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

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

PLAINTIFFS' POST-TRIAL CLOSING BRIEF

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As instructed by the Court at trial, the Plaintiffs submit the following post-trial brief to substitute or stand-in for extended closing arguments.

I. Introduction

Dallas County, Texas, is one of the most diverse counties in the state, if not the nation. Like all other counties in Texas, Dallas County is governed by a Commissioners Court, with a County Judge, who sits as its head. In addition to the County Judge (elected at large), four (4) Commissioners each represent a single-member district. The districts for these four Commissioner Court seats are drawn by the Commissioners Court on a ten year cycle.

The Plaintiffs brought this action because the Defendants, in drawing the most recently enacted Commissioners Court district map (the "EP"), deliberately classified Anglo citizens by race, and then purposefully crafted district lines to deny them the chance to elect representatives of their choice at the Commissioners-Court level at a rate equitable to their share of the Citizen Voting Age Population ("CVAP"), thus illegally diluting their votes under § 2 of the Voting Rights Act (the "VRA").[1] The Plaintiffs believe the record is clear and allows for no other conclusion than that the EP violates VRA § 2 and the federal statutory rights of the Plaintiffs Dallas County. The record establishes that the Defendants intentionally drew the EP to disadvantage Anglos because of their race. The Defendants' stated purpose was to prevent

[1] 52 U.S.C. §§ 10301 and 10302. *See also Thornburg v. Gingles*, 478 U.S. 30, 87 (1986) (holding that the purpose of § 2 of the Voting Rights Act was to prohibit practices which "operate[] to cancel out or to minimize [i.e. dilute] the voting strength of racial groups," leaving minority groups with less opportunity to participate in the electoral process effectively than other groups). *See also Rodriguez v. Bexar Cnty.*, 385 F.3d 853, 859 (5th Cir. 2004).

Dallas's Anglo minority from electing more than one Commissioner, so ensuring that the local majority could elect three quarters of the Commissioners Court.[2]

Second, the record clearly demonstrates that the EP has the effect of violating diluting Dallas's Anglo vote, in violation of VRA § 2. The Plaintiffs have met their burden under the first *Gingles* precondition, proving beyond dispute that Anglos are sufficient in both number and compactness to support a second Anglo opportunity district. In satisfaction of *Gingles* second and third precondition, the Plaintiffs have clearly established both that Anglos in Dallas County vote as a bloc in Commissioners Court elections and that their preferred candidates are, more often than not, defeated by the majority. Indeed, throughout these proceedings, the Defendants failed to present any counter-evidence relevant to any of the *Gingles* I factors. This leaves it clear that the EP was enacted with the discriminatory *intent* of disadvantaging Anglo voters, and has resulted in the discriminatory *effect* that Anglos' votes are diluted across the county (in District 2, through over-concentration and waste; in the rest of the County, through division and swamping by the majority). It did not have to be this way - the Plaintiffs have demonstrated, by virtue of their proposed map, that it was and is possible for to draw two (2) districts with a majority Anglo CVAP, while respecting traditional redistricting principles.

Third, the Plaintiffs have proven that, taking into account all the relevant pieces of information relevant to Dallas's dilution of its Anglos voting power, the totality of the circumstance are clear:[3] Anglos suffer an intentional dilution of their voting power.

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[2] Tr. IV 5:14 - 7:10 (Angle); 7:11 - 9:15 (Angle) (The Roman numerals refer to the volume number of the transcript; the rest of the citation reads page:line.).

[3] *See Gingles*, 478 U.S. at 45; 79; *Johnson v. DeGrandy*, 512 U.S 997, 1011 (1994).

The Plaintiffs have shown unlawful vote dilution of the Anglo minority in Dallas County.[4] Through this brief, they merely highlight how the most important pieces of evidence align with the different components of the Plaintiffs' burden under *Gingles*,[5] justifying the Court's invalidation of the EP.

II. Standing

A. Any Affected Member of the Racial Minority Group Has Standing to Challenge His District

Before discussing the Plaintiffs' proof through the *Gingles* framework, the Plaintiffs note their clear standing to bring this action. Although this issue has been extensively briefed, and the Plaintiffs do not wish to repeat the obvious, they will underscore that the trial record parallels their prior submissions to this Court.

The Plaintiffs' claims are vote dilution claims under VRA § 2 and the 14th Amendment. Both assert that the EP diluted the Plaintiffs' voting power, intentionally an in effect, denying Anglos representation proportional to their CVAP. In short, the EP packed Anglos into District 2, and cracked them across the rest of the county. As long as the Plaintiffs are a member of that diluted racial group, each may challenge the district in which they live and the entire "redistricting plan that generated this harm."[6] Furthermore, any member of the aggrieved

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[4] *Voinovich v. Quilter*, 507 U.S. 146, 157 (1993).

[5] "Proof of vote dilution is assembled using the two-part framework set forth in the seminal case of *Thornburg v. Gingles*, 478 U.S. 30, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986)." *Rodriguez v. Harris Cnty*, 964 F.Supp.2d 686 (S.D. Tex. 2013) (citing *Growe v. Emison,* 507 U.S. 25, 40-41 (1993), and *Fairley v. Hattiesburg*, 584 F.3d 660, 667 (5th Cir. 2009).

[6] *Larios v. Perdue*, 306 F. Supp. 2d 1190, 1290 (N.D. Ga. 2003).

minority population in question who resides in any part of the Dallas County EP that could support another Anglo opportunity district, would also have standing to sue.[7]

B. Plaintiffs Are all Members of the Affected Group, And Have Standing Individually, and Collectively

Therefore, the Plaintiffs clearly have standing to bring this action. There is no dispute that the Plaintiffs are all registered voters in Dallas County,[8] and that they are all Anglo.[9] As explained in detail, below, the Plaintiffs (like all Dallas's Anglos) have had their votes diluted. Whether they live in District 2 (and suffer intentional dilution through "packing"),[10, 11] or in any of the other districts (in which Anglos were intentionally diluted through "cracking"),[12, 13, 14, and 15] they have standing to sue to challenge their districts and entire plan responsible for their harm. Their standing is established, regardless of their access to any particular service or representative.

III. The Defendants' Intentionally Diluted the Plaintiffs' Racial Minority in the EP

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[7] *Pope v. Cty. of Albany*, No. 11-cv-0736, 2014 WL 316703, at *5 (N.D.N.Y. Jan. 28, 2014).

[8] The Defendants stipulated to the current, valid registration of each Plaintiff (Pre-Trial Order, Dkt. # 126, Stipulated Fact 64). Moreover, the Plaintiffs have submitted to the Court for the record, the voter registration and valid Driver's License of each Plaintiff. (*See* Pls.' Ex. #1 through Pls.' Ex. #8).

[9] Pre-trial Order, Dkt. #126, Stipulated Fact #63.

[10] Anglos, like Ms. Morse, are "packed" in District 2. Tr. II 28:10-16; 31:15-22 (Morrison). Plaintiff Holly Knight Morse resides in District 2. Tr. I, 220:5-7 (Morse).

[11] *United States v. Hays,* 515 U.S. 737, 744 (1995).

[12] Plaintiff Greg Jacobs lives in District 1. Tr. III 5:1-11 (Jacobs).

[13] Plaintiff Johanes Peter Schroer lives in District 3. Tr. II 228:20-21 (Schroer).

[14] Plaintiff Anne Harding lives in District 4. Tr. II 7:18 (Harding).

[15] Tr. II 28:10-16; 32:11-13 (Morrison). *See also* Pls. #68, Morrison Report; *and* Pre-Trial Order, Dkt. 126, Stipulated Fact #45 (Anglos are in the minority in 3 out of the 4 Commissioners Court Districts in the EP).

