IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

DYAMONE WHITE; DERRICK SIMMONS; TY PINKINS; CONSTANCE OLIVIA SLAUGHTER HARVEY-BURWELL — **PLAINTIFFS**

VS. — **CIVIL ACTION NO. 4:22-cv-00062-SA-JMV**

STATE BOARD OF ELECTION COMMISSIONERS; TATE REEVES ***in his official capacity as Governor of Mississippi*****; LYNN FITCH** ***in her official capacity as Attorney General of Mississippi*****; MICHAEL WATSON** ***in his official capacity as Secretary of State of Mississippi*** — **DEFENDANTS**

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DEFENDANTS' PRETRIAL BRIEF

INTRODUCTION

Plaintiffs seek an order from this Court "permanently [to] enjoin the Defendants and their agents from holding elections for the Mississippi Supreme Court under the existing districts." [Dkt. #133], at 47. Although not identified anywhere in their Amended Complaint, the statute enacting those districts was adopted by the Legislature in 1987. *See* 1987 Miss. Gen. Laws ch. 491, § 1, codified as Miss. Code Ann. § 9-3-1. A map depicting those districts is displayed in their Amended Complaint. *See* [Dkt. #133], at 15, ¶ 37.

Plaintiffs' only claim is that the 1987 statute violates § 2 of the Voting Rights Act, 52 U.S.C. § 10301. Section 2(a) prohibits the "denial or abridgement of the right of any citizen of the United States to vote on account of race or color." Section 2(b) continues:

> A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

Plaintiffs allege that "Black voters are denied an equal opportunity to elect candidates of choice to the Mississippi Supreme Court," [Dkt. #133], at 3, ¶ 4, and ask the Court to redraw District 1, the Central District, "to have a Black voting age majority." *Id.* at 3, ¶ 5.

Eight months before the adoption of the 1987 statute, the Supreme Court addressed the proof necessary to establish lack of equal opportunity under § 2 in *Thornburg v. Gingles*, 478 U.S. 30 (1986). This Court reviewed the *Gingles* criteria fully in its order and memorandum opinion of August 19, 2025, *see* [Dkt. #264], which was vacated by the Fifth Circuit on May 11, 2026. *See* [Dkt. #308]. This Court's task now is to apply to Plaintiffs' Amended Complaint the revised evidentiary standards established in *Louisiana v. Callais*, 608 U.S. 85 (2026).

The application of the elements now required by *Callais* will be addressed throughout the remainder of this brief. But there is at least one thing that *Callais* did not change. Plaintiffs must bear the burden of proving lack of equal opportunity to overcome the presumption of good faith. *See Abbott v. Perez*, 585 U.S. 579, 603 (2018); *League of United Latin American Citizens Council No. 4434 v. Clements*, 999 F.2d 831, 849 (5th Cir. 1993) (en banc). If Plaintiffs fail to carry the burden of proof on any required element, then their Amended Complaint must be dismissed.

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ARGUMENT

I. BECAUSE THIS COURT'S JUDGMENT HAS BEEN VACATED, ALL ISSUES REMAIN OPEN FOR DECISION.

Upon joint motion of the parties, on May 11, 2026, the Fifth Circuit vacated the Court's August 19, 2025, order and opinion in this action and remanded the case to this Court for further

proceedings in the light of *Callais*, which materially changed the framework for § 2 analyses. *See* [Dkt. #308]. This vacatur "swept away all that was tied to that judgment," including "all findings of fact derived from applying the" pre-*Callais* standard. *Falcon v. Gen. Tel. Co.*, 815 F.2d 317, 320 (5th Cir. 1987). *See also Miss. NAACP v. SBEC*, 2026 WL 2676633, at *2 (S.D. Miss. Sept. 11, 2026) (holding that a vacatur made pursuant to *Callais* "extinguish[ed] the findings made prior to [the] vacated final judgment."). Because this vacatur "strip[ped] the decision below of its binding effect," *Camreta v. Greene*, 563 U.S. 692, 713 (2011) (citation omitted), it has "clear[ed] the path for future relitigation of the issues between the parties" in this case. *United States v. Munsingwear, Inc.*, 340 U.S. 36, 40 (1950).

