No. 25-273

IN THE

Supreme Court of the United States

WES ALLEN, SEC'Y OF STATE, ET AL.,

Appellants,

v.

BOBBY SINGLETON, ET AL.,

Appellees.

On Appeal from the United States District Court
for the Northern District of Alabama

MOTION TO AFFIRM

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QUESTIONS PRESENTED

In 2022, a three-judge district court held that the State's congressional districting plan likely violated Section 2 of the Voting Rights Act, enjoined its use, and stated that a compliant plan must include two districts in which Black voters have an opportunity to elect a representative of their choice. This Court affirmed. After remand, the Alabama Legislature enacted a new plan in 2023 that undisputedly does not include two opportunity districts. Following an eleven-day trial, the district court held that the Legislature's 2023 plan violated Section 2 and permanently enjoined its use. The questions presented are:

1. Did the district court clearly err in its factual findings that the Legislature's 2023 plan had both the effect and intent of diluting Black votes?

2. If the district court's factual findings were not clearly erroneous, did it correctly determine that the Legislature's 2023 plan violates Section 2 of the Voting Rights Act?

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INTRODUCTION

To avoid this Court's 2023 opinion in this same case, the State's jurisdictional statement attacks an opinion the district court never wrote. To hear the State tell it, the district court demanded that the Legislature segregate Alabamians by race, and punished the State for refusing to do so. In fact, the district court enjoined the Legislature's 2023 plan because of its willful refusal to provide an opportunity for Black voters to elect representatives of their choice, rejecting even race-neutral plans that provided two opportunity districts.

From the first sentence of the State's Questions Presented, the jurisdictional statement misrepresents the opinions below. According to the State, "Alabama's 2021 congressional districting plan was preliminarily enjoined under §2 of the Voting Rights Act because it splintered one community of interest, the Black Belt, while keeping together another, the Gulf Coast." J.S. at i. In fact, the 2021 plan was preliminarily enjoined because the plaintiffs showed that it likely met the standards this Court established in *Thornburg v. Gingles*, 478 U.S. 30 (1986). This Court held in *Allen v. Milligan* that "the District Court concluded that plaintiffs' § 2 claim was likely to succeed under *Gingles*. 582 F. Supp. 3d, at 1026. Based on our review of the record, we agree." 599 U.S. 1, 19 (2023). The district court had discussed the supposed tradeoff between splitting the Black Belt and the Gulf Coast only because the State raised it as a defense; it was not the basis of the district court's decision.

In the jurisdictional statement's third sentence, the State misrepresents the district court's order enjoining the 2023 plan as well: "Even so, the district court permanently enjoined the 2023 plan because it did not racially divide the Gulf to place more black voters from 'Black Belt counties in a majority-Black district.' App.345." J.S. at i. This incorrect statement typifies the State's repeated conflation of *illustrative* plans, which are designed to satisfy the first *Gingles* precondition and necessarily include one or more majority-minority districts, and *remedial* plans, whose districts need not meet any racial target as long as minority voters have the opportunity to elect candidates of their choice. Here, the phrase "majority-Black district" refers to the plaintiffs' illustrative plans, but the permanent injunction rested on the State's undisputed failure to provide two opportunity districts in its remedial plan. App.19, 416–17. At no point did the district court fault the State for failing "to place more Black voters … in a majority-Black district."

In sum, the district court never required the Legislature to segregate voters by race or to create a majority-minority district. Moreover, the district court found that "the Special Master Plan, which was prepared race-blind, provides compelling evidence that two reasonably configured Black-opportunity districts easily can be drawn in Alabama." App.16. Therefore, summary affirmance is appropriate for the State's first, second, and fourth questions presented.

The only remaining issue is whether Section 2 provides a private right of action. The State's position is that every federal court that entertained a private suit under Section 2 from 1965 to 2021, including this

Court, misunderstood the law. For reasons the district court explained in detail, the text and the history of Section 2 show that the State is wrong. Because the State's jurisdictional statement discusses neither the text nor the history of Section 2, this Court should summarily affirm on the third question presented as well.

STATEMENT OF THE CASE

The history of this case and the opinions of the district court and this Court reveal that the first, second, and fourth questions presented refer to rulings the district court never made.

