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

JACQUELINE ROZIER and HIRAM MORGAN,

*Plaintiffs*,

v.

HOUSTON COUNTY BOARD OF ELECTIONS and ANDREW BENNETT, in his official capacity as Chair of the Houston County Board of Elections.

*Defendants*.

Civil Action No. 5:25-cv-00478-MTT



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

## INTRODUCTION

Plaintiffs seek to amend the scheduling order for a situation that was completely avoidable and their proposal would cause great prejudice to Defendants. With their motion to dismiss last year, Defendants sought to stay this case in light of the then-pending *Callais* case. Plaintiffs opposed the stay and chose to dive fully into discovery in this case. Now, at nearly the end of extensive factual and expert discovery—including expert reports, depositions of both plaintiffs, and the deposition of Houston Commission Chairman Dan Perdue—Plaintiffs now seek the Court's permission to effectively start this case over again, returning to

the beginning at a significant cost to the taxpayers of Houston County and leaving the cloud of this lawsuit over county government.

In their motion, Plaintiffs never mention that, on November 26, 2025, Defendants moved to stay this case in light of the U.S. Supreme Court's expected decision in *Louisiana v. Callais*, 146 S. Ct. 1131 (2026). Doc. 17. Plaintiffs directly opposed the motion to stay, claiming that Defendants would suffer no prejudice by proceeding. Doc. 18. This Court denied the motion to stay and the case proceeded, at significant cost to Defendants. Doc. 19. Instead of acknowledging this history, Plaintiffs now seek to re-open discovery for more than three months, with new expert and fact discovery, and with the option of amending their complaint once they decide how (or apparently if) they want to proceed. This would certainly lead to additional rounds of discovery based on any amendments.

This Court should deny the motion. Plaintiffs have an option if they need more time to consider the impact of *Callais* on their claims—they can dismiss and refile—or they should receive the consequence of their choices, which is judgment in favor of Defendants because of Plaintiffs' lack of evidence to support a claim that is neither constitutional nor valid.[1]



[1] This problem is not unique to these Plaintiffs. The Motion in this case is largely identical to one filed in the *Driver v. Houston County Board of Elections* matter, also before this Court.

## CURRENT STATUS OF DISCOVERY

This Court entered its Rule 16 and 26 discovery order on December 18, 2025. Doc. 20. In that order, the Court set out the schedule for fact and expert discovery and dispositive motions. *Id*. The parties proceeded, producing expert reports on March 6, 2026, and April 3, 2026. Doc. 24 at 3–4. Plaintiffs expressly adopted all of the expert reports from the *Driver* litigation with the exception of the mapdrawer. Doc. 27.

The evidence in this case is similar to that adduced in the *Driver* case. Plaintiffs' mapdrawer testified that he used race in the creation of the illustrative plans he submitted. Dep. of Anthony Fairfax at 64:3–65:11. He opined that "you can use race as a factor in drawing districts," *id*. at 58:16, and he displayed a racially themed map to "gather information about where black individuals were located," *id*. at 70:11–19, 101:12–19, as part of his drawing process. Plaintiffs' political-science expert, Dr. Stephen Popick, did not include any analysis controlling for race and politics and only considered one primary election which he later testified he could not determine whether it was racially polarized. Dep. of Stephen Popick (March 13, 2026) at 107:14–108:5, 132:5–14; Dep. of Stephen Popick (April 2, 2026) at 15:18–16:15, 30:10–23. Plaintiffs' historical expert, Dr. Bagley, did not identify any evidence of discrimination by Houston County in the last 35 years. Dep. of Joseph Bagley at 86:18–25.

In her deposition, Plaintiff Rozier testified she was unaware of any intentional racial discrimination by Houston County government in recent history aside from political disagreements. Dep. of Jacqueline Rozier at 40:20–41:17, 52:7–17 (identifying only concerns about the Board of Education, not the County government, aside from "covert" discrimination; and identifying only the covert discrimination she has experienced as her own election loss). Plaintiff Morgan was also unaware of any intentional racial discrimination by Houston County. Dep. of Hiram Morgan at 22:17–25 (no knowledge of any actions of Houston County government that are racially discriminatory during time living in Houston County). At root, Plaintiffs have produced no evidence of any intentional racial discrimination and discovery is at its end.



## 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. 37-1 at 5 *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. 37-1 at 5.

