

Supreme Court of the United States

HON. WES ALLEN,
IN HIS OFFICIAL CAPACITY AS THE ALABAMA SECRETARY OF STATE, ET AL.,
Applicants,

v.

MARCUS CASTER, ET AL.,
Respondents.

APPENDIX TO EMERGENCY APPLICATION FOR STAY: VOLUME 2 OF 3

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

4 BOBBY SINGLETON, et al., *
5 Plaintiffs, * 2:21-cv-1291-AMM
6 vs. * May 22, 2026
7 * Birmingham, Alabama
8 * 9:00 a.m.

9 WES ALLEN, in his official *
10 capacity as Alabama Secretary *
11 of State, et al., *
12 Defendants. *

13 *****

14 EVAN MILLIGAN, et al., *
15 Plaintiffs, * 2:21-cv-1530-AMM

16 vs. *

17 WES ALLEN, in his official *
18 capacity as Alabama Secretary *
19 of State, et al., *
20 Defendants. *

21 *****

22 MARCUS CASTER, et al., *
23 Plaintiffs, * 2:21-cv-1536-AMM

24 vs. *

25 WES ALLEN, in his official *
capacity as Alabama Secretary *
of State, et al., *
Defendants. *

TRANSCRIPT OF MOTION HEARING

BEFORE THE HONORABLE ANNA M. MANASCO,
THE HONORABLE TERRY F. MOORER,
THE HONORABLE STANLEY MARCUS

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P R O C E E D I N G S

(In open court.)

JUDGE MARCUS: Good morning, ladies and gentlemen.

Let me ask you at the outset if the lawyers would be kind enough to state their appearances.

Let's begin with Singleton. For the Singleton plaintiffs?

MR. CHRISTIE: Your Honor, Chris Christie on behalf of the Singleton plaintiffs. Henry Quillen, Judge U. W. Clemon, and Jim Blacksher are also here on the Singleton plaintiffs. And Eli Hare is actually over there also.

JUDGE MARCUS: And good morning all of you folks.

And for Milligan?

MR. ROSS: Good morning. Dual Ross for the Milligan plaintiffs. I'm here with Brittany Carter, Michael Turrill, Paul Rand, Davin Rosborough, and Victor Olafin.

JUDGE MARCUS: And good morning to you folk.

And for Caster?

MS. KHANNA: Good morning, Your Honor. Abha Khanna on behalf of the Caster plaintiffs. I'm also here with Lali Madduri and Rich Medina.

JUDGE MARCUS: Thank you. And for the state for the Secretary of State?

MR. BOWDRE: Good morning, Your Honor. Barrett Bowdre for the state defendants. With me is Jim Davis, Brenton Smith,

1 Robert Overing, Michael Taunton and Reilly Kate Lancaster.

2 JUDGE MARCUS: And good morning to all of you folks.

3 These congressional redistricting cases have returned
4 to this Court from the Supreme Court where the Supreme Court
5 vacated the permanent injunction entered by this Court and
6 remanded the case back to us with instructions to reconsider
7 our earlier rulings in light of *Louisiana vs. Callais*.

8 The plaintiffs of each filed motions for preliminary
9 injunctive relief. And so we set the matter down expeditiously
10 after giving all of the parties the opportunity to brief at
11 length and in detail the remaining issues.

12 We also asked the Secretary of State to submit an
13 affidavit to this Court in order that we could more properly
14 understand the practical matters surrounding the administration
15 of Alabama's 2026 congressional elections and in order to
16 ensure that all Alabamians may timely exercise their
17 constitutional right to vote.

18 With that, we wanted to begin and hear the testimony
19 of the representative from the Secretary of State.

20 I'm not sure -- Mr. Davis, are you ready to proceed
21 with Mr. Elrod?

22 MR. DAVIS: We are ready to proceed, Your Honor.

23 It would be our preference to start with a brief
24 direct.

25 JUDGE MARCUS: Sure. If you have him, why don't you

1 call him. We'll have him sworn and you can proceed. And then
2 counsel for the plaintiffs will be able to cross-examine and
3 you will be able to come back and rebut.

4 JEFF ELROD,

5 having been first duly sworn by the courtroom deputy
6 clerk, was examined and testified as follows:

7 THE COURTROOM DEPUTY CLERK: Please state and spell
8 your name for the record.

9 THE WITNESS: Jeff Elrod. J-E-F-F; E-L-R-O-D.

10 JUDGE MARCUS: Thank you, sir.

11 And you may begin.

12 DIRECT EXAMINATION

13 BY MR. DAVIS:

14 Q Good morning, Mr. Elrod.

15 A Good morning.

16 Q Where do you work, Mr. Elrod?

17 A The Alabama Secretary of State's office.

18 Q What position do you hold in that office?

19 A Director of elections.

20 Q How long have you served as director of elections?

21 A Since January of 2023.

22 Q And what does the director of elections do?

23 A Oversees the entire election process, offers guidance to
24 election officials throughout the state, and just ensures that
25 the process is implemented.

1 Q What other experience other than serving as director of
2 elections have you had with election administration in your
3 career?

4 A I served as the supervisor of voter registration in the
5 Secretary of State's office from about August of 2019 until
6 March of 2022.

7 Prior to that, also served as elections analyst in the
8 elections division of the Secretary of State's office.

9 And prior to that, I worked on campaigns.

10 Q Mr. Elrod, have you provided a declaration in this case?

11 A Yes.

12 Q Do you have a copy of that with you?

13 A Yes.

14 Q And is the declaration true and correct to the best of
15 your knowledge?

16 A Yes.

17 Q What did you understand the question to be from the Court
18 that we were to address in that declaration?

19 A The timing of being able to implement any changes to the
20 congressional districts and being able to conduct an election
21 timely.

22 Q Were you aware that the Alabama Legislature was called
23 into special session this year?

24 A Yes.

25 Q What did you understand the purpose of that special

1 session to be?

2 A To have a plan ready for implementation of new
3 congressional districts if an injunction was lifted.

4 Q So at the time of that special session, was it your
5 understanding that the Secretary of State was enjoined from
6 holding an election under anything other than the Special
7 Master's map?

8 A Yes.

9 Q And by Special Master's map, you understand I mean the map
10 that the Court ordered the secretary to use back in the fall of
11 '23, I believe?

12 A Correct.

13 Q Okay. Are you an attorney, Mr. Elrod?

14 A No, no.

15 Q Now, as you understand it, there was never any intention
16 on the secretary to violate that injunction while it was in
17 place, correct?

18 A Correct.

19 Q So unless the injunction was lifted, congressional
20 elections in Alabama in 2026 would be held under the Special
21 Master's map?

22 A Yes.

23 Q Do you have any understanding about whether or not that
24 injunction was lifted or vacated?

25 A Yes.

1 Q What is your understanding?

2 A That it was lifted.

3 Q To your knowledge, did the governor take any action after
4 the Supreme Court vacated the injunction?

5 A Yes.

6 Q What did the governor do?

7 A Issued a proclamation that a special election would be
8 held in the state for those affected congressional districts on
9 August 11th.

10 Q And what is your understanding of what map will be used as
11 things stand -- what is your understanding of what map is
12 planned to be used for the August 11th special primary
13 election?

14 A A map that was approved by the legislature in 2023.

15 Q What steps have been taken, either by you, your office, or
16 others in the state, to your knowledge, to hold the August 11th
17 special primary election using the 2023 map?

18 A Currently on the Secretary of State's website, that
19 legislative plan is hosted. Those maps are viewable to the
20 public. If someone is searching for which district they're in,
21 they can see that on our website.

22 We have also had communication with the vendors who
23 help implement election administration. The maps that have to
24 be used have been reviewed by vendors. We have had
25 communication with them.

1 The public has also been made aware that that's the
2 intent.

3 Q How has the public been made aware, to your knowledge?

4 A Through press releases and press conferences, the
5 Secretary of State's office has communicated that.

6 Q Are you aware of any candidates for congressional
7 elections who have altered plans based on the announcement that
8 the '23 map would be used in the August 11th special primary?

9 A Yes.

10 Q And what is your understanding?

11 A That a few candidates who were running previously in one
12 congressional district have since switched to another district.

13 Q To your knowledge, did the candidates announce their plans
14 before or after the May 19th primary election?

15 A To my knowledge, it was before.

16 Q Has the secretary posted an administrative calendar in
17 relation to the August 11th primary election?

18 A Yes.

19 Q And how did you post that?

20 A That's on our website.

21 Q Is that special calendar an attachment to your
22 declaration?

23 A It is.

24 Q And for the record, the declaration was filed in all three
25 cases. The copy I have was filed in the Caster case as

1 document number 436-1.

2 Who prepared that election calendar, Mr. Elrod?

3 A The elections division of the Secretary of State's office.

4 Q Issued by the governor?

5 A Yes.

6 Q Did the governor's proclamation allow for candidates to
7 qualify for the special primary election?

8 A Yes.

9 Q And what dates did she provide for qualifying?

10 A Wednesday, May 20th through Friday, May 22nd.

11 Q If someone chooses to run as a candidate, wishes to run as
12 a candidate in the special primary election for Congress, how
13 would they qualify? What steps do they need to take?

14 A They qualify with the state party of their choosing.

15 Q Do you have any information about whether candidates have
16 qualified for the August 11th primary election?

17 A Yes.

18 Q And what information are you aware of?

19 A To my knowledge, both parties have posted on their website
20 candidates who have already qualified for the special election.

21 Q And they have until the end of the day?

22 A Correct.

23 Q Will voters need to be reassigned to a different district
24 as a result from moving from the Special Master map to the 2023
25 map?

1 A Yes.

2 Q Is that all voters in the state?

3 A No.

4 Q Have you done any work to try to understand which voters
5 will need to be moved from one district to another?

6 A Yes.

7 Q First off, who is responsible for making those voter
8 reassignments?

9 A The board of registrars in each county.

10 Q And to make sure the record's clear, if I live in state
11 senate district 12, for example, does my voter registration
12 reflect that that's the district I'm assigned to?

13 A Yes.

14 Q And would that determine which ballot I receive when I go
15 to the polls to vote?

16 A Yes.

17 Q So it makes sure, for example, I don't vote in senate
18 district 13 or senate district 11?

19 A Correct.

20 Q And what have you done to identify which voters will need
21 to be reassigned?

22 A Communicated with the vendor who is primarily responsible
23 for getting shapefiles, map files to the registrars, to
24 identify what changes there are between the 2023 map and the
25 2024 map.

1 Q And what is this vendor?

2 A It's called KCS, Keet's Consulting Services.

3 Q Do they work with all counties in the state?

4 A No.

5 Q Which counties do they work with, to your knowledge?

6 A To my knowledge, they have about roughly 40, 42 counties
7 that they provide service for.

8 Q And did the vendor prepare any visual aids to help state
9 officials assess which voters need to be reassigned?

10 A Yes.

11 MR. DAVIS: May I approach, Your Honor?

12 JUDGE MARCUS: Sure.

13 Have you marked these as exhibits and have you given
14 them to your colleagues?

15 MR. DAVIS: I have provided plaintiffs' counsel with a
16 copy. I have not thought to put a sticker on it, Judge.

17 JUDGE MARCUS: Well, we can have the clerk mark them
18 as you give them to him.

19 What you have given him why don't you mark as
20 Defendant's Exhibit 1? This is congressional district changes.

21 We'll mark that as Defendant Exhibit 1 for
22 identification.

23 You may proceed.

24 BY MR. DAVIS:

25 Q So, Mr. Elrod, the document that's been marked as

1 Defendant's Exhibit 1 in front of you, is this a chart prepared
2 by the vendor you were discussing?

3 A Yes.

4 Q Okay. And walk us through.

5 What do the colors indicate?

6 A Each color represents a different congressional district.

7 Q Okay. So let's start with the southeastern corner of the
8 state. I see coffee, Geneva, Dale, Henry, and Houston counties
9 there and a portion of Covington County, correct?

10 A Correct.

11 Q So is this telling us that Houston County is in one
12 district in the Special Master's plan, but it is in a different
13 district in the '23 plan?

14 A Yes.

15 Q But the county is whole; in other words, it's not split in
16 either plan; is that right?

17 A Correct.

18 Q And what about Covington County? What plan -- what
19 district is Covington County in, in the Special Master's plan?

20 JUDGE MOORER: If you could hang on for a second,
21 Mr. Davis.

22 (Discussion off the record.)

23 JUDGE MANASCO: The question, Mr. Davis, is if you
24 will be willing to put this on the Elmo.

25 MR. DAVIS: Of course.

1 JUDGE MANASCO: Or if you have another way to
2 electronically display it, that's fine, too. But just so
3 everyone in the room can see it.

4 Give us just one second.

5 All right. So you may have to zoom out just a little
6 bit so the full sheet of paper will show.

7 All right. There we go.

8 JUDGE MARCUS: Mr. Davis, it's a good thing we have
9 someone to help us.

10 MR. DAVIS: It is very good, Your Honor.

11 JUDGE MARCUS: Can we sharpen that a little bit?
12 Maybe not. If you can't get it any better, we can proceed
13 without it.

14 BY MR. DAVIS:

15 Q Mr. Elrod, I believe we had turned to Covington County.

16 What district is Covington County in, in the Special
17 Master's map?

18 A District 1.

19 Q And what district is Covington County in, in the 2023 map?

20 A Districts 1 and 2.

21 Q Okay. So I just want to right now make sure after you're
22 gone everybody can interpret this and understand what we're
23 looking at.

24 So does this tell us that Houston County, for example,
25 is kept whole in both maps but it changes from one district to

1 another?

2 A Yes.

3 Q Covington County is whole in one map, the Special Master's
4 map, but is split in the '23 map; is that correct?

5 A Yes.

6 Q What about Mobile County?

7 A In the Special Master's plan, Mobile is in both
8 Districts 1 and 2. In 2023 map, it becomes entirely in
9 District 1.

10 Q Okay. And Clarke County, is that split in the Special
11 Master's map, but kept whole in the '23 map?

12 A Yes.

13 Q Okay. So let's focus then on the different jobs that the
14 registrars will have.

15 For Houston County, what will be involved in the
16 Houston County registrars switching their voters or reassigning
17 their voters from one district to another?

18 A That's what's referred to as a mass change.

19 In the voter registration system that the registrars
20 use, which we refer to as Election Navigator, when they're
21 dealing with these political subdivisions they will be able to
22 do a mass change that moves the congressional district
23 assignment in whole from one to another.

24 Q Okay. And what if a county is split in the Special
25 Master's map but whole in the '23 map? What will be involved

1 for registrars to switch that or to make those reassignments?

2 A Moving the entire split, making it whole is also
3 considered a mass change.

4 Q Okay. So the counties on this chart that are whole can
5 all be done by mass changes, correct?

6 A Correct.

7 Q And the counties such as Mobile or Clarke where you're
8 basically going from a split map to a whole county -- to a map
9 that keeps that county whole, that could also be done with a
10 mass change?

11 A Correct.

12 Q Okay. Which counties, if any, are whole in the Special
13 Master's map but split in the '23 map or split in a different
14 way?

15 A In the '23 map, the split in Jefferson County is
16 different; Elmore County has a split; and Covington County has
17 a split.

18 Q Okay. So, then, registrars in Jefferson, Elmore, and
19 Covington County are going to have a different task than all
20 the other counties represented here; is that right?

21 A Yes.

22 Q And what will that task be?

23 A Any time that a split is made, that requires more
24 intentional and manual work on behalf of the registrars.
25 Instead of a mass change, they have to then go in to these

1 political subdivisions at a more granular level, and it
2 requires ensuring that these splits are accurate. It requires
3 review. It requires a more hands-on process from the
4 registrars rather than just moving one whole county or one
5 whole precinct into another. When they have a split, they have
6 to take some more time to make sure that those splits are
7 accurate.

8 Q So let's start with Jefferson County.

9 What do you understand about how they are set up to
10 make these changes and reassignments?

11 A The Jefferson County board of registrars office has a
12 staff. They also have access to GIS, which is an electronic
13 form of mapping.

14 There will still be manual hours spent making sure
15 that these splits are correct and accurate, but using GIS is a
16 helpful resource in at least initiating the changes.

17 Q And what about Elmore and Covington counties?

18 What resources do they have to make reassignments?

19 A Both Elmore County and Covington County also have access
20 to GIS. They use the vendor that we mentioned a moment ago,
21 KCS. However, they do not have as large of a staff or any
22 staff that Jefferson has. Those counties have just three
23 registrars in their offices, so the manual hours is a little
24 more demanding on them than it would be an office that has
25 staff.

1 Q When can registrars start inputting changes into the voter
2 registration database?

3 A That will be May 27th.

4 Q Why is it not until May 27th?

5 A Because the election that we had on May 19th, the voter
6 list is still essentially under a lockdown which prevents
7 changes so that voter history can be updated and the correct
8 information can be linked to the voters who participated in the
9 primary on May 19th.

10 Q Is there anything that registrars and vendors can be doing
11 before the 27th to facilitate the process of voter
12 reassignment?

13 A Yes.

14 Q And what is that?

15 A Identifying the changes that would be necessary to make.
16 They can look at these maps and shapefiles. They can get an
17 understanding of what their work is going to be even before
18 they're able to begin.

19 Q To your knowledge, has the vendor that you've been
20 discussing done any prep work for the voter reassignment
21 process?

22 A Yes.

23 Q And what have they done?

24 A Preparing this map was part of it, the one that we're
25 looking at. They also have the shapefiles for the '23 map,

1 which as soon as registrars are able to begin making changes in
2 the system, they'll be prepared to send to the counties that
3 they represent and work with.

4 Q Okay. Let's explain, please, what a shapefile is.

5 A A shapefile is an electronic form of mapping. It takes
6 the district and it displays the boundaries. It's in contrast
7 to a process that existed before where registrars just had
8 address ranges and they had to do all these assignments
9 manually.

10 The shapefile, which is a component of GIS, makes it
11 easier to see these assignments in bulk rather than going in,
12 adding it at a street level.

13 Q Okay. So is a shapefile a computer file?

14 A Yes.

15 Q And if you have that, it will tell the computer if you
16 have the right software and it will display the map and exactly
17 where the lines are?

18 A Correct.

19 Q Now, how did you come to have the shapefiles for the 2023
20 map?

21 A We received that from the reapportionment office.

22 Q Is this going to be a challenging election to administer,
23 Mr. Elrod?

24 A Yes.

25 Q Is it easier to implement a map like the '23 map which

1 already exists and that you have the shapefiles on than it
2 would be to implement some unknown map that does not yet exist?

3 A Yes.

4 Q And what is the difference?

5 A In a case like the '23 map, we see these changes. We just
6 saw it on the screen and this document here.

7 Knowing what those changes are, what districts are
8 affected, what counties are affected, it allows for more
9 preparation even before the registrars can officially begin
10 their work versus having a map on which we don't know what the
11 changes are, if there are any splits, what counties would be
12 affected. Because, again, a big part of implementing any type
13 of voter reassignment first begins with just assessing what
14 those changes or assignments would be.

15 Q In the 2023 map -- because that already exists, is that
16 available for voters and candidates to review?

17 A Yes.

18 Q In your opinion, Mr. Elrod, can the congressional map be
19 changed from the 2023 map to some other map at this point
20 without disrupting the election?

21 A No.

22 Q So let's assume that sometime after today there's an order
23 that for the August 11th special primary election the state
24 cannot use the 2023 map but, instead, must use some map that
25 does not currently exist, a map that's going to be developed

1 later. What problems would that cause an election
2 administration?

3 A Some we just discussed briefly with the unknown factors of
4 what counties would be affected, the district splits, precinct
5 splits. Those unknown factors will certainly cause disruption.

6 We have the public component where the public has
7 already been made aware that the '23 map is the one intended.
8 That's currently being hosted on our website. Voters may have
9 already referenced that map to determine which district they
10 would be in so they would have to check again if there was
11 another change.

12 It would be disruptive for candidates who have already
13 made announcements and decisions to switch from one district to
14 another.

15 The communication efforts of various state offices
16 would have to be increased to reinform the public of changes
17 that have already been communicated to them.

18 Q In your role, do you ever have communications with voters
19 about elections?

20 A Yes.

21 Q Do you have any concerns about voter confusion if there's
22 a change in maps at this point?

23 A Yes.

24 Q Have you worked on political campaigns as part of your
25 career?

1 A Yes.

2 Q Do you have knowledge about campaign reporting
3 requirements?

4 A Yes.

5 Q Do you know that if a candidate announces that while they
6 were running in one district they, instead, intend to shift to
7 another -- does that affect their campaign filing?

8 A Yes.

9 Q What do they have to do, to your knowledge?

10 A They have to essentially refile or at least edit the
11 documents outlining their campaign committee because when you
12 establish you're a campaign committee, not only are you
13 indicating your name; you indicate the district for which
14 you're running.

15 Q If we need more time, can we just move the August 11th
16 primary election to some other later date?

17 A No.

18 Q Why not?

19 A Because that would begin to conflict with the general
20 election that is scheduled for November 3rd.

21 Q Are there things that need to happen for the November 3rd
22 election that would be difficult to accomplish on time if the
23 primary election were later than August 11th?

24 A Yes.

25 Q Let's establish some dates.

1 First, for the special primary election on
2 August 11th, when is the deadline for states to submit -- to
3 send out UOCAVA ballots?

4 A Now, could you repeat the question?

5 Q Yes.

6 What is the deadline for the state to send out ballots
7 to UOCAVA voters for the August 11th special primary election?

8 A Any UOCAVA applications that absentee offices have prior
9 to the 45th day before the election, which is Saturday,
10 June 27th, those ballots must be sent out at that time.

11 Q And is that a federal law requirement, to your knowledge?

12 A Yes.

13 Q And do you have available the UOCAVA deadline for the
14 November 3rd general election?

15 A Yes.

16 Q And what is that?

17 A September 19th.

18 Q And for the record, the calendar for the special primary
19 election -- again, that's attached as an exhibit to your
20 declaration, correct?

21 A Yes.

22 Q And the administrative calendar for the November 3rd
23 general election, is that available on the secretary's website?

24 A It is.

25 Q Now, assume, Mr. Elrod, that, again, there's an order that

1 says Alabama's not allowed to use the '23 map but, instead,
2 must use some different map but this time switching to a map
3 that does not require any registrar to reassign any voters.

4 Would you still have concerns about how that would
5 impact the election?

6 A Yes.

7 Q And that's true even if registrars are not having to make
8 any reassignments?

9 A Correct.

10 Q And what would those concerns be?

11 A There would be concerns, again, about voter confusion
12 because, again, as we mentioned, the 2023 map has already been
13 communicated to the public, to candidates; decisions have been
14 made with the understanding that that is the map that will be
15 used on August 11th.

16 So to recommunicate that information to the public --
17 that would be an effort that we would have to make. Voter
18 confusion would likely be a concern there.

19 Also, hosting a different map on our website. As I
20 mentioned in the beginning, we currently have the '23 map
21 available on our site. If you search the
22 find-my-elected-official feature that we have, the '23 map is
23 already displayed to allow voters to know which district they
24 may be in.

25 We would need to get additional files from the

1 reapportionment office which comes along with a certification
2 process that we would need to then change and host on our
3 website.

4 Q And all of this would need to be communicated to voters
5 and candidates and parties and everyone else involved, correct?

6 A Correct.

7 Q What was your role, Mr. Elrod, in, say, December 2021 and
8 January, February 2022?

9 A At that time, I was the supervisor of voter registration.

10 Q Were you aware at that time that Mr. Helm submitted a
11 declaration talking about election administration?

12 A Yes.

13 Q Do you believe that what you're testifying about now is
14 inconsistent with what the state testified about during that
15 time period?

16 A No.

17 Q Are there differences between the situation that the state
18 faced in -- for the 2022 election and what the state faces now
19 with the August 11th primary?

20 A Yes, there are.

21 Q And what are the differences?

22 A Following the 2020 Census, there was a delay in receiving
23 that information from the census bureau, which also led to
24 delays for these district reassignments to be made.

25 Also at that time, we had very few counties that had

1 access to GIS. Counties at that time were primarily doing
2 their district assignments and their street file assignments
3 through a manual process.

4 So those are all factors that are different. And also
5 at that time, we didn't know what map was going to be applied
6 or approved for those changes. And that goes back to what we
7 said earlier about how not knowing what changes are makes it
8 difficult to prepare for any changes that these offices have to
9 make.

10 Q Because -- let's talk about that.

11 If you know the map's going to change but you don't
12 know how it's going to change, does that mean that you don't
13 know which counties might be affected and which voters have to
14 be reassigned?

15 A Correct.

16 Q And do all counties have the same resources either today
17 or in 2022?

18 A No.

19 Q Do you know how many counties have GIS now, roughly?

20 A Yes. Roughly 42 or so counties use some form of GIS.

21 Q And that's more than had that technological ability in
22 2022?

23 A Correct.

24 MR. DAVIS: May I consult, Your Honor?

25 JUDGE MARCUS: Sure.

1 (Discussion off the record.)

2 BY MR. DAVIS:

3 Q Mr. Elrod, if a candidate switches -- changes plans, a
4 candidate has been running for District 1 and decides they're
5 going to run, instead, for District 2, how does that, to your
6 knowledge, affect, like, decisions about campaign spending --
7 well, let's start there. What about campaign spending?

8 A A different district does require different priorities.

9 Q How so?

10 A The makeup of a district is different. The needs and the
11 issues that you run on and communicate to those districts is
12 different. And, again, related to campaign spending, you have
13 the filing changes that have to be made to make sure that their
14 committee is properly registered so that they could report
15 that.

16 Q Might they be required to appeal to some voters in the new
17 district that they did not have to appeal to in the old
18 district?

19 A Yes.

20 Q And simply because those voters weren't in the old
21 district?

22 A Correct.

23 MR. DAVIS: Thank you.

24 I have no further questions at this time.

25 JUDGE MARCUS: All right. Cross-examination.

1 I wasn't sure in what order you wanted to go and who
2 would be doing it.

3 MS. CARTER: The Milligan plaintiffs will go first.

4 JUDGE MARCUS: And just for the record, counsel, if
5 you would be kind enough to state your appearance and who
6 you're appearing for.

7 MS. CARTER: Yes, Your Honor. Brittany Carter for the
8 Milligan plaintiffs.

9 JUDGE MARCUS: Thank you. You may proceed.

10 CROSS-EXAMINATION

11 BY MS. CARTER:

12 Q Good morning, Mr. Elrod.

13 A Good morning.

14 Q My name is Brittany Carter. I represent the Milligan
15 plaintiffs.

16 I am going to ask you some yes or no questions. You
17 are free to give a complete answer, but please answer my yes or
18 no question first.

19 Do you understand?

20 A Yes.

21 Q Are you ready to begin?

22 A Yes.

23 Q Thank you.

24 So on direct, you began testifying about the Alabama's
25 2023 plan. If I refer to it as the 2023 plan, you will

1 understand that I am talking about Alabama's 2023 plan?

2 A Yes.

3 Q Thank you.

4 No person has ever voted under the 2023 plan, right?

5 A Correct.

6 Q The Secretary of State's office has never conducted an
7 election under the 2023 plan?

8 A Yes.

9 Q You're familiar with the congressional redistricting plan
10 that this Court ordered Alabama to use in the fall of 2023,
11 correct?

12 A Yes.

13 Q Going forward, can I refer to it as the remedial map?

14 A Yes.

15 Q Or the remedial plan?

16 Before the 2024 primary and general elections, you
17 were assigned -- excuse me -- voters were assigned to precincts
18 based on the remedial map, correct?

19 A Yes.

20 Q For the 2024 primary and general elections, Alabama used
21 the remedial map, correct?

22 A Yes.

23 Q And before the governor's proclamation, the secretary's
24 office planned to use the remedial map for the May 19th, 2026,
25 primary, correct?

1 A Yes.

2 Q For the May 19th primary, both absentee and in-person
3 ballots were based on the remedial map, right?

4 A Yes.

5 Q For the May 19th primary, voters were assigned to
6 precincts based on the remedial map, right?

7 A Yes.

8 Q Today, all voters are assigned to districts based on the
9 remedial map, correct?

10 A Yes.

11 Q When did the 2023 map go up on your website -- the
12 secretary's website? Excuse me.

13 A That was following the governor's proclamation of a
14 special election that would be held on August 11th.

15 Q That was around May -- do you have -- sorry.

16 Do you have a date? Do you know -- can you say the
17 date that the governor's proclamation went on the website --
18 went up? Was that date May 12th, Mr. Elrod?

19 A I was looking to see.

20 Q Okay. I believe the proclamation is on the back of your
21 declaration. But also I can represent to you that it's
22 May 12th, but I'm happy to let you look.

23 A There is no date on the proclamation.

24 Q Mr. Elrod, do you -- can you testify to the fact that the
25 2023 map has been up on your website for around two weeks?

1 A Yes.

2 Q Thank you.

3 And how long was the Special Master's map on -- the
4 remedial plan's map up on your website?

5 A Since it was approved.

6 Q So it was up at least until the past couple of weeks when
7 the governor's proclamation was issued?

8 A Correct.

9 Q Thank you.

10 Implementing the 2023 plan for the August primary
11 would require the reassignment of voters in 40 of Alabama's 67
12 counties, correct?

13 A Yes.

14 Q Absentee voting for the special primary will begin on
15 June 17th, correct?

16 A Correct.

17 Q And so as a practical matter, the reassignments need to be
18 completed before June 17th, correct?

19 A Yes.

20 Q And you testified on direct that the earliest that
21 registrars can begin reassigning voters is May 27th, correct?

22 A Correct.

23 Q This reassignment cannot occur before May 27th because the
24 voter registration records are currently locked due to the
25 May 19th primary election and post-election activities, right?

