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

ANNE HARDING, RAY HUEBNER, GREGORY R. JACOBS, MORGAN MCCOMB, AND JOHANNES PETER SCHROER Plaintiffs,	§	
V.	§	C.A. NO. 3:15-CV-00131-D
COUNTY OF DALLAS, TEXAS CLAY LEWIS JENKINS, in his official Capacity as County Judge of Dallas County, et al., Defendants,	§	

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

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TABLE OF CONTENTS

INDEX OF AUTHORITIES

FEDERAL CASES

United States Supreme Court

Circuit Courts of Appeals

U.S. Constitution

Federal Statutes

Federal Rules

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Defendants, County of Dallas, Texas, Clay Lewis Jenkins, in his capacity as County Judge of Dallas County, Texas, and Theresa Daniel, Mike Cantrell, John Wiley Price, and Elba Garcia, in their capacity as County Commissioners (hereinafter collectively referred to as "Defendants") and file this their Brief in Support of their Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), and would respectfully show the Court as follows:

I. INTRODUCTION

Plaintiffs are five (5) Anglo registered voters in Dallas County who allege that their voting rights are being violated by defendants when the Dallas County Commissioner Precincts[1] were reapportioned after the release of the 2010 census data. Though they acknowledge that Dallas County is a majority-minority county, Compl. at 1, they contend that the plan for electing the Dallas County Commissioners' Court does not fairly reflect Anglo voting strength, because the election plan prevents the minority Anglo population from being able to elect a majority of the Commissioners' Court. Compl. at 21.

By Plaintiffs' own complaint, Anglo voters are a voting majority in one of the four Commissioner Precincts; comprise a substantial proportion of the three

[1] The words "precincts" and "districts" are used interchangeably in this motion; Dallas County has four "Commissioner Precincts' that are essentially single member "districts" *See generally* Compl. Commissioner precincts are larger than, and contain many, voting precincts.

remaining Commissioner Precincts; and they comprise a substantial proportion of the entire County, which elects the fifth member of the County Commissioners' Court countywide—the county judge.

Plaintiffs attempt to plead claims under Section 2 of the Voting Rights Act, 52 U.S.C. § 10301[2] and the equal protection clause of the United States Constitution. Plaintiffs maintain that the defendants drew the commissioner precincts in violation of the "rights of Dallas's Anglo minority". *See generally* Compl. ¶ 2. Notably, however, there is no allegation that the individually named plaintiffs were in any way prohibited from exercising their individual right to vote; they purportedly bring this action on behalf of the Anglo "minority" community. *See generally* Compl. Plaintiffs have failed to establish legally cognizable harm that would confer standing upon them.

Plaintiffs contend that Anglos are underrepresented as a racial group on the Dallas County Commissioners' Court, though they concede, as they must, that three members of the Commissioners' Court are Anglo. As explained below, their complaint fails to state a claim for relief under either the Voting Rights Act or the

[2] Effective September 1, 2014, the Voting Rights Act was transferred from Chapter 42 of the United States Code, The Public Health and Welfare, to Chapter 52, Voting and Elections. Although the Complaint refers to Chapter 42, the undersigned will hereinafter refer to the current statutory designations. A comprehensive table of conversion for the new codification can be found at http://uscode.house.gov/editorialreclassification/t52/Reclassifications_Title_52.html (last accessed March 11, 2015).

Constitution, because they have not pleaded a cause of action under Section 2 of the Voting Rights Act, 52 U.S.C. §10301 or the Fourteenth and Fifteenth Amendments to the United States Constitution.

II. STANDARD OF REVIEW

Defendants move to dismiss Plaintiffs' Original Complaint under Federal Rules of Civil Procedure 12(b)(1) and12(b)(6). In reviewing this motion, the court must accept all material allegations of the complaint as true and construe them in the light most favorable to the nonmoving party. *Garrett v. Commonwealth Mortgage Corp.*, 938 F. 2d 591, 593 (5th Cir. 1991). The motion should be granted if the plaintiffs can prove no set of facts that would entitle them to relief. *Id.*

