

No. 25-13253
(consolidated with No. 25-13254)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

CARA MCCLURE, ET AL.,

Plaintiffs-Appellees,

v.

JEFFERSON COUNTY COMMISSION,

Defendant-Appellant.

On Appeal from the United States District Court for the
Northern District of Alabama, No. 2:23-cv-00443 (Haikala, J.)

APPELLANT'S SUPPLEMENTAL BRIEF

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TABLE OF CONTENTS

Table of Authorities	ii
Introduction	1
Argument	3
I. <i>Callais</i> updated a §2 plaintiff’s evidentiary burden, consistent with <i>Alexander’s</i> burden for plaintiffs alleging racial gerrymandering.....	3
A. <i>Callais</i> “updated” evidentiary standards for §2 plaintiffs.....	3
B. <i>Alexander</i> already settled Plaintiffs’ evidentiary burden.	6
C. <i>Callais</i> and <i>Milligan</i> did not alter <i>Alexander’s</i> legal framework for this racial gerrymandering case.	10
II. Remanding for further proceedings is not warranted.....	14
Conclusion.....	15
Certificate of Compliance.....	17
Certificate of Service	17

TABLE OF AUTHORITIES

Cases

<i>Abbott v. League of United Latin Amer. Citizens</i> , 146 S. Ct. 418 (2025)	1, 7, 15
<i>Abbott v. LULAC</i> , 2026 WL 1127246 (U.S. Apr. 27, 2026)	7
<i>Abbott v. Perez</i> , 585 U.S. 579 (2018)	11, 12
<i>Ala. Legis. Black Caucus v. Alabama</i> , 231 F. Supp. 3d 1026 (M.D. Ala. 2017)	11
<i>Alexander v. South Carolina NAACP</i> , 602 U.S. 1 (2024)	1, 2, 3, 4, 6, 7, 8, 9, 10, 12, 13, 15
<i>Allen v. Milligan</i> , 146 S. Ct. 1377 (2026)	1, 2, 5, 6, 13, 14, 15
<i>Bethune-Hill v. Va. State Bd. of Elections</i> , 580 U.S. 178 (2017)	7, 11
<i>Callais v. Landry</i> , 732 F. Supp. 3d 574 (W.D. La. 2024)	4, 11, 12
<i>Clark v. Putnam County</i> , 293 F.3d 1261 (11th Cir. 2002)	9
<i>Cooper v. Harris</i> , 581 U.S. 285 (2017)	7, 11
<i>Easley v. Cromartie</i> , 532 U.S. 234 (2001)	2, 15
<i>Greater Birmingham Ministries v. Sec’y of State</i> , 992 F.3d 1299 (11th Cir. 2021)	11
<i>Hines v. Brandon Steel Decks</i> , 886 F.2d 299 (11th Cir. 1989)	14
<i>Louisiana v. Callais</i> , 146 S. Ct. 1131 (2026)	1, 2, 3, 4, 5, 6, 7, 8, 10, 13, 14, 15
<i>LWV of Fla. v. Fla. Sec’y of State</i> , 66 F.4th 905 (11th Cir. 2023)	11
<i>Miller v. Johnson</i> , 515 U.S. 900 (1995)	3, 6, 11, 15

<i>Nord Hodges v. Albritton</i> , 796 F. Supp. 3d 1082 (M.D. Fla. 2025)	10, 12
<i>Powell v. Sch. Bd. of Volusia Cnty.</i> , 86 F.4th 881 (11th Cir. 2023).....	14
<i>Robinson v. Ardoin</i> , 605 F. Supp. 3d 759 (M.D. La. 2022)	1, 3
<i>S.C. NAACP v. Alexander</i> , 649 F. Supp. 3d 177 (D.S.C. 2023)	8
<i>Shelby County v. Holder</i> , 570 U.S. 529 (2013)	9
<i>Singleton v. Allen</i> , 782 F. Supp. 3d 1092 (N.D. Ala. 2025).....	5
<i>Tonkyro v. Sec’y, Dep’t of Veterans Affs.</i> , 995 F.3d 828 (11th Cir. 2021).....	14

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INTRODUCTION

Plaintiffs’ only claim in this redistricting litigation was racial gerrymandering. They raised no additional claims. They did not claim any district violated §2 of the Voting Rights Act. And Jefferson County did not raise any §2 defense. Jefferson County never conceded it redistricted with racial purpose—not for §2 or anything else.

