No. 25A1314

In the Supreme Court of the United States

HON. WES ALLEN,
IN HIS OFFICIAL CAPACITY AS THE ALABAMA SECRETARY OF STATE, ET AL.,
Applicants,

v.

EVAN MILLIGAN, ET AL.,
Respondents.

RESPONSE IN OPPOSITION TO EMERGENCY APPLICATION FOR STAY

DEUEL ROSS
Counsel of Record
NAACP LEGAL DEFENSE FUND
& EDUCATIONAL FUND, INC.
700 14th Street NW, Suite 600
Washington, DC 20005
(212) 965-7712
dross@naacpldf.org

Counsel for Appellees in No. 25-274

(additional counsel listed in signature block)

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TO THE HONORABLE CLARENCE THOMAS, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE ELEVENTH CIRCUIT:

For three reasons, Plaintiffs-Respondents respectfully request that this Court deny a stay in this "extremely unusual, perhaps unique" case. App.7.

First, there is simply no time left for Alabama officials to switch from the court-ordered plan ("Remedial Plan") to Alabama's 2023 plan (the "2023 Plan") for the August special primary. Last week, Alabama's Director of Elections testified that Alabama had until June 2 to reassign voters from the Remedial Plan to the 2023 Plan in time for the August special primary. App.73. This process "ordinarily take[s] weeks or months, not days." App.73. The Director was "was unsure if the counties could successfully complete their task" even with "'all hands on deck' working hours during late nights or on weekends" over seven days. *Id.* Yet if the process is "rushed, voters may be accidentally assigned to the wrong district and provided the wrong ballot." App.10. Alabama cannot accurately finish this complex process in the next 24 hours.

By contrast, "[r]equiring the use of the [Remedial] Plan will forestall an expensive, aggressive, and perhaps logistically impossible voter reassignment effort." App.5; *see Moore v. Harper*, 142 S. Ct. 1089 (2022) (declining to stay a remedial plan). All voters are *currently* assigned to the Remedial Plan, which has been the status quo for the last three years, since this Court denied Alabama's request to stay an earlier injunction against the 2023 Plan. App.7–8; *see Allen v. Milligan*, 144 S. Ct. 476 (2023). The May 26 order aligns with the set expectations of the public. In contrast, *no one* has ever voted under the 2023 Plan.

Second, the district court's injunction rests on an independent finding that Alabama intentionally discriminated against Black voters in violation of the Equal Protection Clause of the Fourteenth Amendment, which is unaffected by *Louisiana v. Callais*, 146 S. Ct. 1131 (2026). Alabama has shown no clear error in the district court's findings, which included direct evidence of the Legislature's race-based intent. App.32–41. *Callais* is a racial gerrymandering case, and it revised the framework for a "results" claim under §2 of the Voting Rights Act ("VRA"), but said nothing about the analytically distinct claim of intentional race discrimination here.

The district court's intentional discrimination finding is well supported by the record. Despite this Court's affirmance of an order requiring the creation of two opportunity districts, Alabama in 2023 drew a map that intentionally diluted the votes of Black Alabamians by deliberately keeping the percentage of Black voters in a revised congressional district two ("CD2") at a certain level. App.39–40. It did so knowing it was defying this Court's affirmance of an order requiring a second Black opportunity district. App.36, 68; *see Allen v. Milligan*, 599 U.S. 1, 23 (2023). In reconsidering this case after *Callais*, the district court properly conducted "another exhaustive analysis of an extensive record, App.4, and found "with great reluctance and dismay and even greater restraint" that Alabama's 2023 plan is unconstitutional. App.4.

Alabama admitted that legislators sought to (and did) create the 2023 plan so that it would "not include an additional opportunity district." App.16. This "enormous record" contains "no contemporaneous-statement evidence that the Legislature originally passed the 2023 Plan to remedy vote dilution or to secure a partisan

advantage." App.39. Alabama bemoans that (at 2) a "constitutional map" cannot be "one where white voters are drawn into white districts and given white representatives"—yet this is *exactly* what Alabama tried to do with the 2023 Plan. The direct evidence shows that legislators and the State's cartographer "focused on race" in pursuit of "keeping the [Black population] in District 2 low enough [in the 2023 Plan] to foreclose the election of a Black-preferred candidate." App.39–41. And, for the racial purpose of "exalt[ing]" a majority-White region based on its "French and Spanish colonial heritage," App.37, the Legislature's adopted criteria that mandated drawing a majority-White district "a matter of mathematical necessity," App.32 n.13.

The district court additionally relied on the Legislature's inexplicable rejection of a plan sponsored by Defendant Representative Chris Pringle. App.33–34, 39. He and Defendant Senator Steve Livingston are the Co-Chairs of the Legislature's Permanent Committee on Reapportionment ("Co-Chairs"). App.15. His plan passed the House and, like the 2023 Plan, did not pair incumbents and united the Gulf Coast, but allowed Black-preferred candidates to win two of four modeled elections—thus providing some opportunity to Black voters. App.33. For reasons that neither Co-Chair could explain, App.33–41, the Senate rejected his plan in favor of a plan that completely denied electoral opportunity to Black voters in the Black Belt. App.33–34.

Alabama's map-drawers and key legislators "were focused on race." App.39. Senator Livingston's cartographer—who drafted the 2023 Plan's foundation—focused on the racial population of CD2 in drawing this map. App.39–40. And no one disputes that used racial data to draw a plan with a Black voting-age population ("BVAP")

percentage of roughly 40% in the 2023 Plan's new CD2. App.40. Accomplishing its racial goal required the Legislature to "home[] in on Alabama's most well-known and nationally prominent Black community: the City of Selma," removing it from CD2 in the 2023 Plan to ensure that Black voters there were "utterly unable to elect a representative of their choice." App.34.

Moreover, nothing in *Callais* requires a court, as Alabama implies, to treat the presumption of legislative good faith as irrebuttable. Nor must courts accept a State's demonstrably false or incorrect statements that try to justify a discriminatory action. *See, e.g.*, *Flowers v. Mississippi*, 588 U.S. 284, 313–14 (2019); *Foster v. Chatman*, 578 U.S. 488, 503–04 (2016). Despite the great deference to state officials this presumption requires, *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 10 (2024), such "deference does not mean abdication, and deference does not by definition preclude relief." *Pitchford v. Cain*, No. 24-7351, 2026 WL 1485608, at *6 (U.S. May 28, 2026) (citation modified). Here, the district court gave deference, but "concluded that if this record did not rebut the strong presumption of legislative good faith, we doubted the presumption is ever rebuttable." App.21.

The record here also forecloses Alabama's post hoc claim of a partisan motive. As with Alabama's 2021 plan, the Legislature in 2023 also "did not cite partisan goals." *See Callais*, 146 S. Ct. at 1161 (distinguishing *Allen*). The district court found "zero evidence" that the 2023 Plan was based on partisan or incumbent-protection motives. App.45. The Co-Chairs denied partisan goals, App.45, and the Legislature's written redistricting criteria do not mention partisan goals. App.45. Incumbent

protection is also absent from both the Reapportionment Committee's guidelines and the Legislature's findings (which were inserted into the 2023 Plan after it was drawn)—these criteria only mention not pairing incumbents in the same district, App.81, 88. As the Court's *Callais* decision recognizes, a map that avoids incumbent pairings is different from a map that seeks to protect incumbents, yet the latter is all that Alabama required and the Remedial Plan currently pairs no incumbents. *Cf.* 146 S. Ct. at 1161. In any event, Representative Pringle's plan met all Alabama's stated goals, yet his plan was rejected in favor of the more discriminatory 2023 Plan. App.33.

Third, the district court found that, even after *Callais*, the 2023 Plan still likely violates §2. Alabama can show no clear error here either. Plaintiffs' illustrative maps meet or beat Alabama on all legitimate state criteria and Plaintiffs' cartographer did not use race. App.51–53, 56–57. The district court was "unsurprised that race-blind relief is available here," but not in Louisiana, given "that Black voters in Alabama are relatively geographically compact." App.54. It also found that partisanship could not explain the intensely racially polarized voting in primaries and nonpartisan elections. App.58–60. And it concluded that the totality of circumstances shows multiple recent instances of intentional discrimination by the State and others. App.64–65.

Three years ago, this Court agreed that current conditions in Alabama involve the rare instance where the "excessive role of race in the electoral process" was sufficient to require §2 relief. *Allen*, 599 U.S. at 30. Nothing has changed in Alabama or the record to warrant a different conclusion today. The Court should deny Alabama's stay motion on any one or more of these independent grounds.

STATEMENT

A. Alabama Enacts the 2023 Plan After This Court Affirmed the District Court's Preliminary Injunction Against Alabama's 2021 Plan.

1. In 2021, Alabama enacted a congressional plan that included "only one district in which black voters constituted a majority of the voting age population." *Allen*, 599 U.S. at 16. A three-judge district court held that the map likely violated §2 and preliminarily enjoined it. *Id.* This Court affirmed, *id.* at 23, crediting the district court's findings that "black voters could constitute a majority in a second district that was 'reasonably configured'" under the first *Gingles* precondition, *id.* at 19; *see Thornburg v. Gingles*, 478 U.S. 30, 50 (1986); and concluding that there was "no serious dispute" on the second and third preconditions, *Allen*, 599 U.S. at 22 (citation modified). And this Court accepted the finding that "Alabama's extensive history of repugnant racial and voting-related discrimination is undeniable and well documented." *Id.* at 22–23 (citation modified).

