

No. 26-116

Supreme Court of the United States

WES ALLEN, SEC'Y OF STATE, ET AL.,
Petitioners,

v.

MARCUS CASTER, ET AL.,
Respondents.

On Petition for a Writ of Certiorari Before Judgment to
the U.S. Court of Appeals for the Eleventh Circuit

REPLY BRIEF FOR PETITIONERS

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REPLY BRIEF

Alabama’s 2023 Plan was not motivated by racial animus and complies with the Constitution and the Voting Rights Act. For decades, the State has districted the Gulf Coast counties together and protected incumbents. Plaintiffs concede they cannot redraw Alabama’s map without subordinating those goals, so they lose, *Louisiana v. Callais*, 146 S.Ct. 1131, 1159 (2026). Yet they urge the Court to label the preliminary injunction moot so they can force another trial on the same plan. For the reasons this Court already explained, the Court should grant the petition and summarily reverse. *See Allen v. Milligan*, 608 U.S. 511, 514 (2026); *e.g.*, *Abbott v. LULAC*, 146 S.Ct. 2615 (2026).

Plaintiffs repeat an error that has pervaded this litigation: they argue different rules should apply in Alabama. They castigate routine districting objectives as veiled racism, which is incompatible with the presumption of good faith. *See Alexander v. S.C. NAACP*, 602 U.S. 1, 10 (2024); *Abbott v. Perez*, 585 U.S. 579, 603-09 (2018). They conflate political polarization with racial polarization, ignoring *Callais*. *See Allen*, 608 U.S. at 514. And they claim the State has “imposed” a “second-class status ... on Black Alabamians,” *Milligan*.³⁷, an accusation detached from both the record and reality.

I. These Appeals Are Not Moot.

A. The election is underway, but the preliminary injunction is not moot. The district court ordered Alabama “to administer all remaining events comprising Alabama’s 2026 congressional elections according to the Special Master Plan.” App.80a. Those events will take place throughout November, and

perhaps later.¹ Even on the narrowest reading of the district court’s order, this Court can (and should) summarily reverse in October or November. *E.g.*, *LULAC*, 146 S.Ct. 2615.

B. But even after the 2026 elections, these appeals will not be moot. By its own terms, “[t]he part” of the order imposing a court-drawn plan “**EXPIRES** upon Alabama’s legislative enactment of a new congressional districting plan,” App.80a, which has not occurred and may not occur until after 2030. The injunction may remain in force well past 2026. Neither the district court’s reasoning nor the underlying dispute was limited to this election. This Court can grant “effectual relief.” *Chafin v. Chafin*, 568 U.S. 165, 172 (2013).

C. The preliminary injunction will also have a “continuing effect.” *Firefighters Loc. Union No. 1784 v. Stotts*, 467 U.S. 561, 571 (1984). Experience shows that liability findings in any case related to voting in Alabama will be invoked against the State—either as substantive evidence, *see, e.g.*, DE485:143 (citing *People First of Ala. v. Merrill*, 491 F.Supp.3d 1076 (N.D. Ala. 2020), *stayed*, 592 U.S. 1035, *mooted on appeal*); DE107:76, or to support bail-in under §3(c), *cf.* DE485:434.

¹ These events include casting votes on November 3; a canvassing board meeting, potentially as late as November 25, Ala. Code §17-12-17; delivery of results to the probate judge and Secretary of State, §17-12-9; and the Secretary’s certification, which can take ten days, §17-12-21. The election process may not be final until December—and that is assuming no recount, §17-16-20, or other post-election issues.

Especially if the district court continues to view “legal disagreement” as proof of animus, *Allen*, 608 U.S. at 513; *see, e.g.*, App.43a-45a, 124a-28a, 557-58a, 628a, its injunction will “continue[] to have an impact” even if it becomes unenforceable, *Firefighters*, 467 U.S. at 569, 571. For the appeal to be moot, the State must “feel free” to disagree, *id.*, and exercise its “authority to redistrict,” App.77a.

