No. 25A1316

IN THE SUPREME COURT OF THE UNITED STATES

WES ALLEN, ALABAMA SECRETARY OF STATE, *et al.*,

Applicants,

v.

MARCUS CASTER, *et al.*,

Respondents.

CASTER RESPONDENTS' OPPOSITION TO EMERGENCY APPLICATION FOR STAY PENDING APPEAL

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INTRODUCTION

Alabama's Director of Elections testified below that the process of reassigning voters to new districts in the 2023 Plan, which usually requires months of work, must be completed in the seven-day period between May 27 and June 2, 2026. The district court concluded on May 26 that a "warp-speed" seven-day effort to meet that deadline would require "chaotic" and "Herculean" exertion guaranteed to result in confusion and mistakes. Now, mere *hours* remain until Alabama's statewide voter registration records must be cemented in place for the 2026 elections. Because even Hercules himself could not complete the requisite task in that time, it is simply too late for Alabama to switch congressional maps.

Alabama knows this. In 2022, Alabama insisted it was all but impossible to change district lines *four months* before the scheduled election, averring to this Court that map alterations at that point in the election cycle would inflict a "massive disruption in Alabama's forthcoming elections" and "throw[] the current election into chaos," such that "[v]oters and candidates everywhere are bound to be confused." Emergency Appl. for Stay at 3, 38–39, *Merrill v. Milligan*, No. 21-1086 (U.S. Jan. 28, 2022). Now, Alabama insists that it *must* be permitted to change district lines *after* the May 19 primary election has concluded, less than *two-and-a-half months* before the rescheduled August 11 special primary election, and *just hours* before its own administrative deadline to reassign voters. While Alabama's apparent tolerance for electoral chaos may have changed over the past four years, the nature of the harm inflicted by last-minute map changes has not. The equities—as a matter of responsible election administration and as a matter of intra-case consistency—weigh

so overwhelmingly against a stay that it is no wonder Alabama can barely muster a paragraph on that prerequisite for relief.

Alabama does no better on the merits because this Court's decision in *Callais* did nothing to change the facts of this case. It did not retroactively alter the illustrative map-drawers' non-racial criteria. It did not magically transform recognized racial voting patterns into partisan politics. It did not erase the multiple recent examples of intentional election-related discrimination from the lives of affected Black voters. And it certainly did not cleanse the Alabama legislature's illegitimate purpose in enacting the 2023 Plan. The district court made findings on a full record that remains the definitive account of Alabama's racial geography, racialized politics, and racially discriminatory policymaking.

Unable to revise that record, Alabama seeks to revise the law. But *Callais*'s update to the Section 2 inquiry did not render that test incoherent or impossible. It did not invite legislatures to immunize discriminatory maps by concocting pretextual and inviolable criteria that lock in an illegitimate scheme. It did not defeat liability anytime members of different racial groups vote for different parties. And it did not require legislators to inscribe racial slurs in official legislative findings before an inference of discriminatory intent can attach. Because the Section 2 facts (as found below) continue to establish liability under the Section 2 test (as clarified by *Callais*), Alabama is unlikely to succeed on appeal once again.

The Application should be denied.

BACKGROUND

I. Alabama's 2021 Plan

Throughout the half-decade history of this case one thing has remained constant: Alabama's intentional refusal to create a second district in which Black voters have the opportunity to elect candidates of their choice. Alabama's 2021 Plan cracked Black voters in southern Alabama across three congressional districts—CDs 1, 2, and 3—such that they constituted an ineffective minority in each, while maintaining CD 7 as the lone district in which Black voters had the opportunity to elect their preferred candidates. Finding that the Plan likely violated Section 2, the district court preliminarily enjoined Alabama's use of the map in January 2022, and concluded that the appropriate remedy was to enact a plan including "either an additional majority-Black congressional district, or an additional district in which Black voters otherwise have an opportunity to elect a representative of their choice." ECF 107 at 5, 7.[1]

In January 2022—with Alabama's May 24 primary election more than 15 weeks away—Alabama argued to this Court that requiring the state to alter its map 15 weeks before the election, and 7 weeks before the beginning of absentee voting, was "a prescription for chaos for candidates, campaign organizations, independent groups, political parties, and voters, among others." *Merrill v. Milligan*, 142 S. Ct. 879 (2022) (Kavanaugh, J., concurring). This Court agreed, concluding that

[1] Unless otherwise specified, "ECF" citations are to the electronic case filing docket in *Milligan v. Allen*, No. 2:21-cv-01530-AMM (N.D. Ala.). Pincites are to the ECF page number that appears in the top right-hand corner of each page, if available.

implementing a new map in February of an election year would not be "feasible without significant cost, confusion, or hardship," *id.* at 881–82, and that "even heroic efforts likely would not be enough to avoid chaos," *id.* at 880. Accordingly, the 2022 elections proceeded under a map that this Court would eventually agree violated Black Alabamians' voting rights. *See Merrill*, 142 S. Ct. at 879; *Allen v. Milligan*, 599 U.S. 1 (2023).

On June 8, 2023, this Court affirmed the district court's injunction of the 2021 Plan, finding "no reason to disturb the District Court's careful factual findings" and no "basis to upset the District Court's legal conclusions," which "faithfully applied our precedents." *Allen*, 599 U.S. at 23. The Court agreed with the district court that the record was "insufficient to sustain Alabama's overdrawn argument that there can be no legitimate reason to split the Gulf Coast region." *Id.* at 21 (quotation omitted).

II. Alabama's 2023 Plan

On remand, the district court afforded the Alabama legislature an opportunity to enact a plan to remedy the Section 2 violation. The legislature held a special session, during which Alabama's 2021 redistricting guidelines were re-adopted for the 2023 Plan. The governing guidelines gave highest priority to population equality, compliance with state and federal law, contiguity, and compactness. ECF 490 at 547–48. The guidelines also provided that the following policies shall be observed "to the extent that they do not violate or subordinate" any of the foregoing criteria: avoiding incumbent pairings "whenever possible," respecting communities of interest, minimizing the number of counties in each district, and preserving the cores of

existing districts. *Id.* at 548–49. Representative Pringle, the committee co-chair, testified that these guidelines—which have been largely unchanged since the 1990s—"cover all the bases." *Id.* at 93. Absent from those guidelines was any statement of partisan motivation, any desired partisan effect, or any instruction to ensure re-election of particular incumbents.

"On the morning the 2023 Plan was enacted, the Legislators saw for the first time" eight pages of "legislative findings" embedded in the bill that were "materially different" from the previously adopted guidelines and "were not requested by the Committee chairs" who "had never seen anything like them in any redistricting litigation." App.34–35. These "findings," for the first time, designated certain criteria—including keeping the two Gulf Coast counties of Mobile and Baldwin in a single district—as "non-negotiable." As "[a]ll parties readily agreed," "keeping those counties whole and together made it mathematically impossible" to create a second district in which Black voters could elect candidates of their choice. ECF 490 at 504. Notably, while the legislative findings "state with great particularity many goals," they "omit entirely party politics." App.45.

