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November 9, 2023

VIA CM/ECF

Lyle W. Cayce
U.S. Court of Appeals
for the Fifth Circuit
600 S. Maestri Place, Suite 115
New Orleans, LA 70130

Re: *Petteway v. Galveston County*, No. 23-40582

Dear Mr. Cayce,

At argument on November 7, the panel asked about the status of plaintiffs-appellees' discriminatory-purpose and racial-gerrymandering claims. Oral Arg. 21:06-24:30, 43:05-46:00. Those claims remain undecided, as is commonplace in voting litigation when a results-based claim confers the same relief. The Supreme Court took that approach in *LULAC v. Perry*, 548 U.S. 399, 442 (2006), as did the district courts in *Gingles* and *Milligan*. See *Singleton v. Merrill*, 582 F.Supp.3d 924, 1035 (N.D. Ala. 2022), *aff'd sub. nom. Allen v. Milligan*, 599 U.S. 1 (2023); *Gingles v. Edmisten*, 590 F.Supp. 345, 353 (E.D.N.C. 1984), *aff'd in relevant part sub nom. Thornburg v. Gingles*, 478 U.S. 30, 38, 80 (1986).

The district court "[did] not need to make findings on intentional discrimination or racial gerrymandering" because "plaintiffs succeed[ed] on their *Gingles* claim." ROA.16032-16033. But the findings it made indicate that plaintiffs-appellees' intent-based claims have a strong basis in evidence. See, e.g., ROA.15950-15982 (*Arlington Heights* findings), 16028-16029 (2021 redistricting plan was "mean-spirited" and "egregious" in "circumstances and effect"). Should plaintiffs-appellees' results-based claims fail for any reason, remand to resolve the analytically distinct intent-based claims would be required. If any doubt persists about the district court's holding, remand would let it clarify.

Also, the County's November 8 letter goes well beyond the panel's request for record citations. At argument, two factual points in the County's rebuttal prompted Judge Jones's request for a Rule 28(j) letter with the citations. Oral Arg. 48:30-49:10, 50:10-50:35 (regarding Commissioner Armstrong's appointment and Alford's opinions on confidence intervals). The County's letter provides assertions and citations on at least *fifteen* points, far more than were in its rebuttal, and many of which were not in its original briefs. Such attempts at supplemental briefing are disfavored. See 5th Cir. R. 28.4.

Moreover, the County mischaracterized Alford's opinions on confidence intervals as relating to primary-election results. Oral Arg. 50:10-50:30. Alford's opinions concerned Matthew Barreto's estimates of Latino voting. ROA.15563-15564. The County itself notes Barreto did not analyze primaries (Ltr. 2), so Alford's criticism is irrelevant to the district court's fact-findings on primaries. Regardless, the criticism lacks merit. *See* U.S. Br. 25-26.

Sincerely,

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