No. 25-13007

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ALABAMA STATE CONFERENCE OF THE NAACP, *et al.*,
Plaintiffs-Appellees,
v.
SECRETARY OF STATE FOR THE STATE OF ALABAMA,
Defendant-Appellant.

On Appeal from the United States District Court
for the Northern District of Alabama
Case No. 2:21-cv-01531-AMM

PLAINTIFFS' OPPOSITION TO MOTION FOR STAY PENDING APPEAL

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rules 26.1-1 through 26.1-5, the undersigned counsel certifies that the following listed persons and parties may have an interest in the outcome of this case:

1. ACLU of Alabama
2. Aden, Leah C.
3. Alabama Attorney General's Office
4. Alabama State Conference of the NAACP
5. Allen, Amanda N.
6. Allen, Hon. Wes
7. American Civil Liberties Union Foundation
8. Ashton, Anthony
9. Balch & Bingham LLP
10. Barnes, Anna-Kathryn
11. Bowdre, A. Barrett
12. Burke, Colin
13. Burrell, Ashley
14. Campbell-Harris, Dayton

15. Carter, Brittany
16. Chandler, Laquisha
17. Davis, James W.
18. Douglas, Scott
19. Duggan, Matthew R.
20. Dunn, David
21. Ebenstein, Julie A.
22. Ellsworth, Jessica L.
23. Ettinger, James W.
24. Faulks, LaTisha Gotell
25. Gbe, Harmony R.
26. Geiger, Soren A.
27. Genberg, Jack
28. Greater Birmingham Ministries
29. Harris, A. Reid
30. Hattix, Laurel Ann
31. Heard, Bradley E.
32. Hogan Lovells US LLP
33. Jackson, Sidney

34. LaCour Jr., Edmund G.

35. Lakin, Sophia Lin

36. Lancaster, Riley Kate

37. Lawsen, Nicki

38. Lee, Theresa J.

39. Livingston, Sen. Steve

40. Manasco, Hon. Anna M.

41. Marshall, Hon. Steve

42. Mauldin, Dylan L.

43. Maze, Hon. Corey L.

44. McClendon, (former) Sen. Jim

45. McKay, Charles A.

46. Merrill, Hon. John H.

47. Messick, Misty S. Fairbanks

48. Milligan, Evan

49. Mink, Richard D.

50. Mollman, Alison

51. NAACP Legal Defense and Educational Fund, Inc.

52. Naifeh, Stuart

53. National Association for the Advancement of Colored People

54. Newsom, Hon. Kevin C.

55. Overing, Robert M.

56. Pringle, Rep. Chris

57. Rosborough, Davin

58. Ross, Deuel

59. Sadasivan, Kathryn

60. Seiss, Benjamin M.

61. Shapiro, Avner

62. Short, Caren E.

63. Simelton, Benard

64. Smith, Brenton M.

65. Southern Poverty Law Center

66. Stewart, Shelita M.

67. Stone, Khadidah

68. Taunton, Michael P.

69. Thomas, James

70. Thompson, Blayne R.

71. Turrill, Michael

72. Unger, Jess

73. van Leer, Jacob

74. Walker, J. Dorman

75. Wallace, Janette McCarthy

76. Weisberg, Liza

77. Welborn, Kaitlin

78. Wiggins, Childs, Pantazis, Fisher & Goldfarb, LLC

79. Wilson, Thomas A.

80. Woodard, J. Scott

No publicly traded company or corporation has an interest in the outcome of the case or appeal.

Respectfully submitted this 17th day of October 2025.

/s/ Davin Rosborough

Counsel for Plaintiffs-Appellees

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INTRODUCTION

After an eight-day trial, including twenty live witnesses, the district court faithfully applied the Supreme Court's two-year-old decision in *Allen v. Milligan*, 599 U.S. 1 (2023), to the "extensive record" in this case. *Ala. State Conf. of the NAACP v. Allen* ("*Ala. NAACP*"), No. 2:21-cv-1531-AMM, 2025 WL 2451166, at *1 (N.D. Ala. Aug. 22, 2025). Because both *Milligan* and this case arose out of overlapping regions of Alabama at the same time, much of the trial evidence was identical to or stronger than the preliminary-injunction record in *Milligan*. Order, Dkt. 40-3 at 5.[1] The court below had no problem applying the recent *Milligan* precedent to the similar facts here to hold that Alabama's Senate map (like its congressional plan) violates Section 2 of the Voting Rights Act ("VRA").