In 2021, the Alabama Legislature enacted new congressional districts. One district, District 7, had elected a black Democrat to Congress in every election since 1992, and it was majority-black in the 2021 plan. App.11. Three sets of plaintiffs challenged the plan: The *Singleton* plaintiffs alleged that the plan violated the constitution because District 7 was a racial gerrymander, and the plan intentionally discriminated against black voters; the *Caster* plaintiffs alleged that the plan violated Section 2 of the Voting Rights Act because it had the effect of diluting black votes; and the *Milligan* plaintiffs alleged both constitutional and statutory claims on similar grounds. App.784–88.

The plaintiffs in all three cases moved to enjoin the defendants from using the 2021 plan in the 2022 election. In January 2022, the district court held a seven-day evidentiary hearing with live testimony from seventeen witnesses, more than 350 exhibits, more than 1,000 pages of briefing, and seventy-five pages of joint stipulations of fact. App.11–12. Among that evidence

was expert testimony that it is possible to draw two reasonably configured majority-Black congressional districts in Alabama while adhering to traditional districting principles, satisfying the first *Gingles* precondition. App.928–56. Holding that the defendants had likely violated the Voting Rights Act, and that it was "not a close call," the district court granted a preliminary injunction to the *Milligan* and *Caster* plaintiffs. App.12. Citing the principle of constitutional avoidance, the district court reserved ruling on the *Singleton* and *Milligan* plaintiffs' Equal Protection claims. *Id.* The defendants appealed.

This Court affirmed, agreeing that "plaintiffs' § 2 claim was likely to succeed under *Gingles*." *Milligan*, 599 U.S. at 19. As to the first *Gingles* precondition, this Court held that the plaintiffs' illustrative plans "'strongly suggest[ed] that Black voters in Alabama' could constitute a majority in a second, reasonably configured, district." *Id.* at 20 (quoting App.941). Responding to the State's argument that no illustrative plan can be reasonably configured if it splits the Gulf Coast (as the illustrative plans did), this Court found the State's evidence of the Gulf Coast as a community of interest to be weak. *Id.* at 21 ("The District Court understandably found this testimony insufficient to sustain Alabama's 'overdrawn argument that there can be no legitimate reason to split' the Gulf Coast region.") (quoting App.953). Evidentiary concerns aside, this Court wrote,

> Even if the Gulf Coast did constitute a community of interest, moreover, the District Court found that plaintiffs' maps would still be reasonably configured because they joined together a

> different community of interest called the Black Belt. … The District Court concluded—correctly, under our precedent—that it did not have to conduct a "beauty contest[]" between plaintiffs' maps and the State's. There would be a split community of interest in both.

Id. (quoting App.947).

On remand, the State asked the district court to delay trial so the Legislature could attempt to enact a new plan. *Singleton v. Allen*, No. 21-cv-1291 (N.D. Ala.), Doc. 133. The State based its proposed deadline for the Legislature to finish its work in part on the time required "for the Reapportionment Committee to receive public input regarding the plan and then propose it to legislators for review before a vote." *Id.* at 2–3. The district court agreed, *Singleton*, Doc. 135, and the Governor called a special session of the Legislature. At the special session, the Reapportionment Committee readopted its 2021 redistricting guidelines, which were substantially the same as the guidelines the committee had used since the 1990s. App.419; *Milligan v. Allen*, No. 21-cv-1530 (N.D. Ala.), Doc. 459-20 at 12–13. Among those guidelines was one specifying that a plan "shall have neither the purpose nor the effect of diluting minority voting strength." App.58–59.

"Then the Legislature took a series of unusual turns." App.419. The Reapportionment Committee did not form a plan and receive public input. Casting aside plans designed to have two opportunity districts, including one introduced by Senator Singleton (one of the appellees in this case), the Legislature settled on

one that the State concedes has just one opportunity district. App.420–21. Despite his role as House Co-Chair of the Reappointment Committee, Representative Pringle was shut out of discussions of this plan; Senator Livingston and other Senators "met with the Solicitor General behind closed doors in a different room on a different floor." App.420, 496. Representative Pringle, concerned that Senator Livingston's plan violated federal law, asked for the plan's reasoning and was told, "You're going to have to talk to Senator Livingston and [the Solicitor General]." App.420–21. Senator Livingston testified that the reason for the shift was "some additional information" committee members received, but he testified that he did not know what the information was, where it came from, or who had received it. App.420. The district court found that Senator Livingston's testimony "strains credulity." *Id.*