This case’s post-trial posture underscores the need for review. Based on an “extensive” trial record, the district court had “no doubt” that applying “*Callais* yield[ed] the same conclusion” as before. App.3a. While this Court’s stay opinion may sway the panel, this is not the typical preliminary-stage appeal from a preliminary view of a preliminary record, *e.g.*, *Univ. of Tex. v. Camenisch*, 451 U.S. 390 (1981).

Nor is the appeal moot just because election cycles are “by nature short-lived.” *Cf. Neb. Press Ass’n v. Stuart*, 427 U.S. 539, 546 (1976). This is a “continuing controversy” that “need[s] ... resolution.” *Moore v. Ogilvie*, 394 U.S. 814, 816 (1969). If the district court believes that its order “controls future elections,” *id.*, or otherwise grants new relief in 2027, the State will be forced to file a third jurisdictional statement on the same map, hoping to secure appellate review before the 2028 primaries. Summary reversal would be more efficient and equitable.²

² Alternatively, if the Court finds these appeals moot, it should vacate the judgments below. *See United States v. Munsingwear*, 340 U.S. 36 (1950).

II. The District Court Failed to Apply *Callais*.

A. First *Gingles* Precondition

Because no alternative map achieved the Legislature's goals as well as the enacted plan, adopting any of them would have been racial gerrymandering. *Callais* removed all doubt, defining equal opportunity to elect as "whatever opportunity results from ... the State's combination of permissible criteria." 146 S.Ct. at 1155. After *Callais*, the district court discarded criteria it had once credited, App.55a, mistaking "legal disagreement ... as proof of discriminatory animus," *Allen*, 608 U.S. at 513, and holding that "Alabama cannot use *Callais* to legitimize its pre-*Callais* decision," App.44a. Plaintiffs cannot rehabilitate that reasoning.

1. The Gulf Coast. The Legislature's preservation of the Gulf Coast community was "constitutionally permissible," *Allen*, 608 U.S. at 514, not "the linchpin of a calculated effort to discriminate based on race," App.55a. Plaintiffs ignore the evidence and "hurl [racial] accusations" at the State, *contra Alexander*, 602 U.S. at 11, but their narrative doesn't fit the facts. Importantly, after trial—which showed the economic, cultural, and political ties between Mobile and Baldwin Counties—the district court "f[ou]nd that [the Gulf Coast] is a community of interest." App.448a.

That finding alone dispels accusations that the Gulf Coast is a "fig leaf" (*Milligan*.19) or "post-hoc prox[y]" for racism (*Caster*.1). What's more, the Gulf Coast has been in one district *since 1972*—including in court-drawn and precleared plans. Plaintiffs say the 1972 map was dilutive, *Milligan*.27, which they did not prove, the district court did not find, and would

be irrelevant anyway, *Perez*, 585 U.S. at 603 (rejecting “original sin” logic). The State has recognized the Gulf Coast community for years, presenting testimony from two congressmen in a challenge to its 2011 map, Def.’s Post-Trial Brief, *Chestnut v. Merrill*, No. 2:18-cv-907 (N.D. Ala. Dec. 13, 2019), and again in 2021, DE107:104-05. The Gulf Coast did not “appear[] for the first time” in 2023. *Caster*.19.³

Even if the Gulf Coast had been a new priority in 2023, it is law. *See* Ala. Code §17-14-70.1. Nothing about the legislative history licensed ignoring the State’s enacted prerogatives. For all the handwringing about “departures from the ... norm,” App.35a; *contra Perez*, 585 U.S. at 610-11, the legislative findings were not surprising. Indeed, the district court initially “expect[ed]” the Legislature would “assign [the Gulf Coast] great weight” in its next map. DE107:171. Yet later, the district court described doing so as “doubl[ing] down on racially discriminatory vote dilution.” App.42a. While *other* States get the benefit of *Callais* and can “prioritize a ... community of interest,” the court reasoned, “Alabama cannot use *Callais*” and so “misused” the Gulf Coast by keeping it intact, App.43a-44a, 56a n.17. That is wrong. *Infra* §III.

