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June 9, 2023

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

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

Dear Mr. Smith:

Plaintiffs cite *Allen v. Milligan*, No. 21-1086, 599 U.S. \_\_ (June 8, 2023), but that case does not address the issues presented in *Rose*. If anything, *Milligan* confirms the Secretary's understanding of § 2.

Plaintiffs assert that *Milligan* supports their view of the third *Gingles* prerequisite. But *Milligan* barely mentions the third *Gingles* prerequisite, noting only that it was not meaningfully disputed. Slip op. at 14. And the Court's "full-throated reaffirmation of *Gingles*," Notice at 1, supports the Secretary, because *Gingles* supports the Secretary—especially the five *Gingles* Justices who rejected Plaintiffs' position.

Indeed, *Milligan* confirms that § 2 is concerned only with injuries "on account of race." Slip op. at 11; *id.* at 22 (§ 2 is limited to "instances of intensive racial politics" (citation omitted)). Just as the Secretary

has consistently argued, the Court noted that racially polarized voting is critical precisely and only because it raises a “plausibl[e]” inference that a “distinctive minority vote” has been “thwart[ed] ... *on account of race*.” *Id.* at 11 (citation omitted and emphasis added). And that happens only when “bloc voting ... renders a minority vote *unequal* to a vote by a nonminority voter.” *Id.* at 17 (emphasis added).

Where something *other* than race explains voting patterns, there is no racial causation and no inference of racial inequality. That is the case in Public Service Commission elections, where *all* voters (black, white, Asian, Hispanic, etc.) share “equal opportunity.” *Id.* The distinction is between Republicans and non-Republicans, not racial groups. Far from being too “demanding,” Notice at 1, the requirement of racial causation is the *bedrock* of a § 2 claim, which *Milligan* reaffirms. That is fatal to Plaintiffs’ claim, and nothing in *Milligan* even suggests otherwise.<sup>1</sup>

Respectfully submitted,

/s/ Stephen J. Petrany

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<sup>1</sup> Plaintiffs also assert that the decision undermines the Secretary’s “state-interest argument,” Notice at 1, but the Secretary’s alternative argument is not based on a state “interest.” It is based on § 2’s inapplicability where a remedy would require alterations to the State’s chosen form of government, an issue that *Milligan* did not come within miles of addressing.

### **CERTIFICATE OF SERVICE**

I hereby certify that on June 9, 2023, I served this letter by electronically filing it with this Court's ECF system, which constitutes service on all attorneys who have appeared in this case and are registered to use the ECF system.

/s/ Stephen J. Petrany  
Stephen J. Petrany

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**CERTIFICATE OF INTERESTED PERSONS AND  
CORPORATE DISCLOSURE STATEMENT**

I hereby certify that the CIPs included in the Secretary's  
previous briefs are complete.

/s/ Stephen J. Petrany  
Stephen J. Petrany

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