A stay pending appeal is always an "exceptional response," *Garcia-Mir v. Meese*, 781 F.2d 1450, 1453 (11th Cir. 1986), but Alabama's motion here asks the impossible. Granting Alabama's motion would require this Court to leap over the appropriate standard of review, and to disregard an extensive trial record, closely related recent precedent, the equities, and Rule 8 of the Federal Rules of Appellate Procedure. Alabama cannot clear these high hurdles.

First, the Secretary argues that he is likely to succeed because he disagrees

[1] Citations to "Dkt." are to this Court's docket unless otherwise noted.

with the district court's conclusion that Black Alabamians in the Montgomery area face unequal opportunities to participate in the political process under the State Senate map. Mot. 7-10. He cites a single statistic from one year in one county and a 12-year-old case concerning different maps and a different region. Mot. 8-9 (citing *Ala. Legislative Black Caucus* v. *Alabama* ("*ALBC*"), 989 F. Supp. 2d 1227 (M.D. Ala. 2013), *vacated and remanded on other grounds*, 575 U.S. 254 (2015)). He then asks this Court to disregard the statutory "totality of the circumstances" standard in favor of his single, cherry-picked piece of quantitative evidence. Mot. 9-10. His approach fails in every way. The district court's nearly 250-page decision details how "official discrimination on the basis of race . . . continues to affect Black Alabamians' lives and political participation today." *Ala. NAACP*, 2025 WL 2451166, at *75-78 (summarizing, among other evidence, a "pervasive and protracted history of official discrimination," including "multiple cases" issued in the last decade "by federal judges who remain in service today").

Second, the Secretary misinterprets one case where another circuit affirmed the denial of a preliminary injunction to argue that Plaintiffs here cannot prove the existence of racially polarized voting. Mot. 11-12 (citing *Pierce v. N.C. State Bd. of Elections*, 97 F.4th 194, 232 (4th Cir. 2024)). But, unlike in that case, the court here found "ample evidence of intensely racially polarized voting." *Ala. NAACP*, 2025

WL 2451166, at *2. Based on Alabama's stipulations and its own experts' testimony, *id*. at *70-74, the court correctly held that Black voters' preferred candidates, regardless of party, are "consistently (nearly invariably) . . . defeated by the White majority," *id.* at *65-67.

Third, granting a stay would cause Plaintiffs irreparable harm by denying them any opportunity for a fair map in the 2026 State Senate elections. In contrast, the Secretary cannot show anything more than the possibility of mere administrative inconvenience. As to the public interest, "[f]rustration of federal statutes and prerogatives are not in the public interest," and the Secretary suffers "no harm from the state's nonenforcement of invalid legislation." *United States v. Alabama*, 691 F.3d 1269, 1301 (11th Cir. 2012); *see Ala. State Conf. of NAACP v. Att'y Gen.*, No. 24-13111, 2024 WL 4481489, at *1 (11th Cir. Oct. 11, 2024) (denying a stay where Alabama failed to make "a strong showing" that it is "likely to succeed on the merits" and where a stay "would injure the plaintiffs" and other impacted voters).

While the Secretary makes dramatic claims about the impossibility of implementing a map while the Supreme Court considers in *Louisiana v. Callais* whether states may adopt remedial maps with racial targets, he ignores that Plaintiffs here *already* submitted proposed remedial maps to the Special Master drawn without *any* consideration of racial data or *any* racial targets. *See* Pls.' Notice of

Submission of Proposed Remedial Plans, *In Re Redistricting 2025*, No. 2:25-mc-01682-AMM (N.D. Ala. Oct. 9, 2025), Dkt. 7 (attached as Ex. A). Moreover, the district court appointed the same Special Master team that "prepared race-blind remedial maps in the Alabama congressional redistricting litigation." Dkt. 40-3 at 6. As the court explained, the Secretary's "apparent assumption that a court-drawn map will impermissibly consider race is unfounded and premature." *Id.* It also violates the principle against using a pending Supreme Court case as "a basis to grant relief that would otherwise be denied." *In re Bradford*, 830 F.3d 1273, 1275 (11th Cir. 2016).

