In the Supreme Court of the United States

WES ALLEN, APPLICANT

v.

EVAN MILLIGAN, ET AL.

WES ALLEN, APPLICANT

v.

BOBBY SINGLETON, ET AL.

WES ALLEN, APPLICANT

v.

MARCUS CASTER, ET AL.

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF APPLICANT

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In the Supreme Court of the United States

No. 25A1314

WES ALLEN, APPLICANT

v.

EVAN MILLIGAN, ET AL.

No. 25A1315

WES ALLEN, APPLICANT

v.

BOBBY SINGLETON, ET AL.

NO. 25A1316

WES ALLEN, APPLICANT

v.

MARCUS CASTER, ET AL.

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF APPLICANT

INTEREST OF THE UNITED STATES

The Solicitor General, on behalf of the United States, respectfully submits this brief as amicus curiae in support of the applications for a stay of the May 26, 2026, order of the United States District Court for the Northern District of Alabama. On May 11, 2026, this Court vacated the district court's prior order enjoining Alabama's 2023 congressional map and remanded for further consideration in light of *Louisiana*

v. *Callais*, 146 S. Ct. 1131 (2026). The district court promptly reinstated its pre-*Callais* injunction, holding that Alabama's 2023 map reflects intentional discrimination and violates Section 2 of the Voting Rights Act of 1965, 52 U.S.C. 10301, despite the legislature's effective ratification of that map post-*Callais*. The United States has a strong interest in protecting its citizens from court-ordered racial gerrymanders and in ensuring that federal courts do not erroneously interfere with federal elections or usurp the constitutional primacy of the States in drawing congressional districts.

INTRODUCTION AND SUMMARY OF ARGUMENT

"[S]everal States have in recent months redrawn their congressional districts in ways that are predicted to favor the State's dominant political party." *Abbott* v. *League of United Latin American Citizens*, 146 S. Ct. 418, 419 (2025) (*LULAC*). But Alabama was stuck on the sidelines because, in 2025, the district court enjoined Alabama's 2023 congressional plan—which would have favored Republicans 6-1—and ordered Alabama to use a court-drawn plan that added a second district favoring black Democrats. See *Singleton* v. *Allen*, 782 F. Supp. 3d 1092 (N.D. Ala. 2025) (*Singleton III*), vacated *sub nom. Allen* v. *Caster*, No. 25-243 (May 11, 2026); *Milligan* v. *Allen*, No. 21-cv-1530, 2025 WL 2451498 (N.D. Ala. Aug. 7, 2025).

After this Court in *Louisiana* v. *Callais*, 146 S. Ct. 1131 (2026), corrected a misinterpretation of Section 2 that had resulted in such judicial racial gerrymanders, Alabama joined the fray by asking this Court to expedite its consideration of the State's pending request to vacate the district court's injunction and by authorizing the Governor to call a special primary election using the 2023 map if this Court granted that request. This Court then vacated and remanded for further consideration in light of *Callais*, *Allen* v. *Caster*, No. 25-243 (May 11, 2026), and the Governor called a special election for August 11 using the now-operative 2023 map.

On remand, however, the district court promptly reinstated its pre-*Callais* injunction largely based on its pre-*Callais* reasoning. The court held that Alabama had engaged in intentional discrimination by declining to draw a second black opportunity district that the court had earlier suggested was a required remedy for a Section 2 violation. And the court again held that Alabama had violated Section 2. Those holdings were wrong even before *Callais* and are indefensible after it.

With respect to intentional discrimination, the district court paid only lip service to its obligations to "disentangle race and politics" and to begin "with a presumption that the legislature acted in good faith." *Alexander* v. *South Carolina State Conference of the NAACP*, 602 U.S. 1, 6 (2024). The court disregarded Alabama's indisputably partisan aims when the 2026 legislature chose to use the 2023 map for the upcoming midterms and when the 2023 legislature pursued incumbency protection.

The district court instead concluded that Alabama must have intended to discriminate because it declined to draw a second black opportunity district that the district court had signaled Section 2 required. But a State's insistence on pursuing its partisan goals in the face of an earlier Section 2 holding does not somehow make those partisan goals racially discriminatory. The district court's contrary holding flouts a central lesson of *Callais*: that the pre-*Callais* Section 2 standard improperly condemned the refusal to create additional majority-minority districts in situations that did not even support "a strong inference" of intentional discrimination. 146 S. Ct. at 1157; see *id.* at 1157-1161. In any event, Alabama sought in good faith to correct the disparate treatment of two communities of interest—the Gulf Coast and the Black Belt—that was the premise of this Court's pre-*Callais* holding in *Allen* v. *Milligan*, 599 U.S. 1 (2023), that an earlier map violated Section 2. That legitimate

effort to comply with this Court's decision cannot be reasonably construed as racial discrimination, particularly in light of the presumption of good faith.

The district court's decision to reinstate its Section 2 holding despite *Callais* was tainted by the same errors. The court again failed to disentangle race and politics, ignored Alabama's partisan goals, and deemed illegitimate the State's effort to preserve the Gulf Coast community. The court also failed to hold respondents to their burden to control for party affiliation in analyzing racial voting patterns, relying on a smattering of largely irrelevant pre-*Callais* findings. And the court used its flawed intentional-discrimination analysis to conclude that the totality of circumstances demonstrated likely intentional discrimination in violation of Section 2. Thus, as in *Callais*, the court ordered a racial gerrymander, mandating a minority-opportunity district that the State never would have created based on its race-neutral districting principles and political goals. See 146 S. Ct. at 1161-1162; see also *Malliotakis* v. *Williams*, 146 S. Ct. 809, 810 (2026) (Alito, J., concurring in the grant of stay).

