IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

ALABAMA STATE CONFERENCE OF THE NAACP, *et al.*,	)	
Plaintiffs,	)	
v.	)	Case No. 2:21-cv-1531-AMM
WES ALLEN, *in his official capacity as Alabama Secretary of State*,	)	
Defendant.	)	

SECRETARY OF STATE'S REPLY IN SUPPORT OF EMERGENCY MOTION TO DISSOLVE INJUNCTIONS OR, IN THE ALTERNATIVE, TO STAY (DOC. 342)

The Secretary's request is simple and modest: immediately vacate the Court's injunctions in light of *Callais*, allow Alabama the opportunity to proceed with its election using its legislatively enacted plan because no rulings have been made against the State under the proper legal standard, and reconsider Plaintiffs' claims under the correct standard in due course. That is neither more nor less than what the Supreme Court recently directed in the congressional cases.

Notably, the Secretary is not asking the Court to decide right now whether Plaintiffs will ultimately succeed under the correct standard (*contra* Resp. 24-36[1])—although the Secretary believes that they will not—but only whether vacatur is

[1] Pagination is to the ECF header.

necessary because *Callais* "chang[ed] the landscape." *Thomas v. Att'y Gen.*, 795 F.3d 1286, 1287 (11th Cir. 2015). It is necessary; the Supreme Court just said so.

Plaintiffs say it is too late for Alabama to change course (Resp. 11-17), but, factually, that will be for the Governor to decide should she have the opportunity. Under Alabama Act No. 2026-613 §1(b), (c), the Governor shall call for a special primary election only if a court ruling lifting the injunction (1) "is made at a time too late to be accommodated during the normal 2026 primary election schedule" *and* (2) "certification of the special primary election can be completed by August 26, 2026." That it will indeed soon be too late is not reason to deny relief; it's reason to grant it—quickly.

Plaintiffs' timing concerns are also wrong legally. While they cling to *Purcell*—complaining that it is too late for "judicial intervention," Resp. 8—*Purcell* is a federalism principle that recognizes the critical difference between judicial action *enjoining* the enforcement of state law and judicial action *permitting* it. While *Purcell* "may counsel against the issuance of an injunction … shortly before an election," it "does not counsel against a stay" (let alone vacatur) to prevent an election from being "tainted" by "likely" improper judicial intervention, *Malliotakis v. Williams*, 146 S. Ct. 809, 811 (2026) (Alito, J., concurring in grant of stay)—and the intervention here is "likely" improper because it has not been evaluated in light of *Callais*. Thus, the Secretary does not ask for the Court to "alter the election rules

on the eve of an election," *RNC v. DNC*, 589 U.S. 423, 424 (2020), but to *restore* the proper "federal-state balance in elections" that existed *before* the Court enjoined the 2021 Plan under a now-moribund legal framework, *Abbott v. LULAC*, 146 S. Ct. 418, 419 (2025); *Democratic Nat'l Comm. v. Wisconsin State Legislature*, 141 S. Ct. 28, 31 (2020) (Kavanaugh, J., concurring)[2] And again, Plaintiffs' counsel already made their equities arguments to the Supreme Court when they opposed the Secretary's motion to expedite and vacate and remand in the congressional cases; the Supreme Court acted anyway.

So should this Court. "[T]he inability to enforce its duly enacted plans clearly inflicts irreparable harm on the State." *Abbott v. Perez*, 585 U.S. 579, 602 n.17 (2018). Today's urgency and tight timelines were not created by the Secretary—who requested a stay of this Court's injunction in anticipation of this potential problem—but by the late hour at which the Supreme Court ruled in *Callais*. Now that the Supreme Court *has* ruled, though, it would be inequitable to perpetuate an injunction against the State's legislatively enacted map when no findings have been made against the State under the *Callais* standard. None of Plaintiffs' other arguments warrant deviating from the normal vacate-and-reconsider pathway.

[2] Plaintiffs' judicial-estoppel argument similarly fails because it isn't "clearly inconsistent" (Resp. 17) to argue (1) that *Purcell* instructs courts not to *impose* an injunction and a new map before an election (as the Secretary has argued before) and (2) that *Purcell* does not prohibit courts from *lifting* an injunction before an election (as the Secretary argues now).

***Gingles* I.** *Callais* prohibits a "map in which race was used" at all, *Callais* Op. 29. Plaintiffs respond that their expert "did not use race *as an improper criterion*." Resp. 25 (emphasis added). But this Court found that Mr. Fairfax "reviewed race at the beginning" and "periodically" during mapmaking. Doc. 274 at 173. So, he used and considered race—just not "as much as the other criteria." *Id.*; *contra* Resp. 25 (stating that Mr. Fairfax "did not … rely on race"). Plaintiffs also aimed to draw a new majority-black district "without eliminating any of the [ ] existing" ones, Doc. 251 at 43 (quoting PX6 ¶55), which improperly made "race [ ] a districting criterion," *Callais*. Op. 29. The standard (*contra* Resp. 26) is that "an illustrative map in which race was used has *no value* in proving a §2 plaintiff's case." *Callais* Op. 29 (emphasis added). *Callais* also requires plaintiffs to "offer[] an alternative map that achieves *all* the State's objectives," *Callais* Op. 25 (emphasis added), not just *some* of them—and partisanship is not the only "legitimate districting objective[]," *id.* at 29; *compare* Resp. 30-31. Plaintiffs did not do that—or, at the least, their illustrative maps must be reconsidered in light of *Callais* and the State's redistricting objectives. *Cf.* Doc. 274 at 173, 176 (discussing "tradeoffs" in Plaintiffs' plans that the Court, applying the pre-*Callais* standard, though were "permitted").