Throughout this litigation, the Plaintiffs have maintained that when Dallas County drew the EP, following the 2010 census, it purposefully diluted the Anglo vote, violating VRA § 2 and the Plaintiffs' federal statutory rights. After a four day bench trial, the record makes clear that the EP was enacted with exactly that discriminatory purpose.

A. The Record At Trial Makes Clear That Dallas Intentionally Diluted Its Anglo Voters

The Plaintiffs have demonstrated that, in direct violation of the VRA, the EP had the purpose of diluting Dallas's Anglos, a barred abridgement of their right to vote on account of race. The record establishes that racial considerations drove the creation of the EP, with the intent of disenfranchising Dallas's Anglo voters. That goal can be extrapolated from five different categories of intent evidence.

1. The Defendants Made Use of Racial Data

Although it was their original contention that race was not a factor used in the construction of the EP, the evidence on the record and the Defendants' own witnesses later made clear that racial data *was* considered and used. Indeed, the architect of the map, Matt Angle,[16] conceded he used race, even if he now attempts to qualify this statement with the claim that he did so as allowed by law.[17]

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[16] Although Defendants' counsel Hebert and Rios were actually retained to "draw" the maps (Pls' Ex. #12, Engagement Order), Mr. Hebert ultimately retained Mr. Angle to actually draw the EP, at his direction. Tr. IV 26:14 - 27:14 (Angle).

[17] The Plaintiffs take issue with this attempted qualification. Mr. Angle is not a lawyer and admits that he cannot offer such a legal opinion. Tr. IV 182:20 - 183:6 (Angle). He claims to have relied on the advice of counsel, but the Defendants have shielded that advice from production, citing privilege, instead asking the Court to simply trust them. More, there is no affirmative defense available to a dilution claim and, even if there were, the Defendants did not plead one.

Mr. Angle admits that the Commissioners Court ordered him to prepare racial shading maps as part of his map creation process and that he did, in fact create them.[18] Although he claims that he did not use them in crafting the EP, Mr. Angle concedes that he knew perfectly well the racial composition of Dallas's neighborhoods and subdivisions from his extensive campaign work and that, as a result, he did not *need* to have them open to draw districts with the racial compositions that "mattered" to how he drew the EP.[19] And he provided no explanation (not even a bad one) for why the Commissioners Court ordered his creation of racial shading maps before instructing him to craft proposed plans, especially since he concedes he did not perform a *Gingles* analysis on the racial make-up of Dallas County in 2011.[20]

2. There Is No Dispute That the Defendants Intended to Draw District 1 as a Hispanic Opportunity District

The Defendants also represented to the Department of Justice (the "DOJ") that it was their goal to maintain one Hispanic opportunity district, and create a second.[21] In seeking DOJ's preclearance of the EP, Mr. Hebert indicated that the Commissioner's Court made *an affirmative decision* to draw District 1 with an Anglo minority.[22]

In his testimony, Mr. Angle illuminates that the Defendants sought both to maintain what they viewed as an existing Hispanic opportunity district and to create a second such district. He

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[18] Tr. III 245:1 – 245:9 (Angle).

[19] Tr. IV 187:14 - 188:12 (Angle).

[20] *Compare* Tr. IV 184:12 - 187:6 (Angle) (Performed an analysis to confirm District 1 would elect an African American/Hispanic majority candidate of choice and Hebert was not qualified to have performed that type of analysis elsewhere); *with* Tr. III 103:19 - 106:16 (Turner); *and* Tr. III 116:23 - 118:23 (Turner) (no analysis was done to determine if retrogression would occur).

[21] Pls.' Ex. #16, Department of Justice Submission; Pls.' Ex. #17, Department of Justice Submission; Tr. IV. 9:20 - 11:2 (Angle).

[22] Pls.' Ex. #17, Department of Justice Submission.

acknowledges that the Defendants' DOJ submissions indicates that rather than drawing district 2, and then proceeding to draw a Hispanic opportunity district, an African American opportunity district, and creating the final district (what would be District 1) with "what was left over" as they have tried to argue,[23] the Defendants *decided to draw District 1 as a Hispanic Opportunity District.*[24] At the Commissioners Court Meetings of May 10, 2011[25] and May 21, 2011,[26] Mr. Hebert can be found to clearly indicate that the primary guiding principal observed in the creation of the EP was racial. Mr. Angle indicated under oath at his deposition that he understood his directions from Mr. Hebert, on behalf of the Defendants, to indicate that he must draw three majority-minority districts.[27] In fact, according to Mr. Angle, the *racial* makeup of *each* district, not just District 1,[28] mattered to how he drew *every single district.*[29] And when he had completed the map for presentation to the Commissioners Court, Mr. Angle made sure that the districts "aligned with the racial makeup of the county."[30] He admits that he specifically analyzed whether or not Hispanics, African Americans, or a coalition thereof, could elect their

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[23] Tr. IV 21:4 - 21:10 (Angle).

[24] Pls. Ex. #16-17, Department of Justice Submissions.

[25] Tr. III 103:19 - 106:16 (Turner). *See also* Pls.' Ex. #18, Recording of May 10, 2011 Meeting; *and* Pls.' Ex. #19, Transcript of Recording of May 10, 2011 Meeting.

[26] Tr. III 109:13 - 110:23 (Turner). *See also* Pls.' Ex. #22, Recording of May 21, 2011 Meeting; *and* Pls.' Ex. #23, Transcript of Recording of May 10, 2011 Meeting.

[27] Tr. IV 5:14 - 7:10; Mr. Angle reversed this testimony before trial and continued to repeat the reversal on the stand. 7:11 - 9:15 (Angle). His reversed testimony is not credible. It requires the Court to accept that he understood the word "require" – when repeated three (3) times in a minute – to mean "result in[,]" and then proceeded to answer the same question, without objection, twice in a minute.

[28] Tr. IV 25:10-28:4 (Angle)

[29] Tr. iV 17:9-23 (Angle). *See also* Pre-Trial Order, Dkt. # 126, Stipulated Fact #38.

[30] Tr. IV 183:7-11 (Angle).

preferred candidate in District 1, and that until and unless that was the case, he would not consider the map have met Mr. Hebert's specifications.[31]

Mr. Angle, Mr. Hebert, and Mr. Rios, in presenting the map anticipated that African American and Hispanics population shares were rising,[32] but that they were still each, separately, a minority of Dallas County's CVAP. Despite that fact, and the fact that Anglos constituted just shy of half of Dallas's electorate, they intentionally raised the number of seats that would be occupied by candidates chosen by Hispanic and African American voters from 2 out of 4 to 3 out of 4.[33]

3. The Commissioners Court Considered Race When Evaluating and Passing the EP

There is no dispute that the Commissioners' Court considered race as a factor when instructing Mr. Hebert and Angle to produce the EP, and when adopting it. The Defendants made far too many contemporaneous references to race as they debated the map prepared for them by Mr. Angle to credibly suggest they racial assessments were less than central to the redistricting process.

For example, at the public hearing on May 10, 2011, concerning the proposed map, 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.[34] At that same meeting, Commissioner John Wiley Price indicated his approval of the map as it was presented by Mr. Hebert and Mr. Angle

[31] Tr. IV 184:12 - 187:6.

[32] Tr. IV 121:15 – 122:1 (Angle).

[33] *See also* Pls.' Ex. #24, Cantrell Statement.

