

No. 22-10272

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

MARCUS CASTER, et al.,
Plaintiffs-Appellees,

v.

JOHN H. MERRILL,
in his official capacity as the Secretary of State of the State of Alabama, et al.,
Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of Alabama
Case No. No. 2:21-cv-1536-AMM

**TIME SENSITIVE MOTION TO EXPEDITE BRIEFING SCHEDULE FOR
APPELLANTS' TIME SENSITIVE MOTION FOR STAY PENDING APPEAL**

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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), the undersigned counsel certifies that the following listed persons and parties may have an interest in the outcome of this case:

1. Aden, Leah – Counsel for Appellees
2. Alabama Attorney General’s Office – Counsel for Appellant Secretary Merrill
3. Alabama State Conference of the NAACP – Appellee
4. American Civil Liberties Union Foundation – Counsel for Appellees
5. American Civil Liberties Union of Alabama – Counsel for Appellees
6. Ashton, Anthony – Counsel for Appellees
7. Balch & Bingham LLP – Counsel for Appellants Sen. Jim McClendon and Rep. Chris Pringle
8. Barnes, Anna Kathryn – Counsel for Appellees
9. Bowdre, A. Barrett – Counsel for Appellant Secretary Merrill
10. Branch, Aria C. – Counsel for *Caster* Plaintiffs
11. Carter, Brittany – Counsel for Appellees
12. Caster, Marcus – *Caster* Plaintiff
13. Chestnut, LaKeisha – *Caster* Plaintiff
14. Davis, James W. – Counsel for Appellant Secretary Merrill
15. Dowdy, Shalela – Appellee

16. DuBose, Bobby – *Caster* Plaintiff
17. Dunn, David – Counsel for Appellees
18. Ebenstein, Julie – Counsel for Appellees
19. Elias Law Group LLP – Counsel for *Caster* Plaintiffs
20. Ellsworth, Jessica L. – Counsel for Appellees
21. Faulks, LaTisha Gotell – Counsel for Appellees
22. Gbe, Harmony A. – Counsel for Appellees
23. Greater Birmingham Ministries – Appellee
24. Harris, A. Reid – Counsel for Appellant Secretary Merrill
25. Hogan Lovells US LLP – Counsel for Appellees
26. Jackson, Letitia – Appellee
27. Jackson, Sidney M. – Counsel for Appellees
28. Jones, Benjamin – *Caster* Plaintiff
29. Khanna, Abha – Counsel for *Caster* Plaintiffs
30. LaCour, Jr., Edmund G. – Counsel for Appellant Secretary Merrill
31. Lawsen, Nicki – Counsel for Appellees
32. Louard, Janette – Counsel for Appellees
33. Love, Rodney – *Caster* Plaintiff
34. Madduri, Lalitha D. – Counsel for *Caster* Plaintiffs
35. Manasco, Hon. Anna M. – Judge for the United States District Court for the Northern District of Alabama

36. Marcus, Hon. Stanley – Judge for the United States Court of Appeals for the Eleventh Circuit
37. Marshall, Hon. Steve – Alabama Attorney General
38. McClendon, Sen. Jim – Appellant
39. Merrill, Alabama Secretary of State John H. – Appellant
40. Messick, Misty S. Fairbanks – Counsel for Appellant Secretary Merrill
41. Milligan, Evan – Appellee
42. Moorer, Hon. Terry F. – Judge for the United States District Court for the Southern District of Alabama
43. NAACP (National Headquarters) – Counsel for Appellees
44. NAACP Legal Defense & Education Fund, Inc. – Counsel for Appellees
45. Naifeh, Stuart – Counsel for Appellees
46. Osher, Daniel C. – Counsel for *Caster* Plaintiffs
47. Posimato, Joseph N. – Counsel for *Caster* Plaintiffs
48. Powell, Manasseh – *Caster* Plaintiff
49. Pringle, Rep. Chris – Appellant
50. Quinn, Connor, Weaver, Davies & Rouco LLP – Counsel for *Caster* Plaintiffs
51. Rosborough, Davin M. – Counsel for Appellees
52. Ross, Deuel – Counsel for Appellees

