

**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

***CASTER* PLAINTIFFS' RESPONSE TO *SINGLETON* PLAINTIFFS'
EMERGENCY MOTION FOR A RULING ON THEIR RENEWED
MOTION FOR A PRELIMINARY INJUNCTION**

This Court has asked the parties in *Caster* to respond to the *Singleton* Plaintiffs' emergency motion for a ruling on their Renewed Motion for a Preliminary Injunction following the U.S. Supreme Court's order staying this Court's and the three-judge court's January 24 preliminary injunction orders. The *Singleton* Plaintiffs argue that the Supreme Court's stay order does not preclude the three-judge court from granting preliminary injunctive relief based on the *Singleton* Plaintiffs' Equal Protection Clause claim, which the three-judge court considered but declined to resolve. *See* ECF No. 101 at 214-17. The *Caster* Plaintiffs respond as follows.

Singleton and *Milligan* were formally consolidated on November 23, 2021, for purposes of the preliminary injunction proceedings in both cases. *See Singleton v. Merrill*, No. 2:21-cv-1291-AMM (N.D. Ala.), ECF No. 45 at 3. For this reason, the three-judge court issued its January 24 preliminary injunction order in both *Milligan* and *Singleton*. *Singleton*, ECF No. 88; *Milligan v. Merrill*, No. 2:21-cv-1530-AMM (N.D. Ala.), ECF No. 107. Defendants' appeal of the three-judge court's January 24 order in *Milligan* was, therefore, also an appeal of the same order in *Singleton*. Thus, Defendants' notice of appeal divested the three-judge court of jurisdiction with respect to the preliminary injunction proceedings in *both Milligan* and *Singleton*. *See Farmhand, Inc. v. Anel Eng'g Indus., Inc.*, 693 F.2d 1140, 1145 (5th Cir. 1982) ("Generally, when an appeal is noticed the district court is divested

of jurisdiction; the matter is transferred immediately to the appellate court.”). While there are several exceptions to the rule that a notice of appeal divests the district court of jurisdiction over the proceedings at issue in the appeal, *see id.* at 1145–46, none of those exceptions apply here.

Because the three-judge court lacks jurisdiction over the preliminary injunction proceedings in *Milligan* and *Singleton*, it cannot rule on the *Singleton* Plaintiffs’ motion for a preliminary injunction on the basis of their Equal Protection Claim. Accordingly, the three-judge court should deny the *Singleton* Plaintiffs’ emergency motion for such a ruling.

Dated: February 14, 2022

Respectfully submitted,

By /s/ Abha Khanna

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CERTIFICATE OF SERVICE

I hereby certify that on February 14, 2022, a copy of the foregoing was filed with the Clerk of Court using the CM/ECF system, which will provide electronic notice of filing to all counsel of record.

/s/ Abha Khanna
Abha Khanna
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