The absence of any §2 claim or defense makes this case unlike congressional redistricting challenges in Alabama and Louisiana. *See Allen v. Milligan*, 146 S. Ct. 1377 (2026) (per curiam) (staying order finding likely §2 violation and intentional vote dilution); *Louisiana v. Callais*, 146 S. Ct. 1131 (2026) (rejecting *Robinson v. Ardoin*, 605 F. Supp. 3d 759 (M.D. La. 2022), finding a likely §2 violation). The dispute in this case is simpler: whether Plaintiffs proved race was the “criterion that ... could not be compromised” in the Enacted Plan. *Alexander v. South Carolina NAACP*, 602 U.S. 1, 7 (2024) (quotation marks omitted); *see also id.* at 39-40 (Thomas, J., concurring) (observing *Alexander* defendants did not “invoke the Voting Rights Act as part of their defense”).

Before *Callais* and *Milligan*, the Supreme Court settled Plaintiffs’ “especially stringent” evidentiary burden in *Alexander*. *Id.* at 11. Racial gerrymandering plaintiffs must presume lawmakers “acted in good faith.” *Id.* at 6. They cannot “constru[e] ambiguous direct and circumstantial evidence against” lawmakers. *Abbott v. League of United Latin Amer. Citizens*, 146 S. Ct. 418, 419 (2025) (per curiam). They must “untangle race from other permissible considerations” that explain districts, such as “core preservation.” *Alexander*, 602 U.S. at 7. Simply reciting a plan’s racial demographics will not do; racial

demographics are often just “a side effect” of nonracial redistricting considerations, *id.* at 20, and there is no “affirmative obligation” to change them, *Easley v. Cromartie*, 532 U.S. 234, 249 (2001). Those were the ground rules when this case was tried and decided in the district court. They remain the ground rules now.

The Supreme Court did not alter those ground rules in *Callais* or *Milligan*. The Court extended them to vote dilution claims. Just as a racial gerrymandering claim fails if a plaintiff does not “untangle race from other permissible considerations,” 602 U.S. at 7, a §2 claim fails “if a §2 plaintiff cannot disentangle race from the State’s race-neutral considerations,” *Callais*, 146 S. Ct. at 1157; *see, e.g., Milligan*, 146 S. Ct. at 1381.

In this way, *Callais* and *Milligan* simply reinforced what *Alexander* already said. It is lawmakers’ “prerogative to draw districts based on nonracial factors.” *Callais*, 146 S. Ct. at 1156 (citing *Alexander*, 602 U.S. at 7). They may prioritize “traditional districting factors such as compactness, contiguity, maintaining the integrity of political subdivisions, preserving the core of existing districts, and protecting incumbents.” *Id.* (quotation marks omitted). Or they may not. *Id.* What “weight” to give those nonracial factors is up to the lawmakers, not plaintiffs or their experts. *Id.*; *accord Alexander*, 602 U.S. at 24-33. A racial gerrymandering plaintiff must “rule out” those nonracial factors as the explanation for a district’s racial demographics. *Alexander*, 602 U.S. at 27. Now, after *Callais*, other redistricting plaintiffs must do so too. *See Milligan*, 146 S. Ct. at 1381.

This case need not and should not be remanded for further consideration of *Callais* or *Milligan*. Nothing in *Callais* or *Milligan* altered the proof required for Plaintiffs’

sole claim of racial gerrymandering. Nothing in *Callais* or *Milligan* could rehabilitate the conclusion—absent any proof—that race was the “dominant and controlling rationale” for the Enacted Plan. *Miller v. Johnson*, 515 U.S. 900, 913 (1995). And so nothing in *Callais* or *Milligan* could warrant remanding for Plaintiffs to try anew. Plaintiffs had the chance to make their record in preliminary injunction proceedings, then summary judgment, then trial. At every step, they flunked their “especially stringent” evidentiary burden. *Alexander*, 602 U.S. at 11. The Enacted Plan is no racial gerrymander.

