

NO. 23A231  
IN THE SUPREME COURT OF THE UNITED STATES

---

WES ALLEN, in his official capacity as Secretary of State of Alabama,  
Applicant,

v.

EVAN MILLIGAN, et al.,  
Respondents.

---

**BRIEF OF *AMICI CURIAE* ALABAMA ELECTED LEADERS OF COLOR  
IN SUPPORT OF *MILLIGAN* RESPONDENTS' OPPOSITION  
TO EMERGENCY APPLICATION FOR STAY**

---

Jonathan B. Miller  
Michael Adame  
Public Rights Project  
490 43rd Street, #115  
Oakland, CA 94609  
jon@publicrightsproject.org  
646-831-6113

*Counsel for Amici Curiae*

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES..... ii

STATEMENT OF INTEREST ..... 1

SUMMARY OF ARGUMENT ..... 2

ARGUMENT ..... 4

I. Eluding Court Orders Meant to Protect Black  
Voters Is Not New for Alabama ..... 4

II. The Legislature’s Findings About the Gulf Region  
Are Not Supported ..... 8

III. Racially Polarized Voting Makes the Remedial Map  
Inadequate ..... 11

CONCLUSION ..... 15

APPENDIX A – List of *Amici Curiae* ..... 16

**TABLE OF AUTHORITIES**

**CASES**

*Allen v. Milligan*,  
599 U.S. —, 143 S. Ct. 1487 (2023).....1, 11

*Camp v. Wesch*,  
504 U.S. 902 (1992) .....6

*Davis v. Schnell*,  
81 F. Supp. 872 (S.D. Ala. 1949).....5

*League of United Latin American Citizens v. Perry*,  
548 U.S. 399 (2000) .....13

*Schnell v. Davis*,  
336 U.S. 933 (1949) .....5

*Singleton v. Merrill*,  
582 F Supp.3d 924 (N.D. Ala. 2022) .....12

*Smith v. Allwright*,  
321 U.S. 649 (1944) .....4

*Thornburg v. Gingles*,  
478 U.S. 30 (1986) .....13

*United States v. Parker*,  
236 F. Supp. 511 (M.D. Ala. 1964).....5

*United States v. Penton*,  
212 F. Supp. 193 (M.D. Ala. 1962).....5

*Wesch v. Hunt*,  
785 F. Supp. 1491 (S.D. Ala. 1992).....6

*Wesch v. Hunt*,  
Civ. A. No. 91-0787, 1993 WL 468747 (S.D. Ala. July 13, 1993).....6

*Wright v. Sumter Cnty. Bd. of Elections*,  
979 F.3d 1282 (11th Cir. 2020) .....13

**STATUTES**

52 U.S.C. § 10301(b) ..... 11  
Ala. Code 17-14-70.1(4)f.9 ..... 10

**OTHER AUTHORITIES**

Alabama State Department of Education, School Board Districts, <https://www.alabamaachieves.org/state-board-of-education/school-board-districts/> ..... 10

Alexander Willis, Alabama Republicans frame redistricting case as threat to political power, *The Anniston Star* (Aug. 9, 2023), <https://tinyurl.com/5n7wfpeh>..... 8

B. E. H. and J. J. K., Jr., *Federal Protection of Negro Voting Rights*, 51 Va. L. Rev. 1051, 1091–100 (1965) ..... 5

Barbara Drummond, “*Communities of interest’ means more than sharing roads*,” *Alabama Political Reporter* (Aug. 8, 2023), <https://www.alreporter.com/2023/08/08/opinion-communities-of-interest-means-more-than-sharing-roads/> ..... 10

Duncan Hosie, *Alabama dusts off an old playbook for diluting the Black vote*, *Washington Post* (Jul. 25, 2023), <https://www.washingtonpost.com/made-by-history/2023/07/25/alabama-redistricting-voter-suppression/> ..... 4

Howard Koplowitz, *Kenneth Paschal wins Alabama House seat; becomes Legislature’s only Black Republican*, *AL.com* (July 13, 2021), <https://www.al.com/news/birmingham/2021/07/kenneth-paschal-wins-alabama-house-seat-becomes-legislatures-only-black-republican.html> ..... 14

