UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ANNE HARDING, *et al.*,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	
	§	
COUNTY OF DALLAS, TEXAS, *et al.*,	§	
	§	C.A. NO. 3:15-CV-00131-D
Defendants.	§	
	§	
	§	

DEFENDANTS' RESPONSE TO PLAINTIFFS' POST-TRIAL BRIEF

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SUMMARY OF ARGUMENT

Plaintiffs fall far short of meeting their burden to prove by a preponderance of the evidence that the Commissioners Court engaged in intentional discrimination against Anglos or violated Section 2 of the Voting Rights Act ("VRA"). Defendants are entitled to judgment.

First, plaintiffs have not satisfied their burden to prove that they have standing to raise these claims. The mere fact there are four white plaintiffs, one from each district, does not satisfy Article III's case or controversy requirement. To the extent plaintiffs were able to articulate an injury at trial, it was political, not racial. But plaintiffs did not bring a partisan gerrymandering claim. In particular, plaintiff Holly Morse—the only plaintiff who resides in District 2, which plaintiffs claim is packed with Anglos—testified she thinks her district is not conservative *enough*. The only way to make it more conservative would be to add *more* Anglos. Because she states the opposite injury that plaintiffs claim, and does not want the relief they seek, plaintiffs have no standing to challenge the focal district of their case.

Second, plaintiffs do not come close to proving racially discriminatory vote dilution targeting Anglos. It appears plaintiffs are still trying to shoehorn a *Shaw* claim into Count II. But it is not enough, in asserting an intentional vote dilution claim, to contend that race predominated in redistricting, that neutral considerations were subordinated to race, and that the jurisdiction lacked good reasons for doing so. Those are the elements of a *Shaw* claim—which plaintiffs did not plead. Yet that is exactly what plaintiffs attempt to show. Because plaintiffs offer no evidence that any lines were drawn *because of* their negative effect on Anglo voters, their intent claim fails. Likewise, even if that fundamental flaw is set aside, the arguments plaintiffs make are contradicted by the trial testimony and record evidence. Race was not used to draw the map,

District 1 was not intentionally drawn as a Hispanic opportunity district, the members of the court did not improperly consider race in approving the plan, every contributor was listened to regardless of race, the Enacted Plan respects traditional districting criteria, and race was only considered as required by the VRA. Critically, plaintiffs cannot prove an intentional vote dilution claim because even if the County *had* analyzed whether Section 2 required an additional Anglo district in 2011, such an analysis would have shown it did *not*. Nevertheless drawing such a district would have violated *Shaw*, and it cannot be that it was unconstitutional discrimination to decline to draw an unconstitutionally racially gerrymandered district. There is no evidence of discriminatory intent.

Third, plaintiffs fail to establish a Section 2 violation. Plaintiffs are mistaken in claiming they establish the numerosity requirement. Anglos barely constitute 50% of citizen voting age population ("CVAP") in their proposed second district as of data with a midpoint of *four years ago*. Likewise, plaintiffs violate traditional districting criteria in favor of a singular focus on race, and additionally cannot establish that their proposed districts would actually function to offer increased, rather than decreased, electoral opportunities. Plaintiffs also fail to establish *Gingles* prong two, because they offer no evidence to rebut the three-part fracture defendants demonstrated among Dallas County Anglos, which shows a lack of political cohesion. Moreover, do not come close to showing that the totality of circumstances warrants Section 2 relief. Their effort to ratchet down the quantum of proof Anglos must show, compared to African Americans and Hispanics, should be rejected. On the specific Senate Factors, plaintiffs do not prove racially polarized voting because the evidence shows it is not legally significant—politics, not race, explains it. Their analysis of racial appeals in campaigns is unreliable, and only provides examples post-

dating the enactment of the plan. Additionally, plaintiffs are proportionally represented on the court, and plaintiffs offer no evidence to show that court is not responsive to the needs of Anglo residents.

Plaintiffs do not come close to establishing entitlement to relief under either the Fourteenth Amendment or Section 2. Their claims to the contrary should be rejected, and judgment entered in favor of defendants.

ARGUMENT

I. Being White Residents of the Four Districts Does Not Give Plaintiffs, Who Testified They Suffer No Race-Based Injury, Standing.

Plaintiffs cannot establish Article III standing by merely proving that they are white and live in all four districts. "To meet the standing requirements of Article III, '[a] plaintiff must allege *personal injury* fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief.'" *Raines v. Byrd*, 521 U.S. 811, 818 (1997) (quoting *Allen v. Wright*, 468 U.S. 737, 751 (1984)) (emphasis and bracket in original). The Supreme Court "has stressed that a plaintiff's complaint must establish that he has a 'personal stake' in the alleged dispute, and that the alleged injury suffered is particularized as to him." *Id.* A "particularized" injury is one that "affect[s] the plaintiff in a personal and individual way." *Id.* (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, and n.1 (1992)). The mere fact that plaintiffs are white, one lives in each district, and they wish to see more Republicans elected does not establish a redressable injury-in-fact related to their race.

Take, for example, plaintiff Holly Morse. Ms. Morse is the only plaintiff who resides in District 2—the district plaintiffs contend is packed with Anglos, and the district that is the focus of their case. *See* Pls' Br. at 10 n.10. Ms. Morse testified on direct examination that she does not

even know who her commissioner is. *See* Vol. 2 Tr. at 220:8-9 (Q: "Okay. And do you know who you're represented by?" A: "No."). On cross, Ms. Morse guessed—wrongly—that she was represented by Theresa Daniel. *Id.* at 221:25-222:10. Her only objection to District 2—the district plaintiffs say is packed with Anglos—is that it is *insufficiently conservative*. *Id.* at 224:11-16. But the only way to redress her claimed personal injury would be to add *more* Anglos to District 2. And plaintiffs certainly cannot show that the remedy they seek would make District 2 more conservative; the evidence shows that their proposal would likely cause it to elect a Democrat, and indisputably makes it *less* conservative. *See, e.g.*, DX 59-24 (Angle Rebuttal Report); DX 63-11 (Baretto Rebuttal Report). This, Ms. Morse testified, she does not want. Vol. 2 Tr. at 224:8-10 (Q: "Would you be in favor of a plan that elects – that would elect four Democrats and no Republicans?" A: "I would not be in favor of that."). So, Ms. Morse testified she personally suffers the *opposite* injury that plaintiffs claim with respect to District 2, and she affirmatively does not want the remedy plaintiffs seek. A plaintiff who disclaims the injury alleged and the remedy sought in a lawsuit does not have standing. Plaintiffs' proposed remedy cannot redress her claimed injury—indeed, it worsens it. Plaintiffs thus lack standing to challenge the district that is the main focus of their case. *See, e.g.*, Vol. 2 Tr. at 106:16-23 (Dr. Morrison, testifying that "I didn't say anybody operated with a discriminatory intent. I said it was simply that it is consistent with a single-minded purpose, which was to pack whites into a single district").

