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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

MARCUS CASTER, LAKEISHA CHESTNUT, BOBBY LEE DUBOSE, BENJAMIN JONES, RODNEY ALLEN LOVE, MANASSEH POWELL, RONALD SMITH, and WENDELL THOMAS,

Plaintiffs,

v.

JOHN H. MERRILL, in his official capacity as Alabama Secretary of State,

Defendant,

and

CHRIS PRINGLE and JIM McCLENDON,

Intervenor-Defendants.

Case No. 2:21-CV-1536-AMM

PLAINTIFFS' RESPONSE IN OPPOSITION TO ALABAMA'S EMERGENCY MOTION FOR STAY PENDING APPEAL

Alabama's latest motion doubles down on its misguided legal strategy of refusing to follow court orders simply because it doesn't like them. Alabama identifies no error in the Court's reasoning, no argument that the Court forgot to consider, no precedent the Court overlooked, and certainly no equity that warrants further delaying Plaintiffs' relief. Alabama has accordingly offered the Court no

justification to stay relief to which Plaintiffs have been entitled for the better part of two years. Plaintiffs therefore request that the Court reject Alabama's motion and allow the Special Master to continue his work to ensure a lawful plan is in place for the 2024 elections.

ARGUMENT

"A stay of a preliminary injunction is 'extraordinary relief'" for which Alabama has failed to meet its "'heavy burden.'" *Schultz v. Alabama*, No. 5:17-cv-00270-MHH, 2018 WL 9786086, *3 (N.D. Ala. Nov. 8, 2018) (quoting *Winston-Salem/Forsyth Cnty. Bd. of Educ. v. Scott*, 404 U.S. 1221, 1231 (1971) (Burger, J., in chambers). To obtain a stay, Alabama must show that: (1) it is likely to succeed on the merits of its appeal; (2) it "will be irreparably injured absent a stay"; (3) it will not "substantially injure the other parties interested in the proceeding"; and (4) "the public interest lies" in favor of granting the stay. *Dem. Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1317 (11th Cir. 2019). Alabama cannot satisfy these factors.

A. Alabama has not demonstrated that it is likely to succeed on appeal.

Alabama's insistence that it is "overwhelmingly likely to succeed on the merits of its appeal," Mot. to Stay, ECF No. 226 at 3, is belied by its underwhelming argument on the merits, which is based not on precedent or evidence (or even logic), but on the Secretary's professed "fundamental disagreements with the Court over whether the 2023 Plan remedies a likely § 2 violation and whether the 2023 Plan

complies with § 2." *Id.* at 4. A party's disagreement with a judicial decision, however, is not a basis for a stay. *See Wright v. Sumter Cnty. Bd. of Elections & Registration*, 979 F.3d 1282, 1301 (11th Cir. 2020) ("We may reverse a district court's finding [of vote dilution under Section 2] as clearly erroneous when, 'after viewing all the evidence, we are left with the definite and firm conviction that a mistake has been committed.'").

Alabama offers no basis to believe an appellate court would find clear error in this Court's rulings. Alabama concedes that the 2023 Plan fails to provide Black voters an additional opportunity to elect a candidate of their choice. *See* Remedial Order, ECF No. 223 at 116-17; *see also League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 428-29 (2006), *on remand*, 457 F. Supp. 2d 716, 719 (E.D. Tex. 2006) (three-judge court) (ordering a remedial plan with an "effective Latino opportunity district" to cure a Section 2 violation). The 2023 Plan therefore "perpetuates, rather than completely remedies, the likely Section Two violation found by this Court." Remedial Order, at 139. The Court also correctly determined that the 2023 Plan likely violates Section 2, even if Plaintiffs were required to satisfy *Gingles* anew. *Id.* at 177-78. Alabama's passage of the 2023 Plan does nothing to alter this Court's conclusion, affirmed by the Supreme Court, that Plaintiffs' 11 illustrative plans satisfy the first *Gingles* precondition, the only element of the

Section 2 standard Alabama disputes during this remedial phase. *Id.*; *see also Allen v. Milligan*, 143 S. Ct. 1487, 1504-05 (2023).

In short, Alabama's petulance over this Court's decision is insufficient to trigger the extraordinary relief it seeks. For this reason alone, Alabama's motion fails.

