

No. 25-11055

**United States Court of  
Appeals for the Fifth  
Circuit**

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Winnie Jackson, *et al.*,  
*Plaintiffs-Appellants,*

v.

Tarrant County, Texas, *et al.*,  
*Defendants-Appellees.*

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On appeal from the United States District  
Court for the Northern District of Texas  
USDC 4:25-CV-00587-O

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**BRIEF OF PLAINTIFFS-APPELLANTS**

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**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of 5th Circuit Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualifications or recusal.

<p><b><u>Appellants</u></b></p> <p>Winnie Jackson                  Jarrett “Jay” Jackson                  Celina Vasquez                  Duane Braxton                  Nadia Bhular                  Amjad Bhular                  Cheryl Mills-Smith                  Richard Canada</p>	<p><b><u>Counsel for Appellants</u></b></p> <p>Chad W. Dunn                  George (Tex) Quesada                  Sean J. McCaffity                  Jesse Gaines                  Mark P. Gaber</p>
<p><b><u>Appellees</u></b></p> <p>Tarrant County, Texas                  Tarrant County Commissioners Court                  Tim O’Hare, in his official capacity as                  Tarrant County Judge</p>	<p><b><u>Counsel for Appellees</u></b></p> <p>Joseph M. Nixon                  Stephen Andrew Lund                  Katherine Elizabeth Owens                  Omar Jose Famada                  John Christian Adams                  Kaylan Phillips</p>

*/s/ Chad W. Dunn*  
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## STATEMENT REGARDING ORAL ARGUMENT

This case raises critical questions about the bounds of legislators’ authority to target voters and delay their access to the franchise by an entire election cycle based on race or viewpoint. Given the weight of the issues in this case, Plaintiffs-Appellants (hereinafter “Plaintiffs”) request oral argument. Given the expedient nature of the case, *see* Plaintiffs-Appellants’ Motion for Expedited Briefing and Decision, Doc. 4, Plaintiffs request that oral argument be set as soon as practicable.

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## JURISDICTIONAL STATEMENT

Plaintiffs filed their complaint on June 4, 2025, alleging violations of their rights under, as relevant here, the First, Fourteenth, and Fifteenth Amendments pursuant to 42 U.S.C. § 1983. ECF 1. The district court possessed subject-matter jurisdiction under 28 U.S.C. §§ 1331, 1343, and 1357. Plaintiffs moved for a preliminary injunction on June 27, 2025. Compl., ECF 11.<sup>1</sup> Defendants moved to dismiss on August 1, 2025. Defs.' Mot. to Dismiss, ECF 22. On September 12, 2025, the district court denied Plaintiffs' motion for preliminary injunction in its entirety and granted Defendants' motion to dismiss in part. Mem. Opinion & Order, ECF 42. Plaintiffs timely appealed on September 15, 2025. Pls.' Notice of Appeal, ECF 43.

Jurisdiction in this Court to review the denial of Plaintiffs' motion for preliminary injunction is proper under 28 U.S.C. § 1292(a)(1).

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<sup>1</sup> Plaintiffs have sought an expedited appeal in this matter. The electronic record of appeal is not yet available. Therefore, in lieu of cites to the electronic record of appeal, Plaintiffs provide citations to the district court record with district court docket locations in the format of ECF ## at ##. Page number citations are to the ECF page numbers.

## STATEMENT OF THE ISSUES

1. Are Plaintiffs likely to succeed on the merits of their burden on the right to vote claim that the Tarrant County Commissioners Court violated their First and Fourteenth Amendment rights by adopting a mid-decade redistricting plan that disenfranchises them for the 2026 election without any legitimate governmental justification and, instead, on the basis of their race and viewpoint?

2. Are Plaintiffs likely to succeed on the merits of their intentional discrimination claim under the Fourteenth and Fifteenth Amendments that the Commissioners Court adopted a plan that disenfranchises them for the 2026 election on the basis of their race when the official casting the deciding vote publicly explained it by discussing his view that “Black voters” choose the wrong candidates?

3. Are Plaintiffs likely to succeed on the merits of their First Amendment claim that the Commissioners Court unlawfully disenfranchised them for the 2026 election based on their viewpoint where Defendants admit they were engaged in an “an unambiguous, explicit and unabashed effort to increase Republican power and decrease Democratic power on the Commissioners Court”?

4. Did the district court err in denying Plaintiffs’ motion for preliminary injunction?

## STATEMENT OF THE CASE

Under the Texas Constitution, Commissioners Courts—which consist of four commissioners elected from precincts and the County Judge—are the governing body of Texas counties. Tex. Const. art. 5, § 18(b). Commissioners are elected in staggered elections and they “shall hold [] office for four years and until [a] successor shall be elected and qualified.” *Id.*; *see also* Tex. Const. art. 16, § 64.<sup>2</sup>

On April 2, 2025, the Tarrant County Commissioners Court voted 3-2 to approve a contract with the Virginia-based Public Interest Legal Foundation (“PILF”) to assist in conducting a mid-decade redistricting of the commissioner precincts.

This redistricting process was not necessitated by population growth. Following the 2020 Census, the Commissioners Court underwent a full redistricting process. Pls.’ App. to Mot. for Preliminary Injunction, Decl. of Dr. Cortina, ECF 13 at 12-15. As a result of that process, the Commissioners Court voted to approve the existing precinct boundaries (“Benchmark Map) because, while Tarrant County saw substantial population growth, that growth was relatively even across the county such

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<sup>2</sup> The Texas Constitution provides that even if redistricting causes commissioners to no longer reside in the precinct from which they were elected, commissioners “shall serve in the precinct to which each was elected or appointed for the entire term to which each was elected or appointed, even though the change in boundaries places the person’s residence outside the precinct for which he was elected or appointed.” Tex. Const. art. 5, § 18(d).

that the Benchmark Map had only a 1.97% overall population deviation (far below the constitutional threshold). *Id.* at 13-15.

Rather, the redistricting process was for the avowed purpose of dismantling the power of Black voters and silencing them because they vote for Democrats. On the day he cast the deciding vote on the new plan, Tarrant County Judge Tim O'Hare specifically commented on the redistricting in a television interview as follows: "The policies of Democrats continue to fail Black people over and over and over, but many of them keep voting them in. It's time for people of all races to understand the Democrats are a lost party, they are a radical party, it's time for them to get on board with us and we'll welcome them with open arms." *Id.* at 18. In these proceedings, Defendants have taken the position that the new Map was adopted as part of "an unambiguous, explicit and unabashed effort to increase Republican power and decrease Democratic power on the Commissioners Court." Defs.' Mem. in Support of Its Mot. to Dismiss, ECF 27 at 6. But Judge O'Hare's unambiguous, explicit and unabashed explanation makes clear that the effort was *specifically* aimed at depriving *Black* voters because they tend to support Democrats.

To serve this racially motivated goal, the Commissioners Court engaged in a rushed and irregular process. The Commissioners Court did not adopt any neutral redistricting criteria; each of the public meetings on the process were held *before* the final map options were publicly released on the County's website; the attorneys that

led the process refused to address the public<sup>3</sup> and provided no written analysis; and the vote to adopt Map 7 occurred just days after it was released despite a prior commitment from Judge O’Hare to make the maps available for public consideration for at least two weeks before adoption. Decl. of Dr. Cortina, ECF 13 at 16-17. All this stands in stark contrast to the 2021 process that started with neutral criteria and involved more public input, including from the legal team, and ultimately opted to keep the Benchmark Map. *Id.* at 12-15. Indeed, at the June 3, 2025 Commissioners meeting at which Map 7 was adopted, Republican Commissioner Manny Ramirez commented: “I will agree with what a lot of what folks have said. I think the process -- it had flaws. I think the process could have been a lot more comprehensive.” *Id.* at 18.

Before it was dismantled, the Benchmark Map contained two precincts with a majority of Black and Hispanic voters (Precincts 1 and 2) who were able to elect candidates of choice of those communities and two precincts with a majority of Anglo voters (Precincts 3 and 4) who elected candidates of choice for the Anglo community.

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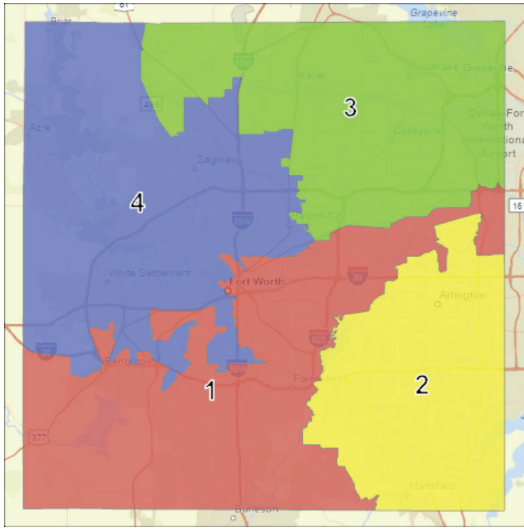
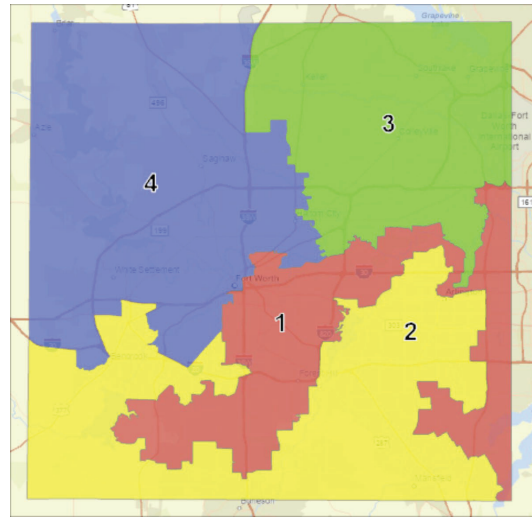
<sup>3</sup> When Commissioner Simmons requested that PILF lawyers come to the meeting room and be available for questions in a public setting—something that Bickerstaff attorneys had done in prior cycles—Judge O’Hare responded that PILF had said they would not present publicly and “you don’t have subpoena power to make them come out here.” Decl. of Dr. Cortina, ECF 13 at 17. Shortly after, Judge O’Hare threatened to have all members of the public removed from the meeting if anyone made noise. *Id.*

*Id.* at 7, 9. When the Benchmark Map was initially configured, Precincts 2, 3, and 4 were all majority Anglo voter districts. Am. Compl, ECF 8 at ¶ 29. Over time, due to population growth and natural demographic changes, Precinct 2 became a majority-minority district and in 2018, began to elect candidates of choice of the Black and Latino communities. *Id.* at ¶ 33.<sup>4</sup>

On June 3, 2025, the Commissioners Court approved a mid-cycle redistricting plan—Map 7—that shifted substantial numbers of Black and Latino voters out of Precinct 2 into Precinct 1. The intentional result of this shift was to deprive Black and Latino voters of their current ability to elect candidates of their choice in Precinct 2 by packing those voters into a single majority-minority district, Precinct 1. The disfiguration of the precincts to serve the goal of injuring Black voters is plain:

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<sup>4</sup> Between the 2010 and 2020 Census, Tarrant County’s population grew by over 300,000 persons. That growth was entirely among non-Anglo residents as the Anglo population decreased over this period. Decl. of Dr. Cortina, ECF 13 at 4.

**Benchmark Plan<sup>5</sup>****Map 7**

The voting age population of those moved from even- to odd-numbered precincts is 153,581. *Id.* at 5. The voters who are shifted from even-numbered precincts to odd-numbered precincts—including Plaintiffs Duane Braxton, Cheryl Mills-Smith, Richard Canada, Nadia Bhular, and Amjad Bhular—were last eligible to vote for commissioner in 2022 and, until the adoption of Map 7, had the right to vote for commissioner in the November 2026 election. Pls’ Decls’, ECF 13-3 at 58-67. Under Map 7, they are denied the right to vote for commissioner in 2026 and will instead not be able to vote for commissioner until November 2028—six years after they last cast ballots. *Id.* In other words, these voters lose an entire election cycle of representation by a Commissioner for whom they had the opportunity to vote.

<sup>5</sup> See Tarrant County Redistricting 2025, <https://www.tarrantcountytx.gov/redistricting>.

Given the intentional shifting of Black and Latino voters from Precinct 2 (an even precinct) to Precinct 1 (odd), the plan has the intentional effect of disproportionately depriving these voters of an election cycle of voting for Commissioners Court. Demographically, the voting age population of Tarrant County as a whole is 46.9% Anglo, 17.9% Black, and 26.3% Latino. Decl. of Dr. Cortina, ECF 13 at 5. By contrast, just 25.7% of the voting age population shifted from an even- to an odd-numbered precinct is Anglo, 31.2% is Black, and 31.9% is Latino. *Id.* Thus, only 5.3% of Tarrant County's adult Anglo population (1 out of 20 Anglo adults) will be denied the right to vote for commissioner in 2026, while 17.0% of the county's adult Black population (1 out of 6 Black adults) and 11.8% of the county's adult Latino population (1 out of 8 Latino adults) will be. *Id.*

Map 7 thus makes Black adults in Tarrant County between three and four times more likely than Anglo adults to be denied the right to vote for commissioner in 2026, and Latino adults between two and three times more likely than Anglo adults. *Id.* at 6.

By voting patterns, Democrats are also disproportionately targeted by this disenfranchisement. While 46.7% of the county voted for the Democrat in the 2024 Presidential election, 62.7% of the population of disenfranchised voters did. *Id.*

On June 4, 2025—one day after the Commissioners Court adopted Map 7—Plaintiffs filed this lawsuit challenging the Map under Section 2 of the Voting Rights

Act and the First, Fourteenth, and Fifteenth Amendments. Compl., ECF 1. They filed their amended complaint on June 17. Plaintiffs challenge both the 2026 disenfranchisement and the intentional vote dilution of Black and Latino voters achieved through the dismantling of Precinct 2. Am. Compl., ECF 8. On June 27, Plaintiffs' moved for a preliminary injunction on their claims and filed declarations and an expert report in support thereof. Pls.' Mot. for Preliminary Injunction, ECF 7; Pls.' App. to Mot. for Preliminary Injunction, ECF 13, 13-1, 13-2, and 13-3. On the same day, they also moved to expedite the hearing to ensure the availability of timely relief, including appellate review, before the 2026 election. Pls.' Mot. to Expedite, ECF 14. Plaintiffs specifically requested a district court determination on their preliminary injunction motion by September 12. *Id.* Defendants moved to dismiss Plaintiffs' claims on August 1. ECF 22. In their response to Plaintiffs' preliminary injunction, Defendants attached no declarations, expert reports, or other evidence countering Plaintiffs' submissions.

On September 12, without holding an evidentiary hearing, the district court, Chief Judge Reed O'Connor, issued a memorandum opinion and order resolving both Plaintiffs' motion for preliminary injunction and Defendants' motion to dismiss. Mem. Op. & Order, ECF 42. The district court denied Plaintiffs' motion for preliminary injunction in full and granted Defendants' motion to dismiss only as to Plaintiffs' First Amendment claims.

On September 15, Plaintiffs filed this appeal. Pls. Notice of Appeal, ECF 43. In this appeal, Plaintiffs only seek review of the denial of the preliminary injunction with respect to their claims challenging the 2026 disenfranchisement resulting from Map 7. This appeal does not address Plaintiffs' intentional vote dilution claims, which remain pending in the district court below.

## SUMMARY OF ARGUMENT

The Constitution safeguards the right to vote—a right that is preservative of all other rights—and protects Americans from government action that punishes them for their race or their political viewpoint. Tarrant County’s brazen mid-decade decision to scramble its maps—which has the effect of disenfranchising over 150,000 Tarrant County residents who would otherwise be headed to the polls in 2026 to vote for their Commissioner—tramples on each of these protections. Plaintiffs established their likelihood of success on the merits on their claims challenging this disenfranchisement and are entitled to a preliminary injunction. If this Court does not act now to protect their right to vote in 2026, the harm will be irreparable.

*First*, the adoption of Map 7 fails under a straightforward application of the Supreme Court’s right to vote jurisprudence, which requires courts to weigh the severity of the burden against a state’s interests in the restriction and applies strict scrutiny whenever the burden on the right to vote is severe or discriminatory. The burden on the right to vote is both severe—the complete loss of the franchise for one election cycle—and discriminatory. Defendants’ own words—both on television and in this case—together establish that voters were targeted based on race and viewpoint. Meanwhile, there is no legitimate justification for this mid-decade redistricting. Unlike every other case addressing the disenfranchisement that occurs at the intersection of staggered elections and redistricting, there was nothing inevitable here:

the redistricting was not for the purpose of equalizing population. Those cases reaffirm that the Constitution does not countenance discriminatory disenfranchisement or disenfranchisement without justification.

*Second*, the disenfranchisement arising out of the adoption of Map 7 was intentionally racially discriminatory. Judge O’Hare’s explained the adoption of Map 7 this way: “The policies of Democrats continue to fail Black people over and over and over, but many of them keep voting them in. It’s time for people of all races to understand the Democrats are a lost party, they are a radical party, it’s time for them to get on board with us and we’ll welcome them with open arms.” ECF 13 at 18. This direct evidence is only bolstered by the circumstantial evidence. Evidence under every *Arlington Heights* factor supports an inference of racial discrimination. The district court only reached the opposite conclusion by (1) subjecting this claim to the racial gerrymandering predominance standard rather than the intentional discrimination standard; (2) excusing the use of race as a proxy of politics, contrary to decades of Supreme Court precedent; and (3) dismissing the circumstantial evidence.

*Third*, the 2026 disenfranchisement is unconstitutional viewpoint discrimination. The Supreme Court has repeatedly held that “[f]encing out from the franchise a sector of the population because of the way they may vote is constitutionally impermissible.” *Carrington v. Rash*, 380 U.S. 89, 94 (1965). Yet, that is the express purpose of Defendants’ actions. The district court concluded that *Rucho*

*v. Common Cause*, [588 U.S. 684](#) (2019) immunizes this action. But, of course, *Rucho*, did not excuse *disenfranchisement* based on partisan viewpoint. It held that partisan vote *dilution* claims are not justiciable because they are not judicially manageable. It is judicially manageable to say—as the Supreme Court has—that officials can never deprive voters of the right to vote in an election based on their political views. In a democracy, that is the only viable answer.

