

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

COURTNEY L. DRIVER, *et al.*,

Plaintiffs,

v.

HOUSTON COUNTY BOARD OF
ELECTIONS, *et al.*,

Defendants.

Civil Action No. 5:25-cv-00025-MTT

**DEFENDANTS' RESPONSE IN OPPOSITION TO DRIVER PLAINTIFFS'
MOTION TO AMEND SCHEDULING ORDER**

INTRODUCTION

In an effort to avoid dismissal of their claim based on the evidentiary record Plaintiffs chose and developed, they now seek the option to start this case over again, returning to the beginning at a significant cost to the taxpayers of Houston County. Discovery in this case is complete and Defendants have already moved for summary judgment, all on the schedule sought by Plaintiffs with the knowledge that the U.S. Supreme Court's decision in *Louisiana v. Callais*, 146 S. Ct. 1131 (2026), would issue before June 30, 2026. Defendants' already-pending motion was based on the law prior to *Callais*, which that decision further bolstered. This Court should deny the motion and allow this case to proceed along its current summary-judgment track.

ARGUMENT AND CITATION OF AUTHORITY

Plaintiffs must demonstrate that good cause exists to amend the Court's scheduling order under Fed. R. Civ. P. 16(b). And "[f]utility of amendment is a proper reason for denying a motion for leave to amend." *Alexander v. AOL Time Warner, Inc.*, 132 F. App'x 267, 269 (11th Cir. 2005); *see also Kemin Foods, L.C. v. Pigmentos Vegetales Del Centro S.A. de C.V.*, 464 F.3d 1339, 1355 (Fed. Cir. 2006).

I. *Callais* does not establish good cause for amendment of the scheduling order.

While Plaintiffs argue that there has been a change in the controlling law, the cases they cite reference things like the elimination of a cause of action by another court while a case was pending. *See* Doc. 75-1 at 4, *citing Coton v. Televised Visual X-Ography, Inc.*, No. 8:07-CV-1332-T-TGW, 2008 WL 11336586, at *1 (M.D. Fla. Nov. 24, 2008) (good cause when Florida Supreme Court eliminated cause of action and Plaintiff moved to eliminate that claim from her case). Plaintiffs also agree that *Callais* "did not expressly overrule prior precedent" regarding Section 2 or their claims in this case. Doc. 75-1 at 4.

Callais did not eliminate a Section 2 claim under the Voting Rights Act. *Callais* did not even "abandon[]" the *Gingles* framework to analyze a Section 2 claim under the Voting Rights Act, but "update[d] the framework so it aligns with the statutory text and reflects important developments" after *Gingles* was decided. *Callais*, 146 S. Ct. at 1157. Further, because Section 2 has always been an

enforcement of the Fifteenth Amendment, the Supreme Court explained that “it imposes liability only when the circumstances give rise to a strong inference that intentional discrimination occurred.” *Id.* at 1156.

At root, while *Callais* provides significant clarity for Section 2, including by rooting the relevant tests in the text of the statute, it did not alter the legal analysis in ways that impact Plaintiffs’ claims here aside from providing further reasons why they fail. In the updated framework, Plaintiffs’ illustrative maps for the first *Gingles* precondition “cannot use race as a districting criterion.” *Id.* at 1159.¹ And on the second and third *Gingles* preconditions dealing with racial polarization, “plaintiffs must provide an analysis that controls for party affiliation.” *Id.* The Supreme Court rooted its example of these points in *Gingles* itself. *Id.* Finally, the totality-of-the-circumstances analysis must focus on “present-day intentional racial discrimination regarding voting.” *Id.* at 1160. The requirement to focus on current-day discrimination was likewise already the law in the Eleventh Circuit.

¹ This is the sole point on which there was a change in the law in this Circuit, although Plaintiffs do not identify it and it is not relevant in the *Driver* litigation. The Eleventh Circuit previously specifically authorized mapdrawers to use race in creating illustrative plans so long as race did not predominate. *See Davis v. Chiles*, 139 F.3d 1414, 1426 (11th Cir. 1998). As discussed in Defendants’ motion for summary judgment, Dr. Cervas’s illustrative plans fail the test of race predominance, which was the established law prior to *Callais*. *See also Singleton v. Allen*, Case No. 2:21-cv-01530-AMM, Doc. 537 (N.D. Ala. May 26, 2026), slip op. at 51 (applying race-predominance bar to illustrative plans).

See Greater Birmingham Ministries v. Sec'y of State for State of Alabama, 992 F.3d 1299, 1332 (11th Cir. 2021). In *Callais*, the Supreme Court also explained that its decision was consistent with its existing Section 2 precedents. 146 S. Ct. at 1160–61.

As a result, Plaintiffs cannot point to a change in the law that provides good cause to permit amendment of the scheduling order post-summary-judgment motion, which is essence would grant Plaintiffs the ability to restart their case from the beginning. *Callais* addressed several issues in interpreting Section 2 that do not alter the realities of this case, such as the constitutionality of Section 2. But Plaintiffs chose how they wanted to make their case, discovery closed, and Defendants moved for summary judgment. Plaintiffs proceeded, knowing the dangers including the pendency of *Callais*, and, as they now admit, *Callais* did not overrule existing precedent. Thus, Plaintiffs cannot show good cause unless they can identify a specific issue on which *Callais* was inconsistent with existing precedent in a way that matters to their claim.

