).

B. Alabama Enacts the 2023 Congressional Map, Admitting That this Map Failed To Remedy the Likely Violation Identified in *Milligan*.

The preliminary injunction affirmed in *Milligan* required Alabama to draw "an additional district in which Black voters . . . have an opportunity to elect a representative of their choice." App.41.

In response, Alabama called a special legislative session. App.54-55. Before the session began, the Permanent Legislative Committee on Reapportionment—led by Co-Chairs Representative Pringle and Senator Livingston (the "Co-Chairs")—readopted the 2021 Districting Guidelines. App.55. These Guidelines listed principles to be "observed to the extent they do not violate or subordinate" federal or state law. App.535-536.

The Co-Chairs directed their mapmaker to keep Mobile and Baldwin Counties whole and together in any map. App.92. When the session began, Representative Pringle introduced the "Community of Interest" (COI) Plan. App.91. This plan retained one majority-Black district. *Id.* "[T]he district with the next-highest" Black voting age population (BVAP) was District 2 (CD2) with 42.25%. *Id.* The Committee's analysis showed that Black-preferred candidates would have sometimes[1] won in the COI Plan's CD2, *id*., but only when they were well-known White Democrats, App.97-98, 464-465.

[1] The special master found that the COI Plan's CD2 "would almost never elect the Black-preferred candidate." Special Master Report at 32, No. 2:21-CV-1530 (N.D. Ala. Sept. 25, 2023), Doc. 295. In the COI plan's CD2, Black-preferred candidates won just three of the 17 analyzed races. Ex. 14 at 3, No. 2:21-CV-1530 (N.D. Ala. Sept. 25, 2023), Doc. 296-14; *cf. Abbott* v. *Perez*, 585 U.S. 579, 617 (2018) (rejecting a remedial district where minority candidates won "7 out of 35" races).

The House passed the COI Plan, but the Senate rejected it in favor of a so-called "Opportunity Plan." App.91. This plan, developed by an outside consultant, maintained one majority-Black district but drew CD2 such that "Black-preferred candidates would have no chance of winning." App.93, 102; *see also* App.497-498. Representative Pringle refused to introduce or put his name on the Senate's new plan, "out of [his] concern about [its] compliance with federal law." App.420-421; *see also* App.103, 507.

Alabama ultimately enacted a modified version of the Opportunity Plan as Senate Bill 5 (SB5). App.91. Unlike CD2 in the COI plan, SB5's CD2 did not contain Dallas County and Selma, App.497, which had politically active Black electorates, App.468. The Co-Chairs knew that "without Dallas County . . . in [CD2], Black-preferred candidates would have no chance of winning[.]" App.93. Before its passage, the Legislature confirmed that, in SB5's CD2, Black-preferred candidates lost all seven analyzed elections. App.92.

On the morning of SB5's passage, eight pages of "legislative findings" were inserted into the bill. App.57, 421. Such findings had never appeared in Alabama's previous redistricting laws. App.421. Alabama's Solicitor General drafted these findings without the Co-Chairs' knowledge or participation. App.98. The legislative findings name three communities of interest "that shall be kept together to the fullest extent possible": the Black Belt, Gulf Coast, and Wiregrass. App.57-58. The findings describe the Black Belt counties in three paragraphs. App.58. In contrast, the findings contain nine paragraphs detailing Baldwin and Mobile Counties' "economy and history, including their 'French and Spanish Colonial heritage.'" App.58. Unlike the Black Belt, SB5 keeps the Gulf Coast together in one district.

C. The District Court Preliminarily Enjoins SB5.

In 2023, Plaintiffs objected to SB5 for violating the VRA, and for intentionally discriminating against Black voters. Alabama conceded that—despite a preliminary injunction requiring a second opportunity district—SB5 did "not include an additional opportunity district." App.567. The three-judge court issued another preliminary injunction, holding that SB5 "does not remedy the likely [§2] violation" and that Plaintiffs "are substantially likely to establish that [SB5] violates [§2]." App.568.

The Secretary appealed. App.73. Both the district court and this Court denied the Secretary's request for a stay. *See id.*; *Milligan*, 144 S. Ct. at 476. The Secretary then dismissed his appeals.

The district court appointed a special master to propose remedial plans. App.73-74. Alabama did not object. The Special Master recommended three plans that were drawn without displaying racial demographic data. App.76.

The district court selected plan three, which was drawn "without reference to any illustrative or proposed plan" and was instead "based on other nonracial characteristics and criteria related to communities of interest and political subdivisions." App.531-32. This plan's CD2 had a BVAP of 48.69%, App.370, and preserved 90.4% of the City of Mobile in a single district, App.531.

D. The District Court Issues a Final Judgment Holding that SB5 Violates the VRA And the Fourteenth Amendment.

In 2025, the district court issued a 527-page decision holding that SB5 violated §2 and the Fourteenth Amendment. App.18-23. The decision was based on a trial record including "live testimony from twenty-three witnesses (including thirteen experts)" and "testimony by

designation for twenty-eight additional witnesses." App.83. By stipulation, the court ordered the Secretary "to administer Alabama's congressional elections according to the Special Master Plan until Alabama enacts a new congressional districting plan based on 2030 census data." App.1033.

1. The District Court Concludes that Alabama Violated §2.

a. ***Illustrative Districts.*** The district court concluded that Plaintiffs "far surpassed their burden" under *Gingles* I, App.363, which requires a showing that "the minority group must be sufficiently large and geographically compact to constitute a majority in a reasonably configured district," *Milligan*, 599 U.S. at 18 (citation modified). Because the parties stipulated that Plaintiffs' maps met the *Gingles* I numerosity requirement, App.319, and contained contiguous districts that equalize population, App.336, the only questions for the district court to resolve were compactness and respect for traditional districting principles.

The district court found that "the Black population in the majority-Black districts" in the illustrative plans "is sufficiently compact that those plans and districts are reasonably configured." App.334. As to the geographic compactness of the Black population itself, the court found that it is "obvious" that "there are areas where much of Alabama's Black population is concentrated, and that many of these areas are in close proximity to each other." App.331. And Alabama's own expert conceded that some of Plaintiffs' maps were more compact than both SB5, App.332, and many "plans and districts that Alabama has enacted for the past thirty years." App.327. The court further found that Plaintiffs' plans "respect political subdivisions," with the post-remand Duchin Plan E—

drawn by Plaintiffs' expert Dr. Moon Duchin and reproduced below—performing "at least as well as" SB5 on both municipality, App.337, and county splits, App.336.

