

No. 25-243

Supreme Court of the United States

WES ALLEN, SEC'Y OF STATE, ET AL.,
Petitioners,

v.

MARCUS CASTER, ET AL.,
Respondents.

On Petition for a Writ of Certiorari
Before Judgment to the United States Court of Appeals
for the Eleventh Circuit

REPLY BRIEF

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REPLY BRIEF

It’s “defiance,” Plaintiffs say, for a State to redistrict after being told in a preliminary-injunction posture that its prior districts “likely” violated §2, *Allen v. Milligan*, 599 U.S. 1, 19 (2023). After *Allen*, Alabama went back to the drawing board rather than head to trial on its 2021 Plan. The new map—the 2023 Plan—preserved *both* the Black Belt *and* Gulf Coast regions in as few districts as possible. Ordering the State to split the Gulf Coast for the first time in fifty years, the district court required what §2 “never require[s]”: the “adoption of districts that violate traditional redistricting principles.” *Id.* at 30. Alabama’s court-drawn congressional districts are now “unexplainable on grounds other than race.” *Shaw v. Reno*, 509 U.S. 630, 644 (1993).

The court below went far beyond *Allen*, such that *any* districting “criterion [that] has the practical effect of ... precluding the creation of a second majority-Black district” must give way, BIO.9, not only for purposes of *Gingles*-1 but to draw the actual congressional district lines that will govern 5 million Alabamians. It is not enough to treat communities of interest equally—as earlier iterations of this case had suggested. App.937; *Allen*, 599 U.S. at 21. What “matters” now, Plaintiffs say, is the priority of drawing an additional majority-minority district, or something quite close. BIO.9-10; *accord*, *e.g.*, App.329. That comes first, and whatever the State’s actual race-neutral priorities, those must come second. Under that version of §2, race is always the criterion that cannot be compromised.

This Court must reverse, even assuming that race could be used in districting in a way that would not

otherwise be allowed. Pet.10-12. But the Court should question that assumption too. Alabama did not “contrive[] a tension” between §2 and the Fourteenth Amendment. BIO.23. For decades, States have had “good reason ... to recognize that explicit race-based districting embarks us on a most dangerous course.” *Johnson v. De Grandy*, 512 U.S. 997, 1031 (1994) (Kennedy, J., concurring). Officials recognize the dangers, but they have no way to navigate them. Try to satisfy courts with a race-based map; get enjoined. Try to satisfy courts with a race-neutral map; get enjoined. Alabama and Louisiana took two different paths and ended up in the same place. *Callais v. Louisiana*, No. 24-109 (U.S.).

If erring on the side of *declining to discriminate* is now deemed racial discrimination, Pet.27-35, a State can *never* decide that enough is enough. That holding is proof positive that §2 is not “ridding our electoral process of race,” *Callais*.Rearg.Tr.41, but prolonging “fixat[ion]” on it, *LULAC v. Perry*, 548 U.S. 399, 434 (2006); *see also De Grandy*, 512 U.S. at 1030 (Kennedy, J., concurring); *Shaw*, 509 U.S. at 657. As long as the judiciary is balancing a “fair share of political power” among racial groups, *cf. Rucho v. Common Cause*, 588 U.S. 684, 709 (2019), courts will be treated as “weapons of political warfare,” *Alexander v. S.C. NAACP*, 602 U.S. 1, 11 (2024). “That is a feature, not a bug, of § 2.” BIO.32. It cannot go on forever. *SFFA v. Harvard*, 600 U.S. 181, 221-26 (2023).

I. The District Court’s §2 Holding Contravenes *Allen* by Ordering the State to Sacrifice a Community of Interest to Achieve a Racial Goal.

A. After the 2023 Plan united the Black Belt in two districts—the smallest number possible—Plaintiffs cannot complain about the “dispersal” of a community of interest, but only of Black voters. BIO.9-10. That can be cured only with a new race-based district combining the “overwhelmingly rural, agrarian” Black Belt community (*Milligan*.Mot.12) with “Black Mobile” in the Gulf (App.708)—indisputably *not part of the Black Belt* and *250 miles* from the Black Belt’s eastern edge.

All along, Alabama has disputed that §2 can constitutionally require such a thing. *Contra* BIO.6. This case obviously does not involve a “compact” and “siloes minority” population, *contra* BIO.6, 24, so the district court asked the wrong question: How many of the eighteen “Black Belt counties,” spanning the width of Alabama, could be placed “in a majority-Black district”? App.345. This approach erroneously treats “the minority population” itself as the community when the Black Belt is “a ‘*historical*’ feature” of the State, not a demographic one,” and must be “treated ... as a community of interest for [that] reason.” *Allen*, 599 U.S. at 32 n.5 (plurality). Thus, the notion that the 2023 Plan limited “Black voting strength” (BIO.10) could be *the conclusion* of a successful §2 challenge, but not the beginning *proof* of it. That would be circular.

