

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

COURTNEY DRIVER, *et al.*,

Plaintiffs,

v.

Civil Action No. 5:25-cv-0025-MTT

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

Defendants.

**PLAINTIFFS' REPLY IN SUPPORT OF MOTION TO AMEND SCHEDULING ORDER
IN LIGHT OF *LOUISIANA v. CALLAIS***

Defendants' response leaves no doubt that Plaintiffs have demonstrated "good cause" and diligence sufficient to warrant amendment of the Scheduling Order pursuant to Federal Rule of Civil Procedure 16(b). Defendants do not dispute that a substantial change in the law constitutes good cause, and their attempts to downplay the substantial change of law effected by *Louisiana v. Callais*, 146 S. Ct. 1131 (2026), fall flat. Further, Defendants do not contest that Plaintiffs acted with diligence, both in completing discovery under the original Scheduling Order deadlines, and by acting promptly to seek amendment of the Scheduling Order after *Callais* was decided.

Rather than challenging either of the two factors relevant to a Rule 16(b) scheduling order amendment, Defendants ask the Court to deny Plaintiffs' motion on the theory that any future amendment of Plaintiffs' complaint would be "futile" and further discovery would "prejudice" Defendants. Defendants' arguments on both points lack merit. Futility is not an issue, because Plaintiffs have not yet moved to amend their complaint, and nothing in the current record precludes Plaintiffs from conducting the discovery necessary to satisfy *Callais*. Defendants' threadbare, prejudicial arguments—which concede that Defendants still have potential liability—provide no basis for depriving Plaintiffs of an opportunity to meet the new requirements *Callais* imposes.

I. The substantial change of law under *Callais* constitutes good cause for rescheduling.

Defendants argue that *Callais* “did not alter the legal analysis in ways that impact Plaintiffs’ claims.” ECF No. 78 at 3. Yet in the same breath, Defendants argue the exact opposite, citing multiple new requirements of *Callais* which Defendants say entitle them to judgment on the current record in this case. *Id.* at 3 (citing *Callais* at 1159, 1160), 5. As Defendants implicitly concede, *Callais* does more than “clarify” Section 2 jurisprudence. It imposes new elements of proof that must be met for Section 2 redistricting claims. Such significant shifts in controlling law provide good cause to amend the Scheduling Order. *See Schwindler v. Bryson*, No. 1:11-CV-1276, 2015 WL 12990955, at *2 (N.D. Ga. Aug. 13, 2015) (citing *Fernandez v. Bankers Nat’l Life Ins. Co.*, 906 F.2d 559, 569 (11th Cir. 1990)).

Just last week, the Supreme Court emphasized the multiple ways *Callais* “updated the standards for §2 liability established by *Thornburg v. Gingles*, 478 U.S. 30 (1986).” *Allen v. Milligan*, Nos. 25A1314, 25A1315, 25A1316, 2026 WL 1552756, at *1 (U.S. June 2, 2026). The Court explained:

[T]o satisfy the first *Gingles* precondition, a plaintiff’s alternative map “must meet all the State’s legitimate districting objectives” “just as well” as the State’s sown map. 608 U.S., at ----, 146 S. Ct. at 1156 (emphasis added). Those legitimate districting objectives, we held, include “the State’s specified political goals” and “any other goal not prohibited by the Constitution.” *Ibid.* A plaintiff also “cannot use race as a districting criterion” in preparing the alternative map. *Ibid.* To prove the second and third preconditions, a plaintiff “must provide an analysis that controls for party affiliation” and “show that voters engage in racial bloc voting that cannot be explained by partisan affiliation.” *Id.*, at ----, 146 S. Ct. at 1156–57. *These updates, we held, were necessary to avoid requiring congressional maps under §2 that would be unconstitutional racial gerrymanders.*

Id. (emphasis added). These “updates” do not merely explain existing understandings of the *Gingles* preconditions—they directly change what Section 2 redistricting plaintiffs must show to establish and substantiate a Section 2 claim, significantly complicating their evidentiary burdens.

Indeed, Defendants concede that *Callais* alters the first *Gingles* factor in a way that represents “a change in the law in this Circuit.” ECF No. 78 at 3 n.1. Defendants offer no similar express concession as to *Callais*’ impact on the second and third *Gingles* factors, but clearly nothing in prior 11th Circuit or Supreme Court jurisprudence linked polarized voting and partisan factors in the manner the Court did in *Callais*.