ARGUMENT

I. *Callais* updated a §2 plaintiff’s evidentiary burden, consistent with *Alexander*’s burden for plaintiffs alleging racial gerrymandering.

A. *Callais* “updated” evidentiary standards for §2 plaintiffs.

1. In *Callais*, the Supreme Court confronted “problems in the existing body of §2 case law.” 146 S. Ct. at 1143. Redistricting litigation in Louisiana made those problems unavoidable. After the 2020 census, Louisiana redistricted; a federal court said Louisiana likely violated §2 by not drawing an additional majority-minority district. *Id.* at 1149 (discussing *Robinson v. Ardoin*, 605 F. Supp. 3d 759 (M.D. La. 2022)). So Louisiana redistricted again to add a second majority-minority district and thereby moot the §2 litigation; then a different federal court said Louisiana violated the Constitution when it intentionally created that “second majority-minority district” stretching “some 250 miles from Shreveport in the northwest corner of the state to Baton Rouge in southeast Louisiana, slicing through metropolitan areas to scoop up pockets of predominantly

Black populations from Shreveport, Alexandria, Lafayette, and Baton Rouge.” *Id.* at 1152 (quoting *Callais v. Landry*, 732 F. Supp. 3d 574, 588 (W.D. La. 2024)).

With those dueling decisions, the “tension between §2 and the Constitution came to a head.” *Id.* at 1142. There was no dispute that race was “the driving force” in Louisiana’s second redistricting plan. *Callais*, 732 F. Supp. 3d at 588. Louisiana’s was one of those “not uncommon” cases where the use of race was conceded. *Alexander*, 602 U.S. at 8. So the Supreme Court had to decide “whether compliance with the Voting Rights Act can indeed provide a compelling reason for race-based districting.” *Callais*, 146 S. Ct. at 1143. The answer? “Compliance with §2, *as properly construed*, can provide such a reason.” *Id.* But §2 had not been properly construed in Louisiana. *Id.*

As *Callais* explained at length, to avoid a constitutional conflict, §2 is better construed to “impos[e] liability only when the evidence supports a strong inference that the State intentionally drew its districts to afford minority voters less opportunity *because of their race*,” not politics or any other nonracial factors. *Id.* at 1157 (emphasis added). That construction required an “update” to a §2 plaintiff’s burden of proof. *Id.*; *see also id.* at 1161 (“[W]e now update the *Gingles* test to ensure a constitutional reading and application of §2.”). Now, when a §2 plaintiff offers an alternative map, it “must meet all of the State’s legitimate districting objectives,” *id.* at 1157, and “cannot use race as a districting criterion,” *id.* at 1159. Separately, when a §2 plaintiff offers a racially polarized voting analysis, that analysis must control for party to show “‘less opportunity’ ... because of race, not just because of partisan affiliation.” *Id.* (quoting 52 U.S.C. §10301(b)).

In short, “if a § 2 plaintiff cannot disentangle race from the State’s race-neutral considerations,” then “§2 cannot impose liability.” *Id.* at 1157.

Applied in Louisiana, the §2 plaintiffs in the earlier litigation “failed to prove their §2 case.” *Id.* at 1161. They “did not provide an illustrative map that met all the State’s nonracial goals.” *Id.* They put a Republican incumbent “in a majority-Democratic district and thus effectively ensured her exit from Congress.” *Id.* And their racially polarized voting analysis failed to “control for partisan preferences.” *Id.* at 1162. No other evidence “showed even a plausible likelihood of intentional discrimination.” *Id.* There was thus no “compelling interest” to justify the undisputed “use of race” in the new redistricting plan. *Id.* It was “an unconstitutional gerrymander.” *Id.*

2. Then in *Milligan*, the Supreme Court applied *Callais* to stay a preliminary injunction order in Alabama’s congressional redistricting litigation. 146 S. Ct. 1377. The district court found districts likely violated §2 and were the product of intentional vote dilution. *Id.* at 1381.¹ The Supreme Court disagreed. The district court did not “heed the presumption of legislative good faith.” *Id.* And it did not heed *Callais* when it credited an “alternative map [that] would not perform just as well as to the State’s constitutionally permissible criteria.” *Id.* at 1381.