The preliminary injunction this Court affirmed in *Allen* required Alabama to draw "an additional district in which Black voters otherwise have an opportunity to elect a representative of their choice." *Singleton v. Allen*, 690 F. Supp. 3d 1226, 1242 (N.D. Ala. 2023). Alabama chose to defy this Court's affirmance of that injunction.

2. "[F]rom the outset," Legislators instructed their mapmaker "to keep the Gulf Coast Counties (Mobile and Baldwin) whole and together," which they knew "made it mathematically impossible to create a second majority-Black district." App.32. That instruction led to Representative Pringle's "Community of Interest Plan" ("COI

Plan"), which had one majority-Black district. App.33; *Singleton v. Allen*, 782 F. Supp. 3d 1092, 1149, 1341 (N.D. Ala. 2025). The district with the next-highest Black Voting Age Population ("BVAP") of 42.25% was CD2, where Alabama's analysis showed "Black-preferred candidate would have won two of the four modeled races." App.33.

Alabama rejected Representative Pringle's Plan. Although it passed the House, *Singleton*, 690 F. Supp. 3d at 1243, the Senate rejected it in favor of Senator Livingston's so-called "Opportunity Plan," App.33. Senator Livingston's plan, developed by an outside consultant, maintained one majority-Black district but drew CD2 in such a way that "Black-preferred candidates would have no chance of winning." App.39. That is the plan Alabama, after making some modifications, ultimately enacted as the 2023 Plan. In devising the 2023 Plan, contemporaneous statements confirm that "key legislators were focused on race" with the goal of "keeping the BVAP in District 2 low enough to foreclose the election of a Black-preferred candidate." App.39–40. Unsurprisingly, Black-preferred candidates lost all seven races in CD2 modeled under this map. App.34.

The Legislature drew Representative Pringle's plan, Senator Livingston's plan, and the final 2023 Plan based on guidelines passed by the Reapportionment Committee before the 2023 special session. App.32–34; *Singleton*, 782 F. Supp. 3d at 1151, 1203. Yet, on the morning of the 2023 Plan's passage, eight pages of "legislative findings" were inserted into the bill. App.34. No such finding had ever appeared in Alabama's previous redistricting laws. App.34–35. Alabama's Solicitor General drafted these "findings" without the Co-Chairs' knowledge. App.34. The Solicitor

General candidly admitted that the findings had not been used to draw the 2023 plan, rather the findings "essentially . . . describ[e] the [2023] map." Doc. 485 ¶ 73 (quoting Aug. 2023 Tr. 162:12-16). The findings name three communities of interest "that shall be kept together to the fullest extent possible": the Black Belt, the Gulf Coast, and the Wiregrass. App.37. The findings discuss the eighteen Black Belt counties in three paragraphs but "eliminate[] from the definition of the Black Belt the express recognition that it has 'a substantial Black population.'" App.37. In contrast, and despite "strip[ping] race . . . out of the list of 'similarities' that may support a community of interest," the Legislature's findings contain nine paragraphs on the Gulf Coast counties, including their "French and Spanish colonial heritage." App.37.

B. The District Court Enjoins the 2023 Plan After Finding that the Plan Violates Section 2 and the Fourteenth Amendment, and This Court Declines to Stay that Injunction.

After its passage, Plaintiffs objected to the 2023 Plan as failing to remedy the Section 2 violation affirmed by this Court, for violating the VRA, and for unconstitutionally and intentionally discriminating against Black voters. *Singleton*, 782 F. Supp. 3d at 1136. Alabama conceded that—despite being enacted after a preliminary injunction requiring a second opportunity district—the 2023 Plan intentionally "does not include an additional opportunity district." App.16. The district court preliminary enjoined the 2023 plan. *Id.* On appeal, this Court declined to stay that injunction. *Allen v. Milligan*, 144 S. Ct. 476 (2023). Alabama dismissed that appeal.

In September 2023, the district court issued "detailed instructions to the Special Master," who drew three plans. *Singleton*, 782 F. Supp. 3d at 1141. Of those three,

the court ultimately selected the Remedial Plan because it "satisfied all constitutional and statutory requirements while hewing as closely as possible to the Legislature's 2023 Plan." App.17–18. In drawing his plans, the Special Master "did not consider race." App.18. He "did not display racial demographic data while drawing districts or examining others' proposed remedial plans." *Id.* Instead, he relied on Alabama's traditional non-racial districting criteria. *Id.* The court's adopted Remedial Plan has one majority-Black district and one opportunity district with a 48.7% BVAP. *Id.*

In May 2025, the district court—after an eleven-day trial, involving over 50 witnesses, dozens of experts, and hundreds of pages of post-trial briefing—issued a detailed and comprehensive ruling, granting a permanent injunction holding that the 2023 Plan violated Section 2 and the Fourteenth Amendment. App.19–21. After a remedial hearing, the court ordered the Secretary to administer elections under the Remedial Plan until the 2030 census, a permanent injunction the scope and length of which Alabama agreed to subject to reserving its appellate rights. App.22.

C. This Court Issues *Callais* and Vacates the District Court's Permanent Injunction for Reconsideration in Light of *Callais*.

Alabama sought this Court's review of the district court's merits ruling. App.22. While Defendants' jurisdictional statement was pending, this Court decided *Louisiana v. Callais*, which "update[d] the *Gingles* framework," 146 S. Ct. at 1159, but did "not overrule[]" its decision in *Allen*. *See id.* at 1162.

On May 11, 2026, this Court granted Defendants' motion to expedite consideration of their jurisdictional statement, vacated the district court's preliminary injunction, and remanded for further consideration in light of *Callais*.

D. Mid-Election Under the Remedial Map, Alabama Re-Adopts the 2023 Plan, Which the District Court Again Enjoins.

When this Court issued *Callais*, Alabama "had already commenced the 2026 elections according to the" Remedial Map: "candidates qualified in January 2026, were certified in March 2026, and absentee balloting had begun." App.25. Nevertheless, after this Court vacated the injunction, Alabama announced a special primary election under the 2023 Plan for affected districts, App.113, requiring new elections and the reassignment of voters in "forty of Alabama's sixty-seven counties." App.26.

On that basis and on the same day this Court vacated the injunction, Plaintiffs moved for emergency relief. App.11. On May 27, after a hearing and briefing, the district court again preliminarily enjoined Alabama from conducting the 2026 congressional elections under the 2023 Plan and required Alabama to use the Remedial Map. App.6. This preliminary injunction is "based on the extensive evidence from trial," which "has not changed," and relied on "the same credibility findings" the court made in the permanent injunction." App.28. The court "carefully reviewed th[is] extensive evidentiary record . . . with fresh eyes in light of *Callais*." App.2.

The court first found that this is the "rare" case where the principles in *Purcell* v. *Gonzalez*, 549 U.S. 1 (2006) (per curiam) posed no barrier to relief—and indeed counseled in its favor. The court observed that the case's facts are "extremely unusual" and that the Remedial Map "remains the practical status quo on the ground." App.7–8. Citing new testimony from the Alabama Director of Elections, the court found that the burdens associated with administering upcoming elections under the Remedial Map will be "simpler by an order of magnitude than administering the

elections under the 2023 Plan." App.9. Administering the elections under the Remedial Map will "lessen" voter confusion, it found, and rushing the reassignment process may mean that some Alabama voters will be mistakenly given an incorrect ballot. App.10–11. The court also credited Plaintiffs for seeking relief "just over six hours" after this Court's vacatur and found no "real doubt" that the public would be injured by voting under the illegal 2023 Plan and the rushed reassignment process. App.11.

As to the merits, the district court first addressed the Equal Protection claim and found that, based on "all the evidence *Arlington Heights* instructs [courts] to consider," Plaintiffs are likely to succeed in establishing that Alabama "intended to discriminate . . . when it passed the 2023 Plan." App.40. The court reached this conclusion even after "draw[ing] every inference in the Legislature's favor" and ignoring "Alabama's [broader] history of discriminating against Black Alabamians." App.31–32. Nevertheless, the "undisputed" evidence, App.40–41, made plain that Alabama had "intentionally refused to create an additional Black-opportunity district for the purpose of entrenching what it knew was discriminatory vote dilution," and Alabama "did this at least in part because of race, and not party politics," App.48.

The district court also found Plaintiffs are likely to succeed on the merits of their §2 claim. App.49. After a "careful re-examination of" the testimony, the court concluded that Plaintiffs' expert "did not 'use race' unlawfully under *Callais*." App.51–52. The ruling rejected Alabama's argument that the court had to "blindly accept the 'non-negotiable' goals expressed in the 2023 legislative findings," finding no "legal basis" for the argument that courts must accept post hoc goals that the court

found were designed to discriminate. App.55. The court next "disentangle[d] party and race" under *Gingles* 2 and 3, and found "ample evidence" that "race, not party politics, drive[s] electoral behavior in Alabama." App.55–61. Finally, after re-examining "every piece" of the "intensely local corpus of evidence" here, the court found that "the totality of the circumstances in today's Alabama," reconsidered after *Callais*, indicated that "things are still different here in Alabama" such that Plaintiffs had shown "an objective likelihood of intentional discrimination." App.61–69.

