

No. 25-274

In the Supreme Court of the United States

WES ALLEN, ET AL.,

Appellants,

v.

EVAN MILLIGAN, ET AL.,

Appellees.

***OPPOSITION TO MOTION TO EXPEDITE CONSIDERATION OF
JURISDICTIONAL STATEMENT AND OF THIS MOTION***

Appellees Evan Milligan, *et al.*, oppose Appellants’ Motion to Expedite Consideration of Jurisdictional Statement (the “Motion”). Appellants’ request is both unworkable and unwarranted. No changes to the state’s congressional districting plan can be effectuated so close to Alabama’s May 19, 2026, primary. Indeed, absentee votes *have already been cast*. And this case is differently situated than *Louisiana v. Callais* (No. 24-109), which Appellants rely upon as the basis for their request.

This Court should deny the motion. Appellees respectfully request that this Court could either adjudicate and grant Appellees’ motion to affirm in the ordinary course or, in the alternative, the Court order full briefing and oral argument on the merits.¹

Appellants’ motion should be denied for at least three reasons.

First, the District Court’s injunction in this case rests on two, independent bases: a violation of Section 2 of the Voting Rights Act and a violation of the Fourteenth Amendment to the U.S. Constitution. Unlike in *Louisiana v. Callais*, the District Court below found that the Alabama Legislature enacted a new 2023 congressional map in violation of the Fourteenth Amendment’s ban on intentional racial discrimination. App.25-26. The District Court found that Alabama’s Legislature made a “deliberate decision to ignore, evade, and strategically frustrate requirements spelled out in a court order” affirmed by the Supreme Court. App.25; *see also* Roberts, C.J., “2024 Year End Report on the Federal Judiciary,” (Dec. 31,

¹ To the extent that the Court has doubts about the effect of *Louisiana v. Callais* on this case, the Court should order supplemental briefs on that question.

2024)² (noting the need to “soundly reject[]” the “dangerous” suggestions of “elected officials from across the political spectrum” who “have raised the specter of open disregard for federal court rulings”). The District Court determined that a “constellation of departures from the norm,” including the Legislature’s statutory findings, made clear that the 2023 map was “an intentional official effort to entrench the likely vote dilution” identified by this Court and the District Court. App.504. Among other evidence, the Legislature’s findings explicitly sought the “the exaltation of [the Gulf Coast] majority-White community of interest above all other communities of interest (and above all other traditional districting principles).” App.348-349.

Yet, in its Motion, Alabama now paints “the goal of keeping Mobile and Baldwin Counties whole and together in one congressional district” as a “political” goal. Mot. at 2. But it is neither “political,” nor non-racial. Rather, as this Court said in *Callais*, Alabama “did not defend its [2021] map on the ground that it was drawn to achieve a political objective.” *Callais* Op. at 36. That same statement remains true for Alabama’s 2023 map enacted after *Allen*. In enacting the 2023 map, the Appellant Co-Chairs of the Legislative Reapportionment Committee again denied that the map was drawn with any partisan motive. App.524. And the legislative findings justified the 2023 map’s focus on the Gulf Coast with “the singular reference to the [French and Spanish colonial] heritage of th[is] majority-White” region while simultaneously “delet[ing] [] any description” of the Black Belt’s heritage, App.504-505, and

² Available at <https://www.uscourts.gov/data-news/judiciary-news/2024/12/31/chief-justice-roberts-issues-2024-year-end-report>.

“eliminat[ing] the [prior] express requirement that a plan not dilute minority voting strength,” App.21.

Second, regarding the Section 2 claim, this Court in *Callais* repeatedly emphasized that it had “not overruled *Allen*.” *Callais* Op. at 36. Thus, the reasoning underlying *Allen* still governs this case. *See Allen v. Milligan*, 599 U.S. 1, 21 (2023) (rejecting Alabama’s “Gulf Coast” and “core retention” defenses as “overdrawn”).

There is significant additional evidence here that was absent in *Callais*. Here, the parties stipulated that the Special Master’s cartographer drew the remedial plans “race blind,” using only “nonracial characteristics.” App.531-532; *see also* App.16, 76; *see also Allen*, 599 U.S. at 34 n.7 (noting that “randomized algorithms” found “plans with two majority-black districts in literally thousands of different ways”). And the court held that “Plaintiffs’ illustrative plans often do meet or beat the 2023 Plan” on Alabama’s own stated criteria. App.329.