Here, the vacatur entered pursuant to *Callais* has nullified the Court's previous factual findings and legal holdings. *See Miss. NAACP*, 2026 WL 2676633, at *4 ("Our prior Findings of Fact and Conclusions of Law…that preceded our vacated Judgment…are necessarily vacated as well…and no remnant of the relief we ordered…carries the force of law at this juncture."). Vacatur has thus reopened ***all*** issues relevant to the Court's adjudication of Plaintiffs' § 2 claim. As this Court has already noted, it must be "squarely focused on liability at this point in time." [Dkt. #317], at 7. Consequently, the Court should accept all admissible testimony and evidence regarding the principles in *Gingles* as modified by *Callais* and any other relevant issue rather than relying on the insufficient record from the prior trial in this matter that was premised on a now-abandoned legal standard.

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II. BECAUSE SUPREME COURT ELECTIONS IN THE CENTRAL DISTRICT HAVE CONSISTENTLY PRODUCED SUSTAINED SUCCESS FOR BLACK VOTERS, THE DISTRICT LINES SATISFY *GINGLES*.

A black Justice has served on the Supreme Court from the Central District since Governor Allain appointed Reuben Anderson in 1985. This Court has acknowledged unrebutted testimony

that Justice Jim Kitchens was also a "Black-preferred candidate." [Dkt. #264], at 46. From his election in 2008 through the date of trial, at least two-thirds of the Justices from the Central District have been black or black-preferred. This "*sustained* success black voters have experienced," *Gingles*, 478 U.S. at 77 (opinion of Brennan, J.) (emphasis in original), in the Central District ordinarily precludes a finding of unequal opportunity under § 2. *Callais* has done nothing to change this principle.

A finding of a § 2 violation by the district court in *Gingles v. Edmisten*, 590 F. Supp. 345 (E.D.N.C. 1984), was reversed in relevant part by the Supreme Court, 478 U.S. at 77 (opinion of Brennan, J.). House District 23, of which the black population constituted 36.3%, elected three members. *See* 590 F. Supp. at 357. "Since 1973, a black citizen has been elected each two-year term to the State House." *Id.* at 366. Describing the circumstances of his election, the district court said, "black candidate Spaulding ran uncontested in the general election in 1978 and in the primary and general election in 1980." *Id.* at 370. "In the 1982 election there was no Republican opposition and the general election was, for all practical purposes, unopposed." *Id.*

On these facts, the Supreme Court declared, "[i]n that district, the last six elections have resulted in proportional representation for black residents." *Gingles*, 478 U.S. at 77 (opinion of Brennan, J.). "This persistent proportional representation is inconsistent with appellees' allegation that the ability of black voters in District 23 to elect representatives of their choice is not equal to that enjoyed by the white majority." *Id.* Justice Brennan's opinion added that "it may be possible for § 2 plaintiffs to demonstrate that such sustained success does not accurately reflect the minority group's ability to elect its preferred representatives, but appellees have not done so here." *Id.* (internal footnote omitted).

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The Fifth Circuit applied this teaching in *Overton v. City of Austin*, 871 F.2d 529 (5th Cir. 1989). It affirmed the District Court's finding of a "sustained history of electoral success by black and Mexican-American candidates, which has yielded proportional (or greater) representation on the Austin Council for over 10 years, refut[ing] the contention of racially polarized voting." *Id.* at 538 (footnote omitted). The Court continued:

> In this connection, the district court properly held that consistent minority electoral success does not as a matter of law foreclose a Section 2 claim, *Thornburg*, 478 U.S. at 76 and 100-01 (O'Connor, concurring), but is "presumptively inconsistent" with a claim. The court thus accorded considerable but not conclusive significance to these electoral successes.

Id. at 538 n.10 (internal citation abbreviated).

