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

BOBBY SINGLETON, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 2:21-cv-01291-AMM
	)	
WES ALLEN, in his official capacity as Alabama Secretary of State, *et al.*,	)	THREE-JUDGE COURT
	)	
	)	
Defendants.	)	

REPLY IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION

For the reasons stated in the Singleton Plaintiffs' motion, as well as the briefs of the Caster and Milligan Plaintiffs, all Plaintiffs are entitled to an injunction under Section 2, even after *Louisiana v. Callais*, 146 S. Ct. 1131 (2026), and the Singleton and Milligan Plaintiffs are entitled to an injunction under the Fourteenth Amendment, especially after *Callais*. In this reply, the Singleton Plaintiffs focus on their constitutional claim, and Defendants' unwillingness to acknowledge that rejecting plans that would not dilute Black votes was the Legislature's choice, not something it was required to do to pursue legitimate goals or to avoid liability for racial gerrymandering.

ARGUMENT

The Singleton Plaintiffs' constitutional intent claim contends that, pursuant to Alabama's historical policy of encouraging white solidarity and suppressing biracial political coalitions, the Legislature in 2023 refused to adopt a plan containing crossover districts that best conformed to its legitimate redistricting principles and would have provided Black voters a reasonable opportunity to elect candidates of their choice. Doc. 229 (Second Amended Complaint) ¶ 75 ("The drafters of Act No. 2023-563 violated the Fourteenth and Fifteenth Amendments by intentionally drawing Congressional District lines in order to destroy otherwise effective crossover Districts.") (citing *Bartlett v. Strickland*, 556 U.S. 1, 24 (2009)). In response, Defendants posit that constitutional violations are simply a subset of Section 2 violations. Doc. 360 ("Opp.") at 44. This position contradicts *Bartlett v. Strickland* and is absurd on its face: To see why, consider a state in which it is impossible to draw a reasonably configured majority-Black district (precluding a Section 2 claim), but there is an existing district where a multiracial coalition creates an opportunity to elect the preferred candidate of Black voters. According to Defendants, the legislature in that state could announce, "We have chosen to move a predominantly Black precinct from the opportunity district for the sole purpose of destroying the crossover district and thus diluting Black voting strength," and it would be immune from constitutional liability because no plaintiff could prove a

Section 2 claim. This result brooks common sense and binding precedent. *Bartlett*, 556 U.S. at 24 (stating, in the context of its holding that the plaintiffs had *not* proven a violation of Section 2, "if there were a showing that a State intentionally drew district lines in order to destroy otherwise effective crossover districts, that would raise serious questions under both the Fourteenth and Fifteenth Amendments").

In their cursory response to the evidence supporting the Singleton Plaintiffs' claim, Defendants attempt to dismiss the testimony of Singleton experts Dr. Riser and Dr. Frederickson, contending that it is focused solely on past racial discrimination. Opp. at 40–41. Defendants miss the point of these experts' opinions. These historians were not making "[a] generalized assertion of past discrimination," *Allen v. Milligan*, 599 U.S. 1, 83 (2023) (Thomas, J., dissenting); they were not merely reviewing Alabama's "sordid history of intentional discrimination ... decades before the Voting Rights Act's passage," as did the district court in *Callais*, 146 S. Ct. at 1162. They were demonstrating how the Legislature's refusal to adopt the Singleton Plan perpetuates "Alabama's enduring policy of maintaining white solidarity and discouraging biracial coalitions." Singleton Motion at 10–11 (citing Singleton Plaintiffs' Proposed Findings of Fact and Conclusions of Law (Doc. 320) at 35–53).

Defendants also invoke the presumption of good faith, Opp. at 49–59, but this Court already bent over backward to give the Legislature the benefit of the doubt on

this issue. *Singleton*, 782 F. Supp 3d 1092, 1346 (N.D. Ala. 2025) (three-judge court) (considering the Plaintiffs' constitutional claims in the "extreme service of the presumption of legislative good faith"). This Court concluded, correctly, that "if this record is insufficient to rebut the strong presumption of legislative good faith, then we doubt that the presumption is ever rebuttable. The Legislature knew what federal law required and purposefully refused to provide it, in a strategic attempt to checkmate the injunction that ordered it. It would be remarkable — indeed, unprecedented — for us to hold that a state legislature that purposefully ignored a federal court order acted in good faith." *Id.* at 1117. The State's arguments to the contrary—that the Legislature wanted to keep the Gulf Coast together and was concerned about racial gerrymandering—completely ignore the Legislature's rejection of the Singleton Plan and the Community of Interest Plan, as well as the rest of the "the unusual corpus of undisputed evidence that confirms the obvious inference from the Legislature's conduct." *Id.* at 1116.