Worse still, the district court issued its injunction deep into the election calendar—less than three months before the primary and after the candidate-qualifying window had closed. The court excused that clear violation of *Purcell* v. *Gonzalez*, 549 U.S. 1 (2006) (per curiam), on the theory that Alabama had created the timing problem by deciding to use the 2023 map only after *Callais*, even though the State acted as soon as it could once this Court vacated the prior injunction in light of *Callais*. But state legislatures are democratically elected bodies that are competent to make the policy judgments inherent in late election changes and are accountable to the voters for any ill effects. Federal district courts do not have the same license to interfere with election rules at the eleventh hour, particularly on such dubious merits theories.

In *LULAC*, this Court faced a similar district-court decision enjoining a State's congressional map by recasting an obvious partisan gerrymander as racial discrimination. 146 S. Ct. at 419. This Court stayed that decision and later summarily reversed, cautioning that the district court had "improperly inserted itself into an active primary campaign, causing much confusion and upsetting the delicate federal-state balance in elections." *Ibid.*; see *Abbott* v. *League of United Latin American Citizens*, No. 25-845 (Apr. 27, 2026). The same is true here, and a stay is equally warranted.

STATEMENT

1. From 1992 to 2020, Alabama's seven-district congressional map "remained remarkably similar," with one black-majority district. *Allen*, 599 U.S. at 14. Beginning in 2012, Alabama sent six Republicans and one Democrat to Congress under that map. See *United States Congressional Delegations from Alabama*, Ballotpedia, https://perma.cc/5VTV-ETW2. In 2021, following the 2020 census, Alabama adopted a new map that "largely resembled" its predecessors. *Allen*, 599 U.S. at 16. Three sets of plaintiffs (respondents here) challenged that map in the United States District Court for the Northern District of Alabama. *Ibid.* The *Milligan* and *Singleton* respondents brought claims under Section 2 and the Fourteenth Amendment, and the *Caster* respondents brought a Section 2 claim only. *Ibid.* The district court issued a preliminary injunction, finding that the 2021 map likely violated Section 2. *Singleton* v. *Merrill*, 582 F. Supp. 3d 924, 936 (N.D. Ala. 2022). The court directed Alabama to draw a new map and expressed its view that "the appropriate remedy" would include a black-majority district or "something quite close to it." *Ibid.*

This Court stayed the injunction pending appeal and noted probable jurisdiction. *Merrill* v. *Milligan*, 142 S. Ct. 879 (2022). The 2022 election was held under the 2021 map, with Alabamians again electing six Republicans and one Democrat. See

United States House of Representatives Elections in Alabama, 2022, Ballotpedia, https://perma.cc/W7SN-7A8W.

In *Allen*, this Court affirmed the district court's preliminary injunction, concluding that the district court had "correctly" found a Section 2 violation "under existing law." 599 U.S. at 23. Among other things, the Court rejected Alabama's argument that respondents had not met their burden to offer a "reasonably configured" majority-minority district because their maps failed to keep together Alabama's Gulf Coast community of interest. *Id.* at 20. The Court expressed skepticism that Alabama's trial evidence established that the Gulf Coast is a community of interest. *Id.* at 21. Regardless, the Court concluded, because respondents' maps "joined together a different community of interest called the Black Belt," the maps were sufficiently equivalent to the State's. *Ibid.* The Court went on to reject "Alabama's attempt to remake [the Court's] § 2 jurisprudence anew" using a computer-generated "race-neutral benchmark." *Id.* at 23.

2. In 2023, Alabama adopted a new map that sought to address the Section 2 violation this Court found in *Allen* while respecting the State's political and other districting goals. See *Singleton III*, 782 F. Supp. 3d at 1132. The 2023 plan adhered to Alabama's desire to keep together the Gulf Coast, adding new legislative findings detailing the region's shared economy and history. *Id.* at 1134. But the 2023 plan improved on the 2021 plan's treatment of the Black Belt by joining that region together in as few districts as respondents' maps. See *id.* at 1132. Unlike respondents, however, the State drew only one black-majority district with a second district having a black voting age population of 40 percent. *Id.* at 1134.

Respondents challenged the 2023 plan, and the district court issued a preliminary injunction.* *Singleton* v. *Allen*, 690 F. Supp. 3d 1226, 1238 (N.D. Ala. 2023). This Court denied a stay, *Allen* v. *Milligan*, 144 S. Ct. 476 (2023), and the 2024 election took place under a court-drawn remedial plan, *Singleton III*, 782 F. Supp. 3d at 1145. That plan cost Republicans a seat in Congress and led to the election of Alabama's second Democratic member of Congress in over a decade. See *ibid.*; p. 5, *supra*.

Following a trial, the district court issued a permanent injunction against the 2023 plan. *Singleton III*, 782 F. Supp. 3d at 1117. Applying the prevailing framework for vote-dilution claims from *Thornburg* v. *Gingles*, 478 U.S. 30 (1986), the court concluded that Alabama's new map violated Section 2. *Singleton III*, 782 F. Supp. 3d at 1259-1308. The court reasoned that respondents' illustrative map only needed to be "reasonable" and did not need to "outperform" the State's on "any particular[] metric." *Id.* at 1264. The court disavowed any obligation to "fully disentangle party and race" in assessing racially polarized voting. *Id.* at 1284; see *id.* at 1292 (recognizing "the obvious truth[] that partisan affiliations drive voting patterns"). The court also concluded that Alabama had engaged in intentional vote dilution in violation of the Fourteenth Amendment by "refus[ing] to satisfy" the court's demand that Alabama draw a second black-majority district or something close to it. *Id.* at 1355. As a remedy, the court ordered Alabama to use the court-drawn plan from the 2024 election through the 2030 census. *Milligan*, 2025 WL 2451498, at *1.

