

No. 25-273

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

REPLY BRIEF

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REPLY BRIEF

After *Allen v. Milligan*, 599 U.S. 1 (2023), Alabama went back to the drawing board rather than head to trial on its 2021 Plan. Unlike the 2021 Plan, the State’s 2023 Plan preserved *both* the Black Belt *and* Gulf Coast regions in as few districts as possible. Not enough, said the district court. Ordering the State to split the Gulf Coast for the first time in fifty years, the court required what §2 “never” requires: the “adoption of districts that violate traditional redistricting principles.” *Id.* at 30. Alabama’s court-drawn congressional districts are “unexplainable on grounds other than race.” *Shaw v. Reno*, 509 U.S. 630, 644 (1993).

The court below went far beyond *Allen*, such that principles that make it “impossible to draw [another] reasonably configured majority-Black district[]” must give way, Mot.15, not just for purposes of *Gingles-1* but for the actual congressional district lines that will govern 5 million Alabamians. It is not enough to treat communities of interest equally—as earlier iterations of this case had suggested. App.937; *Allen*, 599 U.S. at 21. What matters now is the priority of drawing an additional majority-minority district, or something quite close. *See* Mot.2, 15; *accord, e.g.*, App.329. Whatever the State’s actual race-neutral priorities, those must come second. Under that version of §2, race is always the criterion that cannot be compromised.

This Court must reverse, even assuming that race can be used in districting in a way that would not otherwise be allowed. J.S.10-12. But the Court should question that assumption too. For decades, States have had “good reason ... to recognize that explicit race-based districting embarks us on a most dangerous course.” *Johnson v. De Grandy*, 512 U.S. 997, 1031

(1994) (Kennedy, J., concurring). Officials recognize the dangers, but they have no way to navigate them. Try to satisfy courts with a race-based map; get enjoined. Try to satisfy courts with a race-neutral map; get enjoined. Alabama and Louisiana took two different paths that ended up in the same place. *Callais v. Louisiana*, No. 24-109 (U.S.); *see also Black Voters Matter v. Sec’y, Fla. Dep’t of State*, 415 So.3d 180, 184 (Fla. 2025) (“two-hundred-mile-long congressional district encompassing several communities of black voters across North Florida” would be unconstitutional).

If erring on the side of *declining to discriminate* is now deemed racial discrimination, J.S.27-35, a State can *never* decide that enough is enough. That holding is proof positive that §2 is not “ridding our electoral process of race,” *Callais.Rearg.Tr.41*, but prolonging “fixat[ion]” on it, *LULAC v. Perry*, 548 U.S. 399, 434 (2006); *see also De Grandy*, 512 U.S. at 1030 (Kennedy, J., concurring); *Shaw*, 509 U.S. at 657. As long as the judiciary is balancing a “fair share of political power” among racial groups, *cf. Rucho v. Common Cause*, 588 U.S. 684, 709 (2019), courts will be treated as “weapons of political warfare,” *Alexander v. S.C. NAACP*, 602 U.S. 1, 11 (2024). “That is a feature, not a bug, of § 2.” *Caster.BIO.32*. It cannot go on forever. *SFFA v. Harvard*, 600 U.S. 181, 221-26 (2023).

I. The District Court’s §2 Holding Contravened *Allen* by Ordering the State to Sacrifice a Community of Interest to Achieve a Racial Goal.

A. After Alabama united the Black Belt into two districts—the smallest number possible—the district court moved the goalposts. Now, §2 requires the map that places the most “Black Belt counties in a majority-Black district.” App.345. According to the court, because some of the illustrative plans placed “all but one of the Black Belt counties in a majority-Black district,” they respected the Black Belt “better – much better – than the 2023 Plan.” *Id.*; *contra* Mot.2 (denying that “the district court fault[ed] the State for failing ‘to place more Black voters ... in a majority-Black district’”).

But this Court already rejected that move in *Allen*. The “minority population in and of itself” cannot be the community of interest; the Black Belt is “a ‘*historical*’ feature’ of the State, not a demographic one,” and must be “treated ... as a community of interest for [that] reason.” *Allen*, 599 U.S. at 32 n.5 (plurality). Thus, the notion that the 2023 Plan limited black voting strength could be *the conclusion* of a successful §2 challenge, but not the beginning *proof* of it. That would be circular.

