

No. 26-117

IN THE
Supreme Court of the United States

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

Appellants,

v.

EVAN MILLIGAN, ET AL.,

Appellees.

On Appeal from the United States District Court for
the Northern District of Alabama

MOTION TO DISMISS OR AFFIRM

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INTRODUCTION

The district court’s preliminary injunction is moot. Alabama’s 2023 districting plan was enjoined only for the 2026 elections. Today, following this Court’s stay, Alabama’s elections are underway using its 2023 Plan. Nothing can change that. Alabama has received all the relief it could; this appeal must be dismissed as moot.

If this Court nevertheless finds it has jurisdiction, it should summarily affirm or set the case for full briefing and argument. This Court had only hours to assess the district court’s decision during the “preliminary stage” stay briefing. *Allen v. Milligan* (*Allen II*), 608 U.S. 511, 513 (2026). A more fulsome review reveals that the district court did not clearly err in finding that the overwhelming and “intensely local corpus of evidence” compelled its findings of discriminatory intent and vote dilution, App.73a, in this “extremely unusual” case, App.7a.

First, the district court heeded the good-faith presumption, “draw[ing] every inference [it could] in the Legislature’s favor.” App.29a. Nonetheless, it found that the “unique reality of this evidentiary record overwhelms the strong presumption.” App.49a. The 2023 Plan was not the result of a mere “legal disagreement.” *Allen II*, 608 U.S. at 513.

Rather, the “extensive record,” App.49a, shows that the Legislature “focused on race” and used racial data to achieve its primary goal of depriving Black voters of any electoral opportunity in congressional district 2 (CD2). App.40a-41a. At the plan’s inception,

its sponsor, Defendant and Reapportionment Committee Chair, Senator Steve Livingston, texted with an outside consultant about whether aiming for a specific Black voting-age population (BVAP) would deny Black voters electoral opportunities in CD2 while preserving a veneer of Voting Rights Act (VRA) compliance. App.40a-41a. Legislators ultimately used a BVAP target as the primary basis for reconciling the House and Senate plans. App.41a. To achieve its racial goal, the 2023 Plan “homed in on Alabama’s most well-known and nationally prominent Black community: the City of Selma,” removing it from CD2 to ensure that Black voters there were “utterly unable to elect a representative of their choice.” App.33a. Alabama’s choice to “intentionally [draw] district lines in order to destroy” the House-backed plan’s “crossover district[] ... raise[s] serious questions” under the Constitution. *Bartlett v. Strickland*, 556 U.S. 1, 24 (2009) (plurality).

The Legislature demanded the pairing of Baldwin and Mobile Counties using racial appeals, citing the area’s “French and Spanish colonial heritage” to justify the creation of a majority-White district and foreclose a §2 remedy. App.37a-38a. “Ancestry can be a proxy for race. It is that proxy here.” *Rice v. Cayetano*, 528 U.S. 495, 514 (2000); *cf. Bush v. Vera*, 517 U.S. 952, 960-61 (1996) (plurality) (finding that legislators’ statements that districts were drawn based on “language” and “ethnic” heritage served as direct evidence of racial motives).

Alabama cannot hide behind its litigation-driven “findings,” which were reversed engineered to require

the creation of a majority-White district in the Gulf Coast. App.30a n.13. No legislative mapmakers ever employed these “findings”; rather, Alabama’s then-Solicitor General inserted them into the bill for the 2023 Plan just hours before its passage App.31a, 34a.

The Legislature passed the 2023 Plan instead of an alternative map that met all these findings’ late-breaking “nonnegotiable” priorities without entirely foreclosing Black voters’ electoral opportunities. This alternative map kept Baldwin and Mobile together and did not pair incumbents, yet it provided Black voters with some opportunity to elect their preferred candidates. App.31a. Although the House passed this alternative plan, the Senate rejected it. The Legislature passed the 2023 Plan even after learning that Black-preferred candidates lost every modeled election in the new CD2. App.33a.

The Legislature thus “reject[ed] [an alternative] map that might have provided the required remedy ... in favor of a map that it knew in real time and later admitted in court certainly does not provide the remedy” of a second opportunity district. App.72a, 517a. The requirement for an additional district with 50% BVAP “does not apply to cases in which there is intentional discrimination against a racial minority.” *Bartlett*, 556 U.S. at 20, 24. And, although not required for the constitutional claim under *Arlington Heights*, Plaintiffs identified an alternative map that kept “together the Gulf Coast community of interest and avoid[ed] the pairing of incumbents.” *Allen II*, 608 U.S. at 514. This alternative map confirmed that Alabama could have “achieve[d] its districting goals

while maintaining a higher BVAP.” *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 18 (2024).

Plaintiffs were “not require[d] ... to prove that the challenged action rested *solely* on [a] racially discriminatory purpose[],” *Allen v. Milligan* (*Allen I*), 599 U.S. 1, 37 (2023) (quoting *Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977)), making alternative maps or partisan disentangling unnecessary given the potential for mixed motives. Nevertheless, the 2023 Plan’s sponsors disclaimed partisanship as a motive. App.45a-47a. And partisanship and incumbency protection cannot explain the Legislature’s rejection of the alternative map.

Second, regarding the §2 claim, the district court correctly found that Plaintiffs *did* offer maps with additional majority-minority districts that met all Alabama’s *permissible* and *nondiscriminatory* criteria. App.56a-57a. The joining of Baldwin and Mobile at all costs “was the linchpin of a calculated effort to discriminate based on race.” App.55a. And Plaintiffs did offer an illustrative map that met Alabama’s bar on pairing incumbents. *See Singleton v. Merrill*, 582 F. Supp. 3d 924, 979-80 (N.D. Ala. 2022). Alabama “did not cite partisan goals in defending” the 2021 Plan. *Louisiana v. Callais*, 146 S. Ct. 1131, 1161 (2026). So too with the 2023 Plan.

Third, the district court correctly found that “race is the core driver of voting behavior and election results in Alabama.” App.61a. It relied on extensive statistical evidence of race-based voting in recent

Democratic and Republican primaries and nonpartisan races. App.58a-62a. Black candidates rarely win elections in majority-White districts *regardless* of their party affiliation. Alabama’s own expert called the election of a Black Republican a “unicorn,” App.60a, and conceded that the data on racial-voting patterns “established ‘that White voters in Alabama support White Democrats more than they support Black Democrats,’” App.59a. No Black candidate of *either party* has *ever* won election to Congress in Alabama from a majority-White district, Tr.1834, though White Democrats won in several such districts as recently as 2008, Tr.1746. Every Black Democratic candidate for statewide office this century has lost their general-election race, despite several White Democrats having prevailed as recently as 2017. Tr.1746-47.