In both *Gingles* and *Overton,* sustained minority success extended over a period of ten years. Here, the disproportionate success of black and black-preferred Justices began no later than 2008. Justice Graves was already serving on the Court, having won the election in 2004.[1] The lack of any electoral competition to Justice Leslie King does not negate the fact that he has consistently served as a black-preferred Justice. Even though the black legislator in *Gingles* ran

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[1] There is no evidence in the record of black support for Justice Bill Waller, Jr., in 1996 or 2004. Plaintiffs introduced evidence that he did not receive a majority of the black vote in 2012. An account of the 1996 race appears in an article by one of the defeated candidates, Judge Leslie Southwick. Southwick, *Mississippi Supreme Court Elections: A Historical Perspective 1916-1996*, 18 MISS. C.L. REV. 119 (1997). *See also* [PX-165] (same). The Mississippi Republican Party endorsed Judge Southwick, *compare id.* at 183, *with id.* at 185, but he finished third in a five-man field. In the runoff, Judge Waller defeated Judge Billy Bridges.

uncontested on several occasions, the Supreme Court found that his service precluded a finding of lack of equal opportunity. *See* 478 U.S. at 77.[2]

From the adoption of the challenged statute in 1987 through the time period covered by the Amended Complaint, black-preferred candidates have always occupied one-third of the seats in the Central District and often two-thirds. The record reflects that the black voting age population in 1987 was 40.46% of the total. *See* [Dkt. #295-6], at 58. By the time of the 1990 census the BVAP had increased to 42.24%. *See Magnolia Bar Ass'n, Inc. v. Lee*, 793 F. Supp. 1386, 1403 (S.D. Miss. 1992), *aff'd*, 994 F.2d 1143 (5th Cir. 1993); *see also* [PX-1], at 16. Plaintiffs' evidence asserts that the BVAP percentage has increased each decade until reaching 49.29% in 2020. *See* [PX-1], at 16. This Court, however, has found that no race enjoys a majority among eligible voters. *See* [Dkt. #264-1], at 3, ¶ 11.

When there are only three positions in a narrowly divided district, it may be difficult to say what would constitute "proportional representation." However, it is impossible not to conclude that black-preferred candidates for well over a decade have achieved "*sustained* success." *Gingles,* 478 U.S. at 77 (opinion of Brennan, J.) (emphasis in original). Throughout the two terms of Justice Kitchens, Justices preferred by the black minority enjoyed at least a two-thirds majority in the Central District. This long period of success "is inconsistent with appellees' allegation that the

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[2] Yet this Court found it "more appropriate to consider the contested elections in gauging whether White voters sufficiently vote as a bloc so as to usually defeat Black-preferred candidates." [Dkt. #264], at 47. *But see, contra*, *Milwaukee Branch of the N.A.A.C.P. v. Thompson*, 116 F.3d 1194, 1197 (7th Cir. 1997) (where black candidates won six uncontested elections, "the district court inferred from the lack of contest that white voters would have been willing to support these candidates; otherwise a white candidate could have entered and won"). Whatever relevance uncontested races may have in proving racially polarized voting, this Court did not contradict the holding of *Gingles* that uncontested electoral success may defeat an "allegation that the ability of black voters … to elect representatives of their choice is not equal to that enjoyed by" white voters. 478 U.S. at 77 (opinion of Brennan, J.).

ability of black voters … to elect representatives of their choice is not equal to that enjoyed by the white [minority.]" *Id.*

Plaintiffs have offered nothing to rebut the presumption that blacks have long been able to place candidates of their choice on the Mississippi Supreme Court from the Central District. *Gingles* and *Overton* require the dismissal of their Amended Complaint.

III. *CALLAIS* REQUIRES PROOF CREATING A STRONG INFERENCE THAT THE SUPREME COURT DISTRICTS WERE DRAWN BY THE LEGISLATURE IN 1987 BECAUSE OF INTENTIONAL RACIAL DISCRIMINATION.

What § 2(b) protects is equal opportunity. The Supreme Court in *Callais* chose to define opportunity as a matter of process, not result. After describing the State's mix of criteria to be applied to the creation of districts, the Court continued:

> [T]he map it produces may place a particular voter or group of voters in a district in which a majority generally agrees, generally disagrees, or only sometimes agrees with their voting preferences. But in any event, the "opportunity" of these "members of the electorate" to contribute their votes to a winning cause is whatever opportunity results from the application of the State's combination of permissible criteria.

608 U.S. at 112. The Court concluded that "under § 2, a minority voter is entitled to nothing less and nothing more." *Id.*

However, a plaintiff is still entitled to attempt to show that a map resulting from permissible criteria may still have been chosen because of intentional racial discrimination. The Court explained:

> Suppose, for example, that the application of a State's districting algorithm yields numerous maps with districts in which the members of a minority group constitute a majority, and suppose that the State cannot provide a legitimate reason for rejecting all those maps and eliminating all majority-minority districts. In such a situation, the inference of racial motivation is strong, and § 2 of the Fifteenth Amendment permits the imposition of liability … .

