Nos. 25A1314, 25A1315, and 25A1316

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 NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE AS AMICUS CURIAE IN SUPPORT OF APPLICANT

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INTEREST OF AMICUS CURIAE

The National Republican Congressional Committee ("NRCC") is a national political party committee dedicated to electing Republican candidates to the United States House of Representatives. In furtherance of that mission, NRCC supports Republican congressional candidates and works to ensure that voters have the opportunity to elect Republican representation in the House.[1]

NRCC has a direct and substantial interest in this case. Congressional district lines define the electoral landscape in which House candidates campaign and in which national party committees determine how to allocate limited resources, support candidates, communicate with voters, and prepare for an upcoming election. The district court's injunction requires Alabama to abandon its legislatively enacted congressional map and conduct the remainder of the 2026 election cycle under a court-selected plan, notwithstanding this Court's intervening decision vacating the prior judgment on which that remedy rested. That judicial intervention directly affects congressional candidates, political parties, campaign strategy, and voters in an active election cycle.

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[1] Pursuant to Rule 37.6, amicus curiae states that no counsel for any party authored this brief in whole or in part, and no counsel for any party or any party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity other than amicus curiae, its members, or its counsel made a monetary contribution to the preparation or submission of this brief.

NRCC submits this brief because the decision below threatens interests extending beyond Alabama. A federal court's displacement of a State's enacted congressional map creates uncertainty for candidates and political parties nationwide, particularly during an ongoing election cycle. It also undermines the Constitution's allocation of primary responsibility for districting to political actors. NRCC therefore has a substantial interest in ensuring that federal courts apply the limits this Court has imposed on judicial interference with state redistricting decisions and election administration.

NRCC respectfully submits that the application for a stay should be granted.

SUMMARY OF ARGUMENT

Unless this Court intervenes, the people of Alabama will elect their congressional representatives under a map that is nothing short of a court-ordered racial gerrymander that usurps the constitutional primacy of the States in drawing congressional districts. This despite that *Louisiana v. Callais*, 146 S. Ct. 1131 (2026) corrected the misinterpretation of Section 2 that had resulted in many such judicial gerrymanders. In *Callais*, this Court put a stop to federal court injunctions that require states to balance "'competing hazards of liability'" given that "the Equal Protection Clause restricts consideration of race and the VRA demands consideration of race." *Abbott v. Perez*, 585 U.S. 579, 587 (2018) (quoting *Bush v. Vera*, 517 U.S. 952, 977 (1996) (plurality op.)). Undeterred, the district court mandated a court-selected map that would subject Alabama to a racial gerrymandering charge were the State itself to enact it.

Meanwhile, the lower court faulted Alabama, finding that it had engaged in intentional racial discrimination because it *declined* to draw districts based on race. In the end, despite this Court's full-throated recognition that the States bear the primary responsibility for drawing districts—and despite *Callais*'s clear holding—the federal court below ordered Alabama to carry out elections under a race-driven, court-selected plan that fails to meet Alabama's race-neutral political goals. *See* 146 S. Ct. at 1161–62; *see also Malliotakis v. Williams*, 146 S. Ct. 809, 810 (2026) (Alito, J., concurring in the grant of stay).

This Court recently summarily reversed a district court decision which had improperly construed partisan interests as intentional racial discrimination. *Abbott v. LULAC*, 146 S. Ct. 418, 419 (2025). In so doing, the Court chastised the lower court for "improperly insert[ing] itself into an active primary campaign, causing much confusion and upsetting the delicate federal-state balance in elections." *Ibid.*

So too here. A stay is warranted because the district court displaced the Alabama legislature in contravention of the Elections Clause and this Court's repeated rejection of a federal-judges-know-best vision of election administration. The district court improperly intervened in the thick of election season upsetting the delicate federal-state balance and violating *Purcell*. The court also subverted the State's primary role in elections by evading the presumption of legislative good faith and by excusing Plaintiffs' failure to proffer a map that satisfied Alabama's political interests.

This Court should note probable jurisdiction and grant a stay.

ARGUMENT

I. This Court has made plain that federal courts may not displace state legislatures as the primary architects of congressional districts.