This Court should dismiss the appeal. Alternatively, it should summarily affirm or set the case for full briefing.

JURISDICTION

The Court lacks jurisdiction because this appeal is moot. *See Honig v. Students of Cal. Sch. for the Blind*, 471 U.S. 148, 149-50 (1985) (per curiam). The constitutionality of 52 U.S.C. §10301 is not implicated, so 28 U.S.C. § 2403 does not apply either.

COUNTER-STATEMENT OF FACTS

A. In 2023, this Court affirmed a preliminary injunction entered against the Alabama Legislature’s 2021 congressional redistricting plan under the VRA (2021 Plan). App.2a.

In that 2023 decision, this Court held that the district court “correctly found that black voters could constitute a majority in a second district that was ‘reasonably configured,’” *Allen I*, 599 U.S. at 19, and agreed 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.

B. After this Court’s affirmance, the Legislature passed the 2023 Plan, which Alabama admitted failed to remedy the identified violation. App.15a.

The Legislature entered a Special Session in July 2023. App.157a. Before the Session began, the Permanent Legislative Committee on Reapportionment (Committee), led by Defendants Representative Chris Pringle and Senator Livingston (Chairs), held hearings where the Committee readopted their 2021 Districting Guidelines (Guidelines). App.157a. The Guidelines included requirements that a plan “have neither the purpose nor the effect of diluting minority voting strength,” App.36a, and listed other redistricting policies, like not pairing incumbents, to be “observed to the extent they do not violate” federal or state law. App.35a-36a.

Applying the Guidelines, the Committee’s map-drawer, Randy Hinaman, drafted several plans. When the session began, Representative Pringle introduced one Hinaman-drawn plan as the Community of Interest (COI) Plan. App.31a. The COI Plan achieved all of Alabama’s stated redistricting goals, App.30a-34a, and Pringle and Hinaman believed it complied

with the VRA. App.30a-31a. In the COI plan, Black-preferred candidates would have won two of the four elections modeled in the Committee’s performance analysis. App.31a. The House voted to enact the COI Plan. App.193a. But the Senate did not. Instead, Senator Livingston and others pushed a new map called the “Opportunity Plan,” created using BVAP targets by outside consultant Chris Brown. App.32a. The Legislature ultimately enacted a modified version of that Plan—the 2023 Plan—after learning that Black-preferred candidates would have lost all seven elections in CD2 modeled by their expert. App.32a-34a.

C. Racial data played a central role in the Legislature’s drawing of the 2023 Plan. Senator Livingston texted with his own consultant for over a month. App.40a-41a. The texts confirm that, rather than election results or partisan data, the consultant focused on CD2’s BVAP to prevent Black voters from having the opportunity to decide the election. *Id.* When drafting CD2, the consultant texted Livingston to ask if a “41.6 BVAP [would] work?” App.40a. Livingston also testified that the Senate passed the Opportunity Plan and disregarded the COI Plan only after he “received some additional information,” but he never identified the information’s source. App.32a.

To reconcile the House-passed COI Plan and Senate-passed Opportunity Plan, the Legislature relied on racial data, devising the 2023 Plan’s CD2 to “split the difference” between CD2’s BVAP in the competing plans. App.41a. To hit this racial target, the Legislature removed Selma and surrounding

Dallas County, the Black Belt’s historic heart, from CD2. App.33a.

The 2023 Plan was accompanied by eight pages of “legislative findings,” inserted into the bill on the morning of passage, which had never appeared in any Alabama districting bills. App.34a. Alabama’s Solicitor General drafted these “findings” without the Chairs’ knowledge. App.34a. Legislators did not use the findings to draw the 2023 Plan or other maps, App.31a, 34a; rather Alabama’s Solicitor General explained that his post-hoc findings “essentially describ[e]” the enacted 2023 Plan, D.Ct. Dkt. 485 ¶ 73.

For the first time, the “findings” named three communities of interest “that shall be kept together to the fullest extent possible”: the Black Belt, the Gulf Coast, and the Wiregrass. App.95a. In contrast, the Guidelines from 2021 and 2023 did not name or prioritize any particular communities or denote any “non-negotiable” principles. App.31a, 34a. The “findings” describe the Black Belt counties in three paragraphs. App.95a-96a, 160a. By contrast, they contain nine paragraphs elevating Mobile and Baldwin based on their “French and Spanish colonial heritage.” App.96a-98a.

D. After Plaintiffs objected to the 2023 Plan, the district court issued a second preliminary injunction against the 2023 Plan. App.15a. Alabama conceded that the 2023 Plan intentionally “does not include an additional opportunity district.” App.15a. This Court declined to stay this second injunction, *Allen v.*

Milligan, 144 S. Ct. 476 (2023) (mem.), and Alabama dismissed that appeal, App.118a.

The district court then appointed a special master who recommended three plans. App.16a. The special master drew his plans without displaying “racial demographic data” or “examining others’ proposed remedial plans.” App.17a. Instead, he relied on “other characteristics and criteria” related to communities of interest and political subdivisions. App.17a. The court selected the Remedial Map because it “satisfied all constitutional and statutory requirements while hewing as closely as possible to the Legislature’s 2023 Plan.” App.16a. It has one majority-Black district and one opportunity district with a 48.7% BVAP. App.118a. The Remedial Map was used in the 2024 elections.

E. After an eleven-day trial with over 50 witnesses, the district court held that the 2023 Plan violates the VRA and the Fourteenth Amendment. App.18a.

F. Following *Louisiana v. Callais*, 146 S. Ct. 1131 (2026), this Court vacated the district court’s permanent injunction. But *Callais* did “not overrule[]” *Allen*. *Id.* at 1162. Thus, this Court instructed the district court to give this case further consideration based on *Callais*. *Allen v. Caster*, 146 S. Ct. 1196 (2026).

Alabama’s Legislature cancelled the then-upcoming May 2026 primaries and directed election officials to use the 2023 Plan for the first time in the August special primaries. App.24a-25a. On the same day as this Court’s vacatur, Plaintiffs sought a

temporary restraining order to reinstate the Remedial Map, which had been the status quo for three years, and requested a preliminary injunction shortly thereafter. App.10a.

G. The district court concluded that the 2023 Plan was “tainted by intentional race-based discrimination” and issued its third preliminary injunction on May 26, 2026. App.3a. After an exacting review of the “extensive evidentiary record” with fresh eyes in light of *Callais*, the court again found that the 2023 Plan reflected a calculated, purposeful decision to “prevent Black voters in Alabama’s Black Belt and Gulf Coast communities from having any opportunity to elect representatives of their choice.” App.4a.