Jane C. Timm, *Alabama Republicans refuse to draw a second Black congressional district in defiance of Supreme Court*, *NBC News* (July 21, 2023), <https://www.nbcnews.com/politics/elections/alabama-gop-refuses-draw-second-black-district-supreme-court-order-rcna94715>..... 8

Jeffrey P. Lisenby, *Racial Politics Alive and Well in Alabama: The Impact of Recent Voting Rights Decisions on Alabama’s Electoral Districts*, 46 Ala. L. Rev. 641, 683–691 (1995).....6

Kim Chandler, Mark Sherman, and Gary Fields, *Black representation in Alabama tested before Supreme Court*, Associated Press (Oct. 3, 2022), <https://apnews.com/article/voting-rights-2022-midterm-elections-us-supreme-court-health-951245afb2827282e9c340417ca02375> .....6

State of Alabama, *Canvass of Results, General Election*, Nov. 8, 2022 at 67-68, <https://www.sos.alabama.gov/sites/default/files/election-data/2022-11/Final%20Canvass%20of%20Results%20%28canvassed%20by%20state%20canvassing%20board%2011-28-2022%29.pdf>.....9

U.S. Census Bureau, *Congressional and State Legislative Districts* (2022) <https://www.census.gov/acs/www/data/congressional-and-state-legislative-districts> .....14

U.S. Census Bureau, Quick Facts, Baldwin County, Alabama, <https://www.census.gov/quickfacts/fact/table/baldwincountyalabama/PST045222>.....9

## STATEMENT OF INTEREST

*Amici* are a collection of federal, state, and local elected leaders of color in Alabama.<sup>1</sup> Having run for and successfully obtained office in the state, *amici* have deep knowledge of the political landscape, including and especially how racially polarized voting is in Alabama. *Amici* have seen, and experienced, the ways in which polarized voting becomes acute when a candidate of color is on the ballot. Based on our lived experience—and confirmed by the record before the district court—we know that SB 5 does not create sufficient opportunity for Black voters to select candidates of their choice. The state has not remedied the harm affirmed just three months ago by this Court.

Our concern is not just about today. It is about the decades to come. Allowing Alabama to suppress opportunity would have reverberations for years. Many *amici* have benefited directly from the rights protected—and remedies provided—by the Voting Rights Act. Litigation in 1992 required Alabama to create its first Congressional opportunity district for Black voters and led to the election of Alabama’s first Black member of Congress—Earl Hilliard—since Reconstruction. *See Allen v. Milligan*, 599 U.S. —, 143 S. Ct. 1487, 1501 (2023). That remedy continues to have impacts. For example, many *amici* have a direct connection to current or former members of Congress of color. One of the *amici* is a current member of

---

<sup>1</sup> No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund its preparation or submission. No person other than *amici* or *amici*’s counsel made a monetary contribution to the preparation or submission of this brief. A list of all *amici* is available at Appendix A.

Congress. For *amici*, being able to see themselves in other elected leaders, especially at the federal level, made the promise of a political career appear possible.

*Amici* file this brief in opposition to Alabama’s request for emergency relief from this Court. As the district court correctly concluded, SB 5 does not remedy the Section 2 violation. The Legislature has flouted its obligations in order to entrench power and to continue to undermine Black voters throughout the state. Moreover, the state’s position “creates an endless paradox that only it can break, thereby depriving Plaintiffs of the ability to effectively challenge and the courts of the ability to remedy.” App. 126. This cannot be. We urge this Court to hold the course, continue to press the state to fulfill its obligations, and deny the requested relief.

#### **SUMMARY OF ARGUMENT**

Alabama’s request for a stay of the district court’s order should be denied. Having lost at every stage of this case to date, Alabama attempts—yet again—to delay its obligations to comply with the Voting Rights Act by seeking emergency intervention by this Court. The state should not be permitted to relitigate the underlying issues in this case. *Amici* write separately to emphasize three key points in strong support of Plaintiffs’ opposition to the emergency stay.

