

In The
Supreme Court of the United States

PRESS ROBINSON, *et al.*,

Applicants,

v.

PHILLIP CALLAIS, *et al.*,

Respondents.

NANCY LANDRY, SECRETARY OF STATE OF
LOUISIANA, *et al.*,

Applicants,

v.

PHILLIP CALLAIS, *et al.*,

Respondents.

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**On Applications for Stay to the Supreme Court of the United
States**

MOTION FOR LEAVE TO FILE SUR-REPLY

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Respondents respectfully request that the Court direct the Clerk to file a short sur-reply brief responding to new arguments raised for the first time in the State's Reply In Support of Emergency Application for Stay Pending Appeal, filed May 14, 2024. In support, Respondents state as follows:

1. The State's Reply, filed at 10:00 AM today, made two new claims that could have been, but were not, raised in the initial Application. A short sur-reply is respectfully requested to respond to each of them.
2. A request was made to the Emergency Applications Attorney to file in the form of a letter and to distribute to Chambers. That request was denied on the ground that the Rules of Court make no provision for the filing of a sur-reply without a motion, and on the ground that the filing must be in the form of a brief rather than a letter.
3. A brief reply is necessary to respond to two new claims:
 - a. First, the State now admits that if this Court grants a stay on or before May 15, 2024, "S.B. 8, not H.B. 1, will be used for the 2024 elections." Reply at 18. This confirms that the State is using the Stay process in a way that will deprive Respondents and Louisiana voters their constitutional rights; and
 - b. Second, the State for the first time suggests that this Court's June 28, 2022 stay of the remedial proceedings in *Ardoin v. Robinson*, 142 S. Ct. 2892 (2022) was related to *Purcell* and counsels for the same in this case. But this is simply not true. This Court, instead, held *Robinson* in abeyance pending this Court's decision in *Merrill, AL Sec. of State, et al. v. Milligan, Evan, et al.* (No. 21-1086 and No. 21-1087). Indeed the timing of the 2022 *Robinson* case and this case are materially different.

For the reasons discussed above, Respondents respectfully submit that their proposed sur-reply would assist the Court in acting on the State's Application. Respondents respectfully request that the Court direct the Clerk to file their proposed

sur-reply, appended hereto, as a sur-reply in opposition to the State's stay application.

May 14, 2024

Respectfully Submitted,

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APPENDIX
Proposed Sur-Reply

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SUR-REPLY

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1. For the first time, the State admits that if the Court grants a stay on or before May 15, 2024, “S.B. 8, not H.B. 1, will be used for the 2024 elections.” Reply at 18. Having just mocked Respondents for imagining a conspiracy in which the State is using the stay process to enforce its secret preference for S.B. 8, the State admits that this is precisely what it hopes to gain—in direct, not indirect fashion—by an emergency stay. *Id.* Apparently, if a stay is issued on May 15, the State will begin to re-code its ERIN system from H.B.1—its current setting—to the gerrymandered S.B. 8. If a stay is not entered by May 15, then “the H.B. 1 map” will be “implemented.” *Id.* at 19 (Conclusion). Thus, the State is telling the Court for the first time that its May 15 decision—to enter or not enter a stay—chooses either S.B. 8 or H.B. 1 for the November 2024 elections. For all of the reasons Respondents outlined in their Response, that cannot be true. Even if it were true, it is wholly unfair to this Court, the litigants, and Louisiana’s voters to use a 3-day emergency stay process to force such a choice where constitutional rights and weighty political consequences hang in the balance.

2. The State for the first time suggests that this Court’s June 28, 2022 stay of the remedial proceedings in *Ardoin v. Robinson*, 142 S. Ct. 2892 (2022) was somehow related to *Purcell*, and halted proceedings that were only one day off the current 2024 schedule—supporting similar treatment now. Each new claim is false.

First, this Court’s brief June 28, 2022 order referenced not *Purcell*, but a parallel case the Court was then considering: “The case is held in abeyance pending this Court’s decision in *Merrill, AL Sec. of State, et al. v. Milligan, Evan, et al.* (No.

21-1086 and No. 21-1087) or further order of the Court. The stay shall terminate upon the sending down of the judgment of this Court.” *Id.*

Second, the timing of the 2022 and 2024 cases is at least one month, and perhaps as far as two months, apart—a lengthy gap given the State’s claims that every day matters. The 2022 litigation was far behind 2024. The day this Court issued its stay, on June 28, 2022, the District Court was still in the midst of remedial proceedings, having just taken one round of filings on proposed remedial plans, and oral argument in the Fifth Circuit was set for July 8, 2022. *See* State’s Reply in Support of Emergency Application for Administrative Stay, Case No. 21A814, p. 16. Any 2022 remedy could have been expected no earlier than sometime in mid-July. In contrast, the District Court here issued its injunction on April 30, 2024, and plans to have a remedial plan entered no later than June 4, 2024.

May 14, 2024

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