The court found that the Chairs and their mapmakers “were focused on race” and took a series of highly unusual steps to enact a map that denied Black voters in CD2 any opportunity to elect a candidate of choice. App.40a-41a. Among other circumstances, the Legislature inexplicably abandoned its own COI Plan, which had provided Black voters in CD2 with some electoral opportunity, passed the House, and complied with all of Alabama’s stated priorities. App.31-32a. For reasons that neither Chair could explain, App.30a-34a, the Senate rejected this plan in favor of one that completely denied Black voters electoral opportunity in CD2. App.32a-34a.

The Chairs denied partisan goals, and neither the 2023 Guidelines nor “legislative findings” mention any partisan goals. App.45a-47a. The district court also found that the findings were simply post hoc

justifications as they were written only *after* the 2023 Plan, Opportunity Plan, and COI Plan were *already* drawn, and departed sharply from the Legislature’s own recently readopted Guidelines. App.34a. The court found they were designed to ensure that the electoral power of Alabama’s Black Belt could not be respected whereas the Gulf Coast, lauded for its “French and Spanish colonial heritage,” had to be prioritized at all costs. App.4a, 37a-38a. These facts, the district court found, supported only one inference: The purpose of the 2023 Plan was to dilute Black voters’ opportunities. App.4a.

On appeal, this Court stayed the preliminary injunction. *Allen II*, 608 U.S. at 514.

REASONS TO DISMISS OR AFFIRM

I. THIS COURT SHOULD DISMISS BECAUSE THE APPEAL IS MOOT.

A. “[T]he question of whether a preliminary injunction should have been issued ... is moot” once that injunction expires. *Honig v. Students of Cal. Sch. for the Blind*, 471 U.S. 148, 149-150 (1985) (*per curiam*) (citation omitted).

This rule applies with full force here. Alabama’s appeal concerns a preliminary injunction enjoining Alabama “from conducting the 2026 congressional elections according to the 2023 Plan.” App.80a. By its terms, the “time-limited” injunction only addressed the 2026 elections. App.77a. This Court, however, stayed that injunction—permitting Alabama to hold its 2026 elections under the 2023 Plan. Those elections are now well underway. Alabama held

primaries on August 11; the candidates have been certified; and the deadline for parties to amend the certifications has now passed. *See* D.Ct. Dkt. 530-1 at 33.

This appeal from the preliminary injunction governing the 2026 election is thus moot. Once this Court stayed the injunction and elections began, the injunction’s terms “fully and irrevocably” expired. *Honig*, 471 U.S. at 149. “No order of this Court could affect the parties’ rights with respect to the injunction.” *Id.* The stay gave Alabama all the relief it needed; a reversal now would be impermissibly advisory. *See Flast v. Cohen*, 392 U.S. 83, 96 (1968).¹ Because this appeal is moot, this Court should dismiss.

B. Defendants ignore this threshold defect in their jurisdictional statement, and any attempt to cure that omission would fail.

This Court has rejected the argument that it can review an expired preliminary injunction because it is “tantamount to [a] decision[] on the underlying merits.” *Univ. of Texas v. Camenisch*, 451 U.S. 390, 394 (1981). This argument “improperly equates ‘likelihood of success’ with ‘success,’ and...ignores the significant procedural differences between

¹ Alabama’s inability to secure meaningful relief also strips Alabama of Article III standing to press its appeal. *See Khalid v. Blanche*, 172 F.4th 876, 885 (D.C. Cir. 2026) (“[T]here is no redressability if a federal court lacks the power to issue such relief.” (citation omitted)).

preliminary and permanent injunctions.” *Id.* Those differences are especially relevant here, where the court issued its preliminary injunction “on a very tight timeline.” App.2a. What is more, the district court’s likelihood-of-success analysis did not have the benefit of this Court’s stay order, which will inform final judgment. *See Trump v. Boyle*, 145 S. Ct. 2653, 2654 (2025).

Alabama’s jurisdictional statement is unabashedly about the merits—not some independent claim—which Alabama can litigate during a “full trial” or other proceedings “on the merits.” *Camenisch*, 451 U.S. at 397-398. This Court should remand to allow those proceedings to take place.

Nor is this issue capable of repetition yet evading review. “[T]he capable-of-repetition doctrine applies only in exceptional situations.” *Alvarez v. Smith*, 558 U.S. 87, 93 (2009) (citation omitted). This narrow exception ensures that a plaintiff’s claim does not evade review, it does not permit defendants to avoid mootness. *See id.* Nor does it apply in interlocutory appeals of preliminary injunctions where the case remains live, and ongoing trial court proceedings will ensure that the case “will not evade review.” *See Kremens v. Bartley*, 431 U.S. 119, 133 (1977). The simplest example of disputes that do not evade review are those where a plaintiff can continue to litigate claims that are identical to the mooted claims. While this appeal is unquestionably moot, whoever loses at the final-judgment stage may appeal in due course. *See id.* at 133-34 (holding that case was moot where, as here, further court proceedings ensured a claim

would not evade review). The parties will have the opportunity for appellate review. There is thus no basis to apply the exception to mootness here.

II. IN THE ALTERNATIVE, THIS COURT SHOULD AFFIRM.

A. The District Court Did Not Clearly Err in Finding that the 2023 Plan Was Intentionally Discriminatory and Violated the Fourteenth Amendment.

Because this case is moot, this Court should not reach the merits. Nonetheless, Plaintiffs address them.

1. The district court correctly found that the 2023 Plan is unconstitutional based on ample direct evidence of intent, which overcame the presumption of legislative good faith. After reexamining the extensive evidence, the district court concluded “the unique reality of this evidentiary record overwhelms the strong presumption of legislative good faith.” App.49a. The district court took pains to “draw every inference [it could] in the Legislature’s favor.” App.29a. But each time, the court found direct evidence contradicting Alabama’s nonracial justifications. The court therefore “[could] []not understand the 2023 Plan as anything other than intentionally discriminatory.” App.3a.

The “presumption of legislative good faith” is strong but is only a “starting presumption.” *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 10 (2024). It is not insurmountable. *See Callais*, 146 S. Ct. at 1151, 1163 (enjoining map despite legislature’s

alleged nonracial motives). Deference to legislative good faith “does not mean [judicial] abdication, and deference does not by definition preclude relief.” *Pitchford v. Cain*, 608 U.S. 391, 401 (2026) (citation modified). Here, despite its great deference, the court correctly “concluded that if this record did not rebut the strong presumption of legislative good faith, we doubt[] the presumption is ever rebuttable.” App.20a.

a. The district court found that key legislators and map-makers “were focused on race.” App.40a; *cf. Alexander*, 602 U.S. at 8 (explaining that evidence of legislators’ “express acknowledgment that race played a role” in map-drawing can overcome the presumption). Legislators set out to use racial data to draw CD2 with a BVAP “low enough to foreclose the election of a Black-preferred candidate.” App.41a. The consultant who drafted the 2023 Plan’s foundation drew his map while examining CD2’s racial data in service of this goal. To check his progress, the consultant texted Senator Livingston “ask[ing] outright, ‘Would 41.6[%] BVAP work?’” in CD2. App.40a-41a. Ultimately, this consultant drew and Livingston sponsored the “Opportunity Plan” with an even lower BVAP of 38.3% in CD2. App.32a. The Opportunity Plan passed in the Senate, forming the basis of the 2023 Plan. App.32a.