Even if *Gingles*-1 maps can join together “farflung segments of a racial group,” *contra LULAC*, 548 U.S. at 433, race cannot predominate in the *actual* districts that govern Alabama without satisfying strict scrutiny. Now at the end of this case, a district court has concluded that Alabama’s only means of complying with §2 was a race-first district combining “Black Mobile” with black voters 250 miles away. App.708. That

remedy uses race “explicit[ly]” by demanding the State place more Black Belt counties in a race-based district. *Shaw*, 509 U.S. at 642. As the district court observed, “all paths” to another majority-black district “require[] splitting” white voters from black voters in the Gulf Coast. App.7, 531. Admitting that no §2-compliant map “achieve[s] all the political goals” of the 2023 Plan, App.514; see App.492, the court thus “subordinated” neutral criteria to race. *Alexander*, 602 U.S. at 7.

B. The rejoinder that the court-drawn districts were “race-blind,” Mot.10, or “drawn without regard to race,” Mot.8, is preposterous. The court ordered a “district[] in which Black voters either comprise a voting-age majority or something quite close to it.” App.13. It insisted that CD2 have enough black voters that a Democrat would likely win. *E.g.*, *Milligan*, DE311:3, 41. These are “racial target[s],” *contra* Mot.2, even without a bright line “threshold[] for racial demographics” in the remedial districts, Mot.13. *Cf. Ricci v. DeStefano*, 557 U.S. 557, 594 (2009) (Scalia, J., concurring) (“intentionally design[ing] ... hiring practices to achieve the same end” as a quota is equally discriminatory).

We know that “race-neutral considerations ‘came into play only after the race-based decision had been made,’” *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 189 (2017), because the court treated Alabama’s “redistricting principle[s]” as “[n]egotiable,” App.329. Traditional criteria were to be “consider[ed]” by the special master, *Milligan*, DE273:9, but followed only “to the extent reasonably practicable,” *id.* at 8. Traditional principles could be compromised; racial targets could not. See App.329 (no “non-negotiable” principles); App.514 (no “deference” to principle that

“entrenches vote dilution”); App.719 (communities of interest not a “trump card”).

Drawing maps without displaying racial data, as the special master said he did, does not erase race-predominance. *Cf. Cooper v. Harris*, 581 U.S. 285, 313-17 (2017).¹ The court required that he remedy “ineffective” “Black voting strength.” App.715; *see Milligan*, DE273:7. He “confirmed” he hit his target before presenting his plans. *Milligan*, DE295:36. His plans sacrificed compactness, paired incumbents, and split a major city, a county, and a community of interest. *See Milligan*, DE295:14, 17, 23, 25, 38; *id.* at 42 (acknowledging “need to split the Gulf Coast” to increase “Black voting strength”).

At bottom, Plaintiffs play word games to deny the obvious. Alabama, they say, “need not meet any racial target,” Mot.2; “form a majority-Black district,” Mot.9; “place more Black voters [from the Black Belt] in a majority-Black district,” Mot.2; or “draw a race-based plan,” Mot.9-10. It just needed to draw a district that gave black-preferred candidates sufficient “opportunity to elect candidates of their choice.” Mot.2. There is no difference.

Under the district court’s interpretation of §2, the bottom line is that if the wrong race wins too many

¹ The special master had a roadmap from the district court to hit the racial target without explicitly relying on racial data: “split the Gulf Coast,” App.715, “split Mobile County,” App.947, and connect Mobile’s urban core with Montgomery and Black Belt counties on the Georgia border, *id.*; *see Milligan*, DE295:13 (special master had “the eleven illustrative plans”). Small wonder he “grouped together the same” farflung populations as Plaintiffs had. *Caster*.BIO.6. Alabama stipulated, *contra* Mot.12, 19, only that his report states that he did not “display racial demographic data ... while drawing.” *Milligan*, DE436:22.

elections, the State must draw new lines to enable another race to win. By definition, the remedy has everything to do with race. When the government “picks winners and losers based on the color of their skin,” *SFFA*, 600 U.S. at 229, it is no less odious whether it draws district lines randomly until it likes the balance of racial power, draws them with awareness of racial data, or draws them to meet racial quotas. It is all racial discrimination. And when neutral goals are sacrificed to better allocate political power among races, strict scrutiny should apply.

C. Only the *Singleton* Plaintiffs insist that compliance with §2 does not require splitting the Gulf Coast, Mot.20-21, citing the Singleton Plan as evidence. The district court did not instruct the special master to draw anything like it. And Plaintiffs’ insistence that Alabama depart from its non-racial priorities simply confirms the need for this Court’s review.