## STANDARD OF REVIEW

A district court's grant or denial of a preliminary injunction is reviewed for abuse of discretion. *Anibowei v. Morgan*, 70 F.4th 898, 902 (5th Cir. 2023). "Factual findings are reviewed for clear error, while legal conclusions are reviewed de novo." *Moore v. Brown*, 868 F.3d 398, 403 (5th Cir. 2017) (per curiam). And "when a preliminary injunction turns on a mixed question of law and fact, it, too, is reviewed *de novo*." *Byrum v. Landreth*, 566 F.3d 442, 445 (5th Cir. 2009).

A preliminary injunction should be granted when the moving party establishes the following four factors:

(1) a substantial likelihood of success on the merits, (2) a substantial threat of irreparable injury if the injunction is not issued, (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted, and (4) that the grant of an injunction will not disserve the public interest.

*Free Speech Coalition v. Paxton*, 95 F.4th 263, 269 (5th Cir. 2024).

## ARGUMENT

### **I. Plaintiffs are Likely to Succeed on the Merits of Their Claims Challenging Their 2026 Disenfranchisement.**

#### **A. Map 7 Unnecessarily and Discriminatorily Disenfranchises Over 150,000 Tarrant County Residents for an Entire Election Cycle.**

Absent the Commissioners Court's sudden and unnecessary redistricting this year, Plaintiffs Duane Braxton, Nadia Bhular, Amjad Bhular, Cheryl Mill-Smith, and Richard Canada were set to vote for their county commissioner next year. Pls' Decls', ECF 13-3 at 58-67. But now, due to the adoption of Map 7, they will not be able to vote in 2026. *Id.* Instead, they and over 150,000 other Tarrant County voting-age residents will have to wait another full election cycle (6 years since their last vote for commissioner) to cast their first vote in their new district. Decl. of Dr. Cortina, ECF 13 at 5. In the meantime, they will be represented by a commissioner they never had an opportunity to vote for (or against). In other words, they will be disenfranchised with respect to their representation on the Commissioners Court for two years.

This presents a profound constitutional injury: it is the loss of the right to vote in an election cycle. "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined." *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). The voters subject to this disenfranchisement in 2026 have certainly had their right to vote "undermined." *Id.*

And it is no answer to disenfranchisement for *this* election that these voters will be able to vote in a *future* different election. Just as it was no answer in *Dunn v. Blumstein*, the landmark case striking down durational residence laws, that a voter unable to meet a durational residency requirement *this* election could vote in a future one: “Durational residence requirements completely bar from voting all residents not meeting the fixed durational standards. By denying some citizens the right to vote, such laws deprive them of ‘a fundamental political right, . . . preservative of all rights.’” 405 U.S. 330, 336 (quoting *Reynolds v. Sims*, 377 U.S. 533, 562 (1964)); *Cf., ACLU of Ohio, Inc. v. Taft*, 385 F.3d 641, 650 (6th Cir. 2004) (holding that the failure to call an immediate special election—resulting in only six months without a representative in the district—“denied ACLU members the rights to vote and to equal protection in violation of the Fourteenth Amendment”); *Bonas v. Town of Smithfield*, 265 F.3d 69, 75 (1st Cir. 2001) (finding an unlawful delay of elections by one year would “work a total and complete disenfranchisement of the electorate”); *Duncan v. Poythress*, 657 F.2d 691 (5th Cir. 1981) (holding that Georgia’s unlawful appointment of a replacement for a Georgia Supreme Court judgeship, rather than holding a required special election, denied voters’ constitutional rights).

Nor is this infringement on the right to vote born equally by Tarrant County residents. *Contra* Defs’ Mem. in Support of Mot. to Dismiss, ECF 27 at 14 (arguing the burden is one “shared by the entire electorate”). As a result of Map 7, some voters

will vote on a four-year cycle, others will vote twice in two years, and over 150,000 will be forced to wait six years. That injury is a large one, with certain voters being required to wait 50% or 150% longer than others to vote.

Such an unequal doling out of the right to vote wholesale must be justified by a compelling state interest. *See Dunn v. Blumstein*, 405 U.S. 330, 337 (1972) (if a challenged act “grants the right to vote to some citizens and denies the franchise to others, the Court must determine whether the exclusions are necessary to promote a compelling state interest” (internal quotation marks omitted)); *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (“[W]hen [the rights of voters] are subjected to ‘severe’ restrictions, the regulation must be ‘narrowly drawn to advance a state interest of compelling interest[.]’” (quoting *Norman v. Reed*, 502 U.S. 279, 289 (1992)) (subjecting only “reasonable, *nondiscriminatory* restrictions” on the right to vote to lower scrutiny (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983) (emphasis added))).

And even if the disenfranchisement is not subject to strict scrutiny, under the standard rubric for right to vote claims under the First and Fourteenth Amendment, courts must:

weigh “the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate” against “the precise interests put forward by the State as justifications for the burden imposed by its rule,” taking into consideration “the extent to which those interests make it necessary to burden the plaintiff’s rights.”

*Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)). Given the magnitude of the injury and the lack of *any* neutral justification, *see infra*, Plaintiffs prevail under any application of this test.

Both Defendants and the district court minimize this loss of the right to vote for an election cycle by recasting it as “temporary” or merely a “delay.” *See, e.g.*, Mem. Op. & Order, ECF 42 at 6; Defs. Mem. in Support of Mot. to Dismiss, ECF 27 at 11.<sup>6</sup> But once an election occurs, the injury of exclusion is complete. *League of Women Voters of N. Carolina v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) (“[O]nce the election occurs, there can be no do-over and no redress.”). After 2026, Plaintiffs will have permanently lost the opportunity to participate in the selection of their representative for that election cycle.

And Defendants’ position would, taken to its logical conclusion, permit *permanent* disenfranchisement. Under that framework, the County could, after the 2026 election, pass a new map that once again shifts disfavored voters resulting in their “temporary” disenfranchisement. And so on. If the County repeated this exercise

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<sup>6</sup> The district court based its conclusion that “the redistricting does not burden the right to vote,” ECF 42 at 11, on the outcomes in other cases addressing the intersection of staggered elections and redistricting. But, as described, *infra*, those cases do not stand for the proposition that there is no burden but rather, absent discrimination and when balanced against the competing demand to equalize population, that burden is constitutional. Those circumstances are not present here.

every four years, it could forever fence out Precinct 1’s current voters—whose race and political viewpoints the County disfavors—from voting for commissioners. Semantics cannot defeat the substantial burden of having one’s right to vote be put off for two (or more) years.<sup>7</sup>

Prior cases concerning the disenfranchisement that occurs around redistricting in jurisdictions using staggered terms are not to the contrary. Rather, those courts weigh the competing legitimate public interests—including the state interest in using staggered elections and its constitutional duty to redistrict to address malapportionment—and, *where there is no discriminatory application of the disenfranchisement*, find those interests sufficient to justify the burden.<sup>8</sup>

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<sup>7</sup> Defendants’ wordplay is at work throughout their district court briefing. For example, they argue that there is no “restriction on the equal opportunity to vote” here because “Plaintiffs can still vote in every election (national, State, or local) for which they are eligible in 2026[.]” ECF 27 at 19. But of course, the Plaintiff in *Dunn* was able to vote in every election “for which they [were] eligible” too—the problem is the government’s engineering of eligibility to deprive disfavored voters of access to the ballot box.

<sup>8</sup> When undertaking this weighing, at least two courts have found disenfranchisement caused by redistricting staggered election seats to violate the Constitution. In *Mayor & Council of Tucson v. Royal*, an Arizona court found redistricting plan unlawful when it shifted (and thus disenfranchised) far more voters than was necessary to equalize population. 510 P.2d 394, 400 (Ariz. App. Div. 2 1973); *see also Dollinger v. Jefferson Cnty. Comm’rs Ct.*, 335 F. Supp. 340, 343 (E.D. Tex. 1971) (“We believe the equities favor ordering an election for Precinct 2 in that less than 50% of the residents of this precinct have had an opportunity to express a choice in regard to their elected precinct official[.]”).

While the courts in those cases ordered special elections, here the most appropriate remedy is enjoining implementation of Map 7. Federal courts must

For example, the California Supreme Court held that the State had an interest in “stability and continuity in the Senate as a desirable goal which is reasonably promoted by” staggered terms and that “[t]o obviate the inequality would substantially interfere with the orderly operation of the four-year staggered terms system after every reapportionment.” *Legislature v. Reinecke*, 516 P.2d 6, 12 (Cal. 1973). Since “[t]he inequalities among groups of electors are the inevitable byproduct of reapportioning a legislative body whose members are elected to staggered four-years terms,” the California Supreme Court explained it was “not free to obviate them *unless they constitute invidious discrimination* violative of the equal protection clause of the fourteenth amendment.” *Id.* (emphasis added). Likewise, the Nebraska Supreme Court allowed the tiered introduction of staggered terms—which resulted in a similar impact—both because the state had a “legitimate purpose in providing for continuity in the membership of the Omaha School Board” and the law made “no invidious discrimination between classes of electors.” *Barnett v. Boyle*, 250 N.W.2d 635, 638 (Neb. 1977). This is a universal principle. *See, e.g., Republican Party of Oregon v.*

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minimize their intrusion on state policies in remedying federal constitutional violations. It is the state policy of Texas—enshrined in the Texas Constitution—that commissioners serve four-year terms and that redistricting cannot alter those terms. *See* Tex. Const. arts. 16 § 64 & art. 5, § 18(d). Map 7 is a mid-decade redraw advanced by a *county* without any population equality justification and instead to advance racial and partisan goals. In this circumstance, the least intrusive remedy is enjoining implementation of Map 7.

*Keisling*, 959 F.2d 144, 145-46 (9th Cir. 1992) (observing that disenfranchisement is the “inevitable consequence[] of redistricting following the [] census” and holding that temporary disenfranchisement does not violate the Fourteenth Amendment unless it “unduly burden[s] a particular group”); *Donatelli v. Mitchell*, 2 F.3d 508, 514-18 (3d Cir. 1993) (weighing that the state was “constitutionally required to” reapportion and that “such temporary disenfranchisement is inevitable, at least to some degree, whenever a reapportionment is combined with a staggered system of elections” and holding such an outcome constitutional where it was “not targeted at a discrete group of voters based on some personal characteristic”); *Pate v. El Paso Cnty.*, 337 F. Supp. 95, 96-98 (W.D. Tex. 1970), summarily aff’d, 400 U.S. 806 (1970) (rejecting challenge to Texas Constitution’s provision of staggered terms for county commissioners because staggered terms “insure[] that the commissioners court have some continuity in its membership and experience, thereby providing for more efficient and effective county government,” redistricting was necessitated by population deviation and there was “no arbitrary and invidious discrimination” in who was disenfranchised following redistricting); *Mader v. Crowell*, 498 F. Supp. 226, 231 (M.D. Tenn. 1980) (finding no violation where disenfranchisement was in response to court order to equalize districts and there was “no evidence that the General Assembly made these shifts for invidious or discriminatory purposes”); *Pereira v. Town of N. Hampstead*, 682 F. Supp. 3d 234, 244 n.9, 246-47 (E.D.N.Y. 2023)

(denying plaintiff’s claim because he experienced a “temporary disenfranchisement that occurs when reapportionment is combined with a staggered system of elections,” the Town Defendants “did not voluntarily decide to redistrict,” and the differential treatment was not based on a suspect classification).

Two principles emerge from these cases. First, the state must put forward legitimate state interests to justify the disenfranchisement. And second, there must not be any invidious discrimination in its application.<sup>9</sup>

Defendants fail on both scores.

What Tarrant County has done here is far afield from anything in the cases described above. Unlike *all* those cases, the disenfranchisement at issue in this case is *not* the “inevitable consequence of redistricting following the [] census,” *Keisling*, 959 F.2d at 145-46, or in the case of *Barnett*, the inevitable consequence of the introduction of staggered elections. It is undisputed that the Benchmark Plan complied with one person, one vote and, for that matter, all other neutral redistricting criteria Tarrant County had previously established. Decl. of Dr. Cortina, ECF 13 at 10-15.

There is therefore no need to balance two competing federal constitutional

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<sup>9</sup> The district court acknowledged that these cases “agree that temporary disenfranchisement would be unconstitutional—or at least subject to heightened scrutiny—if it was the result of invidious discrimination.” ECF 42 at 7.

concerns—enforcement of the one-person, one-vote requirement on the one hand and federal constitutional concerns regarding disenfranchisement on the other. And Plaintiffs’ claims do not challenge Texas’s ability to employ staggered elections as a general matter. Nor is there any other proffered justification—such as making “maintenance of bridges and roads within a precinct . . . [more] efficient and effective.” *In re Khanoyan*, 637 S.W.3d at 768 n.10—necessitating the disenfranchisement of over 150,000 residents beyond “an unambiguous, explicit and unabashed effort to increase Republican power.” Defs. Mem. in Support of Mot. to Dismiss, ECF 27 at 6.<sup>10</sup> But a desire to engage in partisan gerrymandering is an insufficient governmental interest to warrant disenfranchising voters. *See, e.g., Ariz. State Leg. v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 791 (2015) (“Partisan gerrymanders . . . are incompatible with democratic principles.” (quoting *Vieth v. Jubelirer*, 541 U.S. 267, 292 (2004) (plurality)) (cleaned up). While federal courts lack Article III jurisdiction to enjoin a map based on a partisan vote dilution theory,

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<sup>10</sup> The district court references Defendants’ passing argument that the Benchmark Map was “constitutionally suspect.” ECF 42 at 14. This assertion has no support in law or fact. During the only presentation by Defendants’ redistricting lawyer Mr. Nixon to the Commission, when asked if there was anything illegal about the existing map, he responded “that is not anything I’ve been hired to provide an answer to.” Tarrant County Comm’rs Court Meeting Video at 1:47:10 (May 6, 2025), <https://prod-agendamanagement-publicportal.azurewebsites.us/HtmlAgenda/e86a9f86-cfcb-41c5-f5c2-08dd617d51b0>.

*see Rucho v. Common Cause*, 588 U.S. 684 (2019), political subdivisions cannot assert an interest in partisan gerrymandering to justify *disenfranchising* voters.<sup>11</sup> *See infra* I.C.

And, likewise, unlike *all* the cases described above, the disenfranchisement was undoubtedly “targeted at a discrete group of voters based on some personal characteristic,” *Donatelli*, 2 F.3d at 514, and “unduly burden[s] a particular group,” *Keisling*, 959 F.2d at 145-46. Defendants’ own words—both on television and in this case—together establish that voters were targeted based on race and viewpoint. *See* ECF 13 at 18; ECF 27 at 6. And that targeting was effective. Black adults in Tarrant County are between three and four times more likely than Anglo adults to be denied the right to vote for commissioner in 2026, and Latino adults are between two and three times more likely than Anglo adults. ECF 13 at 5-6.

This case is novel. But that is only because no entity, to Plaintiffs’ knowledge, has engaged in such a brazenly discriminatory and unjustified scheme to

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<sup>11</sup> The district court concluded that because redistricting is “an inherently governmental prerogative,” the Defendants’ interest in drawing lines “for partisan ends” is “presumptively a strong state interest.” ECF 42 at 13. This is circular. Yes, redistricting is a state legislative power. But when courts analyze the governmental interests supporting a state action that curtails a fundamental right, they are almost always analyzing an action within the state’s delegated powers. The state’s interest in the power itself cannot be the answer; the question is towards what purpose has the state used that power. Notably, the district court cites no authority for the position that discriminating against disfavored voters based on their politics is a compelling state interest that can justify disenfranchisement.

disenfranchise voters for a full election cycle. But the legal theory is anything but novel. The burden on the right to vote is severe. The burden is discriminatory. And Defendants have put forward no neutral or legitimate justification but rather, have admitted a discriminatory purpose. Plaintiffs have established their right to relief under the First and Fourteenth Amendments on a straightforward burden on the right to vote theory.<sup>12</sup>

**B. Map 7 Unconstitutionally Targets Voters for Disenfranchisement Based on Race.**

**a. The Intentional Race Discrimination Standard Applies.**

Map 7 must be preliminarily enjoined for yet another black letter constitutional reason: both direct and circumstantial evidence demonstrate that the Map 7 was adopted, at least in part, to harm Black voters and diminish their political power. Protection against such intentional acts of discrimination is the heartland of the

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<sup>12</sup> The district court did not apply the standard *Anderson-Burdick* framework for right to vote claims. *See supra* at 17-18. Rather, the district court dismissed this right to vote claim out-of-hand based on two out-of-circuit cases addressing the more typical temporary disenfranchisement after constitutionally required reapportionment and finding there is no “first amendment right to vote for state representatives on a particular schedule.” ECF 42 at 16 (quoting *Keisling*, 959 F.2d at 145 and citing *Donatelli*, 2 F.3d at 515 n. 10). But as discussed *supra*, neither of those cases involved viewpoint discrimination, which heightens the First Amendment harms at stake. Moreover, both *Keisling* (1992) and *Donatelli* (1993) were decided close in time to *Burdick v. Takushi* (1992) and therefore, before the *Anderson-Burdick* standard was well-established as the overarching standard for right to vote claims.

Fourteenth and Fifteenth Amendments.

The district court failed to apply the correct standard to this claim and so came to the incorrect answer.

Plaintiffs allege that Defendants *intentionally* subjected a disproportionate number of Black and Latino voters to disenfranchisement in the 2026 election cycle as part of a scheme to minimize their political power. This type of intentional discrimination claim has a familiar standard—assessing the direct evidence and, for circumstantial evidence, assessing the *Arlington Heights* factors—not the racial gerrymandering predominance standard. A plaintiff alleging intentional racial discrimination need not show that racial considerations were the predominant motivation of the government action, *see Alexander v. S. Carolina State Conf. of NAACP*, 602 U.S. 1, 38-39 (2024) (noting that the two claims—intentional discrimination vs. racial gerrymandering—are “analytically distinct” (cleaned up)). Rather, as this Court has explained, “‘racial discrimination need only be one purpose, and not even a primary purpose,’ of an official action for a violation to occur.” *Veasey v. Abbott*, 830 F.3d 216, 230 (5th Cir. 2016) (en banc) (quoting *United States v. Brown*, 561 F.3d 420, 433 (5th Cir. 2009)); *see League of United Latin Am. Citizens v. Abbott*, 601 F. Supp. 3d 147, 161-62 (W.D. Tex. 2022) (“LULAC”) (“Plaintiffs may show intentional vote dilution merely by establishing that race was part of Defendants’ redistricting calculus, but to show racial gerrymandering they must go

further and prove that race predominated over other considerations such as partisanship.”).