The Opportunity Plan differed markedly from the COI Plan, which passed the House. App.157a, 596a. In the COI Plan, CD2 had a 42.4% BVAP, and the Legislature’s analysis showed that Black-preferred candidates would have won two of the four modeled elections. App.31a. That is, the COI Plan modestly

increased opportunities for Black voters compared to the 2021 Plan.

To reconcile the two plans, the Legislature again turned to race. App.40a-41a. It did not examine differences in the plans related to communities of interest, partisan affiliations of voters, or political data. *Id.*; *cf. Vera*, 517 U.S. at 960-63 (finding racial gerrymandering based on “direct evidence” that legislators used racial, not political, data to draw districts). Rather, Representative Pringle testified the Legislature’s goal was to “split the difference” between the BVAPs in the competing plans. App.41a.

Legislators hit their stated goal with surgical precision. The 2023 Plan’s CD2 has a 39.9% BVAP: exactly between CD2’s 42% and 38% BVAP in the COI and Opportunity Plans, respectively. App.15a, 41a, 204a.

To achieve its racial goal, the Legislature “homed in on Alabama’s most well-known and nationally prominent Black community: the City of Selma.” App.33a. Unlike the COI Plan, the 2023 Plan removed Selma and Dallas County from CD2, leaving Black voters there “utterly unable to elect a representative of their choice.” App.33a. Based on testimony from Alabama’s mapmaker, the court found that “legislators actually knew from [an] earlier performance analysis of the [COI] Plan that without Dallas County in [CD2], Black-preferred candidates would have no chance of winning in that District.” App.40a.

There is no evidence that legislators had partisan motives. But, even if they did, the direct evidence is that legislators focused on race and CD2's BVAP to achieve that goal. A legislature cannot "elevate[] race to ... advance other goals, including political ones." *Cooper v. Harris*, 581 U.S. 285, 291 & n.1 (2017); see *Vera*, 517 U.S. at 968-70 (holding race predominated when a legislature deliberately "spread[] the Black population" among districts to "protect[] Democratic incumbents").

Moreover, the COI Plan also achieved any undisclosed incumbency or partisan goal. The special master's analysis showed that Republicans won 14 of the 17 (82%) modelled elections, with a 6-percentage point average margin of victory over Democrats. D.Ct. Dkt. 296-14 at 3. Republicans won all 12 modelled bi-racial races in the COI Plan's CD2 by 10-percentage points on average. *Id.*

The district court correctly found that the Legislature's backfilled justification for linking Baldwin and Mobile at all costs in its "legislative findings" also relied on race and ethnicity, exalting the joining of majority-White Baldwin and Mobile Counties for their French/Spanish colonial heritage. App.37a-38a. Further, the findings simultaneously "eliminate[d] the [prior] express requirement that a plan not dilute minority voting strength." App.606a, App.36a. Indeed, together, Mobile and Baldwin "contain more than 90 percent of the population of a congressional district" and would "submerge[] the City of Mobile," with its significant Black population, therein. App.30a n.13.

Faced with these overtly racial motives and means, racial discrimination was evidently “a motivating factor” here, which is sufficient to show that the State engaged in unconstitutional discrimination. *See Foster v. Chatman*, 578 U.S. 488, 501 (2016); *see also Allen I*, 599 U.S. at 37 (recognizing that purposeful discrimination need not be a “sole[]” motive) (citation omitted).

b. The district court found the strong presumption of good faith rebutted only based on the overwhelming evidence of the Legislature’s racial goals. It did so after giving the Legislature “every benefit of the doubt,” App.30a, but rejecting its explanations as implausible or unsupported, App.42a-49a.

First, the court correctly found that this “enormous record contains no evidence of a partisan motive.” App.4a. Alabama “did not cite partisan goals in defending” the 2021 Plan. *Callais*, 146 S. Ct. at 1161. So too with the 2023 Plan.

Even the Legislature’s post hoc “findings” “state with great particularity many goals and omit entirely party politics.” App.45a. The Chairs, including 2023 Plan sponsor Senator Livingston, testified that, although they spoke to the then-Speaker of the U.S. House of Representatives and other Republican leaders, neither partisanship nor those discussions motivated the 2023 Plan. App.45a-47a.

Even if there was evidence of partisanship—and there is not—a state’s partisan goals do not justify or render irrelevant racially discriminatory intent because these need not be mutually exclusive. *See*

Vera, 517 U.S. at 968-970; *Hunter v. Underwood*, 471 U.S. 222, 230-32 (1985). If it were otherwise, legislatures need only fabricate a non-racial fig leaf to evade any liability for intentional race discrimination. *Cf. Callais*, 146 S. Ct. at 1151, 1163 (rejecting legislature’s claim that incumbent protection rather than race motivated its map). If legislators improperly use race as means to further an “end goal of advancing their partisan interests,” this also fails constitutional muster. *Cooper*, 581 U.S. at 308 n.7. The “Constitution prohibits” this “precise use of race as a proxy.” *Miller v. Johnson*, 515 U.S. 900, 914 (1995).

Nor is there support for Alabama’s contention that the district court “rejected the State’s aim to protect incumbents.” J.S.28-29. The court found that the “novel categorical bar on pairing incumbents” was a post hoc justification that the “findings” elevated from a secondary criterion to a “nonnegotiable.” App.55a. The “findings” were never actually considered during the districting process because they were created by Alabama’s Solicitor General after the 2023 Plan was already selected. App.34a. Instead, the Legislature used the Guidelines to draft its maps, which state only that Alabama should avoid “[c]ontests between incumbents ... *whenever possible*” but only to the extent that this rule “do[es] not violate ... the Constitution and laws of the United States.” App.35a-36a. In any event, the COI Plan did not pair incumbents, App.31a, and Plaintiffs provided a *Gingles* map to the same effect, *Singleton*, 582 F. Supp. 3d at 979-80.

Indeed, a rule against pairing incumbents differs from one requiring maps to ensure their reelection. *See Callais*, 146 S. Ct. at 1161. The Guidelines and even the post hoc “findings” only require the former. App.32a, 36a. Alabama admits that one of Plaintiffs’ plans satisfied this requirement. J.S.15. There is no contemporaneous evidence the 2023 Plan was drawn to guarantee the reelection of incumbents.