1 A Correct.

2 Q The runoff for the May 19th primary is scheduled for
3 June 16th, correct?

4 A Yes.

5 Q And before the June 16th runoff, the voter records will
6 need to be locked again, correct?

7 A Correct.

8 Q At this time, the secretary's office is uncertain how long
9 the records will be unlocked to reassign voters before the
10 records are locked again for the June primary runoff, correct?

11 A No. We have an understanding of when those records will
12 be locked again.

13 Q Okay. So, Mr. Elrod, you have your declaration in front
14 of you, correct?

15 A Yes.

16 Q If you could -- in terms of helping with my question,
17 would it be helpful if I just pointed you to a paragraph to
18 refresh your recollection?

19 A Yes.

20 Q Can you look at paragraph 56?

21 A Yes.

22 Q Okay. And so in paragraph 56, you say that at this time
23 the secretary's office is uncertain how long the records will
24 be unlocked for the registrars to work on the reassignments
25 before the records will be locked down again for the regularly

1 scheduled June 16th primary runoff election, correct?

2 A That's what it says. And at that time, that was correct.
3 But since then, we have received information from the vendor
4 that gives more clarification on when those records are going
5 to be locked again.

6 Q Okay. Counties vary in their population resources and
7 capabilities, correct?

8 A Yes.

9 Q So the length of time that the reassignment process takes
10 place -- or the length of time that the reassignment process
11 takes depends on the counties impacted by a new map, correct?

12 A Yes.

13 Q It can take some county board of registrars three to
14 four months to complete the reassignment, correct?

15 A In some cases it could.

16 Q There will be a primary runoff on June 16th, right?

17 A Yes.

18 Q If Alabama were to accept the results of the May 19th
19 congressional primary, then Alabama would need to hold a
20 Republican runoff for District 1, right?

21 A I don't have the results in front of me.

22 Q Okay. There are about three weeks between the opening of
23 the voter records on May 27th and the primary runoff on
24 June 16th, correct?

25 A Correct.

1 Q And so, at most, registrars will have less than three
2 weeks to reassign all voters to the 2023 plan during that time,
3 correct?

4 A It's shorter than that. Because, again, we have received
5 clarifying information since the date of this declaration,
6 which we said the beginning was subject to change based on new
7 information.

8 The vendor has communicated to us that once the
9 absentee process begins and absentee ballot is issued, that is
10 when the records are locked. The first day for absentee voting
11 for the June 16th runoff is June the 2nd.

12 So that window of time that changes could be made
13 without adversely affecting anything that's already established
14 in the system would be between May 27th and June 2nd.

15 Q The window of time that the records will be unlocked will
16 be between -- say those dates again.

17 A May 27th and June 2nd.

18 Q So reassignment can take place between May 22nd and
19 June 7th?

20 A 2nd.

21 Q June 2nd. Excuse me. Between May 22nd and June 27th?

22 A No. May 27th --

23 Q Yes.

24 A -- and June 2nd.

25 Q Okay. Thank you.

1 And that's about two weeks?

2 A No, no. That's less than that.

3 Q That's less than two weeks. Right. Thank you.

4 So this new timeline for voter reassignment is
5 aggressive, correct?

6 A Yes.

7 Q The secretary's office and local election officials will
8 need to work tirelessly to implement the 2023 plan within that
9 window, correct?

10 A Correct.

11 Q And under this aggressive timeline, it will be hard to
12 ensure limited problems or errors, right?

13 A Correct.

14 Q The typical voter reassignment process is lengthy and
15 requires several steps, right?

16 A Yes.

17 Q First pre review?

18 A Yes.

19 Q Then time to make the changes?

20 A Yes.

21 Q And, finally, quality checks?

22 A Right.

23 Q All of these deadlines are sequenced in a way that they
24 relate to each other?

25 A Correct.

1 Q So that if one deadline is missed, then that's setting up
2 the county to be underprepared for the next step of their
3 process?

4 A Correct.

5 Q If the reassignment process is rushed, it's much more
6 likely that voters will not be correctly assigned?

7 A Correct.

8 Q Errors could include providing some voters with ballots
9 for the wrong district, right?

10 A Yes.

11 Q And this problem has happened in the past?

12 A Yes.

13 Q Given all of that, no matter when officials begin, it will
14 be time consuming to reassign voters to the 2023 plan, right?

15 A Could you repeat that, please?

16 Q Given the fact that this is going to be a
17 time-consuming -- or excuse me.

18 Given the fact that there is a lengthy process for
19 registrars to go through in order to complete reassignment, no
20 matter when officials begin the reassignment process, it will
21 be a time-consuming process to reassign voters to the 2023 plan
22 from the current remedial plan?

23 A Yes; it's time consuming, but it's easier when you know
24 what the changes are.

25 Q And this aggressive timeline increases the chances of

1 errors in election administration, right?

2 A It's likely.

3 Q Your declaration didn't address any hardships related to
4 keeping the remedial map, right?

5 A I don't recall.

6 Q And retaining the Special Master map involves no voter
7 reassignment, right?

8 A Correct.

9 Q Okay. Let's talk about the process of administering an
10 election.

11 I believe you testified to this, but your office
12 provides updates to the counties on changes in election laws?

13 A Correct.

14 Q The election's administrative calendar assumes that the
15 voter assignments of an election cycle are completed then kept
16 up to date leading up to the preparation of voter lists and
17 ballots, right?

18 A Yes.

19 Q And that work is going to be continuous throughout the
20 election cycle, right?

21 A Yes.

22 Q When officials are asked to redistrict before elections,
23 it adds more responsibilities for them to complete in a
24 shortened amount of time?

25 A Correct.

1 Q Election officials will have to balance the redistricting
2 process with other deadlines and duties that are on the
3 calendar by law, right?

4 A Correct.

5 Q Even without voter reassignment, each county's board of
6 registrars is responsible for registering voters and ensuring
7 that the voter list is correct and up to date?

8 A Yes.

9 Q Absentee managers are also responsible for the absentee
10 voting process, right?

11 A Yes.

12 Q And probate judges are the chief election officials of
13 each county, right?

14 A Correct.

15 Q Probate judges are primarily responsible for ensuring that
16 the election is held in their county, correct?

17 A Correct.

18 Q And so during a redistricting year, the secretary's office
19 tends to get more questions from voters about where they're
20 supposed to vote, right?

21 A Typically, yes.

22 Q In a redistricting year, the secretary's office typically
23 gets more questions from registrars than in other cycles,
24 right?

25 A Potentially.

1 Q Similarly, probate judges may reach out more often to the
2 secretary to ensure that they have all the necessary
3 information to complete the redistricting process?

4 A Yes. That would be likely.

5 Q Redistricting and reassignment is not something these
6 election officials do every cycle, right?

7 A Correct.

8 Q And so because of personnel turnover, the officials who
9 are tasked with the reassignments may have never been through a
10 redistricting process before?

11 A That's likely, yes.

12 Q For example, a probate judge elected in 2024 may be
13 unfamiliar with the reassignment process?

14 A Yes.

15 Q Or new staff might be less familiar with the process that
16 happened a few years ago?

17 A Yes.

18 Q And so these new officials will need additional support
19 and guidance from the secretary, right?

20 A Potentially, yes.

21 Q And even experienced election officials typically need a
22 refresher or additional assistance to get them through the
23 reassignment process?

24 A Yes.

25 Q Election Navigator keeps all the counties' voter data

1 centralized?

2 A Correct.

3 Q It registers voters?

4 A It keeps track of registered voters. The registrar's
5 registered voters.

6 Q Okay. It keeps track of street files?

7 A Yes.

8 Q It keeps track of precinct assignments?

9 A Yes.

10 Q It assigns ballot styles?

11 A It keeps track of the ballots styles. The election
12 officials input that information.

13 Q Okay. Thank you. It keeps track of ballot styles.

14 It keeps a record of voters who have requested and
15 received absentee ballots and voted absentee?

16 A Yes.

17 Q The voter list is usually exported from Election Navigator
18 and then loaded into electronic poll books around 10 days
19 before the election?

20 A Correct.

21 Q But Election Navigator doesn't necessarily reduce the time
22 that it takes for counties to update their records?

23 A Could you repeat the question?

24 Q Election Navigator doesn't necessarily reduce the time
25 that it takes for counties to do the work themselves of

1 updating their records?

2 A I'm not sure I understand what you're asking with that.

3 Q So before when I asked you about whether Election
4 Navigator registers voters, you said no; the county -- the
5 registrars register voters?

6 A Right.

7 Q And whether it assigns ballot styles -- you corrected me
8 and you said, no; it keeps track of ballot styles, but the
9 county assigns or officials assign ballot styles. So those are
10 things that officials have to do.

11 So Election Navigator as a program doesn't necessarily
12 reduce the time that it takes for counties to update their
13 records, right?

14 A Right. It still requires manual input. The registrars,
15 probate judges, absentee managers, they have to physically
16 manually interface with the system. The system is not
17 automatic.

18 Q Thank you.

19 Most of the election officials' reassignment work will
20 be done outside of Election Navigator, right?

21 A A lot of their work is also in the system of inputting
22 that information. They have work both in and out of the
23 system.

24 Q Okay. They have work both in and out of the system.
25 There's work -- manual work that they alone have to do outside

1 of the system, right?

2 A Correct.

3 Q Okay. And most of the counties' registrars are not tech
4 savvy, right?

5 A Correct.

6 Q Even experienced registrars are only familiar with the
7 software to an extent?

8 A Correct.

9 Q And so for the reassignment, all officials will take it
10 slowly to ensure accuracy?

11 A Yes.

12 Q In a typical redistricting cycle, local officials may need
13 additional help or information from the vendor about using
14 Election Navigator?

15 A Correct.

16 Q Some counties use Geographic Information Systems or GIS,
17 which you've testified about, to assist them with the voter
18 reassignment during redistricting?

19 A Yes.

20 Q GIS breaks the address ranges that have been put into
21 Election Navigator into individual address points that are then
22 put in electronic form on a map where county registrars can
23 more visibly see which districts voters are in, right?

24 A Correct.

25 Q But GIS also doesn't necessarily make reassignment easier

1 for counties, correct?

2 A Correct. Not necessarily.

3 Q GIS doesn't allow for updating and moving voters in larger
4 batches once there's a new map?

5 A GIS is not moving any voters. GIS is identifying where
6 those voters would be. The registrars are then making sure
7 that the assignments are made according to the map. GIS is
8 just an electronic interactive mapping feature that allows them
9 to easier see the addresses.

10 Q Right. GIS just puts the address points on an electronic
11 map after local officials have already input the street files
12 data, right?

13 A Correct.

14 Q And so GIS is not doing the actual reassignment of voters?

15 A That's correct. GIS just displays the data that gets into
16 it.

17 Q Okay. Thank you.

18 And even with the help of temporary workers or outside
19 vendors to review changes or identify what changes need to be
20 made, registrars are the only ones who can make the changes in
21 Electronic Navigator to a voter's record, right?

22 A Correct.

23 Q And the more people that you have adjusting files, the
24 greater the risk for errors?

25 A Yes.

1 Q If something as simple as an extra character or space is
2 entered in the address, the GIS output would be unreliable,
3 right?

4 A It would make it more difficult, yes. Because, again, GIS
5 is only as good as the data that you input into it. So if bad
6 data goes in, bad data comes out.

7 It does filter that -- if you did have just some bad
8 characters or extra characters, that wouldn't necessarily
9 corrupt the entire file. It would just be isolated to whatever
10 data point had the extra character, bad information, and
11 require more time to correct.

12 Q So if bad information is put into GIS, the GIS output is
13 unreliable, right?

14 A Yes.

15 Q If there is a reassignment this year, officials in
16 Jefferson, Covington, and Elmore counties will need to work
17 under extremely tight time pressures to make the required
18 large-scale changes, right?

19 A Correct.

20 Q In 2023, you surveyed county registrars about the length
21 of the reassignment process in counties that are split between
22 congressional districts, right?

23 A Correct.

24 Q And in 2023, registrars said that because it takes time to
25 convert the street files into the needed GIS format, any

1 changes made before the 2024 primary would be done without GIS,
2 right?

3 A Yes. That sounds right.

4 Q The secretary's office has very few staff compared to the
5 number of election officials who are out there in the counties
6 conducting elections, correct?

7 A Correct.

8 Q There are only six or seven people working in the
9 secretary's election division, right?

10 A Yes. It's fewer than that now. There are four staff
11 members in addition to myself. So there's five of us total.

12 Q Okay. The secretary's office can't bring in outside
13 contractors to assist a county during a time-sensitive project,
14 right?

15 A No, not necessarily. We try to help counties as much as
16 we can, but we don't have authority to really do the work for
17 them.

18 Q Only the county commission can approve outside contractors
19 to help a registrar, right?

20 A They -- they can also approve temporary staff for the
21 registrar's office. Not necessarily a contractor, but just
22 additional individuals.

23 Q Okay. And if they were to approve outside contractors,
24 that would require the commission to enter into an agreement
25 with that contractor?

1 A I believe so, yes.

2 Q The secretary's office doesn't hire temporary employees to
3 help with election administration?

4 A No.

5 Q And the secretary's office doesn't have the ability to
6 hire temporary employees, as needed, for time-sensitive
7 matters?

8 A Correct.

9 Q Under previous administrative calendars that the state and
10 counties use during the 2012-to-2024 cycle, UOCAVA deadlines
11 weren't being met by all the counties, right?

12 A Say that time frame again.

13 Q I'll ask the whole question again.

14 Under previous administrative calendars that the state
15 and counties use during the 2012-to-2024 cycle, UOCAVA
16 deadlines weren't being met by all the counties, right?

17 MR. DAVIS: Objection, Your Honor.

18 I'm confused by the question. I don't know what the
19 2012 to '24 --

20 JUDGE MARCUS: Yeah. Why don't you just rephrase the
21 question if you would, Ms. Carter.

22 MS. CARTER: Sure, Your Honor.

23 BY MS. CARTER:

24 Q Does it help if I limit it to just the 2012 cycle?

25 A You could.

1 Q Okay. So during the 2012 cycle -- do you recall that
2 UOCAVA deadlines weren't being met by all the counties during
3 the 2012 cycle?

4 A I don't recall the exact year because that was prior to my
5 time being in the Secretary of State's office.

6 I am aware that there have been concerns in the past
7 of missing that deadline, but I don't know the exact year or
8 election cycle offhand.

9 Q Okay. And you say you're aware of a deadline being
10 missed.

11 So are you aware that the UOCAVA deadline wasn't being
12 met because the qualifying deadline occurred too late in the
13 process for certification to be completed?

14 MR. DAVIS: Objection. I think Mr. Elrod's already
15 said he wasn't in the office at that time.

16 BY MS. CARTER:

17 Q Okay. Do you -- would it help you if I refreshed your
18 recollection with a deposition that you took on May 11th, 2023?

19 A Sure.

20 Q Okay.

21 MS. CARTER: Paul, can you start at page 73 of the
22 deposition?

23 JUDGE MARCUS: What's the date on the deposition,
24 Ms. Carter?

25 MS. CARTER: I believe May 11th, 2023. Yes. May 11,

1 2023.

2 JUDGE MARCUS: You may proceed.

3 MS. CARTER: Thank you.

4 BY MS. CARTER:

5 Q Beginning on page 73, line 15.

6 Okay. It's actually starting at line 18. I asked
7 you: And what exactly happened -- excuse me. Starting at 15.

8 So we're talking and you were answering, and this was
9 around the 2012-2014 cycle when the calendars had to be
10 changed, I believe.

11 I asked you: And what exactly happened in terms of
12 the UOCAVA deadlines not being out? Were ballots sent out
13 late?

14 And you can begin to read your answer beginning on
15 line 21.

16 A Federal law requires that anybody who has requested a
17 UOCAVA prior to the absentee process beginning that those
18 ballots are sent out no later than the 45th day before the
19 election.

20 Q And go ahead. Yes.

21 A And under previous calendars that the state and the
22 counties operated under around 2010, 2012, that deadline was
23 not being met because other deadlines, such as qualifying, were
24 too late in the process for things to be certified and ballots
25 to be printed on time. So the counties were getting their

1 materials past that deadline and, therefore, not able to comply
2 with the federal requirement.

3 Q Thank you.

4 And the secretary's office had to redo the
5 administrative calendar to give more time for the counties to
6 meet their deadlines in that instance, right?

7 A Correct.

8 Q Thank you.

9 Let's talk about the process of implementing a new
10 congressional map.

11 When a new map is passed, the state sends the new
12 map's files and legal descriptions of the districts to
13 registrars to begin the reassignment process, right?

14 A Yes.

15 Q The resources available for reassignment will vary from
16 county to county?

17 A Correct.

18 Q And the only way that voters will receive correct ballots
19 is if the different combinations of the districts -- is if the
20 different combinations of the districts assign the correct
21 ballot style, right?

22 A Yes.

23 Q Even when whole counties are reassigned into new
24 districts, the process can be time consuming, depending on
25 several factors, right?

1 A Correct.

2 Q One factor being where the county was located prior?

3 A Yes.

4 Q Another factor being the registrar's familiarity and
5 comfort level with the reassignment process?

6 A Correct.

7 Q For example, a registrar might need more time to be walked
8 through the reassignment process?

9 A Yes.

10 Q If reassignment involves just a portion of voters in a
11 county, it can be time consuming, right?

12 A Yes.

13 Q And splitting a county may also involve splitting
14 precincts?

15 A Potentially yes.

16 Q Split precincts will take even more time, right?

17 A Correct.

18 Q And many of the registrars manually complete the
19 reassignment of split precincts by splitting each street
20 segment according to the new map, right?

21 A That is what registrars without GIS have to do. They
22 still also have to go into that manually after the shapefiles
23 are overlaid on their map. If they don't have GIS to initiate
24 the changes where they can see it up front beforehand, then
25 they're doing the entire process manually, yes.

1 Q Okay. For any county that has a split of any kind,
2 there's no mass change option available in GIS?

3 A If the changes are at the precinct level and splitting out
4 like that, then no; that's not a mass change. That's an
5 individual effort.

6 Q Any time there is any precinct split, you have to go
7 precinct part by precinct part and add street segment by street
8 segment, right?

9 A Correct.

10 Q Voters can't be moved in blocks, right?

11 A Correct.

12 Q The mass change, as you testified, is only going to be
13 applied if everybody is moving to the same location, right?

14 A Yes.

15 Q Otherwise, you have to break it down into the
16 precinct-part level which requires, again, getting into the
17 street-segment level to assign the split?

18 A Yes.

19 Q Splitting a county precinct or precinct part cannot be
20 done with a simple click on Election Navigator, right?

21 A Say that again. You mentioned the split can't be done by
22 single click?

23 Q Correct.

24 A That's right.

25 Q Any split has to be done at a lower, more targeted level

1 like a street segment?

2 A Yes.

3 Q And even if precincts don't need to be reassigned placing
4 the voters in the correct districts is still a lengthy process,
5 right?

6 A Yes.

7 Q To change a precinct, you have to change each part?

8 A Correct.

9 Q And with any new plan, the reassignment process requires
10 the same steps for registrars?

11 A Yes.

12 Q Registrars still have to run the preliminary reports in
13 order to first identify the changes?

14 A Correct.

15 Q They still have to make the changes?

16 A Yes.

17 Q They're still going to have to check the changes?

18 A Yes.

19 Q Okay. Let's talk about the timeline from now until the
20 special primary election.

21 I'm going to show you -- well, I am going to show you
22 Exhibit Number 2.

23 THE COURT: This is a plaintiffs' exhibit that you
24 want to mark or some exhibit that's already been received? I'm
25 not sure I know --

1 MS. CARTER: It's not been received. I'm sorry, Your
2 Honor. It's a plaintiffs' exhibit that I will mark.

3 JUDGE MARCUS: All right. So you are going to mark
4 this as Milligan Plaintiff Exhibit 2?

5 MS. CARTER: Number 2, yes.

6 JUDGE MARCUS: Okay. Do you have a copy for
7 Mr. Davis?

8 MS. CARTER: I do have a copy for Mr. Davis.
9 One moment.

10 I have handed a copy to Mr. Davis, and the ECF is
11 82-7.

12 JUDGE MARCUS: Thank you.

13 BY MS. CARTER:

14 Q So, Mr. Elrod, do you recognize this document?

15 Can you scroll down?

16 A Yes.

17 Q What is it?

18 A Declaration of Clay S. Helms.

19 Q In paragraph 9 of Mr. Helms's declaration, he states that
20 reassignment can take three to four months for the counties'
21 board of registrars to complete, right?

22 A Correct.

23 Q After Alabama's congressional maps were passed in 2021,
24 Mr. Helms said that there were substantial obstacles to
25 changing congressional districts at such a late date, right?

1 A Yes.

2 Q And the Helms declaration states that December 21st, 2021,
3 was too late a date for redistricting because absentee voting
4 was set to begin in a little over three months on March 30th,
5 2022, for the May 24th, 2022, primary elections, right?

6 A Correct.

7 Q Based on your understanding of the election timeline, do
8 you agree with that statement?

9 A Yes.

10 Q In paragraph 16, Mr. Helms states that registrars need to
11 notify voters of their assigned precincts and districts well
12 before the beginning of absentee voting to allow voters time to
13 know what their choices are and inform themselves about those
14 choices, right?

15 A Correct.

16 Q Do you agree with this statement?

17 A Yes.

18 Q Here, in this case, absentee voting is set to begin on
19 June 17th, which is less than one month from today and for a
20 special primary that's about three months away, right?

21 A Correct.

22 MR. DAVIS: Your Honor, may I give Mr. Elrod some
23 water?

24 JUDGE MARCUS: Absolutely.

25 BY MS. CARTER:

1 Q Similar to registrars --

2 JUDGE MARCUS: Wait one moment. Give him a moment,
3 please.

4 Thank you.

5 BY MS. CARTER:

6 Q All right. Are you okay? Are you ready?

7 A Yes.

8 Q Okay. Thank you.

9 So there are three weeks from when you can begin
10 reassigning voters and when absentee voting begins, correct?

11 A Correct.

12 Q Similar to the registrars, the vendors' process for
13 printing ballots is a lengthy one, right?

14 A Yes.

15 Q Vendors are working on printing ballots for at least a
16 couple of months, right?

17 A Yes.

18 Q In paragraph 2 of Mr. Helms' declaration, Mr. Helms states
19 that changing the congressional district lines would cause
20 confusion, additional costs, and a rushed district assignment
21 process that would potentially increase the risk of mistaken
22 assignments, right?

23 A Yes; that's what it says.

24 Q Do you agree with that statement?

25 A Yes.

1 And, again, at the time that this was being done and
2 the time that this declaration was submitted, the changes and
3 the extent of those changes was not fully known.

4 Q Okay. And Mr. Helms in paragraph 17 stated that if
5 congressional districts changed, local officials will have to
6 start over in the process of assigning voters to new districts,
7 making the already shortened time for the assignment process
8 even shorter. Right?

9 A Yes.

10 Q And you would agree with him, right?

11 A Yes.

12 Q In paragraph 25, Mr. Helms also testified that if the 2022
13 congressional primaries were separated from the other federal,
14 state, and county primaries with which they're traditionally
15 held, there would be substantial additional costs, right?

16 A Correct.

17 Q And the additional primaries would result in voter
18 confusion, right?

19 A Correct.

20 Q And reduced turnout, right?

21 A Correct.

22 Q Changing just one congressional district -- this is not in
23 his declaration, but I'm just asking.

24 Changing just one congressional district could still
25 involve significant changes because of how they look in

1 individual counties -- that would take more time to implement
2 for the registrars, right?

3 A Depending on what those changes are, yes.

4 Q Elmore County is whole in the remedial plan, right?

5 A I believe so, yes.

6 Q But Elmore County would be split in the 2023 plan,
7 correct?

8 A Correct.

9 Q Splitting districts that are not currently split is a
10 large-scale change, right?

11 A Yes; that's the manual process that we were discussing.

12 Q Splitting a county that is currently whole into one
13 congressional district -- excuse me. Splitting a county that
14 is currently whole in one congressional district into multiple
15 is a large-scale change, right?

16 A Correct.

17 Q Covington County is whole in the remedial plan?

18 A Correct.

19 Q But it would be split in the 2023 plan, right?

20 A Yes.

21 Q According to paragraph 10 of the Helms declaration, in
22 2017, following the Alabama Legislative Black Caucus
23 redistricting litigation, the legislature drew remedial senate
24 and house plans that altered only a portion of the districts in
25 each plan, right?

1 A Yes.

2 Q And even though only some districts were affected, local
3 election officials struggled to complete the district
4 assignment process in up to four months, right?

5 A Correct. And, again, at the time this declaration was
6 offered, the resources that counties had to make these changes
7 was much different than what it is today.

8 Now, the challenges still exist. It's still --
9 redistricting of any kind or reassignment of any kind is still
10 a tedious process for registrars. But the time frame mentioned
11 here in the 2017, we had even fewer counties than what we had
12 in '21 or '22 that had access to GIS.

13 So this example of 2017, you had even more counties
14 that were relying solely on this manual process. And that's
15 where this extended time frame comes into play. Because what
16 GIS allows the registrars to do is to take these changes,
17 whether it's whole or split, and see it electronically first.
18 And then that allows them to focus on where they need to focus.

19 As we've discussed, a large-scale change would not
20 necessarily require as much review because you're changing the
21 entirety of that district, that county.

22 You're able to essentially isolate the splits with the
23 GIS and see that. Counties didn't have access to that in 2017.
24 Or a majority of them did not.

25 So where it says that even with some districts being

1 affected and only a portion of some districts in that plan
2 being changed, the registrars had even more limited resources
3 than what they have now.

4 And I think it's important to mention here while we're
5 talking about this that the makeup of these registrar
6 offices -- you typically have three registrars. And as we
7 mentioned a few moments ago, the familiarity is different
8 amongst those registrars.

9 What also is a varying factor is that registrars have
10 a set number of working days that they work. In some counties,
11 it may not always be Monday through Friday, 8:00 to 5:00. They
12 may divide their time in shifts.

13 And so your person that is most familiar with how
14 these street files operate and how to make these changes, they
15 may be in the office one, two days a week, just depending on
16 how they divide their shifts and split their time.

17 So that also contributes to this time frame that we're
18 looking at here.

19 Q And so before GIS can be used, the registrars have to
20 manually do the reassignment process, correct?

21 A I'm sorry. You said before GIS is used or was used?

22 Q Is used. Just before -- you're testifying that GIS is
23 being used in more counties now than it was in 2017, right?

24 A Correct.

25 Q But you testified today that registrars have to input data

1 into GIS in order for GIS to do any of the work that you just
2 laid out?

3 A Correct.

4 Q Okay. Alabama Code Section 17-6-4(d) prohibits adjusting
5 precinct boundaries or designating additional voting places
6 within three months of an election, right?

7 A Correct.

8 Q Because the closer to an election that you wait to notify
9 voters of changes, the likelihood of more confusion being
10 created is higher, right?

11 A Yes.

12 Q Ensuring that elections are free and fair includes giving
13 notice of any changes to voters that impact their ballots?

14 A Correct.

15 Q And the candidate qualifying deadline is typically
16 116 days before the election, right?

17 A Roughly, yes.

18 Q And it's now 82 days between the current candidate
19 qualifying deadline and the special primary election, right?

20 A I believe so, yes.

21 Q And the candidate qualifying deadline is typically
22 116 days out because county parties and state parties also need
23 enough time to verify or certify candidates who are seeking to
24 run in their respective parties before the secretary certifies
25 those candidates, right?

1 A Yes.

2 Q The reassignment process needs to be completed by the
3 ballot printing deadline, right?

4 A Correct.

5 Q When is the ballot printing deadline for the special
6 election?

7 A On June 17th, absentee ballots will be delivered to
8 counties, so that means that prior to that, they will have been
9 printed.

10 The vendor will begin printing on May 29th once the
11 certification is made.

12 They'll have -- I mean, essentially, the deadline to
13 have ballots complete is in time for that June 17th delivery.

14 Q So the -- okay. So the deadline -- the ballot printing
15 deadline for the special election is June 17th? Is -- sorry.

16 The ballot printing deadline for the special election
17 is May 29th?

18 A That's the certification deadline. And at that time, on
19 May 29th, when the Secretary of State certifies the names of
20 opposed candidates, that certification is immediately sent to
21 the print vendor. They begin printing at that time. And they
22 continue printing until they're complete. And they're working
23 toward making sure that they have those ballots delivered no
24 later than June 17th.

25 So they may complete their printing prior to

1 June 17th, but on June 17th, those ballots have to be in the
2 county.

3 Q And reassignment hasn't started yet, right?

4 A Correct.

5 Q In the lead-up to the primary, voters thought that they
6 would be voting under the remedial map, right?

7 A Until it was announced that there was a change, correct.

8 Q Which was about two weeks ago, right?

9 A Correct.

10 Q Candidates up until two weeks ago had been preparing to
11 run under the remedial map?

12 A Yes.

13 Q All of the campaign materials were prepared for elections
14 to happen under the remedial map?

15 A Correct.

16 Q Election officials were preparing to administer the
17 primary under the remedial map?

18 A Correct.

19 Q Sample ballots were prepared for the primary election?

20 A Yes.

21 Q On direct, you testified that candidates had announced
22 changes to the districts they're running in according to the
23 2023 plan?

24 A Yes.

25 Q Right?

1 Which candidates announced changes?

2 A To my knowledge and recollection, there were two
3 candidates in District 1 that announced that they were running
4 for District 2.

5 Q So the only candidates who announced changes in alignment
6 with the 2023 plan were two candidates in congressional
7 District 1?