Notwithstanding this distinction—and that the harms in racial gerrymandering cases (being placed in a district based on your race) and the harm here (disenfranchisement in 2026) are entirely inapposite—the district court applied the racial gerrymandering test. ECF 42 at 16. The district court found that the racial gerrymandering test must apply because Plaintiffs disclaimed making an intentional vote *dilution* claim. *Id.* But the district court missed the critical distinction: between the mere *consideration* of race in redistricting, which gives rise to a racial gerrymandering claim, and *intentional racial discrimination* aimed at “minimiz[ing] or cancel[ing] out the voting potential of racial or ethnic minorities.” *Alexander*, 602 U.S. at 38. While it is true that this claim is about disenfranchisement not vote dilution, it is an intentional discrimination claim that the mapmakers were attempting to “minimize or cancel out the voting potential of racial or ethnic minorities.” *Id.* That is what matters. It would be beyond bizarre to suggest that mapmakers are free to act *intentionally* to harm Black voters so long as that wasn’t their “predominant” goal. Yet, that is precisely what the district court concluded. The Fourteenth and Fifteenth Amendments prohibit intentional acts to diminish Black voters’ political power, even if lawmakers have other goals too.

“[D]iscriminatory intent need not be proved by direct evidence.” *Rogers v.*

*Lodge*, 458 U.S. 613, 618 (1982). As the *en banc* Fifth Circuit has explained in holding that circumstantial evidence can prove intentional discrimination,

[i]n this day and age we rarely have legislators announcing an intent to discriminate based upon race, whether in public speeches or private correspondence. To require direct evidence of intent would essentially give legislatures free rein to racially discriminate so long as they do not overtly state discrimination as their purpose and so long as they proffer a seemingly neutral reason for their actions. This approach would ignore the reality that neutral reasons can and do mask racial intent, a fact we have recognized in other contexts that allow for circumstantial evidence.

*Veasey*, 830 F.3d at 230.

As the Supreme Court has explained, “[d]etermining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence as may be available.” *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266 (1977). “The impact of the official action[,], whether it ‘bears more heavily on one race than another,’ may provide an important starting point.” *Id.* (quoting *Washington v. Davis*, 426 U.S. 229, 242 (1976)). From there, the Court “set out five non-exhaustive factors to determine whether a particular decision was made with a discriminatory purpose:” (1) “the historical background of the decision,” (2) “the specific sequence of events leading up to the decision,” (3) “departures from the normal procedural sequence,” (4) “substantive departures,” and (5) “legislative history, especially where there are contemporary statements by members of the

decision-making body.” *Veasey*, 830 F.3d at 231; *Arlington Heights*, 429 U.S. at 267-68. Plaintiffs claiming intentional discrimination “need not prove race-based hatred or outright racism, or that any particular legislator harbored racial animosity or ill-will toward minorities because of their race.” *Perez v. Abbott*, 253 F. Supp. 3d 864, 948 (W.D. Tex. 2017).

**b. Plaintiffs’ direct and circumstantial evidence establishes intentional discrimination.**

With the correct standard in place, Plaintiffs have shown a strong likelihood of success on their intentional race discrimination claim, which is supported by both direct and circumstantial evidence.

**i. Judge O’Hare’s comments are direct evidence of intentional racial discrimination.**

Judge O’Hare’s comments in an NBC 5 interview on the date he cast the deciding vote to adopt Map 7 are direct evidence of intentional racial discrimination—the very type of statement that the en banc Fifth Circuit explained is “rare[]” in this “day and age.” *Veasey*, 830 F.3d at 230. He said: “The policies of Democrats continue to fail Black people over and over and over, but many of them keep voting them in. It’s time for people of all races to understand the Democrats are a lost party, they are a radical party, it’s time for them to get on board with us and we’ll welcome them with open arms.” ECF 13 at 18. He expressed disapproval for the voting patterns of “Black people” and that it was “time for people of all races”

to “get on board” with his preferred candidates. *Id.*<sup>13</sup> He did this in the context of explaining his vote in favor of Map 7, which reduced from two to one the number of precincts in which minority voters were a majority of eligible voters, and which disproportionately targets Black voters for disenfranchisement in the November 2026 commissioner election. Decreasing the number of majority-minority districts and subjecting Black voters to disproportionate disenfranchisement for an election cycle because the decisionmaker disagrees with who “Black people” choose to elect is as direct of evidence of intentional racial discrimination as can be imagined.<sup>14</sup> *See Personnel Adm’r of Mass v. Feeney*, 442 U.S. 256, 279 (1979) (explaining it is intentionally discriminatory to act “at least in part ‘because of,’ not merely ‘in spite

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<sup>13</sup> Judge O’Hare’s comment is unfortunately not the only recent comment from Tarrant County officials publicly using race to explain political differences. As former Precinct 2 Commissioner Devan Allen testifies, she ran in 2018 in response to the incumbent commissioner announcing at a campaign rally: “If being called a racist is the price I have to pay to preserve America, I am willing to pay 100-fold.” Decl. of Devan Allen, ECF 13-3 at 69. And in a 2022 campaign add, Judge O’Hare said “if you’re a Republican officeholder and you haven’t been called a racist, then you probably haven’t done a thing.” ECF No. 8 at ¶ 47.

<sup>14</sup> The district court faults Plaintiffs for failing to “meet their heavy burden of disentangling race from politics.” ECF 42 at 18. While this applies the wrong standard, *see supra*, this direct evidence also eliminates this concern. Unlike most redistricting cases, we need not wonder whether officials considered race *or* partisanship in drawing the lines because Judge O’Hare made his use of race plain. Indeed, in *Alexander*, the Supreme Court focused on the need to disentangle race and politics precisely because the Plaintiffs did not present any direct evidence. 602 U.S. at 19; *see also id.* at 9 (“*A circumstantial-evidence-only* case is especially difficult when the State raises a partisan-gerrymandering defense.” (emphasis added)).

of,’ [] adverse effects upon an identifiable group”).

That racial intent—unlawful even if it is just *one* part of the calculus—is constitutionally prohibited even if it is tied to an ultimate partisan political goal. The Supreme Court has repeatedly and emphatically held that the purposeful use of race to achieve partisan goals trades on impermissible racial stereotypes and violates the Equal Protection Clause.<sup>15</sup> The district court faulted Plaintiffs for “suggest[ing] Judge O’Hare was making an unfair racial assumption,” because Plaintiffs acknowledge racially polarized voting in their complaint. ECF 42 at 22. But it is not Plaintiffs, but the Supreme Court, that disallows such assumptions by state actors, particularly when they underly adverse action: “Where the State assumes from a group of voters’ race that they ‘think alike, share the same political interests, and will prefer the same candidates at the polls,’ it engages in racial stereotyping at odds with equal protection mandates.” *Miller v. Johnson*, 515 U.S. 900, 920 (1995) (quoting *Shaw v. Reno*, 509 U.S. 630, 647 (1993)). “Eliminating racial discrimination means eliminating all of it,” even when it’s a

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<sup>15</sup> See *Cooper v. Harris*, 581 U.S. 285, 308 n.7 (2017) (“[T]he sorting of voters on the grounds of their race remains suspect even if race is meant to function as a proxy for other (including political) characteristics.”); *Easley v. Cromartie*, 532 U.S. 234, 257 (2001) (A legislature may not “defend its districting decisions based on a ‘stereotype’ about African-American voting behavior”); *Id.* at 266-67 (Thomas J., dissenting) (“It is not [a] defense that the legislature merely may have drawn the district based on the stereotype that blacks are reliable Democratic voters.”); *cf. Powers v. Ohio*, 499 U.S. 400, 410 (1991) (“Race cannot be a proxy for determining juror bias or competence.”).

convenient proxy. *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 206, 219–20 (2023) (“We have long held that universities may not operate their admissions programs on the belief that minority students always (or even consistently) express some characteristic minority viewpoint on any issue.” (internal quotation marks omitted)) (citing *Shaw v. Reno*, 509 U.S. 630 (1993)).

Such racial stereotyping to achieve partisan goals not only employs unconstitutional assumptions and racial stereotypes, but also impermissibly targets and diminishes minority voting power. Accordingly, the Supreme Court has affirmed that partisan goals do not immunize purposeful attempts to limit minority voting power. *See League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 440 (2006) (“In essence the State took away the Latinos’ opportunity because Latinos were about to exercise it. This bears the mark of intentional discrimination that could give rise to an equal protection violation.”). Given this unwavering precedent disavowing intentional discrimination based on race—even to serve partisan ends—the district court’s handwaving of Judge O’Hare’s explicit racial comments because they conform with a “partisan motive,” ECF 42 at 22, was error.

**ii. The *Arlington Heights* factors also support a finding of intentional racial discrimination.**

*First*, it is uncontested that the disenfranchisement borne out of the adoption of Map 7 “bears more heavily on one race than another.” *Arlington Heights*, 429 U.S. at 266 (cleaned up); ECF 42 at 13 (“[T]he Court acknowledges there is a

disparate impact, in that Black and Latino voters are subject to postponement at higher rates than White voters.”). Specifically, while only 5.3 % of eligible White voters are impacted, 17% of eligible Black voters are impacted and 11.8% of eligible Latino voters are impacted. *Id.*<sup>16</sup> Where “the adverse consequences of a law upon an identifiable group” are clear, “a strong inference that the adverse effects were desired can reasonably be drawn.” *Id.*; see *LULAC*, 601 F. Supp. 3d at 160 (“[T]he decisionmaker need not explicitly spell out its invidious goals—a court may sometimes infer discriminatory intent where an act has predictable discriminatory consequences.”).

*Second*, the historical context of redistricting of Tarrant County and Texas voting laws supports an inference of discriminatory intent. “In every decade since the statute was passed in 1965, federal courts have held that Texas violated the VRA.” *Id.* at 170. “That includes the most recent redistricting cycle and, most

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<sup>16</sup> In the context of addressing Plaintiffs’ Section 2 Voting Rights Act claim (not at issue in this appeal), the district court faulted Plaintiffs for providing “no metric by which the Court can conclude that the disparity between Anglo voters and Black and Latino voters is large or small,” ECF 42 at 13. While the court’s application of *Brnovich v. Democratic National Committee*, 594 U.S. 647 (2021), is inapplicable in this context, it is also hard to imagine *any* metric by which this disparity is small. In terms of proportions, Black voters are three times as likely to be disenfranchised as Anglo voters. And in terms of overall impact, nearly one out of every six Black voters lost their right to vote for the Commissioners Court in 2026 because of this change. By way of comparison, the percentage of voters affected by the challenges in *Brnovich* hovered around 1 percent. *Id.* at 680. These are not thin margins.

damningly, the 2012 decision holding that, among other violations, Texas had engaged in intentional vote dilution by drawing SD 10” in Tarrant County. *Id.*; see *Veasey*, 830 F.3d at 239 (citing the 2012 decision regarding SD 10 in Tarrant County as a “contemporary example[ ] of State-sponsored discrimination”).<sup>17</sup> As the *LULAC* court found regarding SD10, the “historical evidence weighs in favor of an inference of discriminatory intent.” 601 F. Supp. 3d at 171.

*Third*, the sequence of events, together with the procedural and substantive departures from the norm, support an inference of intentional discrimination.<sup>18</sup> To begin, mid-decade redistricting—unprompted by an unlawful population deviation or a federal or state court order finding a legal violation in the existing map—is certainly unusual, whether nationally, in Texas, or in Tarrant County. ECF 13 at 15. Moreover, the absence of any formally adopted redistricting criteria in 2025 notably

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<sup>17</sup> All three federal judges adjudicating the 2011 congressional map’s lawfulness agreed that its configuration of districts in Tarrant County was intentionally discriminatory. *Perez*, 253 F. Supp. 3d at 961; *id.* at 986 (Smith, J., dissenting) (disagreeing with majority regarding other parts of the state but concluding that DFW districts were the product of intentional discrimination); *id.* (“Relatively little about the 2011 Congressional redistricting passes the smell test as to DFW.”); *id.* (noting the “unusual appendages added [in a Tarrant County district] from an adjoining, but demographically dissimilar, neighboring county”).

<sup>18</sup> As the *LULAC* court noted, these factors “can be difficult to disentangle.” 601 F. Supp. 3d at 17. Because Texas open meetings laws limit the potential of “private meetings” of commissioners compared to redistricting by the legislature, Plaintiffs address these factors together here in relation to the “formal, public legislative process.” *Id.*

departs from both the 2011 and 2021 Tarrant County redistricting processes, where neutral criteria were adopted to guide the map drawing and selection process. *Id.* at 10, 12, 16. *See Petteway v. Galveston County*, [698 F. Supp. 3d 952, 991](#) (S.D. Tex. 2023), reversed and remanded on other grounds, [111 F.4th 596](#) (5th Cir. 2024) (en banc) (“[T]he commissioners court’s failure to adopt redistricting criteria . . . is a deviation because the commissioners court had adopted criteria in prior years and other counties across the state have regularly adopted redistricting criteria.”).

The 2025 process was also rushed, lasting only two months from start to finish, without any justification or explanation. And there is no explanation for why map options were not publicly posted until just a month before the final vote or why Map 7 was not publicly released until just days before it was selected, contrary to Judge O’Hare’s commitment to provide two to two-and-a-half weeks for the public to consider any selected map. *See Petteway*, [698 F. Supp. 3d at 992-93](#) (finding that COVID pandemic did not explain Galveston County’s “rushed process” in which maps were not drawn until just a month before adoption). As was the case in *Petteway*, the failure to publicly release Map 7 until *after* public hearings had completed “prevented meaningful public comment” on the map. *Id.* at 992.

Moreover, the County’s failure to undergo a bidding process for outside redistricting counsel—despite choosing not to use Bickerstaff, which had been the County’s counsel for the prior four decennial redistricting cycles—was a significant

procedural departure. *Id.* (citing Galveston County’s failure to have bids from redistricting counsel as procedural deviation). More startling was PILF’s departure from the manner in which Bickerstaff undertook its task. While Bickerstaff managed the public input process and its counsel made substantive legal presentations to both the Commissioners Court and the public, PILF expressly refused to do so, with Mr. Nixon claiming to fear for his life if he attended a public input meeting in majority-minority Precinct 2. ECF 13 at 17. As former Commissioner Devan Allen, who attended the meeting, testifies: “This was absurd and insulting to the people of southeastern Tarrant County. It is hard not to see the racial undertone in Mr. Nixon’s claim that he would be unsafe if he attended a public input session in a majority-minority community represented by a Black Commissioner.” Decl. of Devan Allen, ECF 13-3 at 71.

The sequence of events, together with procedural and substantive departures, support an inference of intentional discrimination.

Rather than addressing this evidence wholistically—as the “sensitive inquiry” under *Arlington Heights* requires—the district court picks apart each piece of circumstantial evidence for being just that, circumstantial, and discounts the relevance of the very factors that *Arlington Heights* identifies. *See e.g.*, ECF 42 at 20 (discounting the disparate impact because of the correlation between race and politics), 21 (discrediting the history of discrimination in Tarrant County

redistricting because it was committed by state legislators and the remarks of a Tarrant County commissioner because it was not a *current* commissioner), 12, 21 (quibbling with whether mid-decade redistricting is “exceedingly unusual” or just “not the norm”), and 21-22 (labeling, with no explanation, procedural departures as “indicators of politics—not race discrimination”). This analysis simply does not credit circumstantial evidence but rather demands direct evidence (and then excuses that as well). This Court has admonished that circumstantial evidence must be an adequate pathway to prove intentional discrimination because “neutral reasons can and do mask racial intent.” *Veasey*, 830 F.3d at 230. The district court’s analysis, in practice, flouts this principle.

**C. Map 7 Unconstitutionally Targets Voters for Disenfranchisement Based on Viewpoint.**

But even if Judge O’Hare had not admitted the targeting of “Black voters” because they “keep voting” for his political opponents, and even if this Court discounted the *Arlington Heights* evidence, Defendants’ reliance on their “unabashed effort to increase Republican power and decrease Democratic power” is not the saving grace they believe it to be. ECF 27 at 6. While the Supreme Court has acknowledged that partisan vote dilution claims are nonjusticiable, it has emphatically *not* permitted legislators to target politically disfavored voters with actual disenfranchisement—temporary or not.

Defendants have admitted that they moved disproportionately Black and Latino

voters out of Precinct 2 and into Precinct 1 because they believe those voters are likely Democratic (i.e. viewpoint-disfavored voters) and that the result of those intentional moves is to deprive nearly one in six Black voters in Tarrant County of the opportunity to vote at all in 2026 for the Commissioners Court (and thus to be represented for the next two years by a candidate they had the opportunity to vote for).

The Supreme Court has repeatedly held that “[f]encing out from the franchise a sector of the population because of the way they may vote is constitutionally impermissible.” *Carrington v. Rash*, 380 U.S. 89, 94 (1965); *see also Anderson v. Celebrezze*, 460 U.S. 780, 793 (1983) (“[I]t is especially difficult for the State to justify a restriction that limits political participation by an identifiable political group whose members share a particular viewpoint, associational preference, or economic status.”); *Vidal v. Elster*, 602 U.S. 286, 293 (2024) (noting that viewpoint discrimination is “particularly egregious form of content discrimination” (cleaned up)). That is precisely what Map 7 does—and what Defendants *claim* it was intended to do. ECF 13 at 6 (noting that 66.7% of disenfranchised voters cast ballot for 2022 Democratic gubernatorial candidate versus 47.3% of countywide voters doing so).