*Callais* did not eliminate a Section 2 claim under the Voting Rights Act. In fact, *Callais* did not "abandon[]" the *Gingles* framework used 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." *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' claim here aside from providing further reasons why it fails. In the updated *Gingles* framework, Plaintiffs' illustrative maps for the

first precondition "cannot use race as a districting criterion." *Id*. at 1159.[2] 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 already the law in the Eleventh Circuit. *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 restart the schedule for this particular case. *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 and apparently now want to go in a different direction, but that does not provide 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.



[2] This is the sole point on which there was a change in the law in this Circuit, although Plaintiffs do not identify it. The Eleventh Circuit previously specifically authorized mapdrawers to use race in creating illustrative plans for Section 2 cases, so long as race did not predominate. *See Davis v. Chiles*, 139 F.3d 1414, 1426 (11th Cir. 1998).

Further, Plaintiffs chose to oppose the motion to stay this case and that matters. They proceeded, knowing the dangers, and, as they now admit, *Callais* did not overrule existing precedent. As a result, *Callais* did not work a sufficient "change in the law" to support a finding of good cause in this particular case, especially when Plaintiffs proceeded without regard to the cost to and impact on Defendants after opposing the motion to stay.

**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.[3] On the discovery front, to even attempt to make a valid claim, Plaintiffs would need to completely start over, beginning with finding all new experts. Their mapdrawer considered race in drawing the illustrative plans, meaning they cannot use those plans to show the first *Gingles* precondition. Fairfax Dep. at 58:16, 64:3–65:11, 70:11–19, 101:12–19. Their political scientist did not provide the required analysis controlling for partisan affiliation that is required to show the second and third *Gingles* preconditions and he relied on the wrong test to show cohesion. Dep. of



[3] Plaintiffs claim they are not yet sure if they need to amend their complaint. Doc. 37-1 at 7-8. 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.

Stephen Popick (April 2, 2026) at 15:18–16:15, 30:10–23.[4] Their historical expert did not identify any discrimination by Houston County in the last 35 years, despite the requirement that they must show some present-day intentional discrimination. Dep. of Joseph Bagley at 86:18–25. As a result, Plaintiffs need more than just more discovery—they need to start over.

Further, Plaintiffs need not only all new experts—they appear to need new Plaintiffs. Both Plaintiffs Rozier and Morgan admitted in their depositions that they had and have no knowledge of any present-day intentional racial discrimination by Houston County. Dep. of Jacqueline Rozier at 40:20–41:17, 52:7–17; Dep. of Hiram Morgan at 22:17–25. In other words, they admit they are not aware of any evidence on the key point in a Section 2 case. *Callais*, 146 S. Ct. at 1156. They cannot, therefore, bring a valid claim under Section 2.[5]

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



[4] Because the evidence is the same, Defendants are moving to exclude Dr. Popick's testimony on the same grounds as in *Driver*.

[5] To the extent that this Court allows this matter to continue and accepts Plaintiffs' motion, Defendants also plan to request that this Court permit new motion(s) to dismiss.

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

Finally, no good cause can exist when the prejudice to Houston County would be severe. Plaintiffs opposed Defendants' motion to stay and proceeded, at a significant cost of time and resources. Plaintiffs did so knowing that *Callais* had the potential to further clarify Section 2 claims like the one they brought.

Because Plaintiffs did not and could not develop a record with the key 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, apparently starting with 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 continues.

**IV. Plaintiffs should dismiss and attempt to refile when and if they are ready to do so.**

Facing the reality that the only path forward is to start over again, Plaintiffs should just take that approach that if they wish to proceed. If they believe the law has changed so substantially that it continues to require further investigation and a new complaint, they should dismiss.[6] Based on Plaintiffs' arguments in their

[6] To Defendants' knowledge, there was only one other county in Georgia besides Houston County facing a pending Section 2 case. The 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).

motion to amend, the correct path is to dismiss their claims, gather their thoughts on any pleadings that may need to be filed, and refile with appropriate evidence to support a valid claim (including potentially new plaintiffs and new experts if Plaintiffs determine they can still bring a claim). Defendants will continue to defend their election system as fully compliant with the law.

## CONCLUSION

This Court should deny the motion to amend and allow the case to proceed through summary judgment if Plaintiffs decide not to dismiss.



Respectfully submitted this 29th day of May, 2026.

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