UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

ALABAMA STATE CONFERENCE OF THE NAACP, *et al.*,

Plaintiffs,

v.

WES ALLEN, in his official capacity as Alabama Secretary of State,

Defendant.

Case No. 2:21-cv-01531-AMM

PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANT'S EMERGENCY MOTION TO DISSOLVE INJUNCTIONS OR TO STAY

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INTRODUCTION

Last year, the Secretary informed this Court that Alabama needed a State Senate Map by November 2025 to avoid problems with election administration and voter confusion in the May 2026 primary. Now, the Secretary seeks the Court's eleventh-hour intervention to change the map *in the middle* of that same election despite the mass confusion it will create, and the legitimate votes it will nullify. This Court should decline the Secretary's request to "insert[] itself into an active primary campaign." *Abbott v. League of United Latin Am. Citizens*, 146 S. Ct. 418, 419 (2025). This is precisely what the Supreme Court has done when a state seeks judicial intervention to reinstate an enjoined plan when an election is underway. *See Moore v. Harper*, 142 S. Ct. 1089 (2022); *Frank v. Walker*, 574 U.S. 929 (2014).

Electoral chaos and vote nullification aside, the Secretary offers no basis for a stay, let alone vacatur, on the merits. Under the current record, Plaintiffs satisfy the "updates" to the *Gingles* framework set out in *Louisiana v. Callais*, Nos. 24-109 & 24-110, 2026 WL 1153054, at *15–16 (U.S. Apr. 29, 2026). Plaintiffs' illustrative plan met all the "state's legitimate districting objectives" and "specified political goals," *id.* at 15, which did not include partisanship, as Senator McClendon confirmed. It also did not "use race as a districting criterion" in the drawing process,

id. at *2. Unlike in *Callais*, this Court found that voting patterns could not be seen "as mere party politics," *Ala. State Conf. of the NAACP v. Allen* ("*Ala. NAACP I*"), 796 F. Supp. 3d 759, 864–65 (N.D. Ala. 2025), but rather found "substantial evidence suggesting that race is a driving factor" in Alabama's voting patterns, *id.* at 863. Finally, the Court found ample evidence of "official discrimination in voting rights in Alabama," *id.* at 869, as *Callais* requires, *see* 2026 WL 1153054, at *16.

The Eleventh Circuit has ordered expedited merits briefing, "declin[ing] to address the merits of the Secretary's appeals without full briefing by the parties," and noting that "mail in voting has already begun" under the current maps. Order at 3, 4, *Ala. State Conf. of NAACP v. Allen* ("*Ala. NAACP III*"), No. 25-13007 (11th Cir. May 11, 2026), ECF No. 72-2. A stay will short-circuit these processes and create extreme voter confusion. The Court should deny the motion.

ARGUMENT

Granting a stay is an "exceptional" occurrence, and happens "only upon a showing of four factors: 1) that the movant is likely to prevail on the merits on appeal; 2) that absent a stay the movant will suffer irreparable damage; 3) that the adverse party will suffer no substantial harm from the issuance of the stay; and 4)

that the public interest will be served by issuing the stay." *Garcia-Mir v. Meese*, 781 F.2d 1450, 1453 (11th Cir. 1986).

As to vacatur, "a decision that clarifies the law will not, in and of itself, provide a basis for modifying a decree," absent something more. *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 390 (1992). The Secretary invokes cases in which the Supreme Court's wholesale *overruling* of core precedent justified vacatur.[1] But in *Callais*, the Supreme Court held that its "interpretation of § 2 does not require abandonment of the *Gingles* framework"—rather, the Court sought to "update the framework." *Callais*, 2026 WL 1153054, at *14.

Vacating a decision after trial on an emergency motion would be form of extraordinary relief of vacatur. *See Johnson v. Florida*, 348 F.3d 1334, 1348 (11th Cir. 2003). This type of vacatur is far more drastic and final than what the Supreme Court's just did in *Milligan*: vacating the "judgment . . . for further consideration in light of *Louisiana v. Callais*." *Allen v. Caster*, Nos. 25–243, 25-27, 25-274, 2026 WL 1282800, at *1 (U.S. May 11, 2026). The latter type of vacatur is "much more limited in nature . . . and its effect is not to nullify all prior proceedings.'" *United*

[1] For instance, in *Agostini*, the "change in [] law" relied on by the Court to justify vacatur was its concurrent decision to "overrule [*Sch. Dist. of City of Grand Rapids v.*] *Ball* and *Aguilar* [*v. Felton*]." *Agostini v. Felton*, 521 U.S. 203, 236 (1997).

States v. Tamayo, 80 F.3d 1514, 1520 (11th Cir. 1996) (citation modified); *see also Gonzalez v. Justs. of Mun. Ct. of Bos.*, 420 F.3d 5, 7 (1st Cir. 2005) (holding such vacatur and remand "is neither an outright reversal nor an invitation to reverse"). The Secretary cannot meet his burden.