It would be patently unconstitutional for the Commissioners Court to declare that 100,000 Democratic voters would be selected, based on their party registration, to be excluded from elections in 2026 and to resume voting in 2028. The Commissioners Court cannot achieve the same result—based on the same explicit

viewpoint discrimination—by smuggling it through an unnecessary redistricting process.

The district court found that this claim is “identical to that in *Rucho*.” ECF 42 at 15. But that is not so. Nothing in *Rucho* overruled the bedrock principles that legislators cannot fence out from the franchise portions of the population it believes vote the “wrong” way. To the contrary, the Court was clear that even in the context of partisan vote *dilution*—distinct from access to the ballot—it did not “condone excessive partisan gerrymandering” and reiterated that “such gerrymandering is ‘incompatible with democratic principles,’” *Rucho*, 588 U.S. at 718-19. Notwithstanding the vote dilution harms of partisan gerrymandering, however, the Court concluded that there were no manageable standards for assessing when such harms are unconstitutional.

But whether a voter is precluded from voting in an election on account of their viewpoint is very different from whether districts are configured to elect more or fewer members of a political party. The latter is not justiciable in federal courts, but the former clearly is. The justiciability problems the Court identified in that case do not arise in answering this question: Can the government target voters for exclusion from the electorate in the next election because it disfavors their viewpoints? It is judicially manageable to say “no” to that without worrying about line drawing. The Supreme Court has done just that: “‘(D)ifferences of opinion’ may not be the basis for

excluding any group or person from the franchise.” *Dunn*, 405 U.S. at 355 (quoting *Cipriano v. City of Houma*, 395 U.S., at 705—706). There is no exception to this rule if the disenfranchisement is “just” for two years.

## **II. Plaintiffs Will Sufferable Irreparable Injury.**

Map 7 causes substantial disenfranchisement—disproportionately affecting Black and Latino voters and those whose viewpoints the County disfavors. The right to vote, the right to be free from intentional racial discrimination in voting, and the right to be free from viewpoint discrimination are core constitutional rights. *See U.S. Const. amend. I, XIV § 1, U.S. Const. amend. XV § 1*. Defendants’ imposition of Map 7 violates those rights. These harms cannot be undone through monetary relief.

As such, Plaintiffs will suffer irreparable harm absent this Court’s intervention. *BST Holdings v. OSHA*, 17 F.4th 604, 618 (5th Cir. 2021) (“the loss of constitutional freedoms . . . ‘unquestionably constitutes irreparable injury’”) (quoting *Elrod v. Burns*, 347 U.S. 373 (1976)); *see also, e.g., Deerfield Med. Center v. City of Deerfield Beach*, 661 F. 2d 328, 338 (5th Cir. Unit B Nov. 1981) (finding that violations of fundamental rights are always irreparable); *DeLeon v. Perry*, 975 F. Supp. 2d 632, 663 (W.D. Tex. 2014), *aff’d sub nom. DeLeon v. Abbott*, 791 F.3d 619 (5th Cir. 2015) (“Federal courts at all levels have recognized that violation of constitutional rights constitutes irreparable harm as a matter of law.”); *see also League of Women Voters of N. Carolina v. North Carolina*, 769 F.3d 224, 247 (4th

Cir. 2014) (“[O]nce the election occurs, there can be no do-over and no redress.”).

### **III. The Balance of Equities Favors Plaintiffs.**

The balance of equities also favors entry of a preliminary injunction. *See Ingebretsen v. Jackson Public School Dist.*, 88 F.3d 274, 280 (5th Cir. 1996) (holding that where an enactment is unconstitutional, “the public interest [is] not disserved by an injunction preventing its implementation”). Defendants lack any legitimate interest in enforcing a redistricting plan that violates Plaintiffs’ rights to be free from discrimination. *See BST Holdings*, No. 21-60845 \*19 (finding that any interest that may be asserted in enforcing laws that infringe on constitutional freedoms is “illegitimate”). And the public interest in protecting Plaintiffs’ constitutional rights to be free from discrimination outweighs any minimal burden to Defendants. *See De Leon*, 975 F. Supp. 2d at 665 (“[A] preliminary injunction preventing the enforcement of an unconstitutional law serves, rather than contradicts, the public interest.”); *see also, e.g., G & V Lounge, Inc. v. Michigan Liquor Control Commission*, 23 F.3d 1071 (6th Cir. 1994) (“[I]t is always in the public interest to prevent the violation of a party’s constitutional rights.”); *Charles H. Wesley Educ. Fdn., Inc. v. Cox*, 408 F.3d 1349, 1355 (11th Cir. 2005) (“[T]he . . . cautious protection of the Plaintiffs’ franchise-related rights is without question in the public interest.”).

## **CONCLUSION**

For the foregoing reasons, this Court should reverse the district court's denial of Plaintiff's motion for preliminary injunction and direct the district court to preliminarily enjoin implementation of Map 7.

Dated: September 29, 2025

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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT,  
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/s/ Chad W. Dunn  
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**CERTIFICATE OF SERVICE**

I hereby certify that on September 29, 2025, this document was electronically served on all counsel of record via the Court's CM/ECF system.

/s/ Chad W. Dunn  
Chad W. Dunn

No. 25-11055

**United States Court of Appeals  
for the Fifth Circuit**

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Winnie Jackson, *et al.*,  
*Plaintiffs-Appellants,*

v.

Tarrant County, Texas, *et al.*,  
*Defendants-Appellees.*

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On appeal from the United States District  
Court for the Northern District of Texas  
USDC 4:25-CV-00587-O

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# **TAB 1: DOCKET SHEET**

**U.S. District Court  
Northern District of Texas (Fort Worth)  
CIVIL DOCKET FOR CASE #: 4:25-cv-00587-O**

Jackson et al v. Tarrant County, Texas et al  
Assigned to: Chief District Judge Reed O'Connor  
Case in other court: United States Court of Appeals 5th Circuit,  
25-11055  
Cause: 42:1983 Civil Rights Act

Date Filed: 06/04/2025  
Date Terminated: 09/23/2025  
Jury Demand: None  
Nature of Suit: 441 Civil Rights: Voting  
Jurisdiction: Federal Question

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Date Filed	#	Docket Text
06/04/2025	<a href="#"><u>1</u></a>	COMPLAINT against Tarrant County Commissioners Court, Tarrant County, Texas, Tim O'Hare, in his official capacity as Tarrant County Judge filed by Celina Vasquez, Jarrett "Jay" Jackson, Duane Braxton, Winnie Jackson, Nadia Bhular. (Filing fee \$405; Receipt number ATXNDC-15550407) Plaintiff will submit summons(es) for issuance. In each Notice of Electronic Filing, the judge assignment is indicated, and a link to the <a href="#"><u>Judges Copy Requirements</u></a> and <a href="#"><u>Judge Specific Requirements</u></a> is provided. The court reminds the filer that any required copy of this and future documents must be delivered to the judge, in the manner prescribed, within three business days of filing. Unless exempted, attorneys

		who are not admitted to practice in the Northern District of Texas must seek admission promptly. Forms, instructions, and exemption information may be found at <a href="http://www.txnd.uscourts.gov">www.txnd.uscourts.gov</a> , or by clicking here: <a href="#">Attorney Information - Bar Membership</a> . If admission requirements are not satisfied within 21 days, the clerk will notify the presiding judge. (Attachments: # <a href="#">1</a> Civil Cover Sheet) (Dunn, Chad) (Entered: 06/04/2025)
06/04/2025	<a href="#">2</a>	CERTIFICATE OF INTERESTED PERSONS/DISCLOSURE STATEMENT by Nadia Bhular, Duane Braxton, Jarrett "Jay" Jackson, Winnie Jackson, Celina Vasquez. (Clerk QC note: No affiliate entered in ECF). (Dunn, Chad) (Entered: 06/04/2025)
06/04/2025	<a href="#">3</a>	Request for Clerk to issue Summons in a Civil Action filed by Nadia Bhular, Duane Braxton, Jarrett "Jay" Jackson, Winnie Jackson, Celina Vasquez. (Dunn, Chad) (Entered: 06/04/2025)
06/04/2025	<a href="#">4</a>	New Case Notes: A filing fee has been paid. File to: Judge O Connor. Pursuant to Misc. Order 6, Plaintiff is provided the Notice of Right to Consent to Proceed Before A U.S. Magistrate Judge. Clerk to provide copy to plaintiff if not received electronically. Attorneys are further reminded that, if necessary, they must comply with Local Rule 83.10(a) within 14 days or risk the possible dismissal of this case without prejudice or without further notice. (sre) (Entered: 06/04/2025)
06/04/2025	<a href="#">5</a>	Summons Issued as to Tim O'Hare, Tarrant County Commissioners Court, Tarrant County, Texas. (sre) (Entered: 06/04/2025)
06/10/2025	<a href="#">6</a>	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee \$100; Receipt number ATXNDC-15563502) filed by Nadia Bhular, Duane Braxton, Jarrett "Jay" Jackson, Winnie Jackson, Celina Vasquez (Attachments: # <a href="#">1</a> Gaber DC Certificate of Good Standing)Attorney Mark Gaber added to party Nadia Bhular(pty:pla), Attorney Mark Gaber added to party Duane Braxton(pty:pla), Attorney Mark Gaber added to party Jarrett "Jay" Jackson(pty:pla), Attorney Mark Gaber added to party Winnie Jackson(pty:pla), Attorney Mark Gaber added to party Celina Vasquez(pty:pla) (Gaber, Mark) (Entered: 06/10/2025)
06/11/2025	7	ELECTRONIC ORDER granting <a href="#">6</a> Application for Admission Pro Hac Vice of Mark P. Gaber. Important Reminder: Unless excused for cause, an attorney who is not an ECF user must register within 14 days of the date the attorney appears in a case pursuant to LR 5.1(f) and LCrR 49.2(g). (Ordered by Judge Reed C. O'Connor on 6/11/2025) (chmb) (Entered: 06/11/2025)
06/17/2025	<a href="#">8</a>	AMENDED COMPLAINT against Tim O'Hare, Tarrant County Commissioners Court, Tarrant County, Texas filed by Celina Vasquez, Jarrett "Jay" Jackson, Duane Braxton, Winnie Jackson, Nadia Bhular, Amjad Bhular, Cheryl Mills Smith, Richard Canada. Unless exempted, attorneys who are not admitted to practice in the Northern District of Texas must seek admission promptly. Forms, instructions, and exemption information may be found at <a href="http://www.txnd.uscourts.gov">www.txnd.uscourts.gov</a> , or by clicking here: <a href="#">Attorney Information - Bar Membership</a> . If admission requirements are not satisfied within 21 days, the clerk will notify the presiding judge. (Dunn, Chad) (Entered: 06/17/2025)
06/17/2025	<a href="#">9</a>	Request for Clerk to issue Summons in a Civil Action filed by Amjad Bhular, Nadia Bhular, Duane Braxton, Richard Canada, Jarrett "Jay" Jackson, Winnie Jackson, Cheryl Mills Smith, Celina Vasquez. (Attachments: # <a href="#">1</a> First Amended Complaint) (Dunn, Chad) (Entered: 06/17/2025)
06/17/2025	<a href="#">10</a>	Summons Issued as to Tim O'Hare, Tarrant County Commissioners Court, Tarrant County, Texas. (bdb) (Entered: 06/17/2025)
06/27/2025	<a href="#">11</a>	MOTION for Injunction ( <i>Plaintiffs' Motion for Preliminary Injunction</i> ) filed by Amjad Bhular, Nadia Bhular, Duane Braxton, Richard Canada, Jarrett "Jay" Jackson, Winnie

		Jackson, Cheryl Mills Smith, Celina Vasquez (Attachments: # <a href="#">1</a> Proposed Order) Attorney Mark Gaber added to party Amjad Bhular(pty:pla), Attorney Mark Gaber added to party Richard Canada(pty:pla), Attorney Mark Gaber added to party Cheryl Mills Smith(pty:pla) (Gaber, Mark) (Entered: 06/27/2025)
06/27/2025	<a href="#">12</a>	Brief/Memorandum in Support filed by Amjad Bhular, Nadia Bhular, Duane Braxton, Richard Canada, Jarrett "Jay" Jackson, Winnie Jackson, Cheryl Mills Smith, Celina Vasquez re <a href="#">11</a> MOTION for Injunction ( <i>Plaintiffs' Motion for Preliminary Injunction</i> ) (Gaber, Mark) (Entered: 06/27/2025)
06/27/2025	<a href="#">13</a>	Appendix in Support filed by Amjad Bhular, Nadia Bhular, Duane Braxton, Richard Canada, Jarrett "Jay" Jackson, Winnie Jackson, Cheryl Mills Smith, Celina Vasquez re <a href="#">11</a> MOTION for Injunction ( <i>Plaintiffs' Motion for Preliminary Injunction</i> ), <a href="#">12</a> Brief/Memorandum in Support of Motion, (Attachments: # <a href="#">1</a> Appendix Pages 74-133, # <a href="#">2</a> Appendix Pages 134-148, # <a href="#">3</a> Appendix Pages 149-221) (Gaber, Mark) (Entered: 06/27/2025)
06/27/2025	<a href="#">14</a>	MOTION to Expedite ( <i>Plaintiffs' Motion to Expedite the Preliminary Injunction Hearing and Separate the Trial on Counts 1 and 2 from Counts 3 and 4 and Consolidate it with the Preliminary Injunction Hearing</i> ) filed by Amjad Bhular, Nadia Bhular, Duane Braxton, Richard Canada, Jarrett "Jay" Jackson, Winnie Jackson, Cheryl Mills Smith, Celina Vasquez (Attachments: # <a href="#">1</a> Proposed Order) (Gaber, Mark) (Entered: 06/27/2025)
06/27/2025	<a href="#">15</a>	Brief/Memorandum in Support filed by Amjad Bhular, Nadia Bhular, Duane Braxton, Richard Canada, Jarrett "Jay" Jackson, Winnie Jackson, Cheryl Mills Smith, Celina Vasquez re <a href="#">14</a> MOTION to Expedite ( <i>Plaintiffs' Motion to Expedite the Preliminary Injunction Hearing and Separate the Trial on Counts 1 and 2 from Counts 3 and 4 and Consolidate it with the Preliminary Injunction Hearing</i> ) (Gaber, Mark) (Entered: 06/27/2025)
06/30/2025	<a href="#">16</a>	ORDER: Before the Court are Plaintiffs' Motion for a Preliminary Injunction (ECF No. <a href="#">1</a> ) and Plaintiffs' Motion to Expedite (ECF No. <a href="#">14</a> ), filed June 27, 2025. In order to expeditiously resolve the issues presented, the Court ORDERS Plaintiffs to confer with Defendants and agree on a briefing schedule for the Motion. The parties are to file a joint notice outlining the agreed briefing schedule no later than July 7, 2025. (Ordered by Judge Reed C. O'Connor on 6/30/2025) (sre) (Entered: 06/30/2025)
07/07/2025	<a href="#">17</a>	SUMMONS Returned Executed as to Tim O'Hare ; served on 6/30/2025. (Dunn, Chad) (Entered: 07/07/2025)
07/07/2025	<a href="#">18</a>	SUMMONS Returned Executed as to Tarrant County Commissioners Court ; served on 6/30/2025. (Dunn, Chad) (Entered: 07/07/2025)
07/07/2025	<a href="#">19</a>	SUMMONS Returned Executed as to Tarrant County, Texas ; served on 6/30/2025. (Dunn, Chad) (Entered: 07/07/2025)
07/07/2025	<a href="#">20</a>	NOTICE of <i>Filing Joint Notice on Briefing Schedule</i> filed by Amjad Bhular, Nadia Bhular, Duane Braxton, Richard Canada, Jarrett "Jay" Jackson, Winnie Jackson, Cheryl Mills Smith, Celina Vasquez (Dunn, Chad) (Entered: 07/07/2025)
07/10/2025	<a href="#">21</a>	ORDER: Before the Court are the parties' Joint Notice on Briefing Schedule. ECF No. <a href="#">20</a> . The parties have conferred and agreed to a briefing schedule. Accordingly, the Court adopts and ENTERS the following briefing schedule: August 4, 2025: Deadline for Defendants' responsive pleading to the First Amended Complaint, response to Plaintiffs' Motion for Preliminary Injunction, and response to Plaintiffs' Motion to Expedite. August 11, 2025: Deadline for Plaintiffs' replies (Ordered by Judge Reed C. O'Connor on 7/10/2025) (wxc) (Entered: 07/10/2025)

