

December 18, 2023

Michael E. Gans, Clerk of Court
United States Court of Appeals, Eighth Circuit
Thomas F. Eagleton Courthouse
111 South 10th Street
St. Louis, MO 63102

Re: Supplemental Authority in *Arkansas NAACP et al., v. Arkansas Board of Apportionment et al.*

Dear Mr. Gans,

Pursuant to Rule 28(j) of the Federal Rules of Appellate Procedure, Appellants respectfully submit this notice of supplemental authority related to whether Section 2 of the Voting Rights Act of 1965 (“VRA”) permits suit by private plaintiffs—the issue on appeal and the subject of Appellants’ Petition for Rehearing And/Or Rehearing En Banc to this Court. *See* Plaintiffs-Appellants Pet. at 1.

On December 15, 2023, the U.S. Court of Appeals for the Fifth Circuit denied rehearing and rehearing en banc in *Robinson v. Ardoin*, disclosing that “no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc” No. 22-3033, slip op. at 2 (5th Cir. Dec. 15, 2023), ECF No. 363-2 (attached as Exhibit A).

On November 10, 2023, a panel of the Fifth Circuit held in *Robinson* that “Section 2 provides for a private right of action.” *Robinson v. Ardoin*, 86 F.4th 574, 587-88 (5th Cir. 2023). Appellants in *Robinson* then petitioned for rehearing en banc, asking the full Fifth Circuit to take the case on the question: “[d]id the panel err in holding that §2 of the VRA provides an implied private right of action?” Pet. for Rehearing En Banc at 1, *Robinson*, No. 22-3033, ECF No. 353. The Court’s ensuing denial of rehearing details that no active member of the Fifth Circuit Court of Appeals requested that the panel decision, which found Section 2 permits private plaintiffs to sue, be considered en banc.

Respectfully,



Sophia Lin Lakin



Attorney for the Appellants
American Civil Liberties Union
Foundation, Inc.

EXHIBIT A

United States Court of Appeals for the Fifth Circuit

No. 22-30333

PRESS ROBINSON; EDGAR CAGE; DOROTHY NAIRNE; EDWIN
RENE SOULE; ALICE WASHINGTON; CLEE EARNEST LOWE;
DAVANTE LEWIS; MARTHA DAVIS; AMBROSE SIMS; NATIONAL
ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
LOUISIANA STATE CONFERENCE, *also known as* NAACP; POWER
COALITION FOR EQUITY AND JUSTICE,

Plaintiffs—Appellees,

versus

KYLE ARDOIN, IN HIS OFFICIAL CAPACITY AS SECRETARY OF
STATE FOR LOUISIANA,

Defendant—Appellant,

CLAY SCHEXNAYDER; PATRICK PAGE CORTEZ; STATE OF
LOUISIANA - ATTORNEY GENERAL JEFF LANDRY,

Intervenor Defendants—Appellants,

EDWARD GALMON, SR.; CIARA HART; NORRIS HENDERSON;
TRAMELLE HOWARD,

Plaintiffs—Appellees,

versus

KYLE ARDOIN, *in his official capacity as Secretary of State for Louisiana,*

Defendant — Appellant,

CLAY SCHEXNAYDER; PATRICK PAGE CORTEZ; STATE OF
LOUISIANA - ATTORNEY GENERAL JEFF LANDRY,

Movants — Appellants.

ON PETITION FOR REHEARING EN BANC

Before KING, ELROD, and SOUTHWICK, *Circuit Judges.*

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5TH CIR. R. 35 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P. 35 and 5TH CIR. R. 35), the petition for rehearing en banc is DENIED.