

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION**

**HAROLD HARRIS; PASTOR ROBERT
TIPTON, JR.; DELTA SIGMA THETA
SORORITY, INC.; and DESOTO COUNTY
MS NAACP UNIT 5574**

PLAINTIFFS

VS.

CIVIL ACTION NO.: 3:24-CV-00289-GHD-RP

**DESOTO COUNTY, MISSISSIPPI;
DESOTO COUNTY BOARD OF
SUPERVISORS; and DESOTO COUNTY
ELECTION COMMISSION**

DEFENDANTS

**DEFENDANTS' BRIEF REGARDING *LOUISIANA V. CALLAIS* AND
RESPONSE TO PLAINTIFFS' [479] OPENING BRIEF**

In prior submissions, Defendants explained why they must prevail in this Voting Rights Act case. But on April 29, 2026 the result became even more obvious. The Supreme Court's landmark decision in *Louisiana v. Callais*, 146 S.Ct. 1131 (2026) ("*Callais*") confirms a verdict in Defendants' favor.

As VRA scholars have explained, *Callais* "effectively ends Section 2 racial vote dilution claims."¹ Yet if one were to simply read Plaintiffs' opening brief, one would think *Callais* somehow supports Plaintiffs' case. It assuredly does not. In dissent, Justice Kagan forthrightly acknowledged that *Callais* "demolishes" Plaintiffs' theory here. *Callais*, 146 S.Ct. at 1166 (Kagan, J., dissenting) (citation modified).

Plaintiffs' argument is, and always has been, that the County was required to create a minority-Black district. But, under the facts of this case, that is precisely what *Callais* says the

¹ Nicholas Stephanopolous, *Some Thoughts About Callais*, Election Law Blog, Apr. 29, 2026, <https://electionlawblog.org/?p=155758> (citation modified).

Constitution forbids. “[T]he Constitution almost never permits the Federal Government or a State to discriminate on the basis of race.” *Id.* at 1152.

Under the Supreme Court’s “updated *Gingles* framework,” this case is an easy one. *Id.* at 1161. Plaintiffs said in their closing argument that “this case is not about intent,” and, after *Callais*, their disparate impact theory is no longer viable. Further, they have failed to produce any illustrative map that was not racially drawn, nor have they presented any analysis that controls for political affiliation. And their assertions of historical racial polarization and disenfranchisement are immaterial while their lack of evidence of actual “intentional present-day voting discrimination” is dispositive. *Id.* at 1160. Even just one of these is fatal after *Callais*.

DeSoto County’s 2022 redistricting plan does not violate Section 2 of the VRA. But accepting the Plaintiffs’ arguments would violate the Equal Protection Clause. This Court should reject the Plaintiffs’ attempt to divvy up DeSoto County citizens based on race and instead uphold the decision-making of the citizens’ duly elected representatives made pursuant to traditional, race-neutral districting principles.

BACKGROUND

Plaintiffs filed this lawsuit claiming DeSoto County’s 2022 redistricting plan (“2022 Plan”), used for electing officials to five different county offices, diluted Black voting strength in violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301(b) (“VRA”). *See generally* Compl. [1]. Plaintiffs contend that although Black voters in DeSoto County constitute almost one-third of the county’s population, the 2022 Plan deprives them of the opportunity to elect their candidate of choice to any of the five elected offices. Trial Tr. at 10:14-18. In Plaintiffs’ view, “DeSoto County could and should have drawn one reasonably configured majority-Black district in Desoto County where Black voters would have the opportunity to elect candidates of choice to

office.” *See* Pretrial Order [380] at 5 (Plaintiffs’ concise summary). Because Defendants did not, Plaintiffs argue, the 2022 Plan violates Section 2 of the VRA. *Id.*

After a 12-day bench trial on the merits, where the court heard testimony from several experts and lay witnesses and hundreds of exhibits were moved into evidence, both parties submitted to the Court their proposed Findings of Fact and Conclusions of Law and their Post-Trial Briefs.

On April 29, 2026, the U.S. Supreme Court issued its landmark decision in *Callais*, where it updated the legal framework and evidentiary standards that govern alleged violations of Section 2 of the VRA. *See generally Callais*, 146 S.Ct. 1131. This Court subsequently granted Plaintiffs’ request for supplemental briefing in light of the *Callais* decision and directed that there “shall be no additional discovery conducted or evidence submitted, beyond what is already in the record from the trial on this matter.” Order [478].

LAW

In *Callais*, the Supreme Court reaffirmed that Congress’s authority to pass the VRA is merely coextensive with its authority to enforce the prohibitions of the Fifteenth Amendment, which “bars only state action ‘motivated by a discriminatory purpose.’”² *Callais*, 146 S.Ct. at 1155 (quoting *Reno v. Bossier Par. Sch. Bd.*, 520 U.S. 471, 481 (1997)) (emphasis added). The scope of Congress’s authority, then, does not extend to prohibitions on “mere disparate impact.” *Id.* (emphasis added). This is because “Congress cannot ‘enforce a constitutional right by changing

² Plaintiffs erroneously summarized *Callais* as “answer[ing] one specific question: ‘whether compliance with the Voting Rights Act can indeed provide a compelling reason for race-based redistricting.’” Pl.’s Opening Brief [479] at 1. Of course, the Supreme Court answered that question in the affirmative, but with one major qualification omitted from Plaintiffs’ opening brief: such is the case only where the State complies with Section 2, “as properly construed.” The Supreme Court went on to clarify that Section 2, *as properly construed*, prohibits intentional racial discrimination, including the very thing that Plaintiffs seek here—a districting effort to intentionally draw a majority of black citizens of DeSoto County into the same district to create a majority-minority district.

what the right is[.]” *Id.* (quoting *City of Boerne v. Flores*, 521 U.S. 507, 519 (1997)). For that reason, “the focus of [Section] 2 must be enforcement of the Fifteenth Amendment’s prohibition on *intentional* racial discrimination.” *Id.*

Thus, Section 2 “imposes liability only when the circumstances give rise to a strong inference that intentional discrimination occurred.” *Id.* “[I]nterpreting [Section] 2 of the [VRA] to outlaw a map solely because it fails to provide a sufficient number of majority-minority districts would create a right that the [Fifteenth] Amendment does not protect.” *Id.* at 1156. And such an interpretation would contravene the VRA’s “express disclaimer against racial proportionality.” *Id.*

While States “may use traditional districting factors such as ‘compactness, contiguity,’ ‘maintaining the integrity of political subdivisions, preserving the core of the existing districts,’ and protecting incumbents [.] . . . [n]othing in the Constitution requires States to heed these criteria[.]” *Id.* (citations omitted). Nor are they forbidden by the Constitution. *Id.* Similarly, nothing in the Constitution prohibits States from drawing districts to achieve partisan advantage. *Id.* Indeed, States are free to exercise a significant degree of discretion to draw electoral maps for reasons other than race and “[p]roperly understood, [Section] 2 thus does not intrude on States’ prerogative to draw districts based on nonracial factors.” *Id.*

