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May 9, 2026

VIA E-Filing

The Honorable Scott S. Harris
Clerk of Court
Supreme Court of the United States
One First Street, NE
Washington, DC 20543

Re: *Allen v. Milligan*, No. 25A1231

Dear Mr. Harris:

I write to notify the Court of two developments that occurred since Applicants filed their emergency application for stay yesterday afternoon.

First, the district court denied a stay because it determined that “only the Supreme Court has the authority to address the substance of [Applicants’] arguments and resolve them.” *Milligan* DE525:4. “Accordingly,” the court said, “unless and until the Supreme Court stays, reverses, vacates, or otherwise renders our injunction inoperable, it remains effective.” *Id.* at 4-5.

Second, the Alabama Legislature enacted and the Governor signed into law Act 2026-612, which provides for a special primary election for affected Congressional districts “[i]n the event that” a federal court, “by issuing a judgment or by vacating an injunction, permits the reinstatement of the” 2023 Plan.

I would be grateful if you would relay these updates to the Court.

Respectfully submitted,

s/ A. Barrett Bowdre

A. Barrett Bowdre

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cc: All Counsel of Record

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

BOBBY SINGLETON, et al.,)
)
Plaintiffs,)
)
v.)
)
WES ALLEN, in his official)
capacity as Secretary of State of)
Alabama, et al.,)
)
Defendants.)

Case No.: 2:21-cv-1291-AMM

THREE-JUDGE COURT

EVAN MILLIGAN, et al.,)
)
Plaintiffs,)
)
v.)
)
WES ALLEN, in his official)
capacity as Secretary of State of)
Alabama, et al.,)
)
Defendants.)

Case No.: 2:21-cv-1530-AMM

THREE-JUDGE COURT

Before MARCUS, Circuit Judge, MANASCO and MOORER, District Judges.

BY THE COURT:

ORDER

These cases are before the Court on Alabama Secretary of State Wes Allen’s emergency motion to stay the permanent injunction we entered in *Singleton v. Allen*,

Case No. 2:21-cv-1291-AMM, and *Milligan v. Allen*, Case No. 2:21-cv-1530-AMM. Doc. 520.¹ After we permanently enjoined Alabama’s 2023 congressional districting plans, *see* Doc. 510, Secretary Allen noticed his third appeal to the Supreme Court of the United States, Doc. 511. On April 29, 2026, that Court decided *Louisiana v. Callais*, Nos. 24-109 & 24-110. Doc. 520 at 2. According to the Secretary, because *Callais* clarified Section Two of the Voting Rights Act of 1965 “in ways that should fundamentally alter the inquiry regarding the legality of Alabama’s 2023 Plan,” *id.* at 4, we should stay our injunction, *see id.* at 7–8.

The Secretary concedes that “[t]he Supreme Court presently has jurisdiction over [his] appeal as-of-right,” but argues that “there is ambiguity in the caselaw regarding whether Federal Rule of Civil Procedure 62(d)” allows a “district court[] to suspend injunctions pending appeal.” *Id.* at 2 n.1. Each set of plaintiffs opposes a stay. Doc. 523; *Singleton* Doc. 350. The plaintiffs in *Caster v. Allen*, Case No. 2:21-cv-01536-AMM, a coordinated case pending before Judge Manasco sitting alone, also oppose a stay. *Caster* Doc. 429.

Under longstanding and controlling precedent, “[a]n appeal . . . ‘divests the district court of its control over those aspects of the case involved in the appeal.’” *Coinbase, Inc. v. Bielski*, 599 U.S. 736, 740 (2023) (quoting *Griggs v. Provident*

¹ Unless otherwise specified, citations are to the *Milligan* docket, Case No. 2:21-cv-01530-AMM.