"The Constitution provides that state legislatures—not federal judges . . . —bear primary responsibility for setting election rules." *Democratic Nat'l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 29 (2020) (Gorsuch & Kavanaugh, JJ., concurring in denial of application to vacate stay) (citing U.S. Const. Art. I, §4, cl. 1). Accordingly, "[t]he Constitution entrusts state legislatures with the primary responsibility for drawing congressional districts." *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 6 (2024). As "an inescapably political enterprise . . . [r]edistricting constitutes a traditional domain of state legislative authority." *Id.* at 6–7 (citations omitted); *see also, e.g., Vieth v. Jubelirer*, 541 U.S. 267, 285–286 (2004) ("The Constitution clearly contemplates districting by political entities."); *Rucho v. Common Cause*, 588 U.S. 684, 718 (2019) ("Federal judges have no license to reallocate political power . . . .").

This Court has enforced that principle for decades. In 1946, the Court found a challenge to Illinois congressional districts entirely nonjusticiable, warning that judicial involvement would "bring courts into immediate and active relations with party contests" and that "[i]t is hostile to a democratic system to involve the judiciary in the politics of the people." *Colegrove v. Green*, 328 U.S. 549, 553–54 (1946) (Frankfurter,

J.). When the Court did enter the redistricting arena—finding Equal Protection challenges to state legislative apportionment justiciable, *Baker v. Carr*, 369 U.S. 186, 200 (1962), and locating a one-person-one-vote principle in Art. I, § 2, applicable to congressional district lines, *Wesberry v. Sanders*, 376 U.S. 1, 7–8 (1964)—it imposed careful limits on judicial intervention. *See Baker*, 369 U.S. at 198–204; *Wesberry*, 376 U.S. at 5–7. *But see Allen v. Milligan*, 599 U.S. 1, 51–55 (2023) (Thomas, Gorsuch, Barrett, Alito JJ., dissenting) (discussing "serious constitutional questions" posed by measuring Section 2 vote-dilution claims against race-based benchmarks) (citations omitted). The structural limits on federal court intervention in state election administration have been stated and restated ever since.

Reynolds v. Sims recognized that "legislative reapportionment is primarily a matter for legislative consideration and determination, and that judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites." 377 U.S. 533, 586 (1964). *White v. Weiser* emphasized that federal district courts must "follow the policies and preferences of the State . . . whenever adherence to state policy does not detract from the requirements of the Federal Constitution"—a rule which applies with equal force "in the context of congressional reapportionment"—and that "a district court should not preempt the legislative task nor 'intrude upon state policy any more than necessary.'" 412 U.S. 783, 795 (1973) (quoting *Whitcomb v. Chavis*, 403

U.S. 124, 160 (1971)). As *Karcher v. Daggett* put it, federal courts deciding redistricting cases must "defer to state legislative policies, so long as they are consistent with constitutional norms." 462 U.S. 725, 740 (1983).

Time and again, this Court has set aside district court decisions that go beyond what is required to cure a legal violation and instead substitute federal judges' redistricting priorities for a state legislature's. *Weiser* held that a district court erred when, in choosing between two possible court-ordered plans, it failed to choose the one that most closely approximated the state's own proposal. 412 U.S. at 797. *Whitcomb* held that a district court erred by invalidating each of a plan's multimember districts when it had only found *some* of those districts unconstitutional. 403 U.S. at 160–61. And *Upham v. Seamon* held that, absent a constitutional or statutory violation, "a court must defer to the legislative judgments the [state's] plans reflect, even under circumstances in which a court order is required to effect an interim legislative apportionment plan." 456 U.S. 37, 40–41 (1982).

The Court has reaffirmed this principle in recent decisions. *Growe v. Emison* reiterated "'what has been said on many occasions: reapportionment is primarily the duty and responsibility of the State through its legislature or other body, rather than of a federal court.'" 507 U.S. 25, 34 (1993) (quoting *Chapman v. Meier*, 420 U.S. 1, 27 (1975)). *Growe* also emphasized that federal courts are mapmakers of last resort, holding that "federal judges [must] defer consideration of disputes involving

redistricting where the State, through its legislative or judicial branch, has begun to address that highly political task itself." *Id.* at 33. Given that primacy, "[a]bsent evidence that these state branches will fail timely to perform that duty, a federal court must neither affirmatively obstruct state reapportionment nor permit federal litigation to be used to impede it." *Id.* at 34; *see also, e.g.*, *Perez*, 585 U.S. at 588 (holding that district court "should have respected the legislative judgments embodied in the [Texas legislature's] 2011 plans to the extent allowed by the Constitution and the VRA").