For this reason, “when a State defends a districting scheme on the ground that it was drawn for partisan purposes, plaintiffs have a ‘special’ burden to overcome.” *Id.* at 1156. “To prevail, the plaintiff must disentangle race from politics by proving that the former drove district lines.” *Id.* at 1157 (quotation marks and citation omitted). “That means, among other things, ruling out the competing explanation that political considerations dominated the legislature’s redistricting efforts” and so “[i]f either politics or race could explain a district’s contours, the plaintiff has not cleared its bar.” *Id.* (quotation marks and citation omitted). In the end, “if a [Section] 2 plaintiff

cannot disentangle race from the State’s race-neutral considerations, including politics, then [Section] 2 cannot impose liability.” *Id.*

“In short, [Section] 2 imposes 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.” *Id.* at 1157. Imposing liability any further than that would be to read Section 2 in a manner inconsistent with the authority conferred upon Congress by the Fifteenth Amendment. *Id.*

Against that backdrop, the Supreme Court in *Callais* updated the *Gingles* framework “so it aligns with the statutory text [of Section 2 of the VRA] and reflects important developments” in the four decades since *Gingles* was decided. *Id.*

The first *Gingles* precondition requires a plaintiff to show that “a community of minority voters [is] sufficiently numerous and compact to constitute a majority in a reasonably configured district.” *Id.* at 1159. To satisfy this precondition, “many [Section] 2 plaintiffs have simply provided illustrative maps with their desired number of majority-minority districts.” *Id.* (citing *Allen v. Milligan*, 599 U.S. 1, 20 (2023)). But the Supreme Court held in *Callais* that “[s]uch maps [] are not alone sufficient,” as “[t]hey prove only that the State *could* create an additional majority-minority district, not that the State’s failure to do so violated [Section] 2 of the Voting Rights Act.” *Id.* (emphasis in original). Thus, to show the latter, plaintiffs’ illustrative maps must satisfy two conditions: (1) “in drawing illustrative maps, plaintiffs cannot use race as a districting criterion[.]”³ and (2) “the illustrative maps must meet all the State’s legitimate districting objectives, including traditional districting criteria and the State’s specific political goals.” *Id.* Only then “can the

³ Plaintiffs reformulate this requirement to be more generic than articulated by the Supreme Court. According to Plaintiffs, the first condition is that “Section 2 Plaintiffs’ illustrative plans must be produced using districting criteria that would be constitutional if a state were drawing the map,” Pl.’s Opening Brief [479] at 5, but the Supreme Court was much more specific—Plaintiffs’ illustrative maps must not have been drawn using race as a criterion at all.

illustrative maps help to ‘disentangle race’ from politics and other constitutionally permissible considerations.” *Id.* at 1159.

To satisfy the second and third *Gingles* preconditions—politically cohesive voting by the minority and racial bloc voting by the majority—“plaintiffs must provide an analysis that controls for party affiliation.” *Id.* “In other words, they must show that voters engage in racial bloc voting that cannot be explained by partisan affiliation[,]” which is “critical for ‘disentangling race and politics.’” *Id.* (cleaned up; citation omitted).

Finally, the “‘totality of the circumstances’ inquiry must focus on evidence that has more than a remote bearing on what the Fifteenth Amendment prohibits: present-day intentional racial discrimination regarding voting.” *Id.* at 1160. Consistent with that focus, the Supreme Court expressly instructed that “[d]iscrimination 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.* (citation omitted). Instead, “[f]ar more germane are ‘current data’ and “‘current political conditions’” that “shed light on current intentional discrimination.” *Id.* (citation omitted). Importantly, the Supreme Court recognized that where “pertinent evidence relating to intentional present-day voting discrimination” is hard to find, that “is cause for celebration.” *Id.*

Defendants have previously shown why Plaintiffs failed to prove their case under pre-*Callais* precedent. When the trial record is evaluated under *Callais* and the updated *Gingles* framework, it is even more clear that the record evidence does not support Plaintiffs’ assertions that Section 2 of the VRA has been violated.

ARGUMENT

I. Under the Updated *Gingles* Framework, Plaintiffs Failed to Prove a Violation of Section 2

In their proposed Findings of Fact and Conclusions of Law and Post-Trial Brief, Defendants have already explained that Plaintiffs have wholly failed to carry their burden of proving a violation of Section 2 of the VRA and that the record does not support such a showing. This remains even stronger under the heightened evidentiary standard and updated *Gingles* framework established in *Callais*.

A. First *Gingles* Precondition

The first *Gingles* precondition requires that “a community of minority voters must be sufficiently numerous and compact to constitute a majority in a reasonably configured district.” *Callais*, 146 S.Ct. at 1159. The Supreme Court noted that, in the past, many plaintiffs simply provided illustrative maps with their desired number of majority-Black districts, purporting to prove that the government *could* have created a majority-Black district. *Id.* However, the Supreme Court held that such maps are not alone sufficient, as a government’s failure to create such maps does not, by itself, violate Section 2 of the VRA. *Id.* Rather, the Supreme Court said for plaintiffs to prove a Section 2 violation, plaintiffs’ illustrative maps must satisfy two conditions: (1) “plaintiffs cannot use race as a districting criterion” in drawing illustrative maps, and (2) the “illustrative maps must meet all the [County’s] legislative districting objections, including traditional criteria and the [County’s] specified political goals.” *Id.* Neither condition is satisfied here.

1. Plaintiffs Used Race as Criterion to Draw Illustrative Maps

First, the trial record is replete with evidence that Plaintiffs’ expert map maker, William Cooper, used race as a districting criterion—appearing to be the main criterion—in drawing

Plaintiffs' illustrative maps. Testimony from Cooper shows that "avoiding the dilution of minority voting strength" was one of the traditional districting principles he accounted for in drawing his plans. Trial Tr. at 52:2-25. When drawing illustrative maps, Cooper admitted that he "put green dots over the 30 percent plus voting districts" or "30 percent plus census blocks" and "develop[ed] a plan just looking at the 30 percent plus Black district -- Black geographies." Trial Tr. at 157:2-12; *see also id.* at 189:10-13; 190:21-23. When asked how this dot method informed his mapmaking, Cooper responded that it made him "aware of where the Black population lives[.]" while simultaneously and contradictorily downplaying that "it means race is in the background." *Id.* at 158:15-16. Cooper went on to admit that where there's a concentration or cluster of green dots, "that's generally going to be an area that one might want to include in a majority-Black district." *Id.* at 158:24-159:9. This evidence shows that Cooper was not merely "aware" of race after he drew Plaintiffs' maps, but openly admitted that he actually used race as a criterion in drawing Plaintiffs' illustrative maps.