I. Stay and Vacatur Should Be Denied Because Granting It Would Irreparably Harm Plaintiffs and the Public and the Equities Weigh Strongly Against It.

Stays and vacaturs are forms of "equitable relief." *Black Warrior Riverkeeper, Inc. v. U.S. Army Corps of Eng'rs*, 781 F.3d 1271, 1290 (11th Cir. 2015). When "federal courts contemplate equitable relief," they must "take account of the public interest." *U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 26 (1994).

Here, the irreparable injuries to voters—but not the Secretary—the equities, and the public interest strongly favor denial of the motion.

A. Granting the Requested Relief Would Irreparably Harm Plaintiffs and the Public Interest by Creating Confusion and Violating the Due Process Rights of Alabama Voters in Senate Districts 25 and 26.

1. Purcell *applies and weighs heavily against the relief requested.*

The Secretary has "not established that the changes" he requests from this Court "are feasible without significant cost, confusion, or hardship." *Merrill v. Milligan*, 142 S. Ct. 879, 881–82 (2022) (Kavanaugh, J., concurring). Alabama's May 19 primary election is *four days away*, and election officials have been mailing

absentee ballots since April 4 as required under the Uniformed and Overseas Citizen Absentee Voting Act ("UOCAVA"). 52 U.S.C. § 20301 *et seq*. Absentee ballots for this election were "deliver[ed] to the absentee election manager[s]" at the latest by March 25, Ala. Code § 17-11-12, who have since provided those ballots to qualified voters, including in-person, Ala. Code § 17-11-5.

Preserving the status quo is essential here, as changing the maps in the middle of voting will "caus[e] much confusion." *Abbott*, 146 S. Ct. at 419. If implementing a new map four months before a primary and before the close of the candidate-qualifying period amounted to impermissible "disruption" and "unanticipated and unfair consequences for candidates, political parties, and voters," *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring), then vacating the current maps mid-election would wreak electoral chaos. The Secretary's Office previously testified that reassigning voters in Montgomery County alone would take "about three months" in the congressional contest, making compliance with UOCAVA impossible here. *See* Sec'y of State 30(b)(6) Dep. at 164:18-22 (attached as Ex. A). And such reassignment cannot even *begin* until May 27. *See Milligan*, ECF No. 530-1 ¶ 56.

Contrary to the Secretary's assertions (at 4, 22–23), *Purcell* and its progeny apply here for two separate reasons. *First*, the Supreme Court has declined multiple

times to reinstate a state's map or election law when primaries were already ongoing and ballots had gone out. In *Frank*, 574 U.S. at 929, the Supreme Court vacated an appellate court's stay and reinstated a district court's injunction against a state election law when ballots had already been printed and mailed under that injunction. Recently, in *Moore v. Harper*, 142 S. Ct. 1089 (2022), the Court left in place a court-ordered map, declining to reinstate North Carolina's map even though it had accepted granted certiorari. The Court explained that it was "too late for federal courts to order that the district lines be changed" in March "for the [] primary and general elections, just as it was too late for the federal courts to do so in the Alabama redistricting case last month." *Id.* (Kavanaugh, J., concurring in denial of stay). Justice Kavanaugh thus analogized *Moore*—where the state sought reinstatement of its maps—to *Milligan*—where the plaintiffs sought to change the state's map. *Id.*

Second, the Secretary argues (at 4) that *Purcell* does not apply to last-minute state changes; only to "federal intrusion." Yet that is exactly what he requests from this Court: judicial action that the legislature itself cannot legally perform to change the map.

2. Granting the relief requested would irreparably harm Plaintiffs, retroactively depriving Alabamians of their legally cast votes.

Purcell aside, the relief the Secretary requests would also negate properly cast ballots during an ongoing election. This would violate Plaintiffs' other Alabamians' "right to be free from the purposeful decision of state officials to deny the citizens of a state the right to vote in an election mandated by law," which "jeopardize[s] the integrity of the electoral process." *Duncan v. Poythress*, 657 F.2d 691, 702, 705 (5th Cir. 1981); *see also Roe v. State of Ala. ex rel. Evans*, 43 F.3d 574, 580 (11th Cir. 1995). For the Alabamians who have already voted in the District 25 and 26 primaries, it is "hard to envision a more 'severe restriction' than retroactive invalidation of one's vote." *Griffin v. N.C. State Bd. of Elections*, 781 F. Supp. 3d 411, 449 (E.D.N.C. 2025) (quoting *Norman v. Reed*, 502 U.S. 279, 289 (1992)).