[34] Tr. III 103:19 - 106:16 (Turner). *See also* Pls. Ex. #18, Recording of May 10, 2011 Meeting; *and* Pls. Ex. #19, Transcript of Recording of May 10, 2011 Meeting.

because it "reflects the demography" and the "racial makeup, [and] political behavior" of the county,[35] before Elba Garcia spoke of how drawing an additional racially-defined district "just made sense[;.]"[36] Mr. Hebert again, made similar comments invoking the use of race at the May 21, 2011 Commissioners Court Meeting.[37] Judge Jenkins briefly suggested that non-racial factors should come into play, only to be cowed by Commissioners Price and Garcia, and to leave the map unchanged following Mr. Hebert's promised investigation of the racial impact of those factors.[38] These of course are just examples of the myriad mentions of race by the Defendants contemporaneous with their consideration and passage of the EP.[39]

4. Dallas Did Not Seek, and Did Not Listen to Anglo Input

First, the Commissioners' Court outsourced the drawing of the EP to a Democratic attorney, who then hired a Democratic Campaign operative,[40] to ensure that ordinary rules of legislative transparency would not apply. Although the Defendants' submissions to the Department of Justice make clear that they sought to draw a second Hispanic opportunity district and settled, in District 1, for an African American/Hispanic coalition district,[41] the man who

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[35] Tr. III 98:10 - 99:5 (Turner); *and* Tr. III 99:7 - 102: 21 (Turner). *See also* Pls. Ex. #18, Recording of May 10, 2011 Meeting; *and* Pls. Ex. #19, Transcript of Recording of May 10, 2011 Meeting.

[36] Tr. III 102:22 - 103:18 (Turner). *See also* Pls.' Ex. #18, Recording of May 10, 2011 Meeting; *and* Pls.' Ex. #19, Transcript of Recording of May 10, 2011 Meeting.

[37] Tr. III 109:13 - 110:23 (Turner). *See also* Pls. Ex. #22, Recording of May 21, 2011 Meeting; *and* Pls. Ex. #23, Transcript of Recording of May 10, 2011 Meeting.

[38] Tr. III 108:19 - 109:9 (Turner); and Tr. III 110:24 –114:11.

[39] Plaintiffs will discuss more fully all the statements on the record regarding race when Category 2 is discussed below.

[40] Mr. Angle conceded in his report that his history of representing Democratic candidates and causes is long and lengthy. Pls.' Ex. #65, pp. 20-21. He further concedes he has no expertise in demography or quantitative analysis (Tr. IV 203:16 – 203:25 (Angle)).

[41] Pls.' Ex. #17, Department of Justice Submission.

drew the maps claims he does not know of the legal justification for this.[42] He indicates that these were his instructions, as he understood them, from Mr. Hebert on behalf of the Defendants, to indicate that he must draw three majority-minority districts.[43] He further demonstrates that it is possible that someone did that analysis, but since he was only a subcontractor to Mr. Hebert, he would have no way of knowing what other information Mr. Hebert did or did not have, or who may have provided that information. Ultimately, we are expected to believe the analysis was done, and the Defendants' motivations were lawful, but we are not permitted to know what they were. This entire scheme of lawyers to subcontractors prevents Plaintiffs from examining information a legislative body might normally be expected to reveal.

The record demonstrates that while the Commissioners Court spent much time in Executive Session, and in discussion with Hebert, Rios, and Angle, they virtually cut out Dallas's Anglo citizens from the redistricting process, and from County Government in its entirety, which makes it difficult to prove that the consequences of Anglos votes being diluted was not intended.[44] Commissioner Cantrell was forced to send out a memo indicating that he was being virtually shut out of the process, and that several Anglo communities of interest were being negatively impacted from the exclusion.[45] Indeed, Commissioner Dickey was given a different version of the EP to be voted on than the one which was actually to be voted on, meaning she did

[42] Tr. IV 25:10 - 28:4 (Angle).

[43] Tr. IV 5:14 - 7:10; 7:11 - 9:15 (Angle).

[44] *Davis v. Bandemer*, 478 U.S. 109, 129 (1986) (plurality opinion).

[45] Pls. Ex. #24, Cantrell Statement. *See also* Tr. III 125:17 - 127:1.

not even *see her new district until the day it was voted on.*[46] And, the vote was scheduled to be taken while she was out of town.[47]

Furthermore, 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.[48] Jeff Turner warned the Court that the record they were creating smacked of racial predominance, and they neither engaged with him, nor took his admonishment seriously.[49] Instead, the Defendants marched merrily along, prioritizing the interests and power of the racial groups composing Dallas's bloc-voting majority at the expense of the Dallas Anglos they excluded from the process.

5. **There Is Overwhelming Evidence The Defendants Made a Conscience Choice to Subordinate Traditional Redistricting Factors to Racial Considerations**

The record also record makes abundantly clear that all other redistricting goals were subordinated to race in the drawing and enactment of the EP. Now, the Defendants have maintained that they considered traditional redistricting principles, and that race was not predominant.[50] However, even if Angle and his fellow drafters considered other traditional principles (such as balancing population, or incumbent protection) and weighed them against racial considerations, this would merely established that race was used, but was not the *only* goal. Plaintiffs are not required to prove that racial results were the *only* goal. Indeed, any such

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[46] Dfds.' Ex. #52.

[47] *Id.*

[48] Tr. III 124:20 - 125:16 (Turner); 155:21 - 169:15 (Lovell); 174:11 - 175:17 (Lovell); IV 67:4 - 73:7 (Love).

[49] Tr. III 119:24 - 121:16 (Turner). *See also* Pls.' Ex. #22, Recording of May 21, 2011 Meeting; *and* Pls.' Ex. #23, Transcript of Recording of May 10, 2011 Meeting.

[50] Tr. III 122:16 – 123:7 (Turner).

requirement runs afoul of Supreme Court precedent.[51] Rather, the Plaintiffs need only show that racial dilution was *a* purpose of the EP and/or without justification in order to prevail on their intentional dilution claim.

Even if there were plausible non-racial reasons to design the Commissioners Court districts as Mr. Angle did in the EP, the record is rife with the Defendants' own statements which belay the idea that those policy goals motivated the final adoption of the EP. The Commissioners Court own Criteria Order makes clear that they ranked racial considerations ahead of all other traditional redistricting factors, second only to the equalization of population.[52] Their criterion order does not allow for the consideration of political advantage,[53] and Mr. Angle admitted that the Criteria Order compelled him to place racial consideration ahead of all such unlisted considerations.[54]

Furthermore, Mr. Angle's sworn testimony completely contradicts any assertion that the EP, and in particular, District 1, was drawn pursuant to traditional redistricting goals, after accounting for population equalization. First, his testimony illuminates that it was a goal of the Defendants from the jump not only to maintain what they viewed as an existing Hispanic opportunity district, but to create a second such district. He acknowledges that the Defendants' DOJ submission indicates that (despite their post-hoc rationale that District 1 was "what was left

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[51] *See* LULAC v. Perry, 548 U.S. 399, 416 (2006) (opinion of Kennedy, J.) (rejecting sole-intent test); *Vieth v. Jubelirer,* 541 U.S. 267, 284 (2004) (plurality opinion) (rejecting predominant-intent test).

[52] Pls.' Ex. #15, Criteria Order. *See also* Pre-Trial Conference, Dkt. #126, Stipulated Fact #26.

[53] Tr. III 252:20-23 (Angle). *See also* Pls.' Ex. #15, Criteria Order.

[54] Tr. III 253:2-5 (Angle). ("These things being superior to other things, yes.")

over" after the creation of the rest of the EP)[55] the Defendants *decided to draw District 1 as a coalition district to be dominated by Hispanics and African Americans.*[56]

When it came time to present the map, the Defendants discussed and evaluated the map based on racial considerations. The sheer amount of discussion and commentary of racial issues regarding the map far exceeds any discussion of traditional redistricting criteria.

- At the May 10, 2011 meeting Commissioner Price gives his approval of the EP as presented because it reflects the "racial makeup" of Dallas County.[57] Commissioner Garcia indicated her approval as well, is based on the racial allocations made by the EP, stating it "just made sense" to create another Hispanic and/or African American opportunity district.[58]
- At the May 21, 2011 meeting, the Commissioners Court's discussion clearly established that they were subordinating the continuity of communities of interest to the racial goal of constraining Anglo voting-power. Judge Jenkins raised the input from an Anglo constituent who hoped that Lake Highlands and White Rock Lake could be kept whole, even if separated; Commissioners Price, and Garcia, followed by a cowed Judge Jenkins, indicated that this traditional redistricting principle could and would not be allowed to interfere with the racial goals they (inaccurately) shorthanded as avoiding

[55] Tr. IV 21:4 - 21:10 (Angle).

