IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

CARA MCCLURE, et al., *Plaintiffs*, v. JEFFERSON COUNTY COMMISSION, *Defendant*,	No. 2:23-cv-00443-MHH
ALEXIA ADDOH-KONDI, et al., *Plaintiffs,* v. JEFFERSON COUNTY COMMISSION, *Defendant.*	No. 2:23-cv-00503-MHH

DEFENDANT'S MOTION TO STAY INJUNCTION PENDING APPEAL

This Court has permanently enjoined Defendant Jefferson County Commission from conducting any elections using the 2021 Enacted Plan. *See* Doc. 191. Defendant has appealed that order, *see* Doc. 193, and now moves this Court to stay its injunction pending appeal. Defendant requests that the Court rule on this motion **as soon as possible, and at the latest, by Wednesday, September 24, 2025.**[1] Should

[1] Defendant proposes the following expedited briefing schedule: Plaintiffs' response due by 5 p.m. Monday, September 22; Defendant's reply, if any, due by 12 p.m. Tuesday, September 23.

this Court deny the stay motion, that timing is necessary to afford Defendant time to seek a stay pending appeal from the Eleventh Circuit before the Court's 30-day deadline to "file a joint report on the development of a remedial redistricting plan," Doc. 191 at 139, and before imminent election deadlines. Defendant respectfully notifies the Court that it will move the Eleventh Circuit for a stay pending appeal unless this Court grants this motion on or before September 24, 2025.

LEGAL STANDARD

When a court "grants … an injunction," it may still "suspend" that injunction while "an appeal" from its order "is pending." Fed. R. Civ. P. 62(d). A stay pending appeal is warranted when (1) "the stay applicant has made a strong showing that it is likely to succeed on the merits," (2) "will be irreparably injured absent a stay," (3) a stay will not "substantially injure the other parties interested in the proceeding," and (4) a stay is in "the public interest." *Venus Lines Agency v. CVG Industria Venezolana De Aluminio*, 210 F.3d 1309, 1313 (11th Cir. 2000) (cleaned up); *see also Alabama v. U.S. Sec'y of Educ.*, 2024 WL 3981994, at *3 (11th Cir. Aug. 22, 2024).

In election cases, a stay pending appeal can also issue "while 'expressing no opinion' on the merits." *League of Women Voters of Fla. v. Fla. Sec'y of State*, 32 F.4th 1363, 1371 (11th Cir. 2022). In such cases, "when a lower court has issued an injunction of [an] election law in the period close to an election," a stay must issue to avoid the so-called *Purcell* harm caused by election-law changes that

hamper candidates, officials, and voters preparing for an election. *Id.* at 1370-71 (11th Cir. 2022) (quoting *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring) (collecting cases)); *see Democratic Nat'l Comm. v. Wis. State Leg.*, 141 S. Ct. 28, 31-32 (2020) (Kavanaugh, J., concurring) (citing *Purcell v. Gonzalez*, 549 U.S. 1 2006)). Courts have stayed such injunctions even when plaintiffs had only "a fair prospect of success," *Milligan*, 142 S. Ct. at 881 n.2 (Kavanaugh, J., concurring), and even when the challenged law was "invalid" but there was insufficient time to alter it, *Reynolds v. Sims*, 377 U.S. 533, 585 (1964). Such a stay will "maintain the status quo until a final decision on appeal" for consequential constitutional questions like that at issue here. *S.C. NAACP v. Alexander*, 2024 WL 1327340, at *2 (D.S.C. Mar. 28, 2024) (granting in part stay pending appeal).

ARGUMENT

I. The Commission is Likely to Prevail on Appeal.

The Eleventh Circuit is likely to find that Plaintiffs did not carry their "especially stringent" burden to prove racial gerrymandering. *Alexander v. South Carolina NAACP*, 602 U.S. 1, 11 (2024). Here, as in *Alexander*, Plaintiffs failed to "untangle race from other permissible considerations," including "core preservation" of the existing districts. *Id.* at 6-7. The Commission's decades-old efforts to comply with §5 of the VRA did not excuse Plaintiffs from that evidentiary showing.

