Nos. 25-13007, 25-14131

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ALABAMA STATE CONFERENCE OF THE NAACP, et al.,
Plaintiffs-Appellees,

v.

SECRETARY OF STATE FOR THE STATE OF ALABAMA,
Defendant-Appellant.

On Appeal from the United States District Court
for the Northern District of Alabama
Case No. 2:21-cv-1531

SECRETARY OF STATE'S EMERGENCY MOTION TO VACATE INJUNCTIONS IN LIGHT OF *LOUISIANA V. CALLAIS* AND FOR THE IMMEDIATE ISSUANCE OF THE MANDATE, OR, IN THE ALTERNATIVE, TO STAY THE INJUNCTIONS

(Relief Requested by May 8, 2026)

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CERTIFICATE OF INTERESTED PERSONS

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1-1(a)(3) and 26.1-2(b), undersigned counsel certifies that the following listed persons and parties may have an interest in the outcome of this case:

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

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

37. Lancaster, Riley K.
38. Lawsen, Nicki
39. Lee, Theresa J.
40. Livingston, Sen. Steve
41. Manasco, Hon. Anna M.
42. Marshall, Hon. Steve
43. Mauldin, Dylan L.
44. Maze, Hon. Corey L.
45. McClendon, (former) Sen. Jim
46. McKay, Charles A.
47. Merrill, Hon. John H.
48. Messick, Misty S. Fairbanks
49. Milligan, Evan
50. Mink, Richard D.
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52. NAACP Legal Defense and Educational Fund, Inc.
53. NAACP Legal Defense Fund
54. Naifeh, Stuart
55. National Association for the Advancement of Colored People
56. Newsom, Hon. Kevin C.

57. Olofin, Victor
58. Overing, Robert M.
59. Pringle, Rep. Chris
60. Rosborough, Davin
61. Ross, Deuel
62. Sadasivan, Kathryn
63. Seiss, Benjamin M.
64. Shapiro, Avner
65. Short, Caren E.
66. Simelton, Benard
67. Smith, Brenton M.
68. Southern Poverty Law Center
69. Stewart, Shelita M.
70. Stone, Khadidah
71. Taunton, Michael P.
72. Thomas, James
73. Thompson, Blayne R.
74. Turrill, Michael
75. Unger, Jess
76. van Leer, Jacob

77. Walker, J. Dorman

78. Wallace, Janette McCarthy

79. Weisberg, Liza

80. Welborn, Kaitlin

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

82. Wilson, Thomas A.

83. Woodard, J. Scott

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

Respectfully submitted this 4th day of May, 2026.

s/ A. Barrett Bowdre
A. Barrett Bowdre
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INTRODUCTION

This is an appeal of the district court's injunctions entered under Section 2 of the Voting Rights Act (1) prohibiting the Alabama Secretary of State from conducting elections pursuant to the State's 2021 Plan for its Senate districts and (2) requiring the Secretary to use instead a court-ordered map that created an additional majority-black Senate district. *See* DE274 ("Op."), 322 (remedial map).[1] After denying the Secretary's motion to stay the injunctions pending appeal, CA11.DE51-2, this Court stayed appellate proceedings "until a decision is issued in *Louisiana v. Callais*" by the Supreme Court, CA11.DE61-1. As the Secretary noted at the time, the Supreme Court's decision would "likely address the ongoing validity or contours of the *Gingles* test and the appropriateness of race-based remedies, such as the one the district court required in this case." CA11.DE56:3.

So it did. Last Wednesday, the Supreme Court issued its decision in *Callais* and "update[d] the *Gingles* framework" to "realign it with the text of §2 and constitutional principles." *Louisiana v. Callais*, Nos. 24-109 & 24-110, slip op. 29 (U.S. Apr. 29, 2026) ("*Callais* Op."). The updates were significant, both in general and for this case. For instance, where the district court began its inquiry by noting that "[i]ntent is not an element of a Section Two violation," Op.13, *Callais* held that "the focus of §2 must be enforcement of the Fifteenth Amendment's prohibition on

[1] Docket entry ("DE") and Op. citations are to the ECF-stamped pagination.

intentional racial discrimination," *Callais*.Op.23, and each step of the test must be oriented toward that end, *id.* at 29-31, 33-35. Likewise, where the court below found that race did not "predominate" in Plaintiffs' illustrative maps even though the map-drawer "reviewed race at the beginning of the process to see 'where the minority community exists'" and thereafter "checked the minority BVAP" "periodically," Op.173, the Supreme Court made clear that "an illustrative map in which race was *used* has no value in proving a §2 plaintiff's case," *Callais*.Op.29 (emphasis added). And where the district court assumed that "the second and third *Gingles* preconditions do not require that the Court disentangle party and race," Op.183, the *Callias* Court squarely held that "disentangling race and politics" is "critical" to "the second and third preconditions," *Callais*.Op.30 (alteration omitted).[2] The injunctions cannot stand after *Callais*.

Alabama seeks emergency relief now because it should have the same opportunity as other States to use a lawfully enacted map free of an injunction that cannot be reconciled with §2 "as property construed," *Callais*.Op.3. Accordingly, this Court should either (1) vacate the injunctions and immediately issue its mandate or (2) stay the injunctions. Either way, the Secretary respectfully asks this Court to act quickly.

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[2] For more examples, see the Appendix to this motion.

While Alabama's primary election is currently set for May 19,[3] the Governor has called the Legislature into a special session beginning *today*—May 4—"to consider legislation to provide for a special primary election for electing members of … the Alabama State Senate in districts whose boundary lines are altered by a court issuing a judgment, vacating an injunction, or otherwise ordering or permitting an alteration in the boundaries of such districts."[4] **The Secretary thus respectfully requests a ruling on or before May 8**. The Secretary suggests that Plaintiffs' response be filed by 12 p.m. on May 6 and any reply be due by 10 a.m. on May 7.

BACKGROUND

In 2024, the district court held a trial to determine whether Alabama's 2021 Plan violates §2 for failing to add additional majority-black Senate districts in the Huntsville and Montgomery areas. On August 22, 2025, the court held that Plaintiffs failed to establish a §2 violation near Huntsville but established a violation near Montgomery. Op.3-4. The court thus permanently enjoined the Secretary of State from conducting future elections under the 2021 Plan and ordered remedial proceedings for a new plan. Op.4-5. The court set a soft racial target for its remedy: a plan

[3] *See* Alabama Secretary of State, Administrative Calendar, 2026 Statewide Election, https://www.sos.alabama.gov/sites/default/files/election-2026/AdminCalendar%20-2026.pdf.

[4] Proclamation by Governor Kay Ivey (May 1, 2026), https://governor.alabama.gov/newsroom/2026/05/2026-first-special-session-proclamation/.

that "include[s] an additional district in the Montgomery area in which Black voters either comprise a voting-age majority or something quite close to it." Op.5.

The Secretary appealed the court's ruling regarding Montgomery and asked this Court for a stay pending appeal, which this Court denied on October 30, 2025. CA11.DE51-2. The district court held remedial proceedings, and on November 17, 2025, ordered the Secretary "to administer Alabama's 2026 and 2030 state Senate elections, as well as any special and other elections for the state Senate that occur before the Legislature passes a districting plan based on the 2030 census, according to" a remedial map that adjusted the boundaries of Montgomery-area Senate Districts 25 and 26 to make both districts "Black-opportunity districts." DE322:25.

The Secretary appealed the affirmative injunction, moved to consolidate the appeals, and asked this Court to hold both appeals in abeyance until the Supreme Court issued its opinion in *Callais*. "No matter how the Supreme Court decides that case," the Secretary said, "it will provide guidance about how Section 2 should apply here." CA11.DE.60:10. On February 12, the Court consolidated the appeals and stayed the cases "until a decision is issued in *Louisiana v. Callais*." CA11.DE61-1. The Supreme Court issued its decision in *Callais* on April 29.

ARGUMENT

This Court will vacate and remand a lower court's decision when the lower court "applie[s] the law extant at the time it considered" the case, but "since the district court issued its order," a "subsequent case[] in the Supreme Court" "substantially altered the landscape." *Thomas v. Att'y Gen., Fla.*, 795 F.3d 1286, 1291 (11th Cir. 2015). Alternatively, when analyzing whether to stay an injunction pending appeal, this Court considers "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Swain v. Junior*, 958 F.3d 1081, 1088 (11th Cir. 2020) (quotation omitted).

Both sets of requirements are met here. Even assuming the district court properly applied "the law extant at the time it considered" the case, *Thomas*, 795 F.3d at 1291, the *Callais* Court expressly rejected the interpretations of §2 the court relied on. Its injunctions cannot survive *Callais*, making immediate vacatur proper and nearly guaranteeing the Secretary's likelihood of success on the merits in these appeals. As for the equities, without immediate action by this Court, Alabama will lack any opportunity to conduct the upcoming elections pursuant to its lawfully enacted map and will instead be forced to use a map that *Callais* makes clear is an

unconstitutional racial gerrymander whose "use would violate [voters'] constitutional rights." *Callais*.Op.35.

I. The District Court's Injunctions Cannot Survive *Callais*.

Callais upended every test the district court applied to impose its injunctions. Whether the *Callais* Court "updated [the] *Gingles* framework" (as the majority put it, *Callais*.Op.33) or radically "transform[ed] it" (as the dissenters said, *id.* at 23 (Kagan, J., dissenting)), the upshot is the same: Even if the district court perfectly applied §2 precedent as it existed before *Callais*, that precedent can no longer support the court's injunctions. *See* Appendix (providing chart comparing *Callais* and district court opinion)

A. The District Court's Application of §2 Conflicts With *Callais.*

In *Callais*, the Supreme Court considered a challenge to Louisiana's congressional districts following the 2020 census. A district court had found that the State's first post-census map likely violated §2 because it did not include an additional majority-black district. *Callais*.Op.1. "But when the State drew a new map that contained such a district, its new map was challenged as a racial gerrymander" under the Equal Protection Clause, and a three-judge court agreed. *Id.* at 1-2. Louisiana appealed to the Supreme Court, which took the opportunity "to resolve whether compliance with the Voting Rights Act" can provide a "compelling reason for race-based districting" of the sort Louisiana engaged in. *Id.* at 2. The Court's answer?

"Compliance with §2, *as properly construed*, can provide such a reason," but "[c]orrectly understood, §2 does not impose liability at odds with the Constitution, and it should not have imposed liability on Louisiana for its 2022 map." *Id.* at 3.

To explain what §2 "as properly construed" means, the Court began with the text of the Fifteenth Amendment and §2 of the VRA and held that "the focus of §2 must be enforcement of the Fifteenth Amendment's prohibition on *intentional* racial discrimination." *Callais*.Op.23. "While that interpretation does not demand a finding of intentional discrimination," the Court explained, §2 "imposes liability only when the circumstances give rise to a strong inference that intentional discrimination occurred." *Id.* The Court gave an example of when such an inference would be proper: when "application of a State's districting algorithm yields numerous maps with districts in which the members of a minority group constitute a majority" and the "State cannot provide a legitimate reason for rejecting all those maps and eliminating all majority-minority districts." *Id.*

Under *Callais*, Plaintiffs challenging a state map thus have the burden of "disentangl[ing] race from politics," which they can do only "by offering an alternative map that achieves all the State's objectives—including partisan advantage and any of the State's other political goals—at least as well as the State's map." *Id.* at 25 (quotation omitted). "Properly understood," the Court concluded, "§2 thus does not intrude on States' prerogative to draw districts based on nonracial factors." *Id.* at 24.

The district court interpreted §2 differently. The court eschewed evidence suggesting (or dispelling) racial intent because "[i]ntent is not an element of a Section Two violation," Op.13, and focused instead on "the impact" or "effects" a challenged action had "on minority electoral opportunities," *id.* at 36 (quotation omitted), without considering whether those effects may have been the product of race-neutral redistricting goals. That focus may have been understandable before *Callais*, but it cannot survive the Supreme Court's holding that §2 simply guarantees minority voters "whatever opportunity results from the application of the State's combination of permissible criteria"—"nothing less and nothing more." *Callais*.Op.22.

B. The District Court's *Gingles* Analysis Conflicts With *Callais.*

In *Thornburg v. Gingles*, 478 U.S. 30 (1986), the Supreme Court "set out three threshold requirements for proving a §2 vote-dilution claim, plus a nonexhaustive list of factors to be considered in making a final decision as to whether the State had violated §2." *Callais*.Op.8. The *Callais* Court "update[d]" that framework to align it "with the statutory text and reflect[] important developments since [the Court] decided *Gingles* 40 years ago." *Callais*.Op.26.

Most of the district court's opinion consists of its application of the *Gingles* preconditions and the Senate factors. *See* DE274:36-221. In light of *Callais*, that analysis was fatally flawed.

1. The district court's *Gingles* 1 holding conflicts with *Callais* because the court did not require Plaintiffs to draw maps race blind or meet "all" the State's legitimate redistricting objectives.

"The first *Gingles* precondition is that a community of minority voters must be sufficiently numerous and compact to constitute a majority in a reasonably configured district." *Callais*.Op.29. While before *Callais* many §2 plaintiffs purported to meet this requirement by offering "illustrative maps with their desired number of majority-minority districts," *Callais* held that such maps "prove only that the State *could* create an additional majority-minority district, not that the State's failure to do so violated §2." *Id.* at 29. Thus, the Court clarified that (1) "in drawing illustrative maps, plaintiffs cannot use race" and that "an illustrative map in which race was used has no value in proving a §2 plaintiff's case," and (2) "illustrative maps must meet all the State's legitimate districting objectives, including traditional districting criteria and the State's specific political goals." *Id.*

The district court violated both commands.

First, the district court thought that "Section Two itself demands consideration of race" because "the question whether additional majority-minority districts can be drawn … involves a quintessentially race-conscious calculus." Op.171 (alteration and quotation marks omitted). The district court thus considered the "use" of race in drawing an illustrative map permissible so long as "race did not predominate," Op.172—which, it said, occurs "'when race-neutral considerations [come]

into play only after the race-based decision had been made,'" *id.* (alteration in original and quotation omitted).

So the district court did not blink when Plaintiffs' expert Anthony Fairfax admitted that he used race when he drew Plaintiffs' illustrative maps:

> Mr. Fairfax testified that he *reviewed race at the beginning of the process* to see "where the minority community exists" but then "turn[ed] it off." *He acknowledged that he later checked the minority BVAP and BCVAP periodically* "to see if [he] me[]t th[e] sufficiently large component."
>
> Further, Mr. Fairfax testified that he "tend[s] to not consider race as much as the other [redistricting] criteria" and "always use[s] the other criteria labels more than race." Mr. Fairfax testified that when he prepared the illustrative plans he was not "toggling race and compactness" only, but "look[ed] at all of the criteria and trading off those," and he *considered race only to see "where the minority community exists*."

Op.173 (alterations in original, citations omitted, and emphasis added).

Despite these admissions, the district court concluded that "nothing in Mr. Fairfax's explanation of his map-drawing process causes the Court concern that he considered race-neutral criteria only after he made race-based decisions." Op.173-74. "Rather," the court found, "his testimony about his order of operations supports a finding that his map-making process was *race-aware to the degree the law allows*." Op.174 (emphasis added).

Whether or not the district court was correct to find that Fairfax's use of race was permissible "to the degree the law" then allowed, *id.*, *Callais* makes clear that

"the degree the law allows" race to be used when drawing an illustrative map is none at all: "If a plaintiff can produce an additional majority-minority district only by using race—a process that would be unconstitutional if a State engaged in such mapmaking—that illustrative map … has no value in proving a §2 plaintiff's case." *Callais*.Op.29 (citation omitted). The district court's holding to the contrary cannot survive *Callais*.

Second, the district court continued the "race predominant" theme when analyzing whether Fairfax considered the State's other districting objectives. While the *Callais* Court emphasized that an illustrative map "must meet all the State's legitimate districting objectives," *Callais*.Op.29, the district court held Plaintiffs to a lower standard. As it explained, Fairfax "testified that he followed five traditional redistricting criteria when drawing the plans," but merely "attempted" to follow "other criteria found in the Legislature's redistricting guidelines." Op.172-73. "'[T]here are always tradeoffs' when drawing a map," he explained, Op.173—meaning that he could not "achieve" "all the State's legitimate objectives" with his map, *Callais*.Op.29. Under *Callais*, that kind of map cannot "demonstrate that the State's chosen map was driven by racial considerations rather than permissible aims." *Id.* Yet to the district court, Fairfax's map "established the first *Gingles* precondition." Op.176. That holding cannot be reconciled with *Callais*.

2. The district court's *Gingles* II and III holdings conflict with *Callais* because the court did not require Plaintiffs to "disentangle" race and political affiliation.

According to *Callais*, "[t]o satisfy the second and third preconditions—politically cohesive voting by the minority and racial-bloc voting by the majority—the plaintiffs must provide an analysis that controls for party affiliation." *Callais*.Op.30. "In other words, they must show that voters engage in racial bloc voting that cannot be explained by partisan affiliation." *Id.* As the Court explained, "simply pointing to *inter*-party racial polarization proves nothing, because 'a jurisdiction may engage in constitutional political gerrymandering, even if it so happens that the most loyal Democrats happen to be black Democrats and even if the State were *conscious* of that fact." *Id.* (quotation omitted). Section 2 plaintiffs must therefore "disentangle race and politics." *Id.* (cleaned up).

The district court applied the opposite rule: It said that "the second and third *Gingles* preconditions do not require that the Court disentangle party and race." Op.183. Again, regardless of what guidance may have existed at the time, the lower court's rule cannot be squared with *Callais*. Nor was application of its contrary rule harmless. While the Secretary offered expert testimony "that the voting patterns in Alabama are attributable to political party, not race," Op.73-74—and that "in general elections most black voters prefer Democratic candidates, and most white voters in both the challenged areas prefer Republicans," *id.* at 178 (alterations omitted)—the

district court waved away that analysis based on testimony from Plaintiffs' expert on polarized voting, Dr. Liu, *id.* at 73-74, 177. But as the district court noted, Dr. Liu did not even attempt to disentangle party and race: "he was not concerned with voters' motivations for selecting candidates, only whether the voting patterns were racially polarized." Op.74. Such testimony "proves nothing" under *Callais*. *Callais*.Op.30.

3. The district court's totality-of-the-circumstances holding conflicts with *Callais* because the court did not focus on evidence of "present-day intentional racial discrimination regarding voting."

The *Callais* Court also revised the "totality of the circumstances" inquiry, which formerly focused on the Senate factors derived from legislative history. This inquiry must now focus on "present-day intentional racial discrimination regarding voting." *Callais*.Op.30. "Discrimination that occurred some time ago, as well as present-day disparities that are characterized as the ongoing 'effects of societal discrimination,' are entitled to much less weight." *Id.* at 30-31.

The district court conducted a very different analysis. *See* Op.192-216. That analysis may be understandable (to some) given the caselaw at the time, but that it was very different and very wrong under the governing standards today is all that matters for the State's entitlement to relief. The court spent page after page detailing examples of Alabama's distant past, crediting trial testimony from Alabamians "who attended segregated public schools" many years ago, and opining that present-day

disparities in income and educational attainment "are inseparable from (and in large part the result of) the state's history of official discrimination." Op.206-16. That kind of analysis has a "remote bearing" on the question *Callais* asks: whether there exists "present-day intentional racial discrimination regarding voting." *Callais*.Op.30.

* * *

Callais radically altered how §2 claims are to be assessed and made clear that intentional discrimination must be at the center of that analysis. The district court applied a very different "effects" test, and as a result came to a very different conclusion than the one *Callais* requires. Because the district court's holding cannot be squared with *Callais*, its injunctions must be vacated—or at least stayed.

II. The Equities Require Quick Relief.

The equities also favor granting the Secretary relief—and quickly.

First, without relief from this Court, the Secretary, the State of Alabama, and the Alabama public will all be irreparably harmed. *See Swain*, 958 F.3d at 1091 (noting that "where the government is the party opposing the … injunction, its interest and harm merge with the public interest"). If—as demonstrated above—the district court's injunctions cannot be reconciled with §2 "as property construed," *Callais*.Op.3, then not only does the injunction *prohibiting* Alabama from using its lawfully enacted map significantly harm the State's sovereign interests, but the injunction *requiring* the State to use a map intentionally drawn to include an additional

black-majority district imposes an unconstitutional racial gerrymander on both the State and the individual voters in the affected districts. *See Callais*.Op.35 ("In sum, because the Voting Rights Act did not require Louisiana to create an additional majority-minority district, no compelling interest justified the State's use of race in creating SB8. That map is an unconstitutional gerrymander, and its use would violate the plaintiffs' constitutional rights.").

Second, Plaintiffs will not be harmed by granting the Secretary relief because they will still receive "whatever opportunity results from the application of the State's combination of permissible criteria" in the creation of its Senate districts. *Callais*.Op.22. Under §2, Plaintiffs are "entitled to nothing less and nothing more." *Id.*

Yes, time is tight, even if this Court acts quickly. But the point of *Callais* is that elected officials—not courts—shoulder the burden of making most of the hard decisions concerning elections. This is one of them. It remains to be seen what the Alabama Legislature will do during its special session *this week* as it "consider[s] legislation to provide for a special primary election" for the districts affected by the district court's injunctions.[5] But that is all the more reason for this Court to act with haste and quickly return the opportunity to conducts elections in accordance with state law back to Alabama and her elected representatives.

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[5] Proclamation, *supra* note 4.

CONCLUSION

For these reasons, the Court should (1) vacate the injunctions (DE274 & 322) and immediately issue its mandate or (2) stay the injunctions.

Respectfully submitted,

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MAY 4, 2026

CERTIFICATE OF COMPLIANCE

1. I certify that this motion complies with the type-volume limitations in Rule 27(d)(2)(A). It contains 4,223 words, including all headings, footnotes, and quotations (including in the appendix), and excluding the parts of the motion exempted under Rule 32(f).

2. In addition, this motion complies with the typeface and type style requirements of Rule 32(a)(5) and (6) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in 14-point Times New Roman font.

s/ A. Barrett Bowdre
A. Barrett Bowdre
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CERTIFICATE OF SERVICE

I certify that on May 4, 2026, I electronically filed this document using the Court's CM/ECF system, which will serve counsel of record.

s/ A. Barrett Bowdre
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Counsel for Secretary of State Wes Allen

APPENDIX

District Court	*Callais* Court
***Gingles* I: Numerosity and Compactness**	
SECTION 2 DEMANDS CONSIDERATION OF RACE	***RACE CANNOT BE CONSIDERED***
"Because **the Voting Rights Act in itself *demands* consideration of race**, map drawers in Section Two cases will be aware of racial demographics[.]… [W]hether additional majority-minority districts can be drawn, after all, involves a quintessentially race-conscious calculus.… While **race consciousness is permissible**, race may not be the predominant factor in drawing district lines unless there is a compelling reason." Op.30-31 (citations and quotation marks omitted) (cleaned up) (emphases added).	"First, in drawing illustrative maps, **plaintiffs cannot use race as a criterion**. If a plaintiff can produce an additional majority-minority district only by using race—a process that would be unconstitutional if a State engaged in such mapmaking—that illustrative map sheds no light on whether the State acted unconstitutionally by *not* adopting such a map. Thus, **an illustrative map in which race was used has no value in proving a §2 plaintiff's case**." *Callais*.Op.29 (citation omitted) (emphases added).
THERE WILL BE TRADE-OFFS BETWEEN DISTRICTING OBJECTIVES	***ALL LEGITIMATE DISTRICTING OBJECTIVES MUST BE MET***
"To determine whether the plaintiffs satisfy this requirement, the Court compares the [Enacted] Plan with each illustrative plan provided by the plaintiffs. Further comparisons are not required; a Section Two district that is reasonably compact and regular, taking into account traditional districting principles, need not also defeat a rival compact district in a beauty contest." Op.32 (citations and quotation marks omitted) (cleaned up). "[The] *Gingles* preconditions do not require that the Court disentangle party and race." Op.183.	"Second, illustrative maps **must meet all the State's legitimate districting objectives**, including traditional districting criteria and the State's specified political goals. If the State's aims in drawing a map include a target partisan distribution of voters, a specific margin of victory for certain incumbents, … the plaintiffs' illustrative maps must achieve these goals just as well. If not, the plaintiffs would fail to demonstrate that the State's chosen map was driven by racial considerations rather than permissible aims. Only by meeting all the State's legitimate objectives can the illustrative maps help to 'disentangle race' from politics and other constitutionally permissible considerations." *Callais*.Op.29-30 (emphasis added).

District Court	*Callais* Court
***Gingles* II & III – Racially Polarized Voting**	
RACE AND POLITICS DO NOT NEED TO BE DISENTANGLED "[T]he second and third *Gingles* preconditions **do not require that the Court disentangle party and race**." Op.183 (emphasis added). "[A]cknowledging that race plays a key role in party attachments keeps the controlling legal standard honest and workable.… As the Court understands it, *Gingles* accounts for partisanship based on race in its demand for political cohesion among the minority group, which will be absent in times or places where party affiliations are driven primarily by something other than race." Op.201.	***RACE AND POLITICS MUST BE DISENTANGLED*** "To satisfy the second and third preconditions—politically cohesive voting by the minority and racial-bloc voting by the majority—the plaintiffs must provide an analysis that **controls for party affiliation**. In other words, they must show that voters engage in racial bloc voting that cannot be explained by partisan affiliation. This is, once again, **critical for disentangling race and politics**." *Callais*.Op.30 (quotation marks and citation omitted) (cleaned up) (emphases added).
Totality of the Circumstances	
PAST AND PRESENT DISCRIMINATION, AND SOCIO-ECONOMIC DISPARITIES, ARE GIVEN SUBSTANTIAL WEIGHT "[The totality of the circumstances] inquiry… requires … a searching practical evaluation of the past and present reality.… In this step, the court considers the Senate Factors, which include: **the *history* of voting-related discrimination** in the State or political subdivision; [and] … the **extent to which minority group members bear the effects of *past* discrimination**…." Op.32-33 (citations and quotation marks omitted) (emphases added).	***PAST DISCRIMINATION AND SOCIO-ECONOMIC DISPARITIES ARE GIVEN "MUCH LESS WEIGHT"*** "[T]he 'totality of circumstances' inquiry must focus on evidence that has more than a remote bearing on what the Fifteenth Amendment prohibits: present-day intentional racial discrimination regarding voting. **Discrimination that occurred some time ago, as well as present-day disparities that are characterized as the ongoing effects of societal discrimination, are entitled to much less weight**. Far more germane are current data and current political conditions that shed light on current intentional discrimination. In large part *because of* the Voting Rights Act, our Nation has made great strides in eliminating racial discrimination in voting. And if, as a result of this progress, it is hard to find pertinent evidence relating to intentional present-day voting discrimination, that is cause for celebration. *Callais*.Op.30-31 (cleaned up and emphasis added).

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

LOUISIANA *v.* CALLAIS ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA

No. 24–109. Argued October 15, 2025—Decided April 29, 2026*

These cases concern whether Louisiana's new congressional map is an unconstitutional racial gerrymander. In 2022, after the State redrew its congressional districts, a federal judge in *Robinson* v. *Ardoin*, 605 F. Supp. 3d 759 (MD La.), held that the 2022 map likely violated §2 of the Voting Rights Act of 1965, 52 U. S. C. §10301 *et seq*., because it did not include an additional majority-black district. But when the State drew a new map, SB8, that contained such a district, the new map was challenged as a racial gerrymander. A three-judge court in *Callais* v. *Landry*, 732 F. Supp. 3d 574 (WD La.), held that SB8 violated the Equal Protection Clause of the Fourteenth Amendment, and the State appealed to this Court.

The parties originally briefed and argued this suit last Term, and their arguments at that time highlighted problems in the existing body of §2 case law. One problem resulted from the rule that in racial gerrymandering cases, unlike other cases involving claims of racial discrimination, strict scrutiny is triggered only if race "predominated" in the State's decisionmaking process. Another problem stemmed from the long-unresolved question whether compliance with the Voting Rights Act provides a compelling reason that may justify the intentional use of race in drawing legislative districts. For over 30 years, the Court has simply assumed for the sake of argument that the answer is yes. These and other problems convinced the Court that the time had come to resolve whether compliance with the Voting Rights Act can indeed provide a compelling reason for race-based districting.

*Together with No. 24–110, *Robinson et al.* v. *Callais et al.*, on appeal from the same court.

Held: Because the Voting Rights Act did not require Louisiana to create an additional majority-minority district, no compelling interest justified the State's use of race in creating SB8, and that map is an unconstitutional racial gerrymander. Pp. 17–36.

(a) The Constitution almost never permits a State to discriminate on the basis of race, and such discrimination triggers strict scrutiny. The Court's precedents have identified "only two compelling interests" that can satisfy strict scrutiny: "avoiding imminent and serious risks to human safety in prisons," and "remediating specific, identified instances of past discrimination that violated the Constitution or a statute." *Students for Fair Admissions, Inc.* v. *President and Fellows of Harvard College*, 600 U. S. 181. The question presented is whether compliance with §2 of the Voting Rights Act should be added to this very short list of compelling interests. The Court now holds that compliance with §2, *as properly construed*, can provide such an interest. A proper interpretation of §2 requires examining the statutory text to understand what it demands with respect to drawing legislative districts. Pp. 17–26.

(1) Under Section 2(a), the Court takes as a given that a legislative districting map may constitute a "standard, practice, or procedure" that may violate §2 if it "results in a denial or abridgement" of the right to vote "on account of race or color." Section 2(b) establishes that a violation occurs when political processes are "not equally open to participation by" members of a racial group "in that [they] have less opportunity than other members of the electorate to . . . elect representatives of their choice." The key concept is "less opportunity than other members of the electorate," which sets a baseline against which to assess the opportunity of minority voters. That baseline—the opportunity that any given group of voters has to elect their candidate of choice—depends on the voting preferences of other voters in the district. For example, in a district where most voters prefer Democratic candidates, a Republican voter in that district will have a low chance of securing the election of his or her preferred candidate. The roster of voters who end up in a given district depends, in turn, on the districting criteria the State uses to draw a legislative map. Thus, the "opportunity" of these "members of the electorate" to contribute their votes to a winning cause is whatever opportunity results from the application of the State's combination of permissible districting criteria. That is what a randomly selected individual voter and group of voters can expect regarding their opportunity to elect their preferred candidate. Under §2, a minority voter is entitled to nothing less and nothing more. Pp. 19–22.

(2) This interpretation is the best reading of the statutory text and ensures that §2 of the Voting Rights Act does not exceed Congress's authority under §2 of the Fifteenth Amendment, which confers on

Congress the "power to enforce [the Amendment] by appropriate legislation." As the Court has long held, the Fifteenth Amendment bars only state action "'motivated by discriminatory purpose.'" *Reno* v. *Bossier Parrish School Bd.*, 520 U. S. 471, 481. So a law that seeks to enforce the Fifteenth Amendment by prohibiting mere disparate impact would fail to enforce a right that the Amendment secures. That is never "appropriate," *South Carolina* v. *Katzenbach*, 383 U. S. 301, 308, because Congress cannot "enforce a constitutional right by changing what the right is," *City of Boerne* v. *Flores*, 521 U. S. 507, 519. For this reason, the focus of §2 must be enforcement of the Fifteenth Amendment's prohibition on *intentional* racial discrimination. When §2 of the Act is properly interpreted, it imposes liability only when circumstances give rise to a strong inference that intentional discrimination occurred. Properly understood, §2 thus does not intrude on States' prerogative to draw districts based on nonracial factors, including to achieve partisan advantage. In short, §2 imposes liability only when the evidence supports a strong inference that the State intentionally drew its districts to afford minority voters less opportunity because of their race. Not only does this interpretation follow from the plain text of §2, but it is consistent with the limited authority that the Fifteenth Amendment confers. Pp. 22–26.

(b) This interpretation does not require abandonment of the framework for evaluating §2 claims that the Court established in *Thornburg* v. *Gingles*, 478 U. S. 30. The Court need only update the framework so it aligns with the statutory text and reflects important developments since the Court decided *Gingles* 40 years ago. Four historical developments are of particular note. First, vast social change has occurred throughout the country and particularly in the South, which have made great strides in ending entrenched racial discrimination. Second, a full-blown two-party system has emerged in the States where §2 suits are most common, and there is frequently a correlation between race and party preference. Third, in *Rucho* v. *Common Cause*, 588 U. S. 684, this Court held that partisan gerrymandering claims are not justiciable in federal court, and this holding creates an incentive for litigants to exploit §2 for partisan purposes by "repackag[ing] a partisan-gerrymandering claim as a racial-gerrymandering claim," *Alexander* v. *South Carolina State Conference of the NAACP*, 602 U. S. 1, 21. Fourth, the increased use and capabilities of computers in drawing districts and creating illustrative maps means that a §2 plaintiff can easily identify an alternative map that fully achieves all the State's legitimate goals while producing greater racial balance, if such a map is possible. In light of these developments, the Court updates the *Gingles* framework and realigns it with the text of §2 and constitutional principles. Pp. 26–31.

(1) The first *Gingles* precondition is that a community of minority voters must be sufficiently numerous and compact to constitute a majority in a reasonably configured district. While many §2 plaintiffs have simply provided illustrative maps with their desired number of majority-minority districts, such maps prove only that the State *could* create an additional majority-minority district, not that the State's failure to do so violated §2 of the Voting Rights Act. To show the latter, plaintiffs' illustrative maps must satisfy two conditions: Plaintiffs cannot use race as a districting criterion in drawing illustrative maps, and illustrative maps must meet all the State's legitimate districting objectives, including traditional districting criteria and the State's specified political goals. Pp. 29–30.

(2) To satisfy the second and third preconditions—politically cohesive voting by the minority and racial-bloc voting by the majority—the plaintiffs must provide an analysis that controls for party affiliation, showing that voters engage in racial-bloc voting that cannot be explained by partisan affiliation. P. 30.

(3) On the "totality of circumstances" inquiry, the focus must be on evidence that has more than a remote bearing on what the Fifteenth Amendment prohibits: present-day intentional racial discrimination regarding voting. Discrimination that occurred some time ago and present-day disparities characterized as ongoing "effects of societal discrimination" are entitled to much less weight. *Shaw* v. *Hunt*, 517 U. S. 899, 909–910. Pp. 30–31.

(c) Nothing in *Allen* v. *Milligan*, 599 U. S. 1, dictates a different result. That case merely addressed whether Alabama's novel evidentiary standard required a change to existing §2 precedent. *Allen* did not address whether "race-based redistricting" under §2 could "extend indefinitely into the future" despite significant changes in conditions, 599 U. S., at 45 (KAVANAUGH, J., concurring in part), nor did it address whether §2 plaintiffs must disentangle race from politics in proving their case. Indeed, *Allen* did not address the Fourteenth Amendment at all. But here, the decision before the Court is based on the Fourteenth Amendment. Pp. 31–32.

(d) Under the updated *Gingles* framework, the facts of this suit easily require affirmance. Louisiana's enactment of SB8 triggered strict scrutiny because the State's underlying goal was racial. The State configured District 6 to achieve a black voting-age population over 50% because the *Robinson* court held that §2 likely required the creation of an additional majority-black district. The State's intentional compliance with the court's demands constituted an "express acknowledgment that race played a role in the drawing of district lines." *Alexander*, 602 U. S., at 8.

No compelling interest justifies SB8 because §2 did not require the

State to create a new majority-minority district. At every step of the *Gingles* framework, the *Robinson* plaintiffs failed to prove their §2 case. On the first *Gingles* precondition, the *Robinson* plaintiffs did not meet their burden because they did not provide an illustrative map that met all the State's nonracial goals, including the State's political goals. On the second and third *Gingles* preconditions, the *Robinson* plaintiffs offered evidence that black and white voters consistently supported different candidates, but their analysis did not control for partisan preferences. And on the totality of circumstances, the *Robinson* plaintiffs failed to show an objective likelihood of intentional discrimination, instead relying on historical evidence and evidence that failed to disentangle race from politics. Pp. 32–35.

732 F. Supp. 3d 574, affirmed and remanded.

ALITO, J., delivered the opinion of the Court, in which ROBERTS, C. J., and THOMAS, GORSUCH, KAVANAUGH, and BARRETT, JJ., joined. THOMAS, J., filed a concurring opinion, in which GORSUCH, J., joined. KAGAN, J., filed a dissenting opinion, in which SOTOMAYOR and JACKSON, JJ., joined.

NOTICE: This opinion is subject to formal revision before publication in the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, pio@supremecourt.gov, of any typographical or other formal errors.

SUPREME COURT OF THE UNITED STATES

Nos. 24–109 and 24–110

24–109 LOUISIANA, APPELLANT
v.
PHILLIP CALLAIS, ET AL.

24–110 PRESS ROBINSON, ET AL., APPELLANTS
v.
PHILLIP CALLAIS, ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA

[April 29, 2026]

JUSTICE ALITO delivered the opinion of the Court.

Section 2 of the Voting Rights Act of 1965, 52 U. S. C. §10301 *et seq.*, was designed to enforce the Constitution—not collide with it. Unfortunately, lower courts have sometimes applied this Court's §2 precedents in a way that forces States to engage in the very race-based discrimination that the Constitution forbids.

This tension between §2 and the Constitution came to a head when Louisiana redrew its congressional districts after the 2020 census. In 2022, a federal judge in the Middle District of Louisiana held that the map adopted by the state legislature likely violated §2 because it did not include an additional majority-black district. But when the State drew a new map that contained such a district, its new map was challenged as a racial gerrymander. A three-judge court in the Western District of Louisiana held that the new map

violated the Equal Protection Clause, and the State appealed to this Court.

The parties originally briefed and argued this suit last Term, and their arguments at that time highlighted problems in the existing body of §2 case law. One problem resulted from the rule that in racial gerrymandering cases, unlike other cases involving claims of racial discrimination, see, *e.g.*, *Arlington Heights* v. *Metropolitan Housing Development Corp*., 429 U. S. 252, 265–266 (1977), strict scrutiny is triggered only if race "predominated" in the State's decisionmaking process. In this suit, Louisiana adopted the challenged map and created the second majority-black district because it quite reasonably anticipated that, if it did not do so, the Middle District of Louisiana would order the use of a map with a differently configured second majority-black district that would effectively oust an incumbent whom the legislature sought to protect. Under our existing case law, that situation posed the question whether race or politics was the State's "predominant" motivation.

Another problem stemmed from the long-unresolved question whether compliance with the Voting Rights Act provides a compelling reason that may justify the intentional use of race in drawing legislative districts. For over 30 years, we have *assumed* for the sake of argument that the answer is yes. See *infra*, at 9–11. And we have gone further and assumed that it is enough if a State "'ha[s] a strong basis in evidence'" for thinking that the Voting Rights Act requires race-based conduct. *Cooper* v. *Harris*, 581 U. S. 285, 292–293 (2017). But allowing race to play any part in government decisionmaking represents a departure from the constitutional rule that applies in almost every other context.

These and other problems convinced us that the time had come to resolve whether compliance with the Voting Rights Act can indeed provide a compelling reason for race-based districting. We now answer that question: Compliance with

§2, *as properly construed*, can provide such a reason. Correctly understood, §2 does not impose liability at odds with the Constitution, and it should not have imposed liability on Louisiana for its 2022 map. Compliance with §2 thus could not justify the State's use of race-based redistricting here. The State's attempt to satisfy the Middle District's ruling, although understandable, was an unconstitutional racial gerrymander, and we therefore affirm the decision below.

I

A

Ratified in 1870, the Fifteenth Amendment provides that the "right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." For many years afterward, however, States "heavily suppressed" the right of black citizens to vote. *Brnovich* v. *Democratic National Committee*, 594 U. S. 647, 655 (2021). "States employed a variety of notorious methods, including poll taxes, literacy tests, property qualifications, white primaries, and grandfather clauses," in a "blatant" effort to suppress black voting. *Id.*, at 655–656, and n. 1 (citing H. R. Rep. No. 439, 89th Cong., 1st Sess., 8, 11–13 (1965); S. Rep. No. 162, 89th Cong., 1st Sess., pt. 3, pp. 4–5 (1965); brackets and internal quotation marks omitted). Even "as late as the mid-1960s, black registration and voting rates in some States were appallingly low." *Brnovich*, 594 U. S., at 656; see *South Carolina* v. *Katzenbach*, 383 U. S. 301, 309–315 (1966). In addition, States employed legislative districting schemes to prevent the election of black candidates and candidates that black voters preferred. See *Alexander* v. *South Carolina State Conference of the NAACP*, 602 U. S. 1, 35 (2024); *Gomillion* v. *Lightfoot*, 364 U. S. 339, 341 (1960).

Section 2 of the Fifteenth Amendment authorizes Congress to enact "appropriate legislation" to enforce the Amendment's protections, and in 1965 Congress invoked that power to enact the Voting Rights Act. *Brnovich*, 594 U. S., at 656. "The Act and its amendments in the 1970s specifically forbade some of the practices that had been used to suppress black voting," including literacy tests and poll taxes. *Ibid.*; see 52 U. S. C. §10301; §§4(a), (c), 79 Stat. 438–439; §6, 84 Stat. 315; §102, 89 Stat. 400, as amended, 52 U. S. C. §§10303(a), (c), 10501 (prohibiting the denial of the right to vote in any election for failure to pass a test demonstrating literacy, educational achievement or knowledge of any particular subject, or good moral character); see also §10, 79 Stat. 442, as amended, 52 U. S. C. §10306 (declaring poll taxes unlawful); §11, 79 Stat. 443, as amended, 52 U. S. C. §10307 (prohibiting intimidation and the refusal to allow or count votes). We upheld many of these provisions in *Katzenbach*, 383 U. S., at 316, 327–337.

Section 2 of the Voting Rights Act in its original form "closely tracked the language of the Amendment it was adopted to enforce." *Brnovich*, 594 U. S., at 656. At that time, §2 stated simply that "[n]o voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color." 79 Stat. 437.

In *Mobile* v. *Bolden*, 446 U. S. 55 (1980), the Court interpreted this language, and four Justices concluded in a plurality opinion that "facially neutral voting practices violate §2 only if motivated by a discriminatory purpose." *Brnovich*, 594 U. S., at 658. Justice Stevens, who concurred in the judgment, proposed a different but similarly demanding standard. See *Bolden*, 446 U. S., at 90–94. Indeed, in his view, a districting practice, even if motivated in part by race, would not violate §2 so long as it was "supported by valid and articulable justifications." *Id.*, at 91–92.

Bolden roused "'an avalanche of criticism, both in the media and within the civil rights community.'" *Allen* v. *Milligan*, 599 U. S. 1, 11 (2023) (quoting T. Boyd & S. Markman, The 1982 Amendments to the Voting Rights Act: A Legislative History, 40 Wash. & Lee L. Rev. 1347, 1355 (1983)). Critics argued that a focus on discriminatory intent, rather than discriminatory effects, would defeat worthy claims because of the difficulty of proving intentional discrimination. See 599 U. S., at 11.

Members of Congress evidently shared these concerns. In 1982, shortly after *Bolden*, Congress sought to abrogate that decision by amending §2. A House bill was "originally passed . . . under a loose understanding that §2 would prohibit all discriminatory 'effects' of voting practices, and that intent would be 'irrelevant,'" but "[t]his version met stiff resistance in the Senate." *Mississippi Republican Executive Comm.* v. *Brooks*, 469 U. S. 1002, 1010 (1984) (Rehnquist, J., dissenting) (quoting H. R. Rep. No. 97–227, p. 29 (1981)). Critics worried that an effects test would lead to "mandat[ory] racial proportionality in elections," a scenario "regarded by many as intolerable." *Allen*, 599 U. S., at 12. The House and Senate eventually compromised, and the final product included both an effects test in §2(a) and a "robust disclaimer against proportionality" in §2(b). *Id.*, at 13.

This latter provision also specifies what a plaintiff must establish to prove a §2 violation. The provision requires consideration of the "totality of circumstances" in each case and demands proof that the "political processes leading to nomination or election in the State or political subdivision are not *equally open* to participation" by members of a protected class "*in that its members have less opportunity* than other members of the electorate to participate in the political process and to elect representatives of their choice." 52 U. S. C. §10301(b) (emphasis added). Congress took this language almost verbatim from Justice White's opinion for the Court in *White* v. *Regester*, 412 U. S. 755 (1973), which

involved a "vote dilution" claim, *i.e.*, a claim that a districting scheme impermissibly lessens the weight of the votes of minority voters.

In *White*, the Court affirmed a judgment that Texas had used two multimember electoral districts "invidiously to cancel out or minimize the voting strength of racial groups." *Id.*, at 765. According to *White*, a vote-dilution plaintiff had to show that "the political processes leading to nomination and election were not equally open to participation by the group in question—that its members had less opportunity than did other residents in the district to participate in the political processes and to elect legislators of their choice." *Id.*, at 766.

The decision in *White* did not say anything one way or another about proof of discriminatory purpose or intent, but the Court's rationale rested on evidence that gave rise to an obvious inference that the State had set out to prevent the election of candidates preferred by minority voters. The Texas districting scheme generally used single-member districts but employed multimember districts in two parts of the State where single-member districts might have resulted in the election of minority candidates. The Court observed that the use of multimember districts is not "necessarily" or "per se" unconstitutional, but it recognized that such districts can be employed to achieve discriminatory ends. *Id.*, at 765; see also *Perkins* v. *Matthews*, 400 U. S. 379, 389 (1971) (observing that a switch to at-large elections could be a "metho[d] to maintain white control of the political process"); *Allen* v. *State Bd. of Elections*, 393 U. S. 544, 569 (1969) (explaining that a change to at-large voting could nullify the ability of minority voters to elect their candidate of choice). The Court also cited strong evidence that the legislature had done so in the case at hand. Writing at a time when the Democratic Party was dominant in much of Texas, the Court noted that a "white-dominated organization," which had "effective control" over candidate slating

within that party, had engaged in "'racial campaign tactics in white precincts to defeat candidates who had the overwhelming support of the black community,'" thereby "'effectively exclud[ing]'" the black community "'from participation in the Democratic primary selection process.'" *White*, 412 U. S., at 766–767. The Court likewise cited evidence that the legislature had "invidiously excluded Mexican-Americans from effective participation in political life, specifically in the election of representatives to the Texas House of Representatives." *Id.*, at 769. Thus, *White* presented a situation in which circumstantial evidence suggested very strongly that the State had created multimember districts for the purpose of diluting minority votes.

A few years later, when Congress looked for language that would abrogate *Mobile* v. *Bolden*'s interpretation of §2, it selected terms that were nearly identical to language used in *White*. The accompanying Report of the Senate Judiciary Committee explained that the amendment's purpose was to repudiate *Bolden* and establish a new vote-dilution test based on *White*. See S. Rep. No. 97–417, pp. 2, 15–16, 27 (1982).

B

This Court first construed the amended version of §2 in *Thornburg* v. *Gingles*, 478 U. S. 30 (1986). *Gingles* concerned a challenge to North Carolina's multimember districting scheme on the ground that it diluted the vote of black citizens. *Id.*, at 34–36. *Gingles* was decided at a time when this Court often paid insufficient attention to the language of statutory provisions, and Justice Brennan's opinion for the Court followed this pattern. Instead of analyzing what the statute said, the opinion simply "quoted the text of amended §2 and then jumped right to the Senate Judiciary Committee Report." *Brnovich*, 594 U. S., at 667; see *Gingles*, 478 U. S., at 42–46. Relying heavily on that Report, the opinion set out three threshold requirements for

proving a §2 vote-dilution claim, plus a nonexhaustive list of factors to be considered in making a final decision as to whether the State had violated §2. See *id.*, at 44–45, 48–51, 80.

To succeed in proving a §2 violation, *Gingles* taught, a plaintiff must make four showings. First, the plaintiff must show that the minority group in question is "sufficiently large and [geographically] compact to constitute a majority in a reasonably configured district." *Wisconsin Legislature* v. *Wisconsin Elections Comm'n*, 595 U. S. 398, 402 (2022) (*per curiam*) (citing *Gingles*, 478 U. S., at 50–51). A district is reasonably configured, we later explained, "if it comports with traditional districting criteria, such as being contiguous and reasonably compact." *Allen*, 599 U. S., at 18. "Second, the minority group must be able to show that it is politically cohesive." *Gingles*, 478 U. S., at 51. Third, "the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it . . . to defeat the minority's preferred candidate." *Ibid*. "Finally, a plaintiff who demonstrates the three preconditions must also show, based on the 'totality of circumstances,' that the political process is not 'equally open' to minority voters." *Allen*, 599 U. S., at 18 (quoting *Gingles*, 478 U. S., at 45–46).

C

In later cases, redistricting plans that States created to comply with the Voting Rights Act were themselves challenged as racial gerrymanders. This Court approached such cases by building on the framework from other racial-discrimination cases under the Equal Protection Clause. In those cases, if race played a role in a decision made by a government actor, strict scrutiny applied. See *Arlington Heights*, 429 U. S., at 265–266. Under this standard, the government needed to assert a compelling interest that justified its use of race; and if the analysis progressed beyond this point, the government had to show that its use of race

was narrowly tailored to vindicate that interest. See, *e.g.*, *Students for Fair Admissions, Inc.* v. *President and Fellows of Harvard College*, 600 U. S. 181, 206 (2023) (*SFFA*).

The Court modified this framework for racial gerrymandering cases. Although *any* use of race in government decisionmaking generally triggers strict scrutiny, in gerrymandering cases a challenger must show that race was the government's predominant consideration. See *Bush* v. *Vera*, 517 U. S. 952, 964 (1996) (plurality opinion). And in cases where race predominated, States would sometimes assert that compliance with the Voting Rights Act provided a compelling interest justifying the use of race. Yet we never decided whether compliance with the Act could constitute a compelling interest. Instead, we repeatedly assumed without deciding that the Voting Rights Act could constitute a compelling interest because in all those cases, the Act actually did not demand the State's race-predominant districting. Thus, the States in those cases could not satisfy strict scrutiny regardless of whether compliance with the Voting Rights Act could provide a compelling interest.

The first case in which the Court explicitly made this assumption was *Miller* v. *Johnson*, 515 U. S. 900, 917–920 (1995),[1] which concerned a majority-black district that was designed to satisfy the Justice Department's preclearance demands under §5 of the Voting Rights Act. The *Miller* Court first found that the legislature had "subordinated traditional race-neutral districting principles, including but not limited to compactness, contiguity, and respect for political subdivisions or communities defined by actual shared interests, to racial considerations." *Id.*, at 916. For this reason, the Court held, race had predominated in the creation of the new district, and the State had to "demonstrate

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[1] Such an assumption may have been implicit in *Shaw* v. *Reno*, 509 U. S. 630, 653–656 (1993) (*Shaw I*).

that its districting legislation [wa]s narrowly tailored to achieve a compelling interest." *Id.*, at 920. The Court declined to address "[w]hether or not in some cases compliance with the [Voting Rights Act], standing alone, c[ould] provide a compelling interest independent of any interest in remedying past discrimination." *Id.*, at 921. Instead, the Court explained that the "challenged district was not reasonably necessary under a constitutional reading and application" of the Voting Rights Act, so the State's goal of complying with the Act could not supply a compelling interest. *Ibid.*

We repeated much the same analysis in *Shaw* v. *Hunt*, 517 U. S. 899, 908 (1996) (*Shaw II*), applying strict scrutiny to a redistricting plan that a State crafted to comply with both §2 and §5 of the Voting Rights Act. "[O]nce again," we did not reach the question "expressly left open" in *Miller*: whether the Voting Rights Act could itself provide a compelling interest to justify race-predominant districting. 517 U. S., at 911. After "assum[ing], *arguendo*, for the purpose of resolving this suit, that compliance with §2 could be a compelling interest," we held that the plan failed strict scrutiny because it was not reasonably required under a constitutional reading and application of the Voting Rights Act. *Id.*, at 915.

Likewise, in *Alabama Legislative Black Caucus* v. *Alabama*, 575 U. S. 254, 259 (2015), we applied strict scrutiny to a race-predominant districting plan that the State had created for two purposes: first, to "come close to a one-person, one-vote ideal," and second, to "ensure compliance" with §5 of the Voting Rights Act. We held that, even if the Voting Rights Act could provide a compelling interest, the map did not satisfy strict scrutiny because it was not required by the Act. *Id.*, at 277. Once again, we left open whether compliance with the Act "remain[ed] a compelling interest." *Id.*, at 279.

In *Cooper*, 581 U. S., at 301, we continued our "long"-standing assumption that "complying with the VRA is a compelling interest." Again, we did not need to resolve this question because a constitutional reading and application of the Act did not require the district at issue. *Id.*, at 306. And again, in *Wisconsin Legislature*, we once more "assumed that complying with the [Voting Rights Act] is a compelling interest." 595 U. S., at 401. But because the Wisconsin Supreme Court had not properly analyzed whether the Act required the map at issue, we remanded for the court to "undertake a full strict-scrutiny analysis." *Id.*, at 406. This was the legal framework in place when the lawsuits involving Louisiana's congressional districts were filed and litigated in the lower courts.

II

As noted earlier, the underlying litigation in this suit resulted from Louisiana's response to the population changes disclosed by the 2020 census. The subsequent reapportionment of House seats among the States left Louisiana with the same number of seats—six—that it had previously been allocated, but due to shifts in population, the State needed to recalibrate its districts.

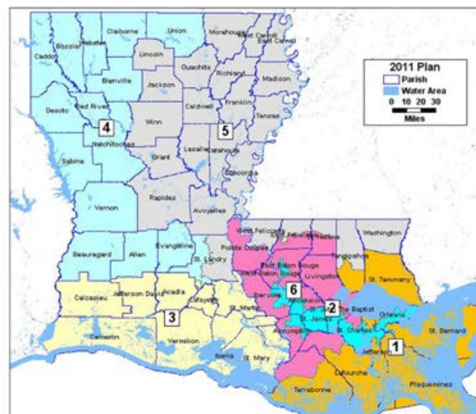

Figure 1. Louisiana's map from 2013–2022

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In 2022, Louisiana enacted a new map, "HB1," that closely resembled its immediate predecessor:

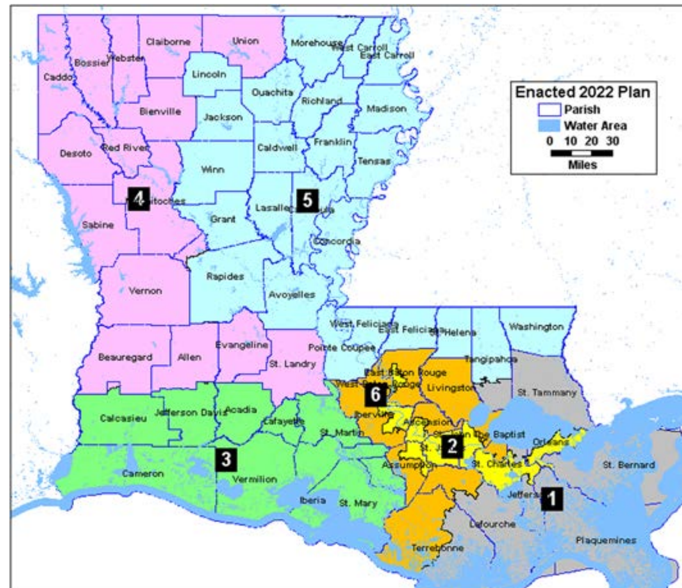

Figure 2. HB1, enacted in 2022

HB1, like its predecessor, included only one district in which black voters were a majority of the voting-age population. (In the above maps, it is the bat-shaped District 2 that includes much of New Orleans, blue in Figure 1 and yellow in Figure 2.) As soon as HB1 was enacted, lawsuits were filed in the Middle District of Louisiana asserting that the map violated the Voting Rights Act by "'packing' large numbers of Black voters into a single majority-Black congressional district . . . and 'cracking' the remaining Black voters among the other five districts." *Robinson* v. *Ardoin*, 605 F. Supp. 3d 759, 768 (2022). After the suit was filed, the *Robinson* court issued a lengthy opinion concluding that HB1 likely violated the Voting Rights Act by failing to include a second majority-black district. The court thus entered a preliminary injunction requiring Louisiana to

implement a new map before the 2022 election, which was less than six months away. *Id.*, at 856.

Louisiana objected to the decision and promptly appealed. But because of circumstances outside the State's control, its appeal ended up in limbo. This Court granted certiorari before judgment and held the case pending a decision in *Allen*. Nearly a year later, after deciding *Allen*, the Court dismissed the petition as improvidently granted and remanded the case to the Fifth Circuit to consider Louisiana's appeal in the ordinary course. By that time, the 2022 election had passed, and the urgency that had justified the preliminary injunction was no longer present. In a tentatively worded opinion, the Fifth Circuit held that the *Robinson* District Court's decision "was valid when it was issued" but that the preliminary injunction was no longer needed. *Robinson* v. *Ardoin*, 86 F. 4th 574, 599–600 (2023).

In the absence of urgency, the Fifth Circuit remanded the case to the District Court with instructions to give Louisiana time to draw a new map. If Louisiana failed to do so, the Fifth Circuit suggested, the District Court could proceed with a trial on the merits and, if needed, remedial proceedings. *Id.*, at 601–602.

After the Fifth Circuit's remand, Louisiana did not have many options. In the *Robinson* decision, the District Court held that the plaintiffs were "likely to prevail" on their claim that the Voting Rights Act demanded the creation of a second majority-black district. 605 F. Supp. 3d, at 851. So if Louisiana refused to adopt such a map, the District Court would likely draw one and mandate its use. Wishing to avoid that outcome, Louisiana decided to draw its own map. After a deliberative process, Louisiana enacted the map at issue in this suit: SB8.

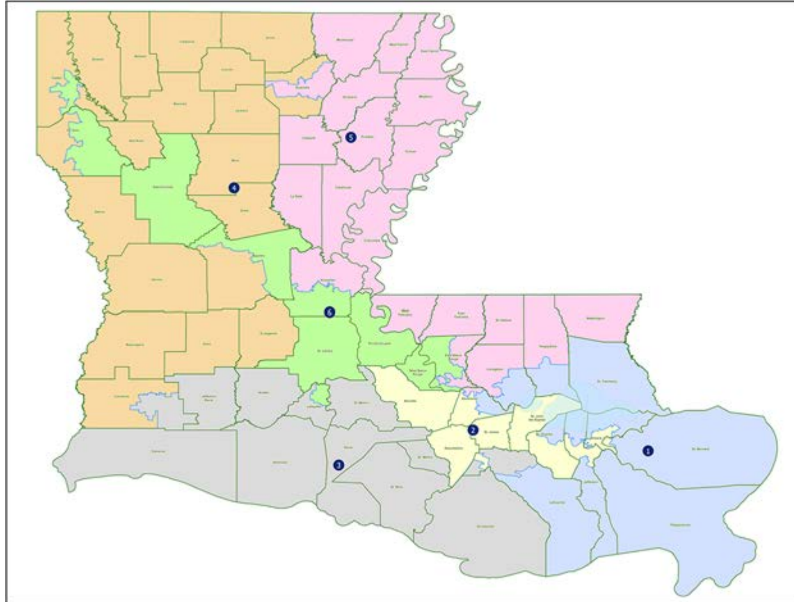

Figure 3. SB8

SB8 retains the original majority-minority district from HB1 (above in yellow). It then adds an additional majority-minority district, District 6 (above in green). To attain a majority-black voting-age population, District 6 connects black populations from Baton Rouge and Lafayette (in the southcentral region of the State) with the black population in Shreveport (in the far northwest of the State). SB8 differed from the illustrative maps—shown below—on which the District Court relied in *Robinson*:

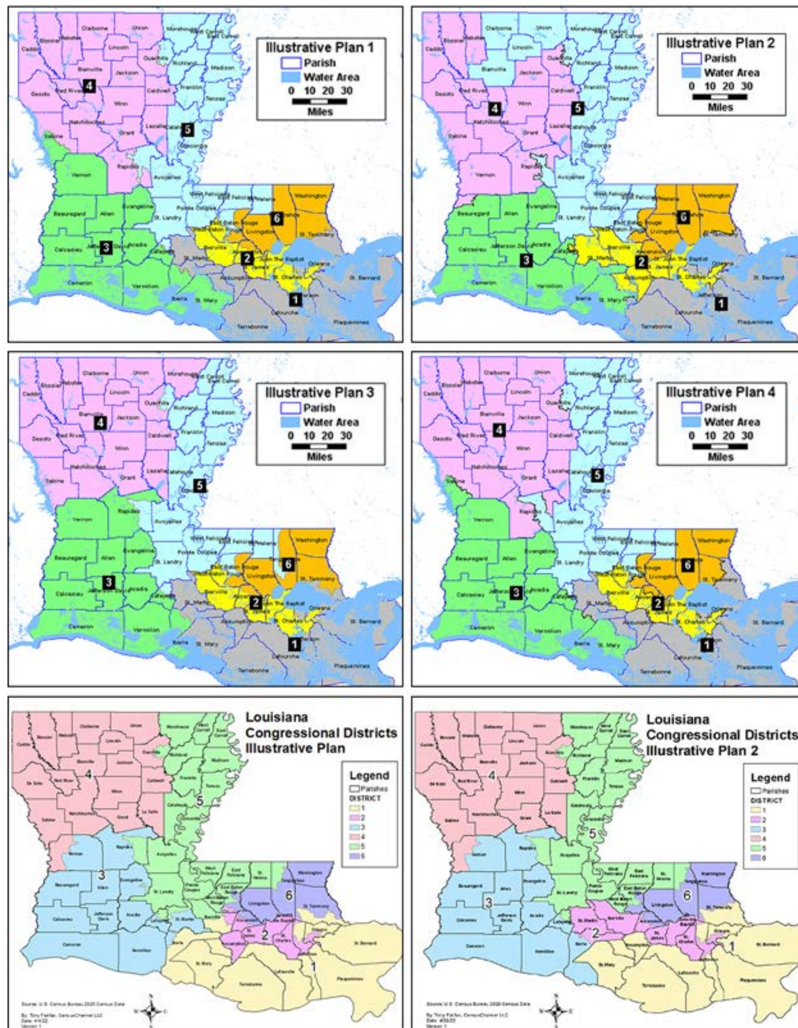

Figure 4. *Robinson* Court's Illustrative Maps

These illustrative maps also include a second majority-minority district, but one with very different boundaries (shown in blue in the top four maps and in green in the

bottom two maps). This district connects largely urban black communities in Baton Rouge and Lafayette with more rural black communities in the northeast corner of the State. By contrast, SB8's District 6 connects the Baton Rouge and Lafayette black populations with the distant black population in Shreveport, in the northwest. Louisiana adopted this scheme, rather than the one used in the *Robinson* illustrative maps, because it protects the Republican incumbents the State considered most important: Speaker of the House Mike Johnson, House Majority Leader Steve Scalise, and Appropriations Committee member Julia Letlow. See Brief for Appellant in No. 24–109, pp. 13–14, 17.

Not long after SB8 was enacted, another lawsuit was filed, this time in the Western District of Louisiana. A group of plaintiffs (the *Callais* plaintiffs) asserted that SB8, and specifically District 6, was a racial gerrymander that violated the Equal Protection Clause. The plaintiffs from *Robinson* intervened in the litigation, seeking to defend Louisiana's decision to draw a second majority-minority district. Because the *Callais* plaintiffs challenged "the constitutionality of the apportionment of congressional districts," a District Court of three judges was convened to hear the suit. 28 U. S. C. §2284(a). The court held a 3-day preliminary injunction hearing, which was consolidated with a trial on the merits.

Observing that SB8's "second majority-minority district . . . stretches some 250 miles from Shreveport in the northwest corner of the state to Baton Rouge in southeast Louisiana, slicing through metropolitan areas to scoop up pockets of predominantly Black populations from Shreveport, Alexandria, Lafayette, and Baton Rouge," the court concluded that the map effected a racial gerrymander that "violates the Equal Protection Clause." *Callais* v. *Landry*, 732 F. Supp. 3d 574, 582, 588 (WD La. 2024). Judge Stewart of the Fifth Circuit dissented. See *id.*, at 614. The State of

Louisiana and the *Robinson* intervenors appealed the decision directly to this Court, and the Court noted probable jurisdiction. 604 U. S. 1007 (2024). See 28 U. S. C. §1253.

After an initial round of briefing and argument last Term, the Court restored these cases to the calendar for reargument this Term. See 606 U. S. 923 (2025). We ordered supplemental briefing on the following question: "Whether the State's intentional creation of a second majority-minority congressional district violates the Fourteenth or Fifteenth Amendments to the U. S. Constitution." 606 U. S. 993 (2025). And because the State's intentional creation of a second majority-minority district had been prompted by an order suggesting that such a district is required by the Voting Rights Act, our question necessarily implicated the correctness of our longstanding assumption that compliance with the Voting Rights Act may justify what the Constitution generally condemns: the use of race as a basis for government action. This question was pending in several lower-court cases, but in light of the potential impact of those cases on upcoming elections, we concluded that resolution of the question in this suit was appropriate.

III

A

In considering whether the Constitution permits the intentional use of race to comply with the Voting Rights Act, we start with the general rule that the Constitution almost never permits the Federal Government or a State to discriminate on the basis of race. Such discrimination triggers strict scrutiny, and our precedents have identified "only two compelling interests" that can satisfy that standard. *SFFA*, 600 U. S., at 207. One compelling interest, not relevant here, is "avoiding imminent and serious risks to human safety in prisons, such as a race riot." *Ibid.*; see *Johnson* v. *California*, 543 U. S. 499, 512–513 (2005). The only other compelling interest we have found is "remediating specific,

identified instances of past discrimination that violated the Constitution or a statute." *SFFA*, 600 U. S., at 207.

To "rise to the level of a compelling state interest," an effort to remediate past discrimination "must satisfy two conditions." *Shaw II*, 517 U. S., at 909. "First, the discrimination must be 'identified discrimination.'" *Ibid*. (quoting *Richmond* v. *J. A. Croson Co*., 488 U. S. 469, 499, 500, 505, 507, 509 (1989)). In other words, the State or Federal Government must identify the specific instances of past discrimination that it aims to remediate and, in light of that specification, must "'determine the precise scope of the injury it seeks to remedy.'" 517 U. S., at 909 (quoting *Croson*, 488 U. S., at 498 (opinion for the Court)). The States and Federal Government have no compelling interest in generally remediating "past discrimination in a particular industry or region" or "the effects of societal discrimination." 517 U. S., at 909–910. Second, after identifying the specific instance of discrimination, "the institution that makes the racial distinction must have . . . a 'strong basis in evidence' to conclude that [its] remedial action [is] necessary." *Id*., at 910 (quoting *Wygant* v. *Jackson Bd. of Ed*., 476 U. S. 267, 277 (1986)).

"Our acceptance of race-based state action has been rare for a reason." *SFFA*, 600 U. S., at 208. "'Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.'" *Ibid*. (quoting *Rice* v. *Cayetano*, 528 U. S. 495, 517 (2000)). And in redistricting, "where the State assumes from a group of voters' race that they 'think alike, share the same political interests, and will prefer the same candidates at the polls,' it engages in racial stereotyping at odds with equal protection mandates." *Miller*, 515 U. S., at 920 (quoting *Shaw I*, 509 U. S. 630, 647 (1993)).

The question before us now is whether compliance with the Voting Rights Act should be added to our very short list

of compelling interests that can justify racial discrimination. To answer that question, we must understand exactly what §2 of the Voting Rights Act demands with respect to the drawing of legislative districts. We therefore turn to the text of that provision.

B

1

As amended in 1982, §2 states:

> "(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color . . . as provided in subsection (b).
>
> "(b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population." 52 U. S. C. §10301.

This is not the easiest language to parse, and we will therefore break it down in steps. Beginning with subsection (a), we take as given that a legislative districting map may constitute a "standard, practice, or procedure." If that were not so, there would have been no statutory basis for any of

our §2 vote-dilution cases. See *Holder* v. *Hall*, 512 U. S. 874, 895–896 (1994) (THOMAS, J., concurring in judgment). Therefore, subsection (a) means that a districting map may run afoul of §2 if it "results in a denial or abridgement" of the right to vote "on account of race or color."

With that established, subsection (b) explains when such a denial or abridgment occurs: when "the political processes leading to nomination or election" are "not equally open to participation by" members of a racial group of voters "in that [they] have less opportunity than other members of the electorate to . . . elect representatives of their choice." §2(b).

In this complicated verbal formulation, the key concept for present purposes is "less opportunity than other members of the electorate to . . . elect representatives of their choice." *Ibid*. This language sets a baseline against which to assess the opportunity of minority voters: the "opportunity" that "other members of the electorate" have "to elect" their preferred candidates. To understand this baseline, we must nail down the meaning of three terms: "less opportunity," "other members of the electorate," and "elect."

In isolation, "opportunity" could refer to either a desired outcome or a chance to achieve that outcome. As used in §2(b), however, "opportunity" must mean a *chance* to achieve a desired result, because the Voting Rights Act does not guarantee equal outcomes. See *White*, 412 U. S., at 765–766. Accordingly, "less opportunity" must mean a lesser chance. In ordinary usage, "less opportunity" often takes on such meaning. One might say, for example, that men under 6 feet tall have less opportunity to play in the NBA than those who stand at least 6 feet 7 inches (the current median).

The next term—"other members of the electorate"—specifies the comparator to be used in determining whether the group protected by subsection (a) has suffered or is threatened with suffering "less opportunity . . . to elect representatives of their choice." In conceptualizing the members of

this comparator group, we may think of a randomly selected member of the electorate who has particular voting preferences, or we may think of a randomly selected group of voters who share certain voting preferences. These voting preferences may be based on a candidate's party affiliation, ideology, stance on a particular policy issue, personal charisma, or some other characteristic or set of characteristics. But whatever they are, the situation of these randomly selected voters must be compared with that of minority voters alleged to have suffered vote dilution.

This brings us to the final term: "to elect." As used in §2(b), this term must refer to the achievement of electoral victory by casting a ballot.

Putting all these terms together, the baseline is the chance enjoyed by nonminority voters to secure the election of their preferred candidates. What, then, is the chance that any given nonminority voter or group of nonminority voters has to secure the election of a preferred candidate? The answer to this question depends on the voting preferences of other voters in the district. For example, in a district where most voters prefer Democratic candidates, a Republican voter in that district will have a low chance of securing the election of his or her preferred candidate. But that chance would be substantially higher if the district were instead filled with voters who prefer Republican candidates. The roster of voters who end up in a given district depends, in turn, on the districting criteria used by the State in drawing a legislative map.

If a districting map is produced by computer, as is generally the case today, we may think of all the parameters in the algorithm that the mapmaker uses. One necessary parameter would be the number of districts required by law, and another would have to be a range of inter-district population variations that is small enough to comply with the one-person, one-vote requirement. The algorithm might then go on to lay out and assign priorities to whatever

additional permissible criteria the legislature chooses to use. For example, the legislature might want to minimize changes in the prior map, avoid districts with discontiguous territory, and avoid splitting counties or municipalities. It might impose a certain standard of compactness, aim to protect some or all incumbents, or promote the prospects of a particular political party. When this algorithm is used, the map it produces may place a particular voter or group of voters in a district in which a majority generally agrees, generally disagrees, or only sometimes agrees with their voting preferences. But in any event, the "opportunity" of these "members of the electorate" to contribute their votes to a winning cause is whatever opportunity results from the application of the State's combination of permissible criteria.

That is what our randomly selected individual voter and group of voters can expect regarding their opportunity to elect a preferred candidate. And under §2, a minority voter is entitled to nothing less and nothing more.

2

Not only is this the best reading of the statutory text, but it also ensures that §2 of the Voting Rights Act does not exceed Congress's authority under §2 of the Fifteenth Amendment. That provision confers the "power to enforce [the Amendment] by appropriate legislation." Thus, to lie within Congress's authority, §2 of the Voting Rights Act must "effectuate by 'appropriate' measures the constitutional prohibition" in §1 of the Fifteenth Amendment. *Katzenbach*, 383 U. S., at 308.

Our Fourteenth and Fifteenth Amendment jurisprudence delineates what constitutes "appropriate" legislation in the sense relevant here. See *City of Boerne* v. *Flores*, 521 U. S. 507, 518 (1997) (stating that Congress has "parallel power to enforce the provisions" of the Fourteenth and Fifteenth Amendments). In legislation enforcing these Amendments,

"[t]here must be a congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end." *Id.*, at 520.

As the Court has long held, the Fifteenth Amendment bars only state action "'motivated by a discriminatory purpose.'" *Reno* v. *Bossier Parish School Bd.*, 520 U. S. 471, 481 (1997) (quoting *Mobile*, 446 U. S., at 62). So a law that seeks to enforce the Fifteenth Amendment by prohibiting mere disparate impact would fail to enforce a right that the Amendment secures. That is never "appropriate," *Katzenbach*, 383 U. S., at 308, because Congress cannot "enforce a constitutional right by changing what the right is," *City of Boerne*, 521 U. S., at 519.

For this reason, the focus of §2 must be enforcement of the Fifteenth Amendment's prohibition on *intentional* racial discrimination. When §2 is properly interpreted in the way we have outlined, it is sufficiently congruent with and proportional to the Amendment's prohibition. While that interpretation does not demand a finding of intentional discrimination, it imposes liability only when the circumstances give rise to a strong inference that intentional discrimination occurred. Suppose, for example, that the application of a State's districting algorithm yields numerous maps with districts in which the members of a minority group constitute a majority, and suppose that the State cannot provide a legitimate reason for rejecting all those maps and eliminating all majority-minority districts. In such a situation, the inference of racial motivation is strong, and §2 of the Fifteenth Amendment permits the imposition of liability without demanding that the courts engage in the fraught enterprise of attempting to determine whether the state legislature as an institution, as opposed to certain individual members or the State's hired mapmaker, was motivated by race.

Only when understood this way does §2 of the Voting Rights Act properly fit within Congress's Fifteenth

Amendment enforcement power. See, *e.g.*, *I. N. S.* v. *St. Cyr*, 533 U. S. 289, 299–300 (2001) ("[I]f an otherwise acceptable construction of a statute would raise serious constitutional problems, and where an alternative interpretation of the statute is 'fairly possible,' we are obligated to construe the statute to avoid such problems" (citation omitted)). By contrast, interpreting §2 of the Voting Rights Act to outlaw a map solely because it fails to provide a sufficient number of majority-minority districts would create a right that the Amendment does not protect. And such an interpretation would run headlong into the Act's express disclaimer against racial proportionality.

Properly understood, §2 thus does not intrude on States' prerogative to draw districts based on nonracial factors. "Redistricting constitutes a traditional domain of state legislative authority." *Alexander*, 602 U. S., at 7. The Constitution imposes some important restrictions on the States' exercise of this power, but they are otherwise free to draw districts as they please. We have held that they may use traditional districting factors such as "compactness, contiguity," "maintaining the integrity of political subdivisions, preserving the core of existing districts," and protecting incumbents. *Bush*, 517 U. S., at 964; *Miller*, 515 U. S., at 906, 916. Nothing in the Constitution requires States to heed these criteria, of course, and the desirability of some of these criteria might be disputed. But because they are not forbidden by the Constitution, it is up to each State to decide what weight, if any, they warrant.

The same is true with respect to the drawing of districts to achieve partisan advantage. Disapproval of partisan gerrymandering dates back to the founding. See *Rucho* v. *Common Cause*, 588 U. S. 684, 696–697 (2019). But partisan gerrymandering claims are not justiciable in federal court. *Id.*, at 718. "Federal judges have no license to reallocate political power between the two major political parties, with no plausible grant of authority in the

Constitution, and no legal standards to limit and direct their decisions." *Ibid*. Thus, in considering the constitutionality of a districting scheme, courts must treat partisan advantage like any other race-neutral aim: a constitutionally permissible criterion that States may rely on as desired.

