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June 9, 2023

Via CM/ECF

Mr. David J. Smith
Clerk of Court
U.S. Court of Appeals for the Eleventh Circuit
56 Forsyth St, NW
Atlanta, GA 30303

Re: ***Rose et al. v. Georgia Secretary of State*, No. 22-12593**

Dear Mr. Smith,

Appellees submit this letter under Federal Rule of Appellate Procedure 28(j) to alert this Court of a pertinent and significant decision, *Allen v. Milligan*, No. 21-1086, 599 U.S. ___ (June 8, 2023), that supports affirmance here.

In *Milligan*, the Supreme Court affirmed the district court's judgment that Alabama's recently adopted congressional districting plan likely violates Section 2 of the Voting Rights Act. Op. 1. In doing so, the Court confirmed that *Thornburg v. Gingles*, 478 U.S. 30 (1986), remains settled law. Op. 11, 18. The Supreme Court's full-throated reaffirmation of *Gingles* supports Appellees' position here for several reasons. Appellees highlight only two.

First, *Milligan* makes clear that, contrary to the Secretary's assertion (Br. 29-30), Judge Grimberg correctly understood the third *Gingles* precondition, which is how a plaintiff satisfies Section 2's textual requirement that vote dilution occur "*at least plausibly* on account of race." Op. 11 (emphasis added) (citation omitted). Because "it is patently clear that Congress has used the words 'on account of race or color' in the [Voting Rights] Act to mean 'with respect to' race or color," *id.* 17 (citation omitted), Judge Grimberg properly concluded that a Section 2 plaintiff need not prove vote dilution "solely" or even "predominantly" on account of race. The Secretary's contrary rule (Br. 36), like Alabama's proposal, fails because it would be "even *more* demanding than the intent test Congress jettisoned." Op. 29-30. And in describing the "evidence of racially polarized voting" in *Milligan*, the Court emphasized the concession by Alabama's expert "that the candidates preferred by white voters in the areas that he looked at regularly defeat the candidates preferred by Black voters." *Id.* 14. Judge Grimberg relied on similar evidence here. (Appellees' Br. 60.)

Second, the Court rejected Alabama's "single-minded view of §2" that echoes the Secretary's state-interest argument. Op. 18. Placing "insurmountable weight" here on Georgia's asserted interest in preserving its at-large electoral system, *Davis v. Chiles*, 139 F.3d 1414, 1423 (11th Cir. 1998), would be inconsistent with the Supreme Court's repeated warning against "improperly reducing *Gingles*' totality-of-circumstances analysis to a single factor," Op. 18 (cleaned up).

Sincerely,

Nico Martinez
Counsel for Appellees

cc: All counsel on CM/ECF