To the extent that Ms. Morse or any of the other three plaintiffs identified a personalized injury, it was that they wanted more Republican commissioners, not that being white has lessened their opportunity to elect their candidates of choice or that the members of the court intentionally targeted them on account of their race. *See, e.g.*, Vol. 2 Tr. at 17:23-18:4 (Harding); Vol. 3 Tr. at

9:8-18 (Jacobs). Plaintiff Peter Schroer's stated injury was the presence of "jagged lines" in the map, but he did not know how he would alter the Enacted Plan. Vol. 2 Tr. at 232:11-16; 236:21-25. These are not injuries on account of plaintiffs' *race*. And their real stated injury—wanting more Republicans elected—is not cognizable under the claims they brought, and is not redressable by the relief they seek. Article III requires a case or controversy. These plaintiffs cannot establish one under the VRA or the Fourteenth Amendment merely by being white residents of the four districts. If plaintiffs wished to bring a partisan gerrymandering suit, they should have pled such a claim. But they do not have standing to raise the claims they actually did plead.

II. Plaintiffs Have Not Satisfied Their Burden To Establish Intentional Vote Dilution.

Plaintiffs do not come close to meeting their burden of proof to show, by a preponderance of the evidence, that the Enacted Plan was the product of intentional racial discrimination against Anglos. To prove a Fourteenth Amendment intentional vote dilution claim, plaintiffs must show the plan was "conceived or operated as [a] purposeful device[ ] to further racial discrimination by minimizing, cancelling out or diluting the voting strength of [Dallas County Anglos]." *Rogers v. Lodge*, 458 U.S. 613, 617 (1982) (internal quotation marks omitted). Plaintiffs must prove "racially motivated discrimination" to prevail on a Fourteenth Amendment vote dilution claim. *Perez*, 2017 WL 3495922, at *10. "'[D]iscriminatory purpose' . . . implies more than intent as volition or intent as awareness of consequences. It implies that the decisionmaker . . . selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." *Personnel Am'r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979) (citation omitted). It is not enough for plaintiffs to show that the governing body was aware of race while drawing district lines, because "'the legislature always is *aware* of race when it draws district lines,'

just as it is aware of a variety of demographic factors." *Perez v. Abbott*, 253 F. Supp. 3d 864, 941 (W.D. Tex. 2017) (three-judge court) (quoting *Shaw v. Reno*, 509 U.S. 630, 646 (1993). In assessing a claim of discriminatory intent, "a presumption of good faith [ ] must be accorded legislative enactments." *Miller v. Johnson*, 515 U.S. 900, 916 (1995).

Additionally, it is also not enough to prove only the presence of discriminatory intent. Plaintiffs must also prove that any such intent had some discriminatory *effect*. *See Perez v. Abbott*, 253 F. Supp. 3d at 942 ("To prove intentional vote dilution under the Fourteenth Amendment, plaintiffs must show both discriminatory purpose and discriminatory effect.").

Plaintiffs identify five categories of evidence from which they contend the Court should "extrapolate[ ]" the Commission's supposed invidious intent to discriminate against Anglos. Pls.' Br. at 11. First, they contend that the mapdrawer, Mr. Angle, made use of racial data in drawing the plan. *Id.* Second, they contend that the Commission intended to draw District 1 as a Hispanic opportunity district. *Id.* at 12-14. Third, they contend that the members of the court considered race when evaluating and enacting the plan. *Id.* at 14-15. Fourth, they contend that the court did not seek out, or listen to, Anglo input. *Id.* at 15-17. And fifth, they contend that the evidence shows a conscious choice to subordinate traditional redistricting criteria to racial considerations. *Id.* at 17-21. Finally, plaintiffs contend that compliance with the VRA did not provide a contemporaneous, good faith basis for the use of race in drawing the plan. *Id.* at 21-23. Plaintiffs' invitation for the Court to disregard the required presumption of good faith, and instead extrapolate an intent on the part of the Commission to discriminate against Anglos should be soundly rejected, for a host of reasons.

Before addressing plaintiffs' five categories—and the serious mischaracterizations of the trial testimony and evidence that accompany them[1]—a broader observation about plaintiffs' theory of discriminatory intent is warranted. Plaintiffs proceed as if their task in proving Count II is to show that race was the predominant factor in redistricting, to which other neutral criteria were subordinated, and that the Commission lacked good reasons for relying upon racial data. But those are not the elements of an intentional vote dilution claim, but rather are the elements of a *Shaw*-type racial gerrymandering claim. *See, e.g.*, *Cooper v. Harris*, 137 S. Ct. 1455, 1463-64 (2017). But as this Court has already concluded in its summary judgment ruling, *see* ECF No. 106 at 19, plaintiffs did not plead a *Shaw* claim, and so their task is *not* to attempt to prove that the choice of line placement was, without good reasons, predominantly driven by racial considerations. Rather, their task is to prove that the Commission affirmatively chose to place the district lines where they did *because* doing so would harm Anglos. *Feeney*, 442 U.S. at 279. These claims are "analytically distinct," *Miller*, 515 U.S. at 911, and even if plaintiffs could establish that race was used to separate voters into districts (they cannot), that would not suffice to establish that defendants acted with an invidious, discriminatory purpose to dilute the voting power of Anglos. Nor would it be proper to just assume that were so, based upon mere evidence of racial awareness. Because plaintiffs do not even attempt to show the Commissioners Court acted with an affirmative motive to harm Anglos, but rather merely attempt to show that race was considered, their Fourteenth Amendment intentional vote dilution claim fails at the gate.

[1] Plaintiffs include very few actual quotations from the trial transcript in their brief. Rather, they editorialize throughout, and in several instances simply make up testimony that did not occur, while claiming it came directly from the witness's mouth. Defendants will note some of these examples, but a thorough fact-check of each of plaintiffs' mischaracterizations would distract from the broader point that plaintiffs have not met their burden of proof on either of their two claims.

A. The Mapdrawer Did Not Use Racial Data in Drawing the Enacted Plan.

The Commission's mapdrawer, Mr. Angle, did not use racial data in drawing the Enacted Plan, as plaintiffs claim. Plaintiffs contend that this Court should extrapolate that the members of the court intended to invidiously discriminate against Anglos because the members of the court viewed a racial shade map before Mr. Angle drew the map and because Mr. Angle is familiar with the demographic makeup of Dallas County. Pls.' Br. at 11-12. This does not constitute evidence—direct or circumstantial—of intentional discrimination. Plaintiffs' first category of supposed intent evidence is irrelevant for a number of reasons.