Callais also alters the standards in the totality of circumstances inquiry. Rather than relying on historical factors that shape “present day disparities,” Section 2 redistricting plaintiffs must put forth “‘current data’ and ‘current political conditions’ that shed light on current intentional discrimination.” *Callais*, 146 S. Ct. at 1160. Defendants’ citation to *Greater Birmingham Ministries v. Secretary of State for State of Alabama*, ECF No. 78 at 3–4, is unavailing on their claim that a focus on present discrimination was already established Eleventh Circuit law. The Eleventh Circuit found that the *Gingles* factors were not even applicable to the vote denial claim in question. 992 F.3d 1299, 1331–32 (11th Cir. 2021). The court focused on evidence of historical voting-related discrimination only in discussing *Gingles* Factors 1 and 2, not as part of the totality of circumstances inquiry. *Id.* at 1332. The court “credit[ed] Plaintiffs’ argument about Alabama’s history of voting-related discrimination” while cautioning against reliance on such old evidence to decide the claims in question. *Id.* By contrast, in *Callais*, the Supreme Court concluded that “[d]iscrimination that occurred some time ago...[is] entitled to much less weight” when analyzing the totality of circumstances. *Callais*, 146 S. Ct. at 1160. Like the *Gingles* pre-conditions, the totality of circumstances inquiry has been substantially changed.

Defendants’ make much of Plaintiffs’ observation that *Callais* “did not expressly overrule prior precedent,” ECF No. 78 at 2, 4, apparently acknowledging that the cases cited by Plaintiffs remain good law. *See* ECF No. 75-1 at 4 (citations omitted). But this fact only compounds the

complexity of analyzing and implementing the new *Callais* requirements. For example, as to the first *Gingles* factor, it presumably remains the law that mapmakers need not “be entirely ‘blind’ to race,” since proof “that an additional majority-minority district could be drawn ... is the whole point of the enterprise.” *Allen v. Milligan*, 599 U.S. 1, 33 (2023). How to offer such proof without “us[ing race] as a districting criterion” is now an open question. *Allen*, 2026 WL 1552756, at *1.

Similarly, notwithstanding *Callais*’ discourse on considering intentional discrimination in the “totality of circumstances” analysis, it presumably remains the law that, under the 1982 amendments to Section 2, “proof of intent is [not] required to prove a § 2 violation.” *Chisom v. Roemer*, 501 U.S. 380, 394 (1991). The distinction between that well-established holding and the *Callais* “totality of the circumstances” approach must now be analyzed and applied.

In sum, the scope and impact of the new elements or standards of proof that *Callais* attaches to Section 2 redistricting claims constitutes a substantial change of law. The change establishes good cause to amend the Scheduling Order to afford Plaintiffs the opportunity to analyze and apply the new standards to the facts of this case, move to amend their complaint if warranted and conduct such further discovery as may be reasonably necessary to meet those standards.¹

II. Defendants’ futility arguments fail.

Defendants’ principal argument is that “any amendment of the scheduling order would be futile” because, in Defendants’ view, “Plaintiffs’ claim fails on the legal standards governing

¹ Plaintiffs do not share Defendants’ assumption that all aspects of *Callais*’ analysis in the context of a Section 2 redistricting case necessarily apply here. This is not a redistricting case. Plaintiffs challenge Houston County’s use of an at-large voting system—*i.e.*, Defendants’ refusal to use any redistricting plan at all. As a result, Defendants cannot claim to have followed any traditional redistricting criteria, nor to have achieved any partisan-based redistricting objectives, that would be afforded deference under the new rules set forth in *Callais*. Any disagreement as to the applicability of *Callais* in this case cannot prevent Plaintiffs from seeking the discovery required to satisfy *Callais* to the extent it applies.

Section 2 cases before and after *Callais*.” ECF No. 78 at 4–5. This argument fails and is premature for three reasons. First, “futility” measures the sufficiency of a pleading in a response to a motion to amend a under Rule 15—which Plaintiffs have not yet filed; futility is not part of the independent analysis required by Rule 16(b) for amending a scheduling order.