Even if *Gingles*-1 maps can join together “farflung segments of a racial group,” *contra LULAC*, 548 U.S. at 433, race cannot predominate in the *actual* districts to govern Alabama without satisfying strict scrutiny. Now at the end of this case, a district court has concluded that Alabama’s only means of complying with §2 was a race-first district combining “Black Mobile” with black voters from a separate community of interest 250 miles away. App.708. That remedy uses race “explicit[ly]” by demanding the State place more Black Belt counties in a race-based district. *Shaw*, 509 U.S. at 642. And, as the district court observed, “all paths” to another majority-black district “require[] splitting” white voters from black voters in the Gulf Coast. App.7, 531. Admitting that no §2-compliant map “achieve[s] all the political goals” of the 2023 Plan, App.514; *see* App.492, the court “subordinated” neutral criteria to race, *Alexander*, 602 U.S. at 7.

B. The rejoinder that the court-drawn districts did not consider race “at all,” was “race-blind,” BIO.25, or even lacked “awareness of race,” *Milligan*.Mot.21, is preposterous. The court ordered a “district[] in which Black voters either comprise a voting-age majority or something quite close to it.” App.13. It insisted that CD2 have enough black voters that a Democrat would likely win. *E.g.*, *Milligan*, DE311:3, 41. These are “racial targets.” *Contra Milligan*.Mot.23-24.

We know that “race-neutral considerations ‘came into play only after the race-based decision had been made,’” *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 189 (2017), because the court treated Alabama’s “redistricting principle[s]” as “[n]egotiable,” App.329. Traditional criteria were to be “consider[ed]” by the special master, *Milligan*, DE273:9, but only “to the extent reasonably practicable,” *id.* at 8.

Traditional principles could be compromised; racial targets could not. *See* App.329 (no “non-negotiable” principles); App.514 (no “deference” to principle that “entrenches vote dilution”); App.719 (communities of interest not a “trump card”).

Drawing maps without displaying racial data, as the special master says he did, does not erase race-predominance. *Cf. Cooper v. Harris*, 581 U.S. 285, 313-17 (2017).¹ The court required that he remedy “ineffective” “Black voting strength.” App.715; *see Milligan*, DE273:7. He “confirmed” he hit his target before presenting his plans. *Milligan*, DE295:36. His plans sacrificed compactness, paired incumbents, and split a major city, county, and community of interest. *Milligan*, DE295:14, 17, 23, 25, 38; *id.* at 42 (acknowledging “need to split the Gulf Coast” for “Black voting strength”). The Fourteenth Amendment may not “be so easily thwarted.” BIO.31.

II. Requiring Race-Based Districts is Racial Discrimination That Cannot Survive Strict Scrutiny.

The district court addressed the State’s constitutional argument in just three pages, did not cite *SFFA*, and refused to apply strict scrutiny. App.454-56. Bereft of any serious analysis of the Equal

¹ The special master already had a roadmap: “split the Gulf Coast,” App.715, “split Mobile County,” App.947, and connect Mobile’s urban core with Montgomery and Black Belt counties on the Georgia border, *id.*; *see Milligan*, DE295:13 (special master had “the eleven illustrative plans”). Small wonder he “grouped together the same” farflung populations as Plaintiffs had. BIO.6. Alabama stipulated, *contra* BIO.14, only that his report states that he did not “display racial demographic data ... while drawing.” *Milligan*, DE436:22.

Protection Clause, its judgment must be reversed. *See* Pet.16-25; Br. of Alabama and 15 States, *Louisiana v. Callais*, No. 24-109 (U.S. Sept. 24, 2025).

A. Race-based redistricting lacks an exact connection between means and ends.

No one really thinks that “few legal tests are as clear as the *Gingles* inquiry.” BIO.29. The law of vote dilution “is notoriously unclear.” *Merrill v. Milligan*, 142 S.Ct. 879, 881 (2022) (Kavanaugh, J., concurring). Even after forty years, there remains “considerable disagreement and uncertainty” about the “nature” of vote dilution. *Id.* at 883 (Roberts, C.J., dissenting). The “essence of a §2 claim” is easy to recite (BIO.28) but hard to explain. *See, e.g., Callais.Rearg.Tr.14* (when “race is playing a role to contaminate” democracy), 17 (when “race is playing an outsized role”), 37 (when maps “use race in excessive fashion”). If no one can articulate the very “concept of injury,” then this area of law is not safe enough for courts to wield the “dangerous” tool of racial sorting. *SFFA*, 600 U.S. at 209, 212; *see Ala.Callais.Br.6-9 & nn.1-4*.