8 A That I am aware of right now. I don't know of any others
9 that have since made a change.

10 Q Do you know what days they announced their changes on?

11 A I don't recall the exact date.

12 Q Okay. Your office continued to encourage people to turn
13 out and vote in the May 19th primary, right?

14 A Correct.

15 Q Who is Katie Britt?

16 A A United States senator.

17 Q Okay. As a United States senator, Senator Britt would be
18 knowledgeable about federal elections in Alabama, right?

19 A I would think so.

20 Q Okay.

21 MS. CARTER: Paul, can you please pull up Exhibit
22 Number 3? I would like to identify it's -- well, this will be
23 Plaintiffs' Exhibit 3.

24 BY MS. CARTER:

25 Q Okay. This is an X post from May 19th at 8:00 a.m. from

1 Senator Britt's official account, right?

2 MR. DAVIS: Objection.

3 I don't think any foundation has been laid that
4 Mr. Helms is aware of what this is or knows Senator Britt's
5 motivations.

6 JUDGE MARCUS: Counsel?

7 MS. CARTER: Yes, Your Honor.

8 JUDGE MARCUS: I take it you mean to use this to
9 cross-examine and confront him in some way.

10 Do you need to lay a foundation for the exhibit that
11 you're showing him?

12 What is Plaintiffs' Exhibit 3?

13 MS. CARTER: Yes, Your Honor.

14 BY MS. CARTER:

15 Q What is Plaintiffs' Exhibit 3?

16 A Is this Exhibit 3?

17 Q Yes. I've identified this as Plaintiffs' Exhibit 3.

18 What is Plaintiffs' Exhibit 3?

19 A It appears to be a Twitter post -- or X, as they call it
20 now, I guess -- I guess from Senator Katie Britt.

21 Q Can you please read the text of it?

22 MR. DAVIS: Objection, Judge. This is --

23 JUDGE MARCUS: Sustained.

24 BY MS. CARTER:

25 Q How do you recognize what this is?

1 A Because it has her name on it and it looks like a format
2 that is used in Twitter or X.

3 I don't follow that, so I don't really know.

4 Q Is there any reason to doubt that she posted this on
5 May 19th, 2026?

6 MR. DAVIS: Again, objection, Judge.

7 JUDGE MARCUS: We'll take the answer if he knows.

8 Do you know? If you do not know, just tell us you
9 don't know.

10 THE WITNESS: Yeah. I don't know if she posted this
11 or not.

12 BY MS. CARTER:

13 Q Is there any reason to doubt that this is an official --
14 that this is a reproduction from her official account?

15 MR. DAVIS: Same objection.

16 JUDGE MARCUS: Sustained.

17 MS. CARTER: Okay.

18 May I have a moment to confer?

19 JUDGE MARCUS: Sure.

20 (Discussion off the record.)

21 MS. CARTER: I have one more question.

22 JUDGE MARCUS: Sure.

23 BY MS. CARTER:

24 Q I would like to show a video that I will be identifying as
25 Exhibit Number 5. Well, I guess Exhibit Number -- well,

1 Exhibit Number 4.

2 JUDGE MARCUS: What is it a video of, counsel?

3 MS. CARTER: This is a video of another X video, but
4 it is from Secretary Allen's official account.

5 JUDGE MARCUS: I'm sorry. From whose account?

6 MS. CARTER: Secretary Allen -- Secretary Allen. Wes
7 Allen. The Secretary of State.

8 JUDGE MARCUS: All right.

9 MS. CARTER: Yes, sir.

10 JUDGE MARCUS: Do you know what she's referring to?

11 MR. DAVIS: I don't. I haven't seen this.

12 MS. CARTER: So we'll --

13 JUDGE MARCUS: How long is the video?

14 MS. CARTER: 10 seconds.

15 JUDGE MARCUS: You may proceed.

16 And you may comment, cross-examine, confront or
17 object, if you will.

18 Let's proceed. You may play Plaintiffs' Exhibit 4.
19 This is a video from Secretary Allen.

20 Do I have that right?

21 MS. CARTER: Yes, sir.

22 JUDGE MARCUS: And what's the date on it?

23 MS. CARTER: The day is May 19th, 2026.

24 BY MS. CARTER:

25 Q Have you seen this video before, Mr. Elrod?

1 A I don't know. I haven't seen the video.

2 Q Do you know who this is in the video?

3 A Yes.

4 Q Can you tell the Court who this is in the video?

5 A Secretary of State Wes Allen.

6 Q Okay. Can you scroll up a little bit to show -- does this
7 appear to be the official account of this Alabama Secretary of
8 State?

9 A Looks like it, yes.

10 Q Okay. The --

11 MS. CARTER: Paul, you can play the video. Thank you.

12 (Plaintiffs' Exhibit 4 played in open court as follows:)

13 SECRETARY ALLEN: Hey, everyone. Wes Allen, Alabama
14 Secretary of State. Today's a big date. May the 19th. The
15 primaries are today. Polls are already open.

16 As you know, polls are open from 7:00 a.m. to 7:00
17 p.m. Go out and go vote today.

18 Make sure you have your photo ID with you. Normally,
19 that's your Alabama driver's license. And when you go vote and
20 when you finish up, make sure you thank your poll worker. It
21 is a long day for them. They are doing a public service. So
22 make sure you thank your poll worker. And I hope y'all have a
23 great day.

24 (End of video.)

25 JUDGE MARCUS: All right. You've played it. Now you

1 may question him about it.

2 Let's proceed.

3 MS. CARTER: Thank you.

4 BY MS. CARTER:

5 Q In the video, Secretary Allen doesn't reference the
6 cancellation of the primaries for congressional Districts 1, 2,
7 6, or 7, right?

8 A Correct.

9 Q And the secretary's office is still going to tally the
10 votes for the primaries in congressional Districts 1, 2, 6 and
11 7, right?

12 A The Secretary of State's office doesn't tally the votes.
13 The tabulators that receive the ballots tallies the votes.

14 Q To your knowledge as the director of elections, the votes
15 for the primaries in congressional Districts 1, 2, 6, and 7 are
16 still going to be tallied, correct?

17 A Yes.

18 Q So if ordered by the Court, you could still report the
19 results of those primaries, right?

20 A Yes.

21 MS. CARTER: Thank you.

22 Pass the witness.

23 JUDGE MARCUS: Thank you.

24 Any questions from the Singleton plaintiffs, Mr.
25 Quillen?

1 MR. CHRISTIE: Your Honor, the Caster plaintiffs were
2 going to go next. The Singleton plaintiffs are going to go
3 after the Caster plaintiffs.

4 JUDGE MARCUS: How much do you have, by the way? I
5 don't mean to cut you off, but I'm just trying to get a sense
6 of timing here.

7 MR. CHRISTIE: Your Honor, I would think 45 minutes,
8 perhaps from the Singleton plaintiffs.

9 MS. MADDURI: I think 10 to 15.

10 JUDGE MARCUS: All right. Let's proceed with Caster.
11 Thank you.

12 MS. MADDURI: Would it be okay to take a break at this
13 point?

14 JUDGE MARCUS: Sure. We'll take a ten-minute break
15 and then we will proceed with Caster. Thank you.

16 (Recess.)

17 JUDGE MARCUS: Please be seated, folks.

18 Counsel, you may proceed with your cross-examination.

19 Again, if you would be kind enough to state your name
20 on the record. You're appearing on behalf of the Caster
21 plaintiffs.

22 MS. MADDURI: Thank you. Good morning, Your Honors.

23 Good morning, Mr. Elrod.

24 My name is Lali Madduri, and I represent the Caster
25 plaintiffs?

1 THE WITNESS: Good morning.

2 CROSS-EXAMINATION

3 BY MS. MADDURI:

4 Q Okay. Let's start with Tuesday's primary election.

5 So Alabama just conducted its primary election this
6 week on May 19th; is that right?

7 A Correct.

8 Q And the remedial plan was used during that primary
9 election, correct?

10 A Yes.

11 Q There were contested congressional primaries in
12 Districts 1 and 6 for the Republican side; is that right?

13 A Yes.

14 Q I know there are also two other contested Republican
15 primaries, but they're not affected by the changes -- the
16 potential changes between the remedial plan and the 2023 plan;
17 is that right?

18 A Correct.

19 Q So I'll focus my questions only on the districts that are
20 going to potentially be affected by a change here.

21 A Okay.

22 Q So that's CD1 and CD6, right?

23 A Correct.

24 Q So the results of the Republican congressional primary in
25 CD1 and CD6 were tabulated, right?

1 A Correct.

2 Q And those results were announced, correct?

3 A Correct.

4 Q Okay. And according to the state's website, more than
5 81,000 votes were cast in CD1's Republican congressional
6 primary; is that right?

7 A I don't have those results in front of me.

8 Q Do you have any reason to dispute that 81,000 votes were
9 cast in Republican congressional primary in CD1?

10 A No.

11 Q That figure is roughly the same as the total number of
12 votes cast in other Republican primary elections in CD1; is
13 that right?

14 A I would need to see election results in previous cycles to
15 compare.

16 Q I'm not asking about previous cycles.

17 I'm asking between the congressional primary in CD1
18 and other Republican primaries in CD1 during this election.

19 Roughly the same number of votes were cast across
20 Republican primary elections in CD1 in this election; is that
21 right?

22 A Well, again, I don't have the results in front of me, so I
23 don't know how many votes were cast in other races.

24 Q Do you have any reason to dispute that roughly the same
25 number of votes were cast in the Republican congressional

1 primary in CD1 as were cast in other Republican primaries in
2 CD1?

3 MR. DAVIS: Objection, Your Honor.

4 I think he just said he didn't know.

5 JUDGE MARCUS: We'll take it a second time.

6 Are you able to answer the question, Mr. Elrod?

7 THE WITNESS: Yes, sir. I don't have any reason to
8 dispute it. I don't have that in front of me.

9 BY MS. MADDURI:

10 Q If a special primary election occurs in August, all of the
11 votes that were cast in CD1 and CD6 for the Republican
12 congressional primary will be voided, correct?

13 A Could you restate the question please?

14 Q Sure.

15 If there is a new special primary election in August
16 for the congressional plan, the votes that were just cast in
17 CD1 and CD6 in the Republican congressional primary -- those
18 votes will be voided, right?

19 A It's my understanding that those votes are not going to be
20 certified to begin with.

21 Q You discussed with your counsel that the secretary has
22 educated voters about the 2023 plan; is that right?

23 A Yes.

24 Q And that was only through press releases and press
25 conferences, right?

1 A And also by the fact that we have the '23 map hosted on
2 our website.

3 Q Okay. So it was press releases, press conferences, and
4 the fact that the 2023 map is posted on your website; is that
5 right?

6 A Correct.

7 Q No other voter education efforts have been undertaken at
8 this time regarding the 2023 map, correct?

9 A To my knowledge -- I don't know anything beyond what our
10 office has done.

11 Q And that is all that your office has done to educate
12 voters about the change to the 2023 plan, right?

13 A That I'm aware of at this time.

14 Q The Secretary of State sends voter information cards to
15 every voter in advance of elections, correct?

16 A No. The board of registrars send cards. Also, it may
17 vary about the extent to which those cards are sent because
18 state law only requires that those voter identification
19 cards -- what we refer to as a voter registration postcard is
20 sent only when polling locations change.

21 Now, some counties may elect to send notification to
22 all their voters prior to an election. That's going to depend
23 on the resources that the county has. But by law, registrars
24 are only required to send those notices, those cards when a
25 polling location changes ahead of an election.

1 The Secretary of State's office does not send any
2 voter registration information directly to voters.

3 Q Okay. So that's sent by county by county. If voter
4 registration card is sent, that's done at the county level; is
5 that right?

6 A Correct.

7 Q Apologies. Technical glitch.

8 Okay. You -- I just want to clarify some things about
9 the timeline for the upcoming voter assignments.

10 So you said that that can begin on May 27th, correct?

11 A Correct.

12 Q And that process has to be completed on June 2nd; is that
13 right?

14 A Correct.

15 Q So that's a one-week window to do all of the voter
16 reassignments that will be necessary between the remedial map
17 that's currently in place and the 2023 plan that Alabama
18 intends to shift to; is that right?

19 A Correct.

20 Q And that's actually only five business days?

21 A It would, but in situations like this, it would be
22 expected that the registrars are in their offices throughout
23 weekends or any holidays that may exist at that time. Because
24 of the tight time frame, we would expect all hands on deck to
25 get the work done.

1 Q Have you confirmed with each county that needs to do voter
2 reassignments that they will be able to complete that process
3 in the seven-day window?

4 A No; I've not spoken to each county.

5 Q So you don't know whether counties can actually complete
6 the reassignment process in the seven-day window that they
7 have?

8 A Based on the knowledge that we have of the '23 map,
9 knowing those changes ahead of time, there is reasonable
10 certainty that we could say that it could be completed in that
11 time, because, again, most of the changes are what we refer to
12 as mass changes. For those counties that have the splits, it
13 has been communicated to them to expect the short window and to
14 be prepared to dedicate as much time as necessary.

15 But, yeah. Again, based on what we know of the
16 changes, while it is a short time frame, a lot of those changes
17 could be done with relative quickness and then allowing time
18 for review to make sure that it is all correct.

19 Q Has Alabama ever completed voter reassignment in under
20 seven days in the past?

21 A I don't know.

22 Q You're not aware of any instances where Alabama reassigned
23 voters within seven days that's contemplated now?

24 MR. DAVIS: Objection, Your Honor.

25 I believe the testimony has been it's done county by

1 county; there's not, like, a state reassignment.

2 JUDGE MARCUS: Rephrase the question.

3 BY MS. MADDURI:

4 Q To your knowledge, has Jefferson County ever completed
5 voter reassignments within seven days?

6 A I don't know offhand.

7 Q Jefferson County is one of the counties that is split in
8 the 2023 plan, correct?

9 A Correct.

10 Q And it's also split in the remedial plan, right?

11 A Yes.

12 Q But the split is different between the two plans?

13 A Correct.

14 Q Okay. So Jefferson County is not one of the counties who
15 can do that mass sort of change that you mentioned?

16 A Correct.

17 Q And you're not aware if Jefferson County has ever
18 completed voter reassignments within seven days, correct?

19 A I don't know. I would have to check with the county to
20 see how quick they've been able to do it in the past.

21 Q Sitting here today, are you aware of any county that has
22 completed voter reassignments within seven days where the
23 county was split?

24 A Not offhand. I'd have to check with counties.

25 Q And you discussed a little bit I think on both your direct

1 and your cross about the reassignment that occurred in 2021 and
2 2022 to implement that map.

3 Do you recall that?

4 A Yes.

5 Q Are you aware that Jefferson County said it would take
6 five-and-a-half months to do the reassignments in that time?

7 A I recall they did have a lengthy time, yes.

8 Q And at that time, Jefferson County also had GIS, correct?

9 A Correct.

10 Q So there's no change between its GIS capabilities when it
11 did the reassignments in 2022 versus now, correct?

12 A To my knowledge, they still have the same GIS
13 capabilities.

14 The extent of the changes, of course, makes a
15 difference in the timing, but, to my knowledge, their resources
16 remain the same.

17 Q It's fair to say that it's administratively easier to use
18 the remedial map than changing to the 2023 map right now,
19 correct?

20 MR. DAVIS: Object, Your Honor.

21 Administratively easy is pretty vague.

22 JUDGE MARCUS: No. I will take the answer.

23 Overruled.

24 THE WITNESS: If making the changes you just mean the
25 reassignment -- if no changes are made, that would be easier.

1 But I don't have a -- I don't have an opinion on which map
2 would be better to use.

3 We're going to direct counties to implement whatever
4 is approved for use.

5 BY MS. MADDURI:

6 Q It's fair to say that the process to implement the 2023
7 plan will be rushed; is that fair?

8 A It's a quick, tight time frame, yes.

9 Q And it's fair to say when there is a rushed or quick time
10 frame, it's more likely that there will be errors in
11 reassigning voters; is that right?

12 A That's always a possibility, yes.

13 Q And if voters are assigned incorrectly, then they will
14 receive the incorrect ballot; is that right?

15 A Yes.

16 Q Voters were wrongly assigned and provided incorrect
17 ballots for the wrong districts in state legislative races in
18 2022; is that right?

19 A Yes, as I recall.

20 Q And there were approximately four months between the
21 adoption of that plan and the start of absentee voting in that
22 primary, correct?

23 A As I recall.

24 Q In 2023 and 2024, Secretary Allen considered it likely
25 that a new plan by around October 1st of 2023 would provide

1 enough time to reassign voters, print and distribute ballots,
2 and otherwise conduct the 2024 primary which took place
3 five months later; is that right?

4 A As I recall, yes.

5 Q And even with the five months between finalization of the
6 map and the primary election in 2024 -- at that time, Secretary
7 Allen could not predict whether implementing a plan at that
8 point would lead to disruption for state officials, local
9 officials, candidates, and voters, right?

10 A Yes. Again, all these changes are influenced by various
11 factors, and knowing what the changes are before you have to
12 make them is one of them.

13 In a lot of these scenarios that we're discussing, we
14 didn't have as clearly defined a comparison in order to
15 identify what changes potentially could be made.

16 But, yes. Any time that you're making changes shortly
17 before an election, you are going to have an increase of those
18 factors.

19 Q And none of those increased factors that you just
20 discussed -- none of those would be increased risk if we kept
21 the remedial plan in place, correct?

22 A The risk of voter confusion and communication, the impact
23 on qualifying, all of those factors would still be in place.
24 The system changes, though, would not be a factor if the
25 remedial plan was used. Because if no changes are made, then

1 that currently exists. We have that; the counties have that.

2 But as discussed earlier, there are other contributing
3 factors that would be at play that -- while the issue of
4 reassignment would be eliminated if the remedial plan was kept
5 in place, there are other challenges that exist.

6 Q And the remedial plan has been in place now since 2023,
7 right?

8 A Correct.

9 Q So about three years it's been in place?

10 A Roughly, yes.

11 Q The 2024 general election and the primary elections
12 leading up to that election were all conducted under the
13 remedial plan?

14 A Yes.

15 Q And then the May 19th primary was just conducted under
16 that remedial plan?

17 A Yes.

18 Q And the 2023 plan has been announced as the new plan for
19 ten days; is that right?

20 A Roughly, yes.

21 Q And in that time, the only education that voters have been
22 given from your office is a press -- some press releases, press
23 conferences, and the posting of the map on your website,
24 correct?

25 A To the best of my recollection, yeah.

1 Q Fair to say it would be easy enough to issue new press
2 releases that would tell voters that the remedial plan is back
3 in place if that's what a Court orders?

4 A We would certainly have an aggressive communication
5 operation. But any time you start going back and forth between
6 communication to the public, there's going to be an increase of
7 confusion; there's going to be a decrease in confidence of the
8 electoral process as a whole.

9 As I mentioned earlier, having the
10 find-my-elected-official feature on our website where voters
11 can go and search to find what district they're in -- right
12 now, if someone searches that map, they'll see the 2023 plan
13 for their congressional district.

14 If someone searches now and sees that they're in, for
15 example, say, District 1, and -- if that were to change, we
16 can't guarantee you -- there's a possibility that they may not
17 go back and check that site. If they look up their information
18 once and see, okay; I'm in this district, they commit that,
19 they say, this is where I vote, and then if a change is made
20 back to where they would be under the remedial plan, then
21 there's a likelihood that they're not going to see it.

22 So the challenge is aggressively communicating, making
23 sure that people are aware. But, again, any time you go back
24 and forth, it's just going to increase confusion and decrease
25 the confidence that people have in the process.

1 Q It's fair to say that your office will educate voters
2 about any change that a Court orders to which map will be used
3 in the congressional elections this year, right?

4 A It's fair to say we will do our absolute best to
5 communicate any changes that may occur.

6 Q And fair to say that many counties will take steps to do
7 the same?

8 A I can't speak for the counties, but I would imagine that
9 they would also take necessary steps to communicate.

10 Q Okay. And you don't have any knowledge or information
11 about how many voters have actually received notice about the
12 2023 plan, correct?

13 A You mean like a count? No; I don't know how many.

14 Q And you don't know how many people have looked up their
15 district in the last ten days to discover that they've been
16 moved, correct?

17 A Correct.

18 Q My apologies. I'm trying not to cover anything that you
19 already covered with Ms. Carter.

20 A I understand.

21 MS. MADDURI: Okay. I don't have any more questions
22 for you, Mr. Elrod. Thank you for your time.

23 THE WITNESS: Thank you.

24 JUDGE MARCUS: We'll hear now from Singleton.

25 MR. CHRISTIE: Chris Christie for the Singleton

1 plaintiffs.

2 I have notebooks with exhibits in them that -- I would
3 like to hand copies of the notebooks both to the bench and
4 opposing counsel.

5 JUDGE MARCUS: Let's proceed.

6 How many exhibits do you wish to use?

7 MR. CHRISTIE: I have ten exhibits in the notebook,
8 but several I am not going to use --

9 JUDGE MARCUS: All right. So let's proceed with the
10 ones you want to use.

11 MR. CHRISTIE: I will. Yes, sir.

12 JUDGE MARCUS: You'll have a set of that for
13 Mr. Davis, please.

14 Do you have a set for our court reporter?

15 All right. Let's proceed.

16 CROSS-EXAMINATION

17 BY MR. CHRISTIE:

18 Q Mr. Elrod, a point of personal privilege.

19 I had surgery about a month ago, and my wife tells me
20 that I don't speak as loudly as I normally do. And so if you
21 don't hear me, would you please let me know?

22 A Yes, sir.

23 Q All right. Thank you.

24 If you would, first go to tab 6 in the notebook that I
25 gave you.

1 A I don't have a copy.

2 JUDGE MARCUS: Have we not given the witness a copy?

3 Thank you.

4 THE WITNESS: Which page, Mr. Christie?

5 BY MR. CHRISTIE:

6 Q Tab 6, please.

7 Do you see on the front page that this is an order
8 entered in Singleton against Allen, in Milligan against Allen,
9 and it has document 355 at the top of it?

10 A Yes, sir.

11 Q And if you will, flip several pages in to where you get to
12 paragraph 5 -- it actually says page 4 of 5 at the top of the
13 document.

14 Do you see where I am?

15 A Yes.

16 Q All right. And then paragraph 5 -- I'm going to start
17 where it says Secretary Allen.

18 Do you see where I am? Fourth line?

19 A Yes.

20 Q Secretary Allen is ordered to file an affidavit -- time
21 frame -- providing any and all such information that he
22 believes to be necessary to be the resolution of the issues now
23 before the Court on remand from the Supreme Court.

24 Do you see where I read that?

25 A Yes.

1 Q So the declaration that you provided is to comply with the
2 Court's order that we've just read in paragraph 5, correct?

3 A Yes.

4 Q All right. If you will, flip to the next page, page 5 of
5 5.

6 Do you see the paragraph that starts with the word
7 "accordingly"?

8 A Yes.

9 Q Accordingly, at a minimum, the secretary is directed to
10 advise this Court of the date by which he needs an electoral
11 map in hand to timely facilitate a special primary election in
12 accordance with Alabama law.

13 A Yes.

14 Q Did I read that correctly?

15 And the declaration that you have does not provide the
16 date that the Court directed you to provide, does it?

17 A No.

18 Q If you could have provided that date, you would have,
19 correct?

20 A If it was possible to provide that, yes.

21 Q And so there's so much uncertainty here that the Secretary
22 of State's office could not provide a date by which they would
23 need to have an electoral map in hand to timely facilitate a
24 special primary election?

25 A Right.

1 Q If you would, I would like for you to go to Tab 8.

2 If you will look up at the top, Tab 8 is filed
3 September 18th, 2025.

4 Do you see the date that I'm talking about?

5 A Yes.

6 Q And this is the declaration of Barry Stephenson, right?

7 A Yes.

8 Q And Mr. Stephenson is the chief of registrars for
9 Jefferson County, right?

10 A Correct.

11 Q And he is the chair of the board of registrars, right?

12 A Yes.

13 Q And if you will flip to page 2 of 5 of Exhibit 8, do you
14 see where at the top it says next regularly scheduled elections
15 in Jefferson County are the May 19th, 2026, primary elections?

16 A Yes.

17 Q And so this affidavit is being provided by -- this
18 declaration is being provided by Mr. Stephenson in relationship
19 to the May 19th, 2026, primary which was just three days ago,
20 right?

21 A Correct.

22 Q If you will, I would like for you to go to page 4 of 5.
23 And you see paragraph 14 there?

24 A Yes.

25 Q So it takes at least a week for Jefferson County to print

1 ballots; is that correct?

2 A That's what he says.

3 MR. DAVIS: Your Honor, I want to object.

4 I don't know that Mr. Elrod has ever seen this. This
5 is from another case. This sounds like the Singleton
6 plaintiffs are trying to get in hearsay through a witness who
7 has no familiarity with this declaration.

8 JUDGE MARCUS: I understand.

9 You can use it for the purposes of confronting and
10 cross-examining. The exhibit has not been received in
11 evidence.

12 MR. CHRISTIE: Thank you, Your Honor.

13 BY MR. CHRISTIE:

14 Q If you will, go to page 5 of 5.

15 Do you see there where it starts with the word
16 "considering"?

17 A Yes.

18 Q All right. And I am going to read the first sentence.

19 Considering these deadlines and districting realities,
20 I estimate that the county would need to know by October 20th,
21 2025, of the final plan to be used for the 2026 elections.

22 Did I read that correctly?

23 A Yes.

24 Q And so Mr. Stephenson was able to give a specific date,
25 wasn't he?

1 A It appears that he did.

2 Q And that date was October 20th, 2025, right?

3 A That's what he says.

4 Q And that date of October 20th, 2025, is about six months
5 before the May 19th primary, right?

6 A Yes.

7 Q And so, for Jefferson County, it takes about six months to
8 get ready for an election, right?

9 A That appears to be what he says.

10 Q Now, the Special Master's remedial map was used in the
11 2024 primaries, right?

12 A Yes.

13 Q And the Special Master's remedial map was used in the 2024
14 general election, right?

15 A Yes.

16 Q And the Special Master's remedial map was used in the 2026
17 primary, right?

18 A Yes.

19 Q And so if voters were paying attention, they would -- that
20 would be the map that they would be familiar with, right?

21 A Yes.

22 Q And if -- and for the over-two-year period that if a voter
23 had gone to the Secretary of State's website to see what
24 district they were in, it would have been the remedial map that
25 they would have been able to find what district they were in,

1 correct?

2 A Yes.

3 Q And so the confusion is going to come from changing away
4 from the map that's been used for the 2024 primary, the 2024
5 general, 2026 primary, and that's been up on the Secretary of
6 State's website for over two years, right?

7 A That confusion has already started -- attempted to be
8 addressed by communicating now which map would be intended to
9 use.

10 Further confusion would come from reversing what's
11 already been said since the governor's proclamation.

12 Q If you will, I'd like for you to go to tab 1. And
13 probably need to look at the top of page 2 of 35, declaration
14 of Jeff Elrod.

15 Do you see that?

16 A Yes.

17 Q And, there, you recognize that the Court has directed --
18 paragraph 1, the Court has directed the secretary to advise
19 this Court of the date by which he needs an electoral man in
20 hand to timely facilitate a special primary election in
21 accordance with Alabama law, right?

22 A Yes.

23 Q And you do not give that date in this affidavit -- this
24 declaration, correct?

25 A Correct.

1 Q Now, at the bottom in the same paragraph, do you see where
2 it says, the later any injunction comes, the greater the
3 hardship would be in trying to reverse course?

4 A Yes.

5 Q And you're talking about actually conducting the election,
6 right?

7 A Yes.

8 Q Now, the easiest map to use in the general election in
9 2026 will be the Special Master's remedial map because all the
10 work has been done for that map, correct?

11 A Again, as I've said before, I don't have an opinion on
12 which map will necessarily be easier.

13 Every map potentially has challenges and difficulties,
14 which is why it's been difficult to say which date for a
15 special election we would need a map in place.

16 But speaking about the changes, the reassignments, no
17 changes would have to be made because, as we've already stated
18 and agreed, that map is in existence. But there are other
19 challenges.

20 Q The only challenge -- well, the challenge that you have
21 for the 2023 map is the reassignments, one of the challenges,
22 right?

23 A That's one of them, yes.

24 Q And that challenge does not exist for the Special Master's
25 remedial map, correct?

1 A Correct.

2 Q And that makes the Special Master's remedial map easier,
3 right?

4 A It makes reassignment easier, yes.

5 Q Now, at the top of page 3 of 35, you see there where it
6 says, things would be made worse if the Court were to order the
7 implementation of some yet-unknown map.

8 Do you see where I am?

9 A Yes.

10 Q Now, you do not mention the Special Master's remedial map
11 in your declaration, do you?

12 A No.

13 Q And the alternative to the 2023 map is the Special
14 Master's remedial map, correct?

15 A It is an alternative, yes.

16 Q And so when you're referring to some yet-unknown map,
17 that's a misleading statement, isn't it?

18 A It's a true statement that it would be difficult to
19 implement an unknown map.

20 Q Yes. But that's not the alternative here; the alternative
21 is the Special Master's remedial map, correct?

22 A It is one alternative.

23 Q If you will, go to page 4 of 35.

24 Do you see Paragraph 6 there?

25 A Yes.

1 Q And it's talking about the judges of probate to have
2 ballots produced and delivered by June 17th.

3 Do you see where I am?

4 A Yes.

5 Q And based on Barry Stephenson's declaration, we know that
6 it's a week for Jefferson County, right?

7 A That's what he said; yes.

8 Q And then when it's talking about at the end of that,
9 because the voter registration records may be locked down, to
10 facilitate the regularly scheduled primary runoff election,
11 which would be held on June 16th -- that lockdown date we now
12 know is June 2nd, correct?