[56] Pls.' Ex. #16-17, Department of Justice Submissions.

[57] Tr. III 99:7 - 102: 21 (Turner). *See also* Pls' Ex. #18, Recording of May 10, 2011 Meeting; *and* Pls.' Ex. #19, Transcript of Recording of May 10, 2011 Meeting.

[58] Tr. III 102:22 - 103:18 (Turner). *See also* Pls.' Ex. #18, Recording of May 10, 2011 Meeting; *and* Pls.' Ex. #19, Transcript of Recording of May 10, 2011 Meeting.

"retrogression."[59] In other words, the Commissioners refused to even *consider* following the traditional redistricting principal of keeping communities of interest whole, where those communities were majority Anglo. While Mr. Hebert tried to cloud matters contemporaneously with a promise to "look into" the matter,[60] a majority of the Commissioners Court had already made clear that they would not even *consider* voting for any proposal that failed to weaken Anglo voting power*, regardless of what traditional redistricting principles might say.* And even Mr. Hebert's attempt to cloud matters is a farce: Mr. Angle testifies he never performed the regression analysis requested by Judge Jenkins and promised by Mr. Hebert at the May 21st meeting.[61] Instead, he testifies he performed an entirely different analysis, submitted that to the Commissioners Court, and never heard anything further about the Lake Highlands/White Rock Lake situation.[62] Mr. Angle was also unable to provide an explanation for *why* he was never asked to do the analysis Mr. Hebert promised. He specifically testified that: (a) no one ever commented on his delivery of an entirely different analysis; (b) he is unaware of any additional analysis having been performed by someone else on the matter; and (c) Mr. Hebert could not have performed it himself.[63] The explanation is obvious: the Commissioners Court had already made their race-based decisions and achieved their race-based goals.

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[59] Tr. III 108:9 - 109:9; 110:24 - 114:11 (Turner). *See also* Pls.' Ex. #22, Recording of May 21, 2011 Meeting; *and* Pls.' Ex. #23, Transcript of Recording of May 10, 2011 Meeting.

[60] Tr. III 112:5 - 112:9 (Turner).

[61] Tr. III 116:23 - 118:23 (Turner).

[62] Tr. IV 189:3 – 191:11 (Angle).

[63] Tr. IV 184:12 – 187:10 (Angle).

Traditional redistricting principles meant nothing to the Defendants when racial considerations determined a particular outcome was necessary.

Whatever role traditional criteria may have played in the creation and enactment of the EP, race's place in the process is clearly established.[64] When Mr. Angle began his work, the Commissioners Court ordered him to prepare racial shading maps.[65] When *asked* to analyze the necessity of splitting communities of interest, he failed to consider obvious options (allegedly on his own authority),[66] and instead performed a completely non-responsive analysis.[67] There is simply no indication that the use of traditional redistricting factors controlled the development and enactment of the EP.

These five categories of intent evidence bear out the Plaintiffs' pleadings. The record establishes the purpose of the EP as it was created and enacted: to advance the voting power of African Americans and Hispanics above their share of Dallas's electorate, at the expense of the voting power of Dallas's Anglo minority. The Commissioners Court classified voters into racial groups, and intentionally discriminated against Anglo voters because they were Anglo.

B. Defendants Cannot Show A Contemporaneous Good-Faith Basis To Use Race in the Drawing of The EP

Rather than address the overwhelming evidence of racial purpose, the Defendants and their Experts seek, post-facto, to justify their use of race with an unpled, inapplicable, back-door affirmative defense: namely that the Voting Rights Act required it.

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[64] The Defendants' own expert claimed that the sole redistricting criteria applicable in Texas are equalizing population and contiguity. Tr. V 148:2-9 (Lichtman).

[65] Tr. III 245:1 – 245:9 (Angle).

[66] Tr. IV 192:18 – 195:21 (Angle).

[67] See, Footnote 65, Supra.

For example, Mr. Angle now says he used race, but only to the extent allowed by law.[68] Setting aside for a moment that the Defendants are trying to backdoor a defense they never pled, there is *no evidence* that Dallas performed any analysis in 2011 that would establish such a defense. Mr. Angle concedes that he never performed any *Gingles* analysis to determine if this was in fact, appropriate, or necessary.[69] In fact, in relation to the Commissioners Court Criteria Order,[70] Mr. Angle testified he never understood Anglos as a racial group to be entitled to an "opportunity" to elect their preferred candidates, where numbers and geography would allow it.[71] He also conceded that he never understood the Criteria Order to include Anglos when discussing minority groups whose voting strength must be protected from retrogression under the Voting Rights Act.[72] And although Mr. Angle claims to have drawn District 2 to satisfy a completely undocumented, alleged request for one "strongly conservative Republican district,"[73] he and the Defendants never performed any analysis of whether or how this District might protect the voting rights of Dallas's Anglo population. This assertion, coupled with Mr. Angle's admission to contemporaneous knowledge that Anglos have a higher CVAP population than other racial groups,[74] only further buttresses the conclusion that Dallas made an intentional use of race to pack, crack, and dilute the political clout of Anglo voters.[75]

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[68] Tr. IV 182:4 – 183:2 (Angle).

[69] Tr. IV 182:24-25 (Angle).

[70] Pls'. Ex. #15, Criteria Order.

[71] Tr. III 250:8-23 (Angle); 252:4-11 (Angle). *See also* Voting Rights Act § 2.

[72] Tr. III 248:11-20 (Angle). *See also* Voting Rights Act § 5.

[73] Tr. IV 16:18-25 (Angle).

[74] Tr. IV: 11:6-8 (Angle).

[75] Tr. IV 16:18-25 (Angle).

Mr. Angle's claim to have relied on Mr. Hebert's legal analysis doesn't change anything. The Defendants never shared the content of these discussions with the Court, or the basis for Mr. Hebert's alleged conclusions. To the contrary, the Defendants made affirmative attempts to shield the content of that direction from judicial scrutiny.[76] So while Mr. Angle insists that Mr. Hebert would never lie to DOJ,[77] he has no idea what makes up the basis for the assertion that the VRA required the use of race. He only knows that: (a) Mr. Hebert asserted to DOJ that race was used; (b) Mr. Hebert told him that race *must* be used;[78] (c) Mr. Angle never performed any analysis to justify that conclusion; and (d) Mr. Hebert is not qualified to have done so.[79]

IV. The EP Violates the § 2 Rights of Dallas's Anglo Voters

§ 2 of the VRA prohibits any "voting qualification or prerequisite to voting or standard, practice, or procedure…which results in a denial or abridgment of the right of any citizen of the United States to vote on account of race or color…."[80] A Plaintiff can prove that § 2 has been violated if "based on the totality of the circumstances, it is shown that the political processes leading to the nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by [this statute]."[81]

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[76] Because there certainly is no evidence of any such guidance or advice, or analysis performed on the record, to the extent that the Defendants continue to insist on its existence, Plaintiffs are left to presume it takes place in these so called privileged conversations and sessions.

[77] Tr. IV 25:10 - 28:4 (Angle).

[78] Tr. IV 5:14 - 7:10; 7:11 - 9:15 (Angle).

[79] Tr. IV 184:12 - 187:6 (Angle).

[80] 52 U.S.C. § 10301(a).

[81] *Id.* § 10301(b).