Finally, the Secretary's motion violates Rule 8(a) of the Federal Rules of Appellate Procedure by seeking a stay pending appeal in this Court without having first sought one on the same grounds in the district court or explaining why doing so was impracticable. In the district court, the Secretary only sought to stay remedial proceedings pending the Supreme Court's decision in *Callais*, *see* Dkt. 40-4, and the district court analyzed the stay on that basis, *see* Dkt. 40-3. In contrast, the Secretary's motion here is premised on broader grounds than those addressed by the district court.

Rather than showing clear factual or legal error, the Secretary's motion attempts again "to remake [the Supreme Court's] § 2 jurisprudence anew," *Milligan*,

599 U.S. at 23, but this time on an interlocutory stay motion. The Secretary does not remotely meet his burden for the extraordinary relief of a stay pending appeal.

ARGUMENT

Granting a stay pending an appeal is an "exceptional" occurrence—appellate courts "must always be diffident in interposing [their] power . . . into the province of the trial court and its orders save upon full briefing and mature reflection." *Garcia-Mir*, 781 F.2d at 1453. Appellants must make a "strong showing" of likelihood of success on the merits and irreparable injury absent a stay, both of which require "more than the mere possibility." *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1317 (11th Cir. 2019) ("*DECF*"); *see also Fla. Immigrant Coal. v. Att'y Gen.*, No. 25-11469, 2025 WL 1625385, at *4 (11th Cir. June 6, 2025) (denying a stay on a close question because the appellant had "not made a 'strong showing' on this issue"). The Court also considers if issuing a stay will substantially injure other parties and where the public interest lies. *DECF*, 915 F.3d at 1317.

In reviewing the likelihood of success, this Court must uphold "[t]he District Court's determination whether the § 2 requirements are satisfied . . . unless clearly erroneous," or based on a "misreading of governing law." *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 427 (2006). The district court's findings merit deference "due to its special vantage point and ability to conduct an intensely local

appraisal of the design and impact of a voting system." *Negron v. City of Miami Beach, Fla.*, 113 F.3d 1563, 1566 (11th Cir. 1997) (citation modified).

I. The Secretary Fails to Make a Strong Showing that the District Court Clearly Erred in its Factfinding or Applied the Wrong Legal Standard.

In finding that Alabama's State Senate map violated Section 2 in the Montgomery region, the district court applied the legal test that "has been the controlling test for forty years," and which the Supreme Court reaffirmed "two years ago in an Alabama case involving substantial evidentiary overlap with this case." Order at 5, Dkt. 40-3 (citing *Thornburg v. Gingles*, 478 U.S 30 (1986), and *Milligan*, 599 U.S. at 23). It faithfully applied that test on "an extensive record," formed after "an eight-day trial, live testimony from twenty witnesses (including ten experts)," and "joint stipulations of fact that span twenty-seven pages." *Ala. NAACP*, 2025 WL 2451166, at *1.

The Secretary makes three arguments in response. First, he asks this Court to find that the district court clearly erred in evaluating equal opportunity because of one statistic and the abbreviated findings in another case concerning a different region and another map drawn thirteen years ago. Mot. 7-10. Second, he asks this Court to disregard his own stipulation, the record, and controlling precedent about whether, under the third *Gingles* precondition, "the challenged districting thwarts a

distinctive minority vote at least plausibly on account of race," *Milligan*, 599 U.S. at 19 (citation omitted). Mot. 11-12. Third, he asks this Court to analyze only "measurable" rather than "qualitative" evidence. Mot. 13. But there was ample statistical evidence in the record demonstrating racial disparities that affect voting. *Ala. NAACP*, 2025 WL 2451166, at *79-81. Moreover, Section 2's "textual command" requires conducting a "totality of circumstances" inquiry. *Milligan*, 599 U.S. at 26 (citation omitted).

None of these arguments indicate a likelihood of success on appeal.

A. The Court Correctly Analyzed Equal Opportunity and Did Not Clearly Err in Finding that Montgomery's Senate Districts Failed to Provide Black Voters an Equal Opportunity to Participate.