***Gingles* II and III.** The Court held it was "not require[d]" to "disentangle party and race." Doc. 274 at 183. But *Callais* says "disentangling race and politics"

is "critical." *Callais* Op. 30. Showing that "race, more than partisan politics, drives polarization" or that "racial polarization cannot be explained [solely] by party preference" is not enough. *Contra* Resp. 30, 31. *Callais* mandates that "the plaintiffs must provide an analysis that *controls* for party affiliation." *Callais* Op. 30 (emphasis added). Plaintiffs want to flip the burden. *See, e.g.*, Resp. 32 (asserting that the political parties' positions on abortion and same-sex marriage "did not explain the voting patterns of Black voters"). And the little evidence they point to now—a few cherry-picked elections where underfunded and unknown black candidates had little success—does not raise "a strong inference of racial discrimination." *Callais* Op. 35.

Totality of Circumstances. At the totality-of-circumstances stage, the Court relied extensively on "past discrimination" and the Senate Factors. Doc. 274 at 210, 184-221. But the "inquiry must *focus*" on "present-day intentional racial discrimination regarding voting," *Callais* Op 30 (emphasis added), rather than "jump[ing] right to the Senate Judiciary Committee Report," *id.* at 7. Plaintiffs cite the same kind of "evidence" that *Callais* held (at 34-35) did not create "even a plausible likelihood of intentional discrimination by the State." *Compare* Resp. 33-35, *with* Supp. Br. for Robinson Appellants 46-47, *Callais*, No. 24-109 (U.S. Aug. 27, 2025). Plaintiffs cite *ALBC v. Alabama*, but there was no finding of intentional discrimination there, and Alabama was trying to *comply* with the preclearance

requirements of the VRA. 231 F. Supp. 3d 1026, 1032-34 (M.D. Ala. 2017). Otherwise, Plaintiffs offer a few fraught examples of voting cases against localities, the remark of a former legislator from fifteen years ago, and the fact that mostly Democrats attend NAACP events. Resp. 34-35. They did not come "close to showing an objective likelihood that the State's challenged map was the result of intentional discrimination." *Callais* Op. 35.

Newfound Claims. Plaintiffs cannot oppose the Secretary's request based on claims not included in their operative complaint. *See Gilmour v. Gates, McDonald & Co.*, 382 F.3d 1312, 1315 (11th Cir. 2004) (The only "proper procedure for plaintiffs to assert a new claim is to amend the complaint."); *cf. Kaimowitz v. Orlando*, 122 F.3d 41, 43 (11th Cir. 1997), *opinion amended on reh'g*, 131 F.3d 950 (11th Cir. 1997) ("A district court should not issue an injunction when the injunction in question is not of the same character, and deals with a matter lying wholly outside the issues in the suit."). So their conjectures about theoretical due process (at 14-15) or state-law (22-24) claims not before the Court offer no reason to deny the Secretary's request.[3]

[3] Indeed, considering them *would* go far afield of the "limited [ ] nature" of a vacatur in light of intervening precedent. Resp. 10 (quoting *United States v. Tamayo*, 80 F.3d 1514, 1520 (11th Cir. 1996)). The reconsideration is typically only of the aspects of the case that could be affected by the intervening precedent—which, here, is the entirety of Plaintiffs' Section 2 claims and the Court's decision and injunction, all of which must be reconsidered in light of *Callais*. *See Tamayo*, 80 F.3d at 1520. It would not include Plaintiffs' attempt at issue spotting.

Their concerns are meritless in any event. There is not disenfranchisement when voters in Districts 25 and 26 would have the opportunity to vote in a later special election, *see* Ala. Acts No. 2026-613 §1(c), and none of their cases say otherwise. *See* Resp. 14-15. As for Plaintiffs' state-law concern, that is not a concern for this Court because the Eleventh Amendment precludes it from "instruct[ing] state officials on how to conform their conduct to state law." *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 98 (1984). And there is no state-law issue anyway because, among other reasons, to the extent (if at all) Act 2026-613 relates to "the conduct" of an election, Ala. Const. Art. IV, §111.08, it relates only to the conduct of the primary election.

* * *

Because "the parties had no occasion" to address *Callais*, *United States v. Pickett*, 916 F.3d 960, 967 (11th Cir. 2019), the Court should dissolve its injunctions and allow for a proper schedule to reconsider Plaintiffs' §2 claim. In the alternative, it should stay the injunctions pending appeal. Either way, the Secretary respectfully asks that the Court act quickly.

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CERTIFICATE OF SERVICE

I certify that on May 16, 2026, I electronically filed the foregoing notice with the Clerk of the Court using the CM/ECF system, which will send notice to all counsel of record.

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