First, though the *Singleton* Plaintiffs support this plan, the *Caster* and *Milligan* Plaintiffs objected to it out of fear that its second opportunity district was “unlikely to ... perform[.]” *Milligan*, DE295:33. They argued that given previous elections, it failed to create “reliable opportunities to elect.” *In re Redistricting 2023*, No. 2:23-mc-1181 (N.D. Ala.), DE23:6-7. “The uncertainty” was “especially” troubling to them because one of the opportunity districts in the Singleton Plan would have paired Alabama’s only black representative at the time—Terri Sewell—“against a white incumbent.” *Id.* at 6.² Unsurprisingly then, the special

² Had Sewell faced that Representative in 2022, the other Plaintiffs argued, she “likely would have lost.” *Id.* at 7. Sewell also objected to this plan because she thought it “fail[ed] to

master split the Gulf Coast in all three of his remedial maps. *See Milligan*, DE295:17, 23, 25; *see also* App.7; 530-31.

Second, the Singleton Plan fails *Gingles*-1 because it does not create two majority-black districts. As Plaintiffs admit, drawing two majority-black districts requires splitting the Gulf Coast. Mot.15. The two “opportunity districts” in the Singleton Plan are CD6 (39.61% BVAP) and CD7 (49.38%). *In re Redistricting 2023*, DE5:7. CD6 is a crossover district, but because §2 “does not require crossover districts,” *Bartlett v. Strickland*, 556 U.S. 1, 23 (2009) (plurality), Alabama could not defend this district as “narrowly tailored to achieve compliance with section 2,” *ALBC v. Alabama*, 231 F.Supp.3d 1026, 1320 (M.D. Ala. 2017).

Third, race predominates in the Singleton Plan too. By modifying all seven congressional districts, it “made significant changes across the state,” *Milligan*, DE295:29, 44, paired incumbents (Mot.23), and added strange shapes—all to craft a new race-based district. The map “satisfies every relevant redistricting principle” (Mot.22) only if “relevant” is defined to exclude principles standing in the way of another opportunity district. That is why Plaintiffs must concede on the very next page that their plan does not, in fact, satisfy all the State’s redistricting criteria. Mot.23. If the State had adopted this map, sacrificing non-racial criteria in pursuit of a racial goal, its decision would have been “driven by race.” Mot.24.

provide Black voters with a reasonable opportunity to elect.” *In re Redistricting 2023*, DE21:5.

II. Requiring Race-Based Districts is Racial Discrimination That Cannot Survive Strict Scrutiny.

The district court addressed the State’s constitutional argument in just three pages, did not cite *SFFA*, and refused to apply strict scrutiny. App.454-56. Bereft of any serious analysis of the Equal Protection Clause, its judgment must be reversed. See J.S.16-25; Br. of Alabama and 15 States, *Louisiana v. Callais*, No. 24-109 (U.S. Sept. 24, 2025).

A. Race-based redistricting lacks an exact connection between means and ends.

No one really thinks that “few legal tests are as clear as the *Gingles* inquiry.” *Caster*.BIO.29. The law of vote dilution “is notoriously unclear.” *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring). Even after forty years, there remains “considerable disagreement and uncertainty” about the “nature” of vote dilution. *Id.* at 883 (Roberts, C.J., dissenting). The “essence of a §2 claim” is easy to recite (*Caster*.BIO.28) but hard to explain. See, e.g., *Callais*.Rearg.Tr.14 (when “race is playing a role to contaminate” democracy), 17 (when “race is playing an outsized role”), 37 (when maps “use race in excessive fashion”). If no one can articulate the very “concept of injury,” then this area of law is not safe enough for courts to wield the “dangerous” tool of racial sorting. *SFFA*, 600 U.S. at 209, 212; see Ala.*Callais*.Br.6-9 & nn.1-4.

Experience has proven that allotting a “fair share of political power” among racial groups is not possible. Cf. *Rucho*, 588 U.S. at 709. In the same breath that Plaintiffs say traditional redistricting principles are “important” and must be “take[n] ... seriously,” they

add that criteria “incompatible” with a “majority-black district[]” must give way. Mot.15, 16. That standard does not discipline the use of race.