Voters are denied due process where "election officials refuse to tally absentee ballots that they have deliberately (even if mistakenly) sent to voters" *Hoblock v. Albany Cnty. Bd. of Elections*, 422 F.3d 77, 98 (2d Cir. 2005). As such, where "fundamental, constitutionally protected liberties are adversely affected," applying a new rule "to nullify previously acceptable" ones is "unfair and violate[s] due process." *Briscoe v. Kusper*, 435 F.2d 1046, 1055 (7th Cir. 1970); *see also Roe*, 43

F.3d at 580 (finding a substantive due process violation where plaintiffs "demonstrated fundamental unfairness" due to a ruling that occurred after voting).

Conversely, Alabama cannot show it would suffer the irreparable harm necessary to warrant emergency equitable relief. In fact, the portion of the Secretary's brief (at 2–3) purporting to address "Prevent[ing] Irreparable Harm" focuses solely on attempting to rebut *Purcell*—it fails to articulate a *single* way in which denying a stay would harm him or the State. The Secretary suffers no harm from continuing to conduct the *ongoing election* under the court-ordered map. His own motion confirms the speculative nature of that yet-to-be-alleged harm. SB 1 is conditional—it would authorize a special primary only if this Court changes the district lines, whether that happens now or after full merits briefing in the Eleventh Circuit. *See Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (en banc) ("irreparable injury must . . . actual and imminent.") (citation omitted).

Rather than allow the invalidation of votes, Plaintiffs deserve the chance to fully brief and "address the impact of *Callais*," as the Eleventh Circuit envisions. *See* Order at 4, *Ala. NAACP III*. Its order envisioned a careful—though expedited—analysis of the record in light of *Callais*. *Id.* Indeed, that Court's order relinquishing limited jurisdiction back to this Court noted the timing concerns of the relief

requested, including that "mail in voting has already begun." *Id.* And it expressly contemplated parties taking time to thoroughly brief the effect of *Callais*, explaining that even if it had the authority to vacate on the merits, it "decline[d] to address the merits of the Secretary's appeals without full briefing by the parties." *Id.* at 3.

Moreover, and contrary to the Secretary's contention (at 3), the Supreme Court did not "necessarily reject[ ] the plaintiffs' arguments that it was too late to act" under the "*Purcell* principle" or other doctrines in *Milligan*, nor did it express its views of the merits. The Supreme Court left those decisions to the district court. When the Supreme Court vacates a "judgment for consideration in light of a particular decision," [it] is 'much more limited in nature' than a general vacation by an appellate court, and its effect is 'not to nullify all prior proceedings." *Tamayo*, 80 F.3d at 1520 (citation omitted). Such vacatur and remand "is merely a device that allows a lower court that had rendered its decision without the benefit of an intervening clarification to have an opportunity to reconsider that decision." *Gonzalez*, 420 F.3d at 7. The Supreme Court's remand in *Milligan* reflects this principle. It does not imply that the Supreme Court endorses an outcome or sanctions electoral chaos, only that it is leaving it to the district court to decide.

B. Defendants are Barred by Judicial Estoppel from Requesting this Relief

The Secretary's emphatic warnings about the disastrous implications of changing a districting map even months before an election also belie his position today. Under the doctrine of judicial estoppel, the Secretary's deliberately inconsistent statements to this Court and others preclude his requested relief.

Judicial estoppel is an "equitable doctrine," "prohibiting parties from deliberately changing positions according to the exigencies of the moment." *Slater v. U.S. Steel Corp.*, 871 F.3d 1174, 1180 (11th Cir. 2017) (en banc) (quoting *New Hampshire v. Maine*, 532 U.S. 742, 749–50 (2021)). Namely, "a party should not be allowed to gain an advantage by litigation on one theory," and then seek an "advantage by pursuing an incompatible theory." *Id.* at 1180–81. "[J]udicial estoppel prevents parties from playing fast and loose with the courts." *New Hampshire*, 532 U.S. at 750 (citation modified).

When applying judicial estoppel, courts "typically" consider: first, whether "a party's later position" is "clearly inconsistent with its earlier position"; second, "whether the party has succeeded in persuading a court to accept that party's earlier position," such that accepting the later inconsistent position would create "the perception" that one of the courts "was misled"; and third, "whether the party"

asserting an inconsistent position would derive an unfair advantage . . . if not estopped." *Id.* at 750–51. If judicial estoppel applies anywhere, it is here.