*First*, this effort is not a new ploy by Alabama. It is a tired act. Over the past century, the state has shown intransigence when it comes to the rights of Black voters. Time and time again, the state has harmed Black voters and sought to further entrench established power. This case fits that pattern. Having lost, Alabama must now correct its error. The Legislature’s unusual approach during the special session

combined with contemporaneous statements make clear that its intent behind the proposed map is not to comply with its obligation to create two opportunity districts for Black voters. *See, e.g.*, App. 627 (There is “no other case in which a state legislature, faced with a federal court order declaring that its electoral plan unlawfully dilutes minority votes . . . responded with a plan that the state concedes does not provide [an additional opportunity] district.”)

*Second*, the Legislature’s focus on the Gulf Region as a community interest to support SB 5 should be rejected. To ensure two opportunity districts for Black voters, all of Baldwin and Mobile counties cannot be together in their own Congressional district. To start, the new map provides too much influence for voters in Baldwin County at the expense of voters in the City of Mobile and the Black Belt. In so doing, it further entrenches outcomes that favor preferred candidates for white voters. In addition, the *post hoc* justification for a supposed community of interest connecting all Mobile and Baldwin counties is unsubstantiated. Linking a geographic area does not make it a genuine community of interest.

*Third*, racially polarized voting patterns in Alabama make clear that the new CD 2 remains inadequate to meet the requirements of Section 2. Given the makeup of the district and the analysis from historical voting patterns, Black voters will remain without sufficient opportunity to select candidates of their choice.

## ARGUMENT

### **I. Eluding Court Orders Meant to Protect Black Voters Is Not New for Alabama**

“Alabama has an extensive and ongoing history of repugnant racial discrimination, and this history of discrimination includes abandoning racist laws when they’re enjoined by courts, and then replacing them with facially race-neutral laws that maintain the status quo.”

App. 464 (Opening Statement of Mr. Ross).

Once again, the state attempts to evade its obligations by relitigating a case it already lost to maintain the status quo. The request for emergency relief should be viewed in light of a pattern that extends back decades. Moreover, this lens reveals the important role this Court has played in backstopping civil rights enforcement against the state’s intransigence.

Consider Alabama’s response to this Court’s landmark decision in *Smith v. Allwright*, 321 U.S. 649 (1944). In that case, this Court ruled that a state may not delegate its authority over elections to political parties as means to further racial discrimination. *Id.* at 664–65. The ruling prohibited so-called “white primaries”, where political parties allowed only white voters to participate in their primary elections. In response to fears that Black Alabamans may thus exercise their right to vote, state leadership drafted an amendment to the state constitution, which voters then approved in 1946.<sup>2</sup> The “Boswell Amendment” established a voting literacy test: to register a vote, a citizen had to be able to “understand and explain any article of

---

<sup>2</sup> Duncan Hosie, *Alabama dusts off an old playbook for diluting the Black vote*, Washington Post (Jul. 25, 2023), <https://www.washingtonpost.com/made-by-history/2023/07/25/alabama-redistricting-voter-suppression/>.

the constitution of the United States in the English language.” *Davis v. Schnell*, 81 F. Supp. 872, 877 (S.D. Ala. 1949). The district court concluded that the Boswell Amendment “was intended to be, and is being used for the purpose of discriminating against applicants for the franchise on the basis of race or color . . . [and] is unconstitutional, because it violates the Fifteenth Amendment.” *Id.* at 880. This Court affirmed in a *per curiam* opinion. *Schnell v. Davis*, 336 U.S. 933 (1949).

Despite clear instructions from the federal court to cease discriminating against Black Alabamans, state and local government officials continued to devise ways to hinder Black representation.<sup>3</sup> For instance, in 1962 a federal court found that several policies and practices of the Montgomery County Board of Registrars throughout the 1950s and 1960s were designed to suppress Black voter registration. The district court found that “the evidence in this case . . . overwhelmingly reflects that . . . the registrars of Montgomery County, Alabama, and the defendant State and its agents, have deliberately and consistently engaged in procedures and practices which have favored white applicants and discriminated against Negro applicants who were seeking to become registered voters” and subsequently ordered these practices enjoined. *United States v. Penton*, 212 F. Supp. 193, 197 (M.D. Ala. 1962). It is perhaps unsurprising that this injunction was ignored by state and local officials, and the court had to subsequently reassert and expand the injunction two years later. *United States v. Parker*, 236 F. Supp. 511, 517 (M.D. Ala. 1964).

