Nos. 25-13253, 25-13254

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

CARA MCCLURE, et al.,
Plaintiffs-Appellees,

v.

JEFFERSON COUNTY COMMISSION,
Defendant-Appellant.

ALEXIA ADDOH-KONDI, et al.,
Plaintiffs-Appellees,

v.

JEFFERSON COUNTY COMMISSION,
Defendant-Appellant.

On Appeal from the United States District Court
for the Northern District of Alabama, Nos. 2:23-cv-443, 2:23-cv-503

BRIEF OF ALABAMA, FLORIDA, AND GEORGIA AS *AMICI CURIAE* IN SUPPORT OF DEFENDANT-APPELLANT

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November 17, 2025

CERTIFICATE OF INTERESTED PERSONS

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1-1 and 26.1-2, the undersigned counsel certifies that in addition to those listed in the certificate of interested parties included with Defendant-Appellant's opening brief, the following persons and parties may have an interest in the outcome of this case:

1. Alabama Attorney General's Office;
2. Bowdre, Alexander B.;
3. Carr, Christopher M.
4. LaCour, Jr., Edmund G.;
5. Marshall, Steve;
6. State of Alabama;
7. State of Florida;
8. State of Georgia;
9. Uthmeier, James.

Respectfully submitted this 17th day of November, 2025.

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TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS C-1

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

INTEREST OF *AMICI CURIAE* AND SUMMARY OF ARGUMENT 1

ARGUMENT 3

I. Plaintiffs' Claims Fail Because They Did Not Rule Out Core Retention as a Non-Racial Principle Explaining the Districts' Lines 5

II. The Constitution Does Not Require Governments to Engage in Race-Predominant Districting to Avoid Racial Gerrymandering Liability 7

CONCLUSION 10

CERTIFICATE OF COMPLIANCE 11

CERTIFICATE OF SERVICE 12

TABLE OF AUTHORITIES

Cases

Abbott v. Perez,
585 U.S. 579 (2018).....3, 8

Alexander v. S.C. NAACP,
602 U.S. 1 (2024)..... 1, 2, 4-7

Allen v. Milligan,
599 U.S. 1 (2023).....2

Brnovich v. Democratic Nat'l Comm.,
594 U.S. 647 (2021).....5

Cooper v. Harris,
581 U.S. 285 (2017)..... 4-6

Easley v. Cromartie,
532 U.S. 234 (2001).....6, 7

Fletcher v. Peck,
10 U.S. 87 (1810).....1, 4

Gomillion v. Lightfoot,
364 U. S. 339 (1960).....5

Johnson v. Governor of State of Fla.,
405 F.3d 1214 (11th Cir. 2005) 8, 9

Karcher v. Daggett,
462 U.S. 725 (1983).....6, 10

League of Women Voters of Fla. Inc. v. Fla. Sec'y of State,
32 F.4th 1363 (11th Cir. 2022) 3

League of Women Voters of Fla. v. Fla. Sec'y of State,
66 F.4th 905 (11th Cir. 2023) 8

McCleskey v. Kemp,
481 U.S. 279 (1987).....1

Miller v. Johnson,
515 U.S. 900 (1995).....1, 3

Perez v. Abbott,
274 F. Supp. 3d 624 (W.D. Tex. 2017).....3

Personnel Adm'r of Mass. v. Feeney,
442 U.S. 256 (1979).....8

Other Authorities

Pamela S. Karlan,
The Fire Next Time: Reapportionment After the 2000 Census,
50 Stan. L. Rev. 731 (1998).....9

Voting Rights Act of 1965.....2, 8, 9

INTEREST OF *AMICI CURIAE* AND SUMMARY OF ARGUMENT

The States of Alabama, Florida, and Georgia respectfully submit this brief as *amici curiae* in support of Jefferson County. Courts assessing the work of a legislature or county commission should proceed with the "starting presumption that the legislature" or commission "acted in good faith." *Alexander v. S.C. NAACP*, 602 U.S. 1, 10 (2024). Federal courts should never be eager to find a hidden, unlawful purpose lurking behind a facially valid state or local law. As Chief Justice Marshall declared, "it is not on slight implication and vague conjecture that the legislature is to be pronounced to have transcended its powers, and its acts to be considered as void." *Fletcher v. Peck*, 10 U.S. 87, 128 (1810). Instead, "[t]he opposition between the constitution and the law" must be "clear." *Id.* And in the redistricting context, courts should be especially sure to tread lightly, as "[f]ederal-court review of districting legislation represents a serious intrusion on the most vital of local functions." *Miller v. Johnson*, 515 U.S. 900, 915 (1995). When there are "legitimate reasons" for a legislature or commission to enact a particular law, courts should "not infer a discriminatory purpose on the part of the State." *McCleskey v. Kemp*, 481 U.S. 279, 298-99 (1987).