08/01/2025	<a href="#">22</a>	MOTION to Dismiss for Lack of Jurisdiction filed by Tim O'Hare, Tarrant County Commissioners Court, Tarrant County, Texas with Brief/Memorandum in Support. (Attachments: # <a href="#">1</a> memorandum in support)Attorney Joseph M Nixon added to party Tim O'Hare(pty:dft), Attorney Joseph M Nixon added to party Tarrant County Commissioners Court(pty:dft), Attorney Joseph M Nixon added to party Tarrant County, Texas(pty:dft) (Nixon, Joseph) (Entered: 08/01/2025)
08/01/2025	<a href="#">23</a>	MOTION to Strike filed by Tim O'Hare, Tarrant County Commissioners Court, Tarrant County, Texas (Nixon, Joseph) (Entered: 08/01/2025)
08/03/2025	<a href="#">24</a>	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee \$100; Receipt number ATXNDC-15702840) filed by Tim O'Hare, Tarrant County Commissioners Court, Tarrant County, Texas (Attachments: # <a href="#">1</a> Additional Page(s) Cert of Good Standing, # <a href="#">2</a> Additional Page(s) Admissions)Attorney John Christian Adams added to party Tim O'Hare(pty:dft), Attorney John Christian Adams added to party Tarrant County Commissioners Court(pty:dft), Attorney John Christian Adams added to party Tarrant County, Texas(pty:dft) (Adams, John) (Entered: 08/03/2025)
08/04/2025	<a href="#">25</a>	RESPONSE filed by Tim O'Hare, Tarrant County Commissioners Court, Tarrant County, Texas re: <a href="#">14</a> MOTION to Expedite ( <i>Plaintiffs' Motion to Expedite the Preliminary Injunction Hearing and Separate the Trial on Counts 1 and 2 from Counts 3 and 4 and Consolidate it with the Preliminary Injunction Hearing</i> ) (Nixon, Joseph) (Entered: 08/04/2025)
08/04/2025	26	ELECTRONIC ORDER granting <a href="#">24</a> Application for Admission Pro Hac Vice of J. Christian Adams. Important Reminder: Unless excused for cause, an attorney who is not an ECF user must register within 14 days of the date the attorney appears in a case pursuant to LR 5.1(f) and LCrR 49.2(g). (Ordered by Judge Reed C. O'Connor on 8/4/2025) (chmb) (Entered: 08/04/2025)
08/04/2025	<a href="#">27</a>	Brief/Memorandum in Support filed by Tim O'Hare, Tarrant County Commissioners Court, Tarrant County, Texas re <a href="#">22</a> MOTION to Dismiss for Lack of Jurisdiction (Nixon, Joseph) (Entered: 08/04/2025)
08/04/2025	<a href="#">28</a>	RESPONSE filed by Tim O'Hare, Tarrant County Commissioners Court, Tarrant County, Texas re: <a href="#">11</a> MOTION for Injunction ( <i>Plaintiffs' Motion for Preliminary Injunction</i> ) (Nixon, Joseph) (Entered: 08/04/2025)
08/06/2025	<a href="#">29</a>	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee \$100; Receipt number ATXNDC-15713853) filed by Tim O'Hare, Tarrant County Commissioners Court, Tarrant County, Texas (Attachments: # <a href="#">1</a> Exhibit(s) Certificate of Good Standing)Attorney Kaylan Phillips added to party Tim O'Hare(pty:dft), Attorney Kaylan Phillips added to party Tarrant County Commissioners Court(pty:dft), Attorney Kaylan Phillips added to party Tarrant County, Texas(pty:dft) (Phillips, Kaylan) (Entered: 08/06/2025)
08/07/2025	30	ELECTRONIC ORDER granting <a href="#">29</a> Application for Admission Pro Hac Vice of Kaylan Phillips. Important Reminder: Unless excused for cause, an attorney who is not an ECF user must register within 14 days of the date the attorney appears in a case pursuant to LR 5.1(f) and LCrR 49.2(g). (Ordered by Judge Reed C. O'Connor on 8/7/2025) (chmb) (Entered: 08/07/2025)
08/11/2025	<a href="#">31</a>	RESPONSE filed by Amjad Bhular, Nadia Bhular, Duane Braxton, Richard Canada, Jarrett "Jay" Jackson, Winnie Jackson, Cheryl Mills Smith, Celina Vasquez re: <a href="#">22</a> MOTION to Dismiss for Lack of Jurisdiction (Dunn, Chad) (Entered: 08/11/2025)
08/11/2025	<a href="#">32</a>	RESPONSE filed by Amjad Bhular, Nadia Bhular, Duane Braxton, Richard Canada, Jarrett "Jay" Jackson, Winnie Jackson, Cheryl Mills Smith, Celina Vasquez re: <a href="#">23</a> MOTION to

		Strike (Dunn, Chad) (Entered: 08/11/2025)
08/11/2025	<a href="#">33</a>	REPLY filed by Amjad Bhular, Nadia Bhular, Duane Braxton, Richard Canada, Jarrett "Jay" Jackson, Winnie Jackson, Cheryl Mills Smith, Celina Vasquez re: <a href="#">11</a> MOTION for Injunction ( <i>Plaintiffs' Motion for Preliminary Injunction</i> ) (Dunn, Chad) (Entered: 08/11/2025)
08/11/2025	<a href="#">34</a>	REPLY filed by Amjad Bhular, Nadia Bhular, Duane Braxton, Richard Canada, Jarrett "Jay" Jackson, Winnie Jackson, Cheryl Mills Smith, Celina Vasquez re: <a href="#">14</a> MOTION to Expedite ( <i>Plaintiffs' Motion to Expedite the Preliminary Injunction Hearing and Separate the Trial on Counts 1 and 2 from Counts 3 and 4 and Consolidate it with the Preliminary Injunction Hearing</i> ) (Dunn, Chad) (Entered: 08/11/2025)
08/11/2025	<a href="#">35</a>	MOTION for Leave to File Amicus Brief <i>IN SUPPORT OF DEFENDANTS MOTION TO DISMISS</i> filed by State of Texas (Attachments: # <a href="#">1</a> Amicus Brief, # <a href="#">2</a> Proposed Order) Attorney Zachary Louis Rhines added to party State of Texas(pty:am) (Rhines, Zachary) (Entered: 08/11/2025)
08/15/2025	<a href="#">36</a>	ORDER granting <a href="#">35</a> : Before the Court is State of Texas's Unopposed Motion for Leave to File Brief on Behalf of the State of Texas as Amicus Curiae in Support of Defendants. ECF No. <a href="#">35</a> . Having reviewed the Motion and applicable law, the Court deems the State's Motion meritorious and ORDERS that it is GRANTED. (Ordered by Judge Reed C. O'Connor on 8/15/2025) (wxc) (Entered: 08/15/2025)
08/15/2025	<a href="#">37</a>	Brief of the State of Texas as Amicus Curiae in Support of Defendants' Motion to Dismiss filed by State of Texas re <a href="#">22</a> (wxc) (Entered: 08/15/2025)
08/18/2025	<a href="#">38</a>	Unopposed MOTION for Leave to File Response to Amicus Brief of State of Texas filed by Amjad Bhular, Nadia Bhular, Duane Braxton, Richard Canada, Jarrett "Jay" Jackson, Winnie Jackson, Cheryl Mills Smith, Celina Vasquez (Attachments: # <a href="#">1</a> Proposed Response to Texas's Amicus Brief, # <a href="#">2</a> Proposed Order) (Gaber, Mark) (Entered: 08/18/2025)
08/19/2025	<a href="#">39</a>	ORDER granting <a href="#">38</a> : Before the Court is Plaintiffs' Unopposed Motion for Leave to File Response to Amicus Brief. ECF No. <a href="#">38</a> . The Motion is GRANTED. (Ordered by Chief District Judge Reed C. O'Connor on 8/19/2025) (wxc) (Entered: 08/19/2025)
08/19/2025	<a href="#">40</a>	Plaintiffs' Response To Amicus Curiae Brief of State of Texas filed by Amjad Bhular, Nadia Bhular, Duane Braxton, Richard Canada, Jarrett "Jay" Jackson, Winnie Jackson, Cheryl Mills Smith, Celina Vasquez re: <a href="#">37</a> . (wxc) (Entered: 08/19/2025)
08/21/2025	<a href="#">41</a>	REPLY filed by Tim O'Hare, Tarrant County Commissioners Court, Tarrant County, Texas re: <a href="#">22</a> MOTION to Dismiss for Lack of Jurisdiction (Nixon, Joseph) (Entered: 08/21/2025)
09/12/2025	<a href="#">42</a>	ORDER denying <a href="#">11</a> Motion for Injunction; granting <a href="#">14</a> Motion to Expedite.; granting in part <a href="#">22</a> Motion to Dismiss for Lack of Jurisdiction. ; denying <a href="#">23</a> Motion to Strike (Ordered by Chief District Judge Reed O'Connor on 9/12/2025) (chmb) (Entered: 09/13/2025)
09/15/2025	<a href="#">43</a>	NOTICE OF INTERLOCUTORY APPEAL as to <a href="#">42</a> Order on Motion for Injunction,, Order on Motion to Expedite,, Order on Motion to Dismiss/Lack of Jurisdiction,, Order on Motion to Strike, to the Fifth Circuit by Amjad Bhular, Nadia Bhular, Duane Braxton, Richard Canada, Jarrett "Jay" Jackson, Winnie Jackson, Cheryl Mills Smith, Celina Vasquez. Filing fee \$605, receipt number ATXNDC-15837474. T.O. form to appellant electronically at <a href="#">Transcript Order Form</a> or US Mail as appropriate. Copy of NOA to be sent US Mail to parties not electronically noticed. IMPORTANT ACTION REQUIRED: Provide an electronic copy of any exhibit you offered during a hearing or trial that was admitted into evidence to the clerk of the district court within 14 days of the date of this notice. Copies must be transmitted as PDF attachments through ECF by all ECF Users or

		delivered to the clerk on a CD by all non-ECF Users. See detailed instructions <a href="#">here</a> . (Exception: This requirement does not apply to a pro se prisoner litigant.) Please note that if original exhibits are in your possession, you must maintain them through final disposition of the case. (Dunn, Chad) (Entered: 09/15/2025)
09/17/2025	<a href="#">44</a>	STATUS REPORT ORDER: In light of Plaintiffs' Notice of Interlocutory Appeal, the parties are ORDERED to meet and confer on how this case should proceed while the appeal is pending. The parties should provide a joint status report no later than September 24, 2025, explaining how this case should proceed. (Ordered by Chief District Judge Reed O'Connor on 9/17/2025) (wxc) (Entered: 09/17/2025)
09/22/2025	<a href="#">45</a>	USCA Case Number 25-11055 in United States Court of Appeals 5th Circuit for <a href="#">43</a> Notice of Appeal, filed by Duane Braxton, Jarrett "Jay" Jackson, Cheryl Mills Smith, Winnie Jackson, Amjad Bhular, Nadia Bhular, Celina Vasquez, Richard Canada. (tle) (Entered: 09/22/2025)
09/23/2025	<a href="#">46</a>	Joint STATUS REPORT filed by Amjad Bhular, Nadia Bhular, Duane Braxton, Richard Canada, Jarrett "Jay" Jackson, Winnie Jackson, Cheryl Mills Smith, State of Texas, Celina Vasquez. (Dunn, Chad) (Entered: 09/23/2025)
09/23/2025	<a href="#">47</a>	ORDER: Before the Court is Parties' Joint Status Report requesting that the proceedings in this Court be held in abeyance pending Plaintiffs' appeal. ECF No. <a href="#">46</a> . The case is STAYED pending the Fifth Circuit's resolution of Plaintiffs' appeal from this Court's order denying Plaintiffs' motion for injunctive relief. ECF No. <a href="#">42</a> . The clerk shall administratively close this case for statistical purposes. (Ordered by Chief District Judge Reed O'Connor on 9/23/2025) (wxc) (Entered: 09/23/2025)
09/24/2025	<a href="#">48</a>	MOTION to Withdraw as Attorney filed by Tim O'Hare, Tarrant County Commissioners Court, Tarrant County, Texas (Famada, Omar) (Entered: 09/24/2025)
09/25/2025	<a href="#">49</a>	ORDER granting <a href="#">48</a> : Before the Court is Defendants' Unopposed Motion to Withdraw Counsel filed on September 24, 2025. ECF No. <a href="#">48</a> . After considering the Motion, the Court finds that it should be and is hereby GRANTED. Accordingly, it is ORDERED that Omar J. Famada is hereby withdrawn as counsel of record for the Defendants. Attorney Omar Jose Famada terminated (Ordered by Chief District Judge Reed O'Connor on 9/25/2025) (wxc) (Entered: 09/25/2025)


## **TAB 2: NOTICE OF APPEAL**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

WINNIE JACKSON, *et al.*,

Plaintiffs,

v.

TARRANT COUNTY, TEXAS, *et al.*,

Defendants.

CIVIL ACTION NO. 4:25-cv-00587-O

**PLAINTIFFS' NOTICE OF APPEAL**

Pursuant to 28 U.S.C. § 1292(a)(1) and Federal Rule of Appellate Procedure 3, notice is hereby given that Plaintiffs Winnie Jackson, Jarrett “Jay” Jackson, Celina Vasquez, Duane Braxton, Nadia Bhular, Amjad Bhular, Cheryl Mills-Smith, and Richard Canada hereby notice an appeal to the United States Court of Appeals for the Fifth Circuit from the September 12, 2025 Memorandum Opinion and Order, Docket No. 42, denying Plaintiffs’ motion for a preliminary injunction.

Dated: September 15, 2025

/s/ Mark P. Gaber

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Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

On September 15, 2025, I served the foregoing on all counsel of record via the Court's CM/ECF system.

/s/ Chad W. Dunn  
Chad W. Dunn

**TAB 3: DISTRICT COURT  
MEMORANDUM OPINION & ORDER**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

**WINNIE JACKSON, ET AL.,**

**Plaintiffs,**

v.

**TARRANT COUNTY, TEXAS, ET AL.,**

**Defendants.**

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**Civil Action No. 4:25-CV-00587-O**

**MEMORANDUM OPINION & ORDER**

Before the Court are Defendants’ Motion to Dismiss for Lack of Jurisdiction (ECF No. 22), Plaintiffs’ Response (ECF No. 31), and Defendants’ Reply (ECF No. 41). Additionally, before the Court are Plaintiffs’ Motion for Preliminary Injunction (ECF No. 11), Defendants’ Response (ECF No. 28), and Plaintiffs’ Reply (ECF No. 33). Also before the Court are Plaintiffs’ Motion to Expedite the Preliminary Injunction Hearing (ECF No. 14), Defendants’ Response (ECF No. 25), and Plaintiffs’ Reply (ECF No. 34). Finally, before the Court are the State of Texas’s Brief as Amicus Curiae in Support of Defendants’ Motion to Dismiss (ECF No. 37) and Plaintiffs’ Response (ECF No. 40).

Having reviewed the briefing and applicable law, the Court **DENIES** Plaintiffs’ Motion for a Preliminary Injunction in full. The Court **GRANTS** Defendants’ Motion to Dismiss only as to Plaintiffs’ First Amendment claims. The Court therefore **DISMISSES with prejudice** Plaintiffs’ First Amendment claims. This Order serves to **GRANT** Plaintiffs’ Motion to Expedite.

**I. BACKGROUND**

This case arises from a redistricted precinct map that Defendant, the Tarrant County Commissioners Court, adopted in June 2025. Plaintiffs are registered voters who reside in Tarrant

County,<sup>1</sup> and allege that the redistricted map—which they call “Map 7”—adversely impacts their opportunity to vote in the November 2026 local county commissioners’ election.<sup>2</sup> Specifically, the group of voters allege that the new precinct map violates (1) Section 2 of the Voting Rights Act (“VRA”), 52 U.S.C. § 10301, (2) the First and Fourteenth Amendments by disenfranchising voters for a period of two years, and (3) the Fourteenth and Fifteenth Amendments by intentional racial vote dilution.<sup>3</sup>

Following the 2020 Census, the Commissioners Court started to conduct a full redistricting process. However, Tarrant County was never redistricted that year, and the Commissioners ultimately decided to keep the precinct boundaries the same.<sup>4</sup> Then, four years later, in April of 2025, the Commissioners Court, under new leadership, voted again to consider redistricting the Commissioners’ precincts.<sup>5</sup>

The Commissioners Court is made up of one county-wide presiding County Judge who is elected to a four-year term and four Commissioners who are elected in single-member precincts (districts), also to four-year terms.<sup>6</sup> The election of Commissioners—which is at issue here—is determined by staggered elections in two commissioner precincts each election cycle.<sup>7</sup> Effectively, some precincts have seats up for election in years that others do not.

Plaintiffs allege that the former map—“the Benchmark Map”—included two districts (Precincts 1 and 2) that were majority-minority and elected the minority candidate of choice, while Precincts 3 and 4 elected the Anglo-preferred candidate.<sup>8</sup> In 2022, when the incumbent Tarrant

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<sup>1</sup> Pls.’ First Am. Compl. 4, ECF No. 8

<sup>2</sup> *Id.* at 2.

<sup>3</sup> Pls’ Mot. Prelim. Inj. 1, ECF No. 11.

<sup>4</sup> Pls.’ First Am. Compl. 10–11, ECF No 8.

<sup>5</sup> *Id.* at 8.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 11.

County Judge, Anglo Republican Glen Whitley, did not run for re-election, he was replaced by Anglo Republican Tim O’Hare.<sup>9</sup> Districts 1 and 2 voted for the Black Democrat, Deborah Peoples, even though Tim O’Hare ultimately won county-wide.<sup>10</sup> Plaintiffs allege that on the day of the redistricting vote, Judge O’Hare said in an interview with NBC 5 that “[t]he policies of Democrats continue to fail Black people over and over, but many of them keep voting them in. It’s time for people of all races to understand the Democrats are a lost party, they are a radical party, it’s time for them to get on board with us and we’ll welcome them with open arms.”<sup>11</sup>

Under the new map, “Map 7,” several Plaintiffs no longer fall into majority-minority precincts, and now reside in a majority-Anglo precinct. Other Plaintiffs still reside in majority-minority precincts even under the new map. However, their new precinct does not have a seat up for election until November 2028, whereas under the Benchmark map they would have been able to vote for County Commissioner in November 2026.<sup>12</sup> Accordingly, Plaintiffs allege that Black and Latino voters are subject to voting postponement at higher rates than White voters. That is, 5.3% of eligible White voters are impacted; 17% of eligible Black voters are impacted; and 11.8% of eligible Latino voters are impacted.<sup>13</sup>

All Plaintiffs are registered voters residing in Tarrant County, regularly vote in local elections, including County Commission elections, and claim an intent to vote in future elections for County Commission.<sup>14</sup>

On June 17, 2025, Plaintiffs filed their First Amended Complaint alleging: (1) Map 7 violates § 2 of the VRA because it results in a racially discriminatory imposition of a six- rather

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Pls.’ Br. Supp. Mot. Prelim. Inj. 8, ECF No. 12.

<sup>12</sup> Pls.’ First Am. Compl. 4–7, ECF No. 8.

<sup>13</sup> Pls.’ App. Supp. Mot. Prelim. Inj. 3, ECF No. 13.

<sup>14</sup> Pls.’ First Am. Compl. 4–7, ECF No. 8.

than four-year voting cycle for Commissioners Court elections; (2) Map 7 violates the First and Fourteenth Amendments by causing a two-year disenfranchisement period with no legitimate justification and in a manner that discriminates on the basis of race and viewpoint; (3) Map 7 is the product of intentional racial vote dilution in violation of the Fourteenth Amendment; and (4) Map 7 is the product of intentional racial vote dilution in violation of the Fifteenth Amendment.