13 A Yes.

14 Q If you would, go to page 8 of 35 of Singleton Exhibit 1,
15 paragraph 18.

16 When you say, under ideal circumstances, what do you
17 mean by ideal?

18 A Well, what that sentence says is under ideal
19 circumstances, the reassignment of all voters would occur
20 before qualification opens for any candidates for any offices,
21 meaning that before candidates say which district they're
22 intending to be a candidate in, that they would know what the
23 makeup of those districts are.

24 Q And the only way that we -- Alabama can have congressional
25 districts that meet the ideal circumstances is to use the

1 Special Master's remedial map, correct?

2 A Not necessarily.

3 We know what districts would be made up in the '23
4 plan which has been communicated.

5 Q And you're uncertain whether or not those reassignments
6 can get done in time, correct?

7 A We can't give a specific date, but, as mentioned, we would
8 direct the counties to work on an aggressive timeline to
9 implement those changes. And it's helpful when you know what
10 those changes are.

11 Q It's uncertain, correct? Whether or not the reassignments
12 can get done for the 2023 map is uncertain, correct?

13 A Getting done by June 2nd is, what --

14 Q Yes.

15 A Again, we're going to push the counties to do it and
16 direct them to do it.

17 Q Can you answer the question yes or no? It's uncertain;
18 yes?

19 A Yes.

20 Q If you will, go to page 10 of 35.

21 Congressional District 1 for the May 19th primary had
22 eight candidates, correct, in the Republican primary?

23 A Yes.

24 Q And, in fact, Jerry Carl and Rhett Marques were the top
25 two vote-getters on May 19th, correct?

1 A As much as I recall without having the results in front of
2 me.

3 Q And there are going to be statewide runoffs for June 16th
4 both in the senate race for both Republicans and the Democrats,
5 correct?

6 A I believe so, yes.

7 Q And there's going to be a runoff in lieutenant governor's
8 race for the Republicans and the attorney general's race for
9 the Republicans, too, right?

10 A Yes.

11 Q So every precinct in congressional District 1 is going to
12 already have a runoff, right?

13 A Correct.

14 Q And so the burden for adding a -- the runoff result
15 between Jerry Carl and Rhett Marques is nominal, correct?
16 Adding just one more race to the ballot.

17 A Well, I don't know if we could add one more race to the
18 ballot if those votes are not going to be certified.

19 Q If the Court orders the votes to be certified, there is a
20 nominal burden placed on the counties that would be involved in
21 putting just one more race on the ballot, correct?

22 A I don't know to the extent of what burden they would face
23 because there would be ballot styles that would have to be
24 potentially restructured and reevaluated.

25 The counties have already been working off of the

1 premise that this would not be a race. So the extent to how
2 they would be burdened, I can't say for certain what that is.

3 Q The results for the May 19th primary have not been
4 certified yet, have they?

5 A No.

6 Q And so they haven't started working on those issues yet,
7 have they? The counties have not.

8 A Preliminarily, they are expecting, anticipating not to
9 certify the results for those congressional districts. And
10 that leads to any -- early preparation on getting ready for the
11 runoff, which they're not expecting this race to be part of.

12 Q Mr. Elrod, you're aware that this Court, this three-judge
13 panel, has already ruled that the 2023 map violates the United
14 States Constitution, right?

15 A I have seen the orders, yes.

16 Q And so you understand that there is a realistic
17 possibility that there could need to be a runoff in the first
18 congressional district on June 16th, correct?

19 A That is a possibility.

20 Q And your office is prepared to work with the counties to
21 make sure that happens efficiently, correct?

22 A Anything that a Court orders us to do, we will work
23 diligently to ensure that it can get carried out. That doesn't
24 mean that it will necessarily be easy or without challenges,
25 but our office just implements what we're directed to do.

1 Q The June 16th primary runoff is actually part of the
2 May 19th primary, right?

3 A Yeah. It's an extension of that. It comes as a result of
4 that election.

5 Q So the Court really has two choices. It could order for
6 the runoff on June 16th to include the runoff between Jerry
7 Carl and Rhett Marques in the first congressional district,
8 right?

9 A That's a possibility.

10 Q And the Court could also order to have a runoff at a later
11 date, for example, early August, correct?

12 MR. DAVIS: I want to object.

13 I don't think he -- these are the things that lawyers
14 are going to argue about. I don't think it's the thing that
15 Mr. Elrod has personal knowledge of.

16 JUDGE MARCUS: We will take the answer to the
17 question. I think the question goes fairly to the mechanics,
18 counsel.

19 MR. CHRISTIE: Thank you.

20 THE WITNESS: Could you repeat the question, please?

21 BY MR. CHRISTIE:

22 Q Yeah.

23 I am going to start off: There are two alternatives
24 if this Court decides that it's in the public interest to use
25 the 2023 remedial map for the 2026 general election. One is to

1 order the runoff on June 16th to include the first
2 congressional district between Rhett Marques and Jerry Carl,
3 correct? That's an alternative?

4 A That's a possibility, yes.

5 Q Another alternative would be to have that runoff of that
6 specific election at a later date, correct?

7 A It would depend on the date because, as we discussed
8 earlier, the later that a special election for these
9 congressional districts is held is going to conflict with the
10 November 3rd general election that has to be held.

11 So a later date, while it is a possibility -- it
12 depends on what that date is because it does affect more than
13 just that special election.

14 Q It could be any time in July and that would be acceptable,
15 correct?

16 A I'm not aware if July would give enough time because we do
17 have certain requirements with absentee deadlines and other --
18 other requirements that have to be done.

19 The date of an election isn't just the date of an
20 election. There are other factors that have to be met.
21 Deadlines and things like that.

22 Q It would be much easier administratively to have the
23 runoff between Marques and Carl for the first congressional
24 district on August 11th than it would be to use the 2023 map;
25 isn't that correct?

1 A Again, holding the election on August 11th -- that does --
2 it's a tight time frame. It would allow for things to be met.
3 The map that's used -- there are advantages to not having
4 redistricting assignments.

5 There are other challenges, voter education and the
6 candidate qualifying and those type of things, that come into
7 play. But yes; it is -- any time you know what the map's going
8 to be makes it easier to make those necessary changes.

9 Q And the 2023 remedial map is known, correct?

10 A It's known, yes.

11 Q And there wouldn't be any candidate qualifying issues
12 because you would just be putting two candidates who have
13 already become the top two vote-getters in the May 19th
14 primary, that being Jerry Carl and Rhett Marques, correct?

15 A One of those candidates being someone that has said that
16 he was not running in that district any more.

17 Q Well, they can by the end of the day today decide whether
18 or not they're going to participate in the runoff. And one,
19 either Carl or Marques, could say that there's not going to be
20 a runoff in the first congressional district because they're
21 not going to run, correct?

22 A Yeah. Today's the qualifying deadline for the August 11th
23 election, so that would --

24 Q Today is also the last day on which a candidate who wants
25 to participate in the June 16th runoff can indicate that they

1 decline to participate in the runoff; isn't that correct?

2 A Yes.

3 Q If you are looking for the administrative calendar, it's
4 tab 3. The administrative calendar --

5 A Yeah.

6 Q Do you see where I am?

7 A I've got it.

8 Yes; May 22nd is the last day for candidates to
9 decline to have their name on a runoff ballot.

10 Q If you will, go to page 11 of 35.

11 And I think in some ways what's in paragraphs 30 and
12 31 I have already discussed because if the Court orders that
13 the May 19th primary results, first congressional district, be
14 canvassed and certified, the Secretary of State's office will
15 make sure that happens, right?

16 A Yes.

17 Q And if the -- if the Court orders for the runoff for the
18 first congressional district to be included on June 16th
19 ballots, the Secretary of State's office will make sure that
20 happens, right?

21 A Yes.

22 Q Now, May 27th -- and I am looking at paragraph 32.

23 May 27th is the date that the state executive
24 committee will receive the returns canvassed and tabulated.

25 Do you see where I am?

1 A Yes.

2 Q Now the state executive committee is the Republican
3 executive committee and the Democratic executive committee for
4 the primaries, correct?

5 A Correct.

6 Q And that's the parties' role in a primary?

7 A Yes.

8 Q One of the roles.

9 If you will, go to page 15 of 35.

10 And your declaration indicates that things will be
11 more complicated in Covington County, Elmore County, and
12 Jefferson County, correct?

13 A Correct.

14 Q At the bottom of page 16 of 35, the secretary understands
15 from registrars that the typical voter reassignment process is
16 lengthy and requires pre-reviewed time to make changes and
17 quality checks, correct?

18 A Where are you?

19 Q I was at the bottom of page 16, bleeding over to the top
20 of page of 17 of 35.

21 A Okay. I see it now. Yes.

22 Q All right. And then paragraph 56.

23 A Yes.

24 Q Registrars to be able to begin inputting voter
25 reassignments within the registration system on May 27th.

1 Do you see where I am?

2 A Yes.

3 Q That's only true if there's no challenges to the results;
4 isn't that correct?

5 There are two types of election challenges that are
6 possible, a recount and then also substantive challenges,
7 correct?

8 A Correct.

9 Q And that May 27th date is based on not having any recounts
10 requested by a candidate, correct?

11 A That day is based on updating the voter history for those
12 that voted in the May 19th primary. Following May 26th which
13 is the date that the canvassing takes place, May 27th is when
14 we expect registrars to be complete with updating voter
15 history, which, in turn, just unlocks the list for changes.

16 To my knowledge, that part of the process is not
17 affected by recount or challenge because it's based on in --
18 the system updating the voter history.

19 Q All right. Let's go to paragraph 60 on page 18 of 35.

20 The vendor's not recognized in your declaration, but
21 you have identified him in your testimony, correct?

22 A Yes.

23 Q And that vendor does not give a date certain either, do
24 they?

25 A No.

1 Q And so there's some uncertainty on the vendor's part,
2 also, as well as the Secretary of State's, correct?

3 A You're right; there is no specific date.

4 Q If you will, go to page 19 of 35.

5 That paragraph says -- and I am going to read first
6 the part -- well, read the first sentence.

7 Reassignments ideally will need to be completed in
8 time for the judges of probate to have ballots produced and
9 delivered by June 17th which is when absentee voting will begin
10 for the special primary election.

11 Do you see that?

12 A Yes.

13 Q And that June 17th date is based on Alabama Code 17-11-12
14 which requires absentee ballots to be ready 55 days before an
15 election isn't that correct?

16 A Yes.

17 Q And so ideally really is not the right word; it's
18 reassignments are required to be completed; isn't that right?

19 A It's ideally because as it continues, as a practical
20 matter, the voter list is going to be locked because we have a
21 June 16th runoff.

22 Whenever you have an election that's built in the
23 Election Navigator system, when you begin assigning absentee
24 ballots for an election for a jurisdiction, that causes the
25 list to be locked down.

1 Ideally, we would not have a statewide election at the
2 same time as preparing for a special election.

3 The statutory deadline that you're referring to, while
4 it is a requirement, there are some limits that get put in
5 place because of the existence of another election in the
6 system.

7 That's why the time frame moves up to be shortened
8 because we do have other factors to work around because of the
9 system.

10 Q And what you're saying is it's likely because of the
11 August 11th primary that there are going to be counties that
12 cannot meet the 55-day deadline required by Alabama law in
13 Alabama Code 17-11-12, right?

14 A I don't see where we have said that we would miss that
15 deadline.

16 Q You say ideally because you know the deadline's not
17 necessarily going to be met, correct?

18 A I say ideally because that would give us more time; that,
19 ideally, we would have more time to get those assignments done
20 using June 17th as a target end date.

21 But June 2nd is the date that we now have from ES&S as
22 a date on which the voter list is going to be locked down. So
23 our time frame gets shortened. That's not ideal.

24 And that's why we've said that it's an aggressive
25 timeline and that we would direct counties to work around the

1 clock until it's done, even work through weekends and a holiday
2 which we have during that few-day period.

3 Q All right. Paragraph 62.

4 Do you see where there's a reference to some other
5 map? Third line down.

6 To the extent that the Court's order requiring this
7 declaration contemplates implementation of some other map -- do
8 you see where I am?

9 A Yes.

10 Q There's not some other map; there's the Special Master's
11 remedial map, correct? It's the only alternative.

12 A It is an alternative. We don't know what map it would be.

13 Q If you read on down -- and I'm about ten lines down in
14 paragraph 62 with the word that starts with "if."

15 Do you see where I am?

16 A Yes.

17 Q If the reassignment process is rushed, it is more likely
18 that voters will not be correctly assigned and some may be
19 provided ballots for the wrong district, which has happened in
20 the past.

21 Do you see that?

22 A Yes.

23 Q And as a matter of fact, we know that both Morgan and
24 Madison counties -- on May 20th, there were a number of ballot
25 problems and there were wrong ballots that were used in both

1 the Republican and the Democratic primary, right?

2 A On May 20th?

3 Q Yes.

4 A What was May 20th.

5 Q May 19th. I'm sorry. I said May 20th and I meant
6 May 19th.

7 The May 19th primary -- there were problems with
8 ballots in both Madison and Morgan County, right?

9 A I believe so, yes.

10 Q And we're talking about probably having hundreds of
11 problems with ballots if we move forward with the June 2023 map
12 and have an August 11th special primary, right?

13 A I couldn't quantify how many issues. I mean, again, any
14 time reassignment is an issue, there is a possibility of
15 something being rushed or missed or misassigned. But any time
16 that you're dealing with changes like this, it is helpful to
17 know up front what those changes potentially would be so that
18 you could be prepared to address them.

19 Q You're concerned that there are going to be hundreds of
20 ballot problems on August 11th, 2026, in the special primary,
21 aren't you?

22 A I can't quantify how many issues.

23 Q Hundreds is not unrealistic, is it?

24 A I would, again, just say like it says in the declaration,
25 any time that a reassignment process is rushed, it's likely

1 that you have concerns and issues. But we also have resources
2 that the counties will be able to utilize to hopefully minimize
3 some of those effects. But it is a possibility.

4 Q Your declaration, paragraph 60, what we just talked about,
5 referenced Covington County and Elmore counties, right?

6 Paragraph 60.

7 A Yes.

8 Q It did not mention Jefferson County, did it?

9 A No.

10 Q Jefferson County is the largest county in Alabama, right?

11 A Yes.

12 Q Roughly 13 percent of the active voters in the state are
13 in Jefferson County; is that right?

14 A Roughly. Not having that in front of me, I can't confirm.

15 Q And Jefferson County has -- in the last election had 176
16 precincts, right?

17 A Again, I don't have that in front of me, but I don't have
18 any reason to say otherwise.

19 Q That sounds about right?

20 A Roughly, yes, sir.

21 Q And Jefferson County budgeted for the primary May 19th and
22 for the general election on November 3rd but does not have a
23 budget for the special primary that's going to be on
24 August 11th; isn't that correct?

25 A I don't know what Jefferson County has.

1 When we talked about election setup and
2 administration, Jefferson County does a lot of their operations
3 inhouse. It's separate from the rest of the state.

4 For example, when we create an election, we're
5 creating that for 66 counties. Jefferson County creates their
6 own in the Election Navigator system.

7 So what they have budgeted, what they have prepared
8 for, I can't say because that's -- those are not usual
9 conversations that I have.

10 Q So you cannot tell the Court that Jefferson County has the
11 budget to be able to run the special election on August 11th,
12 correct?

13 A I can't speak for Jefferson County.

14 Q Now, you know that the probate judge -- or the probate
15 judge for each county is the chief election officer, correct?

16 A Correct.

17 Q And you know the probate judge in Jefferson County was
18 suspended by the judicial inquiry commission yesterday,
19 correct?

20 A I had not heard that.

21 Q That would be a problem for having the election run
22 smoothly, wouldn't it?

23 A I can't comment on what effects that would have.

24 I can say that, while the probate judge is the chief
25 election official, Jefferson County has a much larger staff

1 than any other county. They have a dedicated election manager
2 who operates and administers a lot of the tasks that probate
3 judges would carry out in smaller counties where they don't
4 have -- they're not as fortunate to have the resources or a
5 staff.

6 Q Having your chief election officer suspended and removed
7 from office at least temporarily creates more uncertainty,
8 doesn't it?

9 A It's likely. Again, I can't say for sure.

10 Q You know that Jefferson County and other counties lease
11 their voting machines to municipalities, right?

12 A Yes.

13 Q And you know that Jefferson County has municipal elections
14 coming up on August 25th, 2026?

15 A Correct.

16 Q And both Bessemer and Mountain Brook have municipal
17 elections in Jefferson County on August 25th, 2026?

18 A Correct.

19 Q And Montgomery County has the City of Montgomery municipal
20 election on August 24th, 2026, right?

21 A Correct.

22 Q And Talladega County has the City of Talladega having a
23 municipal election on August 24th, 2026; isn't that correct?

24 A I believe so.

25 Q And it's very likely that the August 11th, 2026, primary

1 messes up the Jefferson County, the Montgomery County, and the
2 Talladega County elections because those municipal elections
3 leasing the machines from the counties, correct?

4 A Not necessarily, no.

5 Q Have you even asked the counties whether or not that's a
6 problem?

7 A I haven't yet, but the machines are not delivered to
8 polling locations until just before an election. So if you
9 have --

10 Q You knew that that's a possible problem and you haven't
11 asked the counties --

12 JUDGE MOORER: Hang on. Let the -- counselor --

13 JUDGE MARCUS: One moment. Let him answer the
14 question before you ask the next question.

15 MR. CHRISTIE: I'm sorry. I thought he was finished.

16 JUDGE MARCUS: Have you finished your answer,
17 Mr. Elrod?

18 THE WITNESS: No, sir.

19 JUDGE MARCUS: Finish it, please.

20 THE WITNESS: Any time you have an election, those
21 machines are delivered to the polling locations usually just a
22 few days before the election.

23 So sitting here today, I can't say that an election on
24 August 11th would necessarily interfere or jeopardize an
25 election that's held a few weeks later.

1 You would still have an aggressive timeline to make
2 sure that you had enough machines available, but as we just
3 mentioned, Jefferson County has an abundance of resources.

4 So the number of machines that they would have
5 available to deploy for a municipal election, they could safely
6 do so while also being prepared for an election on August 11th.

7 BY MR. CHRISTIE:

8 Q We're talking about more uncertainty here, aren't we?

9 A There are more challenges with that, other factors to
10 consider; yes.

11 Q And the challenges could lead to failures, correct?

12 A The more factors you have, the more issues potentially
13 there could be.

14 Q All right. I have one more topic that I want to ask you
15 questions about.

16 JUDGE MARCUS: How much longer do you have on your
17 cross?

18 MR. CHRISTIE: 10 minutes at most, Your Honor.

19 JUDGE MARCUS: All right. Let's proceed. Thank you.

20 BY MR. CHRISTIE:

21 Q If you could go to Plaintiffs' -- I mean to Exhibit 3, tab
22 3 in the exhibits that I have given you.

23 This is the administrative calendar that was, correct,
24 before -- before the May 19th primary, correct?

25 A It's still correct. I'm sorry. Did you say created or

1 correct?

2 Q Well, it was for the May 19th primary?

3 A Yes.

4 Q And for the November 3rd general election, correct?

5 A Yes.

6 Q All right. And I want you to go down to candidate seeking
7 nomination by a party primary.

8 Do you see where I am?

9 It's January 23rd, 2026.

10 A Yes.

11 Q All right. So the candidates have got to qualify with the
12 party by January 23rd, 2026, correct?

13 A That was for the primary, yes.

14 Q And that date is 116 days before the election, correct?

15 A Correct.

16 Q And then if you will, skip down to where it says Thursday,
17 February 26th.

18 Do you see where I am?

19 A Yes.

20 Q And, there, it says, the state party chairman must certify
21 names of primary election candidates by 5:00 p.m. 82 days prior
22 to the primary, correct?

23 A Yes.

24 Q And that's -- would be February 26th, correct?

25 A Yes.

1 Q And there's 34 days between January 23rd and
2 February 26th. If you just subtract 82 from 116, you get 34,
3 right?

4 A Yes.

5 Q I would like to go back to the administrative calendar
6 that is attached to your declaration. It's page 32 of 35.

7 Do you see where I am?

8 A Yes.

9 Q And if you will, keep your thumb under tab 3, please.

10 Here, the first day candidates may begin qualifying
11 with political parties is May 20th, 2026, under special primary
12 election calendar, correct?

13 A Yes.

14 Q And continuing with that calendar, the deadline for any
15 candidate to qualify with a major political party is no later
16 than 5:00 p.m. on May 22nd, correct?

17 A Correct.

18 Q And then the deadline for major political parties to
19 certify qualified candidates to the Secretary of State is no
20 later than noon on May 26th, correct?

21 A Correct.

22 Q And that's Tuesday, May 26th, but Monday, May 25th, is a
23 holiday, correct?

24 A Yes.

25 Q And so at the end of the day Friday is when somebody has

1 to qualify.

2 And then the party's required to certify someone the
3 next business day, correct?

4 A Yes.

5 Q As a matter of fact, it's the next business day by noon?

6 A Yes.

7 Q That gives three or four hours, depending on whether you
8 think the business day starts at 9:00 or at 8:00 o'clock,
9 right?

10 A Sure. Yes.

11 Q Parties have a role in challenging whether or not a
12 candidate can qualify for that party, correct?

13 A Yes.

14 Q A recent example that everybody's seen in the news is that
15 the new Republican nominee, Tommy Tuberville, was challenged by
16 Ken McFeeters as to his residency as to whether or not he could
17 be on the primary ballot, and the Republican Party ruled that
18 he could; isn't that correct?

19 A Yes; that happened.

20 Q And so every candidate can be challenged by somebody on
21 some ground; isn't that correct?

22 A It's possible.

23 But I think it's important to mention here that, for
24 congressional districts, there is not a residency requirement
25 within that district.

1 So to say that someone did not live in, for example,
2 District 2 -- that would not be grounds for a challenge.

3 Q That would not be grounds under state law; isn't that
4 correct?

5 A To my knowledge.

6 Q That could be grounds under the Democratic rules, correct?

7 A I'm not familiar with what the party bylaws say.

8 Q The party can have its own rules, correct?

9 A Yes.

10 Q One reason could be residency. Another reason could be if
11 someone has donated to Republican candidates in the last
12 election cycle, correct?

13 A It's possible.

14 Q So it's very possible that there could be candidates that
15 the -- that someone wants to challenge that could be trying to
16 qualify in the Democratic primary, correct?

17 A It's likely a challenge could come up. Or possible,
18 anyway.

19 Q I'd like, if you would, to go to tab 10.

20 Tab 10 is -- the first page is Alabama Code 17-13-70,
21 right?

22 A Yes.

23 Q And the first sentence reads, any contest to a nomination
24 made by primary election must be filed within 24 hours after
25 the results of the primary election have been declared; is that

1 correct?

2 A Yes.

3 Q And so the results of the primary election are going to be
4 declared for the May 19th primary when?

5 A Certification of the primary will take place on May
6 the 26th.

7 Q And so the period at which someone has to be put up as
8 Democratic nominee is before the time that someone can possibly
9 challenge them, correct?

10 A Yes. But we are talking about a special election calendar
11 where the usual time frames are not necessarily at play because
12 that's why it's a special election.

13 Q The special primary eliminates the party's ability in
14 order to decide whether or not somebody can qualify as a member
15 of that party; isn't that correct?

16 A To my knowledge, parties could still have time to do an
17 emergency meeting of their steering committee.

18 I know my experience -- I've heard that's not
19 uncommon, for those committees to meet on weekends to consider
20 these issues.

21 That would still exist with this short qualifying
22 period for the special election.

23 So I don't necessarily believe that parties are
24 excluded from hearing any challenges that may or may not come
25 up.

1 Q By statute, the challenges are supposed to occur within
2 24 hours of May 26th; isn't that correct?

3 A Based on the understanding here -- and I'm not an
4 attorney, so I can only just read what I see, but this does
5 not, to what I'm seeing here, necessarily address a special
6 election.

7 This is talking about, as far as I understand it, the
8 challenge under a normal schedule. But we're talking about a
9 special election calendar where the time frame is different.

10 Q So what you're saying is that either it's impossible for
11 the party to fulfill its role as required by statute or the
12 party has no role by statute; one or the other?

13 A I'm saying I can't speak for the party -- what they are or
14 not able to do. And I haven't had time to really look at this
15 particular statute that you've put in front of me to see how it
16 does or does not fit into a special election.

17 Q All right. So we've got the May 26th date and then we've
18 indicated that the challenge would have to be filed with the
19 party by May 27th; isn't that correct?

20 A That's what it says here, yes.

21 Q And then the party has to give notice to the individual --
22 to the contestee, if you want to use that term, the person
23 who's trying to qualify and being contested, right?

24 A That's what it says.

25 Q And then they'd have five days after notice to respond;

1 isn't that correct?

2 A That's what it says.

3 Q This process could take ten, 20, 30 days, couldn't it?

4 A Potentially.

5 Q That's why, in the normal calendar, there's 34 days
6 between the 116 days and the 82 days between when people
7 qualify and when they get certified by the party; isn't that
8 correct?

9 A Yes. But, again, this is a special election. And my
10 understanding, by looking at this, is that this is talking
11 about a regularly scheduled primary, which the special election
12 on August 11th is not.

13 Q The special primary is a primary, correct?

14 A A special one, yes.

15 Q And this statute applies to primaries, right?

16 A It says time for contesting generally. But, again, it
17 doesn't say anything about a special election.

18 Q It's actually a special primary, correct?

19 A Yes.

20 Q If you will, flip to the next page, 17-13-73.

21 Do you see where I am?

22 A Yes.

23 Q Read out loud, if you will, just the whole statute there.

24 A When a contest of a nomination is instituted or where a
25 special primary to nominate is held, as provided for in this

1 chapter, the declared nominee for such office shall not be
2 certified until after termination of the contest filed in the
3 time herein prescribed.

4 Q So it's clear that 17-13-73 applies to special primaries,
5 correct?

6 MR. DAVIS: Your Honor, I would object.

7 He's asking for legal opinions.

8 JUDGE MARCUS: Sustained.

9 BY MR. CHRISTIE:

10 Q If you will, go to the last page of tab 10.

11 This is Title 17-13-88, correct?

12 A Yes.

13 Q And it says, the state executive committee, which would be
14 either the Republican or the Democratic committee currently,
15 correct?

16 A Yes.

17 Q May prescribe such other additional rules governing
18 contests and other matters of party procedure as it may deem
19 necessary and not in conflict with this chapter, correct?

20 A That's what it says.

21 Q Do you know that both parties have rules about election
22 contests, correct?

23 A I know that they have bylaws, yes.

24 Q And the time frame that is set up by what is now Title
25 Alabama Code 17-13-3.1 makes it impossible for those time

1 frames to be followed; isn't that correct?

2 A I don't have that statute in front of me. And, again, I'm
3 not able to give any legal opinion on what it means or doesn't.

4 Q Well, let me back up a little bit.

5 Alabama Code 17-13-3.1 is what's been called HB1. Did
6 you know that?

7 If you go to the Alabama Code now, it's in Alabama
8 Code as 17-13-3.1.

9 A Okay.

10 Q At least the West Law version.

11 So let me back up and ask the question: Using HB-1 or
12 whatever you would want to refer to the bill that's HB-1, which
13 is 2026 -- I forget the number -- 2026-612. Is that how you
14 refer to it?

15 A As -- you know, in my role, I usually just refer to
16 statutes. I don't try to keep track of the house bill numbers
17 or senate bill numbers because my role is not to give legal
18 guidance or advice.

19 I advise on the process.

20 Q I'm sorry. I was just trying to use the name that you're
21 comfortable with for the new bill that has led to the
22 administrative calendar and everything leading to the
23 August 11th special primary, if that's going to go forward.

24 So what is the name that you would use?

25 It's on page 22 of 35 of tab 1 if you're looking for

1 it.

2 A Okay. I have it here.

3 I mean, honestly I haven't referred to it by any
4 particular name, which is why I wasn't following what you were
5 referring to.

6 I would normally just say, this is the bill that the
7 legislature just passed.

8 Q Okay. For the bill that the legislature just passed, it
9 eliminates the party's role in considering a candidate who's
10 challenged the party purposes; isn't that correct?

11 A I don't know if I could speak to that.

12 MR. CHRISTIE: Thank you.

13 JUDGE MARCUS: Thank you, sir.

14 Redirect?

15 REDIRECT EXAMINATION

16 BY MR. DAVIS:

17 Q Mr. Elrod, hello again.

18 A Yes.

19 Q Is there a procedure, to your knowledge, for internal
20 party challenges after a candidate's qualified?

21 A I believe so, yes.

22 Q To a candidate disqualification is what I mean.

23 A Yes.

24 Q Then after the election is held, is there a provision for
25 people to file election contests?

1 A Correct, yes.

2 Q Are those separate types of challenges?

3 A Yes.

4 Q So if what Mr. Christie was asking for -- if the statutes
5 were about post-primary election contests, that would be
6 different from the internal party procedure, would it not?

7 A I believe it would, yeah.

8 Q There was discussion that your declaration did not require
9 a precise date.

10 Was that because, in order to conduct the August 11th
11 special primary election, it's your opinion that we already
12 need to have a map in place?

13 A Yes; I would say that's correct.

14 Q The 2022 declaration that was submitted by Clay Helms --
15 was that based on the circumstances that existed in 2022, to
16 the best of your knowledge?

17 A As far as I know, yes.

18 Q And you were in the office when that declaration was
19 prepared, correct?

20 A Yes.

21 Q Were you part of discussions about what the deadlines were
22 and what the challenges were that the state was facing at that
23 time?

24 A Yes.

25 Q In 2022 or whenever Mr. Helms submitted his declaration,

1 did we know what the boundaries of a remedial map might look
2 like?