The district court convened a hearing where Alabama conceded that, like the enjoined 2021 Plan, the 2023 Plan included only a single district in which Black Alabamians would have the opportunity to elect a candidate of their choice. App.16. The district court issued a second preliminary injunction, finding that that the 2023 Plan failed to remedy the 2021 Plan's likely Section 2 violation and Plaintiffs were likely to establish that the 2023 Plan also violated Section 2. *See* ECF 272. On October

5, 2023, the district court adopted the Special Master Plan, which "satisfied all constitutional and statutory requirements while hewing as closely as possible to the Legislature's 2023 Plan," App.17–18, and in which "boundaries . . . were not drawn on the basis of race." ECF 295 at 36; *see also* App.18 ("The Special Master Plan was drawn race-blind."). Alabama once again sought an emergency stay of the district court's injunction in this Court, which this Court denied. *Allen v. Milligan*, 144 S. Ct. 476 (2023) (Mem.). Alabama subsequently withdrew its appeal of the preliminary injunction, ECF 490 at 8, and the 2024 elections were held under Special Master Plan.

In February 2025, the district court held an 11-day trial; heard from 23 witnesses, including 13 experts, and designated testimony from 28 others; reviewed more than 790 exhibits; and considered 840 pages of proposed findings after trial. App.19. In the end, it found once again that the 2023 Plan violated Section 2. It also concluded that the "Legislature acted with discriminatory intent when it passed the 2023 Plan." ECF 490 at 526. The court concluded that the legislative findings included in the 2023 Plan—which required the Gulf Coast region to be kept together as a non-negotiable criterion—were post-hoc rationalizations which formed the "centerpiece" of Defendants' "effort to intentionally checkmate any remedial order designed to require a second opportunity district." *Id.* at 514. On August 7, the district court entered a final judgment permanently enjoining the 2023 Plan and ordering the Secretary to administer Alabama's congressional elections using the Special Master Plan until Alabama enacts a new congressional districting plan based on 2030 census data. *Caster* ECF 417.

Preparation for Alabama's 2026 elections began nearly five months ago. Under the operative Special Master Plan, candidates qualified in January, were certified in March, and absentee balloting began that same month, all in preparation for the May 19 primary election. *See* Ala. Code § 17-13-5(a), (b); 52 U.S.C. § 20302(a)(8).

III. Post-*Callais* Proceedings

On May 8, nine days after this Court issued its decision in *Callais*, Alabama's governor signed House Bill 1, which authorized a "special primary election" in the event "[(i)] a federal court, by issuing a judgment or by vacating an injunction, permits the reinstatement of the [2023 Plan]. . . and (ii) the court ruling is made at a time too late to be accommodated during the normal 2026 primary election schedule."[2] The same day HB 1 was signed—less than two weeks before the May 19 primary—Defendants filed an Emergency Application in this Court requesting a stay pending appeal of the injunctions barring the State from using the 2023 Plan. *See* Emergency Appl. for Stay at 25, *Allen v. Caster*, No. 25A1229 (U.S. May 8, 2026). On May 11, this Court vacated the injunction and remanded this case for further consideration in light of *Callais*. *See Allen v. Caster*, No. 25-243, 2026 WL 1282800, at *1 (U.S. May 11, 2026). One day later, and with absentee voting in the 2026 primary well underway, the Governor of Alabama issued a proclamation directing a special primary election to be held on August 11, 2026 using "the last legislatively

[2] H.B. 1, 2026 Gen. Assemb., Spec. Sess. 1 (Ala. 2026), https://arc-sos.state.al.us/cgi/actdetail.mbr/detail?page=act&year=2026&act=612.

enacted congressional maps,"[3] *i.e.*, the 2023 Plan the district court invalidated under both Section 2 of the Voting Rights Act and the U.S. Constitution.

Plaintiffs promptly moved to enjoin the 2023 Plan. The district court received extensive briefing and held a hearing on May 22. At the hearing, the district court heard live testimony from Jeff Elrod, Alabama's director of elections, who explained for the first time that any reassignment of voters from the Special Master's Plan to the 2023 Plan must be completed in the seven-day window between May 27 and June 2. App.142. He confirmed that attempting reassignment on this timeframe would make it "hard to ensure limited problems or errors," including by making it "much more likely that voters will not be correctly assigned" and even by increasing the likelihood that voters will be provided "with ballots for the wrong district." App.143–44. Notably, Mr. Elrod testified that counties typically required upwards of five months to complete the reassignment process from one map to another. App.186–87. Mr. Elrod ultimately admitted that it was "uncertain" whether reassignment could even be completed by June 2. App.201.

Following the hearing, the district court "re-examined all evidence admitted in *Singleton*, *Milligan*, and *Caster*" in light of *Callais*, "fully revisit[ed] the merits of each claim," App.28 & n.10, and concluded "at the end of the fresh analysis" that Plaintiffs are "likely to establish a Section Two violation under *Callais*." App.52. The court also reiterated its finding that it "cannot understand the 2023 Plan as anything other than

[3] Proclamation by Governor Kay Ivey (May 12, 2026), available at https://perma.cc/9TMH-93QA.

intentionally discriminatory." App.3. And it found: "The record is crystal clear: administering Alabama's 2026 congressional elections under the Special Master Plan is simpler by an order of magnitude than administering the elections under the 2023 Plan." App.9.

ARGUMENT

"A stay is an 'intrusion into the ordinary processes of administration and judicial review.'" *Nken v. Holder*, 556 U.S. 418, 427 (2009) (quoting *Va. Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958) (per curiam)). Alabama, in requesting a stay, "bears the burden of showing that the circumstances justify" one. *Id.* at 433–34. A stay is never "a matter of right, even if irreparable injury might otherwise result." *Id.* at 427 (quoting *Virginian Ry. Co. v. United States*, 272 U.S. 658, 672 (1926)). To decide whether to grant a stay, the Court considers (1) whether "the stay applicant has made a strong showing that he is likely to succeed on the merits," (2) "whether the applicant will be irreparably injured absent a stay," (3) whether a stay "will substantially injure the other parties," and (4) the public interest. *Id.* at 434 (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)).

Alabama has not carried its burden. The district court's thorough opinion is unlikely to be reversed, and the equities weigh decisively against a stay.

I. Alabama is unlikely to succeed on appeal because the 2023 Plan is still unlawful after *Callais*.

The 2023 Plan still violates Section 2—a conclusion the district court reached after conducting a "fresh analysis" in light of this Court's decision in *Callais*. App.49. As *Callais* explained, although a proper interpretation of Section 2 "does not demand

a finding of intentional discrimination, it imposes liability only when the circumstances give rise to a strong inference that intentional discrimination occurred." *Louisiana v. Callais*, 146 S. Ct. 1131, 1156 (2026). "The circumstances here give rise to more than a strong inference—they support [a] separate and independent finding that intentional discrimination occurred." App.49.

This case, and this record, is nothing like *Callais*. Indeed, this Court *already affirmed* a finding of Section 2 liability, *Allen v. Milligan*, 599 U.S. 1 (2023), which *Callais* expressly did "not overrule[]," *Callais*, 146 S. Ct. at 1162. Here, as in *Allen*, Alabama has not defended the 2023 Plan as a partisan gerrymander—to the contrary, key legislators disclaimed any partisan motivation. Plaintiffs' experts here did not inappropriately use race in drawing their illustrative maps, and it is *undisputed* that the remedial districts were drawn by the special master "race-blind and without reference to any other illustrative or proposed plan." App.53 (quotation omitted). Here, unlike in *Callais*, there is an extensive record of intra-party racial polarization and recent discrimination in voting. And here, unlike in *Callais*, the district court found through an extensive analysis of the *Arlington Heights* factors that the 2023 Plan was enacted with racially discriminatory intent.