Second, Defendants’ futility arguments also fail and are premature because they ask the Court to decide Defendants’ summary judgment motion before it has been fully briefed, and before Plaintiffs have had the opportunity to conduct the discovery they need to respond to the motion under the new *Callais* standards. Forcing Plaintiffs to respond to, and the Court to decide, summary judgment arguments in the context of a Rule 19(b) scheduling motion makes no practical sense and contradicts both Rule 19(b) and Rule 56(d).

Third, the summary judgment arguments that Defendants present in opposition to Plaintiffs’ scheduling motion boil down to the theory that the evidence Plaintiffs gathered under the old Section 2 standards is insufficient to defeat Defendants’ summary judgment motion under the new ones. But Defendants make no attempt to show, and cannot show, that anything in the record precludes Plaintiffs from gathering **additional** evidence sufficient to satisfy the new *Callais* standards. Instead, the very evidence Defendants cite leaves plenty of room for additional discovery to satisfy those standards.

A. “Futility” has no bearing on Plaintiffs’ Rule 16(b) scheduling motion.

Futility has nothing to do with the only question before the Court: whether Plaintiffs have demonstrated good cause and diligence as required under Rule 16(b) for amending the Scheduling Order. Rather, futility measures a proposed amendment to a pleading under Rule 15(a): leave to amend may be denied as futile when the amended complaint would still be subject to dismissal. *Hall v. United Ins. Co. of Am.*, 367 F.3d 1255, 1262–63 (11th Cir. 2004); see *Foman v. Davis*, 371 U.S. 178, 182 (1962). Here, Plaintiffs only have moved to amend the Scheduling Order; they have

not moved to amend their complaint. Instead, as their motion explains, Plaintiffs seek to extend the schedule so they can fully analyze *Callais*, decide whether, and how, to amend, and (whether or not they amend the complaint) conduct discovery necessary to meet the new *Callais* standards. ECF No. 75-1 at 5–6. Defendants offer no authority to suggest that a court considers futility of some potential future amendment in these circumstances. Rather, the cases Defendants cite each involved a motion for leave to file an amended pleading that a party had actually put forward; none holds that a court should declare a possible future amendment futile before it exists, on a motion that asks only to reopen the schedule.

To justify their premature invocation of “futility,” Defendants argue in a footnote that amendment of the complaint will eventually be required because “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.” ECF No. 78 at 4 n.2. These assertions are baseless. First, Plaintiffs’ complaint, which survived Defendants’ motion to dismiss, ECF No. 41, specifically alleges that “Houston County and the State of Georgia have a long and extensive history of voting discrimination against Black voters.” ECF No. 14 ¶ 30. Under well-established pleading rules, Plaintiffs’ allegations support the “reasonable inference[]... construed in the light most favorable to the plaintiff,” *Jenkins v. Butts Cnty. Sch. Dist.*, 984 F. Supp. 2d 1368, 1372 (M.D. Ga. 2013) (quoting *Garfield v. NDC Health Corp.*, 466 F.3d 1255, 1261 (11th Cir.2006)), that “voting discrimination” refers to intentional, rather than accidental, discrimination. Second, nothing in *Callais* justifies Defendants’ assertion that a specific allegation of “intentional discrimination,” or reference to any other specific “totality of the circumstances” consideration, is required to satisfy Rule 8 pleading standards in a Section 2 case. On the contrary, recognizing this factor as fact-intensive and secondary to the *Gingles* preconditions, courts decline

to consider the “totality of circumstances” inquiry at the pleading stage. *Luna v. Cnty. of Kern*, No. 1:16-cv-00568, 2016 WL 4679723, at *6 (E.D. Cal. Sept. 6, 2016) (citing cases); *see also Rose v. Raffensperger*, 511 F. Supp. 3d 1340, 1360 (N.D. Ga. 2021) (“the *Gingles* factors present mixed questions of law and fact,” which “makes it particularly inappropriate to foreclose at the pleading stage Plaintiffs’ opportunity to prove their claims.”).

When and if Plaintiffs seek to amend their complaint, Defendants will have an opportunity to argue futility. Until then, Defendants’ futility arguments should be rejected as premature.