The Secretary's prior representations in this matter conflict with his present ones. At the start of the remedial phase, he represented to this Court that any remedial map needed to be in place more than *six months* prior to the May 19 primary election to avoid calamitous effects on election administration. *See* J. Status Rep., ECF No. 275. The Secretary said that it was "not possible to provide a date and say with confidence that Alabama can implement a remedial map entered by that date without disruption and confusion." *Id.* at 4. But he explained that, due to factors like counties being "required to reassign" voters to new districts, he "believe[d] that a remedial map for the [May 19,] 2026 election would need to be in place on or before November 17, 2025 to mitigate these concerns." *Id.*

The Secretary now asks for "clearly inconsistent" relief, *New Hampshire*, 532 U.S. at 750—namely, a late order from this Court reinstating a *different* map for that same election *in the middle of the ongoing primary*. He previously "succeeded in persuading [this] court to accept [his] earlier position . . . ." *Id.* The Court, the special master, and Plaintiffs expended substantial resources to proceed according to the Secretary's timeline, and the Court ordered the remedial map precisely on the date

urged by the Secretary. *See* Inj., Order, and Court-Ordered Remedial Map, ECF No. 322 (Nov. 17, 2025). Accepting Defendant's "inconsistent position . . . would create the perception that . . . [the] court was misled." *New Hampshire*, 532 U.S. at 750 (citation modified). It cannot be true that a new map is not administrable within six months of an election *and* that a new map can be imposed in the middle of voting. The Secretary "would derive an unfair advantage" by being permitted to reverse course based solely on whether delay serves his political goals. *Id.* at 751.

The Secretary's inconsistencies extend to another case in which all the parties here are also parties. In early 2022, in *Milligan*, a three-judge court preliminarily enjoined the use of Alabama's 2021 Congressional map and began the process of implementing remedial maps. At that time, the Secretary found it beneficial to oppose late-breaking judicial intervention to change Alabama's congressional districts. The Secretary insisted that a court order resulting in changed districts "roughly two months before absentee voting begins . . . will cause irreparable harm to Alabama, its aspiring congressional representatives, and the voters they seek to represent." Defs.' Emergency Mot. for Stay Pending Appeal at 23, *Singleton v. Merrill* (N.D. Ala. Jan. 25, 2022), ECF No. 110. The Secretary warned that "[e]njoining the State from using the 2021 Map throws the current election into

chaos and leaves almost no time for maps to be redrawn," and noted specific difficulties—district reassignments, the impossibility of sending out UOCAVA ballots with only three months' notice, candidates signature gathering, and "all sorts of activities" that must occur before voting began. *See id.* at 18–22. For those reasons, the Secretary argued, the Court should not have entered an order that changed districts "where an election was imminent and the election process had already begun." *Id.* at 22 (internal quotation marks omitted).

The Secretary pressed these claims all the way to the Supreme Court and argued, in an emergency application, that equitable factors should bar any court order that modifies electoral districts within months of an election. *See* Emergency App. for Admin. Stay at 38–40, *Merrill v. Milligan*, No. 21A375 (U.S., Jan. 28, 2022) ("*Milligan* Stay App."); *see* Reply in Supp. of *Milligan* Stay App. at 24–26, *Merrill v. Milligan*, No. 21A375 (U.S. Feb. 2, 2022). "Federal courts ordinarily don't change election rules at the eleventh hour," he argued, and the Court's order imposing "new districts days before the candidate qualifying deadline and less than two months before absentee voting is to begin" would "result in voter confusion and consequent incentive to remain away from the polls." *Milligan* Stay App. at 39; *see* Reply in Supp. of *Milligan* Stay App. at 25–26 (rolling out parade of horribles).

Again, the Secretary's *Milligan* arguments are "clearly inconsistent" with his current position. *New Hampshire*, 532 U.S. at 750. The Secretary argues (at 4, 22) that *Purcell* does not apply when a *state* tries to make last-minute election changes, as opposed to a court, but as discussed *supra* at § I.A, that misses that it is the Secretary who is asking *the Court* to affect a change in the maps, and the Supreme Court has stepped in twice in similar circumstances.

Ultimately, the Secretary "succeeded in persuading [the Supreme Court] to accept [his] earlier position." *New Hampshire*, 532 U.S. at 750. It intervened to prevent any change in maps for the 2022 elections. *See Merrill v. Milligan*, 142 S. Ct. 879 (2022). And the Secretary "would derive an unfair advantage" from succeeding under these inconsistent positions. *New Hampshire*, 532 U.S. at 751. Based on Defendant's prior arguments, these same Plaintiffs were harmed in *Milligan* by a stay of a later-affirmed injunction granting them their requested relief. *See Allen v. Milligan*, 599 U.S. 1, 10 (2023). It would be unfair to deal Plaintiffs further harm in this matter based on contradictory arguments, and to do so without affording a full opportunity to brief the survival of these claims under *Callais*.

As the Secretary warned this Court, "'the election machinery wheels [are] in full rotation,' and can't be stopped without grave damage to the public." Defs.'

Emergency Mot. for Stay at 23, *Singleton*, ECF No. 110 (citation omitted). For these reasons, the Secretary should be estopped from receiving emergency relief now.