In fact, Cooper admitted in his testimony on three separate occasions that, even before he drew Plaintiffs' illustrative maps, he already knew "where the Black population lived" in DeSoto County because the state legislature had recently created a "new majority-Black house District 40 in and around Horn Lake." *Id.* at 158:17-20; *see also id.* at 156:12-22 (testifying that "he immediately knew even before entering into this case that there was the potential for a new majority-Black supervisor's district" in the area around Horn Lake and Southaven) (emphasis added); *id.* at 188:8-17 ("I knew going in that there was a concentration of Black persons in and around Horn Lake" because the state legislature recently created a new district) (emphasis added). Thus, Plaintiffs' illustrative maps provide no value in proving their Section 2 case given that race was used as a criterion in drawing their maps. *Callais*, 146 S.Ct. at 1159.

Plaintiffs' own witnesses confirmed Cooper's race-based map drawing methodology and his own belief that the government should be allowed to draw maps based on race. Plaintiffs called Democrat Jimmy Stokes, the newly elected mayor of Horn Lake (a majority Black city), to testify in their case in chief. However, on cross examination, and most likely to the chagrin of Plaintiffs, Mayor Stokes said the quiet part out loud: that Ward 2 in Horn Lake—a majority White area—had been excluded in each of the proposed majority-Black districts in Plaintiffs' illustrative maps. Trial Tr. at 781:4-782:20. In fact, Mayor Stokes doubled down and said that he believed it was okay to draw these county maps based upon race. *Id.* at 782:20-784:11.

And as Defendants have already explained in their post-trial briefings, *see* Def. Proposed Findings of Fact and Conclusions of Law at 19-23, the evidence in the record shows that Cooper subordinated traditional districting criteria, such as maintaining communities of interest and traditional boundaries, compactness, to connect disparate communities in furtherance of Plaintiffs' racial goals in order to draw a district where the Black population constituted a majority. *See* Trial Tr. at 2157:22-2160:19 (Supervisor Lee Caldwell testimony as to the 2022 Plan reunifying the Greenbrook neighborhood, the Tulane area, the Jordan Drive community, Nesbit East and West, and the old Sparks farm community). The irregular shape and size of the districts in Plaintiffs' illustrative maps further support this conclusion. *See id.* at 1810:25-1812:6; *see also* PX-154 at 1; PX-155 at 1; PX-156 at 1. As a result, Plaintiffs' illustrative maps “shed[] no light” on whether the County acted unlawfully by not adopting such a map. *Callais*, 146 S.Ct. at 1159.

Plaintiffs argue that Cooper did not impermissibly use race in drawing their illustrative maps because he looked at racial demographics after he had already drawn the illustrative maps. *See* Pl.'s Opening Brief [479] at 6-7. However, the Supreme Court was clear in *Callais* that race cannot be used as a districting criterion. Period. *See Callais*, 146 S.Ct. at 1159 (“First, in drawing

illustrative maps, plaintiffs cannot use race as a districting criterion.”). The Supreme Court did not impose a temporal condition on the use of race—it commanded plaintiffs not to use race at all. *Id.* (“Thus, an illustrative map in which race was used has no value in proving a [Section] 2 plaintiff’s case.”). In any event, Cooper’s own testimony, as detailed above, undermines Plaintiffs’ prestidigitatory arguments that Cooper considered racial data only after he drew the illustrative maps.⁴

Accordingly, because the evidence in the record clearly shows that Plaintiffs used race in drawing their illustrative maps, such maps have “no value in proving” Plaintiffs’ Section 2 case. *Callais*, 146 S.Ct. at 1159. For this reason alone, the first *Gingles* precondition is not satisfied under *Callais*’ updated *Gingles* framework. *Id.*

2. Plaintiffs Failed to Meet County’s Traditional and Political Objectives

Plaintiffs also cannot satisfy the first *Gingles* precondition because their illustrative maps do not meet all the County’s legitimate districting objectives, including traditional districting criteria and the County’s specified political goals. *Callais*, 146 S.Ct. at 1159.

“If the State’s aims in drawing a map include a target partisan distribution of voters, a specific margin of victory for certain incumbents, or any other goal not prohibited by the Constitution, the plaintiffs’ illustrative maps must achieve these goals just as well.” *Id.* (emphasis added). “If not, the plaintiffs would fail to demonstrate that the State’s chosen map was driven by

⁴ Compare Trial Tr. at 129:2-130:5 (testifying that “the darkest red shows populations that are in the 60 to 75 percent Black range,” that “[y]ou can see some of those are clustered around Horn Lake,” and that “[i]t’s clear that the bulk of the Black population lives in an area that basically just tracts the Tennessee state line in the municipalities in that same general area, Horn Lake, Southaven, part of Walls” and “Olive Branch ha[ving] some majority-Black block groups as well”) with *id.* at 160:11-161:3 (testifying that District 3 in Illustrative Plan 1 is the proposed BVAP district and that the percentage of Horn Lake in that district is “almost 90 percent”) and *id.* at 167:23-168:16 (testifying that District 3 in Illustrative Plan 2 is the proposed BVAP district and that the percentage of Horn Lake in that district is “89.18 percent”) and *id.* at 173:9-174:1 (testifying that District 3 in Illustrative Plan 3 is the proposed BVAP district and that the percentage of Horn Lake in that district is “84 percent”).

racial considerations rather than permissible aims.” *Id.* “Only by meeting all the State’s legitimate objectives can the illustrative maps help to ‘disentangle race’ from politics and other constitutionally permissible considerations.” *Id.*

At trial, Desoto County presented testimony from its map maker, Christopher Watson, regarding the 2020 redistricting process. Mr. Watson was hired by the Board, and the Board relied on Mr. Watson to provide them with the criteria needed for the 2020 redistricting process. Trial Tr. at 1592:19-22; *see also* PX-310 at 26-27. These criteria included compactness, trying to keep incumbents in their respective districts, avoiding splitting neighborhoods, avoiding removing areas of strong constituency, and trying to use visible boundaries. *See* PX-322 at 2; Trial Tr. at 1548:5-24. In fact, in the 2022 Plan, Defendants kept all incumbents’ home addresses in the districts where they had previously been located in the 2011 Enacted Plan. *See* D-2064; D-2065. All of these criteria are constitutionally permissible and legitimate redistricting objectives. *See Callais*, 146 S.Ct. at 1156 (citing *Bush v. Vera*, 517 U.S. 952, 965 (1996) (citing Supreme Court cases)).