3 A We did not, no.

4 Q Did we know what areas of the state would be impacted by a
5 remedial map?

6 A We did not, no.

7 Q Did we know which counties would have to be -- would have
8 to reassign voters?

9 A We did not, no.

10 Q And did we know then what the resources of those counties
11 would be?

12 A No.

13 Q Here, though, is it not correct that, to implement the
14 2023 plan, you know that there are three counties that will
15 have to do some detailed reassignment?

16 A Yes; we know that.

17 Q And are those counties Jefferson, Elmore, and Covington?

18 A Yes.

19 Q Other counties -- is it correct that they can be done by a
20 mass change?

21 A Yes.

22 Q Do you have concern that if there's a changed plan at this
23 point that we would need to account for time for qualification?

24 A Yes.

25 Q How much time is left in the calendar to have a

1 qualification period, in your opinion?

2 A There's not much. Our office's certification needs to be
3 complete by May 29th in order to ensure that all these other
4 deadlines that we've talked about, all the other requirements,
5 are met. Because, again, we have a November 3rd general
6 election that has to be held. To have an election on
7 August 11th, that's a tight time frame.

8 This special election calendar that we have, it
9 reflects, to the best of my knowledge, the dates on which these
10 activities would have to take place.

11 Q Are the resources that counties have today the same as
12 they had in 2022?

13 A No.

14 Q In 2022, were registrars reassigning voters after the
15 Census for multiple different plans?

16 A Yes. Multiple districts?

17 Q That's a poor question.

18 Is it not true that in 2022 the registrars weren't
19 just worrying about putting people in the right house of
20 representatives district; they were also worried about county
21 commission districts and school board districts and state
22 senate and other things at the same time?

23 A They were, yes.

24 Q For the situation that we face now, are the registrars, to
25 your knowledge, having to be concerned about reassignments for

1 anything other than congressional?

2 A As far as I know, no.

3 Q The timeline that registrars face and the window -- when
4 things are going to be locked down -- do we know if there's any
5 fluidity to that?

6 MR. ROSS: Objection.

7 MR. DAVIS: That's fair.

8 JUDGE MARCUS: Why don't you rephrase it?

9 MR. DAVIS: I am going to rephrase.

10 BY MR. DAVIS:

11 Q Can you say for certain whether there will be any further
12 discussions with the vendor to discuss possible options?

13 A It's safe to say that, throughout this whole process, we
14 will be communicating closely the vendor. Because, again,
15 while we know what these changes look like on paper, we would
16 certainly be communicating with them to make sure that the
17 implementation gets done in a way that complies with this
18 calendar that exists.

19 Q At one point, Mr. Elrod, I think I heard you say that the
20 Secretary of State had to redo the administrative calendar
21 because of UOCAVA changes.

22 To be clear, the secretary doesn't pick the dates for
23 deadlines in election administration, correct?

24 A Correct.

25 Q You are compiling a calendar that other statutes, both

1 federal and state, provide; is that correct?

2 A That's right. Our role is just to create a calendar based
3 on federal and state statutes.

4 Q And I think we've established that there were candidates
5 for Congress that announced before the May 19th primary that
6 they were not running for one district any more; they were
7 running for another; is that right?

8 A Correct.

9 Q And, again, you have worked on campaigns?

10 A Yes.

11 Q If a candidate had plans for a get-out-the-vote effort on
12 election day when they were planning to run for District 1 --
13 if they were no longer planning for District 1, but, instead,
14 were planning to run for District 2 on August 11th, would it
15 not make sense to make changes in those spending priorities?

16 A Yeah. Absolutely. Any time a campaign shifts, the focus
17 of their efforts is going to be determined by the makeup of the
18 district that they're communicating to or how they direct their
19 resources.

20 Q And has it been announced to the public that the results
21 of the May 19th primary are not going to be canvassed?

22 A Yes.

23 Q What's the difference between tabulating and canvassing?

24 A Tabulation is just a count.

25 The machines that exist at the polling place -- when

1 you go in on election day, you insert your ballot into a
2 tabulator. At the end of the night, the poll workers close
3 that machine. It prints out a ticket that shows the races that
4 were on the ballot at that location and how many votes of the
5 candidates or the ballot measure received.

6 And that's just a tally. Those numbers are reported,
7 they're recorded, but they're not canvassed or certified. A
8 week later, when the canvassing board, which, for a primary,
9 would be the party -- the canvassing and certification is to
10 officially say these are the results.

11 Q Is it correct that voters were told ahead of time before
12 the May 19th primary that the parties' nominees would not be
13 determined on May 19th but would, instead, be determined on --
14 through the August 11th special election?

15 A Just for those four affected congressional districts, yes.

16 Q Can you say with any certainty how that would -- might
17 affect turnout?

18 A I can't say.

19 MR. ROSS: Objection. There's no way he can know
20 that, Your Honor.

21 JUDGE MARCUS: Can you answer that question?

22 THE WITNESS: Based on my experience, yes, Your Honor.

23 JUDGE MARCUS: You may answer.

24 BY MR. DAVIS:

25 Q Can you say with any certainty how these events may have

1 affected turnout for the May 19th primary?

2 A Based on my previous experience on the campaigns, which
3 we've discussed, and based on my current role where I
4 communicate with voters regularly, it is safe to say that any
5 time an announcement is made that changes the makeup of a race,
6 that could very likely impact the turnout.

7 Someone's preferred candidate may have said, well, I'm
8 not running in this district any more and so voters who were
9 going to vote for that person may say, okay, well, I'm not
10 going to go vote then; that was my favorite candidate.

11 Q Can you say whether there may have been voters who showed
12 up on May 19th because they wanted to vote for U.S. Senate and
13 governor and all the other races in the ballot but perhaps
14 chose not to cast a vote in a congressional race because their
15 preferred candidate had announced he was not running or perhaps
16 because the state had announced that those results would not
17 count?

18 MR. ROSS: Objection, Your Honor.

19 JUDGE MARCUS: Sustained.

20 MR. ROSS: Thank you.

21 BY MR. DAVIS:

22 Q Do you know whether there were voters who may have voted
23 in other races on May 19th but declined to vote in the
24 congressional race because of any of these announcements?

25 MR. ROSS: Objection, Your Honor.

1 JUDGE MARCUS: Is there any way you can answer that
2 question based on your knowledge, sir?

3 THE WITNESS: No, sir.

4 JUDGE MARCUS: Let's move on if we can, counsel.

5 BY MR. DAVIS:

6 Q The video that you watched from the Secretary of State,
7 was that the only communication he's had with voters about this
8 election cycle?

9 A No.

10 Q Is it the only communication he had about the special
11 primary election?

12 A No.

13 Q Do you know whether any counties, campaigns, or private
14 organizations have had any voter education initiatives related
15 to the primary?

16 A Yes.

17 Q What do you know?

18 A I've seen and heard numerous statements from candidates,
19 elected officials. I know that this has been widely talked
20 about ever since the proclamation was issued.

21 Q Is it safe to say or do you know whether there's been a
22 lot of publicity about the Supreme Court ruling in *Louisiana*
23 *vs. Callais*?

24 A Yes.

25 Q Do you know if there's been publicity about -- in the

1 media about -- quoting the August 11th special primary?

2 A Yes.

3 Q In 2023 when the Secretary of State filed a report with
4 the Court and said when we would need a map for the next
5 election, was it known then what that map would be?

6 A No.

7 Q Was it known then what counties might be affected?

8 A No.

9 Q Does the Secretary of State direct probate judges?

10 A No.

11 Q Do registrars act under his supervision?

12 A Not directly.

13 Q Do any local officials act under the direction of the
14 Secretary of State?

15 A No.

16 Q Is it ever certain whether registrars can complete a
17 reassignment process without making errors?

18 A No.

19 Q You've said clearly, though, have you not, that, when it's
20 rushed, errors become more likely?

21 A Yes.

22 Q But in this case, has the Secretary of State's office been
23 sitting on their hands and just hoping things work out for the
24 August 11th primary?

25 A No.

1 Q Have you been in contact with vendors and registrars in
2 affected areas?

3 A Yes.

4 Q Do these registrars know that they have a busy task ahead?

5 A They do; yes.

6 Q With GIS, are they in a better position to complete the
7 task than they would be without GIS?

8 A Yes.

9 Q In terms of the Jefferson County probate judge, if -- do
10 you know whether his replacement has already been sworn in?

11 A No.

12 Q If a replacement has been sworn in, does that lessen any
13 concerns how that suspension might have on an election
14 administration?

15 A Again, the way that Jefferson County is made up of having
16 divisions and departments and extra staff that other counties
17 don't have the luxury of having, I can't say with any certainty
18 what direct effect just the probate judge would have. Because
19 a lot of the administrative tasks in Jefferson County are
20 carried out by an election manager and his staff, his team;
21 whereas, in another county that doesn't have that, it would be
22 carried out by the probate judge directly.

23 Q Are you familiar with who Sherri Friday is?

24 A Yes.

25 Q Who is she?

1 A Former probate judge for the Bessemer division.

2 Q Do you know if she had any experience with election
3 administration?

4 A I don't know to what extent, no.

5 Q Okay. If she, having been probate judge before, was sworn
6 in as the replacement, would that be of benefit to Jefferson
7 County in conducting the next election?

8 A It's possible.

9 Q Do you believe, Mr. Elrod, that it's likely that
10 registrars are going to be able to accomplish the task ahead of
11 them in light of the prep work that's been done and the
12 resources available?

13 A Knowing that we have already identified what changes
14 potentially could be made, it does make their task more clear
15 and direct. And they understands the time constraints that
16 they're under.

17 The vendors are also standing by, ready to assist.

18 While it is an aggressive timeline, I think it is safe
19 to say that registrars could get done with what they have
20 assigned.

21 MR. DAVIS: May I consult?

22 JUDGE MARCUS: Sure.

23 (Discussion off the record.)

24 MR. DAVIS: Your Honor, I have no further questions.

25 JUDGE MARCUS: Thank you. Thank you.

1 Let me ask my colleagues whether they have any
2 questions.

3 Judge Moorer?

4 JUDGE MOORER: No.

5 JUDGE MARCUS: Judge Manasco?

6 JUDGE MANASCO: I want to make sure I understand one
7 detail correctly.

8 THE WITNESS: Yes, ma'am.

9 JUDGE MANASCO: The scheduled special primaries for
10 August involve 40 counties.

11 If those primaries occur under the 2023 plan,
12 redistricting will be required in 14 of those 40 counties?

13 THE WITNESS: Yes, ma'am.

14 JUDGE MANASCO: Okay.

15 JUDGE MARCUS: Thank you.

16 Any follow-up based on the question that Judge Manasco
17 asked?

18 All right. I'm sorry. Did you have something,
19 Mr. Ross?

20 MR. ROSS: Just a couple of small questions related
21 to --

22 JUDGE MARCUS: You mean you want to have re-recross?

23 MR. ROSS: Just two questions, Your Honor.

24 JUDGE MARCUS: I will limit you to two. We're not
25 going beyond. We're not going to have redirect, recross,

1 redirect, recross, re-redirect, and re-recross. Are we clear?

2 MR. CHRISTIE: Your Honor?

3 JUDGE MARCUS: Yes.

4 MR. CHRISTIE: I mentioned this to Mr. Davis, and my
5 information is that Ms. Friday -- Judge Friday has been
6 temporarily appointed as probate judge in Jefferson County.

7 I feel like, as an officer of the court, I should
8 bring to your attention that the -- that that is information
9 that I --

10 JUDGE MARCUS: I understand.

11 MR. CHRISTIE: -- find reliable, and Mr. Davis has the
12 same information.

13 THE COURT: Thanks very much.

14 MS. CARTER: Just two more questions.

15 JUDGE MARCUS: I have limited you to two.

16 MS. CARTER: Thank you. Thank you, Your Honor.

17 RECROSS-EXAMINATION

18 BY MS. CARTER:

19 Q Mr. Elrod, the Elmore judge was only elected in
20 November 2026, right?

21 A I believe so, yes.

22 Q And the Elmore judge was only put into office in
23 January 2026, right?

24 A I believe so, yes.

25 MS. CARTER: Thank you.

1 JUDGE MARCUS: Thank you.

2 Thank you very much. You may step down, and you are
3 excused.

4 THE WITNESS: Thank you.

5 (Witness excused.)

6 JUDGE MARCUS: We will take a lunch break. We will
7 bring you back here at a quarter after 1:00 at which time we
8 will give you the opportunity to argue your motions.

9 We have three motions for preliminary injunctive
10 relief. We have three motions to address.

11 We will give each side one hour in the aggregate to
12 address the motions.

13 The plaintiffs can break them up any way you want.
14 The defendants, of course -- you will have two sets of
15 defendants. You can break them up, as well.

16 We will see you back here 1:15. Thank you all.

17 (Lunch recess.)

18 JUDGE MARCUS: Good afternoon, Ms. Khanna.

19 Have you decided how you want to divide up your
20 presentation?

21 MS. KHANNA: We have, Your Honor.

22 I am going to speak on behalf of Caster plaintiffs and
23 primarily address the Section 2 claim. Mr. Ross will address
24 the constitutional claim and Singleton. I believe Mr. Henry
25 will finish up with their claim, as well.

1 JUDGE MARCUS: Thanks very much. And you may fire
2 away.

3 MS. KHANNA: Thanks, Your Honors. Good afternoon,
4 Your Honors. May it please the Court. Abha Khanna on behalf
5 of the Caster plaintiffs.

6 There is no question that the Supreme Court's recent
7 decision in *Callais* changed the Legal 2 standard for Section 2
8 to make it more difficult for black voters to prove a
9 violation.

10 Under *Callais*, Section 2 plaintiffs must go to great
11 pains to not only prove that a challenged map has a
12 discriminatory result but also to establish a strong inference
13 that it was driven by discriminatory intent.

14 In many jurisdictions across the country, this new
15 standard will put Section 2 claims out of reach for minority
16 voters.

17 But as this Court has already found, Alabama is not
18 one of those jurisdictions.

19 One of the reasons that Congress decided to do away
20 with any intent requirement in its 1982 amendments was because
21 of how difficult and resource intensive such a claim would be.
22 And this case only underscores that reality.

23 Over the course of nearly five years and multiple
24 appeals in multiple courts and hours upon hours of painstaking
25 and fact intensive work by the Court, its staff, the parties,

1 their legal teams, and countless experts, the record in this
2 case presents an uncontroverted account of Alabama's racialized
3 politics and racially discriminatory redistricting policies.

4 To the extent the *Callais* standard is designed to
5 strike down the most glaring and blatant violations of the
6 Voting Rights Act, Alabama's 2023 plan easily fails for all the
7 same reasons that this Court already found on a complete
8 record.

9 Now, as set forth in our motion for preliminary
10 injunction, we believe that our Section 2 claim survives
11 *Callais*.

12 I will walk through some of the factors, but, please,
13 of course, I will answer any questions the Court has along the
14 way.

15 For *Gingles* 1, *Callais* instructs that plaintiffs'
16 illustrative maps, one, must not unconstitutionally use race as
17 a criterion and, two, must meet the state's legitimate
18 redistricting objectives.

19 I will address each of those in turn.

20 As to the first, plaintiffs have shown by a
21 preponderance of the evidence that Alabama's black population
22 is sufficiently numerous and geographically compact to comprise
23 a majority of eligible voters in a second district drawn
24 without the use of race.

25 *Callais* provides that an illustrative map must not

1 use, quote, a process that would be unconstitutional if a state
2 engaged in such mapmaking. And citing to page 6 of the
3 *Alexander* opinion, which reiterates that if a legislature gives
4 race a predominant role in redistricting decisions, the
5 resulting map is subjected to strict scrutiny and may be held
6 unconstitutional.

7 In this case, the Supreme Court in *Allen* already
8 affirmed this Court's finding that race did not predominate in
9 any of the 11 illustrative plans that plaintiffs originally
10 presented in 2022.

11 This Court reaffirmed that finding after trial on the
12 merits with respect to both Mr. Cooper's and Dr. Duchin's
13 illustrative plans, including the additional plans that they
14 prepared for trial.

15 And, indeed, while Mr. Cooper testified to his general
16 awareness of racial demographics in the state, based on his
17 familiarity with the state, just the same as Mr. Hinaman, the
18 state's map drawer for many decades, Dr. Duchin's computer
19 algorithm produced thousands of maps without regard to race.

20 And if for some reason that were not enough, this
21 Court has already found that the Special Master and his team
22 prepared three proposed remedial plans race-blind without any
23 difficulty.

24 Together, the Court's existing findings as to any or
25 all of these maps more than satisfies the requirements of

1 *Gingles* 1 after *Callais*.

2 Additionally, these same illustrative and Special
3 Master maps also satisfy the state's legitimate redistricting
4 objectives.

5 Those objectives were set forth in the 2023 guidelines
6 adopted by the legislature, and this Court already found these
7 maps, plaintiffs' illustrative maps, to satisfy those criteria
8 along with the Special Master maps.

9 And I will point the Court to page 379 of ECF 401, its
10 findings of fact.

11 As discussed in our briefing, defendants' purported
12 new nonnegotiable criteria injected by way of its legislative
13 findings do not alter that analysis.

14 As this Court found, those findings were designed to
15 foreclose black electoral opportunity and entrench a
16 majority-white district.

17 As the Supreme Court said in *Allen*, which it expressly
18 did not overrule in *Callais*, a state cannot immunize from
19 challenge a new racially discriminatory plan simply by claiming
20 that it preserves and entrenches an old racially discriminatory
21 plan.

22 And, finally, Alabama did not specify any partisan
23 political goals in drawing the 2023 plan. To the contrary, the
24 map drawers expressly disclaimed partisan influence from
25 then-Speaker McCarthy and, instead, they put all their stock in

1 the preservation of the predominantly white Gulf Coast
2 community.

3 Try as they might, defendants cannot now go back and
4 reverse engineer the intent of a map that they drew three years
5 ago.

6 Plaintiffs also satisfy *Gingles* 2 and 3, as defined by
7 the *Callais* court. *Callais* requires that plaintiffs must
8 disentangle race from party in satisfying these preconditions.

9 In this case, this Court's finding as to both the
10 *Gingles* preconditions and Senate Factor 2 already do just that.

11 And I will highlight just a few of the examples that
12 we talk about in our brief.

13 The undisputed record demonstrates that white
14 Democrats in Alabama preferred the white Republican
15 presidential candidate in 2008 to the black Democrat.

16 Two nonpartisan mayoral races in 2019 and 2023
17 demonstrated that race drove the results even where the party
18 cue was eliminated.

19 In the 2021 Democratic primary for District 1, more
20 than half of the black voters preferred the black candidate
21 while only 16.7 percent of the white voters preferred that
22 candidate.

23 And in the District 2 primary in 2024, under the
24 Special Master's plan, we saw all four black candidates come in
25 dead last, together amassing only six percent of the vote.

1 These are intra-party races that show the same extreme levels
2 of racially polarized voting we have seen throughout every
3 election analyzed in this case.

4 Plaintiffs further educed evidence that white
5 candidates of both parties have demonstrated a lack of
6 responsiveness to the needs and the interests of the black
7 constituents. And, of course, defendants own expert,
8 Dr. Bonneau, conceded that the data on racial voting patterns
9 established that white voters in Alabama support white
10 Democrats more than they support black Democrats.

11 And Dr. Hood's entire body of scholarship, meanwhile,
12 is built on the premise and repeated finding that race and not
13 partisan politics remains the dominant political influence.

14 In short, this Court already did the analysis that
15 *Callais* now demands of all Section 2 inquiries.

16 As this Court concluded in its post-trial findings of
17 fact, we have an overwhelming evidentiary record about the
18 importance of race in Alabama politics, both historically and
19 today.

20 Again, it denies reality for us to say that, at the
21 end of the day, all of that is just party politics. That
22 reality in Alabama exists today just as much as it did before
23 *Callais* was decided.

24 And, finally, plaintiffs have also established the
25 totality of the circumstances as defined by *Callais*.

1 *Callais* instructs courts to focus their inquiry on
2 current data and current political conditions that shed light
3 on current intentional discrimination. This Court did just
4 that.

5 On page 23 to 24 of our preliminary injunction motion,
6 we outlined the host of recent data and circumstances that shed
7 light on current intentional discrimination. That includes
8 bail-in relief across multiple jurisdictions in Alabama,
9 multiple instances where courts have found lawmakers were
10 motivated by race in creating state legislative or school
11 districts and lawmakers' use of racial slurs in strategizing
12 ways to depress black turnout.

13 On top of that, of course, is the Court's independent
14 finding that the 2023 plan itself is a product of intentional
15 racial discrimination, a conclusion, as Mr. Ross will discuss,
16 that not only stands on its own, but, at the very least, gives
17 rise to a strong inference that intentional discrimination
18 occurred, as required by Section 2 under *Callais*.

19 In short, Your Honors, this case -- in this case, the
20 parties and the Court have already done the heavy lifting that
21 *Callais* now demands.

22 The findings and the facts remain just as damning as
23 they were before, and the 2023 plan remains a Section 2
24 violation today.

25 I'm just going to touch very briefly on the equities,

1 Your Honor. I know this has been the subject of a lot of
2 briefing, and I know this morning's testimony was all about the
3 logistics of implementation. I won't try to rehash all of that
4 here, but I am just going to point to a few facts that I
5 believe are really beyond dispute.

6 One, it is beyond dispute that the Special Master map
7 is the status quo for Alabama voters, candidates, and election
8 administrators. It has been --

9 JUDGE MANASCO: Let me ask you a question about that.

10 I just want to be sure we're really precise about the
11 status quo.

12 So I think what I take you to be saying is that the
13 Special Master map is the practical status quo in election
14 administration systems across the state as of today.

15 MS. KHANNA: Correct.

16 JUDGE MANASCO: As I understand it, as decretal
17 language, vacatur returned the 2023 plan to the legal status
18 quo ante; is that right?

19 MS. KHANNA: I believe that's correct. Which is why
20 we are here on a preliminary injunction, to return -- to make
21 sure the legal status quo matches up to the practical status
22 quo.

23 The map in the system right now is the Special Master
24 map. The map that Alabama voters have been voting under for --
25 and relying on for over three years is the Special Master map.

1 The map that candidates qualified under for the last
2 several months and campaigned under is the Special Master map.

3 And so what we seek is a preliminary injunction to
4 ensure that the election goes forward on that practical status
5 quo Special Master map.

6 JUDGE MANASCO: All right.

7 MS. KHANNA: Another undisputed fact --

8 JUDGE MARCUS: And, in your view, how would it go
9 forward?

10 MS. KHANNA: How would the election go forward?

11 JUDGE MARCUS: Uh-huh.

12 MS. KHANNA: Your Honor, I believe that -- as far as
13 the Caster plaintiffs are concerned, we are agnostic about how
14 the state wants to run its elections.

15 If it wants to consider the May 19th primary, which
16 took place and which the secretary actively encouraged voters
17 to turn out, so be it. If it wants to continue to abide by
18 their August 11th primary, so be it. Our concern, our only
19 concern is that whatever -- whenever the election takes place
20 in whatever manner that the secretary determines Alabama's
21 elections need to take place, that they take place under the
22 Special Master map.

23 As long as the lines are lawful, we are -- we can
24 trust that the secretary will figure out the best way to make
25 sure that the elections are administered in a way that comports

1 with all of the rules and all of their requirements.

2 But I think what we learned today is that, to the
3 extent that it is any plan other than the Special Master plan,
4 it is requiring the secretary to move mountains, mountains that
5 they were not prepared to move several years ago, but
6 apparently mountains they're willing to undertake. But it is
7 not at all clear from the record that it is even feasible.

8 They may want to try it, but the chaos that they
9 guaranteed us would occur several years ago is not just
10 speculative and not just a potential. Now it is certain, where
11 they are basically saying that the only way they can rush
12 through their preferred map would be to administer it on a
13 timeline of less than seven days, which is less than any
14 documented election that they're able to -- that anyone is able
15 to recognize.

16 Where Jefferson County has taken three to five months
17 in the past in order to make the necessary changes, they are
18 asking that county to do that in less than seven days.

19 So, you know, if that -- the status quo requires zero
20 changes whatsoever. The map that they are pushing for requires
21 inordinate, inordinate burdens; inordinate changes; and
22 guaranteed chaos.

23 And the map that they are trying to push through is a
24 map that no Alabama voter has ever voted under in its entirety
25 of its existence.

1 As we also discussed, it is also beyond dispute that
2 defendants insisted some four months prior to the May primary
3 that altering district lines at that point would throw the
4 elections into chaos in 2022 for candidates, for voters, and
5 for election administrators.

6 We heard some testimony today about some potential
7 differences when it comes to GIS software; however, Jefferson
8 County, which is going to see some of the biggest changes both
9 then and now, had GIS software then; they have GIS software
10 now. And all of the counties that were discussed will require
11 work outside of the GIS software. That is not a magical
12 solution to anything.

13 And the same difficulties that were promised to occur
14 back in 2022 are now guaranteed to take place by the
15 secretary's own testimony.

16 And, finally, it is beyond dispute that the Supreme
17 Court credited the state's assertions about the impending chaos
18 in staying the 2020 -- the 2022 injunction from this Court even
19 though the map enjoined was ultimately found unlawful by that
20 court.

21 I'm not entirely sure, Your Honors, how defendants are
22 able to get up with a straight face and say that the chaos that
23 they hued and cried about four years ago is not going to ensue
24 now even though we're months further along in the process.

25 But for all the reasons that we outline in our brief,

1 defendants are estopped from arguing that here. They are
2 estopped from taking a completely different position here.
3 They have not demonstrated that there's any significant change
4 in circumstances that would warrant their complete 180.

5 Whether the 11th hour change in district lines comes
6 at the hands of the Court or the state, chaos is chaos. And
7 that chaos is guaranteed on the calendar that they are trying
8 to force through.

9 And for all of their twisting and turning of the
10 so-called *Purcell* doctrine, the fact remains, Your Honor, that
11 *Purcell* is an equitable doctrine. And this Court sits in
12 equity in deciding these P.I. motions. And there's nothing
13 equitable about defendants' 180 on when it is too late to
14 change district lines. And there's nothing equitable about
15 defendants' attempt to ram through new districts well past the
16 11th hour. And they told us that just these types of maneuvers
17 would harm Alabama voters.

18 And there's nothing equitable about defendants'
19 attempts to reinstate the 2023 plan after an objective reading
20 of *Callais* alongside this Court's findings of fact make clear
21 that whatever the effects of *Callais* in future Section 2 cases
22 anywhere else, in this case, this map remains unlawful and
23 cannot survive.

24 Unless Your Honors have any further questions --

25 JUDGE MARCUS: Thanks very much. And you have

1 reserved some time.

2 MS. KHANNA: Thank you, Your Honors.

3 JUDGE MARCUS: Mr. Ross.

4 MR. ROSS: Thank you, Your Honors.

5 Your Honors, the merits of plaintiffs' intent claim
6 remain unchanged by *Callais*.

7 *Callais* involved a racial gerrymandering challenge to
8 a map passed by the Louisiana Legislature. And in the
9 decision, the Supreme Court changed the Section 2 standard.
10 They said nothing about intentional discrimination claims; they
11 said nothing about the standard about what was required to
12 prove discriminatory intent. And in vacating and remanding,
13 all they asked this Court to do is to reconsider its very
14 detailed findings in light of the *Callais* decision.

15 We've already heard from Ms. Khanna how the Section 2
16 claims should continue despite what the Supreme Court said in
17 *Callais*.

18 I'm going to try to briefly highlight the evidence
19 this Court knows very well from its intent findings. But if
20 the Court has any questions, I'm happy to answer them.

21 JUDGE MANASCO: Do I understand, then, that you're
22 adopting what Ms. Khanna has just explained on the Section 2
23 side of the house?

24 MR. ROSS: Yes, Your Honor.

25 And in addition, I am happy to answer questions about

1 that. And we have obviously fully briefed it several times on
2 our own here.

3 JUDGE MANASCO: One follow-up question.

4 Are the Milligan plaintiffs aligned with the Caster
5 plaintiffs in terms of what Ms. Khanna described as being
6 agnostic about which election, the May 19th primary or the
7 August 11th primary, is used so long as the primary occurs
8 under the Special Master plan?

9 MR. ROSS: Yes. We are also agnostic.

10 The only thing I would add is to the extent -- the
11 deadline, as this Court knows, for qualifying candidates for
12 the August primary is today. And so if there is any thought
13 about extending the deadline, I think that's something the
14 Court could do now today to extend the deadline for whatever
15 plan is going to be in place through sometime next week.

16 JUDGE MANASCO: Let me just put a final point on that.

17 Are the Milligan plaintiffs asking the Court to enjoin
18 the occurrence of the scheduled special primary or only to rule
19 as to what districting plan must be used in it?

20 MR. ROSS: We're only asking the Court to rule on what
21 redistricting plan must be used in it.

22 We say that, like Ms. Khanna, if this Court says the
23 remedial plan is the plan that must be used for the 2026
24 elections, we defer to the secretary. They have the results of
25 the May 19th election. We have Britt and the secretary saying

1 on election day, come out and vote, come out and vote in some
2 of these elections.

3 I know that Your Honors did not admit into evidence
4 the Britt testimony, but I would -- excuse me. The Britt
5 posting, but I think it's admissible as judicial notice of the
6 statement of a public official.

7 So if Your Honors will allow me, we will try to file a
8 very brief motion on that point later today just to make it.

9 I -- so I -- to answer your question, Judge Manasco,
10 if they think that they -- it's better off just allowing the
11 results of the May 19th primary -- we think there's enough
12 there for the Court to allow that. If they want to run an
13 August primary, we think there's enough time to -- based on all
14 the testimony, that is, in fact, the only map that can actually
15 be implemented for the August election.