On the last morning of the special session, the Legislature was presented with a variation of Senator Livingston's plan, which again did not contain a second opportunity district. They were also presented with something unprecedented in Alabama: a list of "Legislative Findings" that "were drafted surreptitiously, in the dead of night, at the very last minute, and without any input from either the Senate Co-Chair or House Co-Chair of the Legislature's Reapportionment Committee." App.22. According to Senator Livingston, the Solicitor General drafted these findings. App.98. Compared to the guidelines the Reapportionment Committee had used since the 1990s, the findings made major changes. For one, they eliminated the guideline that a plan "shall have neither the

purpose nor the effect of diluting minority voting strength," and added a statement that "The Supreme Court of the United States recently clarified that Section 2 of the Voting Rights Act 'never requires adoption of districts that violate traditional redistricting principles.'" App.543. The findings then declared, for the first time in Alabama history, that certain redistricting principles were "non-negotiable," including keeping the Gulf Coast counties of Mobile and Baldwin together, App.544, notwithstanding that Mobile and Baldwin Counties had been in separate congressional districts for most years since the Civil War, *see Singleton*, Doc. 285-6 (historical Alabama congressional maps). The findings spent far more space discussing the Gulf Coast as a community of interest than it did on the other two identified communities of interest: the Black Belt and the Wiregrass. App.545–49. The Legislature adopted the plan with only one opportunity district, along with the legislative findings, and the Governor signed it into law.

The State's tactics "thrust this case into an unusual posture: we [the district court] are not aware of any other case in which a state legislature — faced with a federal court order declaring that its electoral plan unlawfully dilutes minority votes and requiring a remedial plan that provides an additional opportunity district — responded with a plan that the state concedes does not provide that district." App.14. The district court preliminarily enjoined the 2023 plan and set a trial on the plaintiffs' claims that the plan violated Section 2 and the Fourteenth Amendment.

Before trial, the district court charged its special master with proposing remedial plans. With the assistance of a cartographer, the special master proposed three plans that were all drawn without regard to race, included two opportunity districts, and followed traditional redistricting principles and the contours of the 2023 plan to the extent they could while complying with the law. App.73–77. All plaintiffs supported the third proposed plan, which the district court adopted, and which was used in Alabama's 2024 congressional elections. App.77–82.

In February 2025, the district court tried the case. At trial, the evidence of the State's Section 2 violation was similar to the evidence at the original preliminary injunction hearing, but stronger. The plaintiffs' experts presented additional illustrative plans showing that it is possible to create two reasonably configured majority-minority illustrative districts (satisfying the first *Gingles* precondition), and other evidence showing that the other two *Gingles* preconditions and the Senate factors were satisfied as well. App.123–260, 319–428. Much of this evidence, along with the bizarre sequence of events in the Legislature, demonstrated that the State's 2023 plan was intended to dilute minority voting strength, violating the Fourteenth Amendment. App.490–529. The district court permanently enjoined the 2023 plan, and the State appealed.

ARGUMENT

I. The Appellants' First, Second, and Fourth Questions Are Not Presented Because Neither Section 2, nor the Fourteenth Amendment, nor the District Court Required the State to Segregate Voters by Race or Create a Majority-Minority District.

The State raises three questions that are not presented by the record below:

Question 1: "Does §2 require Alabama to segregate a conceded community of interest to combine black voters from that community with black voters elsewhere to form a majority-black district?"

The district court never stated that Section 2 required the State to segregate anyone or to form a majority-Black district, and it ultimately adopted a race-blind remedial plan whose new opportunity district was not majority-Black.

Question 2: "Whether §2 can require Alabama to intentionally create a second majority-minority district without violating the Fourteenth or Fifteenth Amendments to the U.S. Constitution?"

Again, the district court never said that Section 2 required the State to create a second majority-minority district, and it adopted a remedial plan without a second majority-minority district.

Question 4: "Did Alabama violate the Fourteenth Amendment by declining to draw a race-based plan?"