A. Alabama legislators disclaimed any partisan intent.

Callais did "not overrule[] *Allen*" in part because Alabama "did not defend its map on the ground that it was drawn to achieve a political objective." *Callais*, 146 S. Ct. at 1162. That is as true now as it was then. This record contains "*zero evidence* the Legislature enacted the 2023 Plan for partisan purposes." App.45 (emphasis added). Notably absent from either Alabama's 2023 guidelines *or* its "legislative

findings" is any reference to "the State's specified political goals." *Callais*, 146 S. Ct. at 1159. There is certainly no evidence to suggest that the legislature sought to achieve partisan "target[s]." *Id.* *Allen* thus continues to govern this case, and it compels the same result. Alabama's attempts to manufacture partisan evidence after the fact range from wild exaggeration at best to outright misrepresentation at worst.

First, Alabama cites Democrats' "exclu[sion] from the [metaphorical] 'map drawing room.'" Appl. at 18 (citing ECF 190 at 494). As an initial matter, Alabama cites no finding of fact for this alleged "exclusion." Instead, it misleadingly points to the district court's recitation of *Alabama*'s argument below. *See* ECF 490 at 513 (quoting ECF 481 at 281). In any event, this is not evidence of a "specified political goal." *Callais*, 146 S. Ct. at 1159. It merely reflects the "common" practice of legislators "to meet in their separate caucuses to discuss legislat[ion] without members of the other party present." Tr. 2373.

Second, Alabama mentions that some Republican legislators at some point "spoke about a Republican opportunity plan" and "seven Republican Congressmen." Appl. at 18 (quotation omitted). But, as the district court observed, neither of those statements was about the 2023 Plan. App.45. And neither the 2023 Plan nor any other proposal considered by the legislature produced seven Republican seats, so such an unsupported partisan goal could not have been served by the 2023 Plan.

Third, Alabama cites a text message from a consultant to Senator Livingston—who has *never* proclaimed partisan motivation—indicating that a proposed map was "not ideal" for a White Republican incumbent in District 2. Appl. at 18 (citing ECF

490 at 72). That observation from a non-legislator is no evidence of partisan motivation. And tellingly it was made during an explicit discussion of the racial—not partisan—composition of the proposed district: the same consultant "testified that he then texted Senator Livingston, 'would 41.6 BVAP work?'"—referring to the Black voting age population of the proposed District 2. ECF 490 at 91.

Fourth, Alabama notes that Senator Livingston and Representative Pringle testified about "calls they received from the then-Speaker of the U.S. House about Republicans' slim congressional majority." App.45. But "neither Legislator testified that they acted on those conversations, or even that they seriously considered acting on them." App.45. To the contrary, Senator Livingston testified that his conversation with Speaker McCarthy "really didn't play into [the legislature's] efforts" at all. App.45 (citation omitted). Alabama discounts this testimony as that of merely "two legislators." Appl. at 18 (citation omitted). But the testimony of these two chairs of the relevant subcommittees is dispositive on this point because *they are the only legislators alleged to have received the phone calls*. Nothing in the record suggests that Speaker McCarthy spoke with *any* other Alabama legislator, and neither Senator Livingston nor Representative Pringle testified that the phone calls had any influence on their actions. App.45.

Finally, Alabama's attempt to retroactively establish partisan intent behind the *2023* Plan by pointing to scattered statements from a handful of legislators during the *2026* special session is a nonstarter. Appl. at 19. Statements that are "remote in time and made in unrelated contexts" are not "'contemporary statements' probative

of the decision at issue." *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 35 (2020) (quoting *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 268 (1977)) (plurality op. of Roberts, C.J.). The *only* intent that is relevant to the 2023 Plan that the district court enjoined is the intent of the legislature when it was enacted in 2023. By contrast, no redistricting plan was "enacted" in 2026 at all—the latest legislation merely provides for a "special primary" to be held using the legislature's old, racially discriminatory 2023 Plan. App.48. This case is thus nothing like *Abbott v. Perez*, 585 U.S. 579 (2018), where a *new* legislature enacted a *new* map based on a plan already blessed by a federal court after that court enjoined an earlier, intentionally discriminatory plan. *See id.* at 604 ("The 2013 Texas Legislature did not reenact the plan previously passed by its 2011 predecessor. Nor did it use criteria that arguably carried forward the effects of any discriminatory intent on the part of the 2011 Legislature."). Nothing said in 2026 can "remove" the intent behind legislation enacted three years earlier. Appl. at 19.

Alabama thus not only failed to establish a partisanship defense for the 2023 Plan—the legislature explicitly disclaimed it. Alabama adamantly insisted in detailed legislative findings and legal arguments that the 2023 Plan was grounded in the legislature's desire to preserve the predominantly White Gulf Coast community, rooted in "French and Spanish colonial heritage." ECF 490 at 512, 559. That choice forecloses Alabama from claiming a partisan justification that now, under *Callais*, might be more legally viable. Alabama cannot retroactively manufacture an intent that it failed to assert three years ago. *Callais* requires only that illustrative maps

satisfy "the State's *specified* political goals." 146 S. Ct. at 1159 (emphasis added). Where, as here, no such goals are specified, that requirement is met. Alabama is thus unlikely to demonstrate that the district court's contrary finding was clear error.

B. Plaintiffs' illustrative maps satisfy *Gingles* 1 as articulated in *Callais*.

Callais reaffirmed that "[t]he first *Gingles* precondition is that a community of minority voters must be sufficiently numerous and compact to constitute a majority in a reasonably configured district." *Callais*, 146 S. Ct. at 1159. Under *Callais*, to make this showing, "plaintiffs' illustrative maps must satisfy two conditions." *Id.* "First, in drawing illustrative maps, plaintiffs cannot use race as a districting criterion." *Id.* That is, plaintiffs cannot use "a process that would be unconstitutional if a State engaged in such mapmaking." *Id.* "Second, illustrative maps must meet all the State's legitimate districting objectives, including traditional districting criteria and the State's specified political goals." *Id.* The district court's careful and extensive findings of fact make clear that this standard is more than satisfied here.

i. The illustrative maps did not use race as a districting criterion.

The district court rightly concluded that Plaintiffs' illustrative maps "did not 'use race' unlawfully under *Callais*." App.51. Alabama does not seriously claim that this finding was clear error. Indeed, pressed by the district court to identify a single scrap of evidence in the record demonstrating that Dr. Duchin's illustrative maps used race as a districting criterion, Alabama's solicitor general came up empty. App.273–74. Instead, Alabama attempts to bootstrap its way to a contrary conclusion by arguing that Plaintiffs' experts and the special master *must* have used race in an

impermissible way because they did not satisfy all the state's "nonracial" goals. Appl. at 27. That puzzling argument conflates *Callais*'s prohibition on the use of race with its separate admonition that illustrative maps should meet the state's "legitimate districting objectives." 146 S. Ct. at 1159.

Callais forbids using "race as a districting criterion" "in drawing illustrative maps," in "a process that would be unconstitutional if a State engaged in such mapmaking." *Id.* (citing *Alexander v. S.C. State Conf. of NAACP*, 602 U.S. 1, 6 (2024)). That means that race may not be given "a predominant role in redistricting decisions." *Alexander*, 602 U.S. at 6. "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 . . . Voting Rights Act precedent.'" App.50–51 (quoting *Alexander*, 602 U.S. at 22; May 22, 2026 Tr. at 171) (emphasis added).