Consumer Disc. Co., 459 U.S. 56, 58 (1982)); accord, e.g., *United States v. Diveroli*, 729 F.3d 1339, 1341 (11th Cir. 2013). This means that “the district court has no authority to set aside its judgment, grant leave to amend the complaint, or allow any further litigation of the issues involved in the appeal.” *Boyd v. Sec’y, Dep’t of Corr.*, 114 F.4th 1232, 1238 (11th Cir. 2024). Exceptions include district court orders (1) in aid of the appeal, or (2) addressing collateral matters such as costs and attorneys’ fees. *Id.* at 1238; see also *Zaklama v. Mount Sinai Med. Ctr.*, 906 F.2d 645, 648–49 (11th Cir. 1990).²

Consistent with the first exception, Federal Rule of Civil Procedure 62(d) expresses a district court’s continuing authority to “suspend, modify, restore, or grant an injunction” to preserve the status quo during an appeal. See, e.g., *Pettway v. Am. Cast Iron Pipe Co.*, 411 F.2d 998, 1003 (5th Cir. 1969).³ Rule 62(d) provides:

(d) Injunction Pending an Appeal. While an appeal is pending from an interlocutory order or final judgment that grants, continues, modifies, refuses, dissolves, or refuses to dissolve or modify an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing

² Examples of orders “in aid of the appeal” might include orders memorializing oral opinions in writing soon after the decision was rendered, see, e.g., *Inland Bulk Transfer Co. v. Cummins Engine Co.*, 332 F.3d 1007, 1013 (6th Cir. 2003) (collecting cases), or orders protecting litigants and witnesses in the case of retaliation based on their use of the courts, see, e.g., *EEOC v. Locals 14 & 15, Int’l Union of Operating Eng’rs*, 438 F. Supp. 876, 879–80 (S.D.N.Y. 1977).

³ In *Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981, *id.* at 1209.

party's rights. If the judgment appealed from is rendered by a statutory three-judge district court, the order must be made either:

- (1) by that court sitting in open session; or
- (2) by the assent of all its judges, as evidenced by their signatures.

Fed. R. Civ. P. 62(d). "It is well settled that [Rule 62(d)] is expressive of the power in the courts to preserve the status quo pending appeal." *Pettway*, 411 F.2d at 1003; *see also id.* at n.11 (collecting cases).⁴

Under these precedents, we have no authority to grant a stay. The Secretary has appealed the permanent injunction that he now asks us to stay, and his appeal is pending in the nation's highest court. If we were to consider the substance of his request for a stay, we would have to weigh arguments that go to the heart of his appeal—arguments about what the Constitution, Section Two, *Callais*, and other binding precedents prohibit and allow. As things now stand, only the Supreme Court has the authority to address the substance of those arguments and resolve them. Any opinion we might render on the merits would be wholly advisory in nature and improper for this Court of limited jurisdiction to render. Accordingly, unless and until the Supreme Court stays, reverses, vacates, or otherwise renders our injunction inoperable, it remains effective, and we lack jurisdiction to do anything with it other

⁴ At the time the old Fifth Circuit decided *Pettway*, the substance of Rule 62(d) was housed in Rule 62(c). *See* 16A Wright & Miller's Fed. Prac. & Proc. § 3954 (5th ed.).

than enforce it. *See, e.g., U.S. Commodity Futures Trading Comm'n v. Escobio*, 946 F.3d 1242, 1251 (11th Cir. 2020) (per curiam).

Nothing in Rule 62(d) is to the contrary. Our injunction is the status quo in Alabama. Indeed, our districting map has been the status quo since we and the Supreme Court declined to stay it in September 2023, and pursuant to the orders of this Court, the Secretary used our districting map for Alabama's 2024 congressional elections and is using it for the 2026 congressional elections that are occurring now. Accordingly, a stay would upend Alabama's status quo, and Rule 62 does not authorize us to do that at this time. *See, e.g., Pettway*, 411 F.2d at 1003.