The district court did not hold that the State violated the Fourteenth Amendment by declining to draw a race-based plan. Instead, the district court held that the State violated the Fourteenth Amendment by intentionally failing to create two opportunity districts when it knew, from litigation in the district court and this Court, that a plan with only one opportunity district "very likely unlawfully diluted the votes of Black Alabamians." App.489. The remedial plan the district court adopted, which undisputedly was drawn race-blind, contains two opportunity districts.

Summary affirmance is appropriate for Questions 1, 2 and 4 because they are not presented here.

A. The District Court Correctly Applied Established Law.

When the State last appealed a decision enjoining its unlawful congressional districts, it claimed that the district court had misapplied the *Gingles* test in several ways. This Court disagreed. *Milligan*, 599 U.S. at 19–30; *see also id.* at 30 ("the State misunderstands § 2 and our decisions implementing it"). On remand, the district court applied the *Gingles* test the same way, supporting its careful decision with hundreds of pages of discussion of the evidence. In its new appeal, the State identifies no way in which the district court departed from *Gingles* or clearly erred in its factfinding.

1. The District Court Followed *Gingles*, *Milligan*, and Other Precedent.

When the plaintiffs first challenged the State's 2021 congressional districting plan, the district court held a seven-day evidentiary hearing that included live testimony from seventeen witnesses, more than 1,000 pages of briefing, reports and rebuttal reports from every expert witness, more than 350 hearing exhibits; and seventy-five pages of joint stipulations of fact. App.777. Based on this ample record, the district court applied the *Gingles* framework for evaluating a potential violation of Section 2, determining that the plaintiffs were likely to satisfy all three *Gingles* preconditions and show that Black voters have less opportunity to elect candidates of their choice under the totality of the circumstances. App.778.

This Court affirmed, holding that the district court correctly applied the *Gingles* framework, including the first *Gingles* precondition: "With respect to the first *Gingles* precondition, the District Court correctly found that black voters could constitute a majority in a second district that was 'reasonably configured.'" *Milligan*, 599 U.S. at 19–20.[1]

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[1] The requirement that illustrative plans include majority-minority districts is well established. *Milligan*, 599 U.S. at 19 (citing cases); *see also Bartlett v. Strickland*, 556 U.S. 1 (2009) (crossover districts do not meet the first Gingles precondition). This Court has already rejected the State's contention that compliance with Section 2 requires a "race-neutral benchmark." *Milligan*, 599 U.S. at 23–30.

On remand, the district court faithfully applied the *Gingles* framework as this Court laid it out in *Milligan*. In particular, the district court noted that the evidence that Black voters could constitute a majority in a second district had only grown stronger since the preliminary injunction stage. In addition to the illustrative plans that this Court had already held to be reasonably configured, the district court stated, "the Special Master Plan, which was prepared race-blind, provides compelling evidence that two reasonably configured Black-opportunity districts easily can be drawn in Alabama." App.16. The district court also discussed new illustrative plans prepared by the same two experts whose previous plans supported the preliminary injunction. App.123–38, 203–24. Taken together, these plans left no doubt that the first *Gingles* precondition was satisfied. App.363

Turning to the remainder of the *Gingles* analysis, the district court laid out a wealth of evidence that spans 146 pages of its opinion, App.138–203, 224–60, 271–317, and explained at length that the second and third *Gingles* preconditions and the Senate factors were satisfied. App.363–428. Based on this thorough analysis, and the State's concession that "the 2023 Plan does not include an additional opportunity district," App.3, the district court held that "these Section Two claims are not a close call," App.19.

Despite the appellants' repeated accusations to the contrary, the district court did *not* hold that the State had violated Section 2 by failing to draw districts based on race in the 2023 plan. To be sure, the district court recognized that "as a practical reality, based on

extensive evidence of intensely racially polarized voting in Alabama, any remedial plan would need to include two districts in which Black voters either comprise a voting-age majority or something quite close to it." App.12–13 (internal quotation marks omitted). But the remedy the district court required, as opposed to what it acknowledged as a practical reality, demanded no thresholds for racial demographics or district lines based on race: "the appropriate remedy is a districting plan that includes either an additional majority-Black district, *or an additional district in which Black voters otherwise have an opportunity to elect a representative of their choice*." App.20 (emphasis added). This was the correct remedial standard; an opportunity district need not be majority-minority to avoid liability under Section 2. *Cooper v. Harris*, 581 U.S. 285, 305–06 (2017). Therefore, while the State could have avoided liability by drawing two majority-Black districts, it was not required to do so: opportunity districts, drawn without regard to race, would have sufficed.