"§ 2 proscribes practices that, while permitting a mechanical exercise of the right to vote, 'operate[ ] to cancel out or minimize [i.e. dilute] the voting strength of racial groups," such that members of the racial minority have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice."[82] "A state or political subdivision thereof violates § 2 whenever it adopts a practice that dilutes the voting strength of a minority group, such that members of the minority group have less opportunity for meaningful participation and franchise.[83]

It is this type of violation the Plaintiffs alleged against Dallas County. The four Plaintiffs in this matter brought their § 2 claim to allege that rather than having an equal opportunity to elect their preferred representatives, Anglos in Dallas County have had their votes diluted. In 1986, the Supreme Court laid out in *Gingles* a two-part framework for courts to evaluate whether or not a Plaintiff or Plaintiffs asserting such § 2 claims prevail.[84] The first tier requires Plaintiffs to prove three preconditions: "(1)[the minority group must be] sufficiently large and geographically compact to constitute a majority in a single-member district; (2) it [must be] politically cohesive; and (3) the [racial] majority [must] vote[] sufficiently as a bloc to enable it —in the absence of special circumstances—usually to defeat the minority's preferred candidates."[85] If the Plaintiffs can prove those three preconditions, the analysis must move to the second tier of the framework, wherein "plaintiffs must then prove that, 'based on the totality of

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[82] *Rodriguez v. Harris Cnty.,* 964 F.Supp.2d at 698 (citing 42 U.S.C. § 1973).

[83] *Id.* (*citing Voinovich*, 507 U.S. at 157; *and Gingles*, 478 U.S. at 44).

[84] *Gingles*, 478 U.S. 30 (1986).

[85] *Sensley v. Albritton*, 385 F.3d 591, 595 (5th Cir. 2004) (quoting *Clark v. Calhoun Cnty., Miss*., 21 F.3d 92, 94-95 (5th Cir. 1994)).

the circumstances,' they have 'less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice."[86]

A. Plaintiffs Have Definitively Met *Gingles 1*

The first *Gingles* precondition is normally considered to be broken down into two subcategories: numerosity and compactness. When a plaintiff shows that his or her racial or language minority is a large enough portion of the electorate, which is compact enough that another district could have been drawn for it, allowing that community the chance to elect more candidates the community prefers, that plaintiff meets the first *Gingles* precondition.[87]

1. Numerosity

To satisfy numerosity, the Plaintiffs must establish that it would be possible to draw an additional district with a majority Anglo CVAP, without undermining any already existing.[88]

The parties have stipulated that Anglos are a minority in Dallas County.[89] The. Parties have stipulated that they were a racial minority in Dallas County in 2011.[90] And, although the Defendants deny that Dallas County Anglos are large and compact enough to constitute the majority of another single-member district, they offered no *evidence* that Plaintiffs have failed to meet their burden.[91]

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[86] *Id.* (quoting *Clark*, 21 F.3d at 94).

[87] *Rodriguez v. Harris Cnty.,* 964 F.Supp.2d at 725 (citing *Hall v. Virginia,* 385 F.3d 421, 429 (4th Cir.2004)).

[88] Rodriguez 964 F.Supp.2d at 725 (S.D. Tex. 2013) (citing *Valdespino*, 168 F.3d at 853; *Perez v. Pasadena Indep. Sch. Dist.,* 165 F.3d 368, 372 (5th Cir.1999); Campos, 113 F.3d at 548).

[89] Pre-Trial Order, Dkt. 126 Stipulated Facts #44; #47.

[90] Pre-Trial Order, Dkt. #126 Stipulated Facts #5-6; #19.

[91] *Rodriguez v. Harris Cnty,,* 964 F.Supp.2d at 724 (S.D. Tex. 2013) (citing *LULAC*, 548 U.S. at 425, 126 S.Ct. 2594; see also *Growe*, 507 U.S. at 40, 113 S.Ct. 1075; *Gingle*s, 478 U.S. at 50–51, 106 S.Ct. 2752).

And, although Defendants do dispute that Dallas County Anglos are large and compact enough to constitute the majority of another single-member District, there is no *evidence* in the record beyond their assertions and conjecture to disprove that Plaintiffs have met their burden to demonstrate to this Court just that.[92]

Now, the Defendants' experts have attempted to assert that the Anglo population is far too low to sustain two Anglo opportunity districts, but their own expert Dr. Barreto concedes that drawing two districts with Anglo-majority CVAPs is possible.[93] Mr. Angle concedes that Anglos have a much higher CVAP than do other racial groups, and that therefore it is entirely possible for Anglos to make up a much larger percentage of the CVAP than they do of the general population.[94] Dr. Barretto compiled a report he insists is dispositive in showing that the percentage that Anglos comprise of the population could not sustain a second district, but acknowledges he did not perform his analysis using CVAP.[95] When asked why he did not use CVAP, he merely stated that he hadn't been asked to do so.[96] When asked if he knew that CVAP was required by the 5th Circuit Court of Appeals,[97] he admitted he did and that the Court in *Rodriguez v. Harris*, a case in which he was the plaintiffs' expert, noted in its opinion that this

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[92] *Rodriguez* 964 F.Supp.2d at 724 (S.D. Tex. 2013) (citing *LULAC*, 548 U.S. at 425, 126 S.Ct. 2594; see also *Growe*, 507 U.S. at 40, 113 S.Ct. 1075; *Gingle*s, 478 U.S. at 50–51, 106 S.Ct. 2752.).

[93] Tr. IV 37:7-8.

[94] Tr. IV 17:9-23 (Angle). Dr. Barreto too, admits that Anglo CVAP is higher than that of other racial groups. Tr. V 36:24 – 37:1 (Barreto).

[95] Tr. IV 36:5 – 36:7 (Barreto).

[96] Tr. IV 36:8 – 36:10; Tr. V 45:9-14 (Barreto).

[97] *Rodriguez* 964 F.Supp.2d at 726 (S.D. Tex. 2013) (citing *Valdespino v. Alamo Heights Independent School Dist.*, 168 F.3d 848, 853 (1999).

was the required standard.[98] The Defendants' third expert, Dr. Lichtman, conceded in cross-examination that he performed no quantitative analysis on this topic.[99]

When CVAP of Anglos is considered, as is required for a *Gingles 1* analysis by the Court of Appeals' binding authority,[100] it is clear from the record that Anglos objectively satisfy numerosity*:* there are a sufficient number of Anglos to constitute more than fifty percent (50%) of two (2) districts' CVAP.[101]

2. Compactness

To fully satisfy *Gingles* 1, courts require plaintiffs to submit at least one hypothetical redistricting proposal demonstrating the possibility of drawing a geographically compact district or districts avoiding the violation of the plaintiffs' voting rights.[102] In addition to satisfying numerosity, a plaintiff's plan must show that the resulting district(s) will be comparably consistent with traditional redistricting principals.[103] The Plaintiffs' claim succeeds if they satisfy both of these requirements.

Plaintiffs' map is also as good as, if not superior to, the EP in terms of respecting and observing traditional redistricting criteria.[104] Although the Defendants insists this is not true,

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98 Tr. IV 42:21 – 45:14 (Barreto).

99 Tr.IV 171:8-13 (Lichtman).

100 Supra 120.

101 *Valdespino*, 168 F.3d at 853.

102 *Houston v. Lafayette Cnty., Miss.,* 56 F.3d 606, 611 (5th Cir. 1995) (the issue is "whether the [Plaintiffs'] proposal demonstrate[s] that a geographically company district could be drawn."). *See also e.g. Fairly v.* 584 F. 3d at 669.