The district court found that Dr. Moon Duchin offered five illustrative remedial plans that did not use race as forbidden by *Callais*. ECF 490 at 100. The court first found *in 2022* that Dr. Duchin did "not allow race to predominate in her work, which included four illustrative plans for these cases." App.51–52 (citing ECF 107 at 149, 206). When this Court affirmed that finding, it observed that Dr. Duchin's 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." App.52 (quoting *Allen*, 599 U.S. at 34 n.7).[4] Last year at trial, the district court again credited Dr. Duchin's testimony that she "just did not look at race as she placed district lines." ECF 490 at 325 (quotation omitted). This year again, the district court "re-examined Dr. Duchin's trial testimony carefully" and again "credit[ed] her testimony that she 'just did not look at race' as she placed district lines." App.52 (quoting Trial Tr. at 287–89, 292, 365). After being asked by the district court "no less than three times whether race informed the granular process of drawing maps," "she testified without contradiction that it did not." App.52 (quoting Trial Tr. at 365–66; *Milligan* Doc. 490 at 122–24). Alabama offers no reason to disturb these careful findings and credibility determinations under the clear error standard.

Were that not enough, the *Caster* Plaintiffs' expert, Bill Cooper, produced no fewer than *nine* illustrative maps without the impermissible use of race. ECF 490 at 211. The district court credited Mr. Cooper for "the care he took not to alert himself to information about race that might allow it to become predominant." *Id.* at 328. The "only information about race that he was aware of as he placed lines" was his general awareness of where predominantly Black municipalities and precincts were, *id.* at 328–29, the same as Alabama's own long-time map drawer. *See, e.g.*, *id.* at 86 (Randy Hinaman testifying to his awareness that "an area of geography . . . had a compact enough African American population in the relevant counties to draw a district that could perform as an opportunity district"). Mere awareness of general demographic

[4] Alabama's uncited contention that Dr. Duchin "trained her algorithms to hit a racial target," Appl. at 28, finds no support in the record.

information cannot render a districting map unconstitutionally race-based "because we expect that redistricting legislatures will almost always be aware of racial demographics." *Alexander*, 602 U.S. at 22 (citing *Miller v. Johnson*, 515 U.S. 900, 916 (1995)); *see also id.* at 37 ("[T]here is nothing nefarious about [a map drawer's] awareness of the State's racial demographics.").

When Plaintiffs' experts testified that race was a "consideration," Appl. at 28, that means they simply "considered the relevant racial data only *after*" drawing a proposed map, "to check that the maps [they] produced complied with [this Court's] Voting Rights Act precedent." *Alexander*, 602 U.S. at 22; *see also* ECF 490 at 365. That precedent *requires* plaintiffs to adduce an illustrative district where minorities make up more than 50 percent of the voting-age population. *Bartlett v. Strickland*, 556 U.S. 1, 18 (2009). "The very reason a plaintiff adduces a map at the first step of *Gingles* is precisely because of its racial composition — that is, because it creates an additional majority-minority district that does not then exist." *Allen*, 599 U.S. at 34 n.7; *see also id.* at 33 (noting the "entire point" of *Gingles* 1 is to show "that an additional majority-minority district could be drawn"). As the district court explained, "[i]f a cartographer was unable to consider race even to determine whether a map he drew complies with Section Two precedent, no cartographer could comply with that precedent." App.51.

Even if the proposed districts submitted by Plaintiffs were not enough, the district court also had the benefit of the remedial plans proposed by the Special Master, which were *undisputedly* "**drawn race-blind**." App.18 (bold emphasis in

original). The parties stipulated that the Special Master's cartographer "drafted the Special Master Plan without reference to any illustrative or proposed plan," "did not display racial demographic data within the mapping software, Maptitude, while drawing his remedial proposals," and "drew his proposals based on other nonracial characteristics and criteria." ECF 490 at 555 (citation modified). That plan "satisfies all constitutional and statutory requirements while hewing as closely as possible to the 2023 Plan (including the cap on county splits)." App.53 (citing ECF 490 at 37–38). That is even more evidence that Dr. Duchin "was correct when she testified that it is possible to draw many race-blind illustrative maps," and that "her own maps did not improperly use race." App.53.

ii. The illustrative maps meet all the state's legitimate districting objectives.

Callais requires that illustrative maps meet "all the state's legitimate districting objectives." 146 S. Ct. at 1159. At the start of the 2023 special session, the House redistricting committee re-adopted the same redistricting guidelines used in 2021. The district court found after trial that Plaintiffs' illustrative plans "often do meet or beat the 2023 Plan" on Alabama's own criteria as stated in these guidelines. *Id.* at 335, 69–72. Post-*Callais*, the district court "carefully re-examined each component of that finding" and "adopt[ed] it again." App.57.

Alabama has never disputed this. Instead, it relies on three supposedly "non-negotiable" criteria that appeared for the first time in an unprecedented set of "legislative findings": (1) keeping the Gulf Coast together, (2) splitting the Black Belt into only two districts, and (3) avoiding incumbent pairings. Appl. at 26, 28. But, as

the district court found, there is nothing "legitimate" about the redistricting objectives presented in the legislative findings. *Callais*, 146 S. Ct. at 1159.

The findings were "not the ordinary result of the Legislature's usual process." App.35. They were, instead, inserted into the bill enacting the 2023 Plan just hours before its passage, specifically in service of this litigation. These novel findings "are replete with sharp departures from (and some outright conflicts with) Alabama's traditional districting guidelines," ECF 490 at 511, and were specifically designed to "checkmate" an additional Black opportunity district in "an intentional official effort to entrench the likely vote dilution [the district court] previously found." *Id.* at 524–25. Far from "declining to prioritize race," Appl. at 23, Alabama went out of its way to design its criteria to make it "mathematically impossible" for Black voters to comprise a majority or anything close to it in a second congressional district. App.32 & n.13.

Alabama faults the district court's analysis of these events for missing "the most obvious motive of all: *to prevail in these ongoing lawsuits*." Appl. at 12 (emphasis in original). That is an admission, not a defense. The district court found the legislative findings were "the centerpiece of the Legislature's effort to intentionally checkmate any remedial order designed to require a second opportunity district." ECF 490 at 514. Criteria that are reverse engineered specifically to circumvent Section 2 liability—and foreclose Section 2 relief—cannot be "legitimate" redistricting objectives. This Court's "decisions cannot be evaded with such ease." *Callais*, 146 S. Ct. at 1158 (quoting *Alexander*, 602 U.S. at 21).

1. Start with the Gulf Coast. This Court already rejected Alabama's argument "that plaintiffs' [illustrative] maps erred by separating [the Gulf Coast region] into two different districts," as "not . . . persuasive." ECF 490 at 37 (quoting *Allen*, 599 U.S. at 20–21). As this Court explained, the district court "understandably found [the PI record] insufficient to sustain Alabama's overdrawn argument that there can be no legitimate reason to split the Gulf Coast region." *Allen*, 599 U.S. at 21 (citation modified). Alabama now argues that its legislative findings were merely an attempt to develop the record that this Court said was lacking. But this Court's affirmance of the district court's finding of likely vote dilution was not an invitation to reverse-engineer the record to entrench that vote dilution.

In any event, the trial record, like the preliminary injunction record, cannot sustain Alabama's "overdrawn" insistence on maintaining the Gulf Coast. App.42. Alabama's contention that the Gulf Coast is now somehow inviolable is belied by its State Board of Education Plan, which splits the Gulf Coast in the very same way that Alabama claims is "non-negotiable." ECF 490 at 361. In fact, Alabama has "repeatedly split those Counties in the State Board of Education districting plans, and did so as recently as 2020." App.37. In fact, Alabama placed Mobile and Baldwin Counties in different *congressional* districts for nearly 100 years and only placed them together in the 1970s to prevent the reelection of a Black incumbent. ECF 490 at 354–55.