App.127.

The district court likewise found that the illustrative plans "respect communities of interest." App.339. The court found the Black Belt is "quite clearly a community of interest of substantial significance," App.340, with a "substantial body of evidence" establishing "the shared history and economy (or lack thereof) in the Black Belt; the overwhelmingly rural, agrarian experience; the extreme poverty; and major migrations and demographic shifts that impacted many Black Belt residents." App.342. The court also found "meaningful connections between the City of Mobile, the City of Montgomery, and the Black Belt," App.342, relying on the "intimate historical and socioeconomic ties" between the City of Mobile and Black Belt. App.624 (citation omitted); *accord* App.175, 342.

In contrast, the district court concluded that Alabama "lacks a basis" in the record for elevating the Gulf Coast "above the Black Belt (and every other community of interest in Alabama) or declaring it inviolable." App.349.

For example, although Alabama insisted that Mobile County was inextricably linked with Baldwin County, the court found that Alabama's congressional plans had put the two countries in separate districts from 1875 until 1972. App.349. The court also assigned "very little weight" to Alabama's expert who testified against splitting the Mobile and Baldwin Counties based on websites like Wikipedia and Reddit. App.379-380.

Analyzing the whole record, the court saw "no evidence that" Plaintiffs' experts "allowed race to predominate, and extensive evidence that they took great care to avoid that fault." App.362. The court further observed that "the Special Master Plan, which was prepared race-blind, provides compelling evidence that two reasonably configured Black-opportunity districts easily can be drawn in Alabama." App.16.

b. ***Racially Polarized Voting*.** The court found there was a "comprehensive record" showing "intensely and extremely racially polarized [voting] for purposes of the second and third *Gingles* preconditions." App.372-373; *accord Milligan*, 599 U.S. at 18.

The court also found "overwhelming" quantitative and qualitative evidence about the continued "importance of race in Alabama politics." App.391. Alabama's expert admitted that "race remains the dominant political influence" in the State. App.385. For example, Black and White Alabamians hold similar views on policies like same-sex marriage and abortion, App.171, 305, but their voting patterns *do not* reflect these shared values, App.391-392. At times, White self-identified Democrats supported White Republicans over Black Democrats in *general* elections. App.388-89. Likewise, in primaries for *both* Democrats, App.147-148, *and* Republicans, App.388-389; *see also* App.229-230, White voters consistently

supported White candidates over Black ones. For example, in remedial CD2's 2024 Republican primary, four experienced Black politicians "together received only 6.2% of the total vote," finishing behind four White candidates, App.389, including a political novice, App.163. The court found that this race-based polarization, inflamed by racial appeals, App.413-415, led to a "near-total absence of Black Alabamians in statewide office and legislative office (outside of Black-opportunity districts)." App.388.

c. ***Totality of the Circumstances.*** Finally, the district court found that "official discrimination on the basis of race . . . continues to affect Black Alabamians' lives and political participation today." App.396.

It concluded that each analyzed Senate Factor favored Plaintiffs. App.413-425. The court considered Alabama's "pervasive and protracted history of official discrimination," including multiple cases that "run well into the present era." App.400. It found that "Alabama is the only state to have more than one jurisdiction bailed back into federal preclearance requirements." App.403-404. And it relied on fact and expert witnesses' testimony to find that racial disparities in voting, education, and other areas were attributable to Alabama's official discrimination that had "hamper[ed]" Black voters' participation. App.408-410.

2. The Court Finds that Alabama Engaged in Intentional Racial Discrimination in Adopting SB5.

Finally, the district court held that SB5 was "an intentional effort to dilute Black Alabamians' voting strength and evade the unambiguous requirements of court orders standing in the way." App.21. While acknowledging that a successful Fourteenth Amendment

claim is "unusual," the court found this case was not "a particularly close call." App.22.

The court began with a "heavy presumption of good faith," App.486, drew "every inference [it could] in the Legislature's favor," App.488, and did "not accuse any Legislator of being animated by racism," App.490. It carefully considered and rejected each of Alabama's proposed alternative motives for SB5. App.515-529. For example, it credited the Co-Chairs' own testimony that SB5 lacked a partisan motive. App.524. The court also relied on Alabama's "admi[ssion that it] did not include an additional opportunity district" despite the court's order and the "novel legislative findings that made the additional opportunity district impossible to draw." App.492.

The court nevertheless found that through the "legislative" findings' nonnegotiable rules, Alabama elevated "the Gulf Coast as the most important community of interest in Alabama," effectively "prescribing a majority-White district there." App.347.

REASONS TO DISMISS OR AFFIRM

I. THE DISTRICT COURT CORRECTLY APPLIED THIS COURT'S PRECEDENTS IN HOLDING THAT SB5 VIOLATED §2.

The district court properly concluded that SB5 violated §2. App.18. The map "unlawfully dilutes Black voting strength by consigning it to one majority-Black district despite Alabama's Black population plainly being numerous and compact enough, and voting in Alabama [being] racially polarized enough, to readily support an additional opportunity district under all the circumstances in Alabama today." App.19. The court correctly applied the *Gingles* framework to its well-supported factual findings—just as it did in the preliminary-injunction order affirmed

by this Court in *Milligan*. Alabama's attacks (at 10-15) on the district court's §2 analysis fail.

A. This Court Has Already Rejected Alabama's Challenges to the Proposed Maps' Configuration.

Alabama rehashes (at 12) the argument it made two years ago that Plaintiffs' maps "prioritized race over conceded communities of interest" by separating Baldwin and Mobile Counties. *Milligan* forecloses that argument: Even if "the Gulf Coast did constitute a community of interest," Plaintiffs' maps "would still be reasonably configured because they joined together a different community of interest called the Black Belt." 599 U.S. at 21. The trial record only strengthens the Court's reasoning in *Milligan*. Alabama's attempts to distinguish it fail.

Alabama first falsely claims that there is "no longer a 'split community of interest' in Alabama's plan." J.S.14. Yet SB5 still "cracks" the Black Belt, App.355, as Alabama elsewhere admits, J.S.4.