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Id. at 113. The application of permissible criteria cannot save a plan actually produced by the impermissible criterion of racial discrimination.

As this Court has recently declared, the controlling question in a § 2 case is "whether 'the evidence supports a strong inference that the [State] intentionally drew its districts to afford minority voters less opportunity because of their race.'" *Harris v. DeSoto County*, 2026 WL 1816145, at *3 (N.D. Miss. June 24, 2026) (alteration added), quoting *Callais*, 608 U.S. at 116. Plaintiffs do not have to go so far as to prove that the challenged 1987 statute was adopted with discriminatory intent, but any inference that it might have been *must* be based on proof of the sort of current intentional discrimination that the Fourteenth and Fifteenth Amendments empower Congress to address. This Court has correctly said that plaintiffs must show the sort of "'present-day intentional racial discrimination regarding voting' as required to prevail on such a claim." *Foster v. Mississippi*, 2026 WL 2352910, at *7 (N.D. Miss. Aug. 13, 2026), quoting *Callais*, 608 U.S. at 120.

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As *Callais* makes clear, the language of § 2(b) was taken "almost verbatim from Justice White's opinion for the Court in *White v. Regester*, 412 U.S. 755 (1973)." *Callais*, 608 U.S. at 96 (citation cleaned up). As Justice White made clear in his opinion for the Court in *Rogers v. Lodge*, 458 U.S. 613, 619 (1982), *White* was "consistent with that principle" that there must be proof of purposeful discrimination. The 1982 amendment to § 2 eases Plaintiffs' burden by requiring only "a strong inference that intentional discrimination occurred." *Callais*, 608 U.S. at 113.

In the only Court of Appeals decision on the merits since *Callais,* the Seventh Circuit found no need to look further than the obvious lack of discriminatory intent. *See City of Hammond, Indiana v. Lake Cnty. Bd. of Elections*, 179 F.4th 1100, 1108 (7th Cir. 2026) ("[T]horny questions … need not [be] resolve[d]" because "[t]here is no evidence that Indiana's decision … was the

product of intentional racial discrimination"). The Seventh Circuit did not examine maps, or voting behavior, or any other circumstances. Once it determined that the record would not support a strong inference of intentional discrimination, the case was over. *See id.*

IV. PLAINTIFFS DO NOT ALLEGE FACTS SUFFICIENT TO SUPPORT A STRONG INFERENCE OF INTENTIONAL RACIAL DISCRIMINATION IN 1987.

Nothing in the Amended Complaint alleges "present-day intentional racial discrimination regarding voting." *Callais*, 608 U.S. at 120. *See* [Dkt. #133]. Neither does any such allegation appear in the pretrial order. *See* [Dkt. #228]. While § 2 does not require Plaintiffs to prove that the Legislature adopted the 1987 statute for an intentionally discriminatory reason, they do have to prove that the statute is being applied in the context of current unconstitutional conduct by the State regarding voting. Plaintiffs make no such allegation, and they have no such proof.[3]

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The 1987 statute dividing Mississippi into three districts for the election of Supreme Court Justices bears little resemblance to the manipulation of nomination rules by the Texas Democratic Party addressed in *White v. Regester*. The Texas Legislature, then controlled by the Democratic Party, adopted a "districting scheme [that] generally used single-member districts but employed multimember districts in two parts of the State where single-member districts might have resulted in the election of minority candidates." *Callais*, 608 U.S. at 96-97. The *White* plaintiffs proved "that a white-dominated organization, which had effective control over candidate slating within that party, had engaged in racial campaign tactics in white precincts to defeat candidates who have the overwhelming support of the black community, thereby effectively exclud[ing] the black

[3] This Court agreed that voter identification and absentee ballot laws "disproportionately impact Black voters," [Dkt. #264], at 61, but Plaintiffs do not allege those statutes to constitute intentional racial discrimination. *See* [Dkt. #133], at 29-30, ¶ 73. This Court agreed that the felon disenfranchisement laws are not the product of discriminatory intent. *See* [Dkt. #264], at 59, citing *Harness v. Watson*, 47 F.4th 296 (5th Cir. 2022). Plaintiffs do not identify any currently effective Mississippi statute as constituting "present-day intentional racial discrimination regarding voting." *Callais*, 608 U.S. at 120.

