

June 12, 2023

Honorable Scott S. Harris
Clerk of the Court
Supreme Court of the United States
1 First Street, NE
Washington, D.C. 20543

Re: No. 21A814, *Ardoin, et al. v. Robinson, et al.*

Dear Mr. Harris:

The *Robinson* Respondents write in response to Petitioners' June 8, 2023 letter to the Court. Letter from Louisiana Attorney General Jeff Landry to Hon. Scott Harris (June 8, 2023) ("Pet. Ltr. Br."). Petitioners' principal argument in seeking the doubly extraordinary relief of a stay and certiorari before judgment was that "this case presents the same question as *Merrill [v. Milligan]*." See Petitioners' Emergency Application for Administrative Stay, Stay Pending Appeal, and Petition for Writ of Certiorari Before Judgment, *Ardoin v. Robinson*, No. 21A814 (June 17, 2022) ("Pet. Stay App."), at 4-5. Now that *Milligan* has been decided and affirmed, there is no longer any basis for hearing this case before judgment. The preliminary injunction in *Robinson* was issued by the district court applying the same standards on which this Court affirmed the preliminary injunction in *Allen v. Milligan*, 599 U.S. ___ (2023). Because the reasons for granting it no longer exist, this Court should dismiss the petition for certiorari as improvidently granted. Alternatively, the district court's decision should be summarily affirmed.

In *Milligan*, the Court reaffirmed the standards it first adopted in *Thornburg v. Gingles*, 478 U. S. 30 (1986), standards that the Court has applied for nearly forty years in litigation under §2 of the Voting Rights Act. *Milligan*, Slip Op. at 11. Applying those standards in *Milligan*, the Court affirmed the judgment of the three-judge panel that the Alabama congressional redistricting plan at issue likely violated §2. *Id.*

The district court here applied the same *Gingles* standards in reaching the same conclusion with respect to Louisiana's congressional redistricting plan and preliminarily enjoining that plan. *Robinson v. Ardoin*, 605 F. Supp. 3d 759 (M.D. La. 2022). A Fifth Circuit motions panel also applied *Gingles* in a manner consistent with *Milligan* in denying Petitioners' motion for a stay pending appeal. See *Robinson v. Ardoin*, 37 F.4th 208 (5th Cir. 2022) (Smith, Higginson, and Willett, JJ.). This Court's opinion in *Milligan* confirms the correctness of those decisions. Further, because this matter came to this Court on a stay request, the Fifth Circuit has not had an opportunity to consider Petitioners' appeal on the merits. Dismissing Petitioners' certiorari petition will simply allow this case to proceed in the ordinary course in the lower courts, and will allow Petitioners (or Respondents, if the Fifth Circuit rules against us) another opportunity to seek review if warranted after the Fifth Circuit rules.

Petitioners offer no good reason for this Court to take the extraordinary step of hearing this case before the Court of Appeals has even heard or decided the case on the

merits. The Court granted certiorari before judgment pending its decision in *Milligan*, on Petitioners' representation that the cases "present[] the same question." See *Ardoin v. Robinson*, 142 S. Ct. 2892 (2022) (holding this case "in abeyance pending this Court's decision in [*Milligan*] or further order of the Court"). The *Milligan* decision has now issued, and Petitioners have failed to make the extraordinary showing required for this Court to proceed with this case. See S. Ct. R. 11 ("A petition for a writ of certiorari ... before judgment ... will be granted only upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court."). Because the reasons for the grant of certiorari before judgment no longer exist, the Court should dismiss the petition as improvidently granted.

Petitioners' belated about-face assertion that this case does not "present the same question as *Milligan*," but differs materially is, in any event, incorrect. All of the purportedly distinguishing issues Petitioners identify are addressed in *Milligan* or other decisions of this Court in §2 cases that *Milligan* reaffirms. Plaintiffs in both *Milligan* and *Robinson* presented the kind of evidence this Court has long required and has now reaffirmed in *Milligan* as sufficient to prove a §2 violation.

First, with respect to the compactness of the minority community, *Milligan* reaffirmed the existing legal standards governing that showing, which the district court applied in evaluating the evidence proffered by Respondents below. See Opposition to Application for Stay Pending Appeal and Writ of Certiorari Before Judgment, No. 21A814 (2022) ("Stay Opp."), at 35-39 (describing district court's analysis of Respondents' illustrative maps").