Alabama next asserts that splitting the Black Belt into fewer districts remedied its "cracking" and the likely §2 violation. J.S.11. But "cracking" is "the dispersal of blacks into districts in which they constitute an ineffective minority," it is not simply geographic splits. *Bartlett v. Strickland*, 556 U.S. 1, 14 (2009) (plurality) (citation omitted). *Milligan* affirmed that Alabama's map unfairly limited Black voters' political opportunity by cabining their effective voting power to "only one district." 599 U.S. at 16. A map that splits the Black Belt into two districts instead of three but still cracks Black voters in a way that limits their electoral opportunities is "not a cure for the underlying problem." App.518.

Finally, Alabama recycles its arguments that a few lines of Duchin's testimony from the preliminary-injunction

stage show that race predominated. *Compare* J.S.13 *with* Appellants' Br. 24, *Allen* v. *Milligan*, Nos. 21-1086, 21-1087 (Apr. 25, 2022).

But Alabama "badly misstate[s] the record." App.359. The district court found that Duchin "did not look at race as she drew district lines." App.321. She used nonracial traditional redistricting criteria to draw illustrative maps—with her "top" priority in Plan E being compactness. App.130. *After* drawing plans, she "periodically check[ed]" racial data at the "screening stage" only to ensure her submissions satisfied the "nonnegotiable" parameters of presenting two majority-Black districts pursuant to *Bartlett*, 556 U.S. at 11-12 (plurality). App.127-130, 359. The court credited her testimony, and found that she was "internally consistent," "highly reliable and helpful to the Court." App.320.

B. Alabama's Attempt To Immunize SB5 from Challenge Fails

Alabama asserts (at 14) that the district court erred by finding maps that split Mobile and Baldwin Counties satisfied *Gingles* I. But Alabama cannot use these counties to "intentionally checkmate any remedial order designed to require a second opportunity district." App.495. The record does not support Alabama's insistence on keeping those counties together at all costs.

Take Alabama's historical treatment of these counties. Beginning in the 1870s, Alabama's Democratic-controlled Legislature first split Mobile and Baldwin Counties across districts to "prevent the reelection of a Black [Republican] incumbent." App.349; *see also* App.154-155, 461-462. For "nearly 100 years"—when Black voters were otherwise disenfranchised—Mobile County was paired with large parts of the Black Belt. App.349. The court credited unrebutted testimony that, in the 1970s, Alabama reunited

Baldwin and Mobile Counties to limit Black political influence. App.349; *see also* App.462. Since 2010, Alabama has also "repeatedly split Mobile and Baldwin Counties in districting maps for the State Board of Education," including "*at the very same time* it drew the previous congressional plans." App.351 (emphasis added).

By contrast, the evidence showed that the Black Belt is a genuine community of interest. The district court noted that while the "Black Belt is overwhelmingly Black," "the reasons why it is a community of interest have many more dimensions." App.342. The court credited evidence that "established the shared history and economy (or lack thereof) in the Black Belt; the overwhelmingly rural, agrarian experience; the extreme poverty; and major migrations and demographic shifts that impacted many Black Belt residents." *Id.*

Because Alabama's arguments are unsupported by the record, Alabama reaches the wrong conclusions. Far from "abandon[ing]" *Milligan*'s "race-neutral reasons for holding that §2 likely required new districts," J.S.14, the district court relied on those very same reasons, as well as an expanded evidentiary record, to reach the same result. Contrary to Alabama's claims regarding Mobile and Baldwin Counties, a State cannot engineer one community of interest as a "trump card" to override compliance with §2, App.525; *see also League of United Latin Am. Citizens* v. *Perry* ("*LULAC*"), 548 U.S. 399, 433 (2006). The district court's reasoning is fully consistent with *Milligan*.

C. The District Court Correctly Concluded that Black Alabamians Have Less Opportunity to Participate in the Political Process than White Alabamians.

1. Alabama wrongly contends (at 15) that the district court's analysis conflicts "with §2's text and history."

Section 2 requires courts to analyze equal opportunity under "the totality of circumstances." 52 U.S.C. § 10301(b). The court properly applied that test and held that there was unlawful vote dilution. *See supra* at 8-12.

As the court explained, the record illustrated that "things are different" in Alabama (compared to most other States), in a way that impacts Black political participation. Official discrimination resulted in the Black Belt's "extreme poverty" that is "very uncommon in the First World," App.412, 404, producing higher rates of illiteracy (up to 30%), "squalid conditions" like raw sewage and undrinkable water, and inadequate basic communication infrastructure. App.343-345. Further, roughly 40% of all Alabamians *who voted in 2020* attended de jure segregated schools. App.408. Others are experiencing *ongoing* discrimination uncovered in recent desegregation cases. App.399, 412; *see, e.g., Stout ex rel. Stout* v. *Jefferson Cnty. Bd. of Educ.*, 882 F.3d 988, 1009 (11th Cir. 2018). The court credited testimony that this intentional discrimination led to today's educational disparities, which "hamper" Black voters "due to an inability to read ballots, learn about candidates, absentee vote, locate voting information, and travel to polls," App.408-409, making "participation difficult and unlikely for many Black Alabamians," App.410.

2. Alabama favors a rule that would ignore this evidence; it argues (at 15) that this Court should replace the totality-of-circumstances test with a bright-line rule—suggesting that "parity" in voter registration and turnout *per se* proves nondiscrimination.

There are several problems with that suggestion. For one, this Court rejected a similar argument in *Milligan* as inconsistent with the VRA's "textual command" to "employ a more refined approach." 599 U.S. at 26 (citation omitted).

For another, this test would not help Alabama. Plaintiffs' experts identified "a racial gap in voter registration and turnout in Alabama," App.172, meaning that evidence here satisfies *both* the existing totality-of-circumstances test *and* Alabama's invented rule.

In any event, there is no support in this Court's precedent for Alabama's proposal. Alabama's sole citation—*Whitcomb* v. *Chavis*, 403 U.S. 124, 153 (1971), which concerned vote dilution that was "a mere euphemism for political defeat at the polls"—is inapposite. The record here brims with qualitative and quantitative evidence that race, rather than partisanship, best explains Black candidates' electoral losses, *supra* at 11-12, and with recent intentional discrimination in voting and elsewhere, App.398-400, 412.