Plaintiffs filed a Motion for Preliminary Injunction on June 6, 2027, requesting a decision by September 12, 2025. Defendants filed a Motion to Dismiss alleging that, among other things, this case presents a non-justiciable political question.<sup>15</sup> The State of Texas as Amicus Curiae submitted a brief in support of Defendants' Motion to Dismiss.<sup>16</sup> The Motions are ripe for the Court's review.

## II. LEGAL STANDARDS

### A. Justiciability

Under Article III of the Constitution, federal courts are limited to deciding “Cases” and “Controversies.” This limitation means that federal courts may only address questions that are “historically viewed as capable of resolution through the judicial process.” *Flast v. Cohen*, 392 U.S. 83, 95 (1968). “[I]n James Madison’s words,” cases and controversies are issues ““of a Judiciary Nature.”” *DiamlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 (2006) (quoting 2 Records of the Federal Convention of 1787, p. 430 (M. Farrand ed. 1966)).

Even though “the province and duty of the judicial department to say what the law is.” *Rucho v. Common Cause*, 588 U.S. 684, 695 (2019), sometimes, “the law is that the judicial department has no business entertaining the claim of unlawfulness—because the question is entrusted to one of the political branches or involves no judicially enforceable rights.” *Vieth v.*

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<sup>15</sup> Defs.’ Mot. Dismiss, ECF No. 22.

<sup>16</sup> Texas’s Amicus Br., ECF No. 37.

*Jubelirer*, 541 U.S. 267, 277 (2004) (plurality opinion). In those cases, the claim presented is a nonjusticiable “political question,” outside the courts’ competence and beyond its jurisdiction. *Baker v. Carr*, 369 U.S. 186, 217 (1962). “Among the political question cases the Court has identified are those that lack judicially discoverable and manageable standards for resolving them.” *Rucho*, 588 U.S. at 696 (internal quotation marks and citation omitted).

If the Court does not have jurisdiction to review a particular claim, it need not—indeed it cannot—proceed to the merits of the case. *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 94 (1998).

### **B. Preliminary Injunction**

To obtain a preliminary injunction, the movant must demonstrate: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable harm; (3) that the balance of hardships weighs in the movant’s favor; and (4) that issuance of a preliminary injunction will not disserve the public interest. *Daniels Health Servs., L.L.C. v. Vascular Health Scis., L.L.C.*, 710 F.3d 579, 582 (5th Cir. 2013). The last two factors merge when the government is the opposing party. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

While the decision to grant or deny injunctive relief is committed to the district court’s discretion, such relief is considered an “extraordinary remedy,” never awarded as of right. *Miss. Power & Light Co. v. United Gas Pipe Line*, 760 F.2d 618, 621 (5th Cir. 1985); *see also Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (explaining that a court must “pay particular regard for the public consequences in employing the extraordinary remedy of injunction”).

As movant, the party seeking relief bears the heavy burden of proving all elements of the preliminary injunction. *Nichols v. Alcatel USA, Inc.*, 532 F.3d 364, 372 (5th Cir. 2008). If the movant fails to establish any one of the four prerequisites to injunctive relief, relief will not be

granted. *Women’s Med. Ctr. of Nw. Hous. v. Bell*, 248 F.3d 411, 419 n.15 (5th Cir. 2001). Of these factors, likelihood of success on the merits is the most important. *Tesfamichael v. Gonzales*, 411 F.3d 169, 176 (5th Cir. 2005).

### III. ANALYSIS

Two theories of harm underlie Plaintiffs’ claims. The first is the “temporary disenfranchisement,” i.e., two-year voting delay, that Plaintiffs allege disproportionately impacts Black and Latino voters. The second is alleged dilution of the Black and Latino vote because those same voters are unable to vote in this election cycle. Plaintiffs advance these claims under statutory and constitutional authorities, but in light of the record available on this expedited posture, the Court concludes that none have a substantial likelihood of success on the merits.

#### A. Counts 1 and 2: Plaintiffs’ Voting-Delay Claims under § 2 of the VRA, the First Amendment, and the Fourteenth Amendment

Plaintiffs’ first two Counts are based on a novel theory of harm “that the adoption of Map 7 . . . has disproportionately disenfranchised Black and Latino voters of their right to vote in the November 2026 election—forcing them to wait six rather than four years to cast a ballot for commissioner.”<sup>17</sup> Plaintiffs rely on three sources of authority to advance their claim: Section 2 of the VRA, the First Amendment, and the Equal Protection Clause. The Court addresses each in turn, but first, it addresses a threshold issue whether precedent forecloses Plaintiffs’ theory of harm, as Defendants argue. Plaintiffs argue that their claims fall within the category of cases that courts have left open. The Court agrees with Plaintiffs.

This is not the first time that redistricting caused some voters to experience an election delay, and the impacted voters challenged the delay in court. In *Pate v. El Paso County, Texas*, the plaintiffs argued that staggered elections created an unconstitutional restriction upon the right to

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<sup>17</sup> Pls.’ Br. Supp. Mot. Prelim. Inj. 9, ECF No. 12.

vote because “a series of realignments of precinct lines” could “effectively prevent certain persons from ever voting by shifting them back and forth between commissioners precincts.” 337 F. Supp. 95, 99 (W.D. Tex. 1970) (three-judge panel), *aff’d sub nom. Pate v. El Paso Cnty., Tex.*, 400 U.S. 806 (1970). The three-judge panel noted that “[a]s long as standards and conditions regarding voting are reasonable and non-discriminatory they are permissible.” *Id.* at 97. Finding rational justifications for having staggered elections and that plaintiffs did not otherwise allege “arbitrary or invidious discrimination arising from the action of the state,” the panel decided the resultant voting delay was constitutional. *Id.* The Supreme Court affirmed. 400 U.S. 806.

Since *Pate*, a slew of courts across the country have followed course. A district court in Texas, *Carr v. Brazoria County, Texas*, 341 F. Supp. 155 (S.D. Tex. 1972), *aff’d sub nom. Carr v. Brazoria Cnty., Tex.*, 468 F.2d 950 (5th Cir. 1972), relied on *Pate* to reach the conclusion that redistricting causing “transferred voters to suffer a two-year postponement of the franchise,” is “constitutionally valid.” *Id.* at 160. Courts outside of the Fifth Circuit agree that postponement of the franchise is a natural consequence of redistricting in a system with staggered elections, and thus constitutional. *See, e.g., Republican Party of Oregon v. Keisling*, 959 F.2d 144 (9th Cir. 1992); *Mader v. Crowell*, 498 F. Supp. 226, 231 (M.D. Tenn. 1980); *see also Pereira v. Town of N. Hempstead*, 682 F. Supp. 3d 234, 244 (E.D.N.Y. 2023) (collecting cases that approve of the inevitable impacts—in addition to voting delays—of redistricting on staggered election terms).

But those courts likewise agree that temporary disenfranchisement would be unconstitutional—or at least subject to heightened scrutiny—if it was the result of invidious discrimination. *See Keisling*, 959 F.2d at 145–46 (“[A] temporary dilution of voting power that does not unduly burden a particular group does not violate the equal protection clause.”); *Mader*, 498 F. Supp. at 231 (“Plaintiffs submitted no evidence that the General Assembly made these shifts

for invidious or discriminatory purposes. Rather, this disenfranchisement results simply from the neutral and inoffensive . . . provision for overlapping senatorial terms, [among other reasons].”); *Donatelli v. Mitchell*, 2 F.3d 508, 514 (3d Cir. 1993) (“In contrast . . . the two-year ‘disenfranchisement’ suffered by the plaintiffs here as a result of the 1991 reapportionment . . . was not targeted at a discrete group of voters based on some personal characteristic.”); *Pereira*, 682 F. Supp. 3d at 246 (“Like all other federal courts that . . . hav[e] confronted this issue, the Court concludes that, because McHugh’s alleged discrimination is based on non-suspect classifications, the burden remains on Plaintiffs to ‘negate any reasonably conceivable state of facts that could provide a rational basis for the challenged classification.’”).

To the Court’s knowledge, no sort of claim—postponement based on race—has ever been litigated under the VRA or the Equal Protection Clause. If it has, it has been packaged as a vote-dilution or racial-gerrymandering claim, but Plaintiffs are adamant they do not make those claims under Counts 1 and 2.

In any event, because Plaintiffs allege racial discrimination was behind the two-year voting delay, *Pate*, *Carr*, and their progeny are not dispositive. Below, the Court addresses the merits of each of Plaintiffs’ claims based on the two-year voting delay.

### **1. Count 1: Section 2 of the VRA**

Plaintiffs’ first count is brought under § 2 of the VRA. That statute provides: “No voting . . . standard, practice, or procedure shall be imposed or applied . . . in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color.” 52 U.S.C. § 10301(a). Plaintiffs contend that the two-year period of disenfranchisement violates § 2 because it is an abridgement of their right to vote on account of race; particularly, as

a “time, place, or manner restriction” under *Brnovich v. Democratic Nat’l Comm.*, 594 U.S. 647 (2021).

After *Brnovich*, there are, seemingly, two ways of advancing a § 2 claim. *But see Ark. State Conf. NAACP v. Ark. Bd. of Apportionment*, 86 F.4th 1204, 1206–07 (8th Cir. 2023) (holding that private plaintiffs lack the ability to sue under § 2). The traditional path is to assert a vote-dilution claim challenging “the dispersal of [minorities] into districts in which they constitute an ineffective minority of voters or . . . the concentration of [minorities] into districts where they constitute an excessive majority.” *Thornburg v. Gingles*, 478 U.S. 30, 46 n.11 (1986) (citation omitted). The new path charted in *Brnovich* is to challenge a restriction on the time, place, or manner of voting. *See Brnovich*, 594 U.S. at 667 (Justice Alito explaining “this is our first § 2 time, place, or manner case”).

Regardless of which claim is asserted, § 2 requires “consideration of ‘the totality of circumstances’ that have a bearing on whether a State makes voting ‘equally open’ to all and gives everyone an equal ‘opportunity’ to vote.” *Id.* at 674. “[A]ny circumstance that has a logical bearing on whether voting is ‘equally open’ and affords equal ‘opportunity’ may be considered.” *Id.* at 668–69. But some factors are more or less relevant under each approach. *See id.* at 672 (“Some of [the *Gingles*] factors are plainly inapplicable in a case involving a challenge to a facially neutral time, place, or manner voting rule.”).

Defendants argue that Plaintiffs seek to use *Brnovich* as a backstop to *Gingles*, a traditional § 2 claim, because Plaintiffs cannot prevail under *Gingles*.<sup>18</sup> Whether or not Plaintiffs could prevail

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<sup>18</sup> Defendants also argue that “[c]ourts rely on *Gingles* to untangle a redistricting dispute, not *Brnovich*.” But given that *Brnovich* is still a relatively recent precedent, Defendants overstate how courts have applied it. In any event, whether *Gingles* must apply to a redistricting factual scenario is an open question this Court does not seek to answer. The Supreme Court said in *Brnovich* “that § 2 applies to a broad range of voting rules, practices, and procedures,” and in doing so, it did not specify whether it meant either or both § 2 *Gingles* claims and § 2 *Brnovich* claims.

under *Gingles*, *Gingles* addresses a distinct theory of harm—vote dilution—that Plaintiffs do not advance under Count 1. Instead, Plaintiffs allege that their two-year disenfranchisement period is a restriction on “time.” Therefore, the Court only addresses whether Plaintiffs could prevail under *Brnovich*.

In *Brnovich*, the Supreme Court identified five “important” factors in time, place, or manner cases. *Id.* at 669. “First, the size of the burden imposed by a challenged voting rule”—not on race but on the voting franchise itself—“is highly relevant.” *Id.* Second, “the degree to which a voting rule departs from what was standard practice when § 2 was amended.” *Id.* at 669–70. Third, “[t]he size of any disparities in a rule’s impact on members of different racial or ethnic groups.” *Id.* at 671. Fourth, “the opportunities provided by a State’s entire system of voting.” *Id.* And fifth, “the strength of the state interests served by a challenged voting rule.” *Id.*

The first factor—burden on the right to vote—is resolved by the many courts that have held that temporary postponement of the franchise is not unduly burdensome. *See Keisling*, 959 F.2d at 145 (“Appellants . . . will have an opportunity to vote again for state senate in the next elections scheduled for their districts, . . . . Appellants are not being deprived of a voice in any scheduled election.”); *Mader*, 498 F. Supp. at 231 (“[T]he deprivation suffered is de minimis at most . . . . The disenfranchisement is temporary in nature and is no different from that experienced by ‘new registrants who reach the age of 18 years shortly after an election and (by) people moving from one area to another.’” (quoting *Ferrell v. State of Okl. ex rel. Hall*, 339 F. Supp. 73, 82 (W.D. Okla. 1972))); *Donatelli*, 2 F.3d at 514 (“Nor has [the two-year ‘disenfranchisement’] precluded plaintiffs from voting in any regularly scheduled senate election, for they will have equal access

to the ballot in the next regularly scheduled state senate election in 1994.”). For the same reasons here, the two-year postponement resulting from the redistricting does not burden the right to vote.<sup>19</sup>

Second, “the degree to which a challenged rule has a long pedigree or is in widespread use in the United States is a circumstance that must be taken into account.” *Brnovich*, 594 U.S. at 671. Plaintiffs argue that, traditionally, redistricting occurs following a census to account for changes in population. *See Reynolds v. Sims*, 377 U.S. 533, 568 (1964) (requiring apportionment on a population basis or else “an individual’s right to vote . . . is unconstitutionally impaired” because “its weight is in a substantial fashion diluted when compared with votes of citizens living on other parts of the State”). But here, Plaintiffs argue that no population imbalance necessitated redistricting mid-decade. Plaintiffs also cite to an expert report explaining why the “2025 Tarrant County redistricting differed in procedure and substance from the County’s prior redistricting processes.”<sup>20</sup>

The Court disagrees that these perceived irregularities are indeed irregular. Plaintiffs assume that population is the only driver of redistricting, but that is not so. *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399 (2006), dealt expressly with the Texas legislature’s “mid-decade redistricting for exclusively *partisan* purposes,” which is what Defendants claim to have been their motivation here.<sup>21</sup> *Id.* at 420 (emphasis added). And the Supreme Court in *Perry* declined to find mid-decade redistricting for exclusively partisan purposes unconstitutional. *Id.*

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<sup>19</sup> Plaintiffs also argue that the disenfranchisement affects 150,000 voting-age residents, but if the disenfranchisement is not burdensome on an individual level, it is no more burdensome when viewed on a cumulative scale. *See* Pls.’ Br. Supp. Mot. Prelim. Inj. 10, ECF No. 12.

<sup>20</sup> Pls. App. Supp. Mot. Prelim. Inj. 7, ECF No. 13.

<sup>21</sup> The redistricting was not ordered by a court, as Plaintiffs’ expert contends—there were many iterations of redistricting, and the legislature’s map *overrode* the court-ordered map. *See Perry*, 548 U.S. at 423 (“In sum, we disagree with appellants’ view that a legislature’s decision to override a valid, court-drawn plan mid-decade is sufficiently suspect to give shape to a reliable standard for identifying unconstitutional political gerrymanders.”).

at 423. The “rarity” of this phenomenon is hardly supported when, as the State of Texas points out in its Amicus Brief, the Supreme Court has considered at least two challenges to redistricting maps adopted mid-decade and did not take issue with the timing of those maps.<sup>22</sup>

Moreover, there is a Congressional Research Service (“CRS”) report dedicated to the topic.<sup>23</sup> The CRS’s “Mid-Decade Congressional Redistricting” report documents several 19th century examples of redistricting “unrelated to any population shifts,” so the phenomenon is not entirely recent. Either way, “[s]ince the 2000 census, there has been renewed mid-decade congressional redistricting activity by states.”<sup>24</sup> In addition to Texas’s 2003 redistricting at issue in *Perry*, Texas Governor Greg Abbott signed into law a new congressional district map that was formerly under consideration in a 30-day special session by the Texas legislature.<sup>25</sup> It is expected to give Republicans five additional opportunities for seats ahead of the 2026 elections.<sup>26</sup> Texas is not the only culprit—“[s]tate officials in several other states, including California, Florida, New York, and Missouri, are reportedly considering the possibility of redrawing their congressional district boundaries before the 2030 census.”<sup>27</sup>

Finally, Defendants’ departure from their prior redistricting processes has very little probative value under the second *Brnovich* factor, as that factor requires a benchmark that shows “a long pedigree or . . . widespread use in the United States.” *Brnovich*, 594 U.S. at 671. In sum, though the Court recognizes that mid-decade redistricting is not the norm, it is not as “exceedingly uncommon” as Plaintiffs portray.

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<sup>22</sup> Texas’s Amicus Br. 5, ECF No. 37.

<sup>23</sup> SARAH J. ECKMAN & L. PAIGE WHITAKER, CONG. RSCH. SERV., IF13082, MID-DECADE CONGRESSIONAL REDISTRICTING: KEY ISSUES (2025).

<sup>24</sup> *Id.*

<sup>25</sup> Caroline Vakil, *Abbott signs GOP’s redrawn Texas map*, THE HILL (Aug. 29, 2025, at 12:06 PM ET), <https://thehill.com/homenews/campaign/5467206-greg-abbott-texas-congressional-map-signed/>.

<sup>26</sup> *Id.*

<sup>27</sup> *Supra* note 23.

Third, the Court acknowledges there is a disparate impact, in that Black and Latino voters are subject to postponement at higher rates than White voters. That is, based on the evidence Plaintiffs present, 5.3% of eligible White voters are impacted; 17% of eligible Black voters are impacted; and 11.8% of eligible Latino voters are impacted.<sup>28</sup> But “[t]he size of any disparity matters.” *Id.* And Plaintiffs provide no metric by which the Court can conclude that the disparity between White voters and Black and Latino voters is large or small. *See id.* (“Small disparities are less likely than large ones to indicate that a system is not equally open.”). Even if the disparity were statistically significant, it may be explained by a correlation between race and partisanship, where the impact on racial minorities is incident to the legislature’s overtly partisan goals to eliminate a Democrat seat. Thus, this factor bears little weight in light of all the circumstances.

