

No. 22-10272

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

MARCUS CASTER, et al.,
Plaintiffs-Appellees,

v.

JOHN H. MERRILL,
in his official capacity as the Secretary of State of the State of Alabama, et al.,
Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of Alabama
Case No. No. 2:21-cv-1536-AMM

**UNOPPOSED MOTION TO PLACE APPEAL IN ABEYANCE AND
VACATE ALL DEADLINES**

Dorman Walker
BALCH & BINGHAM LLP
Post Office Box 78 (36101)
105 Tallapoosa Street, Suite 200
Montgomery, AL 36104
Telephone: (334) 269-3138
Email: dwalker@balch.com

*Counsel for Sen. McClendon and
Rep. Pringle*

Steve Marshall
Attorney General
Edmund G. LaCour Jr.*
Solicitor General
A. Barrett Bowdre
Thomas A. Wilson
Deputy Solicitors General
James W. Davis
Deputy Attorney General
Misty S. Fairbanks Messick
Brenton M. Smith
A. Reid Harris
Benjamin M. Seiss
Assistant Attorneys General
OFFICE OF THE ALABAMA ATT'Y GENERAL
501 Washington Avenue
Montgomery, AL 36130
(334) 242-7300
Edmund.LaCour@AlabamaAG.gov

Counsel for Secretary of State John Merrill

CERTIFICATE OF INTERESTED PERSONS

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1-1(a)(3) and 26.1-2(b), the undersigned counsel certifies that the following listed persons and parties may have an interest in the outcome of this case:

1. Aden, Leah
2. Aderholt, Hon. Robert
3. Arkansas Attorney General's Office
4. Arkansas, State of
5. Alabama Attorney General's Office
6. Alabama Center for Law and Liberty
7. Alabama State Conference of the NAACP
8. Alabama State Republican Executive Committee
9. American Civil Liberties Union Foundation
10. American Civil Liberties Union of Alabama
11. Arizona Attorney General's Office
12. Arizona, State of
13. Ashton, Anthony
14. Balch & Bingham LLP
15. Barnes, Anna Kathryn
16. Beato, Michael
17. Blankenship, Joel R.

18. Blankenship Law Firm, LLC (The)
19. Bowdre, A. Barrett
20. Branch, Aria C.
21. Brnovich, Hon. Mark
22. Cameron, Hon. Daniel
23. Carl, Jr., Hon. Jerry
24. Carr, Hon. Chris
25. Carter, Brittany
26. Caster, Marcus
27. Chestnut, LaKeisha
28. Clark, Matthew J.
29. Cole, David D.
30. Consovoy McCarthy PLLC
31. Davis, James W.
32. Dowdy, Shalela
33. DuBose, Bobby
34. Dunn, David
35. Ebenstein, Julie
36. Elias Law Group LLP
37. Elias, Marc E.
38. Ellsworth, Jessica L.

39. Faulks, LaTisha Gotell
40. Fitch, Hon. Lynn
41. Gbe, Harmony A.
42. Georgia Attorney General's Office
43. Georgia, State of
44. Greater Birmingham Ministries
45. Harris, A. Reid
46. Harris, Jeffrey M.
47. Hogan Lovells US LLP
48. Holtzman Vogel Baran Torchinsky & Josefiak, PPLC
49. Indiana, State of
50. Jackson, Letitia
51. Jackson, Sidney M.
52. Jones, Benjamin
53. Jordan, Albert L.
54. Kentucky Attorney General's Office
55. Kentucky, Commonwealth of
56. Khanna, Abha
57. Knudsen, Hon. Austin
58. LaCour, Jr., Edmund G.
59. Landry, Hon. Jeff

60. Lawsen, Nicki
61. Louard, Janette
62. Louisiana Department of Justice
63. Louisiana, State of
64. Love, Rodney
65. Madduri, Lalitha D.
66. Manasco, Hon. Anna M.
67. Marcus, Hon. Stanley
68. Marshall, Hon. Steve
69. McClendon, Sen. Jim
70. Meehan, Taylor A.R.
71. Merrill, Hon. John H.
72. Messick, Misty S. Fairbanks
73. Milligan, Evan
74. Mills, Christopher E.
75. Mississippi Attorney General's Office
76. Mississippi, State of
77. Missouri Attorney General's Office
78. Missouri, State of
79. Montana Attorney General's Office
80. Montana, State of

81. Moore, Hon. Barry
82. Moorer, Hon. Terry F.
83. Morrissey, Hon. Patrick
84. Murrill, Elizabeth
85. NAACP (National Headquarters)
86. NAACP Legal Defense & Education Fund, Inc.
87. National Republican Redistricting Trust
88. National Redistricting Foundation
89. Naifeh, Stuart
90. O'Connor, Hon. John
91. Office of the Indiana Attorney General
92. Office of the Oklahoma Attorney General
93. Office of the Texas Attorney General
94. Office of the West Virginia Attorney General
95. Oklahoma, State of
96. Osher, Daniel C.
97. Palmer, Hon. Gary
98. Paxton, Hon. Ken
99. Pardue, Andrew
100. Posimato, Joseph N.
101. Powell, Manasseh