Defendants' opposition cites "the State's concern that it would have risked constitutional liability by subordinating its interests to connect black voters in Mobile with rural black voters on the other side of the State." Opp. at 56. No such risk existed. Before the 2023 special session even started, the Singleton Plaintiffs' counsel showed the Legislature how the race-neutral "CLC 1" plan, originally proposed by the Campaign Legal Center and later introduced as the Singleton Plan,

would provide two opportunity districts while keeping the Gulf Coast intact. *Milligan v. Allen*, No. 21-cv-1530-AMM, Doc. 266-19 (letter from Jim Blacksher to Dorman Walker, counsel for the Reapportionment Committee Chairs). Without explicitly endorsing the Singleton Plan, the Alabama Attorney General agreed with the Singleton Plaintiffs' counsel that a race-based plan would have constitutional problems, and pointed out that the Campaign Legal Center presented the Singleton Plan as a remedial option. *Milligan*, Doc. 266-20 (letter from Steve Marshall to Dorman Walker). Therefore, despite Defendants' contention that the Legislature was between a rock and a hard place, even the Attorney General agreed that the Legislature could provide the remedy this Court required without risking liability for racial gerrymandering. *See Bartlett*, 566 U.S. at 24 ("in the exercise of lawful discretion States could draw crossover districts as they deemed appropriate."). Yet, the Legislature rejected multiple plans that would have provided a second opportunity district without "connect[ing] black voters in Mobile with rural black voters on the other side of the State."

Defendants spend one sentence and one footnote in their 88-page brief responding to the Singleton Plaintiffs' argument that the introduction of the Singleton Plan at the 2023 special session demonstrates that the Legislature could have enacted a remedial plan without resorting to race, while following every legitimate redistricting criteria—even the ones contrived at the last minute to try to

make compliance with the law impossible. All Defendants can muster is that the Singleton Plan "does not achieve minimum population deviation, does not protect incumbents, and departs widely from the 2023 Plan's lines." Opp. at 61. The first part of that statement is false; the Singleton Plan had a population deviation of one person, the minimum possible and the same as the 2023 Plan. *In re Redistricting 2023*, No. 23-mc-1181-AMM, Doc. 5 at 14. The rest of the statement contradicts the majority opinion in *Allen v. Milligan*, which is still good law: "[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." 599 U.S. at 22. *Callais* did not state, or even suggest, that when a State is already subject to an order holding that it has violated Section 2 and enjoining the use of its plan, that it can invoke core retention to pass a plan designed to dilute minority votes in the same way the original plan did.

Instead of doing what it knew this Court's decision would require, the Legislature took pains to eliminate from consideration districting plans that would encourage the creation of biracial coalitions. Motion at 10 ("it is clear that the real nonnegotiable principle at the 2023 special session was that a plan could not provide Black voters the opportunity to elect the candidate of their choice in a second district—even if that district was not majority-Black"). Doing so intentionally

denied and abridged Black voting strength in violation of the Fifteenth Amendment, and unconstitutionally classified voters on the basis of race in violation of the Fourteenth Amendment.[1]

To the extent Defendants contend that the Legislature had no obligation to avoid vote dilution because *Callais* undermined this Court's 2022 order holding that the 2021 Plan violated Section 2, they are directing that contention to the wrong court. This Court's 2022 order was affirmed in *Allen v. Milligan*, and *Callais* itself stressed that it did not contradict *Allen v. Milligan*. 146 S. Ct. at 1160. Even if some of the reasoning in *Callais* arguably undermines the Supreme Court's affirmance of this Court's holdings in *Allen v. Milligan*, this Court has no power to treat *Allen v. Milligan* as overruled. *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484 (1989) ("If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions.").