The district court found that the remaining preliminary-injunction factors favored Plaintiffs as well, including that Plaintiffs will be irreparably harmed if they must vote under a map that purposefully discriminates. App.70. It also concluded that the public interest and equities favored an injunction, which among other things, would preserve the practical status quo of the Remedial Plan and mitigate the "unmeasurable risk of error attendant to allowing elections to proceed under the 2023 Plan." App.72. The court's "time-limited" and "race-blind remedy that alleviates the need for extensive redistricting by" the State was appropriate here. App.72–74.

ARGUMENT

Alabama entirely fails to show that a stay is warranted here. The State cannot make out a "strong showing" on the likelihood of success on the merits because the district court's decision was correct on the merits. And because the Remedial Plan has been the practical status quo in Alabama, and voting is nearly underway under it, all of the equitable stay factors are dispositively in Plaintiffs-Respondents' favor here. It is Plaintiffs-Respondents, Alabama voters, and the public at large who will

be irreparably harmed if the district court's fact-intensive order and the Remedial Plan are stayed. *See Nken v. Holder*, 556 U.S. 418, 434 (2009) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). The State's stay request is particularly misplaced where, as here, the district court's order was based on factual findings of intentional discrimination after careful weighing of the evidence and faithfully applied this Court's precedents—including correctly determining that *Callais* has no bearing on the finding of intentional discrimination—and where the district court's order was "narrowly drawn to effectuate its decision with a minimum of interference with the State's legislative processes, and with a minimum of administrative confusion in the short run." *See Graves v. Barnes*, 405 U.S. 1201, 1204 (1972).

I. Plaintiffs Remain Likely to Succeed in Demonstrating that the District Court Did Not Clearly Err, in Finding that Alabama's 2023 Plan Was Motivated in Part by Intentional Race Discrimination.

The district court's correct finding that "[w]hen the Legislature enacted the 2023 Plan, it made a calculated, purposeful decision to refuse to provide the remedy for discriminatory vote dilution" that this Court's affirmance required, defeats a stay and exists independent of any §2 question. App.5. That finding was based on a voluminous record. It is correct and should not be reversed. *See Rogers v. Lodge*, 458 U.S. 613, 623 (1982) (applying clear error standard to finding of discriminatory purpose and subsidiary findings of fact); *see also Allen*, 599 U.S. at 23 (clear error review).

A. Alabama Used Race to Limit the Number of Black Voters CD2 and Exalted the Gulf Coast Based on its European Ethnic "Heritage" to Perpetuate its Denial of Opportunity to Black Voters.

The district court correctly found that the "Legislature well knew what dilutive

mechanisms would prevent Black voters in Alabama's Black Belt and Gulf Coast communities from having any opportunity to elect representatives of their choice, and . . . employed precisely those mechanisms." App.3–4. In reaching this conclusion, the court correctly applied the "approach . . . in *Arlington Heights*." *Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 687–88 (2021). Consistent with *Allen*, in "[d]emonstrating discriminatory intent," the court did "not require [Plaintiffs] to prove that the challenged action rested *solely* on racially discriminatory purpose." *Allen*, 599 U.S. at 37 (quoting *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977)). Nor did it require Plaintiffs to show "that a particular purpose was the 'dominant' or 'primary' one." *Arlington Heights*, 429 U.S. at 265.

Though "discriminatory intent need not be proved by direct evidence," *Rogers*, 458 U.S. at 618, and "[o]utright admissions of impermissible racial motivation are infrequent," *Hunt v. Cromartie*, 526 U.S. 541, 553 (1999), this record contains several sources of direct evidence—and plenty of circumstantial evidence—that support the district court's finding that the Legislature was "focused on race" in intentionally "keeping the BVAP in District 2 low enough to foreclose the election of a Black-preferred candidate." App.39–40. This evidence is sufficient to overcome the "presumption of legislative good faith [that] directs district courts to draw the inference that cuts in the legislature's favor when confronted with evidence that could plausibly support multiple conclusions." *Alexander*, 602 U.S. at 10. Here, the "proof that a discriminatory purpose has been a motivating factor in the decision" means "this judicial deference is no longer justified." *Arlington Heights*, 429 U.S. at 265–66. That was the

case here: the "unique reality of this evidentiary record overwhelms the strong presumption" with which the court began. App.48.

First, the Legislature's map-drawing process began with text messages about racial targets in the proposed plans between Senator Livingston and his map-drawing consultant: The consultant "texted him to ask outright, 'Would 41.6[%] BVAP work?'", after which "Senator Livingston supported a plan with a substantially lower BVAP in District 2." App.39–40. Ultimately, *the* map drawn by this consultant and sponsored by Senator Livingston with a lower 38.3% BVAP in CD2, the "Opportunity Plan," formed the basis of the 2023 Plan. App.33–34; *see also Singleton*, 782 F. Supp. 3d at 1327. This evidence emerged *after* Senator Livingston's deposition, in which he testified that he did not know where the Opportunity Plan had come from—an account that the district court found "strains credulity" given both his role as Reapportionment Committee Co-Chair and these subsequently disclosed text messages. *Singleton*, 782 F. Supp. 3d at 1341.

Second, Senator Livingston's "Opportunity Plan" emerged as the Senate considered, then inexplicably rejected, Representative Pringle's COI Plan, which had passed the House. The COI Plan served all the Legislature's espoused interests *except* that, unlike Senator Livingston's plan or the ultimately enacted 2023 Plan, it offered some opportunity to Black voters in CD2. App.33. Senator Livingston claimed that his mind changed "based on 'additional information' Committee members received about 'compactness, communities of interest, and making sure that congressmen are not paired against each other.'" App.33. Yet there is *no dispute* that Co-Chair

Pringle's COI Plan met *all* these goals: it kept Mobile and Baldwin counties together, split the Black Belt and Wiregrass regions into only two districts, did not pair incumbents, and maintained the core of 2021 plan. Doc.436 ¶¶ 126–27 (Stipulated Facts); *see also* Doc.459-13 at 16 (Livingston Dep.); Doc.459–7 at 19 (Hinaman Dep.).

This only major difference between the COI Plan and Senator Livingston's proposals carried over to the enacted 2023 Plan: In the COI Plan, Black-preferred candidates won two out of the four modeled elections, App.33, while in the 2023 Plan, Black-preferred candidates lost all seven modeled races, App.34. This was because "Senator Livingston's plans, the Opportunity Plan, and the 2023 Plan homed in on Alabama's most well-known and nationally prominent Black community: the City of Selma, in Dallas County." App.34. The 2023 Plan moved Dallas County from CD2 in the COI Plan to District 7. *Id.* It is undisputed that the Committee Co-Chairs Pringle and Livingston and "at least some legislators actually knew from . . . performance analysis . . . that without Dallas County in District 2, Black-preferred candidates would have no chance of winning in that District." App.39. Nothing in the record otherwise explains the move of Dallas County from District 2 to District 7. *Cf.* App.39.

Indeed, Representative Pringle refused to pass Senator Livingston's plan "in the House *or even attach his name to it*" because Pringle "believed [Livingston's] Plan might not or did not satisfy the [VRA]," and that Pringle's own "[COI] Plan was more likely lawful." App.34 (emphasis added). Even Senator Livingston, the Opportunity Plan's sponsor, did not believe that it offered a second opportunity district. Doc.459-13 at 18. His Opportunity Plan evolved into the 2023 Plan. Yet, regarding the 2023

Plan too, Senator Livingston testified that "any analysis to determine whether a district is an 'opportunity district' would need to include a Black-preferred candidate who is 'well-funded and well-known,'" and he admitted that Senator Doug Jones fit that description yet still would have lost CD2 in the 2023 Plan. *Singleton*, 782 F. Supp. 3d at 1151. Thus, the district court found that the Legislature "consider[ed] and reject[ed] a map that might have provided the required remedy," the COI Plan, "in favor of a map that it knew in real time and later admitted" did not provide a second opportunity district. App.68. Instead, the Legislature "prescribe[d] a majority-White congressional district" that it "prioritized over every other districting principle, including compliance with federal law." *Id.*

Third, the Legislature's compromise between the COI Plan and Opportunity Plan was focused on racial considerations; particularly Representative Pringle testified that "reconciliation process between the Alabama House and Senate to reach the 2023 Plan" was "focused on the BVAP of District 2." App.40. Rather than partisanship goals, complying with §2, incumbents, or any other factor, Representative Pringle testified that the 2023 Plan was designed to "'split the difference' on [the BVAP] between the plans the House and Senate had passed." App.40. The district court found that this testimony is direct evidence "that the Legislature was focused on race—more particularly, keeping the BVAP in District 2 low enough to foreclose the election of a Black-preferred candidate—when it passed the 2023 Plan." App.40. While *Callais* provides deference to a State's "legitimate districting objectives" and "specified political goals," it does not allow a State to pursue discriminatory goals "prohibited by the

Constitution." 146 S. Ct. at 1159.

The United States (at 19) admits, then seeks to excuse, Alabama for its use of racial data as its primary tool for drafting CD2 in the 2023 Plan, claiming it was the "the district court's fixation on compelling Alabama to draw a second black opportunity district" that made it "hardly . . . surprising that Alabama legislators were concerned with whether their plans had a high enough BVAP to satisfy the court."

But the United States omits key facts.