First, Mr. Angle testified that he never turned on the racial shading *when he was drawing the map*, but instead only after he had completed his work to ensure that the plan complied with the VRA obligations to retain an African American and a Latino opportunity district. Vol. 4 Tr. at 153:12-18; 153:25-154:10. During the mapdrawing process, Mr. Angle "used political data and geographic data, [and] population data." *Id.* at 153:19-22. Plaintiffs offer no evidence to dispute Mr. Angle's testimony in this regard, instead they contend that Mr. Angle "knew perfectly well the racial composition of Dallas's neighborhoods and subdivisions from his extensive campaign work and [ ], as a result, he did not *need* to have" racial shading on while drawing the map in order to "draw districts with the racial compositions that 'matters' to how he drew the [plan]." Pls.' Br. at 12 (emphasis in original). But the fact that Mr. Angle is familiar with Dallas County's demographics is hardly evidence of discriminatory intent. Were it otherwise, localities would be forced to employ mapdrawers with no knowledge of their local communities of interest, geographic and political features, and demographic characteristics, lest they suffer an inference in

court that their mapdrawer's *knowledge* of demography means the mapdrawer must have *used* that knowledge to racially invidious ends. That is not the law.[2]

Second, the fact that the members of the court were shown a map depicting the demographic make-up of the County before Mr. Angle began drawing the map is not evidence of discriminatory intent. Mr. Angle testified that he thought the members of the court "were interested in the nature of the demographic makeup of the county," and that he "did not use [the shaded map] to draw the maps." Vol. 3 Tr. at 245:14-20. Plaintiffs cite no authority for the proposition that a legislature's awareness of race creates an inference of an invidious discriminatory purpose, nor could they, because "'the legislature always is *aware* of race when it draws district lines,' just as it is aware of a variety of demographic factors." *Perez*, 253 F. Supp. 3d at 941 (quoting *Shaw*, 509 U.S. at 646) (emphasis in original). Absent some evidence that this countywide map was then used for some nefarious purpose, plaintiffs' contention is beside the point.

Plaintiffs offer no evidence for why Mr. Angle's familiarity with Dallas County, and the members of the court's desire to understand the County's demography, can permit this Court to "extrapolate[ ]" an invidious motive to dilute Anglo votes. Rather, the Court must presume, absent some actual contrary evidence, the members of the court's good faith. *See Miller*, 515 U.S. at 916.

[2] Plaintiffs cite Mr. Angle's statement that the demographic makeup of the districts "mattered," Pls.' Br. at 12, 13, but plaintiffs did not explore what Mr. Angle meant by this at trial, and this statement, without more, certainly does not lend itself to an inference that demography mattered because it furthered a motive to harm Anglo voters.

B. District 1 Was Not Intended To Be a Hispanic Opportunity District.

District 1 was not intended to be a Hispanic opportunity district, but rather was the final district Mr. Angle drew and simply resulted from the drawing of the other three districts. Plaintiffs cite to Dallas County's Section 5 preclearance submission to the Department of Justice ("DOJ") to contend that "Mr. Hebert indicated that the Commissioner's Court made an *affirmative decision* to draw District 1 with an Anglo minority." Pls.' Br. at 12 (emphasis in original). Likewise, plaintiffs state that Mr. Angle "acknowledges that the Defendants' DOJ submission indicates that . . . [they] *decided to draw District 1 as a Hispanic Opportunity District.*" *Id.* at 13 (emphasis in original). Neither statement is true, as a review of the DOJ submissions shows. Moreover, even if they were true, they have no bearing on plaintiffs' claim that the members of the court intended to harm *Anglo* voters.

Plaintiffs mischaracterize the County's preclearance submission to DOJ. The submission noted that the benchmark plan (the one in effect from 2001 to 2010) had naturally become one with three majority African American/Hispanic districts[3] and that it was not possible to draw a new majority Hispanic district. PX 17. The submission then noted that "[t]he Court decided that a new district [District 1] could be drawn that would take account for both the dramatic population growth and population loss that occurred in the last decade," that the district "was drawn with population from three of the four 'old' or benchmark precincts" and that the district was "48.0% Hispanic and 21.2% Black." PX 17. The submission does not say that the Commission directed Mr. Angle to draw the district as a Hispanic opportunity district, or that any

[3] The fact that the benchmark plan had three majority-minority (African American and Hispanic) districts essentially forecloses plaintiffs' contention that defendants engaged in intentional vote dilution by enacting a new plan with three majority-minority (African American and Hispanic) districts.

of its observations about its demographic makeup were purposefully intended, as opposed as simply the results of the drawing process.

Likewise, plaintiffs make up—out of thin air—their twice repeated statement that Mr. Angle "acknowledge[d]" they were correct in their reading of the DOJ submission. He did no such thing. First, plaintiffs do not cite any of Mr. Angle's testimony to support this assertion, rather they merely cite the DOJ submission itself. *See* Pls.' Br. at 13 n.24, 19 n.56. Second, plaintiffs omit Mr. Angle's actual testimony regarding their theory of the meaning of the DOJ submission:

> Q: Is it your testimony today you didn't know about that decision to draw district 1 as a coalition opportunity district?
>
> A: Well, again, this is – the lawyers composed this document, but I interpret it as an explanation of what happened, of what the – where the map ended up, and that would be accurate as to where the map ended up.

Vol. 4 Tr. at 26:7-13. Far from "acknowledg[ing]" that plaintiffs' interpretation of the DOJ submission was correct, Mr. Angle rejected it as incorrect. Mr. Angle drew the map, and he testified that District 1 was the final district drawn, and that it resulted from "largely unassigned area" following the drawing of the other three districts. DX 58-10; Vol. 4 Tr. at 152:18-153:11. Plaintiffs offer no evidence to prove this was not the process Mr. Angle followed.[4]

Plaintiffs also cite their counsel's confusing presentation of deposition questions, which Mr. Angle testified he understood as asking whether the map *resulted* in three majority-minority districts, not whether compliance with the VRA *required* three majority-minority districts. *See* Pls.' Br. at 13; Vol. 4 Tr. at 7:16-20. As defendants explained at the summary judgment stage,

[4] Notably, when plaintiffs moved for summary judgment on the *Shaw* claim they had not pled, they cited Mr. Angle's deposition transcript for the proposition that District 1 was drawn earlier in the sequence. *See* Pls.' Summ. J. Reply Br. at 7 & n.25, ECF No. 102. Their only "evidence" in support of this was the sequence in which *plaintiffs' counsel asked* Mr. Angle questions about the districts, as if that were evidence of the order in which the districts were drawn. *See id.*

plaintiffs' counsel's questioning on this score at Mr. Angle's deposition began with mischaracterizing Mr. Hebert as having told the members of the court at a public hearing that Section 5 required that three districts not be retrogressed (that is not what he said[5]). *See* ECF No. 103 at 23-24. Mr. Dunn objected to this characterization, but told Mr. Angle he could "assume the representation of Mr. Hebert's public comment, if that's sufficient to answer the question . . . without conceding that is the representation Mr. Hebert made." *Id.* at 24-25; ECF No. 103. Then plaintiffs' counsel asked a series of unclear questions, culminating in one referencing "criterion 2." Vol. 4 Tr. at 5:22-7:6. As Mr. Angle reasonably explained to plaintiff's counsel at trial, "[n]ow, I will tell you that, as you can see, there were various objections, and at the time in which that question was asked, I believed that I misinterpreted it. I believe you were asking – or referring to where we ended up in the map, not where we started out." *Id.* at 7:11-15.