community from participation in the Democratic primary selection process." *Id.* at 97 (internal quotation marks omitted) (brackets in original), quoting *White*, 412 U.S. at 766-67. All this evidence "suggested very strongly that the State had created multimember districts for the purpose of diluting minority votes." *Id.*

Here, by contrast, Plaintiffs do not contend that there is anything wrong with the use of multimember districts in electing Supreme Court Justices. They allege the existence of no cabal that impedes access to the general election ballot by candidates supported by black voters. Any candidate can run, and any citizen can vote; sometimes black-supported candidates win, and sometimes they lose. This evidence supports no inference, much less a strong one, that the Legislature acted with an intentionally discriminatory purpose in drawing these districts in 1987.

Plaintiffs impute no such motivation to the 1987 Legislature. Not only do they fail to assert that the Legislature rejected a majority-black Central District for intentionally discriminatory reasons, but they also acknowledge that a reasonably configured majority-black Central District could not have been created in 1992, much less in 1987. *See* [Dkt. #133], at 19, ¶ 48. Judge Barbour found shortly after the 1990 census that it could not be done. *See Magnolia Bar*, 793 F. Supp. at 1415. What options may or may not be available in 2026 sheds no light whatsoever on the choices actually made by the Legislature in 1987.[4]

The three modified preconditions of *Gingles*, then, must be understood in light of what they are supposed to prove. They are supposed to provide "evidence support[ing] a strong inference that the State intentionally drew its districts to afford minority voters less opportunity because of their race." *Callais*, 608 U.S. at 116. The Central District challenged here was drawn

[4] In *City of Hammond*, the Seventh Circuit found contemporary evidence could "not support an inference – much less a strong one – that the state legislature's 1973 enactment … was the product of racial discrimination." 179 F.4th at 1109.

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in 1987. Even if Plaintiffs here had presented maps that "meet all the State's legitimate districting objectives," *id*. at 119, as they have not, hypothetical maps containing a black majority today shed no light on what the Legislature did in 1987 or why it did it.

If the Court wishes, then the parties can slog through the three modified *Gingles* preconditions and the totality of the circumstances based on the facts existing in 2026. None of that, however, illuminates what the Legislature did in 1987. The intent of the 1987 Legislature is the only proper concern of the Fourteenth and Fifteenth Amendments, and Plaintiffs have made no effort to address it. Because Plaintiffs allege no facts supporting such a strong inference here, the Amended Complaint should be dismissed without the need for further analysis.

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V. PLAINTIFFS' EVIDENCE DOES NOT MEET THE STANDARDS SET BY *CALLAIS*.

This Court has already recognized that the first *Gingles* precondition cannot be met by a map that "use[s] race as a districting criterion. . . . [A]n illustrative map in which race was used has no value in proving a § 2 plaintiff's case." [Dkt. #317], at 3, quoting *Callais,* 608 U.S. at 119. Moreover, any such map "must meet all the State's legitimate districting objectives, including traditional districting criteria and the State's specified political goals." *Id.*, quoting *Callais*, 608 U.S. at 119. Finally, to succeed on the second and third preconditions of *Gingles*, Plaintiffs "must show that voters engage in racial bloc voting that cannot be explained by partisan affiliation." *Id.* Here, Plaintiffs fail on all counts.

A. Plaintiffs' maps do not satisfy *Callais*.

1. All of Plaintiffs' maps use race as a districting criterion.

Plaintiffs continue to rely on the maps submitted by Mr. Cooper at the remedial hearing. He testified that, in preparing his supposedly race-blind map, he used his computer to identify areas of poverty, not black population. *See* Apr. 28, 2026, Hearing Tr. at 18:19-25; 19:1-3; 20:6-

25; 21:5-11; 54:3-6. After the first trial, this Court accepted Plaintiffs' testimony that poverty disproportionately affects blacks in Mississippi. *See* [Dkt. #264], at 78-79. Under cross-examination, Mr. Cooper did not deny that fact; nor did he deny that, after many years of drawing maps in Mississippi, he knows where the black population is. *See* Apr. 28, 2026, Hearing Tr. at 54:13-24.