Alabama is wrong to claim that the Legislature was sincere in seeking to keep Mobile and Baldwin together at all costs for community-of-interest reasons. J.S.28. The Legislature has repeatedly split Mobile and Baldwin counties, including as recently as 2021 in creating the State Board of Education map. App.37a, 451a-452a. Moreover, the district court found, based on un rebutted testimony, that the *very reason* Alabama first joined Mobile and Baldwin together in 1970 was for “racial reasons” of diluting the Black vote. App.451a.

Finally, even if Alabama had sought to protect the Gulf Coast or pursue partisan goals (which it did not), it could have enacted either the House-passed COI Plan, App.157a, or the “Whole County” or Singleton Plan. Both the Singleton Plan and the COI Plan put the Black Belt in two districts while keeping Mobile and Baldwin counties together in one district. Tr.1332; App.31a. And the COI Plan, App.104a, likely would have maintained the same partisan makeup as the 2023 Plan.

2. *Callais* did not change the standard for intentional racial discrimination under the Fourteenth Amendment.

Plaintiffs alleging intentional vote dilution “must show that the State ‘enacted a particular voting scheme as a purposeful device to minimize or cancel out the voting potential of racial or ethnic minorities.’” *Alexander*, 602 U.S. at 38-39 (quoting *Miller*, 515 U.S. at 911). Many factors are relevant to this inquiry, as set out in *Arlington Heights*. See 429 U.S. at 266-68; see also *Rogers v. Lodge*, 458 U.S. 613, 625 (1982) (applying similar factors in voting cases). And Plaintiffs need only show that “race was a motivating factor” in the adoption of Alabama’s plan. *Ramos v. Louisiana*, 590 U.S. 83, 88 (2020) (emphasis added).

Callais did not overturn decades of precedent on intentional vote dilution without so much as discussing that precedent. *Arlington Heights* is only mentioned to distinguish its application to “claims of racial discrimination” from the Court’s “modified” inquiry in racial gerrymandering cases. *Callais*, 146 S. Ct. at 1143, 1147. In *Allen* too, this Court held that “[d]emonstrating discriminatory intent ... ‘does not require a plaintiff to prove that the challenged action rested solely on racially discriminatory purpose[].’” 599 U.S. at 37 (citation omitted). And *Callais* did “not overrule[] *Allen*.” 146 S. Ct. at 1162.

3. The finding of intentional discrimination does not rest on a mere legal disagreement. Nothing supports Alabama’s claim that the Legislature was instead engaged in good-faith efforts to navigate

“abiding tension in the caselaw about how States navigate the ‘competing hazards of liability’ in redistricting,” J.S.1.

a. The court did not find the State’s map unconstitutional because it failed to provide two majority-minority districts. It found Alabama’s map unconstitutional because of the wide-ranging direct and circumstantial evidence of discriminatory intent. App.27a-49a, 592a-616a.

As the district court recognized, Alabama used racial means and the post hoc cover of creating an “exalted, unsplittable community of interest that was prioritized above every other districting principle” to “prescrib[e] ... a majority-White congressional district.” App.72a. Alabama was unfaithful to principles of race-neutrality. *See supra* 15-18. And Alabama admitted that the 2023 Plan did not comply with the VRA. App.72a; *see* App.39a

b. Alabama also argues that the 2023 Plan satisfied §2 “without using race, ... as its objectives were race neutral and evenly applied,” and asserts that “to the district court, any map without a second majority-minority district was discriminatory.” J.S.1. This is false. The district court itself adopted a race-blind remedial plan that did not contain two majority-Black districts. App.79a, 472a. And Plaintiffs have long acknowledged that the COI Plan and Singleton Plans increased electoral opportunity compared to the 2021 Plan. App.575a.

Yet, for reasons that neither Committee Chair could explain, App.33a-41a, the Senate rejected the

House-backed COI Plan in favor of the “Opportunity Plan.” App.32a. The court’s intent analysis focused on how Alabama shut Black voters out of a second opportunity district in 2023 by passing the worst-performing map among those it considered, App.72a, App.595a-99a, which Pringle admitted likely “did not satisfy” the VRA, App.32a, 598a. Pringle refused to introduce or put his name on the Senate’s “Opportunity Plan,” “out of [his] concern about [its] compliance with federal law.” App.523a; *see* App.32a.

Alabama had an opportunity to pass alternative maps that met all its legislative goals while increasing opportunities for Black voters compared to the 2023 and 2021 Plans. But it rejected those maps in favor of the 2023 Plan, and it did so knowing that Black-preferred candidates would never win in CD2. App.40a; *see also* App.523a, 599a-600a.

The Constitution prohibits the Legislature from intentionally creating a plan that left Black voters with *no* increase in opportunity over to the 2021 Plan after this Court’s preliminary-injunction affirmance. But that’s exactly what it did.

B. The District Court Did Not Abuse its Discretion in Holding that Plaintiffs Were Likely to Succeed on Their Voting Rights Act Claim.

The district court correctly applied the *Callais* updates to the Gingles framework, 146 S. Ct. at 1159, to determine that Plaintiffs were likely to succeed on their §2 claim. App.39a-74a. This was not surprising given the “intensely local corpus of evidence,”

App.73a, in this “extremely unusual” case, App.7a, revealing that “things are still different here in Alabama,” App.73a. The district court did not clearly err in finding that Plaintiffs’ maps meet *Gingles* I. Alabama does not contest that Plaintiffs meet the numerosity requirement, the geographic compactness of the relevant Black population, or that the maps are reasonably configured. App.54a.

In *Callais*, this Court made two modifications to the first precondition, where Plaintiffs must show that Black voters are “sufficiently numerous and compact to constitute a majority in a reasonably configured district.” 146 S. Ct. at 1159. First, Plaintiffs’ “maps must meet all the State’s *legitimate* districting objectives, including traditional districting criteria and the State’s specified political goals.” *Id.* (emphasis added). Second, “plaintiffs cannot use race as a districting criterion” in drawing their illustrative maps such that the maps “would be unconstitutional if a State engaged in such mapmaking.” *Id.*

While meaningful, these updates do not allow Alabama to reverse engineer justifications for its map that are neither part of its traditional nor contemporaneously specified political goals.

1. Plaintiffs’ illustrative maps fully respected Alabama’s political goals, J.S.11-14, to the extent those goals were “constitutionally permissible,” *Callais*, 146 S. Ct. at 1156. Plaintiffs’ maps failed only insofar as Alabama’s goals unconstitutionally discriminated against Black voters by exalting one, majority-White community contrary to Alabama’s

own traditional criteria. And as explained above, Alabama never sought to ensure a particular partisan composition or to “protect incumbents.” Rather, these were post hoc rationales.