Because the State's violation of Section 2 was straightforward, the district court's holding that the State had intentionally diluted Black voting power was not hard to reach. After all, the State had been told by the district court and this Court that a plan that did not provide two opportunity districts likely unlawfully diluted Black voting power, and the State enacted "a map that did not nurture any ambition to comply with what the Court said the law required." App.489. Again, this was not because the State failed to segregate voters by race or create majority-Black

districts; instead, the State flouted its obligations under the Fourteenth Amendment by knowingly and intentionally extinguishing the right to equal protection for hundreds of thousands of Black voters. *Id.*

2. The State Has Not Shown That the District Court's Factual Findings Were Clearly Erroneous.

Although the State complains about several of the district court's factual findings, it only claims that one was clearly erroneous: that the plaintiffs' expert Bill Cooper "*generally* drew lines [for illustrative districts] based on neutral factors. App.222 [*sic*: App.322]." J.S. at 13. But the district court never stated that Mr. Cooper generally drew lines based on neutral factors. Applying the correct standard, it held that race did not predominate in the design of Mr. Cooper's illustrative plans. App.322.

Establishing clear error, which is already difficult,[2] is even harder here because the district court had reached the same conclusion about Mr. Cooper's process before, and this Court affirmed. App.931–34; *Milligan*, 599 U.S. at 31–32 (plurality opinion).[3] As the

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[2] "The court's findings of fact—most notably, as to whether racial considerations predominated in drawing district lines—are subject to review only for clear error. Under that standard, we may not reverse just because we would have decided the matter differently. A finding that is plausible in light of the full record—even if another is equally or more so—must govern." *Cooper*, 581 U.S. at 293 (cleaned up).

[3] Justice Kavanaugh did not join the part of the opinion that specifically discussed Mr. Cooper's testimony, but he did join the

Caster respondents explain, the district court's evaluation of Mr. Cooper's testimony was correct. Whether the State contends that the district court also clearly erred when it found that race did not predominate in the illustrative plans drawn by the plaintiffs' expert Moon Duchin is unclear. *See* J.S. at 13. But if that is the State's contention, it is wrong for the same reasons, as the *Milligan* appellees explain.

Because the district court unquestionably carried out the correct analysis under *Gingles*, and none of its factual findings were clearly erroneous, its decision that the State violated Section 2 must be affirmed.

3. A State Cannot Insulate a Plan from Scrutiny with "Non-Negotiable" Redistricting Principles.

The State believes that it has found "one weird trick" to exempt the State from liability under Section 2: Because a plaintiff's illustrative majority-minority districts must be "reasonably configured" to satisfy the first *Gingles* precondition, a legislature need only adopt a "non-negotiable" redistricting principle with which majority-minority districts are incompatible. Here, it is mathematically impossible to draw two reasonably configured majority-Black districts if all of Mobile and Baldwin Counties are in the same district. App.136. Therefore, according to the State, any plan that includes two majority-Black districts will be unreasonably configured *per se*, and the

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part holding that the plaintiffs' illustrative plans (including Mr. Cooper's) all "contained two majority-black districts that comported with traditional districting criteria." *Milligan*, 599 U.S. at 20.

Gingles preconditions cannot be satisfied. The State's trick is as intentionally discriminatory as it is wrong.

No court has ever condoned this tactic. While courts must take traditional redistricting principles seriously, and measure illustrative plans against those principles, there is no support for pushing any principle (other than those mandated by the United States Constitution) across the line from "important" to "non-negotiable." "Indeed, requiring a plaintiff to meet or beat an enacted plan on every redistricting principle a State selects would allow the State to immunize from challenge a racially discriminatory redistricting plan simply by claiming that it best satisfied a particular principle the State defined as non-negotiable." App.329.

Moreover, the State's tactic would contravene this Court's holding in *Milligan* that the first *Gingles* precondition is not a "beauty contest" between a plaintiff's illustrative maps and a state's map. *Milligan*, 599 U.S. at 21. Here, the State wants not only to hold a beauty contest, but also to set the criteria for beauty in its sole discretion.