A. Evidence of past compliance with §5 is not evidence of present-day racial gerrymandering.

The county's §5 preclearance submissions to the Department of Justice are not evidence of present-day discrimination. The submissions simply reported the resulting racial demographics of redrawn districts so that DOJ could determine the extent of the changes and whether they would deny or abridge voting rights. *See, e.g.*, Doc. 169-5 at 1081. After all, majority-minority districts can result from a race-neutral redistricting process; meaning, local governments can and do comply with the Voting Rights Act without race predominating. Doc. 172 183:21-184:13 (Fairfax). Jefferson County is no exception. Single-member districts were drawn in 1985 without race predominating while still conforming with the VRA (*i.e.*, "ensur[ing] greater minority representation on the Commission" than what the at-large system allowed, *Yeldell v. Cooper Green Hosp.*, 956 F.2d 1056, 1058 (11th Cir. 1992)). *See* Doc. 177 ¶¶124-36; Doc. 183 at 5-6, 44. And by 2013, the uncontroverted testimony was that the county did not even actively consider the VRA during the legislative process and still, once redistricting was complete, the county was able to report to DOJ that the districts did not diminish or abridge voting rights. Doc. 174 726:17-21 (Stephenson). Unlike preclearance submissions from other jurisdictions, the county's submissions never announced any racial target or a goal of moving voters based on their race. *Compare, e.g.*, *Clark v. Putnam County*, 293 F.3d 1261, 1275, 1267 & n.17 (11th Cir. 2002) (§5 submission reporting that "black voting strength

in Putnam County has been maximized" by including "every contiguous census block which would have the effect of increasing the black percentage in the two majority black voting districts"), *with* Doc. 169-2 at 2 (Jefferson County's 1985 §5 submission describing the "anticipated *effect* of the change" was that Black voters "will have a greater opportunity to elect 2/5 or 40% of the County Commission positions" (emphasis added)). At most, the §5 submissions reveal an awareness of the racial makeup of districts after redistricting was complete, "but it does not follow" from mere awareness "that race predominates in the redistricting process." *Miller v. Johnson*, 515 U.S. 900, 916 (1995).

Even assuming race somehow predominated in past plans, the Eleventh Circuit, like the Supreme Court, has "rejected the argument that 'a racist past is evidence of current intent.'" *LWV v. Fla. Sec'y of State*, 66 F.4th 905, 923 (11th Cir. 2023); *McCleskey v. Kemp*, 481 U.S. 279, 298 n.20 (1987); *GBM v. Sec'y of State for State of Ala.*, 992 F.3d 1299, 1325 (11th Cir. 2021). What matters is whether the 2021 changes to districts can be explained only by race. *See Abbott v. Perez*, 585 U.S. 579, 605 (2018); *Alexander*, 602 U.S. at 7. Past §5 compliance does not reveal a present-day intent to discriminate.

B. Commissioners' statements are not direct evidence of intentional discrimination.

As for what occurred during the 2021 redistricting process, there was only one express reference to the racial demographics (and politics) of only one district—and

coming only *after* the whole Commission voted to adopt the Enacted Plan. That is too thin a reed to rest a finding of racial gerrymandering. *See Allen v. Milligan*, 599 U.S. 1, 30 (2023) (citing *Miller*, 515 U.S. at 916) (discussing difference "between being aware of racial considerations and being motivated by them"). Commissioner Tyson mentioned both the racial demographics *and* politics of three distinct areas; at no point did she say those areas were added to her District 2 *because of* race. Doc. 170-8 39:1-40:19. Moreover, the idea that these statements revealed an intent to pack Black individuals into District 2 is contrary to undisputed evidence that Commissioner Tyson's District 2 *declined* in Black population. Doc. 170-16 at 22; Doc. 172 86:8-16; Doc. 173 308:5-8. Not even Mr. Fairfax could conclude there was evidence of racial predominance in the drawing of Commissioner Tyson's District 2. Doc. 172 84:9-17 (testifying that he could not "see demographic shifts in District 2 that evidence racial predomination"). As the Commission has argued, Doc. 177 ¶¶240-44, 355, 469; Doc. 183 at 143-44, 193-97, applying the presumption of legislative good faith, Commissioner Tyson's comments should be read as an after-the-vote defense of her district in the face of Commissioner Scales's public criticisms about the Republican *politics* of areas added to District 2, not evidence of

predominant racial purpose *during* redistricting by the entire Commission. *See LWV*, 32 F.4th at 1373; *Alexander*, 602 U.S. at 10, 22.[2]

C. Plaintiffs failed to untangle race from non-racial explanations.

The Eleventh Circuit is likely to find that Plaintiffs did not abide by the evidentiary standards set out in the Supreme Court's most recent racial gerrymandering decision, *Alexander*. For Plaintiffs to prove that "[r]ace was the criterion that … could not be compromised," they needed to "untangle race from other permissible considerations," including "core preservation," *Alexander*, 602 U.S. at 7. Plaintiffs failed to rule out the "possibility" that such nonracial priorities explain the Enacted Plan. *Id.* at 20.

