

**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,

v.

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

Defendants.

No. 3:24-cv-00289-GHD-RP

**PLAINTIFFS' REPLY BRIEF ON *LOUISIANA V. CALLAIS* AND IN RESPONSE TO
DEFENDANTS' [480] BRIEF**

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Plaintiffs Harold Harris, Pastor Robert Tipton, Jr., Delta Sigma Theta Sorority, Inc., and DeSoto County MS NAACP Unit 5574 (together, “Plaintiffs”) respectfully submit this reply brief in further support of their continued entitlement to relief under Section 2 of the Voting Rights Act following the Supreme Court’s decision in *Louisiana v. Callais*, 146 S. Ct. 1131 (2026).

INTRODUCTION

Defendants read *Callais* to do what the Court explicitly said it did *not* do: prevent a finding of liability under Section 2 of the Voting Rights Act. *Callais* expressly holds that Section 2 remains a viable cause of action: “[c]orrectly understood, § 2 does not impose liability at odds with the Constitution.” 146 S. Ct. at 1143. Defendants also studiously ignore the *Callais* Court’s statement that its opinion cannot be read as overturning *Allen v. Milligan*, 599 U.S. 1 (2023), a case directly on point that Defendants barely acknowledge. *See id.* at 1162–63. This Court should follow the Supreme Court’s own words, rather than Defendants’ misreading. Under *Callais*, Plaintiffs have established a Section 2 violation.

ARGUMENT

I. PLAINTIFFS HAVE SATISFIED *GINGLES I*.

Under *Callais*, a *Gingles I* illustrative plan must not make use of race in a manner that would be impermissible for a state-drawn map. *See* 146 S. Ct. at 1159 (*Gingles I* plan cannot use “a process that would be unconstitutional if a State engaged in such mapmaking.”). Defendants point to Mr. Cooper’s testimony that he was aware of where the Black population in DeSoto County is concentrated, and that he examined precincts that were 30% Black, as proof that his maps unlawfully prioritized race. Dkt. No. 480 at 7–10. But “awareness” of race is not the standard. The Supreme Court recognizes that a “legislature always is aware of race when it draws district lines, just as it is aware of . . . a variety of other demographic factors,” *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 187 (2017) (citation modified); *see also Milligan*, 599 U.S.

at 33 (“The line that we have long drawn is between consciousness and predominance [of race].”). As *Milligan* states, “Section 2 itself ‘demands consideration of race.’ The question whether additional majority-minority districts can be drawn, after all involves a ‘quintessentially race-conscious calculus.’” *Id.* at 30–31 (first quoting *Abbott v. Perez*, 585 U.S. 579, 587 (2018)); and then quoting *Johnson v. De Grandy*, 512 U.S. 997, 1020 (1994)).

In *Milligan*, the Supreme Court affirmed the district court’s conclusion that the first *Gingles* precondition was satisfied where “none of plaintiffs’ maps contained any tentacles, appendages, bizarre shapes, or any other obvious irregularities[.]” 599 U.S. at 20 (citation modified). Additionally, “equal populations, contiguity, and respect for existing political subdivisions like counties, cities, and towns” are relevant to the analysis. *Miss. State Conf. of NAACP v. State Bd. of Election Comm’rs*, 739 F. Supp. 3d 383, 414 (S.D. Miss. 2024) (citing *Milligan*, 599 U.S. at 20).