---

<sup>3</sup> See generally B. E. H. and J. J. K., Jr., *Federal Protection of Negro Voting Rights*, 51 Va. L. Rev. 1051, 1091–1100 (1965).

Alabama’s defiance continues through the present. In the early 1990s, several plaintiffs challenged Alabama’s then-current congressional districts, including plaintiffs who argued that the district plan violated Section 2 because there were no Black voter opportunity districts.<sup>4</sup> The district court entered an order requiring the state to adopt a redistricting plan that rectified this violation. *Wesch v. Hunt*, 785 F. Supp. 1491, 1493 (S.D. Ala. 1992). The state nonetheless sought review from this Court, which denied the appeal and affirmed the lower court’s decision. *Camp v. Wesch*, 504 U.S. 902 (1992). A year later, with the parties, including the state, continuing to challenge its original order, the district court issued a second injunction ordering the adoption of the previously identified redistricting plan. The district court made clear that the order was “a stay to enforce the injunction previously entered by the [court]” *Wesch v. Hunt*, Civ. A. No. 91–0787, 1993 WL 468747, at \*1 (S.D. Ala. July 13, 1993), and threatened to hold the parties, including the Alabama governor and secretary of state, in contempt if they failed to abide by its requirements, *id.* at \*2. It was only after that subsequent court order was implemented that Alabama elected its first Black member of Congress since Reconstruction (a 116-year span).<sup>5</sup>

And so it continues today. Pressed to create two opportunity districts for Black voters, or at least something close to it, the Legislature has refused. Instead, relying

---

<sup>4</sup> See generally Jeffrey P. Lisenby, *Racial Politics Alive and Well in Alabama: The Impact of Recent Voting Rights Decisions on Alabama’s Electoral Districts*, 46 Ala. L. Rev. 641, 683–691 (1995).

<sup>5</sup> Kim Chandler, Mark Sherman, and Gary Fields, *Black representation in Alabama tested before Supreme Court*, Associated Press (Oct. 3, 2022), <https://apnews.com/article/voting-rights-2022-midterm-elections-us-supreme-court-health-951245afb2827282e9c340417ca02375>.

on a litigation-driven process, it has taken unusual steps to try to avoid the demands of Section 2 yet again. *First*, the map-drawing process was irregular. Legislators in the majority failed to offer any maps for public consideration prior to the special session, even though there were public forums. Plaintiffs' plan and several other plans offered by Black legislators were discussed at two public hearings prior to the beginning of the special session. App. 93. No other plans were proposed or available for public comment. App. 93. In fact, legislators were confused by where the final map emerged from. Even the state's cartographer was not as involved as he was in the 2021 process. App. 470. At various stages, the Alabama Solicitor General and a political consultant played a role. App. 100.

*Second*, the Joint Permanent Legislative Committee on Reapportionment rejected an amendment that would have provided specific instructions to remedy the Section 2 violation. Instead, the Committee voted along racial lines to readopt the 2021 Guidelines without amendment. App. 93. The Legislative findings, which include new information on the Gulf Coast as a community interest, were heavily influenced by the Solicitor General and geared toward sustaining this map. App. 99.

*Third*, contemporaneous statements by members of the Legislature and other leaders make clear that maintaining the status quo is the sole goal. Representative Simpson from Baldwin County believed that Republicans could use the new map as an opportunity to pick up more seats. Attorney General Marshall has offered a political rationale for the new map: "What we believe fully is that we just live in a red state with conservative people, and that's who the candidates of Alabama want to be

able to elect going forward.”<sup>6</sup> Governor Ivey said following the special session: “The Legislature knows our state, our people and our districts better than the federal courts or activist groups . . .”<sup>7</sup> Representative Pringle testified that he spoke with Speaker McCarthy in connection with the special session and was asked “to keep in mind that he has a very tight majority.”<sup>8</sup> App. 100. All told, these actions and statements reflect a continued resistance to what the district court has required.

## II. The Legislature’s Findings About the Gulf Region Are Not Supported

Under SB 5, CD 1 groups all Mobile County and Baldwin County voters together, rather than distributing voters into two districts as Plaintiffs and others have proposed. Such a decision furthers the dilution of Black voting power in the state, as Baldwin County’s combination with dissimilar Mobile enables white voters to prevail and minimize opportunities for Black voters. To rebut, Alabama asserts that “Gulf Coast should be kept together because of its shared and unique economic and cultural interests.” Stay Br. 37. But this *post hoc* justification—aimed to avoid a second majority-Black district (or something close to it)—cannot control. Communities of interest do not “work as a trump card with the text of purpose of Section Two.” App. 170.