¹ In earlier litigation, some plaintiffs also pressed a racial gerrymandering claim that was similar to Plaintiffs’ theory here. See *Singleton v. Allen*, 2:21-cv-1291 (N.D. Ala. Jan. 31, 2024), ECF 229 ¶¶67-74. The district court did not address it. *Singleton v. Allen*, 782 F. Supp. 3d 1092, 1163 (N.D. Ala. 2025).

In short, *Callais* and *Milligan* upped the evidentiary burden in vote dilution cases to resemble the evidentiary burden in racial gerrymandering cases. *See Callais*, 146 S. Ct. at 1155-59 (citing *Alexander* throughout); *Milligan*, 146 S. Ct. at 1381. Lawmakers may choose whatever “nonracial factors” they desire to prioritize; §2 plaintiffs, like gerrymandering plaintiffs, must account for those nonracial factors, not confuse them for evidence of an unlawful plan. *Callais*, 146 S. Ct. at 1156; *Alexander*, 602 U.S. at 6-7.

B. *Alexander* already settled Plaintiffs’ evidentiary burden.

1. Before *Callais* and *Milligan*, the Supreme Court decided *Alexander*. *Alexander* was arguably a simpler case. The *Alexander* plaintiffs contended districts splitting the Charleston area were racially gerrymandered. 602 U.S. at 14-15. The *Alexander* defendants did not concede racial purpose. *See id.* at 8-9. They did not invoke the VRA as part of their defense. *See id.*; *id.* at 39-40 (Thomas, J., concurring). Absent any §2 claim or defense, the only question was whether the plaintiffs proved “race for its own sake” was the plan’s “dominant and controlling rationale.” *Miller*, 515 U.S. at 913.

Distilled in *Alexander*, a racial gerrymandering plaintiff’s burden is demanding. 602 U.S. at 17-18 (describing “‘demanding’ standard”); *id.* at 11 (describing “especially stringent” burden). A plaintiff must overcome the presumption of good faith and untangle race from nonracial explanations for districts. *Id.* at 6-7, 10-11. Anything less risks conflating an unlawful racial purpose with racial “side effect[s]” of otherwise lawful redistricting considerations. *Id.* at 20. Since *Alexander*, the Supreme Court applied those rules to summarily reverse a racial gerrymandering finding in Texas, predicated on

“construing ambiguous direct and circumstantial evidence against” lawmakers. *Abbott*, 146 S. Ct. at 419; see *Abbott v. LULAC*, 2026 WL 1127246 (U.S. Apr. 27, 2026).

The *Alexander* plaintiffs did not meet that demanding standard. See *Alexander*, 602 U.S. at 33. Evidence of racial demographics was not enough. *Id.* at 20 (finding “the district’s BVAP of 17% was simply a side effect of the legislature’s partisan goal”). Evidence that the mapdrawer had access to racial data was not enough. *Id.* at 22. Evidence that the mapdrawer “check[ed]” for VRA compliance was not enough. *Id.* Expert evidence, including alternative maps, failing to account for standard redistricting criteria, including “core preservation,” was not enough. *Id.* at 24-33.

As for §2 of the VRA, there was no discussion in *Alexander* about whether §2 supplied a “compelling governmental interest” for South Carolina’s districts. *Id.* at 11. That question arises only once plaintiffs prove—or defendants concede—that districts were drawn with racial purpose to comply with the VRA. See, e.g., *Callais*, 146 S. Ct. at 1143; *Cooper v. Harris*, 581 U.S. 285, 300-01 (2017) (describing “announced racial target” to avoid §2 liability); *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 184 (2017) (describing 55% BVAP target “used in structuring the districts” for VRA compliance). But absent any such §2 defense, the question in *Alexander*—and in this case—was simpler: Was plaintiffs’ evidence enough to “rule out” nonracial explanations for a district and its resulting racial demographics? *Alexander*, 602 U.S. at 27.