Moreover, the legislative findings' discussion of "communities of interest" is hardly race-neutral. The findings "describe the 'French and Spanish colonial heritage'

of one community of interest (the Gulf Coast) while remaining silent on the heritage of all other communities of interest in Alabama (including the Black Belt)." App.37. And the findings "exalt and extol" the Gulf Coast "for pages," while devoting only "a couple of short paragraphs" to the Black Belt and ignoring communities of interest in half the state. App.37. The district court rightly found this disparate treatment to be "especially pointed in a voting rights case where one of the allegations is that the majority-White community of interest in the Gulf Coast is being used to entrench race-based discrimination against the majority-Black community of interest in the Black Belt, which shares a heritage of enslavement." ECF 490 at 512–13.

The "cumulative effect" of Alabama's "non-negotiable" focus on the Gulf Coast "was to prescribe a majority-White district in an unsplittable community of interest, such that an additional opportunity district would be mathematically impossible." ECF 490 at 425. Indeed, "counsel for the State conceded in closing argument that he is 'not aware of a way to draw two majority-Black districts without going against the Legislature's priority of keeping Mobile and Baldwin County whole.'" *Id.* at 352 (quoting Trial Tr. 2648).

The district court's findings of fact in this regard were not clearly erroneous, and Alabama's attempts to assign legal error fall flat. Nothing in the district court's order demonstrates a "belief that a federal court can override the State's priorities." Appl. at 23. Nobody disputes that maintaining communities of interest such as the Gulf Coast is, in the abstract, a traditional redistricting criterion. But Alabama, like every other state, has many overlapping communities of interest. Alabama's own

longtime map drawer testified that "'no plan is going to respect all' communities of interest, that 'there are trade-offs,' and 'you can't satisfy all communities of interest.'" ECF 490 at 194 (quoting ECF 459-6 at 40). Generally, state legislatures have discretion to balance those tradeoffs as they see fit. *See* App.56 n.17 ("To be clear, we do not hold that a legislature runs afoul of the Constitution when it sets goals that prioritize a particular community of interest or protects incumbents.").

What the state may *not* do, however, is pick and choose which criteria to prioritize—or, in this case, make "non-negotiable"—based on whether those criteria will make it mathematically impossible for Black voters to elect their candidates of choice. In *pages* of careful factfinding (not "two paragraphs," Appl. at 24), the district court found that the 2023 legislative findings did exactly that. *E.g.*, App.35–38; ECF 490 at 500–542. Rather than taking maintenance of the Gulf Coast as a starting point, the legislature started with the goal of foreclosing a second Black opportunity district and worked backward from there to decide which among many redistricting criteria to make non-negotiable. The district court's "finding that the Legislature (among other things) exalted the Gulf Coast in the 2023 legislative findings for an unconstitutional purpose is based on all the steps the Legislature took to dilute minority votes on purpose, not solely the bare fact of the Legislature's overdrawn exaltation of the Gulf Coast." App.42.

It matters not that previous congressional plans placed Mobile and Baldwin Counties together. This Court "has never held that a State's adherence to a previously used districting plan can defeat a § 2 claim," because "if that were the rule, a State

could immunize from challenge a new racially discriminatory redistricting plan simply by claiming that it resembled an old racially discriminatory plan." *Allen*, 599 U.S. at 22. Simply put, "[t]hat is not the law: § 2 does not permit a State to provide some voters 'less opportunity . . . to participate in the political process' just because the State has done it before." *Id.* (quoting 52 U.S.C. § 10301(b)); *see also Callais*, 146 S. Ct. at 1162 ("[W]e have not overruled *Allen*.).

2. The same goes for Alabama's incumbency-protection criteria. The legislative findings elevated to "non-negotiable" status a requirement that "[t]he congressional districting plan shall not pair incumbent members of Congress within the same district." ECF 490 at 555. As an initial matter, at least one illustrative plan, Cooper Plan 5, "pairs no incumbents." *Caster* ECF 101 at 15, 132, 223.[5] But even setting that aside, this new "non-negotiable" criterion contradicts the 2023 guidelines that governed the 2023 redistricting process, which provided only that incumbent pairings should be "avoided whenever possible." ECF 490 at 548–49. In combination with the exaltation of the Gulf Coast, the elevation of avoiding incumbent pairings to non-negotiable status was designed to prevent the creation of another Black opportunity district. *Id.* at 515.

Alabama now argues that the district court's remedial plan "caused a direct and undeniable harm to the State" because "one of its incumbents was not reelected to Congress." Appl. at 25 (quotation omitted). But nothing in the 2023 legislative

[5] Moreover, "because two paired incumbents live[d] in the same county just miles apart, a plan would have to split that county to avoid pairing those incumbents," *Caster* ECF 101 at 73, thus placing multiple redistricting criteria at odds.

findings indicates the legislature set out to protect any specific incumbent. Those findings say only that the "congressional districting plan shall not pair incumbent members of Congress within the same district." ECF 490 at 555.

Moreover, Alabama's re-definition of their incumbent protection criteria, if accepted, would make Section 2 self-defeating. The *entire point* of a Section 2 claim is to provide minority voters a district in which they have an opportunity to elect their candidate of choice. It *requires* a showing that minority voters prefer different candidates than their White counterparts. If such a claim requires an illustrative plan in which *every single existing representative will win re-election*, then Section 2 is well and truly meaningless. That requirement would make the mere invocation of "incumbent protection," as Alabama now seeks to re-define it, a kill switch. And it has nothing to do with disentangling race and politics because it would immunize both racial and partisan gerrymanders. Even a hypothetical illustrative district in which Black Republicans cohesively prefer different candidates from their White Republican counterparts for purely racial reasons would not satisfy Alabama's redefined incumbency-protection criteria.

3. Alabama's pretextual insistence on splitting the Black Belt into two districts instead of three fails for the same reason. Again, as an initial matter, at least two illustrative plans satisfied this criterion: "Duchin Plans C and E keep all 18 core Black Belt counties in two districts." ECF 490 at 350. In any event, the 2021 Plan was not "preliminarily enjoined in part because 'there would be a split community of interest' in the Black Belt." Appl. at 26 (citing *Allen*, 599 U.S. at 21). What this Court

actually said in *Allen* is that "[t]here would be a split community of interest *in both*" the 2021 Plan and Plaintiffs' illustrative plans—further demonstrating that Alabama's single-minded focus on prioritizing the Gulf Coast was "overdrawn." 599 U.S. at 21 (emphasis added). That remains true in the 2023 Plan.

The district court rightly rejected "the faulty premise that splitting the Black Belt into only two districts remedies the cracking problem found in the 2021 Plan." ECF 490 at 360. The problem of cracking is not the *number* of districts into which a community is split, but the *effect* of that dispersal—that it leaves the community in "districts in which they constitute an ineffective minority of voters." *Thornburg v. Gingles*, 478 U.S. 30, 46 n.11 (1986). Alabama accuses the district court of a "racialized approach" to the Black Belt. Appl. at 26. But the district court recognized the simple fact that the Black Belt is "overwhelmingly Black," while also noting that it "blinks reality to say that it is a proxy for race." ECF 490 at 348; *see also id.* at 346 n.57 (noting the Black Belt is named for its "fertile black soil").