First, Plaintiffs’ illustrative maps are deficient because the record shows that Cooper ignored the County’s traditional districting criteria in drawing Plaintiffs’ illustrative maps, such as avoiding splitting neighborhoods, maintaining communities of interest, and traditional boundaries, as illustrated by the testimony of Supervisor Lee Caldwell. *See* Trial Tr. 2157:22-2159:9. Further, Defendant’s expert Dr. Sean Trende shows that Plaintiffs’ Illustrative Maps: (1) often subordinated proposed traditional redistricting principles to racial goals; (2) individual districts are frequently less compact than any in the 2022 Plan; (3) Illustrative Maps 2 and 3 are based upon non-compact minority populations; (4) have comparatively low core retention rates; and (5) demographic

comparisons are meaningless without a proper statistical test. *See* Trende Expert Report D-4918 at 1 (introduction and executive summary).⁵

But the most obvious deficit in Plaintiffs' illustrative maps is the failure to meet the County's political goals, including trying to keep incumbents in their respective districts and avoiding removing areas of strong constituency. *See* PX-322 at 2; Trial Tr. at 1548:5-24. Plaintiffs' Illustrative Maps 1 and 3 pitted many incumbents against one another, while Illustrative Map 2 moved incumbent Justice Court Judge Billy Lantrip out of District 3 and into District 2 and incumbent Justice Court Judge Karen Carter out of District 5 and into District 4. While Justice Court Judges do not have to live in the district where they run for office, this was nonetheless a decision that Defendants made – to keep all incumbents' home addresses in the districts where they had previously been located in the 2011 Enacted Plan. Thus, this was part of Defendants' "goal[s] not prohibited by the Constitution" which, under *Callais*, Plaintiffs were required to respect, meet, and comply with in their Illustrative Maps. Because they failed to do so in Plaintiffs' Illustrative Map 2, it also fails.

Finally, all three illustrative maps failed to account for incumbents' strong constituencies. *See* Trial Tr. at 164:22-25; 165:11-15. Indeed, Cooper emphatically rejected that incumbent protection and avoiding incumbent conflicts are even traditional districting criterion, admitting that avoiding incumbent conflicts was not on his list of traditional redistricting principles he considered, despite the fact that it remains a permissible traditional redistricting principle that was important to the County. *See* Trial Tr. at 246:1-247:6; 215:6-10; 165:5-10. As the Supreme Court stated in *Callais*, "If the State's aims in drawing a map include a target partisan distribution of voters, a specific margin of victory for certain incumbents, or any other goal not prohibited by the

⁵ The page numbers cited in reference to Dr. Trende's report refers to the pagination as set forth in Dr. Trende's report.

Constitution, the plaintiffs' illustrative maps must achieve these goals just as well. If not, the plaintiffs would fail to demonstrate that the State's chosen map was driven by racial considerations rather than permissible aims." *Callais*, 146 S.Ct. at 1159. Thus, the evidence shows that Plaintiffs' illustrative maps do not meet the County's political goals.

Plaintiffs suggest that because Illustrative Map 2 does not pair incumbents, it meets all of the County's goals. Pl.'s Opening Brief [479] at 8. However, incumbent protection means more than ensuring incumbents remain in their district. "An incumbent is not protected if he or she will lose re-election." *See Callais*, 146 S.Ct. at 1161 (adding that "because the plaintiffs' illustrative maps failed to protect all the incumbents that the State sought to shield, the plaintiffs did not meet their burden on this precondition"). Plaintiffs did not prove their proposed maps were drawn in a manner that would ensure the County's incumbents won re-election, which was the whole point of Defendants' legitimate districting goal of "avoiding removing areas of strong constituency."⁶ In fact, the evidence shows that Plaintiffs' illustrative maps shift a significant portion of incumbents' core constituencies with respect to the 2022 Enacted Plan. *See* PX-183. As Defendants' expert Dr. Trende explained, displacing the core population of a district or placing an incumbent in a different district would mean that the incumbent would be put before a whole new set of voters and would potentially open themselves to primary challenges, even if there were no incumbent pairing. *See* Trial Tr. at 1818:20-1819:8. As such, much like in *Callais*, Plaintiffs failed to produce any illustrative map that meets all of the County's legitimate districting objectives and thus they cannot satisfy the first precondition under the updated framework.

⁶ In fact, Plaintiffs would likely never attempt to make such a showing as it would be fundamentally at odds with the entire theory of their case: Plaintiffs believe the County's district lines needed to be drawn in a way that placed a majority of Black citizens in at least one district so that a Black citizen could be elected to public office because only Blacks can represent Black citizens, so the theory goes. *See* Trial Tr. at 495:7-9; 516:19-25.

In sum, because the maps of Plaintiffs' illustrative maps either fail to consider all of the County's objectives or directly conflict with those objectives, Plaintiffs have failed to satisfy the updated first *Gingles* precondition.

B. Second and Third *Gingles* Preconditions

To satisfy the second and third *Gingles* preconditions, "[P]laintiffs must provide an analysis that controls for party affiliation," meaning that "they must show that voters engage in racial bloc voting that cannot be explained by partisan affiliation." *Callais*, 146 S.Ct. at 1159. This is "critical" for "disentangling race and politics." *Id.*

In conducting his analysis, Plaintiffs' expert, Dr. Jacob M. Grumbach, conceded that he did not account for party affiliation, Trial Tr. at 723:24-724:7, effectively precluding himself from offering effective testimony related to the second and third *Gingles* preconditions in a post-*Callais* world. In fact, Dr. Grumbach believes it is not appropriate in a racial polarization analysis "to attempt to control for partisanship." Trial Tr. at 681:5-25; *see also* PX-193 at 6 ("[W]e should not consider partisanship in analyses of the relationship between voter race and voter choice"). Thus, Plaintiffs' expert forecloses any argument that Plaintiffs satisfied the second and third *Gingles* preconditions post-*Callais*.

By contrast, the evidence in the record shows evidence that partisanship or party affiliation is determinative of election outcomes in DeSoto County. Defendants' expert, Dr. John Alford, analyzed the same elections as Dr. Grumbach but included an assessment of party affiliation. Trial Tr. at 1633:6-14; *see* D-4916 at 14-17. Dr. Alford's analysis revealed that the differences in voting between Blacks and Whites in DeSoto County are more about partisanship and party affiliation than race. D-4916 at 17. Dr. Grumbach admitted that there is partisan polarization in DeSoto County, Trial Tr. at 726:7-9, and agreed that Dr. Alford's analysis provides evidence of partisan

polarization, *id.* at 732:1-15. But Dr. Grumbach believed that partisan polarization is “irrelevant.” *See* PX-193 at 7 (“I have made clear that the presence or absence of partisan polarization is irrelevant for determining the presence or absence of racially polarized voting.”); Trial Tr. at 725:13-726:16 (testifying, in pertinent part, that the partisan polarization he admits is happening in DeSoto County is “neither here, nor there, to the question of whether there is racial polarization”); *id.* at 732:13-15 (testifying that the question of partisan polarization “does not affect one’s conclusion of whether voting is racially polarized”). As a result, Dr. Grumbach did not attempt to disentangle race and politics, which is now fatal under *Callais*. Instead, Dr. Grumbach simply declared that polarization based on partisan affiliation “does not negate[]” his half-baked findings of racially polarized voting. *See* PX-193 at 7 (“[D]espite voting cohesively for their candidates of choice, Black voters in DeSoto County are not represented by their preferred candidate because White voters overwhelmingly vote against these candidates in general elections. That candidates in these elections often have different political party affiliations does not negate this fact.”). This is not enough under the updated *Gingles* framework.