53. Rossi, Christina M. – Counsel for Appellants Sen. Jim McClendon and Rep. Chris Pringle
54. Rouco, Richard P. – Counsel for *Caster* Plaintiffs
55. Sadasivan, Kathryn – Counsel for Appellees
56. Sedwick, Olivia N. – Counsel for *Caster* Plaintiffs
57. Seiss, Benjamin M. – Counsel for Appellant Secretary Merrill
58. Smith, Brenton M. – Counsel for Appellant Secretary Merrill
59. Smith, Ronald – *Caster* Plaintiffs
60. Stewart, Shelita M. – Counsel for Appellees
61. Stone, Khadidah – Appellee
62. Thomas, Wendell – *Caster* Plaintiff
63. Thompson, Blayne R. – Counsel for Appellees
64. Turrill, Michael – Counsel for Appellees
65. Walker, J. Dorman – Counsel for Appellants Sen. Jim McClendon and Rep. Chris Pringle
66. Welborn, Kaitlin – Counsel for Appellees
67. Wiggins Childs Pantazis Fisher & Goldfarb, LLC – Counsel for Appellees
68. Wilson, Thomas A. – Counsel for Appellant Secretary Merrill
69. Winfrey, Adia – Plaintiff (terminated)

Respectfully submitted this 27th day of January, 2022.

s/ Edmund G. LaCour Jr.
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Counsel for Secretary of State John Merrill

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**TIME SENSITIVE MOTION TO EXPEDITE BRIEFING
SCHEDULE FOR APPELLANTS' TIME SENSITIVE
MOTION FOR STAY PENDING APPEAL**

Defendants-Appellants respectfully move this Court to enter an expedited briefing schedule so that their time-sensitive motion for stay of the lower court's injunction can be resolved as quickly as possible. *See Caster et al. v. Merrill*, No. 2:21-cv-01536, ECF No. 101 (the "Order"). There is good cause to do so: A district court has enjoined the State of Alabama to abandon its lawfully enacted redistricting plan—days before critical election deadlines—and to accept in its place a new, racially gerrymandered map that will not possibly survive strict scrutiny. The court has required the State to surrender its sovereign redistricting prerogative based on a misunderstanding of the Voting Rights Act that will “unnecessarily infuse race into virtually every redistricting, raising serious constitutional questions.” *Bartlett v. Strickland*, 556 U.S. 1, 21 (2009) (plurality opinion). What is more, the court has done so days before the State's first in a series of forthcoming and related election deadlines.

Setting to one side the unconstitutionality of what the district court has demanded of the State, the Order requires nothing less than an overhaul of Alabama's congressional map, which at this late hour will undoubtedly inflict grave harm on the public interest. “When the massive disruption to the political process of the [State] is weighed against the harm to plaintiffs of suffering through one more election based on an allegedly invalid districting scheme, equity requires that [this Court] deny relief.” *Mac Govern v. Connolly*, 637 F. Supp. 111, 116 (D. Mass. 1986) (three-judge court).

Further, the eleventh-hour change to the State’s existing districts would require reassignment of hundreds of thousands of voters to new districts and would force candidates and political organizations seeking ballot access to obtain thousands of new signatures. Pulling the rug out from these candidates and their voters in the run-up to an election requires extraordinary justification not present in this case. As other courts have recognized, “elections are complex to administer, and the public interest [is] not ... served by a chaotic, last-minute reordering of ... districts. It is best for candidates and voters to know significantly in advance of the petition period who may run where.” *Favors v. Cuomo*, 881 F. Supp. 2d 356, 371 (E.D.N.Y. 2012) (three-judge court) (citing *Diaz v. Silver*, 932 F. Supp. 462, 466-68 (E.D.N.Y. 1996) (three-judge court)). Thus, “[t]he Supreme Court has held that an injunction may be inappropriate *even when a redistricting plan has actually been found unconstitutional* because of the great difficulty of unwinding and reworking a state’s entire electoral process.” *Id.* (emphasis added) (citing *Reynolds v. Sims*, 377 U.S. 533, 585 (1964); *Roman v. Sincock*, 377 U.S. 695, 709-10 (1964)).