16 JUDGE MARCUS: And so that we are crystal clear, you
17 would leave that to them.

18 MR. ROSS: Plaintiffs would leave it to them.

19 It's their -- they're the experts in this area. But
20 we -- what we care about is the remedial map that's in place.
21 And what they have said essentially is -- from the testimony
22 today, it's really not possible to do anything but implement
23 the remedial map for the August election.

24 JUDGE MARCUS: So why don't you take us right to the
25 constitutional argument?

1 MR. ROSS: Yes, Your Honor.

2 Your Honor, as this Court found, there was direct
3 evidence in this case of intentional racial discrimination.

4 Part of that direct evidence was passed with
5 legislative findings that were passed, not statements of
6 individual legislators, but the entire Alabama Legislature --
7 every legislator who voted for this plan voted for these
8 legislative findings.

9 And, as you know, in the findings, what this Court
10 said is that Alabama Legislature essentially made it a
11 mathematical certainty that they were going to create a
12 second -- excuse me -- a majority-white district and one that
13 they knew would dilute the voting power of black voters,
14 particularly those in the City of Mobile.

15 This Court also found that the findings described the
16 French and Spanish Colonial heritage of one community, the Gulf
17 Coast, while remaining silent about the heritage of the Black
18 Belt and other communities and that, in doing so, in
19 identifying that very specific community, it exalted that
20 majority-white community above and beyond all other communities
21 in the Alabama -- in the State of Alabama.

22 It is the only community that is described in great
23 detail in the legislative findings, as you know. It's the only
24 community that's described in explicit -- what we have said
25 are -- racial tones -- in the very least are ethnic tones,

1 which we think are very clearly an indication that they were
2 trying to protect the interest of white voters.

3 And you also have the very direct evidence from
4 Speaker Ledbetter, as this Court already found, that he said
5 that his plan was to ensure that if you think about where we
6 were, Supreme Court ruling was 5 to 4, so there's just one
7 judge that needed to change his mind.

8 As this Court said, that was a clear indication not
9 that the legislature was trying to remedy vote dilution, but
10 that they were trying to maintain the discriminatory map that
11 they already had. What else was his purpose?

12 The only other thing that Alabama has been able to
13 come up with is this purported partisan intent. But we know
14 from the defendants -- excuse me -- Representative Pringle and
15 Senator Livingston that that was not their intent.

16 No one in this case has testified to any partisan
17 intent. None of the legislative findings that were passed by
18 the entire legislature mention partisanship. None of the
19 guidelines mention partisanship. There is no indication, no
20 shred of evidence in this case that anyone was motivated
21 bipartisanship. And, in fact, the evidence -- the direct
22 evidence from the defendants themselves is exactly to the
23 contrary.

24 There's also substantial circumstantial evidence. We
25 think the most significant circumstantial evidence is that the

1 one thing Alabama has continuously said that they care about is
2 this -- the Mobile-Baldwin community staying together in one
3 district. But we know that there is both the Singleton plan
4 that kept that community together and the community of interest
5 plan which we continue to think is problematic on its own but
6 shows that the legislature, including, as we know, the house of
7 representatives that passed the map and Defendant Pringle who
8 submitted that map as a remedial plan in the Special Master
9 proceedings, thought that that map at least increased minority
10 opportunity more than the Special Master -- excuse me -- more
11 than the 2023 plan and did so in a way that met all of the
12 state's purported goals.

13 We also know that the legislature, in exalting this
14 majority-white community, subjected the -- a particular part of
15 the Black Belt to disparate treatment and that is Dallas County
16 and the City of Selman. As this Court said, probably Alabama's
17 most famous city was removed from the opportunity district in
18 the community of interest plan and placed in Representative
19 Sewell's district under the 2023 plan.

20 And the legislature knew for a fact because they had
21 data because their own mapmaker testified to it that doing so
22 would eliminate any opportunity for black voters to elect their
23 candidate of choice under the 2023 plan's congressional
24 District 2.

25 The defendants have made a number of arguments. One

1 of their arguments, though, I think is really important for us
2 to highlight and address, which is that they say if we are
3 unable to meet the new *Callais* standard under Section 2, that
4 that means that we cannot win our intent claim either.

5 The Supreme Court -- to be clear the Supreme Court has
6 never said that. In fact, in *Bartlett*, the Court very clearly
7 said the opposite, that the standards that it was adopting for
8 Section 2 to determine whether or not you needed to have a
9 *Gingles* 1 map were not the same standards that the Court would
10 necessarily adopt for an intentional discrimination case.

11 And the Eleventh Circuit, although they've cited this
12 case called *Johnson vs. DeSoto*, we have more recent cases
13 including the *Stout vs. Jefferson County* case in which the
14 Eleventh Circuit has made clear that any time there's
15 intentional discrimination, that that -- any time there's
16 intentional discrimination, that that discrimination has no
17 legitimacy whatsoever under our constitution.

18 And in that case, the Eleventh Circuit described the
19 evidence of discriminatory impact as vanishingly -- excuse
20 me -- as seemingly insignificant and, yet, the Court still
21 found that there was a constitutional violation in that case.

22 So not only do we have Supreme Court precedent; we
23 also have Eleventh Circuit precedent, saying that when you have
24 any kind of discriminatory impact, whether it's the *Callais*
25 standard or some other standard -- or the evidence that we

1 think we have already presented, that impact is enough when you
2 also have both direct and circumstantial evidence and then,
3 obviously, this Court's unanimous finding that there was
4 intentional discrimination by the Alabama Legislature in 2023.

5 Nothing in *Callais* touches upon this. Nothing on
6 *Callais* changes the results of our -- of Your Honor's finding.
7 And we think that this Court should have issued the same
8 decision again.

9 JUDGE MARCUS: Thanks very much.

10 MR. ROSS: Thank you.

11 JUDGE MARCUS: Counsel for Singleton.

12 MR. QUILLEN: Good afternoon, Your Honors. Henry
13 Quillen for the Singleton plaintiffs.

14 We -- there's no daylight between our opinion on the
15 Section 2 claims and the constitutional claims with the Caster
16 and Milligan plaintiffs. We adopt their arguments, and so I'm
17 not going to spend too much time on them. But I did want to
18 address a point that --

19 JUDGE MARCUS: Why don't you slow down, take your
20 time, speak right into that microphone so that our court
21 reporter can get it all down.

22 Thank you.

23 MR. QUILLEN: I think there is an issue that has
24 engendered some confusion because I think the state at times
25 has claimed that you cannot comply with the remedy that this

1 Court ordered and keep the Gulf Coast whole. And that is not
2 true.

3 The community of interest plan that was introduced in
4 the legislature showed that it was possible to do so in a plan
5 where, in two of the four elections they modeled, the preferred
6 candidate of black voters would have gotten more votes.

7 The Singleton plan, the one that was introduced at the
8 2023 legislative session, is another example of a plan with two
9 opportunity districts but one that kept the Gulf Coast whole.
10 And not only that. Kept the Black Belt intact better than the
11 2023 enacted plan.

12 The 2023 enacted plan basically splits the Black Belt
13 down the middle, and half of it is subsumed into a district
14 where it has very little voice.

15 The Singleton plan put 16 of 18 core Black Belt
16 counties, which is the most mathematically possible, into the
17 same district. So in terms of keeping communities of interest
18 together, it actually outperformed the enacted plan.

19 So any time the state says we -- we cannot comply with
20 all of the legislative findings, even the contrived legislative
21 findings that the 2023 legislature adopted, without breaking up
22 the Gulf Coast, it's not true.

23 We learned today, I think for the first time, that
24 reassignment has to be done by June 2nd, within seven days or
25 less of the time that registrars can actually get into the

1 system and start making changes.

2 Despite the talk of new technologies, just this past
3 September, the chairman of the Jefferson County Board of
4 Registrars, Barry Stephenson, submitted a declaration to this
5 Court under penalty of perjury in the *Jefferson County*
6 *Commission* case -- that's *McClure vs. Jefferson County*
7 *Commission*, Number 23-CV-433 -- that -- where he said, we
8 really need to have the Jefferson County Commission districts
9 seven months before the election to be able to properly
10 implement them. That's document number 203-1 in that case at
11 page 5.

12 Now we're hearing that this all needs to be done in
13 seven days, about 25 times faster. And that is absolutely a
14 recipe for chaos.

15 And what worries me is that what happens if the -- if
16 Jefferson County registrars start reassigning people and find
17 out at the end of that week, on June 2nd when everything gets
18 locked down, that they couldn't move 25 times faster than they
19 thought and they're only partway done and they can't make
20 changes to the voter lists because the voter lists are now
21 locked down for subsequent elections.

22 At that point, I'm not sure how you could have any
23 election under any plan by August 11th, which creates problems
24 with getting to a November general election.

25 The -- I think the idea that we can just hope that

1 election officials can move 25 times faster than they think
2 they need to is a real problem that weighs the equities in
3 favor of keeping the practical status quo, which is using the
4 Special Master's plan in future elections.

5 We also agree with the Caster and Milligan plaintiffs,
6 that as long as the Court rules that the Special Master's
7 remedial plan is the plan, that we do not mind however the
8 state wants to implement that plan.

9 If they want to canvas and certify the results of the
10 May 19 election, they can canvas and certify those results. If
11 they want to rerun the primary elections on August 11th under
12 the remedial plan, they could do that. It's up to them as long
13 as we're using a lawful plan.

14 And to reiterate a point that I think is in all the
15 briefs, the state has no legitimate interest in running an
16 election with an unlawful plan.

17 If the Court decides that the 2023 plan still violates
18 Section 2 or still violates the constitution, then what we are
19 left with is a choice between an administrable election
20 calendar with a lawful plan if we keep the Special Master's
21 plan in place or chaos with an unlawful plan if we go back to
22 the 2023 plan.

23 Obviously, the equities favor an administrable lawful
24 plan over a chaotic unlawful plan.

25 Unless the Court has any questions --

1 JUDGE MARCUS: Thank you very much.

2 We'll hear from the secretary.

3 MR. BOWDRE: Thank you, Your Honor. Barrett Bowdre
4 for the secretary.

5 JUDGE MARCUS: Quick question.

6 Are you going to share your time with Mr. Davis?

7 MR. BOWDRE: Yes, Your Honor.

8 So I am going to try and address some of the -- the
9 effects of *Callais* on the Section 2 and equal protection
10 claims.

11 Mr. Davis is going to effect some of the equitable
12 considerations and a lot of the testimony that we've heard this
13 morning.

14 And then Mr. Taunton may have something to add at the
15 end of all that.

16 JUDGE MARCUS: Thanks.

17 MR. BOWDRE: Thank you, Your Honor.

18 At the outset, I am going to take a step back and kind
19 of refocus on what the plaintiffs have asked the Court to do
20 and the Court's job, all of our job in light of the vacatur of
21 the injunction.

22 We think that it is -- that there is no presumption
23 that the prior findings just port over. This is a new
24 standard. All of those findings were made under a different
25 standard. And so, you know, the Court's opinion --

1 JUDGE MARCUS: Some things are different and some
2 things are the same. They didn't wipe the slate clean on
3 *Gingles*. They imposed four additional requirements. Have I
4 misapprehended that?

5 MR. BOWDRE: I think -- I mean, the changes are
6 significant. And I agree that the Court has updated --

7 JUDGE MARCUS: I do think that's a fair
8 characterization. But they did not wipe the slate clean as to
9 a variety of obligations any movant has to establish Section 2,
10 right?

11 MR. BOWDRE: I agree with that, Your Honor. I am
12 saying the standard has changed. The facts, the factual
13 findings and the mixed questions of findings and law just need
14 to be reconsidered. That's all I'm saying.

15 And the second point is I think this is a heavy task
16 and that plaintiffs have made it heavier because the plaintiffs
17 are not able to follow just in the footsteps of *Callais* but
18 have asked this Court to take a couple of big steps in front of
19 *Callais*. And so I want to address two of those, one with
20 Section 2 and one with equal protection claims.

21 And so turning to the *Gingles* 1 analysis under
22 *Callais*, *Callais* says plaintiffs cannot use race as a
23 districting criterion and the illustrative map must meet all
24 the state's legitimate districting objectives just as well as
25 the state's map.

1 This Court found as a factual finding that no
2 alternative map at the *Gingles* 1 stage achieves all the
3 political goals of the legislature. Particularly, the
4 legislature's goal to keep the Gulf Coast communities intact,
5 to protect incumbents, and to split the Black Belt into the
6 fewest districts possible.

7 We think this finding should be dispositive because
8 *Callais* says the illustrative maps have to meet or beat the
9 state's maps. This Court found that they didn't.

10 So how do the plaintiffs get around that? They say,
11 well, *Callais* says they have to meet all of the legitimate
12 districting criterion just as well. And so they say these
13 criterion that the -- Alabama used are not legitimate.

14 So *Callais* defines what a legitimate districting
15 criteria is, and it says that it is any criteria that the state
16 wants that is not unconstitutional, that does not violate the
17 constitution.

18 Any goal not prohibited by the constitution is
19 legitimate and, quote, it is up to each state to decide what
20 weight, if any, a particular goal warrants.

21 So we think that for plaintiffs to survive this, to
22 show that all of the state's goals that they cannot meet or
23 beat are illegitimate, that they would have to show that the
24 state's desire to not pair incumbents against each other --
25 that that is illegitimate and unconstitutional even though

1 *Callais* itself says -- uses incumbent protection as an example
2 of a valid goal.

3 The state wants to keep communities of interest
4 together and split them in as few districts as possible. The
5 plaintiffs would have to show that that is an unconstitutional
6 goal.

7 The state's desire to reduce the county splits and to
8 make districts as compact as possible, *Callais* says that's a
9 constitutional goal. Plaintiffs would have to show that is
10 unconstitutional.

11 And to do that, they rely on this Court's intentional
12 discrimination findings.

13 I think the major problem with that -- and I will
14 address some of the other problems, but the major problem here
15 is that I think that is circular because the intentional
16 discrimination findings come after 400 pages that the Court has
17 addressed on whether the 2023 map violates Section 2 or not,
18 whether the plaintiffs have met their *Gingles* preconditions,
19 what the totality of the circumstances show.

20 And then based on that determination, that the 2023
21 map violated Section 2, then the Court was able to look through
22 that prism and make its intentional discrimination findings.

23 But it makes no sense to say, well, the intentional
24 discrimination findings that were at least in part based on the
25 Section 2 violation can then be used to find another Section 2

1 violation of the same map.

2 I think that is circular, but I think that's what
3 plaintiffs are arguing.

4 I also want to note -- so turning to *Gingles* 2 and
5 3 -- well, on -- on the other *Gingles* factors, plaintiffs
6 cannot use --

7 JUDGE MARCUS: What would you -- while you're still
8 talking about *Gingles* 1, what would you have us do with the
9 fact that our Special Master drew three maps race-blind? We
10 credit it; he said it, he didn't have any racial configurations
11 regarding geography in front of him when he looked at
12 contiguity, compactness, et cetera.

13 He drew three maps race-blind.

14 MR. BOWDRE: Yes, Your Honor. And so taking --

15 JUDGE MARCUS: And we accepted that finding of fact.

16 MR. BOWDRE: Well, we certainly agreed -- yes. Yes.
17 You accepted that finding of fact. Yes.

18 And taking that as it is, one, we don't think that the
19 remedial maps that the Special Master drew are -- those are not
20 *Gingles* 1 maps. They don't have two black-majority districts.
21 They are -- the goal was different. It was to provide
22 opportunity districts. But that's not the standard for *Gingles*
23 1.

24 And they also don't -- you know, just like the
25 illustrative maps that plaintiffs produced, those maps also do

1 not meet the state's legitimate districting objectives just as
2 well as the state's map does.

3 And so, again, I don't think that can be used to pass
4 *Gingles* 1.

5 At *Gingles* 2 and 3, *Callais* makes clear that it is
6 on -- that plaintiffs have to show that it is race and not
7 politics as driving the voting, the block voting, the racial
8 block voting. Excuse me.

9 This Court made a factual finding that, based on this
10 evidentiary record -- it's on page 400 of the Court's
11 opinion -- it cannot separate voters' racial considerations
12 from their party affiliations.

13 I think that makes sense because, as *Callais* talks
14 about, in states like Alabama, where it is the case that the
15 majority of black Alabamians vote Democrat, the majority of
16 white Alabamians vote Republican, it's really, really hard to
17 disentangle race and politics.

18 But that is the standard that the *Callais* court now
19 requires and the plaintiffs were not able to meet that burden.

20 At the very least, this Court would have to look at
21 what is left of the intra-party evidence that they discussed
22 this morning. And I think if you take away, you know, the
23 mountain of other evidence, their primary evidence of racial
24 block voting, and look only at what is left that is about
25 intra-party voting, I think that is not sufficient to pass

1 *Gingles* 2.

2 It is pretty insignificant evidence about some primary
3 elections, a couple of mayoral elections. But the point is you
4 would have to look at that separately and then assess whether
5 that by itself passes *Gingles* 2. And I don't think that is
6 sufficient.

7 Briefly on the totality of the circumstances --

8 JUDGE MANASCO: Let me ask you a *Gingles* 1 question
9 before we go to the totality.

10 So *Callais* is really specific about the forbidden use
11 of race. And as I understand it, together with *Alexander*, the
12 forbidden use is of race as a districting criterion; that after
13 a mapmaker prepares maps, it remains lawful, as it was under
14 *Alexander*, for the mapmaker to check whether the map contains
15 the additional black-majority district that would be required
16 under *Bartlett*.

17 Have I understood that correctly, in the state's view?

18 MR. BOWDRE: I think so, Your Honor.

19 Certainly that's what *Alexander* says.

20 JUDGE MANASCO: Okay. So what is the evidence that in
21 this case the plaintiffs' experts used race as a districting
22 criterion?

23 MR. BOWDRE: Yes, Your Honor.

24 So I think two thoughts on that.

25 One, *Callais* uses the word "use race." It doesn't say

1 race predominates. And so there is this question of whether
2 there is a distinction between use race versus race
3 predominates, and that's the kind of *Alexander* -- that's what
4 you have to show to show a racial gerrymander.

5 So whether that, you know, intentional distinction
6 matters, the Supreme Court has not said. And so that would be
7 something I think this Court has to grapple with.

8 But as far as the plaintiffs' experts, you know,
9 Dr. Duchin and Mr. Cooper both testified that, of course, race
10 is a consideration that they used when drawing the maps. All
11 this Court found was that race did not predominate. I don't
12 think that is the correct standard. I think there's a little
13 bit of ambiguity.

14 JUDGE MANASCO: I guess I am asking a more granular
15 question.

16 I know what we found earlier had to do with
17 predominance. That was the standard the measurement was to be
18 taken against. And I know much of the evidence had to do with
19 predominance. People asked their questions on direct and cross
20 having to do with predominance because that was the standard.

21 So I'm asking a more specific question about what the
22 evidence is in the record we have already that Dr. Duchin or
23 Mr. Cooper used race in the specific way that *Callais* now
24 forbids.

25 MR. BOWDRE: Yes, Your Honor.

1 I don't have that at my fingertips. If I could, you
2 know, at the end maybe consult and come back with an answer --
3 is that sufficient? I know it's not ideal, but it is what it
4 is.

5 JUDGE MANASCO: Well, I appreciate it.

6 Just to make sure you understand the question clearly,
7 it's: Is there evidence that either of them or both of them
8 specifically used race in the way that *Callais* now forbids?

9 So evidence of use of race doesn't really tell me when
10 in the process they used it unless the question was specific
11 about that. Right?

12 So to say I considered race, if that's what the expert
13 says, doesn't mean necessarily that the expert used race as a
14 districting criterion. Maybe the expert used race -- and we
15 had some writing about this, right -- to determine which of the
16 maps the expert drew to submit to the Court as *Bartlett* maps,
17 as maps that actually contained an additional majority-black
18 district.

19 And so that's the evidence that my question is aimed
20 at identifying. I mean, there is a footnote in the chief
21 justice's opinion in *Milligan* that recount Dr. Duchin's
22 testimony that her randomized algorithms could draw race-blind
23 maps in thousands of ways.

24 And so I think we've got to be more precise when we
25 talk about whether these experts for present purposes of

1 preliminary injunction motions used race or didn't use race.

2 I think we have got to be a little bit more precise
3 than that to be faithful to the enterprise of measuring this
4 record against *Callais*.

5 MR. BOWDRE: Yes, Your Honor.

6 And I guess a couple of thoughts on that.

7 One, I think that's plaintiffs' burden to show that
8 their mapmakers did not use race in the way that *Callais* talks
9 about because it's --

10 JUDGE MANASCO: Well, they have some arguments about
11 that in their motion. That's why I'm --

12 MR. BOWDRE: Sure. And we have some arguments about
13 it in our response, as well. I just don't have it with me.

14 But just to take a couple examples. This is from this
15 Court's opinion on page 325 in which it recounts Dr. Duchin's
16 testimony in which she testified race is a consideration; it
17 doesn't dominate others, but she periodically checked to see if
18 the plan, as a whole, had the property of two majority-black
19 districts.

20 So if you are drawing your district, your map, and
21 you're, you know, toggling on and off race to see if you've
22 gotten to the black-majority district, I think that is a use of
23 race that is in violation of *Callais*. And there's pretty
24 strong evidence that that's exactly what Dr. Duchin did.

25 JUDGE MARCUS: Let me follow up on that if I could.

1 Again, the endeavor here is to as fairly as we can
2 take an enormous body of evidence and match it up against the
3 *Callais* standard.

4 We all agree race is involved overtly and properly in
5 meeting the numerosity requirement, right?

6 MR. BOWDRE: Yes; you have to have --

7 JUDGE MARCUS: You have to take an examination and say
8 has the plaintiff met its burden of establishing 50 plus one.

9 MR. BOWDRE: Yes, Your Honor.

10 JUDGE MARCUS: And the only way you can do that is to
11 look at race at least for that surgical and limited purpose.

12 MR. BOWDRE: I agree with that. At the end --

13 JUDGE MARCUS: And you couldn't get to first base on
14 *Gingles* 1 if you couldn't produce a map that met the numerosity
15 requirement.

16 MR. BOWDRE: Yes, Your Honor.

17 JUDGE MARCUS: Again, so to come back to the question
18 we're focusing on here, the issue is not whether race was used
19 for that purpose but whether race was used as a traditional
20 districting criterion in actually going about the granular
21 process of drawing maps.

22 We can agree on that, right?

23 MR. BOWDRE: I think so, Your Honor, so far as I
24 understand that it is okay once you draw the map to turn on the
25 race button to see if you have drawn a map that is

1 majority-black or majority-minority.

2 If you are toggling it on and off as you're drawing
3 the map, I think that it is an unlawful use of race.

4 JUDGE MARCUS: Help me with this dialogue.

5 In the course of the examination of Dr. Duchin, at the
6 back end, she was asked the following questions -- the object
7 of the questions was to focus specifically on whether race was
8 used in the granular process of drawing the maps. By granular,
9 she uses the term "microscopic" throughout. And it seemed fair
10 to me in reading it and rereading it again that her reference
11 was to the traditional criteria.

12 Question from me to Dr. Duchin at the end of the
13 examination, 365, 366: Did you ever have occasion to take a
14 look at the number 50 plus one, discover that you fell below
15 it, and, thereby, were nudged to alter or change the
16 microscopic analysis in any way?

17 Dr. Duchin: As I understand the question, it might
18 ask, quote, did falling below 50 lead me to look for
19 majority-black precincts.

20 Judge Marcus: Yes.

21 Dr. Duchin: No. That's not my process.

22 The inquiry didn't end there.

23 Second question: So you did not change the
24 microscopic process simply because the numbers in a particular
25 district might have fallen beneath 50 plus one?

1 Dr. Duchin: That's right. I would say the balancing
2 of criteria looks the same. When you're above 50, and below,
3 the process is not one of going hunting for majority-black
4 precincts because you've fallen below the line.

5 Third time the question is asked -- Judge Marcus: So
6 let me ask you the question again in my own words just to be
7 sure I have this right. Did you ever change the microscopic
8 part of your analysis to get up to 50 plus one?

9 Duchin: Best I understand the question, my answer
10 would be no.

11 What did you take her answers to be to that set of
12 questions?

13 MR. BOWDRE: I -- I mean, I understand the testimony.

14 I don't know if I have a takeaway from that other than
15 it sounds, at least from some of her testimony -- I'm not sure
16 if it's exactly what you just read, but there was some --

17 JUDGE MARCUS: I'm asking about this particular
18 question, which at least the purpose of which was to discern
19 whether when she drew the map, when she crunched the numbers,
20 when she looked at compactness, when she looked at contiguity,
21 when she looked at splitting as few counties or cities or
22 precincts or VTDs as possible, did she use race in the process.

23 She says no.

24 I just want you to help me understand how, in your
25 view, we are supposed to read this examination when measured in

1 light of a new standard.

2 MR. BOWDRE: Yes, Your Honor.

3 So I think maybe the second requirement that *Callais*
4 imposes on the illustrative maps helps answer this, that the
5 illustrative maps have to meet all of the state's legitimate
6 districting criteria just as well.

7 So if it doesn't and the reason is -- the reason it
8 doesn't is because of race, then it's fair to infer that race
9 was used in the map-drawing process to create that map that
10 cannot meet the traditional districting principles.

11 JUDGE MOORER: Explain that to me. How does that make
12 sense?

13 Just because they reached the result, you're saying
14 the only way they could have reached that result was because of
15 race?

16 MR. BOWDRE: Well, Your Honor, I think if -- so
17 *Callais* provides the example of what vote dilution looks like
18 in Section 2; and that is, if you have the application of all
19 the neutral legitimate principles of the state --

20 JUDGE MOORER: Where did she not apply the neutral
21 principles of the state?

22 MR. BOWDRE: When none of her maps, for instance, keep
23 the Gulf communities together.

24 JUDGE MOORER: Well, are you saying that we have to
25 accept -- just because the state says it; that keeping the Gulf

1 Coast together is a legitimate interest, that we have to accept
2 that?

3 MR. BOWDRE: I think pretty close to that.

4 I mean, *Callais* says it is up to each state to decide
5 for itself what the criteria are as long as they're not
6 unconstitutional, and it's up to each state --

7 JUDGE MOORER: But if that is merely a subterfuge to
8 get to a result, then it -- are we not able, as we would in any
9 other area of the law where intent is to be inferred -- we
10 infer it from actions; we infer it from other things that may
11 be done. And, ultimately, doesn't the factfinder have to
12 become convinced that the stated intention is or is not the
13 fact?

14 MR. BOWDRE: I think the presumption is that the
15 stated intention is legitimate, that there is the presumption
16 of --

17 JUDGE MOORER: But not conclusive, correct?

18 MR. BOWDRE: It's not conclusive. And I would say
19 here --

20 JUDGE MOORER: So then we have to go through the
21 traditional things that factfinders, judges or juries, do,
22 which is to look at what someone does, perhaps what the effects
23 of what they did were, and a variety of other factors to draw a
24 conclusion, correct?

25 MR. BOWDRE: Yes, Your Honor. And --

1 JUDGE MOORER: How does her, then, analysis of the
2 content of the population step across the line that *Callais* has
3 set?

4 In other words, she said, I looked at it as it was
5 going on, but I did nothing to influence it.

6 MR. BOWDRE: I may be misunderstanding something here,
7 but it seems to me that when you're looking at what Dr. Duchin
8 did, she has to apply the presumption of legislative good
9 faith.

10 I mean, by that -- at that point -- or right? So if
11 the -- and this gets into some of the intentional
12 discrimination findings, but --

13 JUDGE MOORER: Well, let me ask you about this keeping
14 the Gulf Coast together.

15 Do you live in Alabama?

16 MR. BOWDRE: I'm sorry?

17 JUDGE MOORER: Do you live in Alabama?

18 MR. BOWDRE: Yes, Your Honor.

19 JUDGE MOORER: How long?

20 MR. BOWDRE: I was born here.

21 JUDGE MOORER: Okay. Have you ever been to New York
22 City?

23 MR. BOWDRE: I have.

24 JUDGE MOORER: New York City -- let's just take this
25 hypothetical. If we were drawing districts for New York City,

1 I'm sure there are some neighborhoods there that are
2 Irish-Catholic, there are some there that are maybe
3 Italian-Catholic, maybe some that are Asian communities.

4 Now, those would be three probably fairly distinct
5 groups in political, perhaps, ideologies, wouldn't you agree?

6 MR. BOWDRE: I could assume so, but I don't know.

7 JUDGE MOORER: So, in Alabama, you don't have that
8 type of areas where you've got, say, some vastly different
9 group of people, do you?

10 MR. BOWDRE: I think -- I'm not quite sure. I mean,
11 Alabama is pretty diverse.

12 JUDGE MOORER: Diverse, true. But would you say it's
13 as diverse as, say, that example that I gave you? For
14 instance, isn't Alabama predominantly Protestant?

15 MR. BOWDRE: I honestly -- I don't know what the --

16 JUDGE MOORER: The answer to that would be yes,
17 wouldn't it?

18 MR. BOWDRE: I'll assume the answer is yes, but I
19 don't know.

20 JUDGE MOORER: Wouldn't you say that day-to-day life
21 in the State of Alabama as far as the population, it's fairly
22 similar. In other words, the things people do for
23 entertainment would be fairly consistently the same?

24 MR. BOWDRE: I have no idea. I'm sorry. I don't -- I
25 mean, compared to what?

1 JUDGE MOORER: Comparing the state, the various
2 sections of the state.

3 For instance, do you think that the things that people
4 do in, say, northwest Alabama for entertainment would be
5 markedly different than what they might do in the southeast
6 part of the state or the western part, southwest part of the
7 state?