II. SECTION 2 IS CONSTITUTIONAL AND CREATES A JUSTICIABLE STANDARD FOR IDENTIFYING AND REMEDYING RACIAL VOTE DILUTION.

As in *Milligan* two Terms ago, Alabama argues §2 is unconstitutional. J.S.16-25; *see Milligan*, 599 U.S. at 41. This time, Alabama latches onto *SFFA*, which held that universities' voluntary race-based admissions processes that do not "comply with strict scrutiny," "use race as a stereotype or negative," and "lack a 'logical end point,'" violate the Fourteenth Amendment. *SFFA*, 600 U.S. at 213, 221 (citation omitted). But *SFFA* and *Milligan* were decided concurrently, and there is no reason for the Court to reach a different outcome now. The *Gingles* framework ensures that only discriminatory maps trigger a remedy, which may or may not (as here) involve some awareness of race. Even if *SFFA* were relevant, *Gingles* is consistent with it.

A. Recent Precedent Compels the Conclusion that §2 Is Constitutional.

Two years ago, this Court "reject[ed] Alabama's argument that § 2 as applied to redistricting is unconstitutional." *Milligan*, 599 U.S. at 41. This Court decided *SFFA* in the same Term. The Chief Justice authored both opinions. There is no tension between *Milligan* and *SFFA*. Remedial redistricting coheres with *SFFA*'s recognition that "remediating specific, identified instances of past discrimination that violated the Constitution or a statute" remains a "compelling interest[] that permit[s] resort to race-based government action." 600 U.S. at 207—if race-neutral actions done with a mere awareness of race, *cf. id*. at 299-300 (Gorsuch, J., concurring), can be considered "race-based" at all.

1. *SFFA* addressed a categorically different use of race. The Court was careful to distinguish universities' affirmative-action programs from §2's discriminatory-results analysis, which this Court devised to interpret a congressional statute. *Id*. at 207. *SFFA* approvingly cited *Shaw* v. *Hunt*, 517 U.S. 899, 909-910 (1996), as part of the Court's acknowledgement that compliance with federal statutes can permit the remedial use of race. *See SFFA*, 600 U.S. at 207. And the concurring Justices all agreed that race-neutral actions need not trigger strict scrutiny even if they are aimed at addressing racial disparities or involve awareness of race. *See, e.g., id*. at 299-300 (Gorsuch, J., with Thomas, J., concurring); *id*. at 317 (Kavanaugh, J., concurring).

Unlike affirmative-action programs, §2 does not seek to remediate *amorphous* "[s]ocietal discrimination." *City of Richmond* v. *J.A. Croson Co.*, 488 U.S. 469, 497 (1989). Absent "some basis for believing a constitutional or statutory violation [has] occurred," nonremedial *SFFA*-

type programs "could be used to 'justify' race-based decisionmaking essentially limitless in scope and duration." *Id*. at 497-498 (citation omitted). But in applying §2, as *Shaw* explains (and *SFFA* cites), a State may use race "in remedying the effects of past or present racial discrimination" where the State's actions target "*identified* discrimination." *Shaw*, 517 U.S. at 909-910 (emphasis added); *accord Croson*, 488 U.S. at 500-501.

A court can thus order remedial districting under §2 only after "identified discrimination" is *already* proved. *Shaw*, 517 U.S. at 909; *see SFFA*, 600 U.S. at 207 (favorably citing *Shaw*). Plaintiffs must demonstrate, based on the most recent census and electoral results, that race operates within the State's chosen electoral scheme to deny equal electoral opportunity to minority voters. *Milligan*, 599 U.S. at 30. States can therefore engage in remedial redistricting only where a State has "good reasons" to believe that current conditions demonstrate a likely §2 violation. *Cooper* v. *Harris*, 581 U.S. 285, 292-293 (2017); *cf. Bethune-Hill* v. *Va. State Bd. of Elections*, 580 U.S. 178, 195-196 (2017).

2. Remedial redistricting also coheres with *SFFA*'s discussion of narrow tailoring. 600 U.S. at 207. Section 2 allows flexible remedies, and *Gingles* ensures such remedies are narrowly tailored to the identified violation and permit only limited use of race or (increasingly often, as here) no consideration of race at all.

Remedying a §2 violation does not require employing racial targets. *See Abrams* v. *Johnson*, 521 U.S. 74, 93 (1997) (rejecting a "methodology of calculating" electoral opportunity in remedial districts "based on strict racial percentages" rather than election results). Remedies can be drawn based on traditional districting principles, nonracial socioeconomic data, and communities of

interest. *Lawyer* v. *Dep't of Just.*, 521 U.S. 567, 581-583 (1997); *Abrams*, 521 U.S. at 93. And §2 can be satisfied *without* racial targets using crossover districts where "members of the majority help a 'large enough' minority to elect its candidate of choice." *Cooper*, 581 U.S. at 303; *Bartlett*, 556 U.S. at 24 (plurality). Moreover, §2 remedies can involve cumulative or limited voting systems, which do not involve race or districting at all. *See, e.g., Branch* v. *Smith*, 538 U.S. 254, 309-310 (2003) (O'Connor, J., with Thomas, J., concurring); *United States* v. *Vill. of Port Chester*, 704 F. Supp. 2d 411, 453 (S.D.N.Y. 2010). If a "race-neutral alternative" satisfies §2, then one need never resort to race-based action. *Wis. Legislature v. Wis. Elections Comm'n*, 595 U.S. 398, 406 (2022).

Tellingly, every successful recent VRA case in Alabama has used race-neutral remedies, except one. *See Jones* v. *Jefferson Cnty. Bd. of Educ.*, No. 2:19-CV-01821, 2019 WL 7500528, at *5 (N.D. Ala. Dec. 16, 2019) (crossover districts drawn using school zones); *Ala. State Conf. of NAACP* v. *City of Pleasant Grove*, No. 2:18-CV-02056, 2019 WL 5172371 (N.D. Ala. Oct. 11, 2019) (cumulative voting); *Dillard v. Chilton Cnty.*, 615 F. Supp. 2d 1292, 1294-95 (M.D. Ala. 2009) (same); *United States* v. *City of Calera*, No. CV-08-BE-1982-S, 2009 WL 10730411 (N.D. Ala. Oct. 23, 2009) (limited voting); *but see Allen* v. *City of Evergreen*, No. 13-CV-107, 2013 WL 1163886 (S.D. Ala. Mar. 20, 2013).