1. Plaintiffs never disputed that core retention explains the Enacted Plan. And when Plaintiffs' expert, Dr. McCartan, accounted for core retention in his simulations analysis, he agreed that the racial demographics of majority-Black Districts 1 and 2 of the Enacted Plan resemble tens of thousands of race-neutral simulations controlling for core retention; they are *not* outliers. Doc. 169-26 ¶36; Doc. 170-17 at 4; Doc. 174 633:14-21, 641:20-23. *Contra* Doc. 191 ¶¶179, 182 n.29, p.128 n.45. So Plaintiffs took a different tack—they advanced alternative plans that simply

[2] Mr. Simelton's and Mr. Hall's testimony about what Commissioner Tyson purportedly told them, *see* Doc. 191 ¶¶236-37, was inconsistent with Commissioner Tyson's statements from the dais, her seconding the motion to approve the Enacted Plan, and the undisputed decline in BVAP in her district in the Enacted Plan, *see* Doc. 170-16 at 22; Doc. 172 86:8-16; Doc. 173 308:5-8.

ignored core retention in their pursuit of achieving "greater racial balance." *Alexander*, 602 U.S. at 10. Only Cooper Plan D attempted to control for core retention but still fell short of the core retention of the Enacted Plan, significantly redrawing Districts 1 and 4 with the effect of pairing incumbents, splintering Birmingham more than the Enacted Plan, and exceeding the Commission's stated +/-1% population deviation standard. Doc. 169-85; Doc. 170-16 at 7, 9, table 3; Doc. 169-76; Doc. 173 322:13-14, 328:13-14, 330:25-331:2, 333:19-20. Such alternative plans are not evidence of racial gerrymandering. *See Alexander*, 602 U.S. at 27-29.

The county's past §5 compliance is not grounds for distinguishing *Alexander*. *Contra* Doc. 191 at 129 n.44. Explained above, Plaintiffs did not carry their burden to prove that race predominated in past redistricting cycles based on the §5 correspondence. *Supra*, I. At the very least, Plaintiffs did not carry their burden to prove that race predominated to such a degree in past redistricting cycles that it should, in the manner of "original sin," taint the Enacted Plan. *Abbott*, 585 U.S. at 603; *GBM*, 992 F.3d at 1325. During the 2013 redistricting cycle, the VRA was not discussed until after districts were adopted and the county submitted required preclearance data to DOJ. Doc. 174 726:17-21 (Stephenson); *see also* Doc. 172 183:21-184:13 (Fairfax). Just as Plaintiffs had to rule out core retention to explain the redrawn congressional district in *Alexander*, 602 U.S. at 24-25, 33, Plaintiffs had to rule out core retention here too.

2. Nor have Plaintiffs ruled out other explanations as *Alexander* requires. For example, anchoring Districts 1 and 2 in Birmingham has long explained the county's districts and the resulting racial demographics of those districts. Plaintiffs showed how Mr. Cooper could achieve a different "racial balance," *Alexander*, 602 U.S. at 10, by splintering Birmingham; his Plan D keeps only 81% of Birmingham in Districts 1 and 2, compared to 95% in the Enacted Plan. Doc. 175 758:23-759:2; Doc. 170-16 at 9, table 3; Doc. 169-85. Likewise, Plaintiffs failed to rule out the political explanation for 2021 district lines by ignoring the undisputed political reality that the five Commissioner incumbents would rather their districts stay largely the same than be redrawn. Doc. 172 82:4-11; Doc. 173 327:18-23; Doc. 175 757:3-12. Plaintiffs showed how Mr. Fairfax could achieve a different "racial balance," *Alexander*, 602 U.S. at 10, by jettisoning core retention and instead prioritizing keeping municipalities together to turn Commission President Jimmie Stephens's district into a Democratic district. Doc. 172 179:13-20; *see also* Doc. 173 328:13-14 (Cooper Plan D pairing incumbents). In sum, Plaintiffs failed to "untangle race" from these nonracial explanations for district lines, meaning they failed to "rule out the possibility" that some nonracial factor "drove the districting process." *Alexander*, 602 U.S. at 24.