Second, Respondents offered the same kind of evidence of polarized voting, demonstrating similar levels of extreme racial polarization, as this Court found sufficient in *Milligan* to show "legally significant racially polarized voting"—that is, bloc voting sufficient to result in the usual defeat of minority-preferred candidates. Compare, e.g., Opposition to Application for Stay Pending Appeal and Writ of Certiorari Before Judgment, No. 21A814 (June 23, 2022) ("Stay Opp."), at 27 n.2 (citing evidence that white voters' support for Black-preferred candidates ranged from 11.7% to 20.8%), with *Milligan*, Slip Op. at 14 (affirming district court's *Gingles* II and III findings based on evidence that "white voters supported Black-preferred candidates with 15.4% of the vote"). The district court in *Robinson*, as in *Milligan*, found that this level of polarized voting prevented Black-preferred candidates from being elected in all but the state's sole majority-Black district. 605 F. Supp. 3d at 842-43, and the Fifth Circuit, in reliance on this Court's decisions in *Gingles* and *Wis. Legislature v. Wis. Elections Comm'n*, 142 S. Ct. 1245, 1250 (2022), agreed with the district court's analysis, 37 F.4th at 225.

Finally, the mandatory preliminary injunctions in both the *Milligan* and *Robinson* cases contained materially identical terms calling for the legislature or the court to create

Honorable Scott S. Harris

June 12, 2023

Page 3

a new congressional map that remedies the identified §2 violation. As this Court confirmed in *Milligan*, when §2 of the Voting Rights Act has been violated, a race conscious remedial map that respects traditional redistricting principles (as the Respondents' proposed remedial plan does here) is appropriate and does not constitute unlawful racial gerrymandering. *Milligan*, Slip Op. at 34 (“race-based redistricting” is appropriate and lawful “as a remedy for state districting maps that violate §2”); *id.* at 12 (“Alabama could enact” any of plaintiffs’ illustrative maps that remedied the section 2 violation and “comported with traditional redistricting principles.”); Stay Opp. at 34-35 (describing district court and Fifth Circuit rulings that Respondents’ illustrative maps satisfied traditional redistricting principles).

Most importantly, this Court took this case on Petitioners’ representation that, in *Milligan*, it would “address an identical issue to the one here.” *See* Pet. Stay App., at 39; *id.* at 1 (the Court’s decision in *Milligan* “will soon resolve ... [w]hether Louisiana’s 2021 redistricting plan for its six seats in the United States House of Representatives violated section 2 of the Voting Rights Act, 52 U. S. C. §10301”). If that is the case, now that *Milligan* has been affirmed without changing the law, there is no basis for hearing this case before the Fifth Circuit has an opportunity to address the merits. Petitioners are free to argue that it should come out differently, but the justification for hearing the case outside of the normal course has evaporated.

Insofar as Petitioners’ letter is circulated to the Members of the Court, we respectfully ask that you circulate this letter to the Court as well.

Respectfully submitted,

/s/ Stuart Naifeh

STUART NAIFEH

CERTIFICATE OF SERVICE

I, Stuart Naifeh, certify that I filed Respondents' June 12, 2023 letter electronically with the Court; that I am having a copy of the letter delivered to the Clerk through FedEx and that I am serving a copy of the letter on the following counsel through FedEx:

Elizabeth Baker Murrill
Office of the Attorney General
1885 N. Third Street
Baton Rouge, LA 70802
murrille@ag.louisiana.gov
(225) 326-6766

Abha Khanna
Elias Law Group LLP
Suite 2100
Seattle, WA 98101
akhanna@elias.law
(206) 656-0177

Edmund Gerard LaCour, Jr.
Office of the Attorney General
501 Washington Ave
Montgomery, AL 36130
edmund.lacour@alabamaag.gov
(334) 242-7300

Christopher E. Mills
Spero Law LLC
557 East Bay Street #22251
Charleston, SC 29413
(843) 606-0640
cmills@spero.law

Tyler Green
Consovoy McCarthy PLLC
222 S. Main Street
5th Floor
Salt Lake City, UT 84101
(703) 243-9423
tyler@consovoymccarthy.com

Honorable Scott S. Harris

June 12, 2023

Page 5

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 12, 2023.

/s/ Stuart Naifeh

STUART NAIFEH