Thus, the uncontradicted evidence “shows that divergent voting patterns among white and minority voters are best explained by partisan affiliation.” *LULAC v. Clements*, 999 F.2d 831, 861 (5th Cir. 1993) (en banc) (“*Clements IV*”). As a result, if “partisan affiliation, not race, best explains the divergent voting patterns among minority and white citizens, then there is no ‘legally significant’ racially polarized voting under the third *Gingles* precondition. *Id.* at 850; *see also id.* at 861 (“Because . . . divergent voting patterns among white and minority voters are best explained by partisan affiliation, we conclude that plaintiffs have failed to establish racial bloc voting.”).

Recognizing this, Plaintiffs cherry-pick from the work of Dr. Chris Bonneau in their ill-conceived effort to establish racially polarized voting and satisfy the second and third *Gingles*

preconditions. Plaintiffs focus on a single race—the 2023 District 3 supervisor race between William Egner and eventual winner Ray Denison—to argue that “race drives polarization” in DeSoto County because of Egner’s performance in that election. Pl.’s Opening Brief [479] at 6. This argument fails for four reasons. First, Plaintiffs do not offer any record citation or other proof supporting their statement that “White voters were much more willing to vote for a White Democrat” *Id.* Second, Plaintiffs contradict themselves by relying on Dr. Bonneau to establish racially polarized voting when Plaintiffs elicited testimony from Dr. Bonneau that he “was not an expert in quantitative racially polarized voting analyses” and that he “did not do any” racially polarized voting analysis. Trial Tr. at 1726:19-21; 1727:4-8. Third, both Dr. Bonneau and Dr. Grumbach agreed that studying a single election would not allow anyone to draw strong conclusions. *See* Trial Tr. at 1702:19 (Bonneau recommending that the paragraph in his report discussing the election between Egner and Denison be struck because when looking at only one given race, “it’s just not good social scientific practice to compare only when you have one - -”); *see also* PX-193 at 2 (Grumbach stating in his Rebuttal Report that “one cannot draw strong conclusions from analysis of any single election” and that [i]t is crucial to study racially polarized voting *on average across multiple elections*”) (emphasis Grumbach’s). Fourth, District 3 Supervisor Ray Denison offered uncontradicted testimony about the distinct differences in the quality of campaign run against him by Bacardi Harris in 2019 versus the campaign run against him by William Egner in 2023, with the explanation behind the difference in support obtained by Harris and Egner being directly related to the work each respective candidate put in rather than based on either candidate’s race. *See* Trial Tr. at 1918:7-10; 1923:6-1925:8; 1925:12-23; 1929:9-1932:6.

Nonetheless, in an effort to escape their evidentiary deficiencies, Plaintiffs contend that they can carry their burden of demonstrating that voters engage in racial bloc voting that cannot be explained by partisan affiliation by “showing intra-party racial-bloc voting pattern[s] which help to ‘demonstrate that the minority plaintiffs have less opportunity than their majority counterparts because of race, not just because of partisan affiliation.’” Pl.’s Opening Brief [479] at 9. This argument is a nonstarter.⁷ Dr. Grumbach did not examine “intra-party elections,” a.k.a. primary elections and thus Plaintiffs have offered no evidence related to “intra-party elections.” See PX-193 at 7. Recognizing this, Plaintiffs rely on a series of non-partisan elections that Dr. Grumbach analyzed, but Plaintiffs’ argument completely ignores evidence Defendants put on through Dr. Bonneau that although certain races are officially “nonpartisan” meaning candidates’ “party identification is not on the ballot[] . . . [that] doesn’t mean the[candidates] don’t identify with the party” or that “they may not use partisan slogans in their campaigns” See Trial Tr. at 1706:22-1707:4. Dr. Bonneau agreed there is a way to determine which way a candidate leans in the nonpartisan races, including looking at the kinds of appeals they make and whether they include certain campaign themes or messages on their campaign signage. *Id.* at 1707:5-25. Plaintiffs make no effort to wrestle with this undisputed evidence, instead choosing simply to ignore it.

⁷ In any event, Plaintiffs’ cherry-picked portions of *Callais* do not support this proposition. In *Callais*, the Supreme Court explained that the specific facts of *Gingles* provide a “good example” of how a Section 2 plaintiff “can properly” meet the second and third preconditions. 146 S. Ct. at 1159. *Gingles* arose in the context of a one-party system where Black and White voters had starkly different voting patterns despite their affiliation within the same party. *Id.* (citing *Gingles*, 478 U.S. at 59). Thus, the facts in *Gingles* showed that “black and white voters had dramatically different voting patterns *within* the Democratic party” and “[t]his type of intra-party racial-bloc voting helps demonstrate that the minority plaintiffs have less opportunity than their majority counterparts because of race, not just because of partisan affiliation.” *Id.* This is important context because as the Supreme Court recognized in *Callais*, a “full-blown two-party system has emerged in the States where [Section] 2 are most common” since the decision in *Gingles*. *Id.* Worse for Plaintiffs, there is no evidence of “intra-party voting patterns of any kind in this case because Plaintiffs’ racially-polarized voting expert (Dr. Grumbach) did not look at primary elections. See PX-193 at 7.

Finally, Plaintiffs rely on *White v. State Bd. of Election Comm'rs.*, 795 F. Supp. 3d 794 (N.D. Miss. 2025), for the proposition that “other courts have concluded, evidence of racially polarized voting in non-partisan elections cuts sharply against a conclusion that party better explains polarization than race does.” Pl.’s Opening Brief [479] at 9. But not only was *White* decided pre-*Callais* and thus did not apply the updated *Gingles* framework, but it was also recently vacated by the Fifth Circuit. *See White v. State Bd. of Election Comm'rs, et al.*, 2026 WL 1340213, at *1 (5th Cir. May 11, 2026) (vacating district court’s opinion and order and remanding to the district court for further proceedings in light of *Louisiana v. Callais*). As such, *White* has no precedential or persuasive value. *See Asgeirsson v. Abbott*, 696 F.3d 454, 459 (5th Cir. 2012); *Beiser v. Weyler*, 284 F.3d 665, 668 (5th Cir. 2002) (noting vacated opinion was “no longer binding”); *Corp. Mgmt. Advisors, Inc. v. Artjen Complexus, Inc.*, 561 F.3d 1294, 1295 n.1 (11th Cir. 2009) (“Although we have previously addressed this question in [an earlier opinion], as that case was vacated on other grounds, we have no binding precedent to guide us.”).

C. Totality of the Circumstances

Even if Plaintiffs could satisfy any of the preconditions, the trial record also does not support the conclusion that Plaintiffs have met their burden at the totality of the circumstances step under the updated *Gingles* framework.