* * *

Alabama's view that courts must uncritically accept whatever facially non-racial districting criteria a state legislature puts forward is a roadmap for evading Section 2 and the Constitution. That has never been the law and it is not the law under *Callais*. *Callais* requires that illustrative maps meet "all the state's *legitimate* districting objectives." 146 S. Ct. at 1159 (emphasis added). A set of racially charged "legislative findings" that are intentionally reverse-engineered to make the drawing of a Black opportunity district impossible are not "legitimate" criteria by any

definition. That precludes Alabama's reliance on those criteria to argue that Plaintiffs' illustrative maps do not satisfy *Gingles* 1 under *Callais*.

C. There is strong evidence of intra-party racial polarization in Alabama.

The district court, as *Callais* requires, found that racial polarization "exists within both political parties in Alabama and transcends voters' partisan affiliations." App.61. The court "carefully re-examined all the evidence" and concluded that "race is the core driver of voting behavior and election results in Alabama." App.58, 61. As a result, "Black Alabamians in the districts at issue in these cases 'have less opportunity than their majority counterparts because of race, not just because of partisan affiliation.'" App.61 (quoting *Callais*, 146 S. Ct. at 1159). This finding rested on extensive quantitative and qualitative evidence adduced by both expert and fact witnesses. Alabama, having pointed to zero contrary evidence, does not come close to showing this finding was clear error.

In *Callais*, there was no evidence that race, rather than party, drove polarized voting patterns. Here, however, the record contains "ample evidence," including "evidence of intra-party racial bloc voting." App.58 (quoting 146 S. Ct. at 1159, 1162). Start with the experts. Dr. Baodong Liu "testified at length that 'race is more important than party' in Alabama elections." App.58 (citing Trial Tr. 584–87). His analysis showed that, in 2008, White Democrats in Alabama supported Senator John McCain over then-Senator Barack Obama. App.58 (citing Trial Tr. 588–90). He "drew a similar conclusion from his analysis of the 2008 Alabama Democratic primary for president." ECF 490 at 143. Dr. Liu also testified that in the 2021 District 1

Democratic primary, over 50 percent of Black voters supported the Black candidate, compared to only 16.7 percent of White voters. *Id.* (quoting Trial Tr. at 587–88). Dr. Liu also analyzed "two nonpartisan Montgomery mayoral runoff elections" and found that "race drove the outcome" even when the party cue was taken away. App.58 (citing ECF 385-4 at 9–10, 385-8 at 8). Finally, Dr. Liu showed that, in 2024, the four Black candidates in the CD-2 Republican primary together amassed only six percent of the primary vote, all of them finishing behind the four White candidates. App.58 (citing ECF 385-8 at 4). This data, the district court found, "suggests that White Republicans are not willing to support minority candidates" even within their own party. ECF 490 at 397.

Similarly, Dr. Max Palmer's analysis showed that "Black Republicans are rarely successful." ECF 490 at 229. There were ten Black candidates in the 2022 and 2024 Republican primaries in Alabama, including two for statewide office. *Id.* at 229–30. Nine of the ten lost to White Republicans, and the only one that succeeded ran in a majority-Black district against a White opponent. *Id.* at 230.

Moreover, the district court heard and credited extensive testimony that, while Black and White Alabamians both consider themselves to be ideologically conservative and hold similar views on important social issues, their voting patterns do not reflect those shared values. Dr. Joseph Bagley testified that "many Black Alabamians identify as conservative Christians," "even fundamentalist conservatives or, more importantly, evangelical conservatives, and yet, they do not vote for Republican candidates." ECF 490 at 167 (quoting Trial Tr. 1360). Pastor Valtoria

Jackson likewise explained, "that on abortion as well as LGBTQ rights, the Republican Party aligns closely with the Black church." ECF 490 at 247 (quoting Trial Tr. at 1106–07), while Plaintiff Evan Milligan testified that many in the Black community "are conservative on issues about sexuality, abortion, gender, and sometimes even in terms of government services." *Id.* at 178 (quoting Trial Tr. at 1174). Despite these policy alignments between Black Alabamians and the Republican Party, the "numbers don't bear . . . out" that Black Alabamians vote based on political ideology rather than race. App.59 (quoting Trial Tr. 1361–62).

The evidence also shows that White candidates of both parties are less responsive to the needs of Black voters. The president of the Alabama State Conference of the NAACP testified that Black legislators have regularly met with his organization to discuss issues of importance to Black voters, but "he has not seen any White legislators (regardless of party) at those events." App.59 (citing ECF 441-7 at 36); *see also* ECF 490 at 212 (noting that "the only elected officials who have met with the NAACP about civil rights issues are Black"). White Democrats previously elected to Congress from Alabama failed to support civil rights bills as recently as 2009. Trial Tr. 716:23–720:8 (L. Jackson). And White Republicans from the Alabama congressional delegation voted against the First Step Act—a 2018 law passed by a Republican-controlled congress and signed by President Trump—intended to reduce racial disparities in sentencing. Trial Tr. 715:13–716:16 (L. Jackson). Because White politicians across parties do not support issues important to Black voters, polarized voting in Alabama cannot be explained by the parties' appeals to policy.

Alabama nonetheless argues that the district court's finding of intra-party polarization was "clear error" because it was based on a "threadbare record," but it disputes none of the array of evidence above and points to no countervailing evidence that the district court overlooked. Application at 30. There is no such record evidence: Even Alabama's *own experts* support the district court's conclusions. Alabama offered Dr. Trey Hood to testify to the state's purportedly race-blind politics, but his testimony was "widely inconsistent" with his own scholarly work, including several articles that "directly refute his litigation opinions." ECF 490 at 382–83. According to Dr. Hood's scholarship, "[r]ace, especially the Black-White dichotomy, is the largest dividing line between the Republican and Democratic parties in the region. In fact, in terms of party identification, race dwarfs the effects of religion and class." App.60 (quoting Trial Tr. at 587).

Alabama's other expert on this issue, Dr. Christopher Bonneau, conceded that the data on racial voting patterns "established 'that White voters in Alabama support White Democrats more than they support Black Democrats.'" App.59 (quoting Trial Tr. 1789). This is consistent with Dr. Liu's undisputed data demonstrating that White Alabamians of *both* major parties are less willing to support minority candidates. And, while Alabama has made much hay of the election of "one Black Republican from one majority-White district in 150 years," ECF 490 at 396–97, even Dr. Bonneau agreed that "Representative Paschal's election is a 'unicorn.'" *Id.* at 397 (quoting Trial Tr. at 1688); *see also* App.59 n.18.

Another defense witness, Dr. Carrington, agreed that "Black and White Christians in Alabama hold similar views on abortion." ECF 490 at 308 (quoting Trial Tr. at 1621). Nevertheless, as other witnesses explained, "both racial issues and other issues that are important to Black Alabamians override[] the obvious alignment between these voters' conservative Christian beliefs and the Republican Party." *Id.* at 399–400. And "most Black people do not support Republican candidates because Republicans do not campaign in Black communities." *Id.* at 247.

Finally, none of these conclusions is inconsistent with the district court's prior findings, which Alabama selectively quotes. The district court *never* found that race and politics cannot be "disentangled" in Alabama. *Contra* Application at 29. What the court actually said is that "we cannot separate voters' racial considerations from their party affiliations, and that we must not ignore the powerful role that voters' race plays in their partisan attachments." ECF 490 at 401. In other words, it found that *race*, rather than "mere party politics," is what drives Black vote choices in Alabama. *Id.* at 400–01.

That the district court "adhere[d]" to its earlier findings of *inter*-party polarization in no way undermines the court's separate finding of *intra*-party polarization. Application at 29–30. Both things can be true. *Callais* held that "simply pointing to *inter*-party racial polarization proves nothing" on its own. 146 S. Ct. at 1159 (citation modified). This Court has never held that "disentang[ling] race and politics," requires affirmatively *dis*proving any relationship between race and party

preference. *Id.* (citation modified). It only requires an analysis that "controls for party affiliation." *Id.* That is precisely what the district court did here.