For this reason, as we have repeatedly made clear, when a State defends a districting scheme on the ground that it was drawn for partisan purposes, plaintiffs have a "'special'" burden to overcome. *Alexander*, 602 U. S., at 9 (quoting *Cooper*, 581 U. S., at 308). "To prevail," the plaintiff "must 'disentangle race from politics' by proving 'that the former *drove* a district's lines.'" 602 U. S., at 9 (quoting *Cooper*, 581 U. S., at 308). "That means, among other things, ruling out the competing explanation that political considerations dominated the legislature's redistricting efforts. If either politics or race could explain a district's contours, the plaintiff has not cleared its bar." 602 U. S., at 9–10; see *Easley* v. *Cromartie*, 532 U. S. 234, 258 (2001) (*Cromartie II*) (rejecting a racial gerrymandering claim when the plaintiffs failed to show "that the legislature could have achieved its legitimate political objectives in alternative ways that are comparably consistent with traditional districting principles").

A plaintiff may carry its disentanglement burden by offering an alternative map that achieves all the State's objectives—including partisan advantage and any of the State's other political goals—at least as well as the State's map. See *Alexander*, 602 U. S., at 10; *Cromartie II*, 532 U. S., at 258. Today, §2 litigants almost always have the wherewithal to proffer such a map if there is one to be found. See *Abbott* v. *League of United Latin American Citizens*, 607 U. S. ___ (2025) (holding that the lack of an alternative map merits a "dispositive or near-dispositive adverse inference" against a racial-gerrymandering plaintiff); *Alexander*, 602 U. S., at 10 ("[A]ny plaintiff with a strong case

has had every incentive to produce such an alternative map"); see also *Allen*, 599 U. S., at 23 (observing that "modern computer technology" allows challengers to "generate millions of possible districting maps for a given State"). But if a §2 plaintiff cannot disentangle race from the State's race-neutral considerations, including politics, then §2 cannot impose liability.

In short, §2 imposes liability only when the evidence supports a strong inference that the State intentionally drew its districts to afford minority voters less opportunity because of their race. Not only does this interpretation follow from the plain text of §2, but it is consistent with the limited authority that the Fifteenth Amendment confers.

C

This interpretation of §2 does not require abandonment of the *Gingles* framework. We need only update the framework so it aligns with the statutory text and reflects important developments since we decided *Gingles* 40 years ago. Four historical developments are of particular note.

First, vast social change has occurred throughout the country and particularly in the South, where many §2 suits arise. As this Court has recognized, "things have changed dramatically" in the decades since the passage of the Voting Rights Act. *Shelby County* v. *Holder*, 570 U. S. 529, 547 (2013). At the time of the Act's passage, the Nation had faced nearly a century of "entrenched racial discrimination in voting, 'an insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution.'" *Id.*, at 535 (quoting *Katzenbach*, 383 U. S., at 309). But the Voting Rights Act led to "great strides" in the ensuing decades: "voting tests were abolished, disparities in voter registration and turnout due to race were erased, and African-Americans attained political office in record numbers." 570 U. S., at 549, 553. By 2004, the racial gap in voter

registration and turnout had largely disappeared, with minorities registering and voting at levels that sometimes surpassed the majority. *Id.*, at 547–548. Black voters now participate in elections at similar rates as the rest of the electorate, even turning out at higher rates than white voters in two of the five most recent Presidential elections nationwide and in Louisiana. See Supp. Brief for United States as *Amicus Curiae* 13 (citing Dept. of Commerce, Census Bureau, Voting and Registration Tables (Election of Nov. 2024) (Apr. 2025)).

Second, a full-blown two-party system has emerged in the States where §2 suits are most common. *Gingles* arose in the context of a one-party system in which black and white voters had starkly different voting patterns despite their affiliation within the same party. 478 U. S., at 59. In the area involved in *Gingles*, an overwhelming majority of white voters did not vote for any black candidate in the Democratic party primary elections, which for all practical purposes selected the candidates who would ultimately obtain office. *Ibid.* And in general elections, white voters in heavily Democratic areas often ranked black candidates last among Democrats. *Ibid.* Such intra-party disparities showed that black voters had less opportunity to elect their preferred candidate because of their race, not because of their partisan affiliation.

When the vast majority of voters, regardless of race, favors the same political party, a map that is disadvantageous for members of one racial group cannot be explained on the ground that it was drawn to favor a particular political party. But in a State where both parties have substantial support and where race is often correlated with party preference, a litigant can easily exploit §2 for partisan purposes by "repackag[ing] a partisan-gerrymandering claim as a racial-gerrymandering claim." *Alexander*, 602 U. S., at 21.

That brings us to the third significant post-*Gingles* development: this Court's decision in *Rucho*. In that decision, we held that claims of partisan gerrymandering are not justiciable in federal court. See 588 U. S., at 704–710. The upshot of *Rucho* was that, as far as federal law is concerned, a state legislature may use partisan advantage as a factor in redistricting. And litigants cannot circumvent that rule by dressing their political-gerrymandering claims in racial garb. Imposing liability "based on the racial effects of a political gerrymander in a jurisdiction in which race and partisan preference are very closely correlated . . . would, if accepted, provide a convenient way for future litigants and lower courts to sidestep our holding in *Rucho* that partisan-gerrymandering claims are not justiciable in federal court." *Alexander*, 602 U. S., at 21. "Instead of claiming that a State impermissibly set a target Republican-Democratic breakdown, a plaintiff could simply reverse-engineer the partisan data into racial data and argue that the State impermissibly set a particular [racial] target. Our decisions cannot be evaded with such ease." *Ibid*.

The fourth significant development since *Gingles* is the increased use and capabilities of computers in drawing districts and creating illustrative maps. With "modern computer technology" at the ready, §2 plaintiffs invariably invoke the assistance of experts who can generate thousands—or even millions—of maps. *Allen*, 599 U. S., at 23; see *id*., at 33, 36 (involving more than 2 million expert-generated maps). Computer algorithms can "easily contro[l] for partisan preferences" and "other redistricting factors such as compactness and county splits." *Alexander*, 602 U. S., at 25. With the advent of such technology, *if* it is possible to identify an alternative map that fully achieves all the State's legitimate goals while producing "'greater racial balance,'" then a §2 plaintiff can easily do so. *Id*., at 34–35 (quoting *Cromartie II*, 532 U. S., at 258).

In light of these significant developments, it is appropriate to update the *Gingles* framework and realign it with the text of §2 and constitutional principles.

1. First *Gingles* Precondition

The first *Gingles* precondition is that a community of minority voters must be sufficiently numerous and compact to constitute a majority in a reasonably configured district. To satisfy this precondition, many §2 plaintiffs have simply provided illustrative maps with their desired number of majority-minority districts. *E.g.*, *Allen*, 599 U. S., at 20. Such maps, however, are not alone sufficient. They prove only that the State *could* create an additional majority-minority district, not that the State's failure to do so violated §2 of the Voting Rights Act. To make the latter showing, plaintiffs' illustrative maps must satisfy two conditions.

First, in drawing illustrative maps, plaintiffs cannot use race as a districting criterion. If a plaintiff can produce an additional majority-minority district only by using race—a process that would be unconstitutional if a State engaged in such mapmaking, see *Alexander*, 602 U. S., at 6—that illustrative map sheds no light on whether the State acted unconstitutionally by *not* adopting such a map. Thus, an illustrative map in which race was used has no value in proving a §2 plaintiff's case.

Second, illustrative maps must meet all the State's legitimate districting objectives, including traditional districting criteria and the State's specified political goals. If the State's aims in drawing a map include a target partisan distribution of voters, a specific margin of victory for certain incumbents, or any other goal not prohibited by the Constitution, the plaintiffs' illustrative maps must achieve these goals just as well. If not, the plaintiffs would fail to demonstrate that the State's chosen map was driven by racial considerations rather than permissible aims. Only by meeting all the State's legitimate objectives can the illustrative

maps help to "disentangle race" from politics and other constitutionally permissible considerations. *Ibid.*

2. Second and Third *Gingles* Preconditions

To satisfy the second and third preconditions—politically cohesive voting by the minority and racial-bloc voting by the majority—the plaintiffs must provide an analysis that controls for party affiliation. In other words, they must show that voters engage in racial bloc voting that cannot be explained by partisan affiliation. This is, once again, critical for "disentangl[ing] race and politics." *Alexander*, 602 U. S., at 6.

The facts of *Gingles* afford a good example of how a §2 plaintiff can properly meet these preconditions. There, as discussed, black and white voters had dramatically different voting patterns *within* the Democratic party. 478 U. S., at 59. This type of intra-party racial-bloc voting pattern helps to demonstrate that the minority plaintiffs have "less opportunity" than their majority counterparts because of race, not just because of partisan affiliation. 52 U. S. C. §10301(b). By contrast, simply pointing to *inter*-party racial polarization proves nothing, because "'a jurisdiction may engage in constitutional political gerrymandering, even if it so happens that the most loyal Democrats happen to be black Democrats and even if the State were *conscious* of that fact.'" *Alexander*, 602 U. S., at 9 (quoting *Hunt* v. *Cromartie*, 526 U. S. 541, 551 (1999)).

3. Totality of Circumstances

Last, the "totality of circumstances" inquiry must focus on evidence that has more than a remote bearing on what the Fifteenth Amendment prohibits: present-day intentional racial discrimination regarding voting.

Discrimination that occurred some time ago, as well as present-day disparities that are characterized as the ongoing "effects of societal discrimination," are entitled to much

less weight. *Shaw II*, 517 U. S., at 909–910. Far more germane are "current data" and "'current political conditions'" that shed light on current intentional discrimination. *Shelby County*, 570 U. S., at 552–553 (quoting *Northwest Austin Municipal Util. Dist. No. One* v. *Holder*, 557 U. S. 193, 203 (2009)). "[I]n large part *because of* the Voting Rights Act[,] . . . our Nation has made great strides" in eliminating racial discrimination in voting. *Shelby County*, 570 U. S., at 548–549. And if, as a result of this progress, it is hard to find pertinent evidence relating to intentional present-day voting discrimination, that is cause for celebration.

D

Nothing in *Allen* dictates a result that differs from the one we reach today. The decision in that case was based on the State of Alabama's specific argument that its "race-neutral benchmark" was "necessary in any redistricting case." Brief for Appellants in *Allen* v. *Milligan*, O. T. 2022, Nos. 21–1086 etc., pp. 43–44 (Brief for Alabama). Alabama argued that deriving this benchmark—the "median or average number of majority-minority districts" in a race-blind "multimillion-map set," *Allen*, 599 U. S., at 23—required "computer simulations that are technically complicated, expensive to produce, and available to '[o]nly a small cadre of university researchers [that] have the resources and expertise to run' them," *id.*, at 36 (quoting Brief for United States as *Amicus Curiae* 28). Nonetheless, the State contended that its race-neutral benchmark was "the only plausible test" to ensure that §2 stays within "constitutional guardrails." Brief for Alabama 44, 75. We rejected that "single-minded view." *Allen*, 599 U. S., at 26. *Allen*, in short, was about whether Alabama's novel evidentiary standard required a change to our existing §2 precedent. See Tr. of Oral Arg. 8–9. It did not.

Allen did not address the central issue here. We had no occasion in *Allen* to confront the presumption that compliance with §2 may serve as a compelling interest for a State to satisfy strict scrutiny. Indeed, *Allen* did not discuss the Fourteenth Amendment at all. Here, by contrast, it is the linchpin of this suit.[2]

In addition, our decision in *Allen* did not reach two pivotal issues that we now squarely address. First, we left open whether "race-based redistricting" under §2, even if permissible when the Voting Rights Act was enacted in 1982, could "extend indefinitely into the future" despite significant changes in relevant conditions. 599 U. S., at 45 (KAVANAUGH, J., concurring in part); see *Shelby County*, 570 U. S., at 557 (requiring assessment of the constitutionality of the Voting Rights Act in light of current conditions). Second, because the State in *Allen* did not cite partisan goals in defending its map, we did not address whether §2 plaintiffs must disentangle race from politics in proving their case. Indeed, this is our first occasion to address the implications of *Rucho* in a vote-dilution case. Failing to account for political considerations in redistricting, as explained above, can allow plaintiffs to undo a State's legitimate, nonracial decisions under the banner of §2. In light of our answers to these questions left open in *Allen*, we now update the *Gingles* test to ensure a constitutional reading and application of §2.

[2] The dissent claims that the Fourteenth Amendment is irrelevant to our analysis, *post*, at 39–40, n. 11 (opinion of KAGAN, J.), but the dissent appears to forget—or at least tries to lead readers to forget—that *the decision before us is based on the Fourteenth Amendment*. The plaintiffs claimed, and the court below held, that the map enacted by the state legislature in SB8 impermissibly discriminated on the basis of race and thus violated the plaintiffs' rights under the Fourteenth Amendment's Equal Protection Clause. See *supra,* at 16.

IV

Under the updated *Gingles* framework, the facts of this suit easily require affirmance.

Louisiana's enactment of SB8 triggered strict scrutiny because the State's underlying goal was racial. The State never hid the ball: It configured District 6 to achieve a black voting-age population over 50% because it knew that if it failed to do so, the *Robinson* court would very likely find its map unlawful and order the use of something like the *Robinson* plaintiffs' illustrative maps, which would have imperiled one of the influential incumbents the legislature sought to protect. The State's intentional compliance with the court's demands constituted an "express acknowledgment that race played a role in the drawing of district lines." *Alexander*, 602 U. S., at 8. Louisiana therefore had to satisfy the "extraordinarily onerous" standard of proving that its use of race was narrowly tailored to further a compelling governmental interest. *Id.*, at 11.

No compelling interest justifies SB8. Section 2 does not provide a compelling interest because the State did not need to create a new majority-minority district to comply with the Act. That is because at every step of the *Gingles* framework, the *Robinson* plaintiffs failed to prove their §2 case.

On the first *Gingles* precondition, the *Robinson* plaintiffs did not meet their burden because they did not provide an illustrative map that met all the State's nonracial goals. The most obvious deficit in the plaintiffs' illustrative maps was the failure to meet the State's political goals, including incumbency protection. The plaintiffs' preferred map would have placed Representative Letlow in a majority-Democratic district and thus effectively ensured her exit from Congress. See Brief for Appellant in No. 24–109, at 14; 2 App. to Juris. Statement in No. 24–110, p. 673a (placing Representative Letlow in a district with over twice as many registered Democrats as registered Republicans).

The *Robinson* court erroneously concluded that the plaintiffs' illustrative maps protected incumbents because the maps left all six Representatives "in the district where they currently live" and "could avoid incumbent pairing." 605 F. Supp. 3d, at 830. That observation missed the point: An incumbent is not protected if he or she will lose re-election. And because the plaintiffs' illustrative maps failed to protect all the incumbents that the State sought to shield, the plaintiffs did not meet their burden on this precondition.

Nor did the plaintiffs meet their burden on the second and third *Gingles* preconditions. To show racially polarized voting, the *Robinson* plaintiffs offered evidence that black and white voters consistently supported different candidates, but their analysis did not control for partisan preferences. See 605 F. Supp. 3d, at 840.

Even if the *Robinson* plaintiffs had met their burden on the *Gingles* preconditions, they still would have failed to show an objective likelihood of intentional discrimination based on the totality of circumstances. The *Robinson* court went through the nine Senate Report factors, but none of the evidence it cited showed even a plausible likelihood of intentional discrimination by the State. Much of the cited evidence—such as the low number of black Louisianans who have been elected to Congress in recent decades—failed to disentangle race from politics. See 605 F. Supp. 3d, at 845–846. Indeed, the court observed that black voters have been aligned with the Democratic party for decades and that issues discussed by that party appealed to black voters. *Id.*, at 845. Those observations should have undercut, not strengthened, any showing of intentional racial discrimination because race and politics are so intertwined.

The *Robinson* court also relied on the "'sordid history'" of intentional discrimination by Louisianian officials in the decades before the Voting Rights Act's passage. *Id.*, at 846. And it cast aside as "irrelevant" the lack of evidence that

black voters had faced intentional discrimination in recent years. *Id.*, at 847. That analysis had its priorities backwards. The Fifteenth Amendment, which the Voting Rights Act enforces, "is not designed to punish for the past" but works "to ensure a better future." *Shelby County*, 570 U. S., at 553. The focus of §2 must therefore be on "current conditions," not on "decades-old data relevant to decades-old problems." *Ibid*. And none of the historical evidence presented by plaintiffs came close to showing an objective likelihood that the State's challenged map was the result of intentional racial discrimination.

In sum, because the Voting Rights Act did not require Louisiana to create an additional majority-minority district, no compelling interest justified the State's use of race in creating SB8. That map is an unconstitutional gerrymander, and its use would violate the plaintiffs' constitutional rights.

V

The dissent's arguments are fully addressed in the prior sections of this opinion, but in closing we emphasize three points.

First, the dissent states over and over again that our decision requires a §2 plaintiff to prove discriminatory intent. *Post*, at 6, 23–26, 30–32, 37, 39–41, 45–46. What must be shown is exactly what the 1982 amendment of §2 called for. A §2 plaintiff in a vote dilution case must show that a districting scheme denies members of a racial group the same "opportunity" as other voters to elect the candidates they prefer. *Supra*, at 20–22. When that is shown, the circumstances are comparable to those in *White*, 412 U. S. 755, the decision from which the new language added by Congress in 1982 was drawn. That is, the circumstances must give rise to a strong inference of racial discrimination. See *supra*, at 23–26.

Second, contrary to the dissent's assertion, we have not overruled *Allen*. As is our general practice, the *Allen* Court adjudicated the case based on the parties' arguments, and in that case, the State did not defend its map on the ground that it was drawn to achieve a political objective. See *supra*, at 31–32. Here, the State has been forthright from the beginning that its aim was to protect the State's most prominent Republican House members. One may lament partisan gerrymandering, but for the reasons explained in *Rucho*, partisan gerrymandering claims are not justiciable in federal court. And in a racial gerrymandering case like the one before us, race and politics must be disentangled, as even the author of the dissent has acknowledged. See *Alexander*, 602 U. S., at 9; *Cooper*, 581 U. S., at 308 (opinion for the Court by KAGAN, J.) (holding that a racial-gerrymandering plaintiff must "disentangle race from politics and prove that the former drove a district's lines"). That is true regardless whether the case is brought pursuant to the Fourteenth Amendment or the VRA, since §2 of the VRA requires evidence giving rise to a strong inference of intentional discrimination. If race and politics are not disentangled and a §2 claim is cynically used as a tool for advancing a partisan end, the VRA's noble goal will be perverted.

Third, while the dissent wraps itself in the mantle of *stare decisis*, the dissent is unabashedly at war with key precedents. See *post*, at 45 (claiming that *Rucho* was disastrously wrong and should be cabined); *post*, at 5, 8–9, 42–43 (repeatedly criticizing *Shelby County* and citing the dissent in that case); *post*, at 4 (criticizing the Court's decision in *Brnovich*). Respect for precedent cannot be a one-way street.

* * *

The judgment of the District Court is affirmed, and these cases are remanded for proceedings consistent with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

Nos. 24–109 and 24–110

24–109 LOUISIANA, APPELLANT *v.* PHILLIP CALLAIS, ET AL.

24–110 PRESS ROBINSON, ET AL., APPELLANTS *v.* PHILLIP CALLAIS, ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA

[April 29, 2026]

JUSTICE THOMAS, with whom JUSTICE GORSUCH joins, concurring.

I join the Court's opinion in full. This Court should never have interpreted §2 of the Voting Rights Act of 1965 to effectively give racial groups "an entitlement to roughly proportional representation." *Thornburg* v. *Gingles*, 478 U. S. 30, 93 (1986) (O'Connor, J., concurring in judgment); see *ante*, at 23–24. By doing so, the Court led legislatures and courts to "systematically divid[e] the country into electoral districts along racial lines." *Holder* v. *Hall*, 512 U. S. 874, 905 (1994) (THOMAS, J., concurring in judgment). "Blacks [we]re drawn into 'black districts' and given 'black representatives'; Hispanics [we]re drawn into Hispanic districts and given 'Hispanic representatives'; and so on." *Ibid.* That interpretation rendered §2 "repugnant to any nation that strives for the ideal of a color-blind Constitution." *Id.*, at 905–906. Today's decision should largely put an end to this "disastrous misadventure" in voting-rights jurisprudence. *Id.*, at 893.

As I explained more than 30 years ago, I would go further and hold that §2 of the Voting Rights Act does not regulate districting at all. See *id.*, at 922–923. The relevant text prohibits States from imposing or applying a "voting qualification," "prerequisite to voting," or "standard, practice, or procedure," in a manner that results in a denial or abridgement of the right to vote based on race. 52 U. S. C. §10301(a). How States draw district lines does not fall within any of those three categories. *Holder*, 512 U. S., at 922–923 (opinion of THOMAS, J.); *Allen* v. *Milligan*, 599 U. S. 1, 46 (2023) (THOMAS, J., dissenting). The words in §2 instead "reach only 'enactments that regulate citizens' access to the ballot or the processes for counting a ballot'; they 'do not include a State's . . . choice of one districting scheme over another.'" *Ibid.* (quoting *Holder*, 512 U. S., at 945 (opinion of THOMAS, J.)). Therefore, no §2 challenge to districting should ever succeed.

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ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA

[April 29, 2026]

JUSTICE KAGAN, with whom JUSTICE SOTOMAYOR and JUSTICE JACKSON join, dissenting.

Consider the story of a hypothetical congressional district in a hypothetical State, subjected to a redistricting scheme. The example is admittedly stylized, but in its essence simulates the dispute before us, and clarifies the immense issues at stake. The district, let's say, is a single county, in the shape of a near-perfect circle, sitting in the middle of a rectangular State. The State is one with a long history of virulent racial discrimination, and its many effects, including in residential segregation and political division, remain significant even today. The population of the circle district is 90% Black; the rest of the State, divided into five surrounding districts, is 90% White. And voting throughout all those districts is racially polarized: Black residents vote heavily for Democratic candidates, while White residents vote heavily for Republicans. The circle district thus enables the State's Black community to elect a representative of its choice, whom no neighboring community would put in

office. But that arrangement, in this not-so-hypothetical, is not to last. The state legislature decides to eliminate the circle district, slicing it into six pie pieces and allocating one each to six new, still solidly White congressional districts. The State's Black voters are now widely dispersed, and (unlike the State's White voters) lack any ability to elect a representative of their choice. Election after election, Black citizens' votes are, by every practical measure, wasted.

That is racial vote dilution in its most classic form. A minority community that is cohesive in its geography and politics alike, and that faces continued adversity from racial division, is split—"cracked" is the usual term—so that it loses all its electoral influence. Members of the racial minority can still go to the polls and cast a ballot. But given the State's racially polarized voting, they cannot hope—in the way the State's White citizens can—to elect a person whom they think will well represent their interests. Their votes matter less than others' do; they translate into less political voice. Or, as this Court put it recently, the cracking makes "a minority vote unequal to a vote by a nonminority voter." *Allen* v. *Milligan*, 599 U. S. 1, 25 (2023).

And because that is so, Congress in the Voting Rights Act made the practice illegal. Section 2 of that Act guarantees that members of every racial group have an equal "opportunity" to "elect representatives of their choice." 52 U. S. C. §10301(b). That promise arose from a far-too-prominent part of this Nation's history. Even after the Fifteenth Amendment banned racial discrimination in voting, state officials routinely deprived African Americans of their voting rights. Through a seemingly boundless array of mechanisms—most of them facially race-neutral and among them the drawing of district lines—States either prevented Black citizens from casting ballots or ensured that their votes would count for next to nothing. The Voting Rights Act was meant as the corrective. And when this Court construed it too narrowly—insisting that a person suing under

Section 2 had to prove discriminatory intent—Congress amended the law so that it turned solely on discriminatory effects. Under that revised version, a person has a good Section 2 claim if the challenged state action, in the "totality of circumstances," "*results in*" an electoral system "not equally open" to members of his racial group—meaning a system giving those citizens "less opportunity" to "participate in the political process and to elect representatives of their choice." §10301 (emphasis added). And for 40 years now, this Court has recognized that language to encompass districting decisions that, in the way illustrated above, result in vote dilution—the "minimiz[ing]" of minority voters' "ability to elect their preferred candidates." *Allen*, 599 U. S., at 18 (quoting *Thornburg* v. *Gingles*, 478 U. S. 30, 48 (1986)).

But no longer. Under the Court's new view of Section 2, a State can, without legal consequence, systematically dilute minority citizens' voting power. Of course, the majority does not announce today's holding that way. Its opinion is understated, even antiseptic. The majority claims only to be "updat[ing]" our Section 2 law, as though through a few technical tweaks. *Ante*, at 26, 29, 32. But in fact, those "updates" eviscerate the law, so that it will not remedy even the classic example of vote dilution given above. Without a basis in Section 2's text or the Constitution, the majority formulates new proof requirements for plaintiffs alleging vote dilution. Those demands, meant to "disentangle race from politics," *ante*, at 25, leverage two features of modern political life: that racial identity and party preference are often linked and that politicians have free rein to adopt partisan gerrymanders. The first fact—say, that in a given area, Black voters mainly support Democrats and White voters Republicans—was viewed before today as practically an element of a vote-dilution claim, because it indicates that a minority group is politically cohesive enough to elect a preferred representative but will be outvoted by the

majority bloc. See *Allen*, 599 U. S., at 18, 22. The second fact—the result of a prior mistake by this Court—is something every day to regret, not to use as an excuse for stripping minority citizens of their voting rights. But under the majority's new test, when those two facts coexist—which is almost everywhere Section 2 still has purchase—a plaintiff cannot prevail by showing that a redistricting *resulted in* the dilution of minority voting power. Rather, a plaintiff will have to show—contrary to Section 2's clear text and design—that the legislators were "motivated by a discriminatory *purpose*." *Ante*, at 23 (emphasis added). And that, as Section 2's drafters knew, is well-nigh impossible.

Today's ruling is part of a set: For over a decade, this Court has had its sights set on the Voting Rights Act. In 2013, the Court made a nullity of Section 5, the provision of the Act enabling the Department of Justice to review and block new voting rules—including redistrictings—in jurisdictions with a history of voter suppression. See *Shelby County* v. *Holder*, 570 U. S. 529 (2013). Congress had recently, and after lengthy study, reauthorized that preclearance mechanism. It found the scheme still essential to counter the protean techniques States can use to prevent minorities from exercising their fair share of political influence. But this Court thought it knew better. "[T]hings have changed dramatically," the Court explained, *id.*, at 547, ignoring that whether things had changed dramatically *enough* to make the law dispensable was a question better left to its democratically accountable authors. Not surprisingly, a flood of discriminatory voting laws followed, and now only Section 2 stood in the gap. In 2021, the Court did half what was needed to raze that section too. See *Brnovich* v. *Democratic National Committee*, 594 U. S. 647 (2021). Section 2 prohibits not only vote-diluting districting plans, but also discriminatory burdens on the casting of ballots. In a suit involving the latter type of law, the Court invented a new legal standard making Section 2 useless, on the

theory that the statute as written was too "radical." See *id.*, at 674. Since the Court ruled, not a single Section 2 suit has successfully challenged such a restriction on voting, however discriminatory in operation. See R. Hasen, The Stagnation, Retrogression, and Potential Pro-Voter Transformation of U. S. Election Law, 134 Yale L. J. 1673, 1686 (2025).

And finally, today, the last piece—Section 2 as applied to redistricting. The last, and surely the hardest, for just three Terms ago the Court upheld a vote-dilution challenge to a districting map in a case much like this one—preserving Section 2 as a tool to prevent racially discriminatory redistricting. See *Allen*, 599 U. S., at 17. "[W]e decline to adopt," the Court said then, "an interpretation of §2 that would revise and reformulate" our "§2 jurisprudence [of] nearly forty years." *Id.*, at 26. Nothing has changed in the three years since. Yet today, the majority does "revise and reformulate" . . . and destroy. It avails itself again of the tools used before to dismantle the Act: untenable readings of statutory text, made-up and impossible-to-meet evidentiary requirements, disregard for precedent, and disdain for congressional judgment. And in that way it greenlights redistricting plans that will disable minority communities—in Louisiana and across the Nation—from electing, as majority communities can, "representatives of their choice." §10301(b). What if the districts in which minority citizens exercise voting power are sliced up, and the pieces appended to districts in which they can play no meaningful role? The majority tells us that the inability to make out a Section 2 claim will just be a mark of the Nation's progress, and therefore "cause for celebration." *Ante*, at 31.

I dissent. The Voting Rights Act is—or, now more accurately, was—"one of the most consequential, efficacious, and amply justified exercises of federal legislative power in our Nation's history." *Shelby County*, 570 U. S., at 562 (Ginsburg, J., dissenting). It was born of the literal blood

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of Union soldiers and civil rights marchers. It ushered in awe-inspiring change, bringing this Nation closer to fulfilling the ideals of democracy and racial equality. And it has been repeatedly, and overwhelmingly, reauthorized by the people's representatives in Congress. Only they have the right to say it is no longer needed—not the Members of this Court. I dissent, then, from this latest chapter in the majority's now-completed demolition of the Voting Rights Act.

I

I begin with some history—both with what led originally to the Voting Rights Act and with how the current Section 2 came to be. The point is not to deliver a eulogy for the law—though, in truth, the Court's step-by-step slaying of voting rights now makes one appropriate. Rather, the object is to reveal how far today's decision repudiates past, and rightfully still controlling, congressional choices. As I'll later explain, the majority now demands that vote-dilution plaintiffs muster proof of racially discriminatory motive. See *infra*, at 23–32. In that way, the decision echoes an earlier one of this Court, which also held that Section 2 should function as an intent test. See *Mobile* v. *Bolden*, 446 U. S. 55 (1980). But Congress, as you'll soon see, amended Section 2 to reject that view: In light of the way voting discrimination had operated since the Fifteenth Amendment's adoption, Congress instead drafted Section 2 to bar the use of any electoral mechanism that would *result in* minority citizens having less opportunity than non-minority citizens to choose their political representatives.

A

In the wake of the Civil War, Congress enacted and the States ratified the Fifteenth Amendment, to ensure the enfranchisement of Black Americans. Nearly 200,000 Black men had fought in the Union cause: "[W]hen the fight is

over," General Sherman counseled, "the hand that drops the musket cannot be denied the ballot." See A. Keyssar, The Right to Vote 69 (rev. ed. 2009) (Keyssar). And millions more African Americans had just become citizens, giving them a claim on political rights. The Fifteenth Amendment responded with a clarion promise of racial equality in voting: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

The Amendment's passage was a momentous occasion. It appeared to affirm that a mere few years after slavery's end, African Americans had become "equal members of the body politic." E. Foner, The Second Founding 111 (2019) (Foner). President Grant, in a message to Congress, called the Amendment "the most important event that has occurred since the nation came to life." *Ibid.* Black Americans similarly referred to the Amendment as the Nation's "second birth." *Ibid.* At one of the many celebrations ratification sparked, Frederick Douglass rejoiced that those just released from bondage were now "placed upon an equal footing with all other men": "Never," he declared, "was revolution more complete." Keyssar 82; Foner 112.

But all the hosannas were many years premature: "In the century that followed," the Fifteenth Amendment "proved little more than a parchment promise." *Allen*, 599 U. S., at 10. Violence and intimidation were ever-present ways to deny Black citizens their right to vote. But often force was not needed, because state laws could well enough accomplish that goal. Especially in the South, States soon put in place a host of facially race-neutral devices to systematically disenfranchise African American citizens. Poll taxes, literacy tests, "good character" exams, property qualifications, convoluted registration processes—all these and more, when combined with administrative discretion, effectively suppressed the Black vote, without much affecting

the White one. See *South Carolina* v. *Katzenbach*, 383 U. S. 301, 311 (1966). Congress could have acted: the Fifteenth Amendment gave it the "power to enforce" minority voting rights "by appropriate legislation." But for decades it sat mute while facially race-neutral voting rules succeeded in "render[ing] the right to vote illusory" for Black Americans. *Allen*, 599 U. S., at 10. Louisiana's post-Reconstruction rules, to cite the most pertinent example, took less than a decade to drive the number of Black registered voters from 130,000 (in 1896) to 1,342 (in 1904). See Keyssar 91. The numbers did not begin to climb until the end of World War II (when Black soldiers returned from other battlefields), and even then only slowly. See 1 U. S. Commission on Civil Rights Report 42 (1961).

Congress's initial efforts to counter voting discrimination—in the Civil Rights Acts of 1957, 1960, and 1964—did little but prove the difficulty of the task. Each of those statutes authorized the Attorney General "to seek injunctions against public and private interference with the right to vote on racial grounds." *Katzenbach*, 383 U. S., at 313. But time and again, States found ways to evade the ensuing court orders. They "merely switched to discriminatory devices not covered by" the court decrees, finding yet new race-neutral rules (there seemed an endless number) that would maintain the disparity between White and Black voting power. *Id*., at 314. Congress thus learned of the "unremitting and ingenious" methods States could use to resist African American enfranchisement. *Id*., at 309. Protecting minority voting was like "battling the Hydra": "Whenever one form of voting discrimination was identified and prohibited, others sprang up in its place." *Shelby County*, 570 U. S., at 560 (Ginsburg, J., dissenting).

The Voting Rights Act of 1965 represented Congress's most determined effort to stop the cycle. Selma's Bloody Sunday had galvanized the Nation to finally confront racial disfranchisement. Now Congress enacted legislation

making use of a double-barreled approach to ensure the Fifteenth Amendment's enforcement. Section 5 of the Act required that States or localities with a history of racial voter suppression obtain Department of Justice approval before implementing new voting districts or rules. An administrative review process thus would impede—at least, until this Court in *Shelby County* stopped it—the ever-inventive efforts of certain jurisdictions to deny or minimize minority voting. Meantime, Section 2 provided judicial recourse for victims of voting discrimination in all jurisdictions. That provision prohibited any election rule or practice that would "deny or abridge" the right to vote, thus imposing a "permanent, nationwide ban on racial discrimination in voting" (or so the Court assured the country when disabling Section 5). 42 U. S. C. §1973 (1970); *Shelby County*, 570 U. S., at 557. Taken together, Congress thought, the two mechanisms could "forever banish the blight of racial discrimination in voting"—effectively countering States' constantly morphing methods of suppressing minority ballots. *Allen*, 599 U. S., at 10.

B

After the Act's passage—and partly because of its initial success—those methods more and more focused on vote dilution. The Act led to a large increase in minority voting registration: In just five years, almost as many African Americans registered to vote in six Southern States as in the entire century before 1965. See C. Davidson, The Voting Rights Act, in Controversies in Minority Voting 21 (B. Grofman & C. Davidson eds. 1992). And the Act mostly halted state efforts to prevent those new voters from casting ballots at all. So the States, as Congress noted when reauthorizing Section 5 in 1975, "resorted to [measures] which would dilute increasing minority voting strength." *City of Rome* v. *United States*, 446 U. S. 156, 181 (1980) (quoting H. R. Rep. No. 94–196, pp. 10–11 (1975)). Efforts to

minimize minorities' voting power took several forms. One was to use at-large voting. A majority-White municipality, for example, might exclude all African Americans from its city council by scrapping geographic districts in favor of citywide elections. See *Perkins* v. *Matthews*, 400 U. S. 379, 389 (1971). Another common dilution mechanism was just to redraw single-member districts. Minority citizens could be "packed": A racial community large enough to constitute a majority in two normal districts—and therefore capable of electing two representatives—might be crammed into a single district instead. See *Voinovich* v. *Quilter*, 507 U. S. 146, 153–154 (1993). Or else minority citizens could be "cracked," as in the hypothetical introducing this opinion. See *supra*, at 1–2. Then, voters would be dispersed across multiple districts so they could not muster a majority in any. See *Voinovich*, 507 U. S., at 153. In either event, a minority citizen's vote would "carry less weight than" it did previously or than it would "in another, hypothetical district." *Gill* v. *Whitford*, 585 U. S. 48, 67 (2018).

This Court soon held, in *White* v. *Regester*, 412 U. S. 755 (1973), that such practices could be unlawful because of their effects—more specifically, because they result in unequal electoral opportunities for minority citizens. (Attend closely here, because *White* becomes the template for the current version of Section 2.) The plaintiffs in *White* challenged a Texas districting scheme that established multimember districts in two counties with concentrated urban populations, even while using single-member districts nearly everywhere else. The effect of the scheme, the plaintiffs charged, was to "minimize the voting strength of racial groups"—both African Americans and Mexican Americans—by putting them in a broad county-wide district in which their votes would be swamped. *Id.*, at 765, 767. In addressing that claim, the Court initially stated that it was "not enough" to show that the districting scheme prevented the minority groups from achieving proportional

representation—legislative seats in proportion to their population. *Id.*, at 765. But that did not mean that the plaintiffs had to show that the State had acted with discriminatory intent. Rather, the Court held, the plaintiffs could prevail on a different kind of showing that a scheme's effect was to "minimize the voting strength of racial groups." *Ibid*. Under the Court's test, there was unlawful vote dilution if "the political process[]" was "not equally open to participation" by a racial group, so that "its members had less opportunity" than others "to participate in the political processes and to elect legislators of their choice." *Id.*, at 766.

The Court in *White* found that test satisfied under a "totality of the circumstances" inquiry, which looked to how the multi-member districting scheme operated when "overlaid" on historical, social, and political "realities." *Id.*, at 769. As part of that analysis, the Court noted the "history of official racial discrimination in Texas" and the persistent use of "racial campaign tactics" in elections. *Id.*, at 766–767. But beyond such intentional race-based action, the Court looked to how the current or "residual" effects of past discrimination, including disparities in matters like housing, "education [and] employment," had political consequences. *Id.*, at 768. Similarly, with respect to Mexican Americans, the Court considered evidence of "cultural and language barrier[s]" to political participation. *Ibid.* And finally, the Court homed in on political data itself, including voter registration and the infrequent election of Black or Hispanic candidates in majority-White districts. See *id.*, at 766, 768–769. When all those factors were combined—in what the Court called "an intensely local appraisal"—the "impact" of the multi-member districts clearly emerged: Those districts denied minority voters equal "access to the

political process[]," "specifically in the election of [state] representatives." *Id.*, at 767–769.[1]

Just seven years later, however, the Court did an about-face, now requiring a showing of discriminatory intent to succeed on a vote-dilution claim. In *City of Mobile* v. *Bolden*, the plaintiffs challenged an at-large election system for a three-member city commission. Under that system, Mobile's Black population, which made up 35% of the total, had never managed to elect a candidate of its choice. But the Court did not embark on the kind of analysis employed in *White* to determine whether the system diluted Black votes. Instead, the Court's controlling opinion held that Section 2 merely "restated the prohibitions" of the Fifteenth Amendment, which barred only intentional discrimination. 446 U. S., at 61 (plurality opinion); see *id.*, at 62–65. And the plaintiffs had produced no evidence of discriminatory motive. They could, the Court noted (as though it were the end of the matter), "register and vote without hindrance." *Id.*, at 65. That their chosen candidates happened to always lose was beside the point. Because they could not show that

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[1] The majority's description of the *White* Court's "totality of the circumstances" analysis gives a false impression. According to the majority, "the Court's rationale rested on evidence that gave rise to an obvious inference" that the State acted with "discriminatory purpose or intent." *Ante*, at 6. That might be so of pieces of the evidence the Court relied on—for example, the use of "racial campaign tactics" by a party-affiliated organization. *Ante*, at 7; 412 U. S., at 767. And it is of course true that evidence of disparate impact can be of such magnitude (in this sphere as in others) as to indicate illicit intent. But the Court was crystal clear that its review of local conditions encompassed things "neither . . . improper nor invidious." *Id.*, at 766. And indeed, its opinion reads more like a fine-grained report on political and social conditions than (as the majority would have it) a criminal bill of particulars. Most important (and as even the majority admits), the Court never suggested that the ultimate point of its analysis was to gauge the State's intent. *Ante*, at 6. Rather, the point was just what the Court said: to decide whether Texas's districting scheme in fact "operated to dilute [minorities'] voting strength." 412 U. S., at 759.

the city had "*purposeful[ly]* exclu[ded]" them "from participati[ng] in the election process," the Court held, they had no viable Section 2 suit. *Id*., at 64 (emphasis added); see *Allen*, 599 U. S., at 11 (similarly describing *Bolden*).

Bolden, as the majority notes, triggered "an avalanche of criticism, both in the media and within the civil rights community." *Ante*, at 5 (quoting *Allen*, 599 U. S., at 11). This Court recently noted a few of the assessments. "[T]he biggest step backwards in civil rights" to come from the Court since the Voting Rights Act's passage. *Allen*, 599 U. S., at 11 (quoting N. Y. Times, Apr. 23, 1980, p. A22). And a "major defeat for blacks and other minorities fighting electoral schemes that exclude them from office." *Allen*, 599 U. S., at 11–12 (quoting Washington Post, Apr. 23, 1980, p. A5).

The problem, as even the majority recognizes, was "that a focus on discriminatory intent, rather than discriminatory effects, would defeat worthy claims because of the difficulty of proving intentional discrimination." *Ante*, at 5. It is the rare legislature, as the history of voting discrimination shows, that cannot camouflage racial targeting with race-neutral justifications. For that reason, *Bolden* brought vote-dilution claims to a near-standstill. The Department of Justice shelved the dilution cases it had intended to bring; and private plaintiffs filed just 10 such suits in the next year, compared with 60 the year before. See A. Berman, Give Us the Ballot 135 (2015). States, it seemed, could make minority votes meaningless without ever running into the Voting Rights Act.

But then Congress stepped in, to reverse *Bolden*'s intent requirement—and create the statute existing today. The House began the process with a simple change to Section 2's text. It replaced the words "to deny or abridge" with the phrase "in a manner which results in a denial or abridgement of," to make the section look like this:

> "No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision *in a manner which results in a denial or abridgement of* the right of any citizen of the United States to vote on account of race or color." §10301(a) (emphasis added).

But a Senate subcommittee led by Senator Orrin Hatch objected. It thought the House's amendment would always require racially proportional representation, and advocated keeping Section 2—as construed by *Bolden*—just as it was. The impasse was resolved by Senator Bob Dole in the Judiciary Committee, through the addition of a subsection codifying the *White* decision. Recall that *White* had rejected proportional representation as the standard for vote-dilution claims. See *supra*, at 10–11. Now Senator Dole—while retaining the House's "results in" language—added a provision to do the same thing. See §10301(b) ("[N]othing in this section establishes a right to have members of a [racial group] elected in numbers equal to their proportion in the population"). And yet more important for present purposes, Senator Dole took language from *White* to clarify when a State would violate the ban on electoral rules that "result[] in a denial or abridgement" of voting. A violation is established, the Dole (but really the *White*) language stated,

> "if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a [racial group] in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." §10301(b).

That elaboration of when the effects of an electoral rule would cause a violation of Section 2 received bipartisan support. The amended Section 2 passed both the House and

the Senate by huge majorities; and in June 1982, President Reagan signed it into law.

An "oft-cited" Senate Report explained just what the 1982 amendment had accomplished: The new Section 2 repudiated *Bolden*'s intent requirement and adopted *White*'s "results test." *Brnovich*, 594 U. S., at 658; S. Rep. No. 97–417, p. 27 (1982) (Senate Report). An intent test, the Report stated, imposed "an inordinately difficult burden for plaintiffs." *Id.*, at 36. Even when state actors had purposefully discriminated, they would likely be "ab[le] to offer a non-racial rationalization," supported by "a false trail" of "official resolutions" and "other legislative history eschewing any racial motive." *Id.*, at 37. The proof lay in what had happened after *Bolden*, when even suits involving "egregious" vote dilution had failed. Senate Report, at 37; see *id.*, at 26–27, 37–39. And in any event, the Report continued, the *Bolden* intent test "ask[ed] the wrong question." Senate Report, at 36. The right question was instead the one *White*—and now the statute—asked: "whether minorities have equal access to the process of electing their representatives." Senate Report, at 36. In applying the new Section 2, the Report instructed, courts should "assess the impact of the challenged" practice based on "objective factors" to determine whether it worked to "minimize or cancel out the voting strength and political effectiveness of minority groups." *Id.*, at 27–28.

The Senate Report also noted this Court's holdings recognizing Congress's constitutional authority to focus the Section 2 standard on results. It is "hornbook law," the Report explained, that the Fifteenth Amendment "grant[s] Congress broad power" to enact legislation "reasonably adapted to protect citizens against the risk" that their constitutional right to vote will be denied. *Id.*, at 39–40 (citing *Katzenbach*, 383 U. S., at 326). So even though the Fifteenth Amendment itself barred only intentional discrimination, Congress could enact legislation extending to

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discriminatory effects. Indeed, the Report observed, this Court had held as much two years earlier, when it approved Section 5's broad effects-based scope. Senate Report, at 40 (citing *City of Rome*, 446 U. S. 156). In Section 2 as well, proper enforcement of the Fifteenth Amendment necessitated a results test. For one thing, voting rules with "discriminatory results perpetuate the effects of past purposeful discrimination." Senate Report, at 40. And anyway, the Report again emphasized, the difficulties of proving motive would "create a substantial risk that intentional discrimination" would go "undetected, uncorrected and undeterred." *Ibid*.

So Congress made a choice that was "as considered as considered comes": to ensure that "results alone could lead to liability" under Section 2. *Brnovich*, 594 U. S., at 703 (KAGAN, J., dissenting). Congress in 1982 knew all about this Nation's history of racially discriminatory voting practices. It knew that even when States could no longer deny ballots to minority citizens, they might still try to give their votes no or minimal weight. And Congress knew that those efforts did not come tagged as race-based. To the contrary, they were race-neutral on their face, and likewise were publicly backed by race-neutral justifications. So Congress renounced, as strongly as it could, *Bolden*'s decision to limit Section 2's ban to intentional discrimination. It made sure instead, as this Court recently explained, that Section 2 would "turn[] on the presence of discriminatory effects." *Allen*, 599 U. S., at 25; see *id*., at 44 (KAVANAUGH, J., concurring in part) ("[T]he text of §2 establishes an effects test, not an intent test"). And more precisely, that the section would turn on whether, given all relevant circumstances, an electoral rule would leave minority voters with "less opportunity" than non-minority voters to "elect representatives of their choice." §10301(b).

There is a way to decide this case consistent with that fully permissible congressional choice, and a way not. In

the next part, I show how 40 years' worth of this Court's caselaw would address the vote-dilution claim involved here. After that, I address what today's majority does.[2]

II

This Court first construed the amended Section 2 in *Thornburg* v. *Gingles*, establishing there a framework—like the new statute itself—based on *White*. That framework has governed vote-dilution claims for the last four decades. And indeed, just three years ago, in *Allen*, we unequivocally reaffirmed it when sustaining a vote-dilution challenge to an Alabama redistricting scheme. See 599 U. S., at 19–23. Had we proceeded along the same road today, we would have treated the vote-dilution challenge to Louisiana's scheme in the same way.

"*Gingles* began," as *Allen* recently noted, "by describing what §2 guards against." 599 U. S., at 17. "The essence of a §2 claim," *Gingles* explained, is that an electoral rule or practice "interacts with social and historical conditions," generally caused by past intentional discrimination, "to cause an inequality in the opportunities enjoyed by black and white voters." 478 U. S., at 47. Such an inequality exists when the challenged rule "operates to minimize or cancel out [minority voters'] ability to elect their preferred

[2] A wrinkle here is that the suit directly before us involves a claim of racial gerrymandering under the Fourteenth Amendment, not of vote dilution under Section 2. See *ante*, at 16–17. (As I will later discuss, the elements of the two have always been poles apart—with a dilution claim turning on an election rule's effects and a gerrymandering claim turning on its purpose. See *infra*, at 26–27, and n. 6). But this gerrymandering suit arose out of a prior dilution suit's success: The plaintiffs here attack the districting plan that Louisiana devised to remedy the vote dilution previously found. See *ante*, at 12–17. And the majority chooses to resolve this suit by focusing on the earlier one—holding that the plaintiffs here succeed because the court in the earlier litigation did not apply the majority's brand-new understanding of Section 2. See *ante*, at 32–35. So I too focus on how to decide a vote-dilution claim under Section 2, and do not address other issues implicated in a gerrymandering suit.

candidates." *Id.*, at 48. And the risk of that "minimiz[ation]"—or dilution—is greatest when "minority and majority voters consistently prefer different candidates" and the minority voters are submerged in a majority voting population that "regularly defeat[s] [their] choices." *Ibid.*; see *Allen*, 599 U. S., at 17–18.[3]

To get at that issue, *Gingles* initially requires a Section 2 plaintiff asserting vote dilution to satisfy three "preconditions." 478 U. S., at 50. First, the minority group allegedly harmed must be "sufficiently large and geographically compact to constitute a majority in a reasonably configured district"—meaning, one "comport[ing] with traditional districting criteria." *Allen*, 599 U. S., at 18 (alteration omitted). Second, the identified minority group must be "politically cohesive," meaning that its members mainly vote for the same parties or candidates. *Gingles*, 478 U. S., at 51. And third, the majority in the district must "vote[] sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." *Ibid.* Those three factors, taken together, serve a gatekeeping function. They permit a vote-dilution suit to proceed only if a plaintiff can show that minority voters would elect a "representative of [their] own choice" in some reasonably drawn electoral district, but

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[3]The majority, in describing the legal background to this case, briefly criticizes our *Gingles* opinion for spending too little time with Section 2's text and too much with the Senate Judiciary Committee Report. See *ante*, at 7. The author of today's decision made the same point in *Allen*—in his then-dissenting opinion. See 599 U. S., at 103 (opinion of ALITO, J.). But the erstwhile majority there rejected the argument, explaining that, whatever changes have occurred in statutory interpretation, "*Gingles* effectuates the delicate legislative bargain that §2 embodies." *Id.*, at 39, n. 10. It does so, as will soon become evident, by grounding its framework in Section 2's ban on electoral rules that, in all the circumstances, "result[] in" giving minority voters a "less[er] opportunity" than others to "elect representatives of their choice." §10301. And it does so, too, by relying on (indeed, partly copying) this Court's analysis in *White*—which was the indisputable basis for Senator Dole's textual compromise. See *Allen*, 599 U. S., at 12–13; *supra*, at 14–15.

that racially polarized voting in the district as actually drawn will usually "impede[] [their] ability" to do so. *Allen*, 599 U. S., at 18; *Gingles*, 478 U. S., at 51.

That threshold test is not easily met. To satisfy the first factor, a plaintiff will have to suggest alternative districting plans complying with such traditional criteria as compactness, contiguity, and respect for geographic boundaries and political subdivisions. And as *Allen* recently described, the inability to offer such substitute maps has doomed a good many vote-dilution suits. See 599 U. S., at 27–29 (citing *Shaw* v. *Reno*, 509 U. S. 630 (1993); *Miller* v. *Johnson*, 515 U. S. 900 (1995); *Bush* v. *Vera*, 517 U. S. 952 (1996); *Abbott* v. *Perez*, 585 U. S. 579 (2018)). Similarly, to satisfy the second and third conditions, the plaintiff must show the existence of racially polarized voting, generally through "statistical evidence of historic voting patterns." *League of United Latin American Citizens* v. *Perry*, 548 U. S. 399, 500 (2006) (ROBERTS, C. J., concurring in part and dissenting in part). It is never enough in a Section 2 suit to rely on "assumptions" about how individuals will "vote based on their ethnic [or racial] background." *Ibid*. Instead, "plaintiffs must prove" racial bloc voting. *Gingles*, 478 U. S., at 46. Given those requirements—and the steady decline in both residential segregation and racially polarized voting, which make them harder to meet—only strong vote-dilution claims can today get out of the gate. See Brief for Ellen D. Katz et al. as *Amici Curiae* 7–8 (Katz Brief); *Allen*, 599 U. S., at 26–29; *infra*, at 43–44.

And beyond *Gingles*'s preconditions lies the "totality of circumstances" inquiry that migrated from *White* to Section 2's text. §10301(b); see *supra*, at 14–15. To find, under that test, that the political process is not "equally open" to minority voters, a court must make (so *Gingles* held, lifting from *White*) "an intensely local appraisal" of how the challenged electoral rule operates against the backdrop of "past and present [racial] realit[ies]." §10301(b); *Gingles*, 478

U. S., at 79; see *White*, 412 U. S., at 769. The "objective factors" to be considered include the State's "history of voting-related discrimination," its experience of "racial appeals in political campaigns," and its track record of electing minority citizens to office. *Gingles*, 478 U. S., at 44–45; see *White*, 412 U. S., at 769; Senate Report, at 28–29. So too, the inquiry may involve appraising the "effects of past discrimination" on economic and social conditions that "hinder [minority citizens'] ability to participate effectively in the political process." *Gingles*, 478 U. S., at 45; see *White*, 412 U. S., at 768. Equally, though, the totality test weighs the strength of a "State's interest in maintaining" a given electoral practice. *Houston Lawyers' Assn.* v. *Attorney General of Tex.*, 501 U. S. 419, 426 (1991). And the variety of matters to be assessed does nothing to detract from the test's bite. By digging deep into local context, the totality inquiry implements Congress's directive that a simple lack of proportional representation cannot make out a Section 2 claim. See *Allen*, 599 U. S., at 26–30. And when superimposed on *Gingles*'s threshold conditions, the test ensures that Section 2 will work as intended: to limit liability to cases where electoral rules in fact "deny minority voters equal opportunity" in the political process. *Allen*, 599 U. S., at 30 (alteration omitted).

Understood in that way, *Allen* explained just three years ago, "*Gingles* has governed our Voting Rights Act jurisprudence since it was decided." *Id.*, at 19. More: "Congress has never disturbed our understanding of §2 as *Gingles* construed it." *Ibid.* And more: "[W]e have applied *Gingles* in one §2 case after another, to different kinds of electoral systems and to different jurisdictions in States all over the country." *Ibid.* (citing no fewer than 10 Supreme Court decisions). And yes, still more, this time invoking "*stare decisis*": "[W]e decline to adopt an interpretation of §2 that would revise and reformulate" the *Gingles* framework "that has been the baseline of our §2 jurisprudence for nearly

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forty years." *Id.*, at 26, and n. 3. One might even have thought the matter settled. But see *ante*, at 1–37.[4]

In that settled view, a paradigmatic case of a Section 2 violation is the cracked-circle hypothetical opening this dissent. See *supra*, at 1–2. If you refresh your memory, you'll instantly see why. The Black electorate could form—indeed, did form—a reasonably configured district: The circle in the middle of the State complies with traditional districting criteria of contiguity, compactness, and respect for political subdivisions. So *Gingles*'s first precondition is met. And the racially polarized voting in the State ensures that the second and third are met as well. The Black electorate within the circle and the White population surrounding it vote as blocs and for different candidates. So when the Black voters are dispersed among six predominantly White districts, they lose all their electoral influence. Or, as we recently described such a situation: Black voters have "the potential to elect a representative of [their] own choice in a possible district," but "racially polarized voting prevents [them] from doing so in the district as actually drawn because [they are] submerged in a larger white voting population." *Cooper* v. *Harris*, 581 U. S. 285, 302 (2017) (alteration omitted). That means a Section 2 suit will be decided

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[4]The majority's view that *Allen* "did not address the central issue here," *ante*, at 31—the meaning of Section 2 and appropriate content of the *Gingles* framework—is one of the more perplexing aspects of today's decision. I will have more to say about that assertion below, see *infra*, at 35–37, 39, n. 11, but for now, I invite readers to do a bit of exploration on their own. Just search for every quotation from *Allen* in this opinion—in this paragraph of course, but all the rest too—and ask yourself whether it is credible that *Allen* "did not address" the question of "our understanding of §2 as *Gingles* construed it." *Ante*, at 31; *Allen*, 599 U. S., at 19. Better yet, go read all of *Allen*. You will find that, on page after page, it discusses precisely that issue—and offers a reading of Section 2 and *Gingles* perfectly consonant with this dissent, and fundamentally at odds with today's majority opinion. See, *e.g.*, *Allen*, 599 U. S., at 11–14, 17–19, 24–30, 37–38, 39, 41; *id.*, at 30–33 (plurality opinion).

based on the totality of the circumstances. And, as to that, I have posited facts making the inquiry straightforward: Recall that the hypothetical State has a long history of racial discrimination, which continues to show up, in manifold ways, in social conditions and political activity. So Section 2 (before today) would have stopped the hypothesized cracking plan and, in so doing, worked as Congress intended—to give Black voters no less a chance than their White neighbors to participate in the political process and elect their preferred representatives.

And my hypothetical is not so different from the Louisiana districting scheme that was challenged in the dilution suit underlying this case. It is just that instead of arguing about the need for one majority-minority district, the plaintiffs in that suit were asserting the need for a second. As the majority relates, Louisiana drew its post-2020 census map with one mainly Black district and five mainly White ones. See *ante*, at 11–12. (For context, Louisiana's population is about one-third African American.) The dilution plaintiffs alleged that there was another natural (*i.e.*, politically cohesive and geographically contiguous) Black-majority district which the Louisiana Legislature had effectively cracked. See *ante*, at 15 (showing the plaintiffs' proposed district). The residents of that possible district wound up dispersed among the State's other districts, where (given racially polarized voting) their preferences would count for nothing. According to the plaintiffs, that plan violated Section 2 by giving Black voters less opportunity than their White counterparts to elect representatives of their choice.

Based on a voluminous record, including mountains of statistical data and five days of testimony, the District Court found that the plaintiffs were likely to prevail. See *Robinson* v. *Ardoin*, 605 F. Supp. 3d 759, 766 (MD La. 2022). Their proposed second district—in which Black voters could "easily" form a majority—was reasonably configured according to traditional districting criteria. *Id.*, at

821; see *id*., at 827–831. And without that district, Black voters' choices would be swamped: The evidence showed that as few as 12% of White voters in Louisiana would support Black-preferred candidates in statewide contests. *Id*., at 841–842. With the *Gingles* preconditions thus satisfied, the court assessed the totality of the circumstances and found that it, too, supported relief. See, *e.g*., 605 F. Supp. 3d, at 845 (recounting, among other things, the State's long history of racial discrimination, including that "Louisiana has never had a Black Congressperson elected from a non-majority-Black district"). And so the court ordered the State to draw a new map.

The court thus applied, in an altogether unexceptionable way, the framework used for the last 40 years to evaluate Section 2 vote-dilution claims. The court followed *Gingles*, along with the two fistfuls of this Court's decisions affirming its framework. See *supra*, at 20–21. And most crucially, the court followed Section 2 itself, because all our prior decisions faithfully implemented the fundamental choice Congress made in amending that section: to make liability turn (as the Court did in *White*) not on the motives behind but on the "results" of an electoral practice like districting.

III

The majority today does just the opposite. Under the guise of "updat[ing]" the *Gingles* framework, *ante*, at 26, 29, 32, the majority transforms it—and in so doing, betrays Congress's choice. At each of *Gingles*'s steps, the majority imposes new proof requirements, serving a common objective: to convert an effects test, as commanded by Congress, into a purpose test, as preferred by this Court. Nearly half a century ago, Congress amended Section 2 to repudiate *Bolden*'s limitation of that provision's reach to intentional discrimination. See *supra*, at 13–16. Today's decision returns Section 2 to what it was under *Bolden*. Now, as then, vote-dilution plaintiffs will have to show more than vote

dilution: They will have to show, as well, race-based motive. Now, as then, that requirement will make success in their suits nearly impossible, even if an electoral practice has in fact "minimize[d] or cancel[ed] out" minority citizens' "voting strength." *Allen*, 599 U. S., at 25 (quoting *Gingles*, 478 U. S., at 47). It is as if Congress had never amended Section 2. I first show how that is the consequence of today's "updating"; I then address how the majority attempts to justify what it has done. The upshot is that the majority, without any good reason, has overturned Congress's studied determination—along with this Court's precedents upholding it—about how to rectify racial inequalities in electoral politics.

A

Let's first drop the majority's misleading label. What the majority gives us today is not an "updated *Gingles* framework." *Ante*, at 32. It is its own thing, deserving of its own name. Maybe the *Callais* contrivance? Or if that seems too immediately pejorative, just say that what the majority does today is to impose the *Callais* requirements.

At their base, all those requirements have the same function: They force a vote-dilution plaintiff to prove that a State adopted an election rule with racially discriminatory intent. On the majority's view, a rule diluting minority votes—even making them count for nothing—poses no problem if motivated by "nonracial factors." *Ante*, at 24. So a State has free rein to "use traditional districting factors" even when they minimize or cancel out minority votes. *Ibid*. And yet more practically important, a State may (so says the majority) draw districts for any political purpose, including for a purely "partisan purpose[]"—that is, to increase one party's electoral strength—no matter their racial effects. *Ante*, at 25. For that reason, the majority insists, a Section 2 plaintiff has "a special burden to overcome." *Ibid.* (quoting *Alexander* v. *South Carolina State Conference of*

the NAACP, 602 U. S. 1, 9 (2024) and *Cooper*, 581 U. S., at 308). The plaintiff "must disentangle race from politics by proving that the former drove a district's lines." *Ante*, at 25 (quoting *Alexander*, 602 U. S., at 9, and *Cooper*, 581 U. S., at 308; emphasis deleted). In other words, he must show that the State, in drawing that district, had not a political but instead a racial motivation—that it acted for the specific purpose of weakening a minority group's voting influence. The new *Callais* requirements, as I'll soon discuss, are all (concededly) designed to ensure that the plaintiff is held to that "special burden"—which, as the Congress amending Section 2 well understood, is nearly insuperable.[5]

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[5] In responding to this dissent, the majority (on its opinion's penultimate page) appears to disclaim this reading. The majority notes first (and this is true enough) that "the dissent states over and over again that our decision requires a §2 plaintiff to prove discriminatory intent." *Ante*, at 35. And then the majority's response: No, a vote-dilution plaintiff need show only that a redistricting "denies members of a racial group the same 'opportunity' as other voters to elect the candidates they prefer." *Ibid*. That formulation is right, and as shown above, it demands an inquiry into the *effects* of a scheme on voters' opportunity to elect candidates. See *supra*, at 14–15, 17–22. Similarly, the majority claims that it is doing just what *White* did. See *ante*, at 35. And *White*, recall, made an "intensely local appraisal" of whether an electoral scheme, when "overlaid" on historical, social, and political "realities," in fact operated to dilute minority voting strength—in other words, applied an effects test. See *supra*, at 10–12, and n. 1. So the majority closes its opinion by suggesting it is *not* requiring a vote-dilution plaintiff to present evidence of "discriminatory intent." *Ante*, at 35. Which, if true, would be welcome news. And welcomer still if lower courts took those last words seriously and allowed Section 2 claims to succeed even absent proof of race-based purpose. But I suspect they will not. Because they, like I, will have read the many pages leading up to the majority's coda. And those pages, both in setting out and in explaining the *Callais* requirements, make clear that a Section 2 plaintiff has a "special burden" to "demonstrate" that racial rather than political (or other) reasons "drove a district's lines"—*i.e.*, that "the State *intentionally* drew its districts to afford minority voters less opportunity." *Ante*, at 25–26, 29 (emphasis added). So what the majority hopes to accomplish by its last-minute attempt to associate itself with an effects inquiry is something of a mystery. To try to disguise what it is

But before becoming so granular, it is worth asking what precedents support the majority's insistence on evidence of racially discriminatory intent. By now, I hope, no reader will think those precedents concern Section 2. Our Section 2 precedents are quite to the contrary: It is "patently clear," *Allen* recently summarized, that because Section 2 liability "turns on the presence of discriminatory effects, not discriminatory intent," a plaintiff need not demonstrate a "purpose of racial discrimination." 599 U. S., at 25 (quoting *Gingles*, 478 U. S., at 71, n. 34). So the majority must go further afield. Its citations regarding the plaintiff's "special burden" of showing that race rather than politics (or anything else) motivated the State are from this Court's racial-gerrymandering jurisprudence. See *ante*, at 25 (citing *Alexander* and *Cooper*). But racial gerrymandering claims and vote-dilution claims are, despite some superficial similarities, different legal beasts. Contra, *ante*, at 36 (confusing and conflating the two). Plaintiffs bringing the former need not have suffered vote dilution, nor do they invoke Section 2. Their claim is simply that purposeful racial sorting—all on its own, irrespective of any vote-minimizing effects—violates the Fourteenth Amendment.[6] In such a case

really doing? To somehow absolve itself of responsibility? Or could it just be that, in responding to this dissent, the majority can do nothing but agree?

[6] The first case to recognize a racial gerrymandering claim was *Shaw* v. *Reno*, 509 U. S. 630 (1993). There, five White residents objected to the North Carolina Legislature's decision to create two majority-Black districts. But the plaintiffs did not—and could not—argue that the map diluted their votes. See *id*., at 641. Instead, they contended that the legislature's "deliberate [race-based] segregation of voters" violated their Fourteenth Amendment right to "a color-blind electoral process." *Id*., at 641–642. The Court held that the plaintiffs had a "cognizable claim"—that the Fourteenth Amendment could be violated by such intentional sorting. *Id*., at 634. And later decisions elaborated that a racial gerrymandering claim would trigger strict scrutiny if a plaintiff "prove[d] that race was the predominant factor motivating" the drawing of district lines. *Cooper* v. *Harris*, 581 U. S. 285, 291 (2017).

(as I have elsewhere explained), it is of course essential to have proof of race-based purpose. See *Cooper*, 581 U. S., at 291–292, 308. But not so when the claim is for vote dilution, brought under a statute that (in *Allen*'s words again) "clearly rejected treating discriminatory intent as a requirement for liability." 599 U. S., at 37. In that context, putting a burden on the plaintiff to show that district lines were "driven by" racial rather than political (or other) factors, *ante*, at 29, is to reject everything this Court has ever said about Congress's Section 2 choice.

The majority's misplaced focus on purpose shows up first, and most critically, in its recasting of the first *Gingles* precondition. That threshold requirement, as the majority acknowledges, has always functioned to ensure that a minority community is large and geographically compact enough to elect a representative of its choice in a reasonably configured district. See *ante*, at 8, 29; *supra*, at 18–19. So the illustrative maps most vote-dilution plaintiffs submit show exactly that—how a reasonable majority-minority district could be created. But now, the majority says, the first precondition must be devoted to flushing out discriminatory purpose on the part of the State, by excluding the possibility that its districting plan arose from nonracial motives. See *ante*, at 29–30. So the plaintiffs' alternative maps have to satisfy (as well or better than the State's own) every permissible districting criterion the State specifies, including—and this is the kicker—all its "political goals." *Ibid*. Those goals include the "partisan distribution" of districts within the State—say, that six seats should be held by one party and none by the other. *Ibid*. Likewise, they apparently encompass the partisan balance within any district—say, to ensure "a specific margin of victory" for a candidate. *Ibid*. Only if the plaintiffs' maps "achieve [all those] goals just as well" as the State's plan, the majority intones, can those maps "help to 'disentangle race' from politics"—or, otherwise said, show that the State's plan was "driven by

racial" motives. *Ibid.* (quoting again *Alexander*, 602 U. S., at 6—a racial gerrymandering, not Section 2 dilution, case).

That change alone is likely to bring vote-dilution suits (already hard to win) to a screeching halt. To see how, return to the circle hypothetical—until now, the paradigmatic case of vote dilution, because the State there prevents Black (but not White) voters from having an opportunity to elect their preferred representative, as Section 2 demands. See *supra*, at 1–2. The legislature, recall, has sliced the majority-Black circle district into six pie pieces, with each added to (and only marginally affecting) a predominantly-White district. Before today, the first *Gingles* precondition is met with ease, just with a picture of the old district: Yes, that picture would say, Black voters can form—in fact, have formed—a majority in a district drawn consistent with traditional principles. See *supra*, at 21. But after today? Suppose the State, per the majority's instructions, asserts that it cracked the African American electorate because it wants six safe Republican districts. Now the plaintiffs' illustrative map, insists the majority, must also have six safe Republican districts. But given that race and partisan preference are linked (with Black citizens mainly voting Democratic), such a map cannot be drawn. Any map with a majority-Black district will not be a map with all Republican seats. And so, the majority decides, a Section 2 suit must fail at the outset—even though the State has deprived Black citizens of any opportunity to elect representatives of their choice. At least where such common race-based voting patterns hold, States now have an automatic political-gerrymandering defense to vote-dilution claims.

Yet more, the majority's reworking of *Gingles*'s first precondition (contra its assurance) will doom vote-dilution suits even when majority and minority voters support different candidates *within a single party*. Take an example offered by the Solicitor General, whose ideas about how to upend *Gingles* the majority largely filches. See Brief for

United States as *Amicus Curiae* 20–31. In that hypothetical, Black, Hispanic, and White voters residing in Harlem all vote mainly for Democrats, but have "different candidates of choice." Tr. of Oral Arg. 119. The Solicitor General maintains that if the district lines "favor[] one of those racial groups"—let's say, the Black voters—"that's the sort of situation where Section 2 could come in." *Ibid.* The majority agrees, because there the State's preference for one party could not explain the district lines drawn. See *ante*, at 27, 29–30. But under the majority's test, the legislature could easily invoke other political, as well as non-political, goals to justify the lines and thus preclude liability. Suppose the State asserted that it drew the lines to protect an incumbent, who just so happened to be favored by Black residents. Or suppose the State said it wanted to increase (or decrease or maintain) the district's partisan competitiveness (created by its ratio of Democrats to Republicans), which just coincidentally gave Black voters more influence. Or suppose the State said that it wished to keep the existing district's core intact (itself a frequent districting criterion, see *ante*, at 24), rather than make the changes needed to give non-Black voters greater electoral opportunity. The possibilities are endless. And each would have the same result. Because a Section 2 plaintiff's map could not as well advance the bespoke political (or other) goal(s) favoring the Black voters' chosen candidate, the suit would fail—even if non-Black votes, election year in and election year out, had been made to count for nothing.

Congress, as should by now be clear, made a different choice. In amending Section 2, Congress opted for the effects test of *White* over the purpose test of *Bolden*. See *supra*, at 13–16. And it did so largely because of the unfeasibility of countering a State's non-race-based justification for a given districting decision. See *supra*, at 15–16. Such a demand, the authors of the Senate compromise explained, would impose "an inordinately difficult burden," precluding

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a remedy for even the most "egregious" cases of vote dilution. Senate Report, at 36–37. Yet that is exactly the burden the majority makes Section 2 plaintiffs bear—and at the first threshold condition. The majority makes no effort to explain how minority voters can meet its new requirement. How they can devise a map satisfying (at least as well as the State's own) each of the State's asserted political and other goals while *also* creating (or maintaining) a majority-minority district.[7] Or assuming they cannot draw such a map, whether they may produce other evidence of racially discriminatory motive to meet (or else bypass) the first *Callais* requirement. Or if they may offer such evidence, how (if at all) it might differ from the kind generally needed to prevail in a racial gerrymandering suit—*i.e.*, "direct evidence," like "leaked e-mails" from legislators professing the desire to reduce a racial group's voting strength. *Alexander*, 602 U. S., at 8. Presumably, the majority thinks that the details do not much matter. Once Section 2 has been transformed, via a change to *Gingles*'s first

[7] If that assignment does not sound fanciful enough, the majority imposes yet a weirder requirement on plaintiffs' maps—and one *Allen* specifically rejected. "[I]n drawing illustrative maps," today's majority holds, "plaintiffs cannot use race." *Ante*, at 29; see *ibid*. ("[A]n illustrative map in which race was used has no value in proving a §2 plaintiff's case"). What exactly the majority means by "use" is left unclear. But assuming the majority means to bar plaintiffs from taking account of race when showing how a majority-*minority* district could be created, it is both incoherent and inconsistent with Section 2 and *Gingles*. I cannot do better than *Allen* did in explaining why. In that case, Alabama took much the view the majority does: that a Section 2 plaintiff's illustrative maps "cannot have been 'based' on race." 599 U. S., at 24. But *Allen* spurned the notion. "Section 2 itself demands consideration of race," we explained, because its implementation requires knowing "whether additional majority-*minority* districts can be drawn." *Id*., at 30–31 (emphasis in original). And indeed, we continued, "[t]hat is the whole point" of the maps "adduced at the first step of *Gingles*." *Id*., at 33 (emphasis deleted). To say that those maps must be "race-blind" is thus to "reject [the *Gingles*] framework outright"—really, to insist that it "be overruled." *Ibid*. Quite right.

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precondition, from a ban on racially dilutive effects (à la *White*) to a ban on race-based motives (à la *Bolden*), virtually all vote-dilution cases will fail anyway. The majority has thus nullified Congress's decision to provide a remedy, without proof of intent, for state action that "results in" a minority group's lesser opportunity "to elect representatives." §10301.

But the majority is not yet done thwarting Congress's objective. Maybe in some exceptional case, a State will fail to assert a goal, like political gerrymandering, that the plaintiff's map cannot replicate. Then, the majority's makeover of the second and third *Gingles* preconditions comes into play, again to convert Section 2 into its opposite—a statute turning on discriminatory intent, not effects. Contra, *Allen*, 599 U. S., at 25 ("§2 turns on the presence of discriminatory effects, not discriminatory intent"). Until today, the second and third preconditions focused simply on racially polarized voting: Plaintiffs had to show that minority citizens vote cohesively, but cannot elect their preferred candidates because majority citizens vote as a bloc for others. See *supra*, at 18–19. Now the majority introduces a new requirement to impede Section 2 suits: "[T]he plaintiffs must provide an analysis that controls for party affiliation." *Ante*, at 30. That means if minority citizens vote mainly for one party and majority citizens vote mainly for another, none of that difference can count toward meeting the second and third preconditions. So in offering evidence of polarized voting preferences, a plaintiff must remove from the equation . . . polarized voting preferences. For in most places (even if not in Harlem), partisan difference is the way those divergent preferences are expressed—and the way one racial group's vote can swamp another's, again and again. The majority argues that its new requirement is needed to rule out the possibility that the State districted as it did for partisan, rather than racial, reasons. See *ibid*. But the State's intent is not what is supposed to matter in a Section 2 suit.

Congress amended Section 2 (need I say again?) to ensure that it would function as an effects test. The majority wishes a different statute, and makes it so.[8]

And so too for Section 2's "totality of circumstances" inquiry. §10301(b). Should some litigant miraculously arrive at that stage of a vote-dilution suit, he will find it transformed. The "totality" test, today's majority insists, must focus on only one thing: "intentional present-day voting discrimination." *Ante*, at 31. But that is neither what Congress said nor what Congress meant when it added the phrase "totality of circumstances"—obviously referring to multiple things—to Section 2. See *Allen*, 599 U. S., at 26 (A "single-minded" concentration on "only one circumstance[]" "cannot be squared with [Section 2's] demand"). Derived from *White*, that phrase demands the kind of "intensely local appraisal" the Court there used to evaluate a districting plan's "impact" on a minority group's access to the political process. 412 U. S., at 769–770. That appraisal of course included evidence relating to "intentional present-day voting discrimination." *Ante*, at 31. But it included as well the continuing effects of past discrimination—and not only in politics but in other spheres of life. See *White*, 412 U. S., at 767–769; *supra*, at 11–12. The majority's flattening of the prescribed inquiry mirrors *Bolden*'s conversion of *White* into a test for illicit motive. See *supra*, at 12–13. But it was precisely to reverse that shift that Congress enacted Section 2's current "totality" language.

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[8] As with the first *Callais* requirement, see *supra*, at 30–31, the majority does not address whether plaintiffs can bypass this second requirement if they have evidence that the districting decision was "driven by racial considerations," *ante*, at 29. In other words, what happens if the second *Callais* requirement is unsatisfied (because race and partisan preference go hand in hand) but there is still evidence that race "drove" the "district's lines"? *Ante*, at 25, 36. Presumably the claim should be able to proceed to the "totality" test, but the majority leaves us guessing.