This allocation of authority is not merely structural—it is practical. It accords with deep-seated institutional competencies that are inherent in both vertical and horizontal separation-of-powers principles. As Justices Gorsuch and Kavanaugh explained in *Democratic National Committee v. Wisconsin State Legislature*, there are myriad reasons the Founders assigned to state legislators—and not to federal courts—primary authority over state elections. 141 S. Ct. at 29 (Gorsuch & Kavanaugh, JJ., concurring in denial of application to vacate stay). For starters, state "[l]egislators can be held accountable by the people for the rules they write or fail to write; typically, judges cannot." *Ibid.* Further, "[l]egislatures make policy and bring to bear the collective wisdom of the whole people when they do, while courts dispense the judgment of only a single person or a handful." *Ibid.* State legislatures also "enjoy far greater resources for research and factfinding . . . than usually can be mustered

in litigation between discrete parties before a single judge." *Ibid.* And finally, the political give-and-take that is part and parcel of legislative negotiations can lead to fairer results that reflect a democratic consensus: "[i]n reaching their decisions, legislators must compromise to achieve the broad social consensus necessary to enact new laws, something not easily replicated in courtrooms where typically one side must win and the other lose." *Ibid.* No wonder the Founders adhered to the view that "[d]rawing political districts is a task for politicians, not federal judges." *Alexander*, 602 U.S. at 40 (Thomas, J., concurring).

Moreover, substituting federal judges as congressional mapdrawers "ensnarls courts in a political thicket." *Id.* at 44. There is no principled way for judges to resolve the political conflicts inherent in redistricting. Does preserving a new and growing community of interest justify a map that divides an existing district's core? Does protecting incumbents justify splitting an established community of interest into several districts? What economic ties, geographic features, shared infrastructure, and countless other factors bind some communities together and distinguish them from others? These sorts of questions "do not ask for legal answers, only political compromises." *Ibid.* It is no small wonder then that "[a]ssessing the complicated tradeoffs involved in . . . election rules . . . in a particular State . . . falls outside the competence of federal courts." *Wis. State Legislature*, 141 S. Ct. at 32–33 (Kavanaugh, J. concurring in denial of application to vacate stay). Accordingly, "this Court has consistently

rejected [a] federal-judges-know-best vision of election administration." *Id.* at 35.

The Fourteenth Amendment and the Voting Rights Act introduce constraints on this primary state authority, but they do not displace it. Rather, given "'the complex interplay of forces that enter a legislature's redistricting calculus,'" 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 (quoting *Miller v. Johnson*, 515 U.S. 900, 915–16 (1995)). This extraordinary caution "is necessary because 'federal-court review of districting legislation represents a serious intrusion on the most vital of local functions.'" *Id.* (quoting *Miller*, 515 U.S. at 915) *(*cleaned up). Given the gravity of this intrusion—and because "States must have discretion to exercise the political judgment necessary to balance competing interests," *Miller*, 515 U.S. at 915—federal courts evaluating claims of race-based districting must apply "a presumption that the legislature acted in good faith." *Alexander*, 602 U.S. at 6.

II. The district court exceeded these narrow bounds.

The district court's injunction cannot be reconciled with the limits this Court has repeatedly imposed on federal judicial intervention in state redistricting decisions.

On April 26, 2026 (twenty-three days before Alabama's May 19 primary election), this Court decided *Callais*, 146 S. Ct. 1131, and shortly

thereafter vacated the district court's prior judgments, including its injunction of the 2023 Plan, remanding for further consideration in light of *Callais*. *Allen v. Caster*, Nos. 25-243, 25-273 & 25-274, 2026 WL 1282800, at *1 (U.S. May 11, 2026). With that vacatur, Alabama's legislatively enacted 2023 Plan sprang into effect. *See, e.g.*, App. 27.