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* In the preliminary-injunction proceedings, the United States filed a statement of interest that took no position on the facts of this case or respondents' constitutional claims but expressed the view that Section 2 required Alabama to draw a second district in which "Black voters have a realistic opportunity to elect their candidates of choice." 21-cv-1291 D. Ct. Doc. 152, at 8 (July 28, 2023). Following the change in Administration, the United States reconsidered its position on the proper interpretation of Section 2, as it explained in *Callais*.

3. Alabama appealed to this Court in *Singleton*, No. 25-273, and *Milligan*, No. 25-274, and sought certiorari before judgment in *Caster*, No. 25-243. While Alabama's jurisdictional statements and petition were pending, this Court decided *Callais*, which "update[d] the framework" for vote-dilution claims to "realign it with the text of §2 and constitutional principles." 146 S. Ct. at 1157, 1159. Because a State may lawfully pursue political goals in districting, Section 2 plaintiffs must "disentangle race from the State's race-neutral considerations, including politics." *Id.* at 1157. Plaintiffs must offer an illustrative map that "meet[s] all the State's legitimate districting objectives, including traditional districting criteria and the State's specified political goals." *Id.* at 1159. And plaintiffs must demonstrate politically cohesive voting by the minority and racial bloc voting by the majority while "control[ling] for party affiliation." *Ibid.* Given the Constitution's focus on "*intentional* racial discrimination," plaintiffs ultimately must demonstrate that the totality of circumstances establishes "a strong inference" of such discrimination. *Id.* at 1155, 1157; see *id.* at 1160. In so holding, the Court did not "overrule[] *Allen*," because that decision was limited to rejecting Alabama's "specific argument[s]." *Id.* at 1160, 1162. But the Court made clear that it had "update[d]" the Section 2 framework by answering "questions left open in *Allen*." *Id.* at 1161.

Alabama moved swiftly to hold its 2026 election under a map consistent with this Court's decision. On April 30, 2026, the day after *Callais* issued, Alabama moved this Court to expedite consideration of its pending jurisdictional statements and petition, so that Alabama could have "the same opportunity as other States to use a lawfully enacted congressional map." Mot. to Expedite 1, *Allen* v. *Caster*, No. 25-253 (Apr. 30, 2026). On May 11, this Court granted that motion over respondents' opposition and three Justices' dissent, vacating and remanding for further consideration

in light of *Callais*. *Allen* v. *Caster*, No. 25-243 (May 11, 2026). The Court's order reinstated the 2023 map that the district court had enjoined.

The primary for the 2026 congressional elections was set for May 19, 2026—too soon for the State to implement its 2023 map. See Op. 2. So on May 8, the Alabama Legislature passed and Governor Ivey signed a law allowing the Governor to void the results of the May 19 primary and call a special primary election if this Court were to vacate the district court's injunction barring the use of 2023 map (as this Court did three days later). Ala. Act 2026-612, § 1(b). On May 12, the Governor signed a proclamation setting a special primary election for August 11, 2026. Gov. Kay Ivey, Proclamation (May 12, 2026) (Ivey Proclamation). Under the proclamation, candidate qualifying closed on May 22, and the political parties were set to submit their candidates to Alabama's Secretary of State by May 26 at noon. *Ibid.*

4. Meanwhile, respondents moved for a preliminary injunction in district court. On May 26 at 7:58 AM—two weeks after the proclamation and just four hours before the political parties were due to submit their certified lists of candidates under the 2023 map—the court issued a new preliminary injunction, again barring Alabama's use of the 2023 map and ordering it to hold the 2026 elections under the 2024 court-drawn map. Op. 77.

The district court first held that its intentional-discrimination holding was "undisturbed by *Callais*." Op. 29. The court concluded that Alabama had "doubled down on racially discriminatory vote dilution" by not drawing a second black opportunity district. Op. 41. The court rejected Alabama's political goal of keeping the Gulf Coast together as "illegitimate" because it had been "used for an unconstitutional purpose" of diluting black votes. Op. 42. And the court rejected Alabama's argument that it had acted for partisan reasons, holding that there was insufficient

evidence of partisanship in 2023 and that the 2026 act had not "cure[d]" any discriminatory intent. Op. 47; see Op. 45-48.

The district court also reinstated its holding that respondents had made out a likely Section 2 claim. Op. 48-70. The court recognized respondents' obligation to offer an illustrative map that "meet[s] all the State's legitimate [re]districting objectives, including traditional [re]districting criteria and the state's specified political goals." Op. 55 (quoting *Callais*, 146 S. Ct. at 1159). The court acknowledged that respondents had not offered a map that satisfied the State's objective of preserving the Gulf Coast community of interest. *Ibid.* But the court deemed that objective "[il]legitimate" and declined to consider it along with Alabama's other partisan goals. *Ibid.* The court also concluded that the pre-*Callais* record included sufficient evidence of racially polarized voting, even controlling for party. Op. 57-61. And it concluded that the totality of circumstances demonstrated likely intentional discrimination in light of the court's intentional-discrimination holding. Op. 61-69.

The district court also determined that an injunction would be consistent with the *Purcell* principle on the theory that, because the 2024 elections were held under the court-drawn remedial plan, it would be simpler and less confusing to voters to reinstate that plan. Op. 8-13. The court viewed this Court's decision to grant Alabama's request to vacate and remand the earlier injunction on an expedited basis as reflecting this Court's "expect[ation]" that the district court would "give these cases further consideration in connection with the 2026 elections." Op. 7.

ARGUMENT

This Court will stay a three-judge court's injunction pending appeal when there is a reasonable probability the Court will note probable jurisdiction, a fair prospect the Court will reverse, and a likelihood of irreparable harm absent a stay. *Rostker* v. *Goldberg*, 448 U.S. 1306, 1308 (1980) (Brennan, J., in chambers). In "a close case," the Court may also balance the equities and weigh the relative harms. *Ibid.*; see *Hollingsworth* v. *Perry*, 558 U.S. 183, 190 (2010) (per curiam).