103 *LULAC,* 548 U.S. at 433 (citing *Abrams v. Johnson*, 521 U.S. 74, 91 (1997) and (quoting *Miller v. Johnson*, 515 U.S. 900, 920 (1995)). *See also Abrams* 521 U.S. at 92; *Fairley,*584 F.3d at 670

104 Tr. II 184:16 - 186:13 (Morrison).

they cannot seem to nail down exactly what the criteria they observed and respected even are.[105] However, the record clearly establishes that the Plaintiffs' demonstrative map equalizes population (better than the EP);[106] is as reasonably compact as the EP;[107] and protects incumbency as well as the EP does.[108] Moreover, as Plaintiffs' expert Dr. Morrison points out, the plaintiffs' proposal is superior with regard to city splits[109] and preserving communities of interest.[110] In fact, the Defendants' own expert admitted that there are at least 9 city splits in the EP,[111] while there were only 8 city splits in the Plaintiffs' alternative, one of which contained no population.[112] Plus, the Plaintiffs' proposal fairly respects the interests of other ethnic groups within Dallas County.[113]

Rather than contest any of these established facts, the Defendants contend that somewhere within *Gingles* 1 is embedded a requirement that demonstration districts must be expected to "perform" in every election. The Defendants are entirely wrong. The Plaintiffs need not show that Anglos will ultimately succeed at the polls if their demonstrative map (or one like it) were enacted.[114] The goal of § 2 is to guarantee minorities an equal *opportunity*, through a

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105 Tr. IV 148:2-9 (Lichtman).

106 Tr. II 187:17-24 (Morrison).

107 Tr. II 188:19-190:7 (Morrison).

108 Tr. II 188:19 - 190:7 (Morrison).

109 Tr. II 199:8-18 (Morrison).

110 Tr. II 195:6-8 (Morrison).

111 Tr. IV 209:10 - 210:23 (Angle).

112 Tr. IV 211:21 - 213:15 (Angle).

113 Tr. II 199:19 - 190:11 (Morrison).

114 *De Grandy*, 512 U.S. 997, 1014 (1994); Rodriguez v. Harris.

fair electoral process.[115] But § 2 protects only that opportunity, "not the right to vote for the winning candidate."[116] That's why the vital threshold is 50% +1 of CVAP – it gives a plaintiff's minority group the *opportunity* to be a meaningful part of the electorate, commensurate with its percentage of the electorate, without stripping the possibility that the group's candidate could still lose, just like that of any other voter or group of voters.[117]

Plaintiffs have clearly met their burden to satisfy all three *Gingles* preconditions,[118] and thus move on to show this Court that they can also survive a Tier 2 analysis.

B. Plaintiffs Have Demonstrated It Is Possible for the County to Have Adopted a Map that Would Have Respected Those Rights

Plaintiffs' expert Dr. Hood testified that there is irrefutable evidence that Anglos in Dallas County are politically cohesive *at the County Commissioner Court level* of government, always voting as a bloc.[119] Defendants' expert, Matt Angle, conceded that this was the case.[120] Dr. Lichtman, another of the Defense's experts, also conceded that racially polarized voting was evident in Dallas county,[121] indicating "I don't think any expert disputes" its existence.[122]

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[115] *De Grandy*, 512 U.S. at 1014 n. 11 (1991) ("the ultimate right of § 2 is equality of opportunity"); *Campos v. City of Houston,*113 F.3d 544, 546 (5th Cir. 1997); *Hall* 385 F.3d at 429.

[116] *Nevett v. Sides*, 571 F.2d 209, 236 (5th Cir. 1978).

[117] *United States v. Euclid City Sch. Board*, 632 F.Supp.2d 740, 752 (N.D. Ohio 2009).

[118] *League of United Latin Am. Citizens No. 4552 v. Roscoe Indep. Sch. Dist.,* 123 F.3d 843, 847 (5th Cir.1997); *League of United Latin Am. Citizens No. 4434 v. Clements,* 986 F.2d 728, 743 (5th Cir.1993) ("*LULAC III*"); *Benavidez v. Irving Indep. Sch. Dist.*, 690 F.Supp.2d 451, 455 (N.D.Tex.2010).

[119] Tr. III 22:5 - 23:8 (Hood); 24:1-6 (Hood).

[120] Tr. III 241:3 - 242:22 (Angle).

[121] Tr. IV 103:3-5; 140:18-24 (Lichtman).

[122] Tr. IV 154:25 (Lichtman).

Meanwhile, Defense expert Dr. Barreto admitted that the Anglo bloc vote usually breaks down to 77% Republican and 23% Democrat, clearly evidencing the existence of Anglo bloc-voting.[123]

Dr. Hood also testified that a thorough analysis of endogenous elections show that the candidates of choice of the Anglo community are defeated by the choices of the majority, whose preferences diverge from that of Anglos.[124] Mr. Angle agreed that those preferences diverged and that three (3) of the four (4) current Commissioners are not favored by the Anglo community.[125] Specifically, Dr. Hood's analysis shows that when analyzing endogenous elections, the Anglo preferred candidate has won only one out of six contested elections over the last decade.[126] Under the EP, across all the districts excepting District 2,[127] Anglos' preferred candidates have been defeated an overwhelming number of times, always by the candidates preferred by the bloc-voting majority. In District 1, Anglo-preferred candidates went 2/5 over a decade when quasi-exogenous elections are included and 0/2 considering just endogenous elections; since the EP's enactment, Anglo-preferred candidates have lost all three (3) endogonous and quasi-endogonous elections in District 1 to the Commissioners Court.[128] In District 3, the Anglo-preferred candidate went 0/5 in endogenous and quasi-endogonous elections over the last decade (0/3 since the EP's enactment).[129] In District 4, the Anglo-preferred

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123 Pre-Trial Order, Dkt #126, Stipulated Facts #54-55.

124 Tr. III 22:5 - 23:8 - 24:1-6 (Hood). *See also* Pls.' Ex. #69, Hood Report, *and* Pls.' Ex. #72, Hood Supplemental Report.

125 Tr. III 241:3 - 242:22 (Angle).

126 Pls.' Ex. #69, Hood Report, Pls.' Ex. #72, Hood Supplemental Report; Pls.' Ex. #76.

127 Tr. III 78:1 - 79:4 (In District 2, the Anglo preferred candidate is 3/3, and when exogenous races are examined, 1/1, under the EP) (Hood).

128 Tr. III 74:17 - 77:25 (Hood);

129 Tr. III 79:5 - 80:15 (Hood).

candidate went 2/5 in endogenous races and quasi-endogonous elections over the last decade, with Anglo-preferred candidates have lost the only such contested race since the EP was implemented.[130] And, as Dr. Hood pointed out, no expert put on by Defendants reached any different conclusion concerning any of these elections.[131]

V. A Totality of the Circumstances Show that the Defendants Have Discriminated Against the Plaintiffs

The final burden the Plaintiffs must carry to prevail is to show this Court, having satisfied the three *Gingles* preconditions, that the totality of the circumstances reflects that the EP "impairs the ability of the minority voters to participate equally in the political process and to elect a representative of their choice."[132] This determination requires an evaluation of the "past and present reality"[133] of for the minority group, and should include an examination of what are commonly referred to as the "Senate Factors" – a list drawn from the legislative history of the

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130 Tr. III 80:16 - 81:20 (Hood).

131 Tr. III 85:22 - 86:8 (Hood).

132 *Rodriguez v. Harris Cnty.,* 964 F.Supp.2d 686, 699 (S.D. Tex. 2013) (citing *De Grandy,* 512 U.S. at 1011, 114 S.Ct. 2647; *Fairley,* 584 F.3d at 667 (citing *Sensley,* 385 F.3d at 595); *see also Bartlett v. Strickland,* 556 U.S. 1, 11–12, 129 S.Ct. 1231, 173 L.Ed.2d 173 (2009)).

133 *Rodriguez* 964 F.Supp.2d at 699 (S.D. Tex. 2013) (citing *Gingles*, 478 U.S. at 45, 106 S.Ct. 2752 (quoting S.Rep. No. 417, 97th Cong., 2d. Sess., (1982) ("Senate Report") at 30, reprinted in 1982 U.S. Code Cong. & Admin. News ("U.S.C.C.A.N.") 177 at 208).