Anticipating this possibility, Alabama's duly elected state officials had passed legislation authorizing the Governor to void the May 19 primary results and hold a special primary in August if this Court vacated the injunction against the State's 2023 Plan. *See* Ala. Code § 17-13-3.1(b) (providing for a special primary "in the event a federal court, by issuing a judgment or by vacating an injunction, permits the reinstatement of the last legislatively enacted congressional districts [from 2023], to be used in the 2026 General Election" in time for the results to be certified). This provided an opportunity for Alabama's 2026 elections to occur under a map that reflects the judgment of its state legislature, rather than a federal court. The day after the 2023 Plan was revived, the Governor set a special primary for August 11, 2026. Gov. Kay Ivey, 2026 Special Primary Election Proclamation (May 12, 2026) (setting special primary election for Alabama congressional districts 1, 2, 6, and 7; citing Ala. Code § 17-13-3.1(b)). Amicus curiae then worked with Republican congressional candidates throughout Alabama to prepare for an election in the districts as configured in the 2023 Plan, reallocating the NRCC's campaign-

support and voter-contact resources accordingly, and assisting candidates in their efforts to do the same.

Yet a mere fifteen days later, the district court reinstated the *same* congressional map ordered in its pre-*Callais* injunction, again prohibiting Alabama from using its legislatively enacted 2023 Plan and requiring the State to conduct the remaining events in the 2026 congressional elections under the court-selected map. App. 76–77. The court also reserved jurisdiction for itself through 2030—retaining authority to judicially manage multiple *future* election cycles. *See* App. 78; Injunction and Final Judgment (Dkt. 512), *Milligan v. Allen*, No. 2:21-cv-01530-AMM (N.D. Ala.) (entered Aug. 7, 2025) (retaining jurisdiction). Now, Alabama congressional candidates and amicus are caught between the court-ordered plan and the 2023 Plan and left to wonder which voters they should be wooing, how to navigate the practicalities of the applicable filing requirements, and how to allocate limited party and campaign resources.

The district court's errors share a common source: its failure to defer to the Alabama legislature's primary authority over redistricting, and to limit any judicial invasion of this prerogative to the minimum necessary to correct existing statutory or constitutional violations. *See*, *e.g.*, *Upham*, 456 U.S. at 40–41; *Growe*, 507 U.S. at 33. That failure infected the district court's merits analysis, which further disregarded the presumption of legislative good faith and failed to require Plaintiffs to account for Alabama's permissible districting criteria and political goals as

Alexander and *Callais* require. *See Alexander*, 602 U.S. at 6, 9–11; *Callais*, 146 S. Ct. at 1157, 1159. That same disregard is evident in the remedy, which displaced Alabama's enacted map with a judicially selected arrangement and altered the electoral environment for candidates, political parties, and voters after the 2026 election process was already underway—and despite the express intent of Alabama's current legislature. *See* Ala. Code § 17-13-3.1(b).

Those related errors demonstrate a fair prospect that this Court will reverse the injunction. A stay is particularly warranted because the injunction requires Alabama to abandon its enacted map at the precise moment when federal judicial interference in the mechanics of Alabama's elections was most disruptive. *Accord Growe*, 507 U.S. at 33.

A. The district court's *Purcell* analysis puts the federal courts, rather than state legislatures, in the driver's seat.

Start with *Purcell*. A stay is warranted because the lower court's order violates "a bedrock tenet of election law:" the *Purcell* principle. *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring). As this Court has explained time and again, "When an election is close at hand, the rules of the road must be clear and settled." *Ibid.* "Late judicial tinkering with election laws" is forbidden because it "can lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters." *Id.* at 881.

Such tinkering gives short shrift to the Constitution's allocation of authority. In fact, *Purcell*'s anti-disruption principles are "grounded in a federalism principle—protecting states' constitutional interest under the Elections Clause in governing their own elections." *Gardner v. Henderson*, No. 2:26-CV-00084-RJS-JCB, 2026 WL 496448, at *16 (D. Utah Feb. 23, 2026) (3 judge court) (Tymkovich, J., concurring).

Here, the district court's failure to respect the Constitution's allocation of primary redistricting authority to state legislatures infected its *Purcell* analysis, leading it to require a court-mandated map at the eleventh hour. Following this Court's vacatur of the prior judgments, the 2023 Plan became the legally operative map, and Governor Kay Ivey set special primary elections for August 11, 2026, in Congressional Districts 1, 2, 6, and 7. App. 6, 27. Candidates qualified between May 20 and May 22, and political parties were required to certify their candidates by May 26. App. 26–27. Nevertheless, on May 26—the same day those certifications were due—the district court displaced the 2023 Plan and ordered that all remaining election events proceed under a court-ordered plan. App. 76–77. That displacement cannot be squared with *Purcell*.

