

ENTERED

May 24, 2022

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

UNITED STATES OF AMERICA,	§	
	§	
<i>Plaintiff,</i>	§	
VS.	§	CIVIL ACTION NO. 3:22-cv-93
	§	
GALVESTON COUNTY, TEXAS, <i>et</i>	§	
<i>al.,</i>	§	
	§	
<i>Defendants.</i>	§	
	§	

ORDER

Before the court is the defendants’ motion to stay this case pending the Supreme Court’s decision in *Merrill v. Milligan*, 142 S. Ct. 879 (Feb. 7, 2022) (No. 21-1086). Dkt. 27. In so doing, the defendants ask this court to speculate that the Supreme Court will alter the standard it announced in *Thornburg v. Gingles*, 478 U.S. 30 (1986), for voter-dilution claims under section 2 of the Voting Rights Act. For support, the defendants cite several stay orders from federal district courts waiting for other courts to clarify factual and legal questions.¹ But in none of those cases did the trial court stay its own case

¹ See *Johnson v. Ardoin*, No. 3:18-cv-625 (M.D. La. Oct. 17, 2019), Dkt. No. 133 (granting stay pending Fifth Circuit decision largely on whether a three-judge panel was required); *Labouliere v. Our Lady of Lake Found.*, No. 16-00785-JJB-EWD, 2017 WL 4365989, at *10 (M.D. La. Sept. 29, 2017) (granting stay pending decision by medical review panel in parallel state-court litigation concerning the

simply because a higher court *may* substantially change its own precedent.

The court finds that the balance of equities, including “(1) the potential for hardship and inequity imposed on the parties by proceeding with the action, (2) whether prejudice will result if a stay is imposed, and (3) the interests of judicial economy,” weigh against staying the case. *Labouliere*, 2017 WL 4365989, at *10 (citing *Falgoust v. Microsoft Corp.*, No. A.00-0779, 2000 WL 462919, at *2 (E.D. La. Apr. 19, 2000)). Delaying all proceedings in this case until next spring (at the earliest) will not, as the defendants suggest, prevent “judicial inefficiency.” *Wedgeworth v. Fibreboard Corp.*, 706 F.2d 541, 546 (5th Cir. 1983). This is especially true given the differences between this case and *Merrill*. As suggested above, the challenge to the Alabama maps in *Merrill* is a *Gingles* voter-dilution claim. *See Merrill*, 142 S. Ct. at 884–85 (Kagan, J., dissenting). By contrast, the challenge to the Commissioners Court precinct lines in this case includes not only a *Gingles* claim but also a claim of intentional discrimination. *See Dkt.* 1 ¶¶ 118–123. This challenge will likely be, at worst, only partially affected by

same parties and facts); *Alford v. Moulder*, No. 3:16-CV-350, 2016 WL 6088489, at *2 (S.D. Miss. Oct. 17, 2016) (granting stay pending Fifth Circuit resolution of another case with substantially similar issues); *Tel. Sci. Corp. v. Asset Recovery Sols., LLC*, No. 15 C 5182, 2016 WL 47916, at *1–*6 (N.D. Ill. Jan. 5, 2016) (granting stay pending Supreme Court resolution of a circuit split over whether the plaintiff would have standing); *Kamal v. J. Crew Grp., Inc.*, No. 15-0190, 2015 WL 9480017, at *2 (D.N.J. Dec. 29, 2015) (same).

any outcome in *Merrill*.

The plaintiff has made clear that it hopes to have the Commissioners Court precinct lines redrawn in time for the 2024 election. The defendants insist that because the Supreme Court will likely decide *Merrill* over a year before that election, the plaintiff would not be prejudiced by a stay. Dkt. 33 at 8. But any delay in reaching a final ruling in this case—and a stay would almost certainly cause such a delay—could impair this court’s ability to issue effective relief later. *See Merrill*, 142 S. Ct. at 879 (Kavanaugh, J., concurring) (stating that “federal district courts ordinarily should not enjoin state election laws in the period close to an election”) (citing *Purcell v. Gonzalez*, 549 U.S. 1 (2006)).

The court is confident in its ability to adjust quickly to any changes in the law that may come from *Merrill* or any other case. But compressing the amount of time available to litigate this case will only make it more difficult for both the court and the parties to ultimately achieve a just and lawful result.

The court denies the motion to stay.

Signed on Galveston Island this 24th day of May, 2022.



JEFFREY VINCENT BROWN
UNITED STATES DISTRICT JUDGE