Under these principles, Plaintiffs’ expert, Mr. Cooper, did not use excessive reliance on race in drawing his illustrative plans. Mr. Cooper made clear that he prioritized traditional districting criteria and did not move voters into districts because of their race, but simply checked the resulting racial demographics of the districts *after* he drew maps to determine he had created a majority-Black district. 2/17 Tr. 191:13–18 (Cooper) (“Let me make clear that you can draw much stronger [BVAP] districts. . . . I was trying to balance the traditional redistricting principles.”). Mr. Cooper’s similar testimony in *Milligan* supported the Supreme Court’s approval of the preliminary injunction in that case. 599 U.S. at 30. Knowing where the Black population lives, and what districts have previously been drawn in the same area, is permissible “awareness” of race for a *Gingles* I expert, just as it would be for a state. *Id.* at 30–31; *see also Singleton v. Allen*, No. 2:21-

cv-1291-AMM, 2026 WL 1469518, at *22 (N.D. Ala. May 26, 2026).¹

Similarly, Mr. Cooper’s awareness of mixed-race precincts—which were up to 70% white and 30% Black—involves no invidious use of race. As *Milligan* makes clear, “there is a difference between being aware of racial considerations and being motivated by them” and that mere “race consciousness does not lead inevitably to impermissible race discrimination.” 599 U.S. at 30 (citation modified). Indeed, Mr. Cooper testified that, had he not prioritized traditional redistricting criteria such as compactness, he could easily have drawn a district with a much higher Black voting age population. 2/17 Tr. 191:11–18 (Cooper).

Mr. Cooper’s Illustrative Plan 2 fully satisfies *Callais*’ requirement that a *Gingles* I plan must meet “all the State’s legitimate districting objectives, including traditional districting criteria and the State’s specified political goals.” *Callais*, 146 S. Ct. at 1159. Mr. Watson testified that the Supervisors did not give him any traditional districting principles to follow in drawing the 2022 plan. 2/26 Tr. 1592:17–23 (Watson). But he understood that the Supervisors’ overriding goal for the new plan was to keep each of the twenty-five incumbents in separate districts. *Id.* at 1599:5–15. Mr. Cooper’s Illustrative Plan 2 satisfies that goal: none of the twenty-five incumbents is paired in a district with any other incumbent. 2/17 Tr. 192:12–14 (Cooper).² It also satisfies other

¹ *Singleton v. Allen* is the caption for the *Milligan* case on remand to the Northern District of Alabama following the Supreme Court’s vacatur of *Allen v. Castor* for reconsideration in light of *Callais*. *Allen v. Castor*, No. 25-274, 2026 WL 1282800 (May 11, 2026) (mem.).

² Defendants now argue that, apart from avoiding the pairing of incumbents, it was important for each incumbent to remain in the same numbered district as previously. Dkt. No. 480 at 12–13. But their citation to the trial transcript fails to bear this out. Defendants cite Mr. Watson’s testimony at 2/26 Tr. 1548:5–24, but that says nothing about keeping the same district numbers; instead, Mr. Watson testified that “we certainly want to consider in the redistricting process where the elected officials live so that we can -- we can keep from pitting one election official against the other, putting two elected supervisors in the same supervisor district, for instance. We want to avoid that.” *Id.* at 1548:14–18. Mr. Cooper’s Plan 2 fully achieves that goal. Plan 2 does not join any two incumbents in the same district. 2/17 Tr. 192:12–14 (Cooper). In any event, the only two officials whose district numbers changed were Justice Court Judges, who are not even required to reside in the district where they are running. There is literally nothing preventing any Justice Court judge from running in *any* district they choose. Thus, Mr. Cooper’s Plan 2 does not interfere with Defendants’ newly discovered “interest.”

traditional redistricting principles, including compactness. PX-149 at 26 fig.16; 2/17 Tr. 170:14–172:6 (Cooper). Plaintiffs had no obligation to consider any other goals or criteria because the County itself did not advance any, beyond the desire to avoid pitting incumbents against each other. In particular, unlike in *Callais*, Defendants here never articulated any partisan goals for the Enacted Plan. *Cf. Callais*, 146 S. Ct. at 1156 (“[W]hen a State defends a districting scheme on the ground that it was drawn for partisan purposes, plaintiffs have a ‘special’ burden to overcome.” (citation modified)). No such “special” burden applies here.