II. The Equities and Public Interest Favor a Stay.

A stay pending appeal is warranted because Plaintiffs "unduly delayed bringing the[ir] complaint to court." *Merrill*, 142 S. Ct. at 881 (Kavanagh, J., concurring). The Commission adopted the Enacted Plan in November 2021. Doc. 169-16. By early 2022, the next regularly scheduled elections for County Commissioners were set to proceed. Plaintiffs did not sue to stop them. And when Jefferson County voters re-elected their commissioners to four-year terms in November 2022, Plaintiffs did not sue. It was not until April 2023—seventeen months after redistricting—that Plaintiffs filed their complaints alleging the districts violated the Equal Protection Clause. Doc. 1. And then Plaintiffs waited another three months, until July 2023, to move for preliminary injunctions. Doc. 26. As the litigation unfolded, the Commission moved with the utmost speed. The Commission filed a motion for summary judgment, arguing the case could be completely resolved in 2024. *See* Doc. 99. The Commission tried this case in January 2025, days after summary judgment motions were denied. *See* Docs. 164, 172-75. And the Commission proposed briefing findings of fact and conclusions of law immediately after the end of that January trial. *See* Doc. 175 901:1 (proposing a one-week deadline, while Plaintiffs proposed a two-week deadline).

The Commission's opportunity for appellate review should not be foreclosed as a consequence of Plaintiffs' own decision to wait well over a year to challenge

the districts. *Compare Grace, Inc. v. City of Miami*, 2023 WL 5286232, at *2 (11th Cir. 2023) (staying an injunction of a local redistricting plan in light of the plaintiffs' nine-month delay), *and Tenn. NAACP v. Lee*, 105 F.4th 888, 898 (6th Cir. 2024) (staying injunction where NAACP delayed litigation), *with* Doc. 54 at 29 (denying PI due to "plaintiffs[']' seeming lack of urgency"). Plaintiffs never explained why they waited so long to sue. And yet, but for that delay, the parties could have tried this case and appealed it well before the 2026 elections. This undue delay naturally counsels against any claim they have to irreparable harm. *Tenn. NAACP*, 105 F.4th at 898.

Plaintiffs cannot be found to be irreparably harmed by waiting for appellate review of important constitutional questions—for example, whether §5 correspondence amounts to unconstitutional intent—when they allowed the 2022 elections to pass and then waited still months more before challenging the districts. *See* Doc. 54.

On the other side of the ledger, as a governing body, the Commission's "interest and harm merge with the public interest." *Swain v. Junior*, 958 F.3d 1081, 1091 (11th Cir. 2020). And here, the "inability" to conduct elections under a "duly enacted" redistricting plan "clearly inflicts irreparable harm" on the Commission and the public it represents. *See Abbott*, 585 U.S. at 602 n.17; *accord Trump v. CASA, Inc.*, 606 U.S. 831, 860-61 (2025). That harm is most severe here, where the districts resulting from the 2021 race-neutral redistricting process will be substituted

with a race-based remedial process, where Plaintiffs seek to rebalance the racial demographics of districts. The remedial stage will see Black voters uprooted from Districts 1 and 2 and moved to Districts 3 and 4 on account of their race. *See, e.g.*, Doc. 191 at 133, 135 (identifying alternative precincts that could have been moved into districts to achieve a different racial balance). That is "offensive and demeaning," both for the Commission but especially for the voters who will be reassigned "on the basis of race," *Miller*, 515 U.S. at 911-12, even when for "remedial" purposes, *Shaw v. Hunt*, 517 U.S. 899, 905 (1996). Equity favors maintaining the existing districts pending an appeal of the novel theory advanced by Plaintiffs that past §5 compliance was "[r]emedial racial gerrymandering," Doc. 191 at 88, sufficient to taint districts drawn in 2021 and enjoin their use.

III. The Timing Requires a Stay.

A stay allows the remaining issues to be litigated and appealed expeditiously, not rushed before 2026 election deadlines commence and foreclosing an appeal. Without a stay, the Commission will have only weeks to litigate and implement redrawn commission districts, and no time for appellate review, before the first election deadline in November. That is too little time. Stephenson Decl. ¶21. A stay is warranted. *See LWV*, 32 F.4th at 1371-72.