Plaintiffs top off their mischaracterizations regarding the process of drawing District 1 by claiming that Mr. Angle "admits that he specifically analyzed whether or not Hispanics, African Americans, or a coalition thereof, could elect their preferred candidate in District 1, and that until and unless that was the case, he would not consider the map [sic] have met Mr. Hebert's specifications." Pls.' Br. at 13-14. This "admission" is one of plaintiffs' own creation. Here's the trial testimony plaintiffs cite for this assertion:

> Q: Did – did you provide [Mr. Hebert] the informational basis for him to make that representation?

[5] The video of the hearing, DX 47, makes clear that Mr. Hebert noted the (correct) fact that the benchmark plan had three majority-minority (African American and Hispanic) districts, and then explained that any ability to elect districts must not be retrogressed in order to gain preclearance under Section 5. At no point did Mr. Hebert contend that all three districts were actually performing in elections for African Americans and Hispanics, and nor does the County's preclearance submission indicate that view.

> A: Let – let me be very clear on answering your question. That when the map was formulated it was not formulated with the purpose of or using race in order to configure current district 1. After current district 1 was configured and we did look at the election results in that district and it was clear that minority candidate of choice were chosen – were elected.
>
> Q: Okay. So when a moment ago you testified that you never analyzed that in 2011, that was wrong?
>
> A: Your question was unclear to me, again, in which I couldn't tell whether you were asking what was happening as the maps were drawn or what was done after the maps were drawn.

Vol. 4 Tr. at 186:20-187:10. Nothing from Mr. Angle's trial testimony—or any other source in the record—supports plaintiffs' contention that Mr. Angle kept drawing district 1 "until and unless" it would perform for African American and Latino voters, yet they attribute it directly to him in their brief.

In any event, none of this has anything to do with whether the members of the court acted with any discriminatory intent against *Anglo* voters. Even if plaintiff were correct that defendants affirmatively wanted a third Hispanic opportunity district (they are not), that is not proof of discrimination against *Anglos*. This is not a *Shaw* case, and plaintiffs cannot prevail on their intentional vote dilution claim by asserting that a district was drawn to benefit Hispanic voters, using racial data, despite the fact that the VRA did not require such a district to be drawn. Even if plaintiffs were right about the motivation for drawing District 1 (they are not), they must show that the district was drawn not merely to benefit Hispanics, but specifically because it would harm Anglos. *See Feeney*, 442 U.S. at 279 ("'[D]iscriminatory purpose' . . . implies more than intent as volition or intent as awareness of consequences. It implies that the decisionmaker . . . selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." (citation omitted)).

Plaintiffs' complaints about the drawing of District 1 are factually and legally misplaced, and offer no support for their contention of intentional vote dilution targeting Anglos.

C. The Court Did Not Improperly Consider Race in Evaluating and Enacting its Plan.

The Court did not improperly consider race in evaluating and enacting its redistricting plan. As their third category of "intent" evidence from which they ask this Court to extrapolate an invidious purpose to harm Anglos, plaintiffs claim that, at the May 10, 2011 public hearing, "Mr. Hebert provided a detailed explanation of pre-clearance, making it clear that race was a factor, if not *the* factor, guiding the county's entire process." Pls.' Br. at 14 (emphasis added). Likewise, they note that Commissioner Price commented that the map "reflects the demography" and the "racial makeup, [and] political behavior" of the county, *id.* at 15 (bracket in original), that Commissioner Garcia commented that the map "just made sense," *id.* at 15, and that the members of the court declined to adopt a suggestion from a white attendee about joining communities surrounding a lake into one district, *id.*

Plaintiffs offer no explanation for how *any* of this demonstrates a motivation to discriminate against Anglos. Mr. Hebert's explanation of the then-extant *requirements of federal law* hardly constitutes intentional discrimination against Anglos. Section 5 of the Voting Rights Act is solely about race, so describing the statute's requirements is hardly proof of intentional discrimination. Nor do comments by the members of the court about the demographic proportionality of the plan constitute evidence that they sought to harm Anglo voters. And as Mr. Angle testified, the suggestion regarding uniting the communities around the lake would have caused a "ripple" effect throughout the map, and would have undermined Commissioner Dickey's request for a Tea Party district. Vol. 4 Tr. at 193:24-194:6. Moreover, it is not at all clear how the

fact that a commenter was Anglo means that rejection of the suggestion was based upon a racially discriminatory intent. That is certainly not the standard for divining discriminatory intent. In sum, none of this is evidence of racially discriminatory intent.

D. Dallas Sought and Listened to Input from Everyone, Including Anglos.

Dallas sought and listened to input from everyone, including Anglos. The evidence shows that the members of the court held three public hearings, took comments from the public, and specifically addressed the wishes of Anglo Republican Commission Dickey to draw a conservative Tea Party district, and then again to modify lines to include a road and bridge district office in her district. Tr. Vol. 4 at 136:19-23; Tr. Vol. 4 at 128: 12-16. Although people attended the public hearings and provided comments, none of the plaintiffs in this case did. Tr. Vol 2 at 10:25-12:14 (Harding); Tr. Vol. 2 at 230:23-231:13 (Schroer); Tr. Vol. 2 at 221:17-24 (Morse); Tr. Vol. 4 at 7:4-9 (Jacobs).

As evidence of this fourth category of 'intent" evidence from which this Court is asked to extrapolate racial discrimination, plaintiffs cite a public statement by Commissioner Cantrell in which he outlines his disagreement with Commissioner Dickey throughout the process. Pls.' Br. at 16-17. Plaintiffs contend this statement reveals that Commissioner Cantrell was "being virtually shut out of the process" and "that several Anglo communities of interest were being negatively impacted from the exclusion." *Id.* at 16. But Commissioner Cantrell's statement reveals nothing about *Anglo* communities of interest, but rather it recounts a political dispute between two Republican members of the court over whether there should be two weak Republican districts or one strong Republican district. *See* PX 24. Commissioner Cantrell explains he would have preferred to keep a second Republican district "that could have remained a marginal Republican

district for *the next two cycles*," *id.* (emphasis added), but that "Commissioner Dickey . . . is the one that voted and made agreements with the Democrats and she was perfectly fine with what was being done to me, my district, my constituents, and the Republican Party." *Id.* This disagreement does not reveal any racial discrimination in the redistricting process, but rather a political disagreement between two Anglo Republicans over whether to draw one strong or two weak Republican districts, the latter of which would stop performing for Republicans within two cycles.