Indeed, the district court's *Purcell* analysis takes us through the looking glass, suggesting that *federal courts* do *states* a favor when they impose their own court-ordered map. The court found its eleventh-hour intervention in Alabama's political process appropriate because it might forestall an "expensive … voter reassignment effort." App. 5–6. The court

believed federal court meddling permissible based on its speculation that replacing the 2023 Plan would "improve the administrative situation in Alabama." App. 6.

That gets *Purcell* exactly backwards. It is for the State to determine whether a redistricting plan is worth the candle. As Justice Kavanaugh has explained, "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 880 (Kavanaugh, J., concurring). That's because *Purcell* applies to counter "federal intrusion on state lawmaking processes," not condone it. *Wis. State Legislature*, 141 S. Ct. at 28 (Roberts, C.J., concurring).

To make matters worse, the district court's newfound concern for state resources is wholly unconvincing. *See* App. 9 (lamenting that the 2023 Plan will "cost the State far more money" than the court-ordered plan). This is the same district court that ordered Alabama to completely redraw its congressional districts and *refused* to stay that order in light of imminent elections even when the "order would require heroic efforts by those state and local authorities in the next few weeks." *Merrill*, 142 S. Ct. at 880 (Kavanaugh, J., concurring). In contrast, this Court applied *Purcell* and *granted* the stay. This was true even though a divided Court ultimately concluded that the relevant map violated Section 2. *Allen,* 599 U.S. at 42. Even if the *Purcell* principle is not absolute, *but see Purcell v.*

Gonzalez, 549 U.S. 1, 4–6 (2006) (resting on the imminence of the election without analyzing merits), this sequence of events makes clear that *Purcell* bars untimely interference unless the merits are "entirely clearcut in favor of the plaintiffs." *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring). This is doubly true here, where the Plaintiffs' late-breaking challenge is barred by *Callais*.

In an attempt to evade this straightforward conclusion, the district court turned the status quo upside down. The court conceded that "the 2023 Plan became the legal status quo after the Supreme Court vacated [its] permanent injunction." App. 7. Yet in a bizarre twist, the court insisted that its own court-selected map "remains the practical status quo on the ground in Alabama." App. 7–8. That argument, too, misunderstands the Constitution's allocation of power. The status quo is the plan put forward *by Alabama*. *See supra*, Part I. A federal court cannot arrogate *Purcell* to entrench its own court-ordered plan—much less so when that plan has been vacated by this Court. Justice Kavanaugh's concurrence in *Merrill* rejected a similar argument, explaining that *Purcell* does not protect district court orders from appellate review. *Merrill*, 142 S. Ct. at 882 (Kavanaugh, J., concurring) ("Correcting an erroneous lower court injunction of a state election law does not itself constitute a *Purcell* problem."). Because *Purcell*'s anti-disruption principles are aimed at "protecting states' constitutional interest under the Elections Clause in

governing their own elections," the State's plan *must* be the status quo. *Gardner*, 2026 WL 496448, at *16 (Tymkovich, J., concurring).

Purcell bars the district court's late-breaking interjection of its own court-ordered plan because that plan has concrete and deleterious consequences. Congressional district lines affect where candidates run, how campaigns are organized, which voters candidates seek to persuade and mobilize, and how political parties allocate limited resources. Requiring Alabama to proceed under the court-ordered plan altered the electoral landscape in which candidates, political parties, and voters must participate. The timing—so close to the party primaries—makes that substitution particularly disruptive. With voters making decisions early and wanting to ensure mail-in ballots arrive, this Court has applied *Purcell* even where elections are farther off on the horizon. The district court's last-minute interference is inconsistent with this Court's consistent rejection of a "federal-judges-know-best vision of election administration." *Wis. State Legislature*, 141 S. Ct. at 35 (Kavanaugh, J., concurring).

In sum, "[t]his Court has repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election." *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U. S. 423, 424 (2020) (per curiam). Here, "[t]he District Court improperly inserted itself into an active primary campaign, causing much confusion and upsetting the delicate federal-state balance in elections." *LULAC*, 146 S. Ct. at 419 (Alito, Thomas, Gorsuch, JJ., concurring in the grant of the

application for stay). A stay is warranted because the district court's decision misapplies *Purcell*.