As an initial matter, Plaintiffs attempt to lower the substantive bar imposed by the totality-of-the-circumstances inquiry by contending that the standard requires “even a plausible likelihood of intentional discrimination by the State.” Pl.’s Opening Brief [479] at 6. In fact, that phrase appears only once in *Callais* as the Supreme Court distinguished *Robinson v. Ardoin*, 605 F. Supp. 3d 759, 845–46 (M.D. La. 2022). Far from that distinguishing phrase which didn’t articulate any real standard, the Supreme Court now under *Callais* requires “a strong inference that intentional

discrimination occurred.” *Callais*, 146 S.Ct. at 1156. Anything short of “a strong inference” isn’t sufficient for Plaintiffs to succeed on their claim, and Plaintiffs’ attempt to overlook this phrase is telling.

Similarly, Plaintiffs’ diversionary reliance on *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), is wholly misplaced. Pl.’s Opening Brief [479] at 11. For one, the *Arlington Heights* framework applies to challenges to redistricting legislation based on the Equal Protection Clause of the Fourteenth Amendment. *See, e.g., Jackson v. Tarrant Cnty.*, 158 F.4th 571, 585-90 (5th Cir. 2025). For another, nowhere in *Callais* does the Supreme Court hold that the *Arlington Heights* factors apply to Section 2 vote dilution claims or that the Senate Factors no longer apply. To be sure, the Senate Factors are specifically mentioned in the Supreme Court’s analysis at the totality of the circumstance step in *Callais*. 146 S.Ct. at 1162.

Thus, when the evidence in the trial record is evaluated against the correct legal standards and through the correct evidentiary lens, it remains true that the evidence in the trial record does not support the conclusion that Section 2 was violated and, indeed, *Callais* fortifies that conclusion.

As Defendants have already explained, Plaintiffs primarily rely on historical incidents and events as examples of discrimination, *see* Trial Tr. at 389:22-390:8; 407:21-25; 1069:13-1074:14; 1075:14-1076:16; 1086:22-1088:4; 1088:24-1089:8; 1103:2-9; 1107:11-23; 1134:18-1138:23, as well as socioeconomic disparities that they contend are the effects of ongoing discrimination. *See* Trial Tr. at 19:14-20:24; 2264:3-25; 136:14-139:15. But as *Callais* instructs, such evidence is entitled to “much less weight” since the focus of the totality of the circumstances inquiry is on evidence of “present-day intentional racial discrimination regarding voting” and Section 2 does not impose liability for mere disparate impact. *Callais*, 146 S.Ct. at 1161. And evidence of “current data” and “current political conditions” that “shed light in current intentional discrimination” is

lacking here. Of course, as the Supreme Court noted in *Callais*, this should be a “cause for celebration.” *Id.* at 1160.

What is also lacking is any Plaintiffs’ evidence disentangling race from politics. As already explained, Dr. Grumbach’s election analysis did not look specifically at which elections were partisan versus non-partisan, did not consider the candidate’s party, and did not account for partisanship, *see* Trial Tr. at 723:24-724:7, and his racially polarized voting analysis did not control for partisanship. *Id.* at 681:5-25. Thus, Dr. Grumbach’s shallow analysis provides little value here. To be sure, Dr. Grumbach agreed that Dr. Alford’s analysis of the same elections provides evidence of partisan polarization. *Id.* at 732:1-15. That observation undercuts any showing of intentional racial discrimination because race and politics are so intertwined. *See, e.g., Callais*, 146 S.Ct. at 1162 (observation that black voters have been aligned with the Democratic party for decades and issues discussed by that party appealed to black voters undercuts, not strengthens, any showing of racial discrimination because race and politics are so intertwined). Indeed, Plaintiffs’ counsel acknowledged that “it should come as no surprise that race and party are connected in Mississippi.” Trial Tr. at 18:9-10. The problem for Plaintiffs, however, is that *Callais* makes it their responsibility disconnect race and party. Given that Plaintiffs failed to disentangle race from politics despite evidence in the record showing that race and politics are highly correlated, liability cannot be imposed under Section 2.

In effort to save their case, Plaintiffs seemingly attempt to reframe their Section 2 vote dilution claim as predicated on allegations of discriminatory intent or purpose. Pl.’s Opening Brief [479] at 13-14. But Plaintiffs disclaimed any such theory at trial. *See* Trial Tr. at 2254:22-24 (Plaintiffs counsel summarized their evidence by saying “this case is not about intent” but rather “Section 2 is about effects.”); *see also id.* at 310:24-311:2 (Khadija Sheard, as corporate

representative of Plaintiff Delta Sigma Theta Sorority, Inc., testifying that Plaintiff Delta Sigma Theta has no knowledge of intentional discrimination in the 2022 redistricting process). Plus, the federal rules prohibit trial by ambush, and a plaintiff must stick to the same legal and factual theory over the course of the proceedings. *See Shelak v. White Motor Co.*, 581 F.2d 1155 (5th Cir. 1978) (“The law is settled in this court that parties generally are bound by the theory of law they argue in the district court, absent some ‘manifest injustice.’”). Indeed, the Fifth Circuit has rejected the argument that a party, even in the late stages of litigation, should be “entitled to recovery under any legal theory that would fit allegations of fact contained in the operative pleadings.” *Southern Constructors Grp., Inc. v. Dynalectric Co.*, 2 F.3d 606, 610 (5th Cir. 1993) (footnote omitted). It has also admonished litigants for engaging in the type of “wait and see” approach in which Plaintiffs have engaged here, particularly when a litigant is represented by counsel and fails to assert a claim as soon as they could have. *Goldstein v. MCI WorldCom*, 340 F.3d 238, 255 n.6 (5th Cir. 2003) (citation omitted). This is because Plaintiffs’ “blind-hog-occasionally-finds-an-acorn approach would play havoc with trial procedure and would negate the narrowing and winnowing process that occurs under the present federal rules.” *Southern Constructors Grp., Inc.*, 2 F.3d at 610.

Regardless, even if Plaintiffs’ belated argument was proper, nothing in Plaintiffs’ brief supports the conclusion of a “strong inference that intentional discrimination occurred” or that the Board of Supervisors acted with discriminatory intent or purpose.⁸ To the contrary, the record shows that the poverty rate in DeSoto County is less than the national average and the median

⁸ The bulk of evidence Plaintiffs cite in their brief focuses on purported private discrimination. But that is not relevant since Section 2 “does not require States to overcome societal effects of private discrimination;” only their own discrimination. *See Frank v. Walker*, 768 F.3d 744, 753 (7th Cir. 2014), *reh’g denied by an equally divided court*, 773 F.3d 783, *cert. denied*, 575 U.S. 913 (2014); *Clements IV*, 999 F.2d at 867 (5th Cir. 1992) (“[S]ocioeconomic disparities and a history of discrimination, without more,” do not satisfy Section 2’s legal standard).

household income for Black citizens in DeSoto County is higher than the national income. *See* Trial Tr. at 1170:25-1171:3; 236:7-18. As to education, the graduation rate for DeSoto County Schools has steadily improved and the DeSoto County School System is now among the Top 10 in the State of Mississippi for graduation rate, with an overall rate of 97%. Trial Tr. at 585:11-587:15. And in 2025, the DeSoto County School District received an “A” rating and each high school within DeSoto County received either an “A” or “B” rating and has at least a 95% or greater graduation rate. *See* PX-232; Trial Tr. at 585:18-586:18.