D. The totality of the circumstances demonstrates that Black Alabamians suffer present-day voting-related discrimination.

Callais held that "the 'totality of the circumstances' inquiry must focus on evidence that has more than a remote bearing on what the Fifteenth Amendment prohibits: present-day intentional racial discrimination regarding voting." *Callais*, 146 S. Ct. at 1160. Even before *Callais*, the district court declined to "assign Alabama's shameful history dispositive weight," ECF 490 at 403, and did not "grant Section Two relief simply because [it] condemn[s] past discrimination." *Id.* Instead, the district court "carefully considered an extensive record about both past and present discrimination," *id.* at 404, to conclude that "under all the circumstances in Alabama *today*, Black Alabamians have less opportunity than other Alabamians to elect representatives of their choice." *Id.* at 12 (emphasis added). The district court has since "re-examined" the record "in light of" *Callais* and concluded that "every Senate Factor" favors Plaintiffs. App.62, 69. "[E]very piece of this intensely local corpus of evidence" says "the same thing: things are still different here in Alabama." App.69. These "careful factual findings" are "subject to clear error review," and as in *Allen*, there is "no reason to disturb" them nor any "basis to upset the District Court's legal conclusion." *Allen*, 599 U.S. at 23.

Alabama waves away the district court's careful and well-supported findings as "not germane" and "hodgepodge," Appl. at 31–32 (quotation omitted), but identifies no error in the court's recitation of the facts. Alabama dismisses evidence of "subtle

racial appeals" as a "Rorschach test, not a legal test," ignoring that Senate Factor 6 *requires* district courts to consider this evidence as part of the totality of the circumstances. Appl. at 31. Nothing in *Callais* says otherwise: it simply requires courts to give more weight to "current" information that "shed[s] light on current intentional discrimination." 146 S. Ct. at 1160. The district court identified several examples within the past decade. App.67–68.

Because Alabama cannot dispute this recent evidence of racial discrimination, it tries to whitewash it. Alabama discounts a consent decree following denial of a motion to dismiss in a case alleging intentional discrimination as just small towns "choos[ing] to settle rather than litigate redistricting cases against well-heeled voting-rights groups." Appl. at 32; *see Ala. State Conf. of NAACP v. City of Pleasant Grove*, 372 F. Supp. 3d 1333 (N.D. Ala. 2019); Consent Decree, *Ala. State Conf. of NAACP*, 372 F. Supp. 3d 1333 (No. 2:18-cv-2056-LSC), 2019 WL 5172371. It writes off *Stout v. Jefferson County Board of Education*, where the Eleventh Circuit affirmed that a city "acted with a discriminatory purpose to exclude black children from [a] proposed school system" 882 F.3d 988, 992 (11th Cir. 2018), as just a "suburb trying to create its own school district." Appl. at 32. It distinguishes a federal criminal case concluding that state lawmakers "sought to defeat [a bill] partly because they believed the absence of the referendum on the ballot would lower African–American voter turnout during the 2010 elections," *United States v. McGregor*, 824 F. Supp. 2d 1339, 1345 (M.D. Ala. 2011)), as just a "racial remark by a former state senator over fifteen years ago." Appl. at 32. And it ignores other recent cases, App.64–65, including

one in which Jefferson County—Alabama's largest—*agreed* that its method of electing the county's education board "was enacted at least in part for the purpose of limiting the influence of Black voters in Board elections," *Jones v. Jefferson Cnty. Bd. of Educ.*, No. 2:19-cv-01821-MHH, 2019 WL 7500528, at *3 (N.D. Ala. Dec. 16, 2019), and another in which a three-judge panel concluded after trial that twelve state legislative districts were unconstitutional racial gerrymanders, *Alabama Legislative Black Caucus v. Alabama*, 231 F. Supp. 3d 1026, 1348–49 (M.D. Ala. 2017); App.65. If anything, Alabama's glib derision and dismissal of this corpus of evidence should *itself* be weighed against them under the totality of the circumstances. At the very least, the district court was right to cite this evidence (and more) as "current data and current political conditions that shed light on current intentional discrimination." App.62 (citing *Callais*, 146 S. Ct. at 1160).

Ultimately, the most damning evidence on the totality of the circumstances is the district court's finding *in this very case* that Alabama intentionally discriminated against Black voters when it enacted the 2023 Plan. *See* App.68–69. That finding does not merely "support[] a *strong inference* that the State intentionally drew its districts to afford minority voters less opportunity because of their race," *Callais*, 146 S. Ct. at 1157 (emphasis added), it conclusively establishes that racial discrimination is *presently* infecting the legislature's redistricting efforts.

E. The Court's finding of discriminatory intent is unaffected by *Callais*.

The district court's independent finding of intentional vote dilution under *Arlington Heights* not only fortifies its Section 2 ruling, it withstands *Callais* even if

the court's Section 2 determination does not. Drawing "every inference . . . in the Legislature's favor," App.31, the district court concluded that the Legislature (1) "intentionally refused to create an additional Black-opportunity district for the purpose of entrenching what it knew was discriminatory vote dilution, and (2) that the Legislature did this at least in part because of race, and not party politics," App.48. This finding remains undisturbed by *Callais* and is subject to clear error review. None of Alabama's attempts to assign legal error bears fruit.[6]

1. Alabama leans mightily on the presumption of legislative good faith, arguing that the district court "[o]nly" could have "presum[ed] bad faith" on the part of the legislature. Appl. at 14. But the good faith presumption is not "a kind of super-charged, pro-State presumption on appeal, trumping clear-error review." *Cooper v. Harris*, 581 U.S. 285, 309 n.8 (2017). And the history of this case more than bears out the district court's finding. Determining "whether the Legislature acted unconstitutionally" is a task the district court "refused" to undertake for "years" in the name of judicial "restraint." App.31 n.11. But the Alabama legislature left the court with no other choice: "faced with a federal court order declaring that its electoral plan unlawfully dilutes minority votes and requiring a remedy that provides an additional opportunity district," Alabama "responded with a plan that the state

[6] *Callais* did not and could not change the applicable law on intentional vote dilution under the Fourteenth or Fifteenth Amendments because the Court had no such claim before it—instead, the Court considered whether a redistricting plan enacted to comply with Section 2 was a racial gerrymander. *See Alexander*, 602 U.S. at 38 (2024) ("A vote-dilution claim is analytically distinct from a racial-gerrymandering claim and follows a different analysis." (citation modified)). Nothing in *Callais* casts doubt upon the well-worn *Arlington Heights* standard or how the district court applied it.

conceded did not provide that district." App.16. Even still, the district court drew "every inference [it] c[ould] in the Legislature's favor, ma[d]e no effort to read anyone's mind, and accuse[d] no legislator of racism." App.31. It gave no weight to (and did not even mention in its most recent order) text messages from Senator Livingston referring to Montgomery as "monkey town." ECF 490 at 476; *see also* App.40 n.15 (assigning certain comments from legislators "no weight" at all "[i]n service of the presumption of good faith"). It "scoured the record" for *any* evidence that some legislator considered but refused to support a map that provided an additional Black opportunity district because of racial gerrymandering concerns—and came up empty. App.44. Despite its efforts, "the unique reality of this evidentiary record," the court explained, "overwhelms the strong presumption of legislative good faith." App.48.[7]

2. *Callais* in no way "validates" Defendants' supposed fear of racial gerrymandering liability. Appl. at 17–18. There is "zero evidence that racial gerrymandering fears drove the 2023 Special Session." App.44. That is merely Alabama's post-hoc litigating position. *Cf. Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 189–90 (2017) ("The proper inquiry . . . concerns 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."). Moreover, the legislature had assurances from both this Court and the district court

[7] This case also is nothing like *Abbott v. Perez*, for the reasons explained *supra*. *Contra* Appl. at 13.

that it was possible to draw a remedial district that did not give undue consideration to race and in fact could be drawn "race blind." *Allen*, 599 U.S. at 34 n.7.