A stay is manifestly warranted here. Once again, a district court has enjoined a State's duly enacted congressional map at the eleventh hour, thereby "improperly insert[ing] itself into an active primary campaign, causing much confusion[,] and upsetting the delicate federal-state balance in elections." *Abbott* v. *League of United Latin American Citizens*, 146 S. Ct. 418, 419 (2025) (*LULAC*). This Court frequently intervenes in redistricting cases on an interim basis, reflecting the high likelihood that this Court will note probable jurisdiction or grant certiorari and the "clear[]" irreparable harm when a State cannot "enforce its duly enacted plans." *Abbott* v. *Perez*, 585 U.S. 579, 602 n.17 (2018); see, *e.g.*, *LULAC*, *supra*; *Robinson* v. *Callais*, 144 S. Ct. 1171 (2024); *Ardoin* v. *Robinson*, 142 S. Ct. 2892 (2022); *Merrill* v. *Milligan*, 142 S. Ct. 879 (2022); *Rucho* v. *Common Cause*, 138 S. Ct. 923 (2018).

Alabama is also highly likely to succeed on the merits. The district court's injunction flouts *Louisiana* v. *Callais*, 146 S. Ct. 1131 (2026), and *Alexander* v. *South Carolina State Conference of the NAACP*, 602 U.S. 1 (2024), by inverting the presumption of good faith and failing to disentangle race and politics. The court treated Alabama's failure to draw a second black opportunity district as proof of intentional racial discrimination, notwithstanding the obvious alternative explanations for Alabama's actions: helping Republicans and protecting the Gulf Coast community of in-

terest. The whole point of *Callais* is that refusing to create a majority-minority district in such circumstances does not support even a strong inference of intentional discrimination, much less prove intentional discrimination. The court also reinstated a Section 2 finding that busts through the guardrails this Court just announced in *Callais*. And the district court violated the principle of *Purcell* v. *Gonzalez*, 549 U.S. 1 (2006) (per curiam), by enjoining Alabama's operative congressional map less than three months before the primary and after candidate qualifying had already closed.

A. The District Court Flouted *Callais* In Concluding That Alabama's Decision To Use The 2023 Map Was Intentionally Discriminatory

The district court concluded that Alabama engaged in intentional racial discrimination when adopting the 2023 map and choosing to reinstate that map in time for the 2026 midterms. Op. 28-49. That conclusion was wrong before *Callais* and is indefensible after it.

This Court has "repeatedly emphasized that federal courts must 'exercise extraordinary caution in adjudicating claims that a State has drawn district lines on the basis of race.'" *Alexander*, 602 U.S. at 7. "Such caution is necessary because federal-court review of districting legislation represents a serious intrusion on the most vital of local functions," as "[r]edistricting constitutes a traditional domain of state legislative authority." *Ibid.* (brackets and quotation marks omitted). Accordingly, "a party challenging a map's constitutionality must disentangle race and politics." *Id.* at 6. And a court assessing such a claim must begin "with a presumption that the legislature acted in good faith." *Ibid.*

"[D]isentangl[ing] race from politics" requires a plaintiff to prove that race "*drove* a district's lines" and to "rul[e] out the competing explanation that political considerations dominated the legislature's redistricting efforts." *Alexander*, 602 U.S.

at 9-10. "If either race or politics could explain a district's contours," a court must accept the latter explanation, because the "presumption of legislative good faith directs district courts to draw the inference that cuts in the [state] legislature's favor when confronted with evidence that could plausibly support multiple conclusions." *Id.* at 10; accord *LULAC*, 146 S. Ct. at 419 (issuing stay where district court "failed to honor the presumption of legislative good faith by construing ambiguous direct and circumstantial evidence against the legislature").

The district court fundamentally erred in suggesting that *Callais* sheds no light on "the standard for intentional discrimination." Op. 29. This Court evidently viewed *Callais* as relevant to respondents' intentional-discrimination claim, because it vacated and remanded the district court's prior intentional-discrimination holding, on an expedited basis, "for further consideration in light of" *Callais*, *Allen* v. *Caster*, No. 25-243 (May 11, 2026), slip op. 1, over the dissent's objection that the "constitutional finding of intentional discrimination is independent of, and unaffected by, any of the legal issues discussed in *Callais*," *id.* at 2 (Sotomayor, J., dissenting). Indeed, the relevance of *Callais* to the intentional-discrimination standard is clear: A central teaching of that decision is that the pre-*Callais* standard wrongly condemned the failure to create additional majority-minority districts as impermissible vote dilution even in circumstances where there was not even a "strong inference" of intentional discrimination, let alone sufficient proof of such discrimination. 146 S. Ct. at 1157; see *id.* at 1157-1161. In particular, *Callais* instructed that the presumption of good faith, and the concomitant duty to disentangle race from partisanship, apply not just to racial-gerrymandering claims like in *Alexander* but to vote-dilution claims like in *Callais* and this case. *Id.* at 1156-1157.

Although the district court paid lip service to the presumption of good faith, *e.g.*, Op. 31-32, it flouted that presumption by effectively putting the burden on Alabama to *disprove* that it acted for racially discriminatory reasons. In particular, the court disregarded the State's partisan motive and denigrated the State's other legitimate districting principles.