C. The Legislature Cannot Change the Court-Ordered Map for this Election Without Violating the Alabama Constitution

There is another equitable reason to deny the Secretary's request to vacate or stay because of the Alabama Legislature's passage of a bill (SB 1) "which authorizes a special primary '[i]n the event' that "a federal court, by issuing a judgment or by vacating an injunction, permits the reinstatement of the last legislatively enacted State Senate Districts."[2] At the heart of that bill is not just the "special primary," but that it "permits the reinstatement of the last legislatively enacted State Senate districts . . . in the 2026 General Election."[3] The foundation for this emergency motion violates the Alabama Constitution.

In 2022, voters approved an amendment to the Alabama Constitution providing that the "implementation date for any bill enacted by the Legislature in a calendar year in which a general election is to be held and relating to the conduct of the general election shall be at least six months before the general election." Ala.

[2] S.B. 1, § 1 (b), 2026 Ala. S., 1st Special Sess. (Ala. 2026), https://alison.legislature.state.al.us/files/pdf/SearchableInstruments/2026SS1/SB1-enr.pdf.
[3] *Id.* at 2–3.

Const. § 111.08. Here, SB 1 authorizes a reversion of State Senate Districts 25 and 26 as of May 8, 2026—the day it was passed, given that SB 1 stated that the "act shall be effective immediately."[4] But the General Election occurs on November 3, 2026, making the implementation date for SB 1 less than "six months before the general election." Ala. Const. § 111.08.

Because SB 1 has an implementation date less than six months before the general election, it violates the Alabama Constitution as it "relat[es] to the conduct of the general election." *Id.* A law "relates to" something if, "'in the normal sense of the phrase, if it has a connection with or reference to'" that thing. *HealthAmerica v. Menton*, 551 So. 2d 235, 238 (Ala. 1989) (quoting *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 47 (1987)). By its text, SB1 "relate[s] to the conduct of the general election" because it explicitly "permits the reinstatement of the last legislatively enacted State Senate districts . . . in the 2026 General Election."[5] Thus, not only does it "have a connection" to the General Election, *see HealthAmerica*, 551 So. 2d at 238—it directly regulates the General Election by dictating a new map be used.

[4] S.B. 1, § 2.
[5] S.B. 1, § 1 (b).

Granting this motion, thus triggering SB 1, would leave Alabama voters in a constitutional quagmire, and even "heroic efforts . . . would not be enough to avoid chaos and confusion." *Merrill*, 142 S. Ct. at 880 (Kavanaugh, J., concurring).

II. The Record is Sufficient to Sustain the Court's Ruling that the 2021 State Senate Plan Violates Section 2 of the VRA in the Montgomery Region under the *Callais* Standard.

This Court is likely to, and should, reaffirm its thorough decision. In *Callais*, the Supreme Court repeatedly emphasized that it "ha[d] not overruled *Allen* [*v. Milligan*, 599 U.S. 1 (2023)]." *Callais*, 2026 WL 1153054, at *18. In *Allen*, the Court recently affirmed a finding that Alabama likely violated Section 2 of the Voting Rights Act. 599 U.S. at 23. Here, "the plaintiffs and the State presented much of the same evidence that was presented in [*Allen*,] including ten of the same expert witnesses who opined on overlapping issues." *Ala. NAACP I*, 796 F. Supp. 3d at 776. This case shares much of the evidence that the Court found sufficient in *Allen*, even in light of *Callais*.

A. Plaintiffs' Illustrative and Remedial Plans Satisfy the Legislature's Legitimate Redistricting Considerations and Stated Political Goals.

In *Callais*, the Court revised the first *Gingles* precondition, which requires plaintiffs to submit illustrative maps with an additional opportunity district. *Callais*, 2026 WL 1153054, at *15. Under the revised standard, (1) "plaintiffs cannot use race

as a districting criterion"; and (2) the "illustrative maps must meet all the State's legitimate districting objectives, including traditional districting criteria and the State's specified political goals." *Id*. Plaintiffs satisfy these requirements.

1. *Based on the Record, the Court Correctly Found that it is Possible to Draw an Additional Majority-Black District that Satisfies the State's 2021 Redistricting Guidelines Without Considering Race as a Criterion.*

This Court properly concluded that Plaintiffs' expert, Mr. Anthony Fairfax, did not use race as an improper criterion in redistricting. *Ala. NAACP I*, 796 F. Supp. 3d at 770. Indeed, Alabama's own expert never alleged that Mr. Fairfax improperly used race in drawing illustrative District 25. *Id*. at 854. While he knew "where the minority community exist[ed]"—as any mapmaker familiar with Alabama would—he did not display or rely on race in drawing illustrative District 25. *Id*. at 791. Mr. Fairfax also unequivocally testified that he "turn[ed] [race] off" when drawing maps and began with only some awareness of the location of minority communities. *See id.* at 791, 853; *see also Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 22 (2024). That satisfies the adjustment made by *Callais*.

