

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

ALPHA PHI ALPHA FRATERNITY
INC., *et al.*,

Plaintiffs,

v.

BRAD RAFFENSPERGER, in his
official capacity as Secretary of State of
Georgia,

Defendant.

CASE NO. 1:21-CV-05337-SCJ

**DEFENDANT'S RESPONSE TO PLAINTIFFS' NOTICE OF
SUPPLEMENTAL AUTHORITY IN OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT [DOC. NO. 264]**

In response to Plaintiffs’ Notice of Supplemental Authority in Opposition to Defendant’s Motion for Summary Judgment [Doc. No. 264], Secretary Raffensperger states that there is no basis for this Court to rely on the United States Supreme Court’s dismissal, on June 26, 2023, of the petition for certiorari in *Ardoin v. Robinson*, U.S. S. Ct. No. 21-1596, as improvidently granted. Plaintiffs notably do not cite any authority that is relevant to Defendant’s pending motion for summary judgment [Doc. No. 230].

The dismissal order in *Ardoin* (the *Ardoin* Dismissal Order) states, in full:

The writ of certiorari before judgment is dismissed as improvidently granted. The stay heretofore entered by the Court on June 28, 2022, is vacated. This will allow the matter to proceed before the Court of Appeals for the Fifth Circuit for review in the ordinary course and in advance of the 2024 congressional elections in Louisiana. See this Court’s Rule 11 [“Certiorari to a United States Court of Appeals Before Judgment”].

[Doc. No. 264-1, p. 2]. There were no opinions accompanying the *Ardoin* Dismissal Order to provide any further explanation of the dismissal. The *Ardoin* Dismissal Order has no bearing on Defendant’s motion for summary judgment for two independent reasons.

First, the Court did not issue an opinion on the merits, but only a docket order, which is not binding authority. It is well established that a denial of a petition for certiorari “does not in any way or to any extent reflect or imply any

view on the merits.” *Powell v. Barrett*, 541 F.3d 1298, 1312 n.5 (11th Cir. 2008) (collecting cases). The Eleventh Circuit went on to hold in *Powell*, “Because the denial of certiorari implies no view of the merits, the denial or vacation of a stay that was entered to permit consideration of a certiorari petition logically cannot imply any view of the merits either.” *Id.* The latter situation is essentially the same as what happened in *Ardoin*—the Supreme Court granted the petition before judgment with an accompanying stay and then dismissed the petition and vacated the stay “for the Fifth Circuit to review in the ordinary course and in advance of the 2024 congressional elections in Louisiana.” The conclusion in *Ardoin* is yet to come and still unknown.

The second reason that the *Ardoin* Dismissal Order has no bearing on Defendant’s summary-judgment motion is that Defendant has not relied on the filings of the *Ardoin* Petitioners in this case. Just as the facts and arguments in *Allen v. Milligan*, Case No. 21-1086 (U.S. June 8, 2023), are distinguishable from those before the Court in this case, *see* [Doc. No. 263, pp. 3-4], so are the facts and arguments in *Ardoin*. Therefore, the proceedings in *Ardoin* (which

are still under review by the Fifth Circuit¹) are not relevant to Defendant's motion for summary judgment.

Defendant stands by the arguments submitted in his Supplemental Brief filed June 22, 2023 [Doc. No. 263], which are not affected by the *Ardoin* Dismissal Order.

Respectfully submitted this 30th day of June, 2023.

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¹ In fact, the day after Plaintiffs filed their Notice, the Fifth Circuit instructed the parties to brief whether it should remand to the district court or not. *See* Memorandum to Counsel or Parties, June 28, 2023, attached as Ex. A.

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CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(D), the undersigned hereby certifies that the foregoing Supplemental Brief has been prepared in Century Schoolbook 13, a font and type selection approved by the Court in L.R. 5.1(B).

/s/ Bryan P. Tyson
Bryan P. Tyson

EXHIBIT A

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

June 28, 2023

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

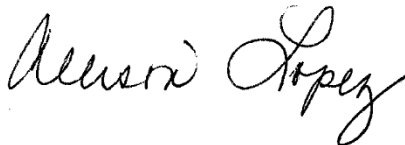
No. 22-30333 Robinson v. Ardoin
USDC No. 3:22-CV-211
USDC No. 3:22-CV-214

The parties are requested to file letters by July 6, 2023 addressing whether this court should remand the appeal to allow the district court to consider the new authority.

Also, the Court requests that the parties file supplemental briefs addressing the Supreme Court's June 8, 2023, decision in No. 21-1086, Allen v. Milligan, and any other developments or caselaw that would have been appropriate for Rule 28(j) letters over the past year had the case not been in abeyance. The appellants' brief is due 40 days from this date. The appellees' brief is due 30 days after the appellants' brief has been filed. The appellants may file a reply brief 21 days after the appellees' briefs have been filed.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Allison G. Lopez, Deputy Clerk
504-310-7702

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