---

<sup>6</sup> Alexander Willis, *Alabama Republicans frame redistricting case as threat to political power*, The Anniston Star (Aug. 9, 2023), <https://tinyurl.com/5n7wfpeh>.

<sup>7</sup> Jane C. Timm, *Alabama Republicans refuse to draw a second Black congressional district in defiance of Supreme Court*, NBC News (July 21, 2023), <https://www.nbcnews.com/politics/elections/alabama-gop-refuses-draw-second-black-district-supreme-court-order-rcna94715>.

<sup>8</sup> *See also* Brief of Alabama Congressional Delegation at 8-11 (describing circumstances as partisan gerrymandering rather than racial gerrymandering).

On vote dilution, Baldwin County is represented almost exclusively by white politicians at the state and county levels.<sup>9</sup> All of its state representatives are white. Two of three state senators with districts covering parts of the county are white, with Senator Vivian Figures the lone exception. Senator Figures is a long-time incumbent, and her late husband held the seat before her. She represents a district that spans both Mobile and Baldwin counties, with most of her constituents in Mobile County and from the City of Mobile itself. In the most recent election, Senator Figures carried Mobile County by a 3:1 margin and lost 4:1 in Baldwin County to a white opponent.<sup>10</sup> Because most of her voters are in Mobile, she easily carried the district in 2022.

Senator Figures' electoral results demonstrate precisely the problem with SB 5's treatment of Mobile and Baldwin counties. By keeping Mobile voters, particularly those in the City of Mobile, in CD 1, their votes are diluted and residents of a city that is roughly 52.5% Black are crowded out of representation of choice. Plaintiffs' arguments to include portions of Mobile with the Black Belt make more sense culturally and historically and create an actual opportunity district in CD 2. *See, e.g.*, Opp. App. 3-4 (noting shared economic, healthcare, familial, cultural, religious, educational, and healthcare connections between Mobile and the Black Belt).

---

<sup>9</sup> Baldwin County's population is approximately 87.4% white and 8.4% Black. U.S. Census Bureau, Quick Facts, Baldwin County, Alabama, <https://www.census.gov/quickfacts/fact/table/baldwincountyalabama/PST045222>.

<sup>10</sup> State of Alabama, *Canvass of Results, General Election*, Nov. 8, 2022 at 67-68, <https://www.sos.alabama.gov/sites/default/files/election-data/2022-11/Final%20Canvass%20of%20Results%20%28canvassed%20by%20state%20canvassing%20board%2011-28-2022%29.pdf>.

The Legislature’s effort to create categories that connect all of Mobile and Baldwin counties do not resonate with the history and tradition of the area either. *See* App. 66 (quoting testimony of State Rep. Samuel L. Jones). The Legislature seeks to link the two counties because of economic connection through the “development of highways and bay-crossing bridges” and a “distinct culture stemming from its French and Spanish colonial heritage.” Ala. Code 17-14-70.1(4)f.9. Both ring hollow. As a historical matter, there is a stronger connection between Mobile and the Black Belt. Representative Barbara Drummond wrote powerfully: “Mobile is the watershed of the Black Belt; it is where the slaves came in and went up to labor, and where the cotton came down to be shipped out.”<sup>11</sup> Dating back centuries, including as a result of slavery, there is significant economic interdependence between the Black Belt, the City of Mobile, and its northern suburbs. In other contexts, such as education, the state groups the City of Mobile and parts of the Black Belt together.<sup>12</sup> Representative Samuel L. Jones made this clear in his declaration to the lower court: “Baldwin’s economic base is fundamentally different from Mobile’s economy.” Opp. App. 5

In addition, while the state seeks to paint a picture of interdependence across the Gulf Coast, which is invariably true to some degree of any geographically connected area, there are significant disparities within the proposed CD 1. The

---

<sup>11</sup> Barbara Drummond, “*‘Communities of interest’ means more than sharing roads,*” Alabama Political Reporter (Aug. 8, 2023), <https://www.alreporter.com/2023/08/08/opinion-communities-of-interest-means-more-than-sharing-roads/>.