Defendants now seek to recast the record by arguing that their goal was not just to keep incumbents in their districts, but to ensure that no incumbent could lose an election. Dkt. No. 480 at 13. Nothing in the record supports this new, previously unarticulated assertion. Not a single Supervisor testified that they were afraid of being defeated if a Black-majority district were created. Instead, they touted their support for and from the Black community in DeSoto County. *See, e.g.*, 3/2 Tr. 1958:11–14 (Denison); 3/3 Tr. 2202:10–2203:1 (Caldwell). No officials from the other elected offices even testified. In any event, Plaintiffs’ illustrative *Gingles I* districts include only a bare majority of Black voting-age population—the lowest possible Black population that can satisfy *Gingles I*. By comparison, the *Callais* Court emphasized that the plaintiffs’ map there would have “effectively ensured [the incumbent’s] exit from Congress.” 146 S. Ct. at 1161.

This case, instead, tracks the record in *Milligan*, where the state also relied on incumbency protection as a goal, *see* 599 U.S. at 15, but the Supreme Court nevertheless found that plaintiffs’ *Gingles I* plan sufficiently comported with traditional redistricting criteria, and ultimately affirmed the overall finding of a Section 2 violation. *Id.* at 19–20. On remand after *Callais*, the three-judge district court reaffirmed its finding that plaintiffs had satisfied *Gingles I*. *Singleton*, 2026 WL

1469518, at *21–24. The same result follows here: Plaintiffs likewise have satisfied *Gingles* I.

II. PLAINTIFFS HAVE SATISFIED *GINGLES* II AND III.

Defendants argue that the record in this case fails to disentangle racial bloc voting from partisan voting, but this ignores the fact that Plaintiffs’ expert, Dr. Grumbach, studied non-partisan as well as partisan elections. Dr. Grumbach’s analysis showed high levels of racial polarization even in non-partisan school board elections between 2016 and 2023. *See* PX-200 at 6 fig.2. Such evidence of racially polarized voting in non-partisan elections cuts sharply in favor of finding that racial bloc voting in DeSoto County cannot be explained away by partisanship. Defendants’ experts, for their part, failed to analyze *any* non-partisan elections, much less to produce any evidence contradicting Dr. Grumbach’s finding of racial bloc voting in such elections. Plaintiffs have thus satisfied *Callais*’ requirement of analyzing elections that separate race from party, and Defendants have produced no countervailing evidence.

Moreover, as explained in Plaintiffs’ opening brief, Defendants’ expert Dr. Christopher Bonneau’s own analysis demonstrates *intra-party polarization*. Dr. Bonneau admitted that, when using correct data, his analysis shows that the one White Democrat who ran for a districted office, William Egner, did better than any Black candidate who has run. 2/27 Tr. 1753:3–13, 1760:20–24 (Bonneau). Egner ran for District 3 Supervisor as a Democrat and received 46.21% of the vote in his election, compared to an average vote share of 36.8% for Black candidates who have run as Democrats. *Id.* at 1753:11–13; D-4913B (corrected Bonneau report). As Dr. Bonneau’s corrected report states,

In the 1 election involving White Democrats, the losing candidate received 46.21 percent of the vote; in the 13 elections involving Black Democrats, the losing candidate received 36.8 percent of the vote. That is, Black Democrats performed worse than White Democrats. Although, no Democrat was successful, the Black Democrats performed worse.

D-4913B at 7.

The fact that White voters were much more willing to vote for a White Democrat, and that only a White Democrat made an election competitive, is evidence that race drives polarization. *See, e.g., Ala. State Conf. of the NAACP v. Allen*, 796 F. Supp. 3d 759, 861–65 (N.D. Ala. 2025). In fact, Egner, the White candidate for a partisan office in 2023, outperformed Black candidates who ran in elections that same year. 2/27 Tr. 1761:6–11 (Bonneau). Moreover, in 2019, Bacardi Harris (a Black candidate) and Denison competed for an *open* seat; in 2023, Denison was an incumbent when running against Egner (a White candidate). As Dr. Bonneau acknowledged, all else equal, one would expect Denison to do better as an incumbent. *Id.* at 1759:7–11. But Denison, as an incumbent, performed worse against a White Democrat than he did against a Black Democrat when he ran without the incumbency advantage.