A cartographer does not improperly use race where, as here, he "consider[s] the relevant racial data only after he had drawn" a challenged map and he "generate[s] that data solely for a lawful purpose" of checking that the "maps he

produced complied with [the Court's] Voting Rights Act precedent." *Alexander*, 602 U.S. at 22; *see also Callais*, 2026 WL 1153054, at *13–15 (citing *Alexander* with approval). In *Callais*, the Court did not alter, or purport to alter, its decades-long precedent establishing that "there is a difference between being aware of racial considerations, and being motivated by them." *Allen*, 599 U.S. at 30 (plurality) (citation modified). Mapdrawers "will . . . almost always be aware of racial demographics." *Alexander*, 602 U.S. at 22; *see also Callais*, 2026 WL 1153054, at *15 (citing *Alexander* with approval on a related point). The *Callais* Court clarified that Plaintiffs must satisfy this same standard, in adducing illustrative plans to establish a Section 2 violation, that state actors must satisfy when drawing districts. 2026 WL 1153054, at *7. That standard is that "in drawing illustrative maps, plaintiffs cannot use race as a districting criterion." *Id.* at *15. It is not that the mapdrawer must have no awareness of race or that they cannot consult racial statistics after the fact to select a map to satisfy the standard set in *Bartlett v. Strickland*, which is that plaintiffs must "show by a preponderance of the evidence that the minority population in the potential election district is greater than 50 percent." 556 U.S. 1, 19–20 (2009) (plurality).

Moreover, this Court need not "shut [its] eyes" to the fact it devised a constitutional race-blind remedy. *See Wright v. Sumter Cnty. Bd. of Elections and Registration*, 979 F.3d 1282, 1303 (11th Cir. 2020) (examining a remedial plan to determine whether the plaintiffs satisfied Section 2 of the VRA). The Remedial Plan was drawn by a non-party who "did not display any racial demographic data while he drafted the [Remedial] Plan." *Ala. State Conf. of the NAACP v. Allen* ("*Ala. NAACP II*"), 809 F. Supp. 3d 1366, 1380 (N.D. Ala. 2025). The Court rejected Alabama's unsupported claim that the Remedial Plan was "race-predominant even though it was prepared race-blind." *Id*. at 1381. Instead, this Court correctly found it is "very difficult . . . to accept the suggestion" that a plan is unconstitutional "even though it was prepared race-blind" and "even though a teenager can draw a map doing just that without displaying any racial data during the process." *Id*.

The Remedial Plan also meets "all the State's legitimate districting objectives, including traditional districting criteria and the State's specified political goals." *Callais*, 2026 WL 1153054, at *15. The Remedial Plan was "closest to the Enacted Plan, limiting its modifications to . . . only two districts." *Ala. NAACP II*, 809 F. Supp. 3d at 1375. It has the same compactness scores as the Enacted Plan, and splits three fewer municipalities statewide. *Id.*

Plaintiffs also offered three remedial plans with two opportunity districts, including plans drawn by Dr. Kassra Oskooii that he drew "without referencing any map other than the Enacted Plan and without viewing any racial or electoral data until after completing the map." *Id*. at 1376; *see also* Ex. 6, Special Master Report & Recommendation, ECF No. 312-6 at 3 (Oskooii Plan A); Ex. 7, Special Master Report & Recommendation, ECF No. 312-7 at 3 (Oskooii Plan B).

Second, the Court did not err in concluding that Plaintiffs' illustrative plans satisfied the State's own stated redistricting criteria. The Legislature drew the 2021 Senate map based on redistricting guidelines passed by the Redistricting Committee. *Ala. NAACP I*, 796 F. Supp. 3d at 776. Both Senator McClendon, the chair of the Senate's Redistricting Committee in 2021, and Randy Hinaman, the State's longtime cartographer who drew the 2021 map, testified that the guidelines governed the map drawing process. *Id*. at 818–19. The 2021 guidelines "cover (among other things) how the Committee considered traditional districting criteria." *Id*. at 776; *see also id.* at 889 (reproducing the guidelines). The guidelines "prioritized population equality, contiguity, compactness, and avoiding dilution of minority voting strength," and "encouraged, as a secondary matter, avoiding incumbent pairings,

respecting communities of interest, minimizing the number of counties in each district, and preserving cores of existing districts." *Id*. at 776–77 (citation omitted).