A. There is not enough time to implement new districts.

Districts to be used in the 2026 commission elections must be final by **October 20, 2025**. Stephenson Decl. ¶21. Anything later will jeopardize efforts by county elections officials, harm prospective candidates, and cause confusion for voters.

No later than November 3, 2025, all prospective candidates for county commission must live in the district they seek to represent. Ala. Code §45-37-72(d); *see* Stephenson Decl. ¶¶7, 17. Candidates must have sufficient time to comply with that one-year residency requirement before it commences. For example, if the Court were to adopt Cooper Plan D as a remedial plan, one of the paired commissioners must move before November 3, 2025, to avoid running against his or her fellow commissioner in 2026. And before district lines can be used, the county must first inspect and address any errors in redrawn district lines—for example, conforming to county precincts and not the census-designated VTD lines that Plaintiffs have used throughout this litigation—and then update the districts in its election administration software. Stephenson Dec. ¶19. The public, including prospective candidates, should also be afforded at least two weeks' time to see districting changes. Stephenson Dec. ¶20; *see also* Ala. Code §11-3-1.1(c). To accomplish all that before the November 3 candidate residency deadline, district lines should be sufficiently finalized by October 20.

Only weeks remain before that October deadline. In that time, litigants would have to propose new districts; then litigants would have to respond to such proposals, including with remedial-stage expert reports and further testimony; then this Court would have to assess the proposals, including with the help of a special master if appointed; and finally the county would have to implement any chosen proposal and address any errors. *See, e.g.*, *Singleton v. Allen*, 2023 WL 6567895, at *3-12 (N.D. Ala. Oct. 5, 2023) (detailing the hurried district court proceedings that occupied the four months immediately following *Allen v. Milligan*, 599 U.S. 1 (2023)); *see also* Stephenson Decl. ¶19 (identifying possible delays in the implementation of proposals should parties propose remedies drawn on census-designated "VTD" lines instead of the county precinct lines used in elections administration). At the same time, the county has mere weeks to seek the Eleventh Circuit's review of this Court's decision that the existing districts are unconstitutional, and virtually no time to appeal any remedial decision replacing those districts.

B. Given the timing, *Purcell* warrants a stay.

It is a "bedrock" principle that federal courts not "re-do … election laws in the period close to an election," *Merrill*, 142 S. Ct. at 880-81 (Kavanaugh, J., concurring), given the county's "compelling interest in preserving the integrity of its election process." *Purcell*, 549 U.S. at 4; *see Democratic Nat'l Comm.*, 141 S. Ct. at 31 (Kavanaugh, J., concurring) (similar). In *League of Women Voters*, the Eleventh

Circuit explained how "'orders affecting elections'" can "result in voter confusion," a risk that "only increases as an election draws closer." 32 F.4th at 1371. In cases ordering district lines to change, voters "do not know who will be running against whom"; "candidates cannot be sure what district they need to file for" or "which district they live in"; and incumbents do not know "if they now might be running against other incumbents in the upcoming primaries." *Merrill*, 142 S. Ct. at 880 (Kavanaugh, J., concurring). To "avoid chaos and confusion," statutory deadlines governing elections must be met. *Id.*

Here, this Court's order comes too close to "important, interim deadlines." *Thompson v. Dewine*, 959 F.3d 804, 813 (6th Cir. 2020); *cf. Tenn. NAACP*, 105 F.4th at 898 (reasoning that "registration deadline provide[d] the more accurate date to evaluate the injunction's timeliness" because "the injunction change[d] registration rules"). And it leaves *no time* for the Eleventh Circuit to review the injunction, let alone the lawfulness of any substitute remedial plan, in advance of the 2026 elections. *But see City of Miami*, 2023 WL 5286232, at *3; *Petteway v. Galveston Cnty.*, 87 F.4th 721, 723 (5th Cir. 2023) (en banc) (Oldham, J., concurring) (factoring time for appellate review into *Purcell* calculus). This Court should stay the injunction pending appeal so the parties can fully litigate and expeditiously appeal the remaining issues.

CONCLUSION

This Court should rule on the Commission's motion as soon as possible, **and at the latest, by Wednesday, September 24, 2025**.

Dated: September 18, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 18, 2025, I served the foregoing document with the Clerk of Court using the Court's ECF system, thereby serving all counsel who have appeared in this case.

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