II. Amending the scheduling order would be futile.

This Court should also deny the motion to amend the scheduling order because any amendment of the scheduling order would be futile.² As Defendants'

² Plaintiffs claim they are not yet sure if they need to amend their complaint. Doc. 75-1 at 5–6. But Plaintiffs do not even mention intentional racial discrimination in their Complaint, which is required in a Section 2 case as an action to enforce the Fifteenth Amendment. *Callais*, 146 S. Ct. at 1156.

summary-judgment motion demonstrates, Plaintiffs' claim fails on the legal standards governing Section 2 cases before and after *Callais*. Dr. Cervas improperly allowed to predominate in the drafting of the illustrative plans. Doc. 63-1 at 12-18. That was already prohibited before *Callais* clarified the standard, meaning Plaintiffs are unable to establish the first *Gingles* precondition, whether a more-strict *Callais* standard applies or not. *Id.* Plaintiffs' political scientist did not submit sufficient evidence of cohesion among Black voters, aside from not including any analysis controlling for partisan affiliation that is required to show the second and third *Gingles* preconditions.³ Doc. 63-1 at 18-25. Either of those issues required judgment for Defendants before any clarification in *Callais* but certainly require judgment for Defendants now – and further factual development will not solve those shortcomings given Plaintiffs' strategic choices.

But even proceeding with this case beyond those points makes little sense given the remaining factual record. For example, Plaintiffs' sole historical expert did not identify any discrimination by Houston County in the last 35 years, despite the requirement that Plaintiffs must show *present-day* intentional discrimination. Dep. of Joseph Bagley at 86:18-25.

³ Plaintiffs also did not contrast voting preferences inside different groups within recent Democratic voters/blocs or other similar evidence which should be necessary for a Section 2 claim under an application of *Callais*.

And starting discovery over again ignores another problem: Plaintiffs need not only all new experts – they need new Plaintiffs. Plaintiffs Driver, Jones, and the Ga. State Conf. of the NAACP each admitted in their depositions that they had no knowledge of any present-day racial discrimination by Houston County involving voting:

- Plaintiff Driver: Q: “Do you have any personal knowledge of discrimination by the government of Houston County against Black voters?”
- A: “No.”
 - Driver Dep. at 42:42–43
- Plaintiff Jones: Q: “Are you aware of any discriminatory actions by Houston County government against Houston County government employees?”
- A: “Not to my knowledge.”
 - Jones Dep. at 59:9–12
- Plaintiff Jones: Q: “Do you have any knowledge of any actions by Houston County government against members of a minority group related to that group’s participation in the democratic process group related to that group’s participation in the democratic process?”
- A: “Outside of what I believe we’re bringing in this case, I wouldn’t want to speak to that.”
- Q: “So you’d rely on your experts for that?”
- A: “I would, yes.”
 - Jones Dep. at 52:24–53:6
- Plaintiff Ga. NAACP (representative in personal capacity) Q: “Do you have any personal knowledge of any discrimination by the government of Houston County against the members of a minority group?”
- A: “No. I don’t have any personal knowledge of any discrimination by governmental actors in Houston County.”
 - Ga. NAACP Dep. at 33:23–34:2

- *See also* Ga. NAACP Dep. at 25:21–26:4 (members’ only injury is not being able to elect Black members of the commission).

In other words, Plaintiffs admit they are not aware of any evidence on a key point they must prove in a Section 2 case—and their sole historical expert is unaware of that evidence as well. Without even a hint of present-day intentional discrimination in the record Plaintiffs developed over an extensive discovery period, Plaintiffs’ claims must fail. *Callais*, 146 S. Ct. at 1156.

All of this demonstrates that amending the scheduling order to permit amendment of pleadings and extending discovery would accomplish nothing and would be futile. Plaintiffs will not be able to support their claims even with more time.⁴

III. Defendants would be prejudiced by starting this case over again.

Finally, no good cause can exist when the prejudice to Houston County and its taxpayers would be severe. Because Plaintiffs chose to develop a record devoid of necessary evidence they have now decided they need, their only option is seeking a “do-over” from this Court to go back to the very beginning, starting with

⁴ To Defendants’ knowledge, there was only one other county in Georgia besides Houston County facing a pending Section 2 case. Plaintiffs in that case, which challenged Meriwether County’s commission districts under Section 2, dismissed their case following the issuance of the opinion in *Callais*. *See Ga. State Conf. of the NAACP v. Meriwether County Board of Elections and Registration*, Case No. 3:25-cv-00222-LMM, Doc. 46 (N.D. Ga. May 20, 2026).

the Complaint. And, presumably, Plaintiffs still are seeking attorney fees for all their work on this case if successful, compounding the potential liability for Defendants if this case starts over again. If this Court grants Plaintiffs' demands, it would cause great harm to Defendants.

Defendants have moved for summary judgment on the factual record Plaintiffs built. Defendants are entitled to judgment as a matter of law on the law and facts prior to *Callais*.⁵ This Court should rule on the pending motions rather than create the option to start the case over with a new Complaint and more discovery, because the factual record already dooms Plaintiffs' case and additional effort cannot undo the record created by Plaintiffs.

CONCLUSION

This Court should deny the motion to amend and proceed with ruling on Defendants' pending motions.

Respectfully submitted this 29th day of May, 2026.

/s/ Bryan P. Tyson
Bryan P. Tyson
Georgia Bar No. 515411
btyson@tysonyounker.law
David J. Younker

⁵ Defendants are also willing to submit additional briefing, if it would assist the Court, to supplement their Motion for Summary Judgment based on the updated standard included in *Callais*.

Georgia Bar No. 940387
dyounker@tysonyounker.law
Tyson Younker LLC
1225 Johnson Ferry Road
Suite 600-A
Marietta, GA 30068
678.223.3160 (phone)

Counsel for Defendants

RETRIEVED FROM DEMOCRACYDOCKET.COM