Plaintiffs also contend that "not a single member of the public who brought an issue to the attention of the Commissioner's Court during the process had their issues addressed." Pls.' Br. at 17. First of all, those members of the public who attended the redistricting hearings offered very few proposed modifications to the redistricting plan. Second, Plaintiffs offer no explanation for how rejecting *everyone's* suggestions, regardless of the race of the commenter, is indicative of a motive to discriminate against *Anglos*. Plaintiffs, who did not even bother to attend the public hearings or contact the members of the court about the redistricting plan, can hardly be heard to complain about the outreach efforts of the Commission.

E. Traditional Redistricting Principles Were Not Subordinated to Race.

The record and trial evidence demonstrates that neutral, traditional districting principles drove the process of drawing the Enacted Plan. *See* Defs.' Post-Trial Br. at 43; DX 58-9 & -10; Vol. 4 Tr. at 150:14-22; 158:11-24; 151:7-152:17; 152:18-152:11 (report and testimony of Mr. Angle). Plaintiffs contrary arguments are misplaced.

First, plaintiffs contend that the adopted "Criteria Order makes clear that they ranked racial considerations ahead of all other traditional redistricting factors, second only to the equalization of population." Pls.' Br. at 18. Apparently, plaintiffs believe that ensuring

compliance with Sections 2 and 5—mandatory federal law—constitutes racial discrimination against Anglos. This makes absolutely no sense, and bears no relation to the law. *See Cooper*, 137 S. Ct. at 1464 ("This Court has long assumed that one compelling interest is complying with operative provisions of the Voting Rights Act . . . ."). No court anywhere has ever held that prioritizing compliance with the VRA is evidence of racial discrimination against Anglos.

Second, plaintiffs discuss at length a single constituent request that Lake Highlands and White Rock Lake be kept whole. *See id.* at 19-20. As plaintiffs note, Commissioners Price and Garcia noted at the hearing that they believed doing so would cause retrogression in the map. *Id.* Mr. Angle testified that he later examined the possibility of honoring the request, but concluded that it would cause a ripple effect of changes across the entire map, and that doing so would jeopardize the Republican performance of the Tea Party district that Commissioner Dickey had requested. Vol. 4 Tr. at 193:24-194:6. Plaintiffs complain that rather than analyze racial retrogression, Mr. Angle "performed an entirely different analysis," Pls.' Br. at 20, but they offer no explanation for why his analysis—that the change would disrupt the entire map and would go against the wishes of Anglo Republican Commissioner Dickey—could possibly be evidence of a discriminatory intent to harm Anglos. It is difficult to understand how basing the decision on a *non-racial* reason is evidence of racial discrimination.

Plaintiffs' remaining contentions in their fifth category of "intent" evidence merely repeat arguments from their prior categories. *See id.* at 18-21. The evidence plaintiffs cite in their five categories falls far short of establishing, by a preponderance of the evidence, a racially discriminatory intent on the part of the members of the court.

F. Race Was Used Only as Required by the VRA, and Defendants Would Have Committed a *Shaw* Violation Had They Drawn the Additional Anglo District Plaintiffs Seek.

To the extent race was considered in drawing the Enacted Plan, it was only as required to ensure compliance with the VRA, and had defendants used race to draw an additional Anglo-majority district, as plaintiffs wish they had, the County would have committed a *Shaw* violation. Plaintiffs' contention that defendants had no "[g]ood-[f]aith [b]asis" to rely upon the VRA is misplaced, and irrelevant. Pls.' Br. at 21.[6]

Plaintiffs contend that the members of the court could not have relied on the VRA in 2011 because there was no written *Gingles* analysis performed. Pls.' Br. at 22. But defendants were obligated to comply with both Section 2 *and* Section 5 of the VRA at the time, and *Gingles* has nothing to do with Section 5. As the members of the court explained in their preclearance submission, there were two existing ability to elect districts that they believed Section 5 required them to maintain:

> Precinct 3 is 45.6% African American and was configured in 2001 to elect the candidate of choice of African American voters (Commissioner John Wiley Price) and has done so throughout the last decade. Precinct 4 was originally configured in 2001 to elect an Anglo Republican. However population growth through the decade has made the Precinct 49.3% Hispanic and 16.9% African American. In 2010, voters in Precinct 4 elected a Hispanic Democratic (Commissioner Dr. Elba Garcia).

PX 17. No more analysis under Section 5 was needed, as demonstrated by DOJ's ultimate preclearance of the plan.

[6] So too is their complaint that defendants did not plead reliance on the VRA as an affirmative defense. *See* Pls.' Br. at 21-22. Whatever sense this point may have made in the context of a *Shaw* claim, it makes little sense in relation to an intentional discrimination claim. Even with respect to a *Shaw* claim, it is not at all settled that this is a defense, rather than an element of a claim.

Indeed, plaintiffs concede that the VRA required protection of these two districts. Dr. Morrison testified that his goals in drawing their proposed plan included maintaining a Hispanic district and an African American district. *See* Vol. 2 Tr. at 121:18-122:3. Dr. Morrison testified:

> Q: The reason that you made sure there was an African American and Latino opportunity district drawn is because you knew the Voting Rights Act required that; isn't that true?
>
> A: I can't say that I knew that it required it. I knew that it was consistent with the purposes of the rules that the Voting Rights Act put forth. And I knew that it was on the safe side of the rules. And that the overall objective was to maintain the strengths that I could see, what few there were in the enacted plan, while resolving the weaknesses in the enacted plan.

Id. at 122:16-25; *see id.* at 123:2-5 (Q: "I'm just confirming that you and your work drawing your proposed map didn't believe it to be impermissible to draw a black and Latino opportunity district?" A: "Correct."). In fact, plaintiffs believed that these two districts should have *higher* percentages of African Americans and Hispanics. *See id.* at 36:121-37:8. Plaintiffs can hardly contend there was something improper—let alone discriminatory—about the County seeking to maintain the African American and Hispanic ability-to-elect districts, given that plaintiffs did the same in their proposal. Indeed, by their own count, *plaintiffs* must be engaging in intentional discrimination.