Alabama's "sole argument about the configuration of Proposed District 25 [was] that the illustrative district is not reasonably configured because it 'subordinates traditional districting principles to racial considerations.'" *Id*. at 852. That is, Alabama never contested that Mr. Fairfax's plan satisfied every other state guideline. *Id*.; *see also id*. at 845 (noting that Alabama's expert "did not analyze whether [Plaintiffs'] plan respects political subdivisions, observes natural boundaries, preserves the cores of districts, or pairs incumbents"). Indeed, the Court noted that Mr. Fairfax followed the State's guidelines and that his plan met or, at times, beat the 2021 map on their criteria. *Id*. at 853. Plaintiffs' "Proposed District 25 received better compactness scores on the Reock, Polsby-Popper, and Convex Hull metrics than did District 25 in the Enacted Plan." *Id*. at 852. His plan "actually removed a county split" and, "as far as county splits go, Mr. Fairfax's map outperforms the Legislature's Enacted Plan." *Id*. at 853-54. The Court correctly found that "the configuration of Proposed District 25 reflects that Mr. Fairfax deferred to the Legislature's priorities of avoiding city and county splits." *Id*.

2. Defendants Did Not Defend the Map on Partisanship Grounds and the Record Does Not Reflect Partisanship as a Goal of the Plan.

Here, like in *Milligan*, "the State did not defend its map on the ground that it was drawn to achieve a political objective." *Callais*, 2026 WL 1153054, at *18. No member of the Legislature asserted any partisan objectives as motivating the district lines in the 2021 Plan, and the legislative redistricting guidelines did not reference to partisanship. *Ala. NAACP I*, 796 F. Supp. 3d. at 776–78. *Callais* requires Plaintiffs to present an alternative map based on the guidelines that *actually* governed the Legislature's map-making process. 2026 WL 1153054, at *13. In the related racial gerrymandering context, the Supreme Court explained that the "inquiry concerns the actual considerations that provided the essential basis for the lines drawn, not *post hoc* justifications the legislature in theory could have used but in reality did not." *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 189–90 (2017).

Alabama leaders expressly disclaimed any partisan motive in drawing the 2021 Plan. Senator McClendon, the Redistricting Committee Chair who oversaw the enactment of the 2021 Plan, testified that partisanship was not a factor in drawing the Enacted Plan and that the Plan was drawn *without even looking at political data*. Dkt. 235-1 at 28–29. Plaintiffs therefore had no duty to meet a goal that Alabama itself never set or tried to advance. Rather, Mr. Fairfax closely followed the State's

redistricting criteria when drawing Plaintiffs' illustrative plans. *Ala. NAACP I*, 796 F. Supp. 3d at 853–54. No party has provided evidence otherwise.

While Alabama never asserted a partisan goal, the Remedial Plan is more likely than not to maintain the partisan makeup of the Senate and protect incumbents. Under the Remedial Plan, a Republican candidate is more likely than a Democratic one to win elections in the new District 26. *See Ala. NAACP II*, 809 F. Supp. 3d at 1375 (noting that "a Black-preferred [Democrat] wins approximately 47% of the nineteen elections studied"). Indeed, according to Plaintiffs' own analysis, Black Democrats have failed to win in any elections for remedial District 26 in the past two cycles. *Id*. at 1377. In biracial general elections, White Republicans on average win remedial District 26 by over six percentage points. Ex. 3, Special Master Report & Recommendation, Doc. 312-3 at 3. Across all elections, Republicans on average win this District 26 by two points. *Id*.

B. The Record Shows that Race, More Than Partisanship, Drives Voting Patterns in the Montgomery Area.

Callais requires that plaintiffs "disentangle" race and political affiliation in analyzing voting patterns. 2026 WL 1153054, at *15. Here, the Court found that Plaintiffs showed that race, more than partisan politics, drives polarization in Alabama. *Ala. NAACP I*, 796 F. Supp. 3d at 861–65.

First, the Court accepted Plaintiffs' evidence showing that racial polarization cannot be explained by party preference. The Court declined to find that White Republican voters were willing to support Black Republicans, particularly in Montgomery. *Ala. NAACP I*, 796 F. Supp. 3d at 863. In examining two 2024 Republican primary races in the Montgomery area, the Court found that White voters overwhelmingly supported White Republicans over Black Republicans. *Id*. For example, in the 2024 Republican primary in Congressional District 2, four Black candidates finished behind the four White candidates, with the four Black candidates "together receiv[ing] only 6.2% of the total vote." *Id*. The Court also accepted that "several stipulated facts are to the same effect," where Black Republicans lost primaries for Congressional District 3, State House District 27, and the 2022 U.S. Senate, with the Black candidates garnering only between 0.9% and 8.7% of votes. *Id*. Thus, the Court found "that White Republicans are not willing to support minority [Republican] candidates in large numbers." *Id*. The Court also had before it evidence from Montgomery's nonpartisan mayoral election where, even absent of party labels, Black voters and White voters voted along racial lines. *See id*. at 808.

Second, the Court found that the political parties' positions on key issues like abortion and same-sex marriage did not explain the voting patterns of Black voters.