1. The district court failed to disentangle race and partisanship

The district court failed to hold respondents to their "special burden" to demonstrate that a map was drawn for racial reasons rather than partisan ones. *Callais*, 146 S. Ct. at 1156 (quotation marks omitted).

a. The district court did not dispute that Alabama's *2026* redistricting effort was nakedly partisan—a point that should be incontrovertible in light of the ongoing battle between States on both sides of the political aisle to "redraw[] their congressional districts in ways that are predicted to favor the State's dominant political party." *LULAC*, 146 S. Ct. at 419; see 21-cv-1291 D. Ct. Doc. 360, at 63-66 (May 18, 2026) (collecting statements by Republican state legislators emphasizing that the districts were drawn "in a way that would benefit Republicans"). But the court dismissed the relevance of that evidence by claiming (1) that the 2026 law did not count as districting legislation because it only changed the timing of the 2026 primary without adopting a new map, and (2) that a legislature cannot "cure the original discriminatory intent" of a previous law. Op. 47-48. That reasoning is flawed on both scores.

To begin, the 2026 law effectively ratified the 2023 map. After all, the entire point of that law was to permit "the last legislatively enacted Congressional districts" (*i.e.*, the 2023 map) "to be used in the 2026 General Election" *if* the district court's injunction against that map was vacated—an injunction that barred the legislature from itself reimposing that map immediately after *Callais*. See Ala. Act 2026-612,

§ 1(b). The 2026 Legislature had no need to contingently reenact the 2023 map if the injunction were vacated, because its law altering the timing of the 2026 primary was premised on the 2023 map springing back into effect upon vacatur of the injunction. See Op. 27 (district court acknowledging that "the 2023 Plan became the legal status quo *ante*" "[u]pon vacatur" of its prior injunction).

The district court also erred in reasoning that a legislature cannot cure the discriminatory taint of a previous law. "[P]ast discrimination cannot, in the manner of original sin, condemn governmental action that is not itself unlawful." *Perez*, 585 U.S. at 603 (brackets in original). "The 'ultimate question remains whether a discriminatory intent has been proved in a given case.'" *Ibid.* Multiple courts of appeals have therefore held that a legislature can cure the taint of a felon-disenfranchisement law originally adopted with racial animus by readopting the same law for race-neutral reasons. See *Harness* v. *Watson*, 47 F.4th 296, 304-307 (5th Cir. 2022) (per curiam) (en banc) (collecting cases), cert. denied, 143 S. Ct. 2426 (2023).

Accordingly, the district court erred by treating the obvious partisan motives for the 2026 law as categorically irrelevant. That is sufficient basis to grant a stay.

b. Moreover, even looking at the 2023 law in isolation, the district court failed to properly account for Alabama's partisan motives. The court faulted the legislature for offering "zero evidence [that] the Legislature enacted the 2023 Plan for partisan purposes." Op. 45. But it is *plaintiffs'* burden to overcome the presumption of good faith and "rul[e] out the competing explanation that political considerations dominated the legislature's redistricting efforts." *Alexander*, 602 U.S. at 9-10. That is why *Alexander* and *Callais* require plaintiffs to offer an alternative map that accomplishes the State's asserted partisan goals. *Id.* at 34; *Callais*, 146 S. Ct. at 1159. If plaintiffs cannot offer such a map, they "fail to demonstrate that the State's chosen

map was driven by racial considerations rather than permissible aims." *Callais*, 146 S. Ct. at 1159. By treating the record's supposed silence on partisanship as proof that the legislature must have acted for racial reasons, the district court "construed ambiguous * * * circumstantial evidence against the legislature" and inverted the parties' burdens under the presumption of good faith. *LULAC*, 146 S. Ct. at 419. While perhaps forgotten in the current rash of redistricting, politicians often have electoral motivations for not wanting to admit to partisan purposes until forced to do so in litigation. A record that describes districting goals in euphemistic (or even pretextual) terms does not somehow prove a legislature's discriminatory intent, absent proof that race rather than party was the true motive.

Regardless, Alabama's enacted legislative findings in 2023 *do* expressly address partisanship by directing the map drawers not to "pair incumbent members of Congress within the same district." Op. 88 (reproducing findings). This goal of protecting incumbents is the same partisan goal that Louisiana advanced in *Callais* and that the challengers there failed to meet by ousting a Republican incumbent. See 146 S. Ct. at 1161. The district court here refused to equate incumbency protection with partisanship because Alabama had one Democratic incumbent who would also be protected. Op. 46. But the same was true in *Callais*. See 146 S. Ct. at 1150. Alabama's Republican-led state legislature had an obvious partisan interest in maintaining its 6-1 Republican map even if it might have preferred a 7-0 map even more. By forcing Alabama to instead use a 5-2 map that ousted a Republican incumbent in 2024, the district court subordinated the State's partisan goals.

2. Even setting aside partisanship, the district court improperly subordinated the State's race-neutral districting principles

Even on its own terms, the district court's conclusion that Alabama engaged in intentional racial discrimination disregarded the State's race-neutral districting principles. That decision contravenes both *Callais* and *Allen*.

a. The crux of the district court's intentional-discrimination finding was that Alabama intentionally refused to draw a second black opportunity district that the court had previously suggested was a necessary Section 2 remedy. See Op. 32, 35, 38-39, 41, 46-47. But that reasoning confuses awareness of a decision's allegedly discriminatory effects with proof that the decisionmaker intended those effects. To bring an intentional-discrimination claim, respondents must establish that Alabama "selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." *Personnel Adm'r of Mass.* v. *Feeney*, 442 U.S. 256, 279 (1979); see *City of Mobile* v. *Bolden*, 446 U.S. 55, 66 (1980) (plurality opinion) ("A plaintiff must prove that the disputed plan was conceived or operated as a purposeful device to further racial discrimination.") (brackets, quotation marks, and alterations omitted). The district court short-circuited that analysis, treating allegations that Alabama refused to adopt a particular pre-*Callais* Section 2 remedy as proof that Alabama did so for racially discriminatory reasons.