The consequences of the new *Callais* requirements show up immediately, in the majority's disposition of this case. The District Court may have heard five days of testimony; may have properly applied the (old) *Gingles* factors; may have explained in 110 fact-intensive pages why the vote-dilution plaintiffs were likely to prevail. See *supra*, at 22–23. But the majority thinks it "eas[y]" to overturn all that court's work in a few paragraphs. *Ante*, at 32. The plaintiffs flunked the (new) first *Gingles* precondition because their illustrative map, although showing a reasonably configured majority-minority district, "fail[ed] to meet the State's political goal[]" of protecting every incumbent Republican Representative. *Ante*, at 33. The plaintiffs came up short on the (new) second and third preconditions because their showing of racially polarized voting—"that black and white voters consistently supported different candidates"—"did not control for partisan preferences." *Ante*, at 34. And anyway, the plaintiffs could not prevail under the (new) "totality of circumstances" test because they did not show "that the State's challenged map was the result of intentional racial discrimination"; all the plaintiffs' evidence—like the dearth of Black-preferred candidates ever elected in the State—could just be the result of "politics." *Ante*, at 34–35. Bang, bang, bang. It is like shooting fish in a barrel. Once the State can rely on any political goal of its devising—and once "inter-party racial polarization" serves to "undercut" rather than "strengthen[]" a vote-dilution claim—no plausibly existing evidence in this case could have made a difference. *Ante*, at 30, 34 (emphasis deleted).

And nothing is special about *this* majority-minority district; as the *Callais* requirements have eliminated it today, so they will eliminate other and older ones in the years to come. Recall that this majority-Black district (which is District 6) was Louisiana's second. See *supra*, at 22–23. The State's District 2 has had a Black majority since 1983, when a vote-dilution suit forced its creation. If Louisiana were

tomorrow to slice up District 2, dispersing its Black residents among the rest, it is hard to see how the now judicially amended Section 2 could stand in the way. The State presumably would assert as its "political goal" an all-Republican congressional delegation; in other words, it would announce a partisan gerrymander. *Ante*, at 25, 33. And because of the severe racial polarization in the State, that goal would be incompatible with maintaining District 2 as is. So those advocating for its majority-minority composition would almost surely lose at the first *Callais* requirement (and, as above, at the others as well). Repeated often enough across the country, the same districting practice—really, hinging only on the partisan ambitions (or restraint) of state legislatures—could destroy most of the majority-minority districts that in the past 40 years the Voting Rights Act created. The *Callais* requirements have thus laid the groundwork for the largest reduction in minority representation since the era following Reconstruction. Under cover of "updat[ing]" and "realign[ing]" this greatest of statutes, *ante*, at 29, the majority makes a nullity of Section 2 and threatens a half-century's worth of gains in voting equality.

B

There is only one "special burden" appropriate to deciding this case. *Ante*, at 25. And it is not the utterly novel one that the majority imposes on Section 2 vote-dilution plaintiffs to "disentangle" state motives. *Ibid*. Rather, it is the well-settled one that the Court itself must meet before overturning precedent about the meaning of a statute. Our law is clear. *Stare decisis*—the presumption that "today's Court should stand by yesterday's decisions"—"carries enhanced force" when the decision in question "interprets a statute." *Kimble* v. *Marvel Entertainment, LLC*, 576 U. S. 446, 455–456 (2015). That is because our statutory, unlike our constitutional, rulings can always be changed by Congress

itself. See *id.*, at 456. (Just recall how Congress rejected our decision in *Bolden*.) When this Court has said what a statute means—and Congress has said nothing to the contrary—a "superpowered form of *stare decisis*" takes hold, which only a "superspecial justification" can overcome. *Id.*, at 458. Or, as one Justice has put it, there is in that circumstance a "nearly impregnable . . . shield" protecting the decision. *Minerva Surgical, Inc.* v. *Hologic, Inc.*, 594 U. S. 559, 579 (2021) (ALITO, J., dissenting).

This Court, as noted above, invoked that shield to uphold *Gingles* just three Terms ago. See *supra*, at 20–21. In *Allen*, Alabama proposed a way of limiting *Gingles* to make it harder to win a vote-dilution suit. We responded that "Congress is undoubtedly aware" of how this Court has construed Section 2. 599 U. S., at 39. And, we said, "[i]t can change that if it likes." *Ibid.* "But until and unless it does, statutory *stare decisis* counsels our staying the course." *Ibid.* (citing *Kimble*, 576 U. S., at 456); see also 599 U. S., at 42, 43, n. 1 (KAVANAUGH, J., concurring in part) (invoking "stringent statutory *stare decisis*" rules and noting that "[i]n the past 37 years" Congress "ha[s] not disturbed *Gingles*"). And if that's not enough (though why not?), then there's this. JUSTICE ALITO dissented in *Allen* in a way that prefigured today's opinion, proposing there that the *Gingles* framework be changed to reflect his own views about Section 2's text and constitutional context. See 599 U. S., at 103–104, 108–109; compare *ante*, at 20–26. The Court noted his argument that "[t]he *Gingles* framework should be [re]interpreted"—and then said no. 599 U. S., at 39, n. 10 (alterations in original). "[A]s we have explained," the Court stated, "*Gingles* effectuates the delicate legislative bargain that §2 embodies." *Ibid.*; see *id.*, at 17–19; *supra*, at 13–15. "And statutory *stare decisis*," the Court concluded, "counsels strongly in favor of not undoing" that "compromise." 599 U. S., at 39, n. 10 (alteration omitted). Apparently, though, statutory *stare decisis* is now done

"counsel[ing]," *id*., at 39, and n. 10; it is not so much as mentioned in today's opinion.

That void is more remarkable still given *Allen*'s own reaffirmation of *Gingles* on the merits (even putting aside its precedential status). Just control-find for all my citations of *Allen* (or better yet read the decision), and you will have a good idea of its character. In addition to awarding *Gingles* the highest form of *stare decisis* protection, *Allen* (1) traced the history of Section 2's amendment as I have, focusing on Congress's rejection of *Bolden*'s motive inquiry in favor of *White*'s effects test, see 599 U. S., at 10–14; (2) explained as I have how each part of the *Gingles* framework functions and how the Court has used that framework "[f]or the past forty years" "in one §2 case after another," 599 U. S., at 17–19; (3) showed how the District Court's analysis (which closely resembles the one here) conformed in all respects to *Gingles*, see 599 U. S., at 19–23;[9] and (4) rejected the notions that the *Gingles* framework should not apply to single-member districting or that it violates the Fifteenth Amendment, see 599 U. S., at 38–42; *infra*, at 41. The majority's main claim for why *Allen* nonetheless has no relevance here is that the decision "was about" Alabama's "specific argument" that a vote-dilution suit could succeed only if the State's map deviated from a "race-neutral benchmark." *Ante*, at 31. Well, sure, *Allen* was about that too. And in rebuffing that argument, it used reasoning that equally discredits the new *Callais* requirements.[10] But even put that

[9] In that part of the opinion, the Court took note of JUSTICE THOMAS's complaint that "what the District Court did here is essentially no different from what many courts have done for decades under this Court's superintendence." 599 U. S., at 26, n. 3 (dissenting opinion). The Court's one-sentence response: "That is not such a bad definition of *stare decisis*." *Ibid*.

[10] That is so because Alabama's proposed "race-neutral benchmark" and the majority's *Callais* requirements operate on the same (mistaken) logic. Alabama's premise in urging the benchmark's adoption was that race-neutral reasons for districting should defeat a Section 2 suit; the

aside. The key point here is that at every step of its multi-step analysis, and in every part of its multi-part opinion, *Allen* reaffirmed *Gingles*—the old *Gingles*, with its old understanding of what Congress did when amending Section 2. So *Allen*, too, demands that today's majority, before mutilating *Gingles*, possess a "superspecial justification." *Kimble*, 576 U. S., at 458.

And it does not have one. Not a superspecial justification; not a special justification; not even an ordinary decent justification. On the statute's text, on the statute's constitutional context, and on "historical developments" post-dating the statute—the majority fails at every turn. *Ante*, at 26.

The majority's textual analysis is long and winding and, in its crucial move, wholly non-textual. The majority tells us it will interpret the phrase "less opportunity than other members of the electorate . . . to elect representatives of their choice." §10301(b); see *ante*, at 20. It then says a number of things, to no apparent effect, about the component terms "opportunity," "other members of the electorate," and "elect." *Ante*, at 20–21. And then, the majority puts all that aside and begins to free solo. See *ante*, at 21–22. What the provision promises minority voters, the majority says in the critical passage, is—and is only—"whatever opportunity results from the application of the State's

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benchmark would show whether a districting plan in fact derived from such reasons, or instead from impermissible race-based ones. See *Allen*, 599 U. S., at 23–24; Brief for Appellants in *Allen* v. *Milligan*, O. T. 2022, Nos. 21–1086, 21–1087, pp. 43–46, 75. The *Callais* requirements are different in form but not in function: They too are designed to disentangle race-based from race-neutral (*e.g.*, partisan) reasons, on the (selfsame) view that Section 2 liability should attach only to the former. See *ante*, at 25, 29–30, 32. It is, then, not surprising that *Allen*'s primary ground for rejecting Alabama's benchmark also defeats the *Callais* requirements. *Allen* responded that "§2 turns on the presence of discriminatory effects, not discriminatory intent." 599 U. S., at 25. So it would not matter that the benchmark (and likewise the majority's alternative mechanism) suggested race-neutral motives.

combination of permissible criteria." *Ante*, at 22. Can you find that in the "less opportunity" phrase? What the majority means is that if the State has used non-race-based criteria (whether political or non-political) to draw its districts, then Section 2 has nothing to say. Even though those criteria produce a world (think about my cracked circle district) in which minority voters, compared to their White neighbors, have "less opportunity" to "elect representatives of their choice," a vote-dilution claim cannot prevail. §10301(b). That can only happen, according to the majority's view, when the district lines arise from "[im]permissible," race-based criteria—that is, when the State's evident intent was to strip minority voters of their opportunity to elect. *Ante*, at 22. With that interpretation in mind, read Congress's "less opportunity" phrase again. It is miles away.

And of course it is. Because, once more, the "less opportunity" standard was designed to focus on the "results" of a state practice, not on its justifications. §10301(a). Congress had seen again and again—when it amended Section 2 in 1982, had seen for over a century—how race-neutral election procedures, including in districting, could produce discriminatory results. See *supra*, at 7–8, 13, 15. Congress knew States did not have to rely on impermissible, race-based criteria to "minimize[] or cancel[] out [minority] voting strength." *Allen*, 599 U. S., at 25. So when this Court decided *Bolden*—which immunized race-neutral election procedures unless a plaintiff could produce smoking-gun evidence of discriminatory intent—Congress responded. It did not, as I've described, opt for proportional representation; it enacted a standard that would take some work to meet. See §10301; *supra*, at 19–20. But it most assuredly did not amend Section 2 to give minority citizens only "whatever" the "application of the State's combination of permissible" (*i.e.*, "nonracial") "criteria" produced. *Ante*, at 22, 24.

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So the majority must turn elsewhere, and it next lands on the Constitution. There, it begins in settled territory. The Fifteenth Amendment, all agree, prohibits only purposeful discrimination. See *ante*, at 23. But that amendment, in addition, grants Congress the power to enforce it by "appropriate legislation." Even the majority concedes that grant enables Congress to go further than the Amendment would—to prohibit things by legislation that the Amendment itself does not. See *ante*, at 22–23. The important issue is how far and how much. And here the majority makes an unprecedented claim. It contends that to "ensure" compliance with the Fifteenth Amendment, Section 2 must be construed to impose liability only when the circumstances create a "strong inference" of intentional discrimination. *Ante*, at 23. And more, the majority makes clear that the circumstances will not do so when the State can point to any remotely plausible race-neutral justification—whether political or non-political—for the district lines it has drawn. See *ante*, at 24 ("Properly understood," Section 2 "does not intrude on States' prerogative to draw districts based on nonracial factors"). That is so regardless of how discriminatory its districting is in operation—even to the point of "eliminating" in one fell swoop "all majority-minority districts." *Ante*, at 23.[11]

[11] Note that the majority's constitutional analysis is based only on the Fifteenth Amendment, and not at all on the Fourteenth. I would not ordinarily think to make that blazingly obvious point. But in a second attempt to distinguish this case from *Allen* (see *supra*, at 21, n. 4, for the first unsuccessful one), the majority insists that whereas "*Allen* did not discuss the Fourteenth Amendment," "[h]ere, by contrast, [the Fourteenth Amendment] is the linchpin of this suit." *Ante*, at 32. That is not so, at least in any way that matters to the majority's analysis. The Fourteenth Amendment serves as the entryway to that analysis, because the suit in fact before us presents a racial gerrymandering claim. But as I have described, the majority opts to decide that Fourteenth Amendment claim by focusing on the earlier Section 2 vote-dilution claim from which it arose. See *supra*, at 17, n. 2. The only Fourteenth Amendment

I just called that claim "unprecedented," and so it is: The majority has conjured it out of thin air. From before Section 2 was amended until today, Congress was understood to have constitutional power to ban practices resulting in unequal voting opportunities, irrespective of proof of racial motive. And likewise, Congress was understood to have power to prohibit vote-diluting practices even when a State could proffer some sort of plausible race-neutral justification. In this Court's seminal decisions, we explained that the phrase "appropriate legislation" in the Fifteenth Amendment grants Congress "the same broad powers expressed in the Necessary and Proper Clause." *Katzenbach* v. *Morgan*, 384 U. S. 641, 650 (1966); see *Katzenbach*, 383 U. S., at 325–327. So Congress has "discretion" to determine "whether and what legislation is needed to secure" the Amendment's "guarantees." *Morgan*, 384 U. S., at 651. And that discretion, as critical here, extends to "outlaw[ing] voting practices that are discriminatory in effect," without proof of intent. *City of Rome*, 446 U. S., at 173. In explaining why, this Court first underscored the connection between past discriminatory intent and present discriminatory results: Congress, we held, could decide that some unintentional state action works to "freeze the effect of past [purposeful] discrimination." *Id*., at 176. And that was not all. Congress also could enact an effects test, we held, as the appropriate way of preventing current intentional discrimination—a sort of prophylactic rule responding to the "risk" (often made reality in American history) of a State's using ostensibly race-neutral practices to cover

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"holding" here is that a court may not draw race-based district lines without a compelling interest—something we have made plain many times before. See *ante*, at 8–11. The real work of the opinion is in deciding that compliance with Section 2 could not have given Louisiana a compelling interest because that provision, as construed today, did not require any change to the State's map. And that analysis is based only on Section 2 and the Fifteenth Amendment—exactly the subjects *Allen* covered.

impermissible goals. See *id.*, at 177; see also *Katzenbach*, 383 U. S., at 309, 335.

And if those decisions are too ancient for today's majority, it should consider (again) *Allen*, from three Terms ago. There, Alabama made an argument, similar to the majority's, that the effects-based framework of Section 2 and *Gingles* too far strayed from the Fifteenth Amendment's ban on intentional discrimination. We stomped on that objection. "[T]he prior decisions of this Court," we stated, "foreclose any argument that Congress may not, pursuant to §2 [of the Fifteenth Amendment], outlaw voting practices that are discriminatory in effect." 599 U. S., at 41; see *id.*, at 45 (opinion of KAVANAUGH, J.) ("[T]he constitutional argument presented by Alabama is not persuasive in light of the Court's precedents"). Section 2's "ban on electoral changes that are discriminatory in effect," we continued, "is an appropriate method of promoting the purposes of the Fifteenth Amendment." *Id.*, at 41. And if that were not enough, one final way of driving home the point: "[W]e are not persuaded" by the view that the "effects test" of Section 2 "as interpreted in *Gingles* exceeds the remedial authority of Congress." *Ibid.*

Those well-established precepts permit Congress to do what Congress did when it amended Section 2—prohibit electoral schemes based on their vote-diluting effects, regardless whether a State could offer up some race-neutral explanation. Congress then knew that it possessed such enforcement power; our decisions settling the issue were landmarks of the civil rights era. And Congress decided to use its authority. It did not make asserted state interests irrelevant: Those interests, indeed, had to be considered in the "totality of circumstances" inquiry Congress prescribed. §10301(b); see *supra*, at 20. But neither did Congress make those interests a nearly impregnable shield, as the majority does today. It understood, just as the Court had, that even race-neutral actions could perpetuate purposeful racial

discrimination. And it realized, again in the same vein as the Court, that race-neutral explanations could conceal race-based intent. See *supra*, at 15–16. Today's majority makes plain its disdain for those views. See *ante*, at 22–26. But the Fifteenth Amendment gave the power to enforce its guarantees not to this Court but to Congress.

So the majority moves on again, now to a grab-bag of "developments" that it somehow thinks license it to rewrite a statute. *Ante*, at 26–29. The majority first summons the slogan of *Shelby County*, in which the Court ordained itself the arbiter of when civil rights laws are no longer needed. "'[T]hings have changed dramatically,'" today's majority echoes, pointing to increases in African American voting registration and to the success of "'African-Americans attain[ing] political office'"—"particularly in the South, where many §2 suits arise." *Ante*, at 26 (quoting *Shelby County*, 570 U. S., at 547, 553). No doubt that is so, in large measure *because of* the Voting Rights Act. But it is a separate question whether those gains will endure once the Act's protections are gone. See *Shelby County*, 570 U. S., at 590 (Ginsburg, J., dissenting) (noting the fallacy of "throwing away your umbrella in a rainstorm because you are not getting wet"). And surely—but apparently not—the proper actor to answer that question is Congress. For one thing, it likely has a fuller understanding of the issue. I will be interested to see, for example, whether time will vindicate the majority's view that the "great strides" made in African American office-holding, "particularly in the South," will hold up after the issuance of this opinion. *Ante*, at 26. My own guess is not. See *supra*, at 33–34. But honestly, the American people pay no Member of this Court to make those predictive policy judgments—and more important, the Constitution does not allow us to base our decisions on them. It is for the people's representatives in Congress to decide when the Nation need no longer worry about the dilution of minority voting strength. So long as Congress has

not done so—and it has not—this Court has no right to cancel (sorry, "update") a duly enacted statute on the theory that it knows better.

Indeed, the majority's "things have changed" stance here is yet less defensible than in *Shelby County*. That is because Section 2, unlike the now-defunct Section 5, itself responds to change, so no external "fix" is needed. Section 5 selected jurisdictions for preclearance based on past conditions; so if the provision's last authorization was many years in the past, the mechanism could appear outdated. See *Shelby County*, 570 U. S., at 551 ("Coverage today is based on decades-old data and eradicated practices"). Section 2, by contrast, does not run on historical data. Liability attaches based only on present electoral practices and the present discrimination they "result[] in." §10301(a). A plaintiff must prove that the political process is "not equally open to participation" by all citizens *at the time of suit*; if he cannot, he loses. *Ibid.* There is thus no danger, as *Shelby County* put it, that "current burdens" are not "justified by current needs." 570 U. S., at 536. Under Section 2, they must be.

The *Gingles* preconditions yet further anchor Section 2 suits in the here-and-now by working as built-in sunset clauses. The first precondition is met only if a racial group is (in the present) geographically concentrated. See *supra*, at 18–19. That means as residential segregation decreases in a State, Section 2 becomes unavailable as a remedy. See *Allen*, 599 U. S., at 28–29. Similarly, the second and third preconditions can be satisfied only if voting (again, in the present) is racially polarized. See *supra*, at 18–19. So as racial bloc voting recedes, Section 2 ceases to operate. And racial desegregation and depolarization are not just possible in theory; they are happening in fact—and at speed—in many parts of the country. See Brief for Nicholas O. Stephanopoulos as *Amicus Curiae* 16–29. Consistent with those trends, the number of successful Section 2 vote-dilution

suits (always fairly small) has declined every decade since the statute was amended. Katz Brief 6. In short, as "things change dramatically," Section 2 self-liquidates—and to a fair extent, it already has. But in the places where, because of local conditions, the law continues to work, the Court has no warrant to speed its demise.

Nor is the majority aided by what it terms the emergence of a "full-blown two-party system" in "the States where §2 suits are most common." *Ante*, at 27. As to that development, the majority reiterates its persistent theme: When racially polarized voting expresses itself in different party preferences, district lines may reflect partisan rather than racial motives, and so Section 2 should drop out of the picture. See *ante*, at 27, 30, 32. But as an initial matter, the majority's newly formulated test will eliminate the lion's share of Section 2 claims even when racially polarized voting occurs within a single party—as in the Solicitor General's Harlem example, discussed above. See *supra*, at 28–29. The State could not then assert a partisan-gerrymandering defense, but it could invoke a host of other race-neutral justifications, like incumbency protection or district continuity, to ward off liability. In short, the majority's test fails to save Section 2 even for the "intra-party [racial] disparities" that the majority asserts Congress had in mind. *Ante*, at 27.

And more fundamentally, the majority is wrong on its history. By 1982 (the year of Section 2's amendment), Congress well knew that "race is often correlated with party preference," because that was increasingly the case. *Ibid*. Senate hearings were replete with testimony about that growing correlation, with opponents of the House's "results in" language (Senator Hatch and his camp) questioning witnesses about why "minority groups alone" should be "immune to partisan or ideological gerrymandering." Senate Report, at 184; see *id*., at 172, n. 235; Hearings on S. 53 et al. before the Subcomm. on the Constitution of the S.

Comm. on the Judiciary, 97th Cong., 2d Sess., 649, 964–965, 1255, 1376–1377 (1982). But those proponents of *Bolden*, of course, did not get their way: The Dole proposal maintained the House's emphasis on results, not motives. See *supra*, at 14–15. So the majority's appeal to an old "one-party system," *ante*, at 27, like the rest of its insistence on disentangling partisanship and race, works not to uphold but instead to overthrow the bargain Congress made.

The last argument about "post-*Gingles* development[s]" worth mentioning is also the most dispiriting. *Ibid.* Seven years ago, this Court held in *Rucho* v. *Common Cause*, 588 U. S. 684 (2019), that claims of political gerrymandering are not justiciable in federal court. That was, in my view, an ill-considered decision, whose adverse effects have never been more obvious than today, as this country's two major parties compete in a race to the bottom. But to its (modest) credit, the *Rucho* Court did not pretend that partisan gerrymanders were something in need of safeguarding. To the contrary, the Court conceded that they were "incompatible with democratic principles" and "lead[] to results that reasonably seem unjust." *Id.*, at 718. (The Court's rationale was only that federal courts lack competence to deal with gerrymanders, not that they were protected by law or beneficial as policy.) Today, though, the majority straight-facedly holds that the Voting Rights Act must be brought low to make the world safe for partisan gerrymanders. See *ante*, at 27–28. For how else, the majority reasons, can we preserve the authority of States to engage in this practice than by stripping minority citizens of their rights to an equal political process? See *ibid*. And with that, the majority as much as invites States to embark on a new round of partisan gerrymanders—and makes an already bad precedent into one still worse. It is not enough that *Rucho* has harmed the whole body politic. Now, that decision also becomes the cudgel to diminish the rightful voting influence of its minority citizens.

IV

Congress amended Section 2 to reverse this Court's decision in *Bolden* that the law barred only intentional racial discrimination in voting. Based on a century of history, Congress determined that such a limited ban would not be enough to protect minority citizens' voting rights. The legislation Congress enacted to correct *Bolden* emerged from vigorous debate and careful compromise, based mainly on this Court's decision in *White*. The new law denied a right to proportional representation; it focused instead on the "opportunity" that a given election practice granted minority citizens. But the requisite opportunity was not to be assessed by a State's intent or by its proffered justifications. Rather, the lawfulness of an election practice was to turn on its "results"—on whether it gave minority citizens a lesser chance than their majority neighbors to participate in politics and elect candidates. In making that choice, Congress exercised its constitutional responsibility to enforce the Fifteenth Amendment. And when called on to interpret the new law, this Court—from *Gingles* all the way through *Allen*—respected and implemented what Congress had done.

Today's majority does not. Its supposed "updating" of *Gingles* overthrows Congress's decision to make Section 2 liability hinge on an electoral practice's effects—on how it actually works. The new *Callais* requirements will effectively insulate any practice, including any districting scheme, said by a State to have any race-neutral justification. That justification can sound in traditional districting criteria, or else can sound in politics and partisanship. As to the latter, the State need do nothing more than announce a partisan gerrymander. Assuming the State has left behind no smoking-gun evidence of a race-based motive (an almost fanciful prospect), Section 2 will play no role. "Whatever"—*whatever*—results from the State's asserted justification is all its minority citizens are entitled to. *Ante*,

at 22. Even if the State has deprived those citizens (but not their majority neighbors) of all opportunity to "elect representatives of their choice," the law will not protect them. §10301(b). It is *Bolden* redux, despite Congress's repudiation of that decision (and this Court's precedents honoring that rejection). The majority has made its own assessment of current needs, see *ante*, at 26–28, and concluded that preventing racial vote dilution does not count among them. So once again, "in the absence of proof of intentional discrimination," the right to vote gives minority citizens "nothing more than the right to cast meaningless ballots." *Bolden*, 446 U. S., at 104 (Marshall, J., dissenting).

The consequences are likely to be far-reaching and grave. Today's decision renders Section 2 all but a dead letter. In the States where that law continues to matter—the States still marked by residential segregation and racially polarized voting—minority voters can now be cracked out of the electoral process. The decision here is about Louisiana's District 6. But so too it is about Louisiana's District 2. See *supra*, at 33–34. And so too it is about the many other districts, particularly in the South, that in the last half-century have given minority citizens, and particularly African Americans, a meaningful political voice. After today, those districts exist only on sufferance, and probably not for long. If other States follow Louisiana's lead, the minority citizens residing there will no longer have an equal opportunity to elect candidates of their choice. And minority representation in government institutions will sharply decline. At the first stage of this judicial project to destroy the Voting Rights Act, the Court maintained that Section 5 was no longer needed because in recent decades "African-Americans attained political office in record numbers." *Shelby County*, 570 U. S., at 553; see *id.*, at 549. At this last stage, the Court's gutting of Section 2 puts that achievement in peril. I dissent because Congress elected otherwise. I dissent because the Court betrays its duty to faithfully

implement the great statute Congress wrote. I dissent because the Court's decision will set back the foundational right Congress granted of racial equality in electoral opportunity. I dissent.

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U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

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

INJUNCTION AND ORDER
FINDINGS OF FACT AND CONCLUSIONS OF LAW

In this redistricting case, the plaintiffs allege that Alabama's districting plan for the Alabama Senate dilutes the votes of Black Alabamians in the Huntsville and Montgomery areas in violation of Section Two of the Voting Rights Act of 1965, 52 U.S.C. § 10301 ("Section Two"). This case is one of four cases currently pending in the Northern District of Alabama that allege that Alabama's electoral maps dilute the votes of Black Alabamians in violation of Section Two: *Singleton v. Allen*, No. 2:21-cv-1291-AMM, *Milligan v. Allen*, No. 2:21-cv-1530-AMM, and *Caster v. Allen*, No. 2:21-cv-1536-AMM, challenge Alabama's congressional districting map. Final judgment in those cases recently entered after a bench trial; it held that Alabama's congressional districting plan violated both Section Two and the

Fourteenth Amendment to the United State Constitution. Those cases are now on a third appeal to the Supreme Court of the United States, and this one is ripe for decision.

These plaintiffs request an injunction barring Alabama Secretary of State Wes Allen from conducting elections for the 35-member Senate according to the plan the Alabama Legislature enacted in 2021 ("the Plan" or "the Enacted Plan"). That Plan has eight majority-Black districts. The districting plan for the Alabama Senate has included eight majority-Black districts since the 1990 census cycle. *See Montiel v. Davis*, 215 F. Supp. 2d 1279, 1281–82 (S.D. Ala. 2002).

Currently, all seven Black Senators were elected from majority-Black districts, and every Black Representative in the Alabama House except one was elected from a majority-Black district. Doc. 230 ¶ 117. There are no Black statewide elected officials in Alabama, Doc. 230 ¶ 93, and "[o]nly one Black person has ever been elected to statewide office in a contested election in Alabama[,]" and that person was elected after first being appointed, Doc. 230 ¶ 94.

Because the plaintiffs did not seek preliminary injunctive relief, Alabama Senators serve four-year terms, and Alabama law prohibits mid-decade redistricting for state legislative seats, the Secretary administered the 2022 Senate elections according to the Plan, and the plaintiffs seek relief for the 2026 and 2030 elections. *See* Ala. Const. art. IV, § 46, art. IX, § 200.

The parties have developed an extensive record. The Court has the benefit of an eight-day trial, live testimony from twenty witnesses (including ten experts), designated deposition testimony from three lay witnesses, reports and rebuttal reports from every expert, joint stipulations of fact that span twenty-seven pages, proposed findings of fact and conclusions of law that span more than 400 pages, and able argument by the forty-eight lawyers who have appeared in the litigation.

Based on the findings of fact and conclusions of law explained below, including the Court's assessments of the credibility of expert witnesses, the Court concludes that the plaintiffs have failed to establish a Section Two violation in the Huntsville area, and they have established a Section Two violation in the Montgomery area.

The record about the plaintiffs' Huntsville-area claim does not satisfy the applicable legal test for Section Two because it does not establish that as a group, Black voters are sufficiently numerous and geographically compact there to constitute a voting-age majority in an additional reasonably configured district. The plaintiffs offer only one Huntsville-area illustrative district in which Black voters comprise a voting-age majority, and the shape of that district, together with its compactness scores and its failure to serve traditional districting principles, foreclose a finding that it is reasonably configured.

On the other hand, the record about the plaintiffs' Montgomery-area claim

satisfies the applicable legal test for Section Two relief. The parties agree that Black voters comprise a voting-age majority in plaintiffs' Montgomery-area illustrative district. The shape of that district, together with its compactness scores and its adherence to county lines and other traditional districting principles, support a finding that it is reasonably configured. Further, the parties agree (as they must) that patterns of racially polarized voting are apparent in Alabama elections.

The Secretary nevertheless resists relief in the Montgomery area primarily on two grounds, and the Court rejects both arguments. There is no evidence (not even the Secretary's own expert witness) to support the Secretary's contention that considerations of race predominated in the plaintiffs' map-drawing process for their Montgomery-area illustrative district. Indeed, all the evidence probative of this issue establishes that race did not predominate in that process. Likewise, the evidence does not support the Secretary's contention that patterns of racially polarized voting are attributable only to voters' political party affiliations, divorced from considerations of race.

For these reasons, and because the evidence establishes that the totality of the circumstances supports Section Two relief, the Court finds a Section Two violation in the Montgomery area and **ENJOINS** Secretary Allen and his successors in office from conducting any Senate elections according to the Plan.

Under the statutory framework, Supreme Court precedent, and Eleventh

Circuit precedent, the appropriate remedy is a redistricting plan that includes either an additional majority-Black Senate district in the Montgomery area, or an additional district there in which Black voters otherwise have an opportunity to elect a Senator of their choice. *See, e.g.*, *Bartlett v. Strickland*, 556 U.S. 1, 24 (2009). Supreme Court precedent dictates that the Legislature should have the first opportunity to draw that plan. *See, e.g.*, *North Carolina v. Covington*, 585 U.S. 969, 979 (2018); *White v. Weiser*, 412 U.S. 783, 794–95 (1973). The Legislature enjoys broad discretion (broader than the Court's) and may consider a wide range of remedial plans.

As the Legislature considers such plans, it should be mindful of the practical reality, based on the ample evidence of intensely racially polarized voting adduced during the trial, that any remedial plan will need to include an additional district in the Montgomery area in which Black voters either comprise a voting-age majority or something quite close to it.

For the reasons set forth below, the Secretary's motion for judgment as a matter of law is **DENIED**. To facilitate timely remedial proceedings, a status conference is **SET** for **AUGUST 28, 2025,** at 10:00 AM in the Third Floor Courtroom, Robert S. Vance Federal Building and United States Courthouse, 1800 5th Avenue North Birmingham, Alabama 35203. The parties are **ORDERED** to file a joint status report with the parties' proposals for moving the case forward at or before noon Central Daylight Time on **AUGUST 27, 2025.**

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I. BACKGROUND

A. Procedural Posture

On November 4, 2021, Governor Kay Ivey signed into law Senate Bill 1, which provided a redistricting plan for Alabama Senate elections based on data from the 2020 census. Doc. 206-1.[1] On November 16, 2021, a group of plaintiffs sued the former Secretary (John Merrill)[2] and the co-chairs of the Legislature's Permanent Legislative Committee on Reapportionment ("the Committee") (Representative Chris Pringle, and Senator Jim McLendon, collectively "the Legislators"), alleging that the Plan violated both Section Two and the Fourteenth Amendment to the United States Constitution. Doc. 1 at 1 & ¶ 5. The Chief Judge of the United States Court of Appeals for the Eleventh Circuit convened a three-judge court. Doc. 5.

On December 6, 2023, the plaintiffs filed the operative complaint against Secretary Allen, Representative Pringle, and Senator Steve Livingston.[3] Doc. 126. In that complaint, the plaintiffs asserted a Section Two claim but no constitutional claims. *Id.* ¶¶ 170–76. The three-judge court thus dissolved itself, and the case

[1] Page number pincites are to the CM/ECF page number that appears in the top right-hand corner of each page. Citations to the trial transcript are identified by page number. That transcript may be found at Docs. 254–55, 257–60, 264–65.

[2] On January 16, 2023, Wes Allen became the Secretary. Pursuant to Federal Rule of Civil Procedure 25(d), Secretary Allen was substituted for former Secretary Merrill as defendant in this case. Doc. 76.

[3] Senator Livingston replaced Senator McClendon as the Senate co-chair of the Committee. *See* Doc. 230 ¶¶ 12, 15.

returned to the undersigned sitting alone as the originally assigned judge. Doc. 127.

Before trial, the Court dismissed the claim against Senator Livingston on legislative immunity grounds, Doc. 143, the Secretary moved for partial summary judgment, Doc. 166, and Representative Pringle moved for summary judgment, Doc. 168. The Court dismissed the claim against Representative Pringle on the plaintiffs' motion under Federal Rule of Civil Procedure 41(a)(2). Docs. 169, 170. The Court denied the Secretary's motion for partial summary judgment and denied as moot Representative Pringle's motion for summary judgment. Doc. 191.

The parties then stipulated the dismissal of plaintiffs Khadidah Stone and Laquisha Chandler. Doc. 204. The remaining plaintiffs are the Alabama State Conference of the NAACP ("the State Conference") and Greater Birmingham Ministries—two organizational plaintiffs suing on behalf of their members—and Evan Milligan, a Black registered voter residing in Montgomery. Doc. 230 at 1–3.

Trial commenced on November 12, 2024, and ended on November 21, 2024. After trial, the parties submitted proposed findings of fact and conclusions of law. Docs. 250, 251. The Secretary moved for judgment as a matter of law, Doc. 247, and that motion is fully briefed, Docs. 252, 261.

B. Legal Background

The Alabama Constitution requires the Legislature to divide the state's legislative seats into districts after each decennial census. Ala. Const. art. IX, §§

199–200. Redistricting "is primarily the duty and responsibility of the State[]." *Allen v. Milligan*, 599 U.S. 1, 29 (2023) (quoting *Abbott v. Perez*, 585 U.S. 579, 588 (2018)). "[F]ederal-court review of districting legislation represents a serious intrusion on the most vital of local functions," and when "assessing the sufficiency of a challenge to a districting plan, a court must be sensitive to the complex interplay of forces that enter a legislature's redistricting calculus." *Abbott*, 585 U.S. at 603 (quoting *Miller v. Johnson*, 515 U.S. 900, 915–16 (1995)) (internal quotation marks omitted).

Redistricting must comply with federal constitutional and statutory requirements. *Bartlett v. Strickland*, 556 U.S. 1, 7 (2009); *Reynolds v. Sims*, 377 U.S. 533, 554–60 (1964); *Wesberry v. Sanders*, 376 U.S. 1, 6 (1964); *see Allen*, 599 U.S. at 17–18, 30–31. As relevant here, "federal law impose[s] complex and delicately balanced requirements regarding the consideration of race" in redistricting. *Abbott*, 585 U.S. at 585. On the one hand, the Equal Protection Clause "restrict[s] the use of race in making districting decisions." *Id.* On the other hand, Section Two "often insists that districts be created precisely because of race." *Id.* at 586.

Section Two provides:

> (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgment of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 10303(f)(2) of this title, as provided in subsection (b).

> (b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

52 U.S.C. § 10301.

"The essence of a [Section Two] claim . . . is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by [B]lack and [W]hite voters." *Allen*, 599 U.S. at 17 (quoting *Thornburg v. Gingles*, 478 U.S. 30, 47 (1986)). That occurs "when a State's electoral structure operates in a manner that 'minimize[s] or cancel[s] out the[ir] voting strength,'" rendering "an individual . . . disabled from 'enter[ing] into the political process in a reliable and meaningful manner' 'in the light of past and present reality, political and otherwise.'" *Id.* at 25 (first quoting *Gingles*, 478 U.S. at 47 and then *White v. Regester*, 412 U.S. 755, 767 (1973)) (alterations in original). "A district is not equally open, in other words, when minority voters face—unlike their majority peers—bloc voting along racial lines, arising against the backdrop of substantial racial discrimination within the State, that

renders a minority vote unequal to a vote by a nonminority voter." *Id.*

"[A] plaintiff may allege a [Section Two] violation in a single-member district if the manipulation of districting lines fragments [cracks] politically cohesive minority voters among several districts or packs them into one district or a small number of districts, and thereby dilutes the voting strength of members of the minority population." *Shaw v. Hunt* (*"Shaw II"*), 517 U.S. 899, 914 (1996).

Intent is not an element of a Section Two violation, and "proof that a contested electoral practice or mechanism was adopted or maintained with the intent to discriminate against minority voters[] is not required under Section [Two]." *City of Carrollton Branch of NAACP v. Stallings*, 829 F.2d 1547, 1553 (11th Cir. 1987).

A basic history of state legislative redistricting in Alabama is helpful for a complete understanding of the claims raised in this action. In 1962, a federal district court struck down Alabama's state Senate districting plans after the Legislature failed to redraw the districts following the decennial census for approximately fifty years. *See Sims v. Frink*, 208 F. Supp. 431 (M.D. Ala. 1962). The Supreme Court affirmed. *See Reynolds v. Sims*, 377 U.S. 533 (1964).

On remand, that district court gave the Legislature the opportunity to draw a new map. *Sims v. Baggett*, 247 F. Supp. 96, 99 (M.D. Ala. 1965). Later, that court concluded that the multi-member Senate districts the Legislature adopted were constitutional, *id.* at 107, but found that the House districts "intentionally aggregated

predominantly [Black] counties with predominantly [W]hite counties for the sole purpose of preventing the election of [Blacks] to [state] House membership," *id.* at 109. The district court ordered the state to use a court-drawn plan for those House districts until the 1970 census was completed. *See id.* at 108–09; *Sims v. Amos*, 336 F. Supp. 924, 928 n.4, 931 (M.D. Ala. 1972). Under that plan, Fred Gray and Thomas Reed became the first Black members of the Alabama House of Representatives since Reconstruction.

The Legislature again failed to redistrict itself after the 1970 census, so the district court drew new single-member Senate and House districts. *See Sims*, 336 F. Supp. at 932, 936, 940. Under that plan, Richmond Pearson and U.W. Clemon became the first Black members of the Alabama Senate since Reconstruction.

Meanwhile, Congress had passed the Voting Rights Act of 1965, which required (among other things) Alabama to receive preclearance from either the Attorney General of the United States or a three-judge federal court before changing its voting procedures. *See Shelby Cnty. v. Holder*, 570 U.S. 529, 537 (2013).

After the 1980 census, the Legislature passed two state legislative redistricting plans that did not receive preclearance, and then passed a constitutional plan. *Burton v. Hobbie*, 561 F. Supp. 1029, 1032–35 (M.D. Ala. 1983). Circuit Judge Frank M. Johnson Jr. described the Legislature's previous failure to enact a plan that complied with federal court orders and the "invidious discrimination existing in both houses

of the Legislature." *See id.* at 1030–32. He explained that after decades of judicial intervention, the Legislature, for "the first time in Alabama's history," "provided an apportionment plan that is fair to all the people of Alabama." *Id.* at 1030.

After the 1990 census, federal courts again invalidated the Legislature's redistricting plan, and new state legislative districting plans were adopted in a state court consent judgment. *See Brooks v. Hobbie*, 631 So. 2d 883, 884 (Ala. 1993). That districting scheme, known as the Reed-Buskey Plan, included eight majority-Black Senate districts. *Montiel v. Davis*, 215 F. Supp. 2d 1279, 1281–82 (S.D. Ala. 2002). The United States Supreme Court upheld the Reed-Buskey Plan. *See Sinkfield v. Kelley*, 531 U.S. 28, 30–31 (2000). After the 2000 census, the Legislature redistricted and maintained the eight majority-Black state Senate districts. *Montiel*, 215 F. Supp. 2d at 1281–82.

After the 2010 census, the Legislature again redistricted. Since 2010, a supermajority of Republican members have controlled the Legislature. *See* Doc. 230 ¶ 120; *see also* Doc. 206-19 at 12. Many of the majority-Black districts, including all eight majority-Black Senate districts, were underpopulated for purposes of the requirement that districts contain nearly equal numbers of voting-age persons. *Ala. Legis. Black Caucus v. Alabama*, 231 F. Supp. 3d 1026, 1035–36 (M.D. Ala. 2017). A three-judge district court found that the Legislature's plans did not violate Section Two and were not racial gerrymanders in violation of the Fourteenth Amendment.

Ala. Legis. Black Caucus v. Alabama, 989 F. Supp. 2d 1227, 1280–87, (M.D. 2013), *vacated*, 575 U.S. 254 (2015). The Supreme Court vacated on the ground that the district court misapplied the law to the racial gerrymandering claim. *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 279 (2015).

During the pendency of that litigation, the Supreme Court ruled in another case that the preclearance requirement in Section Five of the Voting Rights Act was unconstitutional, and Alabama was no longer required to receive preclearance for its redistricting plans. *Shelby Cnty.*, 570 U.S. at 556–57.

On remand, the district court determined that twelve state legislative districts, including Senate District 26 in the Montgomery area, were unconstitutional racial gerrymanders. *Ala. Legis. Black Caucus*, 231 F. Supp. 3d at 1140, 1348–49. The Legislature then passed remedial districting plans. *See* 2017 Ala. Laws Act. No. 2017-347; 2017 Ala. Laws Act. No. 2017-348.

After the 2020 census, lawsuits were filed to challenge both the state legislative districting map (this action) and the congressional districting map (the *Singleton*, *Milligan*, and *Caster* actions). After the congressional redistricting plan (which included only one majority-Black district) was preliminarily enjoined on the ground that it likely violated Section Two, the Secretary and Legislators appealed, and the Supreme Court affirmed. *See Allen*, 599 U.S. 1.

The district court afforded the Legislature an opportunity to enact a new plan

that contains two majority-Black districts or two districts in which Black voters otherwise have an opportunity to elect a representative of their choice. *See Singleton v. Allen*, 690 F. Supp. 3d 1226, 1238 (N.D. Ala. 2023). But the Legislature again passed a plan that "include[d] only one majority-Black district" and did not include an additional Black-opportunity district. *See id.* The district court preliminarily enjoined the use of that plan, *see id.*, and the Secretary (but not the Legislators) again appealed to the Supreme Court and sought a stay, *Milligan* Docs. 274, 275, 276, 281.[4] The district court denied a stay, *Milligan* Doc. 289 at 5, and the Secretary sought a stay from the Supreme Court, which summarily denied the request with no noted dissents, *see Allen v. Milligan*, 144 S. Ct. 476 (2023) (mem.). The district court then ordered the Secretary to administer Alabama's 2024 congressional elections according to a court-ordered plan. *See Singleton v. Allen*, No. 2:21-cv-1291-AMM & No. 2:21-cv-1530-AMM, 2023 WL 6567895 (N.D. Ala. Oct. 5, 2023).

The congressional case proceeded to an eleven-day bench trial (in which the plaintiffs and the State presented much of the same evidence that was presented in this case, including ten of the same expert witnesses who opined on overlapping issues). After trial, the district court again concluded that the plaintiffs established a Section Two violation. *Singleton v. Allen*, Case No. 2:21-cv-1291-AMM & Case

[4] Citations to documents in the current round of congressional redistricting litigation in the district court are to the documents in the *Milligan* action.

No. 2:21-cv-1530-AMM, 2025 WL 1342947, at *125–71 (N.D. Ala. May 8, 2025). It also found that the Legislature intentionally discriminated against Black Alabamians in violation of the Fourteenth Amendment when it deliberately enacted a districting plan that it admitted did not contain the second opportunity district that the Supreme Court and the district court said was required. *Id.* at *194–213.

C. Factual Background

The 2020 cycle for state legislative redistricting began when the Committee—the body in charge of creating, proposing, and evaluating redistricting plans for the state, *see* Ala. Code § 29-2-52—passed redistricting guidelines ("the Legislature's redistricting guidelines"). Doc. 230 ¶ 17. The Legislature's redistricting guidelines applied to both state and congressional redistricting. *See* App. A.

The guidelines cover (among other things) how the Committee considered traditional districting criteria. *See id*. The guidelines "prioritized population equality, contiguity, compactness, and avoiding dilution of minority voting strength," and "encouraged, as a secondary matter, avoiding incumbent pairings, respecting communities of interest, minimizing the number of counties in each district, and preserving cores of existing districts." *Allen*, 599 U.S. at 15.

The Legislature's redistricting guidelines are reproduced in relevant part below and attached in full to this Order as Appendix A.

10 **II. CRITERIA FOR REDISTRICTING**

11 a. Districts shall comply with the United States Constitution, including the
12 requirement that they equalize total population.

13 b. Congressional districts shall have minimal population deviation.

14 c. Legislative and state board of education districts shall be drawn to achieve
15 substantial equality of population among the districts and shall not exceed an
16 overall population deviation range of ±5%.

17 d. A redistricting plan considered by the Reapportionment Committee shall
18 comply with the one person, one vote principle of the Equal Protection Clause of
19 the 14th Amendment of the United States Constitution.

20 e. The Reapportionment Committee shall not approve a redistricting plan that
21 does not comply with these population requirements.

22 f. Districts shall be drawn in compliance with the Voting Rights Act of 1965, as
23 amended. A redistricting plan shall have neither the purpose nor the effect of
24 diluting minority voting strength, and shall comply with Section 2 of the Voting
25 Rights Act and the United States Constitution.

26 g. No district will be drawn in a manner that subordinates race-neutral
27 districting criteria to considerations of race, color, or membership in a language-
28 minority group, except that race, color, or membership in a language-minority
29 group may predominate over race-neutral districting criteria to comply with
30 Section 2 of the Voting Rights Act, provided there is a strong basis in evidence in
31 support of such a race-based choice. A strong basis in evidence exists when there
32 is good reason to believe that race must be used in order to satisfy the Voting Rights
33 Act.

1 h. Districts will be composed of contiguous and reasonably compact
2 geography.

3 i. The following requirements of the Alabama Constitution shall be complied
4 with:

5 (i) Sovereignty resides in the people of Alabama, and all districts should be
6 drawn to reflect the democratic will of all the people concerning how their
7 governments should be restructured.

8 (ii) Districts shall be drawn on the basis of total population, except that voting
9 age population may be considered, as necessary to comply with Section 2 of the
10 Voting Rights Act or other federal or state law.

11 (iii) The number of Alabama Senate districts is set by statute at 35 and, under
12 the Alabama Constitution, may not exceed 35.

13 (iv) The number of Alabama Senate districts shall be not less than one-fourth or
14 more than one-third of the number of House districts.

15 (v) The number of Alabama House districts is set by statute at 105 and, under
16 the Alabama Constitution, may not exceed 106.

17 (vi) The number of Alabama House districts shall not be less than 67.

18 (vii) All districts will be single-member districts.

19 (viii) Every part of every district shall be contiguous with every other part of the
20 district.

21 j. The following redistricting policies are embedded in the political values,
22 traditions, customs, and usages of the State of Alabama and shall be observed to
23 the extent that they do not violate or subordinate the foregoing policies prescribed
24 by the Constitution and laws of the United States and of the State of Alabama:

25 (i) Contests between incumbents will be avoided whenever possible.

26 (ii) Contiguity by water is allowed, but point-to-point contiguity and long-lasso
27 contiguity is not.

28 (iii) Districts shall respect communities of interest, neighborhoods, and political
29 subdivisions to the extent practicable and in compliance with paragraphs a
30 through i. A community of interest is defined as an area with recognized
31 similarities of interests, including but not limited to ethnic, racial, economic, tribal,
32 social, geographic, or historical identities. The term communities of interest may,
33 in certain circumstances, include political subdivisions such as counties, voting

1 precincts, municipalities, tribal lands and reservations, or school districts. The
2 discernment, weighing, and balancing of the varied factors that contribute to
3 communities of interest is an intensely political process best carried out by elected
4 representatives of the people.

5 (iv) The Legislature shall try to minimize the number of counties in each district.

6 (v) The Legislature shall try to preserve the cores of existing districts.

7 (vi) In establishing legislative districts, the Reapportionment Committee shall
8 give due consideration to all the criteria herein. However, priority is to be given to
9 the compelling State interests requiring equality of population among districts and
10 compliance with the Voting Rights Act of 1965, as amended, should the
11 requirements of those criteria conflict with any other criteria.

12 g. The criteria identified in paragraphs j(i)-(vi) are not listed in order of
13 precedence, and in each instance where they conflict, the Legislature shall at its
14 discretion determine which takes priority.

Doc. 190-21.

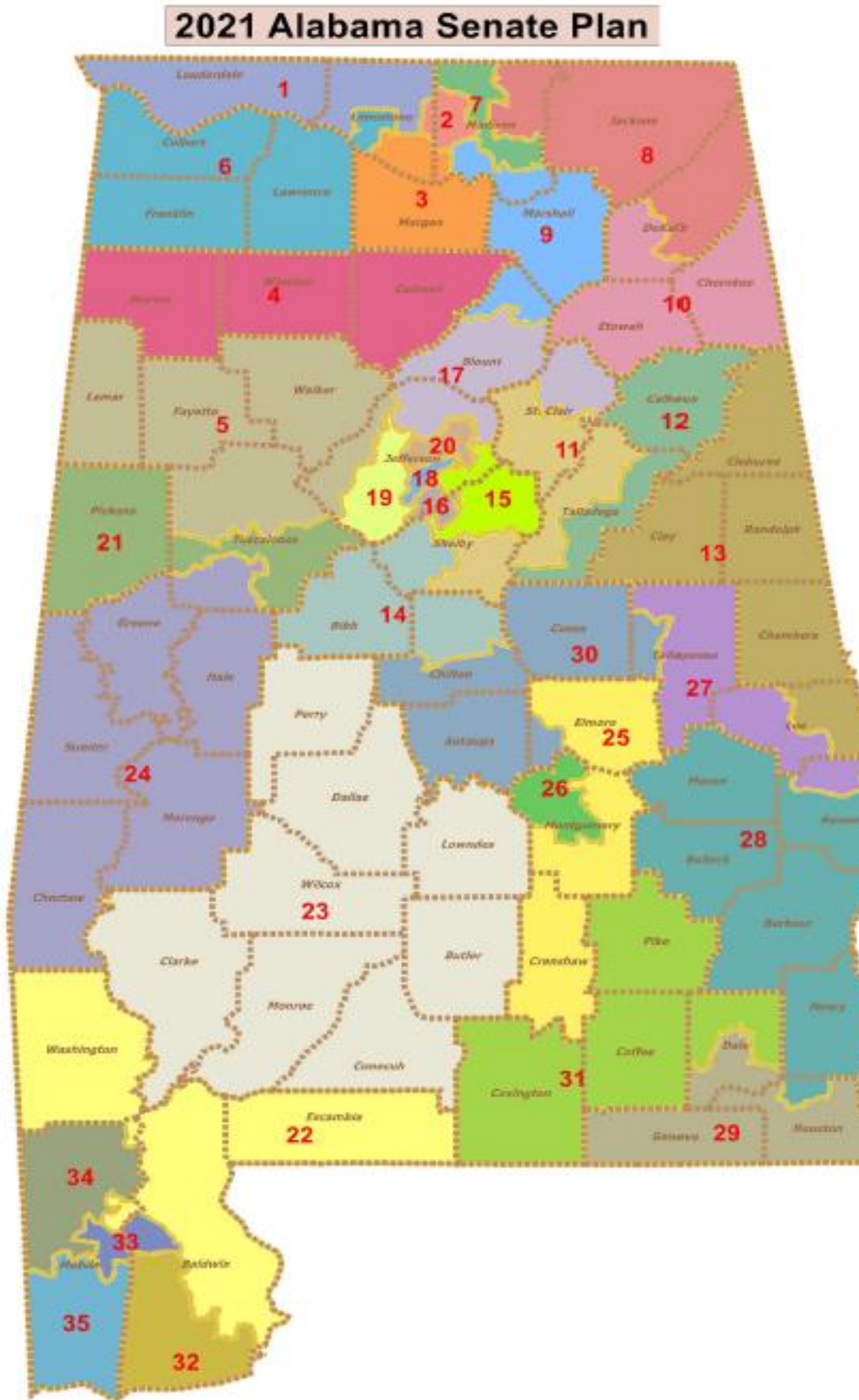
After the 2020 census data was released in August 2021, the Committee began developing new Senate districts. Doc. 230 ¶¶ 25–26. The Committee's expert cartographer was Randy Hinaman, Doc. 235-2 at 15–16, who has drawn Alabama's districting maps for many years, *see Allen*, 599 U.S. at 15. Mr. Hinaman testified that he began drawing the 2021 Plan by using the 2017 Senate plan that was enacted after the *Alabama Black Legislative Caucus* litigation. Doc. 235-2 at 30. He testified that he prioritized preserving the cores of the existing districts, *id.* at 33, and that he drew the map "race blind," only reviewing the racial makeup of the districts after the Plan was completed, *id.* at 46–47. He testified that when he evaluated the population of each district, he considered only the voting-age population ("VAP") and did not consider the citizen voting-age population ("CVAP"). *Id.* at 47–48.

"BVAP" refers to the Black share of the voting-age population within a district. Tr. 358; *see id.* at 946. The BVAP is derived from decennial census data, *id.* at 356, 943–44, and is based on a "full numeration"—a count—of the population, Doc. 189-7 at 10; *see* Doc. 206-6 at 6, 15; Doc. 206-14 at 6; Tr. 236–37, 361, 944.

"CVAP" refers to the citizen voting-age population within a district. Tr. 358, 946. Because there is no citizenship question on the decennial census, *id.* at 356, 946; Doc. 189-7 at 9, CVAP is an estimate derived from monthly surveys of a sample of the population conducted by the American Community Survey, a subset of the

Census Bureau, *see* Tr. 236–37, 360, 946–47; Doc. 206-6 at 6; Doc. 189-7 at 7, 11; Doc. 206-14 at 6–7. The American Community Surveys are a "rolling survey" of sample data that reflect estimates, not counts. Tr. 236, 310, 946–47.

The Senate plan Mr. Hinaman prepared passed the Committee, although all Black members of the Committee voted against it. Doc. 230 ¶¶ 44–45. Governor Ivey called a Special Legislative Session on redistricting to begin in October 2021. *Id.* 230 ¶ 33. The Legislature passed the Plan, and Governor Ivey signed it into law on November 4, 2021. *Id.* ¶¶ 47–48. The Plan appears below.



Doc. 195-19.

D. Claims and Defenses

The plaintiffs allege that the Plan "denies Black Alabamians an equal opportunity to participate in the political process and elect candidates of their choice" by cracking Black voters across Districts 2, 7, and 8 in the Huntsville area and packing Black voters into District 26 in the Montgomery area. Doc. 126 ¶¶ 2–4.

The Secretary denies that the Plan cracks or packs Black voters and argues that the totality of the circumstances do not support a finding of vote dilution. *Id.* at 28, ¶¶ 14, 18–19. He particularly argues that the totality of the circumstances do not support a finding of race-based vote dilution because vote choice in Alabama is driven by party, not race. *See* Tr. 1667.

1. Huntsville – Senate Districts 2, 7, and 8

The plaintiffs allege that the Plan "unnecessarily cracks Black voters in State Senate Districts 2, 7, and 8 in Huntsville, thereby preserving three districts where candidates preferred by [W]hite voters reliably win." Doc. 126 ¶ 4. They assert that District 7 "split[s] the City of Huntsville and the Black community there into three parts." *Id.* ¶ 84. According to the plaintiffs, District 7 "cuts through Huntsville's Black community and splits communities of interest, taking a sharp eastern turn to capture heavily [W]hite communities rather than additional Black communities in Huntsville, which instead lie in the adjacent Senate Districts 2 and 8, to the west and east, respectively." *Id.* The plaintiffs provide three illustrative plans ("Illustrative

Plans 1, 2A, and 3") that they contend demonstrate that a remedial district (illustrative District 7) can be drawn in the Huntsville area. Doc. 206-6 at 31; Doc. 206-8 at 25; Doc. 206-10 at 2–3.

The Secretary denies that the Plan cracks Black voters into Districts 2, 7, and 8. Doc. 147 at 1, ¶ 4. He argues that District 7 in two of the plaintiffs' illustrative plans (Illustrative Plans 1 and 2A) does not meet the numerosity threshold the law requires and that Illustrative Plans 1, 2A, and 3 each propose a remedial District 7 that is not reasonably compact and does not comply with traditional districting criteria. Tr. 1657–60; Doc. 166 at 31–38. He also argues that the illustrative plans were impermissibly drawn on the basis of race. Tr. 1657–60; Doc. 166 at 31–38.

2. Montgomery – Senate Districts 25 and 26

The plaintiffs allege that that the Plan "unnecessarily packs Black voters in Montgomery into [Senate] District 26, and surgically extracts communities with higher percentages of [W]hite [voting-age populations] from the core of Montgomery into [Senate] District 25." Doc. 126 ¶ 83. The plaintiffs provide one illustrative plan for a remedial district (illustrative District 25) in the Montgomery area. *See* Doc. 206-6 at 31, 36–37. District 25 remains the same in all three illustrative plans, *see* Tr. 266, 272, so the court refers to it as "Proposed District 25." They argue that Proposed District 25 is reasonably compact and "includes more of the city of Montgomery than before while maintaining the district's tie to the . . .

Black Belt." *Id.* at 1641.

The Secretary denies that Black voters are packed into Senate District 26. Doc. 147 at 1, ¶ 3. He contends that Proposed District 25 is not reasonably compact and does not comply with traditional districting criteria. *See* Tr. 1660. He also argues that it was impermissibly drawn on the basis of race. *See id.*

II. STANDARD OF REVIEW

"The usual standard of proof in civil litigation is preponderance of the evidence," *E.M.D. Sales, Inc. v. Carrera*, 604 U.S. 45, 47 (2025), and redistricting cases do not require a higher threshold, *see, e.g.*, *Cooper v. Harris*, 581 U.S. 285, 319 n.15 (2017). The Court thus considers whether the plaintiffs have proven their claims by a preponderance of the evidence.

III. APPLICABLE LAW

"For the past forty years, [federal courts] have evaluated claims brought under [Section Two] using the three-part framework developed in [the Supreme Court] decision *Thornburg v. Gingles*." *Allen*, 599 U.S. at 17 (citation omitted). "*Gingles* has governed . . . Voting Rights Act jurisprudence since it was decided 37 years ago" and the Supreme Court "ha[s] applied *Gingles* in one [Section Two] case after another, to different kinds of electoral systems and to different jurisdictions in States all over the country." *Id.* at 19.

"Congress has never disturbed [the] understanding of [Section Two] as

Gingles construed it." *Id.*; *see also id.* at 42 (Kavanaugh, J., concurring in part) ("In the past 37 years, . . . Congress and the President have not disturbed *Gingles*, even as they have made other changes to the Voting Rights Act.").

Gingles requires district courts to conduct a two-step analysis when considering redistricting challenges under Section Two. In the first step, the Court must consider whether the plaintiffs have established the three *Gingles* preconditions that: (1) as a group, Black voters in Alabama are "sufficiently large and [geographically] compact" to constitute a majority in an additional "reasonably configured district"; (2) Black voters are "politically cohesive"; and (3) each challenged district's "[W]hite majority votes sufficiently as a bloc to enable it . . . to defeat the [Black] preferred candidate." *Id.* at 18 (majority opinion) (internal quotation marks and citations omitted).

"Each *Gingles* precondition serves a different purpose." *Id.* "The 'geographically compact majority' and 'minority political cohesion' showings are needed to establish that the minority has the potential to elect a representative of its own choice in some single-member district." *Growe v. Emison*, 507 U.S. 25, 40 (1993) (citations omitted). The minority political cohesion showing is needed to establish "that a representative of its choice would in fact be elected," and the racially polarized voting showing "'establish[es] that the challenged districting thwarts a distinctive minority vote' at least plausibly on account of race.'" *Allen*, 599 U.S. at

19 (alteration in original) (quoting *Growe*, 507 U.S. at 40).

"Unless these points are established, there neither has been a wrong nor can be a remedy." *Growe*, 507 U.S. at 40–41. Accordingly, if the plaintiffs fail to establish any one of these three preconditions, the Court need not consider the other two. *See Voinovich v. Quilter*, 507 U.S. 146, 158 (1993).

As to the first *Gingles* precondition, "a party asserting [Section Two] liability must show by a preponderance of the evidence that the minority population in the potential election district is greater than 50 percent." *Bartlett*, 556 U.S. at 19–20. As the Supreme Court has explained, "it is a special wrong when a minority group has 50 percent or more of the voting population and could constitute a compact voting majority but, despite racially polarized bloc voting, that group is not put into a district." *Id.* at 19.

Citizenship data may be relevant in a numerosity analysis. "[W]here there is reliable information indicating a significant difference in citizenship rates between majority and minority populations," the unit of analysis is "voting age population as refined by citizenship" data. *Negron v. City of Miami Beach*, 113 F.3d 1563, 1569 (11th Cir. 1997). "[S]uch a disparity is unlikely except in areas where the population includes a substantial number of immigrants." *Id.* The disparity in citizenship rates is important—because only citizens can vote, a district with a majority-minority VAP is "hollow" if the district does not have a majority-minority CVAP. *See League*

of United Latin Am. Citizens v. Perry ("*LULAC*"), 548 U.S. 399, 429 (2006) (plurality opinion in part); *Negron*, 113 F.3d at 1568.

Even if a group is sufficiently large, the majority-minority district must also be reasonably configured. *See Allen*, 599 U.S. at 18. "A district will be reasonably configured . . . if it comports with traditional districting criteria, such as being contiguous and reasonably compact." *Allen*, 599 U.S. at 18, 30 ("[Section Two] never require[s] adoption of districts that violate traditional redistricting principles.") (second alteration in original) (internal quotation marks omitted). Because the injury in a Section Two claim is vote dilution, the compactness analysis "refers to the compactness of the minority population, not to the compactness of the contested district." *LULAC*, 548 U.S. at 433 (quoting *Bush v. Vera*, 517 U.S. 952, 997 (1996) (Kennedy, J., concurring)). "If, because of the dispersion of the minority population, a reasonably compact majority-minority district cannot be created, [Section Two] does not require a majority-minority district . . . ." *Vera*, 517 U.S. at 979.

Compactness "is critical to advancing the ultimate purposes of [Section Two], ensuring minority groups equal 'opportunity . . . to participate in the political process and to elect representatives of their choice.'" *LULAC*, 548 U.S. at 434 (alteration in original) (quoting 42 U.S.C. § 1973(b)). A "minority group [that] is spread evenly throughout" the relevant geographic area (i.e., "substantially integrated throughout" that area) is not compact enough to "maintain that they would have been able to elect

representatives of their choice" in a single district. *Gingles*, 478 U.S. at 50 n.17.

"While no precise rule has emerged governing [Section Two] compactness, the inquiry should take into account traditional districting principles such as maintaining communities of interest and traditional boundaries." *LULAC*, 548 U.S. at 433 (internal quotation marks omitted) (quoting *Abrams v. Johnson*, 521 U.S. 74, 92 (1997)); *see also Ala. Legis. Black Caucus*, 575 U.S. at 272 (noting that traditional redistricting principles "includ[e] compactness, contiguity, . . . respect for political subdivisions or communities defined by actual shared interests, incumbency protection, and political affiliation") (internal citation and quotation marks omitted).

"A district that reaches out to grab small and apparently isolated minority communities is not reasonably compact." *LULAC*, 548 U.S. at 433 (internal quotation marks omitted) (quoting *Vera*, 517 U.S. at 979). "[B]izarre shaping of" a district that, for example, "cut[s] across pre-existing precinct lines and other natural or traditional divisions," suggests "a level of racial manipulation that exceeds what [Section Two] could justify." *Vera*, 517 U.S. at 980–81.

"When it comes to considering race in the context of districting, [the Supreme Court] ha[s] made clear that there is a difference 'between being aware of racial considerations and being motivated by them.'" *Allen*, 599 U.S. at 30 (quoting *Miller*, 515 U.S. at 916). Because the Voting Rights Act in itself "demands consideration of race," *Abbott*, 581 U.S. at 587, map drawers in Section Two cases will "be aware of

racial demographics," *Allen*, 599 U.S. at 30 (internal quotation marks omitted) (quoting *Miller*, 515 U.S. at 916). But "such race consciousness does not lead inevitably to impermissible race discrimination." *Id.* (internal quotation marks omitted) (quoting *Shaw v. Reno*, 509 U.S. 630, 646 (1993)). "The question whether additional majority-minority districts can be drawn, after all, involves a quintessentially race-conscious calculus." *Id.* at 31 (internal quotation marks and emphasis omitted) (quoting *Johnson v. De Grandy*, 512 U.S. 997, 1020 (1994)).

While race consciousness is permissible, "race may not be the predominant factor in drawing district lines unless [there is] a compelling reason." *Id.* (alteration in original) (internal quotation marks omitted) (quoting *Cooper*, 581 U.S. at 291). "Race predominates in the drawing of district lines . . . when race-neutral considerations [come] into play only after the race-based decision had been made." *Id.* (second alteration in original) (internal quotation marks omitted) (quoting *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 189 (2017)).

"[T]he first *Gingles* condition requires the possibility of creating more than the existing number of reasonably compact districts with a sufficiently large minority population to elect candidates of its choice." *De Grandy*, 512 U.S. at 1008. This requirement "relates to the availability of a remedy," *Nipper v. Smith*, 39 F.3d 1494, 1526 (11th Cir. 1994), and the plaintiffs must "demonstrate the existence of a proper remedy," *Burton v. City of Belle Glade*, 178 F.3d 1175, 1199 (11th Cir. 1999)

(collecting cases).

To determine whether the plaintiffs satisfy this requirement, the Court compares the Plan with each illustrative plan provided by the plaintiffs. *See LULAC*, 548 U.S. at 430 (quoting *De Grandy*, 512 U.S. at 1008) (stating requirement of "a comparison between a challenger's proposal and the 'existing number of reasonably compact districts'"). Further comparisons are not required; a Section Two "district that is reasonably compact and regular, taking into account traditional districting principles," need not also "defeat [a] rival compact district[]" in a "beauty contest[]." *Vera*, 517 U.S. at 977 (internal quotation marks and emphasis omitted).

The second and third *Gingles* preconditions rise and fall on whether the plaintiffs establish that voting in the challenged districts is racially polarized. *See, e.g., LULAC*, 548 U.S. at 427. As the Supreme Court has explained, "in the absence of significant [W]hite bloc voting it cannot be said that the ability of minority voters to elect their chosen representatives is inferior to that of [W]hite voters." *Voinovich*, 507 U.S. at 158 (quoting *Gingles*, 478 U.S. at 49 n.15).

If the plaintiffs establish all three *Gingles* requirements, the Court then must proceed to the second step of the Section Two analysis. In this step, the Court considers whether, "under the 'totality of circumstances,' . . . the political process is not 'equally open' to minority voters." *Allen*, 599 U.S. at 18 (quoting *Gingles*, 478 U.S. at 45–46); *see Bartlett*, 556 U.S. at 11–12. This "inquiry recognizes that

application of the *Gingles* factors is 'peculiarly dependent upon the facts of each case'" and requires the Court to "conduct 'an intensely local appraisal' of the electoral mechanism at issue, as well as a 'searching practical evaluation of the past and present reality.'" *Allen*, 599 U.S. at 19 (some quotation marks omitted) (quoting *Gingles*, 478 U.S. at 79).

"[I]t will be only the very unusual case in which the plaintiffs can establish the existence of the three *Gingles* factors but still have failed to establish a violation of [Section Two] under the totality of circumstances." *Ga. State Conf. of NAACP v. Fayette Cnty. Bd. of Comm'rs*, 775 F.3d 1336, 1342 (11th Cir. 2015) (quoting *Jenkins v. Red Clay Consol. Sch. Dist. Bd. of Educ.*, 4 F.3d 1103, 1135 (3d Cir. 1993)).

> In this step, the court considers the Senate Factors, which include:
>
> the history of voting-related discrimination in the State or political subdivision; the extent to which voting in the elections of the State or political subdivision is racially polarized; the extent to which the State or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority vote requirements, and prohibitions against bullet voting; the exclusion of members of the minority group from candidate slating processes; the extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process; the use of overt or subtle racial appeals in political campaigns; and the extent to which members of the minority group have been elected to public office in the jurisdiction.

De Grandy, 512 U.S. at 1010 n.9 (quoting *Gingles*, 478 U.S. at 44–45). "[E]vidence

demonstrating that elected officials are unresponsive to the particularized needs of the members of the minority group and that the policy underlying the State's or the political subdivision's use of the contested practice or structure is tenuous may have probative value." *Id.* (quoting *Gingles*, 478 U.S. at 45).

The Senate Factors are not exhaustive. Under controlling Supreme Court precedent, the Court may also consider whether the number of Black-majority districts in the map is roughly proportional to the Black share of the population in Alabama. *See LULAC*, 548 U.S. at 426; *accord De Grandy*, 512 U.S. at 1000. The Supreme Court has held that "whether the number of districts in which the minority group forms an effective majority is roughly proportional to its share of the population in the relevant area" is a "relevant consideration" in the totality-of-the-circumstances analysis. *LULAC*, 548 U.S. at 426; *accord De Grandy*, 512 U.S. at 1000. "[P]roportionality . . . is obviously an indication that minority voters have an equal opportunity, in spite of racial polarization to participate in the political process and to elect representatives of their choice . . . ." *De Grandy*, 512 U.S. at 1020 (internal quotation marks omitted) (quoting 42 U.S.C. § 1973(b)); *accord Ala. Legislative Black Caucus*, 989 F. Supp. 2d at 1286–87 (concluding that the totality of the circumstances weighed against a finding that the state legislative map violated Section Two in part because the number of majority-Black districts in the Legislature is "roughly proportional to the [B]lack voting-age population"), *vacated on other*

grounds, 575 U.S. 254 (2015).

But the proportionality evaluation is not dispositive. Section Two expressly provides that "nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population," 52 U.S.C. § 10301(b), and "[f]orcing proportional representation is unlawful and inconsistent with [the Supreme Court's] approach to implementing [Section Two]," *Allen*, 599 U.S. at 28.

"[T]he *Gingles* framework itself imposes meaningful constraints on proportionality," as "[i]ts exacting requirements" "limit judicial intervention to 'those instances of intensive racial politics' where the 'excessive role [of race] in the electoral process . . . den[ies] minority voters equal opportunity to participate.'" *Allen*, 599 U.S. at 26, 30 (some alterations in original) (quoting S. Rep. No. 97-417 at 33–34 (1982)).

The Court may also consider "any circumstance that has a logical bearing on whether" the challenged structure and its interaction with local social and historical conditions "affords equal 'opportunity.'" *Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 668–69 (2021); *see also District of Columbia v. Wesby*, 583 U.S. 48, 60–61 (2018) (observing that a "totality of the circumstances" test "requires courts to consider the whole picture" and "recognize[s] that the whole is often greater than the sum of its parts" and "precludes [a] sort of divide-and-conquer analysis" in which

each factor is "viewed in isolation") (internal quotation marks omitted) (quoting *United States v. Cortez*, 449 U.S. 411, 417 (1981)).

The Section Two analysis "assess[es] the impact of the contested structure or practice on minority electoral opportunities on the basis of objective factors." *Gingles*, 478 U.S. at 44 (internal quotation marks omitted). Section Two protects against "electoral changes that are discriminatory in effect." *Allen*, 599 U.S. at 41 (internal quotation marks omitted). "[F]or the last four decades, [federal courts] have repeatedly applied the effects test of [Section Two] as interpreted in *Gingles* and, under certain circumstances, have authorized race-based redistricting as a remedy for state districting maps that violate [Section Two]." *Id.*

If the Court determines that the Plan violates Section Two, that would not be a determination that the plaintiffs are entitled to a plan of their choice, or to one of the illustrative plans submitted to satisfy *Gingles*; those maps are illustrative maps submitted for the purposes of establishing liability under Section Two.

IV. ANALYSIS

A. Plaintiffs' Arguments

The plaintiffs argue that they satisfy each *Gingles* precondition and prevail on an analysis of the totality of the circumstances.

1. *Gingles* I – Numerosity and Reasonable Compactness

To satisfy the first *Gingles* precondition, the plaintiffs must establish that

Black voters as a group are "sufficiently large and [geographically] compact to constitute a majority in a reasonably configured district." *Allen*, 599 U.S. at 18 (internal quotation marks omitted) (quoting *Wis. Legislature v. Wis. Elections Comm'n*, 595 U.S. 398, 402 (2022)); *accord Growe*, 507 U.S. at 40.

The plaintiffs argue that they have established these requirements because their illustrative plans contain examples of remedial majority-Black districts in the Huntsville and Montgomery areas that are reasonably compact (three examples of a remedial district in Huntsville and one example of a remedial district in Montgomery). *See* Tr. 1641–43. The plaintiffs argue that their illustrative plans unite communities of interests and more predominantly Black portions of each of the metropolitan areas. *See id.* at 1641, 1643. To establish these assertions, the plaintiffs rely on the testimony of expert witnesses Anthony Fairfax and Dr. Kassra Oskooii.

The court already has explained BVAP and BCVAP. *See supra* Part I.C. BCVAP becomes relevant to redistricting "where there is reliable information indicating a significant difference in citizenship rates between majority and minority populations." *Negron*, 113 F.3d at 1569. For instance, where the citizenship rate of the minority population at issue in a district was 50.16 percent, and the non-minority citizenship rate was 88.18 percent, the Eleventh Circuit held that "the minority population include[d] a substantial number of immigrants" and that "refin[ing]" VAP data with CVAP data was appropriate to ensure a remedial district included a

meaningful majority of the minority population. *Id.* at 1567–69.

The Census Bureau provides data at various geographic levels. *See* Doc. 189-7 at 9. The smallest level is a "census block." Tr. 237, 362–63. Together, groups of census blocks form "block groups." Doc. 189-7 at 9; Tr. 237–38, 362, 965. In turn, block groups form "census tracts," and tracts form counties. Doc. 189-7 at 9; Tr. 238, 965. The Census Bureau reports decennial census data down to the census block level. *See* Tr. 949, 965. The American Community Survey reports CVAP data down to the block group level. *See id.* at 255, 362, 948–49.

A redistricting map-drawer may have to split block groups between districts. *See id.* at 368, 948–49; Doc. 189-7 at 10, 16, 19. In that circumstance, the map-drawer is required to "estimate the racial makeup of the portion of the block group that is contained within [each] district." Doc. 189-7 at 16, 19; *see* Tr. 368, 948. This process is completed by using a "disaggregation" technique. Doc. 206-6 at 7; Doc. 189-7 at 22; Tr. 255; *see* Tr. 972.

Because the parties dispute the statistical reliability of CVAP data, the court defines statistical terms used by the parties. The best estimate, or most likely outcome, of survey data is referred to as the "point estimate." Tr. 75, 969–70. It is the "best approximation" based on the survey data. *Id.* at 376; *see id.* at 969–70.

