

No. 21-1086

IN THE
Supreme Court of the United States

JOHN H. MERRILL, in his official capacity as Secretary of State of Alabama, *et al.*,

Appellants,

v.

EVAN MILLIGAN, ET AL.,

Appellees.

**MILLIGAN APPELLEES' UNOPPOSED APPLICATION TO EXCEED WORD
LIMIT**

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Pursuant to Rules 22 and 33.1(d), Appellees respectfully request leave to file a brief on the merits in excess of the word limit, not to exceed 14,000 words.

1. On January 28, 2022, Appellants filed applications for a stay or injunctive relief pending appeal in *Merrill v. Milligan*, No. 21-1086 and *Merrill v. Caster*, No. 21-1087—cases brought by two different groups of plaintiffs challenging Alabama’s 2021 redistricting plan, in which two district courts entered preliminary injunctions of Alabama’s plan.

2. The Supreme Court treated the *Milligan* application as a jurisdictional statement and noted probable jurisdiction; the Court treated the *Caster* application as a petition for writ of certiorari before judgment and granted the petition. On February 22, the Court consolidated the two cases for briefing and oral argument.

3. Appellants later submitted an application for leave to file consolidated opening and reply briefs on the merits and to exceed the word limit. Appellees did not oppose this request.

4. Justice Thomas granted Appellants’ unopposed application provided that the opening brief does not exceed 18,000 words and the reply brief does not exceed 10,000 words. In total, Appellants have 28,000 words to challenge the preliminary injunctions below.

5. A 14,000-word limit would allow Appellees one half of the total number of words that the Court has afforded Appellants. This 1,000-word enlargement is necessary for Appellees to fully address Appellants’ arguments and fairly characterize the record.

6. The trial court record in this case is extensive; the preliminary injunction decision below in the *Milligan* case, which described significant aspects of that record including expert witness testimony and credibility determinations, was 217 pages long. That record is important context for the preliminary injunction ruling that this Court is reviewing.

7. Granting Appellees leave to exceed the word limit will not result in unnecessary duplication. As Appellants noted in their unopposed application to exceed the word limit and all parties agree, the *Milligan* Appellees and *Caster* Respondents do not share the same legal theory—the parties made different arguments, relied on different witnesses, and prioritized different evidence below, and will do so before this Court as well. Indeed, the parties resisted consolidation beyond the preliminary injunction hearing below.

8. Appellees have conferred with Appellants, who do not oppose Appellees' request.

Respectfully submitted,

/s/ DEUEL ROSS

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