The district court found that Black Alabamians lack an equal opportunity to participate in the political process after "carefully consider[ing] an extensive record about both past and present discrimination, and a wealth of expert analysis of recent data about Black Alabamians' lives and voting patterns, along with other evidence." *Ala. NAACP*, 2025 WL 2451166, at *75. The record reflected "(without meaningful dispute) stark racial socioeconomic disparities that (1) are clearly traceable to Alabama's lengthy history of official discrimination, and (2) unsurprisingly hinder Black Alabamians' political participation." *Id.* at *81. The court also found that "Black Alabamians enjoy zero success in statewide elections." *Id.* at *74. It also

cited "substantial evidence" that "race is a driving factor in Black Alabamians' . . . voting patterns" and that "White Republicans are not willing to support minority candidates in large numbers," so it could not "understand the patterns it sees as mere party politics." *Id.* at *72-74.

The Secretary attempts to rebut this by pointing to *ALBC*, a case from over a decade ago. Mot. 7-9. There, a court rejected a Section 2 claim against some of Alabama's 2012 state legislative districts for not meeting the first *Gingles* precondition. 989 F. Supp. 2d at 1281-83. The *ALBC* court's finding on this point resolved that claim. But the Secretary cites the portion of *ALBC* where the court, writing briefly in the alternative, found that the plaintiffs failed to prove unequal opportunity in the political process. *Id.* at 1285-87. Of course, "the totality of circumstances inquiry . . . is peculiarly dependent upon the facts of each case," and requires "an intensely local appraisal of the electoral mechanism at issue, as well as a "searching practical evaluation of the past and present reality." *Milligan*, 599 U.S. at 19 (citation modified).

The records of these cases could not be more distinct. For one, in the decade since the *ALBC* decision, federal courts have issued numerous decisions finding that Alabama has violated the VRA or the constitutional rights of Black voters. *See Ala. NAACP*, 2025 WL 2451166, at *77-78. Among other recent indicia of

discrimination unavailable at the time of *ALBC* is that Alabama is the only state where, since 2013, "more than one political subdivision" has been "bailed back into preclearance review" under the VRA. *Id*. at *77. And earlier this year a three-judge court unanimously found that Alabama intentionally discriminated against its Black voters in enacting its 2023 congressional plan. *Singleton v. Allen*, 782 F. Supp. 3d 1092, 1356 (N.D. Ala. 2025).

Further, unlike the *ALBC* plaintiffs who presented no evidence on racial appeals or a lack of responsiveness, 989 F. Supp. 2d at 1286-87, the court here cited significant evidence on these issues, and expert testimony that the court largely found "credible and helpful," *Ala. NAACP*, 2025 WL 2451166, at *68. By contrast, the court "assign[ed] very little weight" to the testimony of the Secretary's expert on political participation, citing how he "chose not to examine Alabama-specific data," "repeatedly offered opinion testimony without support," *id.* at *69, and was "dogmatic, defensive, and deliberately confrontational" including in explaining his statement that "people in the hood" have the "same taste[s] and drives as Neanderthal rapists." *Id.* at *69-70. The Court assigned "no weight" to another of the Secretary's experts, citing how he "ma[de] little to no effort to learn about Alabama" and "did not conduct an Alabama-specific analysis." *Id.* at *70. Because appellate courts "give particular deference to credibility determinations of a fact-

finder[s] who had the opportunity to see live testimony," *Owens v. Wainwright*, 698 F.2d 1111, 1113 (11th Cir. 1983), the district court's assessment of these witnesses' testimony matters.

Second, the Secretary contends that in 2020, Black and White Alabamians in the Montgomery area had a comparable voter registration rate, so this must "cripple Plaintiffs' case." Mot. 9. But the Secretary's argument crashes headlong into the facts and the court's analyses. To start, the undisputed evidence is that White *turnout* in the 2020 general election *exceeded* Black turnout in Montgomery County by 11.8% and in Elmore County by 16.2%, which is "the best estimate of whether a person is voting and participating in politics." Trial Tr. 693-94 (attached as Ex. B); Burch Report, Dkt. 40-8 at 7. By the Secretary's own definition, Plaintiffs should prevail. And this Court has found smaller turnout disparities of five to ten points sufficient to "show that the effects of past discrimination still linger." *United States v. Dallas Cnty. Comm'n*, 739 F. 2d 1529, 1538 (11th Cir. 1984); *see also Milligan*, 599 U.S. at 22-23 (finding an inequality in participation without reference to voter registration or turnout data). Additionally, the district court did "not consider socioeconomic disparities . . . in a vacuum" or grant relief "simply because" of statistical disparities. *Ala. NAACP*, 2025 WL 2451166, at *81. It heard "compelling testimony from Black Alabamians who personally experienced official