B. The district court failed to presume that the Alabama legislature acted in good faith.

The district court's failure to respect the Alabama legislature's primary responsibility for drawing its congressional districts is nowhere more apparent than in its refusal to start "with a presumption that the legislature acted in good faith." *Alexander*, 602 U.S. at 6. "This presumption of legislative good faith directs district courts to draw the inference that cuts in the legislature's favor when confronted with evidence that could plausibly support multiple conclusions." *Id.* at 10. The presumption applies to both racial gerrymandering and vote dilution cases. *See, e.g.*, *id.* at 6, 10; *Perez*, 585 U.S. at 603.

As this Court has explained, the presumption of legislative good faith is justified for at least four reasons—all of which flow from the Constitution's allocation of primary election authority to State legislatures. *First*, the presumption "reflects the Federal Judiciary's due respect for the judgment of state legislators, who are similarly bound by an oath to follow the Constitution." *Alexander*, 602 U.S. at 10. *Second*, because a State may lawfully pursue political redistricting goals, the presumption of good faith helps "disentangle race from the State's race-neutral considerations, including politics." *Callais*, 146 S. Ct. at 1157. The presumption "ensures that" a violation attaches only when a map is based on "race for

its own sake." *Alexander*, 602 U.S. at 10. *Third*, the presumption embodies an appropriate hesitancy to "hurl . . . accusations" of "'offensive and demeaning' conduct" at a state legislature. *Ibid.* (citation omitted). And *fourth*, it evinces a suitable "war[iness] of plaintiffs who seek to transform federal courts into 'weapons of political warfare' that will deliver victories that eluded them 'in the political arena.'" *Ibid.* (citation omitted)

The decision below highlights what can go wrong when the presumption of good faith is honored in the breach. The district court blew right past the presumption, "construing ambiguous direct and circumstantial evidence *against* the legislature." *LULAC*, 146 S. Ct. at 419 (emphasis added). Specifically:

- The court faulted the Alabama legislature for offering "zero evidence [that] the Legislature enacted the 2023 Plan for partisan purposes." App. 45. But this Court's precedents and the burden of proof require *plaintiffs* to "rul[e] out the competing explanation that political considerations dominated the legislature's redistricting efforts." *Alexander*, 602 U.S. at 9-10.

- Rather than crediting Alabama's good-faith effort to provide additional evidence that the Gulf Coast is a community of interest—which addressed a record deficiency this Court found in *Allen v. Milligan*, 599 U.S. 1—the court treated that effort itself as *evidence of discrimination. E.g.,* App. 37.

- The court rejected as "illegitimate" the Alabama legislature's goal of keeping the Gulf Coast together (as it had been for fifty years) insinuating that rationale was being "used for an unconstitutional purpose" of diluting black votes. App. 42.

- The court disregarded Alabama's desire to protect incumbents, *see* App. 36, even though Section 2 liability cannot be proven with an illustrative map that "fail[s] to meet the State's political goals, including incumbency protection." *Callais*, 146 S. Ct. at 1161.

The district court saw racial animus at every juncture. It condemned the Alabama legislature "in the strongest possible terms" and accused the State of attempting to disguise "its intentional decision to dilute minority votes with a veneer of legislative regularity." App. 4. By the lower court's lights, "the purpose of the 2023 Plan was to distribute Black voters across districts to dilute their votes, at least in part because they are Black." *Ibid.* That's quite a charge. It is also unsupported by the evidence. What the evidence shows is that the Alabama legislature rationally sought to accomplish race-neutral political goals like protecting incumbents and keeping the Gulf Coast region together (as it had been for the past 50 years). Stay Application in 25A1315, *Allen v. Singleton*, 14-19. The district court's refusal to consider this evidence flies in the face of this Court's repeated admonition 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 (citation omitted).

At day's end, what really seemed to bother the district court was that Alabama elected not to use its court-ordered plan but to draw a *different* map to remedy the Section 2 violation found in *Allen*. The court

chides Alabama for its "purposeful decision to refuse to provide the remedy for discriminatory vote dilution that [its] order … required." App. 3. But that charge misunderstands the Constitution's allocation of election authority. Nowhere did *Allen* suggest that the Alabama legislature could not draw a new map that both accomplished its political priorities and addressed this Court's concerns. Rather, the Alabama legislature had every right to respond to *Allen* by redrawing its electoral map. Its refusal to adopt a court-ordered map is not cause for concern, much less evidence of intentional racial discrimination.