Rule 12(b)(1) permits dismissal of a claim for lack of subject matter jurisdiction. Because failure to establish a recognizable justiciable claim deprives federal courts of jurisdiction to hear the suit, a motion to dismiss for lack of constitutional standing is properly addressed under FED. R.CIV. P. 12(b)(1). *Harold H. Huggins Realty, Inc. v. FNC, Inc.*, 634 F.3d 787, 795 n.2 (5th Cir. 2011). "The party asserting jurisdiction bears the burden of proof for a 12(b)(1) motion to dismiss." *Ballew v. Cont'l Airlines, Inc.*, 668 F.3d 777, 781 (5th Cir. 2012). A court may find that subject matter jurisdiction is lacking based on the *complaint alone*. *Id.* [emphasis added]

Rule 12(b)(6) permits dismissal of a complaint when its allegations "fail to state a claim upon which relief can be granted." FED. R. CIV. P. 12(b)(6). To avoid dismissal, the plaintiff must have provided both fair notice of the nature of the claim and plausible factual allegations to support the claim. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009) (stating that plausibility is "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense"). The plaintiff's complaint must contain "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Factual allegations "must make relief plausible, not merely conceivable, when taken as true. " *United States ex rel. Grubbs v. Kanneganti*, 565 F.3d 180, 186 (5th Cir. 2009) (citing *Twombly*, 550 U.S. 544); *United States ex rel. Hebert v. Dizney*, 295 F. App'x 717, 721 (5th Cir. 2008) ("Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." (quoting *Twombly*, 550 U.S. at 555)). The court should "not strain to find inferences favorable to the plaintiff. " *Dorsey v. Portfolio Equities, Inc.*, 540 F.3d 333, 338 (5th Cir. 2008) (internal quotation marks omitted).

Taking all the alleged facts in paragraphs 11 through 23 as true and in a light most favorable to the plaintiffs, this Complaint does not remotely approach establishing a violation of federal law.

III. ARGUMENT

A. Plaintiffs Lack Standing to Pursue Any of Their Claims.

Dismissal for lack of subject matter jurisdiction under Rule 12(b)(1) is required when the court lacks constitutional and statutory power over the case. *E.g.*, *Home Builders Ass'n of Miss., Inc. v. City of Madison*, 143 F.3d 1006, 1010 (5th Cir. 1998). Plaintiffs bear the burden of establishing this Court's subject matter jurisdiction, see *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001), including their own standing to sue, *See Cobb v. Central States*, 461 F.3d 632, 635 (5th Cir. 2006). To establish constitutional standing under Article III, § 2, a plaintiff must "demonstrate that he has suffered 'injury in fact,' that the injury is 'fairly traceable' to the actions of the defendant, and that the injury will likely be redressed by a favorable decision." *Bennett v. Spear*, 520 U.S. 154, 162 (1997) (quoting *Lujan, v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)).

Plaintiffs cannot show an injury in fact, because they do not identify any specific or particularized harm that befalls them due to the County's redistricting plans. To establish an injury in fact, the plaintiff must identify "a concrete and

imminent invasion of a legally protected interest that is neither conjectural nor hypothetical." *Lujan*, *supra*, at 560.

Plaintiffs do not allege that their own electoral districts have been drawn in a manner that harms them or deprives them of the right to elect the candidate of their choice. The complete failure to identify any concrete injury deprives Plaintiffs of standing and divests this Court of subject matter jurisdiction.

B. Plaintiffs' Complaint Fails to State a Claim Under Section 2 of the Voting Rights Act

1. Standards for Section 2 claims

Section 2 prohibits what is referred to as "minority vote dilution"—the minimization or canceling out of minority voting strength. Section 2(a) of the Act prohibits any electoral practice or procedure that "results in a denial or abridgement of the right of any citizen . . . to vote on account of race or color [or membership in a language minority group]. 52 U.S.C. § 10302. Section 2 (b) specifies that the right to vote has been abridged or denied if,

> based on a totality of circumstances, it is shown that the political processes leading to nomination or election . . . are not equally open to participation by members of a [racial or language minority group] in that its members have less opportunity than other members of the electorate to participate in the political processes and to elect representatives of their choice.

Id. § 10303. Section 2, thus prohibits any practice or procedure that, interacting with social and historical conditions, impairs the ability of a protected minority group to elect its candidates of choice on an equal basis with other voters.

In 1986, in *Thornburg v. Gingles*, 478 U.S. 30 (1986), the Supreme Court articulated the Section 2 framework. Under the *Gingles* test, the first step in determining whether a majority- minority district is mandated by Section 2 is to ask the following three questions:

> (1) Is the minority group "sufficiently large and geographically compact to constitute a majority" in a single-member district?[3]
>
> (2) Is the minority group "politically cohesive"?
>
> (3) Does the white majority vote "sufficiently as a bloc to enable it—in the absence of special circumstances…—usually to defeat the minority's preferred candidate"?[4]

If the answer to any of these questions is "No," then Section 2 does not require the creation of a majority-minority district.