<sup>12</sup> Alabama State Department of Education, School Board Districts, <https://www.alabamaachieves.org/state-board-of-education/school-board-districts/>.

socioeconomic differences within the Gulf Coast underscore the actual connection of the voting interests between Mobile and the Black Belt. For example, “pockets of poverty” in Mobile create greater economic connection to the Black Belt than the more economically secure voters of Baldwin County. Opp. App. 10.

Alabama complains that “the State would have to continue intentionally creating a second majority-black district in lieu of keeping together communities of interest until ‘Black Mobile’ has enough in common with other parts of the Gulf Coast.” Stay Br. 38. But to contest the point is to make it: the City of Mobile does not have enough in common with Baldwin County. This Court already affirmed the district court’s rejection of Alabama’s argument along this line. *Allen*, 143 S. Ct. at 1505 (“The District Court understandably found this testimony insufficient to sustain Alabama’s ‘overdrawn argument that there can be no legitimate reason to split’ the Gulf Coast region.”). Or to put it another way, calling a region a community of interest “simply to preserve political advantage” is insufficient. App. 168 (citing *Allen*, 143 S. Ct. at 1505). CD 1, as drawn, should be rejected again.

### **III. Racially Polarized Voting Makes the Remedial Map Inadequate**

Despite ample opportunity, the Alabama Legislature has failed to fulfill its obligation to ensure that the political process is “equally open to participation” by Black voters in the state. 52 U.S.C. § 10301(b). Instead, the Legislature has modestly modified the prior map with no ascertainable change in the actual opportunity for

Black voters because of significant racial polarization. App. 135.<sup>13</sup> In fact, as the district court noted, it is undisputed in the case that “Black voters remain an ineffective minority of voters” in CD 2. App. 166.

Facts stipulated in prior proceedings “do most of the heavy lifting,” including that there have been no Black statewide elected officials in Alabama since 1996 and that virtually all current elected officials of color come from districts with major Black populations. *Singleton v. Merrill*, 582 F Supp.3d 924, 1019 (N.D. Ala. 2022). In addition, Plaintiffs’ expert Dr. Liu showed with great clarity that Black-preferred candidates do not win in districts where white voters are the majority. *Id.* at 967 (“[I]n 13 out of the 13 elections (100%) in which Black voters expressed a preference for Black candidates, that preference was not shared by white majority voters,” and “the white majority voted sufficiently as a bloc to typically defeat all the Black candidates in those elections.”). These statistical findings were supported by Dr. Palmer. *Id.* at 981 (“Black-preferred candidate was able to win only one out of twelve [statewide] elections that he studied” with the one exception being Roy Moore’s defeat to Doug Jones, a white candidate for Senate in a special election). *See also* App. 136–137.

The revised CD 2 still offers no meaningful opportunity for Black voters. All of the past election results highlighted by Alabama show this to be the case, and the results are even more pronounced when the Black candidate of choice is Black

---

<sup>13</sup> Because of extreme racial polarization in voting, the district court was correct in its rejection of “the State’s legal argument that communities of interest are somehow a dispositive factor in our analysis such that we must accept a remedial map that purports to respect communities of interest but does not cure the vote dilution found in the 2021 Plan.” App. 168–169.

themselves. App. 65 (“[P]erformance analyses performed by Dr. Liu and the State indicate that Black-preferred candidates in the new CD 2 will continue to lose 100% of biracial elections.”); *see also Wright v. Sumter Cnty. Bd. of Elections*, 979 F.3d 1282, 1292–93 (11th Cir. 2020) (biracial elections are “more probative” than other elections). Though the percentage of Black voters in CD 2 is now higher than before, the slight change does not make SB 5 compliant with this Court’s prior order. The core question is one of opportunity, and SB 5 does not affect that analysis in the slightest. *See, e.g., League of United Latin American Citizens v. Perry*, 548 U.S. 399, 425 (2000) (a state’s purported “opportunity” district with a 46% Latino citizen population violated § 2 because the white majority would “often, if not always, prevent Latinos from electing the candidate of their choice in the district”); *Thornburg v. Gingles*, 478 U.S. 30, 76 (1986) (“The relative lack of minority electoral success under a challenged plan . . . can constitute powerful evidence of vote dilution”).