The assurance that some features of the test are “numeric and measurable” (BIO.29) rings particularly hollow here, where the district court rejected as “too formulaic” Alabama’s attempt to disprove the “lasting effects of official discrimination” with statistical proof of “racial parity in rates of voter registration and turnout.” App.411. What was “overwhelming evidence” of political equality last cycle, *ALBC v. Alabama*, 989 F.Supp.2d 1227, 1287 (M.D. Ala. 2013) (W. Pryor, J.), was hardly considered in 2025. Deferring to memories of segregation, the district court refused to credit evidence of equality today because it would somehow give

“punitive effect to the political participation of Black Alabamians.” App.403.

Plaintiffs try to distinguish *ALBC* for having relied in part on racially proportional representation in the State Senate, which they admit “obviously” indicates “that minority voters have an equal opportunity.” BIO.30. It’s hard to see how Alabama’s state elections could be *obviously* fair, yet its federal elections so plagued by racism that this case was “not a close call.” BIO.4. And in any event, Alabama’s Senate map, featuring the same proportion of majority-black districts as in *ALBC*, was recently enjoined. *Ala. NAACP v. Allen*, No. 2:21-cv-1531, 2025 WL 2451166 (N.D. Ala. Aug. 22, 2025), *stay denied*, DE51-2, No. 25-13007 (11th Cir. Oct. 30, 2025) (not likely to succeed despite “high registration rates” and no “obstacles to voting”).

Experience has proven that allotting a “fair share of political power” among racial groups is not possible. *Cf. Rucho*, 588 U.S. at 709. In the same breath that Plaintiffs say that courts must “adhere to traditional redistricting principles,” they add that “the denial of [a race-based] district” “matters” more than “any other criterion,” and that “non-racial redistricting goals” can offer no “safe harbor.” BIO.10, 25-26, 31. How, then, can §2 possibly “guard[] against the excessive use of race”? BIO.25.

As things stand, States cannot predict how courts will apply the more “malleable” and “ethereal” districting principles, *Milligan*.Mot.27, especially when they conflict with each other, *see Ala. Callais*.Br.11-14. “Nothing in §2 provides an answer[.]” *Cf. Allen*, 599 U.S. at 35. Without a “reliable way to determine who wins, or even where the finish line is,” *id.* at 37, §2’s

use of race is not narrowly tailored but “inescapably imponderable,” *SFFA*, 600 U.S. at 215.

B. Race-based redistricting will not end on its own or “any time soon.”

The district court held that race-based redistricting could not be “render[ed] unconstitutional” by “the mere passage of time,” App.454, but that’s not the argument. *See* Pet.23-25. Rather, time is “the acid test of [the] justification” for using race. *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003). If race-based districting had any “efficacy,” Plaintiffs would be able to say when it will “no longer be necessary.” *Id.*

Under the current regime, States can *never* stop using race. Each census restarts redistricting anew, but that just guarantees a “periodic review” of how States use (or do not use) race every decade in perpetuity, much like Harvard’s use of race every admissions cycle. *SFFA*, 600 U.S. at 225.

The theory that §2 will sunset on its own is divorced from reality. *See Ala.Callais.Br.19-25*. According to district courts, if a 250-mile-wide majority-black district can be drawn in Alabama (or Louisiana), it must be drawn. As for the totality-of-circumstances test, States can win repeatedly one cycle and lose in the next, even with overlapping evidence. Pet.16-17. Anything that has ever happened in the State is fair game, and which facts courts will deem relevant is anyone’s guess. Ben Carson’s finish in the 2016 primary was counted against Alabama in 2022. App.844. After Alabama proved that Carson’s tally in Alabama was one of his best in the country, App.281, Plaintiffs dug up a CNN exit poll from two cycles prior, and the State was faulted for President Obama’s unpopularity in 2007, App.389. Likewise, after Alabama proved that

it had the second-smallest racial gap in incarceration in the nation, Tr.2203:24-25, the district court turned to gaps in infant mortality, App.405. The test is ever evolving, and the sun seems only to be rising. *Contra* BIO.34-35 & n.5; *see* Ala.*Callais*.Br.7-8 & n.5.

Thus, States can make “substantial progress” across every vector, App.455, without ever knowing whether they have satisfied the test. That’s what makes §2’s use of race unlike “chemotherapy,” which is also toxic but has an end goal to “cure” a specific illness. BIO.25. One more race-based district will not end myriad “disparities ... in the modern world.” App.404-09. It will not stop candidates from making politics about race, especially if it *helps* their party in court, Ala. NAACP, 2025 WL 2451166 at *81; *see* Ala.*Callais*.Br.29. Whatever §2 diagnoses, it will not cure anything “any time soon.” *SFFA*, 600 U.S. at 225.