None of this is to say that the district court ignored the Gulf Coast. The district court expressly accepted the Legislature's finding that the Gulf Coast is a community of interest:

> To be clear, we accept that the Gulf Coast is a community of interest, but we cannot accept the Legislature's effective designation of it as unsplittable, nor its designation of it as superlative to all other traditional districting principles. We particularly cannot prioritize that effective

> designation above compliance with Section Two, or above the Black Belt for that matter. If evading the requirement of an additional opportunity district under Section Two were as easy as enacting a rule against splitting a specific majority-White community of interest, Section Two would have no meaning.

App.348.

Furthermore, as the district court found, "Mobile and Baldwin Counties were in separate congressional districts for almost 100 years, "from 1875 until the 1970s." App.349. The district court also noted that "for many years, the Legislature has split the Gulf Coast counties in the districting plan for the State Board of Education." App.357; Even in 2021, the State split Mobile County in the Alabama Board of Education plan. App.349; *see* App.533–36 (same 2021 "Reapportionment Committee Redistricting Guidelines" for congressional districts and State Board of Education districts).

And the district court heard extensive testimony about specific communities within the Gulf Coast and their relationship both to each other and to other communities like the Black Belt. App.193, 350–52. Based on this evidence, the district court found that splitting the Gulf Coast in an illustrative plan "does not always disrespect (or even disadvantage) that community," and it noted that sometimes a community of interest prefers to be split to increase its representation. App.350.

The State does not contend that these factual findings were clearly erroneous, arguing instead that

splitting a "non-negotiable" community of interest is unreasonable *per se*. As the district court found, however, "[s]plit communities of interest are inevitable in any plan, and we must evaluate them in an intensely local appraisal. … [The plaintiffs' experts'] decisions to split Mobile County did not violate communities of interest or produce unreasonably configured plans." App.352. The district court's careful evaluation of local conditions justified its conclusion that an illustrative plan that splits Mobile County can be reasonably configured.

B. The District Court's Remedial Plan Proves That the State Could Have Complied with the Injunction Without Segregating Voters by Race or Creating a Majority-Minority District.

The district court's remedial proceedings proved that a fundamental premise of the jurisdictional statement—that the State was punished for not drawing districts based on race—is false. After the district court enjoined the State's 2023 plan, it directed the special master to propose remedial plans that satisfied four requirements: (1) completely remedy the likely Section 2 violation, (2) comply with the United States Constitution and the Voting Rights Act, (3) comply with the one-person, one-vote principle, and (4) "[r]espect traditional redistricting principles to the extent reasonably practicable … such as compactness, contiguity, respect for political subdivisions, and maintenance of communities of interest." *Singleton*, Doc. 192 at 7–9; App.74–75. None of these requirements was any less strict than the requirements for a

remedial plan the district court identified when it enjoined the 2021 plan. *See* App.779. And in one regard, they were stricter: the district court recognized that "the Alabama Legislature has substantially more discretion than does this Court in drawing a remedial map: state legislatures may consider political circumstances that courts may not." *Singleton*, Doc. 192 at 9.

The special master submitted three plans that complied with each of the district court's requirements, including the creation of two opportunity districts. The district court found as follows:

> Although federal law does not require a Section Two remedial plan to be prepared race-blind, the ability of the Special Master to do it that way (on a very short timetable) confirms for us that it is not only possible, but relatively easy. We thus have no concern that race will predominate in the preparation of a remedial plan, nor that a remedial plan will segregate Alabama voters on the basis of race.

App.532. Again, the State does not contend that these findings are clearly erroneous.

The special master stated, and no party disputes, that each of the three plans was drawn race-blind. App.76. All plaintiffs endorsed the special master's third plan, and the district court held that it completely remedied the State's violation of Section 2. App.514 ("Even if the Legislature refused to consider the Duchin Plans and Cooper Plans out of its view that race predominated in the preparation of those plans, the subsequent preparation of a race-blind plan by the Special Master on September 25, 2023 suggests to us

how easy it would have been for the Legislature to consider another plan that complied with the requirements of Section Two.").