For one, Alabama "concede[d]" it was *not* trying to draw a second opportunity district in the 2023 Plan. *See Singleton*, 782 F. Supp. 3d at 1113 ("The State asserted that notwithstanding our order and the Supreme Court's affirmance, the Legislature was not required to include an additional opportunity district in the 2023 Plan."). Rather, the Legislature intended to, and did, enact a new map "without adding a second opportunity district." *Id*. This is a compelling admission that the Legislature had deliberately set out to devise a plan that "took away [Black voters'] opportunity because [they] were about to exercise it," which "bears the mark of intentional discrimination." *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 440 (2006). Moreover, the court found that the Legislature's "process was focused on the BVAP of District 2" after Representative Pringle testified that the Legislature landed on a nearly 40% BVAP for CD2 based on "split[ting] the difference" between two plans, not an analysis of Black electoral opportunity. App.40. Put another way, Alabama's goal was to draw a 60% White district. Thus, the United States highlights, rather than diffuses, Alabama's intentional use of race in service of vote dilution.

Fourth, the legislative findings that accompanied the 2023 Plan contain both direct and circumstantial evidence of discriminatory intent of the Legislature as a whole, and not just a few individual members. *See Wallace v. Jaffree*, 472 U.S. 38, 56 (1985) (relying on legislative statements inserted into an Alabama law to discern legislative intent). There was direct evidence that the Legislature intended to "exalt and extol one" majority-White community in Mobile and Baldwin counties in racialized terms. App.37. In describing Mobile and Baldwin Counties, the Legislature's "findings describe the[ir] 'French and Spanish colonial heritage,'" but remain "silent on the heritage of" the Black Belt. App.37.

Alabama neither mentions nor rebuts this evidence of intentional discrimination. This is unsurprising because unrebutted expert testimony confirms that "French and Spanish colonial heritage" is a reference to White people. *Singleton*, 782 F. Supp. 3d at 1187. "Ancestry can be a proxy for race," *Rice v. Cayetano*, 528 U.S. 495, 514 (2000), and "[s]imply because a class defined by ancestry does not include all members of the race does not suffice to make the classification race neutral," *id.* at 516–17.

Fifth, the legislative findings also provide compelling circumstantial evidence of discriminatory intent in their last-minute elevation of the two Gulf Coast counties as the *only* two unbreakable counties in the State to non-negotiable status. At the outset, the Reapportionment Committee's guidelines were the criteria that legislators actually used to draw the 2023 plan and other proposed plans in 2023. App.33–34; *see Singleton*, 782 F. Supp. 3d at 1346 (finding that "the legislative findings" were drafted "without any input from either" Co-Chair and created "at the very last

minute," *after* the 2023 Plan was drawn). The guidelines do not mention the "non-negotiable" elevation of certain communities. App.36. And the court credited the unrebutted expert testimony that these goals "come close to prescribing" a congressional district that "must be majority-White and would submerge Black voters in the City of Mobile" as "a matter of mathematical necessity." App.32 n.13 (citation omitted).

Alabama contends (at 16) that "it was error to find that the Legislature gave priority" to the Gulf Coast over the Black Belt "when the 2023 Plan gave both communities equal status." But that supposed equal treatment was illusory. Despite purporting to elevate the Gulf Coast, Black Belt, and the Wiregrass as the three communities that "shall be kept together to the fullest extent possible," App.89, in reality, this required either splitting both the Wiregrass and the Black Belt two ways, or splitting the Black Belt three ways, with *only* the Gulf Coast counties remaining together. *See Singleton*, 782 F. Supp. 3d at 1171. The Legislature's deliberate choice of non-negotiables thus had the "inevitable" effect of and was "tantamount for all practical purposes" to "mathematical[ly]" requiring racial discrimination against Black voters. *Gomillion v. Lightfoot*, 364 U.S. 339, 341 (1960); *accord* App.32 n.13. Such "inconsistent treatment" of White and Black communities is "significant evidence of a § 2 violation." *Johnson v. De Grandy*, 512 U.S. 997, 1015 (1994).

Alabama contends (at 15) that its "longstanding prioritization of a Gulf Coast district among its congressional districts did not become discriminatory in 2023." But the court can and did accept both that the Gulf Coast is a community of interest (one of many) and, at the same time, find "that the Legislature misused it (among other

things) for an unconstitutional, and therefore illegitimate, purpose." App.42. This argument also ignores how, only in the 1970s as Black voters registered in greater numbers after the VRA, the Legislature united Mobile and Baldwin for "racial reasons" of preventing the exercise of Black voting power. *Singleton*, 782 F. Supp. 3d at 1274. Nor does Alabama's argument (at 8) that about the impossibility of creating "an additional majority-minority district . . . splitting the Gulf Coast" carry any weight. No one has claimed the need or ordered the drawing of an explicitly "majority-minority district," and certainly not one like the district that troubled this Court in *Callais*. The Remedial Plan has an opportunity district that was set without any racial target, App.17–18, and the record contains examples of other plans that keep Mobile and Baldwin together and whole but still provide better opportunities for Black voters like Representative Pringle's plan, App.99, or the Whole County Plan, *Singleton*, 782 F. Supp. 3d at 1156. If Alabama only wanted Mobile and Baldwin in a district, it could have done so in a plan that also *did not* dilute Black people's votes.

Finally, the 2023 Plan itself demonstrates how this discriminatory design played out. After all, "the prohibition against racial discrimination is levelled at the thing, not the name." *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 230 (2023) (citation modified). The Constitution "nullifies sophisticated as well as simple-minded modes of discrimination." *Gomillion*, 364 U.S. at 342 (citation modified).

Despite the lip service paid to all three communities, legislators specifically "instructed [their cartographer] from the outset to keep the Gulf Coast Counties

(Mobile and Baldwin) whole and together," App.32, without offering any such instruction for the other supposedly equal communities. And as discussed *supra* at 16, legislators knew that (even if they kept the Black Belt in two districts), their movement of Dallas County and Selma from CD2 in Representative Pringle's COI Plan to CD7 in the 2023 Plan, would still act as a "key mechanism" for ensuring that Black voters would have "zero opportunity to elect a candidate of their choice" in the 2023 Plan's CD2. App.35.

The Legislature's intentional discrimination is all the clearer in light of the procedural history of this case on remand from this Court's decision affirming the first preliminary injunction against the 2021 Plan. *See Flowers*, 588 U.S. at 307 (noting that courts "cannot take th[e] history out of the case"). The Legislature carried out this plan on remand in order "to prevent a court-ordered remedial district, even though a remedial district was required by the Supreme Court's affirmance of [the district court's] order." App.37–38. "Judges 'are not required to exhibit a naiveté from which ordinary citizens are free,'" especially on clear error review. *Diamond Alternative Energy, LLC v. E.P.A.*, 606 U.S. 100, 122 (2025) (citation omitted).

B. The Record Does Not Support Alabama's Post Hoc Partisan Justifications, Which do not Require Disentangling Under *Arlington Heights*.

Alabama weakly attempts (at 18–19) to reverse engineer a partisanship justification for its 2023 Plan, even though the sworn testimony of the Defendant Co-Chairs Livingston and Pringle is to the contrary, App.45. But the Court's inquiry here must focus on "the actual considerations that provided the essential basis for the lines

drawn, not *post hoc* justifications the legislature in theory could have used but in reality did not." *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 189–90 (2017). Based the record of those actual considerations, the district court found "there is zero evidence the Legislature enacted the 2023 Plan for partisan purposes." App.45–46. There is no real dispute about the Legislature's stated motives in 2023.

First, and most importantly, Defendants and Committee Co-Chairs Pringle and Livingston—who led the 2023 redistricting efforts—both denied "that they acted on" conversations with then-U.S. House Speaker Kevin McCarthy or party staff about protecting the Republican majority, "or even that they seriously considered acting on them." App.45. Senator Livingston, who led the enactment of the 2023 Plan, testified that these calls "really didn't play into our efforts." App.45. Senator Livingston also relied on talking points from the Solicitor General that extolled various aspects of the 2023 Plan, but "not partisanship or providing an opportunity district." App.34.

Alabama attempts (at 18) to minimize these remarks as just "*two legislators*." But these two legislators are defendants in this case who chaired the relevant Committee in 2023, sponsored different 2023 plans that passed the House and Senate, and in Senator Livingston's case, sponsored the 2023 Plan itself and passed it over Representative Pringle's concerns. App.33–35; *Singleton*, 782 F. Supp. 3d at 1341; *see also Cooper v. Harris*, 581 U.S. 285, 310–11 (2017) (citing the statements of the redistricting committee chairs and sponsors of a challenged plan as evidence). The only other testimony Alabama cites for partisan motives "were not statements about the 2023 Plan." App.45. For example, one of Alabama's quotes about a "Republican

opportunity plan" was *not* about the 2023 Plan at all. Instead, it was one legislator's criticism of the Whole County plan, which the Legislature itself rejected. *See Singleton*, 782 F. Supp. 3d at 1335–36; *see also id.* at 1156 (describing the Whole County Plan and its rejection).

Alabama also cites (at 18–19) several statements from the recent 2026 legislative special session, in which the Legislature passed a bill allowing for special elections under the 2023 map if the injunction against it were overturned in a timely manner. This is the essence of a *post hoc* justification, particularly when done in the middle of litigation and given the greater protection given to partisan motives in *Callais*. These statements do not "cleanse" original purposes or lack thereof when the Legislature enacted the plan in 2023—"the Legislature did not enact a districting plan during the 2026 Special Session: it simply provided a mechanism for special primary elections to occur if an opportunity to use the 2023 Plan arose." App.48.