Accordingly, Plaintiffs’ evidence satisfies the threshold requirements of *Gingles* II and III, as modified by *Callais*.

III. THE TOTALITY OF THE CIRCUMSTANCES EVIDENCE RAISES AN INFERENCE OF CURRENT INTENTIONAL DISCRIMINATION.

Plaintiffs’ opening brief explained in detail how the totality-of-the-circumstances evidence in this case is sufficient to raise “a plausible likelihood of intentional discrimination” as described in *Callais*, 146 S. Ct. at 1162. In doing so, Plaintiffs detailed how the evidence here responds to the *Arlington Heights* factors which the Fifth Circuit has found relevant in assessing a claim of intentional discrimination. *See Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265–68 (1977); *Veasey v. Abbott*, 830 F.3d 216, 230 (5th Cir. 2016) (en banc). The non-exhaustive list of factors includes the (1) “historical background of the decision,” (2) “specific sequence of events leading up to the decision,” (3) “departures from the normal procedural sequence,” (4) “substantive departures,” and (5) “contemporary statements by members of the decision-making body.” *Veasey*, 830 F.3d at 231 (citation modified). As explained in Plaintiffs’ opening brief, the

evidence here includes substantial indicia of intentional discrimination in the enactment of the County's 2022 districting plan ("Enacted Plan"). Dkt. No. 479 at 7–12.

Defendants urge this Court to ignore the *Arlington Heights* factors. Dkt. No. 480 at 19. But *Callais* now requires the Court to assess evidence of racial intent in the Section 2 totality-of-circumstances analysis, and the Fifth Circuit has employed those factors when analyzing whether governmental action is intentionally discriminatory. *See Veasey*, 830 F.3d at 230–31. Defendants give no cogent reason for applying a different test.³

Application of the *Arlington Heights* factors here strongly points to a finding of intentional discrimination satisfying *Callais*. In fact, Defendants' own cartographer used race in drawing the Enacted Plan to a far greater extent than Plaintiffs' expert, Mr. Cooper, did in creating his illustrative districts. Mr. Watson not only knew where the Black population resides, but, at the request of the Supervisors, also deliberately sought to maintain the exact racial percentages within each district to match the racial percentages of the 2010 plan. 2/26 Tr. 1620:4–7, 1621:2–8 (Watson) (discussing maintaining previous Black population percentage of districts); 2/23 Tr. 1035:22–1037:24 (Caldwell by deposition) (same). As Mr. Watson explained in an email to Supervisor Denison, he followed Supervisor Gardner's request for a plan "which more closely equalizes the racial change across all five districts." PX-10. This ensured that no district would have more than 38% Black VAP, *see* PX-83 at DEF-09888, even while Black residents were asking

³ Defendants point to Plaintiffs' counsel's statement in closing argument that this case did not require a finding of intent. Doc. 480 at 2. Although that was a correct statement of the governing standard at the time, the *Callais* Court has now directed courts to consider whether the totality of circumstances supports a finding that a challenged plan shows evidence of a racially discriminatory intent. 146 S. Ct. at 1156; *see also, e.g., Utah v. Su*, 109 F.4th 313, 319–20 (5th Cir. 2024) (citing Richard Fallon, et al., *Hart & Wechsler's The Federal Courts and the Federal System* 1292 (7th ed. 2015) ("Traditionally, judicial decisions, no matter how novel, apply retroactively to the parties in the litigation and to other litigants in all pending cases that have not yet become 'final' on direct review.")). It is therefore wholly appropriate for Plaintiffs to draw this Court's attention to the facts in the record that show intentional discrimination.

the Supervisors to create a Black opportunity district in the new plan, PX-8 at 3, and Mr. Watson acknowledged that he was able to draw a plan with an almost 50%-Black district. PX-21 at DEF-00439. Under Supreme Court precedent, “expressly adopt[ing] and appl[y]ing a policy of prioritizing mechanical racial targets” provides “evidence that race motivated the drawing of particular lines.” *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 267 (2015); *see also Cooper v. Harris*, 581 U.S. 285, 300–01 (2017) (noting that the district court “could hardly have concluded anything but” racial predominance in the face of “an announced racial target”).