As for §5 of the VRA, there was no suggestion in *Alexander* that past §5 compliance doomed the present-day districts. While the district court faulted past plans for

splitting Charleston “to satisfy the then existing non-retrogression requirements of Section 5,” *S.C. NAACP v. Alexander*, 649 F. Supp. 3d 177, 190 (D.S.C. 2023), the State’s past §5 compliance did not even warrant a footnote in the Supreme Court’s decision reversing the district court. What was “dispositive” was plaintiffs’ failure to rule out nonracial explanations for the present-day districts, 602 U.S. at 20, including core retention, *id.* at 27, even in a State with a “history” of §5 compliance, *contra* Op.127 n.44.

2. The same legal framework applies in this case. Plaintiffs pressed only a racial gerrymandering claim. That claim was “analytically distinct” from vote dilution cases like *Milligan. Alexander*, 602 U.S. at 38. And, absent any §2 defense, it was analytically distinct from the §2 “problems” addressed in *Callais*. 146 S. Ct. at 1143; *see Alexander*, 602 U.S. at 39-40 (Thomas, J., concurring) (observing the same about *Alexander*).

Like *Alexander*, Jefferson County never conceded it redistricted with racial purpose. Like *Alexander*, Plaintiffs failed to account for nonracial factors such as core retention, incumbent protection, not splintering Birmingham, and others. *Compare Alexander*, 602 U.S. at 27-28, 33, *with* Op.110, 127 n.44; *see* Opening Br.29-35; Reply Br.12-17. Like *Alexander*, accusations of “racial targets” proved themselves to be only “side effects” of those nonracial factors. *Compare Alexander*, 602 U.S. at 20, *with* Op.107, 109, 117; *see* Opening Br.48-49. So like *Alexander*, the conclusion that Plaintiffs proved race alone explained the Enacted Plan is reversible error. *See Alexander*, 602 U.S. at 33.

As for §2 of the VRA, there was no occasion to address whether §2 could have compelled Jefferson County to draw race-based districts. Like *Alexander*, Plaintiffs never

proved districts were race-based, and Jefferson County never raised a §2 defense for the Enacted Plan’s configuration. Unlike cases such as *Callais*, *Cooper*, or *Bethune-Hill*, *supra* p.7—Jefferson County never conceded districts were drawn in search of a racial target to comply with the VRA. The VRA did not even come up during the 2021 (or 2013) redistricting process. *See* Opening Br.4-6, 49; Reply Br.6; DE174 708:2-8, 726:17-21. What the VRA might have “required” (Op.100, 103, 107, 129) of some hypothetical plan challenged in some hypothetical case with a §2 claim or defense was irrelevant.

As for §5 of the VRA, like *Alexander*, there was no basis to fault Jefferson County’s past §5 compliance as evidence of present-day racial gerrymandering. *See* Opening Br.47-53; Reply Br.8-12. Decades-old §5 letters were not “powerful circumstantial evidence” that today’s districts were enacted with racial purpose. *Contra* Op.104-05, 127-28 & n.44; *see* Reply Br.8-12. They merely recited districts’ racial demographics to disclose the “anticipated effect” of redistricting plans to the Department of Justice decades ago. *See* Opening Br.48-49; Reply Br.8-10. That comes nowhere close to showing racial purpose then—let alone today. *Compare Clark v. Putnam County*, 293 F.3d 1261, 1267 & n.17, 1275 (11th Cir. 2002) (describing §5 letter conceding redistricting plan “maximized” the “black voting strength” by including “every contiguous census block ... increasing the black percentage”).