discrimination," *id.* at *78, in education, health, employment, and transportation, *id.* at *79, and accepted evidence about how this discrimination caused inequalities in access to the political process, *id.* at *80.

Third, the Secretary argues that the district court unconstitutionally applied Section 2 by crediting qualitative evidence. Mot. 13. That is wrong. For one, the court credited a variety of *quantitative* evidence of the lack of Black candidate success statewide, as well as racial disparities in voter turnout, vehicle ownership, internet access, and health and educational outcomes, all stemming from official discrimination. *Ala. NAACP*, 2025 WL 2451166, at *67, *79-81. On the legal argument, just two years ago, the Supreme Court affirmed a preliminary injunction under the same test, *see Milligan*, 599 U.S. at 23, in another "Alabama case involving substantial evidentiary overlap with this case," Order, Dkt. 40-3 at 5. In *Milligan*, the Supreme Court agreed that "plaintiffs had carried their burden at the totality of circumstances stage" where the court found "Black Alabamians enjoy virtually zero success in statewide elections; that political campaigns in Alabama had been characterized by overt or subtle racial appeals; and that Alabama's extensive history of repugnant racial and voting-related discrimination is undeniable and well documented." 599 U.S. at 22-23 (internal quotation marks omitted). The district court here considered a variety of other evidence about Alabama that was

even more robust than that present in the preliminary injunction stage in *Milligan*. For example, the district court here made substantial findings on lack of responsiveness, *Ala. NAACP*, 2025 WL 2451166, at *82-83, whereas the *Milligan* court made no findings on that factor, 599 U.S. at 22-23.

Alabama's "single-minded view of § 2 cannot be squared with the VRA's demand that courts employ a more refined approach" which instructs federal courts to consider the totality of circumstances. *Milligan*, 599 U.S. at 26. And the Secretary cannot "remake [the Supreme Court's] §2 jurisprudence anew," *id*. at 23, in this Court on a stay motion.

B. The Secretary Ignores Evidence and Seeks to Override Controlling Precedent in Favor of its Misinterpretation of an Out-of-Circuit Case.

The court did not clearly err in finding that Plaintiffs met the third *Gingles* precondition: White Alabamians consistently vote as a bloc to defeat Black-preferred candidates in the challenged district. *Ala. NAACP*, 2025 WL 2451166, at *64-67; *see also Milligan*, 599 U.S. at 18. Plaintiffs presented an effectiveness analysis that showed in the challenged District 25 that "in all eleven elections [analyzed], the Black-preferred candidate lost in District 25 in the Enacted Plan but won in Proposed District 25." *Ala. NAACP*, 2025 WL 2451166, at *66. The Secretary *stipulated* as such: "candidates cohesively preferred by Black voters are

consistently (nearly invariably) [] defeated by the White majority." *Id.* at *65.

The Secretary tries to overcome this finding and his concession by concocting, post-trial, a "novel legal argument," *id.* at *66, that "white crossover voting [is] high enough" that Black-preferred candidates can win in a less than 50% BVAP district. Mot. 11. He contends—citing the Fourth Circuit's decision in *Pierce*, 97 F.4th at 232—that this means that "legally significant racially polarized voting does not exist" in Montgomery. Mot. 12. The Secretary's problem is twofold.