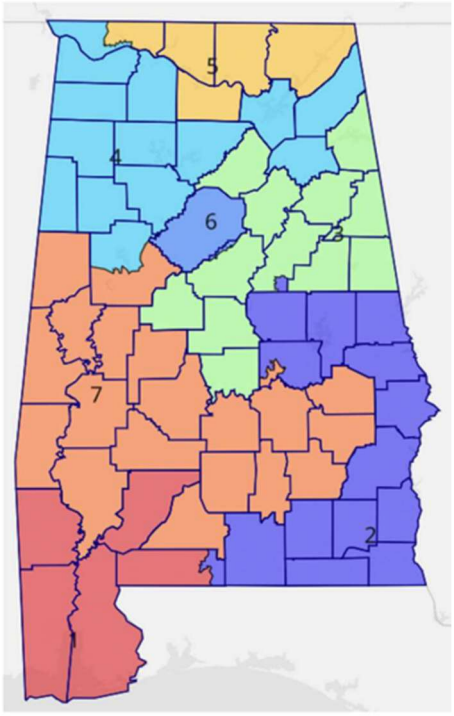
Because the district court approved a plan that was drawn without respect to race, the State cannot claim that it was ordered to segregate voters, form a majority-Black district, or draw a race-based plan. *See* J.S. at i (Questions Presented). Without those claims, there is nothing left of its grounds for appeal other than its argument that individuals cannot enforce Section 2.

C. The State Never Tried to Prove That Complying with Section 2 Requires Dividing the Gulf Coast.

Another false premise underlies the jurisdictional statement: "the court concluded that §2 requires splitting the Gulf Coast—an undisputed community of interest—and combining black Mobilians with black voters in the Black Belt." J.S. at 6; *see also id.* at i, 4–7, 11–12, 14, 22. While the district court held that the Gulf Coast would need to be split *if* the Black Belt is split in half (as the Legislature did in the 2023 plan), App.355, the district court never held that the Gulf Coast would need to be split in every compliant plan.

If the State intends to rest its entire appeal on the premise that the 2023 plan was rejected for failing to split the Gulf Coast, it must cite at least some proof that it would have been impossible simultaneously to keep the Gulf Coast intact and create two opportunity districts. But the State never tried to prove this point

at trial.[4] And one of the plans introduced during the 2023 special session demonstrates that the State's premise is false. At that session, appellee Senator Bobby Singleton introduced a race-neutral plan that kept the Gulf Coast intact:



[4] The district court stated that it would be impossible to create a plan with two opportunity districts that complies with *all* the requirements of the legislative findings, App.492, but not that it would be impossible to create a plan with two opportunity districts that keeps the Gulf Coast intact. When asked whether it would be possible to create two opportunity districts and comply with the legislative findings, the State's counsel reframed the question as whether it would be possible to create two *majority-Black* districts and keep the Gulf Coast together, and answered in the negative. App.61, 136.

All three appellants admitted that in the 28 statewide contested elections from 2012 to 2022, the Black-preferred candidate received the most votes 22 times in District 6 of the Singleton plan, and all 28 times in District 7.[5] Based on these admissions alone, it would be untenable for the State to deny that the Singleton plan contains two opportunity districts while keeping Mobile and Baldwin Counties together.

Moreover, the Singleton plan better comports with the Legislature's contrived redistricting criteria than the enacted 2023 plan does. Besides keeping the Gulf Coast intact and providing two opportunity districts, the Singleton plan satisfies every relevant redistricting principle contained in the Legislature's findings. *See* App.544–49. It has minimal population deviation, it is contiguous, it is at least as compact as the 2023 plan, it keeps the state's four largest municipalities intact (which the 2023 plan fails to do), it splits no more than six county lines, and it keeps together communities of interest. Specifically, it keeps the Gulf Coast intact, and it puts 16 of the 18 core Black Belt counties in the same district—the highest number mathematically possible. It also keeps the Wiregrass intact except for two counties that are also core Black

[5] Secretary Allen admitted this fact in response to a request for admission. *Singleton*, Doc. 180-1 at 5–6. Senator Livingston and Representative Pringle made the same admission in separate responses, which were not introduced as exhibits in the district court.