Plaintiffs also contend that Mr. Angle must have engaged in intentional racial discrimination against Anglos because he testified he had not, in 2011, considered that Sections 2 and 5 required an analysis of Anglo voter behavior. Pls.' Br. at 22. Yet, Plaintiffs point the Court to no authority that the County was required to perform a Section 2 and Section 5 analysis, at the map drawing stage, in the circumstances here where Anglos only recently fell below majority status using total population, and there was (as Plaintiffs admit) no recent history of discrimination

against Anglos. But the fact that Mr. Angle did not believe the law required consideration of Anglo voter opportunities or retrogression in fact proves the *absence* of discriminatory intent, not its *presence*. It would be one thing if Mr. Angle *thought* he was required to consider Anglo voters, but opted not to. But the fact he did not analyze Anglo voter opportunities under Sections 2 or 5 because it did not occur to him that doing so was required demonstrates he could not have been acting with invidious intent by failing to do so.[7]

Ultimately, this discussion about VRA analyses highlights a key factor that forecloses plaintiffs' intentional discrimination claim. Even if the County had conducted a *Gingles* analysis in 2011 to determine whether Section 2 required the drawing of a second Anglo majority CVAP district, such an analysis would have shown *it did not*. As defendants explained in their post-trial brief, and again below, Dallas County Anglos satisfy neither *Gingles* prongs one nor two, and the totality of the circumstances do not support the conclusion that Section 2 required a second Anglo district. For that reason, had the County done what plaintiffs wish, it would not have had "good reasons," *Cooper*, 137 S. Ct. at 1464, for doing so, and thus it would have failed strict scrutiny. The consideration of race in drawing such a district thus would have been a *Shaw* violation. So even if the failure to conduct a Section 2 analysis for Anglos in 2011 could somehow be viewed as evidence of a discriminatory intent (it cannot), there could not have been any discriminatory *effects* flowing from such failure because the analysis, even if conducted, would not have led to the creation of a second Anglo majority CVAP district. It cannot plausibly be considered unconstitutional discrimination to decline to unconstitutionally rely on race in drawing a district.

[7] The undersigned are unaware of *any* DOJ submission in 2010, from *any* covered jurisdiction, that performed an analysis of retrogression of Anglo voting strength. Perhaps that was a mistake on everyone's part, but it certainly suggests the absence of invidious discriminatory intent to harm Anglo voters in Dallas County.

None of the evidence from which plaintiffs ask this Court to extrapolate an intent to discriminate against Anglos establishes—or is even relevant to—such an intent. And drawing the district plaintiffs desire would have constituted an unconstitutional racial gerrymander. For these reasons, plaintiffs do not even approach satisfying their burden of proof to establish their Fourteenth Amendment intentional vote dilution claim.

III. Plaintiffs Have Not Met Their Burden to Prove a Section 2 Violation.

Plaintiffs have not satisfied their burden to prove a Section 2 violation by the preponderance of the evidence. Plaintiffs have not established either *Gingles* prongs one or two, and failed to show that the totality of the circumstances warranted Section 2 relief.

A. Plaintiffs Have Not Satisfied *Gingles* Prong One.

Plaintiffs have not met *Gingles* prong one. Plaintiffs contend that they have satisfied the "numerosity" component of prong one because their proposed plan includes a second Anglo majority CVAP district as of the 2012-2016 ACS data release, and they contend defendants have not offered any contrary evidence. Pls.' Br. at 25-26. But as Dr. Lichtman testified, the Texas Legislative Council ("TLC") reports show that the Anglo CVAP in that district was 54.5% in the 2011 to 2015 report, but fell 1.6% to 52.9% in the 2012 to 2016 data. Vol 5 Tr. at 120:1-15. Dr. Lichtman noted that, because the midpoint for the latest data is 2014, the district today—four years later—is probably below 50% Anglo CVAP, and "certainly would be below 50% by 2020 given what's happening in terms of changes in that area of the county." *Id.*; compare DX 60-138 (2011-2015 ACS data) *with* DX 60-139 (2012-2016 ACS data). Plaintiffs offered no evidence to demonstrate that their proposed district is above 50% Anglo CVAP *today*, as opposed to four years ago.

Plaintiffs also fail to satisfy the "compactness" requirement of prong one. They contend that their plan is actually superior to the Enacted Plan on this score because they say it has one fewer city that is split and purportedly preserves communities of interest. Pls' Br. at 28. But as defendants explained in their post-trial brief, plaintiffs paid no attention to the County's adopted districting criteria, and indeed completely disregarded the County's preexisting voting precincts. Dr. Morrison testified that he "had to dispense with all the existing precinct geography" in order to further his sole focus on racial targets. Vol. 2 Tr. at 206:8-16; Defs.' Post-Trial Br. at 18. Indeed, Dr. Morrison acknowledged that the only two criteria that played any part developing plaintiffs' proposed plan was "[r]ace and total population." Vol. 2 Tr. at 63:7-19; Defs.' Post-Trial Br. at 19. A plan that rejects the governing body's preferred, race-neutral districting criteria in favor of criteria focused exclusively upon race cannot meet prong one's compactness requirement, because it violates the entire premise for why traditional districting principles are incorporated into *Gingles* prong one. *See Gonzalez v. Harris Cnty.*, 601 F. App'x 255, 262 (5th Cir. 2015); *LULAC v. Perry*, 548 U.S. 399, 433 (2006) (noting that traditional districting criteria considered to avoid "assum[ption] from a group of voters' race that they think alike, share the same political interests, and will prefer the same candidates at the polls").

Moreover, comparing city splits in redistricting plans is not a simple matter of tallying, as plaintiffs contend. *See* Pls.'s Br. at 28. For one, Plaintiffs never finalized their analysis and their expert is not able to determine authoritatively how many splits there are in either plan. Anyway, the nature of the specific splits must be compared, and on that score, plaintiffs also fall short. Not only did they split at least 42 separate precincts (by ignoring precincts altogether), but they also included "unnecessary city splits of relatively small suburban cities that don't exist in the current

map[,] . . . includ[ing] the cities of Coppell, Hutchings, Wilmer, Duncanville and Cedar Hill." DX 59-16 (Angle Rebuttal Report); Vol. 4 Tr. at 166:16-167:10. The Enacted Plan, on the other hand, splits cities in a sensible way, where large geography makes it necessary (including in the City of Dallas and in large suburban cities). *See* DX 59-6 (Angle Rebuttal Report). Plaintiffs' plan fails the compactness requirement because it disregards traditional districting criteria—and specifically the reasonable criteria preferred by the County—in favor of their singular focus on racial criteria.