The harms that will flow absent a stay of the district court’s preliminary injunction are varied and certain. Accordingly, the State respectfully requests a ruling on their stay motion by **Monday, January 31**. The candidate qualifying deadline is tomorrow. Other pre-election deadlines are also looming. Any redrawing of district lines requires the State to update voter-registration records to reflect the redraw, well in advance of when absentee voting begins on March 30, 2022. Federal law, moreover, requires that the State provide ballots to voters protected by the Uniformed and

Overseas Citizens Absentee Voting Act no later than April 9, 2022. *See* Ex. A (Declaration of Clay Helms) at 4-5; 52 U.S.C. § 20302(a)(8). Recent experience shows that election officials struggled to complete the district-assignment process within *four months* following remedial redistricting. Helms Decl. 4. Here, the district court’s drastic preliminary injunction gives the State far less time. In short, “the election machinery wheels [are] in full rotation,” *Graves v. City of Montgomery*, 807 F.Supp.2d 1096, 1112 (M.D. Ala. 2011), and can’t be stopped without grave damage to the public.

Because enacting a new districting map will unavoidably entail substantial logistical difficulties and will force the State to implement a racially gerrymandered plan, the State respectfully requests that the Court decide the matter as quickly as possible. To expeditiously resolve the matter while allowing the Court sufficient time to consider and rule on the motion, Defendants request the following briefing schedule in response to Defendants’ emergency stay motion filed today:

- **Friday, January 28, 2022, by 12:00 PM CT:** Plaintiffs’ response brief due, along with any amicus filings in support;
- **Saturday, January 29, 2022, by 12:00 PM CT:** Defendants’ reply brief due.

Plaintiffs have already demonstrated that they are able to meet these deadlines. After Defendants filed their substantively similar stay motion with the district court, that court ordered Plaintiffs to respond to the motion in less than 24 hours, DE104, and Plaintiffs had no trouble complying, DE107. Defendants’ stay motion to this Court

presents same issues that the parties briefed before the district court at the stay stage. Moreover, none of the issues Defendants raise on appeal is remotely new; the parties litigated them before the district court through extensive briefing and a seven-day hearing. *See* DE3 (Plaintiffs' Complaint), DE71 (Defendants' Response), DE96 (Defendants' Proposed Findings of Fact and Conclusions of Law), DE97 (Plaintiffs' Proposed Findings of Fact and Conclusions of Law). The parties thus can meet the deadlines required by the exigent nature of this case.

Respectfully submitted,

Steve Marshall

Alabama Attorney General

/s/ Edmund G. LaCour Jr.

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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT,
TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS**

1. I certify that this motion complies with the type-volume limitations set forth in Fed. R. App. P. 27(d)(2)(A). This motion contains 870 words, including all headings, footnotes, and quotations, and excluding the parts of the motion exempted under Fed. R. App. P. 32(f).

2. In addition, this brief complies with the typeface and type style requirements of Fed. R. App. P. 32(a)(5) and (6) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in 14-point Garamond font.

/s/ Edmund G. LaCour Jr.

Edmund G. LaCour Jr.

Counsel for Appellant Secretary of State John Merrill

CERTIFICATE OF SERVICE

I hereby certify that on January 27, 2022, I filed the foregoing motion using the Court's CM/ECF system, which will serve counsel for all parties.

/s/ Edmund G. LaCour Jr.

Edmund G. LaCour Jr.

Counsel for Appellant Secretary of State John Merrill

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