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

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
	)	
JOHN MERRILL, in his official capacity as Alabama Secretary of State, *et al.*,	)	THREE-JUDGE COURT
	)	
	)	
	)	
Defendants.	)	

SINGLETON PLAINTIFFS' EMERGENCY MOTION FOR A RULING ON THEIR RENEWED MOTION FOR A PRELIMINARY INJUNCTION

On February 1, the *Singleton* Plaintiffs asked this Court to rule on their Renewed Motion for a Preliminary Injunction if the Supreme Court stayed the injunction in *Milligan* and *Caster*. Doc. 98. Yesterday the Supreme Court entered that stay. Ex. 1. Thus, it is no longer true that "Alabama's upcoming congressional elections will not occur on the basis of the map that is allegedly unconstitutional," Doc. 88 at 216, and there is no reason for this Court to continue to defer ruling on the *Singleton* Plaintiffs' gerrymandering claim.

The Supreme Court's order does not imply that it is too late for this Court to order relief. Only two Justices invoked the Supreme Court's holding in *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam) that district courts should not enjoin state

election laws in the period close to an election; the other three Justices who voted for a stay declined to join their concurring opinion. Moreover, the two-Justice concurrence stated,

> the *Purcell* principle thus might be overcome even with respect to an injunction issued close to an election if a plaintiff establishes at least the following: (i) the underlying merits are entirely clearcut in favor of the plaintiff; (ii) the plaintiff would suffer irreparable harm absent the injunction; (iii) the plaintiff has not unduly delayed bringing the complaint to court; and (iv) the changes in question are at least feasible before the election without significant cost, confusion, or hardship.

Ex. 1 at 5. The *Singleton* Plaintiffs' gerrymandering claim and their proposed remedy satisfy all four criteria. First, it is undisputed that the district lines in the 2021 plan separate voters by race, Doc. 84 at 4–7, 10, and the Defendants' own arguments to the Supreme Court that racial gerrymandering is never appropriate apply in spades to the 2021 plan, Doc. 98 at 3–4. Second, this Court has already described the irreparable harm that voters will suffer if the 2022 election uses an unlawful map. Doc. 88 at 197–98. Third, the *Singleton* Plaintiffs did not delay at all, much less "unduly," in bringing their complaint to court. *Id.* at 203 n.13 ("The *Singleton* plaintiffs already had filed their lawsuit, but within hours of the Plan being signed by the Governor filed the amended complaint to address the enacted 2021 Plan."). Fourth, implementing the *Singleton* Plaintiffs' proposed remedy is feasible without significant cost, confusion, or hardship. When ordering that new districts be drawn under the Voting Rights Act, this Court examined the

Defendants' evidence on this point and found it wanting. *Id.* at 199–204; Doc. 93 at 27–34. The *Singleton* Plaintiffs' proposed remedial maps, all of which have been vetted by the Legislature's own mapping software, would be even easier to implement; at most, about 0.4% of the state's population would have to be manually assigned to a congressional district different from the one that covers everyone else in their county. Doc. 84 at 24–25.

CONCLUSION

The *Singleton* Plaintiffs and this Court have been admirably diligent throughout this case. It would be a shame if the *Singleton* Plaintiffs and millions of other Alabamians must vote in patently unconstitutional districts without any review by this Court, making all that diligence count for nothing.

Dated: February 8, 2022

Respectfully submitted,

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