First, that is not the law—not in the Supreme Court or in any Circuit. In *Milligan*, the Supreme Court explained that the third *Gingles* precondition concerns whether "the challenged districting thwarts a distinctive minority vote at least plausibly on account of race." 599 U.S. at 19. This requires proof "that white bloc voting *regularly causes* the candidate preferred by black voters to lose"—this "usual predictability of the majority's success [is what] distinguishes structural dilution from the mere loss of an occasional election." *Wright v. Sumter Cnty. Bd. of Elections & Registration*, 979 F.3d 1282, 1304 (11th Cir. 2020) (citation modified). Neither the Supreme Court nor any appeals court has ever required plaintiffs to *disprove* the ability to elect Black candidates in districts slightly below 50% Black Voting-Age Population, and the Secretary cites none. Mot. 11-12.

The Secretary gets *Pierce* wrong as well. In *Pierce*, the Fourth Circuit

affirmed the district court's denial of a preliminary injunction on a clear-error standard. 97 F.4th at 210 ("Our mere disagreement with the district court does not make its findings clearly erroneous."). It found no clear error in the district court's rejection of legally significant racially polarized voting *despite* "[t]he district court's inaccurate implication that a district effectiveness analysis is required for proving a VRA violation in every Section 2 case," not because of it. *Id.* at 218.

Pierce found enough other support for the district court's conclusion to avoid clear error, including that the court declined to find persuasive the testimony of plaintiffs' racially polarized voting expert. *See id.* at 212-13. Moreover, the Fourth Circuit considered evidence that, in North Carolina, there is sufficient White crossover voting in existing districts such that Black candidates could win "when BVAP meets or exceeds 30 to 40 percent." *Id.* at 214. In contrast, the court here found "ample evidence of intensely racially polarized voting" sufficient to show that "any remedial plan will need to include an additional district in the Montgomery area in which Black voters either comprise a voting-age majority or something quite close to it." *Ala. NAACP*, 2025 WL 2451166, at *2. Indeed, the Secretary could not "rebut the reality that Black Alabamians enjoy zero success in statewide elections, and near-zero success in legislative elections outside of Black-opportunity districts protected by federal law." *Id*. at *74.

Second, the Secretary has a factual problem. The district court here did not clearly err in finding that significant racially polarized voting caused Black-preferred candidates to lose without exception in the challenged district, *id.* at *66-67, and the Secretary stipulated as much, *id.* at *65. Like in *Milligan*, Plaintiffs' same expert—who the court found "credible, reliable, and helpful," *id.* at *64—provided a thorough "effectiveness analysis," showing "in all eleven elections [analyzed], the Black-preferred candidate lost in District 25 in the Enacted Plan." *Id.* at *66. The Secretary's expert's analysis, by contrast, was "scant," and he "offered little testimony to explain his analysis, methodology, or findings about the BVAP below which the Black-preferred candidate would not routinely win in District 25," and "admitted at trial that he did not analyze whether District 25 in the Enacted Plan has been performing for Black voters." *Id*.

The district court did not clearly err in its merits ruling.

II. The Equities Strongly Favor Plaintiffs, and the Secretary has Failed to Show Irreparable Harm.

A. Plaintiffs Face Irreparable Harm from a Stay; the Secretary Faces Speculative Administrative Inconvenience.

The district court correctly held that Plaintiffs—"Alabamians who prevailed in their challenge to the State's redistricting plan"—"are entitled to relief for the next scheduled election" and that "[a] stay would thus seriously injure the

plaintiffs." Dkt. 40-3 at 7. No one disputes that if the Court grants a stay, Plaintiffs will be forced to vote under the same maps they successfully challenged as violative of the VRA. *See id.* (noting that the "Secretary's deadline for a map is approximately seven weeks away"). Missing the opportunity to vote under non-discriminatory maps in an election presents the most classic form of irreparable harm: because "once the election occurs, there can be no do-over and no redress." *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014).

By contrast, the Secretary offers no basis for finding that he will be irreparably harmed absent a stay. The Secretary cites only the "prejudice suffered" in having a remedial map imposed under a standard that may change after *Callais*. Mot. 19-20. But he provides no basis for why such harm (if any) is irreparable. As the district court explained, any injury to the "State" rings hollow: "The State cannot both decline to enact a remedial map," despite having "ample opportunity" to do so, "and complain that the Court tramples its sovereignty by undertaking that task." Order, Dkt. 40-3 at 6. Notably, Plaintiffs here have presented maps that were drawn without *any* reference to race or racial targets, *see* Ex. A—which means that any of the concerns in *Callais* about the intentional creation of majority-minority remedial districts, *see Louisiana v. Callais*, No. 24-109, 2025 WL 2180226, at *1 (U.S. Aug. 1, 2025) (mem.), are absent here.

