

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-13007

ALABAMA STATE CONFERENCE OF
THE NAACP, *et al.*,

Plaintiffs-Appellees,

versus

WES ALLEN, *in his official capacity as the*
Alabama Secretary of State,

Defendant-Appellant,

Appeal from the United States District Court
for the Northern District of Alabama
D.C. Docket No. 2:21-cv-01531-AMM

Before JORDAN, ROSENBAUM, AND JILL PRYOR, Circuit Judges.

PER CURIAM:

The motion for stay of the district court's injunction pending appeal filed by the Alabama Secretary of State is DENIED for the reasons set out below.

The plaintiffs challenged Alabama's districting plan for the Alabama Senate on the ground that it violates § 2 of the Voting Rights Act of 1965, 52 U.S.C. § 10301. The district court conducted an eight-day trial and considered an extensive record that included, among other things, testimony from over twenty witnesses, reports and rebuttal reports from ten experts, and proposed findings of fact and conclusions of law that spanned hundreds of pages. The court issued its findings of fact and conclusions of law in an order that exceeded 250 pages. Applying the framework established in *Thornburg v. Gingles*, 478 U.S. 30 (1986), the court found that in Montgomery, the Black voting population is sufficiently large and compact to constitute a majority in a reasonably configured district; the Black voting population is politically cohesive; the white population votes sufficiently as a bloc to enable it to defeat the Black population's preferred candidate; and under the totality of circumstances, the political process is not equally open to Black voters. Accordingly, the court enjoined the Secretary from conducting Alabama Senate elections according to the districting plan.

The Secretary asks us to stay the district court's injunction pending his appeal on the merits. "A stay is not a matter of right,

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even if irreparable injury might otherwise result.” *Nken v. Holder*, 556 U.S. 418, 433 (2009). To obtain a stay of an injunction, the applicant bears the burden of showing that the circumstances justify that relief. *See id.* at 433–34. In determining whether to grant the stay, we consider (1) whether the applicant has made a strong showing that he is likely to succeed on the merits, (2) whether the applicant will be irreparably injured absent a stay, (3) whether a stay will substantially injure other parties, and (4) where the public interest lies. *See id.* at 434. The first two factors are the most critical. *See id.*

In evaluating whether the applicant has made a strong showing of likelihood of success on the merits, we review the district court’s grant of the injunction for abuse of discretion and underlying findings of fact for clear error. *See Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1317 (11th Cir. 2019). Because an injunction is reviewed under the deferential abuse-of-discretion standard, “the narrow question for us is whether the state has made a strong showing that the district court abused its discretion.” *Robinson v. Att’y Gen.*, 957 F.3d 1171, 1177 (11th Cir. 2020).

The Secretary’s motion does little else but ask us to change Supreme Court precedent. *Cf. Allen v. Milligan*, 599 U.S. 1, 23 (2023) (“The heart of these cases is not about the law as it exists. It is about Alabama’s attempt to remake our § 2 jurisprudence anew.”). First, the Secretary asserts that he is likely to succeed on the merits because “Black voters in Montgomery enjoy equal opportunity to participate in the political process.” Mot. for Stay at 7. Second, he

contends that even if Black voters made up fewer than half of the voters in a district in the Montgomery area, that district probably would elect the candidate preferred by Black voters nonetheless. *See id.* at 11.

These two arguments implicitly, but not subtly, ask us to reject the *Gingles* framework for determining whether a districting plan violates § 2 of the Voting Rights Act. Because the evidence showed that Black voters in Montgomery have high registration rates and there are no physical obstacles to voting, the Secretary contends, there can be no § 2 violation because Black voters have an equal opportunity to vote. Similarly, the Secretary says that in analyzing a § 2 claim, we should look to whether a Montgomery area district would elect a candidate of the Democrat party even if more than half of that district's voters were white. In his view, the evidence showed that to be true, and thus he is likely to succeed on the merits.¹

These arguments are of no help to the Secretary because we, and the district court, are bound to apply the law as it currently stands. *See Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989); *Agostini v. Felton*, 521 U.S. 203, 237 (1997); *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 136 (2023). And *Gingles* is the law. *See Allen*, 599 U.S. at 24. Under *Gingles*, plaintiffs alleging a § 2 violation must satisfy three preconditions and then show that, under the totality of circumstances, the political process is not

¹ To the extent the motion asks us to weigh the evidence anew and reject the district court's findings of fact, we see no findings that are clearly erroneous.

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equally open to minority voters. *See id.* at 18. The district court faithfully applied that standard.

The Secretary's other arguments fall flat for the same reason. He argues, for example, that the "district court's interpretation" of § 2—in effect, the Supreme Court's interpretation—"raises serious constitutional concerns." Mot. for Stay at 12. We disagree. But in any event, as stated above, we are bound by existing precedent. The Secretary has not demonstrated that the district court abused its discretion in issuing the injunction, and therefore he has not made a strong showing that he is likely to succeed on the merits.

A stay of an injunction is an extraordinary remedy. The Secretary has not met his burden to obtain a stay.²

MOTION FOR STAY DENIED.

² Given the Secretary's failure on likelihood of success, we need not and do not address the other *Nken* factors.