Fourth, zooming out to Plaintiffs’ ability to participate in the “entire system of voting,” Plaintiffs can hardly, if at all, claim they are “disenfranchised.” *Id.* Plaintiffs *will* have an opportunity to exercise their vote for Commissioner in 2028—they are not voiceless. And they are only delayed participation in the County Commissioner election—all other state and national elections remain available to them in 2026.

Fifth—regarding the strength of the state interests—redistricting is an inherently governmental prerogative. *See Rucho*, 588 U.S. at 701 (describing “the Framers’ decision to entrust districting to political entities”); *Alexander v. S.C. State Conference of the NAACP*, 602 U.S. 1, 7 (2024) (“Redistricting constitutes a traditional domain of state legislative authority.”). So, Defendants’ asserted interest in “preserving power over drawing line[s] . . . for partisan ends” is presumptively a strong state interest.<sup>29</sup>

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<sup>28</sup> Pls.’ App. Supp. Mot. Prelim. Inj. 3, ECF No. 13.

<sup>29</sup> Defs.’ Br. Supp. Mot. Dismiss 15, ECF No. 22-1.

Moreover, Defendants argue their new map replaces a racially motivated map that was “constitutionally suspect.”<sup>30</sup> That is, in 2021, “the Commissioners Court was advised to keep a coalition district for the purpose of allowing Precinct 2 to maintain a minority-influenced district.”<sup>31</sup> Presumably, Defendants are referring to the Supreme Court’s recent embrace of the question whether the “intentional creation of a second majority-minority congressional district violates the Fourteenth or Fifteenth Amendments to the U. S. Constitution,” by making race the focus of redistricting.<sup>32</sup> If indeed race is what motivated the old map, this provides additional justification for Defendants’ mid-decade redistricting. Regardless, the state has a presumptively strong interest in redistricting for partisan ends.

Having considered the totality of circumstances given the record available to the Court in this expedited posture, the Court concludes that the voting franchise remains “equally open” to Plaintiffs, and thus, Plaintiffs fail to demonstrate a substantial likelihood of success on the merits of their § 2 claim. The Court **DENIES** Plaintiffs’ Motion for a Preliminary Injunction on Count 1.

## **2. Count 2: the First Amendment and the Fourteenth Amendment Equal Protection Clause**

Plaintiffs’ “Count 2 alleges that Map 7 violates the First and Fourteenth Amendments by unequally treating similarly situated voters for disenfranchisement, including on account of their race and viewpoint.”<sup>33</sup> It is unclear why Plaintiffs assert these claims together, as they are separate rights-based theories, so the Court addresses them separately.

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<sup>30</sup> Defs.’ Resp. Mot. Prelim. Inj. 4, ECF No. 28.

<sup>31</sup> *Id.*

<sup>32</sup> Zach Montellaro & Josh Gerstein, *The Supreme Court just dropped a hint about its next big Voting Rights Act case*, POLITICO (Aug. 1, 2025, at 9:41 AM ET) <https://www.politico.com/news/2025/08/01/supreme-court-louisiana-redistricting-order-00490390> (citing Miscellaneous Order (08/01/2025)).

<sup>33</sup> Pls.’ Resp. Defs.’ Mot. Dismiss 16, ECF No. 31.

**i. First Amendment**

Plaintiffs’ First Amendment theory appears to be some hybrid of “disenfranchisement”—denial (or delay) of the franchise itself—and “viewpoint discrimination”—targeting Plaintiffs for their views.<sup>34</sup> In their Motion to Dismiss, Defendants argue that (1) Plaintiffs raise a nonjusticiable political question of partisan gerrymandering and (2) there is no First Amendment claim from the County subjecting voters to a two-year disenfranchisement period. The Court agrees with Defendants on both counts.

*Rucho v. Common Cause* marked the end of the Supreme Court adjudicating partisan gerrymandering claims. 588 U.S. 684 (2019). In *Rucho*, the Supreme Court held that partisan gerrymandering raises a non-justiciable political question. *Id.* at 703–10. In addition to asserting a pure partisan gerrymandering claim, the plaintiffs asserted a First Amendment claim, arguing that “partisanship in districting should be regarded as simple discrimination against supporters of the opposing party on the basis of political viewpoint.” *Id.* at 714. The Supreme Court held that the plaintiffs’ “First Amendment” claim was indistinct from a partisan gerrymandering claim and thus was nonjusticiable. *Id.*

Plaintiffs’ First Amendment claim here is identical to that in *Rucho*. Plaintiffs challenge “the configuration of lines in a manner that disenfranchises over 150,000 voters from voting in the election in which they were next eligible to cast a ballot” “*because the County disagrees with their political views.*”<sup>35</sup> Like that in *Rucho*, Plaintiffs’ viewpoint-discrimination claim “simply describes the act of districting for partisan advantage,” which legislatures are authorized to do and courts are unauthorized to question. *Id.*

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<sup>34</sup> Pls.’ Br. Supp. Mot. Prelim. Inj. 12–15, ECF No. 12.

<sup>35</sup> Pls.’ First Am. Compl. ¶¶ 106, 111, ECF No. 8 (emphasis added).

Even if the Court were to cast aside Plaintiffs’ viewpoint-discrimination theory and focus only on the two-year voting delay resulting from the redistricting, Plaintiffs do not have a First Amendment right to assert on account of the two-year delay. In a similar case in which certain persons were subject to voting delays following reapportionment in a staggered district, the Ninth Circuit refused “to hold that there is a first amendment right to vote for state representatives on a particular schedule.” *Keisling*, 959 F.2d at 145; *see also Donatelli*, 2 F.3d at 515 n.10 (agreeing with the Ninth Circuit that “[n]o such restriction on plaintiffs’ First Amendment rights is involved” where voters were temporarily disenfranchised after reapportionment). Plaintiffs provide no sound reason to depart from these circuits. Even if the redistricting was pretext for racial discrimination, as Plaintiffs argue, Plaintiffs still would have no *First Amendment* right to assert on account of the delay.

In sum, the Court **GRANTS** Defendants’ Motion to Dismiss with respect to Plaintiffs’ First Amendment claims. Because there is no possibility of recovery, the Court **DISMISSES with prejudice** Plaintiffs’ First Amendment claims.

**ii. Fourteenth Amendment Equal Protection Clause**

Plaintiffs contend that their equal protection claim is based on the “racially discriminatory two-year disenfranchisement period occasioned by Map 7.”<sup>36</sup> Defendants argue this is a racial gerrymandering claim in all but name, and thus, the showing for racial gerrymandering claims—that “race predominated in the drawing of a district”—should be required here.<sup>37</sup> *Alexander*, 602 U.S. at 38. The Court agrees with Defendants.

The Supreme Court has said that to prevail on a racial gerrymandering claim “when race and partisan preference are highly correlated,” the plaintiff “must disentangle race and politics if

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<sup>36</sup> Pls.’ Reply Mot. Expedite 3, ECF No. 34.

<sup>37</sup> Defs.’ Resp. Mot. Prelim. Inj. 14, ECF No. 28.

it wishes to prove that the legislature was motivated by race as opposed to partisanship.” *Id.* at 6. Otherwise, a court has no authority to question a plausible case of *partisan* gerrymandering.<sup>38</sup> In response to Defendants’ argument, Plaintiffs argue that this requirement does not apply to their intentional racial vote-dilution claims, because vote-dilution and racial gerrymandering claims are “analytically distinct.”<sup>39</sup> But Plaintiffs are adamant that *this* claim is *not* premised on a theory of vote dilution, and Plaintiffs do not otherwise explain why *this* claim is analytically distinct from a racial gerrymandering claim.

At bottom, Plaintiffs cannot articulate their theory of harm without making an allegation of racial gerrymandering. The harm they assert—the “racially discriminatory two-year disenfranchisement period”—is simply the effect of redistricting. Even Plaintiffs acknowledge this “harm” is only “occasioned by Map 7.”<sup>40</sup> Thus, at its core, Plaintiffs’ Equal Protection claim in Count 2 is a racial gerrymandering claim, and Plaintiffs “must disentangle race and politics if [they] wish[] to prove that the legislature was motivated by race as opposed to partisanship.” *Id.* at 6.

This is especially so, as Plaintiffs elsewhere present evidence that Tarrant County is racially polarized.<sup>41</sup> That is, “the Black and Hispanic electorate tends to vote Democrat, while Anglos tend to vote Republican.” *League of United Latin Am. Citizens v. Abbott*, 601 F. Supp. 3d 147, 164 (W.D. Tex. 2022). Because of the strong correlation between race and politics, and because Defendants assert in defense that they were motivated by partisan goals, it would be wrong

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<sup>38</sup> The Court acknowledges the confusion around whether disentanglement is a pleading or evidentiary requirement, but it does not attempt to resolve that confusion.

<sup>39</sup> Pls.’ Resp. Defs.’ Mot. Dismiss 4, ECF No. 31 (quoting *Alexander*, 602 U.S. at 38).

<sup>40</sup> Pls.’ Reply Mot. Expedite 3, ECF No. 34.

<sup>41</sup> Pls.’ Br. Supp. Mot. Prelim. Inj. 20, ECF No. 12; Pls.’ App. Supp. Mot. Prelim. Inj. 7, ECF No. 13.

to allow Plaintiffs to escape the heavy burden associated with racial gerrymandering claims just by concocting a novel harm theory.

Construing Plaintiffs' Equal Protection claim in Count 2 as a racial gerrymandering claim, the Court finds that Plaintiffs do not meet their heavy burden of disentangling race from politics.<sup>42</sup> Therefore, the Court **DENIES** Plaintiffs' Motion for Preliminary Injunction as to Count 2.

**B. Counts 3 and 4: Plaintiffs' Vote-Dilution Claims under the Fourteenth and Fifteenth Amendments**

Plaintiffs' Counts 3 and 4 allege two ways in which their vote is diluted on account of race. First, they allege Map 7 has "reduc[ed] from two to one the number of precincts in which minority voters can elect their candidate of choice."<sup>43</sup> That is, Map 7 "pack[ed] minority voters into a single precinct and crack[ed] the remaining minority population across the other precincts in which they will be subsumed by Anglo voters, in order to dilute their voting strength on account of race."<sup>44</sup> This elimination of a majority-minority precinct from two out of four precincts to one out of four, Plaintiffs allege, occurred despite the fact that "minorities are the majority of residents in the County and just shy of half of eligible voters in Tarrant County."<sup>45</sup> Second, apart from the elimination of a majority-minority precinct, Plaintiffs allege their vote is diluted by virtue of not voting in the 2026 election for commissioner.<sup>46</sup>

There are two authorities under which a plaintiff may assert a vote-dilution claim: the Constitution and § 2 of the VRA. Here, Plaintiffs explicitly do not press a statutory vote-dilution

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<sup>42</sup> Even if the Court construed Plaintiffs' claim as an intentional-discrimination claim, Plaintiffs do nothing to show the Court why they succeed on the merits. They do not apply the *Arlington Heights* factors to this claim to persuade the Court that the county intended to cause the voting delays. *See Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266–68 (1977).

<sup>43</sup> Pls.' First Am. Compl. ¶ 119, ECF No. 8.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* ¶ 114.

<sup>46</sup> *Id.* ¶¶ 115, 119.

claim; rather, they advance their vote-dilution claims under constitutional sources: the Fourteenth and Fifteenth Amendments. Because the analytical frameworks for intentional vote dilution cases are roughly the same under both the Fourteenth and Fifteenth Amendments, the Court addresses them together. *See Reno v. Bossier Par. Sch. Bd.*, 520 U.S. 471, 481 (1997) (“Since 1980, a plaintiff bringing a constitutional vote dilution challenge, whether under the Fourteenth or Fifteenth Amendment, has been required to establish that the State or political subdivision acted with a discriminatory purpose.” (citations omitted)).

To succeed on their intentional vote dilution claims under the Constitution, Plaintiffs “must show that the [County’s] districting plan ‘has the purpose *and* effect’ of diluting the minority vote.” *Alexander*, 602 U.S. at 39 (quoting *Shaw v. Reno*, 509 U.S. 630, 649 (1993)). “[P]urpose means more than awareness of a discriminatory effect”—it requires an affirmative intent to dilute the minority vote. *Abbott*, 601 F. Supp. 3d at 160 (citing *Mass. v. Feeney*, 442 U.S. 256, 279 (1979)). Moreover, race does not have to be the only or even the predominant purpose—purpose can be established by showing merely “that race was *part* of Defendants’ redistricting calculus.” *Id.* at 161.

The Court holds that Plaintiffs fail to establish a purpose to dilute the minority vote. “Determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.” *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977). The Supreme Court in *Arlington Heights* provided “five factors that courts may look to in drawing such inferences: (1) discriminatory effect, (2) historical background, (3) the sequence of events leading up to a

challenged decision, (4) departures from normal procedure, and (5) legislative history.”<sup>47</sup> *Abbott*, 601 F. Supp. 3d at 160. The Court addresses Plaintiffs’ arguments for each in turn.

First, to show a discriminatory effect in the context of intentional vote dilution, Plaintiffs must demonstrate that the redrawing of Map 7 “bears more heavily on one race than another.” *Arlington Heights*, 429 U.S. at 266 (quoting *Washington v. Davis*, 426 U.S. 229, 243 (1976)). A three-judge panel, including a Fifth Circuit judge, has explained that the *Gingles* preconditions for establishing racial vote dilution are not implicated by constitutional vote-dilution claims. *Abbott*, 601 F. Supp. 3d at 162–64. Therefore, the test is reduced to a comparison between different rates of impact—is the minority group impacted at higher rates?

As the Court acknowledged previously, Black and Latino voters are subject to postponement at higher rates than White voters. That is, Plaintiffs’ expert contends that 5.3% of eligible White voters are impacted, while 17% of eligible Black voters and 11.8% of eligible Latino voters are impacted.<sup>48</sup> But, as the three-judge panel noted in *Abbott*, “given that race and partisanship correlate”—here, around 70% of Latino and 90% of Black voters cast ballots for the same candidates—“almost every reallocation of voting power at the hands of either party will tend to bear more heavily on some races and less on others.” *Id.* at 169. So, there is “a serious line-drawing problem in the redistricting context.” *Id.* Not “every redistricting gives rise to discriminatory effect of constitutional dimensions,” even if it appears that way under a disparate impact test. *Id.*

Second, none of Plaintiffs’ evidence suggesting a *history* of discriminatory intent is persuasive. Plaintiffs quote the three-judge panel’s decision in *Perry* that “[i]n every decade since

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<sup>47</sup> Because discriminatory effect is circumstantial evidence of discriminatory purpose, the Court does not address discriminatory effect as a separate prong,

<sup>48</sup> Pls.’ App. Supp. Mot. Prelim. Inj. 3, ECF No. 13.

... 1965, federal courts have held that Texas violated the VRA.”<sup>49</sup> *Id.* at 170. But the Court declines to impart the discriminatory conduct of Texas state legislatures onto county commissioners who played no role in those redistricting decisions. Nor will it impart the remarks of a previous commissioner onto those who drew the current map.

Moreover, the fact that “a predecessor version of Map 7” was rejected in 2021 by legal advisors is not evidence that the predecessor map was discriminatory.<sup>50</sup> It merely is evidence of a legal *opinion* that the predecessor map “was potentially unlawful because of the large number of minority voters it shifted from Precinct 2 to Precinct 1.”<sup>51</sup> And Defendants contend that because they followed the advice of legal counsel to preserve a majority-minority district, they ended up with a “constitutionally suspect” map in 2021.<sup>52</sup> *See Louisiana v. Callais*, 145 S. Ct. 2608 (2025) (Thomas, J., dissenting from Supreme Court’s decision to defer deciding) (“[D]ue to our Janus-like election-law jurisprudence, States do not know how to draw maps that ‘survive both constitutional and VRA review.’”). As Justice Thomas has argued, far from ameliorating concerns about discrimination, the requirement of majority-minority districts creates constitutional concerns. *See generally id.*

Third and fourth, the Court disagrees with Plaintiffs that “the sequence of events, together with the procedural and substantive departures from the norm, support an inference of intentional discrimination.”<sup>53</sup> As the Court has already explained, and as Texas’s amicus brief likewise explains, the mid-decade redistricting was not “exceedingly unusual.” Similarly, the rushed timeline to adopt Map 7, the lack of community input, and the failure to secure outside counsel in

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<sup>49</sup> Pls.’ Br. Supp. Mot. Prelim. Inj. 20, ECF No. 12.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 20–21.

<sup>52</sup> Defs.’ Resp. Mot. Prelim. Inj. 4, ECF No. 28.

<sup>53</sup> Pls.’ Br. Supp. Mot. Prelim. Inj. 21, ECF No. 12.

the usual manner are at most indicators of politics—not race discrimination. Finally, the Court declines to read a racist intent into a legal counsel’s statement that he would fear for his life if he were to answer questions at a public meeting.

Fifth, Plaintiffs present no evidence of legislative history for the Court to consider. Nevertheless, Plaintiffs highlight one piece of evidence, which they believe is direct evidence of discriminatory intent. In a television interview on the day Judge O’Hare cast the decisive third vote in favor of adopting Map 7, an interviewer asked Judge O’Hare about the impact the redistricting would have on minority voters, and Judge O’Hare responded:

The policies of Democrats continue to fail Black people over and over and over, but many of them keep voting them in. It’s time for people of all races to understand the Democrats are a lost party, they are a radical party, it’s time for them to get on board with us and we’ll welcome them with open arms.<sup>54</sup>

This statement is not the smoking gun Plaintiffs think it is. Judge O’Hare was *prompted* by a reporter to answer a racially charged question. His answer observes the correlation between race and partisan preference, which is consistent with Plaintiffs’ own evidence that racial minorities vote cohesively. Plaintiffs cannot now suggest Judge O’Hare was making an unfair racial assumption, when the very same assumption underlies Plaintiffs’ claims. The second half of the statement is addressed to “people of all races” to “get on board” with the Republican party. All this indicates is that Judge O’Hare wants to garner more Republican support. This expressly partisan motive conforms with what Defendants have represented all along in their briefing.