B. Defendants’ summary judgment arguments are premature.

Even treating Plaintiffs’ rescheduling motion as if a specific pleading amendment were before the Court, the futility argument fails, because it asks the wrong question. Futility tests legal sufficiency—the same inquiry as a motion to dismiss. *Hall*, 367 F.3d at 1262–63. It does not weigh whether a plaintiff’s evidence is strong enough to prevail. But that is the whole of Defendants’ “futility” theory: that Plaintiffs’ expert testimony and the named Plaintiffs’ depositions do not add up to a winning case. ECF No. Doc. 78 at 5–7. This theory—a summary judgment argument dressed up with a futility label—should not impact this Court’s analysis under Rule 16(b).

In granting Plaintiffs’ contested motion to extend their deadline for responding to Defendants’ summary judgment motion, the Court properly recognized that it should evaluate Plaintiffs’ Rule 16(b) motion before considering summary judgment arguments. Plaintiffs’ Rule 16(b) motion specifically explains why the *Callais* decision necessitates additional discovery, and it describes the types of additional fact and expert discovery Plaintiffs need. ECF No. 75-1 at 4–5. Defendants’ response does not contest that this type of additional discovery is likely to provide evidence relevant to the new *Callais* standards. Nor do Defendants dispute that Plaintiffs acted diligently in conducting discovery relevant to pre-*Callais* standards.

That is the beginning and the end of the analysis under Rule 16(b). In the context of a rescheduling motion, it makes no sense to force Plaintiffs to respond to, and the Court to decide, summary judgment arguments that implicate the new standards of law announced by *Callais*, where additional evidence is indisputably required to address those new standards.² Defendants' attempt to engineer a premature summary judgment ruling contradicts both the well-established standards of Rule 16(b), and the dictates of Rule 56(d).

C. Nothing in the current record precludes Plaintiffs from satisfying *Callais*.

Defendants' summary-judgment-*qua*-futility arguments fail in any event because none establish that the current record precludes Plaintiffs from satisfying the new Section 2 standards that *Callais* imposes. Defendants' suggestion that the Court should analyze their arguments under the law in effect both "before and after *Callais*," ECF No. 78 at 4–5, is nonsensical. Defendants offer not a single argument that can be separated from the new standards announced in *Callais*, as Defendants concede by citing *Callais* in support of each of their substantive arguments. *Id.* at 5, 7. The only question (if the Court even entertains Defendants' premature arguments) is whether the current record somehow precludes Plaintiffs from meeting the new standards. It does not.

1. Plaintiffs' expert evidence does not prevent them from satisfying the first *Gingles* factor.

As to the first *Gingles* factor, Defendants contend, citing their summary judgment brief, that Plaintiffs' expert Dr. Jonathan Cervas improperly "allowed [race] to predominate" in the

² Defendants do not and cannot invoke the branch of "futility" which permits a Court to decide whether a proposed amended complaint, filed in response to a summary judgment motion, is "immediately subject to summary judgment." *Cockrell v. Sparks*, 510 F.3d 1307, 1310 (11th Cir. 2007). Here, no proposed amended complaint is before the Court, and Plaintiffs are not seeking additional discovery to respond to Defendants' pre-*Callais* summary judgment motion. Rather, they only seek additional discovery to respond to the new *Callais* standards imposed after Defendants moved for summary judgment. Defendants cannot use the summary-judgment branch of futility to shut off the discovery that would potentially defeat summary judgment.

drafting of the illustrative plans.” ECF No. 78 at 5. That contention fails. To begin with, it disregards that Dr. Cervas prepared multiple illustrative plans, including “race-blind” plans as to which Defendants (according to their own expert Dr. Michael Barber) make no racial gerrymandering claim. (April 15, 2026 M. Barber Dep. Tr., attached hereto as Exhibit 1, 53:3–11; 55:11–20; 56:14–20; 61:3–10.) It further fails because it disregards Dr. Cervas’ consideration of race-neutral alternative electoral systems or voting rules, as well as his consideration of the adoption of an already existing plan utilized by the Houston County Board of Education, which Defendants’ expert also does not contend is a racial gerrymander.