3. This case only underscores §2's consistency with *SFFA*. The parties stipulated that the Special Master's cartographer drew the remedial plan "race blind," using *only* "nonracial characteristics." App.531-532. He never pursued racial targets and reviewed racial data *only after* finishing his maps. *Id.*; *see also* App.76. This Court has consistently held that maps drawn "race blind" are

constitutional. *See, e.g*., *Alexander*, 602 U.S. at 22; *Lawyer*, 521 U.S. at 581.

B. Alabama's Arguments to the Contrary Are Unpersuasive.

Alabama argues (at 18-25) that §2 breaches *SFFA*'s guardrails. This is incorrect.

1. Section 2 Uses Race in a Limited Manner.

a. Section 2 instructs courts to consider the "totality of circumstances." 52 U.S.C. § 10301(b). Alabama wrongly argues (at 19) that this Court should ignore that congressional command because its goals "are not sufficiently coherent for purposes of strict scrutiny."

The three *Gingles* "preconditions" use objective evidence, like maps and statistics derived from the latest census. *Milligan*, 599 U.S. at 18. Only if plaintiffs satisfy these preconditions—and many cannot—do courts "conduct 'an intensely local appraisal'" that is "peculiarly dependent upon the facts of each case." *Id.* at 19 (citation omitted).

This fact-specific inquiry nonetheless includes various bright-line rules. If the geographic distribution of minorities under the latest census does not permit the creation of an additional, reasonably configured majority-minority district, there is no violation. *See id.* at 18. If race predominates in an illustrative district's creation, plaintiffs will fail. *Id*. at 31 (plurality); App.114-115. If voting is not racially polarized, then plaintiffs will fail. *Cooper*, 581 U.S. at 302. If the "totality" does not reveal the present-day effects of discrimination affecting political opportunity, there is no violation. *Wis. Legislature,* 595 U.S. 405-06; *cf.* App.402-412. And if partisanship, not race, drives electoral defeats, plaintiffs fail. *See Gingles*, 478 U.S.

at 83 (White, J., concurring); *Whitcomb*, 412 U.S. at 152-153; *cf.* App.384-393.

In short, the *Gingles* framework limits itself to "those instances of intensive racial politics where the excessive role of race in the electoral process . . . denies minority voters equal opportunity to participate." *Milligan*, 599 U.S. at 30 (cleaned up). Section 2 operates with sufficient precision.

Alabama nevertheless contends that §2's test is arbitrary, pointing to two cases. J.S.12, 19 n.4 (citing *Ala. Legis. Black Caucus* v. *Alabama* ("*ALBC*"), 989 F. Supp. 2d 1227 (M.D. Ala. 2013), *rev'd on other grounds*, 575 U.S. 254 (2015); *Ala. State Conf. of NAACP* v. *Alabama* ("*NAACP*"), 612 F. Supp. 3d 1232 (M.D. Ala. 2020)). *ALBC* and *NAACP* are nothing like this case. The *ALBC* plaintiffs failed to present an acceptable illustrative map; thus, the district court's "totality" analysis was cursory. 989 F. Supp. 2d at 1286. Here, the record contains extensive findings on these issues, including new evidence of intentional discrimination, racial polarization, and racial appeals unavailable in 2013. *See supra* at 8-13. The *NAACP* court also found that plaintiffs failed at the illustrative-map stage. 612 F. Supp. 3d at 1270. The court's secondary rationale for rejecting a §2 challenge to Alabama's at-large, statewide state-appellate court scheme was that partisanship, not race, drove Black candidates' losses. *Id*. at 1291. The court below expressly found that the record here reveals the opposite. App.387-388. Indeed, Alabama's expert testified below that, after correcting a "material error" in his regression analysis in *NAACP*, "he could not rule out that Black candidates were penalized at the polls on account of race." App.386-387. When different courts apply a fact-bound test to different records and reach

different conclusions, it shows the test is working, not arbitrary.

b. In *Callais*, the United States filed an amicus brief criticizing the district court here. Supp. Br. for the United States 20-29, *Louisiana* v. *Callais*, Nos. 24-109 & 24-110 (Sept. 24, 2025) [hereinafter "U.S. Br."]. The United States's approach is wrong for three reasons.

First, the United States proposes that Plaintiffs' maps had to be "*superior* to the State's under the State's own race-neutral districting principles." U.S. Br. 23. But many such principles are "malleable" or "surprisingly ethereal." *Bethune-Hill*, 580 U.S. at 190. This rule would invite the States to invent bespoke principles in attempts to unjustly insulate State maps from §2 challenges while continuing to dilute minority votes, as Alabama did here. App.422-423. Far from vindicating §2, this proposal swallows it. *See* Supp. Reply Br. for Robinson Appellants 42 (Oct. 3, 2025).

Second, the United States proposes that a plaintiff's illustrative maps must also match any partisan tilt in the State's enacted plan. This proposal misreads *Rucho* v. *Common Cause*, which merely held that partisan gerrymandering is non-justiciable. 588 U.S. 684, 718 (2019). *Rucho* did "not condone excessive partisan gerrymandering," and recognized that "such gerrymandering is 'incompatible with democratic principles.'" *Id.* at 719 (citation omitted). Partisanship is not a neutral criterion akin to the traditional redistricting criteria relevant under *Gingles I*. Indeed, because Alabama and others have long employed race for partisan ends, *supra* at 15, even in racial gerrymandering cases, using "race as a proxy" for "political interest[s]" is "prohibit[ed]." *Miller* v. *Johnson,* 515 U.S. 900, 914 (1995); *see also Cooper*, 581 U.S. at 308 n.7; *Easley* v. *Cromartie*, 532 U.S. 234, 266-267 (2001) (Thomas, J., dissenting). The United States

cites nothing to support the notion that partisanship can override "the purposes of the Fifteenth Amendment." *Milligan*, 599 U.S. at 41 (citation omitted).

This proposal is also foreclosed by §2's text and precedent. Section 2 is violated when minorities have "less opportunity" to elect their preferred candidates. 52 U.S.C. § 10301(b). Consistent with §2's text, *LULAC* and *Milligan* found illustrative maps were reasonable even though they did not satisfy the States' goals of incumbent protection and core retention. As *Milligan* explained, prioritizing goals like core retention would wrongly permit "a State [to] immunize from challenge a new racially discriminatory redistricting plan simply by claiming that it resembled an old racially discriminatory plan." 599 U.S. at 22; *see also LULAC*, 548 U.S. at 441 (rejecting incumbency protection as a §2 defense). The "partisan match" proposal fails for the same reason: it would effectively freeze in place dilutive maps.