A negative answer to the first prong of the *Gingles* test means that a minority group could not have constituted an effective voting majority in any reasonably

[3] The test enunciated in *Gingles* originally applied only to challenges brought against multi-member districting plans. In 1993, however, the Court made clear that the three-pronged *Gingles* test applies to single-member districting schemes as well. *See Growe v. Emison,* 507 U.S. 25, 40 (1993).
[4] *Gingles*, 478 U.S. at 50-51.

drawn alternative district, and therefore the minority's voting preferences could not be satisfied under *any* plan.

Even if the answer to all three *Gingles* questions is "Yes," the court must still determine whether, under the "totality of circumstances," the minority group has less opportunity than whites to participate in the political process and to elect representatives of its choice. *Johnson v. De Grandy*, 512 U.S. 997 (1994). Only when all these conditions are met, must a majority-minority district be created.

Although courts have considered a variety of circumstances in making this determination, one factor is particularly important: the "proportionality" or lack thereof, between the number of majority-minority districts and the minority's share of the State's relevant population. It would be very difficult, for example, for a minority group to win a Section 2 case if it constituted 20% of the population but effectively controlled 30% of the districts.

The Supreme Court analyzed the proportionality factor in *Johnson v. DeGrandy, supra.* The Court assumed for the purposes of deciding *DeGrandy* that all three of the *Gingles* factors were satisfied, yet it rejected the plaintiffs' Section 2 claim. As the Court explained, the totality of circumstances did not support a finding of dilution, because the "minority groups constitute effective voting

majorities in a number of districts substantially proportional to their share in the population." *Id.* at 1024.[5]

2. Plaintiffs have not pleaded facts to support *Gingles* precondition I.

Plaintiffs have failed to state a claim under the first prong of *Gingles* because they have failed to allege that Anglos in Dallas County are "sufficiently large and geographically compact to constitute a majority" in an additional Precinct. In their complaint, they fail to state that they can create a second commissioners' court district in which Anglos comprise a mathematical majority of the citizens of voting age. In the Fifth Circuit, plaintiffs must be able to establish such a district or their section 2 case must fail. See, e.g. *Gonzalez v. Harris Cty.*, __ Fed. Appx. __, 2015 WL 525464 (5th Cir. Feb. 9, 2015) (unpublished opinion). See also *Perez v. Pasadena ISD*, 165 F. 3d 368, 372 (5th Cir. 1999).

Plaintiffs' complaint fails to state such a claim. The closest Plaintiffs come to alleging that they can meet the first precondition of *Gingles* is paragraph 22 of their complaint. There, Plaintiffs state that Anglos are such a "sufficiently compact, sufficiently large portion of Dallas County's citizen voting age population, that the Commissioners could have drawn a second performing Anglo CCD." But the test

[5] Although rough proportionality does not automatically protect a State from liability under Section 2, it is a strong "indication that minority voters have an equal opportunity, in spite of racial polarization, 'to participate in the political process and to elect representatives of their choice.'" *Id.* at 1020 (citing Voting Rights Act, 52 U.S.C. § 10301).

under *Gingles* in the Fifth Circuit is not whether a plaintiff can draw a second "performing" district. To state a claim under Section 2, Plaintiffs must allege specifically that they can create an additional district that contains a numerical majority of the citizen voting age population (CVAP). See *Perez,* 165 F. 3d at 372.

In *Perez, supra,* Plaintiffs challenged the at-large method of electing the members of the Pasadena ISD. They contended that they had stated a claim under *Gingles* precondition I by showing that in a demonstration district, Latinos comprised a majority of the *voting age population* (VAP). The court of appeals, however, rejected that argument, stating that courts "must consider the *citizen* voting-age population of the group challenging the electoral practice when determining whether the minority group is sufficiently large and geographically compact to constitute a majority." *Perez v. Pasadena Indep. Sch. Dist*., 165 F. 3d 368, 372 (5th Cir. 1999) (emphasis added)). See also *Valdespino v. Alamo Heights ISD*, 168 F.3d 848 (5th Cir. 1999).