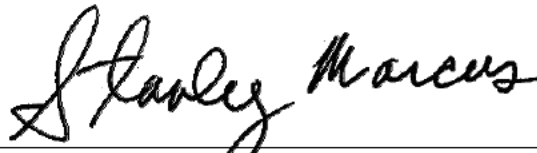
In the ordinary course, Federal Rule of Appellate Procedure 8 and Supreme Court Rule 23 allow district courts to consider requests for stays pending appeals. Rule 62 still governs the substance of such requests in the district court. *See* 16A Wright & Miller's Federal Practice and Procedure § 3954 (5th ed.); *Int'l Ass'n of Machinists & Aerospace Workers, AFL-CIO v. E. Air Lines, Inc.*, 847 F.2d 1014, 1018 (2d Cir. 1988). Notably, under the *Griggs* principle and Rule 62, Appellate Rule 8 does not expand a district court's jurisdiction, which remains limited when an appeal is pending in a higher court.

Moreover, this is not an ordinary stay motion filed upon the commencement of an appeal. The Secretary noticed his third appeal to the Supreme Court nearly a year ago, and he did not seek a stay then. *See* Doc. 495. Two appellate motions are

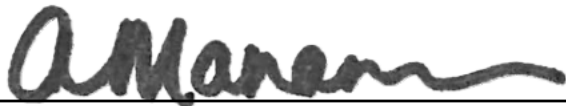
now fully briefed and pending in that Court. The docket sheet reflects that the Supreme Court considered the Secretary's third appeal at its conference on November 21, 2025. Quite simply, we do not have the authority to issue an order that upends Alabama's status quo, especially in the middle of an election, while our injunction establishing that status quo is well under review in the nation's highest court.

The Secretary's motion to stay is therefore **DENIED** for lack of jurisdiction.

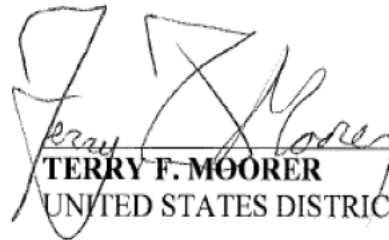
DONE and **ORDERED** this 8th day of May, 2026.



STANLEY MARCUS
UNITED STATES CIRCUIT JUDGE



ANNA M. MANASCO
UNITED STATES DISTRICT JUDGE



TERRY F. MOORER
UNITED STATES DISTRICT JUDGE



ACT #2026-612

- 1 HB1
- 2 JP3TiFF-2
- 3 By Representative Pringle
- 4 RFD: Ways and Means General Fund
- 5 First Read: 04-May-26





HB1 Enrolled

1 Enrolled, An Act,

2

3 Relating to primary elections; to authorize a new
4 special primary election for Congressional districts affected
5 by a federal court ruling under certain circumstances; to
6 require the Governor to call a special primary election for
7 affected Congressional districts under certain conditions and
8 to set an election calendar; and to provide further for the
9 qualification of affected candidates.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. (a) It is the intent of the Legislature that
12 a special primary election, as contemplated in this section,
13 be held only in the event a federal court issues or vacates an
14 order affecting the boundaries of Congressional districts in a
15 time frame that allows for a supplemental special primary
16 election during the 2026 General Election cycle.

17 (b) In the event: (i) a federal court, by issuing a
18 judgment or by vacating an injunction, permits the
19 reinstatement of the last legislatively enacted Congressional
20 districts, as enacted by Act 2023-563 of the 2023 Second
21 Special Session, to be used in the 2026 General Election, and
22 (ii) the court ruling is made at a time too late to be
23 accommodated during the normal 2026 primary election schedule
24 held or to be held in accordance with Chapter 13 of Title 17,
25 Code of Alabama 1975, the state shall hold a new special
26 primary election for the affected Congressional Districts in
27 accordance with this section, so long as certification of the
28 special primary election can be completed by August 26, 2026.