That is especially true where, as here, the court-ordered map was nothing short of court-ordered racial gerrymandering. *See Callais*, 146 S. Ct. 1131. It is no small irony that, while the district court accused Alabama of intentional racial discrimination, it was the court-ordered plan that would have been subject to a racial gerrymandering claim. There is no question that—for the district court—"[r]ace was the criterion that … could not be compromised" in the drawing of district lines. *Alexander*, 602 U.S. at 7–8 (quoting *Shaw v. Hunt*, 517 U.S. 899, 907 (1996)). That's unconstitutional. And at minimum, Alabama's good faith efforts to avoid the "'competing hazards of liability'" between the Equal Protection Clause and the Voting Rights Act are not evidence of intentional discrimination. *See Perez*, 585 U.S. at 587.

C. The district court erred by subverting the State's primary role in elections despite Appellees' failure to present an alternative map.

The district court found both intentional discrimination and a likely Section 2 violation under *Callais'* updated standard. App. 5. This was no small feat. As this Court has explained, it is near impossible to prove intentional discrimination "[w]ithout an alternative map, [since] it is difficult for plaintiffs to defeat [the] starting presumption that the legislature acted in good faith." *Alexander*, 602 U.S. at 10; *see also LULAC*, 146 S. Ct. at 419 (holding that district court erred when it "failed to draw a dispositive or near-dispositive adverse inference" against plaintiffs who did not "produce a viable alternative map that met the State's avowedly partisan goals"). Likewise, under the updated *Gingles* framework, a Section 2 Plaintiff must offer an illustrative map that "meet[s] all the State's legitimate districting objectives, including traditional districting criteria and the State's specific political goals." *Callais*, 146 S. Ct. at 1159.

Here, the district court conceded that Respondents failed to offer a single alternative map satisfying Alabama's redistricting criteria, in particular the State's objective of preserving the Gulf Coast as an undivided community of interest. App. 55. That should have been the end of the matter. *See LULAC*, 146 S. Ct. at 419.

Instead, the district court excused Plaintiffs' failure to offer an illustrative map based on its view that the Alabama legislature's goal of preserving the Gulf Coast community of interest was "illegitimate." App.

42. In an example of the adage that no good deed goes unpunished, the district court viewed Alabama's good-faith efforts to satisfy this Court's concerns in *Allen* as evidence of *intentional* racial discrimination. More specifically, in its 2023 Plan, Alabama expanded upon its discussion of the Gulf Coast as a community of interest because this Court had found the previous record deficient. *See Allen*, 599 U.S. at 21. Yet because the Alabama legislature spent more pages discussing the Gulf Coast (challenged as a community of interest) than the Black Belt (not challenged as a community of interest), the district court claimed to have unearthed intentional racial discrimination. App. 42. But the Legislature's focus on the Gulf Coast after the community's existence was deemed "poorly supported" at the preliminary-injunction stage, *Allen*, 599 U.S. at 21, is hardly evidence of discrimination.

At bottom, the district court should not have preliminarily enjoined the 2023 Plan without first requiring Plaintiffs to identify an alternative map that would have achieved Alabama's legitimate political goals, including keeping the Gulf Coast together. Because the Plaintiff failed to offer any such map, a stay is warranted.

D. The district court's substitution of its preferred map improperly displaces Alabama's lawful policy choices and alters the political landscape.

The district court's remedy compounds its other errors. As this Court has recently explained in returning to first principles, the federal

courts lack "the power to create remedies previously unknown to equity jurisprudence." *Grupo Mexicano de Desarrollo, S. A. v. All. Bond Fund, Inc.*, 527 U.S. 308, 332 (1999). Thus "the absence from 18th- and 19th-century equity practice settles the question of judicial authority." *Trump v. CASA, Inc.*, 606 U.S. 831, 845–46 (2025) (citing *Grupo Mexicano*, 527 U.S. at 318–19). Yet there is no "indication that the Framers had ever heard of courts" resolving electoral redistricting disputes. *Rucho*, 588 U.S. at 699. As a result, there is a good argument that "[t]he power to redraw a States' electoral districts therefore exceeds 'the jurisdiction in equity exercised by the High Court of Chancery in England at the time of the adoption of the Constitution and the enactment of the original Judiciary Act.'" *Alexander*, 602 U.S. at 61 (Thomas, J., concurring) (quoting *Grupo Mexicano*, 527 U.S. at 318); *Baker*, 369 U.S. at 328 (Frankfurter, J., dissenting) ("Surely a Federal District Court could not itself remap the State.").