This case exemplifies why. The Legislature’s judgment is that congressional districting plans respect the Gulf Coast by maintaining it in a single district. Rather than accept that judgment, and despite finding the Gulf is its own community of interest, the district court considered for itself whether the “harm[]” from the split was “intolerabl[e].” App.350. The State offered “expert and lay witnesses about overlapping economic interests, commuting patterns, shared heritage, cultural events, and unique challenges that connect the Gulf Coast counties.” App.346. But that evidence stood no chance against speculation that *some other* communities of interest might prefer a split. App.350. Nor did it stop the district court from concluding that because the State placed the Gulf Coast in two districts in a completely different context, splitting it in a congressional map “respected” the community well enough. App.351-52.³

Determining whether a map respects a State’s neutral principles, especially communities of interest, is a political judgment for legislatures. Because many of the districting principles are “malleable” and “ethereal,” *Milligan*.Mot.27, courts can easily discount or discard race-neutral principles because there is “no

³ Plaintiffs and the district court latched onto the Alabama State Board of Education Plan, which has one more district than the congressional map and originally split Mobile County for pre-clearance reasons and to avoid retrogression, as the State’s expert testified un rebutted. Tr.2024-29. It has nothing to do with the Legislature’s valid policy prerogatives for maintaining one Representative of the Gulf in Congress.

legal answer” to the “question of ‘how much deviation from each [criterion] to allow.’” *Banerian v. Benson*, 589 F.Supp.3d 735, 738 (W.D. Mich. 2022) (Kethledge, J.) (quoting *Rucho*, 588 U.S. at 708); see *Ala. Cal-lais.Br.15-17*; *Allen*, 599 U.S. at 35.⁴ And when districting principles conflict with each other, courts have no neutral way to strike a balance. *Ala. Cal-lais.Br.11-14*. As a result, States cannot predict how courts may balance their priorities, which no longer seem to constrain the use of race but invite its elevation above traditional districting principles. Without a “reliable way to determine who wins, or even where the finish line is,” *Allen*, 599 U.S. at 37, §2’s use of race is not narrowly tailored but “inescapably imponderable,” *SFFA*, 600 U.S. at 215. This “is no business of the courts.” *Banerian*, 589 F.Supp.3d at 738.

B. Race-based districting will not end on its own or “any time soon.”

The district court held that race-based districting could not be “render[ed] unconstitutional” by “the mere passage of time,” App.454, but that’s not the argument, see J.S.23-25. Rather, time is “the acid test of [the] justification” for using race. *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003). If race-based districting had any “efficacy,” Plaintiffs would be able to say when it will “no longer be necessary.” *Id.*

Under the current regime, States can *never* stop using race. Each census restarts districting anew.

⁴ At the preliminary-injunction stage, a *Milligan* expert wrongly interpreted Alabama’s non-dilution principle to mean prioritizing race above bedrock criteria like *contiguity*. App.833. Plaintiffs criticize the State for removing the guideline, Mot.5-7, but never address the chance that the Legislature removed it to avoid such manipulation.

But that currently only guarantees that lawmakers will conduct a “periodic review” of how they use (or do not use) race every decade in perpetuity, little different than Harvard’s use of race every admissions cycle. *SFFA*, 600 U.S. at 225.

The theory that §2 will sunset on its own is divorced from reality. *See Ala.Callais.Br.19-25*. According to the district courts, if a 250-mile-wide majority-black district can be drawn in Alabama (or Louisiana), it must be drawn. As for the totality-of-circumstances test, States can win repeatedly one cycle and lose in the next, even with overlapping evidence. J.S.16-17. Anything that has ever happened in the State is fair game; which facts courts will deem relevant is anyone’s guess. Ben Carson’s finish in the 2016 primary counted against Alabama in 2022. App.844. After Alabama proved that Carson’s tally in Alabama was one of his best in the country, App.281, Plaintiffs dug up a CNN exit poll from two cycles prior, and the State was faulted for President Obama’s unpopularity in 2007, App.389. Likewise, when Alabama proved that it had the second-smallest racial gap in incarceration in the Nation, Tr.2203:24-25, the district court turned to gaps in infant mortality, App.405. The test is ever evolving, and the sun seems only to be rising. *Contra Caster.BIO.34-35 & n.5; see Ala.Callais.Br.7-8 & n.5*.

Thus, States can make “substantial progress” across every vector, App.455, without ever knowing whether they have satisfied the test. One more race-based district will not end myriad “disparities ... in the modern world.” App.404-09. It will not stop candidates from making politics about race, especially if it *helps* their party in court, *Ala. NAACP v. Allen*, No. 2:21-CV-1531, 2025 WL 2451166, at *81 (N.D. Ala.

Aug. 22, 2025); *see Ala. Callais.Br.29*. Whatever §2 diagnoses, it will not cure anything “any time soon.” *SFFA*, 600 U.S. at 225.

CONCLUSION

These cases present every issue raised in the jurisdictional statement. The Court should note probable jurisdiction and reverse.

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