102. Pringle, Rep. Chris
103. Quinn, Connor, Weaver, Davies & Rouco LLP
104. Reyes, Hon. Sean
105. Rogers, Hon. Mike
106. Rokita, Hon. Todd
107. Rosborough, Davin M.
108. Ross, Deuel
109. Rossi, Christina M.
110. Rouco, Richard P.
111. Rutledge, Hon. Leslie
112. Sadasivan, Kathryn
113. Schmitt, Hon. Eric
114. Sedwick, Olivia N.
115. Seiss, Benjamin M.
116. Sheehy, Shawn T.
117. Smith, Brenton M.
118. Smith, Ronald
119. South Carolina Attorney General's Office
120. South Carolina, State of
121. Spero Law LLC
122. Spital, Samuel

123. Stewart, Shelita M.
124. Stone, Khadidah
125. Texas, State of
126. Thomas, Wendell
127. Thompson, Blayne R.
128. Torchinsky, Jason Brett
129. Turrill, Michael
130. Utah Office of the Attorney General
131. Utah, State of
132. Wahl, John
133. Walker, J. Dorman
134. Wallace, Jordan, Ratliff and Brandt, L.L.C.
135. Welborn, Kaitlin
136. Wenger, Edward M.
137. West Virginia, State of
138. Wiggins Childs Pantazis Fisher & Goldfarb, LLC
139. Wilson, Hon. Alan
140. Wilson, Thomas A.
141. Winfrey, Adia

Respectfully submitted this 10th day of February, 2022.

s/ Edmund G. LaCour Jr.
Edmund G. LaCour Jr.
Counsel for Secretary of State John Merrill

**UNOPPOSED MOTION TO PLACE APPEAL IN ABEYANCE AND
VACATE DEADLINES**

On January 27, 2022, Alabama Secretary of State John Merrill, State Senator Jim McClendon, and State Representative Chris Pringle—the Defendants-Appellants—filed a motion requesting that this Court stay the district court’s preliminary injunction order in this case. This Court held the motion to stay in abeyance pending the U.S. Supreme Court’s resolution of the State’s related stay application in *Merrill v. Milligan*, No. 21A375 (U.S. Jan. 28, 2022). The State then filed a stay application and a petition for a writ of certiorari before judgment with the Supreme Court for this case, so it could be considered simultaneously with *Milligan*. See *Merrill v. Caster*, No. 21A376 (U.S. Jan. 28, 2022). On February 7, 2022, the Supreme Court stayed the district court’s preliminary injunction order, noted probable jurisdiction in *Milligan*, and granted the petition for a writ of certiorari before judgment in this case. See Order, Nos. 21-1086 & 21-1087, -- S. Ct. --, 2022 WL 354467 (U.S. Feb. 7, 2022).

The Supreme Court’s action “transfer[s] the case [to the Supreme Court] for review and determination.” *Forsyth v. City of Hammond*, 166 U.S. 506, 513 (1897). Because this case has now been transferred to the Supreme Court, Appellants request that this appeal be placed in abeyance pending the Supreme Court’s decision in *Caster*, and Appellants request that all deadlines be vacated, including the deadline for Appellants’ opening brief and the joint appendix. See, e.g., *State of New York v.*

U.S. Dep't of Commerce, No. 19-212 (2d Cir. Feb. 19, 2019) (granting motion “that the Court place this appeal in abeyance and vacate all deadlines, in light of the Supreme Court’s grant of certiorari before judgment”); *Whole Woman’s Health v. Judge Austin Reeve Jackson*, No. 21-50792 (5th Cir. Oct. 22, 2021) (same).

Appellees do not oppose to this motion.

For the foregoing reasons, Appellants respectfully request that the Court vacate all deadlines in this appeal and place this appeal in abeyance pending the Supreme Court’s decision in this case.

Respectfully submitted,

Steve Marshall
Alabama Attorney General

s/ Edmund G. LaCour Jr.
Edmund G. LaCour Jr.
Solicitor General

A. Barrett Bowdre
Thomas A. Wilson
Deputy Solicitors General

James W. Davis
Deputy Attorney General

Misty S. Fairbanks Messick
Brenton M. Smith
A. Reid Harris
Benjamin M. Seiss
Assistant Attorneys General

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL
501 Washington Avenue
Montgomery, AL 36130-0152
Telephone: (334) 242-7300

Dorman Walker
BALCH & BINGHAM LLP
Post Office Box 78 (36101)
105 Tallapoosa Street, Suite 200
Montgomery, AL 36104
Telephone: (334) 269-3138
Email: dwalker@balch.com

*Counsel for Sen. McClendon and Rep.
Pringle*

Fax: (334) 353-8400
Edmund.LaCour@AlabamaAG.gov

*Counsel for Secretary of State John
Merrill*

FEBRUARY 10, 2022

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT,
TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS**

1. I certify that this motion complies with the type-volume limitations set forth in Fed. R. App. P. 27(d)(2)(A). This motion contains 339 words, including all headings, footnotes, and quotations, and excluding the parts of the motion exempted under Fed. R. App. P. 32(f).

2. In addition, this motion complies with the typeface and type style requirements of Fed. R. App. P. 32(a)(5) and (6) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in 14-point Times New Roman font.

s/ Edmund G. LaCour Jr.

Edmund G. LaCour Jr.

*Counsel for Appellant Secretary of State
John Merrill*

CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2022, I filed the foregoing motion using the Court's CM/ECF system, which will serve counsel for all parties.

s/ Edmund G. LaCour Jr.

Edmund G. LaCour Jr.

Counsel for Appellant Secretary of State

John Merrill