Because the American Community Survey surveys a sample of the population, the point estimate comes with a "sampling error," which "means that

estimates derived from the [surveys] will likely differ from the values that would have been obtained if the entire population had been included in the survey, as well as from values that would have been obtained had a different set of sample units been selected for the survey." Doc. 189-7 at 12 (internal quotation marks and citations omitted); *see* Tr. 407–08, 957, 960.

The American Community Survey reports data from monthly surveys in one-year, three-year, and five-year estimates. Doc. 189-7 at 8; Tr. 236, 360. The five-year estimates are cumulative—that is, they are based upon the aggregation of data from the previous five years. Tr. 363, 947; *see* Doc. 206-14 at 9; Doc. 189-7 at 17.

The point estimate is often reported with a confidence interval. A confidence interval "is a range above and below the point estimate that the true unknown value likely falls in within a certain degree of probability." *Id.* at 376; *see id.* at 70 (explaining that a ninety-five percent confidence interval means that "95 out of 100 times" the true value is contained within that identified range). Sometimes the parties refer to this range as the "margin of error" or "error margin." *See, e.g.*, Tr. 377–78; Doc. 189-7 at 12–13.[5]

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[5] Dr. Trende explained in his report that "[s]tatistics, which can be thought of as the mathematical study of uncertainty, allows us to quantify our uncertainty and express it through error margins." Doc. 189-7 at 12. To that end, "polls are accompanied by error margins, which are typically reported at a 95% degree of confidence." *Id.* So, "[i]f the error margin for [a] poll were +/- 4%, that would tell us that 95 out of every 100 polls conducted will have the 'true' population value within 4 points in either direction of the reported estimate [also known as the point estimate]." *Id.*

Inherent in this estimation is the possibility that the true value (based on a full enumeration of the population rather than a sample) falls outside of the confidence interval. *See id.* at 438, 962–63. For example, if a point estimate is reported with a 2.5-unit margin of error at a ninety percent confidence interval, the researcher estimates that ninety out of 100 times, the true value lies within a ±2.5-unit range of the point estimate. *See id.* at 70. There is a ten percent possibility that the true value lies outside of that margin. *Id.* at 437–38.

a. Mr. Anthony Fairfax

Mr. Fairfax earned a Bachelor of Science in Electrical Engineering from Virginia Tech University and a Master of Geospatial Information Science and Technology from North Carolina State University. Doc. 206-6 at 4; Tr. 226. Mr. Fairfax has worked on redistricting issues for thirty years, Tr. 226–28, qualified as an expert in numerous redistricting lawsuits, *see* Doc. 206-6 at 5; Doc. 206-7 at 8–10, and developed approximately one thousand redistricting plans for states and municipalities, Tr. 228; Doc. 206-6 at 4. Approximately half of Mr. Fairfax's redistricting work has involved state legislative plans, and forty-to-sixty percent of his redistricting work has involved Section Two. Tr. 228–29.

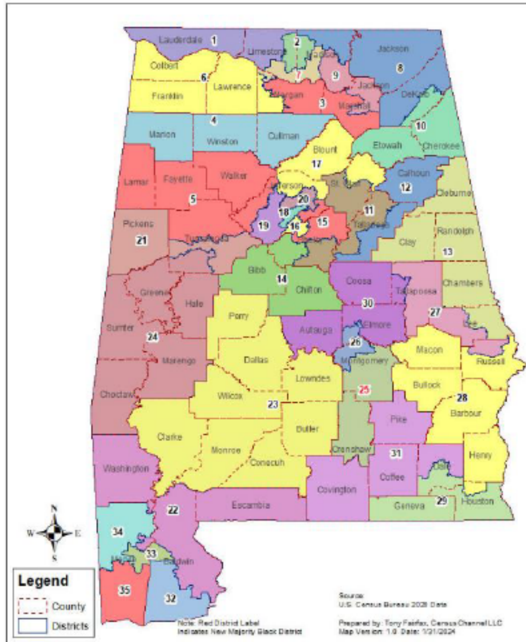
At trial, Mr. Fairfax was admitted without objection "as an expert in map drawing, demographics, and the use of census data for redistricting." *Id.* at 230.

The plaintiffs asked Mr. Fairfax "to determine whether an illustrative plan could be developed that satisfied the first precondition of *Gingles* and adhere[d] to federal and state redistricting criteria for Alabama State Senate districts." *Id.* at 230–31. Mr. Fairfax opined that it is possible to draw two additional, reasonably configured majority-Black Senate districts that comply with traditional redistricting criteria—one each in the Montgomery and Huntsville areas. Doc. 206-6 at 7; Doc. 206-8 at 38.

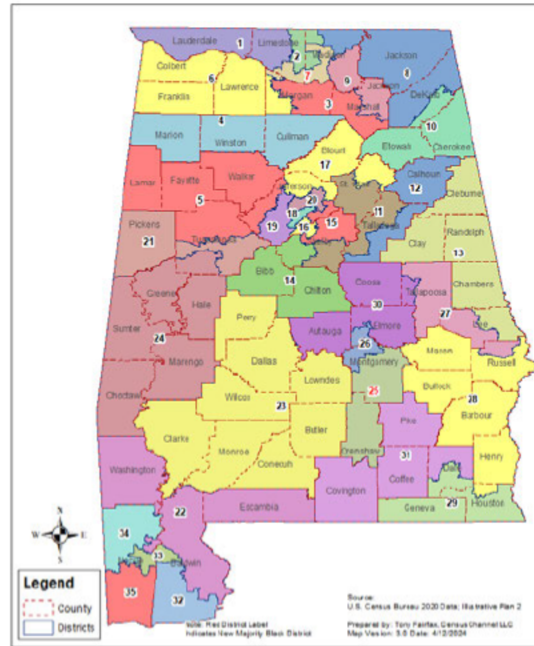
In his original report, Mr. Fairfax observed that the 2020 census revealed that Alabama's BVAP increased to 25.9 percent of the state's voting-age population and White VAP decreased to 65.47 percent. *See* Doc. 206-6 at 49. He also reported that according to the 2022 one-year American Community Survey data, Alabama had a BCVAP of 25.6 percent and a White CVAP of 67.7 percent. *Id.*

Also in his reports, Mr. Fairfax offered three illustrative plans (the "Illustrative Plans"). Doc. 206-6 at 31; Doc. 206-8 at 14, 25; Doc. 206-10 at 2. Mr. Fairfax used 2022 one-year and 2021 five-year CVAP estimates and 2020 decennial census data to draw Illustrative Plan 1. *See* Doc. 206-6 at 6. Mr. Fairfax observed that the 2021 five-year CVAP estimates "would have been available for the Legislature" at the time it drew the Enacted Plan. Tr. 264. He used 2022 five-year CVAP estimates to draw Illustrative Plans 2 and 3. Doc. 206-8 at 6. The illustrative plans appear below:

Alabama
State Senate Districts
Illustrative Plan



Alabama
State Senate Districts
Illustrative Plan 2

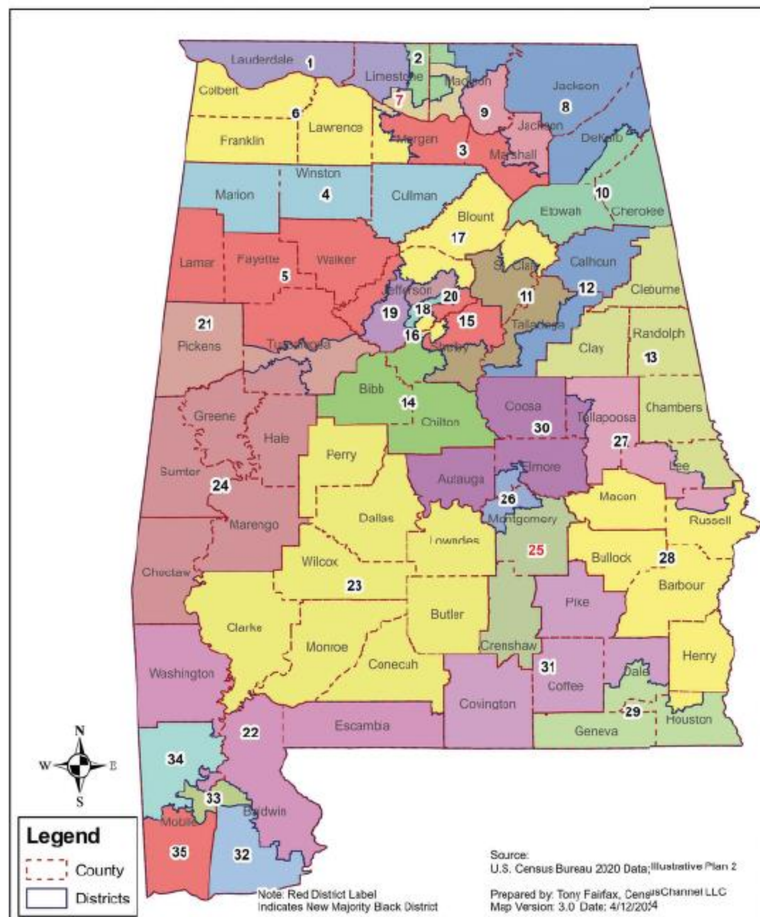


Alabama
State Senate Districts
Illustrative Plan 3

Doc. 206-6 at 31; Doc. 206-8 at 14, 25.

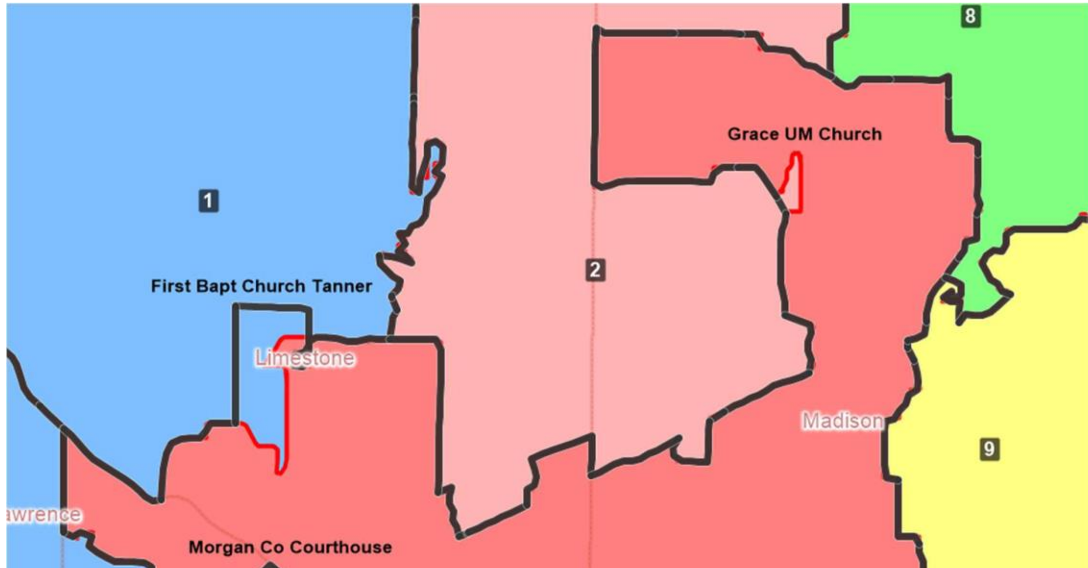
Mr. Fairfax later supplemented his report because he "noticed that [he] had inadvertently and erroneously provided incorrect versions of the map" for Illustrative Plan 2, "even though all of the statistics included [for Illustrative Plan 2] reflected the correct and intended Illustrative Plan 2[A]." Doc. 206-10 at 2. Mr. Fairfax submitted a new plan ("Illustrative Plan 2A") that amended the lines of District 7 in Illustrative Plan 2. *Id.* The changes to Illustrative Plan 2 are "minimal," *id.*, and at trial, Mr. Fairfax testified that Illustrative Plans 2 and 2A are "[v]ery similar," Tr. 321. Illustrative Plan 2A appears below:

Alabama
State Senate Districts
Illustrative Plan 2A



Doc. 207-23 at 2.

The differences in Illustrative Plan 2 and 2A are visible only by zooming in:



Doc. 206-10 at 3. Mr. Fairfax explained that "[t]he background color represents Illustrative Plan 2 while Illustrative Plan 2A is depicted using the black boundary lines, with bold red boundary lines reflecting the differences." *Id.*

At trial, Mr. Fairfax testified that he offered "[e]ssentially three" plans for the Court's consideration, Tr. 233, and on direct examination, he testified about only Illustrative Plans 1, 2A, and 3, *see id.* at 247–74. The plaintiffs draw no distinction between Illustrative Plan 2 and Illustrative Plan 2A other than what the Court has already described, and they offer no reason why the testimony about Illustrative Plan 2 does not also apply to Illustrative Plan 2A. Therefore, the Court considers all testimony about Illustrative Plan 2 applicable to Illustrative Plan 2A, and vice versa.

At trial, Mr. Fairfax testified about how he developed the Illustrative Plans.

He testified that he used the Enacted Plan as a starting point because "many times you want to leave as many districts as [possible] intact." *Id.* at 240; *see id.* at 264–65, 270, 277. Mr. Fairfax testified that he followed five traditional redistricting criteria when drawing the plans—equal population, respecting political subdivisions, compactness, contiguity, and preserving communities of interest. *Id.* at 244. He testified that he also attempted to follow other criteria found in the Legislature's redistricting guidelines. *Id.* at 245. He testified that "[t]here are always tradeoffs" when drawing a map, and that he "balance[d]" the criteria in an effort to create the "best plan" possible. *Id.* at 246–47.

Mr. Fairfax testified that he reviewed race at the beginning of the process to see "where the minority community exists" but then "turn[ed] it off." *Id.* at 242; *see id.* at 277–79. He acknowledged that he checked the minority BVAP and BCVAP periodically "to see if [he] me[]t th[e] sufficiently large component." *Id.* at 280–81. He testified that he "tend[s] to not consider race as much as the other [redistricting] criteria" and "always use[s] the other criteria labels more than race." *Id.* at 241–42.

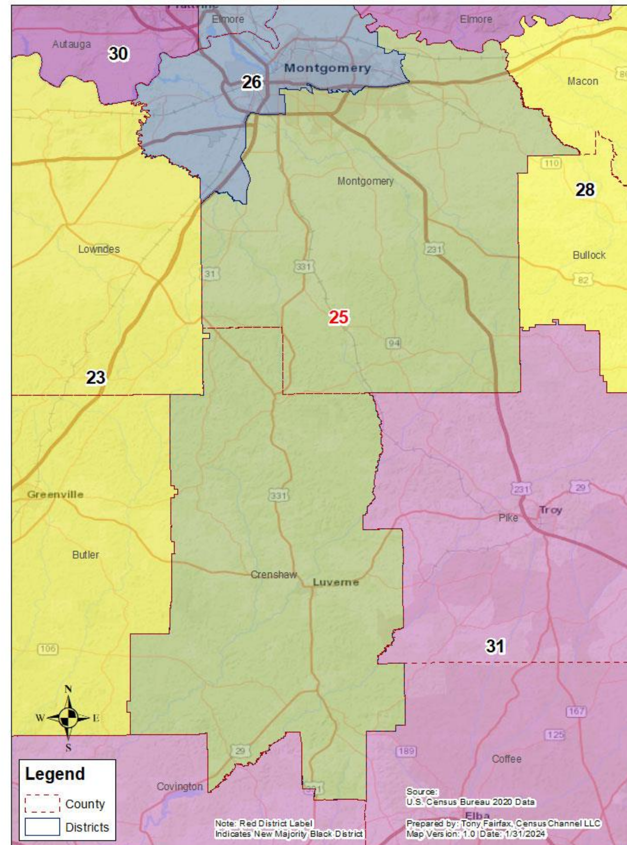
Mr. Fairfax testified that he evaluated whether the proposed remedial districts in the Illustrative Plans are reasonably configured in part by reference to three statistical measures of compactness commonly used in redistricting: the Reock score, the Polsby-Popper score, and the Convex Hull score. Doc. 206-6 at 36, 44–47; Doc. 206-8 at 22; Tr. 258.

Mr. Fairfax defined each metric. He explained that the Reock score measures "the area of the district and divides into it the . . . smallest circle that fits around the district," and that "a finger or an arm sticking out makes the circle larger," which decreases the compactness measure. Tr. 242. He explained that the Polsby-Popper metric "is a perimeter measure." *Id.* This metric takes the "district boundaries and stretche[s] [them] out to a circle," which is "divided into the area of the district." *Id.* at 243. Mr. Fairfax explained that the Convex Hull metric is a "much more forgiving" measure that is described as "taking a rubber band and wrapping it around the district." *Id.* The polygon shape that is created is referred to as the convex hull. *Id.* The Convex Hull score is measured by "tak[ing] the area of that convex hull and divid[ing] [it] into the district." *Id.* Each metric "indicates a more compact district as the value moves closer to 1." Doc. 206-6 at 44–45.

Mr. Fairfax opined that the "measures are the standard that experts use to determine [the] compactness [of] . . . a district." Tr. 260. He testified that comparing compactness scores for an illustrative plan to a previously enacted plan is the "desirable" way to determine if a plan is sufficiently compact. Doc. 206-6 at 44–45; *see* Tr. 257. This is so because a comparison allows a mapmaker "to get a sense of what[] [is] acceptable." Tr. 328. He thus compared compactness scores of Illustrative Plans 1, 2A, and 3 to the compactness scores for the Enacted Plan. *Id.* at 257.

i. Montgomery – Senate Districts 25 and 26

Mr. Fairfax offered Proposed District 25 to demonstrate that it is possible to draw an additional reasonably configured remedial district in the Montgomery area. Mr. Fairfax did not change the boundary lines of Proposed District 25 in Illustrative Plans 1, 2A, or 3. Proposed District 25 appears in green below:



Doc. 206-6 at 37.

The boundaries of Proposed District 25 largely follow county lines. They keep Crenshaw County whole by following its boundary lines, and they keep a majority of Montgomery County whole by following its entire southern boundary line and much of its eastern and western boundary lines. *See id.*

a. Numerosity

Senate Districts 25 and 26 are majority-Black on a BVAP metric. *Id.* at 40. Mr. Fairfax testified that he did not rely on BCVAP in the Montgomery area because "there[] [was] no need to" since "the majority-[B]lack status is already there." Tr. 290.

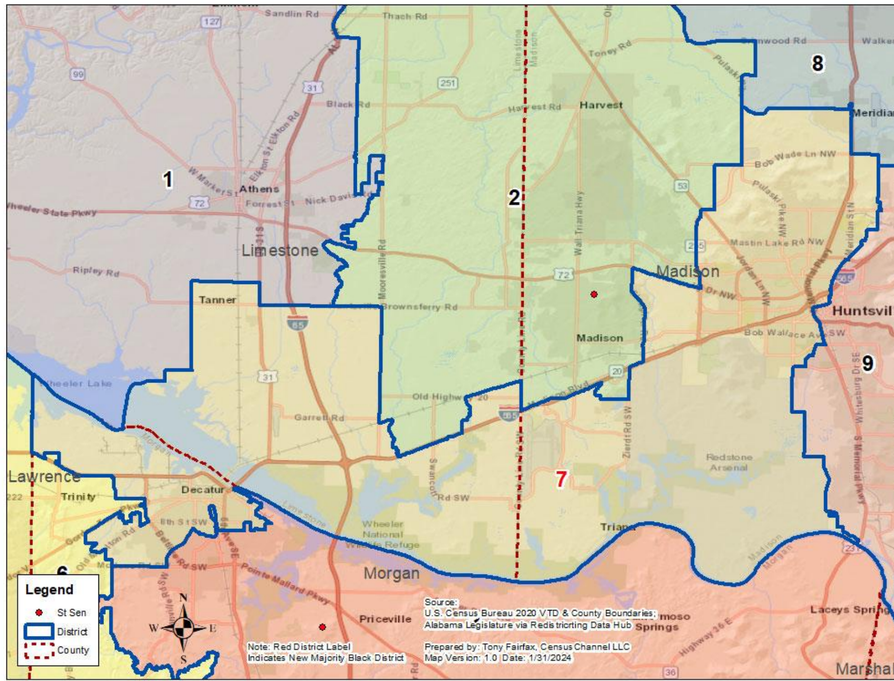
b. Reasonable Configuration

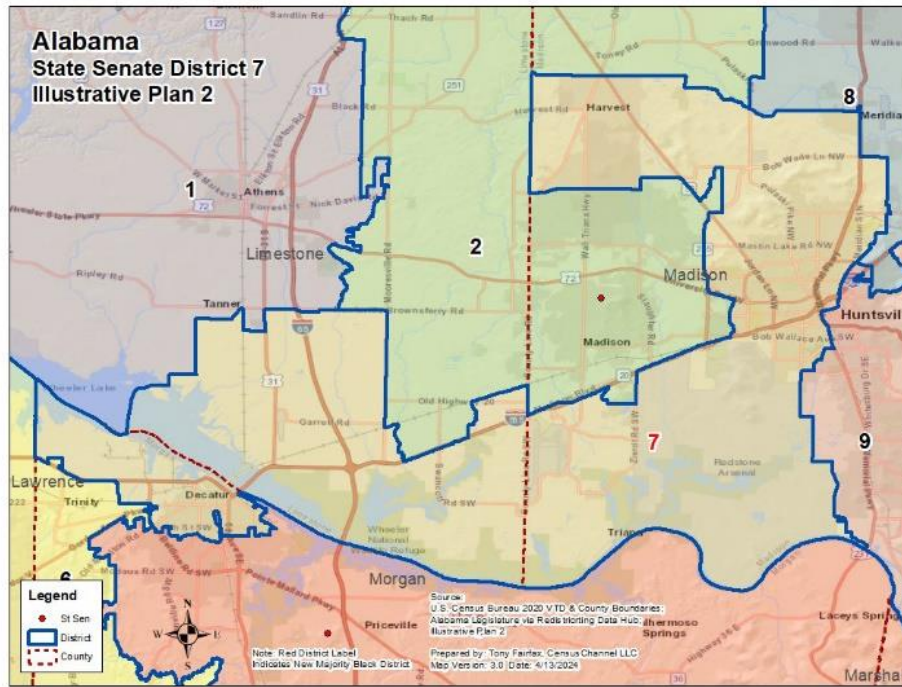
Mr. Fairfax opined that Proposed District 25 is reasonably configured. First, he opined that Proposed District 25 is more compact than districts in the Plan using the Reock, Polsby-Popper, and Convex Hull metrics of compactness. Tr. 258. Mr. Fairfax also opined that Proposed District 25 "outperforms" the Plan on the number of counties contained within the district by splitting only two counties (District 25 in the Plan splits three). Doc. 206-6 at 36; Tr. 256. He observed that in Proposed District 25, "[a]lmost half (49.69%) of the [C]ity of Montgomery is contained within . . . [District] 25" and that, unlike the Plan, "the town of Pike Road is made whole" in Proposed District 25. Doc. 206-6 at 36. He conceded that Proposed District 25 creates a new split in the City of Prattville. Tr. 299.

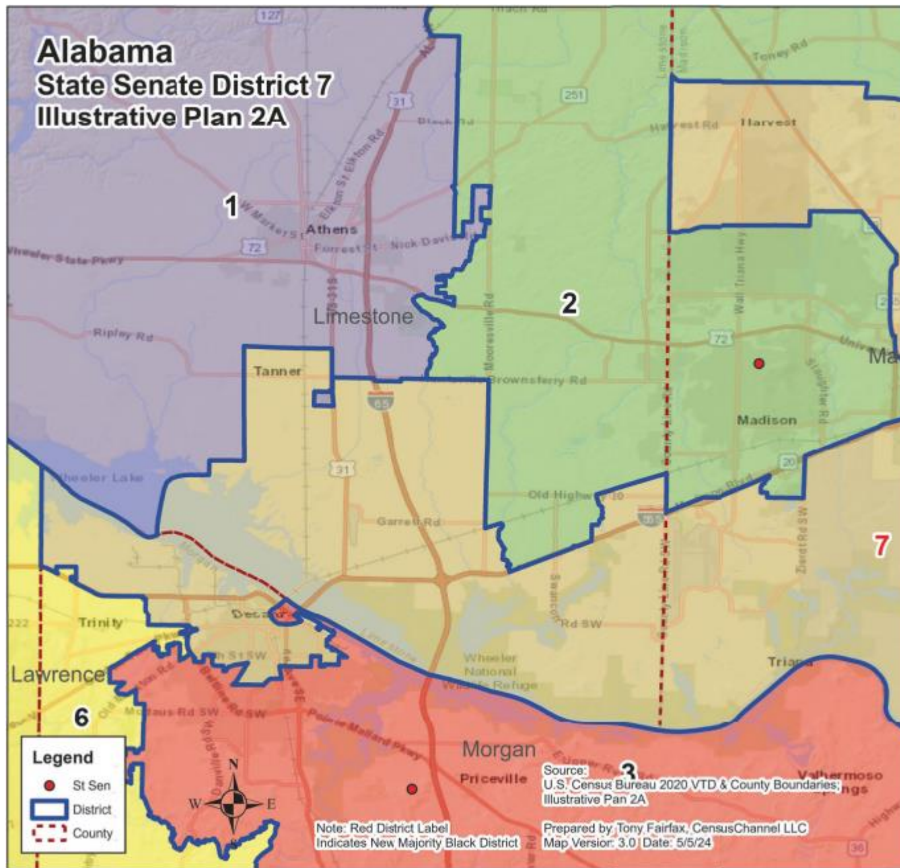
ii. Huntsville – Senate Districts 2, 7, and 8

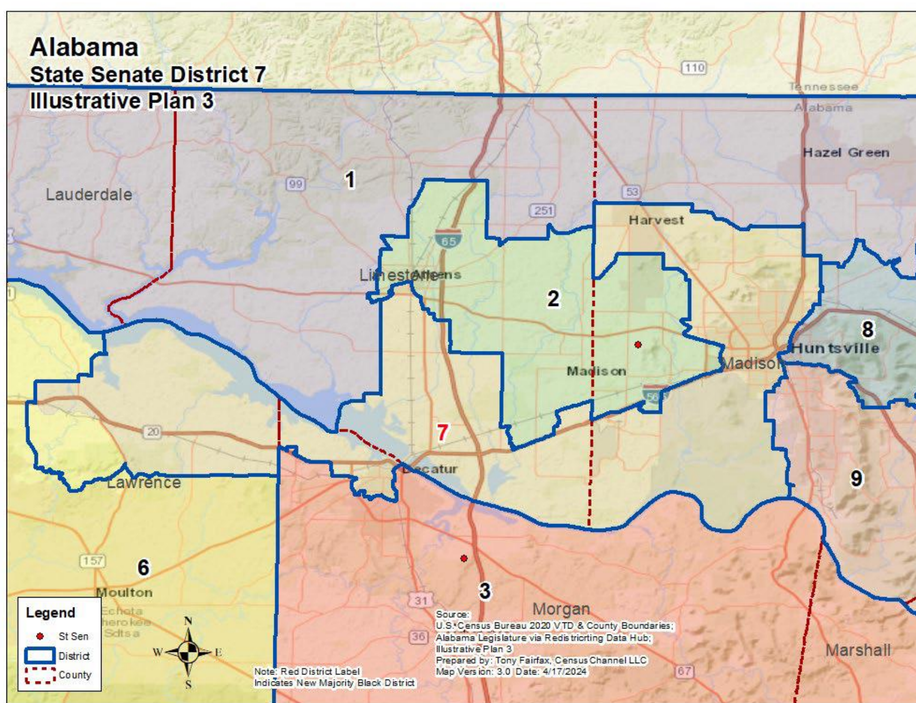
Mr. Fairfax offered three illustrative versions of District 7—one each in Illustrative Plans 1, 2A, and 3—to demonstrate that it is possible to draw a remedial district in the Huntsville area (the first such district in that area) without violating

traditional redistricting principles. Four versions of illustrative District 7 appear below. The first image is from Mr. Fairfax's original report and reflects what the parties denominate as Illustrative Plan 1:




Alabama
State Senate District 7
Illustrative Plan 2
1
2
7
8
9
6
Athens
Limestone
Madison
Huntsville
Harvest
Tanner
Decatur
Trinity
Lawrence
Morgan
Priceville
Marshall
Legend
St Sen
District
County
Note: Red District Label Indicates New Majority Black District
Prepared by: Tony Fairfax, CensusChannel LLC
Map Version: 3.0 Date: 4/13/2024


Alabama
State Senate District 7
Illustrative Plan 2A
1
2
7
6
3
Athens
Limestone
Madison
Harvest
Tanner
Trinity
Lawrence
Morgan
Priceville
Legend
St Sen
District
County
Source:
U.S. Census Bureau 2020 VTD & County Boundaries;
Illustrative Pan 2A
Note: Red District Label
Indicates New Majority Black District
Prepared by Tony Fairfax, CensusChannel LLC
Map Version: 3.0 Date: 5/5/24



Doc. 206-6 at 34; Doc. 206-8 at 16, 27; Doc. 207-23 at 3.

a. Numerosity

In his report, Mr. Fairfax opined that the Black population in the Huntsville area is sufficiently large to constitute a majority in a district. Doc. 206-6 at 7. He used BCVAP and noncitizen data from the American Community Survey and BVAP data from the 2020 decennial census. *Id.* at 6; Doc. 206-8 at 4–5.

Mr. Fairfax used different metrics to evaluate the numerosity of the Black population in the Huntsville area in Illustrative Plans 1 and 2A than he used in Illustrative Plan 3. For Illustrative Plans 1 and 2A, Mr. Fairfax opined in his report that District 7 is majority-Black on a BCVAP metric, but not a BVAP metric. Doc. 206-6 at 43; Doc. 206-8 at 21; *see* Doc. 206-10 at 2; Tr. 283–85. Mr. Fairfax testified

that he "believe[d]" that he "probably [had] not" relied solely on CVAP to establish numerosity in any of his *Gingles* I work in other cases. Tr. 343.

Mr. Fairfax opined that because the Huntsville area contains a significant number of noncitizens, BCVAP is a more accurate and more appropriate estimate for Black eligible voters in that district. Doc. 206-6 at 40–42; *see* Doc. 206-8 at 21; Tr. 252–54, 284. He testified at trial that three counties in the Huntsville area—Madison, Morgan, and Limestone—have some of the highest noncitizenship rates in Alabama. *See* Tr. 253–54. He provided the following chart in his report to compare the noncitizenship rates of those counties to other counties in Alabama:

Alabama
Counties
Noncitizen Voting Age Population
(Sorted by Noncitizen Voting Age Population)

County	TtlPop	VAP	NonCVAP	NonCVAP%
Jefferson County	672,265	519,919	14,793	2.85%
Madison County	**389,781**	**306,047**	**9,591**	**3.13%**
Montgomery County	228,132	174,327	6,014	3.45%
Mobile County	413,878	317,652	5,549	1.75%
Shelby County	223,916	172,853	5,501	3.18%
Lee County	175,126	138,601	5,449	3.93%
Marshall County	97,923	73,200	4,527	6.18%
Tuscaloosa County	231,558	184,343	4,490	2.44%
Morgan County	**123,102**	**94,921**	**4,205**	**4.43%**
DeKalb County	71,680	54,534	4,039	7.41%
Baldwin County	233,420	184,024	3,564	1.94%
Blount County	59,077	45,513	1,812	3.98%
Limestone County	**104,199**	**81,195**	**1,642**	**2.02%**
Franklin County	32,011	24,091	1,467	6.09%
Lauderdale County	94,329	76,073	1,462	1.92%
Calhoun County	116,162	91,563	1,406	1.54%
Houston County	107,040	82,570	1,263	1.53%
Cullman County	88,284	68,612	1,216	1.77%
Etowah County	103,348	81,184	1,211	1.49%
Coffee County	53,559	40,889	1,140	2.79%
Elmore County	87,694	68,631	1,088	1.59%
Chilton County	45,140	34,435	1,046	3.04%
Talladega County	81,105	64,334	935	1.45%
Pike County	32,997	26,777	861	3.22%
Dale County	49,455	38,052	670	1.76%
Autauga County	58,761	44,995	638	1.42%
Pickens County	18,925	15,272	638	4.18%
Russell County	58,849	44,689	528	1.18%
Colbert County	57,270	45,293	527	1.16%
St. Clair County	91,719	71,266	495	0.69%
Walker County	64,978	50,569	458	0.91%
Barbour County	24,877	19,726	421	2.13%
Jackson County	52,618	41,766	420	1.01%
Tallapoosa County	41,251	32,841	386	1.18%
Cherokee County	25,069	20,343	335	1.65%
Winston County	23,655	18,870	315	1.67%
Bullock County	10,328	8,153	276	3.39%
Covington County	37,542	29,315	274	0.93%
Dallas County	38,326	29,288	255	0.87%
Chambers County	34,612	27,421	239	0.87%
Lawrence County	33,116	25,944	228	0.88%
Geneva County	26,647	20,813	223	1.07%
Crenshaw County	13,205	10,185	203	1.99%
Macon County	19,198	16,019	170	1.06%

Doc. 207-10 at 3.

He testified that Madison, Morgan, and Limestone have a non-Black noncitizen population of five percent or less of the total VAP in those counties. *See*

Tr. 253–54. Mr. Fairfax offered in his report the following charts reflecting the breakdown of citizenship rates by race in Madison, Morgan, and Limestone Counties:

Alabama
Madison County
Citizenship Data by Race

Description	Total	Black	Black%	White	White%	Latino	Latino%	Asian	Asian%
Total:	389,781	95,400	24.48%	247,345	63.46%	20,611	5.29%	9,675	2.48%
Male:	191,913	44,658	23.27%	124,234	64.73%	10,558	5.50%	4,386	2.29%
Under 18 years:	42,675	11,221	26.29%	24,240	56.80%	3,667	8.59%	736	1.72%
Native	42,021	11,204	26.66%	24,183	57.55%	3,399	8.09%	442	1.05%
Foreign born:	654	17	2.60%	57	8.72%	268	40.98%	294	44.95%
Naturalized U.S. citizen	232	17	7.33%	28	12.07%	75	32.33%	105	45.26%
Not a U.S. citizen	422	0	0.00%	29	6.87%	193	45.73%	189	44.79%
18 years and over:	149,238	33,437	22.41%	99,994	67.00%	6,891	4.62%	3,650	2.45%
Native	139,375	31,699	22.74%	98,189	70.45%	3,665	2.63%	794	0.57%
Foreign born:	9,863	1,738	17.62%	1,805	18.30%	3,226	32.71%	2,856	28.96%
Naturalized U.S. citizen	4,558	1,097	24.07%	1,118	24.53%	672	14.74%	1,554	34.09%
Not a U.S. citizen	5,305	641	12.08%	687	12.95%	2,554	48.14%	1,302	24.54%
Female:	197,868	50,742	25.64%	123,111	62.22%	10,053	5.08%	5,289	2.67%
Under 18 years:	41,059	10,540	25.67%	22,708	55.31%	3,680	8.96%	909	2.21%
Native	40,330	10,375	25.73%	22,672	56.22%	3,427	8.50%	663	1.64%
Foreign born:	729	165	22.63%	36	4.94%	253	34.71%	246	33.74%
Naturalized U.S. citizen	214	18	8.41%	30	14.02%	38	17.76%	126	58.88%
Not a U.S. citizen	515	147	28.54%	6	1.17%	215	41.75%	120	23.30%
18 years and over:	156,809	40,202	25.64%	100,403	64.03%	6,373	4.06%	4,380	2.79%
Native	146,596	38,821	26.48%	98,123	66.93%	3,929	2.68%	547	0.37%
Foreign born:	10,213	1,381	13.52%	2,280	22.32%	2,444	23.93%	3,833	37.53%
Naturalized U.S. citizen	5,927	1,116	18.83%	1,587	26.78%	660	11.14%	2,334	39.38%
Not a U.S. citizen	4,286	265	6.18%	693	16.17%	1,784	41.62%	1,499	34.97%
Total	389,781	95,400	24.48%	247,345	63.46%	20,611	5.29%	9,675	2.48%
Under 18 years:	83,734	21,761	25.99%	46,948	56.07%	7,347	8.77%	1,645	1.96%
Native	82,351	21,579	26.20%	46,855	56.90%	6,826	8.29%	1,105	1.34%
Foreign born:	1,383	182	13.16%	93	6.72%	521	37.67%	540	39.05%
Naturalized U.S. citizen	446	35	7.85%	58	13.00%	113	25.34%	231	51.79%
Not a U.S. citizen	937	147	15.69%	35	3.74%	408	43.54%	309	32.98%
18 years and over:	306,047	73,639	24.06%	200,397	65.48%	13,264	4.33%	8,030	2.62%
Native	285,971	70,520	24.66%	196,312	68.65%	7,594	2.66%	1,341	0.47%
Foreign born:	20,076	3,119	15.54%	4,085	20.35%	5,670	28.24%	6,689	33.32%
Naturalized U.S. citizen	10,485	2,213	21.11%	2,705	25.80%	1,332	12.70%	3,888	37.08%
Not a U.S. citizen	**9,591**	**906**	**9.45%**	**1,380**	**14.39%**	**4,338**	**45.23%**	**2,801**	**29.20%**

Source: U.S. Census Bureau 2022 5-Year ACS Data (B05003 tables)

Note: Race populations are "Alone" or "Single Race" which include Hispanic or Latino population, thus percentages may exceed 100%. Percentages use the total amount for the denominator.

Alabama
Morgan County
Citizenship Data by Race

Description	Total	Black	Black%	White	White%	Latino	Latino%	Asian	Asian%
Total:	123,102	16,631	13.51%	91,445	74.28%	10,845	8.81%	605	0.49%
Male:	60,953	8,236	13.51%	45,003	73.83%	5,879	9.65%	163	0.27%
Under 18 years:	14,457	2,602	18.00%	9,226	63.82%	2,311	15.99%	14	0.10%
Native	14,144	2,572	18.18%	9,064	64.08%	2,190	15.48%	14	0.10%
Foreign born:	313	30	9.58%	162	51.76%	121	38.66%	0	0.00%
Naturalized U.S. citizen	53	30	56.60%	12	22.64%	11	20.75%	0	0.00%
Not a U.S. citizen	260	0	0.00%	150	57.69%	110	42.31%	0	0.00%
18 years and over:	46,496	5,634	12.12%	35,777	76.95%	3,568	7.67%	149	0.32%
Native	43,125	5,596	12.98%	34,851	80.81%	1,226	2.84%	108	0.25%
Foreign born:	3,371	38	1.13%	926	27.47%	2,342	69.47%	41	1.22%
Naturalized U.S. citizen	786	38	4.83%	377	47.96%	337	42.88%	34	4.33%
Not a U.S. citizen	2,585	0	0.00%	549	21.24%	2,005	77.56%	7	0.27%
Female:	62,149	8,395	13.51%	46,442	74.73%	4,966	7.99%	442	0.71%
Under 18 years:	13,724	2,393	17.44%	8,717	63.52%	2,239	16.31%	0	0.00%
Native	13,529	2,393	17.69%	8,713	64.40%	2,119	15.66%	0	0.00%
Foreign born:	195	0	0.00%	4	2.05%	120	61.54%	0	0.00%
Naturalized U.S. citizen	18	0	0.00%	0	0.00%	18	100.00%	0	0.00%
Not a U.S. citizen	177	0	0.00%	4	2.26%	102	57.63%	0	0.00%
18 years and over:	48,425	6,002	12.39%	37,725	77.90%	2,727	5.63%	442	0.91%
Native	45,978	5,972	12.99%	37,297	81.12%	1,106	2.41%	75	0.16%
Foreign born:	2,447	30	1.23%	428	17.49%	1,621	66.24%	367	15.00%
Naturalized U.S. citizen	827	19	2.30%	247	29.87%	375	45.34%	199	24.06%
Not a U.S. citizen	1,620	11	0.68%	181	11.17%	1,246	76.91%	168	10.37%
Total	123,102	16,631	13.51%	91,445	74.28%	10,845	8.81%	605	0.49%
Under 18 years:	28,181	4,995	17.72%	17,943	63.67%	4,550	16.15%	14	0.05%
Native	27,673	4,965	17.94%	17,777	64.24%	4,309	15.57%	14	0.05%
Foreign born:	508	30	5.91%	166	32.68%	241	47.44%	0	0.00%
Naturalized U.S. citizen	71	30	42.25%	12	16.90%	29	40.85%	0	0.00%
Not a U.S. citizen	437	0	0.00%	154	35.24%	212	48.51%	0	0.00%
18 years and over:	94,921	11,636	12.26%	73,502	77.43%	6,295	6.63%	591	0.62%
Native	89,103	11,568	12.98%	72,148	80.97%	2,332	2.62%	183	0.21%
Foreign born:	5,818	68	1.17%	1,354	23.27%	3,963	68.12%	408	7.01%
Naturalized U.S. citizen	1,613	57	3.53%	624	38.69%	712	44.14%	233	14.45%
Not a U.S. citizen	**4,205**	**11**	**0.26%**	**730**	**17.36%**	**3,251**	**77.31%**	**175**	**4.16%**

Source: U.S. Census Bureau 2022 5-Year ACS Data (B05003 tables)

Note: Race populations are "Alone" or "Single Race" which include Hispanic or Latino population, thus percentages may exceed 100%. Percentages use the total amount for the denominator.

Alabama
Limestone County
Citizenship Data by Race

Description	Total	Black	Black%	White	White%	Latino	Latino%	Asian	Asian%
Total:	104,199	13,714	13.16%	77,842	74.71%	6,588	6.32%	1,917	1.84%
Male:	52,385	6,852	13.08%	38,977	74.40%	3,561	6.80%	762	1.45%
Under 18 years:	11,600	1,024	8.83%	8,027	69.20%	1,543	13.30%	133	1.15%
Native	11,372	1,024	9.00%	7,984	70.21%	1,378	12.12%	113	0.99%
Foreign born:	228	0	0.00%	43	18.86%	165	72.37%	20	8.77%
Naturalized U.S. citizen	138	0	0.00%	43	31.16%	75	54.35%	20	14.49%
Not a U.S. citizen	90	0	0.00%	0	0.00%	90	100.00%	0	0.00%
18 years and over:	40,785	5,828	14.29%	30,950	75.89%	2,018	4.95%	629	1.54%
Native	38,943	5,828	14.97%	30,547	78.44%	1,166	2.99%	56	0.14%
Foreign born:	1,842	0	0.00%	403	21.88%	852	46.25%	573	31.11%
Naturalized U.S. citizen	1006	0	0.00%	364	36.18%	264	26.24%	364	36.18%
Not a U.S. citizen	836	0	0.00%	39	4.67%	588	70.33%	209	25.00%
Female:	51,814	6,862	13.24%	38,865	75.01%	3,027	5.84%	1,155	2.23%
Under 18 years:	11,404	1,365	11.97%	7,708	67.59%	1,187	10.41%	411	3.60%
Native	11,312	1,365	12.07%	7,708	68.14%	1,187	10.49%	319	2.82%
Foreign born:	92	0	0.00%	0	0.00%	0	0.00%	92	100.00%
Naturalized U.S. citizen	92	0	0.00%	0	0.00%	0	0.00%	92	100.00%
Not a U.S. citizen	0	0	0.00%	0	0.00%	0	0.00%	0	0.00%
18 years and over:	40,410	5,497	13.60%	31,157	77.10%	1,840	4.55%	744	1.84%
Native	38,608	5,497	14.24%	30,784	79.73%	1,078	2.79%	194	0.50%
Foreign born:	1,802	0	0.00%	373	20.70%	762	42.29%	550	30.52%
Naturalized U.S. citizen	996	0	0.00%	263	26.41%	328	32.93%	305	30.62%
Not a U.S. citizen	806	0	0.00%	110	13.65%	434	53.85%	245	30.40%
Total	104,199	13,714	13.16%	77,842	74.71%	6,588	6.32%	1,917	1.84%
Under 18 years:	23,004	2,389	10.39%	15,735	68.40%	2,730	11.87%	544	2.36%
Native	22,684	2,389	10.53%	15,692	69.18%	2,565	11.31%	432	1.90%
Foreign born:	320	0	0.00%	43	13.44%	165	51.56%	112	35.00%
Naturalized U.S. citizen	230	0	0.00%	43	18.70%	75	32.61%	112	48.70%
Not a U.S. citizen	90	0	0.00%	0	0.00%	90	100.00%	0	0.00%
18 years and over:	81,195	11,325	13.95%	62,107	76.49%	3,858	4.75%	1,373	1.69%
Native	77,551	11,325	14.60%	61,331	79.08%	2,244	2.89%	250	0.32%
Foreign born:	3,644	0	0.00%	776	21.30%	1,614	44.29%	1,123	30.82%
Naturalized U.S. citizen	2,002	0	0.00%	627	31.32%	592	29.57%	669	33.42%
Not a U.S. citizen	**1,642**	**0**	**0.00%**	**149**	**9.07%**	**1,022**	**62.24%**	**454**	**27.65%**

Source: U.S. Census Bureau 2022 5-Year ACS Data (B05003 tables)

Note: Race populations are "Alone" or "Single Race" which include Hispanic or Latino population, thus percentages may exceed 100%. Percentages use the total amount for the denominator.

Doc. 207-10 at 5–7.

Mr. Fairfax testified at trial that because of the "low percentage of [B]lack noncitizens compared to the relatively high percentage of non-[B]lack noncitizens, specifically the Latino and Asian population, the CVAP data is the more appropriate dataset to use when it comes to the sufficiently large component of *Gingles* I." Tr.

254.

Mr. Fairfax explained that he considered the noncitizen population in the Huntsville area significant because "Huntsville had the leading . . . population of non-citizens in the state" and "Decatur had the sixth." *Id.* at 288. Mr. Fairfax conceded that Montgomery has the second largest noncitizen population in the state. *Id.* at 289; Doc. 207-10 at 9. He testified that he did not use BCVAP data when drawing the illustrative district in that area because "there[] [was] no need to." Tr. 289–90.

Mr. Fairfax testified that CVAP data is reliable and is frequently used in redistricting litigation. *Id.* at 254–55. He explained that he uses a disaggregation technique to estimate the CVAP and BCVAP at the district level because CVAP data is provided down to the block group level. *See id.* at 255. He testified that Illustrative Plans 1 and 2A had a majority BCVAP in District 7 using four different disaggregation methods, including the method used by the Secretary's expert. *See id.* at 345–46.

Mr. Fairfax acknowledged that CVAP data come with a margin of error, *id.* at 311–12, and conceded that, when accounting for the margin of error, his estimated BCVAP in District 7 in Illustrative Plan 2A—the only Illustrative Plan for which Mr. Fairfax calculated a margin of error—includes values below and above a majority, *id.* at 312, 321–22. He further testified that the margin of error is not

"commonly used" in redistricting. *Id.* at 311–12.

At trial, Mr. Fairfax also responded to a criticism by the Secretary's *Gingles* I expert, Dr. Sean Trende, that he did not account for members of the CVAP who are ineligible to vote for various reasons, such as a felony conviction. *See id.* at 320. Mr. Fairfax testified that accounting for such disqualifications is "not normally done" by experts in redistricting litigation. *Id.* at 321.

Illustrative Plan 3 is the only Illustrative Plan in which District 7 "satisfies majority Black status using both BVAP . . . and BCVAP." Doc. 206-8 at 6 (footnotes omitted); *see* Tr. 270, 272.

b. Reasonable Configuration

Mr. Fairfax opined and testified that District 7 is reasonably configured in Illustrative Plans 1, 2A, and 3. *See* Doc. 206-6 at 7; Doc. 206-8 at 5; Tr. 258, 267, 273. Mr. Fairfax explained that the district boundaries in all three illustrative plans bring together portions of the city of Decatur with portions of Huntsville that have "similar socioeconomic makeup[s]." *See* Doc. 206-6 at 35; Doc. 206-8 at 17, 28. He also explained that District 7 in Illustrative Plans 1, 2, and 3 wholly contain Alabama A&M University, an historically Black university that Mr. Fairfax considers a community of interest, and include it with the urban areas of Huntsville. Doc. 206-6 at 35; Doc. 206-8 at 17–18, 29. By contrast, the Plan includes most of Alabama A&M University in District 8, which Mr. Fairfax opined "is a more rural district and

has less communities in common than the more urban areas of [District] 7." Doc. 206-6 at 35; Doc. 206-8 at 18.

Mr. Fairfax testified that on the measures of geographic compactness that he used, District 7 in Illustrative Plans 1, 2A, and 3 performed better than the lowest-scoring district in the Plan. Tr. 258, 267, 273. He testified at trial that Illustrative Plans 1 and 2A, which rely on BCVAP to satisfy *Gingles* I, were the "best" plans, *id.* at 290, and that using BCVAP data allowed him to create a more compact plan, *id.* at 285–86.

At trial, Mr. Fairfax acknowledged that he had to diminish the compactness of District 7 in Illustrative Plan 3 to reach majority-BVAP status, but opined that District 7 in that plan remains reasonably compact. *Id.* at 273–74, 335–36. He also acknowledged that District 7 in Illustrative Plan 3 splits more counties than does District 7 in the Plan, *id.* at 274, and splits more voting districts, *id.* at 333–34. He also acknowledged that the district includes thirty-two of the thirty-five highest-BVAP precincts in the four counties included in the district. *Id.* at 336. He testified that "it's not uncommon for . . . a majority-[B]lack district to have majority-[B]lack precincts." *Id.* at 338.

Mr. Fairfax also testified about Dr. Trende's use of dot density maps to evaluate the compactness of the Black population in the Huntsville area. *See id.* at 260–62. He criticized the maps as "misleading" because an area with "very little

population" will "show[] up as . . . a little amount of dots." *Id.* at 261. He testified that dot density maps are not a standard method to evaluate the compactness of a minority population and criticized Dr. Trende's conclusion that the maps reflected a non-compact Black population because "majority-[B]lack districts are mostly made up of areas that may have different concentrations of [B]lack population." *Id.* at 261–62. Mr. Fairfax made the same point about the Montgomery area. *See id.* at 260–62.

b. Dr. Kassra Oskooii

To establish the first *Gingles* precondition in the Huntsville area, the plaintiffs also rely on the testimony of Dr. Kassra Oskooii. Dr. Oskooii earned a Master of Science and Doctor of Philosophy in political science from the University of Washington and a political methodology field certificate from the Center for Statistics & the Social Sciences. Doc. 206-14 at 2–3; *see* Tr. 349. He works as a tenured professor at the University of Delaware, where he researches and teaches about political methodology, voting rights, and redistricting. Doc. 206-14 at 2; Tr. 348–49. He has published several papers on "ecological inference methods as it pertains to racially polarized voting analysis." Doc. 206-14 at 4; *see* Tr. 350. His research has been published in approximately twenty-two peer-reviewed journals. Tr. 350. He also co-developed a software package called "eiCompare," which he describes as "a reproducible code that quantifies, compares, and represents racially polarized voting data." Doc. 206-14 at 5. Dr. Oskooii has qualified as an expert

witness in various redistricting cases. Tr. 353.

Dr. Oskooii was admitted at trial without objection as "an expert in map drawings, statistical analysis, and U.S. census data including the American Community Survey and the decennial census." *Id.* at 353–54.

The plaintiffs asked Dr. Oskooii to evaluate Dr. Trende's opinion about the reliability of CVAP data. Doc. 206-14 at 5; *see* Tr. 348. Dr. Oskooii evaluated only Illustrative Plan 1 and opined that CVAP data is an appropriate measure of the eligible voting population. Tr. 355–56; Doc. 206-14 at 14.

Dr. Oskooii opined in his report that CVAP data is "regularly used to estimate the proportion of eligible voters by race and ethnicity across electoral districts" and has two advantages over the use of decennial census data: (1) CVAP estimates are more recent data than census counts and (2) CVAP estimates provide estimates of data not included in decennial census data, such as CVAP estimates by race. Doc. 206-14 at 9–10.

At trial, Dr. Oskooii testified that the citizenship rates among Black and White voting-age populations in the Huntsville area are around ninety-five percent each, which he opined is "very high." Tr. 358. Dr. Oskooii testified that the citizenship rate "for [the] Hispanic population is below [fifty] percent" in the Huntsville area and that Hispanic people comprise approximately ten percent of the voting-age population in the Huntsville area. *Id.* at 401. Dr. Oskooii opined that the disparity in

Hispanic citizenship rates and Black and White citizenship rates renders the use of VAP an inaccurate metric for the populations by race in the Huntsville area. *See id.* at 359. He testified that using VAP to estimate a particular minority population in an area that has another minority population with a high noncitizenship rate can "underestimat[e]" the particular minority population at issue. *Id.* at 357.

Dr. Oskooii testified extensively about the reliability of CVAP data. *See id.* at 360–62. He testified that the American Community Survey receives an "incredibly high response rate" and surveys approximately one in every thirty-eight households each year. *Id.* at 361–62. He acknowledged the potential for American Community Survey data to inflate the CVAP of a region, which sometimes results in the CVAP of a block group exceeding the total VAP of that block group. *Id.* at 373. Dr. Oskooii testified that the issue of CVAP exceeding VAP does not appear when calculating the population of larger geographic units, such as an electoral district. *Id.* at 373–74. He further testified that the CVAP "certainly" does not exceed the total VAP in District 7 in Illustrative Plan 1. *Id.* at 364, 373.

Dr. Oskooii pointed out that Dr. Trende has relied on CVAP data in other redistricting litigation on the ground that it is a "useful metric for assessing a district's actual electorate." Doc. 206-14 at 11 (internal quotation marks omitted); *see* Tr. 357. He also testified that, in previous litigation, Dr. Trende relied on the CVAP point estimate at the block group level without raising issues about

confidence intervals or margins of error. Tr. 381–82; Doc. 206-14 at 12. He conceded at trial that three of the five years of data in the 2021 five-year American Community Survey are from before the 2020 census. *See* Tr. 398.

Dr. Oskooii testified about the techniques for disaggregating data to the district level when a block group is split between two districts. *See id.* at 365. Dr. Oskooii acknowledged that there are different disaggregation techniques, and he testified that he does not perform his own disaggregation calculation. *See id.* Instead, he relies on a program called the Redistricting Data Hub, which uses Dr. Oskooii's preferred disaggregation technique. *Id.* This technique involves configuring a "block-to-block group BVAP ratio" by taking the BVAP of a census block and dividing it by the BVAP of the block group. *Id.* The resulting percentage is multiplied by the BCVAP of the block group "to allocate the BCVAP accurately to the block level." *Id.*

Dr. Oskooii acknowledged that different disaggregation techniques result in different CVAP point estimates. *Id.* at 434–35. For example, Dr. Oskooii calculated a 50.11 percent BCVAP point estimate for District 7 in Illustrative Plan 1, which is different from Mr. Fairfax's BCVAP 50.16 percent point estimate, because the experts used different disaggregation methods. *Id.* at 433. When asked how to select a disaggregation method, Dr. Oskooii testified that one should look at the "logic behind the disaggregation and how it's implemented." *Id.* at 436.

On cross examination, Dr. Oskooii was asked how redistricting jurisdictions should determine when to use CVAP instead of VAP. Dr. Oskooii testified that it "depends on what the jurisdiction is looking for." *Id.* at 399. He testified that he would suggest CVAP as the appropriate data when a jurisdiction has a high noncitizen population, although there is "no bright line rule" for determining when a noncitizen population is high. *See id.* at 399–401. He testified that that the citizenship rate is relevant when "the results are impacted" by noncitizenship rates. *Id.* at 401.

Dr. Oskooii acknowledged that because CVAP data is sample data, it comes with a margin of error. Tr. 406; *see* Doc. 206-14 at 13. Part of the uncertainty arises out of "item non-response," which occurs when an individual fills out a survey but leaves a question blank, Tr. 407–08. Dr. Oskooii conceded that the American Community Survey handles item non-response by imputing data—including citizenship data—based on other information in the survey. *Id.* at 408–10. He acknowledged that there is uncertainty about the imputation process and that it can generate error. *See id.* at 410–11.

Dr. Oskooii did not offer an estimated margin of error for District 7 in Illustrative Plan 1. *See id.* at 415. He testified that "[t]here[] [is] no good or sensible . . . calculation" of that margin of error and did not try to calculate it because "it's not relevant in describing the composition of the CVAP composition of this district."

Id. He testified that in his view a point estimate is sufficient to satisfy the numerosity requirement of *Gingles* I. *Id.* at 449.

Dr. Oskooii also testified about Dr. Trende's assertion that an illustrative plan drawn on the basis of CVAP should also consider those who are ineligible to vote based on felony convictions or other disqualifications and that, considering the rates of disenfranchised felons supplied by one of the plaintiffs' experts, Illustrative Plan 1 did not contain a majority-Black population in District 7. *Id.* at 382–83; *see* Doc. 189-7 at 23. Dr. Oskooii criticized Dr. Trende for using an "unverified statewide citizenship rate" that came "from a percentage that another expert [Dr. Burch] in another report has supplied." Tr. 383. He stated that the data was "not verified or detailed enough" for Dr. Trende to make these estimations for District 7 in Illustrative Plan 1. *Id.* at 384.

Dr. Oskooii also criticized Dr. Trende's use of dot density maps to "show population concentration in different regions." *Id.* Dr. Oskooii testified that by placing the markers that reflect the Black population on top of the markers that reflect the White population, Dr. Trende is "effectively hiding the concentration of White VAP in th[e] district." *Id.* Dr. Oskooii explained that this "superimposi[tion]" of the Black markers on top of the White markers is problematic because it may lead the reader to assume that areas with Black markers are all "really high concentrated areas," when actually they may be "areas that also have equal amounts or similar

amounts of [W]hite people in them." *Id.* at 384–85.

2. *Gingles* II and III – Racially Polarized Voting (Dr. Liu)

To establish the second and third *Gingles* requirements—that Black voters are "politically cohesive" and that each challenged district's White majority votes "sufficiently as a bloc to enable it . . . to defeat the minority's preferred candidate," *Allen*, 599 U.S. at 18 (internal quotation marks omitted) (quoting *Gingles*, 478 U.S. at 51)—the plaintiffs rely on stipulated facts and the expert testimony of Dr. Baodong Liu.

The plaintiffs rely on stipulated facts to argue that Black members of the Legislature have been elected because of majority-Black districts created to satisfy federal law. Doc. 250 ¶ 519. These stipulated facts are: (1) "There are currently no Black statewide elected officials in Alabama regardless of political party[,]" Doc. 230 ¶ 93; Doc. 250 ¶ 521; (2) "Only one Black person has ever been elected to statewide office in a contested election in Alabama[,]" and that person was elected after first being appointed, Doc. 230 ¶ 94; Doc. 250 ¶ 525; (3) "In 2024, . . . [a]ll Black Senators are elected from majority-Black districts[,]" Doc. 230 ¶ 117; Doc. 250 ¶ 522; and (4) currently, all Black Representatives in the Alabama House except one are elected from majority-Black districts, Doc. 230 ¶ 117. The plaintiffs also point out that no Black Senators represent the districts in the Huntsville area. Doc. 250 ¶ 523.

Dr. Liu works as a tenured professor of political science at the University of Utah, where he focuses on the "relationship between election systems and the ability of minority voters to participate fully in the political process and to elect representatives of their choice." Doc. 206-16 at 2; *see* Tr. 14, 17. Dr. Liu holds a doctoral degree in political science from the University of New Orleans, a graduate degree in political science from Oklahoma State University, and an undergraduate degree in law from East China University. Doc. 206-17 at 2; Tr. 16. Dr. Liu has written or edited nine books and published articles in many peer-reviewed journals. Doc. 206-16 at 2; Doc. 206-17 at 2–8; *see* Tr. 18. He has served as an expert witness in vote dilution cases in eight states, and has advised the United States Department of Justice on methodological issues concerning racially polarized voting. Tr. 19; Doc. 206-16 at 2–3; Doc. 206-17 at 18. Dr. Liu has been compensated at a rate of $300 per hour for his work on this case and his compensation does not depend on the substance of his testimony. Doc. 260-16 at 2.

At trial, Dr. Liu was qualified without objection "as an expert in racial polarization analysis, voter behavior, and Ecological Inference." Tr. 19–20. The plaintiffs asked Dr. Liu to (1) conduct a racial polarization analysis in the Huntsville and Montgomery regions and (2) analyze the effectiveness of the Illustrative Plans in allowing Black voters an opportunity to elect a candidate of their choice in state Senate elections. Doc. 206-16 at 1–2; Tr. 20.

Dr. Liu concluded that there is a "significant" pattern of "racially[ ]polarized voting between [B]lack voters and [W]hite voters in both elections involved in the State Senate electoral offices." Tr. 21. He explained that he used a two-step approach to conduct a racial polarization analysis. *Id.* at 23. He first evaluated "the cohesiveness of [B]lack voters" by considering whether "the majority of [B]lack voters voted for the same candidate" in biracial elections. *Id.* He then considered whether "the same candidate preferred by the majority [of] [B]lack voters is also shared by the majority [of] voters from the [W]hite voting group." *Id.*

Dr. Liu analyzed only biracial elections, which are "elections that involve both [B]lack and [W]hite candidates." *Id.* at 29; *see id.* at 65. He testified that his "role is to show to the Court" the "true preference" of Black voters when "given a choice between a [B]lack candidate and [W]hite candidate" and that *Gingles* requires him to consider the race of the candidate when evaluating racially polarized voting. *Id.* at 29; *see id.* at 67–68. At trial, Dr. Liu denied that examining biracial elections assumed that Black voters always preferred Black candidates. *Id.* at 114–15. He testified that Black voters could have expressed a preference for White candidates in the biracial elections he analyzed, but they did not. *Id.* at 114–17.

Dr. Liu first examined three biracial endogenous elections (elections for the offices at issue in this litigation) in the Huntsville area, including the 2022 Senate District 2 election, the 2022 Senate District 7 election, and the 2018 Senate District

7 election. Doc. 206-16 at 6; *see* Tr. 26–27. He did not analyze any endogenous elections in Montgomery. Tr. 73. He also considered eleven biracial exogenous elections (elections not for the district in dispute, Doc. 206-16 at 6, which in this case are almost all elections for statewide offices, Tr. 26–27).

Dr. Liu evaluated racially polarized voting in these fourteen elections by using a statistical procedure known as ecological inference, which he opined "has been widely used as the most-advanced and reliable statistical procedure for [racially polarized voting] estimates in not only academic research but also voting rights cases in the last two decades." Doc. 206-16 at 4; *see* Tr. 25. Dr. Liu explained that ecological inference uses two sources of data: (1) "the election outcome aggregated at [the] precinct level" and (2) "the demographic data provided by the U.S. census." Tr. 25. He testified that one benefit of ecological inference is that he can check the reliability of his estimations. *Id.* at 26. Dr. Liu testified that in each biracial election evaluated in his initial report, every Black candidate ran as a Democrat and every White candidate ran as a Republican. *Id.* at 92–93, 117.

Dr. Liu opined that all three endogenous elections were racially polarized, and that the Black candidates in all three elections were defeated "as a result of the high level" of racially polarized voting. Doc. 206-16 at 7; Tr. 31. He offered the following table to demonstrate his findings:

Table 1: Estimated Racial Support for Black Candidate in Endogenous Elections

Election	Black Candidate(s)	White Candidate(s)	% vote cast for Black Cand	Black Support for Black Cand (95% CI)[6]	White Support for Black Cand (95% CI)	Black-Cand Won?	RPV?
2022 SD2	Kim Lewis	Tom Butler	44.4%	63.0% (.52-.75)	23.9% (.12-.38)	No	Yes
2022 SD7	Korey Wilson	Sam Givhan	37.2%	82.9% (.74-.91)	21.3% (.16, .27)	No	Yes
2018 SD7	Deborah Barros	Sam Givhan	44.7	85.7 (.78-.94)	27.9 (.25-.30)	No	Yes

Doc. 206-16 at 7.

Dr. Liu's analysis of the eleven exogenous elections generated similar results. In these races, no Black-preferred candidate in Huntsville won, and the Black-preferred candidate lost seven out of the eleven elections in Montgomery. *Id.* at 9–10; *see* Tr. 32–33. Dr. Liu observed a "strong pattern of racially[ ]polarized voting" in all eleven elections. Tr. 32.

Dr. Liu thus concluded that all fourteen elections showed a "high level" of racially polarized voting in the Montgomery and Huntsville areas. *See* Doc. 206-16 at 8, 10. He observed that "there is overwhelming Black unity in voting" but that only ten to twenty percent of White voters vote for Black candidates in biracial elections in the Huntsville area, and less than ten percent of White voters vote for Black candidates in the Montgomery area. *Id.* at 11. He testified that "voting in Greater Huntsville and Montgomery regions of Alabama during the last [ten] years

is 'racially polarized' in that Black voters have expressed a clear preference for the same candidate," that "in the elections analyzed[,] the preferred candidate by Black voters was a Black candidate," and that "this preference was not shared by the [W]hite voters who were the majority of the electorate." *Id.* at 6.

Dr. Liu also performed an effectiveness analysis, which "is a comparative study of two or more redistricting plans" that "reports the different opportunities for racial minority voters (in this case, Black voters) to elect the candidates of their choice, given how the different redistricting plans have determined the racial configuration of a certain jurisdiction under legal dispute." *Id.* at 10. It also shows "the extent to which [racially polarized voting] has affected the election outcomes in the given jurisdiction." *Id.*

At trial, Dr. Liu explained that he used a two step "effective[ness] analysis," which involves (1) "compar[ing] the racial configuration of one map versus the racial configuration of another" and (2) evaluating "how voters voted in the particular configuration." Tr. 34. He stated that by comparing the results of an illustrative plan with the results of the Plan, he can "make [a] conclusion about whether or not one particular configuration has [a] better opportunity for the [B]lack-preferred candidates to win." *Id.*

Dr. Liu opined that Illustrative Plan 1 is "a much more effective plan at providing Black voters an opportunity to elect candidates of their choice than was

the Enacted Plan," Doc. 206-16 at 12, and "provides Black voters a realistic chance to elect candidate of their choice in two more State Senate districts (SD7 and SD25), in addition to SD 26," *id.* at 15; *see* Tr. 35–37.

Dr. Liu did not conduct an effectiveness analysis for Illustrative Plans 2 and 3. He provided the following tables to support his findings for Illustrative Plan 1:

Table 6: Overall Performance in SD7 based on 11 Elections, Compared

Enacted Plan

	Blk_pref_cand %	Wht_pref_cand %	BPC defeats
White	21.6	77.4	
Black	89.7	9.3	
Total	38.1	60.9	11/11

Plaintiffs' Plan

	Blk_pref_cand %	Whte_pref_cand %	BPC defeats
White	35.9	63.2	
Black	85.5	13.5	
Total	62.8	36.3	0/11

Table 9: Overall Performance in SD25 based on 11 Elections, Compared

Enacted Plan

	Blk_pref_cand %	Wht_pref_cand %	BPC defeats
White	16.8	82.3	
Black	63.5	35.6	
Total	30.8	68.3	11/11

Plaintiffs' Plan

	Blk_pref_cand %	Whte_pref_cand %	BPC defeats
White	20.1	79.0	
Black	88.5	10.6	
Total	53.1	46.2	0/11

Table 10: Overall Performance in SD26 based on 11 Elections, Compared

Enacted Plan

	Blk_pref_cand %	Wht_pref_cand %	BPC defeats
White	27.0	72.0	
Black	93.2	6.0	
Total	71.5	27.5	0/11

Plaintiffs' Plan

	Blk_pref_cand %	Whte_pref_cand %	BPC defeats
White	18.4	80.6	
Black	86.8	12.3	
Total	56.3	42.8	0/11

Doc. 206-16 at 13–14.

Dr. Liu also responded to the reports of four of the Secretary's experts: Dr. Trende, Dr. Wilfred Reilly, Dr. Chris Bonneau, and Dr. M.V. Hood III. Doc. 206-18; Tr. 22. *First*, Dr. Liu addressed the opinion of Dr. Trende that a Black-preferred candidate "would win regularly in District 7" in Illustrative Plan 1 even if the BVAP in that district were only twenty-five percent. Doc. 206-18 at 9–10 (internal quotation marks omitted). Dr. Liu opined that Dr. Trende "unrealistic[ally]" assumed that Black voters would unanimously support a Black-preferred candidate and that one-third of White voters would support the Black-preferred candidate, which is not supported by the data. *See id.* at 10; Tr. 38–39. He also testified that his calculations did not support Dr. Trende's assertion. *See* Tr. 39; Doc. 206-18 at 10.

Second, Dr. Liu addressed the opinions of Dr. Reilly and Dr. Bonneau that the voting patterns in Alabama are attributable to political party, not race. Doc. 206-18

at 3–7; Tr. 40–46. He testified that the Secretary's experts did "not object [to] the findings of [his] report of [the existence of] racially[ ]polarized voting," Tr. 22–23, and criticized them for failing to conduct a racial polarization analysis, which he opined is necessary to determine whether the second and third *Gingles* requirements are satisfied, *id.* at 96, 98. Dr. Liu testified that he was not concerned with voters' motivations for selecting candidates, only whether the voting patterns were racially polarized. *Id.* at 42–43; *see id.* at 74. He criticized Dr. Bonneau for using county-level data, which results in erroneous calculations, *id.* at 43–45, as well as Dr. Bonneau's analysis of straight-ticket voting, which is "not based on [an] actual racial breakdown" of the voters, *id.* at 56.

To address the role of political party, Dr. Liu evaluated several biracial, non-partisan, mayoral elections in the Montgomery and Huntsville areas in 2019, 2020, and 2023. Doc. 206-18 at 8–9. He testified that these elections demonstrated racially polarized voting even when party is not at issue. *See* Tr. 51–52. He explained that "[t]he [B]lack candidates received much less support from the [W]hite voting group and much more support from the [B]lack group. So it's racially polarized." *Id.* at 53.

Third, Dr. Liu addressed the opinion of Dr. Hood that racial bloc voting does not occur in Alabama based on a "cross-state analysis." Doc. 206-18 at 2. Dr. Liu criticized Dr. Hood for comparing "the voting patterns of Black voters in [twenty] other states to that of Alabama" without "provid[ing] any reason why he chose

th[ose] states"—particularly where he selected "states with at least [ten percent] of [a] Black population, despite the fact that Alabama's Black population share is . . . above the [twenty-five percent] level." *Id.* Dr. Liu also criticized Dr. Hood for "focus[ing] on the Black voter choices" without "look[ing] at the [W]hite voter choices for the same elections based on the same polls." *Id.* And he pointed out that "Dr. Hood did not perform any RPV analysis when purporting to analyze the existence or extent of racial bloc voting" in contradiction "to his own professional recommendation when it comes to empirical analysis of vote dilution claims." *Id.*

Dr. Liu also criticized Dr. Hood for failing to analyze Alabama Senate elections, instead relying on the success of one Black Representative (Kenneth Paschal) in a majority-White Alabama House of Representatives district. *See id.* at 3. Dr. Liu opined that Representative Pashcal's election did not occur in the Montgomery or Huntsville region and did not involve Senate districts. *Id.* He also opined that the voter turnout for that primary election was "extremely low," and that recent elections in the challenged areas show that White bloc voting occurs against Black candidates. *Id.*

3. The Senate Factors and Proportionality

The plaintiffs next turn to the totality of the circumstances. They rely on stipulations of fact and testimony from two experts and several fact witnesses to support their arguments. The Court first discusses the stipulations and experts, and

then discusses the fact witnesses in the next sections.

Recall that the nine Senate Factors are:

(1) "the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process";

(2) "the extent to which voting in the elections of the state or political subdivision is racially polarized";

(3) "the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group";

(4) "if there is a candidate slating process, whether the members of the minority group have been denied access to that process";

(5) "the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process";

(6) "whether political campaigns have been characterized by overt or subtle racial appeals";

(7) "the extent to which members of the minority group have been elected to public office in the jurisdiction";

(8) "whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group"; and

(9) "whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous."

Gingles, 478 U.S. at 36–37 (quoting S. Rep. No. 97-417 at 28–29).

a. Stipulations

The parties stipulated to several facts about the totality of the circumstances in Alabama today. They stipulated that twenty percent of state Senate seats and 24.8% of state House seats are held by Black legislators, and that all but one Black Representative and all Black Senators are elected from majority-Black districts. Doc. 230 ¶ 117. They also stipulated that "[o]nly one Black person has ever been elected to statewide office in a contested election in Alabama." *Id.* ¶¶ 93–94.

The parties also stipulated that multiple Black candidates ran in Republican primaries in recent congressional and state legislative elections, but all of them finished behind multiple White candidates. *See id* ¶¶ 106–07. For example, they stipulated, "In the 2024 Republican primary election for Alabama's U.S. Congressional District 2, the four Black candidates in the race . . . finished [fifth], [sixth], [seventh], and [eighth] places out of [eight] candidates, respectively, behind four [W]hite candidates and together received 6.2% of the total vote."; "In the 2024 special Republican primary election for Alabama State House District 27, Black candidate Billy Ray Todd finished fifth of six, behind four [W]hite candidates, receiving 8.7% of the vote."; "In the 2022 Alabama Republican U.S. Senate primary, Black candidate Karla DuPriest finished fifth behind four [W]hite candidates, receiving 0.9% of the vote." *Id.* ¶¶ 106, 109, 111.

a. The Plaintiffs' Expert Witness Testimony

i. Dr. Joseph Bagley

The plaintiffs also rely on the expert testimony of Dr. Joseph Bagley about the Senate Factors. Dr. Bagley holds graduate degrees in history from Auburn University and Georgia State University. Doc. 206-19 at 1; Doc. 206-20 at 1; Tr. 525. He works as an Assistant Professor of History at Georgia State University, where he focuses on "United States constitutional and legal history, politics, and race relations, with a focus on the Deep South." Doc. 206-19 at 1; *see* Tr. 525. He has published a book, numerous articles, and been accepted as an expert in other Alabama voting rights cases. *See* Doc. 206-19 at 1–2; Doc. 206-20 at 1–2; Tr. 526–28. Dr. Bagley was compensated at a rate of $150 per hour for his work and his compensation did not depend on the substance of his testimony. Doc. 206-19 at 2. At trial, Dr. Bagley was qualified without objection "as an expert in Alabama political history, political analysis, race relations, and historical analysis." Tr. 528.

The plaintiffs asked Dr. Bagley to analyze the Senate Factors, which he did according to "standards of historiography." Doc. 206-19 at 2. He opined that "Senate Factors 1, 3, 5, 6, 7, and 8 are present in Alabama in ways that substantially limit equal access to the political process for Black voters." *Id.*; *see* Tr. 531–32. Dr. Bagley testified that he did not evaluate Senate Factor 2 or conduct a racially polarized voting analysis, but he is aware that federal courts have found that racially

polarized voting exists in Alabama. Tr. 532. At trial, Dr. Bagley explained his understanding of the Senate Factors and the methods and sources he used in his analysis. *Id.* at 529–31. Based on his research, he testified that "the political process is not equitably open to [B]lack citizens of Alabama." *Id.* at 532.

As to Senate Factor 1, Dr. Bagley opined that "Alabama's recent history of discrimination against Black citizens continues to the present day." Doc. 206-19 at 4. Dr. Bagley traced the extensive history of federal judicial involvement in and supervision of Alabama redistricting efforts from the 1960s—"the first decade that the state was forced to reapportion the State Legislature for the first time"—to the present. Tr. 533; *see* Doc. 206-19 at 5–14. He testified that in each decade, he observed "a failure on the part of the Legislature to pass equitable plans." Tr. 533. Dr. Bagley testified that the 1990s were a particularly "pivotal point" in Alabama because Black citizens were gaining seats in the state and federal legislatures due to voting rights lawsuits and many White voters began switching their affiliation and votes from the Democratic Party to the Republican Party. *Id.* at 536–38.