B. The Public Interest Supports Proceeding with a Timely Remedy and Doing So Does Not Require "Racial Sorting."

"Frustration of federal statutes and prerogatives are not in the public interest." *Alabama*, 691 F.3d at 1301. Yet the Secretary turns this principle on its head, contending that he is clueless as to how to proceed absent a stay, where neither option is equitable. This is a problem of the Secretary's making. It reflects the Secretary's choice to leverage *Callais* to seek delay rather than simply enact (or allow the Court to enact) a reasonably configured remedial map without any use of racial targets.

The Secretary made the same argument two years ago in seeking a stay pending appeal in *Milligan*, arguing that "the State will be compelled to cede its sovereign redistricting power to the Court so that Alabamians can be segregated into different districts based on race." *Singleton v. Allen*, 691 F. Supp. 3d 1343, 1355 (N.D. Ala. 2023). That three-judge court rejected "[e]very piece of this argument [as] wrong"—it had "not compelled the State to 'cede' its authority," had "not ordered the State to 'segregate' Alabamians," and had "not 'segregated' Alabamians." *Id.* The Supreme Court declined a stay of that decision with no noted dissent. *Allen v. Milligan*, 144 S. Ct. 476 (2023). The same treatment is warranted here.

First, a stay will not preserve the option "for the State to redistrict itself." Mot. 14. The district court gave the Legislature "ample opportunity to exercise its authority to enact a remedial map" and it declined to do so. Dkt. 40-3 at 6. The Secretary asserts that a new map must be in place by November 17, *id.* at 7, and remedial proceedings before the Special Master are well underway, *id.* at 14. As the district court explained, "[t]he State cannot both decline to enact a remedial map and complain that the Court tramples its sovereignty by undertaking that task." *Id.* at 6.

Second, the Secretary's primary complaint is that "[i]f the State enacted a plan pre-*Callais*, it would be merely guessing as to how to comply with §2 and Constitution." Mot. 15. But both the district court and Plaintiffs have explained how to avoid "competing hazards of liability," Mot. 14, even if *Callais* prohibits maps drawn with a "racial target" or designed as purposeful majority-minority districts.

The district court held that the "Secretary's apparent assumption that a court-drawn map will impermissibly consider race is unfounded and premature," reminding him that the court has appointed "the same Special Master and team that prepared race-blind remedial maps in the Alabama congressional redistricting litigation." Dkt. 40-3 at 6. Now, Plaintiffs have submitted plans to the Special Master showing multiple ways in which that may be accomplished. *See* Ex. A. Plaintiffs submitted two plans drawn by an expert who did not consult any racial, ethnic, or

electoral data, yet met or beat the Enacted Plan on compactness, political subdivision splits, and population equality. *Id.* at 2. Another expert separately confirmed, based on analysis of eighteen elections, that both plans provide Black voters a fair opportunity to elect preferred candidates. *Id.* at 3-4.

The Secretary points to a decision in a racial gerrymandering case, *McClure v. Jefferson County Commission*, No. 2:23-cv-00443-MHH, 2025 WL 2682401 (N.D. Ala. Sept. 16, 2025), as evidence of his supposed predicament. Mot. 15-16. He argues that the court there found racial gerrymandering because of the "[p]urposeful creation of majority-black districts in 1985." Mot. 16. Yet no one is demanding a majority-Black district—two of Plaintiffs' plans here do not create an additional majority-BVAP district. *See* Oskooii Report at 16, *In Re Redistricting 2025*, Dkt. 7-3 (attached as Ex. C). The Secretary also mischaracterizes *McClure*. There, the County described its consistent creation of "districts containing African American majorities in excess of 65%" in two districts, *McClure*, 2025 WL 2682401, at *37-38, maintaining this threshold for four decades without analyzing what the VRA requires, *id.* at *37, *38, *40, *46. This is worlds away from drawing a remedial district in response to a specific VRA violation without a racial target.