3. There can be no "adverse inference" against Plaintiffs from failing to produce an alternative map "that met the State's avowedly partisan goals," *Abbott v. League of United Latin Am. Citizens*, 146 S. Ct. 418, 419 (2025), because Alabama had not avowed any such goals in its lead-up to or defense of the 2023 Plan. *Supra* §§ I.A, I.B.ii. In any event, this Court has never held that an alternative map is needed to establish intentional discrimination, which is "analytically distinct" from racial gerrymandering. *Alexander*, 602 U.S. at 38 (citation omitted).

4. Alabama's argument that this Court's prior decision in this case did not require a second Black opportunity district borders on fanciful. The district court's preliminary injunction order was unequivocal: "the appropriate remedy is a congressional redistricting plan that includes either an additional majority-Black congressional district, or an additional district in which Black voters otherwise have an opportunity to elect a representative of their choice." ECF 107 at 5. This Court affirmed that judgment without reservation. *Allen*, 599 U.S. at 42. And the fact that *Allen* was decided "in a preliminary injunction posture on a preliminary record" is irrelevant. Appl. at 21. Setting aside that the injunction was issued "[a]fter reviewing [an] extensive record," *Allen*, 599 U.S. at 16, preliminary injunctions are not advisory and compliance is not optional. *See Celotex Corp. v. Edwards*, 514 U.S. 300, 306 (1995) ("[P]ersons subject to an injunctive order issued by a court with jurisdiction are expected to obey that decree until it is modified or reversed, even if they have proper

grounds to object to the order." (quoting *GTE Sylvania, Inc. v. Consumers Union of U.S., Inc.*, 445 U.S. 375, 386 (1980))).[8]

Callais does not make Alabama's defiance any more "reasonable in retrospect." Appl. at 21. As explained above, Alabama is wrong that there is no Section 2 liability here under *Callais*. But even setting that aside, parties cannot ignore federal injunctions grounded in settled law simply because they think they know better than the Court, or because they hope the law might change. *See Rodriguez de Quijas v. Shearson/Am. Exp., Inc.*, 490 U.S. 477, 484 (1989) ("If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls."); *Agostini v. Felton*, 521 U.S. 203, 237 (1997) ("[Lower courts] should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions." (quoting *Rodriguez de Quijas*, 521 U.S. at 484)).

II. Equitable considerations weigh heavily against a stay.

Alabama cannot meet its burden to show that it will be "irreparably injured absent a stay," or that the stay will not "substantially injure the other parties" or the public interest. *Nken*, 556 U.S. at 434. Indeed, Alabama devotes just four cursory sentences to these required elements. *See* Appl. at 35–36.

As an initial matter, Alabama fails to explain how it could be irreparably harmed from the continued use of congressional districts that are currently

[8] This argument also ignores the question presented in *Allen*, as modified by this Court: "Whether the State of Alabama's 2021 redistricting plan for its seven seats in the United States House of Representatives violated section 2 of the Voting Rights Act, 52 U.S.C. § 10301." *Merrill v. Caster*, 142 S. Ct. 1357 (2022) (mem.).

programmed in its system and that have been administered successfully for the 2024 elections and 2026 primary elections. As explained above, the district court properly concluded that Alabama's preferred alternative—the never-before-used 2023 Plan—is unlawful, and there is no state interest in enforcing an unlawful congressional map.

Alabama's interest in administering the 2023 Plan *this year* is especially weak because of the "significant risk of large-scale election mismanagement and error" that would attend its implementation at this point in the election calendar. App.73. The district court heard live testimony from Jeff Elrod, Alabama's director of elections, who explained at the May 22 hearing that any reassignment of voters from their current districts in the Special Master's Plan to new districts in the 2023 Plan must be completed during the seven-day window between May 27 and June 2. App.142. He confirmed that attempting this reassignment in that time frame would make it "hard to ensure limited problems or errors," including by making it "much more likely that voters will not be correctly assigned" and even by increasing the likelihood that voters will be provided "with ballots for the wrong district." App.143–44. The district court credited this unrebutted testimony and found, on May 26, that "it will take a chaotic, decentralized, and Herculean effort for officials in [Mr. Elrod's] office and fourteen counties to reassign voters according to the 2023 Plan" by the June 2 deadline, especially given that this process has previously required "several months" of careful work. App.8–9.

What would have been exceedingly difficult to accomplish in a week is now impossible to complete in a day. The window to complete any reassignment from the

Special Master's Plan to the 2023 Plan closes *tomorrow*, and that deadline cannot be moved without affecting every subsequent deadline through the November general election. *See* App.130–33, 143, 264.

It was not long ago that Alabama appreciated the gravity of these concerns—it previously represented in this very litigation that it would be irreparably harmed by an election-year change to congressional district lines. *See* Emergency Appl. for Stay at 39, *Milligan*, No. 21-1086 (U.S. Jan. 28, 2022) (successfully arguing that a change in districts *four months* before May primary would result in chaos). Alabama cannot now argue it will be irreparably harmed by an order *avoiding* that very pandemonium. *See New Hampshire v. Maine*, 532 U.S. 742, 749 (2001) (recognizing judicial estoppel "prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase").

On the other side of the ledger, a stay would inflict severe and irreparable harm on the Caster Respondents and voters across Alabama. First, they would be forced to vote in districts that federal courts have already determined violate Section 2 and the U.S. Constitution. As the district court recognized, "Courts routinely deem restrictions on fundamental voting rights irreparable injury." App.70 (citations omitted). Moreover, voters including the Caster Respondents would be the victims of the extraordinary chaos and confusion that will result from emergency reassignment to new districts on an impossibly short timeframe. As the district court found, "pivoting computer systems from the Special Master Plan to the 2023 Plan" now would risk mass confusion and widespread error. App.10.

Alabama does not meaningfully engage with any of these administrative considerations other than to chide the district court for using *Purcell* against the state. In *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006), this Court recognized the equitable principle that federal courts should avoid interfering with state election rules in a manner likely to cause confusion shortly before an election. The district court heeded that warning here and confirmed that its preliminary injunction would *mitigate* confusion by "keep[ing] the candidates and the voters in the districts they have been in for nearly three years." App.10; *see* App.6–13 (ensuring injunction satisfied each of the considerations Justice Kavanaugh identified as relevant to the *Purcell* analysis). Under Alabama's novel approach, *Purcell* would require federal courts to exacerbate confusion by greenlighting any last-minute legislative changes to election rules, no matter how disruptive or discriminatory. That has never been required by any source of federal law. The equitable concerns relevant to election officials, voters, and the greater public do not turn on whether it is a legislature or a court holding the match to the powder keg. Chaos is chaos. This Court should preserve the status quo map during the pendency of these proceedings—the map that has been in force for three years and administered in elections just two weeks ago—and deny the stay.

CONCLUSION

The Application should be denied.

Respectfully submitted,

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