Mr. Stern's computer-generated maps similarly take race into account. *See* **Stern Exp. Rep.**, attached as Exhibit A, at 5-6, 14.[5] He instructed his computer only to produce maps that placed the core counties of the Delta into a single district. *See id.* At the first trial, Plaintiffs repeatedly asserted that the Delta constitutes a community of interest and that the majority of that community is black. Infusing a black community into every map produced by the computer is not color-blind as *Callais* requires.

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2. Plaintiffs have produced no map that meets all the State's legitimate districting objectives.

Plaintiffs have identified no impermissible criteria applied by the Legislature in 1987 when it modified the boundaries of the Central District. Because the 1987 map indisputably resulted from the application of permissible criteria, each racial group thereby obtained an opportunity equal to that of every other racial group. *See Callais*, 608 U.S. at 112.

"Only by meeting all the State's legitimate objectives can the illustrative maps help to 'disentangle race' from politics and other constitutionally permissible considerations." [Dkt. #317], at 3, quoting *Callais*, 608 U.S. at 119. Plaintiffs have not begun to explain how any of their maps "meet all the State's legitimate districting objectives." *Id*. Those objectives must include "the State's specified political goals." *Id.* *Callais* does not say that political goals must be

[5] Defendants do not waive their objection to the admissibility of Plaintiffs' expert reports. Reports are attached simply to show the insufficiency of the testimony Plaintiffs propose to offer.

specified in statutory language, nor that all legitimate districting objectives must be specified. Courts historically have had no difficulty in determining the legitimate objectives of legislation.

That is what the Court did in *Magnolia Bar*:

> Defendants contend that the east-west configuration of the district lines fosters political and economic diversity. The lines, when initially configured in 1832, cut across the sharply divergent interests of the landed aristocracy in the west and the populists in the east. … The east-west configuration of the district lines, which combined diverse political and economic interests, was maintained after the 1890 Constitutional Convention.

793 F. Supp. at 1417. The Legislature likewise maintained the east-west orientation of each district when it adopted the challenged statute in 1987.

After the first trial, this Court did not deny the Legislature's determination to continue the historic east-west lines but found that "there was no persuasive evidence presented that that particular configuration is necessary to keep the Mississippi Supreme Court functioning properly." [Dkt. #264], at 99. However, necessity for proper function is not the test under *Callais*. A map must satisfy the State's districting objectives if they are legitimate, and it must do so "just as well" as the State's plan. *Callais*, 608 U.S. at 119. A map including one county on the Alabama line plainly does not serve just as well in balancing the diverse interests on the east and west sides of the state.

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History from 1832 to 1987 likewise teaches that Supreme Court districts should be composed of entire counties. Plaintiffs do not appear to dispute this particular legitimate districting objective. As the Court found in *Magnolia Bar*, "[t]here is a strong public policy in Mississippi of drawing supreme court districts along county lines and that policy is a valid one." 793 F. Supp. at 1417.

The Legislature has exhibited one other redistricting objective for most of a century. In 1930, it provided that Highway Commissioners should be separately elected from the three

Supreme Court districts, *see* 1930 Miss. Gen. Laws ch. 47, § 1, and the same rule was imposed for Public Service Commissioners in 1938. *See* 1938 Miss. Gen. Laws ch. 139, § 1. That practice was continued in 1987. Indeed, the Commissioners were at the forefront of the Legislature's concern in 1987. Elections for those positions were due to be held that year, and a suit had been filed to enjoin those elections from being held. In changing those districts for Commissioners, the Legislature chose to change them for the Supreme Court as well.

Using the same districts for three separate offices is plainly legitimate. Defendants explained in their answer to Plaintiffs' Interrogatory No. 5, "[t]he use of the same three districts for the Mississippi Transportation Commission and the Mississippi Public Service Commission helps to minimize voter confusion." *See* **Defendants' Responses to Plaintiffs' First Set of Interrogatories**, attached as Exhibit B, at 5. Plaintiffs have never contested the legitimacy of this purpose, but every one of their maps would separate Supreme Court elections from Commission elections.