In this circuit, the 50% CVAP requirement under *Gingles* prong I is not flexible. "In reality, this court has interpreted the *Gingles* factors as a bright line test." *Valdespino, supra* at 852. The court of appeals in *Valdespino* continued: "We have repeatedly disposed of vote dilution cases on the principle that "[f]ailure to establish any one of these threshold requirements is fatal." *Id.* Plaintiffs' failure to

make such allegations here is likewise fatal and thus fails to state a claim under Section 2 of the Voting Rights Act.

More importantly to this case, Plaintiffs in *Perez* also argued that courts should be "more flexible" in evaluating the first *Gingles* requirement and that, to meet *Gingles* prong I's threshold, it is possible to show that minorities have the ability to elect candidates of their choice even if they comprise less than a majority of voting age citizens in a given district. The Fifth Circuit has rejected this precise claim, stating that "evidence that the group may succeed in electing preferred candidates cannot remedy its failure to meet the *Gingles* threshold." *Perez*, at 373.

Plaintiffs' complaint fails to state that they can comprise a majority of the citizens of voting age in an additional district. Like the plaintiffs in *Perez*, Plaintiffs in this case have merely alleged that they can create another performing Anglo CCD. But that's not the law in this circuit. On its face, therefore, Plaintiffs' complaint fails to state a Section 2 claim under *Gingles* prong I.

3. Plaintiffs fail to adequately plead lack of proportionality under *DeGrandy*

Plaintiffs' complaint states that "Anglos are a minority in Dallas County[.]" Compl. at ¶13. Their complaint states that as a result of the redistricting plan enacted by the Defendants, "Anglos could not obtain control of the Commissioners' Court." *Id.*, ¶21. But Section 2 of the Voting Rights Act is not a racial entitlement

for any racial or ethnic group. Moreover, Section 2 does not require proportional representation for any racial or ethnic group. See 52 U.S.C. §10301 ("nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.").

Plaintiffs' complaint fails to include any claim that the defendant County Commissioners are not the candidate of choice of Anglo voters. Even if the five commissioners are the candidates of choice of African-American and Latino voters, that fact does not preclude those Commissioners from also being the candidates of choice of Anglo voters. Plaintiffs' complaint fails to contain any such claims one way or the other. Because their complaint does not allege that any of the Commissioners are not Anglo-supported candidates, their complaint fails to adequately plead lack of proportionality or a Section 2 claim as a matter of law.

Also, Plaintiffs' Complaint indicates that Anglos already have achieved or exceeded proportional representation. *DeGrandy* makes clear that where "minority groups constitute effective voting majorities in a number of districts substantially proportional to their share in the population," a Section 2 challenge will fail. Plaintiffs' complaint acknowledges that Anglos are a minority of Dallas County's population, but claims that the current redistricting plan deprives them of a right to

gain *majority* control of the Commissioners' Court. See Complaint at 21 ("Anglos could not obtain control of the Commissioners Court").

Like any minority group, Anglos are not entitled under Section 2 to an election plan that provides them an opportunity to elect a majority of the governing body. Under that theory, any minority group could state a claim under Section 2 by alleging that a redistricting plan fails to provide them with an opportunity to control a majority of the seats. To the extent Plaintiffs' complaint in this case is framed in this manner (see Compl. at 22), it fails to state a claim under Section 2 of the Voting Rights Act.

4. Plaintiffs fail to adequately plead facts to meet the totality of circumstances requirement.

Even were the Complaint sufficient relating to the *Gingles* preconditions, Complaint must adequately plead facts as to whether, under the totality of the circumstances, the challenged practice impairs the ability of the minority voters to participate equally in the political process and to elect a representative of their choice. *De Grandy*, 512 U.S. at 1011; see also *Bartlett v. Strickland*, 556 U.S. 1, 11–12 (2009).

Plaintiffs' Complaint fails to even reference the 'totality of circumstances' and thus fails to state a claim under *Johnson v. De Grandy*. The Complaint also fails to reference any facts to support a finding under the totality of the circumstances. The

closest Plaintiffs come is this: "Dallas has seen consistent, overt and subtle racial appeals in its local elections held after 2004, including elections to Commissioners Court." Compl. at ¶ 15. Yet, even this allegation falls far short of the mark. Racial appeals are just one factor under the totality of circumstances under Section 2.Moreover, Plaintiffs fail to plead facts under any of the other Senate Factors[6] other than to observe the racial makeup of the incumbents.