Defendants’ *Callais* brief also fails to acknowledge or explain the Supervisors’ blatant violations of Mississippi’s Open Meetings Act, which occurred every time they deliberately limited the number of Supervisors or other elected officials at meetings with Mr. Watson in order to evade a quorum, which would require a public meeting. Mr. Watson himself testified that he was aware that it was best for him not to meet with three supervisors at the same time because he “underst[oo]d the Open Meetings Act [applied to] . . . a meeting of three [in] a body of five [because it] is a quorum.” 2/26 Tr. 1600:19–24 (Watson). Supervisor Denison also admitted the Board met with Mr. Watson in groups of no larger than two specifically to avoid state law requirements that require Supervisor meetings to be public. 3/2 Tr. 1959:17–1960:8 (Denison). As Plaintiffs showed in their opening brief, such evasion violates Mississippi law. Dkt. No. 479 at 9–11. And a violation of state law is certainly a “[d]eparture[] from the normal procedural sequence” and thus evidence of intentional discrimination. *Arlington Heights*, 429 U.S. at 265–68.

Defendants are also incorrect to the extent they argue that Plaintiffs have not presented evidence of modern-day and ongoing racial discrimination and inequities in DeSoto County sufficient to satisfy Section 2’s “totality of circumstances” requirement. Plaintiffs’ opening brief on *Callais* summarized the extensive record of this evidence, Dkt. No. 479 at 7–24, and we will

not repeat it here.⁴

Suffice it to observe that DeSoto County largely excludes its Black citizens—over a third of the population—from county government by election, by appointment, and by employment; DeSoto County devotes much more spending to heavily White areas of the County than to heavily Black areas; DeSoto County’s schools remain racially identifiable and disproportionately discipline Black students; Dkt. No. 479 at 21; and the schools in Horn Lake and Southaven areas (which serve predominantly Black student populations) received Bs, Cs, and in one case a D for the 2024-2025 school, compared to an A rating for the district as a whole. 2/19 Tr. at 553:7–555:24 (Uselton). Surely this is not, as Defendants claim, “cause for celebration.” Dkt. No. 480 at 6.

CONCLUSION

For the foregoing reasons, the evidence presented at trial demonstrates that Defendants’ Enacted Plan violates Section 2 of the Voting Rights Act as clarified by *Louisiana v. Callais*, 146 S. Ct. 1131 (2026). Accordingly, Plaintiffs are entitled to declaratory and injunctive relief.

⁴ Defendants attempt to avoid the clear evidence of current, ongoing racial disparities within DeSoto County by trying to compare DeSoto County population groups to national population groups. Dkt. No. 480 at 21–22. For example, they argue that the poverty rate of Black citizens in DeSoto County is less than the overall poverty rate of the nation as a whole. *Id.* at 21. That is the wrong comparison. The Senate Factors call for a comparison of Black and White poverty rates within DeSoto County itself, and on that score, Black citizens of DeSoto County clearly are worse off than White citizens of DeSoto County. PX-157 at 18; 2/17 Tr. at 136:7–137:8 (Cooper).

Dated: May 27, 2026

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CERTIFICATE OF SERVICE

I, Brenda Wright, do certify that on this day I filed the foregoing with the ECF System which sent notification to all counsel of record.

This 27th day of May, 2026.

/s/ Brenda Wright
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