The record also shows that Black citizens have participated in the political process. Black citizens regularly run for office in DeSoto County, *see* Trial Tr. at 308:4-15; 435:15-23; 753:15-25; 897:21-898:6, and regularly engage in voter registration drives, *see id.* at 60:8-61:8; 377:3-20; 497:24-499:9. Black citizens interested in the County’s redistricting process met with Mr. Watson to discuss the process and ask questions. *Id.* at 297:12-18; PX-008. In fact, Defendant Board of Supervisors specifically arranged for this meeting and paid Mr. Watson to meet with these black citizens. *See* D-3147; Trial Tr. at 276:14-22; 297:15-18 (Darrylinn Todd testifying that the Board of Supervisors scheduled a meeting with Mr. Watson for the citizens to ask questions about the redistricting process); *id.* at 2144:7-9 (Supervisor Lee Caldwell testifying that the Board paid Mr. Watson to meet with the redistricting committee). Black citizens came to multiple meetings of the County’s Board of Supervisors to discuss the redistricting process. Trial Tr. at 271:4-272:24; PX-322. In fact, a Black citizen had a revision made to the redistricting plan that the Board members were leaning toward adopting at the June 6 public hearing (Alternate Plan 1). PX-322 at 4-5, 6. Several Black citizens of DeSoto County have also been elected to offices throughout the State and County. *See* Trial Tr. at 1711:18-1712:4; 1772:19-1773:6; 1879:4-6; 2218:17-18; 357:13-19.

Despite this wealth of evidence, Plaintiffs attempt to distance themselves from this participation arguing that somehow “Mr. Watson’s demeanor and presentation” made it clear to “[s]everal attendees at the meeting” that “[Mr. Watson] was not going to respond to their concerns.” Pl.’s Opening Brief [479] at 13. However, this accusation is unsupported by the record given that Plaintiffs’ attempt to make a generalized statement is based on one witness’s “personal impression.” Indeed, this witness mentioned nothing about her purported concerns but rather testified that her “personal impression was that . . . [Mr. Watson] was going to do exactly what the board of supervisors instructed him to do.” Trial Tr. at 277:2-6. Thus, Plaintiffs’ suggestion that the Board did not care about their concerns is unsupported by the record. Even so, Plaintiffs’ implication is unavailing given that Mr. Watson, in discussing the input from community groups, explained that “there are a couple of things that shake out of the plan that bear some relationship to what the - - what the citizens were asking for.” Trial Tr. at 1615:1-4.

Relatedly, Plaintiffs also argue that because the public hearing on redistricting occurred during the day, this was a “departure from past practice” and “most people were unavailable.” Pl.’s Opening Brief [479] at 13. But in 2010, the public hearing on redistricting occurred on February 22, 2011 at 9:00 a.m., during the work day, so there was no departure from past practice. *See* PX-306 at 9. Moreover, Plaintiffs, through selectively quoting a partial statement without context, disingenuously suggest that Mr. Watson and the Board of Supervisors’ goal was to not create a minority district. Pl.’s Opening Brief [479] at 12. That, however, could not be farther from the truth, as illustrated by a complete reading of the record showing that Mr. Watson explained that “the goal is to balance out the districts, not create a minority district.” Trial Tr. at 1613:7-11. When referring to “balancing” the districts, Mr. Watson explained this language “relates to the necessity to change the district’s geographically to account for districts that were underpopulated and

districts that were overpopulated[,]” such that the variance between the most underpopulated district to the most overpopulated district” does “[n]ot exceed 10 percent.” *Id.* at 1545:18-1546:23. Hence, Mr. Watson was concerned with the overall plan variance for all citizens, not just minority groups, and there is nothing discriminatory about this concern.

Equally unavailing is Plaintiffs’ argument that they have “adduced germane ‘current data’ and ‘current political conditions’ at trial that indicate current intentional racial discrimination.” Pl.’s Opening Brief [479] at 13-24. First, Plaintiffs argue that there is evidence of “present-day” discrimination in appointments and hiring. *Id.* at 13-14. They attempt to cobble together an argument that the lack of Black citizens appointments shows evidence of intentional discrimination by suggesting “Supervisor Jesse Medlin admitted that in his thirty-three years as a supervisor, he has appointed only a single black person to a County Board.” *Id.* at 17. However, the Black citizen that Plaintiffs refer to has been appointed *every* year for at least the last 12 years – for a total of 12 appointments – far more than the “single” appointment Plaintiffs suggest. *See* PX-234 – PX248; Trial Tr. at 1479:22-1480:3.

Nor does Plaintiffs’ suggestion that testimony from witnesses seeing no Black employees at various county offices support a strong inference of intentional discrimination. Pl.’s Opening Brief [479] at 13-18. Quite differently, testimony from DeSoto County Schools’ Superintendent of Education, Corey Uselton, shows that Desoto County’s teacher of the year for 2025 was Black, Administrator of the Year was Black, there are five Black directors of education (up from three before his tenure), and the number of principals during his tenure has grown from two Black Principals to eight Black principals presently. Uselton further explained that during his tenure a total of eleven Black principals have been hired. Trial Tr. at 604:21-607:19. In the end, Plaintiffs wish for the Court to believe that because witnesses testified that they did not see Black citizens

working at county offices while the witnesses reportedly visited such offices, it has to be intentional discrimination. However, Plaintiffs' shortsighted implication fails to account for a myriad of other considerations and suggests that because a witness did not see any Black persons working while the witness was present at the office, there must not be any Black employees period. This is a leap too far.

Moreover, Plaintiffs' argument that there have been "no blacks elected to office" is undermined by the record. The record shows that Rodney Hall, a Black Republican who had never run for office, beat a White male incumbent alderman in from Southaven in the primary election for House District 20, receiving 54.92% of the vote. *See* D-4926 at 6; *see also* Trial Tr. at 1879:4-6. Also, Thomas Tuggle, a Black Republican who had never run for office, beat a White male who was the then-incumbent President of the Board of Supervisors, for sheriff of the majority white Desoto County, securing almost 63% of the vote. *See* D-4926 at 7. Plaintiffs' expert Dr. King even admitted that elections in Desoto County for countywide positions are even more helpful than just county district elections for understanding countywide voting, undercutting Plaintiffs' argument of intentional racial discrimination in voting in Desoto County. *Id.* at 1126:22-1127:1. Finally, Dr. Bonneau also testified that Hester Jackson McCray, a Black female Democrat, beat Ashley Henley, a White female Republican incumbent, in 2023 for House District 40, a then-white plurality/majority district. *See* Trial Tr. at 1710:15-17; 1711:18-1715:4; 1772:19-1773:6.

