

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

EVAN MILLIGAN, et al.,

Plaintiffs,

vs.

JOHN H. MERRILL, et al.,

Defendants.

No. 2:21-cv-01530
THREE-JUDGE COURT

***MILLIGAN* PLAINTIFFS' RESPONSE TO SINGLETON PLAINTIFFS'
EMERGENCY MOTION**

The *Milligan* Plaintiffs submit this response pursuant to this Court's order dated February 8, 2022 (Doc. 133) requiring all parties to respond to the *Singleton* Plaintiffs' Emergency Motion for a Ruling on their Renewed Motion for a Preliminary Injunction (*Singleton*, Doc. 104). The *Singleton* Plaintiffs ask the Court to grant a preliminary injunction on their racial gerrymandering claim and order the Defendant and Defendant-Intervenors in that action to adopt a new Congressional redistricting plan based on the "whole county" principle.

The *Milligan* Plaintiffs respectfully request that the Court defer further action on or consideration of the racial gerrymandering and other constitutional claims asserted in both the *Singleton* and the *Milligan* complaints. The Court's

consideration of the *Singleton* and *Milligan* constitutional claims (as well as further consideration of the *Milligan* Plaintiffs' statutory claims) will be aided by a fuller evidentiary record. Additionally, the avoidance of further interlocutory treatment of individual claims will serve the interest of judicial economy. Accordingly, rather than address the merits further on a preliminary basis and record, this Court should defer action on the *Singleton* Plaintiffs' motion and not address their right to preliminary relief at this time.¹

If, however, the Court is inclined to consider the *Singleton* Plaintiffs' renewed motion for a preliminary injunction on its merits at this stage, the *Milligan* Plaintiffs request that the Court formally sever the *Singleton* and *Milligan* cases prior to any further consideration of the *Singleton* claims. This Court previously consolidated the two cases solely for purposes of the preliminary injunction proceedings (Doc. 40). If the cases remain consolidated, then extending the preliminary injunction proceedings in the *Singleton* case will impact a variety of issues affecting the *Milligan* case, including the scope and timing of discovery and trial. In addition, binding the *Milligan* Plaintiffs to any findings of fact or legal rulings in further preliminary injunction proceedings in *Singleton*—in which the *Milligan* Plaintiffs do not intend to be involved—would be unfairly prejudicial to the *Milligan* Plaintiffs.

¹ Additionally, given the U.S. Supreme Court's decision to stay this Court's preliminary injunction on the *Milligan* Plaintiffs' statutory claims, further consideration of the *Singleton* Plaintiffs' constitutional claim at this time is likely futile.

While the racial gerrymandering claims of the *Milligan* and *Singleton* Plaintiffs share some common elements, the claims are (as the Court is aware) materially different in important respects. Accordingly, if the Court intends to grant the *Singleton* Plaintiffs' emergency motion and give further consideration to their motion for a preliminary injunction, the *Milligan* Plaintiffs request that the Court first sever the *Singleton* and *Milligan* cases for all purposes.

Respectfully submitted,

DATED this 14th day of February 2022.

/s/ Deuel Ross

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CERTIFICATE OF SERVICE

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

/s/ Stuart Naifeh

Counsel for Plaintiffs