Dr. Bagley also testified about what he described as other instances of official discrimination, such as Alabama's closure of several driver license offices, which he opined was done to serve political purposes and affected voters because of Alabama's requirement for voter identification. *See id.* at 541–42. He cited a finding by the United States Department of Transportation "that the state's closure of certain

driver's license offices had a discriminatory effect on [B]lack citizens in Alabama in violation of Title VI of the Civil Rights Act." *Id.* at 541–42; Doc. 206-19 at 15. On cross examination, Dr. Bagley conceded (1) that the Department's investigation concluded with an agreement in which Alabama agreed to reopen closed offices but did not admit liability, (2) that no court found that Alabama discriminated as part of the license center closures, and (3) that he had no evidence that the state intentionally closed license centers in areas with a heavy Black population. Tr. 592–93.

Dr. Bagley opined in his report that the Legislature's redistricting plans "were drawn behind the scenes by familiar characters including consultant Randy Hinaman and noted 'gerrymander whiz' Thomas Hofeller." Doc. 206-19 at 13. On cross examination, Dr. Bagley conceded that he did not have evidence that Mr. Hofeller drew the map but stated that "[h]e was just part of the process." Tr. 589.

Dr. Bagley also opined in his report that Alabama "was forced to comply with the National Voter Registration Act and jettison its practice of requiring documentary proof-of-citizenship in order to register to vote." Doc. 206-19 at 15 (citing *League of Women Voters v. Newby*, 838 F.3d 1 (D.C. Cir. 2016)); *see* Tr. 541–42. On cross examination, Dr. Bagley conceded that Alabama was not a party to the lawsuit he cited in support of that proposition and that the court did not determine that Alabama failed to comply with the National Voter Registration Act or order Alabama to perform any remedial act. Tr. 595.

As to Senate Factor 3, Dr. Bagley opined that Alabama has historically used "the kinds of enhancing devices targeted under" this Senate Factor. Doc. 206-19 at 16. He evaluated Alabama's use of at-large voting systems, anti-single-shot provisions, and other voting laws and concluded that those practices made it more difficult for Black citizens to vote or win election seats. *See id.* at 16–21; Tr. 542–44. He testified that municipalities in Alabama have been compelled to get rid of at-large voting schemes as recently as the 1980s. Tr. 543–44.

As to Senate Factor 5, Dr. Bagley opined that the Black population in Huntsville and Montgomery are "more likely to live in poverty," "more likely to be unemployed," "more likely to rely on food assistance benefits," "less likely to have broadband Internet service or any Internet access," and "less likely to have health insurance" than White Alabamians living in those areas. Tr. 546; *see* Doc. 206-19 at 21. He testified that similar racial disparities exist in the criminal justice system, public transportation, and housing. Tr. 553–54. Dr. Bagley testified that there is no way to account for these disparities "other than the state's history of discrimination." *Id.* at 554.

Dr. Bagley also opined that there are racial disparities in education in the Huntsville and Montgomery areas that are a result of the state's history of discrimination. *Id.* at 547. He opined in his report that thirteen of the schools listed on the Alabama Department of Education's "'Failing Schools List' for three (3) out

of the past five (5) years" are predominantly Black public schools in the Montgomery and Huntsville areas. Doc. 206-19 at 25. Of the 206 Alabama public schools in 2023 deemed "priority" (a new designation for formerly-classified "failing" schools), "181 were majority[-]Black student population," and twenty-four of those schools are Montgomery County Schools and eleven are Huntsville City Schools. *Id.* A trial, he testified that Madison County (in the Huntsville area) is still under a desegregation order and that the Decatur public school system remained under a desegregation order until 2019. *See* Tr. 549; *see also* Doc. 206-19 at 23.

Dr. Bagley also opined about the town of Pike Road, which is just east of Montgomery. Dr. Bagley opined that Pike Road was founded by citizens who wanted to remove their children from integrated public schools in Montgomery and is a "[W]hite flight community." *Id.* at 611; Doc. 206-19 at 26. Dr. Bagley opined that Pike Road's acquisition of Georgia Washington Middle School from the City of Montgomery was evidence of discrimination. *See* Doc. 206-19 at 27. Dr. Bagley included in his report a quote from an article written by Patty Payne, a "city booster," which stated that leadership of Pike Road "sought to 'preserve and protect what they saw as their preferred way of life' in the face of 'encroachment' from the City of Montgomery." *Id.* at 26. He opined that this sentiment demonstrates that "[W]hite boosters wanted to establish a public school system that was not only majority-

[W]hite in its student population, but also under majority-[W]hite, if not all-[W]hite, leadership." *Id.* at 26–27.

He also opined that Pike Road grew by annexing wealthy, predominantly White neighborhoods. *Id.* at 26; *see* Tr. 616. At trial, he testified that he would assume that Pike Road has also incorporated majority-Black neighborhoods "given the growth in the [B]lack population" in the town. Tr. 616. And he conceded that the Black and White share of the population is "pretty close" in Pike Road. *Id.* at 615.

As to Senate Factor 6, Dr. Bagley opined that racial appeals are present in campaigns by Alabama lawmakers in the Montgomery and Huntsville areas. Doc. 206-19 at 4. He defined a "racial appeal" as "an appeal that would only be directed at one race." Tr. 554. He testified that "racial appeals drive racially-polarized voting." *Id.*

Dr. Bagley opined that political campaigns between the 1960s and 1990s featured "thinly coded racial appeals" that have, "very recently, trended back towards more overt racial appeals," Doc. 206-19 at 30, that are expressed in "color masked language," Tr. 555. Dr. Bagley gave in his report examples of racial appeals from current and former elected officials in Alabama: (1) Senator Tommy Tuberville's "repeatedly stated" "belief that [W]hite nationalists are not racist" and that "'inner-city' teachers are lazy and unqualified"; (2) former Congressman Mo Brooks's complaints about "what he called a 'war on [W]hites'"; (3) former

Representative Will Dismukes's lobbying efforts "to maintain state funding for a Confederate memorial park," "beseech[ing] members to channel anger over the removal of Confederate monuments into 'something constructive . . . our ancestors did by rebuilding their homes and lives during the hateful years of Reconstruction," repeated use of "the phrase 'Deo vindice,' or 'God will vindicate [the South],'" and refusal to apologize for using that phrase because "it's time for people to . . . take a stand before our country is Gone with the Wind"; (4) former Alabama Supreme Court Chief Justice Roy Moore's 2017 acclamation of the antebellum period in the South as "'great at the time when families were united – even though we had slavery. They cared for one another. People were strong in the families. Our families were strong. Our country had a direction.'"; (5) former Senator Doug Jones's 2017 "mailers to Black voters" arguing that his opponent, Roy "Moore, like George Wallace, had fought to preserve segregation and had ties to hate groups like ku klux klan" and was "'not on our side'"; and (6) former Alabama Supreme Court Chief Justice Tom Parker's ad "boast[ing] about having 'taken on and beaten the Southern Poverty Law Center,' a well-known Montgomery-based race advocacy organization." Doc. 206-19 at 30–33, 31 n.105; Tr. 555–61.

On cross examination, Dr. Bagley conceded that many of the racial appeals he cited were not made in the course of a political campaign, but testified that he

believed the Senate Factors allowed him to consider a politician's comments made at any time. *See* Tr. 618–20.

As to Senate Factor 7, Dr. Bagley opined in his report that "Black citizens of Alabama currently hold no statewide offices[,]"[6] and that "[o]nly three Black candidates have held statewide office, and one of those was appointed." Doc. 206-19 at 33. He asserted that the Black candidates who have been elected to the Legislature have won their seats only because of the intervention of federal courts and the enforcement of voting rights laws. *Id.* at 4, 33; Tr. 561. He conceded on cross examination that there are no Democrats currently holding statewide office in Alabama, Tr. 621, and testified that White Democrats have held elected offices in the last decade, *id.* at 634–35. He testified that there are no Black Senators serving in the Huntsville area and there are two serving in the Montgomery area—both of whom represent majority-Black districts. *See* Doc. 206-19 at 34; Tr. 561.

As to Senate Factor 8, Dr. Bagley opined that "[t]he most glaring example" of the Legislature's lack of responsiveness to Black citizens' particular needs is the Legislature's recent refusal to draw a second majority-Black congressional district in 2023 as required by a federal court order in the Alabama congressional districting

[6] Dr. Bagley issued his report before Governor Ivey appointed Judge Lewis to the Alabama Court of Civil Appeals. After trial, Governor Ivey appointed Judge Lewis to serve as an Associate Justice on the Alabama Supreme Court, and he continues in that service.

litigation. Tr. 562; Doc. 206-19 at 34. He also opined that Alabama's failure to expand Medicaid, particularly in response to the COVID-19 pandemic, demonstrates a lack of responsiveness to the needs of the Black community. Doc. 206-19 at 34–35; *see* Tr. 562.

In his rebuttal report, Dr. Bagley responded to the reports of three defense experts: Dr. Bonneau, Dr. Reilly, and Dr. Adam Carrington. Tr. 563; *see generally* Doc. 206-21. Dr. Bagley addressed Dr. Bonneau's opinion that polarized voting is present in Alabama based primarily on political party, not race. *See infra* Part IV.B.3. Dr. Bagley attacked Dr. Bonneau's assertion that "all Democrats have a difficult time winning elections in Alabama" as incorrect because Democrats do not have a difficult time winning in majority-Black districts drawn in compliance with the Voting Rights Act. Doc. 206-21 at 17. Dr. Bagley also opined that other races for Alabama state offices—including the races of five White Democrats who won elections during a twenty-four-year period when no Black candidate was elected to statewide office—demonstrate that race is a significant factor in Alabamians' voting patterns. *See id.* at 16–17.

Next, Dr. Bagley addressed Dr. Reilly's assertion that because the overrepresentation of Black Alabamians in the prison system is no different than the overrepresentation across the nation, overrepresentation is not a consequence of racial discrimination. *See infra* Part IV.B.3. Dr. Bagley described Dr. Reilly's

assertion as "what-aboutism." Tr. 565. Dr. Bagley also testified that evaluation of the Senate Factors is "jurisdictionally focused" and does not involve other states. *Id.* at 566.

Finally, Dr. Bagley addressed Dr. Carrington's assertion that the partisan realignment from majority-Democrat to majority-Republican in Alabama occurred due to a variety of factors, such as economic or foreign policies, and not primarily racial issues. *See infra* Part IV.B.3. Dr. Bagley opined that Dr. Carrington's report may offer insight on the "party realignment nationally" but does not "explain party realignment specifically in Alabama," Tr. 563, and that Dr. Carrington relied on dated and national sources rather than contemporary sources relating to Alabama, Doc. 201-21 at 5–6. Dr. Bagley testified that most scholars acknowledge that "race has been the primary driving factor" behind party realignment even if they acknowledge that it was not the only factor. Tr. 564.

Dr. Bagley also cited statistics demonstrating that a "substantial number" of Black Alabamians support traditionally Republican stances on issues like abortion, LGBTQ rights, and same-sex marriage, but these voters identify with the Democratic Party, not the Republican Party. *Id.* at 564–65. He opined that "race" is "what[] [is] left [a]s an explanatory factor." *Id.* at 565.

ii. Dr. Traci Burch

The plaintiffs also rely on the testimony of Dr. Traci Burch about the totality

of the circumstances. Dr. Burch earned a doctoral degree in Government and Social Policy from Harvard University. Doc. 206-11 at 1; Tr. 662. She works as a professor of political science at Northwestern University, where she has taught for seventeen years, and is a research professor for the American Bar Foundation. Tr. 662–63; Doc. 206-11 at 1; *see* Doc. 206-12 at 1. Dr. Burch was compensated at a rate of $400 per hour for her work in this case and her compensation did not depend on the substance of her testimony. Doc. 206-11 at 2.

Dr. Burch has published books, chapters, and peer-reviewed articles on race, political participation, and voter turnout. *Id.* at 1; Tr. 664–65. She has "served as a peer-reviewer for several journals in political science" and is currently the editor-in-chief of the *Law and Social Inquiry* journal. Tr. 661–65. At trial, she was qualified without objection "as an expert witness in political and social science and political behavior." *Id.* at 667.

Dr. Burch testified principally about Senate Factor 5. *See id.* at 669. Dr. Burch opined that socioeconomic disparities exist between Black and White Alabamians, *id.*, and the "large gaps in socioeconomic wellbeing" in Alabama "has been shown to affect voting, such that people who are worse off on those factors tend to vote less than people who are better off," *id.* at 695–96.

The plaintiffs asked Dr. Burch to "analyze whether and to what extent there are disparities in socioeconomic status between Black and White Alabamians that

might affect voter registration and turnout" statewide and in Crenshaw, Elmore, Limestone, Madison, Montgomery, and Morgan Counties. Doc. 206-11 at 1; Tr. 668–69. She found racial disparities in educational attainment, income, unemployment, healthcare, access to transportation, access to internet, and interaction with the criminal justice system, all of which she opined affect voting participation. *See* Doc. 206-11 at 8–9, 12–13, 17–18, 22–23.

Dr. Burch opined that on average, Black Alabamians have a lower educational attainment than White Alabamians and that the educational disparities "are caused, in part, by historical and contemporary discrimination in education that make Black Alabamians less likely to have graduated from high school and college relative to White Alabamians." Doc. 206-11 at 9; *see* Tr. 672, 674–78. She opined that educational attainment is "the most important predictor of voting," Tr. 670, and that "the relationship between education and voting is a causal one," Doc. 206-11 at 9.

Dr. Burch testified that Alabama's history of segregated public schools still impacts voting participation today. *See* Tr. 676. She observed that "in the 2020 general election, 38.6 percent of votes . . . were cast by people age 60 and older, people who were at least school age in 1965, which means they were partially educated during a time when Alabama still had segregated public schools." *Id.*

Dr. Burch opined that lower educational attainment impacts other socioeconomic factors that also affect voting rates for Black Alabamians. *See id.* at

671. She observed that "[u]nemployment rates across all the counties [analyzed] and statewide are higher . . . for [B]lack people in Alabama than for [W]hite people." *Id.* at 680. Similarly, she testified that the median household income in Black households is lower than White households statewide and in every county she analyzed. Doc. 206-11 at 12; Tr. 679. Data from the American Community Survey shows that "the median household income for Black Alabama households is $36,104, compared with $62,545 for White Alabama households." Doc. 206-11 at 12. She opined that this disparity contributes to the racial disparities in family poverty, access to internet, and access to transportation, Doc. 206-11 at 13; *see* Tr. 680–81, 684–85, which hampers voting participation due to an inability to vote absentee, locate voting information, or travel to polling locations, *see* Tr. 684–87, 723.

Dr. Burch testified that in Alabama, "Black family poverty is nearly three times as high as White family poverty," Doc. 206-11 at 12, and that in Montgomery, "family poverty rates are six times as high for [B]lack families than for [W]hite families." Tr. 681. Dr. Burch also noted that "a higher percentage of Black households than White households receive SNAP benefits." Doc. 206-11 at 13.

Dr. Burch testified that "statewide, Black Alabama households are more than twice as likely to lack access to a vehicle at home than White households," Doc. 206-11 at 13, and that in Montgomery, almost three times more Black households

"don't have access to a car" than White households, Tr. 685. She testified that access to transportation affects voting participation. *See id.* at 685–86.

Dr. Burch also testified that Black Alabamians are in demonstrably worse health than White Alabamians, and she gave as examples that (1) the infant mortality rate for Black infants is nearly three times higher than the rate for White infants, and (2) Black Alabamians have a shorter life expectancy rate than White Alabamians. Tr. 682–83; Doc. 206-11 at 17. She testified that Black Alabamians are more likely to be uninsured than White Alabamians statewide and in most counties she analyzed. Tr. 682. She testified that "poor health can lead to lower voter turnout." Tr. 683.

Dr. Burch also observed racial disparities in conviction and sentencing rates in Alabama independent of "factors such as crimes severity, criminal history, and demographic context." *Id.* at 687–88; *see id.* at 690–91. She testified that racial disparities in the criminal justice system directly affect voter turnout and that "14.7% of otherwise-eligible Black people in Alabama cannot vote due to a recent felony conviction." Doc. 206-11 at 18; Tr. 690.

Dr. Burch also responded to the expert reports of two of the Secretary's experts, Dr. Reilly and Dr. Carrington. *See* Tr. 697. Dr. Burch addressed Dr. Reilly's opinion that "racial disparities between [B]lack and [W]hite Alabamians are the result of cultural practices of [B]lack people rather than systemic discrimination." *Id.* She criticized Dr. Reilly for, among other things, failing to support his assertions

with peer-reviewed evidence or address contrary literature. *Id.* at 697, 702–06.

Dr. Burch also addressed Dr. Carrington's assertion that "racial gaps in partisanship are shaped by preferences on economic policy, foreign policy, and social issues," not race. *Id.* at 707. Dr. Burch criticized Dr. Carrington for relying on national data, and testified that the "scholarly consensus is that race is very important to parties and partisanship and vote choice." *Id.* at 707–08. She testified that her research demonstrated that "race [was] very important for explaining th[e] shift[] away from the Democratic party to the Republican party and the realignment in the South," *Id.* at 709; twice, she testified that race was the only factor driving that party realignment, *id.* at 761–62, 773–74. She opined that voting patterns on other factors identified by Dr. Carrington are "not disconnected from the movement of the parties on racial attitudes." *Id.* at 763. She opined that, for instance, "economic anxiety" and how people experience it are "a function of race and racial attitudes" and "the racial context in which [a person] live[s]." *Id.* at 764–65.

b. The Plaintiffs' Lay Witness Testimony At Trial

The plaintiffs also offered the testimony of several lay witnesses about the totality of the circumstances: Evan Milligan, Scott Douglas, Benard Simelton, Tari Williams, and Mary Peoples.

Plaintiff Evan Milligan is a forty-three-year-old registered voter in District 26 in Montgomery. Tr. 453–54. Mr. Milligan grew up in Alabama and spent much of

his childhood in the Montgomery area. *See id.* at 453–54. He testified about his experiences seeing political rallies in Montgomery—some of which were "inspiring" and some of which were "frightening." *Id.* at 459. He recounted his experience witnessing "a protest march for Ku Klux Klan chapters in" Alabama and testified that he "actually s[aw] the hooded robes and . . . s[aw] some of the symbols that [he] had heard some stories about from the elders in [his] family." *Id.*

Mr. Milligan testified that District 26 in the Enacted Plan, the majority-Black district in the Montgomery area, "includes most of the predominantly [B]lack communities in Montgomery"—"southern, central, southwest, west side, and north of Montgomery." *Id.* at 472. He testified that the part of Montgomery included in District 25 in the Enacted Plan "is basically the most predominantly [W]hite neighborhoods in the eastern part of the city." *Id.*

Mr. Milligan testified about racial disparities in the Montgomery area in access to transportation and health care. *See id.* at 469–71. He also testified that the Legislature is not responsive to the needs of the Black community, and described how only Black legislators engaged with the social advocacy groups with which he was involved. *See id.* at 460–62. Mr. Milligan testified that "political representation gives . . . the [B]lack communities of Montgomery more access to leadership and to people that want to bring . . . new investment to communities that have been under[ ]resourced." *Id.* 473.

Scott Douglas works as the Executive Director of Greater Birmingham Ministries. *Id.* at 485. Mr. Douglas testified that Greater Birmingham Ministries has two forms of membership: (1) organizational membership, which primarily includes churches, and (2) individual membership. *Id.* at 488. He identified members in Montgomery County who are Black registered voters. *Id.* at 491; *id.* at 506–07. He did not identify any individual members in Huntsville. *Id.* at 502. Mr. Douglas testified that Greater Birmingham Ministries is participating in this litigation to achieve "a more responsive State Senate." *Id.* at 493.

Benard Simelton is a Black registered voter in Harvest, a city near Huntsville located in Limestone County, where he has resided since 2002. *Id.* at 152–53. Mr. Simelton is the president of the State Conference. *Id.* at 154. He testified that the State Conference is a "suborganization" of the national NAACP and that membership dues are shared by the local, state, and national NAACP. *Id.* at 156, 158. Mr. Simelton testified that within the State Conference, there are NAACP college chapters, branches, and youth councils, *id.* at 156, and that every member of a branch, chapter, or youth council in Alabama is a member of the State Conference "by association," *id.* at 158–59, 184–86. He explained that there is no way for a person to join the State Conference without joining a local unit. *Id.* at 184–86. Mr. Simelton testified that the State Conference has individual members who are Black registered voters in the Huntsville and Montgomery areas. *See id.* at 161, 163, 174.

Mr. Simelton also testified about the connection between the Huntsville and Decatur. He testified that members of the Huntsville and Decatur NAACP branches invite members of each other's branches to events because the two units "share a common interest of . . . ensuring . . . political and economic and social rights are protected." *Id.* at 164. Mr. Simelton also testified that he travels from Huntsville to Decatur around three or four times a year. *Id.* at 165–66. He observed that there is frequently heavy traffic between the cities, that Huntsville and Decatur share some economic interests and industries, and that the local Huntsville news reports on things happening in Decatur. *Id.* at 168–73.

Mr. Simelton testified that Black members of the Legislature have attended NAACP Huntsville events to discuss issues relating to the expansion of Medicaid and access to health care for Black Alabamians, but that he has not seen any White legislators at those events. *See id.* at 165. He testified that the only elected officials who have met with the NAACP about civil rights issues are Black Representatives. *Id.* at 180.

During the course of Mr. Simelton's testimony, counsel raised various privilege objections to questions about the NAACP's decision not to file a lawsuit in connection with previous decennial census data. *See id.* at 204–08, 210–13. In this ruling, the Court does not rely on any privileged information except in the limited instances where privilege was waived at a deposition.

Tari Williams works as the organizing director at Greater Birmingham Ministries. *Id.* at 638. In that position, she works to restore voting rights to Alabamians across the state. *Id.* at 639. She testified that Greater Birmingham Ministries disproportionately serves Black men to restore voting rights. *Id.* at 640–41. She testified that Greater Birmingham Ministries also offers workshops for individuals with literacy issues and that the majority of individuals attending those workshops are Black. *Id.* at 646. Ms. Williams testified that she has observed racial disparities in Alabama in areas such as educational opportunities, transportation, lack of access to internet, and ability to purchase food, clothing, or medications. *Id.* at 647–48, 650–52. She testified that, in her opinion, the Legislature has not been responsive to the needs of Black Alabamians. *See id.* at 649–50.

Mary Peoples is a Black voter in District 7 in Huntsville. *Id.* at 119–21, 147. Ms. Peoples has resided in Huntsville "[b]asically all [of her] life." *Id.* at 120. Ms. Peoples attended a segregated elementary and high school. *Id.* at 122. She testified that both of her children attended "[p]redominantly [B]lack" high schools in Huntsville. *Id.* at 127.

Ms. Peoples attended Alabama A&M University, an historically Black university. *Id.* at 122–23. She testified that the university is located on the north side of Huntsville in a predominantly Black neighborhood. *Id.* at 129–30. She testified that this area does not have "very much in common with Jackson County," the

county east of Huntsville, in terms of "educational level, educational opportunities offered, job opportunities offered, [and the] skill set of the people that are there in the community." *Id.* at 130.

Ms. Peoples also testified about the connection between Huntsville and Decatur. She testified that she traveled to Decatur for shopping, *id.* at 131, but stated that she could not recall making the trip since 2020, *id.* at 148. She testified that the local news in Huntsville reported on news in all cities surrounding Huntsville, including Decatur, Athens, Arab, and Scottsboro and that it was not uncommon for residents of those surrounding cities to commute to Huntsville to work at Redstone Arsenal. *Id.* at 131.

c. Designated Deposition Testimony

The plaintiffs offered deposition testimony from two witnesses: Senator Jim McClendon and Randy Hinaman.

Mr. Hinaman is the cartographer who drew the Enacted Plan, and he has drawn Alabama's districting plans for many years. *See* Doc. 235-2 at 15–16. He drew the Plan based on 2020 census data. *See id.* at 21. He testified that "there was a general agreement" that the two Committee chairs, Representative Pringle and Senator McClendon, would divide the task of overseeing state legislative redistricting. *See id.* at 24–25. "Senator McClendon would focus on the [state] [S]enate map" and "Representative Pringle would focus on the state [H]ouse map."

Id. at 24–25.

Mr. Hinaman testified that he used Maptitude software to draw the Plan. *Id.* at 29. He used as a starting point the state Senate map that was passed by the Legislature as a remedial plan in 2017. *Id.* at 30. He met with various state Senators and adjusted the maps based on population and other concerns. *See id.* at 31–32.

Mr. Hinaman testified that he balanced the Legislature's redistricting guidelines and did not prioritize any guideline over another. *See id.* at 58. He testified that he did not "have race on the computer screen" and "drew the [Plan] race blind." *Id.* at 46. After he drew the Plan, he reviewed the racial data of the districts—that is, the BVAP of the districts—to "mak[e] sure that they still looked like they would function as a majority[-B]lack district." *Id.* at 46–49. Mr. Hinaman did not review CVAP data. *Id.* at 47–48.

Mr. Hinaman testified that no majority-Black districts were added in the Plan: "if they were a majority[-B]lack district in 2017, the senate map, I think they were [a] majority[-B]lack district in the 2021 map. I don't think there were any . . . additions." *Id.* at 49. Mr. Hinaman made no changes to the Plan after reviewing data related to race. *Id.* at 51, 55–56.

Mr. Hinaman testified that he believed all of the districts in the Plan are reasonably compact. *Id.* at 59. He testified about changes he made to districts in the Huntsville area based on either the Legislature's redistricting criteria or

conversations with Senators. *Id.* at 67–71. For example, he testified that he removed a county split in District 1 so that it no longer encompassed portions of Madison County, and that those portions of Madison County were mostly picked up by District 7. *Id.* at 66–67.

Mr. Hinaman also testified about the districts in the Montgomery area. He testified that the Plan places all majority-Black precincts except two into the majority-Black District 26. *Id.* at 79. He testified that District 25 in the Plan extends into the center of Montgomery to include two predominantly White precincts and a portion of a third. *Id.* at 80–81. He testified that he drew District 25 "based on discussions" with Senators. *Id.* at 81. But he testified that "when [he was] drawing this map, [he] did not have race on, so [he] didn't have the benefit of" the BVAP data and did not consider race at any time when he was drawing the district lines. *Id.* at 86–88.

Mr. Hinaman did not have a final version of the Plan until twenty-four hours before the Committee's meeting to vote on it. *Id.* at 40. He explained that the deadline was tight because "the census data was six months late." *Id.* To his knowledge, no further changes to the Plan were made. *Id.* at 43.

Senator McClendon testified that when drawing the Plan, the Committee started with the 2017 Plan. Doc. 235-1 at 22. He testified that they balanced all of the criteria in the Legislature's redistricting guidelines and that he did not instruct

Mr. Hinaman to prioritize any criteria over another. *Id.* at 24. He testified that neither race nor party was displayed on screen when Mr. Hinaman drew the Plan, and that "[r]ace was not considered" in the process of drawing the districts. *Id.* at 28–29. He also testified that he and Mr. Hinaman met with other Senators in part so that they could tell Mr. Hinaman about communities of interest that they preferred to preserve in their respective districts, although he did not recall specific discussions. *See id.* at 84–85.

Senator McClendon testified about the changes made to the districts in the Huntsville area. He testified that the changes were made because of "an increase in population" and "getting the Senators, the incumbents, happy with what they had to deal with." *Id.* at 68–69.

Senator McClendon testified about the racial makeup of districts in Montgomery. He testified that they did not examine racial data when drawing the Plan, but when he was asked if he had "any understanding of why . . . more than twice in proportion percentage of [W]hite Montgomery residents are in District 25 as opposed to [B]lack residents," Senator McClendon testified that he would consider whether "the district is similar in shape, location, and the lines are similar to where it was before" and "the way it has been historically." *Id.* at 58–60.

Senator McClendon testified that he considered all of the districts in the Plan reasonably compact. *Id.* at 60–61. With respect to the shape and compactness of

some districts compared to others, he testified that "it's really easy to draw very handsome districts if you could just disregard the rest of the state." *Id.* at 64.

Senator McClendon testified that many Alabamians were raised in a racist political and social culture as evidenced by his attendance at an all-White segregated high school. *Id.* at 81–82. He testified that based on his experience, Black voters in Alabama tend to vote for Black candidates. *Id.* at 78. He testified that Black and White voters in Alabama have differing opinions on racial issues in the state. *See id.* at 79–80.

B. Secretary Allen's Arguments

The Secretary's position is that the plaintiffs did not demonstrate that the Black population in the Huntsville and Montgomery areas is sufficiently large and geographically compact to constitute a majority in additional Senate districts. *See* Tr. 1654. He also argues that Proposed District 25 and District 7 in Illustrative Plan 3 were impermissibly drawn on the basis of race. *See* Tr. 1654, 1657–58; Doc. 251 ¶¶ 113–57. The Secretary concedes that Black voters are "politically cohesive" and that White Alabamians tend to vote as a bloc, but he argues that these voting patterns are attributable to party politics, not race. Tr. 1661. The Secretary contends that the Senate Factors do not support a finding of racially polarized voting and do not support a Section Two violation. *See id.* at 1662–74.

1. *Gingles* I – Numerosity and Reasonable Compactness

The Secretary asserts that the Illustrative Plans do not satisfy the first *Gingles* precondition. He argues that Proposed District 25 is not reasonably configured, does not comport with traditional districting criteria, and was drawn on the basis of race. *See* Tr. 1660. He argues that District 7 in Illustrative Plans 1, 2, and 2A does not satisfy the numerosity requirement because (1) CVAP data is unreliable, (2) Eleventh Circuit precedent does not support a reliance on BCVAP to establish numerosity, particularly when the BVAP is below fifty percent, and (3) Alabama law does not permit the Legislature "to use anything other than census data." *See id.* at 1653–57. He acknowledges that District 7 in Illustrative Plan 3 is majority-Black according to a BVAP measure but argues that the district is not reasonably configured, does not comport with traditional districting criteria, and was impermissibly drawn on the basis of race. *See id.* at 1657–60.

The Secretary relies on Dr. Sean Trende as his *Gingles* I expert. Dr. Trende earned a Juris Doctor and a Master of Arts in political science from Duke University, a Master of Applied Statistics from The Ohio State University, and a Doctor of Philosophy in political science from The Ohio State University. Doc. 189-7 at 5, 33; Tr. 934–35. Dr. Trende works as a visiting scholar at the American Enterprise Institute, a lecturer at The Ohio State University, and a Senior Elections Analyst for Real Clear Politics, which is a company that "provides online content, aggregating polls." Tr. 934; *see* Doc. 189-7 at 3. He has taught several courses at higher education

universities, including a course on "Political Participation and Voting Behavior" that "spent several weeks covering all facets of redistricting." Doc. 189-7 at 5. Dr. Trende has served as a party expert as well as a court-appointed expert in redistricting litigation, *see id.* at 5–6; Tr. 939–40, although his testimony was found unreliable in a few of those cases, *see* Tr. 1055–56, 1068.

At trial, Dr. Trende was admitted without objection "as an expert in redistricting, political methodology, and survey methods." Tr. 940–41.

a. Montgomery – Senate Districts 25 and 26

i. Numerosity

Dr. Trende did not contest that Proposed District 25 contains a majority BVAP and offered only limited comments in his report on the compactness and effectiveness of the district. Doc. 189-7 at 28–29. At trial, the Secretary conceded he does not contest numerosity for that illustrative district. Tr. 1660; *accord* Doc. 251 ¶¶ 54–112 (addressing numerosity only for Senate District 7 in Illustrative Plans 1 and 2A).

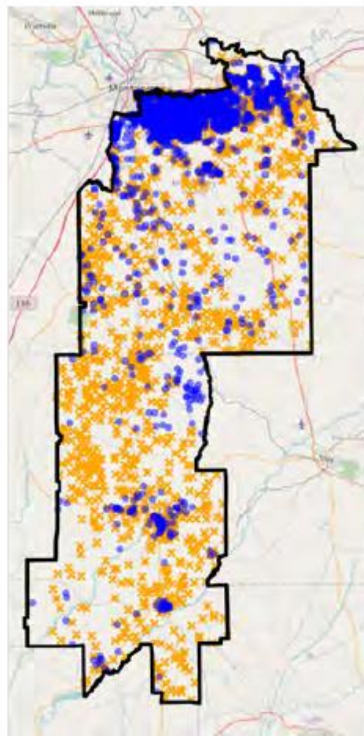
ii. Reasonable Configuration

Dr. Trende did not analyze the compactness of Proposed District 25, Tr. 1079–80, and he did not opine about the Reock, Polsby-Popper, or Convex Hull score of Proposed District 25. Instead, he testified that Mr. Fairfax "ha[d] to pick up isolated Black populations throughout the countryside" for Proposed District 25 to reach

majority-Black status. Doc. 189-7 at 29; *see* Tr. 1021. And the Secretary argues that Proposed District 25 is not reasonably configured because (1) it creates a new city split in Prattville, and (2) it connects central Montgomery with portions of Elmore and Crenshaw Counties without sufficient evidence that the district connects communities of interest. Tr. 1660.

Dr. Trende provided the following dot density map to demonstrate the racial demographics of the population in Proposed District 25:

Figure 13: Dot Density Map of Black and White populations, Illustrative District 25



(a) 1 blue dot represents 10 Black citizens, 1 orange x represents 10 White citizens.

Doc. 189-7 at 29.

Dr. Trende opined that "there is a heavily concentrated Black population in Montgomery[, b]ut to achieve 50% +1 status, the district has to pick up isolated

Black populations throughout the countryside." *Id.* As for effectiveness, he testified that Proposed District 25 would "perform at less than 50% BVAP." *Id.*

b. Huntsville – Senate Districts 2, 7, and 8

Dr. Trende provided opinions on Illustrative Plans 1, 2, and 3. Dr. Trende did not evaluate Illustrative Plan 2A in his reports but evaluated it "minimally" before trial. Tr. 942–43. He testified that the changes to the proposed District 7 in Illustrative Plan 2 and Illustrative Plan 2A were "minimal" and did not impact his analysis of the compactness of the proposed District 7 in Illustrative Plan 2. *See id.* at 943. Dr. Trende attacked Mr. Fairfax's use of BCVAP data to draw District 7 in Illustrative Plans 1 and 2, *see id.* at 950, and he opined that District 7 in Illustrative Plan 3 is not reasonably compact and Mr. Fairfax "sacrifice[d] traditional redistricting principles" to draw it, Doc. 189-8 at 33.

i. Numerosity

First, Dr. Trende opined that CVAP data does not establish that the versions of District 7 that appear in Illustrative Plans 1, 2, and 2A are majority-minority districts. *See* Tr. 1003–04; *accord* Doc. 189-7 at 7–8; Doc. 189-8 at 5. He testified that in his experience, CVAP has been used only to "double check" the relevant VAP, Tr. 951, and has never been used alone to establish numerosity, *id.* at 946, 951.

At trial, Dr. Trende acknowledged that he has relied on CVAP data in his expert opinions in other redistricting cases, *id.* at 952–55, and that he previously

opined that it could be a "useful metric for assessing a district's actual electorate," *id.* at 1043. But Dr. Trende testified that he has never relied on CVAP data to evaluate *Gingles* I and never where there was "a specific threshold that [needed] to [be] cross[ed]." *Id.* at 953–55; *see id.* at 1043. He testified that his use of CVAP in other cases is not inconsistent with his opinions in this case. *Id.* at 955.

At trial, Dr. Trende was careful to isolate his attack on CVAP data to a *Gingles* I analysis. He testified that he was not opining that the American Community Survey "is a bad source of information," but that data from the Survey come with error margins that must be taken into account if that data is used for a *Gingles* I analysis. *Id.* at 956. Dr. Trende testified that CVAP point estimates cannot be divorced from margins of error or confidence intervals, *id.* at 960, particularly when the point estimate of a population is "very close to the [fifty] percent threshold, and that [fifty] percent threshold is very important," *id.* at 950; *see* Doc. 189-7 at 12. He testified that "the accuracy of a poll will decline quickly as you examine smaller and smaller census groups," Doc. 189-7 at 13, and that CVAP estimates are based on a "fairly small sample"—approximately ten people in each block group are surveyed each year on average, Tr. 948.

Dr. Trende further testified about the uncertainty inherent in Mr. Fairfax's decision to split block groups between districts while relying on CVAP data to estimate the BCVAP of his illustrative districts. Dr. Trende opined that the necessity

of relying on a disaggregation method to draw an inference when splitting block groups "can be consequential" and can be dispositive on whether District 7 in Illustrative Plan 1 is a majority-Black district. Doc. 189-7 at 19–20; *see* Tr. 971. He testified that Mr. Fairfax split approximately thirty block groups in District 7 on average in the Illustrative Plans, Tr. 983, which required a disaggregation technique to estimate how many members of the BCVAP are within the portion of the block group located within the proposed remedial district, *see id.* at 972. Dr. Trende opined that there is "no obviously correct" way to allocate portions of the BCVAP when a block group is split, Doc. 189-7 at 21; Tr. 972, and that each method relies on "untestable assumptions," Tr. 978; Doc. 189-7 at 21. He testified that "[t]here[] [is] no known way to calculate the error margin" for data that has been disaggregated. Tr. 977. He also opined that relying on a point estimate from disaggregated CVAP data requires "piling inference on top of inference" because the researcher is required to disaggregate a quantity that is unknown because it is based on a sample estimate. Doc. 189-7 at 18 (emphasis omitted); *see* Tr. 983–84. He further testified that this uncertainty renders the use of the American Community Survey data—and thus CVAP data—uncertain for *Gingles* I purposes. *See* Doc. 189-7 at 11–14.

To emphasize his point, Dr. Trende identified instances where the CVAP point estimates were higher than the actual voting-age population. Tr. 976; Doc. 189-7 at 18. He testified that "citizens of voting age . . . should be a subset of the Voting[-

]Age Population," Tr. 976, but he found that the CVAP point estimates for District 7 in Illustrative Plan 1 exceed the total voting-age population in ten block groups using 2020 data, twelve block groups using 2021 data, and nine block groups using 2022 data, Doc. 189-7 at 17. Dr. Trende opined that these statistics demonstrate that the data on which Mr. Fairfax relies is "wrong." Doc. 189-7 at 17.

Dr. Trende opined that his "closest approximations" of the error margin of American Community Survey data is "around 3%," although he cannot "know exactly what that error margin is." *Id.* at 24. Dr. Trende acknowledged an error in the code he used to calculate the error margin, which would change the result of his calculation. Tr. 1059–60. But he testified that the error would not inflate the error margin. *Id.* at 1060. He explained that a three percent error margin would bring the BCVAP in Senate District 7 for Illustrative Plan 1 to "50% and values below." Doc. 189-7 at 24; *see* Tr. 989–90. He concluded similarly for District 7 in Illustrative Plan 2. *See* Doc. 189-8 at 6.

Dr. Trende testified that the error margins associated with Mr. Fairfax's and Dr. Oskooii's point estimates included estimates of fifty percent BCVAP and that he had not seen "any estimate of an error margin that suggests that the confidence interval would ever not include 50 percent plus 1 or would not include 50 percent." Tr. 980, 983. For example, he testified that Mr. Fairfax's point estimate of 50.16 percent BCVAP for Illustrative Plan 1 is inadequate to establish numerosity because

the confidence interval of this point estimate includes values "between [forty-eight] percent and [fifty-two] percent" and within those numbers, "the confidence interval does[] [not] give you any information about whether [the point estimate] is 48.1 percent or whether its 51.5 percent." *Id.* at 988–89. He testified that the error margins do not permit "meeting in the middle" of the confidence interval, *id.* at 989, and that the margins are important in this case because the point estimate is so close to fifty percent, meaning there is not a basis to confidently conclude that District 7 in Illustrative Plans 1 and 2 include a majority BCVAP, *id.* at 989–90.

In his report, Dr. Trende opined that because Mr. Fairfax justified his use of CVAP data based on a meaningful number of noncitizens present in the Huntsville area, Mr. Fairfax should consider all data related to persons ineligible to vote, including felony convictions. Doc. 189-7 at 23; Tr. 1001–02. Dr. Trende testified that he had not removed individuals disqualified from voting based on a felony conviction from the CVAP or VAP of an illustrative district. Tr. 1045. But he opined that the consideration of other evidence about disenfranchisement could affect the *Gingles* I consideration. *See id.* at 1002. For instance, Dr. Trende applied the statewide statistic offered by Dr. Burch—that 14.7 percent of Alabama's Black population could not vote due to a felony conviction—to District 7 in Illustrative Plan 1 and concluded that based on that statistic, the share of Black citizens eligible to vote would drop below a majority. Doc. 189-7 at 23; Tr. 1002.

ii. Reasonable Configuration

Dr. Trende opined that District 7 in Illustrative Plans 2 and 3 is not reasonably configured. Doc. 189-8 at 8, 17; Tr. 1006, 1020–21. Dr. Trende did not challenge the compactness of District 7 in Illustrative Plan 1. Tr. 1079. Dr. Trende testified that he "tr[ied] to avoid testifying to the ultimate conclusion" on compactness because that determination is in "the province of the courts." *Id.* at 1006. Instead, Dr. Trende testified that he opined on factors that "support a conclusion." *Id.*

Dr. Trende testified that in evaluating compactness, he did not consider every traditional redistricting principle. *Id.* at 1070–72, 1077–80. For instance, he did not consider whether Huntsville, Decatur, and the Redstone Arsenal shared communities of interest, *id.* at 1070, and explained his belief that such evidence is for the court's consideration, *id.* at 1072.

Dr. Trende testified that adherence to certain traditional redistricting principles is required (such as equal population), and that "[s]ometimes a map is so distorted that . . . the other things [do not] matter" and that "at a certain point, . . . something becomes so badly compact that it becomes hard whatever other its virtues to justify it as reasonably configured." *Id.* at 1008. He testified that the fact finder is the appropriate arbiter of whether the other traditional redistricting criteria tradeoffs are permissible. *Id.*

Dr. Trende testified that, to a certain degree, his compactness analysis was

based on "an eyeball test." *Id.* at 1021; *see id.* at 1067. He testified that courts have endorsed eyeball tests in a *Gingles* I analysis, and in any event, statistical compactness measures, like the Reock score, require subjective analysis because social scientists have not "established the bounds" of the statistic that include a compact score. *Id.* at 1021–22; *see id.* at 1067–68.

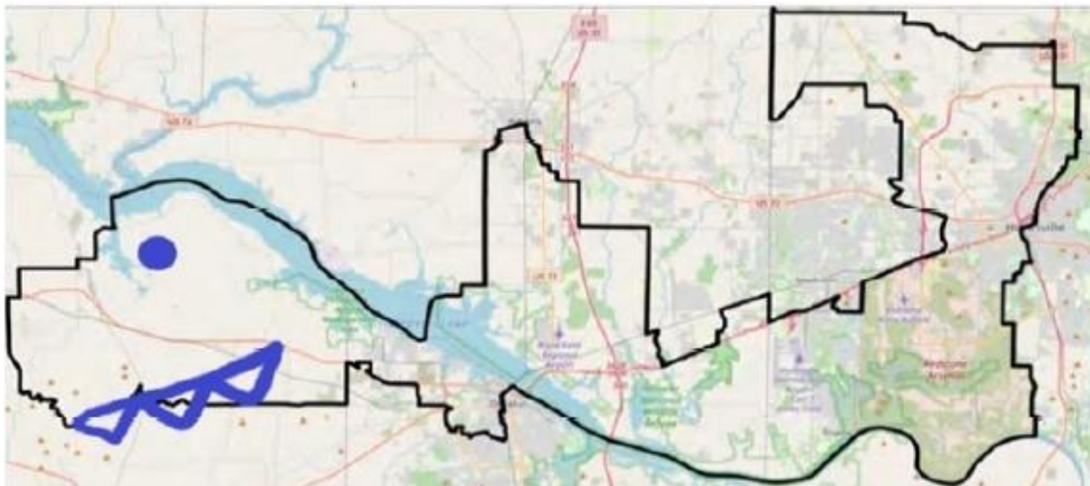
Nevertheless, Dr. Trende evaluated statistical compactness measures in his report. He opined that the version of District 7 in Illustrative Plans 2 and 3 are less compact than District 7 in the Enacted Plan using the Reock score, Polsby-Popper score, and cut edges score. Doc. 189-8 at 12–15, 24–26; *see* Tr. 1023–30. Dr. Trende explained that the cut edges score is "a newer metric" where "all the census blocks in a map can be thought of as being connected by lines or edges," and the district is conceptualized "as removing those edges until there are no edges connecting one group to the rest." *Id.* at 1027–28. He explained that "the fewer edges that [are] remove[d], the more compact a map is thought to be." *Id.* at 1028. Dr. Trende testified that he used this metric because it was used in the Alabama congressional districting litigation. *See id.*

Dr. Trende opined that for the districts in North Alabama that Mr. Fairfax changed in the Illustrative Plans, the difference in the Enacted Plan scores and the Illustrative Plans is "more pronounced." *Id.* at 1023; *see id.* at 1027. He testified that the "regional mean" is the more relevant metric because a mapmaker may "change

radically" a district "and make its Reock score much worse," but that the change may be "covered up by [twenty] districts that do[] [not] get changed." *Id.* at 1024. For instance, he testified that District 7 in Illustrative Plan 1 "is made .03 points more compact under the Reock score" but that District 3 "goes from a Reock score of .59 to . . . .23, which is a substantial difference." *Id.* at 1024–25.

Dr. Trende asserted in his report that Illustrative Maps 1, 2, and 3 rely on irregular shapes to capture larger components of the Black population in District 7 and avoid areas with a higher White population. *See* Doc. 189-7 at 26; Doc. 189-8 at 3, 17–24. At trial, he testified that race predominated when Mr. Fairfax drew District 7 in Illustrative Plans 2 and 3. Tr. 1031–33, 1039.

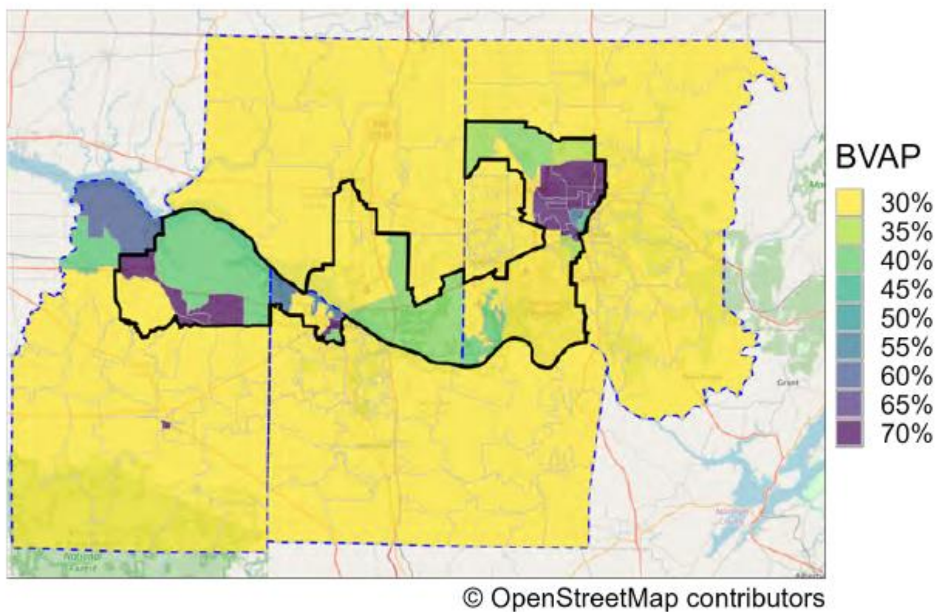
With respect to Illustrative Plan 3, Dr. Trende testified that "District 7 has become very non-compact" and is one of the least compact districts statewide. *Id.* at 1028–29; *see* Doc. 189-8 at 25–26. He described District 7 in Illustrative Plan 3 as resembling "a baby dragon with an overbite in flight." Tr. 1011; Doc. 189-8 at 18. The Secretary offered the following visual illustration of Dr. Trende's description:



Doc. 166 at 33.

Dr. Trende provided two maps that he opines when read together can demonstrate a lack of compactness and the presence of race predominance. *See* Tr. 1013–14. First, Dr. Trende provided choropleth maps that reflect the percentage of the Black population in an area. *See id.* at 1014. In the choropleth maps, Dr. Trende shaded each precinct, or voting tabulation district (a census unit that generally aligns with precinct lines, Doc. 189-7 at 10), by BVAP. *See* Tr. 1014, 1032. Dr. Trende testified that choropleth maps do not illustrate the compactness of a district per se, but rather reflect the "distinct groupings" of the Black population in the relevant area. *Id.* at 1015. Dr. Trende offered the following choropleth map of District 7 in Illustrative Plan 3:

Figure 21: Fairfax Map 3, District 7, with VTDs shaded by BVAP



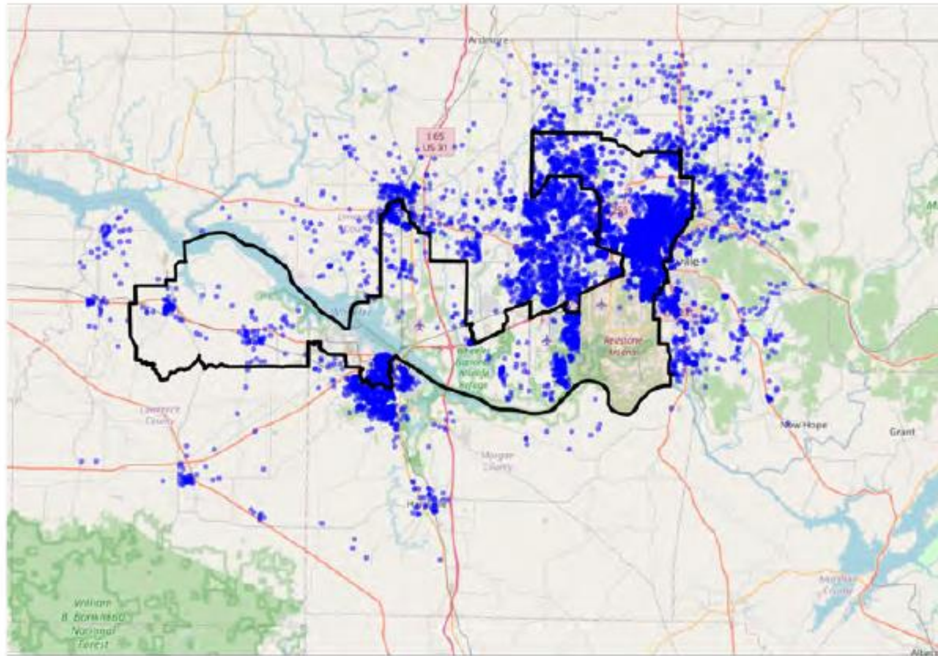
Doc. 189-8 at 27. Dr. Trende testified at trial that this map demonstrates that District 7 in Illustrative Plan 3 "extend[s] over into Lawrence County to take in most of the [B]lack population there." Tr. 1033. He testified that it "takes in every precinct with a BVAP over [thirty] percent in the three counites before and almost every precinct with a BVAP above [thirty] percent in Lawrence County." *Id.* at 1033.

Dr. Trende took care to acknowledge the limitations of a choropleth map. One limitation is that the map only shows percentages, which can be misleading if, for instance, an area only has one resident but is reflected as one hundred percent White. *Id.* at 1017.

Because of these limitations, Dr. Trende also provided dot density maps that reflect "the distribution of individuals within the district." *Id.* at 1014. One of the

maps reflected the Black population around District 7 in Illustrative Plan 3:

Figure 16: Fairfax Map 3, District 7. One blue dot = 10 Black residents of voting age



Doc. 189-8 at 22. This map does not reflect the White population in the Huntsville area; Dr. Trende acknowledged at trial that he "adjusted some of the maps that [he] drew in response to some of the critiques that were made." Tr. 942.

Dr. Trende testified that there are "at best" two or three Black populations "stitched together" in the Huntsville area. *Id.* at 1020. He testified that District 7 in Illustrative Plan 3 contains "multiple populations" in the Huntsville area "that are sometimes separated by completely unpopulated areas or by some heavily [W]hite areas in between." *Id.* at 1021; *see* Doc. 189-8 at 20.

Dr. Trende testified that District 7 in Illustrative Plan 3 includes "every

precinct with a BVAP over [thirty] percent" in Morgan, Limestone, and Madison Counties and "almost every precinct with a BVAP above [thirty] percent in Lawrence County." *Id.* at 1033. He testified that if any of the precincts Mr. Fairfax split when drawing District 7 in Illustrative Plan 3 are made whole, "the BVAP for the district falls below [fifty] percent." *Id.* at 1034. He opined that the areas with a high Black population were "surgical[ly] cut[] out" and that "heavily [W]hite precincts" were avoided. *Id.*

Dr. Trende also opined that Illustrative Plan 3 disregards traditional redistricting criteria. He opined that the proposed District 7 increases the number of county splits from nineteen in the Enacted Plan to twenty-one in Illustrative Plan 3, and that four of those county splits are in District 7. Doc. 189-8 at 31–32. He also testified that District 7 in Illustrative Plan 3 does not include any whole counties within it. Tr. 1038. He opined that "the fourth county split is clearly driven by race" and that he is "skeptical" that a majority-minority district can be drawn without splitting the fourth county unless the mapdrawer is "overwhelming[ly] rel[ying] on race." Doc. 189-8 at 32.

Dr. Trende opined that District 7 in Illustrative Plan 3 "is one of only a handful of configurations in the area that will get a mapdrawer to 50% +1 BVAP," which, he asserted, is indicative that race predominated Mr. Fairfax's considerations when drawing the district. *Id.* at 26–27; *see* Tr. 1035.

2. *Gingles* II and III – Racially Polarized Voting

The Secretary concedes that "a majority of [W]hite voters . . . tend to support Republicans, [and] a majority of [B]lack voters tend to support Democrats." Tr. 1695; *see* Doc. 251 ¶ 159. He also concedes that "[i]f that is all it takes for there to be racially[ ]polarized voting to satisfy *Gingles* 2 and 3, the[] [plaintiffs] have met" their burden. Tr. 1695.

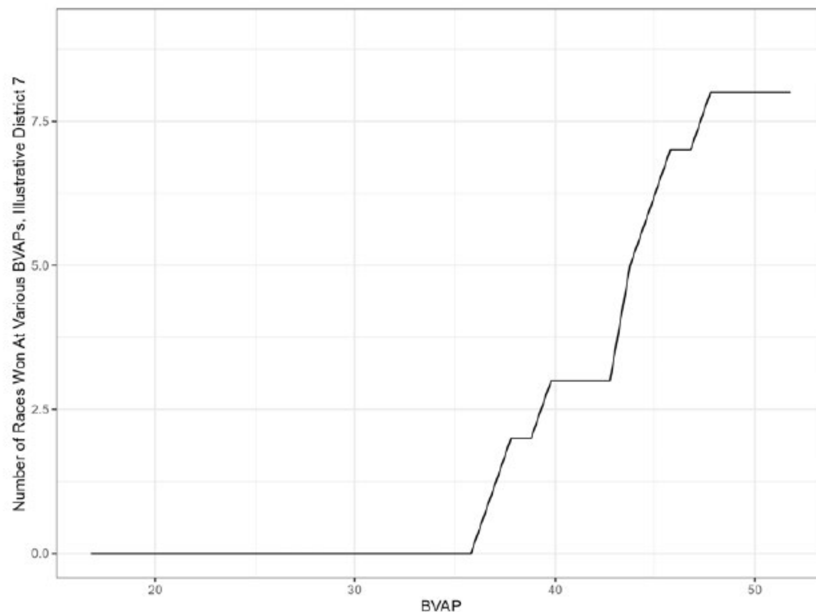
The Secretary "question[s]" the presence of White bloc voting in the Huntsville and Montgomery areas because an effectiveness analysis performed by Dr. Trende suggests that both Proposed District 25 and the three versions of the proposed District 7 in the Illustrative Plans would elect a Black-preferred candidate with a less-than-majority-BVAP. *See* Tr. 1695; Doc. 251 ¶¶ 171, 173–80; Doc. 189-7 at 27–29; Doc. 189-8 at 17, 32.

Dr. Trende examined the effectiveness of District 7 in Illustrative Plans 1, 2, and 3 in providing Black voters an opportunity to elect candidates of their choice. Doc. 189-7 at 27–28; Doc. 189-8 at 17, 32. Dr. Trende opined that all three Illustrative Plans would provide Black citizens an opportunity to elect candidates of their choice at a very low BVAP given the "substantial amount of crossover voting" in the specific area at issue. Doc. 189-7 at 27; *see* Doc. 189-8 at 17, 32; Tr. 1038–39. Although he did not perform an effectiveness analysis for District 7 in Illustrative Plan 2A, he testified that his opinions applied to that plan. *See* Tr. 1045–46. He

acknowledged that lowering the BVAP in the proposed remedial district would change the demographics of the district, and that he thus analyzed the effectiveness of "a different district." *Id.* at 1047.

With respect to Proposed District 25, Dr. Trende offered three sentences in his report: "I also recalculated the effectiveness analysis for District 25. Here, crossover voting is not as commonplace. Nevertheless, the district will still perform at less than 50% BVAP." Doc. 189-7 at 29. He also offered the following chart:

Figure 14: Number of Races won at different BVAPs, Illustrative District 25



Doc. 189-7 at 29–30. At trial, he conceded that he did not evaluate whether the current District 25, which has a twenty-nine percent BVAP, "has been performing for [B]lack voters." Tr. 1048.

The Secretary's other experts conceded that racially polarized voting exists in Alabama, but disputed the reasons for it. *See, e.g.*, *id.* at 1476, 1541, 1544 (Dr.

Bonneau); *id.* at 789–90 (Dr. Reilly); Doc. 189-5 at 5 (Dr. Hood); Tr. 1185 (Dr. Carrington). The Court turns to those arguments in its discussion of the Secretary's position about the totality of the circumstances.

3. The Senate Factors

The Secretary also contends that the totality of the circumstances does not support a finding of vote dilution. Doc. 147 at 28, ¶ 19. The Secretary argues that what appears to be racially polarized voting may simply be partisan politics reflected in the voting behavior of a particular racial group. *See* Tr. 1661–63. The Secretary argues that "the record shows that party is more important than race," *id.* at 1696, and he relies on the expert opinions of Dr. Christopher Bonneau, Dr. Wilfred Reilly, Dr. M.V. Hood, III, and Dr. Adam Carrington. He also relies on the testimony of several lay witnesses to dispute assertions in Dr. Bagley's report about the totality of the circumstances.

a. The Secretary's Expert Witness Testimony

i. Dr. Christopher Bonneau

Dr. Bonneau earned graduate degrees in political science from Ball State University and Michigan State University and works as a professor of political science at the University of Pittsburgh. Doc. 189-1 at 2; Doc. 189-2 at 1; Tr. 1395–96. He has co-authored or -edited three books and several chapters and articles on judicial elections. Doc. 189-1 at 2; *see* Tr. 1398. He has qualified as an expert witness

in three other redistricting cases, Doc. 189-1 at 1–2; Tr. 1399–1400, although this trial was his first time testifying as an expert in a legislative redistricting case, Tr. 1473. He was compensated at a rate of $350 per hour in this case and his compensation did not depend on the substance of his testimony. Doc. 189-1 at 1. At trial, Dr. Bonneau was admitted without objection as an expert in "American political science, election analysis, and political research methodology." Tr. 1401.

The Secretary asked Dr. Bonneau to (1) "ascertain whether Black candidates in elections in Alabama perform worse than [W]hite candidates on account of their race," and (2) respond to the opinions of Dr. Liu and Dr. Burch. Doc. 189-1 at 1. On the *first* task, Dr. Bonneau testified that he limited his analysis and opinions to the question whether the race of the candidate matters to their success, and he did not consider the race of the voter. Tr. 1529. When he explained his conclusions in this case, Dr. Bonneau testified that it can be difficult to reach conclusions with a small number of elections, but that "[y]ou have got to go to war with the data you have got, not the data you want." *Id.* at 1513.

In his report, Dr. Bonneau opined that voting in Alabama is primarily based on political party, not race. *See* Doc. 189-1 at 4–5, 10–12, 17. Dr. Bonneau examined statewide judicial and legislative elections and observed that approximately two-thirds of Alabamians vote by "straight-ticket." *Id.* at 4–5. He opined that "[t]he prevalence of straight ticket voting means that most voters are voting for a *political*

party, not a candidate." *Id.* at 4; *see* Tr. 1424–26. At trial, he testified that this evidence shows a "high degree" of Alabama voters vote for "teams, not players." Tr. 1426.

Dr. Bonneau conceded that he did not consider straight-ticket voting patterns by race of the voter, *see id.* at 1488, but opined that based on the relationship between Black voting patterns in favor of Democratic candidates and "the high number of Democratic votes that are cast via straight ticket, it would be likely that straight-ticket voting is being used by both [W]hites and African-Americans," *id.* at 1467–68.

Dr. Bonneau also evaluated several state House of Representatives elections: one when a White candidate (Philip Ensler) defeated a Black candidate (Malcolm Calhoun) in the Democratic primary in a majority-Black district in 2022, and another when a Black candidate (Kenneth Paschal) defeated a White candidate in a majority-White district in 2021. Doc. 189-1 at 10–11; *see* Tr. 1419, 1421–22. He opined that these elections "indicat[e] that race is not the driving force behind vote choice" and that voters "make selections based on the candidate's positions as well as their political party affiliation." Doc. 189-1 at 10–11.

Dr. Bonneau conceded on cross examination that these results are "rare." Tr. 1519–21. And he acknowledged that Representative Paschal was "the first [B]lack Republican to win election to the State House since Reconstruction." *Id.* at 1421.

Dr. Bonneau also testified about the success of a Black Republican: then-Judge Bill Lewis, who was appointed to serve as a state circuit court judge by Governor Robert Bentley and won re-election to that judicial seat unopposed. *See* Doc. 189-1 at 11; Tr. 1422–23. He opined that the lack of opposition for then-Judge Lewis's re-election "suggest[s] that his race was not a factor in the election." Doc. 189-1 at 11. On cross examination, Dr. Bonneau conceded that he did not draw any conclusions about voting patterns from Justice Lewis's judicial career because he was first appointed and ran unopposed for the only seat in which he was elected. Tr. 1523.

Dr. Bonneau also opined about Alabama Supreme Court elections between the 1980s and 2000. *Id.* at 1402–03; Doc. 189-1 at 3. He testified that both Black candidates and Democratic candidates enjoyed little success in Alabama judicial elections after the state became majority-Republican. *See* Doc. 189-1 at 3; Tr. 1408–09, 1416. And he attributed the lack of success for those candidates in part to lower campaign spending, *see* Tr. 1411–12; Doc. 189-1 at 7, which he believes is an "important factor" in election outcomes, Tr. 1411.

In his report, Dr. Bonneau opined that "[i]n a multivariate regression model including both the percentage of the registered [B]lack population and whether the losing [Alabama] state supreme court candidate was [B]lack as independent variables," Black candidates "perform 4.3 percentage points better than White

candidates." Doc. 189-1 at 9. At trial, Dr. Bonneau admitted a coding error in his data on this point (he coded certain uncontested elections as contested). *See* Tr. 1413. He testified that when he corrected this error, his results flipped: the data indicated greater success (as defined by vote share) for White Democrats than Black Democrats. *Id.* at 1517. Dr. Bonneau testified that after the correction, only one Black candidate would remain in the dataset for contested elections, and he would not have done this kind of analysis "[b]ecause when you are looking at whether or not the candidate was [B]lack as an independent variable, it's basically a case study of one person." *Id.* at 1413–14.

Dr. Bonneau also criticized Dr. Liu for examining only biracial elections; Dr. Bonneau argued that approach "assumes that there are differences based on the race of the candidate" and fails to account for the role of political party. *See* Doc. 189-1 at 13, Tr. 1459–60, 1543. Dr. Bonneau testified that based on his review of the data, "the explanation for the results in Alabama are far more consistent with political party" than the race of the candidate. Tr. 1460, 1543; *see* Doc. 189-1 at 17.

Dr. Bonneau also criticized Dr. Liu for failing to analyze an election in his initial report that controlled for race or party. Tr. 1420. He testified that Dr. Liu's analysis of nonpartisan elections may not effectively control for party because voters can know the partisan affiliation of a candidate even when the candidate does not run on a party platform. *See id.* at 1469. Dr. Bonneau testified that he did not evaluate

whether the candidates in the mayoral races Dr. Liu evaluated were correlated to a party. *See id.* at 1504–05.

Finally, Dr. Bonneau testified that ecological inference "techniques are widely used by courts" for a racially polarized voting analysis, although "they have some significant limitations." Doc. 189-1 at 11. He testified that he was unaware of any empirical methods that would better estimate racially polarized voting than ecological inference. Tr. 1474.

ii. Dr. Wilfred Reilly

Dr. Reilly holds a law degree from the University of Illinois College of Law and a doctoral degree in political science from Southern Illinois University. Doc. 189-9 at 1, 27; Tr. 776. He works as a professor of political science at Kentucky State University, where he has taught for approximately nine years. Tr. 776; Doc. 189-9 at 1. His research focuses on race relations, public law, political theory, and the statistical examination of gaps between racial groups. *See* Doc. 189-9 at 1–2; Tr. 777–79. He has published four books, four book chapters, and numerous articles. Doc. 189-9 at 1–2, 28–34; *see* Tr. 778.

Dr. Reilly's only experience as an expert witness other than this case is the testimony he offered in the Alabama congressional redistricting litigation. Tr. 817. In that litigation, the three-judge district court "assign[ed] very little weight to Dr. Reilly's testimony" because (1) his "opinions [did] not focus on and [were] not about

Alabama," (2) he "repeatedly offered opinion testimony without support," and (3) his "demeanor at trial" was "dogmatic, defensive, and deliberately confrontational" and "left [the district court] with the impression that his goal was to be evocative . . . rather than reliable and persuasive." *Singleton*, 2025 WL 1342947, at *151.

Dr. Reilly was compensated at a rate of $500 per hour for his work in this case and his compensation did not depend on the substance of his testimony. Doc. 189-9 at 2. At trial, Dr. Reilly was admitted without objection "as an expert in political science, statistics, race relations, and a study of the impact of racial discrimination on socioeconomic gaps." Tr. 779–80.

Dr. Reilly opined in his report that the assertion that Alabama "is experiencing racially polarized voting . . . due to Alabama-specific past or contemporary racism" is "incorrect." Doc. 189-9 at 3. Dr. Reilly agreed that Black and White Alabamians vote differently, but testified that "if Alabama is racially polarized than so is every other large state in the [United States]." *Id.* at 7; Tr. 830. He acknowledged Dr. Liu's observation that "[W]hites almost never vot[e] for 'Black[-]preferred candidates . . .' and Blacks almost never vot[e] for '[W]hite preferred candidates[,]'" but stated such an outcome can be explained by party affiliation. Doc. 189-9 at 4. Dr. Reilly opined that "race [is] totally non-predictive in a simple regression which incorporates candidate partisanship." *Id.*

At trial, he testified that Black voters demonstrated a "[m]assive preference for

Democrats" in the elections analyzed by Dr. Liu and that White voters preferred Republicans. Tr. 789. He also opined that this trend is consistent across the country. *See id.* at 791.

Dr. Reilly offered opinions on socioeconomic disparities in Alabama based on national data. *See* Doc. 189-9 at 7–25; Tr. 824. He testified that he classifies the causes of disparities into three schools of thought: (1) "culturalism," which considers various cultural factors as the cause of disparities, (2) "hereditarianism," or "[g]enetic determinism," which considers genetics as the cause of disparities, and (3) "racialist," which considers racism as "the only possible cause[]" of disparities. Tr. 780–81. Dr. Reilly testified that he adheres to the "culturalist" school of thought and believes that "multiple variables influence performance" on socioeconomic measures. *Id.* at 782.

Dr. Reilly conceded that socioeconomic disparities exist between Black and White Alabamians, *id.* at 822, but opined that many of the socioeconomic gaps in, for example, "voter turnout, test scoring, partisan voting by race, and incarceration . . . can be observed literally everywhere in the country, correlate little if at all with current or past rates of bias, and seem to be smaller/better in Alabama than in most other places." Doc. 189-9 at 25.

Dr. Reilly observed that "[W]hite students perform better educationally than Black students in every single state" and that "the size of contemporary group gaps in SAT scoring and college attendance correlates only slightly with documented levels

of historical racism." *Id.* at 9; *see* Tr. 795, 825. He observed that Asian American students outperformed White students on average in his evaluation of 2019 SAT scores. Tr. 797–98; Doc. 189-9 at 10. Dr. Reilly testified that "Nigerian Americans" are "the best-educated group in the United States." Tr. 827. He conceded that he was "[n]ot sure" that the source supporting this opinion was included in his report and that the article cited for the proposition in his report—a 2008 news article—was not peer-reviewed, Tr. 827–28; *see* Doc. 189-9 at 13 n.22, but stated that "[t]he performance of Nigerian Americans . . . in the USA is undisputed," Tr. 844.

Dr. Reilly clarified that he does not believe that disparities in education rates are a result of genetic traits, Tr. 798; *see id.* at 781–82, but, in accordance with his "culturalist" view, believes they could be caused by cultural factors like "[r]eading books," "study time," "parental expectations," income, and whether the individual is an athlete. *Id.* at 798–99, 801.

Dr. Reilly testified that there is a racial disparity in voter turnout and registration rates in Alabama, *id.* at 822, but opined that it is not a "statistically significant" gap, Doc. 189-9 at 15. He also opined that the disparity is not the result of racial discrimination, and he attributed it to age, fatherlessness, and felon disenfranchisement. *See* Doc. 189-9 at 7–15; Tr. 802–05. He testified "the modal average age for a [W]hite American is 58, [and] [B]lack American is 27," that "there are very significant differences in voting by age," and that a racial group that has, on

average, a lower modal age, "[i]t would tend to suggest that" the group would have a lower turnout. Tr. 803–04. He also testified that "[f]atherlessness, to put [it] bluntly, correlates very highly with crime, with . . . civic non-participation, with dropping out of school, with most negative variables." *Id.* at 804. And he testified that individuals with certain felony convictions cannot vote, and that "African-Americans" are more likely to have such convictions "than [W]hites, [W]hites more than Asians." *Id.* at 805.

Dr. Reilly also conceded that Black Alabamians are overrepresented in Alabama prisons, but opined that "there is no reason to think that" the difference between non-Black Alabama citizens and Black citizens who cannot vote due to a felony conviction "is due to bigotry or racism." Doc. 189-9 at 14. He observed that the "reported [Black] violent crime rate, across Alabama and the rest of the United States, is at least 2.4 times the [W]hite [rate]." *Id.* at 14–15. He also testified that racial disparities in incarceration rates "do not track with the measures of historic rac[ism]." Tr. 807. He testified that a 2021 survey showed that Alabama had the second smallest gap in incarceration rates between White and Black citizens nationwide. *See id.* at 809.

Dr. Reilly acknowledged that disparities in education levels could be caused by racism, but he opined that this "God-of-the-gaps" theory is a "fallacy in debate" because the argument could "go on indefinitely." *Id.* at 794–95. He also stated that

the voter registration gap does not "trend in the temporal direction which one would expect were racism a primary proximate cause here" as "the smallest registration gap on recent record was documented in the year 'closest to the past (2018).'" Doc. 189-9 at 15.

On cross examination, Dr. Reilly conceded that he is "not a professional expert on Southern politics" and that his academic work did not focus on Alabama politics. Tr. 817–18. He testified that he is "not a historian" or "an expert on Alabama history." *Id.* at 817. And he testified that he did not evaluate Alabama-specific data to form his opinions. *See id.* at 824–27.

Dr. Reilly also testified to various matters concerning his credibility. For instance, he confirmed that he posted on his social media accounts that "many/most people are banal idiots," *id.* at 839, and that "every prominent Black Lives Matter martyr was a scumbag criminal," *id.* at 840.

Dr. Reilly also confirmed that he posted that "humans still have the exact same taste and drives that we did when we were raping and eating Neanderthals," and that "people in the hood in particular understand these tastes and drives." *Id.* at 839–40. He testified that this characterization was based on the lack of "formal training in gentleese" in the "hood" and that it was not "genetic or anything like this." *Id.* at 839–40. He also testified he did not mean the term "hood" in "an entirely racial sense" but considered it to be "[a] lower income formerly red line neighborhood." *Id.* at 847. Dr.

Reilly appeared surprised that the plaintiffs "pa[id] a lot of attention to [his] social media" and said his social media account does not constitute "peer-reviewed research." *Id.* at 840–41.

iii. Dr. M.V. Hood, III

Dr. Hood earned graduate degrees in political science from Baylor University and Texas Tech University. Doc. 189-6 at 1; Tr. 1215. He works as professor of political science at the University of Georgia, where he has served on the faculty for more than twenty years, Doc. 189-5 at 2, and directs the Survey Research Center at the School of Public and International Affairs there, Tr. 1216; Doc. 189-6 at 1. His work focuses on electoral politics, racial politics, election administration, and Southern politics. Doc. 189-5 at 2; *see* Tr. 1216. He has co-authored two books and published numerous articles in peer-reviewed journals. *See* Doc. 189-6 at 1–6. Dr. Hood has qualified as an expert in numerous redistricting cases, including in Alabama. Tr. 1217–18. He was compensated at a rate of $400 an hour for his work and his compensation did not depend on the substance of his testimony. Doc. 189-5 at 2.

At trial, Dr. Hood was admitted without objection as an expert in "electoral politics, racial politics, election administration, and southern politics, . . . empirical social science research, and for the matters discussed in his report." Tr. 1218.

First, Dr. Hood testified about Black voting patterns. *See id.* at 1219; Doc. 189-

5 at 2. Dr. Hood compared Black voting patterns in Alabama to those of twenty other states with a Black population of ten percent or more. Doc. 189-5 at 3. Dr. Hood selected states with that percentage of a Black population because "if a state had less than [ten] percent African-American population, . . . [he] would be concerned that [there] would [be] too few African-American respondents in the survey data to be able to draw any kind of conclusive inferences." Tr. 1219.

Dr. Hood opined in his report that on average, Black support for Democratic candidates—in Alabama and the twenty other states considered—exceeds ninety percent. Doc. 189-5 at 3, 5. He testified that "[t]his pattern transcends both geographic region (South versus non-South) as well as [political] party control (Democratic versus Republican) at the state-level[,]" *id.* at 5; *see* Tr. 1225, and that Black voters' support of Democratic candidates is "monolithic," Tr. 1225. Dr. Hood did not evaluate the White electorate in any national or Alabama election, Tr. 1241–42, and did not perform a racially polarized voting analysis, *id.* at 1226. He opined that "the primary explanatory factor [in Alabama voting patterns] appears to be ideological congruence between the voter and the candidate." Doc. 189-5 at 21. Dr. Hood acknowledged that he did not perform a racially polarized voting analysis. *See* Tr. 1226.

Second, Dr. Hood considered racial disparities on various sociodemographic factors. *See id.* He "analyze[d] racial disparity rates between [W]hite and [B]lack

residents in Alabama" and compared Alabama's rates with twenty other states. Doc. 189-5 at 7; *see* Tr. 1226. He testified that racial disparities exist in Alabama and the twenty comparison states on factors such as education, healthcare, poverty, Internet access, and incarceration. *See* Tr. 1227–31; Doc. 189-5 at 7, 17–20. Dr. Hood opined that "[f]or ten of the thirteen measures analyzed ([seventy-seven percent]), the disparity rate for Alabama is below the average disparity rate calculated for the comparison states" and never "constitute[d] the maximum value among the states analyzed." Doc. 189-5 at 20. He did not evaluate the racial disparities specific to the Huntsville and Montgomery areas. Tr. 1251.