C. Race-based districts do not remediate specific, identified instances of past discrimination.

1. Remedying “specific, identified instances of past discrimination,” BIO.28, cannot be the constitutional reason for §2’s indefinite use of race. For starters, a §2 violation is anything but “specific,” *supra* §II.A, and it does not prove “discrimination.” *Contra* BIO.27-28. Discrimination is treating someone “worse than others who are similarly situated.” *Bostock v. Clayton County*, 590 U.S. 644, 657 (2020). But courts do not ask §2 plaintiffs to prove that the State’s districting plan makes them worse off than other voters—only that they are less likely to vote for the winning candidate than they would be in an alternative districting plan. That can be true for a host of race-neutral reasons, such as a legislature’s partisan goals, which

make plaintiffs differently “situated” from other voters. Simply *calling* the result “discrimination” does not make it so. *Cf. Miller v. Johnson*, 515 U.S. 900, 922 (1995) (no “blind judicial deference”).

Nor does a §2 violation indicate “likely intentional discrimination.” *Contra* BIO.23. States can violate §2’s results test even when they are “intensely concerned with complying with the VRA.” *Turtle Mountain v. Howe*, No. 3:22-cv-22, 2023 WL 8004576, at *16 (D.N.D. Nov. 17, 2023). Or even when lines drawn by a “bipartisan and independent commission reflected a difficult balance of many competing factors and could be justified in any number of rational, nondiscriminatory ways.” *Soto Palmer v. Hobbs*, 686 F.Supp.3d 1213, 1232 (W.D. Wash. 2023). By design, proving a §2 violation does not begin to prove intentional discrimination. *See Thornburg v. Gingles*, 478 U.S. 30, 44 (1986); BIO.31. If an intent finding requires at least “extraordinarily powerful” evidence, *Alexander*, 602 U.S. at 35, then “§2’s results-centric approach” is far from “perfect[.]” BIO.23.

2. Plaintiffs point to the discrimination holding in the companion case as proof that §2 is “working just as Congress intended.” BIO.33. But they cite zero evidence to support the erroneous finding of “animus,” App.523, never confront the full presumption of good faith under *Alexander* or *Abbott*, and still misunderstand the basic nature of a preliminary injunction, *see* Pet.27-35. Alabama was not required to “take the L,” Tr.2669, and enact a new race-predominant map. Indeed, after enforcement of the *2021 Plan* was *preliminarily* enjoined, the State was not required to enact a new map at all. Passing a better plan that it believed had a “good shot” of winning (App.510) is “defiance” (BIO.19) only if one thinks that a finding that an

earlier map “likely” violated §2 is equivalent to a final judgment that any other map the Legislature may draw *actually* violates §2. That is not how preliminary injunctions work. Project on Fair Representation Br.11-16, No. 25-274 (U.S. Oct. 9, 2025).

The district court wrongly discarded multiple race-neutral motives: constitutional concerns, the partisan aim to save a Republican seat, and traditional districting principles. *See* Reply §II, *Milligan* (Nov. 4, 2025). Plaintiffs fixate on the Gulf Coast, calling it “White,” which is both inaccurate (its diversity is why they want to carve it up) and irrelevant. Alabama proved that the Gulf Coast is a community entitled to respect, the district court agreed, and the 2023 Plan treats it just the same as the Black Belt. *Id.*

D. The Fifteenth Amendment does not save race-based redistricting.

Congress may “enforce” the Fifteenth Amendment with “appropriate legislation.” Plaintiffs claim that §2 is valid enforcement legislation as a “rational means” to effectuate the Amendment. BIO.22. But Plaintiffs’ version of §2 cannot be deemed enforcement legislation when it conflicts with the constitutional provisions it purports to be enforcing—segregating “Black Mobile” from the rest of the Gulf Coast community. As the Court “recalled in *Katzenbach* itself, Congress’ exercise of its Fifteenth Amendment authority even when otherwise proper still must ‘consist with the letter and spirit of the constitution.’” *Miller*, 515 U.S. at 927; *see Shelby County v. Holder*, 570 U.S. 529, 555 (2013). Congress does not use enforcement legislation to “undercut” the Constitution’s “guarantees of personal equality and freedom from discrimination.” *See Oregon v. Mitchell*, 400 U.S. 112, 128 (1970) (opinion

of Black, J.). Thus, “all racial classifications, imposed by whatever federal, state, or local governmental actor, must be analyzed by a reviewing court under strict scrutiny.” *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 227 (1995). Because §2 as applied to redistricting requires States to sort citizens based on race, it must “survive a daunting” standard of review. *SFFA*, 600 U.S. at 206.

CONCLUSION

The Court should grant the petition and reverse.

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