B. The remaining equitable factors sharply cut against staying Plaintiffs' relief.

Nor do the equities support granting Alabama's motion. As this Court found, absent injunctive relief, Plaintiffs will be forced to vote in the 2024 election under the State's dilutive 2023 Plan, causing them irreparable harm. Remedial Order at 188; *see also League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) ("Courts routinely deem restrictions on fundamental voting rights irreparable injury.").

Alabama does not address the harm that would befall Plaintiffs if a stay were granted. Nor does it raise any argument under the so-called *Purcell* doctrine. The State instead contends that without a stay it "will be compelled to cede its sovereign redistricting power to the Court so that Alabamians can be segregated into different districts based on race." Mot. to Stay at 4. But Alabama is confused.

The Supreme Court has been plain that a district court does not encroach on state sovereignty by denying a state "a second bite at the apple," where, as here, a state legislature squanders its opportunity to adopt a lawful remedial plan in the first

instance. *See North Carolina v. Covington*, 138 S. Ct. 2548, 2553-54 (2018) (denying state legislature second "chance at a remedial map" even though legislature "stood ready and willing to promptly carry out its sovereign duty"). Alabama's argument on this score rings especially hollow considering the State's concession that it would be virtually impossible for the Legislature to pass a new districting plan in time for the upcoming election. Remedial Hr'g Tr. at 167; *see also Covington*, 138 S. Ct. at 2554 (rejecting legislature's request for "a second bite at the apple" where doing so "risked 'further draw[ing] out these proceedings and potentially interfer[ing] with the 2018 election cycle'" (alterations in original) (citation omitted)).

Alabama's argument, moreover, invokes a racial boogeyman already dispelled by this Court and the Supreme Court. The State provides no reason to believe that a remedial plan adopted by this Court will "segregate[]" voters based on race, Mot. to Stay at 4, particularly where this Court has found and the Supreme Court has affirmed that Plaintiffs' illustrative maps are "reasonably configured," *Allen*, 143 S. Ct. at 1504-05, and that "race did not predominate" in them, *id.* at 1510-11 (plurality opinion) ("The District Court did not err in finding that race did not predominate in Cooper's maps in light of the evidence before it."). In any event, no remedial plan yet exists: The Special Master has only just begun his work, and his deadline for proposing remedial plans is September 25. *See* Order re Special Master,

ECF No. 224 at 7. Alabama's insistence that *any* remedial plan will be unlawful is at odds with the fact-dependent and "intensely local appraisal" Section 2 demands. *Wright*, 979 F.3d at 1301.

Alabama's outright defiance of the judicial orders to which it is subject is insufficient reason to jeopardize the relief for which Plaintiffs have been waiting for the better part of two years. Because the balance of the equities decidedly cut in Plaintiffs' favor, these factors too counsel against granting a stay.

CONCLUSION

For the reasons expressed herein, as well as those explained in Plaintiffs' extensive briefing on the matters Alabama attempts to relitigate, the Court should deny the State's motion for a stay pending appeal.

Dated: September 8, 2023

Respectfully submitted,

By */s/ Abha Khanna*

Richard P. Rouco
(AL Bar. No. 6182-R76R)
Quinn, Connor, Weaver, Davies & Rouco LLP
Two North Twentieth
2-20th Street North, Suite 930
Birmingham, AL 35203
Phone: (205) 870-9989
Fax: (205) 803-4143
Email: rrouco@qcwdr.com

Abha Khanna*
Makeba Rutahindurwa*
Elias Law Group LLP
1700 Seventh Ave, Suite 2100
Seattle, WA 98101
Phone: (206) 656-0177
Email: AKhanna@elias.law
Email: MRutahindurwa@elias.law

Lalitha D. Madduri*
Joseph N. Posimato*
Jyoti Jasrasaria*
Elias Law Group LLP
250 Massachusetts Ave. NW, Suite 400
Washington, D.C. 20001
Phone: (202) 968-4518
Email: LMadduri@elias.law
Email: JPosimato@elias.law
Email: JJasrasaria@elias.law

Attorneys for Plaintiffs
**Admitted Pro Hac Vice*

CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2023, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Richard P. Rouco
Richard P. Rouco
Counsel for Plaintiffs