The Secretary also cites three courts that have "stayed §2 litigation" considering *Callais*. Mot. 17-18. But only in one of those has the court stayed

remedial proceedings after a judgment in the plaintiffs' favor, and there, the next elections will not be held until 2027, leaving time for a post-*Callais* remedy. *See* Stay Opp'n Ex. A at 6, *Ala. NAACP*, No. 2:21-cv-01531-AMM (N.D. Ala. Sept. 8, 2025), Dkt. 286-1. In *LULAC v. Abbott*, the court merely stayed the post-trial briefing deadline. *See* Order, No. 3:21-cv-00259 (W.D. Tx. Aug. 11, 2025), Dkt. 1126. When the Texas Legislature enacted a new map days later, the court vacated its order in part to hold a hearing on Section 2 challenges to the new map. Order, No. 3:21-cv-00259 (W.D. Tx. Aug. 28, 2025), Dkt. 1146. The third case, *Clark v. Landry*, was filed in 1986 and terminated in 1991, and the court had not yet even granted the plaintiffs' motion to reopen. Mot. to Reopen, No. 86-cv-00435 (M.D. La. Oct. 7, 2024), Dkt. 695.

The equities strongly favor Plaintiffs.

III. The Secretary's Motion Violates Rule 8 of the Federal Rules of Appellate Procedure.

Rule 8(a)(1) of the Federal Rules of Appellate Procedure requires that a party seeking a stay pending appeal "must ordinarily move first in the district court." A party is excused from doing so only if it "show[s] that moving first in the district court would be impracticable." Fed. R. App. P. 8(a)(2)(A)(i). This is because "the district court should have the opportunity to rule on the reasons and evidence

presented in support of a stay, unless it clearly appears that further arguments in support of the stay would be pointless in the district court." *Ruiz v. Estelle*, 650 F.2d 555, 567 (5th Cir. Unit A June 1981) (noting that "some of these matters [presented in support of the stay] were not presented to the district judge and should be so considered by him prior to any action by this court").

The Secretary never sought a stay pending appeal in the district court nor does he state why doing so would have been impracticable. Rather, the Secretary moved for different relief in the district court, seeking a stay of "remedial proceedings in this case pending the outcome of" *Louisiana v. Callais* in the Supreme Court. Order, Dkt. 40-3 at 1; *see also* Mot. to Stay Remedial Proceedings, Dkt. 40-4 at 4 ("this Court should exercise this inherent authority and stay further proceedings pending the outcome of *Callais* . . . ."). The Secretary's only mention of these differing motions comes when he acknowledges that "the district court stated that the Secretary did not seek a stay pending appeal," Mot. 5, but contends that the court analyzed his motion under the same four-factor standard anyway, *id.* at 6.

But this approach is improper for reasons beyond technical noncompliance. In line with the principle that district courts are best positioned "to rule on the reasons and evidence presented in support of a stay," *Ruiz*, 650 F.2d at 567, the Secretary's failure to seek a stay pending appeal in the district court shortchanges

the analysis of the merits of the case here. The district court addressed the four stay factors in light of the Secretary's motion, holding that the "Secretary has not established *that because of Callais*, he is likely to succeed on the merits of his defenses in this case." Order, Dkt. 40-3 at 5; *see also id.* ("no guess is needed to undertake remedial proceedings. If the Supreme Court changes the law, the Secretary may renew his stay application."). It is the "the province of the trial court" to first assess the evidence it heard at trial and provide this Court its position on the movant's likelihood of success. *Garcia-Mir*, 781 F.2d at 1453. Asking this Court to do so in the first instance in the absence of an emergency deprives this Court of the benefit of the district court's analysis.

CONCLUSION

For the foregoing reasons, the Secretary meets none of the requirements for a stay pending appeal and his motion should be denied.

DATED this 17th day of October 2025.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This document complies with the word limit of FRAP 32, because, excluding the parts of the document exempted by FRAP 32(f), this document contains 5,069 words including all headings, footnotes, and quotations, and excluding the parts of the brief exempted under Fed. R. App. P. 32(f). This document complies with the typeface requirements of FRAP 32(a)(5) and the type-style requirements of FRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in 14-point Times New Roman font.

Dated: October 17, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2025, I filed the foregoing motion using the Court's CM/ECF system, which will serve counsel for all parties.

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