VRA's 1982 re-enactment.[134] These factors, however, are not "comprehensive or exclusive."[135] Instead of being controlled solely by the Senate Factors, the 5th Circuit Court of Appeals has directed lower courts to be "flexible in its total inquiry,"[136] and, using the Senate factors as a guide, to weigh any additional information that may bear or impact the issue of the dilution of the voting power of the minority group in question.[137]

A. Defendants Wrongly Assert Historical Discrimination to be a Threshold Requirement

The Defendants seek to shut and lock the courthouse doors to the Plaintiffs and their race, deliberately misconstruing the 5th Circuit's standards regarding the totality of the circumstances. Instead of recognizing that "the totality of the circumstances inquiry presents very complex political and legal issues whose resolution requires a comprehensive canvassing of the relevant facts,"[138] the Defendants would have this Court believe that not only are the Senate Factors

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[134] *Rodriguez* 964 F.Supp.2d at 699. (" In conducting this broader inquiry, the court should consider the objective factors set forth in the Senate Report accompanying the 1982 amendments to the Voting Rights Act, including: (1) the history of voting-related discrimination in the State or political subdivision; (2) the extent to which voting in the elections of the State or political subdivision is racially polarized; (3) the extent to which the State or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group; (4) the degree to which members of the minority group have been denied access to the candidate slating process; (5) the extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process; (6) the use of overt or subtle racial appeals in political campaigns; (7) the extent to which members of the minority group have been elected to public office in the jurisdiction; (8) whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group; and (9) whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice, or procedure is tenuous." *Id.* at 699-700. (citing Senate Report at 28–29, 1982 U.S.C.C.A.N. at 206–07; *Perry,* 548 U.S. at 426, 126 S.Ct. 2594 (citing *Gingles,* 478 U.S. at 44 –45, 106 S.Ct. 2752)).

[135] *Gingles*, 478 U.S. at 45, 106 S.Ct. 2752; *Teague v. Attala Cnty., Miss*., 92 F.3d 283, 292 (5th Cir.1996)

[136] *Teague* 92 F.3d 283, 292 (5th Cir.1996).

[137] *See Gingles,* 478 U.S. at 45, 106 S.Ct. 2752.

[138] *Rodriguez* 964 F.Supp.2d at 699 (S.D. Tex. 2013) (citing *De Grandy,* 512 U.S. at 1011, 114 S.Ct. 2647).

exclusive, but that Senate Factors 3,[139] 4,[140] and 5[141] are dispositive. As Counsel for the Defense noted in his Motion for a Summary Verdict, the Defense believes that Plaintiffs could very well prove all three of the *Gingles* preconditions, and *must still lose* unless the Plaintiffs can prove that Anglos have been discriminated against to the extent African Americans and Hispanics have been in the past – that without such a showing, Anglos are not entitled to protection under the VRA.[142] In other words, exactly as the Plaintiffs the Defendants would do,[143] the Defendants have argued that the VRA does not protect one race, the Plaintiffs', and cannot protect that race until and unless it acquires what Dr. Barretto calls a shared racial identity borne out of a shared history of racial discrimination.[144]

Plaintiffs readily concede that that they and their community have not ever suffered the kind of racial discrimination imposed by the Jim Crow South. Barring a transformation of some or all of America into Zimbabwe, they and their community never will. Unfortunately for the Defendants, such has no bearing on this litigation, because American law does not make Americans' protection from racial discrimination dependent on their race – this is exactly what the equal protection clause of the 14th Amendment forbids.

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[139] The third Senate Factor is " the extent to which the State or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group." Senate Report at 28–29, 1982 U.S.C.C.A.N. at 206–07.

[140] The fourth Senate Factor is "the degree to which members of the minority group have been denied access to the candidate slating process." *Id.*

[141] The fifth Senate Factor is "the extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process." *Id.*

[142] Tr. IV 32:19 – 33:9.

[143] Dkt. 98, p. 29.

[144] Tr. IV 17:10 - 18:17.

This Court is not meant to evaluate whether Anglos have matched the levels of discrimination African Americans faced in the Jim Crow South. Instead, this Court's determination of the totality of the circumstances has always been understood to be closely intertwined with *Gingles* Tier 1 analysis -- it is for this reason that courts have remarked that "it will only be the very unusual case in which the plaintiffs can establish the existence of the three Gingles factors but still have failed to establish a violation of § 2 under the totality of circumstances."[145]

Instead of embracing the Defendants' proposed standard, which would almost certainly render the Voting Rights Act unconstitutional, the Plaintiffs ask the Court to recognize its duty to conduct "an intensely local appraisal of the design and impact of the contested electoral mechanisms,"[146] and weigh the relevant information to determine whether or not dilution took place, and whether or not in the totality, Anglos in Dallas County are being denied the chance to fairly participate in the election of their Commissioners.

B. Plaintiffs Have Shown Clear Evidence of Defendants' Discrimination Against Anglo Dallasites

The Plaintiffs have provided more than ample evidence that, under the totality of the circumstances, Anglos suffer discrimination and disadvantage with regards to their County government, "which impairs their ability… to participate equally in the political process and to elect a representative of their choice."[147]

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[145] *Teague,* 92 F.3d at 292. *See also Clark v. Calhoun Cnty., Miss.*, 88 F.3d 1393, 1396 (5th Cir.1996) ("*Clark II*"); *Benavides,* 638 F.Supp.2d at 712–13.

[146] *Gingles,* 478 U.S. at 79, 106 S.Ct. 2752.

[147] *Rodriguez v. Harris Cnty.*, 964 F.Supp.2d at 699 (citing *DeGrandy*, 512 U.S. at 1011).

1. Racially Polarized Voting, Coupled with Racial Appeals in Elections, Lead to a Lack of Anglo Electoral Success

There is no disputing the existence of racially polarized voting in Dallas County.[148] There is also no disputing, that this racially polarized voting routinely leads to the defeat of the Anglo community's candidates of choice to the Commissioners Court.[149]

Dr. Hood's analysis on these fronts is borne out by the composition of the Commissioner's Court. The Defendants continually refer to the election of three (3) Anglos to the Commissioners Court as proof that Anglos enjoy electoral success, but *all* of their experts admitted under oath that three out of the four current Commissioners (as well as the County Judge), are NOT Anglo candidates of choice. Dr. Barreto conceded that Mike Cantrell, elected in Anglo-packed District 2, is the only Anglo-supported member of the Court.[150] He also conceded that contrary to what appeared in some of the Defenses' Expert Reports, Theresa Daniels is not.[151, 152] Going one step further, Mr. Angle admitted that he has *never*, as an expert or in *any* of his published work with the Lone Star Project, referred to the election of Republican Hispanic or Republican African Americans as proof of the electoral success of those communities.[153]

And there is no denying, as Plaintiffs' Expert Dr. Voth testified, the presence of racial appeals in campaigning in Dallas County Elections,[154] often used to categorize and "otherize"

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148 Footnotes 119-123, Supra.

149 Footnotes 124-131, Supra.

150 Tr. IV 80:9-15 (Barreto).

151 TR. IV 81:14 - 82:8 (Barreto).

152 Even Dr. Lichtman admits this to be the case. Tr. V 155:18 - 156:4 ("I'm not arguing they were the candidate of choice of Anglos.")(Lichtman).

153 Tr. IV 204:1 - 206:23 (Angle).

154 Tr. III 180:15 - 186:6 (Voth); 194:14-21 (Voth).

Anglos.[155] Indeed, far from denying that fact, Dr. Lichtman *agreed* that Dallas elections are characterized by racial appeals. And the Defendants offered no explanation (or expert analysis) challenging Dr. Voth's conclusion that appeals to race advanced in a racially polarized atmosphere systematically make it less likely for the preferred candidates of an out-of-step racial minority to win election, regardless of who makes them or why.