HB1 Enrolled



29 (c) (1) Upon a federal court making a ruling described
30 in subsection (b), the Governor shall issue a proclamation
31 calling for a special primary election to be held as soon as
32 possible for the affected Congressional districts, consistent
33 with subsection (b). Notwithstanding any state law to the
34 contrary, the Governor shall set a calendar for the election
35 as required to effectuate the purposes of this section,
36 provided the dates specified in the election calendar do not
37 violate federal law. A special primary election held pursuant
38 to this section shall be required for the affected
39 Congressional districts regardless of whether a regular
40 primary election was held for the affected Congressional
41 districts using the previous boundary lines.

42 (2) Notwithstanding any state law to the contrary, the
43 candidate who receives the greatest number of votes at the
44 special primary election shall be deemed the winner and party
45 nominee of that primary election, and no primary runoff
46 election shall be held.

47 (d) No candidate shall be deemed the party nominee of a
48 political party for an affected Congressional office based
49 solely on the results of the regular primary election if a new
50 special primary election is held pursuant to this section. Any
51 official certification of results of the regular primary
52 election for an affected Congressional office is void for
53 purposes of determining the party nominee once a new special
54 primary election is required under this section. However, a
55 candidate who was eligible and qualified for the regular
56 primary election for an affected Congressional district office



HB1 Enrolled

57 shall remain eligible to appear on the ballot for the new
58 special primary election, subject to laws and party rules not
59 inconsistent with Chapter 13 of Title 17, Code of Alabama
60 1975. The certification of a nominee for an affected office
61 shall be based solely on the results of the new special
62 primary election conducted under this section.

63 (e)(1) Nothing in this section prohibits a party from
64 choosing its candidates by any means allowed by law other than
65 by primary election.

66 (2) Nothing in this section shall alter the timing of
67 regular primary elections when no change in district
68 boundaries has occurred as described in subsection (b).

69 (3) Nothing in this section shall be construed to alter
70 the date scheduled for the 2026 General Election.

71 Section 2. This act shall become effective immediately.

SPONSOR _____
 CO-SPONSORS _____
 DIST. NO. 101

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HOUSE ACTION
 DATE: 4-7 2020
 RD 1 RFD WAWWLG

REPORT OF STANDING COMMITTEE
 This bill having been referred by the House to its standing committee on WAWW was acted upon by such committee in session, and returned therefrom to the House with the recommendation that it be Passed, w/amend(s) _____ w/sub _____ this 5th day of May, 2020.
R. S. ... Chair

DATE: 4-5 2020
 RF RD 2 CAL

DATE: _____ 20____
 RE-REFERRED RE-COMMITTED
 Committee _____

DATE: _____ 20____
 RE-REFERRED RE-COMMITTED
 Committee _____

I hereby certify that the Resolution as required in Section C of Act No. 81-889 was adopted and is attached to the Bill.
 HB _____ NAYS _____
 YEAS _____
JOHN TREADWELL,
 Clerk

FURTHER HOUSE ACTION (OVER)

SENATE ACTION CAMG
 DATE: 5-6 2020
 RD 1 RFD CAMG

This Bill was referred to the Standing Committee of the Senate on CAMG and was acted upon by such Committee in session and is by order of the Committee returned therefrom with a favorable report w/amd(s) 0 w/sub 0 w/leng sub 0 by a vote of
 yeas 6 nays 3 abstain 0
 this 7th day of May, 2020.
... Chair

DATE: 5-7 2020
 RF FAV RD2 CAL

I hereby certify that the Resolution as required in Section C of Act No. 81-889 was adopted and is attached to the Bill.
 HB _____ NAYS _____
 YEAS _____
PATRICK HARRIS,
 Secretary

DATE: 5-7 2020
 PASSED PASSED AS AMENDED
 RD 3 at length

YEAS 27 NAYS 8
 And was ordered returned forthwith to the House
PATRICK HARRIS,
 Secretary

DATE: _____ 20____
 INDEFINITELY POSTPONED YEAS _____ NAYS _____
 DATE: _____ 20____
 RECONSIDERED YEAS _____ NAYS _____

FURTHER SENATE ACTION (OVER)