Further, even as to plans where Defendants contend race predominates, their evidence is thin. Dr. Cervas indisputably created his base plans using race-neutral criteria (census county divisions and blocks) but allegedly considered race in adjusting those plans to cross the majority-Black threshold. (*Id.*, 47:13–25; 52:4–8.) Defendants’ expert Dr. Barber conceded that each of these plans contains a numeric majority-Black voting-age district and so meets the first *Gingles* precondition’s numerosity requirement. (*Id.*, 52:2–12; 53:11–17). Dr. Barber acknowledged he could not opine on predominance because that is a legal conclusion for the Court to make (*id.* 45:16–19; 59:2–4); see *Cooper v. Harris*, 581 U.S. 285, 301 n.3 (2017); *Nairne v. Landry*, 151 F.4th 666, 692–93 (5th Cir. 2025) (no abuse of discretion in excluding “Dr. Barber’s opinion on ... the ultimate legal conclusion of racial predominance”), *vacated on other grounds*, 2026 WL 1255781 (5th Cir. May 7, 2026), and he offered no meaningful evidence to support such a conclusion. Agreeing that mapmakers need not be blind to race and that Section 2 requires considering it (Ex. 1, 48:23–49:1; 48:15–22), Dr. Barber offered no opinion on the electoral performance of any plan (*id.*, 46:1–5), ran no compactness analysis comparing the illustrative plans to any race-neutral alternative (*id.*, 66:12–17), and did not dispute that the plans are contiguous

(*id.*, 64:13–16) or, with a single exception, respect equal population (*id.*, 65:14–19), nor did he analyze whether they track census county divisions. (*Id.*, 63:21–24.)

But whether or not the Court might have concluded that a subset of Dr. Cervas’ previously produced maps allowed race to predominate is now completely beside the point. The only relevant question now is whether, with the benefit of the new *Callais* standards, Dr. Cervas can prepare maps that satisfy those standards. Defendants have not pointed to anything in Dr. Cervas reports or testimony that would prevent him from doing so. In fact, should Plaintiffs be required to respond to Defendants’ summary judgment motion before conducting the additional discovery they need under *Callais*, they will submit declarations pursuant to Rule 56(d) showing that, if the necessary additional discovery is allowed, Dr. Cervas will prepare maps that accord with *Callais*, and will do so without contradicting any of the opinions he previously expressed.

Thus, because nothing in Dr. Cervas’ reports or testimony prevents Plaintiffs from satisfying the *Callais* “update” to the first *Gingles* factor, Defendants’ challenge to his existing maps provides no basis for denying Plaintiffs’ rescheduling motion.

2. Plaintiffs’ expert evidence does not prevent them from satisfying the second and third *Gingles* factor.

Defendants, again citing their pre-*Callais* summary judgment brief, fault Plaintiffs’ expert Dr. Stephen Popick for not showing cohesion among Black voters and, in particular, for not controlling for party affiliation as *Callais* now requires. ECF No. 78 at 5 & n.3. But the requirement to control for party is itself new to *Callais*—announced after Dr. Popick’s report and after discovery closed. *Callais*, 146 S. Ct. at 1160. Plaintiffs cannot be faulted for not running an analysis the law did not call for at the time, and the answer to a new evidentiary requirement is a chance to meet it, not dismissal. Supplemental analysis controlling for party is exactly the kind of expert discovery Plaintiffs seek. As with Dr. Cervas, should Plaintiffs be required to respond to

Defendants’ summary judgment motion before conducting the additional discovery they need under *Callais*, they will submit declarations pursuant to Rule 56(d) showing that, if the necessary additional discovery is allowed, Dr. Popick will prepare an analysis of voting cohesion that controls for party in accordance with *Callais*, and will do so without contradicting any of the opinions he previously expressed.

3. Plaintiffs’ evidence does not prevent them from satisfying the “totality of circumstances” inquiry.

Defendants argue that the existing record fails to satisfy the *Gingles* “totality-of-the-circumstances” inquiry because it does not include expert or fact evidence of “present-day intentional racial discrimination.” ECF No. 78 at 3, 5–7. That argument has several problems.