As *Alexander* exemplifies, not every jurisdiction once subject to §5 was required to “start with a blank slate,” 602 U.S. at 27, after *Shelby County v. Holder*, 570 U.S. 529 (2013). *Shelby County* did not hold all efforts to comply with §5 are unconstitutional, *id.*

at 557, just as *Callais* did not hold all efforts to comply with §2 are unconstitutional, 146 S. Ct. at 1143. Then and now—as Addoh-Kondi Plaintiffs’ own expert testified—districts can be drawn “without thinking about race at all” and still comply with the VRA. DE172 183:21-184:13; *see also Alexander*, 602 U.S. at 22 (explaining that mapdrawer’s consideration of “racial data only *after* he had drawn the Enacted Map ... to check that the maps he produced complied” with VRA was not unlawful). And that is what Jefferson County did. *See* Opening Br.3-8, 33-35; Reply Br.10-11. Nothing prohibited the county from sticking to the map’s “historical configuration,” favoring “the status quo over something entirely new.” *Nord Hodges v. Albritton*, 796 F. Supp. 3d 1082, 1113 (M.D. Fla. 2025) (three-judge court); *contra* Op.110, 127 n.44 (rejecting core retention).

C. *Callais* and *Milligan* did not alter *Alexander*’s legal framework for this racial gerrymandering case.

Nothing in *Callais* or *Milligan* altered the foregoing legal framework for Plaintiffs’ racial gerrymandering claim. They do not salvage Plaintiffs’ theory that the present-day districts were unconstitutionally tainted by past decades’ §5 compliance. They simply reinforce what *Alexander* already said.

1. Plaintiffs will presumably argue that *Callais* proves the Enacted Plan is a racial gerrymander. *See* 28(j) Letter, *Addoh-Kondi v. Jefferson Cnty. Comm’n*, No. 25-13254 (filed June 25, 2026). Just as Louisiana’s plan drawn in response to §2 litigation was unconstitutional, so goes Plaintiffs’ likely argument, the Enacted Plan is unconstitutional. After all, Plaintiffs will say, the origin of the Enacted Plan was a 1985 consent decree

intended “to provide [B]lack[] [voters] with a greater opportunity to elect [B]lack commissioners” by replacing the previous system of at-large elections with single-member districts. Op.98 (alterations in original). In the district court’s words, that was “[r]emedial racial gerrymandering” perpetuated for 40 years. Opp.88-89; *see id.* at 104-05.

That argument rewrites *Callais*. Nothing in *Callais* validated the “inference” the district court made—that old preclearance submissions tainted the present-day plan. Op.105. *Callais* addressed Louisiana’s *present-day* redistricting effort, culminating in a “highly irregular” district “slicing through metropolitan areas” in pursuit of an undisputed racial goal. *Callais*, 732 F. Supp. 3d at 588. There is no likening that *present-day* racial purpose with a supposed *decades-past* racial purpose surmised in this case. *See Abbott v. Perez*, 585 U.S. 579, 603 (2018); *Greater Birmingham Ministries v. Sec’y of State*, 992 F.3d 1299, 1325 (11th Cir. 2021); *LWV of Fla. v. Fla. Sec’y of State*, 66 F.4th 905, 923 (11th Cir. 2023). The *Alexander* plaintiffs tried the same theory, and it didn’t even merit mention in the Supreme Court’s decision. *Supra* I.B.1.

Before and after *Callais*, racial purpose still must be proved or conceded. *Supra* I.B; *see, e.g., Callais*, 732 F. Supp. 3d at 587-89 (recounting admissions of racial purpose in legislative record), *aff’d*, 146 S. Ct. 1131; *Cooper*, 581 U.S. at 300 (“announced racial target”), *Miller*, 515 U.S. at 907 (enacting “‘max-black’ plan”), *Bethune-Hill*, 580 U.S. at 192 (“express racial target”); *Ala. Legis. Black Caucus v. Alabama*, 231 F. Supp. 3d 1026, 1065-1348 (M.D. Ala. 2017) (applying strict scrutiny only for districts where plaintiffs proved racial predominance). There was no such proof or concession in this case—not