Finally, Defendants assert that the Special Master's plan is an inappropriate remedy for constitutional claims. Even if the Special Master's plan is not the remedy

[1] The Legislature's decision in 2026 to reimpose the 2023 Plan does not make the 2023 Plan any more lawful. This is not because of any "taint," but because this Court held that the 2021 Plan diluted Black votes in violation of Section 2, and that any remedial plan must include two opportunity districts. The Supreme Court affirmed that decision. The 2023 Plan undisputedly fails to provide a second opportunity district.

the Court might have chosen if these actions had been pure constitutional cases, that does not mean it is an inappropriate remedy. Defendants have never cited any evidence to contradict the Special Master's contention (which this Court credited) that his remedial plan did not use race. Bizarrely, they argue that the Special Master's remedial plans were "unconstitutional racial gerrymanders" and "even if Mr. Ely performed his work 'race blind,' his starting point was a plan where race predominates over traditional criteria, and the changes were too modest to undo the race-based decisions." Opp. at 29 (internal quotation marks omitted). The starting point for the Special Master's plans was the 2023 Plan. *In re Redistricting 2023*, No. 23-mc-1181-AMM, Doc. 44 at 12–13. If Defendants are admitting that the 2023 Plan was an unconstitutional racial gerrymander, the Singleton Plaintiffs accept that admission. If not, then Defendants have no grounds to challenge the Court's conclusion that the remedial plan was drawn race-blind. The Special Master's lawful plan is the only viable alternative[2] to the unlawful 2023 plan, and thus should remain in place, even if the Court would have selected a different remedial plan under other circumstances.

[2] On the viability of the 2023 Plan, and possibly other issues, the Singleton Plaintiffs intend to cross-examine Mr. Elrod at the May 22, 2026 hearing.

CONCLUSION

This Court should enter a preliminary injunction preserving the status quo by prohibiting the use of the 2023 Plan and requiring the remedial plan for the remaining parts of the 2026 election cycle. If this Court believes that the Plaintiffs' claim under Section 2 requires reevaluation or further development of the evidence in light of *Callais*, it still can and should enter a preliminary injunction based on the State's violation of the Fourteenth Amendment. That holding was based on dozens of pages of findings that the intent and effect of the 2023 Plan, a holding that is unaffected by *Callais.*

The injunction to maintain the status quo should require that the State administer a runoff election in CD1 as scheduled, using the Special Master's remedial plan.[3] If the Republican Party cannot certify a candidate in that race, there arguably cannot be a general election under the remedial plan. Defendants cannot be allowed to checkmate this Court by making the lawful Special Master's plan infeasible for the general election.

[3] As Mr. Elrod stated in his declaration, a runoff is possible only for the Republican primary in CD1 because it is the only primary in an affected district with more than two candidates. Doc. 356-1, ¶ 5.

Dated: May 19, 2026

Respectfully submitted,

/s/ U.W. Clemon
U.W. Clemon
U.W. Clemon, LLC
Renasant Bank Building
2001 Park Place North, Tenth Floor
Birmingham, AL 35203
Tel.: (205) 506-4524
Fax: (205) 538-5500
Email: uwclemon1@gmail.com

/s/ James Uriah Blacksher
James Uriah Blacksher
825 Linwood Road
Birmingham, AL 35222
Tel: (205) 612-3752
Fax: (866) 845-4395
Email: jublacksher@gmail.com

Joe R. Whatley, Jr.
WHATLEY KALLAS, LLP
2001 Park Place North
1000 Park Place Tower
Birmingham, AL 35203
Tel: (205) 488-1200
Fax: (800) 922-4851
Email: jwhatley@whatleykallas.com

/s/ Henry C. Quillen
Henry C. Quillen
(admitted *pro hac vice)*
WHATLEY KALLAS, LLP
159 Middle Street, Suite 2C
Portsmouth, NH 03801
Tel: (603) 294-1591
Fax: (800) 922-4851
Email: hquillen@whatleykallas.com

Myron Cordell Penn

PENN & SEABORN, LLC
1971 Berry Chase Place
Montgomery, AL 36117
Tel: (334) 219-9771
Email: myronpenn28@hotmail.com

Diandra "Fu" Debrosse Zimmermann
Eli Hare
DICELLO LEVITT LLP
505 20th Street North, Suite 1500
Birmingham, AL 35203
Tel.: (205) 855.5700
Email: fu@dicellolevitt.com
ehare@dicellolevitt.com

/s/ J.S. "Chris" Christie
J.S. "Chris" Christie (ASB-3162-H07J)
Dentons Sirote PC
2311 Highland Avenue South
Birmingham, AL 35205
Tel: (205) 930-5100
Fax: (205) 930-5101
chris.christie@dentons.com

Counsel for Singleton Plaintiffs