In comparison, in *Abbott v. Perez*, this Court considered the intent of a later Texas Legislature that wholly replaced an earlier plan with a new plan in 2013. 585 U.S. 579, 604–05 (2018). In *Abbott*, unlike here, the "2013 Texas Legislature *did not* reenact the plan previously passed by its 2011 predecessor." *Id.* (emphasis added). Here, however, Alabama made *no changes* at all to the 2023 plan. *Cf. id.* at 604 (distinguishing *Abbott* from *Hunter v. Underwood*, 471 U.S. 222 (1985), where this Court found that the Alabama Legislature had failed to modify an intentionally discriminatory law).

Second, "[t]he 2023 legislative findings state with great particularity many

goals and omit entirely party politics." App.45. Only the United States (at 16) claims that the "legislative findings in 2023 *do* expressly address partisanship by directing the map drawers not to 'pair incumbent members of Congress.'" But as *Callais* recognized, a goal of not pairing incumbents is far different from a goal of ensuring that incumbents win reelection or a goal of seeking a particular partisan advantage. 146 S. Ct. at 1161. Nowhere in the record on the 2023 Plan does the Legislature express a specific partisan preference or a desire to ensure incumbents' reelections. Rather, as the district court found, the non-pairing goal "is not evidence that [Alabama] acted for Republican partisan gain; the State has urged us that by 'incumbents,' it means all incumbents, including Congresswoman Sewell, who is a Democrat." App.46.

The United States tries to answer (at 16) by analogy to *Callais*: that this "goal of protecting incumbents is the same partisan goal that Louisiana advanced in *Callais*," and that even though "Alabama had one Democratic incumbent who would also be protected, ... the same was true in *Callais*." This misstates the facts. *Callais* explained that the *Robinson* court erred by conflating incumbent pairing with incumbent protection, 146 S. Ct. at 1161, and pointed to evidence that Louisiana had the goal in enacting its map of protecting "the Republican incumbents the State considered most important," *id.* at 1151. This case contains no such evidence of seeking incumbent "protection," let alone the protection of specific incumbents. Rather, both Alabama's Guidelines and the legislative findings call only for not "pair[ing]" incumbents, App.36—*i.e.*, not pitting one incumbent against another, regardless of party. This is not a partisan goal like Louisiana's. In fact, this Court distinguished this case

from the facts in *Callais* by explaining that—under the same redistricting guidelines Alabama employed for its 2021 and 2023 plans—Alabama "did not defend its map on the ground that it was drawn to achieve a political objective." *Callais*, 146 S. Ct. at 1162. *Callais* also distinguishes Alabama's stated (and simple) goal of not pairing incumbents in districts, App.36, from Louisiana's more complex goals of incumbent protection, which sought to ensure incumbents' reelections, 146 S. Ct. at 1161.

Third, there is "zero evidence" of a desire to protect an incumbent. App.45. Yet Alabama cites (at 18) text messages from the outside consultant who drafted Senator Livingston's "Opportunity Plan," which formed the basis of the 2023 Plan, noting that a map he was working on was "[n]ot ideal for" Barry Moore, the Republican incumbent in CD2. But what Alabama omits is more damning. The consultant did not rely on partisanship in devising his plan—he looked to the racial makeup of his draft CD2 (asking "Would 41.6[%] BVAP work?") to decide its viability. App.39–40. If "race is used as a proxy for political characteristics, a racial stereotype requiring strict scrutiny is in operation." *Bush v. Vera*, 517 U.S. 952, 968 (1996). And, in any event, the consultant's statements cannot override the direct evidence that the Legislature focused on race and racial "heritages" in the 2023 Plan. *Supra* at 3, 14–19.

Moreover, discriminatory intent need only be a motivating factor, *Allen*, 599 U.S. at 37, and so the "use of race as a proxy" for "political interest[s]" remains "prohibit[ed]," *Miller v. Johnson*, 515 U.S. 900, 914 (1995). "[W]here both impermissible racial motivation and racially discriminatory impact are demonstrated, ... an additional purpose to discriminate" on a non-racial basis such as class or party "would not

render nugatory the purpose to discriminate against" Black voters. *See Hunter*, 471 U.S. at 232 (holding an Alabama voting law unconstitutional even where its motive was to disfranchise *both* Black voters based on race *and* poor Whites based on party).

The district court accurately found that "when the Legislature enacted the 2023 Plan," it sought to entrench "discriminatory vote dilution," and it "did this at least in part because of race, and not party politics." App.48. Alabama "cannot avoid liability by way of revisionist history." App.46.

C. Plaintiffs' Intentional Discrimination Claim did not Require them to also Prove a §2 Violation or Provide an Alternative Map but, in any Event, Plaintiffs Can Satisfy Both Contrived Requirements.

Faced with "zero evidence" of partisan intent, App.45, Alabama asks this Court to erase decades of its precedent and expunge the doctrinal differences between §2 claims, racial gerrymandering claims, and intentional discrimination claims—on the emergency docket no less—in two ways, neither supported by *Callais* or other cases.

First, Alabama implies (at 11) that plaintiffs must prove a §2 claim as a necessary condition to proving a Fourteenth Amendment intentional discrimination claim. As explained below at 34, Plaintiffs have proven a Section 2 violation. Nonetheless, adopting Alabama's standard would render a constitutional claim pointless by making proof of discriminatory intent entirely vestigial. And this Court has repeatedly rejected the idea that the standard for proving intentional discrimination is the same as that for statutory claims. *See Bartlett v. Strickland*, 556 U.S. 1, 20 (2009) (declining to apply *Gingles* to "cases in which there is intentional discrimination against a racial minority"); *Reno v. Bossier Par. Sch. Bd.* ("*Bossier II*"), 528 U.S. 320, 332 (2000)

(holding, in a §5 case, that a challenger who proves intent is "spared the necessity" of proving "effect—which, in vote-dilution cases, is often a complex undertaking"); *cf. Brnovich*, 594 U.S. at 687 (analyzing the intent claim and results claim separately).

Callais does not discuss intentional racial discrimination under the Fourteenth Amendment—only claims under Section 2 of the VRA and the "analytically distinct" doctrine of racial gerrymandering, *Alexander*, 602 U.S. at 38—and so it did not change the standard for Plaintiffs' intent claim. Alabama nonetheless contends (at 11) that because Congress borrowed language from *White v. Regester*, 412 U.S. 755 (1973)—a case involving a constitutional vote dilution claim—in enacting Section 2, the current constitutional standard must subsume *White* and the §2 test as part of the standard. But *White* "did not say anything one way or another about proof of discriminatory purpose or intent." *Callais*, 146 S. Ct. at 1145. So, while *White* informs the current standard of proof under Section 2, *see id.* at 1162, it does not follow that plaintiffs bringing intentional discrimination claims must meet the *White* or *Callais* results standard, since such plaintiffs bear a heavier burden of proving intent rather than just an inference of discrimination. While "[d]isproportionate impact is not irrelevant, . . . it is not the sole touchstone of an invidious racial discrimination forbidden by the Constitution." *Washington v. Davis*, 426 U.S. 229, 242 (1976).

The only other authority Alabama cites (at 11) for the proposition that Plaintiffs' constitutional claim requires an underlying showing under §2—*Johnson v. DeSoto County Board of Commissioners*, 204 F.3d 1335 (11th Cir. 2000)—gets them no further. *Johnson*'s intent holding rested upon a finding that "Plaintiffs have failed

to establish causation." *Id.* at 1345. In *dicta*, the Eleventh Circuit questioned, in "the absence of Supreme Court direction," if "vote dilution can be established under the Constitution when the pertinent record has not proved vote dilution under the more permissive section 2," but concluded that it "need not resolve this question today," *id.* at 1344–45. Later, this Court addressed that question in *Bartlett*, where the plurality concluded that the majority-minority district requirement for *Gingles 1* "does not apply to cases in which there is intentional discrimination against a racial minority." 556 U.S. at 24. Alabama cites no other circuit authority for this novel proposition, and this Court should not reach that result in an emergency posture so soon after *Callais*.

Second, Alabama (at 19–20) and the United States (at 14–16) argue that a plaintiff must affirmatively disentangle race and partisanship using alternative maps to prevail on an intent claim. If an alternative map were needed (and it is not), Representative Pringle's COI Plan met both Alabama's legitimate goals and would somewhat increase opportunities for Black voters. App.33. And the court made similar findings about Plaintiffs' plans and the Special Master's plans. App.55–56.

But requiring such a map in every intentional discrimination case would undercut the longstanding principle that plaintiffs bringing intent claims need not "prove that the challenged action rested solely on racially discriminatory purposes . . . or even that a particular purpose was the 'dominant' or 'primary' one," *Arlington Heights*, 429 U.S. at 265—only that it was a "motivating factor," *id.* at 266. Under Alabama's contrary rule, there would be no violation even if all parties conceded that

a state had intentionally discriminated so long as the state *could have* also cited a partisan motive to draw similar districts. That, of course, is not the law. *Cf. Bethune-Hill,* 580 U.S. at 179 (rejecting the notion that discrimination is permissible "if the legislature could have drawn the same lines in accordance with traditional criteria").

Such a requirement makes even less sense here, where Defendant Chairs disclaimed a partisan motive, *supra* at 4-5, and there is direct evidence, *supra* at 14-19; *cf. Alexander*, 602 U.S. at 8–9 (direct evidence can be "a confession of error").