It is also worth noting that Plaintiffs have not pleaded, nor could they show, that the Anglo Plaintiffs have been subjected to such pervasive and discriminatory practices in voting, housing, education and the like for an extended period of time such that federal intrusion into the redistricting affairs on Dallas County, Texas is constitutionally permitted. Plaintiffs simply have not pleaded sufficient facts to the totality of circumstance inquiry for a Section 2 claim.

C. Plaintiffs' Complaint Fails to State a Claim Under the Fourteenth and Fifteenth Amendments to the United States Constitution

Though their Complaint begins with indignant rhetoric couched in racial terms, at the end of the day Plaintiffs' Complaint is a plain and simple political gerrymandering claim masquerading as a claim based on race. Consequently, the Complaint melds claims of discrimination based on race with allegations of

[6] *Gingles*, 478 U.S. at 45 (quoting S.Rep. No. 417, 97th Cong., 2d. Sess., (1982) at 30, reprinted in 1982 U.S.Code Cong. & Admin. News ("U.S.C.C.A.N.") 177 at 208).

political gerrymandering and discrimination. For example, the plaintiffs note on the one hand that Defendants rejected the impulse to create four Democratic districts by fragmenting Republican voters, (Compl. at ¶17), but they complain that Defendants then drew a map less offensive to Anglos by creating only one district (District 2) with a super-concentration of Anglos (Compl. at ¶20). Similarly, they allege that Dallas County voters vote in "polarized racial blocs" but their contention to substantiate this allegation is that African Americans and Latinos support Democratic candidates and Anglo voters support Republican candidates. *See* Compl. at ¶s 11-12. And in perhaps the most blatant example of Plaintiffs' efforts to elide their racial and political claims, they allege the Commissioners' Court chose to entrench racial divisions along partisan lines for the next decade." Compl. at ¶21.

The Complaint, however, fails to state a claim of political gerrymandering. Under the Supreme Court's two most recent decisions involving claims of political gerrymandering, (*Vieth v. Jubilerer* 541 U.S. 267 (2004) and *LULAC v. Perry,* 548 U.S. 399 (2006)) redistricters may draw district lines to pursue partisan advantage. Indeed, in *LULAC v. Perry*, where there were allegations that Texas legislators "packed" or "cracked" Democratic voters, ignored traditional districting criteria, created exceedingly safe districts for incumbents, and even redrew lines in the

middle of a decade, the Supreme Court refused to find such political gerrymandering violative of the Constitution. *LULAC*, 548 U.S. at 405.

Similarly, there is no constitutional requirement of proportional representation; it is simply legally irrelevant that a group may receive a much higher or lower share of seats than its share of the countywide vote. Here the Plaintiffs' complaint contains no identifiable claim of political gerrymandering. Nor does the Complaint allege facts supporting a political gerrymander claim. Perhaps the Complaint omits these key allegations because Plaintiffs are aware that the Supreme Court has yet to articulate a cogent, workable standard for judging the constitutionality of political gerrymanders. In any event, Plaintiffs fail to state a political gerrymandering claim.

Plaintiffs' conclusory allegations are plainly insufficient to state a claim. See, e.g., *Iqbal*, 556 U.S. at 678–79 ("[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—'that the pleader is entitled to relief.'") (quoting FED. R. CIV. P. 8(a)(2)). Moreover, because Plaintiffs' complaint fails to articulate any applicable legal standard, Plaintiffs' political gerrymandering claim must be dismissed as well.

To the extent Plaintiffs purport to make a racial gerrymandering claim, they

also fail to state a claim under the Fourteenth or Fifteenth Amendments. Plaintiffs claim that Anglo voting strength is diluted by the redistricting plan under challenge and they assert their Fifteenth Amendment rights are violated. However, the law in this circuit forecloses that claim. In *Prejean v. Foster*, 227 F.3d 504, 519 (5th Cir. 2000), the Fifth Circuit stated that "the Supreme Court has rejected application of the Fifteenth Amendment to vote dilution causes of action" because "[w]hen a legislative body is apportioned into districts, every citizen retains equal rights to vote for the same number of representatives, even if not for all of them, and every citizen's ballot is equally weighed." Accordingly, a Fifteenth Amendment claim of vote dilution, such as Plaintiffs claim here, is non-justiciable in this circuit.