8 MR. BOWDRE: Probably at times. I mean, each, you
9 know, city has its own festivals, its own -- you know, I grew
10 up in Birmingham. We have the Greek Food Festival. Mobile has
11 Carnival and all those sorts of things. I think there is
12 differences, absolutely.

13 JUDGE MOORER: Okay.

14 MR. BOWDRE: I apologize if I am not getting to where
15 you wanted to go.

16 JUDGE MARCUS: Mr. Bowdre, if I could come back to my
17 question for just a moment.

18 MR. BOWDRE: Yes, Your Honor.

19 JUDGE MARCUS: I think I heard you answer me and
20 perhaps Judge Manasco when we asked you to tell us what in the
21 record we could look to, to suggest that -- let's say we take
22 Dr. Duchin as an example -- that she used race in the granular
23 process of drawing maps.

24 And I think the first thing I heard you say was that
25 you could discern that she used the race as a criteria because

1 she went about splitting the Gulf Coast. That was one example,
2 I think.

3 Did I get that right?

4 MR. BOWDRE: Yes, Your Honor, that's one example.

5 JUDGE MARCUS: Are there others?

6 MR. BOWDRE: Well, she did not meet the state's
7 criteria. She paired incumbents against each other -- against
8 each other.

9 They, you know, the state prioritized splitting the
10 Black Belt into as few districts as possible, which is two. I
11 don't think all of Dr. Duchin's maps did that.

12 And so -- and so the -- you know, when *Callais* says,
13 how do you tell if there's vote dilution, well, you apply all
14 the districting principles and then, if the state's map is one
15 way and doesn't have any black majority districts and then the
16 plaintiffs are able to show all these different maps that
17 accomplishes all those goals just as well as the state does and
18 yet has black-majority districts, well, then you can infer
19 racial discrimination; you can infer intent. That's a Section
20 2 vote dilution.

21 And the output of that is that if the maps that the
22 plaintiffs draw don't meet the redistricting principles that
23 the state has and they look different, why do they look
24 different? An inference could be because they were drawn with
25 a racial goal of having a black -- you know, two black-majority

1 districts and you can't do that and meet the state's legitimate
2 criteria.

3 JUDGE MANASCO: So I guess let me rephrase my question
4 in followup.

5 Is the evidence that Dr. Duchin used race in the way
6 that *Callais* now forbids that she wasn't able to meet the
7 state's articulated districting objectives or is it something
8 specific she said about how she used race?

9 What I'm really trying to do is sort of -- the briefs
10 speak in shorthand of used race. *Callais* speaks specifically
11 about a forbidden use of race.

12 And so I'm trying to figure out whether the shorthand
13 is fully accurate.

14 MR. BOWDRE: I think, of the two options, certainly
15 the first is true. And the second might also be true. I just
16 don't have it at my fingertips to provide an answer.

17 JUDGE MANASCO: Okay.

18 MR. BOWDRE: If I could move to --

19 JUDGE MARCUS: I'm not quite finished with this
20 question because I'm really looking for your help here.

21 You say we should discern that Duchin used race as a
22 forbidden criterion in drawing her maps and we should discern
23 that -- I heard you say three things. One, she split the Gulf
24 Coast; two, she paired incumbents; and, three, she split the
25 Black Belt not two ways but three.

1 MR. BOWDRE: I think those are correct; yes,
2 Your Honor.

3 JUDGE MARCUS: Were there any -- is there anything
4 else that she did that would enable us to draw the fair
5 inference that, when she drew the maps, she used race as a
6 criterion beyond those three?

7 MR. BOWDRE: Well, I think any map that she drew that
8 did not meet all the state's --

9 JUDGE MARCUS: Right. I am not suggesting you're
10 wrong; that those are not enough. I'm just wanting to make
11 sure that I understand the totality of the state's position.

12 MR. BOWDRE: Yes, Your Honor.

13 So I would just say there might be other state, you
14 know, objectives in the legislative findings that those maps
15 did not meet. And so I don't mean to be exhaustive by
16 providing --

17 JUDGE MARCUS: I understand.

18 MR. BOWDRE: But the kind of answer is the same.

19 JUDGE MANASCO: On your answer to Judge Marcus just
20 now, what are we to make of her testimony that on the
21 algorithms she uses, the randomized algorithms that she uses
22 that she can draw remedial districts race-blind in thousands of
23 ways?

24 What -- what does that mean for where we are now, in
25 the state's view?

1 MR. BOWDRE: Yes, Your Honor.

2 I think she was not talking about the *Callais* standard
3 of meeting the state's criteria just as well as the state's map
4 does.

5 So when she draws -- if she could draw it, you know, a
6 thousand districts that meet our criteria, you would think that
7 the plaintiffs would provide one. But they have not.

8 JUDGE MANASCO: And I am not really asking about that
9 piece of it. I'm asking about race-blindness.

10 I mean, is that an indicator, that her randomized
11 algorithms are race-blind?

12 MR. BOWDRE: I think it depends what the containers
13 are or what the goals are.

14 And since those goals that she put into her algorithm
15 were not the state's goals but, instead, the goal was to
16 provide an additional majority district, that's just a
17 different goal, and it is a race-based goal.

18 JUDGE MARCUS: So should we discount -- to go back to
19 the question you were asked earlier -- the chief justice's
20 comment that, using the algorithms that Dr. Duchin used, she
21 could draw thousands of maps that were race-blind?

22 MR. BOWDRE: Under a pre-*Callais* standard, that could
23 be true. I don't think that could be true after *Callais*.

24 THE COURT: Well, is there any ambiguity about the
25 meaning of the term "race-blind"?

1 Again, the template was different then. The template
2 was predominance, subordinate, not race-blind. But she said
3 something about race-blind, too. And that's what I'm trying to
4 get you to help me with.

5 MR. BOWDRE: Maybe if I come at it a different way.

6 I guess if someone draws a bunch of maps that are
7 race-blind but don't meet the state's districting criteria, I
8 guess I'm not sure what work that does under *Gingles*. And
9 that's where I categorize --

10 JUDGE MARCUS: Okay. So we get back to the point I
11 was raising.

12 So we are to infer that the maps were not drawn
13 race-blind from the extrinsic fact that she split the Gulf
14 Coast, paired incumbents, and split the counties in the Black
15 Belt in the wrong way. That's what gives you the inference
16 that she must have used a race-loaded way in doing the
17 microscopic job.

18 MR. BOWDRE: I think so, yes; that she was not able to
19 meet the state's districting criteria, yes.

20 There's a couple of transcript notations I also note
21 when you were asking specifically about what about her
22 testimony do we think could indicate that she was not using
23 race appropriately.

24 So this is from the transcript page 577, line 17
25 through 20. She says, after what I took to be nonnegotiable

1 principles of population balance in seeking two majority-black
2 districts -- after that, I took contiguity as a requirement.

3 JUDGE MANASCO: That's from the preliminary
4 injunction, right?

5 MR. BOWDRE: That is from the preliminary injunction.

6 JUDGE MANASCO: What about trial?

7 MR. BOWDRE: I don't have a trial transcript now.

8 JUDGE MARCUS: I didn't mean to cut you off.

9 So you had some other comments about *Gingles* 2,
10 *Gingles* 3, and the Senate Factors.

11 MR. BOWDRE: I know that my time is -- I don't want to
12 crowd out other people's --

13 JUDGE MARCUS: No. You're on my time, counsel.

14 MR. BOWDRE: Thank you.

15 JUDGE MARCUS: You'll have all the time you need.

16 Just help me with *Gingles* 2, *Gingles* 3, the Senate
17 Factors, and the constitutional argument.

18 MR. BOWDRE: Yes, Your Honor.

19 So *Gingles* 2 -- I think I already said, but just to
20 tie the bow on it, this Court already found that plaintiffs'
21 evidence that -- based on this evidentiary record, they cannot
22 separate voters' racial considerations from their party
23 affiliations. I think that is -- but that's exactly what
24 *Callais* requires.

25 And on the totality, my only comment there is to look

1 at -- I mean, so in *Callais*, they -- the Court looks at the
2 totality of the circumstances and it says it comes no where
3 close to finding -- to inferring present day intent of
4 discrimination.

5 And our record I think is pretty similar to the record
6 in *Robinson*. It's the same type of evidence that the Supreme
7 Court said was insufficient.

8 I am going to move on to the intentional vote dilution
9 claim under the Equal Protection Clause. And I think my main
10 point here is that, to show intentional vote dilution, you have
11 to show vote dilution. And that standard is the same in the
12 constitution and Section 2. And we know that because the
13 standard comes from *White vs. Regester*. So that in 1982 when
14 Congress defines what is vote dilution for purposes of Section
15 2, they reach out and grab the definition from *White vs.*
16 *Regester*, which was an intentional vote dilution claim under the
17 constitution.

18 So it makes sense. The only difference is the level
19 of evidence, you know, whether to show an inference of intent
20 or actual intentional discrimination. But the vote dilution
21 analysis I think has to be the same.

22 And certainly it's the case that the Supreme Court has
23 never said that they're any different. I don't think the
24 Eleventh Circuit has. And, in fact, the Eleventh Circuit has
25 thought that it would be strange, indeed, for a plaintiff to

1 fail on a Section 2 claim but be able to succeed on a
2 constitutional vote dilution claim.

3 JUDGE MANASCO: Well, let me ask you about that.

4 I mean, in the unique posture of these cases, given
5 the sequence of events in these cases, does the Supreme Court's
6 2023 ruling in these cases address whether, in 2023, the 2023
7 plan diluted minority votes?

8 MR. BOWDRE: Certainly it found -- sorry.

9 Does the Supreme Court's decision shed light on
10 whether the 2023 plan -- I think the answer is no. I don't
11 think the Supreme Court has ruled on the 2023 plan. It has
12 ruled on the 2021 plan.

13 JUDGE MANASCO: Sorry. The 2021 plan. Yeah. So let
14 me repeat the question to it's clean.

15 Does the Supreme Court's opinion in 2023 shed light on
16 whether the 2021 plan diluted votes?

17 MR. BOWDRE: It certainly sheds light that, under the
18 standard that was applicable at the time, using that map, based
19 on the preliminary record, that it was a likely Section 2
20 violation.

21 JUDGE MANASCO: All right. What did the 2023 plan do
22 differently, in the state's view, that forecloses that finding
23 from having relevance to the 2023 plan.

24 MR. BOWDRE: Yes, Your Honor.

25 So one thing is in this Court's preliminary injunction

1 opinion, it said, compared -- so this is in dispute -- the
2 dispute in 2021 was the Gulf Coast and the Black Belt -- you're
3 going to have an extra split where. At that time, the Black
4 Belt was split into three districts; yet, the Gulf Coast
5 community was kept whole. Why is that? You're going to have a
6 split. Why don't you split the Gulf rather than the Black
7 Belt.

8 And this Court -- you know, our defense was, well, the
9 Gulf Coast is important. And there is minimal testimony about
10 that at the time, just given the nature of the preliminary
11 hearing.

12 And so this Court wrote, Compared to the record about
13 the Black Belt, the record about the Gulf Coast community of
14 interest is less compelling. Only two witnesses testified, and
15 Burn explained that political advantages likely would accrue
16 for those areas if they're able to be kept together.

17 And then the Court said, if those advantages really
18 are as compelling as the defendant suggests, we expect that the
19 legislature will assign them great weight when it draws a
20 replacement map.

21 That's exactly what happens. So the legislature goes
22 back, tries to fix the underlying problems with the 2021 map.
23 One of those problems was there's a lack of evidence to support
24 the state's interest in keeping the Gulf Coast community
25 together. And so, as the Court said, we would expect the

1 legislature to make findings about how important that Gulf
2 Coast community of interest is.

3 That's exactly what they did. And this Court then
4 found that, yes; the Gulf Coast community is a valid legitimate
5 community of interest.

6 JUDGE MANASCO: And separate from that, is the
7 legislature's purposeful decision not to add an additional
8 opportunity district in 2023 of any relevance?

9 MR. BOWDRE: I think -- in light of *Callais*, I think
10 it is relevant, but it is relevant in the sense that it shows
11 that our concern of trying to fix the underlying problems with
12 2021 map, secure the Section 2 violation, or to at least enact
13 a map without a Section 2 problem, while also not facing a
14 racial gerrymandering problem -- I think *Callais* shows that
15 that was a legitimate fear because that's exactly what happened
16 to Louisiana.

17 They had a preliminary injunction. They were told
18 that map violates Section 2. That was affirmed on appeal.
19 They then drew a second majority district, and the Court just
20 said that was a racial gerrymander.

21 And the Court didn't go into all the details about,
22 you know, how the racial gerrymander looked. It was simply the
23 fact that Louisiana intentionally drew the additional
24 majority-minority district that the Court said was the problem.

25 Even if we're not on all fours with Louisiana, it

1 shows that our fears were real and that we are trying to fix
2 the problems with 2021 map; to -- you know, this Court has said
3 the problem was that we split the Black Belt too many times, so
4 we put the Black Belt in as few districts as possible. We were
5 able to keep the Gulf Coast community of interest.

6 And so we don't think that this 2023 map violates
7 Section 2. We don't think that there is vote dilution in it.
8 And so, therefore, the equal protection claim also fails.

9 JUDGE MARCUS: Thank you very much, counsel.

10 MR. BOWDRE: Thank you, Your Honor.

11 MR. DAVIS: Thank you, Your Honors. Jim Davis for the
12 secretary. And I plan to address the equities.

13 First off, we don't agree with the implication from
14 the plaintiffs that there's some type of a reverse-*Purcell*
15 doctrine that would allow a federal court to stop an election
16 without any finding on the merits, without any finding of
17 likelihood of success. It's not an independent ground for a
18 Court to simply agree --

19 JUDGE MARCUS: I don't think you have to argue that
20 point.

21 MR. DAVIS: Thank you.

22 We think, instead, that *Purcell* counsels against Court
23 intervention even if this Court disagrees with the arguments
24 that Mr. Bowdre has made.

25 There's an important distinction under *Purcell* between

1 what the legislature does on its own and with what a Court does
2 by intervening into the election.

3 That's not something that Alabama's made up. We
4 didn't come up with the *Purcell* doctrine. This is Supreme
5 Court precedent. And they have said very clearly that it's one
6 thing for the state on its own to change the rules late in the
7 day, to live with the consequences whatever they may be, versus
8 a federal court coming in and making last-minute changes.

9 JUDGE MOORER: But, Mr. Davis, don't you ordinarily
10 have a situation where *Purcell* comes up that you have someone
11 urging a map that has not been used before, whereas, here,
12 you've got a map that's been used before and is in use again
13 even though the state is planning to void the results of it?
14 Isn't this a uniquely different situation?

15 MR. DAVIS: There's a difference, but I don't think,
16 Your Honor, that it's one that matters under *Purcell*.

17 Whether the state is using a map that it passed
18 previously or whether we're dealing with some brand new map, I
19 don't think that makes a difference in whether -- in the
20 Court's role.

21 JUDGE MOORER: Well, ultimately, if the state were to
22 take the course of following the Special Master's map, which
23 it's already started that process by having the absentee
24 ballots and the election last Tuesday, couldn't they go on with
25 the normal course of the election with much less difficulty

1 than they will if they follow the '23 map?

2 MR. DAVIS: I don't think I can say that, Your Honor.

3 JUDGE MOORER: Well, but, isn't that the fact?

4 MR. DAVIS: No; I don't think so. I don't think we
5 know that.

6 I think there are some issues that we face with the
7 '23 plan that we would not face under the Special Master plan.
8 We've been candid about that. The reassignment of voters would
9 not be an issue. That's going to be a challenge under the '23
10 map. It's not a challenge we would face if we go forward with
11 the Special Master map.

12 But I think the evidence has been clear -- and we're
13 certainly arguing -- that there are many other difficulties and
14 problems with the Court intervening and making us change course
15 and ping pong again at this late stage.

16 Once voters have been notified, once candidates have
17 adjusted course, we do think that *Purcell* bars Court
18 intervention at this stage.

19 JUDGE MARCUS: I would like to probe that a little
20 further with you, if I can.

21 Justice Kavanaugh, when talking about *Purcell* and
22 talking about these equitable considerations, says that we look
23 to at least three things. We look to costs. That would be one
24 thing. We look to hardship. That would be another thing,
25 although the ideas kind of bleed into each other. And, third,

1 we look to confusion.

2 Help me understand how you would apply fairly each of
3 those considerations here, cost, hardship, and confusion.

4 And confusion is of a different category or specie
5 than cost or hardship. By cost or hardship, I take it the
6 reference is, mechanically, what do you have to do? Are there
7 a whole bunch of different things that you now have to do that
8 you otherwise did not have to do before?

9 MR. DAVIS: And I am assuming, Your Honor, if I may,
10 that your question is premised on an order that the state go
11 back and use the Special Master map.

12 JUDGE MARCUS: Uh-huh.

13 MR. DAVIS: On cost and hardship, certainly voter
14 reassignment would not be among them.

15 JUDGE MARCUS: Isn't that the really -- the big ticket
16 item here?

17 MR. DAVIS: It may be the big ticket item.

18 JUDGE MARCUS: Wouldn't that be a fair say? You say
19 it may be. How could it not be the biggest item?

20 We listened for three hours to the testimony of
21 Mr. Elrod. I thought he was very candid with us. And he said
22 to us, the reassignment problem is really the main problem that
23 you face in terms of the mechanics.

24 Did I misapprehend what he was saying?

25 MR. DAVIS: No, you did not, Your Honor. I don't

1 think so. I do think that reassignment is normally the largest
2 ticket item. It is normally the thing that we would worry
3 about the most. But we -- in terms of cost and hardship.

4 JUDGE MARCUS: Right.

5 MR. DAVIS: But it's not the only consideration.

6 In reversing course, we would -- if this is the order
7 we get, if we get no relief on appeal and this is what we have
8 to do, we would -- we would have one of the biggest, I think,
9 voter education moves we could possibly have to try to undo the
10 confusion that the Court's order would cause.

11 We have voters who have been told one map and then
12 another map and then maybe another map again. We have
13 candidates who have moved from one race to another.

14 I can't say now since things are moving quickly
15 whether somebody who has yesterday or Wednesday, Thursday, or
16 Friday -- maybe before they were running in District 1, now
17 they're running in District 2. They may have had to formally
18 withdraw and there may need to be another qualifying period.

19 So all of those issues go together.

20 JUDGE MARCUS: Right. So I think if I hear you
21 right -- and I do want you to correct me if I don't have it
22 right -- that, as for cost and hardship, those equities tip
23 against you; it's confusion that you're really arguing about.
24 Is that a fair statement of what you've said?

25 MR. DAVIS: I would not say it tips against us. I

1 would not concede that.

2 I do agree that the confusion is what we're pointing
3 to mainly, if that is the Court's order, to use the Special
4 Master map.

5 JUDGE MARCUS: Right. I'm just trying to apply the
6 standard of *Purcell* dealing with equities -- cost, hardship,
7 confusion.

8 So help me with confusion. Why is the confusion
9 greater if you used the remedial map in '24 for the primary and
10 the general and you use the same map for the primary in '26,
11 and then you downshift and you say, but we're going to use the
12 '23, map which had not been used before -- why would using the
13 Special Master map exacerbate the confusion? And maybe it
14 would. I just want you to help me. Spell that out for me.

15 MR. DAVIS: We certainly think it would because the
16 voters have been told and candidates have been told that we're
17 now using the '23 map.

18 When the Supreme Court lifted this Court's
19 injunctions, the Special Master map was no longer lawful to
20 use, but the '23 map was lawful to use.

21 The legislature, I think, had to do something to make
22 allowances for that. And the voters have been told for weeks
23 now, or if not longer, that we're going to use the 2023 map.

24 JUDGE MARCUS: Well, let's talk about the timing. You
25 said for weeks now.

1 The Supreme Court ruled in *Callais* on the evening of
2 the 11th; the governor's order went out on the 12th, if I have
3 that right. So we're ten days into it. Would that be
4 accurate?

5 MR. DAVIS: I will trust you on the dates.

6 But there's been a massive effort to educate voters
7 that we're switching, what the impact of that is on the
8 May 19th election where other races are going to be lawfully
9 decided, and that we're going to have a special election on
10 August 11th, using the '23 map.

11 And we think people have switched courses in reliance
12 on that.

13 We think it would be unfair.

14 JUDGE MARCUS: I'm curious about something on that.

15 Is there any data in this record that would suggest
16 anything about turnout, measuring turnout in the special
17 election which was conducted on the 19th versus, say, a primary
18 election two or four years back?

19 MR. DAVIS: No.

20 JUDGE MARCUS: There's nothing we have in front of us
21 on that?

22 MR. DAVIS: No.

23 MR. ROSS: Your Honor, if we could put that into the
24 record this evening, would that be --

25 JUDGE MARCUS: Well, let's just -- I just want to know

1 if there was anything in the record about that. The answer is
2 no.

3 MR. DAVIS: The answer is no. There's not. And nor
4 do we know how after these announcements were made -- how many
5 people may have gone in and voted for the races that were
6 unaffected by the special primary but not cast a ballot or how
7 they might have cast it differently without this announcement
8 and without candidates announcing their change of plans. We
9 simply do not know.

10 But I don't know of any case where you have to poll
11 voters and come up with a number to prove that there's voter
12 confusion. It's always been assumed in the *Purcell* case that
13 that is a real issue that federal courts should be concerned
14 about. And we think that applies here.

15 We think it would be unfair to voters and to
16 candidates for the Court to say, just count what happened on
17 May 19th for the reasons that we have been discussing.

18 Candidates may have stopped campaigning. Voters had
19 gotten the information that the votes weren't going to
20 determine who the nominee is. We do not think that is fair.
21 Nor do we think ordering us to use the Special Master plan in
22 the August 11th primary would be -- we think *Purcell* counsels
23 against the Court ordering that for this election for the
24 reasons I have talked about, the voter confusion and the
25 *Purcell* issues.

1 JUDGE MANASCO: Mr. Davis, let me ask you a question
2 about *Purcell* and the two claims we have, the constitutional
3 claim and a Section 2 claim.

4 Does *Purcell* apply differently in any way to the two
5 different claims?

6 MR. DAVIS: I do not think so.

7 JUDGE MANASCO: All right. Is it the state's position
8 that if -- and I am not saying whether we will or we won't, I'm
9 just saying if -- we continue to believe that the 2023 plan is
10 the product of intentional discrimination, that *Purcell*
11 requires that, nevertheless, the remainder of Alabama's primary
12 elections unfold according to it?

13 MR. DAVIS: Yes; we do contend that *Purcell* would
14 suggest that this Court should not intervene in the 2026
15 elections at this late stage, regardless of its findings on the
16 claims asserted in the complaint.

17 JUDGE MARCUS: Let me sort of follow up with that.

18 We had asked your colleagues on the opposite side a
19 question of the how. And this is just assuming something that
20 may not be true. But if we were to assume that this Court were
21 to say, the constitution was violated and you can't use a map
22 that violates the constitution. We asked them, going to the
23 equities in *Purcell*, would you leave it to the State of Alabama
24 to decide how or would you get involved yourself. And each of
25 the three of them said -- they used the word they were agnostic

1 on the point.

2 What's your view about that?

3 MR. DAVIS: I do not know what state officials would
4 choose if that was the Hobson's choice that they had.

5 JUDGE MARCUS: Right.

6 MR. DAVIS: I think that the secretary himself -- I
7 don't want to undercut my client's authority, but I don't think
8 the Secretary of State is granted the authority to choose for
9 the whole state.

10 I honestly don't know, as I stand here, how that would
11 play out, which state officials would become involved in that
12 move or who has the authority to make that choice.

13 JUDGE MOORER: Ultimately, the state would hold an
14 election, though, correct?

15 MR. DAVIS: Yes. Yes. I mean short of some natural
16 disaster, we're -- the state is going to hold an election.

17 JUDGE MANASCO: Mr. Davis, as I understand what I'll
18 call the 2026 special primary law, HB-1, it makes provision for
19 a mechanism whereby the governor can call special primary
20 elections.

21 MR. DAVIS: Correct.

22 JUDGE MANASCO: Is that right?

23 MR. DAVIS: Yes.

24 JUDGE MANASCO: And it makes provision for what
25 happens if and when she does that.

1 So it appears, for example, to me that -- speaking
2 only for myself -- when she called the August 11th special
3 primaries that, by operation of Alabama state law, the May 19th
4 results became void.

5 MR. DAVIS: I want to make sure I heard you correctly,
6 Your Honor; that --

7 JUDGE MANASCO: That when she called the August 11th
8 special primaries for the four affected congressional
9 districts, that, by operation of that state law, the results of
10 the May 19th primaries for those districts became void.
11 Secretary was directed not to canvas and certify them.

12 MR. DAVIS: Yes. I'm hung up a little on void.
13 Definitely, under HB-1, under the statute, the -- the
14 legislature provided that if the governor enters the
15 proclamation, any votes cast in affected districts would not
16 count towards who's the nominee.

17 JUDGE MANASCO: Okay. So maybe not the word "void,"
18 but I understand.

19 MR. DAVIS: I just want to be precise.

20 JUDGE MANASCO: No. Thank you for that.

21 Doesn't that same state law allow her to call a
22 special primary and, let's say, provide for qualification for
23 it as she sees fit if the conditions precedent in the state law
24 are met?

25 I mean, at the highest level, doesn't that create a

1 mechanism whereby the governor can call a special primary if
2 certain conditions are met?

3 MR. DAVIS: I think the legislature gave the governor
4 a lot of authority for use of the 2023 map.

5 The -- the bill, HB-1, is premised on the special
6 election will be called, not to use any map she wants to or
7 anything else, but for use of the 2023 map.

8 So I'm not sure, Your Honor, that she -- that the
9 legislature gave the governor all of that authority if some
10 other map is in place.

11 JUDGE MANASCO: Okay.

12 MR. DAVIS: There was discussion at one point about,
13 oh, the Court can just delay the qualifying deadline.

14 I'm not sure that's correct. I don't think the Court
15 has any parties in front of it who enforce the qualifying
16 deadline. That is a process that's just handled by the
17 parties.

18 So I don't think the secretary can force the
19 parties -- the parties don't work for any of the defendants
20 here -- to just say, leave your qualifying open. So I think
21 there's an Article 3 issue with relief of that sort.

22 In the end, Your Honors, I do not agree with
23 plaintiffs. I do not think we have been inconsistent about
24 *Purcell*.

25 We did say in 2022 that we think late changes in the

1 election would be a problem, it would cause problems for
2 election officials. And we have been candid that we think this
3 election is going to be a challenge.

4 Now plaintiffs say on one hand that, gosh, it looks
5 like what the state said in 2022 turned out to be true and,
6 yet, somehow that we were misleading the Supreme Court. I
7 don't see how they can have it both ways.

8 What we said in 2022 was true. Late changes at that
9 stage would be very problematic -- would have been very
10 problematic.

11 We didn't know at that time what a remedial map would
12 look like. We didn't know what counties would be affected. We
13 didn't know which -- you know, if the counties that were
14 affected would have better resources or not, if there would be
15 more experienced registrars or not.

16 So, here, while yes, this timeline presents a
17 challenge for election officials that we do not deny, we do at
18 least know more about the scope.

19 We know that most of the counties that are impacted
20 can be -- voters can be reassigned en masse. The three
21 counties that can't, we've identified them; we've worked --
22 know the resources; we have worked with the vendor to try to do
23 as much prep work as we can. While a challenge, we do think it
24 can be done.

25 And that's very different from just guessing what can

1 be done throughout the state with counties that we have not yet
2 identified.

3 On Jefferson County, I do want to point out -- I
4 cannot tell you where this is in the record, but it's the
5 30(b)(6) deposition that Mr. Elrod gave in 2023. He had polled
6 registrars about their reassignment process and how it went
7 back in 2017 when there was a remedial state senate map.

8 And on page 230 of that Elrod deposition, he was
9 reporting the answer he got from Jefferson County, which was
10 that redistricting process in 2017 took about a week.

11 In terms of this being a challenge, yes. We do think,
12 under *Purcell*, it makes a difference that this was the
13 legislature's choice.

14 In conclusion, Judges, I would say these arguments
15 that plaintiffs are making were before the Supreme Court. We
16 don't know how much they considered them, but they were all
17 made.

18 If this was -- if the Supreme Court had a concern
19 about the state moving forward with this election, we don't
20 think they would have necessarily vacated the opinion when they
21 did, expedited consideration, and sent this back.

22 So we think that is --

23 JUDGE MANASCO: Let me ask you a question about that.

24 If the Supreme Court intended only for the election to
25 occur in this manner, meaning for the state to be able to use

1 the 2023 plan, wouldn't the clearer way to do that have been to
2 simply stay our permanent injunction?

3 MR. DAVIS: Maybe. They chose to vacate; I agree with
4 that. They chose to expedite and vacate, yes. So we think
5 that's a factor for the Court's consideration.

6 JUDGE MARCUS: Did one of your colleagues want to add
7 anything else?

8 I think you said three would speak.

9 MR. DAVIS: Thank you. I will turn it over.

10 JUDGE MARCUS: Thank you.

11 MR. TAUNTON: Good afternoon, Your Honors.

12 JUDGE MARCUS: Good afternoon.

13 MR. TAUNTON: I know it's late in the afternoon here.
14 Michael Taunton for the chairs of the reapportionment
15 committee.

16 I will not rehash everything that Mr. Bowdre and
17 Mr. Davis have already covered, but there were a few things and
18 some colloquies up here that I would like to address and then
19 just a few additional items.

20 First, Your Honors, just sort of setting the stage,
21 Section 2 is, of course, a remedial statute under the Fifteenth
22 Amendment, passed pursuant to Congress' authority, to remedy
23 under the Fifteenth Amendment.