2. Commissioners Court Fails to Proportionally Represent the Anglo Minority

This lack of electoral success on the part of the Anglo minority yields a Commissioners Court that is woefully disproportional.[156] Although Anglos constitute approximately 45% of Dallas's CVAP,[157] their preferred candidates hold only one seat on the Commissioners Court.[158]

3. Majority of Commissioners Lack of Dependence on Minority Support, Which Results in Lack of Responsiveness to the Needs of Anglos and Open Expressions of Racial Contempt[159]

Dr. Hood's analysis (like the Defendants' experts' admissions) establishes that the majority of the Commissioners Court was elected without the support of Dallas's Anglos – these members of the Commissioners Court are simply not dependent on Anglo support for election. So it comes as no surprise that the record is replete with evidence that the resulting Commissioners Court lacks responsiveness to Anglos and Anglo concerns. Fundamentally, if the

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155 Tr. III 186:7-15 (Voth). *See also* Pls.' Ex. #70.

156 Tr. II 37:9-23. *See also* Pls.' Ex. #68, Morrison Report.

157 Pre-Trial Order, Dkt. #126, Stipulated Facts #44; #47.

158 Tr. IV 80:9-15 (Asserting that Commissioner Mike Cantrell is an Anglo candidate of choice) (Barreto); Tr. IV 214:6-8 (Commissioner Teresa Daniels is not an Anglo candidate of choice) (Angle); 11:24 - 12:2 (Commissioner John Wiley Price is not an Anglo candidate of choice) (Angle); and 12:3-6 (Commissioner Elba Garcia is not an Anglo candidate of choice) (Angle).

159 Plaintiffs assert the evidence on the record establishes both procedural and substantive responsiveness. *See* Ellen Katz, Documenting Discrimination in Voting: Judicial Findings Under § 2 Since 1982, (The Voting Rights Institute, 2005) pp. 44-47.

Commissioners know they do not now, nor will they ever, need the support of Anglo voters, they have no incentive to be responsive.[160] Dr. Lichtman's testimony evidences that the Defendants *still* have no idea what Anglos feel they have to be aggrieved by, and have yet to take seriously the idea that they must respect Anglo rights under the VRA as they would any other protected racial or language minority.[161]

To begin with, the County's HR director makes clear that although he believes he has an obligation, per the County's instruction, to make sure that the County's workforce closely mirrors in racial makeup the County's population,[162] the Commissioners Court has ordered into place a policy of specifically recruiting over-represented races, without specifically recruiting Dallas's underrepresented Anglo minority.[163] Unsurprisingly, with this policy in place, the County records establish that it knows full well that the amount of the County's workforce that Anglos represent is declining, has been declining for years, and is now below the Anglo percentage of Dallas's total population.[164] And although the Defendants' counsel attempted to "correct" *their own clients' records* at trial, by submitting what they averred were "corrected" employment numbers, their "corrected" submission still reflects that Anglos are underrepresented in the County workforce and declining in their share thereof.[165]

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[160] *See* Pls.' Ex. #69, Hood Report, *and* Pls.' Ex. #70, Hood Supplemental Report.

[161] Tr. IV 148:2-9 (Lichtman); 149:4-15 (Lichtman).

[162] Tr. III 222:7-14 (Graham).

[163] Tr. III 205:22 - 235:1 (Graham). *See also* Pls.' Ex. #25, HR Policy; *and* Pls.' Ex. #26 Dallas County Administrative Code § 86-1044.

[164] Pls.' Ex. #27, Actual Employment Numbers, Dallas County.

[165] Pls.' Ex. #27-C, Corrected Employment Numbers, Dallas County.

The County and the Commissioners Court have no sworn to lacking any knowledge of any concerns or complaints Dallas's Anglo community.[166] Even when those concerns are identified for them, they ignore them.[167] Indeed, Anglo citizens, contemporaneously with the drawing and adoption of the EP, routinely attempted to make their concerns known to the Commissioners Court, only to be ignored, rejected, and insulted.[168][169] Commissioner Garcia's own Chief of Staff concedes that she and the other Commissioners were aware of, but did not respond to, the concerns of Anglo citizens (of both major parties) regarding the firing of an Anglo County Elections Administrator of indeterminate partisanship.[170] He also conceded that when the expression of those concerns resulted in Anglo citizens being verbally abused, berated, and called racial slurs by a member of the Commissioners Court,[171] Commissioner Garcia did nothing.[172] And, so far as he is aware, neither did any other Commissioner or Judge Jenkins.[173]

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[166] *See* the Defendants' various Discovery Responses: Pls.' Ex. #55, Interrogatory Responses, ROG #4; Pls.' Ex. #56, Interrogatory Responses, ROG #4; Pls.' Ex. #57, Interrogatory Responses, ROG #3; Pls.' Ex. #58, Interrogatory Responses, ROG #3; Pls.' Ex. #59 Interrogatory Responses, ROG #3; Pls.' Ex. #60, Interrogatory Responses, ROG #3; Pls.' Ex. #61, Interrogatory Responses, ROG #3; Pls.' Ex. #73, Interrogatory Responses, ROG #3; and Pls.' Ex. #74, Interrogatory Responses, ROG #3.

[167] Tr. III 155:21 - 169:15 (Lovell).

[168] Tr. III 124:20 - 125:16 (Turner).

[169] Courts have held that open discrimination against a minority group establishes a lack of responsiveness for the purposes of a § 2 Voting Rights Act Claim. *City of Boerne v. Flores*, 521 U.S 507, 519-20 (1997).

[170] Tr. IV 67:4 - 73:7 (Love).

[171] Tr. IV 61:16 - 67:4 (Love).

[172] *Id.*

[173] *Id.*

Contemporaneous with the drafting and accepting of the EP, the Commissioners Court adopted a custom of allowing Anglos to be treated with open racially hostility.[174] No other racial group has been treated this way in this period, and there is no indication that any member of the Commissioners Court feels the needs to stop that mistreatment from occurring.[175] Not even the County Judge appears to have ever intervened on behalf of the Anglo minority, and there is no evidence that he ever intends to do so.[176] In fact, 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.[177]

VI. **Conclusion & Prayer**

For the foregoing reasons, the Court should hold that the EP constitutes a violation of § 2 of the Voting Rights Act, and violates the federal statutory rights of Anglos in Dallas County.

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[174] Tr. III 155:21 - 169:15 (Lovell). Courts have found that open racial hostility and discrimination on the part of the Defendant establishes a lack of responsiveness on the part of the Defendant for Voting Rights Act claims. *See, e.g., City of Philadelphia Litig*., 824 F. Supp. 514, 538 (E.D. Penn. 1993) (considering testimony of a former mayor and a city councilman that the police and fire department discriminated against minorities); *City of Jackson Litig*., 683 F. Supp. 1515, 1535 (W.D. Tenn. 1988) ("The fact that ninety-one of 103 inadequate streets in 1978 were located in black neighborhoods, the fact that in 1955 and prior thereto the City of Jackson employed no black supervisors, black policemen, or black firemen, and the fact that no black has ever Documenting Discrimination 105 been appointed as head of any department make it painfully obvious that the City Commission has not always been responsive to the needs of black citizens."); and *Sisseton Indep. Sch. Dist. Litig. (SD)*, discussion at 804 F.2d 469, 477 (8th Cir. 1986) (remanding to district court for particularized findings on evidence of disproportionately low employment of minority teachers, and the failure to appoint minority voting registrars or establish polling places despite minority requests).

[175] Tr. III 174:11 - 175:17 (Lovell).

[176] Tr. III 172:18-22 (Lovell).

[177] Tr. III 121:17 - 122:15 (Turner).

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CERTIFICATE OF SERVICE

I certify that on May 11,, 2018, I served a copy of this Brief in Support of Plaintiffs' Response to Defendants' Motion for Summary Judgment on all other counsel of record by electronic filing through the Court's CM/ECF system.

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