Nor is observing the Gulf Coast’s “French and Spanish colonial heritage” expressing a “preference for White ancestry.” *Caster*.1. The district court did not even go there. App.605a. Recognizing historical facts does not make Alabama lawmakers French

³ Plaintiffs again rely on Alabama’s State Board of Education Plan. It is an apples-to-oranges comparison. The size and purposes of the government bodies differ.

supremacists any more than it does the plaintiffs, experts, and jurists in Louisiana. *E.g.*, *Nairne v. Ardoin*, 715 F.Supp.3d 808, 846 (M.D. La. 2024) (testimony on “Anglo” and “French” settlement); *Robinson v. Ardoin*, 605 F.Supp.3d 759, 790 (M.D. La. 2022) (testimony on “French and Spanish influence”). Stressing this point proves how “hard [it is] to find pertinent evidence” of discrimination that doesn’t exist. *Callais*, 146 S.Ct. at 1160. Other gripes about how the findings were written—counting the “lines” or “paragraphs” on the Gulf Coast—are not proof of animus either, especially after the State’s Gulf Coast evidence had been found “insufficient,” *Caster*.20-21, while the Black Belt community was uncontested.

In another case, the Court may need to decide when a State’s objectives are not “legitimate,” *Callais*, 146 S.Ct. at 1159, but not in this case.

2. Incumbency protection. As the district court found, the State had a broad interest in “protect[ing] incumbents.” App.46a-47a. Before *Callais*, the court knew it was “[t]raditional” (App.139a) and “appropriate” (App.177a) to do so. App.458a. After *Callais*, that goal became “novel” and part of an “effort to discriminate.” App.55a. The shift was unjustified. The Court should reverse because no alternative map met “the State’s political goals, including incumbency protection.” *Callais*, 608 U.S. at 1161. Asking the Court to infer “intentional discrimination” from “emphasis on incumbency protection,” *Caster*.25, is just asking the Court to overturn *Callais*.

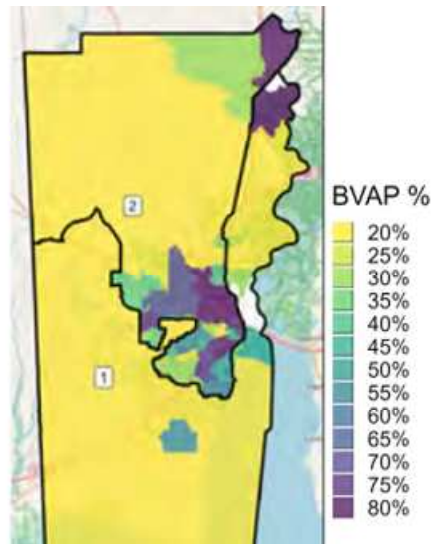
The district court disagreed that Plaintiffs’ maps could protect incumbents equally well. App.57a (finding they “protect[ed] all incumbents except one”). *Caster* Plaintiffs identify a map that paired no

incumbents but would have imperiled Rep. Moore, which they concede was the “*point*” of it. *Caster*.23-24. *Milligan* Plaintiffs pivot to a map that was never litigated as an alternative: the “COI Plan” passed by the House. But it cannot satisfy *Gingles* because its District 2 is not majority-minority. And it would not protect Rep. Moore equally well because he would have lost several modeled elections. *See* App.33a, 596a.

For their part, *Singleton* Plaintiffs point to a crossover district that directly paired two incumbents. *Singleton*.16 n.4 (acknowledging that the Singleton Plan paired Reps. Sewell and Palmer but speculating that Sewell could run in a different district). The other plaintiffs opposed the Singleton Plan for imperiling Rep. Sewell. *See* DE295:33; *In re Redistricting 2023*, No. 2:23-mc-1181 (N.D. Ala.), DE23:6-7. So did she. *In re Redistricting 2023*, DE21:5.

3. Race as a districting criterion. Disregarding the State’s political goals, the district court let Plaintiffs split the Gulf Coast to put more “Black Belt counties ... in a majority-Black district,” transforming a neutral criterion into a race-based one. App.447a; *see* App.34a (criticizing placement of “half the Black Belt ... in majority-White districts”); App.456a-57a. But the State could not choose a plan because it “better” sorted by race. *See Allen v. Milligan*, 599 U.S. 1, 32 n.5 (2023) (plurality) (Black Belt is a *historical* community, “not a demographic one”).