Plaintiffs are similarly without recourse under the Fourteenth Amendment claim. In 1993, in *Shaw v. Reno*, 509 U.S. 630 (1993), the Supreme Court recognized a new constraint on the redistricting process, declaring that the excessive and unjustified use of race in redistricting is prohibited by the Equal Protection Clause of the Fourteenth Amendment. But, in *Easley v. Cromartie*, 532 U.S. 234, 243 (2001), the Court reaffirmed that a district may be invalidated pursuant to a *Shaw* claim only if "race *rather than* politics *predominantly* explains" the district's boundaries. (emphasis added).

In Plaintiffs' Complaint, the Plaintiffs allege that Defendants drew the district

boundaries with political intent (Compl. ¶s 17 and 18). They seemingly concede that Districts 1 and 2 were drawn for political purposes, while claiming Districts 3 and 4 were drawn to provide African-American and Hispanic voters, respectively, an effective opportunity to elect their preferred candidates. *Id.*, at ¶s 17, 18, and 20. Plaintiffs' Complaint at ¶ 18, for example, contends that one alleged defect of the Commissioners' Court plan is that it protects African-American and Hispanic voters in Districts 3 and 4. *Id.* Of course, if the Defendants had failed to draw a district that provided African-American or Latino voters with an effective opportunity to elect their preferred candidates, they would have faced legal liability under Section 2 of the Voting Rights Act. Thus, even assuming Plaintiffs' allegations regarding Districts 3 and 4 are true, Districts 3 and 4 were drawn to avoid a Section 2 violation.

In *Prejean v. Foster*, 227 F.3d 504, 512 (2000), the Fifth Circuit stated that the Supreme Court's decision in *Bush v. Vera*, 517 U.S. 952, 994 (1996) "grants that the state [or local government] has a compelling interest in complying with the results test of Section 2 of the Voting Rights Act, which may lead it to create a majority-minority district only when it has a 'strong basis in evidence' for concluding, or a 'reasonable fear' that, otherwise, it would be vulnerable to a vote dilution claim." Thus, avoiding liability under Section 2 or drawing a district to ensure compliance

with Section 2 of the Voting Rights Act provides a compelling state interest that justifies the predominate use of race in drawing districts.[7] Since the case law establishes that Dallas County could create Districts 3 and 4 as majority-minority districts to avoid Section 2 liability, Plaintiffs' Complaint that Defendants allowed race to predominate the creation of these two districts fails to state a racial gerrymandering claim.

Nor does the Complaint in this case allege that Defendants drew either District 1 or 2 predominantly along racial lines. As to District 1, Plaintiffs' Complaint attacks this district because it was created as a "Democratic Opportunity District." Complaint ¶ 18. That hardly smacks of a claim that the district was drawn with an excessive reliance on race. Similarly, District 2 was drawn, the complaint alleges, to avoid fragmenting Anglos among all four districts and creating four Democratic districts. Complaint ¶ 17. Again, the complaint here is that Defendants acted with political intent. Creating a district in which Anglos are the predominate group to avoid an all Democratic Commissioners' Court again does not on its face suggest an excessive use of race in drawing District 1.

In sum, Plaintiffs' Complaint concedes two districts were drawn for political

[7] The Fifth Circuit has also stated that "*Bush* [*v. Vera*] makes clear, '[s]trict scrutiny does not apply merely because redistricting is performed with consciousness of race . . . . Nor does it apply to all cases of intentional creation of majority-minority districts.'" *Prejean v. Foster*, 227 F.3d 504 (2000) (quoting *Bush v. Vera*, 517 U.S. 952, 958 (1996)).

reasons (Districts 1 and 2) and two districts (Districts 3 and 4) were drawn to create majority minority districts and avoid a Section 2 violation, which is a justified use of race under *Shaw v. Reno* and its progeny. Such allegations as set forth in Plaintiffs' Complaint fail to state a claim of racial or political gerrymandering under the Constitution.

IV. PRAYER

Because Plaintiffs fail to allege legally cognizable harm, Plaintiffs lack standing to assert any of the claims alleged, the Complaint should be dismissed with prejudice pursuant to Federal Rule of Civil Procedure 12(b)(1). Additionally, Plaintiffs fail to state any claims against Defendants. Therefore, Complaint should be dismissed with prejudice under Federal Rule of Civil Procedure 12(b)(6).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of March 2015, 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*
Chad W. Dunn