



July 6, 2023

VIA ELECTRONIC FILING

Lyle W. Cayce
Clerk of the Court
United States Court of Appeals for the Fifth Circuit
600 South Maestri Place
New Orleans, LA 70130

Robinson v. Ardoin; Galmon v. Ardoin, No. 22-30333

Dear Mr. Cayce:

Plaintiffs-Appellees in this consolidated appeal submit this letter in response to the Court's Memorandum of June 28, 2023. The Memorandum requests the parties to address whether, following the Supreme Court's decision in *Allen v. Milligan*, No. 21-1086 (June 8, 2023), the Court should remand the appeal of this matter to allow the district court to consider the new authority. The Memorandum also directs the parties to submit supplemental briefs addressing *Milligan* and any other developments or caselaw that would have been appropriate for Rule 28(j) letters over the past year.

As Appellants have acknowledged, following *Milligan*, "the law in the section 2 context has not substantially changed." Letter from Jeff Landry to Hon. Scott S. Harris in *Ardoin v. Robinson*, No. 21A814 (Sup. Ct. June 14, 2023), at 3. In *Milligan*, the Supreme Court reaffirmed the standards governing actions under Section 2 of the Voting Rights Act that the Court first adopted thirty-seven years ago in *Thornburg v. Gingles*, 478 U. S. 30 (1986), and squarely "reject[ed] Alabama's invitation to change existing law." *Milligan*, slip op. at 22. Applying those settled standards, the Court affirmed the judgment of the three-judge panel that the Alabama congressional redistricting plan at issue likely violated Section 2. *Id.*

Milligan thus reaffirms the applicability of the *Gingles* standards applied by the district court and a motions panel of this Court in this case. The district court, in a comprehensive and thoughtful 152-page opinion, rejected Appellants' suggestion that "the well-worn *Gingles* test is endangered and, possibly, bound for extinction," and instead "appl[ie]d *Gingles* and its progeny" to conclude that Louisiana's congressional redistricting plan likely violated Section 2. *Robinson v. Ardoin*, 605 F. Supp. 3d 759, 818

(M.D. La. 2022). A motions panel of this Court applied the same standards when it concluded that Appellants “ha[d] not met their burden of showing likely success on the merits” and denied their motion for a stay pending appeal. *Robinson v. Ardoin*, 37 F.4th 208, 215 (5th Cir. 2022) (Smith, Higginson, and Willett, JJ.); *see also id.* at 224 (“*Gingles* remains good law, and so the defendants have not shown that they are likely to succeed on that basis.”).

Because *Milligan* reaffirmed the standards that the district court applied, Appellees respectfully submit that the Court need not remand for the district court to consider *Milligan*, and should instead allow the appeal to proceed in the ordinary course following the submission of the parties’ supplemental briefs.

Date: July 6, 2023

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