Third, Dr. Hood considered Dr. Ben Carson's presidential campaign. Doc. 189-5 at 20. He testified that Alabama provided Dr. Carson the second highest level of support that he received in the 2016 election. Tr. 1233; *see* Doc. 189-5 at 20. Dr. Hood conceded that he did not consider the racial demographics of the voters in that presidential election and that he did not evaluate the support for Dr. Carson specific to the Huntsville and Montgomery areas. Tr. 1252.

Fourth, Dr. Hood considered White support for minority Republican candidates. Doc. 189-5 at 21. He testified that, based on national data, "[W]hite conservatives were more than willing to support minority Republican candidates." Tr. 1234; *see id.* at 1253–54. He opined that "ideology trumps race in the case of [W]hite Republicans and their support for minority GOP nominees." Doc. 189-5 at 21.

To examine these findings in Alabama, Dr. Hood discussed the election of Representative Paschal, a Black Republican, from a majority-White district. Doc. 189-5 at 21; Tr. 1235. On cross examination, Dr. Hood conceded that Representative Paschal was the first Black Republican elected to the Legislature since Reconstruction; that his district is in Shelby County, which does not overlap with the districts at issue in this litigation; and that Representative Paschal's election is "[t]he only example of [W]hite voters electing a [B]lack Republican candidate in Alabama" included in his report. Tr. 1254–56. He also conceded that he did not analyze White support for minority candidates in the Huntsville or Montgomery areas. *Id.* at 1256.

Fifth, Dr. Hood examined whether Black political metrics have changed over time in Alabama. He studied the number of Black elected officials from the passage of the Voting Rights Act in 1965 to the present day. *See* Tr. 1236; Doc. 189-5 at 22. He testified that there were no Black members of the Legislature in 1965, three Black Senators and thirteen Black Representatives in 1981, and there are currently seven Black Senators and twenty-six Black Representatives. Doc. 189-5 at 22; *see* Tr. 1237.

Dr. Hood also studied Black voter registration rates. He observed that in 1965, 23.5 percent of eligible Black voters were registered to vote, and the number of eligible Black voters who were registered to vote increased to 95.2 percent in 2024.

Doc. 189-5 at 23; Tr. 1237. He thus opined that "there have been significant gains for [B]lack Alabamians across the last six decades." Doc. 189-5 at 23; Tr. 1238.

On cross examination, Dr. Hood agreed that of the thirty-three Black Alabama legislators, thirty-two are from majority-Black districts (with Representative Paschal as the sole exception). *See* Tr. 1258–59. And Dr. Hood acknowledged that "[a]t least some of the changes in [B]lack representation in Alabama over the last few decades" are due to "[l]itigation that created majority-[B]lack districts." *Id.* at 1259–60.

iv. Dr. Adam Carrington

Dr. Carrington earned graduate degrees in political science from Baylor University and now works as an associate professor of political science at Ashland University (formerly, he worked at Hillsdale College for ten years). Doc. 189-4 at 1; Tr. 1128–29. His research focuses on "American political institutions in their historical context, including the judiciary, the presidency, and political parties" and he has published a book, book chapters, and articles. Doc. 189-3 at 1; Doc. 189-4 at 1–3; *see* Tr. 1129–30.

This case was Dr. Carrington's first time testifying as an expert witness. Tr. 1131. He later testified at the trial in the Alabama congressional districting cases. *See Singleton*, 2025 WL 1342947, at *118–20. The three-judge district court "assign[ed] no weight" to his testimony in those cases because Dr. Carrington had "limited familiarity with Alabama history and politics" and he made "little to no effort to learn

about Alabama before opining about party affiliations here." *Id.* at *151. Dr. Carrington was compensated at a rate of $300 per hour for his work in this case and his compensation did not depend on the substance of his testimony. Doc. 189-3 at 1.

The Secretary offered Dr. Carrington "as an expert in political science, political parties[,] and the partisan shift in the American South." Tr. 1133–34. At trial, the plaintiffs re-raised the arguments presented in their motion in *limine* to preclude Dr. Carrington's testimony. *See id.* at 1134. In that motion, the plaintiffs argued that Dr. Carrington was unqualified to offer expert opinions on "any subject relevant to this case." Doc. 183 at 5. They argued that he is unqualified to testify about "the historical and political development" of "the racial realignment of Alabama voters in the mid-to-late [Twentieth] [C]entury" because his "expertise lies in [Nineteenth] Century political institutions." *Id.* at 3–5; *see* Tr. 1134–35.

The plaintiffs also argued that Dr. Carrington's testimony is not helpful. *See* Tr. 1134–35; Doc. 183 at 8–13. They argued that Dr. Carrington "fail[ed] to perform any localized analysis" that would help the Court evaluate "whether Black voters in the Huntsville and Montgomery regions have less opportunity to participate in the political process." Doc. 183 at 10–13. The Court heard argument on the motion pretrial and carried it with the case.

Dr. Carrington acknowledged at trial that none of his written work has focused on Alabama in the twentieth century. Tr. 1132. He also acknowledged that he is not

an expert in Alabama politics or history, but testified to his belief that he did not need to be such an expert to provide the opinions he offered in this case. *Id.* at 1132–33. The Secretary argued that Dr. Carrington has "a deep expertise in the American institution of political parties," Doc. 203 at 8, and that his study of political parties qualifies him "to reach conclusions about whether the causes for the partisanship in Alabama parallel in important respects the causes for the partisan shift in the South more broadly," Tr. 1135; *see* Doc. 203 at 13–14.

At trial, the Court admitted Dr. Carrington's testimony over the plaintiffs' renewed objections because Dr. Carrington was "candid about his limitations" as an Alabama-specific expert. Tr. 1135; *see* Doc. 203 at 13–14.

Dr. Carrington "sought to provide a fuller context for how Alabamians in 2024 come to identify with and vote for one of the two major political parties." Doc. 189-3 at 29. Dr. Carrington testified that the campaigns of former Alabama Governor George Wallace show the diminishing power of race in Alabama politics as early as 1971. *See* Tr. 1197–98. Dr. Carrington testified that in 1968, Wallace's "anti-integration viewpoint helped him attract supporters among [W]hite voters in Alabama when he ran for president," and that "at his 1971 inauguration," he declared "that the government of Alabama is for all people, [W]hite and [B]lack." *Id.* at 1197–98. Dr. Carrington acknowledged that Wallace might have been "faking that," but said that nevertheless, those statements show that "he already starts to moderate on those

questions as early as the early '70s." *Id.* at 1198.

Dr. Carrington testified that he does not dispute the existence of racially polarized voting in Alabama, only the reasons why voting is racially polarized. *Id.* at 1185. He testified that he did not deny "that race continues . . . to be a factor of some degree," but stated that it "is an oversimplified story to say that it is the dominant or overwhelming [factor] . . . behind all the other views." Tr. 1160–62; *see* Doc. 189-3 at 30.

At trial, Dr. Carrington testified about the history of the realignment of the South from majority-Democrat to majority-Republican. *See* Tr. 1136–56. He testified that the shift was not solely or primarily caused by race, but instead was caused by differences in factors such as economics, foreign policy, and social issues like religious ideology or abortion. *Id.* at 1136–37; *id.* at 1160–62; *see generally* Doc. 189-3. In making these determinations, Dr. Carrington analyzed factors that influenced Southern White voting patterns, Tr. 1157; *id.* at 1188, and did not analyze Black voting patterns, *id.* at 1190. He testified that Alabama patterns aligned with Southern patterns, but he did not study Alabama elections. *See id.* at 1189–90, 1212.

Dr. Carrington also testified about shifts in Southern voters who identify as religious; he testified that, although both parties have voters who identify as religious, the Democratic Party is "seen as a more natural home to the more secular voters," and that the Republican Party would therefore seem more attractive to religious Alabama

voters. *Id.* at 1152. He opined that race does not trump religion among Alabama voters, opining instead that voters' positions on social issues, such as abortion or LGBTQ issues, are the driving factors behind party affiliation. *See id.* at 1153–55.

On cross examination, Dr. Carrington conceded that he did not evaluate the religious beliefs or observance of Black voters or its effect on Black citizens' voting patterns. *Id.* at 1207. He acknowledged that a large percentage of Black Alabamians identify as Christian and that between forty-seven and forty-eight percent of Black Alabamians oppose abortion in most cases. *Id.* at 1207–08. He did not evaluate the views of Black Alabamians who identify as Christian on matters relating to LGBTQ issues, *id.* at 1208, or the differences in the voting patterns of Black and White Christians even when those voters share similar views on these issues, *see id.* at 1209.

Dr. Carrington also testified about racial appeals in several national campaigns. *See id.* at 1178. On cross examination, he conceded that, aside from his responses to statements in Dr. Bagley's report, he did not evaluate any recent campaign advertisements of Alabama politicians and did not reach any conclusions regarding whether Alabama campaigns are characterized by racial appeals. *See id.* at 1176–77. Dr. Carrington conceded that former Congressman Brooks's reference to a "war on [W]hites" may have been an "attempt[] to appeal to [W]hite voters." *Id.* at 1182–83.

On cross examination, Dr. Carrington also testified about matters going to his credibility and the reliability of his opinions. Dr. Carrington was asked about two

Alabamians with nationally prominent roles in the civil rights movement, Judge Robert S. Vance and attorney Fred Gray. *See id.* at 1192, 1203. In both instances, Dr. Carrington first claimed that he knew who they were, but then admitted that he could not offer any information about the relevant person or their work. *See id.* at 1192, 1203.[7]

Dr. Carrington also testified about an opinion piece he published that commented on legal issues in this case—the piece addressed the Supreme Court's decision in the congressional redistricting litigation, in which that Court affirmed the finding of the three-judge court that Alabama's congressional districting plan likely violated Section Two. *See id.* at 1209–10. Dr. Carrington called the Supreme Court's affirmance a "missed opportunity" for the Supreme Court to follow pre-1982 Voting Rights Act precedents. *Id.* at 1210–11.

[7] For the reader's background information, Mr. Gray was one of Alabama's first Black state legislators and is a Montgomery civil rights lawyer known for major civil rights litigation, including his representation of Rosa Parks, Martin Luther King, Jr., and the victims of the Tuskegee Syphilis Study. *See* Barclay Key, *Fred Gray*, Encyclopedia of Alabama (Apr. 15, 2008), https://encyclopediaofalabama.org/article/fred-gray/.

Judge Vance served on the United States Court of Appeals for the Eleventh Circuit and was the last federal judge assassinated in connection with his judicial service. *See* Michael Megelsh, *Robert Smith Vance*, Encyclopedia of Alabama (February 13, 2024), https://encyclopediaofalabama.org/article/vance-robert-smith/. He too participated in major civil rights litigation as a lawyer. The federal courthouse where the trial of this case was held is named for him, and a bust and portrait of him appear in the lobby.

b. The Secretary's Lay Witness Testimony

The Secretary also offered the testimony of several lay witnesses to dispute various assertions in Dr. Bagley's report about the totality of the circumstances: Colonel Jonathan Archer, Dr. Karen Landers, Ms. Susan Copeland, Mr. Doyle Fuller, Dr. Patricia Payne, and Mr. Joshua Roberts.

Colonel Jonathan Archer serves as the Director of the Department of Public Safety at the Alabama Law Enforcement Agency ("ALEA"). *Id.* at 889. Colonel Archer previously served as the Chief of the Driver's License Division of ALEA, which is the agency "tasked with credentialing and examining applicants for Alabama driving privileges." *Id.* at 891.

Colonel Archer testified about Dr. Bagley's assertion that the closures of certain driver's license offices in 2015 was a recent act of official discrimination. *See* Doc. 206-19 at 15. Col. Archer testified that certain driver's license "field offices" were closed at that time due to financial and staffing concerns. Tr. 898. He testified that ALEA decided that "it would be better to suspend operations in those offices so th[e] examiners [at those locations] could remain at the district offices to serve more customers." *Id.* The suspension lasted for thirty days. *Id.* at 904. Colonel Archer stated that the closed offices affected 2.1 percent of total transactions (including the transactions of the county partner offices) and 4.43 percent of ALEA transactions. *Id.* at 901–02. He conceded that ALEA reopened the offices as part of

a memorandum of understanding with the United States Department of Transportation that did not admit liability for discriminating against Black Alabamians. *Id.* at 906, 920.

Dr. Karen Landers works as the Chief Medical Officer of the Alabama Department of Public Health ("the Department"), and she testified about the medical services offered to minority populations in Alabama. *Id.* at 1267, 1271–76, 1287–88, 1297. Dr. Landers has worked as a medical doctor in private practice since 1980 and has worked for the Department since 1982. *Id.* at 1267. She became the Chief Medical Officer of the Department in 2022. *Id.*

Dr. Landers testified about the Department's response during the COVID-19 pandemic. She testified that the Department engaged in outreach efforts to the minority community during the pandemic, *id.* at 1278, offered medical testing and care in sixty-six out of sixty-seven counties at the beginning of the pandemic, *id.* at 1279–80, and engaged in outreach programs in minority communities when the vaccine became available, *see id.* at 1283–84.

On cross examination, Dr. Landers acknowledged that Black Alabamians were disproportionately hospitalized with and died from COVID-19, *id.* at 1289–90; Black Alabamians are at a higher risk for underlying chronic health problems, such as diabetes or hypertension than White Alabamians, *id.* at 1290–91; and Black Alabamians have less access to health care than White Alabamians, *id.* at 1291. She

testified that racial disparities in health care "result from barriers like a lack of access to education and information" and that the Department is working to improve those disparities. *Id.* at 1298, 1305–06.

Dr. Landers testified about Dr. Bagley's assertion that the United States Department of Justice "found abundant evidence that [Alabama] had been discriminating against Black residents of Lowndes County." Doc. 206-19 at 28. She testified that that the Department entered a resolution agreement with the United States related to the residents in Lowndes County without adequate sewage disposal options, and that "no fault was found with the state of Alabama related to any discriminatory practices." Tr. 1294, 1301; *see id.* at 1307. She testified that progress has been made in sewage disposal in Lowndes County. *Id.* at 1301.

The Secretary offered the testimony of Susan Copeland and, through a deposition designation, Mr. Doyle Fuller, two attorneys who represent the town of Pike Road. Mr. Fuller is the attorney who incorporated Pike Road, Doc. 236–1 at 20, and Ms. Copeland began representing Pike Road with Mr. Fuller shortly after the town was incorporated, Tr. 1548. Mr. Fuller and Ms. Copeland assisted Pike Road in annexing property, establishing the Pike Road school system, and purchasing the Georgia Washington Middle School facility from the City of Montgomery. Tr. 1549; *see* Doc. 236-1 at 17, 30.

Mr. Fuller testified that Pike Road was created because its residents wanted

to preserve their rural lifestyle, including maintaining privacy in their backyards, having land, or having pets. Doc. 236-1 at 88–91. He testified that the town grew in part by annexing both White and Black communities. *See id.* at 27–28. Ms. Copeland testified that Pike Road annexed land for residents of all races and granted many Black landowners' petitions for Pike Road to annex their land. Tr. 1560.

Mr. Fuller and Ms. Copeland testified that Dr. Bagley's report did not accurately describe Pike Road. *See id.* at 1550; Doc. 236-1 at 40–41. Ms. Copeland testified that, unlike Montgomery, Pike Road is a small, rural town. Tr. 1551–52. Ms. Copeland testified that approximately forty percent of Pike Road residents were Black at the time of its incorporation. *Id.* at 1553. Ms. Copeland testified that although there are currently no Black members of the town council, *id.* at 1554; *id.* at 1572, a Black resident of Pike Road was elected to the council at-large from the time of its incorporation until 2020, *id.* at 1555–56; *see* Doc. 236-1 at 55. Mr. Fuller criticized Dr. Bagley for either "intentionally" omitting information about the annexation of predominantly Black neighborhoods into Pike Road in addition to predominantly White neighborhoods, or failing to "do his homework." Doc. 236-1 at 82.

The attorneys also testified about the formation of the Pike Road School System. They disputed Dr. Bagley's assertion that Pike Road residents had racial motives to create a separate school system. Tr. 1561–62; Doc. 236-1 at 48–49. Ms.

Copeland testified that students in the Pike Road area attended Montgomery County schools before Pike Road created its own school system, and that none of the county public schools were within Pike Road city limits. Tr. 1563. She testified that Pike Road intended to have its own school system from its incorporation. *Id.* at 1562. Mr. Fuller testified that "[a] significant number of the people who were involved in the formation of Pike Road were [B]lack" citizens and that "[t]hey were just as interested in establishing a decent school system as anybody else in Pike Road was." Doc. 236-1 at 49.

Ms. Copeland and Mr. Fuller testified about Pike Road's acquisition of the Georgia Washington Middle School facility. They testified that the town council and the mayor decided to purchase the school because Pike Road needed a high school. *See* Tr. 1564, 1575; Doc. 236-1 at 31, 59. Ms. Copeland explained that Georgia Washington Middle School was attractive to Pike Road because it was closing and was the closest facility to the Pike Road city limits. Tr. 1564. She testified that she believes the State of Alabama forced the Montgomery County school board to sell the facility to Pike Road over the school board's opposition. *Id.* at 1578. They testified that Montgomery and Pike Road agreed that Pike Road could purchase the property as long as it maintained the name of Georgia Washington, a former enslaved person who started the school. *See* Tr. 1567; Doc. 236-1 at 38–39. The

current name of the school is "Pike Road High School[ ]Georgia Washington Campus." Tr. 1577; *see* Doc. 236-1 at 32, 83.

Dr. Patricia Payne is a resident of Pike Road, Tr. 1582, who co-wrote an article that was quoted in Dr. Bagley's report, *see* Doc. 206-19 at 26. Dr. Payne previously worked part-time for the town and now volunteers as the director of the Pike Road Arts Center. *See* Tr. 1585–86. Dr. Payne testified about the creation of the Pike Road school system. She testified that students who lived in Pike Road were attending "at least [twenty-eight] different schools," and the residents of Pike Road wanted to "control the education of [Pike Road] citizens," *id.* at 1587. She also testified that the Montgomery County schools were "failing" and "not safe." *Id.* at 1598; *see id.* at 1605. Dr. Payne testified that there was no racial motivation behind the creation of the Pike Road school system, *id.* at 1587, and that there are Black students in the Pike Road school system, *id.* at 1618. Dr. Payne testified that Dr. Bagley's assertion that the residents of Pike Road had a racial motivation in creating the school system was "laughable" because there were "[B]lack members on [the] council and on [the] education committee." *Id.* at 1599–1600.

Dr. Payne also disputed portions of Dr. Bagley's report about a newspaper article she helped to write called "Pike Road Dispute Centers Around Choice." *See id.* at 1589. In the article, Dr. Payne stated that Pike Road's "leadership sought to 'preserve and protect what they saw as their preferred way of life' in the face of

'encroachment' from the City of Montgomery." Doc. 206-19 at 26. At trial, Dr. Payne testified that she was opining on the residents of Pike Road's frustration that they "had no voice" in the development of their town. Tr. 1594. Dr. Payne disputed Dr. Bagley's assertion that she was using "color-masked" language. Tr. 1599.

In the article, Dr. Payne stated that Pike Road and Montgomery had "distinct" histories because Pike Road residents "had lived off the land." Tr. 1598; *see* Doc. 206-19 at 26. She testified that she was referring to Pike Road residents' use of land to farm or raise livestock. *See* Tr. 1598. Dr. Payne testified that Dr. Bagley painted an unfair picture of Pike Road. Tr. 1620–21. She testified that he did not discuss that there were Black members of Pike Road's first town council, that the town council "met in a [B]lack church," or that Black residents "were part of [the] planning committees for [Pike Road] education committees." *Id.* at 1620–21.

Joshua Roberts works as the President of Alabama Christian Academy in Montgomery. *Id.* at 1089. Mr. Roberts testified that the "Capital City Conference" schools—a conference that includes five private schools in the Montgomery area, *id.* at 1092—market to and include a diverse student body. *See id.* at 1100. Mr. Roberts disputed Dr. Bagley's assertion that private schools in Montgomery are segregation academies and testified that the Capital City Conference schools have "a very specific campus unity policy" against discrimination. *Id.* at 1100–02. He testified that Alabama Christian Academy has a twenty-five to thirty-five percent Black student

population, *id.* at 1102, and had a Black homecoming queen and a Black student body president in 2024, *id.* at 1100–01. He also stated that all five Capital City Conference schools offer need-based scholarship opportunities for those unable to pay private school tuition and that the Alabama Accountability Act provides additional scholarship opportunities. *Id.* at 1105–07; *id.* at 1124.

The Secretary also offered the testimony of three Black Republicans: Valerie Branyon, Bill McCollum, and Cedric Coley. *See id.* at 849–51, 1309, 1319, 1354–56. Ms. Branyon is a Black registered voter who recently won a seat as a County Commissioner in Fayette County in a district that is approximately half White and half Black. *Id.* at 849–50, 853, 869. Ms. Branyon ran as a Republican in that election. *Id.* at 850–51. Ms. Branyon previously ran for County Commissioner as a Republican in 2020. *Id.* at 861. In that election, she defeated a White Republican in the primary, but lost to a Democrat in the general election. *Id.* at 861–62.

Ms. Branyon explained that she joined the Republican Party due to its stances on issues like abortion and same-sex marriage rights. *Id.* at 851. She testified that she received support from the local and state Republican Party and that the party helped her engage in campaign efforts like door knocking and advertising. *See id.* at 857–61. She testified that the state Republican Party also invited her to a training on how to successfully run for office. *Id.* at 861; *see id.* at 869.

Bill McCollum is a Black registered voter in Fayette County. *Id.* at 1353–54,

1368. Mr. McCollum testified that he joined the Republican Party because he "did[] [not] like a lot of the policies" advocated by the Democratic Party and preferred conservative values that align with the Republican Party. *Id.* at 1355–56. He currently serves as the vice-chairman of the Fayette County Republican Party and was nominated and elected to that position by party members fifteen years ago. *See id.* at 1356–57. He testified that he has been encouraged to run for the Chair of the Fayette County Republican Party but has "never had an interest in it." *Id.* at 1357. Mr. McCollum has been a member of the Alabama Republican Party State Executive Committee, the governing body for the state party, for more than fifteen years. *Id.* at 1358.

Mr. McCollum testified about his experiences running for office in five elections. He testified that he experienced resistance to his qualification as a candidate in the first election he entered in the 1970s. *See id.* at 1364–65, 1373. When he first ran for sheriff, the county administrator told him that "he didn't know if . . . he could register" Mr. McCollum to qualify as a candidate and made him wait in the courthouse for approximately three hours before returning to say that he could qualify. *Id.* at 1363–64. Mr. McCollum was the first Black candidate to qualify for an election in Fayette County. *Id.* at 1364. Mr. McCollum testified that he received financial and volunteer support from the Fayette County Republican Party and Alabama Republican Party duringhis most recent campaign in 2024. *See id.* at 1360–62.

Mr. McCollum also testified about discrimination that he has personally experienced. He testified that when he was originally hired as a police officer for the Fayette County Police Department, "the other officers said they [were not] going to work with [him]. . . . And said they'd quit before they'd work with a [B]lack and things of that nature." *Id.* at 1363. Mr. McCollum was also once asked to leave a restaurant because "it did not serve [B]lack people." *Id.* at 1374.

Cedric Coley is a Black Republican voter in Montgomery. *Id.* at 1308–09, 1311, 1318. Mr. Coley testified about his experience in the Republican Party. He testified that he joined the Republican Party around 2016 and that members of the Republican party were "welcoming." *Id.* at 1319–20; *see id.* at 1336. Mr. Coley is a member of the Montgomery County Republican Executive Committee and has been elected and appointed to various positions in the Montgomery County Republican Party. *See id.* at 1320–22; 1324. Mr. Coley is also involved in the Alabama Republican Party. He testified that he was appointed as regional director of the Alabama Outreach Coalition for the state Republican Party, served as co-chair for Mo Brooks's United States Senate campaign in Montgomery County, and "served as a field representative helping to consult candidates for State Legislature in the State Senate." *Id.* at 1322–23. As a field representative, the state party paid Mr. Coley to advise several Black and White Republican candidates running in an election. *Id.* at 1324–25. Mr. Coley testified that he is also a member of the Alabama

Minority GOP, which is a group that "specialize[s] in being a launch pad for minority Alabamians." *Id.* at 1323.

Mr. Coley testified that he is an "America First conservative" who believes there is a "globalist network of international cartels that are deliberately destroying our nation." *Id.* at 1345. He testified that he believes that these cartels are working through the American education system, economy, and "sections of the judicial system and some sections of intelligence agencies." *Id.* He testified that he believes the COVID-19 pandemic was a "plandemic" and a bioweapon created by China. *Id.* at 1344–45.

Mr. Coley testified that he does not believe that Republican candidates use racial appeals to attract voters. *Id.* at 1346–47. On cross examination, he was asked about his social media post of an image that depicted two hand gestures. On one side of the image, a White hand gesture, which Mr. Coley acknowledged has been described by the FBI as indicating White supremacy, appeared above the text "Jobs, vote for civility, vote for prosperity, vote for unity, vote for patriotism, vote Republican." *Id.* at 1349–50. On the other side of the image appeared a gray fist, which Mr. Coley acknowledged has been associated with communism, uprisings, and "[B]lack power," with text that read "Not mobs. . . . Walk away from violence, walk away from hypocrisy, walk away from globalist Democrats." *Id.* at 1348–49. At trial, Mr. Coley testified that he never intended to advocate for White supremacy.

Id. at 1352.

4. Legal Challenges to Section Two

The Secretary argues that "Congress has not *expressly* authorized private persons to sue under Section 2," and whether Section 2 contains an implied private right of action is an "open" question unresolved by the courts. Doc. 131 at 28–29. The Secretary reasons that "Congress does not confer substantive rights when enforcing the provisions of the Fourteenth and Fifteenth Amendments," and the Voting Rights Act "created new remedies, . . . not new rights" that are privately enforceable. *Id.* at 13–14. It asserts that "Section 2 protects the right of any citizen to vote free from discrimination," which "was enshrined more than 150 years ago in the Fifteenth Amendment," and "[p]rotecting an existing right is not creating a new one." *Id.* at 22.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. *Gingles* I – Numerosity

1. Illustrative Plans 1 and 2A – How to Measure the Black Population

Gingles requires the plaintiffs to establish that the Black population is sufficiently numerous in the Huntsville and Montgomery areas such that an additional remedial district may be drawn in each area. *See Allen*, 599 U.S. at 18. The plaintiffs rely on Illustrative Plans 1, 2A, and 3 to establish this numerosity requirement. *See* Doc. 250 ¶ 118. The Secretary argues that the proposed District 7

in Illustrative Plans 1 and 2A do not establish numerosity in Huntsville because those districts are not majority Black. Doc. 251 ¶¶ 51–112; Tr. 1654–57.

The plaintiffs acknowledge that neither district is majority BVAP. It is undisputed that the BVAP of District 7 in Illustrative Plan 1 is 46.82 percent, Doc. 207-9 at 8; Doc. 251 ¶ 55, and the BVAP of District 7 in Illustrative Plan 2A is 48.38 percent, Doc. 164-12 at 13; Doc. 251 ¶ 55. The plaintiffs contend that District 7 in Illustrative Plans 1 and 2A nevertheless establish numerosity because they are majority BCVAP. Doc. 250 ¶ 167; *see* Tr. 1639–41. They assert that the point estimate of the BCVAP for District 7 in Illustrative Plan 1 is 50.16 percent based on Mr. Fairfax's calculation, Doc. 250 ¶¶ 144, 176, and 50.11 percent based on Dr. Oskooii's calculation, *id.* ¶¶ 143, 176. They assert that the point estimate of the BCVAP for District 7 in Illustrative Plan 2A is 50.19 percent. *Id.* ¶ 177.

Under both federal and Alabama law, the default rule is to use census data for redistricting. *See Negron*, 113 F.3d at 1569; Ala. Const. art. IX, §§ 199–200 (providing that the Legislature should rely on "the decennial census of the United States" in dividing the state into legislative districts).

"Whether citizenship should be taken into account for the first *Gingles* precondition is a question of law." *Negron*, 113 F.3d at 1570 (emphasis omitted). Under binding precedent, a minority's share of the voting-age population may be "refined by citizenship" data to establish the first *Gingles* precondition "where there

is reliable information indicating a significant difference in citizenship rates between the majority and minority populations." *Id.* at 1569. When a difference in citizenship rates is relevant, it is important—because only citizens can vote, a remedial district with a majority-minority VAP may be "hollow" if the district does not have a majority-minority CVAP. *LULAC*, 548 U.S. at 429; *see Negron*, 113 F.3d at 1568–69 (explaining that Section Two plaintiffs must "establish that the minority group constitutes an effective voting majority in a single-member district") (internal quotation marks omitted) (quoting *Romero v. City of Pomona*, 883 F.2d 1418, 1425 (9th Cir. 1989)).

The Eleventh Circuit has not established a numerical threshold for the disparity in citizen and noncitizen populations that constitutes a "significant difference" in citizenship rates. In *Negron*, a group of Hispanic plaintiffs who lived in Miami Beach alleged that the election system for the city's governing commission violated Section Two. 113 F.3d at 1565. To establish numerosity, they offered three illustrative districts with a majority-Hispanic voting-age population. *Id.* at 1567. The district court considered the citizenship rate of the Hispanic population in Miami Beach—where "only 50.16[percent] of the Hispanic residents . . . [were] citizens, while 88.18[percent] of the non-Hispanic residents [were] citizens"—and found that the plaintiffs' illustrative districts did not satisfy the numerosity requirement. *Id.* at 1565, 1567.

On appeal, the Eleventh Circuit held that the district court appropriately considered citizenship data in determining whether the plaintiffs presented a majority-Hispanic illustrative district because of the "significant disparity between Hispanic and non-Hispanic citizenship rates" in Miami Beach. *Id.* at 1567. The Eleventh Circuit reasoned that when such a significant disparity is present, "the proper statistic for deciding whether a minority group is sufficiently large and geographically compact is voting[-]age population as refined by citizenship." *Id.* at 1569. The Eleventh Circuit concluded that the plaintiffs did not satisfy the first *Gingles* precondition because "when citizenship is taken into account, there is no Hispanic majority in any of the [proposed] districts." *Id.* at 1568.

The Eleventh Circuit limited the "refinement" of VAP with CVAP to cases where a "significant disparity" is present, and has made clear that this circumstance is rare. *See id.* at 1568–69. Indeed, "such a disparity is unlikely except in areas where the population includes a substantial number of immigrants." *Id.* at 1569.

Here, the plaintiffs urge this Court to ignore the BVAP of District 7 in Illustrative Plans 1 and 2A, which is below fifty percent, and rely only on the point estimate of the BCVAP of that district, which is more than fifty percent. Doc. 250 ¶¶ 176–78, 587. The Secretary argues (and this Court's independent review confirms) that if this Court took that approach, it would be the first district court in the nation to do so. *See* Tr. 1655; Doc. 251 ¶¶ 71–72, 79. Even Mr. Fairfax testified

that he "believe[d]" that he "probably [had] not" relied solely on CVAP to establish numerosity in any of his *Gingles* I work in other cases. Tr. 343.

The plaintiffs have not established a significant disparity in the citizenship rates of the Black and White populations in their proposed District 7. *See* Tr. 252–54; Doc. 207-10 at 3–7. The plaintiffs' argument about noncitizens in District 7 is about the Hispanic and Asian noncitizen populations—not the Black population, which is the minority population at issue. *See* Doc. 250 ¶ 120; Tr. 1639. The plaintiffs have cited, and the Court has found, no authority for relying on the citizenship rate of a minority population other than the one at issue in the litigation, for a numerosity analysis under *Gingles*. Where, as here, there is "no indication" that there is a "significant difference" between Black and White citizenship rates, the Court need not "refine" BVAP data with BCVAP data, nor rely on BCVAP data exclusively. *See Negron*, 113 F.3d at 1568.

Separately, Mr. Fairfax's admission that his reliance on CVAP data is selective deepens the Court's concern about relying on BCVAP to evaluate numerosity in the Huntsville area. Mr. Fairfax conceded that Montgomery has the second highest noncitizen population in Alabama, but testified that he did not rely on CVAP data there because he "didn't have to" rely on CVAP to draw his proposed District 25 because "the majority-[B]lack status is already there." Tr. 289–90; *see* Doc. 250 at 38 n.3. The Court cannot rely on BCVAP data merely where it serves

the plaintiffs' desired purposes.

Accordingly, the Court finds that Illustrative Plans 1 and 2A do not establish that the Black population in the Huntsville area is sufficiently large to satisfy the first *Gingles* I precondition, and the Court does not analyze those plans further as a basis for Section Two relief.

2. Illustrative Plan 3

It is undisputed that Illustrative Plan 3 includes two majority-Black illustrative districts (Districts 25 and 7). *See* Tr. 1638–39, 1657, 1660; Doc. 189-7 at 28; Doc. 189-8 at 19. The BVAP of Proposed District 25 is 51.59 percent and the BVAP of District 7 in Illustrative Plan 3 is 50.04 percent. Doc. 206-8 at 32; Doc. 189-8 at 19. Accordingly, the Court finds that the plaintiffs have established that the Black population in the Huntsville and Montgomery areas is "sufficiently large" to accommodate an additional remedial district in those areas and turns to the question whether the proposed remedial districts in Illustrative Plan 3 are reasonably configured. *See Allen*, 599 U.S. at 18.

B. *Gingles* I – Reasonable Configuration

The Court proceeds in three steps: *first*, the Court makes its credibility determinations about the testimony of the parties' *Gingles* I expert witnesses. If the Court will not rely on an expert's testimony, the Court does not make a credibility determination for that expert. *Second*, the Court considers the configuration of the

plaintiffs' proposed District 7 in the Huntsville area. *Third*, the Court considers the configuration of the plaintiffs' Proposed District 25 in the Montgomery area.

1. Expert Credibility Determinations

First, the Court finds Mr. Fairfax's testimony credible. The parties do not dispute his qualification as an expert, *see* Tr. 230, and he explained his methods and work clearly and consistently, *see, e.g.*, Doc. 206-6 at 8–14; Tr. 240–47. He answered cross-examination questions with care not to overstate his conclusions, *see, e.g.*, Tr. 281–82, 287–88, and the Court found his testimony both reliable and helpful.

Second, the Court finds Dr. Trende's testimony credible. The parties do not dispute his qualification as an expert, *see* Tr. 941, and he explained his methods and work clearly and consistently. The Court carefully observed Dr. Trende's demeanor during trial and found him to be candid. For instance, when Dr. Trende was confronted with an error in one of his calculations, he acknowledged it and testified that it would change, but not inflate, the resulting margin of error. *See id.* at 1059–60.

Dr. Trende took care to limit his testimony to his expertise and not to overstate his conclusions. For example, he testified that CVAP is not a "bad source of information," and opined only that it should not be relied upon exclusively to establish numerosity when the BVAP is below fifty percent and the BCVAP point

estimate is close to fifty percent. *Id.* at 956. In his testimony about disaggregation techniques, he acknowledged that there are "different ways" to disaggregate data, and did not opine that one method was better than the other. *See id.* at 977–80. Instead, he testified that all techniques rely on "untestable assumptions" that should be considered by the Court in its numerosity assessment. *Id.* at 978.

Dr. Trende offers only limited opinions on the reasonable configuration of the proposed remedial districts in Illustrative Plan 3. He did not analyze whether that plan respects political subdivisions, observes natural boundaries, preserves the cores of districts, or pairs incumbents. *Id.* at 1077–79.

When he was asked how he could testify that a district was not reasonably configured without considering all traditional districting principles, Dr. Trende responded that he had considered all the evidence, including the "progression" of District 7 in Illustrative Plans 1, 2, and 3, and the "increasingly distended" shape of District 7 in each plan. *Id.* at 1009–10. For example, he testified, "If you are going to justify it from a communities of interest point of view, . . . the question is, well, why didn't you include those communities of interest in the district in the first go around?" *Id.* at 1009.

The Court acknowledges that other courts have excluded Dr. Trende's testimony, found it unhelpful, or assigned it limited weight. *See* Tr. 1055–56, 1068; *Singleton v. Allen*, No. 2:21-cv-1291-AMM & No. 2:21-cv-1530-AMM, 2025 WL

1342947, at *101 (N.D. Ala. May 8, 2025). But Dr. Trende explained that the circumstances that precipitated those findings are not present here, *see* Tr. 1055–56, 1068, and the Court agrees. And Dr. Trende offers only a limited opinion in this case in any event. Accordingly, the Court finds Dr. Trende's testimony reliable and assigns it the appropriate weight.

2. Huntsville

a. Visual Assessment and Traditional Districting Principles

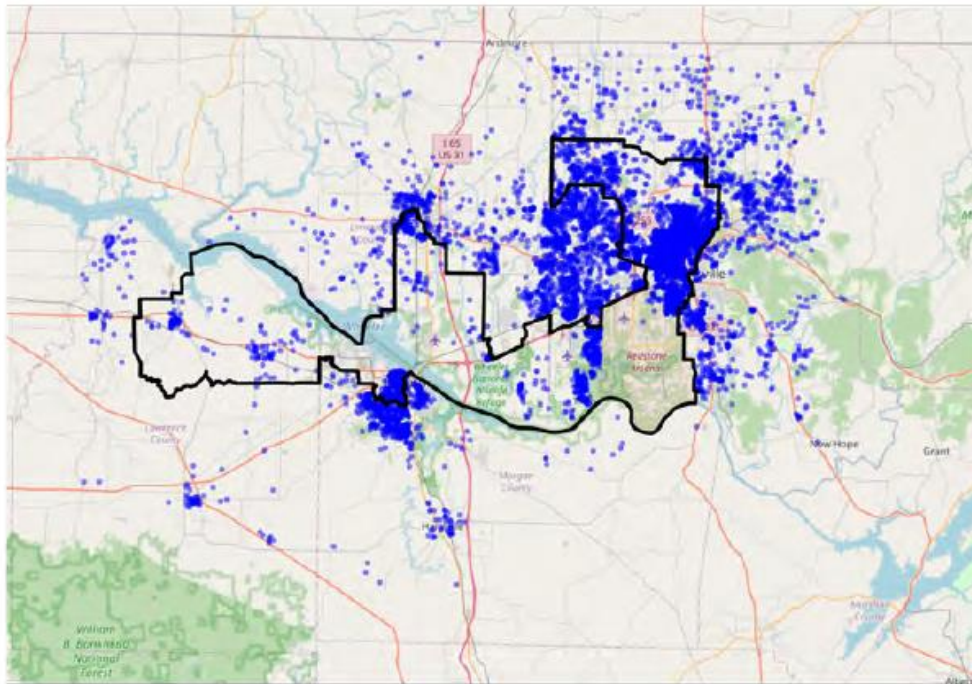
The Court begins its reasonableness analysis of District 7 in Illustrative Plan 3 with a visual assessment. As Dr. Trende testified, "to a certain degree," the compactness analysis "is an eyeball test." *Id.* at 1021. Federal courts regularly use visual assessments to evaluate compactness. *See, e.g.*, *Vera*, 517 U.S. at 960; *Singleton v. Merrill*, 582 F. Supp. 3d 924, 1010–11 (N.D. Ala. 2022); *Singleton*, 2025 WL 1342947, at *130; *Ala. State Conf. of NAACP v. Alabama*, 612 F. Supp. 3d 1232, 1265 (M.D. Ala. 2020). After all, a court cannot evaluate whether a district is reasonably configured without looking at it.

A bizarrely shaped illustrative remedial district can be a powerful indicator that the minority population is too dispersed to create a reasonably configured majority-minority district, in which case Section Two does not require a remedial district. *Vera*, 517 U.S. at 980. That is, a "bizarrely shaped" district may reflect an attempt to "reach[] out to grab small and apparently isolated minority communities,"

id. at 979, and a district with tentacles, appendages, or fingers may reflect an attempt to "combine[] two farflung segments of a racial group with disparate interests," *LULAC*, 548 U.S. at 433.

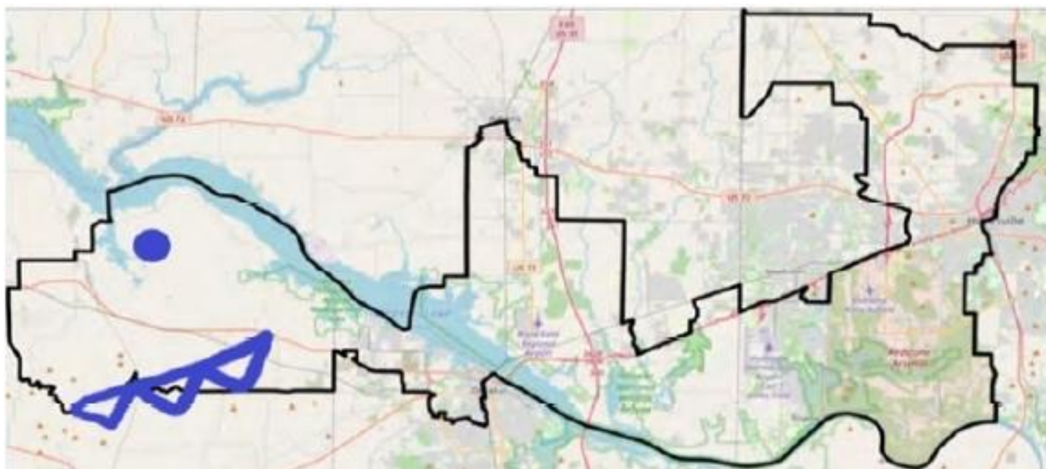
The Secretary makes two intertwined arguments about the configuration of District 7 in Illustrative Plan 3: one about the geographic dispersion of the Black population in Huntsville, Doc. 251 ¶¶ 117, 139, and one about the irregular shape of the remedial district that the plaintiffs propose, *id.* ¶¶ 118, 128, 144; Tr. 1657. *First*, he argues that the illustrative district "reaches out and grabs at least five isolated clusters of [B]lack residents in Lawrence, Limestone, Madison, and Morgan counties." Doc. 251 ¶ 117 (internal quotation marks and brackets omitted). Dr. Trende testified that his dot density map (pictured below) demonstrates that there is not a compact Black population in the Huntsville area and that, at best, there are multiple Black populations "stitched together." Tr. 1020–21.

Figure 16: Fairfax Map 3, District 7. One blue dot = 10 Black residents of voting age



Doc. 189-8 at 22.

Second, Dr. Trende described District 7 in Illustrative Plan 3 as "a baby dragon with an overbite in flight." Tr. 1011; Doc. 189-8 at 18. In his illustration, the Secretary added an eye and mouth to Mr. Fairfax's illustrative map:



Doc. 166 at 33. The Secretary described the dragon district as having "hindquarters" that "twist away from Madison to capture the Redstone Arsenal and Huntsville International Airport," "wings" that "span from Athens in the [n]orth to Decatur in the [s]outh (carefully covering only portions of both cities)," and a "head and neck" that "protrude into the rural precincts west of Decatur." Doc. 251 ¶ 118.

In the Court's visual assessment, it sees the same bizarre shapes and appendages—themselves evidence of a noncompact minority population—that Dr. Trende does. Once the dragon shape is seen, it is hard to unsee, and it forecloses a description of the district as free from appendages.

The plaintiffs offer three responses to the Secretary's visual assessment. *First*, the plaintiffs assert that Dr. Trende's dot density map does not accurately reflect the dispersion of the Black population in the Huntsville area. Doc. 250 ¶¶ 219–21. *Second*, the plaintiffs assert that the "critique of" the "visual appearance" of District 7 in Illustrative Plan 3 "fails to rebut the conclusion that [it] is reasonably compact" because the district respects traditional districting criteria and Section Two does not require them to win a "beauty contest." *Id.* ¶¶ 631–32; Tr. 1641. And *third*, the plaintiffs assert that District 7 in Illustrative Plan 3 is "certainly not less visually compact than several districts enacted by the state," including District 7 in the Enacted Plan. Doc. 250 ¶ 637. In short, although the plaintiffs do not dispute that District 7 in Illustrative Plan 3 physically resembles a dragon, they argue that it is

reasonably compact despite its shape.

The Court discusses each response in turn. *First*, the Court rejects the attack on Dr. Trende's dot density maps. The plaintiffs argue that Dr. Trende's dot density maps "include rounding, so that if there are anywhere between [five] and [fourteen] Black VAP within a census block, the maps will portray one dot for that population." Doc. 250 ¶ 220. The Court is mindful of the limitations of Dr. Trende's dot density maps. But many maps require the use of some rounding or range as a unit of measurement, and the use of such metrics does not render the maps useless.

Second, the Court rejects the plaintiffs' argument about the shape of District 7 in Illustrative Plan 3. The plaintiffs argue that the shape of an illustrative district is not dispositive of compactness. *Id.* ¶ 635. They point out that "a district's shape can be affected by many acceptable considerations, such as following 'existing census block lines' or other boundaries, which can 'lend themselves to irregular shapes' and cause a district to 'look ragged in places.'" *Id.* (quoting *Houston v. Lafayette Cnty.*, 56 F.3d 606, 610, 611 & n.4 (11th Cir. 1995)).

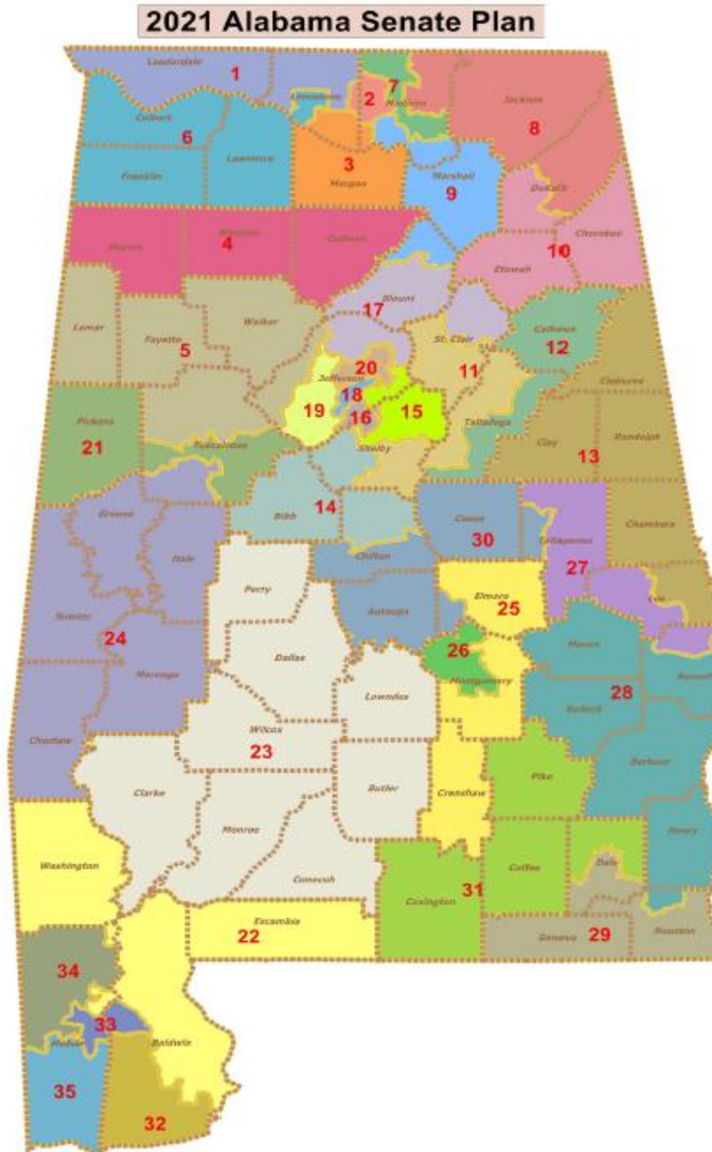
More particularly, the plaintiffs attempt to explain some aspects of the shape of the district by reference to various traditional districting principles. They justify the shape of the dragon's head, core, and the district's crossing of the Tennessee River on the ground that Mr. Fairfax joined communities of interests by (1) combining Huntsville and Decatur and (2) including Alabama A&M University and

the entirety of Redstone Arsenal in the same district. *See id.* ¶¶ 241–42. And Mr. Fairfax attempted to justify the inclusion of Courtland and North Courtland—which are in the head of the dragon—based on various socioeconomic data. *See* Tr. 272.

Even assuming *arguendo* the validity of these explanations, they are only partial: the plaintiffs offer no justification for the dragon's wing, which extends into Athens, or its tail, which extends into Harvest. *See, e.g.*, *id.* at 271. And other evidence about traditional districting principles indicates that they cannot justify the shape of the district: Dr. Trende opined (and the plaintiffs do not dispute) that the proposed District 7 increases the number of county splits from nineteen in the Enacted Plan to twenty-one in Illustrative Plan 3, and that four of those county splits are in District 7. Doc. 189-8 at 31–32. Dr. Trende also testified that District 7 in Illustrative Plan 3 does not include any whole counties within it. Tr. 1038. The plaintiffs cannot rely on traditional districting principles to explain why four of the twenty-one county splits in Illustrative Plan 3 appear in only one of the thirty-five Senate districts.

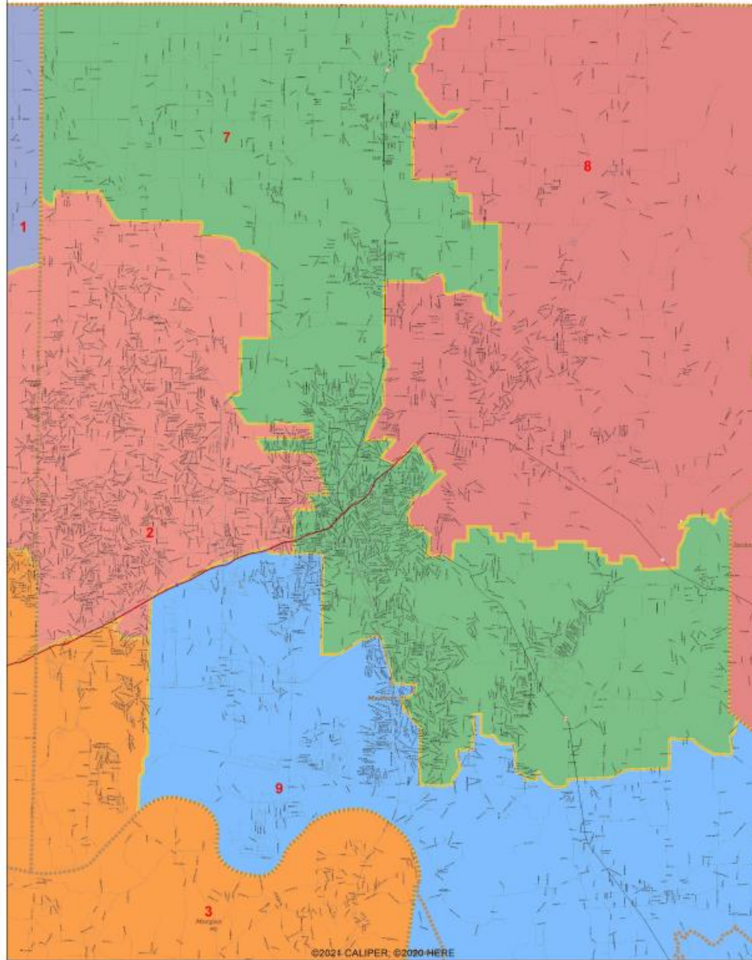
Third, the Court rejects the plaintiffs' comparison between District 7 in Illustrative Plan 3 and District 7 in the Enacted Plan. The plaintiffs argue that District 7 in Illustrative Plan 3 is at least as "visually compact" as other districts included in the Enacted Plan, including District 7. Doc. 250 ¶ 637. But the Enacted Plan appears

below, and the plaintiffs did not identify (and the Court does not see) any district in it that can be fairly described as a flying dragon:



Doc. 195-19.

Furthermore, a close-up of District 7 in the Enacted Plan appears below, and although it is not perfectly regular, it cannot fairly be described as having bizarre shapes or concerning appendages:



Doc. 195-8.

In any event, although the Court must "perform a comparable compactness inquiry for" District 7 in the Enacted Plan and District 7 in Illustrative Plan 3, *see LULAC*, 548 U.S. at 430, the Enacted Plan is not subject to a *Gingles* analysis—only the plaintiffs have the burden to establish the preconditions, which are focused on their illustrative remedial district, *see Allen*, 599 U.S. at 18. The shape of District 7 in the Enacted Plan does not alleviate the Court's concerns about the dragon-like shape of District 7 in Illustrative Plan 3.

And at its core, the plaintiffs' comparative argument does not overcome the foundational issue that the Black population in the area of District 7 is geographically dispersed and non-compact. Indeed, for all their criticism of Dr. Trende's dot-density map that displays the dispersion of the Black population there, the plaintiffs have not presented evidence that reveals a fundamentally different dispersion.

Ultimately, the result of the Court's visual assessment is not merely about aesthetics. The evidence supports findings that (1) the shape of District 7 in Illustrative Plan 3, both on its own and compared to the shape of District 7 in the Enacted Plan, is bizarre and does not serve traditional districting principles; and (2) the shape of District 7 in Illustrative Plan 3, when combined with evidence of the dispersion of the Black population in the area, demonstrates that the Black population there is too scattered to form a voting-age majority in an additional reasonably configured district. Accordingly, the Court cannot find that its visual assessment of District 7 in Illustrative Plan 3 indicates that there is a sufficiently compact minority population there to constitute a voting-age majority in an additional reasonably configured district.

b. Geographic Compactness Scores

The Court next considers industry-standard geographic compactness scores for District 7 in Illustrative Plan 3. After an exhaustive analysis, the Court finds that these scores do not alter the conclusions drawn from the visual assessment.

Dr. Trende opined that Illustrative Plan 3 "decreases the compactness of the districts relative to those in the Enacted [Plan]." Doc. 189-8 at 24. Mr. Fairfax conceded that the mean scores of the Enacted Plan were "slightly better" than the mean scores of Illustrative Plan 3, Tr. 273, but he opined that those scores were "very close," Doc. 206-8 at 33. He opined that "[t]he difference between the means for [Illustrative Plan 3 and the Enacted Plan] is either .01 for the Polsby-Popper and Convex Hull measures and .02 for the Reock measure." Doc. 206-8 at 33.

But *Gingles* focuses the Court's attention on the compactness of the minority population in the proposed remedial district, not on the overall compactness of an entire plan. 478 U.S. at 50; *see Allen*, 599 U.S. at 18. The critical question is whether a remedial district can be reasonably configured in the challenged area. *See Allen*, 599 U.S. at 18.

So the Court turns to the compactness scores for District 7 in Illustrative Plan 3. Mr. Fairfax testified that based on his analysis of the scores, District 7 in Illustrative Plan 3 "performed better than the [E]nacted [P]lan's minimal or least compact" district. *See id.* at 273–74. The Secretary does not dispute Mr. Fairfax's conclusion that the scores for District 7 in Illustrative Plan 3 are better than the least compact district in the Enacted Plan; the Secretary simply points out that the compactness scores of District 7 "are near the bottom of the pile in [Illustrative] Plan 3." Doc. 251 ¶ 135.

The Court assigns no weight to the argument that District 7 in Illustrative Plan 3 earns better compactness scores than the least compact district in the Enacted Plan. That point compares the illustrative District 7 to some other district, which may have different geographic and population factors that explain its boundaries but have no relevance to District 7 and that, in any event, the Court has not considered. The plaintiffs cannot defend the configuration of their illustrative remedial district by referring to another district entirely, without some analysis of why that district is configured as it is and why that configuration provides an apt comparison.

The Secretary relies on Dr. Trende's testimony that District 7 in Illustrative Plan 3 performed worse on the Reock and Polsby-Popper scores than did District 7 in the Enacted Plan. *See* Doc. 189-8 at 25–26. Dr. Trende testified that the district's "tail," "wing," and "head" increased the perimeter of the district, making it "more narrow, less stocky, and with more appendages, and all those things are punished by the metrics." Tr. 1029.

Mr. Fairfax does not dispute this analysis. He conceded that District 7 in the Enacted Plan received "slightly better" compactness scores than District 7 in Illustrative Plan 3, but he said he considered the scores to be "[s]imilar." Tr. 273.

The Court cannot reconcile Mr. Fairfax's assertion of similarity with the obvious physical differences in the shape of the districts. Compactness scores are one tool for the Court to consider in its reasonableness analysis, and Mr. Fairfax's

assertion of similarity illustrates the peril of evaluating scores in a vacuum or assigning them dispositive weight.

Ultimately, the Court's comparative analysis of the compactness scores confirms the finding that the visual assessment indicated: that the Black population in the area of District 7 is too geographically dispersed to form a voting-age majority in an additional reasonably configured district. Accordingly, the Court finds that the plaintiffs have not demonstrated a Section Two violation in the Huntsville area.

3. Montgomery

a. Visual Assessment

The Secretary does not argue that Proposed District 25 contains bizarre shapes, appendages, or fingers. The Court's independent visual assessment of Proposed District 25 confirms that it does not include such irregularities. The reality that Proposed District 25 adheres to the boundary lines of Crenshaw County in their entirety, adheres to the entire southern boundary line of Montgomery County, and adheres to much of the eastern and western boundary lines of Montgomery County, forecloses a finding that Proposed District 25 is bizarrely shaped.

b. Geographic Compactness Scores

The Court has the benefit of expert testimony from only Mr. Fairfax about the geographic compactness scores of District 25. Mr. Fairfax opined that Proposed District 25 received better compactness scores on the Reock, Polsby-Popper, and

Convex Hull metrics than did District 25 in the Enacted Plan. Tr. 258; Doc. 206-6 at 46. Dr. Trende did not evaluate the compactness scores of Proposed District 25, *see* Tr. 1078, and the Secretary did not dispute Mr. Fairfax's calculations, nor his conclusion that Proposed District 25 outperforms District 25 in the Enacted Plan on these metrics.

c. Traditional Districting Principles

The Secretary's sole argument about the configuration of Proposed District 25 is that the illustrative district is not reasonably configured because it "subordinates traditional districting principles to racial considerations." Doc. 251 ¶ 145–57; *see* Tr. 1660. To support his argument that race predominated when Mr. Fairfax drew Proposed District 25, *see* Doc. 251 ¶¶ 145–57; Tr. 1660, the Secretary relies on Dr. Trende's assessment of the "shape of the district and how it[is] carved out," Tr. 1031, and maintains that Proposed District 25 "contains a heavily concentrated [B]lack population in the north," but must "extend southward to pick up isolated rural [B]lack populations throughout the countryside" to reach a majority-Black status, Doc. 251 ¶ 156.

As the Supreme Court explained, "Section [Two] itself 'demands consideration of race.'" *Allen*, 599 U.S. at 30–31 (quoting *Abbott*, 581 U.S. at 587). Indeed, "[t]he question whether additional majority-minority districts can be drawn, after all, involves a 'quintessentially race-conscious calculus.'" *Id.* at 31 (quoting *De*

Grandy, 512 U.S. at 1020) (emphasis omitted)). Race predominates "when 'race-neutral considerations [come] into play only after the race-based decision had been made.'" *Id.* (quoting *Bethune-Hill v. Virginia St. Bd. of Elections*, 580 U.S. 178, 189 (2017)). To demonstrate that race predominated when drawing district lines, "challengers will often need to show that the . . . map conflicts with traditional redistricting criteria." *Alexander v. South Carolina State Conf. of the NAACP*, 602 U.S. 1, 8 (2024).

Three categories of evidence establish that race did not predominate in the preparation of Proposed District 25: (1) evidence about Mr. Fairfax's map-drawing process; (2) the configuration of Proposed District 25; and (3) Dr. Trende's opinion testimony. The Court discusses each category in turn.

First, the evidence about Mr. Fairfax's map-drawing process establishes that race did not predominate in his design of Proposed District 25. Mr. Fairfax testified that when he drew the plaintiffs' illustrative plans, he used the Enacted Plan as a starting point because "many times you want to leave as many districts as [possible] intact." *Id.* at 240; *see id.* at 264–65, 270, 277.

Further, Mr. Fairfax testified that he followed five traditional redistricting criteria when drawing the plans—equal population, respecting political subdivisions, compactness, contiguity, and preserving communities of interest. *Id.* at 244. He testified that he also attempted to follow other criteria found in the

Legislature's redistricting guidelines. *Id.* at 245. He testified that "[t]here are always tradeoffs" when drawing a map, and that he "balance[d]" the criteria in effort to create the "best plan" possible. *Id.* at 246–47.

Mr. Fairfax testified that he reviewed race at the beginning of the process to see "where the minority community exists" but then "turn[ed] it off." *Id.* at 242; *see id.* at 277–79. He acknowledged that he later checked the minority BVAP and BCVAP periodically "to see if [he] me[]t th[e] sufficiently large component." *Id.* at 280–81.

Further, Mr. Fairfax testified that he "tend[s] to not consider race as much as the other [redistricting] criteria" and "always use[s] the other criteria labels more than race." *Id.* at 241–42. Mr. Fairfax testified that when he prepared the illustrative plans he was not "toggling race and compactness" only, but "look[ed] at all of the criteria and trading off those," *id.* at 295, and he considered race only to see "where the minority community exists." *Id.* at 241–42.

Additionally, Mr. Fairfax unequivocally testified that he did not prioritize race over other factors when drawing the illustrative plans. *See id.* at 301. Having observed his manner of testifying, the Court credits this testimony, which is consistent with his other testimony about how he balanced traditional districting criteria.

Accordingly, nothing in Mr. Fairfax's explanation of his map-drawing process

causes the Court concern that he considered race-neutral criteria only after he made race-based decisions. Rather, his testimony about his order of operations supports a finding that his map-making process was race-aware to the degree the law allows.

Second, other evidence about Proposed District 25 confirms that race did not predominate in Mr. Fairfax's design of Proposed District 25. In drawing Proposed District 25, Mr. Fairfax created a new city split in Prattville in Senate District 26 (the existing majority-Black district in the Montgomery area), *id.* at 299, but he made the town of Pike Road whole in Proposed District 25, *id.* at 256; Doc. 206-6 at 36. And the Secretary contends that Proposed District 25 connects urban portions of Montgomery with rural areas in Crenshaw County, Tr. 1660, but Mr. Fairfax actually removed a county split by excluding portions of Elmore County that are included in District 25 in the Enacted Plan, *see* Doc. 206-6 at 36. In each of these ways, the configuration of Proposed District 25 reflects that Mr. Fairfax deferred to the Legislature's priorities of avoiding city and county splits. *See* Doc. 171–1. Indeed, as far as county splits go, Mr. Fairfax's map outperforms the Legislature's Enacted Plan.

Additionally, the boundaries of Proposed District 25 largely follow county lines. Proposed District 25 keeps Crenshaw County whole by following its boundary lines. It also keeps a majority of Montgomery County whole by following its entire southern boundary line and much of its eastern and western boundary lines. The

Court cannot square this level of adherence to county lines with the Secretary's suggestion that race predominated in the drawing of Proposed District 25.

The Secretary asserts that Mr. Fairfax's decision to connect Black Alabamians in west Montgomery with portions of Elmore County was "to achieve the racial goal of keeping [Senate District] 26 majority-[B]lack after moving [s]outheast Montgomery into [Senate District] 25." Doc. 251 ¶ 152. But the Secretary did not rebut Mr. Fairfax's race-neutral explanation for that decision. Mr. Fairfax testified that District "26 had to be expanded because it lost population, so [he] expanded it [in]to Elmore," Tr. 294, because District 26 "is somewhat landlocked," and that he "d[id] not want to cross over an additional county boundary," so his "logical choice" was "to move into Elmore" County, Tr. 297–98. Here again, the Court cannot square this adherence to county lines with the Secretary's insistence that race predominated in Mr. Fairfax's process.

Finally, the Court rejects the Secretary's assertion that race predominated in the preparation of Proposed District 25 because Dr. Trende's testimony does not support it. Dr. Trende did not opine that race predominated in Proposed District 25, and instead opined only that Mr. Fairfax "ha[d] to pick up isolated Black populations throughout the countryside." Doc. 189-7 at 29. And Dr. Trende did not address the race-neutral reasons for Mr. Fairfax's map-drawing decisions, such as removing a county split. This is in stark contrast to the extensive opinion testimony Dr. Trende

offered in support of the Secretary's attacks on District 7 in Illustrative Plan 3. Accordingly, the Court finds that the Secretary did not adduce any evidence, let alone sufficient evidence, that race predominated in the preparation of Proposed District 25.

Because all the evidence probative of the issue of race predominance establishes that Mr. Fairfax did not allow race to predominate when drawing Proposed District 25, the Court finds that Mr. Fairfax did not allow considerations of race to predominate in his preparation of Proposed District 25. The Court further finds that Mr. Fairfax's map-making decisions (1) respected traditional districting principles and (2) were consistent with the trade-offs of those principles that are permitted to create an illustrative, reasonably configured majority-minority district to satisfy *Gingles* I.

Accordingly, the Court finds that the plaintiffs have established the first *Gingles* precondition for their claim of vote dilution in the Montgomery area, and the Court proceeds to analyze the second and third preconditions in that area.

C. *Gingles* II and III – Racially Polarized Voting

As explained below, there is no serious dispute that Black voters are "politically cohesive," nor that the challenged districts' White majority votes "sufficiently as a bloc to usually defeat [Black voters'] preferred candidate." *Allen*, 599 U.S. at 18.

1. Expert Credibility Determinations

Dr. Liu

As an initial matter, the Court credits Dr. Liu's testimony. The parties do not dispute that Dr. Liu's training and experience qualify him to testify as an expert. *See* Tr. 19–20. His professional and academic work has focused on voting patterns and "political methodology that allows scholars to study voting by using data collected at [the] aggregate level," *id.* at 16–17, and he has published extensively on the relationship between race and voting patterns, *see* Doc. 206-16 at 2; Doc. 206-17 at 2–8; Tr. 18–19. At trial, Dr. Liu consistently explained the work he performed in this case and the conclusions that he reached. He employed commonly accepted methodologies, and the Court discerns no reason to question his methods or conclusions. None of the Secretary's experts conducted a racial polarization analysis to contradict Dr. Liu's findings, and as explained below, many of his conclusions are not disputed. Accordingly, the Court finds Dr. Liu's opinions credible, reliable, and helpful.

The Secretary's Experts

Although the Court recites concessions by the Secretary's experts in its analysis of the second and third *Gingles* preconditions, because their testimony focuses on the Senate Factors, the Court defers its credibility determination until that discussion.

2. Patterns of Racially Polarized Voting

The only expert to conduct a racially polarization analysis—Dr. Liu—found a "high level" of racially polarized voting in the Montgomery area. Doc. 206-16 at 8, 10; *see* Tr. 31–33. The Court credits Dr. Liu's testimony that has consistently emphasized the clarity and extremity of the pattern of racially polarized voting he observed in Alabama. Based on the exogenous elections he analyzed, he testified that "[B]lack candidates typically lost their elections" in Montgomery because of "the consistent and highly racially[]polarized voting pattern" there, and that when a Black-preferred candidate won an election in that area, "they tend to win the . . . supermajority [B]lack district[]" there—District 26. Tr. 33.

As he must, the Secretary concedes that "in general elections most [B]lack voters prefer Democratic candidates, and most [W]hite voters in both the challenged areas prefer Republicans," and that "Plaintiffs' evidence shows that [B]lack Alabamians in the . . . Montgomery area[] are politically cohesive." *Id.* at 1661; Doc. 251 ¶ 159.

In addition, the Secretary's experts acknowledge that Black voters tend to vote cohesively. *See, e.g.*, Doc. 189-9 at 4–6 (Dr. Reilly); Doc. 189-5 at 5–6 (Dr. Hood). Dr. Bonneau testified at trial that he does not dispute Dr. Liu's racially polarized voting findings, Tr. 1476, 1541, 1544, and Dr. Carrington testified that he did not dispute the existence of racially polarized voting in Alabama, *id.* at 1185.

In closing arguments, the Secretary conceded "[t]hat a majority of [W]hite voters . . . tend to support Republicans, a majority of [B]lack voters tend to support Democrats," and "[i]f that is all it takes for there to be racially[ ]polarized voting" in a district, the plaintiffs' have met their burden. *Id.* at 1695. He also conceded in post-trial briefing that "[p]laintiffs' evidence shows that [B]lack Alabamians in the Huntsville and Montgomery areas are politically cohesive" and that "[B]lack citizens in Alabama overwhelmingly support the Democratic Party." Doc. 251 ¶ 159.

The stipulated facts supply the only missing piece: that the candidates cohesively preferred by Black voters consistently (nearly invariably) are defeated by the White majority. *See* Doc. 230 ¶¶ 93, 94, 117; Doc. 250 ¶¶ 521, 522, 525. In his post-trial briefing, the Secretary attempts to dispute this reality, suggesting in passing that "in the absence of significant" White bloc voting, "it cannot be said that the ability of minority voters to elect their chosen representative is inferior to that of [W]hite voters." Doc. 251 ¶ 161 (quoting *Gingles*). Outside of Black-opportunity districts, Black Alabamians have nearly zero opportunity to elect candidates of their choice.

The Court thus finds from an overwhelming preponderance of the evidence that Black voters in Alabama are "politically cohesive," and that Montgomery's "[W]hite majority votes sufficiently as a bloc to enable it . . . to defeat the [Black] preferred candidate." *Allen*, 599 U.S. at 18.

Accordingly, the Court cannot accept the Secretary's assertion that when Dr. Liu conducted his ecological inference analysis, his decision to analyze only biracial elections "leads to selection bias and potentially erroneous conclusions." Doc. 251 ¶ 261 (internal quotation marks omitted). The consensus of the evidence and parties on the critical patterns (and the absence of a rebuttal expert from the Secretary) obviates any basis for the Court to address or accept methodological quibbles about how the ecological inference analysis would best be conducted.

Nor does the Court doubt the ecological inference method. Dr. Liu opined that ecological inference "has been widely used as the most[ ]advanced and reliable statistical procedure for [racially polarized voting] estimates in not only academic research but also voting rights cases in the last two decades." Doc. 206-16 at 4. Dr. Bonneau conceded that "ecological inference techniques are widely used and accepted by courts for [racially polarized voting] analysis," and that he did not know of another method that would better estimate racially polarized voting estimates. Tr. 1474. And in any event, the decision to analyze only biracial elections was not unique to Dr. Liu—Dr. Bonneau's analysis of voting patterns (discussed in connection with the Senate Factors, *see infra* Part V.D.2) is similarly focused on the race of the candidate, not the race of the voter. *See* Tr. 1529, 1542–43.

3. Arguments About Legally Significant Racially Polarized Voting and Dr. Trende's Effectiveness Analysis

The Secretary makes a novel legal argument that "White bloc voting in the . . . Montgomery area[] is not 'legally significant.'" Doc. 251 at 45 (emphasis omitted). Citing *Pierce v. North Carolina State Board of Elections*, 97 F.4th 194 (4th Cir. 2024), the Secretary asserts that "White bloc voting in the . . . Montgomery area[] is not 'legally significant' on this evidentiary record because there appears to be enough [W]hite crossover voting to obviate the need for court-ordered majority-minority districts." *Id.* ¶ 171. He argues that "[s]o long as additional majority-minority districts are not 'necessary for [B]lack-preferred candidates to win,' legally significant [W]hite bloc voting is absent." *Id.* ¶ 179 (cleaned up).

To support this argument, the Secretary relies on Dr. Trende's effectiveness analysis in which he concluded, without explanation, that "crossover voting is not as commonplace" in Montgomery but that Proposed District 25 would nevertheless "perform at less than [fifty percent] BVAP." Doc. 189-7 at 29.

Dr. Trende's effectiveness analysis of Proposed District 25 in his report is scant, consisting of only three sentences and a chart. *See id.* at 29–30. At trial, he offered little testimony to explain his analysis, methodology, or findings about the BVAP below which the Black-preferred candidate would not routinely win in District 25. *See* Tr. 1045–48. Dr. Trende admitted at trial that he did not analyze whether District 25 in the Enacted Plan has been performing for Black voters. *Id.* at 1048.

On the other hand, Dr. Liu explained that Dr. Trende "unrealistic[ally]" assumed that Black voters would unanimously support a Black-preferred candidate and that one-third of White voters would support the Black-preferred candidate, which is not supported by the data. *See* Doc. 206-18 at 10; Tr. 38–39. And Dr. Liu conducted an effectiveness analysis by comparing election results in eleven statewide elections in District 25 in the Enacted Plan with Proposed District 25. *See* Doc. 206-16 at 10–12. Dr. Liu found that, in all eleven elections, the Black-preferred candidate lost in District 25 in the Enacted Plan but won in Proposed District 25. *See id.* at 12; *id.* at 14 (Table 9).

Accordingly, the Court finds that Dr. Trende's effectiveness analysis does not overcome the reality that racially polarized voting exists in the Montgomery area. Alabama's patterns of racially polarized voting are stark, and Black candidates' nearly universal losing streak in statewide elections and legislative elections in Alabama (outside majority-Black or very nearly majority-Black districts) is long. In some jurisdictions, evidence may establish that statistically observable differences in Black and White voting patterns are of little practical or legal significance. Not in Alabama.

4. Arguments About Party Politics

Finally, the Court turns to the Secretary's argument that patterns of racially polarized voting in Alabama are attributable more to political party affiliations than

to race. The Secretary relies on Dr. Bonneau to support this argument, but Dr. Bonneau conceded at trial that he does not dispute Dr. Liu's racial polarization findings. *See* Tr. 1476, 1541, 1544. Likewise, the Secretary relies on Dr. Hood, who opined that Black Alabamians vote cohesively. *See* Doc. 189-5 at 5–6.

Under controlling precedent, *see Allen*, 599 U.S. at 18, the second and third *Gingles* preconditions do not require that the Court disentangle party and race. They direct the Court to assess only whether Black voters in Alabama are "politically cohesive," and whether each challenged district's "[W]hite majority votes sufficiently as a bloc to enable it . . . to defeat the [Black] preferred candidate." *Id.* (quoting *Gingles*, 478 U.S. at 51). The Court sees those patterns clearly from the evidence and stipulations, a consensus of experts agrees that the patterns are present, and that concludes the *Gingles* analysis.

The Court considers causation in its analysis of the totality of the circumstances (particularly Senate Factor 2). *See infra* Part V.D.2. And the Court understands that the Secretary agrees with this approach. *See* Doc. 251 ¶ 217 (State's proposed order, explaining that Senate Factor 2 is not "redundant with the second and third *Gingles* preconditions" because "[t]here, the inquiry focused solely on how [B]lack and [W]hite voters voted. The focus . . . at the totality-of-circumstances stage

. . . is on evidence of causation . . . .'"') (quoting *Ala. State Conf. of NAACP*, 612 F. Supp. 3d at 1291).[8]

D. The Senate Factors

The Court begins its analysis of the totality of the circumstances aware that "it will be only the very unusual case in which the plaintiffs can establish the existence of the three *Gingles* factors but still have failed to establish a violation of [Section] 2 under the totality of the circumstances." *Ga. State Conf. of NAACP*, 775 F.3d at 1342 (internal quotation marks omitted). Consistent with this reality and for the reasons explained below, the Court finds that the plaintiffs have established that on balance, the totality of the circumstances weighs in favor of their request for relief in the Montgomery area.

The Court begins with its credibility determinations and then analyzes the Senate Factors. The plaintiffs have not raised a proportionality argument, and the Court rests no part of its analysis on a proportionality assessment.

1. Credibility Determinations

Dr. Bagley

[8] *See also, e.g.*, *Pierce*, 97 F. 4th at 223; *United States v. Charleston Cnty., S.C.*, 365 F.3d 341, 347–49 (4th Cir. 2004); *Solomon v. Liberty Cnty. Comm'rs*, 221 F.3d 1218, 1225 (11th Cir. 2000); *Lewis v. Alamance County*, 99 F. 3d 600, 615 n.12 (4th Cir. 1996); *Nipper*, 39 F.3d at 1536.