First, it is not clear that *Callais* uses “present-day” to refer to the time the challenged action was taken, the time of the court case, or something else. That distinction matters in this case, which challenges a method of election the Georgia General Assembly adopted more than a century ago. By contrast, *Callais* was a congressional redistricting case, involving challenges to newly-adopted redistricting plans. It did not address at-large systems, did not mention the enactment-or-maintenance theory long used in those cases, and did not overrule that theory. *See Dillard v. Crenshaw Cnty.*, 640 F. Supp. 1347, 1354–56 (M.D. Ala. 1986); *Dillard v. Baldwin Cnty. Bd. of Educ.*, 686 F. Supp. 1459, 1468 (M.D. Ala. 1988). How *Callais*’s “present-day” focus applies to a pre-existing structure is an open question—one Plaintiffs are entitled to work through and conduct discovery about, and not one to be decided against them on a scheduling motion.

Second, Defendants’ argument solely addresses “discrimination by Houston County.” ECF No. 78 at 5–7. The relevant decisionmaker for adopting and maintaining the at-large method is the Georgia General Assembly, not Houston County. In this case, Defendants already have admitted that “prior to 1990”—*i.e.*, continuing throughout the period when the General Assembly originally

adopted at-large voting for Houston County, and right up to when it last amended the relevant statute in 1990—“*the State of Georgia had a history of voting discrimination against Black voters.*” ECF No. 43 ¶ 30 (emphasis added). Defendants record—built around the alleged absence of “present-day” discrimination “by Houston County”—is thus aimed at the wrong actor. If intent matters, it is the already-admitted intent of the body that adopted and kept the at-large structure that counts.

Third, even assuming present-day intent is required, the framework for proving it is one *Callais* left alone. *Callais* said nothing about intentional-discrimination claims under the Fourteenth Amendment. See *Allen v. Caster*, 146 S. Ct. 1196, 1198 (2026). And under *Hunter v. Underwood*, 471 U.S. 222, 227–28 (1985), an electoral structure adopted with a discriminatory purpose that still works to dilute minority votes remains unlawful however much time has passed. That avenue stays open, and whether to develop it—including whether to amend the complaint to pursue it—is one of the decisions the requested extension would let the plaintiffs make. A theory *Callais* leaves available cannot preclude Plaintiffs from proving their case.

Fourth, as to Defendants’ citations to the Plaintiffs’ testimony regarding their personal knowledge, ECF No. 78 at 6–7, nothing in that testimony forecloses Plaintiffs’ from offering third-party fact evidence and expert evidence regarding intentional discrimination. Neither *Callais* nor prior case law limits such evidence to facts within a plaintiff’s personal knowledge. In light of Defendants’ contention that the *Callais* update to the “totality of circumstances” inquire requires evidence of “present-day intentional discrimination,” Plaintiffs are entitled to conduct discovery seeking such evidence.

In sum, Defendants’ “futility” argument fails on every level. It is premature, because no amendment has been proposed. It uses the wrong standard, asking whether the plaintiffs’ evidence

would win at summary judgment instead of whether a claim can be stated. And on the merits, each shortcoming Defendants name is disputed, fixable through the discovery Plaintiffs seek, or beside the point. The relief Plaintiffs ask for would enable Plaintiffs to cure the supposed gaps—the opposite of futility. Defendants cannot have it both ways, arguing both that *Callais* changed nothing that matters (to defeat good cause) and that Plaintiffs’ claims now fail because of the new requirements *Callais* imposes (to show futility). *Callais* clearly changed the law, and nothing in the record compiled under pre-*Callais* law prevents Plaintiffs satisfying its new standards. Plaintiffs should be given an opportunity to do so.

III. Defendants’ prejudice argument fails.

Defendants’ cursory, unsupported argument that rescheduling would cause Defendants “severe” prejudice, ECF No. 78 at 7, has no merit. Plaintiffs’ motion described the type of additional discovery it seeks and proposed a limited schedule for filing any motion to amend the complaint and for completing the necessary discovery. ECF No. 75-1 at 5, 9. Defendants offer no explanation as to why such additional discovery would be unduly burdensome and make no objection to the proposed schedule for completing it. Defendants’ contentions that Plaintiffs “chose to develop a record devoid of necessary evidence,” and now seek a “do-over,” are baseless. ECF No. 78 at 7. Plaintiffs diligently conducted fulsome fact and expert discovery in accordance with pre-*Callais* law and are now forced to expand that discovery because the Supreme Court changed the law.