In any event, this Court first called for "alternative map" evidence in the context of racial-gerrymandering claims. *See Alexander*, 602 U.S. at 34–35. A racial gerrymandering claim requires plaintiffs to show that the legislature "subordinated traditional race-neutral districting principles" to race, *Miller*, 515 U.S. at 916, and that it relied *predominantly* on race—no matter its reasons, *Cooper*, 581 U.S. at 291 n.1.

But that logic does not follow for "analytically distinct" intentional racial vote dilution claims which "follow[] a 'different analysis.'" *Alexander*, 602 U.S. at 38 (citation modified). Partisan objectives are immaterial if racial discrimination is also a motive. Whereas "the relevant harm" is "[t]he racial classification itself" for racial-gerrymandering claims, intentional racial vote dilution harms voters by having "the purpose *and* effect of diluting the minority vote." *Id*. at 38–39 (citation modified) (emphasis in original). "[T]he ultimate issue in a case alleging unconstitutional dilution of the votes of a racial group is whether the districting plan under attack exists because it was intended to diminish or dilute the political efficacy of that group." *Rogers*, 458 U.S. at 621. Under *Arlington Heights*, "all a party must show in order to rely on

disparate impact as circumstantial evidence of discriminatory intent is that" the challenged policy "reduced one racial group's" opportunities and "increased [those of] another racial group[]." *Bos. Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. for City of Bos.*, 145 S. Ct. 15, 17 (2024) (Alito, J., dissenting from the denial of certiorari).

Callais's illustrative map rule for §2 claims cannot logically apply here. *Callais* held, among other things, that for §2 to "properly fit within Congress's Fifteenth Amendment enforcement power" without also requiring that plaintiffs prove discriminatory intent, §2 must "not intrude on States' prerogative to draw districts based on nonracial factors." 146 S. Ct. at 1156; *see id.* at 1162. This includes showing that racial disparities are not just the effects of solely partisan goals. *Id.* at 1158.

By contrast, when plaintiffs prove that the Legislature intentionally discriminated based on race, the fact that it also had non-racial motives cannot sanitize the violation. Otherwise, states could never be held accountable for intentional discrimination. What matters is whether a state took "a particular course of action at least in part 'because of,' . . . its adverse effects upon an identifiable group." *Personnel Adm'r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979). If it has such intent, its actions are unconstitutional. *See City of Richmond v. United States*, 422 U.S. 358, 378 (1975).

D. Alabama's Arguments Rest on an Unreasonable Interpretation of the Order Below and it Had no Real Basis to Fear Liability for Racial Gerrymandering for Complying with This Court's 2023 Decision.

Finally, Alabama's suggestion that the district court's intentional discrimination finding rested on a misinterpretation of *Allen*, misses the mark. The district court did not, as, Alabama argues (at 21), fault the Legislature for not drawing "two

majority-minority districts" in response to *Allen*; it faulted Alabama for "purposefully refusing to remedy the vote dilution [the district court] and the Supreme Court found," by taking steps it knew would not remedy it. App.33–35.

Neither this Court nor the district court ordered Alabama to draw two majority-minority districts. This Court's decision in *Allen* "affirmed," 599 U.S. at 42, the district court order instructing "the Legislature . . . to decide whether to enact a remedial plan that contains two majority-Black districts, *or* two districts in which Black voters otherwise have an opportunity to elect a representative of their choice." *Singleton v. Merrill* ("*Merrill*"), 582 F. Supp. 3d 924, 1034 (N.D. Ala. 2022) (emphasis added). The Legislature had flexibility to respond to the court order, so long as it remedied the vote dilution. This Court recognized that Plaintiffs "adduced eleven illustrative maps . . . that Alabama could enact—each of which contained two majority-black districts that comported with traditional districting criteria." *Allen*, 599 U.S. at 20. For this reason, any concern about racial gerrymandering liability would be nonsensical: The "Legislature knew that the Supreme Court had affirmed" the district court's "ruling that there were lawful ways to remedy the vote dilution it found. App.44. It is hard to imagine a stronger basis for avoiding a racial gerrymander than following an order affirmed by this Court. For this reason, the court found "zero evidence that racial gerrymandering fears drove the 2023 Special Session," App.44.

The Special Master's plan and evidence previously before this Court in *Allen* also undermine Alabama's racial gerrymandering concerns. The Special Master produced a race-blind remedial plan that did not create two majority-minority districts

but still remedied the vote dilution. App.53. Alabama's claims that no illustrative or remedial maps "comported with traditional districting criteria" thus ring hollow. Unlike in *Callais*, the Special Master produced plans without using race, instead relying on traditional redistricting principles like keeping political subdivisions whole, and prioritizing compactness. App.17–18, 53–54. There was also no "racial benchmark" used here, unlike in *Callais*, and Plaintiffs' illustrative maps here contained no "tentacles, appendages, bizarre shapes, or any other obvious irregularities" that raised racial gerrymandering concerns in *Callais*. *Allen*, 599 U.S. at 20.

The Legislature's intentional discrimination problem extends beyond the fact that it blatantly disregarded the district court's order. While that context matters, the bigger problem is that Alabama used race as *the* means to draw the discriminatory 2023 Plan. *See supra* 14-19. Each step the Legislature took, its actions were "tainted by intentional race-based discrimination." App.3.

II. Plaintiffs Remain Likely to Prevail on Their §2 Claim Under *Callais*.

A. The District Court Correctly Determined that Plaintiffs Are Likely to Prevail in Establishing *Gingles* I under *Callais*.

Consistent with the *Callais* and the revised first *Gingles* precondition, the district court did not err in finding that Plaintiffs' illustrative maps show that majority-Black districts can be drawn that (1) do not use race and that (2) "meet all the State's legitimate [re]districting objectives." App.49–70 (quoting *Callais*, 146 S. Ct. at 1159).

1. The District Court Correctly Found that Plaintiffs' Illustrative Plans and the Special Master Plans Were Drawn Without Using Race as a Criterion.

In *Allen*, which this Court "not overruled," *Callais*, 146 S. Ct. at 1162, this

Court has already recognized that it is possible to draw a second majority-Black district in Alabama without improperly using race consistent with the State's traditional districting criteria. *See Allen*, 599 U.S. at 20. On remand, the district court credited the testimony of Plaintiffs' expert that she did not use race as a criterion and did not even look at race in her map-making process except to check at the end that her maps satisfied the numerosity threshold requirement established in *Bartlett v. Strickland*, 556 U.S. 1. App.52. The Special Master drew three plans without looking at race and each plan had two majority (or close to it) Black districts. App.17–18; *see Singleton*, 782 F. Supp. 3d at 1357–58. The court found that the Special Master plans confirmed the testimony of the expert "that it is possible to draw many race-blind illustrative maps." App.53. Alabama stipulated that the Special Master plans were drawn "race-blind" in accordance with Alabama's guidelines and "without reference to any illustrative or proposed plan." *Singleton*, 782 F. Supp. 3d at 1357–58.

Because the "very reason a plaintiff adduces a map at the first step of Gingles is precisely because of its racial composition," *Allen*, 599 U.S. at 34 n.7, nothing supports Alabama's claim (at 27–28) that Plaintiffs' illustrative plans employ "race as an unbending and non-negotiable criterion" because cartographers sought to draw two majority-Black districts to comply with *Bartlett* and *Callais*. Rather, under "longstanding precedent that *Callais* does not disturb, and as the *State conceded at argument*, a cartographer may consider 'relevant racial data' so long as he 'generate[s] that data solely for a lawful purpose, namely, to check that the maps he produced complied with . . . [VRA] precedent.'" App.50–51 (quoting *Alexander*, 602 U.S.

at 22) (emphasis added). That is what happened here. *Cf. Alexander*, 602 U.S. at 37.

This Court has already credited Plaintiffs' expert that randomized algorithms "found plans with two majority-Black districts in literally thousands of different ways," and that "'it is certainly possible' to draw the illustrative maps she produced in a race-blind manner." *Allen*, 599 U.S. at 34 n.7; *see* App.52 (district court making the "same finding"). This Court has also already found, contrary to Alabama's argument (at 27–28), that the Black population is geographically concentrated such that "black voters could constitute a majority in a second district that was 'reasonably configured.'" *Allen*, 599 U.S. at 19. Both a "visual assessment" and "statistics" confirm that "Black voters in Alabama are relatively geographically compact," unlike in Louisiana. App.54. As such, Plaintiffs' illustrative maps fully comply with *Callais*.

2. The District Court Did Not Clearly Err in Finding Respondents' Illustrative Plans Meet all the State's Legitimate Districting Objectives.

The district court found that "many of the Plaintiffs' illustrative plans meet or beat the State's 2023 Plan on the legitimate goals expressed in the 2023 legislative findings." App.56. Alabama now argues (at 22) that *Callais* requires Plaintiffs' illustrative maps to satisfy the Legislature's "non-negotiable" goals of not pairing incumbents and keeping the Gulf Coast in one district.

At the outset, none of the *current* incumbents in 2026 are paired in the Remedial Plan or Plaintiffs' illustrative plans. Alabama cites (at 25) the loss of Jerry Carl in a 2024 primary. But Mr. Carl is now running again in his old district (CD1) as a challenger, not an incumbent, having lost in 2024 under the Remedial Map, entered after this Court's declined to stay a prior preliminary injunction against the 2023

Plan.[1] Even looking back to 2022, Plaintiffs *did* present plans that paired no incumbents, *see Merrill*, 582 F. Supp. 3d at 979–80, and the experts testified it was possible to unpair incumbents in all their plans, *id*. at 966.