The Court credits much of Dr. Bagley's testimony. The parties do not dispute that Dr. Bagley's training and experience qualify him to testify as an expert. *See* Tr. 528. Dr. Bagley's credentials and familiarity with Alabama qualify him to opine on Alabama-specific matters. *See id.* at 525–28; Doc. 206-19 at 1; Doc. 206-20 at 1–2. Much of his research and writing have focused on Alabama, and he has experience testifying as an expert witness in voting rights cases, including in Alabama. *See* Tr. 525–28; Doc. 206-20 at 1–2.

At trial, Dr. Bagley walked back several overstatements in his report. *See, e.g.*, Tr. 589, 595, 615–16. These do not cause the Court to regard his testimony as unreliable or assign it little weight. In general, the Court found Dr. Bagley's opinions well-supported, and he was able to explain the basis for his conclusions. When he was confronted with an imprecise or overbroad statement, he responded candidly and fairly rather than dogmatically. *See, e.g.*, *id.* at 595. The Court has not relied on any opinion identified as an overstatement and finds each statement it relies on credible and helpful.

<u>Dr. Burch</u>

Likewise, the Court credits much of Dr. Burch's testimony. The parties do not dispute that her training and experience qualify her as an expert. *Id.* at 667. Dr. Burch's opinions and testimony were thorough, consistent, and generally well-supported with applicable social science literature and Alabama-specific data.

Throughout her testimony, including cross-examination, she had no difficulty articulating the basis for her opinions. Although the parties dispute the inferences the Court should draw from her data, her data are not in dispute. *See, e.g.*, *id.* at 819–20 (Dr. Reilly).

As with Dr. Bagley, the Court does not adopt or make findings about all of Dr. Burch's testimony because the Court need not accept all of it to make findings and draw conclusions. The Court finds all the statements it relies on credible and helpful.

Dr. Hood

The parties do not dispute that Dr. Hood's training and experience qualify him to testify as an expert. *See* Tr. 1218. His extensive published scholarship focuses on "electoral politics, racial politics, election administration, and Southern politics," Doc. 189-5 at 2, and he has qualified as an expert in multiple redistricting cases, including in Alabama, Doc. 189-5 at 2; *see* Tr. 1216–18.

But in three of those cases, Dr. Hood was impeached with his own academic publications, which stated that race was and is a driving force behind party politics in the South, directly contradicting his litigation opinion that voting patterns in Alabama are driven by party more than by race. *See Singleton*, 2025 WL 1342947, at *149–50. In this case, as in those cases, it is difficult to reconcile Dr. Hood's testimony with his published scholarship. At trial, Dr. Hood testified that "Alabama

was included" in the data he used in his 2015 article about White support for minority Republican candidates ("True Colors"). Tr. 1253–55. But at the trial in the Alabama congressional districting cases (which occurred after the trial in this case), Dr. Hood conceded that True Colors "did not consider any Alabama races" and "make[s] no specific findings as to [W]hite voter support for Black Republican candidates." *Singleton*, 2025 WL 1342947, at *149. And he conceded in those cases "that the article concludes that '[a]t a minimum, the level of [ideological] polarization in American politics masks racially prejudiced voting behavior and, at a maximum, it renders it inoperable because White conservatives view recent minority Republican nominees as at least as conservative as White GOP nominees, and their level of support reflects this.'" *Id.*

Nevertheless, out of an abundance of caution, the Court gives Dr. Hood every benefit of the doubt in this case. The impeachment evidence from the Alabama congressional redistricting litigation is not in the record in this case. Accordingly, the Court credits some aspects of Dr. Hood's testimony as specified below. Ultimately, it cannot credit his testimony about the impact of party and race on voting patterns in Alabama because (1) his findings improperly draw broad conclusions from very limited, atypical data, and (2) the Court cannot reconcile this testimony with the reality of election results in the state as stipulated by the parties.

Dr. Hood's findings are based in large part on one election in one district in

an area of the state not at issue in this case: the election of Representative Paschal, a Black Republican, from a majority-White district in Shelby County. *See* Tr. 1254–55; Doc. 189-5 at 21. But it is a gross understatement to say that this election is atypical—Dr. Hood conceded that Representative Paschal was the first Black Republican elected to the Legislature since Reconstruction, Tr. 1255, and Representative Paschal remains the only Black Republican in the Legislature. Accordingly, although the Court does not diminish the importance of Representative Paschal's election, that election does not support a finding that voting in Alabama, particularly in the Montgomery area at issue, is more about party than race.

Further, Dr. Hood's testimony does not match reality in Alabama. It is undisputed that no elected Black officials serve in a statewide office, Black Republican candidates in many 2024 primary elections garnered less than ten percent of the vote, and the only Black Alabamians elected to Congress since the start of the twentieth century were elected by Black-opportunity districts. *See* Doc. 230 ¶¶ 93, 107, 109, 111. It is also undisputed that in 2025, all Black Senators and all but one Black Representative (Representative Paschal) were elected by majority-Black districts. *Id.* ¶ 117. Dr. Hood's testimony does not align with these statistics and does little to account for them. Accordingly, the Court cannot credit Dr. Hood's opinion that voting in Alabama is driven by party and not race.

<u>Dr. Bonneau</u>

The Court credits Dr. Bonneau's testimony. The parties do not dispute that his training and experience qualify him to testify as an expert. *See* Tr. 1401. His opinions were clear and consistent throughout his testimony, and (unlike some of the Secretary's other experts) he relied on Alabama-specific data. Doc. 189-1 at 1. The Court observed Dr. Bonneau's demeanor as he testified, he was careful not to overstate his opinions, and he acknowledged that the small number of elections he studied limited them. Tr. 1513 ("You have got to go to war with the data you have got, not the data you want."). When confronted with an error in his report, he acknowledged it and testified candidly about its effects on his conclusions. *See, e.g.*, *id.* at 1413–14; 1532–33. And when he used data only for a limited purpose, he explained that. *See id.* 1499–1500, 1534–35. Accordingly, the Court finds his testimony reliable and helpful.

Dr. Reilly

The Court assigns very little weight to Dr. Reilly's testimony for three reasons. *First*, most of Dr. Reilly's opinions do not focus on and are not about Alabama. Dr. Reilly admitted at trial that his expertise and academic research are not focused on Alabama, *id.* at 817–18, and that in his report about racial socioeconomic gaps, he chose not to examine Alabama-specific data, *see id.* at 824–27.

Second, Dr. Reilly repeatedly offered opinion testimony without support. The

Court distinguishes these opinions from overstatements because their underlying support was unreliable or completely absent. For at least one assertion in his report, he cited only websites (Wikipedia, Quora, and Reddit) with no scholarship or peer-reviewed backup. Doc. 189-9 at 11 n.19. When asked whether a source for an opinion was included in his report, he stated that he was "[n]ot sure" and relied on a non-peer reviewed article that "cites some research on that point." Tr. 827–28. Standing alone, Dr. Reilly's refusal to limit himself to well-founded opinions forecloses the Court's reliance on his testimony.

And *third*, the Court observed Dr. Reilly's demeanor at trial, particularly when he was cross-examined, and found that it was dogmatic, defensive, and deliberately confrontational. His manner of testifying left the court with the impression that his goal was to be evocative rather than reliable.

Dr. Reilly testified about some of his social media posts, and that testimony confirms this impression. For example, he posted that "people in the hood" understand the "same taste[s] and drives" as Neanderthal rapists, and tried to qualify the post by stating that he did not mean the term "hood" in "an entirely racial sense." *Id.* at 838–40, 847. And Dr. Reilly's apparent surprise that the plaintiffs' "pa[id] a lot of attention" to his social media posts and overall credibility further diminishes the Court's willingness to credit his testimony and assign it great weight. *Id.* at 840.

For these reasons, the Court does not find Dr. Reilly's methods or conclusions reliable or helpful.

Dr. Carrington

The Court assigns no weight to Dr. Carrington's testimony. Dr. Carrington offered opinions about "the historical development of party affiliations among Alabama voters from comprising the core of the Democratic 'Solid South' to becoming a dependably Republican state." Doc. 189-3 at 1; *see* Tr. 1131–32. But he conceded that his education "did not have a particular focus on the American South," he has never taught courses relating to Alabama politics or history, and he is not an expert in Alabama politics or history. Tr. 1132–33, 1172. He has published two articles relating to Alabama in the nineteenth century, but no other work about Alabama. *Id.* at 1132.

At the outset, Dr. Carrington's very limited familiarity with Alabama history and politics greatly reduced the potential value of his testimony in the Court's "intensely local appraisal of the electoral mechanism[s]" in Alabama. *Allen*, 599 U.S. at 19 (internal quotation marks omitted) (quoting *Gingles*, 478 U.S. at 79). He exacerbated this limitation by making little to no effort to learn about Alabama before opining about party affiliations here.

Dr. Carrington admitted that he did not conduct an Alabama-specific analysis of state elections for his report. *See* Tr. 1133, 1189–90. Nor did he study how any of

the factors that he identified as contributing to party realignment in the South impacted the party realignment in Alabama. *See id.* 1188–89. He opined about "the sixth [Senate] factor, which confronts the question of whether or not . . . political campaigns have been characterized by overt or subtle racial appeals," Doc. 189-3 at 2 (internal quotation marks omitted), but he conceded that he did not evaluate any Alabama campaign materials aside from those Dr. Bagley identified, Tr. 1176–77. Dr. Carrington put forth so little effort to learn about Alabama that he opined about segregationist viewpoints and party affiliations, but with no knowledge of numerous relevant prominent civil rights figures from Alabama. *See id.* at 1192, 1203.

Dr. Carrington's willingness to opine about Alabama without first learning about Alabama extends beyond the courtroom. Before he was retained as an expert in this case, he authored an opinion piece calling the Supreme Court's ruling in the Alabama congressional redistricting litigation a "missed opportunity." *Id.* at 1209–11. On cross-examination about the piece, he distinguished his work as an op-ed columnist from his scholarly work. *Id.* at 1211.

Dr. Carrington's lack of relevant expertise, together with his carelessness, forecloses the Court's reliance on his testimony.

2. Senate Factor 2

"[T]he extent to which voting in the elections of the state or political subdivision is racially polarized." ***Gingles*****, 478 U.S. at 37.**

The Court has already found that voting in the challenged districts is starkly

and intensely racially polarized, and that finding is based on substantial evidence, concessions, and the material agreement of the Secretary's experts. *See supra* Part V.C. In his Senate Factor 2 argument, the Secretary urges this Court to examine the cause of that pattern and find that it is attributable to party politics, not racial causes. *See* Tr. 1667; Doc. 251 ¶ 219. The Secretary draws on case law warning courts that patterns do not tell the whole story of how voters vote because "what appears to be bloc voting on account of race may, instead, be the result of political or personal affiliation of different racial groups with different candidates." *Solomon*, 221 F.3d at 1225; *see* Doc. 251 ¶ 219.

But when the Court looks past the pattern in this case, it sees no evidence that only party politics are at work. *First*, the Secretary offers Dr. Hood's testimony to suggest that "[r]acial polarization in Alabama is a product of political partisanship, not racial bias." Doc. 251 at 60 (emphasis omitted); *see id.* ¶¶ 226–27, 244–46. The Court has already explained that the basis for Dr. Hood's testimony is quite limited. *See supra* Part V.D.1.

Second, the Secretary offers the testimony of Dr. Bonneau that based on his review of the evidence, "the explanation for the results in Alabama are far more consistent with political party" than race. Tr. 1460, 1543; *see* Doc. 189-1 at 17. Dr. Bonneau examined certain elections and straight-ticket voting. *See generally* Doc. 189-1.

But the Court finds Dr. Bonneau's evidence limited and the Secretary's arguments from it overdrawn. Dr. Bonneau's selected data included certain judicial elections in the state (which he has studied before, and which analysis contained an error that reversed his conclusions, *see* Tr. 56–57, 1413, 1517), two rounds of state legislative elections in 2022 (one of which was flagged by counsel, *id.* at 1520, and with a focus on the election of Representative Paschal, whose success Dr. Bonneau acknowledged as "rare," *id.* at 1521), and the 2018 election of Bill Lewis to a circuit judgeship in Alabama state court (which was flagged for him by counsel and which he acknowledged as "unusual," *id.* at 1523–24). *See* Doc. 189-1. Between limitations and flaws, the Court does not see that this limited subset of data has the potential to tell the Court very much about how to view the relative influence of race and party in modern Alabama legislative elections.

The Court also sees significant limitations on Dr. Bonneau's opinions about straight-ticket voting—that approximately two-thirds of Alabamians vote by "straight ticket," and "[t]he prevalence of straight ticket voting means that most voters are voting for a *political party*, not a candidate." Doc. 189-1 at 4; *see* Tr. 1424–26. As Dr. Liu pointed out, "Dr. Bonneau does not explain whether he has any knowledge of these voters directly, nor the racial identities of these straight-ticket voters nor localities/precincts the[] voters resided in." Doc. 206-18 at 4; *see* Tr. 56. And even Dr. Bonneau acknowledged that he could not rule out that Black

candidates were penalized at the polls on account of race. *See* Tr. 1530. Ultimately, Dr. Bonneau's limited evidence simply does not support the Secretary's assertion that it has "presented substantial evidence that a majority of [W]hite voters in Alabama vote against minority-preferred candidates not for racial reasons, but for partisan and ideological ones." Doc. 251 ¶ 223.

Third, in connection with the Secretary's reliance on Dr. Bonneau, the Secretary relies on a recent case involving a Section Two challenge to Alabama's at-large process for electing appellate judges: *Alabama State Conference of the NAACP v. Alabama*, 612 F. Supp. 3d 1232 (M.D. Ala. 2020). That court found that Alabama is a "ruby red" state, which has made it "virtually impossible for Democrats – of any race – to win statewide in Alabama in the past two decades." *Id.* at 1291. But that finding was based on an evidentiary record that is absent here. And read in context, that finding does not stand for the broad proposition that racially polarized voting in Alabama is always simply party politics; rather, it supports the more limited proposition that in that case, "the notion that African-American candidates lose solely because of their skin color [wa]s not supported by the evidence." *Id.* at 1293.

Further, the Court is not looking at a record about two decades' worth of racially polarized voting in selected judicial elections. This record demonstrates a near-total absence of Black Alabamians in statewide office and legislative office

(outside of Black-opportunity districts) that dates all the way back to Reconstruction. Accordingly, the Court cannot reach the same conclusion that the *Alabama State Conference of the NAACP* court reached, and it cannot assign the weight to its conclusion that the Secretary urges us to assign.

Fourth, the Secretary relies on the recent election of Representative Paschal from a majority-White Alabama House district and the success of other Black Republicans in the state. *See, e.g.*, Doc. 251 ¶¶ 243–45 (Representative Paschal); *id.* ¶ 247 (then-Judge Bill Lewis); *id.* ¶ 248 (Bill McCollum); *id.* ¶ 249 (Valerie Branyon). The Court does not diminish the inherent significance of Representative Paschal's unusual election, but one election of one Black Republican from one majority-White district in 150 years is hardly a sufficient basis for the Court to find that patterns of racially polarized voting are caused by party more than race. Dr. Bonneau cannot help but agree. Tr. 1521–22.

The Secretary also relies on lay witness testimony of three Black Republicans, but this evidence is similarly limited. Doc. 251 ¶¶ 248–52. Only one of those individuals, Cedric Coley, lived and voted in the Montgomery area. Further, Mr. Colely was unsuccessful in his campaign as a Republican and received only approximately nineteen percent of the vote in the primary election. *See* Tr. 1330.

Both Mr. McCollum and Ms. Branyon have been successful in either primary or general elections as Republican candidates in Fayette County, *see id.* at 1367 (Mr.

McCollum); *id.* at 850–51 (Ms. Branyon), but the Secretary offers no evidence for the Court to draw a larger inference that these two Black Republicans—neither of whom live or were elected in the Montgomery area—are evidence of a larger pattern of a lack of political cohesion among Black Alabamians. This absence of evidence makes sense—even Ms. Branyon testified that Black voters encouraged her to run for office as a Democrat. *Id.* at 876–77.

Dr. Bonneau also testified about the victory of Philip Ensler, a White Democrat, over a Malcolm Calhoun, a Black Democrat, in a majority-Black district in the 2022 House of Representative election. *See id.* at 1519–21; Doc. 189-1 at 10. Dr. Bonneau testified that this election is "[a]nother indication that race is not the driving force behind vote choice" in Alabama. Doc. 189-1 at 10. But he again conceded on cross examination that this election result is a "rare." Tr. 1520.

The Court cannot reconcile the Secretary's assertion that White voters are willing to support minority candidates in large numbers with political reality. If the Secretary were right about this, Representative Paschal, then-Judge Lewis, Mr. McCollum, Ms. Branyon, and Representative Ensler would not be rare, and they or someone similarly situated would have a role and presence in the area of the challenged district in this case.

Ultimately, the rarity of Black electoral success in Alabama tells the Court that the Secretary may be substantially overstating White voters' willingness to

support minority candidates, particularly in Montgomery. This inference is consistent with record evidence in several respects. *First*, Dr. Liu testified about two Montgomery-area elections that provide insight about White support for Black candidates in both political parties—the 2024 Republican primary for the Montgomery County Commission District 3 and in congressional District 2. *See* Doc. 206-18 at 3. In the 2024 Republican primary for the Montgomery County Commission, "Justin Castanza, a [W]hite candidate, ran against Cedric Coley, a Black candidate" and "Castanza won the Republican nomination with 80.38% of the votes cast." *Id*. In the 2024 Republican primary in congressional District 2, Dr. Liu explained that the four Black candidates finished behind the four White candidates, and the four Black candidates "together received only 6.2% of the total vote," which suggests that White Republicans are not willing to support minority candidates in large numbers. *Id.*

Second, several stipulated facts are to the same effect: (1) "In the 2024 Republican primary election for Alabama's U.S. Congressional District 3, Black candidate Barron Rae Bevels finished in third place behind two [W]hite candidates, receiving 5.6% of the vote."; (2) "In the 2024 special Republican primary election for Alabama State House District 27, Black candidate Billy Ray Todd finished fifth of six[th], behind four [W]hite candidates, receiving 8.7% of the vote."; (3) "In the 2022 Alabama Republican U.S. Senate primate, Black candidate Karla DuPriest

finished fifth behind four [W]hite candidates, receiving 0.9% of the vote." Doc. 230 ¶¶ 107, 109, 111.

Third, the Court heard substantial evidence suggesting that race is a driving factor in Black Alabamians' party affiliations and voting patterns. More particularly, this evidence concerned the high percentage of Black Alabamians' who agree with traditionally Republican stances on social issues like abortion or same-sex marriage, but who nevertheless vote overwhelmingly for Democratic candidates. For instance, Dr. Bagley testified that "roughly half of Alabama's [B]lack citizens oppose abortion in nearly all cases" and that "a substantial number of [B]lack Alabamians oppose same-sex marriage." Tr. 564. He testified that if such social issues were the primary factors driving voting, "we would expect to see a concomitant number of [B]lack voters in Alabama voting Republican. And we don't." *Id.* at 564–65; *see* Doc. 206-21 at 14. The Secretary's expert on this issue, Dr. Carrington, acknowledged but could not explain this phenomenon. *See* Tr. 1152–62.

Notably, lay witnesses for the Secretary, Ms. Branyon and Mr. McCollum, testified that they align with the Republican party because of their values. *See id.* at 851–52 (Ms. Branyon's testimony that she identifies as a Republican in part because of her religion and beliefs about abortion and same-sex marriage); *id.* at 1356 (Mr. McCollum's testimony that he aligns with the Republican party because of "conservative values"). But as explained above, there is no evidence that Mr.

McCollum and Ms. Branyon are examples of a broader trend of Black participation in the Republican party in Alabama, much less in Montgomery.

The Secretary urges the Court to focus on the voting patterns of White Alabamians. He argues that "White voters are the appropriate focus because it is their voting behavior, as that of the majority group, that allegedly causes [B]lack-preferred candidates to lose elections." Doc. 251 ¶ 267. The Secretary relies on Dr. Carrington's testimony about the party shift in the South that, he says, occurred because of "respective positions on non-racial issues—namely, economics, foreign policy, religion, abortion, and LGBTQ rights." *Id.* ¶ 271 (citing Doc. 189-3 at 21–29). But as explained above, the Court assigns no weight to Dr. Carrington's testimony. *See supra* Part V.D.1.

Further, the Secretary cannot have it both ways. The Court cannot consider the Secretary's argument that Black-preferred candidates do not enjoy success in Alabama elections because they run as Democrats without also considering the reasons why Black Alabamians are overwhelmingly politically cohesive in their affiliation with the Democratic party. In any event, the evidence described above simply does not support a finding that White voters vote for Black-preferred candidates or Black candidates, particularly in the Montgomery area, where the Court conducts its "intensely local appraisal." *Allen*, 599 U.S. at 19 (quoting *Gingles*, 478 U.S. at 79).

Finally, acknowledging that race plays a key role in party attachments keeps the controlling legal standard honest and workable. It would be deeply contradictory for that standard to demand political cohesion in a minority group for the second and third *Gingles* preconditions, then deny Section Two relief based on that same cohesion because party politics tilt Senate Factor 2 against the minority group. Put differently, the Court's analysis is not confounded by partisanship based on race. As the Court understands it, *Gingles* accounts for partisanship based on race in its demand for political cohesion among the minority group, which will be absent in times or places where party affiliations are driven primarily by something other than race.

The Court understands the statutory command about the totality of the circumstances as an instruction to look at the whole picture, not as permission (let alone a requirement) to carve it up into parts and examine each part in isolation from the others. When the Court considers the whole picture, it cannot understand the patterns it sees as mere party politics. It acknowledges the well-known reality that party affiliations drive voting patterns, but it understands this evidentiary record as indicating that the Court cannot separate voters' racial considerations from their party affiliations, and that it must not ignore the role that voters' race plays in their partisan attachments. Accordingly, the Court finds that when it looks at racial cleavages in voting patterns in Alabama, what it sees is appropriately described as

racially polarized voting, and Senate Factor 2 weighs in favor of the plaintiffs.

3. Senate Factor 7

"The extent to which members of the minority group have been elected to public office in the jurisdiction." ***Gingles*****, 478 U.S. at 37.**

The Court has little difficulty finding that Senate Factor 7 weighs heavily in favor of the plaintiffs.

Four jointly stipulated facts do most of the heavy lifting here:

> 93. There are currently no Black statewide elected officials in Alabama regardless of political party. Judge Lewis is a Black statewide official, but he was appointed to his position in 2024 and has not run in any election for that office.
>
> 94. Only one Black person has ever been elected to statewide office in a contested election in Alabama. In 1982 and 1988, the late Justice Oscar W. Adams, Jr. was elected in contested elections to two consecutive terms, after first being appointed. In 1994, Justice Ralph D. Cook won an unopposed statewide election, after first being appointed.
>
> 117. In 2024, 20.0% of State Senate seats and 24.8% of State House seats in Alabama are held by Black legislators. All but one of these Black House members are elected from majority-Black districts. All Black Senators are elected from majority-Black districts.
>
> 102. Since the start of the Twentieth century, Alabamians have never elected a Black person to Congress outside of the majority-Black district 7, and only since 1992 when a court order first established district 7 as a majority-Black district.

Doc. 230 ¶¶ 93–94, 102, 117. Since the time that the parties filed their jointly stipulated facts, a Black Alabamian won a seat in the United States House of

Representatives in District 2—a Black-opportunity district that was the result of Section Two litigation in the Alabama congressional districting cases.

The Secretary does not dispute that "Blacks have not been winning statewide elections in Alabama," but argues that this phenomenon is "because they have tended to run as Democrats," Tr. 1671—an argument that this Court has already rejected. *See supra* Part V.C.4. The Secretary does not (because he cannot) rebut the reality that Black Alabamians enjoy zero success in statewide elections, and near-zero success in legislative elections outside of Black-opportunity districts protected by federal law.

To be sure, Black Alabamians have made progress in electoral success. Dr. Hood reported that there were no Black Senators or Representatives in the Legislature in 1965, there were three Black Senators and thirteen Black Representatives in 1981, and there are currently seven Black Senators and twenty-six Black Representatives. Doc 251 ¶ 375 (citing Doc. 189-5 at 22).

But just as the Court refused to evaluate Black voters' partisan affiliations in a vacuum, it refuses to evaluate their electoral gains in a vacuum. Every gain in congressional elections has come as a result of federal law (primarily Section Two), and even Dr. Hood acknowledges that the reality is much the same for the gains in state legislative elections. *See* Tr. 1258–60. Accordingly, the Court rejects the Secretary's argument that Senate Factor 7 "has at best limited applicability to this

case." Doc. 251 ¶ 371. Senate Factor 7 weighs decidedly in favor of the Plaintiffs.

4. Senate Factors 1, 3, and 5

Senate Factor 1: "The extent of any history of official discrimination in the state . . . that touched the right of the members of the minority group to register, to vote, or otherwise participate in the democratic process." ***Gingles*****, 478 U.S. at 36–37.**

Senate Factor 3: "The extent to which the state . . . has used . . . voting practices or procedures that may enhance the opportunity for discrimination against the minority group." ***Id.*** **at 37.**

Senate Factor 5: "The extent to which members of the minority group in the state . . . bear the effects of discrimination in such areas as education, employment, and health, which hinder their ability to participate effectively in the political process." ***Id.***

The Court analyzes these three Senate Factors together because much of the evidence that is probative of one of them is probative of more than one of them. Alabama's history of racial and voting-related discrimination is undeniable and well documented. The Secretary argues that Alabama has come a long way, but the question before the Court is more pointed: has it come far enough for these factors to be neutral or to weigh in favor of the Secretary?

The Court is keenly aware of the instruction that "past discrimination cannot, in the manner of original sin, condemn governmental action that is not itself unlawful." *Abbott*, 585 U.S. at 603 (internal quotation marks omitted). It should be apparent that the Court does not assign Alabama's shameful history dispositive weight, and it does not grant Section Two relief simply because it condemns past

discrimination. The Court has carefully considered an extensive record about both past and present discrimination, and a wealth of expert analysis of recent data about Black Alabamians' lives and voting patterns, along with other evidence.

All the evidence about Senate Factors 1, 3, and 5 tells the same story: official discrimination on the basis of race has affected Black Alabamians' lives and political participation for a long time, and it continues to affect Black Alabamians' lives and political participation today. The Court first discusses the parties' stipulated facts that bear on these Senate Factors, then considers relevant Alabama litigation history, then considers the lay testimony that offered firsthand recollections about official discrimination, and then considers the expert testimony about socioeconomic disparities and their impact on political participation.

Stipulations

The parties' stipulated description of at least two instances of official discrimination that bear on Senate Factors 1 and 3: (1) "After the 2010 census, Black voters and legislators successfully challenged [twelve] state legislative districts as unconstitutional racial gerrymanders. *See Ala. Legis. Black Caucus v. Alabama*, 231 F. Supp. 3d 1026, 1348–49 (M.D. Ala. 2017)[,]" Doc. 230 ¶ 70; and (2) "More recently, a three-judge panel preliminarily enjoined two different congressional districting plans that had been adopted by the Alabama Legislature following the 2020 census. The three-judge court found that both the Legislature's 2021 plan and

2023 plan likely violate the Voting Rights Act, *see Milligan v. Merrill*, 582 F. Supp. 3d 924 (N.D. Ala. 2022), and *Milligan v. Allen*, 690 F. Supp. 3d 1226 (N.D. Ala. 2023)[,]" Doc. 230 ¶ 71. The parties jointly acknowledge that "[t]he former decision was upheld in full by the U.S. Supreme Court, *see Allen v. Milligan*, 599 U.S. 1, 22 (2023), and the latter was left in place after the Court declined to stay the injunction, *see Allen v. Milligan*, 144 S. Ct. 476 (2023)." Doc. 230 ¶ 71.

More recently, the three-judge court found that the Legislature's 2023 plan violated Section Two and that the Legislature intentionally discriminated against Black Alabamians by refusing to enact a plan with an additional Black opportunity district that the district court and the Supreme Court said was required. *See Singleton*, 2025 WL 1342947, at *125–71, 194–213.

Alabama's Litigation History

The Court next makes findings based on judicial precedents in Alabama:

- Prior to 1960, the Legislature failed to reapportion for 50 years. As a result, Alabama's entire legislative apportionment scheme was struck down for violating the principle of one person, one vote. *Reynolds*, 377 U.S. at 568. On remand, a three-judge court found that, in devising remedial maps to correct the malapportionment, the "Legislature intentionally aggregated predominantly Negro counties with predominantly [W]hite counties for the sole purpose of preventing the election of Negroes to [State] House membership." *Sims*, 247 F. Supp. at 109.
- Following *Reynolds* and the 1970 Census, the Legislature again failed to redistrict and a three-judge federal court was forced to draw new district lines. *Sims*, 336 F. Supp. at 940. The court rejected the Alabama Secretary of State's proposed map because of its racially "discriminatory effect" on Black voters. *Id*. at 936.

- In the 1980s, the United States Attorney General denied preclearance under the Voting Rights Act to maps drawn by the Legislature to redistrict State House and Senate maps because of their discriminatory effect on Black voters in Jefferson County and the Black Belt. Letter from Wm. Bradford Reynolds, Assistant Att'y Gen., C.R. Div., U.S. Dep't of Just., Hon. Charles A. Graddick, Ala. Att'y Gen. (May 6, 1982), https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/AL-1520.pdf. Shortly thereafter, a three-judge court rejected Alabama's proposed interim remedial state maps in part because Alabama's maps "had the effect of reducing the number of 'safe' [B]lack districts" in and near Jefferson County. *Burton v. Hobbie*, 543 F. Supp. 235, 237 (M.D. Ala. 1982).

- After the 1990 census, the State entered a consent decree to resolve a Voting Rights Act lawsuit filed on behalf of Black voters. *See Brooks*, 631 So. 2d at 884.

- In 1986, a federal court found that the state laws requiring numbered posts for nearly every at-large voting system in Alabama had been intentionally enacted to dilute Black voting strength, and that numbered posts had the effect of diluting Black voting strength in at-large elections. *Dillard v. Crenshaw County*, 640 F. Supp. 1347, 1357 (M.D. Ala. 1986). The court also found that from the late 1800s to the 1980s, Alabama had purposefully manipulated the method of electing local governments as needed to prevent Black citizens from electing their preferred candidates. *See id*.

- Federal courts recently ruled against or altered local at-large voting systems with numbered posts created by the Legislature to address their alleged racially discriminatory purpose or effect. *See, e.g.*, *Jones v. Jefferson Cnty. Bd. of Educ.*, No. 19-CV-01821, 2019 WL 7500528, at *2, *4, 2019 U.S. Dist. LEXIS 223556, at *9 (N.D. Ala. Dec. 16, 2019); *Ala. State Conf. of the NAACP v. City of Pleasant Grove*, No. 18-cv-02056, 2019 WL 5172371, at *1, 2019 U.S. Dist. LEXIS 179206 (N.D. Ala. Oct. 11, 2019).

- The Supreme Court struck down Alabama's discriminatory misdemeanant disfranchisement law, *Hunter v. Underwood*, 471 U.S. 222, 225 (1985), and a state law permitting certain discriminatory annexations, *City of Pleasant Grove v. United States*, 479 U.S. 462, 466–67, 472 (1987).

- Since the decision in *Shelby County v. Holder*, federal courts have ordered more than one political subdivision in Alabama to be bailed back into preclearance review under Section 3(c) of the Voting Rights Act. *See Jones*,

2019 WL 7500528, at *4–5, 2019 U.S. Dist. LEXIS 223556, at *12; *Allen v. City of Evergreen*, No. 13-0107, 2014 WL 12607819, at *2, 2014 U.S. Dist. LEXIS 191739, at *3–4 (S.D. Ala. Jan. 13, 2014).

- In 2018, in a case challenging the attempt by the City of Gardendale, which is 85% White, to form a school district separate from Jefferson County's more racially diverse district, the Eleventh Circuit affirmed a finding that "race was a motivating factor" in the city's effort. *Stout ex rel. Stout v. Jefferson Cnty. Bd. of Educ.*, 882 F.3d 988, 1000, 1009 (11th Cir. 2018).

- Alabama was subjected to a statewide injunction prohibiting the state from failing to disestablish its racially dual school system. *Lee v. Macon Cnty. Bd. of Educ.*, 267 F. Supp. 458, 480 (M.D. Ala. 1967) (per curiam), *aff'd sub nom. Wallace v. United States*, 389 U.S. 215 (1967). The order resulted from the court's finding that the State Board of Education, through Governor George Wallace, had previously wielded its powers to maintain segregation across the state. *Id.* at 462. A trial court found that for decades, state officials ignored their duties under the statewide desegregation order. *See Lee v. Lee Cnty. Bd. of Educ.*, 963 F. Supp. 1122, 1128–30 (M.D. Ala. 1997). A court also found that the state did not satisfy its obligations to remedy the vestiges of segregation under this order until as late as 2007. *Lee v. Lee Cnty. Bd. of Educ.*, 476 F. Supp. 2d 1356, 1367–68 (M.D. Ala. 2007).

- In 1991, a trial court in *Knight v. Alabama*, 787 F. Supp. 1030 (N.D. Ala. 1991), found that Alabama had failed to eliminate the lingering and continued effects of segregation and discrimination in the University of Alabama and Auburn University, and at the state's public Historically Black Colleges and Universities. *See id.* at 1377–78. In 1995, the trial court issued a remedial decree analogous to the statewide injunction issued in *Lee v. Macon*, and the court oversaw implementation of that order for over a decade. *Knight v. Alabama*, 900 F. Supp. 272, 349–73 (N.D. Ala. 1995). Alabama did not satisfy its obligations under that order until 2006. *Knight v. Alabama*, 469 F. Supp. 2d 1016, 1039 (N.D. Ala. 2006).

- After the 2010 census, Black voters and legislators successfully challenged twelve state legislative districts as unconstitutional racial gerrymanders. *See Ala. Legis. Black Caucus*, 231 F. Supp. 3d at 1348–49.

- In *United States v. McGregor*, 824 F. Supp. 2d 1339, 1345–47 (M.D. Ala. 2011), a federal court found that Alabama State Senators conspired to depress Black voter turnout by keeping a referendum issue popular among Black

voters (whom the Senators called "Aborigines") off the ballot.

Singleton, 2025 WL 1342947, at *158–59.

These judicial precedents illuminate a pervasive and protracted history of official discrimination in voting rights in Alabama. This history spans numerous electoral contexts, census cycles, and jurisdictions. In multiple cases it has run well into the present era: several of the decisions recited above were issued in the last ten years and by federal judges who remain in service today. Against that backdrop, the Court turns to the evidentiary record in the case before it.

Lay Testimony About Firsthand Experiences of Official Discrimination

The Court heard at trial compelling testimony from Black Alabamians who personally experienced official discrimination, including several who attended segregated public schools. They described their experiences in detail:

- Evan Milligan, a Black Alabamian who was forty-three years old at the time of trial, testified about witnessing demonstrations by the Ku Klux Klan while growing up in Montgomery. Tr. 453, 459.
- Mary Peoples attended a segregated elementary and high school in Alabama. *Id.* at 122. She testified that both of her children attended "[p]redominantly [B]lack" high schools in Huntsville. *Id.* at 127.
- Senator McClendon testified that he attended a segregated, all White high school. Doc. 235-1 at 82.
- Bill McCollum testified that when he was originally hired as a police officer for the Fayette County Police Department, "the other officers said they [were not] going to work with [him]. . . . And said they'd quit before they'd work with a [B]lack and things of that nature." Tr. 1363. Mr. McCollum was also once asked to leave a restaurant because "it did not serve [B]lack people." *Id.* at 1374.

- When Mr. McCollum first ran for sheriff, the county administrator told him that "he didn't know if . . . he could register" Mr. McCollum to qualify as a candidate and made him wait in the courthouse for approximately three hours before returning to say that he could qualify. *Id.* at 1363–64. Mr. McCollum was the first Black candidate to qualify for an election in Fayette County. *Id.* at 1364.

The Secretary does not dispute these firsthand recollections. Instead, he asserts that this evidence cuts in his favor—that the "[p]laintiffs did not present a witness whose political participation was hampered by past discrimination" because the witnesses who are "old enough to have attended segregated schools . . . are all extremely politically active." Doc. 251 ¶ 338.

The Court emphatically rejects this assertion. It does not see political activism as evidence that these witnesses were not adversely affected by the official discrimination they experienced. It sees that they are politically active both despite that discrimination and because they experienced its harmful effects. Additionally, the Court refuses to give punitive effect to the political participation of Black Alabamians who have personally suffered the ill effects of official discrimination and responded with civic engagement in the democracy that discriminated against them.

Expert Testimony

The Court also has the benefit of expert testimony from both parties about these Senate Factors—from Dr. Bagley and Dr. Burch for the plaintiffs and Dr. Hood, Dr. Reilly, and Dr. Carrington for the Secretary. As an initial matter, the Court

repeats its findings that both Dr. Bagley and Dr. Burch are credible experts (even though it does not adopt or rely on every aspect of their testimony), and that the Court assigns less or no weight to the testimony of Dr. Reilly and Dr. Carrington. *See supra* at Part V.D.1. As explained below, the Court credits Dr. Hood's limited testimony about these Senate Factors and finds it irrelevant.

Dr. Bagley opined at length about Alabama's history of official discrimination, particularly with respect to voting rights and redistricting. *See* Docs. 206-19, 206-21. The Court already made findings about that history based on extensive judicial precedents, *see supra* Part V.D.4, and it regards those precedents as generally sufficient to establish the history. But Dr. Bagley did give the Court one additional detail about the history that illuminates its scope and recency: that school desegregation litigation in Huntsville and Madison County remains ongoing in federal courts to this day. Doc. 206-19 at 23.

Dr. Bagley and Dr. Burch both opined about socioeconomic disparities between Black Alabamians and White Alabamians on numerous dimensions: education, economics, housing, and health, among others. *See* Docs. 206-19, 206-11. The Court finds that many of these disparities are substantial and undeniable.

As one example, Dr. Bagley testified that the Black population in Huntsville and Montgomery are "more likely to live in poverty," "more likely to be unemployed," "more likely to rely on food assistance benefits," "less likely to have

broadband Internet service or any Internet access," and "less likely to have health insurance." Tr. 546; *see* Doc. 206-19 at 21. As another example, he testified that eleven of the schools labeled by the state as "'[f]ailing'" were predominantly Black public schools in Montgomery. Doc. 206-19 at 25.

Dr. Burch also identified substantial disparities, but from a systematic, statistical perspective. She testified that the unemployment rate for Black workers in Alabama is nearly twice that of White workers; the family poverty rate for Black Alabamians is nearly triple the rate for White Alabamians (and in Montgomery specifically, six times as high); the infant mortality rate for Black infants in Alabama is nearly three times higher than the rate for White infants in Alabama; and Black Alabama households are more than twice as likely to lack access to a vehicle at home than White Alabama households (and in Montgomery specifically, almost three times more likely). *See* Doc. 206-11 at 12–13, 15–17; Tr. 680–82, 685.

The Court also credits Dr. Burch's testimony that Black Alabamians have significantly lower educational attainment than White Alabamians. She reported that "[s]tatewide and at the county level, Black adult Alabamians were less likely to have graduated from high school or to have attained a bachelor's degree than White Alabama adults." Doc. 206-11 at 3. She also reported data establishing stark disparities among school-aged children. *See id.* at 9 n.31; Tr. 675.

Dr. Bagley and Dr. Burch both opined that these disparities are inseparable

from (and in large part the result of) the state's history of official discrimination. Dr. Bagley explained that from an historian's perspective, there is no way to account for these disparities "other than the state's history of discrimination." Tr. 554. And Dr. Burch explained that Black Alabamians' lower educational attainment in particular is "caused, in part, by historical and contemporary discrimination in education," including "separate-but-unequal" education. Doc. 206-11 at 9; *see* Tr. 675–78. And Dr. Burch linked educational attainment with "income, poverty, and employment," meaning that Black Alabamians' lower educational attainment in turn drives other socioeconomic disparities. Doc. 206-11 at 12.

The Court credits these explanations and accepts the experts' consensus that Black Alabamians' lower educational attainment is traceable to segregated public schools and dilapidated schools in predominantly-Black areas. Likewise, it seems near-obvious that communities with lower educational attainment are at greater risk for widespread unemployment and poverty than communities with higher educational attainment.

Dr. Bagley and Dr. Burch also opined that many of these disparities hinder Black Alabamians' opportunity to participate in the political process. Dr. Bagley reiterated his earlier explanation (1) that "[b]ecause [W]hite Alabamians tend to have more education and therefore higher income than Black Alabamians," White Alabamians "tend to be better able than Black Alabamians to afford a car, internet

service, a personal computer, or a smart phone; . . . take time off from work; . . . afford to contribute to political campaigns; . . . afford to run for office; . . . [and to] have access to better healthcare, and (2) that [e]ducation has repeatedly been found to correlate with income [and] independently affects citizens' ability to engage politically." Doc. 206-19 at 21 (internal quotation marks omitted).

Dr. Burch relied on a well-established scholarly consensus linking critical disparities to political participation. She testified that educational attainment is "very strongly associated with voting," Tr. 672, "[t]he powerful relationship between education and voter turnout is arguably the most well-documented and robust finding in American survey research," and "the relationship between education and voting is a causal one," Doc. 206-11 at 8–9 (internal quotation marks and citation omitted).

Dr. Burch specifically explained how Alabama's history of segregated public schools still impacts voting participation today: "In 2020 . . . 38.6 percent of votes in [the Alabama] general election were cast by people age 60 and older, people who were at least school age in 1965, which means they were partially educated during a time when Alabama still had segregated public schools." Tr. 676.

Dr. Burch further explained that lower educational attainment impacts other socioeconomic factors that also affect voting rates for Black Alabamians. She explained how racial disparities in family poverty, internet access, and access to

transportation hamper voting participation due to an inability to learn about candidates, absentee vote, locate voting information, and travel to polls. *See id.* 678, 684–86.

The Court credits this testimony, which is not disputed, and the Court says again that these are dynamics that strike the Court as near-obvious. That said, the Court does not make findings about all of Dr. Bagley's testimony, nor all of Dr. Burch's. It does not make findings about every instance of alleged official discrimination that was discussed in expert reports or at trial, nor every disparity that was discussed. For example, the Court makes no findings about racial disparities in interactions with the criminal justice system. Further, it makes no findings about the idea that Dr. Burch testified about, sometimes labeled as "structural racism," that attributes most or all socioeconomic disparities or other differences in the lives of Black Alabamians and White Alabamians to discrimination. The Court makes only those findings necessary to reach a conclusion about these Senate Factors, and no more.

In that regard, the Court says simply that the record reflects (without meaningful dispute) stark racial socioeconomic disparities that (1) are clearly traceable to Alabama's lengthy history of official discrimination, and (2) unsurprisingly hinder Black Alabamians' political participation.

The Court rejects the Secretary's argument, based on the testimony of Dr.

Hood and Dr. Reilly, that these kinds of racial disparities are everywhere in the United States, such that if they are assigned substantial weight, they will invariably drive a finding that the totality of the circumstances supports a Section Two plaintiff. Doc. 251 ¶¶ 307–13. This is for two reasons. *First*, the Secretary's assertion is overwrought: the Court does not consider socioeconomic disparities, nor their causes or effects, nor any other Senate Factor, in a vacuum. And the Court does not grant Section Two relief simply because Black Alabamians are worse off than White Alabamians on various metrics—the Court has analyzed substantial other evidence.

Federal law makes crystal clear that this is the legal standard, as it has for forty years, so the Court harbors no concern that any other federal court will grant Section Two relief simply because of socioeconomic disparities across races. For example, when racially polarized voting is absent, socioeconomic disparities alone will not support Section Two relief. Likewise, as evidenced by the Huntsville-area claim in this case, when a reasonably configured remedial district cannot be drawn because the minority population is too geographically dispersed, socioeconomic disparities alone will not support Section Two relief.

Second, the Secretary's assertion is too narrowly focused. The Court must do more than simply crunch numbers to analyze these Senate Factors properly. The bare fact of a statistical disparity is important, but insufficient, to generate a clear understanding of the presence or absence of the Factors.

5. Senate Factor 6

"Whether political campaigns have been characterized by overt or subtle racial appeals." ***Gingles*****, 478 U.S. at 37.**

The Court finds that Senate Factor 6 weights in favor of the plaintiffs, but to a lesser degree than do Senate Factors 2, 7, 1, 3, and 5. Dr. Bagley offered several examples of racial campaign appeals in his expert report, *see* Doc. 206-19 at 30–33, some of which he testified about at trial. The Court need not decide whether every example reflected a racial appeal, but at least three of them did.

Dr. Bagley testified about the 2017 United States Senate campaign between former Chief Justice of the Alabama Supreme Court Roy Moore and former United States Senator Doug Jones, and he testified that "both candidates in that campaign relied on racial appeals." Tr. 555. Roy Moore, who is White, acclaimed the antebellum period in the South as "'great at the time when families were united – even though we had slavery. They cared for one another. People were strong in the families. Our families were strong. Our country had a direction.'" Doc. 206-19 at 32–33; *see* Tr. 556. Doug Jones, who is White, "sent mailers to Black voters indicating that Moore . . . had fought to preserve segregation and had ties to hate groups like Ku Klux Klan" and "argued that Moore was thus 'not on our side,' in an apparent reference to racial 'sides.'" Doc. 206-19 at 33; *see* Tr. 558. Another mailer "featured the skeptical face of a [B]lack man with the appeal: 'Think if a [B]lack man went after high school girls [as Moore was alleged to have done] anyone would

try to make him a senator?'" Doc. 206-19 at 33; *see* Tr. 558–59.

The Secretary argues that Senator Jones's mailers cannot be evidence of vote dilution because the ads were designed "to pull [B]lack voters into the process." Tr. 1671; *see* Doc. 251 ¶¶ 365–67. But he does not dispute that they targeted Black voters, and Senate Factor 6 does not limit racial appeals in political campaigns to those that target White voters.

As another example, former Alabama Supreme Court Chief Justice Tom Parker stated that he had "'taken on and beaten the Southern Poverty Law Center,'" which is "a well-known Montgomery-based race advocacy organization," in an advertisement showing "images of an African-American Democratic congresswoman from California." Doc 206-19 at 33 (some internal quotation marks omitted) (quoting *Ala. State Conf. of NAACP*, 612 F. Supp. at 1309).

The Secretary argues that even if this campaign ad may be construed as a racial appeal, it "'do[es] not demonstrate a pattern, practice, or routine of racial appeals across the election landscape.'" Doc. 251 ¶ 368 (quoting *Ala. State Conf. of NAACP*, 612 F. Supp. at 1311); *see* Tr. 1670. There is no dispute that the statement was made as part of a campaign, nor that it is a racial appeal.

Based on this evidence, the Court finds that there is some evidence of racial appeals in Alabama campaigns, and Senate Factor 6 tilts in favor of the plaintiffs. At the same time, the Court cannot find that this factor weighs as heavily in favor of

the plaintiffs as the other factors that have already been discussed. Although the examples described above are prominent and recent, the record does not contain any systematic or statistical evaluation of the extent to which political campaigns are characterized by racial appeals, so the Court cannot determine whether these examples indicate that racial appeals occur frequently, regularly, occasionally, or rarely.

6. Senate Factor 8

"Whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group." ***Gingles*, 478 U.S. at 37.**

The parties dispute whether the decisions that form the basis for their arguments about this factor are political or race-based. The Court declines to make a broad finding about the many public policy arguments the plaintiffs raise.

But evidence of a recent and significant occurrence tilts this factor in favor of the plaintiffs: the Legislature's refusal to draw an additional remedial district in its 2023 congressional districting plan after a three-judge district court and the Supreme Court determined that the congressional districting plan likely violated Section Two. In spite of these rulings, the Legislature convened, enacted new districting criteria that made the additional remedial district impossible to draw, and passed a new map that it admitted did not contain the additional remedial district. *See Singleton*, 2025 WL 1342947, at *18. After a trial, that three-judge court found not only that the

Legislature failed to respond to the particularized needs of Black Alabamians, *see id.* at *169–70, but also that the Legislature intentional discriminated against them, *see id.* at *197–213. Those findings are on appeal to the Supreme Court.

The Secretary argues that the Legislature's decision to pass the 2023 congressional plan does not demonstrate a lack of responsiveness to the needs of Black Alabamians in Montgomery. *See* Doc. 251 ¶¶ 379–82. He contends that the Legislature's decision to enact the 2023 plan based on its view of "what [Section Two] requires . . . does not necessarily communicate a purpose of discriminating against [B]lack Alabamians or refusing to respond to their needs." *Id.* ¶ 380. And he suggests that the Legislature's decision was driven by its "desire to avoid racial gerrymandering liability." *Id.* ¶ 381.

The Court cannot ignore that when the Legislature was faced with federal court orders finding likely vote dilution based on race, the Legislature responded with a plan that it admitted did not provide the required remedy for that dilution. The Court thus finds that Senate Factor 8 tilts in favor of the plaintiffs.

7. Senate Factor 9 and 4

Senate Factor 9: Whether the policy underlying the Plan is "tenuous." ***Gingles*****, 478 U.S. at 37.**

Senate Factor 4: "[I]f there is a candidate slating process, whether the members of the minority group have been denied access to that process[.]" ***Id.***

The Court makes no findings about Senate Factors 4 and 9.

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Ultimately, the Court finds that every Senate Factor that it was able to make a finding about weighs in favor of the plaintiffs, and that no Senate Factors or other circumstances considered at this stage weigh in favor of the Secretary. The Court thus finds that the plaintiffs have established every element of a violation of Section Two in the Montgomery area, including that: (1) as a group, Black Alabamians are sufficiently numerous and geographically compact to constitute a voting-age majority in an additional reasonably configured Senate district in the Montgomery area; (2) voting in the challenged district is intensely racially polarized, such that Black voters are (nearly always) politically cohesive; (3) White voters ordinarily (nearly invariably) vote as a bloc to defeat Black-preferred candidates; and (4) under the totality of the circumstances in Alabama today, including all the relevant Senate Factors that the Court must consider, Black voters have less opportunity than other Alabamians to elect candidates of their choice to the Alabama Senate.

The Court turns to the Secretary's legal arguments.

E. Section Two is privately enforceable.

In the congressional districting litigation, the three-judge court (of which the undersigned was a member) rejected the assertion that Section Two is not privately enforceable. *See Singleton*, 2025 WL 1342947, at *171-81; *see also Caster*, No. 2:21-cv-1536-AMM, Doc. 401 at 446–73. The arguments about this issue in that

litigation were nearly identical to the arguments about this issue in this case. Accordingly, the Court adopts as its own, adapts as appropriate, and recites the relevant analysis of the three-judge court, as follows:

Since the passage of the Voting Rights Act, federal courts across the country, including both the Supreme Court and the Eleventh Circuit, have considered numerous Section Two cases brought by private plaintiffs. *See, e.g.*, *Allen*, 599 U.S. 1; *Brnovich*, 594 U.S. 647; *Bartlett*, 556 U.S. 1; *LULAC*, 548 U.S. 399; *Voinovich*, 507 U.S. 146; *Chisom v. Roemer*, 501 U.S. 380 (1991); *Hous. Laws.' Ass'n v. Att'y Gen. of Tex.*, 501 U.S. 419 (1991); *Gingles*, 478 U.S. 30; *Wright*, 979 F.3d 1282. And on the other side of the scale, only one federal appellate court—the United States Court of Appeals for the Eighth Circuit—has held that private parties may not sue to enforce Section Two. *See generally Ark. State Conf. NAACP v. Ark. Bd. of Apportionment*, 86 F.4th 1204 (8th Cir. 2023).

Accordingly, if the Court were to accept the Secretary's argument that private parties may not enforce Section Two, it would seriously disrupt longstanding and consistent federal law on this issue. The Court is not inclined to take that step.

The Court already rejected the Secretary's argument that Section Two is not privately enforceable in its order denying his motion to dismiss. *See* Doc. 143 at 17–20. Because the Secretary repeated the argument, Doc. 247; Doc. 229 at 6, the Court addresses it again.

1. Text of Section Two

Federal law supplies two potential vehicles for private plaintiffs to sue under Section Two: either by way of a private right of action contained in Section Two itself, or pursuant to 42 U.S.C. § 1983 ("Section 1983"). Section Two contains no express private right of action, so the dispositive question is whether one is implied. To establish an implied private right of action, plaintiffs must show that Section Two confers both a private right and a private remedy. *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001). If there is a private right, then private plaintiffs can presumptively sue under Section 1983, unless defendants show that Congress shut the door to a Section 1983 suit. *Gonzaga Univ. v. Doe*, 536 U.S. 273, 284 & n.4 (2002). Then–Chief Justice Rehnquist, writing for the majority in *Gonzaga*, reasoned this way:

> Plaintiffs suing under § 1983 do not have the burden of showing an intent to create a private remedy because § 1983 generally supplies a remedy for the vindication of rights secured by federal statutes. Once a plaintiff demonstrates that a statute confers an individual right, the right is presumptively enforceable by § 1983.

Id. at 284 (internal citation omitted). And then, the Secretary must "demonstrate that Congress shut the door to private enforcement." *Id.* at 284 n.4.

The Secretary concedes that Section Two created "new remedies," but contends those remedies were only public, not private. *See* Doc. 131 at 14–21. And the Secretary has not given any reasons why he believes Section Two did not create a private remedy separate and apart from the reasons why he asserts Section Two

did not create a private right. *See* Doc. 131 at 12–31.

The plaintiffs have availed themselves of Section 1983, Doc. 126 ¶¶ 170–76, and the Secretary does not assert that Congress has shut the door to a remedy under Section 1983, *see* Doc. 131 at 12–31, 20 n. 3. Accordingly, the essential question before the Court is whether Section Two creates a private right. If the Court concludes that it does, there is no basis to accept the Secretary's argument that Section Two is not privately enforceable.

Although the task of determining whether Section Two contains a private right is the Court's, the creation of that right (if it exists) is an exclusively legislative authority. "Like substantive federal law itself, private rights of action to enforce federal law must be created by Congress. The judicial task is to interpret the statute Congress has passed to determine whether it displays an intent to create not just a private right but also a private remedy." *Sandoval*, 532 U.S. at 286 (internal citation omitted). Accordingly, the Court examines at the threshold "whether Congress *intended to create a federal right*." *Gonzaga*, 536 U.S. at 283.

A statute confers a private right "where the provision in question is phrased in terms of the persons benefitted and contains rights-creating, individual-centric language with an unmistakable focus on the benefited class." *Health & Hosp. Corp. of Marion Cnty. v. Talevski*, 599 U.S. 166, 183 (2023) (internal quotation marks omitted) (quoting *Gonzaga*, 536 U.S. at 284, 287). A statute does not confer a private

right when it contains no rights-creating language or focuses on persons or entities other than the benefited class. *See, e.g.*, *Sandoval*, 532 U.S. at 288–89.

The most recent binding Supreme Court precedent about rights-creating language is *Health & Hospital Corporation of Marion County*, 599 U.S. 166 (2023), a case concerning two statutory provisions about the rights of nursing home residents. *Id.* at 171. The Court applies here the same methodology the Supreme Court used to decide that case, which can be summarized in this way:

- First, the Court began its analysis by observing that the statutory provisions at issue "reside in" a statutory section that "expressly concerns '[r]equirements relating to residents' rights.'" *Id.* at 184 (emphasis omitted) (quoting 42 U.S.C. § 1396r(c)). In assigning weight to this observation, the Supreme Court relied on (1) the rule that "statutory provisions 'must be read in their context,'" and (2) the recognition in *Gonzaga* that "[t]his framing is indicative of an individual 'rights-creating' focus." *Id.* (first quoting *West Virginia v. EPA*, 597 U.S. 697, 721 (2022); and then quoting *Gonzaga*, 536 U.S. at 284).

- Next, the Court reviewed each statutory provision at issue and found that each one (1) discussed a specific right held by residents, with (2) a repeated focus on residents. *See id.* at 184–85.

- Then, the Court observed that the statutory provisions also discussed nursing homes, but found that this discussion did not undermine the focus of the provisions on residents' rights. The Court reasoned that "it would be strange to hold that a statutory provision fails to secure rights simply because it considers, alongside the rights bearers, the actors that might threaten those rights." *Id.* at 185.

- Finally, the Court distinguished the statutory provisions from the provisions in *Gonzaga*, which "lacked 'rights-creating language,' primarily directed the Federal Government's distribution of public funds, and had an aggregate, not individual, focus." *Id.* at 185–86 (quoting *Gonzaga*, 536 U.S. at 290).

Like the provisions at issue in *Health & Hospital Corporation of Marion*

County, Section Two resides in a statutory section that expressly concerns rights—in this case, voting rights for members of a class protected from discrimination based on race or color. The title of Section Two is "[d]enial or abridgement of right to vote on account of race or color through voting qualifications or prerequisites; establishment of violation." 52 U.S.C. § 10301. Following the Supreme Court's lead, the Court takes this context and framing as "indicative of an individual 'rights-creating' focus." *Health & Hosp. Corp. of Marion Cnty.*, 599 U.S. at 184 (quoting *Gonzaga*, 536 U.S. at 284).

Further, subsection (a) of Section Two expressly discusses "the right of any citizen of the United States to vote," and it expressly prohibits voting practices that abridge voting rights based on race, color, or language-minority status. 52 U.S.C. § 10301(a) (incorporating by reference 52 U.S.C. § 10303(f)(2)). And subsection (b) expressly discusses the voting rights of persons who are "members of a class of citizens protected by subsection (a)." *Id.* § 10301(b). In the next sentence, subsection (b) refers twice to "members of a protected class." *Id.* Together, these subsections protect citizens in the enumerated class from voting practices with discriminatory results, not just voting practices based on discriminatory intent (which the Fifteenth Amendment forbids based on race or color). *See Reno v. Bossier Par. Sch. Bd.*, 520 U.S. 471, 482 (1997); U.S. Const. amend. XV. Because Section Two is comprised only of a title and three sentences of text, the upshot of the foregoing analysis is that

every sentence of Section Two either refers to rights of the benefited class, contains rights-creating language that creates new rights for that specific class, or expressly focuses on the benefited class.

This precise and repetitive focus on the benefitted class distinguishes Section Two from the statutes at issue in *Sandoval* and *Gonzaga*, which the Supreme Court concluded did not confer implied private rights of action. In *Sandoval*, the statute at issue—Section 602 of Title VI of the Civil Rights Act, 42 U.S.C. § 2000d-1—did not even mention the benefited class: it said merely that "[e]ach Federal department and agency . . . is authorized and directed to effectuate the provisions of [Section 601]." 532 U.S. at 288–89 (quoting 42 U.S.C. § 2000d-1). Thus, the Court found that "the focus of § 602 is twice removed from the individuals who will ultimately benefit from Title VI's protection" because it "focuses neither on the individuals protected nor even on the funding recipients being regulated, but on the agencies that will do the regulating." *Id.* at 289.

Likewise, *Gonzaga* considered provisions of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g ("FERPA"). *Gonzaga*, 536 U.S. at 278. One such provision stated that: "No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records . . . of students without the written consent of their parents . . . ," *id.* at 279 (quoting 20 U.S.C. § 1232g(b)(1)),

while another "direct[ed] the Secretary of Education to enforce this and other of the Act's spending conditions," *id.* (citing 20 U.S.C. § 1232g(f)). The Court found that the focus of these provisions was also "two steps removed from the interests of" the benefited class because they "speak only to" the regulating agency. *Id.* at 287. The Court concluded that the provisions at issue did not imply a private right because they "contain no rights-creating language, they have an aggregate, not individual, focus, and they serve primarily to direct the [regulating agency's] distribution of public funds to educational institutions." *Id.* at 290.

Unlike the statutes in *Sandoval* and *Gonzaga*, the language of Section Two "focuses . . . on the individuals protected." *Sandoval*, 532 U.S. at 289. It explicitly protects "the right of any citizen of the United States to vote" without being discriminated against, and then refers repeatedly to "members of a protected class," or some variation of that phrase. *See* 52 U.S.C. § 10301. It "serve[s] primarily" to protect citizens' rights and to prevent states from interfering with those rights. *See Gonzaga*, 536 U.S. at 290. If all of this is not rights-creating language with an "unmistakable focus on the benefited class," *Cannon v. Univ. of Chi.*, 441 U.S. 677, 691 (1979), it is difficult to imagine what is.

Indeed, Section Fourteen of the Voting Rights Act reinforces the idea that Congress contemplated suits by private parties when it enacted Section Two. Section 14(e) provides: "In any action or proceeding to enforce the voting guarantees of the

fourteenth or fifteenth amendment, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, reasonable expert fees, and other reasonable litigation expenses as part of the costs." 52 U.S.C. § 10310(e). "[A]ny action or proceeding to enforce the voting guarantees of the fourteenth or fifteenth amendment" means *all* such actions or proceedings, because where Congress uses the word "any" and "'did not add any language limiting the breadth of that word,' . . . 'any' means all." *Merritt v. Dillard Paper Co.*, 120 F.3d 1181, 1186 (11th Cir. 1997) (quoting *United States v. Gonzales*, 520 U.S. 1, 5 (1997))); *see also Deroy v. Carnival Corp.*, 963 F.3d 1302, 1316 (11th Cir. 2020) (recognizing that, in a statute, "'any' means 'every' or 'all'" (citing *United States v. Castro*, 837 F.2d 441, 445 (11th Cir. 1988))). And Section Two is unambiguously an action or proceeding to "enforce the voting guarantees of the . . . fifteenth amendment." 52 U.S.C. § 10310(e); *see Brnovich*, 594 U.S. at 656. Section Fourteen therefore anticipates that private litigants will sue to "enforce the guarantees of the . . . fifteenth amendment" alongside the United States. 52 U.S.C. § 10310(e).

The Eighth Circuit says, however, that the term "prevailing party" here refers only to defendants. *Ark. State Conf. NAACP*, 86 F.4th at 1213 n.4. As the Court sees it, that offers too strained a reading of the statute. Congress specified that a "prevailing party, other than the United States" should receive attorneys' fees, not that a "defendant" should receive attorneys' fees—which would have been a much

simpler and more direct way to prescribe that outcome, if that is what Congress had intended. In fact, the Supreme Court has construed identical language found in the attorney-fee provision of Title II of the Civil Rights Act of 1964, 42 U.S.C. § 2000a-3(a) ("CRA"),[9] to refer to private plaintiffs. *See Newman v. Piggie Park Enters., Inc.*, 390 U.S. 400, 401 n.1, 402 (1968) (per curiam) (holding that the term "prevailing party, other than the United States" in Title II's attorney-fee provision refers to private plaintiffs); *see also id.* at 402 ("Congress . . . enacted the provision for counsel fees [in Title II of the CRA] . . . to encourage individuals injured by racial discrimination to seek judicial relief under Title II."). Moreover, Congress has specifically stated that it intended private parties to be able to recover attorneys' fees if they prevailed on Section Two claims: Congress explained that "[f]ee awards are a necessary means of enabling *private citizens* to vindicate these Federal rights." *See* S. Rep. No. 94-295, at 40 (1975) (emphasis added); *see also* H. Rep. No. 97-227, at 32 (1981) ("It is intended that citizens have a private cause of action to enforce their rights under Section 2. . . . If they prevail they are entitled to attorneys' fees under [Section 14(e)] and [42 U.S.C. §] 1988.").

"[T]he words of a statute must be read in their context and with a view to their

[9] The CRA's attorney-fee provision reads as follows: "In any action commenced pursuant to this subchapter, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, and the United States shall be liable for costs the same as a private person." 42 U.S.C. § 2000a-3(b).

place in the overall statutory scheme." *West Virginia*, 597 U.S. at 721. Thus, the reference in Section Fourteen of the Voting Rights Act to private plaintiffs suing to enforce their voting rights supports the determination that Section Two contains a private right of action. Viewing Section Two along with Section Fourteen reinforces Congress's intention to allow private parties to sue to enforce their right to vote free from discrimination. *See Morse v. Republican Party of Va.*, 517 U.S. 186, 234 (1996) (reasoning that the language referring to a "prevailing party, other than the United States" in Section Fourteen indicates "the existence of a private right of action under § 10").

As far as the Court can tell, no court has held under the first step of the analysis that Section Two does not create a private right. Rather, the one circuit court that has concluded that Section Two does not confer a private right of action, the Eighth Circuit, rested its decision on the second step of the analysis—a determination that Section Two does not create a private remedy. *See Ark. State Conf. NAACP*, 86 F.4th at 1216. Notably, the Eighth Circuit did not address the question whether private plaintiffs may sue under Section 1983 to enforce Section Two because the plaintiffs had not raised the issue. *Id.* at 1218.

The Eighth Circuit viewed the question whether Section Two creates a private right as an open one because, in addition to the rights-creating language the Court has described, Section Two also contains language that refers to states, and the court

was unsure "what to do when a statute focuses on both." *Id.* at 1209–10. But the Supreme Court has provided an unambiguous answer to that question that the Eighth Circuit did not consider.[10] In *Health & Hospital Corporation of Marion County*, the statutes at issue (like Section Two) referred to the rights of the benefitted class, but also directed requirements at "actors that might threaten those rights," and the Supreme Court still held that the statutes created private rights. 599 U.S. at 185. That a statutory provision discussing the rights of a benefitted class "also establish[es] who it is that must respect and honor these statutory rights," the Court explained, "is not a material diversion from the necessary focus on the [rights-holders]." *Id.* The Court further reasoned that "[t]he Fourteenth Amendment hardly fails to secure § 1983-enforceable rights because it directs state actors not to deny equal protection." *Id.* at 185 n.12.

Based on case precedent and the text of Section Two, the Court sees a clear answer to the question whether Section Two creates a private right: it does. Nevertheless, the Secretary urged us in its earlier motion to hold that Section Two does not confer a private right for four reasons. The Court discusses each in turn.

First, the Secretary argued in its earlier motion that for Section Two to create

[10] The Supreme Court issued *Health & Hospital Corporation of Marion County* after the Eighth Circuit heard oral argument but before the Eighth Circuit issued its decision. *See Health and Hosp. Corp. of Marion Cnty.*, 599 U.S. at 166; *Ark. State Conf. NAACP*, 86 F.4th at 1204.

a private right of action, it must create a new right not found elsewhere in federal law. *See* Doc. 131 at 14–23, 25. The Secretary claims that Section Two cannot do this because it was passed pursuant to Congress's power under Section Two of the Fifteenth Amendment, which gives Congress the power to enforce the rights guaranteed in the Fifteenth Amendment, but not the power to create new rights. *See* U.S. Const. amend. XV; *Brnovich*, 594 U.S. at 656; Doc. 131 at 14–15.[11]

The Secretary is wrong that to create a private right of action, Section Two must create a new right not found elsewhere in federal law. That premise runs headlong into controlling precedent. For example, in *Morse*, 517 U.S. 186, the Court found an implied private right of action in Section Ten of the Voting Rights Act, which, on the Secretary's logic, would also merely be protecting preexisting Fifteenth Amendment rights. *See id.* at 233 (holding that § 10 "established a right to vote without paying a fee"). And in *Allen v. State Board of Elections*, 393 U.S. 544 (1969), *abrogated by Ziglar v. Abbasi*, 582 U.S. 120, 132 (2017), the Supreme Court found an implied private right of action in Section Five of the Voting Rights Act. *See id.* at 557; *cf. Schwier v. Cox*, 340 F.3d 1284, 1297 (11th Cir. 2003) (finding an implied private right of action in the materiality provision of a similar statute passed under congressional Fifteenth Amendment enforcement power).

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[11] The Supreme Court already has rejected, in this very case, the argument that Section Two exceeds congressional authority under the Fifteenth Amendment. *See Allen*, 599 U.S. at 41.

It is unsurprising, then, that the Secretary has cited no precedent holding that Congress cannot imply a private right of action to enforce an existing federal right. He relies on language found in *Sandoval* (quoted later in *Gonzaga*) referring to "new rights," but that language did not hold (or even suggest, in the context of those cases), that the protected right must be completely novel and found nowhere else in federal law. In *Sandoval*, the Court used the term "new rights" to explain that rights-creating language in one section of a statute did not necessarily imply a private right of action to enforce another section of the same statute. *See* 532 U.S. at 289 (cleaving a difference between Sections 601 and 602 of Title VI of the Civil Rights Act of 1964). *Sandoval* did not address the question whether Congress may grant a private right of action to enforce an existing federal right. Nor did *Gonzaga*, which merely quoted the sentence from *Sandoval* referring to "new rights" when explicating the general background principles for discovering congressional intent. *See Gonzaga*, 536 U.S. at 286–87. There was no discussion in *Gonzaga* of whether the rights referred to in the statute at issue were new or not. *See id.*

Second, the Secretary argued in its earlier motion that Section Two does not unambiguously confer individual rights because there is ambiguity about its focus, which the Secretary says one court has held is "unclear" because it includes both the conduct prohibited and the party regulated. *See* Doc. 131 at 24–27. But like the Eighth Circuit, the Secretary does not account for the instructions found in *Health*

& Hospital Corporation of Marion County. *See* 599 U.S. at 185. As the Court has already explained, if the statutory text at issue in that case created private rights while also mentioning actors and conduct that could threaten those rights, then the Court can discern no principled basis to conclude that Section Two does not likewise create private rights.

Third, the Secretary argued it is earlier motion that the mere use of the term "rights" is not enough to create a private cause of action, citing *Pennhurst State School & Hospital v. Halderman*, 451 U.S. 1 (1981). *See* Doc. 131 at 24–25. But the Court's analysis doesn't rest exclusively on the use of the word "rights." *See supra* Part V.E.1; *infra* Part V.E.2. In any event, *Pennhurst State* does not help the Secretary. There, the Supreme Court declined to find an implied right in a statute that provided that mentally handicapped persons "have a right to appropriate treatment, services, and habilitation" in "the setting that is least restrictive of . . . personal liberty." *Pennhurst State*, 451 U.S. at 13 (quoting 42 U.S.C. § 6010). The Court held that the reference to "a right" was precatory because it was found only in a "bill of rights" provision of the statute, while the enabling provisions of the statute were funding-related, and the bill of rights provision lacked "any language suggesting that [it] is a 'condition' for the receipt of federal funding" under the statute. *Id.* To the contrary, the Court reasoned, the language and structure of the statute "demonstrate[d] that it is a mere federal-state funding statute." *Id.* at 18.

Pennhurst State thus cautions that "[i]n expounding a statute, [the Court] must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy." *Id.*

The Court has not looked at the word "rights" in a vacuum; rather, it has considered the word within the statutory provision and the statute taken as a whole, in order to see whether the statutory provision is using "rights-creating language." *Sandoval*, 532 U.S. at 288 (quotation marks and citation omitted). And it is not merely the presence of the term "rights" in Section Two, but rather the entire provision's focus on the rights of "members of a protected class" and its place within the Voting Rights Act—a statute created, after all, for the sole purpose of enforcing a citizen's right to vote free from discrimination.

Fourth, the Secretary asserted in its earlier motion that the "federal review mechanism" in the Voting Rights Act indicates that Congress did not mean to imply a private right of action in Section Two. *See* Doc. 131 at 19–20. The Secretary relies on *Gonzaga* to argue that "where a statute provides a federal review mechanism, the Supreme Court has been less willing to identify individually enforceable private rights." *Id.* at 19–20 (internal quotation marks omitted) (quoting *Gonzaga*, 536 U.S. at 289–90).

This argument fails at the gate because FERPA, the statute at issue in *Gonzaga*, is fundamentally unlike Section Two. In *Gonzaga*, the Supreme Court

observed that its "conclusion that FERPA's nondisclosure provisions fail to confer enforceable rights [wa]s buttressed by the mechanism that Congress chose to provide for enforcing those provisions." 536 U.S. at 289. FERPA "expressly authorized the Secretary of Education to 'deal with violations' of the Act," and the Secretary did so by creating an office to field complaints from individuals and then initiate investigations, request a response from the institution subject to the complaint, find violations, and mandate steps to resolve them. *Id.* at 289–90 (emphasis omitted) (quoting 20 U.S.C. § 1232(g)(f)). But Congress chose no such extensive administrative procedures for Section Two, and they differ in kind from the Attorney General's prosecutorial discretion to bring Section Two lawsuits in court. Allowing the Attorney General to elect to bring a lawsuit is not the kind of detailed alternative "federal review mechanism" Congress created to enforce FERPA, which the *Gonzaga* Court was discussing. *See id.* at 290.

Even if the Attorney General's power to sue were like the elaborate federal review mechanism described in *Gonzaga* (and it is not), *Gonzaga* clarifies that the likeness is not "an independent basis for precluding private enforcement." *Id.* at 290 n.8. This fits with other jurisprudence allowing both private and public lawsuits to enforce federal rights. *See, e.g.*, *Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 255 (2009) (finding a private right of action in Title IX of the Civil Rights Act despite it having an "express enforcement mechanism" in the form of "an

administrative procedure"). Put simply, the reality that the Attorney General may bring a lawsuit in federal court does not compel, or even suggest, the conclusion that Congress meant to imply no right of action for private individuals also to bring enforcement actions pursuant to Section Two of the Voting Rights Act.

2. Section Two Precedents

Standing alone, the Court's conclusion that the text of Section Two implies a private right of action is a sufficient reason to hold the statute privately enforceable. But there is more. Relevant precedent also supports the Court's conclusion, including in particular two Supreme Court cases: *Morse* and *Allen*. And principles of congressional ratification and statutory *stare decisis* reinforce that result.

a. Relevant Precedent

As the three-judge Court explained in the Alabama congressional districting cases, "[a] ruling that Section Two does not provide a private right of action would badly undermine the rationale offered by the Court in *Morse*." *Singleton*, 582 F. Supp. 3d 924, 1031 (N.D. Ala. 2022). In *Morse*, the Supreme Court held that Section 10 of the Voting Rights Act contained a private right of action, reasoning that:

> Although § 2, like § 5, provides no right to sue on its face, "the existence of the private right of action under Section 2 . . . has been clearly intended by Congress since 1965." S. Rep. No. 97–417, at 30. We, in turn, have entertained cases brought by private litigants to enforce § 2. It would be anomalous, to say the least, to hold that both § 2 and § 5 are enforceable by private action but § 10 is not, when all lack the same express authorizing language.

517 U.S. at 232 (opinion of Stevens, J., with Ginsburg, J. joining) (some internal citations omitted); *see id.* at 240 (opinion of Breyer, J., with O'Connor, J. and Souter, J. joining) (agreeing that Section Ten confers a private right of action because Sections Two and Five do).

The Court's conclusion that Section Ten affords a private right of action turns in no small measure on its foundational observation that Section Two, like Section Five, is indeed enforceable by private right of action. *See id.* at 232. And the Court saw no reason for treating Section Ten any differently. *Id.* The very rationale for the Supreme Court's determination that Section Two affords a private right of action is that Congress has "clearly intended" that since 1965. *Id.* (quoting S. Rep. No. 97–417, at 30); *see also Singleton*, 582 F. Supp. 3d at 1031 ("[T]he understanding [in *Morse*] that Section Two provides a private right of action was necessary to reach the judgment that Section Ten provides a private right of action.").[12]

"When an opinion issues for the Court, it is not only the result but also those portions of the opinion necessary to that result by which we are bound." *Seminole*

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[12] In addition to observing that Sections Two and Five conferred private rights of action, the Court in *Morse* supported its conclusion that Section Ten confers a private right of action by reasoning that: the achievement of the Voting Rights Act's goals would be severely hampered if only the Attorney General could sue to enforce Section Ten; the Attorney General had urged the Court to find a private right of action; and other sections of the Voting Rights Act (specifically, Sections Three and Fourteen) contain language recognizing that private persons can sue to enforce their rights under the Voting Rights Act. *See Morse*, 517 U.S. at 231–34.