Third, the United States's approach would make it impossible to succeed even when the State intentionally dismantles existing opportunity districts since the State could simply point to its partisan or incumbent protection goals. *Cf. Milligan*, 599 U.S. at 37 ("Demonstrating discriminatory intent . . . 'does not require a plaintiff to prove that the challenged action rested *solely* on racially discriminatory purpose[.]') (citation omitted). That danger exists regardless of which party has created the dilutive map. *See, e.g.*, *LULAC*, 548 U.S. at 440-441; *Black Pol. Task Force* v. *Galvin*, 300 F. Supp. 2d 291, 313-314 (D. Mass. 2004). The United States's proposal would render § 2 a dead letter. That is not, and cannot be, the law.

The United States offers its "partisan match" proposal to stop plaintiffs from repackaging partisan-gerrymandering claims as §2 claims. U.S. Br. 26. But §2 claims *already* fail if

partisanship (but not race) is driving polarization and electoral inequalities, App.384-393. Where, as here, *id.,* the evidence shows *race-based* polarization, there is no danger of partisan manipulation.

Here, contrary to the United States's assertions, the court below found (and the record shows) that race did not predominate in Plaintiffs' illustrative maps, App.363; that Plaintiffs' maps were often superior to SB5, App.329; that SB5 was not enacted for partisan ends, App.524; that race (not partisanship) drives voting in Alabama, App.385-393; and that Alabama has a recent history of intentional discrimination in redistricting and elsewhere, App.398-400. Thus, Alabama violated §2 under any version of *Gingles* that preserves §2's core goals.

2. Section 2 Does Not Employ Race as a Stereotype or a Negative.

Contrary to Alabama's claims (at 20-22), remedial redistricting is not predicated on "racial stereotyping."

Section 2 requires plaintiffs to adduce empirical evidence to *prove* that there is consistent racially polarized voting. *Milligan*, 599 U.S. at 18; *Gingles*, 478 U.S. at 46. In this case, for example, the district court relied on a recent record of official discrimination, App.396, 400-401, and expert testimony that Black Alabamians are extremely politically cohesive, App.365-367; *see supra* at 11-12. It was *Alabama's* experts who the court found had relied on stereotypes, musing about racial differences in I.Q., App.380, and "opin[ing] about Alabama without first learning about Alabama," App.382.

3. Section 2 Imposes Temporal Limits on Remedies.

Finally, Alabama wrongly suggests (at 23-25) that race-based districting must have an "end-point."

No remedy is permanent. Residential, voting, and other patterns change over time. *Milligan*, 599 U.S. at 28-29. Where new census data reveals population changes, §2 permits neither liability, nor race-based remedies. *See, e.g.*, *Cooper*, 581 U.S. at 302-304, 306. Each census provides an end point for a remedial plan. Here, for example, the court's order lasts only until Alabama enacts a new plan "based on 2030 census data." App.1020-1021.

More fundamentally, this Court has never imposed an atextual expiration date on a federal civil rights statute, and for good reason. Bans on racial discrimination in private employment and housing are permanent. *See, e.g.*, *Jones* v. *Alfred H. Mayer Co.*, 392 U.S. 409, 412-413 (1968). And while a particular order may eventually elapse, *Board of Education of Oklahoma City Public Schools v. Dowell*, 498 U.S. 237, 247-48 (1991), this Court has never suggested that the Civil Rights Act's ban on school segregation will one day expire because a particular violation may require race-based remedies. *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 31-32 (1971). So too with §2 and its built-in guards against unnecessary race-based remedies.

III. SECTION 2 IS PRIVATELY ENFORCEABLE.

Plaintiffs brought their §2 claims both directly under the statute and 42 U.S.C. § 1983. The district court correctly held that Plaintiffs had the right to do so. App.428-453.

1. Precedent required that conclusion. In *Morse* v. *Republican Party of Virginia*, this Court's majority concluded that §2 is "enforceable by private action." 517 U.S. 186, 232 (1996) (opinion of Stevens, J., joined by Ginsburg, J.); *accord id.* at 240 (Breyer, J., concurring joined by O'Connor & Souter, JJ.). Private plaintiffs have brought *every one* of the "legions of" §2 cases in this Court. App.449. Just months ago, this Court stayed a lower court decision holding that §2 is not privately enforceable. *Turtle Mtn.*

Band of Chippewa Indians, et al. v. *Howe*, No. 25A62 (July 24, 2025). "[S]tatutory *stare decisis* counsels [] staying the course." *Milligan*, 599 U.S. at 39.

First principles do too. A statute is privately enforceable "where the provision in question is phrased in terms of the persons benefited, and contains rights-creating, individual-centric language with an unmistakable focus on the benefited class." *Health & Hosp. Corp. of Marion Cnty.* v. *Talevski*, 599 U.S. 166, 183 (2023) (citation modified).

Section 2 fits that description. Subsection (a) protects "the right of any citizen . . . to vote." 52 U.S.C. § 10301(a). It further "expressly prohibits voting practices that abridge voting rights based on race, color, or language-minority status." App.432-433. Subsection (b), in turn, "expressly discusses the voting rights of persons who are 'members of a class of citizens protected by subsection (a),'" and then "refer[s] twice to 'members of a protected class.'" App.433 (quoting 52 U.S.C. § 10301(b)). "If all of this is not rights-creating language with an unmistakable focus on the benefitted class, it is difficult to imagine what is." App.434-435 (citation modified); *see also* Mot. to Affirm 19-22, *State Bd. of Election Comm'rs* v. *Miss. State Conf. of the NAACP*, No. 25-234 (Oct. 3, 2025).

2. Alabama's contrary arguments are easily dispatched. Alabama contends (at 26) that the provision's "command is directed at 'State[s] and political subdivision[s].'" But a statute's reference to "who it is that must respect and honor . . . statutory rights" does not mean that the statute "fails to secure rights." *Talevski*, 599 U.S. at 185.