Yet that is precisely what the district court did here. The court paid only lip service to the presumption of good faith and the most recent Supreme Court decision articulating how the presumption should apply: *Alexander v. South Carolina State*

Conference of the NAACP, 602 U.S. 1 (2024). Like the district court that was reversed in *Alexander*, the district court here invented racial targets for the 2021 Commission (and its predecessors going back *40 years*) and assumed that the Commission was pursuing those targets at every turn. *See* Op.117 (assuming the Commission pursued a "65% threshold" from 1985). The court never forced Plaintiffs to show that the Commission, "driven only by its professed mapmaking criteria, could have produced a different map with greater racial balance," *Alexander*, 602 U.S. at 34 (quotations omitted), but instead excused Plaintiffs' failure by holding that previous plans adopted by previous Commissions relieved Plaintiffs of this burden because those Commissions complied with §5 of the Voting Rights Act. That reasoning is inconsistent with numerous Supreme Court precedents and would, nonsensically, force States and local governments to engage in race-predominant districting to avoid charges of race-predominant districting.

Sidestepping *Alexander* invites partisans "to transform federal courts into weapons of political warfare that will deliver victories that eluded them in the political arena." *Alexander*, 602 U.S. at 11 (quotations omitted). Because "[d]istricting involves myriad considerations," *Allen v. Milligan*, 599 U.S. 1, 35 (2023), it is *always* possible to second-guess a district line by noting "other options" to draw it elsewhere. *See* Op.133, 135. *Alexander* rightly demands more.

ARGUMENT

"[W]hen a court assesses whether a duly enacted statute is tainted by discriminatory intent, 'the good faith of the state legislature must be presumed.'" *League of Women Voters of Fla. Inc. v. Fla. Sec'y of State*, 32 F.4th 1363, 1373 (11th Cir. 2022) (per curiam) (quoting *Abbott v. Perez*, 585 U.S. 579 (2018)). This presumption applies even after a predecessor redistricting plan has been subject to a "finding of discriminatory intent by" a district court, *Perez v. Abbott*, 274 F. Supp. 3d 624, 648 n.37 (W.D. Tex. 2017); *see Abbott*, 585 U.S. at 603-05. "[P]ast discrimination cannot, in the manner of original sin, condemn governmental action that is not itself unlawful." *Abbott*, 585 U.S. at 603.

The presumption that state and local government officials act for legitimate rather than discriminatory reasons serves vital ends. It reminds courts to exercise caution before intruding "on the most vital of local functions." *Miller*, 515 U.S. at 915-16. It recognizes that redistricting is a "complex" and "difficult subject." *Id.* It is sensitive to the fact that government officials are "almost always … aware of racial demographics." *Id.* And it keeps the burden of proof on plaintiffs. *Id.* Moreover, "this presumption reflects the Federal Judiciary's due respect for the judgment of" other officials in our federalist system "who are similarly bound by an oath to follow the Constitution," and encourages restraint before "declaring that" a legislature or

commission has "engaged in 'offensive and demeaning' conduct." *Alexander*, 602 U.S. at 11.

Without this safeguard, federal courts are more easily "transformed into weapons of political warfare" by "the losers in the redistricting process"—an "often-unstated danger" that invites "illegitimate[] inva[sions]" into "a traditional domain of state authority." *Cooper v. Harris*, 581 U.S. 285, 334-35 (2017) (Alito, J., concurring in judgment in part and dissenting in part).