Belt counties (Crenshaw and Pike), which are placed in the Black Belt district.[6]

The only way the Singleton plan falls short of the 2023 plan is that it does not preserve the cores of existing districts or protect all incumbents, but these cannot be nonnegotiable principles in the context of remedial redistricting: "[T]his Court has never held that a State's adherence to a previously used districting plan can defeat a § 2 claim. If that were the rule, a State could immunize from challenge a new racially discriminatory redistricting plan simply by claiming that it resembled an old racially discriminatory plan." *Milligan*, 599 U.S. at 22; *see League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 441 (2006) ("[T]he problem here is entirely of the State's own making. The State chose to break apart a Latino opportunity district to protect the incumbent congressman from the growing dissatisfaction of the cohesive and politically active Latino community in the district.").

Although the Singleton plan complied with the district court's directives and performed well on every legitimate districting principle the Legislature identified, including keeping the Gulf Coast together, the Legislature rejected it. It is impossible to reconcile

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[6] For further description of the Singleton plan and its performance on various metrics, see *In re Redistricting 2023*, No. 23-mc-1181 (N.D. Ala.), Doc. 5 at 6–19.

the existence of the Singleton plan with the State's position that the district court required the State to split the Gulf Coast in order to comply with Section 2.[7]

D. The State Violated the Fourteenth Amendment Because It Intentionally Diluted Black Votes, Not Because It "Declined to Draw a Race-Based Plan."

During the 2023 special session of the Legislature, it was clear that the State had been preliminarily enjoined from using the 2021 plan because the district court and this Court held that it likely diluted Black votes in violation of Section 2. It was also clear that a remedial plan would have to include two opportunity districts. And yet, the State rejected every plan that at least arguably contained two opportunity districts in favor of a plan that admittedly did not. These basic facts, along with many other supporting ones, led the district court to conclude that the State intentionally discriminated against Black voters. App.484–529.

What the district court did not do was fault the State for declining to draw a race-based plan. Had the State adopted the Singleton plan, or some other plan that also was not driven by race, the proceedings below would have been very different. The State could have argued that the Legislature believed it was

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[7] To be clear, the *Singleton* appellees do not claim that the Legislature or the district court was required to adopt the Singleton plan; they highlight the Singleton plan to show that a fundamental premise of the jurisdictional statement is wrong and that the 2023 plan was intended to dilute Black voting strength.

adopting a plan that complied with Section 2. The State would not have needed to resort to arguments that preliminary injunctions are more like suggestions, or that compliance with Section 2 is not required if a state's solicitor general drafts "legislative findings" that make compliance impossible. In short, the State cannot prevail on its fourth question presented because no one has suggested that its failure to draw a race-based plan was the reason for the district court's finding that it violated the Equal Protection Clause.[8]

II. This Court Should Affirm on the Third Question Because Section 2 Contains a Well-Established Private Right of Action.

The State contends that the district court's opinion should be reversed because Section 2 does not create a privately enforceable right. J.S. at 26–27. Here, the district court closely examined the statute's text and concluded 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." App.433. The district court addressed each of the State's arguments to the contrary, App.438–43, held that recognizing a private right of action is consistent with this Court's precedents, App.443–49, noted that

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[8] Although the district court did not decide the Fourteenth Amendment claim in *Singleton*, the *Singleton* appellees have addressed it briefly here because the State included it in the jurisdictional statement in *Singleton*. The *Milligan* appellees' brief discusses this claim in more detail.

Congress has implicitly ratified the private right of action by amending the Voting Rights Act without changing Section 2, App.450–51, and invoked statutory *stare decisis*, App.452–53. In the end, the district court found it "difficult in the extreme … 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 our apparent error." App.454.

If the jurisdictional statement is an accurate preview of the State's arguments on appeal, the State has little to offer. The jurisdictional statement ignores precedent, congressional ratification, and statutory *stare decisis*, briefly arguing—without referring to the statute's text at all—that Section 2 does not confer any rights on voters. Because the State fails to engage meaningfully with the district court's opinion on this question, the district court's opinion should be summarily affirmed.

CONCLUSION

The State directs its argument at an opinion the district court never wrote, and it attacks a bedrock right of action. Moreover, at trial, the evidence of the State's Section 2 violation was stronger than the evidence justifying the original preliminary injunction, which this Court affirmed in 2023. Therefore, summary affirmance is appropriate here.

Respectfully submitted,[9]

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[9] Counsel would like to recognize the valuable assistance they received throughout the case from Edward Still, who advocated for civil rights over a fifty-four-year career. Mr. Still passed away on September 1, 2025.