24 We have argued in these cases for the last several
25 years that there was -- we had a concern that, over the

1 intervening 40 years *Gingles* since was decided, there -- a gap
2 had grown between that *Gingles* test and what the Fifteenth
3 Amendment was designed to remedy.

4 On that basis, we have argued that either Section 2
5 had gone beyond its constitutional purview and was remedying
6 wrongs the Fifteenth Amendment never intended to be remedied
7 or, you know, properly understood Section 2 need -- that
8 Section 2 needed an update to bring it back in, in accordance
9 with current facts on the ground and the Fifteenth Amendment.

10 In particular, the state defendants have argued
11 repeatedly that Section 2 plaintiffs must meet all of the
12 state's constitutionally permissible criteria, not just the
13 ones it chooses to handpick and thinks that it would like to
14 meet and that it must affirmatively disentangle partisan
15 politics in race.

16 *Callais* has now agreed with those positions. It's
17 updated Section 2 to bring it back in line with the Fifteenth
18 Amendment and as agreed with those positions.

19 *Gingles* 1 has been argued at length. Mr. Bowdre was
20 asked a lot of questions about that. So I won't repeat all of
21 that other than to say a couple of things here.

22 I think there are two new things that plaintiffs must
23 meet under *Gingles*. The first is, it's -- there was a
24 discussion about the way in which they interacted with one
25 another. But I do think that they are actually separate, which

1 is a Section 2 plaintiff must meet all of the state's criteria,
2 not just some.

3 It's not enough to partially meet all of the state's
4 criteria or to fully meet some of the state's criteria. A
5 Section 2 plaintiff must meet -- entirely meet all of the
6 state's criteria so long as they were constitutionally
7 permissible.

8 And, second, must not use race. And I will say more
9 about the use of race. There was a lot of discussion about
10 that.

11 Well, let me turn specifically to that now.

12 On the use of race, I do think that *Callais* has drawn
13 into question whether or not the predominant standard still
14 applies. I think the predominant standard likely does not
15 apply. I think it would have been nice if *Callais* were clearer
16 about it. But it does call into question whether or not -- you
17 know, use of race is permissible so long as it doesn't
18 predominate, at pages 2, 9, and 10. It indicates that that's
19 out of line with the rest of the court's jurisprudence on the
20 use of race.

21 Judge Manasco, you had indicated, well, what -- does
22 that mean race cannot be a criteria? Is that where it becomes
23 impermissible? And I think that's correct.

24 It's when race is used as a criteria -- obviously, at
25 some point, as the solicitor general said, you turn race on at

1 the end and you see did I draw a district or not.

2 You still have to present, you know, a traditional
3 *Gingles* 1 map. But I think it is when race is used as a
4 criteria in the map-drawing process that we have a problem.

5 As it regards Dr. Duchin and Mr. Cooper, I think both
6 of them indicated in their testimony that they did use race as
7 a criteria. They simply indicated that it did not predominate
8 or that they did not dominate other criteria that they were
9 also using.

10 But I think race cannot be a criteria at all. It has
11 to be use of either criteria and then if a -- if a, you know,
12 *Gingles* 1 map is drawn, great.

13 On that point, I think the use of algorithms like the
14 ones that Dr. Duchin mentioned could be an easy way for
15 plaintiffs to succeed in that.

16 I have not used such an algorithm myself, but I
17 understand, at least, you can just turn race off. And so I
18 think that the results must be in some sense race-blind.

19 But I don't think that's what Dr. Duchin testified
20 that she did here. I think she testified that the map she
21 presented were ones that she drew.

22 JUDGE MANASCO: Well, on the first point, I think it's
23 clear from Mr. Ely's work, as well, that you can draw maps
24 without race turned on. And if you do that, it's race-blind to
25 the extent it's not turned on.

1 MR. TAUNTON: Absolutely, Your Honor.

2 The 2021 map, at least, we argued was drawn entirely
3 race-blind. Race was not on when it was drawn.

4 JUDGE MANASCO: But, I mean, I have a memory of
5 Dr. Duchin testifying, I just did not use race as part of my
6 process. And she was asked a lot of questions about how she
7 considered it, did she check to make sure she was 50 percent
8 plus one. We ultimately found that, however she used it, it
9 was not predominate.

10 But what I'm really trying to get at is this use
11 shorthand. There's a specific forbidden use. And what is the
12 state's position about the state of the record on that?

13 I think I'm clear - I'm not saying whether I agree
14 with it or not but I understand what the plaintiffs' position
15 is. And I'm just trying to understand what the state's
16 position is.

17 MR. TAUNTON: Yes, Your Honor.

18 So two things on that.

19 Again, I wish that *Callais* were clearer when it uses
20 the word "use." What do we mean by that? What is an
21 impermissible use? Can you define that a little bit more
22 closely? So there is maybe some ambiguity on this point.

23 JUDGE MARCUS: I think you have to slow down, take
24 your time. Our reporter has been at it a long day. Thank you.

25 MR. TAUNTON: As it regards the evidence in the

1 record, Your Honor, I look to page 325 of this Court's -- I
2 believe this Court's *Milligan* opinion, which, discussing
3 Dr. Duchin's testimony, says that she testified, quote, as a
4 matter of process, race is a consideration that doesn't
5 dominate others.

6 So what I hear her saying there is that she has placed
7 it in line with other criteria. She has this -- the
8 traditional criteria. One of those that she's using is race.
9 And I think that that's problematic.

10 Mr. Cooper was more candid about this, looking to page
11 327 of this Court's opinion. Quoting: I would not have gone
12 to 50 percent plus one for a second majority-black district if
13 I were not also balancing the other traditional districting
14 principles, suggesting that he is balancing race and with other
15 principles as he draws the map. And I think *Callais* draws that
16 into question, whether or not that is permissible.

17 That is separate, though, from the requirement that
18 Section 2 plaintiffs must now -- must meet the state's
19 criteria.

20 So it's not -- again, it's not a any person can go in
21 and use traditional districting principles to draw, you know,
22 any of a number of maps. That may be valid if the state says
23 all of these criteria are flexible. But if the state that has
24 a prioritization on particular criteria, then I think that that
25 prioritization has to be taken seriously.

1 As it regards the keeping Mobile and Baldwin counties
2 together, I say -- I just note, Judge Moorer, I believe -- I
3 believe I'm correct in saying -- you mentioned Protestantism.
4 I believe those are the most Catholic counties in the state, so
5 there is a little bit of a difference there.

6 JUDGE MOORER: Yes, but probably predominantly
7 Protestant, correct?

8 MR. TAUNTON: Your Honor, I would have to look back at
9 the data. I know that -- I thought Mobile actually was
10 predominantly Catholic, but I may be --

11 JUDGE MOORER: Perhaps. But I'm talking about the
12 rest of the state.

13 MR. TAUNTON: The rest of the state is --

14 JUDGE MOORER: And if you were to -- on balance, you
15 will find -- of course, you'll find people of completely
16 different religions in Alabama, as you would anywhere else.
17 But the Gulf Coast region, Mobile-Baldwin County,
18 geographically, is different than other parts of Alabama.

19 But the people who live in Baldwin County, Mobile
20 County, what would you say is the big difference between that
21 population of people and the remaining population of Alabama?

22 MR. TAUNTON: Well, Your Honor, obviously, they're the
23 only two counties of the state that touch Mobile Bay and
24 touch --

25 JUDGE MOORER: Correct. I'm talking about other than

1 geography.

2 MR. TAUNTON: Their economics as a result are
3 obviously going to be different. You will find a fishing
4 industry there and such that you won't find in other parts of
5 the state. The tourism industry there is going to revolve
6 around beaches which won't be true of other parts of the state.

7 There will be a number of unique things. There will
8 also be things that tie them to other parts of the state,
9 undoubtedly.

10 JUDGE MOORER: And not so much that those people in
11 Mobile and Baldwin County vote dramatically differently than
12 other people in the State of Alabama, do they?

13 MR. TAUNTON: Well, if you are presented with a
14 bipolar choice, they may make the same, you know, decisions
15 that others do.

16 JUDGE MOORER: And, in fact, the remaining part of the
17 state is happy when Baldwin and Mobile County prosper because
18 it's prosperity that benefits everyone. A rising tide lifts
19 all boats, right?

20 MR. TAUNTON: Sure, Your Honor. And I enjoy
21 vacationing --

22 JUDGE MOORER: And nothing in Mobile and Baldwin
23 County, if it is benefitted, comes at the detriment of some
24 other part of Alabama, correct?

25 MR. TAUNTON: I would certainly hope not.

1 JUDGE MOORER: And when it comes to the Black Belt and
2 splitting the Black Belt, the Black Belt, of course, is Black
3 Belt as far as the geography, the soil, and then the large
4 population of black people in Alabama, correct?

5 MR. TAUNTON: Correct, Your Honor. Both are true.

6 JUDGE MOORER: And, historically, Macon County would
7 be part of that, correct?

8 MR. TAUNTON: I believe that's correct, Your Honor.

9 JUDGE MOORER: And Macon County has been split off
10 from the Black Belt as far as a political entity vis-a-vis the
11 representative; in other words, Macon County is -- to my
12 knowledge, has never been part of the Black Belt district,
13 which is now predominantly CD7.

14 MR. TAUNTON: Your Honor, I don't -- I can't say
15 standing here right now. I just don't --

16 JUDGE MOORER: I don't think the record will show
17 that.

18 MR. TAUNTON: You may be correct.

19 JUDGE MOORER: And they get split from the Black Belt.
20 The people in Macon County are no less important than the
21 people in Baldwin and Mobile, are they?

22 MR. TAUNTON: Certainly not.

23 JUDGE MOORER: And those counties are counties just as
24 equal as any of the other ones, correct?

25 MR. TAUNTON: Correct, Your Honor.

1 And I think that the 2023 map tried to ensure respect
2 for both the Black Belt community of interest and the Gulf
3 Coast.

4 On that point, I will say a couple of things.

5 First of all, the Gulf Coast, as a community in a
6 congressional map, is not a new invention. It wasn't
7 something --

8 JUDGE MOORER: I'm sorry. I didn't hear what you
9 said.

10 MR. TAUNTON: It's not a new invention. It wasn't
11 something that for the time appeared in a map in 2023. It's
12 something --

13 JUDGE MOORER: Baldwin and Mobile County haven't
14 always been together in a congressional district, have they?

15 MR. TAUNTON: They have been for the past --

16 JUDGE MOORER: Haven't always though?

17 MR. TAUNTON: -- roughly 50 years.

18 JUDGE MOORER: Have not always, have they?

19 MR. TAUNTON: I believe they have as long as Alabama's
20 had 7 districts.

21 JUDGE MOORER: But have not historically always been,
22 have they? The answer is no.

23 MR. TAUNTON: Well, I believe that there was a split
24 between them when Alabama had additional districts and so had
25 to make more splits, yes.

1 I believe since Alabama has had seven representatives,
2 Mobile and Baldwin County have been together. I believe that's
3 correct.

4 And, Your Honor, on that basis, I would just say,
5 again, it wasn't that in 2023 for the first time the
6 legislature indicated that it thought Mobile and Baldwin County
7 ought to be together.

8 Obviously, that was something that was argued
9 regarding the 2021 map. That was something that was true in
10 the 2021 map.

11 My experience, Your Honors, is that legislatures are
12 like courts in that they tend to respond to the problems that
13 are in front of them. And so if nobody is arguing about
14 something or putting pressure on a legislature on a particular
15 topic, they may not say anything about it.

16 Just as this Court is not in the business of giving
17 advisory opinions on things that are not actual cases and
18 controversies, legislatures respond much the same way.

19 So it doesn't surprise me that in 2023, faced with
20 evidence for the first time that there was a legal challenge to
21 whether or not Mobile and Baldwin County ought to be in the
22 same district, the legislature felt a need to say more about
23 that.

24 But I believe that that statement was not creating
25 something new; it was affirming something that had been true

1 for a long time.

2 Regarding *Gingles* 2, Your Honor, the state defendants
3 put on quite a bit of evidence regarding partisan politics in
4 Senate Factor 2 and in the *Gingles* 2 and 3 analysis.

5 The plaintiffs, particularly in their initial reports,
6 but on no evidence regarding partisanship at all, and, in fact,
7 resisted. Their experts resisted efforts, particularly
8 Dr. Liu -- less Dr. Palmer but particularly Dr. Liu resisted,
9 you know, any efforts to suggest that partisanship was playing
10 a role.

11 There was some limited evidence that was presented in
12 response primarily to Dr. Bonneau's report -- Dr. Bonneau who
13 did the primary work of looking at partisanship data -- and
14 that involved three mayoral races in two cities, which
15 Dr. Bonneau testified had partisan markers involved in it;
16 there was a reference to 2008 exit polls, which is now
17 bordering on 20 years old; and then there was a brief
18 examination of two primaries.

19 But I don't believe -- and I'm happy to be corrected
20 if I am incorrect on this because I tried to look just a moment
21 ago -- and I will admit I can't remember off the top of my
22 head, but I do not believe that a racially polarized voting
23 analysis was conducted of either of those primaries.

24 Just the results were noted, that the black candidates
25 had performed poorly in those districts. But I don't think

1 there was any analysis of the voters in those primaries.

2 More evidence was presented on the other side
3 concerning Kenneth Paschal, testimony concerning Bill Lewis,
4 testimony from Valerie Branyon, Bill McCollum, and Cedric
5 Coley. And I note for this Court that Maurice McCaney defeated
6 six-time incumbent, Phillip Pettus, nearly six -- nearly two to
7 one in house District 1 just on Tuesday. And that's a house
8 district with a white voting age population of 86 percent. And
9 he is running unopposed in the general election.

10 So Kenneth Paschal is not -- is expected to not be
11 quite the unicorn that he was.

12 Regardless, Your Honors, the plaintiffs have made very
13 little effort to disentangle race whatsoever.

14 And this Court actually, based on the evidence that
15 was presented, stepped further and said not only is there not
16 evidence that race and politics are disentangled, but there
17 actually is affirmative evidence that they are entangled.

18 And, Your Honors, under the new standard in *Callais*,
19 evidence that race and politics are entangled in this state
20 certainly isn't evidence that they're disentangled in the
21 state.

22 On the Equal Protection Clause, I will only note that
23 *Callais* did address constitutional claims. And, again, as the
24 solicitor general noted, there can be no intentional vote
25 dilution if there is no vote dilution.

1 Your Honors, I think you have heard from us on this.
2 I will note this, though, concerning *Callais's* findings on
3 intentional discrimination. This is from page 33 of the
4 *Callais* opinion. I'm sure Your Honors have read it very
5 carefully, but I just want to note this.

6 Louisiana relied on a court order to, quote, achieve
7 black voting age population over 50 percent because it knew
8 that if it failed to do so; that is, failed to follow a
9 preliminary injunction from a court, the district court would
10 very likely find its map unlawful and order it to use something
11 like the plaintiffs' illustrative maps which would have
12 imperiled one of the influential incumbents that the
13 legislature sought to protect.

14 The state's intentional compliance with the court's
15 demands constituted an express acknowledgement that race played
16 a role in the drawing of the district lines.

17 In other words, Your Honors, *Callais* found that the
18 fact that Louisiana was relying on a court order to draw its
19 maps did not save Louisiana from committing a racial
20 gerrymander.

21 So the court's order -- the court's preliminary order
22 was not found to be a sufficient basis for Louisiana to have
23 done that.

24 JUDGE MANASCO: Did the Supreme Court's affirmance of
25 the 2022 preliminary injunction reflect a finding that there

1 was a lawful way to remedy the vote dilution that that
2 preliminary injunction identified?

3 MR. TAUNTON: Your Honor, I have three responses to
4 that.

5 The first would be that, as *Callais* notes, I think
6 that the 2022 decision or 2023 -- early '23 decision of the
7 Supreme Court in *Allen* is narrow. And it rejected a number of
8 arguments that the state had made, reaffirmed at that time,
9 this is what our caselaw is and you haven't met that.

10 So under the law as it existed at that time, yes,
11 Your Honor; the Court found there was a likely vote dilution
12 problem.

13 It also noted, though, that there may be issues with,
14 for instance, race predominance. Judge Kavanaugh did not join
15 the majority opinion on that. That was a plurality opinion
16 discussing predominance.

17 Since that time, we have a new map, a new record, and
18 now new caselaw. I think that the state perceived at the time
19 that there was a potential constitutional infirmity in Section
20 2 case law if Section 2 case law wasn't altered. I think we
21 have that alteration now.

22 JUDGE MANASCO: I am really not asking a question
23 about the sort of like -- the Supreme Court's ruling vis-a-vis
24 the world and what other people thought it meant for
25 redistricting.

1 I'm asking for the parties in these cases.

2 When that ruling came out in the summer of 2023, is it
3 really fair to say that it left open the question whether it
4 was possible to remedy the vote dilution in the 2021 plan
5 without racially gerrymandering.

6 MR. TAUNTON: Your Honor, I would say --

7 JUDGE MANASCO: I mean, would the Supreme Court have
8 affirmed a preliminary injunction that it found required the
9 state to do something unconstitutional to remedy?

10 MR. TAUNTON: Based on the state of the law at that
11 time, Your Honor, that may well have been the case. Same as it
12 was for Louisiana.

13 JUDGE MANASCO: Well, Louisiana is the district court
14 order. I am asking about the Supreme Court's order. You might
15 have thought we got it wrong and that the state would have to
16 racially gerrymander in response to our preliminary injunction.

17 I am not asking that question.

18 I'm asking the question about the impact of the
19 Supreme Court's affirmance.

20 Did the state legislature understand in real time, as
21 far as you're aware, the Supreme Court to have put it in a
22 position in the summer of 2023 where it had to enact a racial
23 gerrymander in order to cure the vote dilution in the 2021
24 plan?

25 MR. TAUNTON: Your Honor, I believe that the state did

1 believe that there was constitutional -- potential
2 constitutional infirmity in Section 2 law as it existed at that
3 time. And it's argued that. The state has argued that
4 consistently since that time; that there was a constitutional
5 infirmity in Section 2 case law even after --

6 JUDGE MANASCO: But it had been to the Supreme Court
7 on those arguments and not prevailed in that court on those
8 arguments, right?

9 MR. TAUNTON: Well, not on those arguments,
10 Your Honor.

11 In fact, I think that was -- that was really central
12 to the holding, which is that those arguments were not
13 presented. And, therefore, the Court said, we will not address
14 them because they have not been adequately presented. And
15 *Callais* reaffirms that. Alabama did not present these
16 arguments in *Allen v. Milligan*, so our holding was narrow.

17 JUDGE MANASCO: So, as I understand it, the lane
18 you're traveling in is that because Alabama didn't make those
19 arguments as to the 2021 plan, that the legislature still
20 harbored a legitimate concern, after the Supreme Court's
21 affirmance, that it was required to do something
22 unconstitutional.

23 MR. TAUNTON: Your Honor, I think that's correct. I
24 think that's been borne out by *Callais*.

25 I think that the state's concern that there was a

1 constitutional infirmity with the state of Section 2 case law
2 was a valid concern. And I think the fact that *Callais* has
3 retethered -- that's why I begin there -- retethered the test
4 to the Fifteenth Amendment fixes that problem.

5 JUDGE MARCUS: If you could bring your remarks to a
6 conclusion.

7 We have gone on quite a while.

8 MR. TAUNTON: Your Honor, the last thing that I will
9 note is, again, it really is more for the secretary to discuss
10 the timing of the elections and such. I won't say much about
11 that.

12 I did want to note that it is a hardship for the
13 state, which, at least at this time, has been told by the
14 Supreme Court that it is, for the time being, free to use a map
15 that is drawn by the state -- to be required to use a map that
16 is drawn by court, that -- that is a hardship that weighs on
17 the equities.

18 Mr. Davis noted that the Supreme Court already had a
19 chance to hear in some form or another -- maybe not in as much
20 detail as this Court has heard but in some form or another --
21 the equitable arguments and, nonetheless, decided to quickly
22 vacate, remand, and issue the judgment.

23 And then I wanted to just address specifically --

24 JUDGE MARCUS: You don't have much time, counsel.

25 We have already gone an hour and a half for your

1 argument.

2 MR. TAUNTON: Your Honor, I just want to address the
3 *Jefferson County* affidavit that's been raised.

4 JUDGE MARCUS: Okay.

5 MR. TAUNTON: Which I do have some knowledge about.

6 And want to note that that -- the primary thrust of
7 that affidavit concerned the one-year residency requirement,
8 which is not something that is at issue here, and the statement
9 by the Jefferson County election official that seven months was
10 required before the primary because of the residency
11 requirement. Additionally, that case concerned redistricting
12 the entire county in five districts, not simply a portion of
13 it.

14 JUDGE MARCUS: Thanks very much.

15 MR. TAUNTON: Thank you.

16 JUDGE MARCUS: Mr. Ross?

17 MR. ROSS: Yes, Your Honor. My understanding is I
18 will be presenting rebuttal for all of the plaintiffs.

19 JUDGE MARCUS: Let me ask you a question that was
20 raised by Mr. Davis dealing with *Purcell*.

21 His argument is fundamentally: A confusing
22 circumstance becomes still more confusing if you go back to the
23 Special Master map.

24 Do you want to comment on that?

25 MR. ROSS: I don't think that's right at all,

1 Your Honor.

2 I think we have most -- the -- we have three years in
3 which people have voted under the Special Master map. And then
4 we have most of this election in May in which people were
5 voting under the Special Master map.

6 The only confusion caused is all of Alabama's own
7 creation. There was no -- I think Mr. Davis said something
8 like they had to get rid of remedial map.

9 The Supreme Court vacated and remanded for
10 reconsideration in light of *Callais*. It didn't say anything
11 about what map Alabama could or could not use. Alabama just as
12 easily could have decided they were going to keep the remedial
13 map in place at least for the May 19th primary.

14 It is a choice that they made to call a special
15 session. It is a choice that they made to try to go back to
16 the 2023 map.

17 All of these are choices and problems that Alabama
18 itself created.

19 And I think on the *Purcell* point, particularly *Frank*
20 *vs. Walker* and the *Moore* case that we've already cited, but
21 *Frank* is, I think, particularly telling in that, there, the
22 district court had issued an injunction; the state was
23 operating under that injunction for many months; and then the
24 Seventh Circuit stepped in and tried to -- and put it on --
25 stayed it. And then the Supreme Court came in and said, no;

1 you've been -- and essentially restored the injunction.

2 I think that's a very similar situation to what we
3 have here where, yes; the Supreme Court vacated and remanded.
4 But the Court never said anything about this Court not being
5 able to restore the map or what map Alabama did or didn't have
6 to run its elections under for the May 19th primary or any
7 election this year.

8 I answered your question?

9 JUDGE MARCUS: You have.

10 MR. ROSS: Thank you.

11 A few points related first to *Gingles* 1 and 2 and then
12 to some of the equities points that the other side has made.

13 So with respect to the use of race as a criteria,
14 Your Honor, Judge Marcus, you already read your own colloquy
15 with Dr. Duchin. But I just wanted to highlight on page 123,
16 using the ECF numbers, of the document 490, Dr. Duchin
17 testified that she just did not look at race; she only
18 periodically checked to see if the map, as a whole, had that
19 property for two majority-minority districts.

20 And as you said, what she testified to is that she
21 drew her districts. When she was done drawing them, she
22 checked. And as the Supreme Court said in *Alexander*, that a
23 court cannot place too much weight on the fact that a
24 cartographer viewed racial data at some point during the
25 redistricting process.

1 That's exactly what Alabama's asking you to do to
2 Dr. Duchin is exactly what the Supreme Court in *Alexander* said
3 is not appropriate to do.

4 And I want to highlight also what the Supreme Court
5 said in *Callais*.

6 What they said is that plaintiffs can produce an
7 additional majority-minority district only by using race, a
8 process that would be unconstitutional of a state engaged in
9 such map making -- and cites *Callais*. That illustrative map
10 would shed no light, et cetera, et cetera.

11 What I think it's really important there is they
12 actually -- the Supreme Court does very specifically in that
13 paragraph, talking about what would be unconstitutional for a
14 state, cites to page 6 of the *Alexander* opinion. And in page 6
15 of the *Alexander* opinion, the Court says that a legislature
16 acts unconstitutionally when they give race a predominant role
17 in redistricting.

18 The Supreme Court didn't say anything in *Callais* about
19 overturning its decades and decades of racial predominance
20 doctrine and very specifically pointed again and again to the
21 *Alexander* decision in talking about what was a permissible use
22 of race and what was not a permissible use of race.

23 With respect to the traditional redistricting
24 criteria, Dr. Duchin testified that -- and this Court found
25 that she satisfied every single one of the state's traditional

1 redistricting criteria. Dr. Trende admitted that Dr. Duchin's
2 plan outperformed the 2023 plan on compactness; that she split
3 six or fewer counties, meeting or beating the 2023 plan; and
4 that her plans respected communities of interest by applying
5 the legislature's own definition.

6 The only -- on core retention, this Court also found
7 at page 362 of its opinion that Dr. Duchin demonstrated a
8 similar level of retention between Duchin Plan E and the 2023
9 plan as compared to the 2023 plan, the 2011 plan.

10 It also found with respect to incumbent pairing that
11 the guidelines of the legislature actually used very explicit
12 to draw the 2023 map -- were very explicit that not pairing the
13 incumbents was a lower-level priority.

14 And those guidelines, not the legislative findings
15 that the former solicitor general admitted were just describing
16 the 2023 plans -- it's the guidelines that Dr. Duchin used to
17 draw the maps. It's the guidelines that the legislature
18 actually used to draw the maps.

19 With respect to incumbent pairing, Cooper 5 confirms
20 that it's possible not to compare incumbents. And Dr. Duchin
21 testified at the preliminary injunction stage, docket 107 at
22 page 64, that it was possible for her to also unpair incumbents
23 in her plans.

24 And so I highlight that because, with respect to the
25 plethora of evidence, including the Special Master maps that we

1 presented, *Bartlett* says that the standard is just a
2 preponderance of the evidence standard.

3 We have produced dozens of maps showing that it's
4 possible to meet or beat the state's redistricting criteria in
5 multiple ways.

6 There is no reasonable scenario in which the state
7 cannot say that we haven't shown by a preponderance of the
8 evidence that it's possible for our maps and many other maps to
9 do that.

10 With respect to *Gingles* 2, I just want to highlight
11 some of the evidence that is in the record.

12 So in general elections, both for the 2008
13 presidential election between President Obama and Senator
14 McCain, for the 2008 U.S. Senate race between state Senator
15 Figures and the former state senator -- I'm forgetting his
16 name -- former U.S. Senator Sessions, there was also racially
17 polarized voting in which white Democrats -- a majority of
18 white Democrats voted against the black democratic candidates.
19 The same was true in the 2012 presidential election and
20 democratic primaries. We have the 2020 CD1 primary. We have
21 the 2008 presidential primary.

22 With respect to Republican primaries, we have the 2024
23 CD2 primary. There was some comment from Mr. Taunton that
24 there was not evidence of racially polarized voting there.
25 There actually was. At 397 of the opinion, as this Court

1 notes, the testimony was that the Republican primary was
2 96-percent white. Black voters got six percent of the vote.
3 Based on those statistics, we know that black voters did not
4 receive anything close to a majority -- black candidates did
5 not receive anything close to a majority of the vote.

6 There was also testimony that in the '10, 2022, and
7 2024 GOP primaries in which black candidates ran, all nine of
8 them -- excuse me -- nine of them all lost their election.
9 There was also evidence at page 228 from the 2016 presidential
10 campaign.

11 So there was a lot of evidence, including evidence
12 from some of the black Republicans who testified, that
13 Republican community -- excuse me -- white elected officials
14 were not responsive to their concerns. The same was true of
15 black Democrats, testifying that black Democrats were not --
16 excuse me -- white Democrats were not responsive to their
17 concerns.

18 I have just a few more points on the equities. And
19 then I will open up for questions if the Court has it. I
20 realize it's late in the day.

21 The state has testified -- has said that, you know,
22 there would be a lot of confusion with respect to going back to
23 the remedial map. But if someone looked up their candidate
24 where they were supposed to vote -- the precinct -- just a few
25 weeks ago, they would have seen what remedial map they were in.

1 They would have -- they got letters and messages up until
2 May 19th, and including on the day of, that they were supposed
3 to turn out to vote in the primary elections that the state
4 wants to invalidate.

5 The Supreme Court in deciding to vacate this decision
6 did not -- vacate and remand it did not say anything about what
7 Alabama should or should not do.

8 With respect to the primary elections, we have data
9 from Baldwin County, showing that 32.6,000 people voted in the
10 gubernatorial primary; 31.3,000 voted for lieutenant governor;
11 and 31,000 people voted in CD1. We will provide that
12 information to the Court.

13 But there was no indication that there was any drop
14 off in turnout from the actual numbers. People voted in both
15 the congressional primaries and in the state legislative
16 primaries for that May election.

17 I think, Your Honor, that's -- unless you have any
18 other questions --

19 JUDGE MARCUS: Any questions? Judge Manasco?

20 JUDGE MANASCO: None from me.

21 JUDGE MOORER: None.

22 JUDGE MARCUS: Thank you very much.

23 I wanted to take a moment before we adjourn to thank
24 all of the lawyers for all of their clients -- for your
25 considerable efforts. The time exigencies are real. The

1 briefings you submitted were copious and very helpful. And we
2 appreciate the effort of all of the attorneys in the case.

3 We are adjourned.

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5 (Whereupon, the above proceedings were concluded at
6 3:41 p.m.)

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Christina K

Decker, RMR, CRR

Digitally signed by Christina K
Decker, RMR, CRR
Date: 2026.05.26 13:36:41 -05'00'

05-26-2026

Christina K. Decker, RMR, CRR

Date

Federal Official Court Reporter

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