Plaintiffs cannot undo this race-based analysis with testimony that their mapmakers “did not look at race.” *E.g.*, *Milligan*.28-29; *Caster*.12-16; *Singleton*.13-14. Nor was that true. *See* J.S.16-18. It was clear error to believe Mobile could be segregated like this on accident:



DE425-1:76 (Duchin E). The shape itself “discloses a racial design,” *Alexander*, 602 U.S. at 8, which Plaintiffs confirmed: They vigorously defended segregating “Black Mobile” on the ground that “Black Alabamians ... in Mobile” have “more in common” with “Black Alabamians living in the Black Belt” hundreds of miles away. DE272:157-59; *see* DE485:48-80. Having confessed racial aims, Plaintiffs cannot claim they used race only to check for *Gingles* compliance.⁴

⁴ The State never conceded that any alternative map was “reasonably configured,” *Milligan*.24, or drawn “race-blind,” *Milligan*.29; *see* DE436:¶14.

B. Second and Third *Gingles* Preconditions

Summary reversal is also warranted because the district court relied on evidence “not relevant” to vote dilution claims. *Allen*, 608 U.S. at 514.

Plaintiffs repeat that mistake. Even if they had proven that *some* polarization is “not just because of partisan affiliation,” *Caster*.26, that is not proof of “circumstances ... comparable to those in *White*.” *Callais*, 146 S.Ct. at 1162. Today’s “full-blown two-party system” is not racial-bloc voting. *Id.* at 1158. And if the burden were somehow on the State to prove that “all” voting is “just party politics,” App.493a, these factors would be meaningless: Plaintiffs could just testify—as some did here—that *their* “racial concerns drive” *their* political activity. *Id.* That cannot raise a strong inference of racial discrimination.

Ignoring the State’s brief, Plaintiffs rely on the same attenuated data that led the district court to err. *Caster*.26-28. But a single primary election (without analysis of candidate quality, fundraising, or candidate withdrawals), a 2008 exit poll, anecdotes about NAACP events, and other speculation cannot prove that “race is the core driver of voting behavior.” *Caster*.25. Plaintiffs offer evidence primarily on the racial views of “the minority,” not “the majority.” *Callais*, 146 S.Ct. at 1159; *e.g.*, *Milligan*.32. And they fail to grapple with what the district court called the “obvious truth[]” that “partisan affiliations drive voting patterns” even if “issues of race” are relevant to some “Black voters[].” App.493a.

C. Totality of Circumstances

Plaintiffs also ignore their burden on totality of circumstances. None of the evidence supports finding that the 2023 Plan intentionally discriminated. None of it distinguishes Alabama from Louisiana.

Plaintiffs could not locate one person “barred from political participation” in Alabama, *Caster*.³¹, and they ignore racial minorities’ political successes, *e.g.*, App.60a n.18. *See ALBC v. Alabama*, 989 F.Supp.2d 1227, 1287 (M.D. Ala. 2013) (W. Pryor, J.) (finding “overwhelming evidence” of equal opportunity). The district court acknowledged the “racial parity in rates of voter registration and turnout,” but declined to “crunch numbers” because it thought “the lasting effects of discrimination make it harder for Black Alabamians.” App.513a-14a. *Callais* rejected that argument. The belief that “things are still different here in Alabama,” App. 73a, is not enough.⁵

III. Declining to Sort Voters by Race is Not Racial Discrimination.

A. Without proving vote dilution, Plaintiffs cannot prove *intentional* vote dilution. This claim requires Alabama’s 2023 Plan to have the “purpose *and* effect” of vote dilution. *Alexander*, 602 U.S. at 39. Vote dilution means what *Callais* says it means. Although Plaintiffs insist *Callais* did not affect this claim, *e.g.*, *Caster*.³³ n.7, this Court held that the district court “departed from *Callais*” “as to both claims.” *Allen*, 608 U.S. at 514. That makes sense: *Callais* set out to define the “clearly identified” occasions for race-based

⁵ *Milligan* Plaintiffs reference social media posts of a Republican leader, *Milligan*.³⁶, omitting that he is black and does not advocate white supremacy, DE441-3:8, 47-49, 51.

districting, *Richmond v. J.A. Croson Co.*, 488 U.S. 469, 505 (1989), and limited §2’s use of race to “only” the “rare” case the Constitution does not forbid it, *Callais*, 146 S.Ct. at 1152. It would be quite surprising, then, if our Constitution *required* race to be used where §2 does not. And if the constitutional claim were any easier to prove than the §2 claim, there would be no need for §2 in the first place. Pet.24.