Callais underscores the problem with the district court's theory. As *Callais* emphasized, States have wide latitude "to draw districts as they please." 146 S. Ct. at 1156. "[I]nterpreting § 2 of the Voting Rights Act to outlaw a map solely because it fails to provide a sufficient number of majority-minority districts would create a right that the [Constitution] does not protect." *Ibid.* But that is exactly what the district court did here directly under the Constitution. It treated evidence that Ala-

bama had knowingly failed to provide what the court saw as the requisite number of minority opportunity districts under Section 2 as proof that Alabama had engaged in intentional vote dilution. But the pre-*Callais* standard for Section 2 violations wrongly imposed liability in circumstances where there was not even a strong inference of intentional discrimination. See *id.* at 1157-1161. And if a Section 2 violation cannot properly be found under the *Callais* standard, then that necessarily means an actual finding of intentional discrimination cannot be made.

b. The district court's other evidence of discriminatory intent is equally uncompelling. This Court has "never invalidated an electoral map in a case in which the plaintiff failed to adduce any direct evidence" of racial discrimination. *Alexander*, 602 U.S. at 8. This case should not be the first.

The district court placed significant emphasis on the legislative findings supporting the 2023 map, which the court characterized as a "severe departure[] from the Alabama Legislature's norm." Op. 36. In particular, the court lambasted Alabama's goal of keeping the Gulf Coast together, which the court took as proof that Alabama was using "the majority-White community of interest in the Gulf Coast * * * to entrench discrimination against Black voters in the majority-Black community of interest in the Black Belt." Op. 38. The district court therefore refused to require respondents to offer an alternative map that preserved the Gulf Coast (something they could not do) because the court thought the Gulf Coast criterion served an "unconstitutional, and therefore illegitimate, purpose." Op. 42.

But Alabama's emphasis on the Gulf Coast makes perfect sense in light of this Court's concern in *Allen* that Alabama had not adequately substantiated that community of interest at trial, even though Alabama's congressional map has kept the Gulf Coast together for over 50 years. See 599 U.S. at 21; *id.* at 57 (Thomas, J.,

dissenting). This Court thought Alabama had built a bad record, so Alabama went back and built a better record. That is sensible lawyering, not proof of intentional racial discrimination.

Moreover, this Court found a Section 2 violation in *Allen* in large part because it viewed Alabama's and respondents' maps as equivalent in how they treated communities of interest—Alabama split the Black Belt while respondents split the Gulf Coast. See 599 U.S. at 21. Alabama's 2023 map addressed that concern too, by showing that respondents' claim was based on a flawed factual premise. It *is* possible to preserve both the Gulf Coast and the Black Belt, as Alabama's 2023 map proved, even if that does not create a second black-opportunity district. See *Singleton* v. *Allen*, 782 F. Supp. 3d 1092, 1132 (N.D. Ala. 2025), vacated *sub nom. Allen* v. *Caster*, No. 25-243 (May 11, 2026). Accordingly, even under *Allen*, respondents' illustrative maps and the district court's remedial map were not "reasonably configured" because they did not "comport" with the "districting criteri[on]" of preserving *both* "communit[ies] of interest." See 599 U.S. at 18, 20. *Callais* underscored that alternative maps "must meet *all* the State's legitimate districting objectives" and do so "*just as well*." 146 S. Ct. at 1159 (emphases added). The court erred in treating the State's refusal to draw an unreasonable map as unlawful vote dilution and doubly erred by bootstrapping that dilution finding into an intentional-discrimination finding.

The district court also noted record statements discussing the black voting age population (BVAP) of various districts. See Op. 39-40. But given the district court's fixation on compelling Alabama to draw a second black opportunity district, it should hardly be surprising that Alabama legislators were concerned with whether their plans had a high enough BVAP to satisfy the court. If anything, the cited comments highlight that this Court's pre-*Callais* Section 2 jurisprudence put States between a

rock and a hard place, faulting them both for considering race and not considering race enough. Those comments do not support the district court's uncharitable view that Alabama was focused on "keeping the BVAP * * * low enough to foreclose the election of a Black-preferred candidate." Op. 40.

B. The District Court's Section 2 Holding Is Irreconcilable With *Callais*

The district court's decision to reinstate its Section 2 holding less than a month after *Callais* was infected by many of the same errors.

First *Gingles* precondition. *Callais* holds that, to "'disentangle race' from politics and other constitutionally permissible considerations," Section 2 plaintiffs must offer an illustrative map that "meet[s] all the State's legitimate districting objectives, including traditional districting criteria and the State's specified political goals." 146 S. Ct. at 1159. It does not matter whether those goals are idiosyncratic or bad public policy; they just must not be "prohibited by the Constitution." *Ibid.*

There is no dispute that respondents failed to offer an illustrative map that satisfied Alabama's goal of keeping the Gulf Coast together. See Op. 55. The district court dismissed that problem on the theory that the Gulf Coast criterion was "[il]legitimate" because it was the "linchpin" of a disguised effort to discriminate against black voters. *Ibid.* But that just repeats the district court's error of refusing to apply the presumption of good faith to Alabama's redistricting efforts. See pp. 18-19, *supra*. It is also wholly circular. It treats Alabama's focus on the Gulf Coast as proof of a Section 2 violation while using that same Section 2 violation to prove that Alabama could not have legitimately wanted to preserve the Gulf Coast. The better explanation—and the one the court was required to credit given the presumption of good faith—is that Alabama was pursuing its lawful goal of keeping together a community of interest that had existed for decades, unchallenged.