Very few candidates of color can be elected in Alabama unless there is a clear majority of Black voters in the district. Putting all state legislative districts together, there are currently 138 elected officials serving in these positions (with two vacancies). White elected officials represent every white-majority district except for one, and Black elected officials represent every Black-majority district but one. The same polarization is, of course, true for the current Congressional districts.

Take the current State Senate as an example. All Black incumbents come from districts with at least a 55% population that is Black.<sup>14</sup> Senator Smitherman has the lowest share of Black voters, yet he is a six-time incumbent in service since 1995 and has a clear majority, as compared to the proposal for CD 2. Any potential Black candidate in CD 2 would not benefit either from incumbency or numerosity. Similar analyses of other Alabama voting districts reveal similar results. For example, taking the cities with the 10-largest populations in the state, only Birmingham and Montgomery have Black mayors, even though Mobile has a majority of Black voters and Tuscaloosa has more Black residents (44.3%) than the proposed CD 2 as a percentage of the voting district.

At the state level, the Alabama House of Representatives has 25 Black Democrats representing majority-Black districts.<sup>15</sup> Representative Jeremy Gray (D-83) has the smallest majority of Black residents at 53.3%, and he ran unopposed in 2022. Similarly, Representative Berry Forte (D-84) has a small majority of Black constituents at 54.9% and has not faced a general election challenger since 2014, where he earned 63% of all votes cast. By comparison, former Representative Dexter

---

<sup>14</sup> Data has been pulled from U.S. Census Bureau, *Congressional and State Legislative Districts* (2022) <https://www.census.gov/acs/www/data/congressional-and-state-legislative-districts>.

<sup>15</sup> Elected in a special election in 2021, Representative Kenneth Paschal is a Republican representing a district that is 80.1% white. He was the first Black Republican elected to the Alabama Legislature since Reconstruction. Howard Koplowitz, *Kenneth Paschal wins Alabama House seat; becomes Legislature's only Black Republican*, AL.com (July 13, 2021), <https://www.al.com/news/birmingham/2021/07/kenneth-paschal-wins-alabama-house-seat-becomes-legislatures-only-black-republican.html>.

Grimsley, a three-term incumbent, lost his seat in the 2022 election after the Black population in District 85 dropped to 44.4%. Our experience, including in recent elections, as well as the stipulated record show clearly that SB 5 does not create anything close to a second opportunity district for Black voters.

### **CONCLUSION**

For all of the foregoing reasons and for the reasons provided by the *Milligan* Respondents, *amici* ask that this Court reject Alabama's request for emergency relief.

Respectfully submitted,

Jonathan B. Miller  
Michael Adame  
Public Rights Project  
490 43rd Street, #115  
Oakland, CA 94609

*Counsel for Amici Curiae*

Dated: September 21, 2023

**APPENDIX A – List of *Amici Curiae***

**Napoleon Bracy, Jr.**

State Representative, District 98 (Mobile County)

**Merika Coleman**

State Senator, District 19 (Jefferson County)

**Linda Coleman-Madison**

State Senator, District 20 (Jefferson County)

**Vivian Figures**

State Senator, District 33 (Baldwin and Mobile Counties)

**Laura Hall**

State Representative, District 19 (Madison County)

**Arnetta Hilliard**

Brighton City Council

**Sherene Johnson**

Brighton City Council

**Samuel L. Jones**

State Representative, District 99 (Mobile County)

**Patrice McClammy**

State Representative, District 76 (Montgomery County)

**Barbara Moore**

Brighton City Council

**Chester Porter**

Bessemer City Council, District 2

**Steven L. Reed**

Mayor of Montgomery

**Patrick Sellers**

State Representative, District 57 (Jefferson County)

**Terri A. Sewell**

U.S. House of Representatives, Alabama Congressional District 7

**Robert Stewart**

State Senator, District 23

**Ontario Tillman**

State Representative, District 56 (Jefferson County)

**Curtis Travis**

State Representative, District 72

**Sheila D. Tyson**

Jefferson County Commissioner, District 2

**Jason Q. Ward**

Mayor of Lisman

**Randall Woodfin**

Mayor of Birmingham