While Alabama asserts (at 26) that §2's "concern is the voting strength of racial *groups*, not individual rights," this Court has held that §2's reference to "the right of any citizen" makes clear that the "right to an undiluted vote does not belong to the 'minority as a group,' but rather to

'its individual members.'" *LULAC*, 548 U.S. at 437 (citation omitted).

Alabama stresses (at 26) that a different part of the VRA, 52 U.S.C. § 10308, "expressly" permits enforcement "by the federal government." But that does not preclude a private right of action. *See* App.443. Furthermore, 52 U.S.C. § 10302 is more illuminating. That section "originally provided for special procedures in any action brought" under the VRA by the Attorney General. *Morse*, 517 U.S. at 233 (plurality). But "Congress amended that section to cover actions brought by 'the Attorney General *or an aggrieved person*.'" *Id.* (quoting 52 U.S.C. §§ 10302(a), (b), (c)). The VRA thus now "provide[s] the same remedies to private parties as had formerly been available to the Attorney General alone." *Morse*, 517 U.S. at 233 (plurality).

Finally, Alabama wrongly applies (at 26) the "stringent and demanding" standard this Court has articulated in determining whether "Spending Clause statutes" create private rights. *See Gonzaga Univ.* v. *Doe*, 536 U.S. 223, 280 (2002). But §2 was enacted under the Fifteenth Amendment, not the Spending Clause. Pub. L. No. 89-110, 79 Stat. 437, 437 (1965). A "principal purpose" of § 1983 was to provide a cause of action for violations of "federal legislation providing specifically for equality of rights." *Maine* v. *Thiboutot*, 448 U.S. 1, 7 (1980). Applying a heightened standard here would thwart that purpose. Regardless, even if that standard applied, §2 meets it. *See* App.431-435.

IV. THE DISTRICT COURT'S FINDINGS OF INTENTIONAL DISCRIMINATION ARE NOT CLEARLY ERRONEOUS.

The district court did not clearly err in finding that Alabama intentionally discriminated in passing SB5. This was not a finding of "racism," as Alabama contends. J.S.27.

Rather, the court found that Alabama "enacted a particular voting scheme as a purposeful device to minimize or cancel out the voting potential of racial or ethnic minorities." *Alexander*, 602 U.S. at 38-39. That record supports that finding.[2]

A. The District Court's Finding of Intentional Discrimination Is Supported by a Robust Record.

There were two key sets of undisputed facts underpinning the district court's finding that Alabama intended to discriminate against Black voters in SB5.

The first is how SB5 was enacted. The House first passed the COI Plan, under which Black-preferred candidates would only occasionally win in a second district. App.90, 92; *see supra* at 6 n.1. But even this occasional opportunity was too much for the Senate, which rejected the COI Plan.

Senator Livingston instead introduced a new plan—drawn by an outside consultant—which he knew would destroy the viability of a second opportunity district. App.497-498. SB5 was based on this plan. The Legislature passed it despite knowing that Black-preferred candidates lost in "all seven modeled races by approximately seven points" in SB5's CD2. App.498. And Alabama concedes that SB5 "does not include an additional opportunity district." App.567.

The second set of facts focused on SB5's "legislative findings," which Alabama's Solicitor General drafted unbeknownst to legislators until the morning of SB5's enactment. App.498. He later said that the findings are "essentially . . . describing" the enacted 2023 map. Tr. at

[2] Because the remedy for the §2 and constitutional violations are the same, *see* App.1036 (denying broader remedy), this Court need not reach this issue, *see Escambia Cnty.* v. *McMillan*, 466 U.S. 48, 51 (1984).

162:12-16, *Milligan* v. *Allen*, 2:21-CV-01530-AMM (N.D. Ala. Aug. 18, 2023), Doc. 265.

These "findings" purported to justify SB5's placement of Mobile and Baldwin Counties in one district as a "nonnegotiable" community with European "heritage." App.502, 504-505. In contrast to the focus on heritage there, the "findings" did not mention that the Black Belt "contains a high proportion" of voters who share "a lineal connection to 'the many enslaved people brought there to work in the antebellum period,'" *Milligan*, 599 U.S. at 21.

The findings also marked "sharp departures from . . . Alabama's traditional districting guidelines." App.500. Alabama's Legislature had never before described a redistricting principle as "nonnegotiable" nor enacted similar findings. *Id.* Alabama's 2021 and 2023 guidelines had previously prioritized the "nondilution of minority voting strength" but SB5's findings eliminated this consideration. *Id.* Alabama's guidelines had not identified "specific communities of interest;" the findings did. App.501. And they "exalt and extol one community," the Gulf Coast, "above others." *Id.*

As the court found, these "findings were intended to make the discriminatory vote dilution . . . impossible to remedy." App.505. They were a pretext for continuing to deny Black voters a second opportunity district. App.503-504.

These undisputed facts among others, App.486-515, support the court's conclusion that Alabama intentionally discriminated against its Black citizens.

B. The District Court Applied the Correct Legal Framework, Without Requiring Proof of Racist Intent.

Alabama mischaracterizes the district court's order,

suggesting that the court concluded that legislators acted with racist motives. J.S.27. But the district court expressly disclaimed "accus[ing] any Legislator of being animated by racism." App.490. Instead, it considered whether Alabama "enacted a particular voting scheme as a purposeful device to minimize or cancel out the voting potential of racial or ethnic minorities." *Alexander*, 602 U.S. at 38-39 (citation omitted); *see also Rogers* v. *Lodge*, 458 U.S. 613, 622 (1982) (intentionally "diluting the voting strength of the black population" is "invidious" discrimination).

Such intentional discrimination does not require finding "racist" motives. *See, e.g.*, *Flowers* v. *Mississippi*, 588 U.S. 284, 299 (2019) (holding that *Batson* violations depend on the intent to exclude Black jurors without referencing "racist" motives); *LULAC*, 548 U.S. at 440 (a State's voting law "b[ore] the mark of intentional discrimination," despite legislators' political motives). "[I]ntentional [racial] discrimination without an invidious motive" can still single out voters for adverse race-based treatment. *Garza* v. *Cnty. of Los Angeles*, 918 F.2d 763, 778 n.1 (9th Cir. 1990) (Kozinski, J., concurring in part).