Both the inviolable sanctity of Mobile/Baldwin and its “French and Spanish colonial heritage,” App.37a, and the conversion of avoiding incumbent pairing to all-out incumbent protection are “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). Plaintiffs’ maps need not account for them.

a. Regarding communities of interest, three years ago, this Court agreed that “black voters could constitute a majority in a second [congressional] district that was ‘reasonably configured.’” *Allen I*, 599 U.S. at 19. Reading *Allen* and *Callais* together, meeting these requirements does not require mathematical exactitude unless it is specified by the State, given that courts still not need conduct “beauty contest[s]” and “[d]istricting involves myriad considerations” requiring “map drawers to make difficult, contestable choices.” *Allen I*, 599 U.S. at 21, 35. And this Court rejected the need for Plaintiffs to satisfy a State’s desire for district “core retention” in its illustrative plans, *id.* at 21-22, because then “a State could immunize from challenge a new racially discriminatory redistricting plan simply by claiming that it resembled an old racially discriminatory plan,” *id.* at 22.

The prioritization of certain communities above others was not a stated “political goal” during the legislative process. App.34a. At the time state mapmakers drew the 2023 Plan, no one asserted a need to combine Mobile and Baldwin *at any cost*. This emerged as a “nonnegotiable” goal only *after* the map was drawn, on the day the 2023 Plan was enacted. App.34a-35a. In the Guidelines re-enacted by the Committee just days before, there was no mention of any specific community, and communities of interest were relegated to second-tier criteria below VRA compliance and compactness. App.85a-86a.

It was only the post hoc “findings” that decreed that three specific communities—the Black Belt, the Gulf Coast, and the Wiregrass—be “kept together to the fullest extent possible in this congressional redistricting plan.” App.95a. No legislator requested these “findings”—they were drafted by Alabama’s then-Solicitor General and inserted into the bill to reverse-engineer a justification for the continued vote dilution in anticipation of litigation. App.200a. No one used these findings to draw a single map.

Even if this Court allows Alabama to invent “political goals” mid-cycle after being told that its 2021 map likely violated the VRA, Alabama concedes that it is “mathematically impossible” to keep all three designated communities of interest whole. App.455a. Plaintiffs should not need to respond to such illusory requirements. The inquiry should concern “the actual considerations that provided the essential basis for the lines drawn, not post hoc justifications.” *Bethune-Hill*, 580 U.S. at 189-90.

To the extent the primacy of uniting Mobile and Baldwin above all other priorities represented an actual legislative goal, however, it was an impermissible one. As the district court found (and no party disputed), Alabama combined Mobile and Baldwin counties in the 1970s to dilute the new post-VRA voting power of Black voters—an impermissible goal. App.451a. Indeed, Alabama cites “the Legislature’s practice for 50 years” of pairing these communities, but this only admits how the 2023 Plan perpetuates those discriminatory effects. J.S.28. Designating a particular community for special treatment has no history in Alabama’s legitimate districting principles. App.37a. Alabama’s “inconsistent treatment” of White and Black communities in drawing the 2023 Plan is “significant evidence” of racial discrimination. *Johnson v. De Grandy*, 512 U.S. 997, 1015 (1994). Indeed, this Court rejected the argument that it was clear error to credit an illustrative map that joined the Black Belt rather than exalt “the Gulf Coast region.” *Allen I*, 599 U.S. at 21.

This is important because this Court expressly did “not overrule[] *Allen*” in *Callais*. 146 S. Ct. at 1162. Rather, *Callais* presented different issues: Unlike Louisiana, Alabama “did not cite partisan goals in defending” its map. App.45a.

As to incumbency, as explained *supra* at 19-20, Alabama has consistently only sought to avoid incumbent *pairing* when possible, a distinct criterion from all-out incumbent “protection” as this Court explained in *Callais*. App.46a. No *current* incumbents

are paired in Plaintiffs' plans. App.457a-58a. And one of Plaintiffs' plans avoided pairing 2023 incumbents. *Singleton*, 582 F. Supp. 3d at 979-80.

b. In *Allen*, this Court explained that “[t]he 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.” 599 U.S. at 34 n.7. *Callais* did not change this principle. This Court explained that plaintiffs’ illustrative maps must not employ race as a “districting criterion” such that it would be improper if done by a state and pointed to *Alexander* for where this line lies. *Callais*, 146 S. Ct. at 1159. In turn, *Alexander* held that it was not unconstitutional for a state’s map-drawer to reference racial data to check for VRA compliance, including after each version they drew. 602 U.S. at 22.

Alabama cannot show clear error in the district court’s finding that Dr. Duchin’s maps also did not cross this line. This Court has already held that Dr. Duchin would be able to satisfy a “race-blind” standard in creating two majority-BVAP districts in Alabama, *Allen I*, 599 U.S. at 34 n.7, and the district court found on remand that Dr. Duchin “‘just did not look at race’ as she placed district lines.” App.52a. She only checked racial data on the back-end *after* drawing plans, just like the map-drawer in *Alexander*, “‘to see if the plan, as whole, had that property of two majority-Black districts,’ in order to comply with the numerosity requirement of *Bartlett*.” App.52a.

Alabama also stipulated below that the Special Master drew his maps race-blind. App.633a. This supports the view that “Dr. Duchin was correct when she testified that it is possible to draw many race-blind illustrative maps.” App.54a.

Alabama’s post hoc justifications and misreading the law do not demonstrate clear error on *Gingles* I.

2. Alabama’s extreme racially polarized voting is driven by race, not partisan affiliation. Indeed, assessing racially polarized voting in light of *Callais*, the district court found that “all the evidence” shows “that race is the core driver of voting behavior and election results in Alabama” and neither “Alabama’s stark patterns of racial bloc voting” nor “the extreme electoral failures of Black-preferred candidates” are primarily attributable “to party politics.” App.61a, 271a-74a.

No one contests that “voting in Alabama, particularly in the districts at issue, is intensely and extremely racially polarized.” App.57a. The only issue Alabama raises is whether the district court failed to “account[] for politics.” J.S.i. But the district court expressly did so. App.58a-60a. It did not clearly err in reaching the conclusion that race, rather than party, drives bloc voting in Alabama. Because Alabama ignores or does not challenge most of the underlying evidence that supports these findings, Alabama cannot show clear error.

a. The district court recognized that after *Callais*, plaintiffs must “disentangle party and race,” so it

“carefully re-examined all the evidence” with this inquiry in mind. App.58a.