when Jefferson County switched to single-member districts decades ago and certainly not today. *Supra* I.B.2. Even the district court agreed that there were no racial targets in the *Taylor* consent decree. Op.14 (no “explicit racial targets”). Subsequent §5 letters simply reported the “anticipated effect” of redistricting changes over the decades. Reply Br.8-11. What the district court repeatedly and erroneously faulted as a concession of racial purpose in §5 letters,² was simply an after-the-fact recitation of racial demographics of old redistricting plans. *Id.* The letters were not evidence of unconstitutional racial purpose in past decades. *See, e.g., Alexander*, 602 U.S. at 22 (using racial data to “check” §2 compliance “after” redistricting was not evidence of racial purpose); *Nord Hodges*, 796 F. Supp. 3d at 1111 (similar). And they did not “taint” the Enacted Plan with racial purpose today. *Abbott*, 585 U.S. at 603; *see* Reply Br.11-12. Lawmakers in Jefferson County did not even mention the VRA in 2021 (or 2013) during redistricting. *Supra* p.9. Meanwhile, lawmakers in Louisiana conceded it was their “mission” to draw a second majority-Black district for VRA compliance. *Callais*, 732 F. Supp. 3d at 588. It would be serious error to conflate the two.

2. While *Callais* and *Milligan* did not alter the legal framework for this appeal, they did reinforce what *Alexander* already demanded of Plaintiffs: “rule out” nonracial

² *See, e.g.,* Op.98 (misreading letters to establish “racial thresholds”); *id.* (misdescribing districts as “designed to concentrate Black voters in two districts”); *id.* at 104 (misreading letters to disclose a “pattern of using race to set the boundaries of the Commission’s districts”); *id.* at 105-06 (misreading letters to disclose an intent to “maintain a Black population in Districts 1 and 2 in excess of 65%”).

explanations for districts. 602 U.S. at 27; *see id.* at 20; *accord Callais*, 146 S. Ct. at 1156-57 (describing “disentanglement burden”); *Milligan*, 146 S. Ct. at 1381. A plaintiff’s alternative map must control for a redistricting plan’s nonracial factors—be it “compactness, contiguity, maintaining the integrity of political subdivisions, preserving the core of existing districts,” or “protecting incumbents.” *Callais*, 146 S. Ct. at 1156-57 (quotation marks omitted); *accord Alexander*, 602 U.S. at 24-35. Plaintiffs didn’t do that here. *See* Opening Br.29-35; Reply Br.19-20. The district court lauded one of Plaintiffs’ alternative maps (Cooper D) as evidence of the Enacted Plan’s racial purpose, Op.126-27 & n.44, despite finding that the alternative map paired incumbents, did not preserve the core of existing districts as well as the Enacted Plan, and exceeded the Enacted Plan’s population deviation, Op. 55, and the expert himself testified it was drawn with race in mind.³ *See* Opening Br.19, 30-31; Reply Br.14-15. *But see Alexander*, 602 U.S. at 27; *Callais*, 146 S. Ct. at 1159 (“plaintiffs cannot use race as a districting criterion”). Likewise, Addoh-Kondi Plaintiffs’ expert’s alternative map did not prioritize core retention and put a Republican incumbent in a majority-Democratic district. *See* Opening Br.18. *But see Alexander*, 602 U.S. at 27; *Callais*, 146 S. Ct. at 1161 (rejecting alternative map that “ensured [Republican incumbent’s] exit”). Those alternative plans proved nothing—*Alexander* already said so. *See, e.g., Alexander*, 602 U.S. at 27. *Callais* and *Milligan* simply

³ DE173 318:24-319:1 (“I was trying to reduce the overconcentration of black voters in Districts 1 and 2.”); *id.* at 321:2-4 (similar); *id.* at 323:17-324:2 (testifying “[t]he point” was to lower BVAP); *id.* at 337:15-25 (similar).

reinforced that conclusion, extending the same ground rules to vote dilution claims. *See, e.g., Milligan*, 146 S. Ct. at 1381.⁴