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Plaintiffs ask this Court to impose new election districts for the Supreme Court, but they seek no changes in the districts electing Commissioners. An order of this Court separating Justices from Commissioners would not satisfy "the State's legitimate districting objectives." An order requiring the Commissioners to be elected under the lines drawn by this Court would be beyond this Court's authority, as the Amended Complaint seeks no such relief and does not offer to prove that there is anything wrong with the current Commission districts. Indeed, Judge Lee found there to be no infirmity in the Commission districts. *See N.A.A.C.P. v. Fordice*, 252 F.3d 361, 364 (5th Cir. 2001) (affirming judgment below). Plaintiffs cannot meet all the State's legitimate objectives without inducing this Court to impose relief they have not requested and to which they have proven no entitlement.

Plaintiffs assert different objectives in their answer to Interrogatory No. 29, including the objective of "bringing the Supreme Court districts under the 10% population deviation threshold." *See* **Plaintiffs' Responses to Defendants' Second Set of Interrogatories**, attached as Exhibit C, at 7-8. That assertion is necessarily wrong, because the constitutional requirement of substantial population equality does not apply to judicial elections. It does apply to executive and legislative elections, which is why the Legislature altered the Commission districts in 1987. Having done so, it chose to continue to elect Supreme Court Justices from the districts drawn to satisfy the requirement for substantial population equality in legislative and executive bodies. The Commissioners, not the Justices, constituted the Legislature's foremost concern in 1987.

Plaintiffs, in the answer to Interrogatory No. 29, also assert that the Legislature had objectives of "avoiding a denial of Section 5 preclearance, and keeping the Black population in the Central District the same." Ex. C, at 8. They do not explain the basis of their assertion. In any event, these would constitute "the State's legitimate districting objectives" in only the most indirect sense. The examination of black population under § 5 of the Voting Rights Act was a federal, not state, objective. Of course, the State had an interest in satisfying federal law as imposed by federal authorities. The State did so in 1987, carrying its burden of proving to the Justice Department that the 1987 statute had neither a discriminatory effect nor purpose. *See* [PX-173], at 1. This Court is not bound by the determination of the Attorney General of the United States, but Plaintiffs offer no reason to think that he failed in his duty.

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B. Plaintiffs cannot satisfy the second and third preconditions of *Gingles*.

Callais modified the standard for proving the second and third preconditions under *Gingles* – "politically cohesive voting by the minority and racial-bloc voting by the majority." *Callais*, 608 U.S. at 119. To satisfy these two tests, Plaintiffs "must show that voters engage in racial bloc

voting that cannot be explained by partisan affiliation," *id.* at 120, as this Court has already recognized. *See* [Dkt. #317], at 3. A finding that "race best explains these divergent voting patterns," [Dkt. #264], at 76, is no longer sufficient.

The first and most obvious problem is that blacks constitute a majority of the inhabitants of the Central District.[6] However, this Court has found that blacks do not constitute a majority of eligible voters. *See* [Dkt. #264-1], at 3, ¶ 11. Certainly, Plaintiffs have neither alleged nor proven that whites constitute a majority in the Central District; according to the 2020 census, white only residents constitute 45.84% of the voting age total.[7] Plaintiffs have never explained how bloc voting by the white minority can cause the defeat of candidates favored by the significantly larger black electorate.

None of Plaintiffs' six designated experts offers an opinion that "voters engage in racial bloc voting that cannot be explained by partisan affiliation." *Callais*, 608 U.S. at 120. Dr. Lisa Handley, at page 12 of her initial expert report, says only that "race has an independent effect on the vote choices of Black and White voters" and that "race plays a significant role in explaining these voting patterns." *See* **Handley Exp. Rep.**, attached as Exhibit D. At no point does she opine that racial bloc voting allows "a bloc voting majority [to] *usually* be able to defeat candidates supported by a politically cohesive, geographically insular minority group." *Gingles*, 478 U.S. at 49 (emphasis in original). All she purports to establish is that "Black and White voters consistently support[] different candidates." Ex. D, at 12. This Court has already recognized that "the mere

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[6] U.S. Census Bureau, *RACE, Decennial Census, DEC Redistricting Data (PL 94-171), Table P1*, (last accessed on November 2, 2026) https://data.census.gov/table/DECENNIALPL2020.P1?g=040XX00US28$0500000 (tabulating any part black for Central District to be 50.99%).