Rather, Black voters and White voters in Alabama both oppose same-sex marriage and abortion in roughly equal numbers, but these shared political positions are not reflected in their voting patterns. *Id*. at 863–64. There was also evidence that White legislators—regardless of party—were not interested in speaking to the NAACP about civil rights issues. *Id*. at 816–17. Thus, unlike in *Callais*, 2026 WL 1153054, at *17, the evidence here showed that even with party held constant, racial polarization persisted between Black and White voters in the Montgomery area.

Third, the Court found the Secretary's experts on these issues, Drs. Hood and Bonneau, of limited value because they drew broad conclusions from "very limited, atypical data," *Ala. NAACP I*, 796 F. Supp. 3d at 859, 861, and the election results contradicted them. *Id*. at 859.

C. The Record Contains Sufficient Evidence of Recent, Official Intentional Discrimination Related to Voting and Elections in Alabama to Sustain Plaintiffs' Burden Under Section 2 After *Callais*.

In *Callais*, the Supreme Court faulted the *Robinson* court for failing to consider that none of the evidence it cited "showed even a plausible likelihood of intentional discrimination," *Callais*, 2026 WL 1153054, at *17, and for relying on much older evidence of intentional discrimination by Louisiana officials rather than current conditions. *Id*. at *16. Here, Plaintiffs' evidence provides much "more than

a remote bearing" on "present-day intentional racial discrimination regarding voting." *Id*.

For example, the Court relied upon the fact that in the past twelve years, multiple political subdivisions in Alabama were bailed back into preclearance review under Section 3(c) of the Voting Rights Act based on intentionally discriminatory voting practices. *See Ala. NAACP I*, 796 F. Supp. 3d at 868. This Court also cited *United States v. McGregor*, 824 F. Supp. 2d 1339, 1345–47 (M.D. Ala. 2011), where a federal court found that Alabama State Senators conspired to depress Black voter turnout by keeping a referendum issue popular among Black voters (whom the Senators called "Aborigines") off the ballot. *Id*. at 1345. And the Court noted that after the 2010 Census, Black voters and legislators successfully challenged twelve state legislative districts as unconstitutional racial gerrymanders. *Ala. NAACP I*, 796 F. Supp. 3d at 869. The Court found "a pervasive and protracted history of official discrimination in voting rights in Alabama," and that this pattern "has run well into the present era: several of the decisions recited above were issued in the last ten years and by federal judges who remain in service today." *Id*.

There were also direct examples from just the last few years, such as testimony that, unlike Black representatives, White representatives had not attended NAACP events to discuss issues of access to health care for Black Alabamians. *Id.* at 817.

The Secretary has not made a strong showing that he would now prevail on the merits under *Callais*, making an emergency stay or vacatur improper.

III. The Court's Remedial Map Provides a Constitutional Remedy as it Was Drawn Without Considering Race or Seeking to Hit a Racial Target.

The Secretary offers no reason to disturb the Remedial Plan either. While he notes (at 14) "plaintiffs cannot use race as a criterion" in drawing illustrative maps, the Remedial Plan was drawn race-blind and the Court did not set any racial target for the plan. This Court found that the drafter of Remedial Plan 3, "did not display any racial demographic data while he drafted the Plan" and "[n]o party has suggested, let alone established, otherwise." *Ala. NAACP II*, 809 F. Supp. 3d at 1380. The Remedial Plan "pays significant respect to legislative redistricting decisions" and "pays significant respect to traditional districting principles," such that the Secretary lodged no objection to the Remedial Plan other than its alleged use of race. *Id.* at 1379. But the Remedial Plan was drawn race-blind without seeking to hit a racial target—indeed, a teenager drew the map "without displaying any racial data during the process." *Id.* at 1381. Likewise, the Special Master likewise reviewed and

selected the Remedial Plan "race-blind" without "'target[ing]' any particular Black population percentage in any district." *Id.* at 1373.

Moreover, it is self-evident that because a race-blind remedial plan was selected by this Court, the Court never required the use of race to remedy the Section 2 violation in the first place. When the Court ordered 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," the Court explained that was due to the "practical reality" "based on the ample evidence of intensely racially polarized voting adduced during the trial." *Ala. NAACP II*, 809 F. Supp. 3d at 1381. Nor did the actual Remedial Plan ordered by the Court even include an additional Montgomery-area district "quite close" to a Black voting-age majority: the remedial plan includes Montgomery-area districts with Black voting-age population percentages of 43.9% and 51.1%. *Ala. NAACP II*, 809 F. Supp. 3d at 1375. Nothing in *Callais* requires this Court to dissolve a remedy that avoided the very constitutional defect *Callais* identified.

CONCLUSION

The Court should deny the Secretary's extraordinary emergency motion and allow expedited briefing in the Eleventh Circuit to proceed.

DATED this 15th day of May 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2026, a copy of the foregoing has been served on all counsel of record through the Court's CF/ECF system.

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