Plaintiffs also fail *Gingles* prong one because they failed to show that their proposed plan would actually functionally perform to offer Anglos an opportunity to elect another candidate of their choice, as defendants detailed in their post-trial brief. *See* Defs.' Post-Trial Br. at 11-15. Plaintiffs maintain that their only burden to demonstrate increased Anglo voting opportunities is to merely show they can draw a district with 50%-plus-one Anglo CVAP. Pls' Br. at 28-29. But that is plainly not so. As the Supreme Court has explained, "the first *Gingles* condition requires the possibility of creating more than the existing number of reasonably compact districts with a sufficiently large minority population *to elect candidates of its choice*." *LULAC*, 548 U.S. at 430 (quotation marks omitted) (emphasis added). Thus, while 50%-plus-one is a *floor* below which Section 2 plaintiffs may not fall in establishing prong one, it remains incumbent upon plaintiffs to prove that the district they propose has a sufficient minority population "to elect" their preferred candidate. This is so because "it may be possible for a citizen voting-age majority to lack real electoral opportunity. *Id.* at 428. Such is the case here, where the uncontested evidence reflects that, because the specific Anglos upon whom plaintiffs rely to reach majority percentage are the *least* cohesive in the County, their proposed Anglo districts will not actually function to provide additional opportunities to elect Anglo candidates of choice. Defs.' Br. at 11-15. Plaintiffs bear

the burden to show their districts will increase electoral opportunities, but the uncontested evidence shows that plaintiffs' plan in this case actually *decreases* electoral opportunities for Anglos. *Id.* This forecloses plaintiffs' ability to establish *Gingles* prong one.

B. Plaintiffs Have Not Established *Gingles* Prong Two.

Plaintiffs have also failed to establish *Gingles* prong two. As defendants explained in their post-trial brief, Dallas County Anglos are fractured into three groups—with 23% supporting Democrats, 35% supporting mainstream Republicans, and 42% supporting Tea-Party affiliated candidates. Defs.' Post-Trial Br. at 21-22; DX 62-7 (Baretto Report); Vol 5 Tr. at 19:10-22:24 (Dr. Baretto testifying as to fractured Anglo community). Plaintiffs do not dispute this data, rather they contend that there is racially polarized voting in general elections, and that the Commissioner Court races do not show as much non-cohesion (given the lack of contested primaries). Pls.' Br. at 29. But prong two does not focus exclusively on one level of government, but looks at political cohesion generally, and also at political cohesion *within* a political party.[8] The fact that there have not been contested primaries for Commissioner Court seats is a reason to *discount* those endogenous elections in favor of exogenous elections with more robust data. *See LULAC*, 548 U.S. at 444 (noting that absence of contested primary elections made evidence insufficient to show nominee was candidate of choice of primary voters); *Westwego Citizens for Better Gov't v. City of Westwego*, 872 F.2d 1201, 1208-09 (5th Cir. 1989) (noting value of exogenous election data where

[8] Plaintiffs invent testimony again, stating that "Defendants' expert, Matt Angle, conceded that" Anglos "are politically cohesive *at the County Commissioner Court* level of government." Pls.' Br. at 29 (emphasis in original). But the testimony they cite does not support this proposition. Rather, Mr. Angle testified that in his experience working on campaigns generally, Anglos prefer Republicans. Vol. 3 Tr. at 241:3-242:22. Plaintiffs make up their assertion that Mr. Angle said anything in particular about Commissioner Court races, or about ideological divisions *within* the Republican Party.

endogenous data is lacking). And plaintiffs' counsel, Ms. Alvarez, has testified under oath about the lack of Anglo Republican political cohesion in Dallas County. *See* Defs.' Post-Trial Br. at 23; DX 73-34 – 73-36. Moreover, the lack of Anglo cohesion is particularly pronounced among the particular set of Anglos upon whom plaintiffs rely in order to draw a second Anglo majority district, with Hillary Clinton having received 67.8% among the people plaintiffs propose to add to District 1, despite Anglos constituting 53.1% of that group. *Id.* at 24. Plaintiffs fall far short of satisfying *Gingles* prong two.[9]

C. Plaintiffs Have Not Established that the Totality of Circumstances Warrant Section 2 Relief.

Plaintiffs have not proven that the totality of circumstances warrant finding a Section 2 violation. Plaintiffs begin their analysis by explaining at length that they should be held to a lower burden of proof than are African American and Hispanic voters to show entitlement to Section 2 relief under the totality of circumstances because Anglos have not been burdened by a history of discrimination on account of their race. *See* Pls.' Br. at 32-34. This fundamentally misconceives the purpose of Section 2. Section 2 does not exist in order to guarantee a racially-constructed district anytime a racial group can show a majority CVAP district can be drawn and that they vote alike in general elections. Rather, "[t]he concern underpinning section 2 'is that a certain electoral law, practice or structure *interacts with social or historical conditions* to cause an inequality in the opportunity enjoyed by black[, Hispanic,] and white voters to elect their preferred representatives.'" *Westwego*, 872 F.2d at 1211 (quoting *Gingles*, 478 U.S. at 47) (emphasis in original). Thus, the mere fact that a racial group has been overtaken in population in the County

[9] Plaintiffs do not explain the relevance of Districts 3 and 4 to their *Gingles* argument. Those districts have few Anglo voters, and are not the areas of the County plaintiffs contend the VRA requires an Anglo district. *See* Pls.' Br. at 30.

by other groups, and its preferred candidates start losing to the other groups' preferred candidates, does not trigger Section 2 rights. Rather, the districting plan must interact with social or historical conditions to create unequal opportunities for the affected group. Plaintiffs do not attempt to show that has occurred here, and in fact *stipulate* that Anglos do not have a historical background of discrimination. Plaintiffs' failure to show entitlement to relief under the totality of the circumstances forecloses their Section 2 claim.[10]

1. Plaintiffs' Reliance on Racially Polarized Voting and Racial Appeals in Elections Is Misplaced.

Plaintiffs' reliance on racially polarized voting and racial appeals in elections is misplaced. Plaintiffs contend that because Commissioner Cantrell is the only member of the Court preferred by Anglo voters, and because their expert, Dr. Voth, identified some purported racial appeals in campaigns post-dating the adoption of the Enacted Plan, the totality of circumstances analysis weighs in favor of finding a Section 2 violation. *See* Pls.' Br. at 35-36. Not so.

First, as defendants explained in their post-trial brief, Defs.' Post-Trial Br. at 25-26, 32-33, plaintiffs have failed to show the presence of *legally significant* racially polarized voting, because the evidence shows that, among Dallas County Anglos, partisanship, not race, drives their voting choices. *See LULAC v. Clements*, 999 F.2d 831, 850 (5th Cir. 1993) (*en banc*) (holding that racially polarized voting is only legally significant if caused by reasons related to race, not politics).