Plaintiffs argue that the Legislature “knew” its 2023 Plan was dilutive because it “had assurances” that it could draw a race-based district without giving “undue consideration to race.” *Caster*.32, 34. But Plaintiffs ignore the obvious: Louisiana had similar judicial “assurances,” and its replacement map was a racial gerrymander.

However “unequivocal” the district court felt about the 2021 Plan, *Caster*.34, nothing forbade the State from enacting a better map before trial. Alabama did not “ignore federal injunctions.” *Caster*.35; see App.617a-18a. From this Court’s affirmance in 2023, the State learned that its position on the Gulf Coast was undermined by unnecessary splits in the Black Belt. *Allen*, 599 U.S. at 21. It was not defiant or racist to enact a better plan—to then *unify* the Black Belt and build a better record—particularly when racial gerrymandering claims were pending, Pet.31; see App.81a (reserving ruling). At a minimum, Alabama could reasonably think that sacrificing neutral goals to race would risk liability.

The State thus aimed “to persuade,” App.124a, not “gain acceptance of plans that it knew were unlawful,” *Perez*, 585 U.S. at 608. The criticism that Alabama’s position looks good only “in retrospect” (*Caster*.35) ignores that States have been navigating these same

hazards for decades. Interpreting the Constitution correctly before *Callais* is hardly proof of animus.

B. The evidence of lawful motives for the 2023 Plan far surpasses *Alexander*’s plausibility threshold. Plaintiffs presume bad faith by finding a declaration of “French and Spanish” supremacy in anodyne legislation, rewriting partisan performance analysis in racial terms (like “the Black-preferred candidate”), and imputing invidious intent to mere awareness of a district’s racial makeup, which is unsurprising in a §2 case. There was ample evidence of what actually drove decision-making, including traditional principles and partisan politics. Pet. §II.B.2. The district court failed to “draw every inference” in the Legislature’s favor before finding “racial animus.” App.29a, 625a.

C. Plaintiffs object to “produc[ing] an alternative map” on the ground that “this Court has never held that is needed.” *Caster*.34. But they ignore *Allen*, 608 U.S. at 514, and *Alexander*, which held that the absence of an alternative map defeats an allegation “that a rational legislature sincerely driven by its professed partisan goals would have drawn a different map with greater racial balance,” 602 U.S. at 10. Map-based claims require map-based proof.

Milligan Plaintiffs rely on the unenacted COI Plan. They say the State was required to move Selma into District 2 so it would have “higher BVAP.” *Milligan*.2-4. *Singleton* Plaintiffs also favor a new crossover district. First, doing either to boost a district’s BVAP would have been unconstitutional because there was no unlawful discrimination to remedy. *Callais*, 146 S.Ct. at 1152. Second, Alabama did not “destroy” any crossover district, *contra Milligan*.2, and liability for failing to draw new ones

would raise “serious constitutional concerns” and “substantial[ly] increase” race-based districting, *cf. Bartlett v. Strickland*, 556 U.S. 1, 21-23 (2009). Third, every alternative would have been worse for Republicans, who “actually knew” that if they passed the 2023 Plan, Democrats “would have no chance,” *Milligan*.16-17. Plaintiffs infer nefarious motive from nothing, *Milligan*.15, while ignoring the 2023 Plan sponsor’s testimony that compactness and incumbency protection drove the Legislature’s rejection of the COI Plan. DE459-13:66-67, 77-81. The 2023 Plan was more compact than the COI Plan, DE295:38 (*compare* “2023 Plan,” *with* “Pringle Plan” [COI Plan])), and better protected incumbents, *see* App.33a, 596a.

CONCLUSION

The Court should grant the petition and summarily reverse.

Respectfully submitted,

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