Tribe of Fla. v. Florida, 517 U.S. 44, 67 (1996); *see also Dana's R.R. Supply v. Att'y Gen.*, 807 F.3d 1235, 1240 n.3 (11th Cir. 2015) (noting that a statement is dicta only if it "could have been deleted without seriously impairing the analytical foundations of the holding" (quoting *Denno v. Sch. Bd. of Volusia Cnty.*, 218 F.3d 1267, 1283 (11th Cir. 2000) (Forrester, J., concurring in part))); *United States v. Crawley*, 837 F.2d 291, 292 (7th Cir. 1988) (Posner, J.) (same). This holds true for any analysis that the court "explicat[es] and appl[ies]," even where the court "could have decided the case on other grounds." *United States v. Kaley*, 579 F.3d 1246, 1253 n.10 (11th Cir. 2009).

However, even if the Court were to treat *Morse*'s statements as dicta, the Court is "obligated to respect [them]." *Henderson v. McMurray*, 987 F.3d 997, 1006 (11th Cir. 2021) (Pryor, C.J.). "[T]here is dicta and then there is dicta, and then there is Supreme Court dicta." *Schwab v. Crosby*, 451 F.3d 1308, 1325 (11th Cir. 2006). As far as the Court sees it, at the very least, this is Supreme Court dicta with the support of five justices; and if it is a holding, plainly it would be controlling, despite the fractured votes. *See Marks v. United States*, 430 U.S. 188, 193 (1977). The Court will not upend it.

In the 117-page proposed order the Secretary submitted after trial and in his motion for judgment as a matter of law, he did not mention *Morse*. *See* Doc. 247 at 1; Doc. 251. In his earlier motion, the Secretary urged the Court to ignore the *Morse*

language on the ground that it is gravely wounded by *Sandoval*. *See* Doc. 92 at 23–24. The Supreme Court has spurned some private-right-of-action cases that were decided before *Sandoval*, describing them as part of an "*ancien regime*" in which "the Court assumed it to be a proper judicial function to provide such remedies as are necessary to make effective a statute's purpose." *Ziglar*, 582 U.S. at 131–32 (internal quotation marks and citation omitted). But *Morse* is not even mentioned in *Sandoval* and it is not part of the *ancien regime* that *Sandoval* criticized. As the Supreme Court explained in *Sandoval*, the headline case for abandoning the *ancien regime* was *Cort v. Ash*, 422 U.S. 66 (1975). *See Sandoval*, 532 U.S. at 287. *Morse* was decided twenty-one years after *Cort*. As an inferior federal court, the Court is required to "leav[e] to [the Supreme Court] the prerogative of overruling its own decisions." *Agostini v. Felton*, 521 U.S. 203, 237 (1997) (citation omitted); *see also United States v. Gibson*, 434 F.3d 1234, 1246 (11th Cir. 2006) ("It is not given to us to overrule the decisions of the Supreme Court.").

Furthermore, *Shelby County v. Holder* also suggested, albeit in dicta, that Section Two implies a private right of action, and *Shelby County* postdates *Sandoval*. In *Shelby County*, the Supreme Court invalidated Section Five's preclearance regime as unconstitutional. 570 U.S. at 537–38. In describing the statutory scheme, the Court explained that "[b]oth the Federal Government and individuals have sued to enforce § 2, and injunctive relief is available in appropriate cases to block voting

laws from going into effect." *Id.* at 537 (citations omitted). And in the final paragraph of the opinion, the Court ruled that its decision about Section Five "in no way affects the permanent, nationwide ban on racial discrimination in voting found in § 2." *Id.* at 557. The Secretary's earlier argument about *Sandoval* did not account for *Shelby County* either. *See* Doc. 92 at 23–24.

Other federal circuits apparently share the Court's understanding of Supreme Court jurisprudence, including the Eleventh Circuit. *See Ala. State Conf. NAACP v. Alabama*, 949 F.3d 647, 649 (11th Cir. 2020), *vacated on other grounds sub nom. Alabama v. Ala. State Conf. NAACP*, 141 S. Ct. 2618 (2021); *see also Robinson v. Ardoin*, 86 F.4th 574, 587–88 (5th Cir. 2023) ("We conclude that . . . there is a right for these [private] Plaintiffs to bring these [Section Two] claims."); *Mixon v. Ohio*, 193 F.3d 389, 406 (6th Cir. 1999) ("An individual may bring a private cause of action under Section 2 of the Voting Rights Act.").[13]

In 2020, the Eleventh Circuit explained the history of private enforcement of Section Two this way:

> The Voting Rights Act (VRA) is widely considered to be among the most effective civil rights statutes ever passed by Congress. Its success is largely due to the work of private litigants. For more than fifty years, private parties have sued states and localities under the VRA to enforce

[13] Most recently, a three-judge district court in the Southern District of Mississippi has followed *Robinson* and relevant Supreme Court precedent in holding that Section Two confers a private cause of action. *See Miss. State Conf. NAACP v. State Bd. of Election Comm'rs.*, No. 3:22-cv-00734-DPJ-HSO-LHS (July 2, 2024) (per curiam).

> the substantive guarantees of the Civil War Amendments. Today, private parties remain the primary enforcers of § 2 of the VRA.

Ala. State Conf. NAACP, 949 F.3d at 649 (footnotes omitted). The Eleventh Circuit went on to observe that "[t]he Department of Justice has filed only 4 of the 61 enforcement actions under § 2 since 2013." *Id.* n.2.[14] And the Circuit held that "[t]he VRA, as amended, clearly expresses an intent to allow private parties to sue the States. The language of § 2 and § 3, read together, imposes direct liability on States for discrimination in voting and explicitly provides remedies to private parties to address violations under the statute." *Id.* at 652. Although the Court is not bound by this Circuit precedent because it was vacated on mootness grounds, the analysis is persuasive.

The Court next turns to the Supreme Court's decision in the Alabama congressional districting cases. Although *Allen* did not resolve the specific question whether Section Two provides a private right of action, it is nevertheless instructive. In *Allen*, the Supreme Court recognized that "[b]y 1981, . . . only sixteen years[] [after the VRA was passed in 1965], many considered the VRA 'the most successful

[14] Indeed, the Department of Justice has previously observed that private plaintiffs have brought over 400 Section Two cases resulting in judicial decisions since 1982, while the Department of Justice itself has brought just 44 cases. *See* Brief of United States as Amicus Curiae at 1–2, *Turtle Mountain Band of Chippewa Indians v. Howe*, No. 23-3655, 2024 WL 1417744 (8th Cir. Mar. 25, 2024) (citing Ellen D. Katz et al., *To Participate and Elect: Section 2 of the Voting Rights Act 40*, Univ. Mich. L. Sch. Voting Rts. Initiative (2024), https://voting.law.umich.edu; Voting Section Litigation, U.S. Dep't of Just. (2024), https://perma.cc/V5XK-Z7L8).

civil rights statute in the history of the Nation.'" *Allen*, 599 U.S. at 10 (quoting S. Rep. No. 97–417, at 111 (1982)). "The Act 'create[d] stringent new remedies for voting discrimination,' attempting to forever 'banish the blight of racial discrimination in voting.'" *Id.* (quoting *South Carolina v. Katzenbach*, 383 U.S. 301, 308 (1966)). The Court described important amendments to Section Two enacted in 1982, and observed that since then, "[f]or the past forty years, [the Court has] evaluated claims brought under § 2 using the three-part framework developed in [its] decision in *Thornburg v. Gingles*, 478 U.S. 30 . . . (1986)." *Allen*, 599 U.S. at 17. That jurisprudence includes legions of Section Two claims asserted by private plaintiffs and adjudicated by the Supreme Court: *Gingles*, 478 U.S. 30; *Voinovich*, 507 U.S. 146; *Growe*, 507 U.S. 25; *De Grandy*, 512 U.S. 997; *Holder v. Hall*, 512 U.S. 874 (1994); *Vera*, 517 U.S. 952; *Shaw II*, 517 U.S. 89; *Abrams*, 521 U.S. 74; *LULAC*, 548 U.S. 399; *Cooper*, 581 U.S. 285; *Abbott*, 585 U.S. 579; *Brnovich*, 594 U.S. 647; *Wis. Legislature*, 595 U.S. 398; *Allen*, 599 U.S. 1.

b. Congressional Ratification

As the *Allen* Court explained repeatedly in the context of other attacks on Section Two, this long history of private plaintiffs bringing Section Two challenges means that Congress is "undoubtedly aware of [the Court's] constru[ction of] § 2," and "Congress has never disturbed [the Court's] understanding of § 2 as *Gingles* construed it." 599 U.S. at 19, 39. And Congress "can change that if it likes." *Id.*

It has long been the rule that "Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change." *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 239–40 (2009) (citation omitted). In none of its amendments to the Voting Rights Act has Congress ever questioned the then-unanimous view of the courts that Section Two was privately enforceable. *See generally* Pub. L. No. 91-285, 84 Stat. 314 (1970); Pub. L. No. 94-73, 89 Stat. 400 (1975); Pub. L. No. 97-205, 96 Stat. 131 (1982); Pub. L. No. 109-246, 120 Stat. 577 (2006). In its most recent amendment, in 2006, Congress expressly noted "the continued filing of section 2 cases that originated in covered jurisdictions" as "[e]vidence of continued discrimination" that supported the need to strengthen certain provisions of the Voting Rights Act. Pub. L. No. 109-246, 120 Stat. 577 (2006).

Indeed, the Senate Report to the 1982 amendment, which the Supreme Court has called the "authoritative source for legislative intent" behind Section Two, *Gingles*, 478 U.S. at 43 n.7, said that it "reiterates the existence of the private right of action under Section 2, as has been clearly intended by Congress since 1965," S. Rep. No. 97-417, at 30 (citing *Allen*, 393 U.S. 544). The House Report to the 1982 amendment echoes precisely the same congressional intent. *See* H. Rep. No. 97-227, at 32 (1981) ("It is intended that citizens have a private cause of action to enforce their rights under Section 2."). And the Senate Report to the 1975 amendment

explains that fee awards under Section Fourteen of the Voting Rights Act "are a necessary means of enabling *private citizens* to vindicate these Federal rights." S. Rep. No. 94-295, at 40 (1975) (emphasis added). Congress has not only ratified the federal courts' longstanding interpretation that Section Two may be enforced by private plaintiffs through inaction by failing to change the law, but these reports also explicitly state agreement with this interpretation.

The point is simple: if courts have consistently misunderstood a congressional enactment in case after case, court after court, decade after decade, surely Congress would have said so by now. Nearly forty years after *Gingles*—and nearly sixty years after the passage of the Voting Rights Act—it is appropriate to assign some degree of legal significance to this reality, even if only as a data point that confirms the Court's reading of the text.

c. Statutory Stare Decisis

In addition, statutory *stare decisis* principles counsel that the Court should stay the course in allowing private plaintiffs to sue under Section Two. "[*S*]*tare decisis* carries enhanced force when a decision . . . interprets a statute" because "unlike in a constitutional case, critics of [the Court's] ruling can take their objections" to Congress, which "can correct any mistake it sees." *Kimble v. Marvel Ent., LLC*, 576 U.S. 446, 456 (2015); *see also* Bryan A. Garner et al., The Law of Judicial Precedent 333 (2016) ("Stare decisis applies with special force to questions

of statutory construction. Although courts have power to overrule their decisions and change their interpretations, they do so only for the most compelling reasons—but almost never when the previous decision has been repeatedly followed, has long been acquiesced in, or has become a rule of property.”). The Court is guided by decades of unbroken controlling precedent suggesting that Section Two implies a private right of action, and it sees no congressional effort to course correct. Accordingly, the Court thinks “statutory *stare decisis* counsels [its] staying the course.” *Allen*, 599 U.S. at 39.

The Supreme Court has “identified several factors to consider in deciding whether to overrule a past decision, including . . . the workability of the rule it established . . . and reliance on the decision.” *Knick v. Twp. of Scott*, 588 U.S. 180, 203 (2019) (internal quotation marks omitted) (quoting *Janus v. State, Cnty., & Mun. Emps.*, 585 U.S. 878, 917 (2018)). Allowing private plaintiffs to bring Section Two claims has proven to be a workable rule—having gone unquestioned for decades in multiple Supreme Court decisions. In fact, the ability of private parties to bring Section Two claims has become “the sort of stable background rule that fosters meaningful reliance.” *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2272 (2024) (internal quotation marks and citation omitted). There has been no “tinkering” with the ability of private parties to bring Section Two claims by the Supreme Court, lower courts (with one, lone exception), or Congress. *Id.* And

because "Congress has spurned multiple opportunities to reverse" the Supreme Court's and lower courts' treatment of private-plaintiff Section Two actions, "a superspecial justification" would be necessary to reverse course, and the Court sees none here. *Kimble*, 576 U.S. at 456, 458.

The federal courts (including the Supreme Court) have consistently and uniformly allowed private plaintiffs to enforce a high-profile congressional enactment for nearly sixty years, and the Court sees no indication in any congressional record that Congress believes all of that (or any of it) was mistaken.

***

In the Court's view, the text of Section Two compels the conclusion that private plaintiffs may enforce it, either through an implied private right of action, Section 1983, or both. And other doctrines confirm this understanding of the text. It is difficult in the extreme for the Court to believe that for nearly sixty years, federal courts have consistently misunderstood one of the most important sections of one of the most important civil rights statutes in American history, and that Congress has steadfastly refused to correct the apparent error.

F. The plaintiffs have standing.

The Secretary has argued that the plaintiffs lack standing to challenge the Senate districting plan in the Huntsville area. *See* Doc. 229 at 7; Doc. 173 at 3–5. The Court has rejected that argument once already. *See* Doc. 191 at 4–8. But because

the Court "is obligated, as a jurisdictional matter, to confirm the Plaintiffs' standing to bring this case," *Greater Birmingham Ministries v. Sec'y of State*, 992 F.3d 1299, 1316 (11th Cir. 2021), it has re-evaluated the issue after trial and has satisfied again itself that the plaintiffs have standing.

"Article III of the Constitution limits the subject-matter jurisdiction of federal courts to 'Cases' and 'Controversies.'" *Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1245 (11th Cir. 2020) (quoting U.S. Const. art. III, § 2). To satisfy the "case" or "controversy" requirement, an organization may demonstrate standing in two ways: (1) "associational standing based on the injuries of [its] members" or (2) "organizational standing based on [its] own injuries." *Id.* at 1248–49. To assert associational standing, an organization must show that "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Am. All. for Equal Rts. v. Fearless Fund Mgmt., LLC*, 103 F.4th 765, 771 (11th Cir. 2024) (quoting *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 181, 199–200 (2023)).

An organization asserting associational standing must "make specific allegations establishing that at least one identified member ha[s] suffered or [will] suffer harm." *Ga. Republican Party v. Sec. & Exch. Comm'n*, 888 F.3d 1198, 1203

(11th Cir. 2018) (quoting *Summers v. Earth Island Inst.*, 555 U.S. 488, 498 (2009)). Further, "in response to a summary judgment motion, the plaintiff can no longer rest on . . . mere allegations, but must set forth by affidavit or other evidence specific facts" establishing standing. *Id.* at 1201 (internal quotation marks omitted) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992)).

The State Conference has established that it has members affected by the districting map in Huntsville. The State Conference has identified several members in the Huntsville area who are Black registered voters. *See* Doc. 248-1. Mr. Simelton, the president of the State Conference, testified at trial that the State Conference is a "suborganization" of the national NAACP and that membership dues are shared by the local, state, and national NAACP. Tr. 156, 158. And he testified at his deposition that "[e]very member that serves in the State Conference is a member of a branch or a college chapter within the State Conference" who has been "elected to serve as a member of the State Conference." Doc. 171-2 at 12. Put simply, the members of the State Conference are members because they have been elected to that status.

The reality that membership in the State Conference is by election from the local chapters does not diminish the ability of the State Conference to establish associational standing. Controlling Eleventh Circuit precedent confirms this analysis. *See, e.g, Greater Birmingham Ministries*, 992 F.3d at 1316 (holding that the State Conference "ha[s] members (minority voters in Alabama)" for standing

purposes); *see also Fla. State Conf. of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1164 (11th Cir. 2008) (concluding that the Florida State Conference of the NAACP "ha[d] standing to sue on behalf of [its] members"). Because the State Conference has identified at least one member who is registered to vote in Huntsville, Doc. 171-4 at 5, the Court concludes that the State Conference has associational standing.

Because the State Conference has associational standing, the Court need not decide whether Greater Birmingham Ministries has standing to challenge the districting map in that area. *See Florida v. U.S. Dept. of Health & Hum. Servs.*, 648 F.3d 1235, 1243 (11th Cir. 2011), *rev'd on other grounds sub nom. Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012) ("The law is abundantly clear that so long as one plaintiff has standing to raise each claim[,] … [a federal court] need not address whether the remaining plaintiffs have standing.").

VI. REMEDY

"Federal-court review of districting legislation represents a serious intrusion on the most vital of local functions. It is well settled that 'reapportionment is primarily the duty and responsibility of the State." *Miller*, 515 U.S. at 915 (quoting *Chapman v. Meier*, 420 U.S. 1, 27 (1975)).

Even when a federal court finds that a redistricting plan violates federal law, the Supreme Court "has repeatedly held that redistricting and reapportioning legislative bodies is a legislative task which the federal courts should make every

effort not to pre-empt." *Wise*, 437 U.S. at 539–40 (opinion of White, J.) (collecting cases). Upon such a finding, "it is therefore, appropriate, whenever practicable, to afford a reasonable opportunity for the legislature to meet constitutional requirements by adopting a substitute measure rather than for the federal court to devise and order into effect its own plan." *Id.* at 540. "The new legislative plan, if forthcoming, will then be the governing law unless it, too, is challenged and found to violate the Constitution." *Id.*

Following a determination that a redistricting plan violates Section Two, "[s]tates retain broad discretion in drawing districts to comply with the mandate of § 2." *Shaw II*, 517 U.S. at 917 n.9. A state may rely on a Section Two plaintiff's remedial plan, but is not required to do so, nor to "draw the precise compact district that a court would impose in a successful § 2 challenge." *Vera*, 517 U.S. at 978 (internal quotation marks omitted). Instead, "the States retain a flexibility that federal courts enforcing § 2 lack, both insofar as they may avoid strict scrutiny altogether by respecting their own traditional districting principles, and insofar as deference is due to their reasonable fears of, and to their reasonable efforts to avoid, § 2 liability." *Id.*

If—and only if—the state legislature cannot or will not adopt a remedial map that complies with federal law in time for use in an upcoming election does the job of drawing an interim map fall to the courts. "Legislative bodies should not leave

their reapportionment tasks to the federal courts; but when those with legislative responsibilities do not respond, or the imminence of a state election makes it impractical for them to do so, it becomes the unwelcome obligation of the federal court to devise and impose a reapportionment plan pending later legislative action." *Wise*, 437 U.S. at 540 (opinion of White, J.) (internal quotation marks and citation omitted); *accord Growe*, 507 U.S. at 36–37.

To facilitate timely remedial proceedings, a status conference is **SET** for **AUGUST 28, 2025,** at 10:00 AM in the Third Floor Courtroom, Robert S. Vance Federal Building and United States Courthouse, 1800 5th Avenue North Birmingham, Alabama 35203. The parties are **ORDERED** to file a joint status report with the parties' proposals for moving the case forward at or before noon on **AUGUST 27, 2025.**

VII. EVIDENTIARY RULINGS

During the bench trial, the Court accepted into evidence the overwhelming majority of the exhibits that the parties offered; most were stipulated, and the Court ruled on some evidentiary objections and reserved ruling on others. All pending objections are **SUSTAINED**.

VIII. THE SECRETARY'S MOTION FOR JUDGMENT AS A MATTER OF LAW

After trial, the Secretary moved for judgment as a matter of law as a "'belt and suspenders' approach to preservation" of his legal arguments. *See* Doc. 247 at

1. He re-raises his arguments that (1) Section Two does not provide a private right of action and (2) the plaintiffs failed to satisfy the first *Gingles* precondition with their illustrative districts in the Huntsville area. Doc. 247 at 1–2. For the reasons stated above, *see supra* Part V.E, the Secretary's motion for judgment as a matter of law with respect to the enforceability of Section Two as a private right of action is **DENIED**. Because the court concluded that the plaintiffs did not establish numerosity in the Huntsville area, *see supra* Part V.A.–V.B.2, the Secretary's motion for judgment as a matter of law with respect to that argument is **DENIED AS MOOT**.

DONE and **ORDERED** this 22nd day of August, 2025.

ANNA M. MANASCO
UNITED STATES DISTRICT JUDGE

APPENDIX A – COMMITTEE GUIDELINES

1 **REAPPORTIONMENT COMMITTEE REDISTRICTING GUIDELINES**

2 May 5, 2021

3 **I. POPULATION**

4 The total Alabama state population, and the population of defined subunits
5 thereof, as reported by the 2020 Census, shall be the permissible data base used
6 for the development, evaluation, and analysis of proposed redistricting plans. It is
7 the intention of this provision to exclude from use any census data, for the purpose
8 of determining compliance with the one person, one vote requirement, other than
9 that provided by the United States Census Bureau.

10 **II. CRITERIA FOR REDISTRICTING**

11 a. Districts shall comply with the United States Constitution, including the
12 requirement that they equalize total population.

13 b. Congressional districts shall have minimal population deviation.

14 c. Legislative and state board of education districts shall be drawn to achieve
15 substantial equality of population among the districts and shall not exceed an
16 overall population deviation range of ±5%.

17 d. A redistricting plan considered by the Reapportionment Committee shall
18 comply with the one person, one vote principle of the Equal Protection Clause of
19 the 14th Amendment of the United States Constitution.

20 e. The Reapportionment Committee shall not approve a redistricting plan that
21 does not comply with these population requirements.

22 f. Districts shall be drawn in compliance with the Voting Rights Act of 1965, as
23 amended. A redistricting plan shall have neither the purpose nor the effect of
24 diluting minority voting strength, and shall comply with Section 2 of the Voting
25 Rights Act and the United States Constitution.

26 g. No district will be drawn in a manner that subordinates race-neutral
27 districting criteria to considerations of race, color, or membership in a language-
28 minority group, except that race, color, or membership in a language-minority
29 group may predominate over race-neutral districting criteria to comply with
30 Section 2 of the Voting Rights Act, provided there is a strong basis in evidence in
31 support of such a race-based choice. A strong basis in evidence exists when there
32 is good reason to believe that race must be used in order to satisfy the Voting Rights
33 Act.

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1 h. Districts will be composed of contiguous and reasonably compact
2 geography.

3 i. The following requirements of the Alabama Constitution shall be complied
4 with:

5 (i) Sovereignty resides in the people of Alabama, and all districts should be
6 drawn to reflect the democratic will of all the people concerning how their
7 governments should be restructured.

8 (ii) Districts shall be drawn on the basis of total population, except that voting
9 age population may be considered, as necessary to comply with Section 2 of the
10 Voting Rights Act or other federal or state law.

11 (iii) The number of Alabama Senate districts is set by statute at 35 and, under
12 the Alabama Constitution, may not exceed 35.

13 (iv) The number of Alabama Senate districts shall be not less than one-fourth or
14 more than one-third of the number of House districts.

15 (v) The number of Alabama House districts is set by statute at 105 and, under
16 the Alabama Constitution, may not exceed 106.

17 (vi) The number of Alabama House districts shall not be less than 67.

18 (vii) All districts will be single-member districts.

19 (viii) Every part of every district shall be contiguous with every other part of the
20 district.

21 j. The following redistricting policies are embedded in the political values,
22 traditions, customs, and usages of the State of Alabama and shall be observed to
23 the extent that they do not violate or subordinate the foregoing policies prescribed
24 by the Constitution and laws of the United States and of the State of Alabama:

25 (i) Contests between incumbents will be avoided whenever possible.

26 (ii) Contiguity by water is allowed, but point-to-point contiguity and long-lasso
27 contiguity is not.

28 (iii) Districts shall respect communities of interest, neighborhoods, and political
29 subdivisions to the extent practicable and in compliance with paragraphs a
30 through i. A community of interest is defined as an area with recognized
31 similarities of interests, including but not limited to ethnic, racial, economic, tribal,
32 social, geographic, or historical identities. The term communities of interest may,
33 in certain circumstances, include political subdivisions such as counties, voting

1 precincts, municipalities, tribal lands and reservations, or school districts. The
2 discernment, weighing, and balancing of the varied factors that contribute to
3 communities of interest is an intensely political process best carried out by elected
4 representatives of the people.

5 (iv) The Legislature shall try to minimize the number of counties in each district.

6 (v) The Legislature shall try to preserve the cores of existing districts.

7 (vi) In establishing legislative districts, the Reapportionment Committee shall
8 give due consideration to all the criteria herein. However, priority is to be given to
9 the compelling State interests requiring equality of population among districts and
10 compliance with the Voting Rights Act of 1965, as amended, should the
11 requirements of those criteria conflict with any other criteria.

12 g. The criteria identified in paragraphs j(i)-(vi) are not listed in order of
13 precedence, and in each instance where they conflict, the Legislature shall at its
14 discretion determine which takes priority.

15 **III. PLANS PRODUCED BY LEGISLATORS**

16 1. The confidentiality of any Legislator developing plans or portions thereof
17 will be respected. The Reapportionment Office staff will not release any
18 information on any Legislator's work without written permission of the Legislator
19 developing the plan, subject to paragraph two below.

20 2. A proposed redistricting plan will become public information upon its
21 introduction as a bill in the legislative process, or upon presentation for
22 consideration by the Reapportionment Committee.

23 3. Access to the Legislative Reapportionment Office Computer System, census
24 population data, and redistricting work maps will be available to all members of
25 the Legislature upon request. Reapportionment Office staff will provide technical
26 assistance to all Legislators who wish to develop proposals.

27 4. In accordance with Rule 23 of the Joint Rules of the Alabama Legislature
28 "[a]ll amendments or revisions to redistricting plans, following introduction as a
29 bill, shall be drafted by the Reapportionment Office." Amendments or revisions
30 must be part of a whole plan. Partial plans are not allowed.

31 5. In accordance with Rule 24 of the Joint Rules of the Alabama Legislature,
32 "[d]rafts of all redistricting plans which are for introduction at any session of the
33 Legislature, and which are not prepared by the Reapportionment Office, shall be
34 presented to the Reapportionment Office for review of proper form and for entry
35 into the Legislative Data System at least ten (10) days prior to introduction."

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1 **IV. REAPPORTIONMENT COMMITTEE MEETINGS AND PUBLIC**
2 **HEARINGS**

3 1. All meetings of the Reapportionment Committee and its sub-committees
4 will be open to the public and all plans presented at committee meetings will be
5 made available to the public.

6 2. Minutes of all Reapportionment Committee meetings shall be taken and
7 maintained as part of the public record. Copies of all minutes shall be made
8 available to the public.

9 3. Transcripts of any public hearings shall be made and maintained as part of
10 the public record, and shall be available to the public.

11 4. All interested persons are encouraged to appear before the
12 Reapportionment Committee and to give their comments and input regarding
13 legislative redistricting. Reasonable opportunity will be given to such persons,
14 consistent with the criteria herein established, to present plans or amendments
15 redistricting plans to the Reapportionment Committee, if desired, unless such
16 plans or amendments fail to meet the minimal criteria herein established.

17 5. Notice of all Reapportionment Committee meetings will be posted on
18 monitors throughout the Alabama State House, the Reapportionment Committee's
19 website, and on the Secretary of State's website. Individual notice of
20 Reapportionment Committee meetings will be sent by email to any citizen or
21 organization who requests individual notice and provides the necessary
22 information to the Reapportionment Committee staff. Persons or organizations
23 who want to receive this information should contact the Reapportionment Office.

24 **V. PUBLIC ACCESS**

25 1. The Reapportionment Committee seeks active and informed public
26 participation in all activities of the Committee and the widest range of public
27 information and citizen input into its deliberations. Public access to the
28 Reapportionment Office computer system is available every Friday from 8:30 a.m.
29 to 4:30 p.m. Please contact the Reapportionment Office to schedule an
30 appointment.

31 2. A redistricting plan may be presented to the Reapportionment Committee
32 by any individual citizen or organization by written presentation at a public
33 meeting or by submission in writing to the Committee. All plans submitted to the
34 Reapportionment Committee will be made part of the public record and made
35 available in the same manner as other public records of the Committee.

1 3. Any proposed redistricting plan drafted into legislation must be offered by a
2 member of the Legislature for introduction into the legislative process.

3 4. A redistricting plan developed outside the Legislature or a redistricting plan
4 developed without Reapportionment Office assistance which is to be presented for
5 consideration by the Reapportionment Committee must:

6 a. Be clearly depicted on maps which follow 2020 Census geographic
7 boundaries;

8 b. Be accompanied by a statistical sheet listing total population for each district
9 and listing the census geography making up each proposed district;

10 c. Stand as a complete statewide plan for redistricting.

11 d. Comply with the guidelines adopted by the Reapportionment Committee.

12 5. Electronic Submissions

13 a. Electronic submissions of redistricting plans will be accepted by the
14 Reapportionment Committee.

15 b. Plans submitted electronically must also be accompanied by the paper
16 materials referenced in this section.

17 c. See the Appendix for the technical documentation for the electronic
18 submission of redistricting plans.

19 6. Census Data and Redistricting Materials

20 a. Census population data and census maps will be made available through the
21 Reapportionment Office at a cost determined by the Permanent Legislative
22 Committee on Reapportionment.

23 b. Summary population data at the precinct level and a statewide work maps
24 will be made available to the public through the Reapportionment Office at a cost
25 determined by the Permanent Legislative Committee on Reapportionment.

26 c. All such fees shall be deposited in the state treasury to the credit of the
27 general fund and shall be used to cover the expenses of the Legislature.

28 **Appendix.**

29 **ELECTRONIC SUBMISSION OF REDISTRICTING PLANS**

30 **REAPPORTIONMENT COMMITTEE - STATE OF ALABAMA**

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1

2 The Legislative Reapportionment Computer System supports the electronic
3 submission of redistricting plans. The electronic submission of these plans must
4 be via email or a flash drive. The software used by the Reapportionment Office is
5 Maptitude.

6 The electronic file should be in DOJ format (Block, district # or district #,
7 Block). This should be a two column, comma delimited file containing the FIPS
8 code for each block, and the district number. Maptitude has an automated plan
9 import that creates a new plan from the block/district assignment list.

10 Web services that can be accessed directly with a URL and ArcView
11 Shapefiles can be viewed as overlays. A new plan would have to be built using this
12 overlay as a guide to assign units into a blank Maptitude plan. In order to analyze
13 the plans with our attribute data, edit, and report on, a new plan will have to be
14 built in Maptitude.

15 In order for plans to be analyzed with our attribute data, to be able to edit,
16 report on, and produce maps in the most efficient, accurate and time saving
17 procedure, electronic submissions are REQUIRED to be in DOJ format.

18 Example: (DOJ FORMAT BLOCK, DISTRICT #)

19 SSCCCTTTTTTBBBBDDDD

20 SS is the 2 digit state FIPS code

21 CCC is the 3 digit county FIPS code

22 TTTTTT is the 6 digit census tract code

23 BBBB is the 4 digit census block code

24 DDDD is the district number, right adjusted

25 **Contact Information:**

26 Legislative Reapportionment Office

27 Room 317, State House

28 11 South Union Street

29 Montgomery, Alabama 36130

30 (334) 261-0706

1 For questions relating to reapportionment and redistricting, please contact:

2 Donna Overton Loftin, Supervisor

3 Legislative Reapportionment Office

4 donna.overton@alsenate.gov

5 Please Note: The above e-mail address is to be used only for the purposes of
6 obtaining information regarding redistricting. Political messages, including those
7 relative to specific legislation or other political matters, cannot be answered or
8 disseminated via this email to members of the Legislature. Members of the
9 Permanent Legislative Committee on Reapportionment may be contacted through
10 information contained on their Member pages of the Official Website of the
11 Alabama Legislature, legislature.state.al.us/aliswww/default.aspx.

Doc. 190-21.

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U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

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

INJUNCTION, ORDER, AND COURT-ORDERED REMEDIAL MAP

This redistricting case is before the Court to direct the Secretary of State ("the Secretary") to conduct Alabama's state Senate elections pursuant to a districting plan that remedies racially discriminatory vote dilution previously found by this Court. *See* Doc. 274. As explained below, the Court orders the use of a remedial map that was prepared race-blind and affords Black voters in the Montgomery area an equal opportunity, but certainly not a guarantee, to elect Senators of their choice.

I. BACKGROUND

The Court enjoined the Secretary and his successors from conducting state Senate elections according to the redistricting plan that the Alabama Legislature enacted in 2021 ("the Enacted Plan") because the plan violates Section Two of the

Voting Rights Act of 1965, 52 U.S.C. § 10301 ("Section Two"). Doc. 274 at 4. The Secretary moved to stay that injunction and remedial proceedings, Doc. 278, but the Court denied a stay and appointed a Special Master tasked with recommending remedial maps for use in Alabama's state Senate elections, *see* Docs. 302, 307.

The Secretary previously advised this Court that he needs a remedial map in hand by November 17, 2025, to administer the 2026 elections, Doc. 275 at 4, so the Court proceeded on a timetable that accommodates that deadline. The Court invited the parties to object to the appointment of the Special Master, and none did. Doc. 276 at 2–3. And the Secretary alerted the Court that Alabama Governor Kay Ivey decided not to convene the Alabama Legislature for the purpose of enacting a remedial state Senate map. Doc. 299.

The Court appointed Richard Allen as Special Master, Michael Scodro and the Mayer Brown LLP law firm as counsel to the Special Master, and David Ely as cartographer. Docs. 302, 307. This is the same Special Master and team that were appointed in the Alabama congressional redistricting litigation in 2023, after those cases returned from the Supreme Court of the United States for remedial proceedings. *See generally Milligan* Doc. 273.[1]

Although "[r]edistricting is primarily the duty and responsibility of the State,"

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[1] Citations to documents in the congressional redistricting litigation in the district court are to the documents in the *Milligan* action, No. 2:21-cv-1530-AMM.

Abbott v. Perez, 585 U.S. 579, 603 (2018) (internal quotation marks omitted), this Court "ha[s] its own duty to cure" districts drawn in violation of federal law when state legislatures do not do so, *North Carolina v. Covington*, 585 U.S. 969, 977 (2018). So the Court tasked the Special Master and his team with filing a report and recommendation containing three remedial plans that remedy the vote dilution previously found by the Court. Doc. 302 at 11.

The Court instructed the Special Master to produce plans that "remediate the essential problem found in the Enacted Plan—the unlawful dilution of the Black vote in Alabama's state Senate districting scheme." Doc. 307 at 2. Those plans, therefore, had to "include[] either an additional majority-Black Senate district in the Montgomery area, or an additional district there in which Black voters otherwise have an opportunity to elect a Senator of their choice." *Id.* (quoting Doc. 274 at 5). Under the Voting Rights Act and binding precedent, that is the remedy to which the plaintiffs are entitled. *See*, *e.g.*, *Bartlett v. Strickland*, 556 U.S. 1, 24 (2009) (plurality opinion); *Cooper v. Harris*, 581 U.S. 285, 306 (2017).

For the reasons the Court explains below, the Secretary is **ORDERED** to administer Alabama's upcoming state Senate elections using the plan titled "Remedial Plan 3" in the Special Master's Report, which is appended to this order. This plan satisfies all constitutional and statutory requirements while hewing as closely as possible (indeed, very closely) to the Enacted Plan.

The Court appreciates the thorough and expeditious work of the Special Master and his team. The Special Master Team is **INSTRUCTED** to file a Fee Statement within twenty-one days of the date of this order. The Fee Statement must set forth expenses incurred (with supporting documentation), hours worked and work performed, hourly rate, and any additional information necessary for the Court to assess the reasonableness of the expenses and fees claimed, for the Special Master, his counsel, and the cartographer. Any party wishing to respond to the Fee Statement is **ORDERED** to do so within fourteen days of the date it is filed, and the Court will assess the Special Master fees as appropriate by separate order.

II. THE SPECIAL MASTER

The Court provided detailed instructions to the Special Master and his team. The Court directed the Special Master to file three remedial plans and a report and recommendation "that explain[ed] in some detail the choices made in each proposed plan, the differences between the proposed plans, and why each plan remedies the vote dilution found by this Court." Doc. 302 at 11. Those proposed plans were required to "[c]ompletely remedy the Section Two violation identified in this Court's" injunction, "[c]omply with the U.S. Constitution and the Voting Rights Act[,]" and "[c]omply with the one-person, one-vote principle guaranteed by the Equal Protection Clause of the Fourteenth Amendment, based on data from the 2020 Census." *Id.* at 11. The Court required the Special Master's plans to "[r]espect

traditional redistricting principles to the extent reasonably practicable as expressed in the Alabama Legislature's Permanent Legislative Committee on Reapportionment" while acknowledging that "the Alabama Legislature has substantially more discretion than does this Court in drawing a remedial map." *Id.* at 12. Any plan included in the Special Master's report was required to "[h]ew as closely as possibly to the Enacted Plan while providing a lawful remedial district." *Id.* at 13.

The Special Master was permitted to consider the illustrative plans offered by the plaintiffs and all record evidence. *Id.* He was also directed to consider "any proposals, plans, and comments submitted to them by any of the parties." *Id.* As directed by the Court, the Special Master allowed non-parties to propose remedial plans. *Id.*; Doc. 303 at 3. The Special Master was authorized to retain assistants and experts, obtain the software needed to produce plans, and issue appropriate orders as necessary. Doc. 302 at 13. The Court forbade *ex parte* conversations between the Special Master and the parties or their counsel, but allowed *ex parte* communication between the Special Master and the Court. *Id.*

The Special Master was and is required to preserve all of the documents and related materials used in developing his remedial plans until relieved of that obligation by the Court. *Id.* at 13–14. And finally, the Court provided that the Special Master and his team would be compensated by the parties for the reasonable time

and expenses they incurred in developing their plans. *Id.* at 14.

The Court set a deadline of October 24, 2025, for the Special Master's report, and a deadline of October 31, 2025, for objections to that report. *Id.* at 14–15. The Court held a remedial hearing in the Myron H. Thompson Courtroom at the Frank M. Johnson Courthouse in Montgomery, Alabama, on November 5, 2025, to receive comments from the parties and the public.

A. Submissions to the Special Master

The Court opened a miscellaneous docket for the Special Master. *See In re Redistricting 2025*, Case No. 2:25-mc-01682-AMM ("*Redistricting*"). On October 2, 2025, the Special Master set deadlines for parties and interested non-parties to submit proposed plans or comments. *Redistricting* Doc. 2. The Special Master received nine proposed plans. *Redistricting* Doc. 13 at 10. The Plaintiffs jointly proposed three plans, and D.D., a minor resident of the State of Alabama, proposed six plans. *See id.* The Special Master received comments from the Plaintiffs, the Secretary, and a non-party. *See Redistricting* Docs. 9–12.

The Special Master observed that the proposals and comments were "necessarily done on an expedited basis but were nonetheless of extremely high quality and were clearly the product of extensive work and thoughtful analysis." Doc. 312 at 11. The Special Master "reviewed[] and carefully considered" each submission. *Id.*

B. The Special Master's Report

The Special Master filed his Report and Recommendation on October 24, 2025. *See id.* The Special Master explained that he limited his analysis exactly as the Court directed. *See id.* at 11–12. The Special Master ensured that each of the three remedial plans in his Report (1) complies with the primary criteria set out in the Court's instructions (*i.e.*, it completely remedies the likely Section Two violation, complies with the one-person, one-vote principle, and otherwise complies with the U.S. Constitution and the Voting Rights Act), and (2) respects traditional districting criteria ("compactness, contiguity, respect for political subdivisions, and maintenance of communities of interest"). *Id.* at 11. The Special Master (3) "minimized changes to the Enacted Plan to the extent possible by maintaining most district boundaries and retaining the vast majority of people within the same districts they occupied under the Enacted Plan." *Id.* And (4) the Special Master "emphasize[d] that neither he nor his cartographer, Mr. Ely, used racial population data when drawing district boundaries, nor did they 'target' any particular Black population percentage in any district." *Id.* at 12. In other words, the Special Master prepared each plan race-blind.

For each remedial plan, the Special Master provided core retention metrics, an effectiveness analysis, compactness scores, and information about respect for political subdivisions and communities of interest. The core retention metric

indicates (1) the percentage of the population of each district in the Enacted Plan that was retained in that district in each remedial plan, and (2) that statistic calculated on a statewide basis. *Id.* at 15 tbl. 1. Each remedial plan in the Special Master's report retains between 96.1% and 97.6% of Alabama's population in the same districts they were in under the Enacted Plan. *See id.*

The Special Master provided two compactness scores for each remedial plan, using "the most commonly-used measures": Polsby-Popper and Reock. *Id.* at 24; *see id.* at 25 tbl. 6. The Special Master also used cut edges scores and considered the population polygon metric, which is a "statistical measure that examines the shape of a district and the location of where people live in and around the district." *Id.* at 24–25 (internal quotation marks omitted).

The Special Master concluded that all three remedial plans "are all as compact as the Enacted Plan and have none of the 'tentacles, appendages, or fingers [that] may reflect an attempt to "combine two farflung segments of a racial group with disparate interests."''" *Id.* at 25 (first quoting Doc. 274, 154–55; then quoting *League of United Latin Am. Citizens v. Perry* ("*LULAC*"), 548 U.S. 399, 433 (2006) (plurality opinion in part)).

The Special Master explained that each of the three remedial plans complies with the one-person, one-vote principle based on 2020 Census data and is at or below the population deviation reflected in the Enacted Plan. *Id.* at 22–23. And the Special

Master provided data to establish that his plans respect political subdivisions and communities of interest, including information about county splits, municipality splits, and precinct splits. *Id.* at 26–27.

"After preparing each draft plan, Mr. Ely performed an election analysis . . . to determine how frequently the Black-preferred candidate would have won past election contests in each district." *Id.* at 12. The Special Master explained that "[a]n effectiveness analysis uses recent election results to assess whether a candidate preferred by a particular group would be elected from a proposed 'opportunity district.'" *Id.* at 18. The Special Master reasoned that for a proposed remedial district to perform as an opportunity district, "an effectiveness analysis in this case should demonstrate that the Black-preferred candidate often would win an election in the subject district." *Id.*

The Special Master used two sets of elections for his effectiveness analysis. *Id.* at 19. The first set contained eleven biracial, statewide elections between 2014 and 2022 that "the Parties examined during the liability phase of this case and cited in their Joint Statement of Undisputed Facts." *Id.* The second set included those eleven elections as well as "six uni-racial elections that the parties and the Special Master examined in *Milligan*," for a total of seventeen elections. *Id.*

The Plaintiffs suggested, but the Special Master declined to consider, two additional elections from 2024; the Special Master reasoned that "there is no expert

analysis and identification of the Black-preferred candidates in those contests." *Id.* at 19–20. The Special Master also declined to consider "other earlier elections" suggested by the Secretary, "including eleven elections held between 2014 and 2018 that [the Plaintiffs' expert] did not consider" "because the Parties did not consider and agree on those elections, and . . . there [was] no expert analysis and identification of the Black-preferred candidates in those contests." *Id.* The Special Master "concluded that the set of seventeen elections [he used] was sufficiently robust to conduct" an effectiveness analysis. *Id.* at 20.

In all three remedial plans, Districts 25 and 26 are the Black-opportunity districts in the Montgomery area. *See id.* at 20–21, tbls. 3 & 4. District 26 was a majority-Black district in the Enacted Plan. Doc 312-4 at 3.

1. Remedial Plan 1

Remedial Plan 1 is similar to an illustrative plan prepared by the Plaintiffs' liability expert, Mr. Anthony Fairfax, that modified four districts in the Enacted Plan. Doc. 312 at 12. Remedial Plan 1 "modifies only three districts in the Enacted Plan." *Id.* at 28.

Of the three plans included in the Special Master's Report and Recommendation, Remedial Plan 1 has the lowest statewide core retention percentage. *See id.* at 15 tbl. 1.

A Black-preferred candidate wins Senate Districts 25 and 26 under Remedial

Plan 1 in approximately 94% of the elections considered by the Special Master. *Id.* at 21 tbl. 4. In Remedial Plan 1, the Black voting-age population is 51.6% of District 25 and 49.7% of District 26. *Id.* at 22 tbl. 5. In Remedial Plan 1, Senate Districts 25, 26, and 30 are more compact than in the Enacted Plan using the Polsby-Popper score, and only District 26 becomes less compact when using the Reock score. *See id.* at 25 tbl. 6. Remedial Plan 1 splits eighty-seven municipalities statewide, slightly more than the eighty-five split under the Enacted Plan. *Id.* at 26. And Remedial Plan 1 splits thirteen precincts statewide, as does the Enacted Plan. *Id.* at 27.

2. Remedial Plan 2

Remedial Plan 2 is similar to a remedial plan prepared by another Plaintiffs' expert, Dr. Kassra Oskooii, *see id.* at 13, and "is more similar to the Enacted Plan than Remedial Plan 1," *id.* at 28. Like Remedial Plan 1, Remedial Plan 2 modifies three districts in the Enacted Plan. *Id.*

The statewide core retention percentage for Remedial Plan 2 is the second highest out of the three remedial plans. *Id.* at 15 tbl. 1.

Under Remedial Plan 2, a Black-preferred candidate wins every election analyzed by the Special Master in Senate District 25 and approximately 94% of the elections analyzed in Senate District 26. *Id.* at 21 tbl. 4. In Remedial Plan 2, the Black voting-age population is 53.6% of District 25 and 48.3% of District 26. *Id.* at 22 tbl. 5.

Statewide, Remedial Plan 2 has the same Polsby-Popper compactness score as the Enacted Plan. *Id.* at 25 tbl. 6. And at the district level, each district is more compact than in the Enacted Plan using the Polsby-Popper score. *Id.* Using the Reock score, Remedial Plan 2 is more compact statewide and at least as compact as the Enacted Plan at the district level. *See id.* Remedial Plan 2 splits eighty-seven municipalities statewide and fourteen precincts—more of both than the Enacted Plan. *Id.* at 26–27.

3. Remedial Plan 3

Remedial Plan 3 is "identical" to D.D. Plan 5.0, and is "closest to the Enacted Plan, limiting its modifications to the Enacted Plan to only two districts." *Id.* at 28. Remedial Plan 3 has the highest statewide core retention percentage, 97.6%, out of any plan in the Special Master's Report and Recommendation. *See id.* at 15 tbl. 1. At the district level, Remedial Plan 3 has the highest core retention percentage in Senate District 25 and the second-highest core retention percentage in Senate District 26. *See id.*

A Black-preferred candidate wins election in Senate District 25 in approximately 88% of the seventeen elections analyzed by the Special Master. *Id.* at 21 tbl. 4. In Senate District 26, a Black-preferred candidate wins approximately 53% of the seventeen elections analyzed by the Special Master. *Id.* If the two 2024 elections urged by the Plaintiffs are included in the effectiveness analysis, a Black-

preferred candidate wins approximately 47% of the nineteen elections studied. *See* Doc. 316 at 5 n.3.

In Remedial Plan 3, the Black voting-age population is 51.1% of District 25 and 43.9% of District 26. Doc. 312 at 22 tbl. 5. Statewide, Remedial Plan 3 has the same Polsby-Popper score and Reock score as the Enacted Plan. *Id.* at 25 tbl. 6. And at the district level, Districts 25 and 26 are more compact than the Enacted Plan using the Polsby-Popper score. *Id.* Using the Reock score, District 25 is more compact in Remedial Plan 3 than in the Enacted Plan, while District 26 is less compact in Remedial Plan 3 than in the Enacted Plan. *Id.* Remedial Plan 3 splits eighty-four municipalities statewide, three fewer than the Enacted Plan, but fourteen precincts, one more than the Enacted Plan. *Id.* at 26–27.

C. The Special Master's Recommendation

Ultimately, "the Special Master recommend[ed] that the Court adopt Remedial Plan 1 or Remedial Plan 2, recognizing that Remedial Plan 3, while instructive, is less effective as a Section Two remedy." *Id.* at 29. The Special Master reasoned that

> Remedial Plan 3 only weakly remedies the Section Two violation: while the Black-preferred candidate often wins District 25, the Black-preferred candidate wins District 26 in only *three* of the eleven biracial elections examined by the Special Master. The Black-preferred candidate performs better in the uni-racial elections, winning all six uni-racial elections examined. In other words, [W]hite candidates (including [W]hite Black-preferred candidates)

> are able to win District 26 much more reliably than Black candidates.

Id. at 21. Conversely, he reasoned that "Remedial Plan 2 . . . represents the most effective Section Two remedy," *id.* at 28, because Black-preferred candidates win every election he analyzed in Senate District 25 and approximately 94% of the elections he analyzed in Senate District 26, *see id.* at 21 tbl. 4.

D. Objections

Both the Plaintiffs and the Secretary objected to the Special Master's Report and Recommendation. *See* Docs. 316, 317. The Plaintiffs object to Remedial Plan 3 because "Section 2's 'guarantee of equal opportunity is not met when [c]andidates favored by [B]lacks can win, but only if the candidates are [W]hite.'" Doc. 316 at 3 (some alteration in original) (quoting *Rural W. Tenn. African-Am. Affairs Council v. Sundquist* ("*Rural West*"), 209 F.3d 835, 840 (6th Cir. 2000)).

The Plaintiffs assert that Remedial Plan 3 does not provide a complete remedy because, in the Special Master's effectiveness analysis, the Plaintiffs say that "Black voters could only rarely elect Black candidates and can only sometimes elect their preferred candidates if those candidates are White." *Id.* at 5 (citing Doc. 312-3 at 3). (In the Special Master's effectiveness analysis for Remedial Plan 3, the Black-preferred candidate won all six uni-racial elections in District 26 and won three out of eleven biracial elections in that District, winning nine out of seventeen elections studied overall. Doc. 312 at 21 tbl. 4).

The Plaintiffs further object to the Special Master's exclusion of two 2024 elections from his effectiveness analysis; the Plaintiffs argue that if those elections are included, the Black-preferred candidate's win-rate in District 26 under Remedial Plan 3 decreases from 53% to approximately 47%. Doc. 316 at 5 n.3.

Separately, the Plaintiffs contend that Remedial Plan 2 most effectively avoids the unconstitutional use of race because Dr. Oskooii "drew his plan without referencing any map other than the Enacted Plan and without viewing any racial or electoral data until after completing the map." *Id.* at 9. The Plaintiffs do not take issue with D.D.'s representation that he did not view any racial data while he prepared his plans. *See Redistricting* Doc. 11; Doc. 316.

The Secretary objects that "[e]ach of the proposed plans was drawn with a racial target" because the Court's instructions noted the "practical reality" that because of intensely racially polarized voting in Alabama, to provide an additional opportunity district a remedial plan would likely need to include "an additional district in the Montgomery area in which Black voters either comprise a voting age majority or something quite close to it." Doc. 317 at 1 (quoting Doc. 307 at 2).

The Secretary further contends that Remedial Plans 1 and 2 change the Enacted Plan more than what is necessary to remedy the Section Two violation found. *See id.* at 4–5. The Secretary thus contends the "least bad" option is for the Court to select Remedial Plan 3 because it most closely approximates the Enacted

Plan. *Id.* at 5–6.

E. Remedial Hearing

At the remedial hearing, the Plaintiffs called Dr. Oskooii, who provided testimony on both direct and cross-examination about his plans. *See generally* Tr. 3–61. The Court then heard arguments from the parties as to their positions on the remedial plans included in the Special Master's Report and Recommendation.

The Plaintiffs argued that an "opportunity district" is one in which the Section Two "violation is remedied." *Id.* at 63. When asked about the legal basis for considering a candidate's race to determine the effectiveness of a remedy, the Plaintiffs responded that because the "remedy should speak to the legal violation," *id.* at 64, "the guarantee of equal opportunity is not met . . . when candidates favored by [B]lack voters can win but only if those candidates are [W]hite," *id.* at 65. The Plaintiffs also asserted that the Court should assign greater weight to the more recent elections in the Special Master's effectiveness analysis. *Id.* at 67.

The Plaintiffs conceded that Section Two provides only an "opportunity [for Black voters] to elect" a candidate of their choice, not a "guarantee[]" to elect a chosen candidate. *Id.* And the Plaintiffs conceded that a district in which a Black-preferred candidate won 40% of the time would not "categorically" fail to remedy a Section Two violation. *Id.* at 69. The Plaintiffs acknowledged that, regardless whether the Special Master considered 2024 elections in his effectiveness analysis,

District 25 in Remedial Plan 3 would elect a Black-preferred candidate "around 50 percent" of the time in the modeled elections; the Plaintiffs further acknowledged that whether the Black-preferred candidate would win nine of seventeen modeled elections or nine of nineteen modeled elections "cannot be the fulcrum on which [the remedial question in this case] hinges." *Id.* at 73. Nevertheless, although the Plaintiffs concede that Remedial Plan 3 "offer[s] more opportunity" than the Enacted Plan, *id.* at 77, they maintain that it is a "complete failure" in "recent elections," *id.* at 67, and not an adequate remedy.

The Secretary repeated his objection to all three remedial plans as "racial gerrymanders." *Id.* at 78. The Secretary argued that of the three plans, the Court is "required to choose [Remedial] Plan 3 because [Remedial] Plan 3 is the most respectful of the [L]egislature's decisions." *Id.* at 80. He further argued that Remedial Plan 3 provides Black voters an opportunity to elect candidates of their choice, as the Special Master's effectiveness analysis revealed that a Black-preferred candidate wins more than half of the time. *Id.* at 82.

The Secretary acknowledged that in the light of the Court's liability finding that the Enacted Plan unlawfully diluted Black votes by packing Black voters into District 26, any remedy must "unpack" that District. *See id.* at 84–85. The Secretary conceded that his objections to Remedial Plan 3 are coterminous with his objections to the Court's liability findings, and that he maintains no other objections to that

Plan. *See id.* at 88–89 ("I don't believe we would have other objections outside of the gerrymandering objection to [Remedial Plan 3.]").

The Secretary maintained that even though neither the Special Master nor D.D. displayed any racial data while preparing their remedial plans, those plans are not race-blind. *See* Doc. 317 at 2; *Redistricting* Doc. 8-1 at 3. He contended that any keen observer of this litigation would understand how to draw a racial gerrymander in the Montgomery area without needing to see racial demographic data while drawing, such that it is impossible to prepare a map race-blind. *See* Doc. 317 at 2.

III. STANDARD OF REVIEW

Controlling Supreme Court precedent dictates rules that the Court must follow in ordering a remedial plan. The Court does not have the authority to simply select the plan that outperforms all other proposed plans on any particular metric and order the Secretary to use that plan. The Court must give the Alabama Legislature as much deference as possible, and the Court may not disturb the policy choices in the Enacted Plan any more than is necessary to remedy the likely Section Two violation this Court found. *See, e.g.*, *Upham v. Seamon*, 456 U.S. 37, 43 (1982) (per curiam); *Whitcomb v. Chavis*, 403 U.S. 124, 160 (1971).

This is a robust rule. A district court errs "when, in choosing between two possible court-ordered plans, it failed to choose that plan which most closely approximated the state-proposed plan." *Upham*, 456 U.S. at 42. Put differently,

"[t]he **only** limits on judicial deference to state apportionment policy . . . [a]re the substantive constitutional and statutory standards to which such state plans are subject." *Id.* (emphasis added). So the Court must select the plan that "most clearly approximated the reapportionment of the state legislature," while also satisfying federal constitutional and statutory requirements. *White v. Weiser*, 412 U.S. 783, 793 (1973).

This rule is consistent with the judiciary's limited role. "From the beginning, [the Supreme Court] ha[s] recognized that 'reapportionment is primarily a matter for legislative consideration and determination, and that judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so.'" *Id.* at 794–95 (quoting *Reynolds v. Sims*, 377 U.S. 533, 586 (1964)). Indeed, the Supreme Court "has repeatedly held that redistricting and reapportioning legislative bodies is a legislative task which the federal courts should make every effort not to pre-empt." *Wise v. Lipscomb*, 437 U.S. 535, 539 (1978) (citations omitted).

The Court has repeatedly explained that it understands its limited role. *See generally* Docs. 302, 274, 143. The Court reiterates its understanding that the Court acts within the bounds of its authority only "if [its] modifications of a state plan are limited to those necessary to cure any constitutional or statutory defect." *Upham*,

456 U.S. at 43. The Court must not "pre-empt the legislative task nor 'intrude upon state policy any more than necessary.'" *White*, 412 U.S. at 795 (quoting *Whitcomb*, 403 U.S. at 160). At the same time, however, the "Court cannot authorize an element of an election proposal that will not with certitude *completely* remedy the Section 2 violation." *Dillard v. Crenshaw Cnty.*, 831 F.2d 246, 252 (11th Cir. 1987) (Johnson, J.).

And the Court reiterates that it regards this task—"to devise and impose a reapportionment plan" for Alabama to conduct its upcoming state Senate elections without the taint of racially discriminatory vote dilution—as an "unwelcome obligation." *Wise*, 437 U.S. at 540; *see also* Doc. 302 at 2–3.

Although the Legislature had the discretion to consider various political factors when it considered the Enacted Plan (for example, such as whether any redrawn district paired incumbents), the Court may not consider such factors now. *See, e.g.*, *Larios v. Cox*, 306 F. Supp. 2d 1214, 1218 (N.D. Ga. 2004) (three-judge court) (explaining that "in the process of adopting reapportionment plans, the courts are forbidden to take into account the purely political considerations that might be appropriate for legislative bodies," and that "many factors, such as the protection of incumbents, that are appropriate in the legislative development of an apportionment plan have no place in a plan formulated by the courts") (quoting *Wyche v. Madison Parish Police Jury,* 635 F.2d 1151, 1160 (5th Cir. 1981), and *Wyche v. Madison*

Parish Police Jury, 769 F.2d 265, 268 (5th Cir. 1985) (per curiam)) (internal quotation marks omitted).

IV. ANALYSIS

The Court has carefully reviewed each proposed plan, all comments submitted to the Special Master, the Special Master's Report and Recommendation, each objection raised and comment filed to that Recommendation, and the parties' arguments at the remedial hearing. Like the Special Master and his team, the Court finds that the proposals, comments, and objections are the product of thoughtful analysis by the parties and interested members of the public.

A. Remedial Plan 3

The Court begins its analysis with Remedial Plan 3 because that plan alters only two districts in the Enacted Plan: Districts 25 and 26—the Black-opportunity districts in the Montgomery area. The Court must adopt Remedial Plan 3 if it is a lawful remedial plan. If Remedial Plan 3 is such a plan, the Court has no discretion to adopt a remedial plan (such as Remedial Plans 1 or 2) that modifies three districts in the Enacted Plan. Because the Court must leave the Legislature's chosen district boundaries undisturbed as much as possible, the Court must not modify any more districts than are strictly necessary to remedy the vote dilution it found.

The Court is satisfied that Remedial Plan 3 respects the traditional districting principles that the Alabama Legislature has identified, complies with Section Two,

and is constitutional. *First,* Remedial Plan 3 pays significant respect to traditional districting principles. Although federal law does not require that a remedial plan materially meet or beat an enacted plan on various measures of geographic compactness, Remedial Plan 3 does that. *See* Doc. 312 at 25 & tbl. 6. Likewise, although federal law does not require that a remedial plan split fewer municipalities than an enacted plan splits, Remedial Plan 3 does that. *See id.* at 26. And Remedial Plan 3 respects communities of interest. Indeed, although the Secretary initially objected to all remedial plans on the ground that they split a community of Black Alabamians "connected to the downtown Montgomery area," Doc. 317 at 3, he later limited his objection to Remedial Plan 3 to his "gerrymandering objection," Tr. at 89.

Second, Remedial Plan 3 pays significant respect to legislative redistricting decisions. Remedial Plan 3 leaves 97.6% of Alabama voters in the same districts the Enacted Plan provided for them. Doc. 312 at 15 tbl.1. Even the most casual comparison of Remedial Plan 3 and the Enacted Plan reveals how it remedies the vote dilution the Court found by redistricting only 2.4% of Alabama voters: it unpacks District 26 by moving some Black voters from District 26 into the adjacent District 25. *See* Doc. 312-3. Remedial Plan 3 leaves everything else alone.

Accordingly, there can be no legitimate argument that Remedial Plan 3 does significant violence to any traditional districting principle or legislative redistricting

decision, other than the decision that resulted in racially discriminatory vote dilution. Likewise, there can be no legitimate argument that the Legislature could not have enacted Remedial Plan 3 in the first instance: there is (obviously) no legal requirement for the Legislature to pack Black voters into District 26, nor any prohibition on unpacking that district following a finding of unlawful vote dilution.

Third, the Court is satisfied that Remedial Plan 3 "completely" and "with certitude" remedies the Section Two violation the Court found. *See Dillard*, 831 F.2d at 252 (emphasis omitted). Under Remedial Plan 3, a Black-preferred candidate wins election in District 25 in approximately 88% of the seventeen elections analyzed by the Special Master. Doc. 312 at 21 tbl. 4. Under Remedial Plan 3, a Black-preferred candidate wins election in District 26 in more than half of the seventeen elections studied by the Special Master. *See id.* In biracial elections in District 26, the Black-preferred candidate wins approximately 27% of the time, while in uni-racial elections the Black-preferred candidate wins every election. *Id.* at 21. If the Court considers the two 2024 elections that the Plaintiffs request, by the Plaintiffs' own admission the results are materially unchanged. *See* Tr. 73.

The Court rejects the Plaintiffs' argument that Remedial Plan 3 is nevertheless not an effective remedy. This is for two reasons. First, the Court discerns no legal basis to hold that a district where a Black-referred candidate wins approximately half of the (seventeen or nineteen) modeled elections is not an effective remedial district.

In the Court's view, requiring a greater chance of success would erroneously convert the requirement of equal opportunity into a requirement of something more.

And second, the Court discerns no legal basis to assign the weight to candidate race that the Plaintiffs suggest. The Plaintiffs cite the *Rural West* case for the proposition that "Section 2's guarantee of equal opportunity is not met when candidates favored by [B]lacks can win, but only if the candidates are [W]hite." Doc. 316 at 3 (quoting *Rural West*, 209 F.3d at 840 (internal quotation marks omitted)). But as just explained, that's not what these data show for District 25 or District 26. The Plaintiffs' suggestion that only White Black-preferred candidates can win election in District 26 is overdrawn from the set of elections studied. Indeed, it rests primarily on just two recent election cycles, but there is no basis to focus on those to the exclusion of the other elections the Special Master analyzed (with no objection from the Plaintiffs).

And in any event, the promise of Section Two is not that a Black voter can often elect a Black candidate: it's that a Black voter has an equal opportunity to elect a candidate of his choice that a White voter has. *See United States v. Dallas Cnty. Comm'n*, 850 F.2d 1433, 1439 n.6 (11th Cir 1998); *accord LULAC*, 548 U.S. at 428 ("[T]he ultimate right of [Section Two] is equality of opportunity, not a guarantee of electoral success for minority-preferred candidates of whatever race."). That is the rule regardless of the race of the candidate.

Ultimately, the record makes clear that Remedial Plan 3 unpacks District 26 by reassigning some Black voters to District 25 such that both districts are Black-opportunity districts. The Court thus finds that Remedial Plan 3 completely remedies the unlawful vote dilution the Court found in the Enacted Plan.

Fourth, the Court is satisfied that race did not predominate in the preparation of Remedial Plan 3. The original drafter of Remedial Plan 3, D.D., stated in his filing that he did not display any racial demographic data while he drafted the Plan. *Redistricting* Doc. 8-1 at 3. No party has suggested, let alone established, otherwise. Accordingly, there is no evidentiary basis for a finding that race predominated in the preparation of Remedial Plan 3.

The Court rejects the Secretary's suggestion that Remedial Plan 3 was not prepared race-blind because any keen observer of this litigation would understand how to draw a race-predominant remedial map without displaying racial data while drawing the map. This is for two reasons. First, the Court simply cannot hold that a particular consideration predominated in the preparation of a particular map with zero evidentiary basis. Factfinding does not work that way. Second, standing alone, a cartographer's general knowledge of the areas at issue in a mapmaking process cannot form the basis for a finding that a single consideration predominated over others in that process. Because the general knowledge (assuming *arguendo* that it exists) is fixed, and a predominance finding would be inherently relative, general

knowledge is necessarily insufficient to establish predominance.

In any event, the facts of this case make it very difficult for the Court to accept the suggestion that Remedial Plan 3 is race-predominant even though it was prepared race-blind. The vote dilution the Court found in the Montgomery area was the practical result of the reality that the Enacted Plan packed Black voters into District 26. The Court cannot reconcile current Section Two jurisprudence with the Secretary's suggestion that the law forbids the Court to unpack that district even though a teenager can draw a map doing just that without displaying any racial data during the process.

B. Affirmative Injunction Requiring Use of Remedial Plan 3

The Court further finds that all requirements for injunctive relief are satisfied to order the Secretary to conduct Alabama's state Senate elections according to Remedial Plan 3. When, as here, an injunction "goes beyond the status quo and seeks to force one party to act, it becomes a mandatory or affirmative injunction and the burden placed on the moving party is increased." *Mercedes-Benz U.S. Int'l, Inc. v. Cobasys, LLC*, 605 F. Supp. 2d 1189, 1196 (N.D. Ala. 2009) (citing *Exhibitors Poster Exch., Inc. v. Nat'l Screen Serv. Corp.*, 441 F.2d 560, 561 (5th Cir. 1971)). An affirmative injunction "should not be granted except in rare instances in which the facts and law are clearly in favor of the moving party." *Exhibitors Poster Exch., Inc.*, 441 F.2d at 561 (quoting *Mia. Beach Fed. Sav. & Loan Ass'n. v. Callander,*

256 F.2d 410, 415 (5th Cir. 1958) and collecting cases).

The Court has no doubt that the facts and law clearly favor an affirmative injunction requiring the Secretary to administer Alabama's state Senate elections according to Remedial Plan 3. "An injunction is an exercise of a court's equitable authority, to be ordered only after taking into account all of the circumstances that bear on the need for prospective relief." *Salazar v. Buono*, 559 U.S. 700, 714 (2010) (plurality opinion). "Under traditional equitable principles, a plaintiff seeking a permanent injunction must demonstrate (1) it has suffered an irreparable injury; (2) remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) the public interest would not be disserved by a permanent injunction." *Angel Flight of Ga., Inc. v. Angel Flight of Am., Inc.*, 522 F.3d 1200, 1208 (11th Cir. 2008) (citing *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006)); *see also KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1268 (11th Cir. 2006).

The Plaintiffs prevailed on the merits of their Section Two claim in the Montgomery area, and the Court is satisfied that the facts and law are quite clearly in their favor. This case has proceeded through years of litigation. It was stayed for a period of time for the Supreme Court to rule in the Alabama congressional redistricting litigation, and that ruling reiterated the applicable legal standard in a

highly relevant factual context—namely, the totality of the circumstances in present-day Alabama. *Allen v. Milligan*, 599 U.S. 1, 22–23 (2023). After that ruling, the Court held an eight-day bench trial and ultimately enjoined the use of the Enacted Plan based on an extensive record well prepared by all counsel. During that trial, the Secretary's expert did not even attempt to contest the reasonable compactness of the Plaintiffs' illustrative remedial district in the Montgomery area. Doc. 274 at 103–04.

The Court is further satisfied that an affirmative injunction is necessary to protect the public interest in lawful elections. When the Court refused to stay its injunction, the Secretary did not seek an appellate stay. Accordingly, and because the Governor did not call the Legislature into Special Session to attempt to enact a remedial plan, the unwelcome task of preparing a remedial plan fell to the Court. Absent a court-ordered remedial plan, Alabama will have no lawful districting plan for its upcoming state Senate elections.

The Court also finds that an affirmative injunction is necessary to prevent further irreparable injury to the Plaintiffs and other Alabama voters. Those persons already suffered an irreparable injury to their voting rights once in this census cycle, when they cast their votes under the Enacted Plan in Alabama's 2022 state Senate election. Today's remedial order prevents such future injuries.

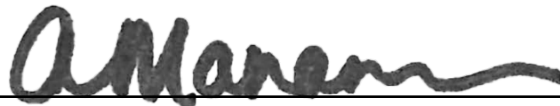
Indeed, it is self-evident that the Plaintiffs face a far greater harm than does the Secretary should this Court refuse to enter a permanent injunction. "Voting is the

beating heart of democracy," and a "fundamental political right, because it is preservative of all rights." *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1315 (11th Cir. 2019) (internal quotation marks omitted) (alterations accepted). And "once the election occurs, there can be no do-over and no redress" for voters whose rights were violated and votes were diluted. *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014). Without a permanent injunction, the Plaintiffs face the loss of their most fundamental right: the opportunity to participate in self-government on equal footing with their peers. Comparatively, the Secretary's ministerial role in administering elections would be only moderately impacted by administering state Senate elections under a different map that redistricts less than three percent of all Alabama voters and affects only two of thirty-five Senate districts.

V. CONCLUSION

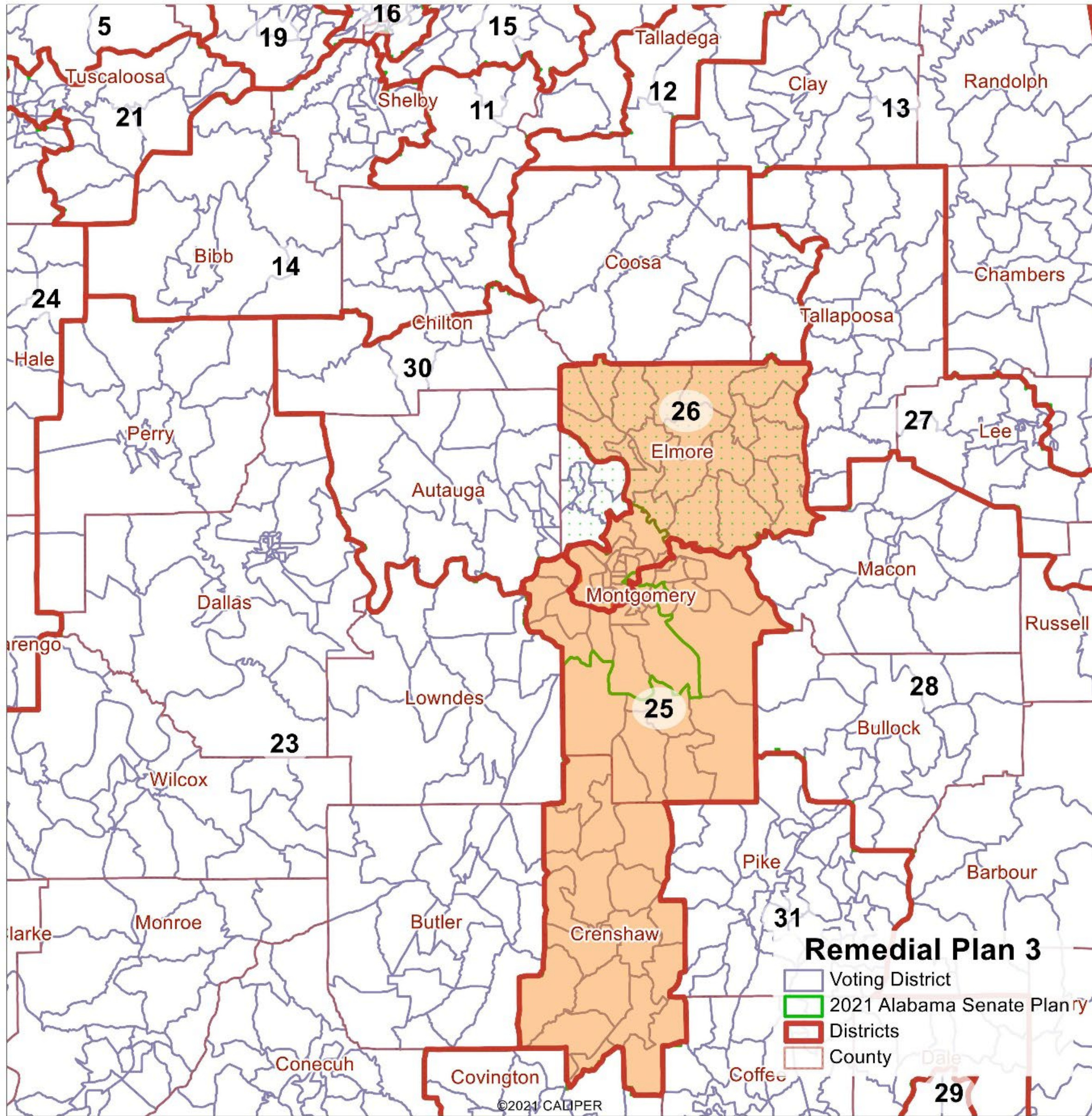
Accordingly, the Alabama Secretary of State is **ORDERED** to administer Alabama's 2026 and 2030 state Senate elections, as well as any special and other elections for the state Senate that occur before the Legislature passes a districting plan based on the 2030 census, according to Remedial Plan 3, which is appended to this order as Appendix A.

DONE and **ORDERED** this 17th day of November, 2025.



ANNA M. MANASCO
UNITED STATES DISTRICT JUDGE

APPENDIX A


Remedial Plan 3
Voting District
2021 Alabama Senate Plan
Districts
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Shelby
Talladega
Clay
Randolph
Bibb
Coosa
Chambers
Chilton
Tallapoosa
Hale
Perry
Elmore
Lee
Autauga
Macon
Dallas
Montgomery
Russell
Lowndes
Bullock
Wilcox
Pike
Barbour
Monroe
Butler
Crenshaw
Conecuh
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STATE OF ALABAMA
PROCLAMATION
BY THE GOVERNOR

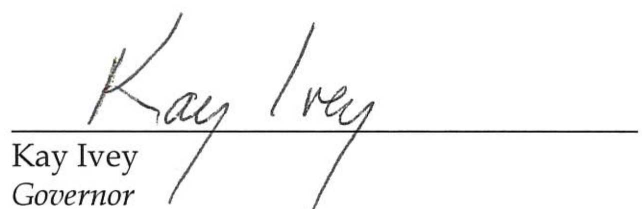
WHEREAS an extraordinary occasion exists in the State of Alabama which requires the Legislature to convene in special session, *see* Ala. Const. art. V, § 122;

NOW, THEREFORE, I, Kay Ivey, as Governor of the State of Alabama, do hereby proclaim and direct that the Legislature of the State of Alabama shall convene in special session in the Alabama State House, in Montgomery, Alabama, at 4:00 p.m. on Monday, May 4th, 2026, to take up the following specifically described subject or matter:

> ***Primary elections.*** The Legislature may consider legislation to provide for a special primary election for electing members of the United States House of Representatives and the Alabama State Senate in districts whose boundary lines are altered by a court issuing a judgment, vacating an injunction, or otherwise ordering or permitting an alteration in the boundaries of such districts.

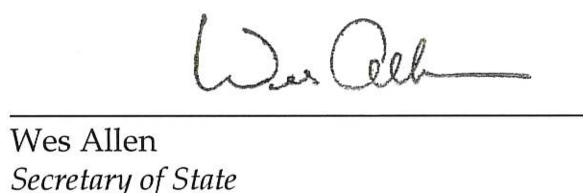
All other legislation, beyond the legislation specifically described above, is expressly excluded from this proclamation and shall require a two-thirds vote for consideration and passage during this special session. *See* Ala. Const. art. IV, § 76.

IN WITNESS WHEREOF, I have hereunto set my hand as Governor of the State of Alabama and caused this proclamation to be attested by the Secretary of State on this 1st day of May 2026.



Kay Ivey
Governor

ATTESTED:



Wes Allen
Secretary of State