C. Alabama's Attempts To Suggest Alternative Motives Do Not Establish Clear Error.

Alabama asks this Court to reweigh the evidence and credit its alternative explanations. J.S.32-34. But the record supports the district court's finding that Alabama's "attempt at a race-neutral rationalization . . . simply fails to explain what [Alabama] did." *Miller-El* v. *Dretke*, 545 U.S. 231, 260 (2005).

1. Alabama contends (at 29-30) that the district court treated its preliminary injunction "as a final order" and failed to afford Alabama the presumption of good faith. That is unfounded.

The district court began by presuming that the

Legislature acted in good faith. App.488. Its intent analysis focused on how Alabama shut Black voters out of a second opportunity district in 2023 by passing the worst-performing map among those it considered, App.495, 507-508, which Representative Pringle admitted likely "did not satisfy" the VRA, App.496. Alabama is similarly misguided in its contention that the decision below "condemn[s] all defendants who keep litigating after being preliminarily enjoined." J.S.31-32 (citing *Abbott*, 585 U.S. at 613). Alabama did not simply "keep litigating." It refused to provide the remedy required by the order affirmed by this Court. Unlike in *Abbott*, the district court placed the burden on Plaintiffs to prove discriminatory intent, App.486-490, and did not make Alabama disprove discrimination in its 2023 map. 585 U.S. at 603-604. Further, unlike in *Abbott*, Alabama made *zero* effort to correct the court-identified §2 violation. App.488-489; *cf*. *Abbott*, 585 U.S. at 590.

2. The district court also properly rejected Alabama's argument (at 31-32) that SB5 was an attempt to "cure[] the alleged inconsistent treatment of the Black Belt and Gulf Coast" and thus comply with §2. App.518.

The record shows that Alabama had multiple ways to join Baldwin and Mobile Counties while improving Black electoral opportunities. For example, the *Singleton* plaintiffs' "whole county" plan kept those counties together *and* created two districts that usually performed for Black-preferred candidates. Special Master Report at 33, No. 2:23-CV-1530, (N.D. Ala. Sept. 25, 2023), Doc. 295. The House-passed COI Plan likewise kept these counties together in an additional district where Black-preferred candidates could *very rarely* win. App.494; *supra* at 6 n.1. Alabama nevertheless passed SB5 where it knew Black-preferred candidates would *never* win in a second district.

App.495-498.

3. The record also belies Alabama's claim (at 32-33) that SB5 was driven by "constitutional concerns." App.520-522.

In *Milligan*, this Court rejected Alabama's theory that any plan connecting Mobile with the Black Belt was a racial gerrymander since Alabama could have drawn §2-compliant maps without racial predominance. 599 U.S. at 34 n.7. Thus, as the district court concluded, Alabama had no reason for "concern[] that splitting Mobile County exposed it to a racial gerrymandering claim." App.522. Indeed, no legislator raised such a concern. *Id*.

4. Alabama finally argues that the district court erred by "rul[ing] out" Alabama's "partisan and political goals [as] a 'plausible explanation.'" J.S.33 (quoting *Alexander*, 602 U.S. at 27). But Alabama's cited case involved an "analytically distinct" racial-gerrymandering claim, *Alexander*, 602 U.S. at 38-39, where legislators said "partisanship was one of the most important factors" in their map-drawing process, *id*. at 13.

Not so here. App.523-529. Defendant Co-Chairs both denied any partisan motives. App.524. Alabama points to nothing that can overcome Defendants' own testimony on clear-error review. *See Anderson* v. *City of Bessemer City*, 470 U.S. 564, 573 (1985). Moreover, partisanship does not explain why Representative Pringle refused to introduce SB5. App.420-421. Nor why SB5's findings contain a "singular reference to the [European] heritage of the majority-White" Gulf Coast region while simultaneously "delet[ing] [] any description" of the Black Belt's heritage, App.504-505, and "eliminat[ing] the [prior] express requirement that a plan not dilute minority voting strength," App.21. And partisanship does not explain SB5's treatment of Selma. App.497.

Even if partisanship were an unspoken goal, Alabama pursued that goal through racial means. Indeed, Senator Livingston's consultant (who drafted the map that became SB5) used CD2's BVAP as his only metric for determining how safe CD2 was for the White Republican incumbent. App.99-100. Even in racial-gerrymandering cases, "the sorting of voters on the grounds of their race remains suspect even if race is meant to function as a proxy for other (including political) characteristics." *Cooper*, 581 U.S. at 308 n.7.

CONCLUSION

This Court should summarily affirm the decision below.

Respectfully submitted,

DEUEL ROSS
Counsel of Record
VICTOR OLOFIN
NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC.
700 Fourteenth St., NW
Washington, DC 20005
(202) 682-1300
dross@naacpldf.org

DAVIN M. ROSBOROUGH
SOPHIA LIN LAKIN
THERESA J. LEE
DAYTON CAMPBELL-HARRIS
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad St.
New York, NY 10004

CECILLIA D. WANG
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
425 California St., Suite 700
San Francisco, CA 94104

JANAI NELSON
SAMUEL SPITAL
STUART NAIFEH
KATHRYN SADASIVAN
BRITTANY CARTER
COLIN BURKE
NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC.
40 Rector St., 5th Floor
New York, NY 10006

JESSICA L. ELLSWORTH
JO-ANN TAMILA SAGAR
DAVID DUNN
SHELITA STEWART
MICHAEL J. WEST
AMANDA N. ALLEN
HOGAN LOVELLS US LLP
555 Thirteenth St., NW
Washington, DC 20004

ALISON MOLLMAN
LAUREL HATTIX
ACLU OF ALABAMA
PO Box 6179
Montgomery, AL 36106

MICHAEL TURRILL
HARMONY A. GBE
JAY ETTINGER
HOGAN LOVELLS US LLP
1999 Avenue of the Stars, Suite 1400

SIDNEY M. JACKSON
NICKI LAWSEN
WIGGINS CHILDS PANTAZIS FISHER & GOLDFARB, LLC

Los Angeles, CA 90067

JOHANNAH CASSEL-WALKER
HOGAN LOVELLS US LLP
4 Embarcadero Center,
Suite 3500
San Francisco, CA 94111

301 19th St. North
Birmingham, AL 35203

CHARNICE CULMER
HOGAN LOVELLS US LLP
1735 Market St., Floor 23
Philadelphia, PA 19103

Counsel for Appellees

OCTOBER 2025