[10] Plaintiffs contend this means that the VRA is always unavailable to Anglo voters. Pls.' Br. at 33. Not so. Section 2 relief is available to *any* group that proves that an electoral practice or procedure interacts with historical or social conditions to cause an inequality of opportunity to participate in the political process in a given locality. The fact that *these* plaintiffs cannot show that Anglos in Dallas County, Texas—who *just* lost majority population status—have had a past or present history of discrimination does not mean that *no* Anglo anywhere could, now or in the future. As plaintiffs acknowledge, Section 2 requires an "intensely local appraisal." *Id.* at 34. That appraisal in Dallas County reveals that the Enacted Plan does not interact with any past or present conditions that threaten the ability of Anglos to equally participate in the political process.

Plaintiffs have thus not established this factor as part of the totality of circumstances analysis. Moreover, plaintiffs continue to misapprehend Factor 6, which assesses "the extent to which members of the minority group have been elected to public office in the jurisdiction." *Fairley v. Hattiesburg*, 584 F.3d 660, 672 (5th Cir. 2009); *see Westwego*, 946 F.2d at 1120 (noting that Factor 6 is one of "two most important" as part of totality of circumstances assessment). Plaintiffs contend that because County Judge Clay Jenkins and Commissioner Theresa Daniel, though Anglo, are not the preferred candidates of Anglos, they do not count as part of the Factor 6 assessment. *See* Pls.' Br. at 35. This is wrong. This factor, unlike the *Gingles* preconditions, is not examining whether someone is a candidate of choice of the minority group. Rather, it looks to whether the minority group has been disadvantaged historically in the jurisdiction *because of their race*. In other words, an electorate hostile to Anglo elected officials, because of their race, would not elect three of them, including one at-large, to a five-member body. So the willingness of voters of the majority group to elect members of that racial group—even if not the preferred candidates of their fellow minorities—is relevant to the totality of the circumstances assessment as to whether the racial group has lessened electoral opportunities on account of their race. Here, three of the five Court members (60%) are Anglo—an over-representation of their share of the population. *See, e.g.*, Vol. 5 Tr. at 120:25-122:1; DX 66-16 (Lichtman Report). Successful section 2 plaintiffs often show that *none* of the elected body is made up of minority race candidates. This case is not about voter hostility toward a particular race of candidate. This case is about these Plaintiffs not liking the political preferences of the members who are elected of the same race.

Second, as defendants explained in their post-trial brief, Dr. Voth's conclusions with respect to racial appeals in campaigns should be rejected outright as the product of a biased,

unsound "methodology." Defs.' Br. at 34-36. Plaintiffs contend that Dr. Lichtman agreed that Dallas elections are characterized by racial appeals, Pls.' Br. at 36, but Dr. Lichtman explained that those appeals have been from *Anglo* candidates against *African American and Hispanic* candidates, Trial Tr. Vol. 5 at 101:24-102:12; DX 66 29-30. The fact that African Americans and Hispanics have been the target of racial appeals by Anglos cannot plausibly provide evidence that Anglos suffer lessened electoral opportunities on account of their race.

2. Dallas County Anglos Are Proportionally Represented on the Court.

As defendants explained in their post-trial brief, *see* Defs.' Br. at 29-31, Dallas County Anglos are proportionally represented on the Court, and thus plaintiffs' Section 2 claim must fail. We do not repeat that analysis here, but rather emphasize that plaintiffs are attempting to have it both ways with respect to Anglo Democrats. They refuse to count any elected Anglo Democrats on one side of the proportionality scale, yet they count Anglo Democratic voters on the other side in order to claim 45% countywide Anglo CVAP. This makes no sense. The evidence shows that once the division of political preferences of Dallas County Anglos is considered, they are near perfectly proportionally represented in the Enacted Plan. *See* Defs.' Br. at 29-31. Plaintiffs' effort to compare apples to oranges should be rejected.

3. Plaintiffs Have Not Established that the Court is Not Responsive to the Needs of Anglos.

Plaintiffs have not established that the Court is unresponsive to the needs of Dallas County Anglos. Plaintiffs contend that "it comes as no surprise that the record is replete with evidence that the [ ] Commissioners Court lacks responsiveness to Anglos and Anglo concerns." Pls.' Br. at 36. One might expect some citations to the record to follow such an assertion, but plaintiffs failed to supply any. That is likely because each plaintiff testified that he or she cited *zero*

examples of the Commissioners Court failing to respond to their needs. Trial Tr. Vol. 2 at 10:25-11:12; 12:8-14; 19:19-22 (Harding); Trial Tr. Vol. 2 at 224:17-21 (Morse); Trial Tr. Vol. 2 at 228:25-229:8; 230:23-231:4 (Schroer); Trial Tr. Vol. 3 at 7:4-9; 8:10-22 (Jacobs). And the two examples plaintiffs did proffer at trial through other witnesses—the county employment figures and discussions surrounding the termination of a single employee—are not evidence of a lack of responsiveness to Anglos. *See* Pls' Br. at 37-38. The mere fact that Anglos are not employed in county jobs at the same level of their countywide population share says nothing about whether Anglos needs are left unaddressed, or that they lack an equal opportunity to participate in the political process. In fact, the uncontested testimony from Urmit Graham is that Anglos do not seek county employment at the rate of other citizens. Trial Tr. Vol. 3 at 224:18-225:10; 227:19-228:10. Plaintiffs offer no analysis to show that Anglos actually have *applied* for and been *rejected* from county employment at rates that suggest a discriminatory practice. Nor do they dive into the data to see how the population metrics compare at different salary levels. This is evidence of nothing, as far as Section 2 is concerned.

Plaintiffs end their brief with the discussions surrounding the firing of the former County Elections Administrator, Pls' Br. at 38-39, and contend it reflected an "adopted [ ] custom of allowing Anglos to be treated with open racial hostility" and that "the treatment Anglos receive at the hands of the Commissioners Court is so offensive and distancing, that it can result in politically active Anglos abandoning any desire to participate any further," *id.* at 39. For this, plaintiffs cite the testimony of Mr. Turner. *See id.* at 39 n.177. But as shown at trial, Mr. Turner first referred to Commissioner Price *eight times* as "Chief Mullah" and twice used the word "tribal" in confronting Commissioner Price about the termination of the Elections Administrator. Vol. 4

Tr. at 42:4-45:22. *That* is the person—Mr. Turner—whom plaintiffs contend was treated in a manner "so offensive and distancing," Pls.' Br. at 39, that Section 2 demands a new redistricting map, drawn exclusively based upon race, be ordered into place. The articulation of that proposition suffices to defeat it.

CONCLUSION

Plaintiffs have not satisfied their burden of proof, and judgment should be entered in favor of defendants.

Dated this 25th day of May 2018.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of May 2018, a true and correct copy of the foregoing was served by the Court's Electronic Case Filing System on all counsel of record.

By: */s/ Chad W. Dunn*