The presumption of good faith has deep roots, *see Fletcher v. Peck*, 10 U.S. 87, 128 (1810), but it has not always been strenuously applied. Thus, in 2024, the Supreme Court in *Alexander* reiterated the demands the presumption places on plaintiffs. The presumption "ensures that" strict scrutiny is applied only where "race for its own sake, and not other districting principles, was the legislature's dominant and controlling rationale in drawing its district lines." *Alexander*, 602 U.S. at 10. Plaintiffs must "rule[] out th[e] possibility" that a district's racial composition is explained by nonracial principles. *Id.* at 20. If they do not, "that possibility is dispositive." *Id.* Indeed, a court should "draw an adverse inference against" plaintiffs who fail to "provid[e] a substitute map that shows how the State" or local government "could have achieved its legitimate political objectives in [a challenged district] while producing significantly greater racial balance." *Id.* at 34 (quotations omitted). The district court here repeatedly failed to follow these commands.

I. Plaintiffs' Claims Fail Because They Did Not Rule Out Core Retention as a Non-Racial Principle Explaining the Districts' Lines.

Like the district court in *Alexander*, the court here "critically erred by failing to draw an adverse inference against the Challengers for" failing to produce a suitable alternative map. *Id.* This "adverse inference" should have been "dispositive" here, "where the plaintiff lacks direct evidence or some extraordinarily powerful circumstantial evidence such as the 'strangely irregular twenty-eight-sided' district lines in *Gomillion v. Lightfoot*, 364 U. S. 339, 341 (1960), which betrayed the State's aim of segregating voters on the basis of race with 'mathematical' precision." *Id*. at 35.[1] "Without an alternative map, it is difficult for plaintiffs" alleging race-based districting to "rul[e] out the competing explanation that political considerations dominated the legislature's redistricting efforts." *Id.* at 9-10; *see also id.* at 20 ("And the Challengers cannot point to even one map in the record that would have satisfied the legislature's political aim and had a BVAP above 17%."); *id.* at 25 (Dr. Imai failed

[1] Plaintiffs' obligation "to disentangle race from politics" in a gerrymandering case is supposed to be "a formidable task." *Cooper*, 581 U.S. at 308. But here, the leading piece of "direct evidence" Plaintiffs cited in opposing the stay motion below was testimony from the executive director *of one of the Plaintiff groups* stating that *he* understood a statement by one of the Commissioners that touched on the political leanings of a majority-black precinct "to be referring to voters' race." *Addoh-Kondi*, Doc. 210 at 16 (citing Op.79). At best, that is only "meager direct evidence of a racial gerrymander," *Cooper*, 581 U.S. at 322, particularly because Plaintiffs needed to show that the Commission "as a whole"—not just one Commissioner—"was imbued with racial motives," *Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 689 (2021).

to "generat[e] maps" "matching or exceeding the Benchmark Plan's Republican tilt."); *id.* at 34-35 ("[W]hen all plaintiffs can muster is meager direct evidence of a racial gerrymander only an alternative map of that kind can carry the day." (quotation modified)). Plaintiffs' failure here to produce an alternative plan that "controlled for" core retention is a "fatal omission in this case." *Id.* at 24-25.

As the Supreme Court in *Alexander* noted, when redistricting, "[l]awmakers do not typically start with a blank slate; rather, they usually begin with the existing map and make alterations to fit various districting goals. Core retention recognizes this reality." *Id.* at 27. Pursuing core retention "honors settled expectations." *Cooper*, 581 U.S. at 338 (Alito, J., concurring in judgment in part and dissenting in part). The Supreme Court has recognized that "preserving the cores of prior districts" is a "legitimate objective[]" compelling enough even to "justify minor population deviations" from the constitutional ideal of equal population among districts. *Karcher v. Daggett*, 462 U.S. 725, 740 (1983).

It is undisputed that the Commission's 2021 Plan largely followed this legitimate objective, with each of the five districts retaining over 90% of the core from the 2013 predecessor plan. Op.54. Pursuing that objective resulted in districts with demographics that were similar to those in the 2013 plan. But the Commission had no "*affirmative* obligation … to avoid creating districts that turn out to be heavily, even majority, minority." *Easley v. Cromartie*, 532 U.S. 234, 249 (2001).

It is also undisputed that the Plaintiffs failed to produce an alternative map that pursued core retention to the same degree as the 2021 Plan. Bill Cooper offered a plan in which "District 1 had a 62.77% Black population and an overall core retention rate of 85.74%, compared to 78.27% and 95.3%, respectively, in the 2021 plan." Op.126. But Cooper failed to match the County's plan on this neutral principle, which "means we cannot rule out core retention as [a] plausible explanation for the difference between the Enacted Plan and" Plaintiffs' alternatives. *Alexander*, 602 U.S. at 27. That should have ended this case.