First, the court looked to party primaries. *Callais* also highlighted primaries as probative: when White voters within a political party “often rank[] black candidates last,” these “intra-party disparities showed that black voters had less opportunity to elect their preferred candidate because of their race, not because of their partisan affiliation.” *Callais*, 146 S. Ct. at 1158. The district court relied on such evidence here.

Notably, “the Republican Party is [now] Alabama’s dominant political party.” App.61a. In its primary for CD2 in 2024—the district created after affirmance by this Court in 2023—“four Black candidates ... together amassed only six percent of the primary vote, all of them finishing behind the four White candidates.” App.58a. Indeed, a White political novice in his twenties received more votes than all four Black Republicans *combined*, Tr.1292. Alabama’s own expert admitted that it is rare for a Black Republican to make it to the general election or win such elections. Tr.1832-33, 1781. This is not for lack of candidates. Black candidates ran in eleven Republican primaries for statewide or congressional office in Alabama in 2022 and 2024 and lost to White candidates in ten of them. App.332a, 388a. Alabama’s expert called the election of one Black Republican a “unicorn,” App.395a, and could not name a single successful Black Republican general election candidate for statewide office in this century or the last, Tr.1832-33.

Evidence about Democrats also reveals the determinative role of race in Alabama politics. Alabama’s expert conceded that the data on racial-voting patterns “established ‘that White voters in Alabama support White Democrats more than they support Black Democrats,” App.59a, and that it is rare for “a white Democrat [to] defeat[] a black Democrat in the primary in a majority-black district,” Tr.1818.

This pattern is stark enough that Alabama’s expert confirmed that, across many recent elections, White voters supported White Democrats for the Alabama Supreme Court at twice the rate they supported Black Democrats. App.335a. Extreme racial bloc voting characterized the 2020 Democratic Primary for CD1 and two non-partisan Montgomery mayoral elections in 2019 and 2023. App.58a-59a. In the 2008 *general* elections, majorities of White Democrats supported White Republicans for President and Senate above Black Democrats. App.58a, Tr.590. That same year, clear majorities of White Democrats supported Hillary Clinton and Black Democrats supported Barack Obama in the primary. App.250a. While Alabama implies this 2008 data is stale, J.S.19, it offers no rebuttal to the more recent elections.

Ultimately, no Black candidate of either party has won election to Congress in Alabama from a majority-White district, Tr.1834, though White Democrats won in several such districts as recently as 2008, Tr.1746. And while every Black Democratic candidate for statewide office this century has lost their general-

election race, several White Democrats have prevailed, as recently as 2017. Tr.1746.

Alabama's own witnesses provided further evidence that "the Black-White dichotomy" in Alabama "transcends voters' partisan affiliations." App.61a. Dr. Trey Hood testified about "the primacy of race" in Alabama politics. App.479a. Two Black Republican candidates called by Alabama testified about receiving support from Black Democrats, and about Black voters generally supporting Black candidates, party aside. D.Ct. Dkt. 441-2 at 876:10-877:9, D.Ct. Dkt. 441-6 at 1381:21-24. Senator McClendon—the chair of the Senate's 2021 redistricting committee—also testified that Black voters tend to vote for Black candidates. App.301a.

Alabama does not address or rebut this evidence. Thus, the court did not err in finding "race is the core driver of voting behavior and election results in Alabama." App.61a.

b. Alabama failed to rebut Plaintiffs' evidence and bases its arguments on erroneous premises. Rather, Alabama takes a statement from the district court out of context to imply that it is impossible to disentangle race and party in Alabama. J.S.18. But, using the evidence above, the district court did just that. App.58a-60a. It credited extensive evidence, App.486a-491a, finding "no evidence that only party politics are at work," App.487a. Regardless of party, White voters did not appear "willing to support minority candidates [of their own party] in large numbers." App.491a. Following from this, the court

also noted that *in addition* to this disentangling, it “must not ignore the powerful role that voters’ race plays in their partisan attachments.” App.494a. In other words, race and party are separable in terms of voting patterns in Alabama, but even in choosing party affiliation, race plays a fundamental role for voters.

Plaintiffs need not use one specific form of analysis to disentangle race and party. *Callais* does not call for a one-size-fits-all approach to proving that racial voting patterns occur “not just because of partisan affiliation.” 146 S. Ct. at 1159. Liability “must be determined ‘based on the totality of circumstances,’” and any “single-minded view of § 2 cannot be squared with the VRA’s demand that courts employ a more refined approach.” *Allen I*, 599 U.S. at 26. Indeed, “[a]n inflexible rule would run counter to the textual command of § 2.” *De Grandy*, 512 U.S. at 1018.

Further, Alabama wrongly implies that Plaintiffs must indisputably prove that “intentional racial discrimination” drives the electorate. J.S.20. But this Court rejected the dissent’s characterization of *Callais* as requiring proof of intent, instead requiring evidence that “give[s] rise to a strong inference of racial discrimination.” 146 S. Ct. at 1162. Indeed, *Allen* reaffirmed that the risk of vote dilution “is greatest ‘where minority and majority voters consistently prefer different candidates’ and where minority voters are submerged in a majority voting population that ‘regularly defeat[s] their choices.’” 599 U.S. at 18 (citation omitted). And this Court has “not overruled *Allen*.” *Callais*, 146 S. Ct. at 1162.

The district court did not clearly err when it relied on extensive evidence to find that race, not party, “is the core driver of voting behavior and election results in Alabama.” App.61a.

3. There can be no doubt that Alabama has engaged in recent intentional discrimination in voting and other areas, which results in inequalities in the political process. This Court explained in *Allen* that a §2 violation occurs “when minority voters face—unlike their majority peers—bloc voting along racial lines, arising against the backdrop of substantial racial discrimination within the State,” thus creating unequal voting power. 599 U.S. at 25. This requires a “searching practical evaluation of the past and present reality.” *Id.* at 19 (citation modified). *Callais* did not change this standard but clarified that the evidence should have “more than a remote bearing on ... present-day intentional racial discrimination regarding voting.” 146 S. Ct. at 1160.

a. Alabama falsely asserts, J.S.20, that the district court relied on evidence that sheds little light on “present-day intentional racial discrimination.” The record proves otherwise:

- This Court’s affirmance that Alabama’s 2021 districting plan likely violated §2. *See Allen I*, 599 U.S. at 42.
- Black voters successfully challenged state legislative districts as unconstitutional racial gerrymanders, *see Ala. Legis. Black Caucus v. Alabama*, 231 F. Supp. 3d 1026, 1348-49 (M.D. Ala. 2017), which “bears an uncomfortable resemblance to

political apartheid,” *Shaw v. Reno*, 509 U.S. 630, 647 (1993).