II. Remanding for further proceedings is not warranted.

An “intervening decision” warrants a remand for further proceedings only when that intervening decision “change[s] the law” that “directly applies” to the case. *Powell v. Sch. Bd. of Volusia Cnty.*, 86 F.4th 881, 883-84 (11th Cir. 2023) (per curiam); *see also Tonkyro v. Sec’y, Dep’t of Veterans Affs.*, 995 F.3d 828, 830 (11th Cir. 2021) (remanding two claims based on change in applicable law but not the third because “intervening decisions did not ... affect the resolution” of that claim); *cf. Hines v. Brandon Steel Decks*, 886 F.2d 299, 302 (11th Cir. 1989) (remanding after Supreme Court “explicitly rejected” applicable circuit precedent).

That standard is not met here. *Callais* and *Milligan* did not change the law governing Plaintiffs’ racial gerrymandering claim. *Callais* “updated” the proof required for a §2 claim, *Callais*, 146 S. Ct. at 1160-61, and *Milligan* applied that updated standard, *supra* I.A.2. Neither decision altered Plaintiffs’ demanding burden settled in *Alexander*.

⁴ *Callais* also confirmed what Jefferson County already argued about the irrelevant racially polarized voting analysis offered by Dr. Liu, another Plaintiffs’ expert. *See* Opening Br.21 n.14; Reply Br.18. He evaluated only general elections without controlling for party. *But see Alexander*, 602 U.S. at 33 (faulting plaintiffs’ experts for not accounting for partisanship); *Callais*, 146 S. Ct. at 1162 (rejecting evidence failing to control for party); *Milligan*, 146 S. Ct. at 1381 (“[T]hat voters of different races vote for different parties is not relevant.”). That analysis just showed race and politics are correlated, making it even more important to disentangle the two. Reply Br.18.

Supra I.B. Absent any §2 claim or defense,⁵ there is no basis to remand for further proceedings. Plaintiffs cannot show race was the “dominant and controlling rationale” for the Enacted Plan. *Miller*, 515 U.S. at 913. The Court should reverse with instructions to enter judgment for Jefferson County. *See, e.g., Cromartie*, 532 U.S. at 257 (reversing without remand because “providing appellees a further opportunity” in the district court was futile).

CONCLUSION

In *Alexander*, the Supreme Court distilled the proof required for Plaintiffs’ racial gerrymandering claim. Then came *Callais* and *Milligan*. Those decisions reinforce what *Alexander* already said: a redistricting challenger’s burden is “especially stringent.” 602 U.S. at 11; *see, e.g., Abbott*, 146 S. Ct. at 419; *accord Callais*, 146 S. Ct. at 1156-57; *Milligan*, 146 S. Ct. at 1381. Those decisions did not alter Plaintiffs’ burden. Reversal is warranted.

⁵ Courts have remanded §2 cases after *Callais*, not racial gerrymandering cases. *See, e.g., Allen v. Caster*, No. 25-243, 2026 WL 1282800, at *1 (U.S. May 11, 2026); *Bd. of Election Comm’rs v. NAACP*, No. 25-234, 2026 WL 1377105, at *1 (U.S. May 18, 2026); *Turtle Mountain Band v. Howe*, No. 25-253, 2026 WL 1377069, at *1 (U.S. May 18, 2026); *Ala. NAACP v. Sec’y of State for Ala.*, No. 25-13007, 2026 WL 1649570, at *1 (11th Cir. June 8, 2026); *Nairne v. Landry*, No. 24-30115, 2026 WL 1255781, at *1 (5th Cir. May 7, 2026); *White v. State Bd. of Election Comm’rs*, No. 25-60506, 2026 WL 1340213, at *1 (5th Cir. May 11, 2026).

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CERTIFICATE OF COMPLIANCE

This brief complies this Court's order for supplemental briefing because it does not exceed 15 pages. *See* Doc. 65. This brief also complies with Rule 32(a)(5)-(6) because it is prepared in a proportionally spaced face using Microsoft Word 2016 in 14-point Garamond font.

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CERTIFICATE OF SERVICE

I filed this brief on the Court's electronic filing system, which will email everyone requiring notice.

Dated: July 14, 2026

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