

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
CENTRAL DIVISION

THE CHRISTIAN MINISTERIAL ALLIANCE, et al.,

Plaintiffs,

v.

SARAH HUCKABEE SANDERS, et al.,

Defendants.

Civil Case No. 4:19-cv-402-JM

PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY OF  
*ALLEN v. MILLIGAN* DECISION

Plaintiffs write to notify this Court of the Supreme Court's recent decision in *Allen v. Milligan*, No. 21-1086, slip op. (June 8, 2023). The *Milligan* decision affirmed a district court ruling that Plaintiffs were likely to succeed, and entitled to preliminary injunctive relief, in a vote dilution claim brought under Section 2 of the Voting Rights Act against congressional districts in Alabama. It provides further support for Plaintiffs' claims in this case. A copy of the *Milligan* decision is attached as **Exhibit 1**.<sup>1</sup>

As the Court is aware, a bench trial was held in this case from April 25 to April 28, 2022, and May 2, 2022. Post-trial briefing was completed on July 8, 2022. Proposed findings of fact and conclusions of law were submitted on July 15, 2022.

The *Milligan* decision strongly reaffirms the *Gingles* legal framework pursuant to which Plaintiffs presented their case, and has noteworthy parallels to this case that underscore why Plaintiffs should prevail.

***Gingles I.*** With respect to the first *Gingles* precondition, the *Milligan* decision reaffirms that this precondition is satisfied when Plaintiffs put forward at least one illustrative majority-Black district that is "reasonably configured," meaning that it "comports with traditional redistricting criteria, such as being contiguous and reasonably compact." Slip op. at 10.

In affirming the district court's finding that the plaintiffs in *Milligan* were likely to succeed on this factor, the Supreme Court agreed that the standard was met by illustrative maps that were submitted by plaintiffs' expert Bill Cooper. See Slip op. at 12–14. Mr. Cooper is the same expert witness who created Plaintiffs' illustrative maps and testified at trial in this case. The Court

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<sup>1</sup> The decision can also be accessed on Westlaw. *Allen v. Milligan*, No. 21-1086, 2023 WL 3872517 (U.S. June 8, 2023).

explained how the maps presented by Mr. Cooper and other plaintiffs' experts in *Milligan* comported with traditional redistricting criteria:

A map offered by another of plaintiffs' experts, Bill Cooper, produced districts roughly as compact as the existing plan. And none of plaintiffs' maps contained any 'tentacles, appendages, bizarre shapes, or any other obvious irregularities that would make it difficult to find' them sufficiently compact. Plaintiffs' maps also satisfied other traditional districting criteria. They contained equal populations, were contiguous, and respected existing political subdivisions, such as counties, cities, and towns.

Slip op. at 12 (citations omitted). Here, too, the illustrative plans that Mr. Cooper submitted comport with traditional redistricting criteria. *See* Pls.' Post-Trial Br. at 3–9, ECF No. 186.

The Court also rejected arguments made by Alabama that attempted to “remake our § 2 jurisprudence” by adding a proposed requirement that “the illustrative plan that plaintiffs adduce for the first *Gingles* precondition cannot have been ‘based’ on race.” *Milligan*, slip op. at 16.

Writing for a plurality, Chief Justice Roberts elaborated upon the reasons why that “new rule” was untenable and at odds with the longstanding *Gingles* test. *See id.* at 22–25. As relevant to the comparable arguments raised by Defendants in this case, the plurality explained that “Section 2 itself ‘demands consideration of race,’ because “[t]he question [of] whether additional majority-minority districts can be drawn, after all, involves a ‘quintessentially race-conscious calculus.’” *Id.* at 23. (citation omitted). It also stated plainly that “[t]he contention that mapmakers must be entirely ‘blind’ to race has no footing in our § 2 case law.” *Id.* at 25. Or, as Chief Justice Roberts further explained in another part of his opinion that was joined by a majority of the Court: “The very reason a plaintiff adduces a map at the first step of *Gingles* is precisely *because of* its racial composition—that is, because it creates an additional majority-minority district that does not then exist.” *Id.* at 27 n.7 (Opinion of the Court) (emphasis in original). In discussing the district court’s application of these principles to the *Milligan* record, Chief Justice Roberts also specifically praised Mr. Cooper’s methodology for considering race in appropriate balance with other traditional redistricting principles. *See id.* at 23–24 & n.5 (plurality opinion). There, Mr. Cooper “testified that while it was necessary for him to *consider* race, he also took several other factors into account, such as compactness, contiguity, and population equality” and that “he gave all these factors ‘equal weighting.’” *Id.* at 23 (emphasis in original) (citation omitted). The plurality cited the district court’s determination that this testimony was “highly credible” and quoted its praise for Mr. Cooper considering all traditional redistricting criteria. *Id.* (quoting 582 F. Supp. 3d at 1005–06).

Similarly, here, Mr. Cooper testified that traditional redistricting criteria are a “balancing act,” and explained how he considered nondilution of minority voting strength along with factors like population equality, compactness, contiguity, and minimizing the split of counties. *See* Pls.’ Post-Trial Br. 4, 7 (quoting Trial Tr. vol. 1, 143:20-25 (Cooper Direct)).

***Gingles II & III.*** With respect to the second and third *Gingles* preconditions, the *Milligan* decision reaffirms that plaintiffs prevail by establishing the existence of political cohesiveness of Black voters and racially polarized voting in the relevant electorate, as those concepts have long been defined by *Gingles* and its progeny. See slip op. at 10–11. Notably, Plaintiffs’ racially polarized voting expert Dr. Baodong Liu also served as an expert in the *Milligan* case. See *Singleton v. Merrill*, 582 F. Supp. 3d 924, 1016–17 (S.D. Ala. 2022) (per curiam). The Supreme Court cited Dr. Liu’s evidence of racially polarized voting and affirmed the district court’s decision to credit his expertise and his analysis. *Milligan*, slip op. at 14 (quoting *Singleton*, 582 F. Supp. 3d at 1017). Here, as in *Milligan*, Dr. Liu analyzed the results of biracial elections and determined that there was racially polarized voting in the relevant electorate. Pls.’ Post-Trial Br. 9–11.

***Totality of the Circumstances.*** With respect to the ultimate totality of the circumstances analysis, the *Milligan* decision reaffirms the longstanding approach of looking to the so-called “Senate Factors” identified in *Gingles*. See slip op. at 10. The *Milligan* decision also summarizes the evidence in that case by which the plaintiffs “carried their burden at the totality of the circumstances stage” as follows:

The [District] Court observed that elections in Alabama were racially polarized; that “Black Alabamians enjoy virtually zero success in statewide elections”; that political campaigns in Alabama had been “characterized by overt or subtle racial appeals”; and that “Alabama’s extensive history of repugnant racial and voting-related discrimination is undeniable and well documented.”

*Id.* at 14 (quoting *Singleton*, 582 F. Supp. 3d at 1018–24). That description closely matches the evidence presented in this case. See Pls.’ Post-Trial Br. 16–24 (At least since Reconstruction, “no Black person has ever won any other statewide election in the state of Arkansas;” “The trial record reflects extensive use of racial appeals in Arkansas politics, both overt and coded;” “[P]rior caselaw recognized Arkansas’s extensive history of racial discrimination against Black voters.”).

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Respectfully submitted,

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