II. The Constitution Does Not Require Governments to Engage in Race-Predominant Districting to Avoid Racial Gerrymandering Liability.

The district court relieved Plaintiffs of their evidentiary burden and imposed on the Commission "an *affirmative* obligation … to avoid creating districts that turn out to be heavily, even majority, minority." *Contra Cromartie*, 532 U.S. at 249. In the court's view, "core retention in this case does not represent a race-neutral redistricting criterion given the history of the 2013 map. If the Commission sought to maintain the 2013 district cores to a high degree, then the Commission effectively sought to reenact the 2013 map, which the Commission enacted with a race-based purpose." Op.127 n.44. The court's rationale lacks legal support or limits.

First, the court's reliance on the 2013 map (and earlier maps) is unavailing. Even if there were strong evidence that earlier maps were race-predominant, this Court has "rejected the argument that 'a racist past is evidence of current intent.'"

League of Women Voters of Fla. v. Fla. Sec'y of State, 66 F.4th 905, 923 (11th Cir. 2023). Instead, courts must "look at the precise circumstances surrounding the passing of the law in question," *id.* (quotations omitted), all while remembering that the "allocation of the burden of proof and the presumption of legislative good faith are not changed by a finding of past discrimination," *Abbott*, 585 U.S. at 603. Here, the 2013 map was never even challenged as a gerrymander, so it was especially erroneous for the court to impute discriminatory intent from the 2013 Commission to the 2021 Commission. The court's findings about the 2013 map cannot prove that the 2021 Commission acted "at least in part 'because of,' not merely 'in spite of,'" the demographic effects of pursuing core retention. *Personnel Adm'r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979). And even if the Plaintiffs had proven race-predominant districting by the 2013 Commission, "it is not reasonable to assign any impermissible motives held by" one Commission to another. *Johnson v. Governor of State of Fla.*, 405 F.3d 1214, 1226 (11th Cir. 2005) (en banc); *see also Abbott*, 585 U.S. at 584 ("fundamental legal error" to require the government to "cure[]" alleged discriminatory "taint").

Second, the district court's rejection of core retention based on the Commission's past successes in obtaining preclearance under §5 "would … reverse the presumption that a State's laws are constitutional, and plunge federal courts into far-reaching expeditions regarding the sins of the past in order to question the laws of

today." *Johnson*, 405 F.3d. at 1225 n.21. Any government that has ever considered §2 or §5 when drawing a map would need to answer numerous imponderable questions. How much of a district's preexisting core can be maintained without carrying forward potentially race-predominant districting from the past? How far back should a State or court look? (The court here ventured all the way back to 1985. Op.13.) Is there a racial target to hit to avoid liability for a past racial target? How strong must the evidence from decades past be to justify a race-based departure today from a race-neutral principle like core retention?

And why stop at core retention? At least one prominent election law scholar has argued that in Georgia, "[t]he policy of not splitting counties … was part and parcel of Georgia's illegitimate pro-rural (and thus pro-reactionary white) bias." Pamela S. Karlan, *The Fire Next Time: Reapportionment After the 2000 Census*, 50 Stan. L. Rev. 731, 746 (1998). Would such allegations call into question any plan that relied on whole counties (or whole cities), or at least excuse plaintiffs for producing alternative maps that ignore such traditional redistricting principles?

The district court's reasoning thus leads to an absurdity: To avoid being condemned for using race too much in districting, a county or State must use race *more* to defend against charges about arguably race-based lines from the past that were never adjudged to be race predominant. And governments must investigate not just the last map, but the one before that—and so on for generations. Perversely, this rule

would require States and counties to treat districts differently *because of* the race of those who live there. "[L]egitimate objectives" like core retention (*Karcher*, 462 U.S. at 740) could be advanced for some, but not others, based on race. Reading the Equal Protection Clause to require such race-based government action makes no sense.

CONCLUSION

For these reasons, the Court should reverse.

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CERTIFICATE OF COMPLIANCE

This brief complies with Rules 29(a)(5) and 32(a)(7)(B)(i) because it contains 2,321 words, excluding the parts that can be excluded. This brief complies with Rule 32(a)(5)-(6) because it has been prepared in a proportionally spaced face using Microsoft Word 2016 in 14-point Times New Roman font.

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I certify that on November 17, 2025, I filed this brief with the Court via ECF, which will electronically notify all parties.

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