To be sure, this Court's precedent sometimes permits federal courts to impose court-ordered maps to remedy constitutional or Voting Rights Act violations, but it has imposed strict limits on such remedial authority. Even when federal judicial relief is warranted, a district court may not assume the legislature's role or displace state policy choices any more than necessary. *Upham*, 456 U.S. at 43. Yet the decision below supplanted the electoral arrangement enacted by Alabama's Legislature

with one selected by a federal court and did so without considering the legislature's redistricting priorities. App. 76–77.

This Court's remedial precedents foreclose that approach. In *Weiser*, the Court held that, even after a constitutional defect required judicial relief, a district court choosing a remedial congressional map should adopt the plan that most closely reflected the legislature's policy choices. 412 U.S. at 793–97. The Court emphasized that a district court may not "pre-empt the legislative task" or "intrude upon state policy any more than necessary." *Id.* at 795.

Upham confirms that same limit in the Voting Rights Act context. There, portions of Texas's enacted congressional plan had failed preclearance, but this Court nevertheless reversed a remedial order that departed from the State's plan in districts not affected by the identified defect. 456 U.S. at 38–40, 43–44. The Court held that modifications to a state plan must be "limited to those necessary to cure any constitutional or statutory defect." *Id.* at 43. Thus, even where a Section 2 violation exists, the federal courts may not run roughshod over the State's permissible policy choices or impose whatever map they deem preferable.

Most directly, *Perry v. Perez* rejected a district court's use of an interim congressional map that displaced Texas's legitimate policy judgments while challenges to the enacted plan remained pending. 565 U.S. 388, 391–94 (2012) (per curiam). Although Texas's plan had not yet received preclearance and could not be used in the upcoming election, this

Court held that the plan was not "of no account" and that the policy judgments it reflected could not simply be disregarded. *Id.* at 393. Instead, the State's plan served as the "starting point" for any interim map to ensure the court did not displace "legitimate state policy judgments with the court's own preferences." *Id.* at 394.

Here, the district court made no effort to preserve Alabama's lawful redistricting priorities. Rather, it mandated the use of a previously devised plan that undisputedly failed to comport with the State's permissible political objectives. Among other things, the court-imposed map failed to preserve the Gulf Coast as a community of interest and to protect incumbents. That the district court did not consider the State's policy objectives is clear from the fact that it mandated a map that *predated* the 2023 Plan.

This was error irrespective of the merits. Even assuming remedial relief is warranted (it is not), this Court's precedents required the district court to use the 2023 Plan as the "starting point." *Perry*, 565 U.S. at 394.. This safeguard ensures that any interim map does not displace "legitimate state policy judgments with the court's own preferences." *Id.* Yet the district court here required Alabama to use a *previously devised* plan that failed to accommodate the State's permissible political objectives.

The district court's continuing supervision underscores the problem. Rather than limiting relief to what was necessary to cure a properly identified legal defect for the election immediately before it, the court

retained control over Alabama's congressional map through the remainder of the census cycle—effectively through 2030. App. 78. That extended federal oversight magnifies the intrusion on Alabama's sovereign redistricting authority and confirms that the district court's error is separate from, and broader than, the timing concerns addressed by *Purcell*. Accordingly, a stay is also warranted because the district court's remedial map failed to minimize the "intru[sion] upon state policy." *Weiser*, 412 U.S. at 795.

* * *

It is hard to imagine a stronger case for a stay of a court-ordered injunction pending this Court's review. A stay is warranted because the decision "improperly inserted [itself] into an active primary campaign, causing much confusion and upsetting the delicate federal-state balance in elections" violating *Purcell*. *LULAC*, 146 S. Ct. at 419. A stay is warranted because the district court failed to presume the legislature acted in good faith—finding racial animus in the State's reasonable efforts to comply with *Allen*. A stay is warranted because Alabama was reasonable in rejecting a court-selected map that would expose the state to a racial gerrymandering claim. A stay is warranted because the district court erred by failing to disentangle race and politics, finding racial discrimination even though Plaintiffs concededly failed to proffer an alternative map. And a stay is warranted because the district court failed to

minimize the disruption caused to the State's political goals by its court-ordered map.

CONCLUSION

The Court should grant the applications for a stay.

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/s/ Erin Morrow Hawley

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