Moreover, the record reflects that "all the State's legitimate districting objectives" including "specified political goals," *Callais*, 146 S. Ct. at 1159, are reflected in the Redistricting Committee's Guidelines. App.36–37. The Legislature used the guidelines to draw plans in 2023. App.33–34. In contrast, the findings, including their "non-negotiable" criteria, were drafted "without any input from either" Co-Chair and inserted "surreptitiously, in the dead of night, at the very last minute," *after* the 2023 Plan was *already* drawn. *Singleton*, 782 F. Supp. 3d at 1117. The guidelines nowhere refer to "non-negotiable" goals nor mention the Gulf Coast. App.80–82. And the guidelines' criterion that "[c]ontests between incumbents will be avoided whenever possible," App.81, is subordinated to higher-tier criteria like "compliance with the [VRA]" and districts being "composed of . . . reasonably compact geography." App.80–81.

Alabama's supposedly "non-negotiable" goals embodied in the legislative findings are simply post hoc additions retrofitted to the State's preferred map as a legal backstop to intentionally perpetuate vote dilution. *See supra* 7-8. As the district court recognized, *Callais* does not foreclose a court from finding an objective illegitimate where, as here, it was adopted for an unconstitutional purpose. App.42; *see also Foster*, 578 U.S. at 503–04 (rejecting a State's proffered "neutral" justification for its

[1] *See Qualified Republican Candidates*, Ala. Republican Party, https://algop.org/qualified-2026-republican-candidates/ (last accessed June 1, 2026).

discriminatory action where the veracity of its justification was demonstrably "false").

B. Plaintiffs Are Likely to Meet *Gingles* II and III Under *Callais*.

Plaintiffs here "provide[d] an analysis that controls for party affiliation" to meet their burden under *Gingles* II and III. *See Callais*, 146 S. Ct. at 1159–60. This evidence showing intra-party racial bloc voting which, as *Callais* required, demonstrates "that the minority plaintiffs have 'less opportunity' than their majority counterparts because of race, not just because of partisan affiliation." *Id.*

Indeed, the district court found "ample evidence . . . of intra-party racial bloc voting" and other probative evidence. App.58. *First*, the court accepted evidence of racial polarization in Democratic and Republican primaries and nonpartisan general elections. App.58–59. It found that race drove voting in Montgomery's nonpartisan 2019 and 2023 mayoral elections. App.58. And it noted extensive fact witness testimony that Black voters tend to vote for Black candidates because of a "general lack of responsiveness" from White politicians, "regardless of party affiliation." App.59; *see also* Doc. 485 ¶¶ 658, 707–08 (recounting the testimony of Black Democrats *and* Republicans who were disappointed with White Politicians' positions on racial issues).

Among Democrats, the court cited the 2020 primary for CD1, where a Black candidate had support from a clear majority of Black voters, but received only 16.7% of White votes. App.58. This polarization is also evident in recent presidential and senatorial *general* elections, where White Democrats had supported White *Republicans* over Black Democrats. App.58. And Alabama's own expert agreed with an analysis showing "that White voters in Alabama support White Democrats more than they

support Black Democrats." App.59 (citation modified).

Among Republicans, there was also a wealth of evidence of intra-party racial polarization. The court found that in the 2024 Republican primaries for CD2 (where 95.9% of the electorate was White), the four Black Republican candidates received, in total, just 6% of the total vote. App.58. They finished behind a White novice candidate "despite all having more political experience." *Singleton*, 782 F. Supp. 3d at 1185. Additionally, nine of the ten Black Republicans who ran in congressional primaries in 2022 and 2024 lost. *Id.* at 1219–20. The sole winner ran in majority-Black CD7, *id.*, but later dropped out. This was in the trial record. Yet, Alabama complains (at 30) the court "waiv[ed] away the election of black Republicans in majority white districts." But the trial record showed only a single Black Republican in the Legislature who Alabama's expert called a "unicorn." *Singleton*, 782 F. Supp. 3d at 1247.

The district court credited evidence that race, far more than the parties' policy positions, drives vote choice. The majority of Black Alabamians "consider themselves conservative" and hold policy preferences on issues like religion, abortion, and same-sex marriage that align far more closely with Republicans. App.59-60. Yet Black Alabama voters still vote overwhelming for the Democratic Party, undermining the proposition that "party politics drove voting patterns in Alabama."[2] App.60. And as Alabama's own expert noted "Black voters perceive the Democratic Party as better on

[2] Alabama presented an expert who attempted to undermine this showing, but the court assigned "no weight" to his "careless[]" testimony, because had "very limited familiarity with Alabama history and politics," "put forth . . . little effort to learn about Alabama." *Singleton*, 782 F. Supp. 3d at 1288–89.

race-based issues such as the Voting Rights Act, Civil Rights Act, and civil rights." App.60. The court also cited the scholarship of another Alabama expert in finding that "race drives [voting] dynamics" and that the "Black-White dichotomy" exists "within both political parties . . . and transcends voters' partisan affiliations." App.61.

C. The district Court Correctly Determined Plaintiffs Are Likely to Establish that the Totality of the Circumstances Supports a Strong Inference of Intentional Discrimination

The district court faithfully applied *Callais* in analyzing the totality of the circumstances focusing on "present-day intentional racial discrimination regarding voting." *Callais*, 146 S. Ct. at 1160. It relied on essentially the same evidence of recent incidents of discrimination that led this Court to affirm a §2 violation in 2023.

First, the district court found recent instances of intentional discrimination at all levels of government. It cited a recent finding that the Legislature drew unconstitutional racial gerrymanders that packed Black voters into districts without justification. *See* App.65.[3] The court also relied on instances where "federal courts recently ruled against or altered" local voting systems "*created by the Legislature* to address their alleged racially discriminatory purpose or effect." App.64 (emphasis added).[4] Alabama tries to dismiss (at 32) multiple federal court findings of intentional discrimination, but it stipulated to this evidence. *See Singleton*, 782 F. Supp. 3d at 1295–96. For example, the court had found that Alabama Legislators had hurled racial slurs

[3] Citing *Ala. Legis. Black Caucus v. Alabama*, 231 F. Supp. 3d 1026, 1348–49 (M.D. Ala. 2017).

[4] Citing *Jones v. Jefferson Cnty. Bd. of Educ.*, No. 19-CV-01821, 2019 WL 7500528, at *2, *4 (N.D. Ala. Dec. 16, 2019); *Ala. State Conf. of the NAACP v. City of Pleasant Grove*, No. 18-cv-02056, 2019 WL 5172371 (N.D. Ala. Oct. 11, 2019).

while conspiring in 2010 to depress Black voter turnout by keeping a referendum issue popular among Black voters off the ballot. App.65.[5] And the court also cited *Stout v. Jefferson County Board of Education*, where a unanimous opinion by Eleventh Circuit Chief Judge William Pryor concluded that a municipal school board "acted with a discriminatory purpose to exclude black children from the proposed school system." 882 F.3d 988, 992 (11th Cir. 2018). These very recent and striking instances of discrimination squarely support the finding of a §2 violation.

Additionally, the district court cited evidence of intentional discrimination by local governments in Alabama. App.64–65.[6] Alabama (at 31–32) and the United States (at 22) attempt to construe these acts of discrimination as irrelevant here. But it cannot escape the district court's finding that discrimination still operates at all levels of government and can, of course, negatively impact Black voting behavior.[7]

Contrary to Alabama's claims (at 32), this substantial evidence of intentional discrimination is far different from the evidence before this Court in *Callais*. In Louisiana, the district court adjudicating the §2 claim had not identified *any* recent incidents of intentional discrimination. 146 S. Ct. at 1162. This is a very different case.

Second, the court faithfully applied the *Callais* standard by granting "much less weight" to socioeconomic disparities and focusing instead on "current data."

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[5] Citing *United States v. McGregor*, 824 F. Supp. 2d 1339, 1345–47 (M.D. Ala. 2011).

[6] Citing *Allen v. City of Evergreen*, No. 13-0107, 2014 WL 12607819, at *2 (S.D. Ala. Jan. 13, 2014).

[7] Tellingly, the court could have listed two other recent findings of intentional discrimination in voting. *See McClure v. Jefferson Cnty. Comm'n*, 800 F. Supp. 3d 1209, 1284 (N.D. Ala. 2025); *Braxton v. Town of Newbern*, No. 2:23-CV-00127, 2024 WL 3519193, at *1-2 (S.D. Ala. July 23, 2024).

App.62. Alabama argues (at 32) that the district court should have given this data no weight. But decades of caselaw, including *Callais*, recognizes that discrimination outside of voting can impact on Black political participation. 146 S. Ct. at 1162. Alabama also ignores (at 33) record evidence of "a racial gap in voter registration and turnout in Alabama," particularly in the Black Belt. *Singleton*, 782 F. Supp. 3d at 1190. And the court credited expert "testimony (which no one disputes) linking Alabama's history of segregated public schools to *present-day racial disparities in voting participation*." App.66 (emphasis added). The district court also considered and rejected Alabama's arguments about registration rates, finding it "overlook[ed] (1) other aspects of political participation," and (2) how "lasting effects of discrimination make it harder for Black Alabamians to participate at the levels that they do." *Singleton*, 782 F. Supp. 3d at 1302. In short, the district court did not ignore Alabama's arguments; it put them in the proper context of the *Callais* totality-of-the-circumstances analysis.