In addition, the district court's analysis of the first *Gingles* precondition ignored the State's partisan goals. The court noted that, before *Callais*, it had found that "many of the Plaintiffs' illustrative plans meet or beat the 2023 Plan on the legitimate goals expressed in the 2023 legislative findings" because, among other things, they "protect[ed] all incumbents except one." Op. 56-57. But protecting all incumbents but one—*i.e.*, ousting a Republican incumbent—is not "meeting all the State's legitimate districting objectives" "just as well." *Callais*, 146 S. Ct. at 1159. Indeed, the Section 2 decision that this Court rejected in *Callais* committed the same error by accepting an illustrative map that "fail[ed] to meet the State's political goals" by placing one Republican incumbent "in a majority-Democratic district." *Id.* at 1161.

Second and third *Gingles* preconditions. *Callais* also holds that Section 2 plaintiffs must "control[] for party affiliation" when demonstrating politically cohesive voting by the minority and racial bloc voting by the majority. 146 S. Ct. at 1159. But the record in this case—which was developed before *Callais*—does not include that statistical analysis.

The district court held otherwise, but much of the evidence it cited involved "*inter*-party racial polarization," which "proves nothing." *Callais*, 146 S. Ct. at 1159. For example, the court cited testimony that black voters favor Democrats because of their position on "race-based issues" and that race rather than "religion and class" "is the largest dividing line between the Republican and Democratic parties." Op. 60 (emphasis omitted). The court also cited evidence about black and white voters' views on abortion, white legislators' attendance at meetings regarding Medicaid expansion, and the lack of black Republicans holding state elective office, Op. 59—data points that do not involve voting patterns at all. To its credit, the court did cite a handful of examples of intra-party racial disparities presented by one expert. Op. 58. But it is

unclear whether the court would have treated that limited evidence as dispositive. In any event, those passing examples do not satisfy respondents' obligation to "provide an analysis that controls for party-affiliation." *Callais*, 146 S. Ct. at 1159.

Totality of the circumstances. Under *Callais*, courts must assess the "totality of circumstances" for "present-day intentional racial discrimination in voting." 146 S. Ct. at 1160. The district court's conclusion that the circumstances demonstrated such discrimination largely repeated its flawed conclusion that Alabama's 2023 map was prompted by intentional racial discrimination. See Op. 69. The court repeated its criticism of the 2023 legislative findings and Alabama's effort to preserve the Gulf Coast. Op. 68. It repeated its finding of racially polarized voting, this time without making any effort to control for party. Op. 63. The court also cited some district-court decisions finding racial discrimination in Alabama—many of them pre-*Callais* Section 2 decisions involving distinct jurisdictions. Op. 64-65. And for good measure, the court threw in a smattering of social science about racial disparities in education, employment, and health, like racial differences in vehicle ownership rates and quality sewage systems, although it purported to assign that evidence less weight. Op. 65-67. After *Callais*, that assorted evidence does not "c[o]me close to showing an objective likelihood that the State's challenged map was the result of intentional racial discrimination." 146 S. Ct. at 1162.

* * * * *

Perhaps the best proof of the district court's error is that, if Alabama had adopted the second black opportunity district the district court wanted, it would have subjected itself to racial-gerrymandering liability under *Callais*. While the district court repeatedly extolled the court-drawn remedial plan as "race-blind" in the sense that the map-drawer claimed not to consider race in drawing particular lines, Op. 2-

3, 6, 14, 18, 43, 53, 72-73, 76, race nevertheless clearly predominated in that map. Because its "underlying goal was racial," *Callais*, 146 S. Ct. at 1161, the "racial target" was "purposefully established," *Cooper* v. *Harris*, 581 U.S. 285, 299 (2017), and race "'was the criterion that, in the [court's] view, could not be compromised' in the drawing of district lines," *Alexander*, 602 U.S. at 7.

In particular, the court directed the special master to propose maps that "include[d] either an additional majority-Black congressional district" or opportunity district. 21-cv-1530 D. Ct. Doc. 273, at 7 (Sept. 5, 2023) (order to special master). Notably, when a state court recently mandated the creation of a similar congressional district favoring racial minorities as a purported remedy for vote dilution under state law, this Court granted a stay *before a remedial map had even been drawn*, see *Malliotakis* v. *Williams*, 146 S. Ct. 809, 809 (2026), and Justice Alito concurred to explain that any remedial map ultimately drawn would inevitably be "unadorned racial discrimination, an inherently 'odious' activity that violates the Fourteenth Amendment's Equal Protection Clause except in the 'most extraordinary case,'" *id.* at 810. In sum, while "[c]ompliance with § 2, *as properly construed*, can provide" a compelling interest for race-predominant districting, *Callais*, 146 S. Ct. at 1143, the court's decision reimposing a pre-*Callais* injunction, based on a pre-*Callais* record, less than a month after *Callais*, fails to comply with *Callais*' revised interpretation of Section 2 and cannot support such constitutionally suspect action.

C. The District Court Violated The *Purcell* Principle

Under *Purcell*, "lower federal courts should ordinarily not alter the election rules on the eve of an election." *LULAC*, 146 S. Ct. at 419 (quoting *RNC* v. *DNC*, 589 U.S. 423, 424 (2020) (per curiam)). If they do, "this Court, as appropriate, should correct that error." *RNC*, 589 U.S. at 425. The district court clearly abused its dis-

cretion in granting a preliminary injunction after Alabama's candidate-qualifying period had closed and less than three months before the primary. This Court has often stayed district-court injunctions against legislative maps even longer before an election and should do the same here. See, *e.g.*, *LULAC*, 146 S. Ct. at 418 (three months before primary); *Robinson*, 144 S. Ct. 1171 (six months before general election); *Ardoin*, 142 S. Ct. 2892 (five months before general election); *Merrill*, 142 S. Ct. 879 (four months before primary); *Rucho*, 138 S. Ct. 923 (four months before primary).