The fact that Defendants filed a summary judgment motion based on pre-*Callais* law also provides no basis for finding prejudice. Courts regularly reopen discovery after the filing of summary judgment motions when additional discovery legitimately becomes necessary, as it clearly has here. *See, e.g., Collins v. Int’l Dairy Queen*, 190 F.R.D. 633, 636–37 (M.D. Ga. 2000);

Allstate Vehicle & Prop. Ins. Co. v. Jawanda, 728 F. Supp. 3d 1246, 1255–56 (N.D. Ga. 2024);
Lamar Advert. of Mobile, Inc. v. City of Lakeland, Fla., 189 F.R.D. 480, 492–93 (M.D. Fla. 1999);
Littlejohn v. Shell Oil Co., 483 F.2d 1140, 1145–46 (5th Cir. 1973).

Defendants’ other argument—that reopening discovery “compound[s] the potential liability for Defendants,” ECF No. 78 at 7–8—simply acknowledges that Plaintiffs clearly do have the potential to prevail in this case if they are permitted to conduct the discovery *Callais* requires. Far from establishing prejudice, Defendants admitted “potential liability” reinforces that Plaintiffs, not Defendants, would be severely prejudiced by denial of their rescheduling motion.

II. CONCLUSION

For the reasons discussed above and in their opening brief, Plaintiffs’ Motion to Amend the Scheduling Order should be granted. Defendants do not contest that, if the Court agrees to grant Plaintiffs additional time to move to amend and conduct discovery, Plaintiffs’ deadline for responding to Defendants’ summary judgment motion also should be deferred, and Plaintiffs reiterate their request for this relief as well.

Dated: June 12, 2026

Respectfully submitted,

/s/ David Newmann

David Newmann (*Admitted Pro Hac Vice*)

david.newmann@hoganlovells.com

HOGAN LOVELLS US LLP

1735 Market St., 23rd Floor

Philadelphia, Pennsylvania 19103

Tel. (267) 675-4600

Fax (267) 675-4601

Bryan L. Sells
Georgia Bar No. 635562
THE LAW OFFICE OF BRYAN L. SELLS, LLC
Post Office Box 5493
Atlanta, Georgia 31107-0493
bryan@bryansellsllaw.com

Lynsey Morris Barron
Georgia Bar No. 661005
BARRON LAW LLC
1800 Peachtree St. NE, Suite 300
Atlanta, GA
404-276-3261
lynsey@barron.law

Arielle Anderson (*Admitted Pro Hac Vice*)
arielle.anderson@hoganlovells.com
HOGAN LOVELLS US LLP
609 Main St., Suite 4200
Houston, Texas 77002
Tel. (713) 632-1400
Fax (713) 632-1401

Attorneys for Driver Plaintiffs

Robert N. Weiner*
Julie M. Houk**
Grace Thomas**
Samantha Heyward**
**LAWYERS' COMMITTEE FOR CIVIL
RIGHTS UNDER LAW**
1500 K Street, Suite 900
Washington, DC 20005
(202) 662-8600
rweiner@lawyerscommittee.org
jhouk@lawyerscommittee.org
gthomas@lawyerscommittee.org
sheyward@lawyerscommittee.org

Stacey M. Mohr
Georgia Bar No. 619207
EVERSHEDS SUTHERLAND (US) LLP
999 Peachtree Street NE
Atlanta, GA 30309
(404) 853-8000
staceymohr@eversheds-sutherland.com

Harmony L. Jones*

Maria L. Stratienko*

John Coffron*

EVERSHEDS SUTHERLAND (US) LLP

700 Sixth Street, NW, Suite 700

Washington, DC 20001-3980

(202) 383-0100

harmonyjones@eversheds-sutherland.com

mariastratienko@eversheds-sutherland.com

johncoffron@eversheds-sutherland.com

John H. Fleming

Georgia Bar No. 263250

JOHN H. FLEMING LAW LLC

1066 Springdale Rd., N.E.

Atlanta, GA 30306

(404) 285-5084

john@jhflaw.org

Attorneys for Georgia NAACP

** Motion for admission Pro Hac Vice forthcoming*

*** Admitted Pro Hac Vice*