The District Court also found “overwhelming” quantitative and qualitative evidence that, even controlling for political opinions and partisanship, race continued to drive Alabama politics. App.391. While Black and White Alabamians hold similar views on issues like same-sex marriage and abortion, App.171, 305; their voting patterns do not reflect their shared values, App.391-392. Alabama’s own expert admitted that “race remains the dominant political influence” in the State. App.385. Another one of Alabama expert’s regression analysis “could not rule out that Black candidates were penalized at the polls on account of race.” App.386-387. Further, in several *general* elections, White Democrats supported White Republicans over Black

Democrats. App.388-89. In recent primaries for Democrats, App.147-148, and Republicans, App.388-389, White voters consistently supported White candidates over Black ones. For example, in remedial District Two’s 2024 Republican primary, four experienced Black Republicans “together received only 6.2% of the total vote,” finishing behind four White candidates. App.389. A White political novice received more votes than *all* four Black candidates *combined*. App.163. The contrast between Alabama’s record and the *Callais* record is un-mistakeable: in Louisiana, Black and White voters’ differences arose from the “issues discussed” by the political parties, and there was no evidence from primaries or otherwise to “control for partisan preferences.” *Callais* Op. at 34.

And, on the totality of circumstances, the District Court found that Alabama had a “pervasive and protracted history” of discrimination, including multiple findings of intentional racial discrimination “issued in the last ten years.” App.398-400. In sharp contrast, in Louisiana, this Court noted a “lack of evidence that black voters had faced intentional discrimination in recent years.” *Callais* Op. at 34-35.

Third, Appellant’s claim that expedited consideration is “necessary to afford Alabama the same opportunity as other States to use a lawfully enacted congressional map,” Mot. at 1, is meritless. No changes to the state’s congressional plan can be effectuated so close to Alabama’s May 19, 2026 primary Election Day.³ Critical deadlines have already passed in the lead up to the rapidly approaching last

³ Appellants did not include any proposed timeline or schedule in their motion for this Court’s resolution of the case.

day for voting: candidates have already qualified, accepted contributions, and have been certified for the May 19 primary, and *voters are already voting*.⁴ The State’s deadline to transmit absentee ballots under the Uniformed and Overseas Citizens Absentee Voting Act was Saturday, April 4, 2026. 52 U.S.C. § 20302(a)(8).

As Alabama once represented in this case, it would have taken “heroic efforts” to respond to an injunction issued “just seven weeks” before the *first* day of absentee voting. *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring). Yet no amount of effort could accommodate changes to an existing plan when voting has *already* been well underway for a month and there are less than three weeks until the *final* day of voting. *Cf. Abbott v. League of United Latin American Citizens*, 146 S. Ct. 418, 419 (chastising a district court that “improperly inserted itself into an active primary campaign, causing much confusion”).

For the foregoing reasons, Appellees respectfully request this Court deny Appellant’s Motion and consider the pending motion to affirm in the ordinary course.

⁴ Administrative Calendar: 2026 Statewide Election, Alabama Secretary of State <https://www.sos.alabama.gov/sites/default/files/election-2026/AdminCalendar%20-2026.pdf>.

Respectfully submitted,

DEUEL ROSS
Counsel of Record
VICTOR OLOFIN
NAACP LEGAL DEFENSE &
EDUCATIONAL FUND, INC.
700 Fourteenth St., NW
Washington, DC 20005
(202) 682-1300
dross@naacpldf.org

JESSICA L. ELLSWORTH
JO-ANN TAMILA SAGAR
DAVID DUNN
MICHAEL J. WEST
AMANDA N. ALLEN
HOGAN LOVELLS US LLP
555 Thirteenth St., NW
Washington, DC 20004

JANAI NELSON
SAMUEL SPITAL
STUART NAIFEH
KATHRYN SADASIVAN
BRITTANY CARTER
COLIN BURKE
NAACP LEGAL DEFENSE &
EDUCATIONAL FUND, INC.
40 Rector St., 5th Floor
New York, NY 10006

MICHAEL TURRILL
HARMONY A. GBE
JAY ETTINGER
HOGAN LOVELLS US LLP
1999 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067

JOHANNAH CASSEL-WALKER
HOGAN LOVELLS US LLP
4 Embarcadero Center, Suite 3500
San Francisco, CA 94111

DAVIN M. ROSBOROUGH
SOPHIA LIN LAKIN
THERESA J. LEE
DAYTON CAMPBELL-HARRIS
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
125 Broad St.
New York, NY 10004

CECILLIA D. WANG
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
425 California St., Suite 700
San Francisco, CA 94104

PAUL RAND
ACLU OF ALABAMA
PO Box 6179
Montgomery, AL 36106

SIDNEY M. JACKSON
NICKI LAWSEN
WIGGINS CHILDS PANTAZIS FISHER &
GOLDFARB, LLC
301 19th St. North
Birmingham, AL 35203
CHARNICE CULMER
HOGAN LOVELLS US LLP
1735 Market St., Floor 23
Philadelphia, PA 19103

Counsel for Appellees