[7] U.S. Census Bureau, *RACE FOR THE POPULATION 18 YEARS AND OVER, Decennial Census, DEC Redistricting Data (PL 94-171), Table P3* (last accessed on November 2, 2026) https://data.census.gov/table/DECENNIALPL2020.P3?g=040XX00US28$0500000.

fact that voters of different races vote for different parties is not relevant to proving racially polarized voting patterns." [Dkt. #317], at 5, quoting *Allen v. Milligan*, 608 U.S. 511, 514 (2026).

The question is whether "racial bloc voting that cannot be explained by partisan affiliation," *Callais*, 608 U.S. at 120, usually causes the defeat of "candidates supported by a politically cohesive, geographically insular minority group," *Gingles*, 478 U.S. at 49. None of Plaintiffs' experts will so testify.

C. The totality of the circumstances reveals no present-day intentional racial discrimination regarding voting.

The three items of proof detailed in *Gingles* are "necessary preconditions" to establish liability. 478 U.S. at 50. Only if all three preconditions have been satisfied will the Court turn to the language of § 2(b) requiring an analysis of the "totality of circumstances" to determine whether black voters "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." *Id*. at 43, quoting 42 U.S.C. § 1973(b), now 52 U.S.C. § 10301. *Gingles* said very little about the application of the statutory language, but *Callais* clearly explained what circumstances are most relevant to establish a violation.

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This Court has acknowledged that Plaintiffs must present "evidence that has more than a remote bearing on what the Fifteenth Amendment prohibits: present-day intentional racial discrimination regarding voting." [Dkt. #317], at 4, quoting *Callais*, 608 U.S. at 120. This Court continued, "Discrimination that occurred some time ago, as well as present-day disparities that are characterized as the ongoing 'effects of societal discrimination,' are entitled to much less weight." *Id.*, quoting *Callais*, 608 U.S. at 120 (citation omitted).

This Court accepted Plaintiffs' evidence about "present-day disparities," but said nothing about "present-day intentional racial discrimination regarding voting." This Court concluded:

> [T]here is extensive evidence in the record that Black Mississippians experience substantially greater hardships in education access, financial status, and wealth. The Court also accepts the evidence indicating that Black Mississippians participate in the political process at a rate lesser than White Mississippians. Additionally, the Court accepts the evidence presented linking the socioeconomic factors to political participation.

[Dkt. #264], at 88-89.

What this Court did not do was to link socioeconomic factors to intentional racial discrimination, much less to "present-day intentional racial discrimination regarding voting." Neither the record of the first trial nor the disclosed opinions of Plaintiffs' experts provides a basis for finding such a link. Plaintiffs do not allege and cannot prove that any current Mississippi statute results from such intentional discrimination. Because Plaintiffs' allegations and proof do not "shed light on current intentional discrimination," *Callais*, 608 U.S. at 120, the totality of the circumstances will not support a finding of a lack of equal opportunity.

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CONCLUSION

This Court previously found that "[r]ace matters." [Dkt. #264], at 69, quoting *Miss. NAACP v. SBEC,* 739 F. Supp. 3d 383, 440 (S.D. Miss. 2024). It is exceptionally dangerous, however, for race to matter in the construction of election districts. "It reinforces racial stereotypes and threatens to undermine our system of representative democracy by signaling to elected officials that they represent a particular racial group rather than their constituency as a whole." *Shaw v. Reno*, 509 U.S. 630, 650 (1993). The Eleventh Circuit applied this reasoning in refusing to redraw judicial districts. Once a race-conscious remedy "sends the message, as it inevitably would, that race matters in the administration of justice, no procedure could mitigate the devastating effects." *Southern Christian Leadership Conf. of Alabama v. Sessions,* 56 F.3d 1281, 1297 (11th Cir. 1995) (en banc). Here, the unanimous testimony of knowledgeable witnesses is

that race plays no part in the administration of justice at the Supreme Court of Mississippi. This Court should leave it that way.

For all of these reasons, Plaintiffs are entitled to no relief. Their Amended Complaint should be dismissed with prejudice.

This the 2nd day of November, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Justin L. Matheny, one of the attorneys for the above-named State Defendants, do hereby certify that I have this date caused to be filed with the Clerk of the Court a true and correct copy of the above and foregoing via the Court's ECF filing system, which sent notification of such filing to all counsel of record.

THIS the 2nd day of November, 2026.

/s/ Justin L. Matheny
JUSTIN L. MATHENY

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