Finally, the court credited evidence of "racial appeals by candidates in three recent congressional elections," like praising the confederacy or accusing political opponents of "waging a war on Whites," App.67 (citation modified), which "have encouraged voting along color lines by appealing to racial prejudice," *Gingles*, 478 U.S. at 40. It also relied on the extensive evidence detailed above that "the enactment of the 2023 Plan reflect[s] 'a significant lack of responsiveness on the part of elected officials to the particularized needs' of Black voters in Alabama." App.68.

III. The Remaining Stay Factors Support Relief.

The remaining stay factors independently foreclose Alabama's request. The

balance of harms and the public interest tip decisively toward the Plaintiffs. Alabama seeks to impose a never-before-used plan on the public in a way that would: (i) unsettle settled expectations, risking voter confusion; and (ii) leave counties with no time to assign voters to new districts, which risks voters getting the wrong ballots. Alabama, however, cannot show harm from continuing to run this election under the status-quo of a race-blind Remedial Plan that has governed for three years. But Plaintiffs face the immediate, irreparable injury of voting under an unconstitutional map.

A. Alabama's Request Is Too Late and Harms the Public Interest.

The untimeliness of the State's request is dispositive by itself. Granting Alabama's request would insert the Court into an ongoing election in a manner that upsets settled expectations, causes voter confusion, and creates chaos and unworkable deadlines for even the most diligent election officials. It would reward the state for an unexplained reversal of its prior litigation positions before this Court. And it would violate this Court's precedent. Any one of those reasons is sufficient for denial.

1. At this late stage, Alabama requests permission from this Court to disregard the Remedial Plan that, "minus a two-week interregnum," has "been the practical status quo in Alabama since" 2023, and was adopted in accordance with this Court's affirmance in *Allen*. App.10, 73. "Candidates staked campaigns on" this Plan, "voters cast votes for candidates under this Plan, and Alabama's election machinery was in full motion." App.73. Alabama's request for relief would be "inequitable" if "issued shortly before an election, when candidates, election officials, and voters have relied on the rules in place at that time." *Malliotakis v. Williams*, 146 S. Ct. 809, 811 (2026)

(mem.) (Alito, J., concurring). Not only would that risk this Court "assuming political . . . responsibility" likely to "produc[e] ill will and distrust," *Rucho v. Common Cause*, 588 U.S. 684, 704 (2019)—it will "caus[e] much confusion," *Abbott v. League of United Latin Am. Citizens*, 146 S. Ct. 418, 419 (2025). That is reason enough for this Court to deny a stay as contrary to the public interest.

Further, even "heroic efforts by . . . state and local authorities . . . would not be enough to avoid chaos and confusion" if the Court grants this stay. *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (mem.) (Kavanaugh, J., concurring). The reassigning of voters to the 2023 Plan *has not begun* and yet "must conclude by June 2"—i.e., tomorrow—"when the voter records will lock again." App.8. Alabama's Elections Director "acknowledged that an injunction would avoid the confusion and error risk attendant to pivoting" between plans "this close to the scheduled special primaries," and that "when the voter reassignment process is rushed, voters may be accidentally assigned to the wrong district and provided the wrong ballot." App.10. Allowing officials only a day "to complete a process that, on previous occasions, has taken several months" would ensure the type of "voter confusion and consequent incentive to remain away from the polls" that *Purcell* seeks to avoid.549 U.S. at 4–5.

2. Alabama knows this. It once agreed with these principles before this Court. As the State explained earlier in this case in another stay application, granting a stay "at this late hour" would "inflict[] grave harm on the public interest[.]" Emergency App. for Admin. Stay & Stay or Injunctive Relief Pending Appeal, *Merrill v. Milligan,* No. 21-1086, 2022 WL 385302 at *38 (Jan. 28, 2022) ("2022 Stay Appl."). This Court

agreed, accepting the claim that "[i]t is best for candidates and voters to know significantly in advance of the petition period who may run where." *Id.* (citation modified).

If permitting implementation of a new map *four months before* a primary election and before the close of the candidate-qualifying period amounted to impermissible "[l]ate judicial tinkering," *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J. concurring), then any stay issued now—with voters still assigned to the Remedial Plan and no time to switch—would change the rules in the middle of the game. Such a decision "squarely implicates *Purcell*." 2022 Stay Appl. at 39.[8]

3. Granting the requested stay would therefore set a dangerous precedent. It would turn *Purcell* on its head, making proximity to an election a reason for, rather than a barrier to, judicial intervention. That is the very development this Court has warned would undermine the reliance interests of voters and candidates, burden election officials with impossible administrative tasks, and invite unfair consequences.

Alabama attempts (at 24) to distinguish *Purcell*, arguing that it does not apply when a state seeks a stay to implement its own map, rather than plaintiffs seeking an injunction against one. But Alabama turns *Purcell* into a doctrine solely about federalism, rather than one also firmly grounded in a set of equitable "principles for the election context." *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring).

This Court's decision to deny a stay in *Moore v. Harper* proves as much. *See*

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[8] For the same reason, Alabama has failed to show that this Court is likely to note probable jurisdiction and reverse. *Cf. Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam). The district court's injunction is limited only to the 2026 elections. App.77–78. And merits ruling would do nothing to assuage the serious timing concerns inherent in the State's request.

142 S. Ct. 1089 (2022) (mem.). There, a state legislature asked this Court for exactly what Alabama does here: to stay an order requiring the use of a court-drawn remedial map. The Court denied the request. As Justice Kavanaugh explained in concurrence, the request was properly denied because the state legislature was "asking this Court for extraordinary interim relief." *Id.* at 1089. In light of *Purcell* and the "timing of the impending primary elections," "it [was] too late for the federal courts to order that the district lines be changed"—"just as it was too late for the federal courts to do so" when it was Plaintiffs who requested such relief in this very case in 2022. *Id.* (Kavanaugh, J., concurring); *cf. Frank v. Walker*, 574 U.S. 929 (2014) (vacating an appellate court's stay of a district court injunction when absentee ballots had already gone out pursuant to that injunction); *Moore v. Brown*, 448 U.S. 1335, 1338–41 (1980) (Powell, J., in chambers) (declining to stay a remedial plan before the elections).

4. Alabama's additional handwaving (at 24) at the timing problem changes nothing. Refusing to take responsibility for the gravity of its request, Alabama points to this Court's recent decision in *Callais* as requiring the extraordinary relief that the State now seeks. But *Callais* does no such thing because it both did "not overrule[ ] *Allen,*" 146 S. Ct. at 1160–61, and the Court's order vacating and remanding this case expressed no view on the merits or equities. The Court's order was "premised on matters that [it had] reason to believe the court below did not fully consider, and because they require only further consideration, the standard that [the Court] appl[ies] in deciding whether to GVR is somewhat more liberal than the All Writs Act standard," *Lawrence on Behalf of Lawrence v. Chater*, 516 U.S. 163, 168 (1996) (per curiam).

In *Callais* itself, this Court stayed a change in the status quo map that would have taken effect almost six months *before* the next relevant election milestone. *See Robinson v. Callais*, 144 S. Ct. 1171 (2024) (mem.). As explained above, Alabama's requested rule change would come far, far later in the game. The election here is much further along, with insufficient time to implement a never-before-used map. A stay would constitute the type of "judicial tinkering" with the status quo that this Court has warned against. *See Merrill*, 142 S. Ct. at 881 (Kavanaugh, J. concurring).

B. Alabama Faces No Harm Justifying a Stay.

Alabama would not face irreparable harm by conducting an election under the court-sanctioned, race-blind Remedial Plan, rather than the intentionally discriminatory 2023 Plan. States have no legitimate interest in furthering racial discrimination, including by using a map that a court has found to be a product of intentional discrimination. That is especially true when dealing with elections. "[O]nce a State's legislative apportionment scheme has been found to be unconstitutional, it would be the unusual case in which a court would be justified in not taking appropriate action to [e]nsure that no further elections are conducted under the invalid plan." *Reynolds v. Sims*, 377 U.S. 533, 585 (1964). Moreover, Alabama cannot claim it is harmed by using a map it stipulated was drawn race-blind. *See Singleton*, 782 F. Supp. 3d at 1358; *see also New Hampshire v. Maine*, 532 U.S. 742, 750 (2001) (applying estoppel to prevent parties from "playing 'fast and loose with the courts'").

Finally, Alabama does not face irreparable harm, because "[r]ather than spawning electoral chaos and serious error potential" it has long sought to avoid, "the

Special Master Plan provides for certainty." App.73–74.

C. Plaintiffs Would Be Irreparably Harmed by a Stay.

Unlike Alabama's unsubstantiated harms, Plaintiffs face immediate and irreparable harm if Alabama is permitted to conduct an election under a plan that the district court found amounted to intentional racial discrimination because any loss of constitutional rights is presumed to be an irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Indeed, "[t]o the extent that a citizen's right to vote is debased, he is that much less a citizen." *Reynolds*, 377 U.S. at 567.

Because the 2023 Plan constitutes "an intentional effort to dilute votes based on race," App.21, it is Plaintiffs—not Alabama—who would suffer from "offensive and demeaning" conduct, *Miller*, 515 U.S. at 912. Such racial discrimination is "odious to a free people whose institutions are founded upon the doctrine of equality," *Shaw v. Reno*, 509 U.S. 630, 643 (1993), and should not be permitted.

CONCLUSION

For these reasons, this Court should deny Defendants' application for a stay.

Respectfully submitted,

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

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

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

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

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

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

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

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

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

Counsel for Appellees