1. This is a quintessential case for a stay based on *Purcell*. "When an election is close at hand, the rules of the road should be clear and settled." *DNC* v. *Wisconsin State Legislature*, 141 S. Ct. 28, 30 (2020) (Kavanaugh, J., concurring in the denial of application to vacate stay). Late-breaking changes by lower federal courts risk "voter confusion and consequent incentive to remain away from the polls" that can undermine the integrity of the election process. *Purcell*, 549 U.S. at 4-5. When changes are no longer "feasible before the election without significant cost, confusion, or hardship," lower courts should be extremely reticent to interfere with a State's election process. *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring in the grant of applications for stays).

This case clearly presents those chaos and confusion concerns. Alabama's rescheduled primary is less than three months away, on August 11, 2026. Candidate qualifying using the 2023 map closed last Friday, May 22, and candidate lists were set to be submitted to Alabama's Secretary of State by noon on May 26, until the district court's injunction that morning halted the process. See Ivey Proclamation. The district court's injunction risks profound confusion for state officials who must now figure out how to complete a new candidate-qualification process in time for the August 11 primary with no guidance from the court. See Op. 77 (declining to address

this question). And the injunction whipsaws voters, who went to the polls on May 19 knowing that any votes in the affected congressional races would be void, but are now being told that they need to go back to vote in the same districts for who knows which candidates on August 11. As in *LULAC*, "[t]he District Court improperly inserted itself into an active primary campaign, causing much confusion and upsetting the delicate federal-state balance in elections." 146 S. Ct. at 419.

At minimum, the timing should have required respondents to make an extremely strong showing of likelihood of success on the merits. Cf. *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring in the grant of applications for stays) (describing *Purcell* as "probably best understood as a sensible refinement of ordinary stay principles for the election context" under which the merits must be "entirely clearcut in favor of the plaintiff"). But for the reasons above, respondents' claims fail on the merits. At minimum, the merits are hardly clearcut, especially given that this Court just issued a decision that the dissenting Justices decried as "greenlight[ing] redistricting plans" like Alabama's that allegedly dilute minority votes. *Callais*, 146 S. Ct. at 1166 (Kagan, J., dissenting). By pressing forward with a dubious theory of liability late in the election calendar, the court transgressed *Purcell*.

2. In granting the injunction, the district court recognized that this Court's vacatur of its earlier injunction had made "the 2023 Plan * * * the legal status quo." Op. 7. But the court reasoned that the previous court-drawn map was "the practical status quo," so sticking with that plan would be "simpler" for Alabama and "avoid the confusion and error risk attendant" to using the 2023 plan. Op. 7, 9-10. That rationale fundamentally confuses the respective roles of courts and legislatures.

"It is one thing for a State on its own to toy with its election laws close to a State's elections. But it is quite another thing for a federal court to swoop in and re-

do a State's election laws in the period close to an election." *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring in the grant of applications for stays); see *Wisconsin State Legislature*, 141 S. Ct. at 28 (Roberts, C.J., concurring in the denial of application to vacate stay) (noting the different rules that apply to "federal intrusion[s] on state lawmaking processes" and state-court decisions). *S*tate legislatures are better situated to address the "host of difficult decisions" inherent in choosing "how best to structure and conduct [an] election." *Wisconsin State Legislature*, 141 S. Ct. at 31 (Kavanaugh, J., concurring in the denial of application to vacate stay). They "enjoy far greater resources for research and factfinding" and can "bring to bear the collective wisdom of the whole people." *Id.* at 29 (Gorsuch, J., concurring in the denial of application to vacate stay). And they are "accountable by the people for the rules they write or fail to write." *Ibid.*

After *Callais*, Alabama's democratically elected leaders faced a choice: Adopt a new map consistent with this Court's decision now or wait for a future election. Alabama—like many of its sister States—chose the former course, accepting the costs of a hurried process as the price of the State's political goals. A State's decision to make that policy choice does not license a district court to make a different judgment for itself. Cf. *Wisconsin State Legislature*, 141 S. Ct. at 32 (Kavanaugh, J., concurring in the denial of application to vacate stay) (documenting similar problem in the context of the COVID-19 pandemic). District courts lack the institutional competence to rejigger election procedures at the last moment or the democratic accountability that comes from having to face voters unhappy with any disruptive changes.

In *LULAC*, the dissenters made the same claim that the court-ordered map "was, in a real sense, the status quo," and that the tight timing could only be blamed on the state legislature. 146 S. Ct. at 428 (Kagan, J., dissenting from the grant of

application for stay). Yet a majority of this Court voted to grant a stay, holding that the district court "violated" the *Purcell* principle by second-guessing the State's choice to adopt a new map. *Id.* at 419. The decision below—which did not even cite *LULAC*—made the same error.

The district court also misconstrued this Court's decision to grant Alabama's motion to expedite and vacate and remand for further consideration of *Callais* as reflecting this Court's "expect[ation]" that the district court would act before the 2026 election. See Op. 6-7. Alabama sought expedition expressly so that it could enjoy "the same opportunity as other States to use a lawfully enacted congressional map free of an injunction that cannot be reconciled with Section 2 of the Voting Rights Act 'as properly construed.'" Mot. to Expedite 1, *Allen* v. *Caster*, No. 25-253 (Apr. 30, 2026) (quoting *Callais*, 146 S. Ct. at 1143). And respondents opposed expedition, warning that this Court's vacatur of the district court's previous injunction would "enable a mid-election change of districts" by permitting Alabama to use the 2023 map. Opp. to Mot. to Expedite 2, *Allen* v. *Caster*, No. 25-253 (Apr. 30, 2026). This Court's decision to grant Alabama's expedited request cannot plausibly be understood as an invitation for the district court to inject itself into the 2026 midterms.

CONCLUSION

The applications for a stay should be granted.

Respectfully submitted.

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