- Legislative leaders called Black Alabamians “Aborigines” during their effort to suppress Black voter turnout in 2010, leading to a court finding “compelling evidence that political exclusion through racism remains a real and enduring problem” in Alabama and that “racist sentiments” remain “regrettably entrenched in the high echelons of state government.” *United States v. McGregor*, 824 F. Supp. 2d 1339, 1345-47 (M.D. Ala. 2011).

- The Legislature’s 2024 restrictions on assistance for illiterate voters likely violated the VRA. *See Ala. State Conf. of NAACP v. Marshall*, No. 24-CV-00420, 2024 WL 4282082, at *6 (N.D. Ala. Sept. 24, 2024), *stay denied* No. 24-13111, 2024 WL 4481489 (11th Cir. Oct. 11, 2024). As the district court found, “[i]lliteracy primarily burdens Black Alabamians,” App.446a, especially in the Black Belt where illiteracy rates are “as high as 30 percent,” App.69a.

- The Alabama Legislature enacting and maintaining dilutive or intentionally discriminatory at-large election systems. *Jones v. Jefferson Cnty. Bd. of Educ.*, No. 19-cv-01821, 2019 WL 7500528, at *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).

- Alabama is the only state with multiple political subdivisions bailed back into preclearance under the VRA due to recent acts of intentional discrimination. *See Braxton v. Town of Newbern*, No.

23-CV-00127, 2024 WL 3519193 at *3 (S.D. Ala. July 23, 2024); *Jones*, 2019 WL 7500528, at *4-5; *Allen v. City of Evergreen*, No. 13-0107, 2014 WL 12607819, at *2 (S.D. Ala. Jan. 13, 2014).

These decisions are further evidence of ongoing, contemporary intentional discrimination in Alabama’s political system. The district court’s findings rested on “current data” about “current political conditions,” *Callais*, 146 S. Ct. at 1160, and not, as Alabama contends, discrimination from “sixty years ago,” J.S.22.

Strong evidence of ongoing racial appeals buttresses these findings. Over the last decade, Congressman Mo Brooks repeatedly railed about a “war on [W]hites.” App.71a. In 2017, then-Senate candidate Roy Moore complained that the Reconstruction Amendments had “wreck[ed]” our government and described the antebellum South as “great ... even though we had slavery.” App.70a-71a. And there was testimony from the appointed regional director of the State Republican Outreach Coalition regarding his social media posts, which associated Democrats with “Black power” and “mobs” and Republicans with “patriotism” and imagery he admitted the FBI has labeled “White Supremac[ist].” App.411a-12a.

The district court also considered extensive evidence of official discrimination in areas like education that bear heavily on political participation. App.69a. Today, three of Alabama’s largest school districts remain engaged in ongoing desegregation

cases, which include recent intentional discrimination findings. App.66a-67a. Many other districts have failed to eliminate the vestiges of intentional discrimination and so remain subject to court orders, App.514a. It is unsurprising, then, that “the bottom 6 percent of the state’s schools,” are “majority Black, most overwhelmingly so.” App.68a. The court found that the Black Belt’s “disproportionately high illiteracy rates” are tied to this present-day discrimination. App.69a.

Ignoring these inferences of intentional discrimination, Alabama contends that the district court inappropriately relied on socioeconomic disparities. J.S.21. But the district court afforded “less weight” to such evidence, and only credited those disparities based on “recent data,” App.67a.

Alabama suggests that these disparities and others do not relate to discrimination in voting. J.S.21. But the court found (and explained) how socioeconomic disparities “hamper voting participation due to an inability to read ballots, learn about candidates, absentee vote, locate voting information, and travel to polls.” App.277a, *see also* App.70a.

Other current evidence highlights the second-class status imposed on Black Alabamians. Alabama’s Black Belt lacks “proper sewage and drinking water systems and had unreliable electricity,” resulting in “whole households [falling] ill with infections contracted from drinking water contaminated with raw sewage.” App.68a. These conditions impair Black

residents’ ability to get by, let alone engage in the political process. App.68a.

Alabama also asserts that the district court erred by not crediting “data proving ‘racial parity in voter registration and turnout.’” J.S.21. But it “badly misstate[s] the record.” App.461a. Undisputed data show that there “is a racial gap in voter registration and turnout” App.274a, with Black voters’ turnout lagging behind White voters in 2018, 2020, and 2022, especially in the Black Belt, Tr.969-970. For example, in the 2020 election, turnout was 66% for White voters and 57% Black voters, a nine-point disparity statewide. D.Ct. Dkt. 485 ¶¶ 495-506.

The district court did not clearly err in relying on this extensive record.

* * *

Callais modified the §2 standards. But this is an “extremely unusual” case, App.7a, with evidence that creates—at the very least—a strong inference of discriminatory intent.

C. The District Court Did Not Abuse its Equitable Discretion.

The necessity of this 2026-specific injunction is now moot. *See supra* 11-14. Nonetheless, the district court properly reconsidered the equities on a “clean slate” after *Callais*. App.75a.

1. The court’s conclusion that Plaintiffs would suffer irreparable harm if they were forced to vote “under a plan that is unconstitutional” is deeply rooted in precedent and was not an abuse of

discretion. *See* App.74a-76a. The public has a “strong interest in exercising the fundamental political right to vote,” *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (citation modified), and the loss of that fundamental right “unquestionably constitutes irreparable injury,” *Elrod v. Burns*, 427 US 347, 373 (1976).

Alabama identifies no abuse of discretion but complains that the court “discount[ed]” Alabama’s “inability to enforce its” preferred map. J.S.34. That is wrong: The court weighed that interest against the “irreparable harm” to citizens’ right to vote and concluded that it “must give greater weight to” protecting voters. App.75a. It is not an abuse of discretion to prioritize citizens’ rights and the court’s “own duty to cure” unconstitutional districts. *North Carolina v. Covington*, 585 U.S. 969, 977 (2018).

2. The preliminary injunction was appropriately tailored. Alabama argues that the preliminary injunction was overbroad and a “purely negative injunction” directing Alabama not to use the 2023 Plan “would have sufficed.” J.S.35. This issue is moot.

Regardless, Alabama does not (and cannot) explain how the Legislature could have drafted, enacted, and implemented a lawful map in the seven days between the district court’s ruling and the date “voter records” “lock[ed]” for the 2026 congressional primaries. App.8a. The district court thus appropriately directed the State to use the 2023 remedial map—which governed “the last congressional elections” and “the 2026 congressional elections until” “fifteen days” before the court’s ruling—and was lawful, “race-

blind,” “hew[ed] as closely as possible to the 2023 Plan,” and was adopted in accordance with this Court’s *Allen* decision. App.79a.

CONCLUSION

This Court should dismiss this case as moot. Alternatively, the preliminary injunction should be either affirmed or set for full briefing and argument.

Respectfully submitted,

September 18, 2026

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