Turning to Plaintiffs' contention that there is evidence of present-day voting barriers, they seem to suggest that Election Commissioner Chad Engelke refused to agree to move a location of a polling place to Brown Baptist Church, a majority Black church, and instead moved the that polling place to Pathway Church, a majority White church. Pl.'s Opening Brief [479] at 19. But what Plaintiffs omit—and what the record shows—is that the Brown Baptist facilities are not

located in the same precinct as Pathway Church. *See* Trial Tr. at 2005:7-25 (Sissie Ferguson testifying that Brown Baptist is located in precinct 204 and the polling locating for Precinct 204 is Goodman Oaks Church of Christ); PX-272 at 1 (showing that Pathway Church is located in Greenbook North precinct 202); PX-270 (showing that Gracewood Baptist Church is in Greenbrook North precinct 202).

Plaintiffs also suggest that a private citizen's comment on a Facebook post indicates that elections in DeSoto County are currently "marred by acts of white prejudice against black candidates." Pl.'s Opening Brief [479] at 19-20. Supervisor Lee Caldwell, however, testified that similar comments had been made towards her previously. Trial Tr. at 2125:21-2126:19. Nonetheless, a private citizen's comment cannot be attributed to Defendants. *See supra* fn. 8. And despite Plaintiffs' witnesses claiming all types of racist, harassing or threatening behavior during campaigns, including dogs being allegedly "sicked" on people, testimony from Desoto County Sheriff's Office Chief Deputy Justin Smith shows that his office received no reports regarding racist behavior in political campaigns, no reports relating to guns being pulled on political candidates, and no reports of dogs being "sicked" on any political candidates or their canvassers. Trial Tr. at 2058:15-2060:20. Sheriff Thomas Tuggle also confirmed that none of this campaign workers, white or black, experienced such incidents. *Id.* at 2222:10-18. In fact, Sheriff Tuggle, a Black Republican who had never run for elected office, received more votes than any other Desoto County elected official in the 2023 election. *Id.* at 2228:2-24. Further, Representative Rodney Hall testified that he did not experience any racial incidents when he was campaigning, that race did not come up at when he knocked on voters' doors, that he won every precinct box except the one his opponent lived in, that he had not experienced official voting-related discrimination in DeSoto

County, and had not seen the County use voting practices that enhance discrimination. *Id.* at 1884:9-1889:1.

As to Plaintiffs' assertion that predominately-White Desoto County schools are more well-maintained than predominately Black schools, that is unsupported by the record. Pl.'s Opening Brief [479] at 24. For support, Plaintiffs' rely on testimony from Harold Harris to suggest that this is evidence of intentional racial discrimination because Harris visited a school and noticed differences in "how buffed or spotless some of the flooring was", "the practice field and equipment," "painting," and differences in "a sense of pride or a sense of cleanliness." *Id.* But Harris admitted that his school analysis was superficial at best as he did not compare academic achievement standards between schools, did not compare any teachers between schools, and did not compare any administrators between schools. Trial Tr. at 94:5-16. Plaintiffs' paltry attempt to equate flooring and paint to intentional discrimination is another leap too far. Plaintiffs' assertion of intentional discrimination in schools, like all of their evidence, is a *post-hoc* effort to resurrect their case. An effort this Court should decline to entertain.

Similarly, Plaintiffs assert that because Plaintiffs' witnesses believe that elected officials do not value predominately black schools equally to those of predominately-white schools, intentional racism exists. But Plaintiffs have not pointed to a single piece of testimony from any elected official to suggest this – all they have is opinion testimony from their own witnesses about outside appearances of structures and buildings. That is simply not enough to support the conclusion of a strong inference of intentional racial discrimination.

Finally, nothing supports Plaintiffs' contention that Mississippi laws enacted with purportedly racially discriminatory intent is "current data" demonstrating the "current effects" of intentional racial discrimination in the County. Pl.'s Opening Brief [479] at 27-30. Their argument

is predicated on: (1) Mississippi's prohibition on voting for convicted felons, (2) Mississippi's lack of same-day voter registration, and (3) the failure of Desoto County to have voting information on their website. *Id.* Plaintiffs also fault Desoto County because the Mississippi Legislature "recently killed an effort to create early voting." *Id.* at 28. From this, Plaintiffs suggest that "legislators" (not Desoto County) have designed a system to produce lower Black political participation. *Id.*

Plaintiffs' assertion is merely that intentional discrimination occurs in Desoto County because Desoto County follows the laws of the State of Mississippi. Plaintiffs' main gripe appears to be with the State of Mississippi, not DeSoto County because, of course, Desoto County cannot change statewide laws. In fact, when Plaintiffs' expert Dr. Marvin King was pressed on his assertion in his expert report that "there is a long and well-documented literature unambiguously demonstrating that the state of Mississippi and local jurisdictions, including DeSoto County, have a history of discrimination affecting the right to vote[.]" King had to admit that he could not name a single book that he reviewed or relied upon about voting discrimination in Desoto County. Trial Tr. at 1134:6-1135:19. Rather, as King stated, he simply assumed discrimination occurred in Desoto County because it was a part of Mississippi. Plaintiffs fail to carry their burden by using assumptions.

Further, as to the claim that Desoto County did not have voting information on its website, Plaintiffs' expert, Dr. Marvin King, admitted that he had not looked at the Desoto County website since April 2025. He also admitted that he not looked at Desoto County's Facebook page when he drafted his report and came to this erroneous conclusion that Desoto County was not distributing information about upcoming elections. Nor did King know of Desoto County's app for citizens to receive voting information. Trial Tr. at 1159:23-1161:11. Despite the supposed lack of available information, King was able to find voting information. *Id.*

In the end, Plaintiffs have failed to present evidence of present-day intentional racial discrimination regarding voting under the updated *Gingles* “totality of circumstances” inquiry as now required by *Callais*, 146 S.Ct. at 1160, and as such their claim that the 2022 Plan violated Section 2 of the VRA must fail.

CONCLUSION

Desoto County is a heavily Republican county. Plaintiffs, obviously upset they could not elect a Democrat at the ballot box, turned instead to the court, filing this lawsuit and couching their allegations in terms of racial discrimination instead of what their true aim is—partisan gain. However, Section 2 of the Voting Rights Act is not violated when Black candidates cannot win elections because they are Democrats. Because Plaintiffs failed to prove that Desoto County engaged in intentional racial discrimination in drawing the county’s voting districts, failed to overcome their “special burden” of disentangling race from politics, used race as a districting criterion in drafting their illustrative maps, failed to meet the County’s legitimate traditional and political districting objectives, failed to control for partisan affiliation in racial bloc voting, and failed to show present-day evidence of intentional racial discrimination regarding voting, Plaintiffs have not carried their burden to prove a Section 2 violation and as such their claims for relief must be denied.

Dated: May 22, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on May 22, 2026, I electronically filed this document with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to all counsel of record in this action.

/s/ Nicholas F. Morisani
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