Given the dearth of evidence on this record to support a finding of discriminatory intent, the Court concludes that Plaintiffs fail to demonstrate a likelihood of success on the merits of their intentional racial vote-dilution claims. Plaintiffs’ Motion for Preliminary Injunction as to Counts 3 and 4 is **DENIED**.

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<sup>54</sup> *Id.* at 8.

\* \* \*

Because Plaintiffs do not demonstrate a likelihood of success on the merits of any of their claims, the Court does not address the other considerations for a preliminary injunction. *See Bell*, [248 F.3d at 419 n.15](#).

#### IV. CONCLUSION

Having reviewed the briefing and applicable law, the Court **DENIES** Plaintiffs' Motion for a Preliminary Injunction in full. The Court **GRANTS** Defendants' Motion to Dismiss only as to Plaintiffs' First Amendment claims. The Court therefore **DISMISSES with prejudice** Plaintiffs' First Amendment claims. This Order serves to **GRANT** Plaintiffs' Motion to Expedite.

**SO ORDERED** on this **12th day of September, 2025**.

  
Reed O'Connor  
CHIEF UNITED STATES DISTRICT JUDGE

**TAB 4: PLAINTIFFS' EXPERT  
DECLARATION OF DR. CORTINA**

**Declaration of Jeronimo Cortina, Ph.D.**

Pursuant to 28 U.S.C. § 1746, I, Jeronimo Cortina, declare that:

My name is Jeronimo Cortina, and I am currently an Associate Professor of Political Science at the University of Houston. I was appointed Associate Professor with tenure at UH in 2015 and have been promoted to Full Professor starting September 1, 2025. I teach courses related to political behavior and statistical methods and my research revolves around electoral behavior, election outcomes, and population dynamics particularly in the State of Texas. I have published peer-reviewed, social science articles about minority electoral behavior, election turnout, and the impact of election administration changes on turnout. I have previously been recognized by a three-judge federal court as an expert witness in political behavior, election analysis, and statistics and testified in deposition and at a preliminary injunction hearing in *League of United Latin American Citizens v. Abbott*, No. 21-cv-259 (W.D. Tex. 2022). In this matter I am being paid \$300/hour.

**Basis for Opinion**

Unless otherwise stated, all opinions herein are based on my experience and training and in accordance with generally accepted theories, principles, and methods of the academic profession and political science. I reserve the right to change, amend and/or modify my opinion should additional documentation become available.

**Facts or Data Considered in Forming Opinion**

In forming my opinions in this matter, I have reviewed maps and corresponding demographic and electoral data generated by the Texas Legislative Council (TLC) for Tarrant County Commissioners Court “Map 7,” the most recent commissioner precinct map adopted by the County on June 3, 2025, as well as for the prior map, which was adopted by the County in 2011 and readopted in 2021 (Benchmark Map). These TLC maps and reports are included in the Appendix to this report, and “Map 7” is labeled as J2104 while the Benchmark Map is labeled as J2103. I have also reviewed population and demographic data published by the U.S. Census Bureau, election results from the Texas Secretary of State, a publicly-available UCLA report analyzing voting patterns under the Benchmark Map and Map 7, Resolutions, Orders, Meeting Minutes, and other Commissioners Court documents regarding the most recent and prior redistricting processes, videos of Commissioners Court meetings, and video of a television interview with County Judge Tim O’Hare. I intend to review additional documents as they become available to me.

**Statement of Opinions I will Express and the Basis and Reasons for the Opinions**

In this matter, I was asked to evaluate the transfer of people from even-numbered to odd-numbered commissioner precincts in Map 7 versus the Benchmark Map. Voters residing in even-numbered precincts under the Benchmark Map last voted for commissioner in November 2022 and were next eligible to vote for that office in November 2026. For those voters moved from an

even-numbered to an odd-numbered precinct, they will no longer be able to cast a ballot for commissioner in November 2026 and will instead wait six years, until November 2028, to vote for commissioner. In the interim two years, they will be represented by a commissioner in whose election they did not participate. I was asked to assess the demographic composition of the voting age population that is shifted in this manner to determine whether any particular group is disproportionately affected in relation to their countywide population. I was likewise asked to assess whether any particular political group disproportionately loses its ability to vote in the 2026 commissioner election.

In addition, I was asked to analyze whether the adoption of Map 7 more negatively affects certain racial or ethnic groups compared to others and to assess the procedural and substantive aspects of the 2025 Tarrant County redistricting compared to prior redistricting processes.

Finally, I was asked to review comments made by County Judge O’Hare regarding the adoption of Map 7 and provide context on how they compare to public statements by government officials regarding redistricting in other jurisdictions.

**1. Tarrant County’s Population Change (2010-2020)**

The 2020 Census reported Tarrant County to have a sizeable population growth. Table 1<sup>1</sup> below reports the changes by population and demographic breakdown and Table 2<sup>2</sup> reports the changes by voting age population (VAP).

**TABLE 1: TARRANT COUNTY TOTAL POPULATION (2010-2020)**

<b>Year</b>	<b>Total Population</b>	<b>Anglo<sup>3</sup> Population (% of total)</b>	<b>Black Population (% of total)</b>	<b>Hispanic Population (% of total)</b>
<b>2010</b>	1,809,034	937,135 (51.8%)	262,522 (14.5%)	482,977 (26.7%)
<b>2020</b>	2,110,640	904,884 (42.9%)	404,404 (19.2%)	620,907 (29.4%)

<sup>1</sup> U.S. Census Bureau, P2 Hispanic or Latino, and Not Hispanic or Latino by Race, Tarrant County, Texas, [\(https://data.census.gov/table/DECENNIALPL2020.P2?g=050XX00US48439&y=2020&d=DEC+Redistricting+Data+\(PL+94-171\)\)](https://data.census.gov/table/DECENNIALPL2020.P2?g=050XX00US48439&y=2020&d=DEC+Redistricting+Data+(PL+94-171)) (2020 Census); U.S. Census Bureau, P9 Hispanic or Latino, and Not Hispanic or Latino by Race, Tarrant County, Texas, [\(https://data.census.gov/table/DECENNIALSF12010.P9?q=Tarrant+County,+Texas\)](https://data.census.gov/table/DECENNIALSF12010.P9?q=Tarrant+County,+Texas) (2010 Census).

<sup>2</sup> U.S. Census Bureau, P4 Hispanic or Latino, and Not Hispanic or Latino by Race for the Population 18 Years and Over, [\(https://data.census.gov/table/DECENNIALPL2020.P4?g=050XX00US48439&y=2020&d=DEC+Redistricting+Data+\(PL+94-171\)\)](https://data.census.gov/table/DECENNIALPL2020.P4?g=050XX00US48439&y=2020&d=DEC+Redistricting+Data+(PL+94-171)) (2020 Census); U.S. Census Bureau, P4 Hispanic or Latino, and Not Hispanic or Latino by Race for the Population 18 Years and Over, [\(https://data.census.gov/table/DECENNIALPL2010.P4?q=Tarrant+County,+Texas&t=Hispanic+or+Latino&d=DEC+Redistricting+Data+\(PL+94-171\)\)](https://data.census.gov/table/DECENNIALPL2010.P4?q=Tarrant+County,+Texas&t=Hispanic+or+Latino&d=DEC+Redistricting+Data+(PL+94-171)) (2010 Census).

<sup>3</sup> “Anglo” in this report refers to the Census Bureau’s “White Not Hispanic” category. The reported numbers are for Hispanic, White Not Hispanic Alone, and Black Alone.

As Table 1 shows, Tarrant County’s population growth came entirely from non-Anglos, with its Anglo population decreasing.

**TABLE 2: TARRANT COUNTY VOTING AGE POPULATION (2010-2020)**

Year	Total VAP	Anglo VAP (% of total)	Black VAP (% of total)	Hispanic VAP (% of total)
2010	1,301,973	736,930 (56.6%)	180,989 (13.9%)	298,169 (22.9%)
2020	1,574,046	738,298 (46.9%)	281,397 (17.9%)	414,177 (26.3%)

As with Tarrant County’s change in total population, the growth in its voting age population was almost entirely from non-Anglos.

**2. Effect of Map 7’s Movement of Voters to Odd-Numbered Precincts Where Commissioner Elections Will Not Occur until November 2028**

**A. Racially Disparate Effect**

Map 7 moves a large number of adults (i.e, VAP) from even-numbered to odd-numbered precincts, thus preventing them from casting a ballot for commissioner in November 2026 when they were otherwise eligible to vote. The racial composition of this group is striking compared to the County as a whole. Black Tarrant County adults and Latino Tarrant County adults are much more likely to be affected than are Anglo Tarrant County voters, as Table 3 below shows.<sup>4</sup>

**TABLE 3: VAP LOSING 2026 COMMISSIONER VOTE BY RACE/ETHNICITY**

	Total VAP	Anglo VAP	Black VAP	Latino VAP
<b>Countywide Total</b>	1,574,046	738,298 (46.9%)	281,397 (17.9%)	414,177 (26.3%)
<b>Moved from Even to Odd Precinct</b>	153,581	39,451 (25.7%)	47,859 (31.2%)	48,924 (31.9%)
<b>Countywide Percentage Losing 2026 Vote</b>	9.8%	5.3%	17.0%	11.8%

As Table 3 reflects, Map 7 causes over 150,000 Tarrant County residents of voting age to lose their ability to vote for commissioner in 2026, and thus requires them to wait six rather than four years to participate in the election of commissioners. There is a substantial racially disparate

<sup>4</sup> For countywide data, see U.S. Census Bureau, 2020 Census, Tarrant County, Texas, P4 Hispanic or Latino, and Not Hispanic or Latino by Race for the Population 18 Years and Over, [https://data.census.gov/table?g=050XX00US48439&y=2020&d=DEC+Redistricting+Data+\(PL+94-171\)](https://data.census.gov/table?g=050XX00US48439&y=2020&d=DEC+Redistricting+Data+(PL+94-171)); For data regarding population shifted from even to odd precincts, see Appendix B, TLC Red-340T.

effect, assessed both in raw numbers and percentages. Although there are 456,901 more Anglo adults than Black adults in Tarrant County, 8,408 more Black adults than Anglo adults lose their ability to vote for commissioner in 2026.

In percentage terms, Anglo make up 46.9% of Tarrant County’s VAP, but just 25.7% of the VAP who lose their ability to vote for commissioner in 2026. Overall, just 5.3% of the Anglo VAP in Tarrant County loses their ability to vote for commissioner in 2026 (roughly 1 in 20 Anglo adults). By contrast, 17.9% of Tarrant County’s VAP is Black, but 31.2% of the VAP that loses their ability to vote for commissioner in 2026 is Black. Overall, 17.0% of Black VAP in Tarrant County loses their ability to vote for commissioner in 2026 (roughly 1 in 6 Black adults). Map 7 thus causes Black adults to be between three and four times more likely than Anglo adults to lose their ability to vote for commissioner in 2026.

Latinos are also disproportionately affected compared to Anglos. Although there are 324,121 more Anglo adults in Tarrant County, 9,473 more Latino adults than Anglo adults lose their ability to vote for commissioner in 2026. Overall, 11.8% of Latino VAP lose their ability to vote for commissioner in 2026 (roughly 1 in 8 Latino adults). Map 7 thus causes Latino adults to be between two and three times as likely as Anglo adults to lose their ability to vote for commissioner in 2026.

**B. Politically Disparate Effect**

Map 7 also causes a particular political group—Democratic voters—to lose their ability to vote for commissioner in 2026 in numbers substantially disproportionate to their share of the countywide electorate. Table 4<sup>5</sup> reports the election results for the 2024 President, 2024 U.S. Senate, and 2022 Governor contests countywide and among the voters who lose their ability to vote for commissioner in 2026.

**TABLE 4: VOTERS LOSING 2026 COMMISSIONER VOTE BY ELECTION RESULT**

	2024 President		2024 U.S Senate		2022 Governor	
	Rep.	Dem.	Rep.	Dem.	Rep.	Dem.
<b>Countywide</b>	51.8%	46.7%	48.7%	48.9%	51.3%	47.3%
<b>Moved from Even to Odd Precinct</b>	35.5%	62.7%	32.5%	65.3%	32.3%	66.7%

As Table 4 reflects, the voters who lose their ability to cast a ballot for commissioner in 2026 are substantially disproportionately Democratic voters in contrast to the closely divided electoral makeup of Tarrant County.

<sup>5</sup> Appendix B, TLC Red-240, Plan Overlap Election Analysis; Texas Secretary of State Nov. 2024 Election Results, <https://results.texas-election.com/races>.

**3. Map 7’s Racially Disparate Negative Impact**

As I explain above, Map 7 negatively affects Black voters and Latino voters compared to Anglo voters in how it makes them much more likely to lose their ability to vote for commissioner in 2026 and wait six, instead of four, years before participating in electing commissioners. The configuration of Map 7’s precinct boundaries also negatively affects non-Anglo voters by reducing the number of majority-minority precincts from two to one. Table 5<sup>6</sup> below reports the VAP and citizen voting age population (CVAP) by racial group for the four precincts under both the Benchmark Map and Map 7. What it shows is the conversion of Precinct 2 from a majority-minority to a majority-Anglo district. Precinct 2’s Anglo voter share increases by 10 percentage points, while Precinct 1 becomes heavily minority, with its Anglo voter share decreasing by 12 percentage points. Precinct 1’s increase in Black voter share corresponds to a decrease in Precinct 2. And Precinct 1’s increase in Latino voter share corresponds to a decrease in Precinct 4’s Latino voter share.

**TABLE 5: RACIAL DEMOGRAPHICS MAP COMPARISON**

	<b>Anglo VAP/CVAP</b>	<b>Black VAP/CVAP</b>	<b>Latino VAP/CVAP</b>
<b>Benchmark Precinct 1</b>	34.4%/39.4%	29.7%/30.3%	30.1%/24.9%
<b>Map 7 Precinct 2</b>	22.4%/27.5%	36.2%/37.8%	34.3%/27.8%
<b>Benchmark Precinct 2</b>	40.1%/45.9%	23.9%/24.1%	25.3%/20.6%
<b>Map 7 Precinct 2</b>	50.3%/55.7%	16.1%/16.2%	25.1%/20.8%
<b>Benchmark Precinct 3</b>	64.3%/69.8%	8.6%/8.4%	15.7%/13.2%
<b>Map 7 Precinct 3</b>	62.9%/67.8%	9.4%/9.4%	15.6%/13.4%
<b>Benchmark Precinct 4</b>	48.8%/56.0%	9.4%/9.5%	34.2%/28.1%
<b>Map 7 Precinct 4</b>	51.0%/58.4%	10.4%/10.3%	30.6%/25.2%

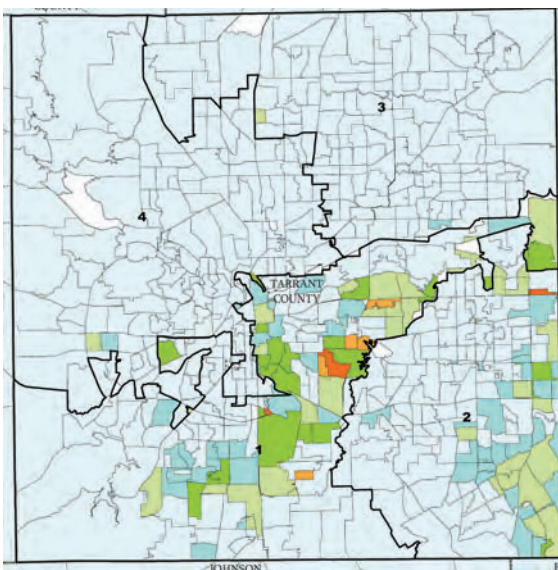
These shifts result in three of the four precincts being Anglo majority VAP and CVAP, even though Anglo voters comprise 46.9% of the County’s overall VAP and 52.9% of the County’s overall CVAP.<sup>7</sup> Under the Benchmark Map, Anglo voters were the majority in a share of precincts (50%) that roughly matched their countywide share of voters. Map 7 sees Anglo voters gain a windfall, with a majority in 75% of the precincts.

<sup>6</sup> Appendix A TLC Red-116, American Community Survey Special Tabulation Plan J2103 (Benchmark Map CVAP); Appendix A TLC Red-101T, District Population Analysis with County Subtotals Plan J2103 (Benchmark VAP); Appendix B TLC Red-116, American Community Survey Special Tabulation Plan J2104 (Map 7 CVAP); Appendix B TLC Red-101T, District Population Analysis with County Subtotals Plan J2104 (Map 7 VAP).

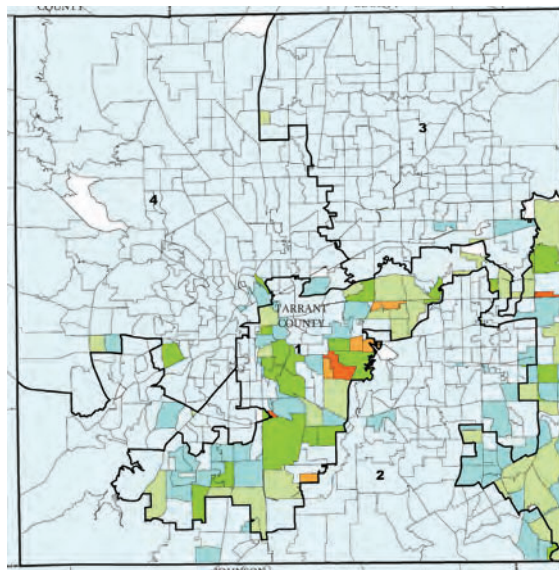
<sup>7</sup> U.S. Census Bureau, American Community Survey Citizen Voting Age Population by Race and Ethnicity (2023), <https://www.census.gov/programs-surveys/decennial-census/about/voting-rights/cvap.html>.

These racial shifts can be best visualized on the maps themselves. Below are maps showing Black and Latino VAP in the Benchmark Map and Map 7, showing how Precinct 1 was altered in a manner that collects nearly all voting tabulation districts with large Black populations (shown in increasing population share from blue to green to orange). Likewise, several heavily Latino VTDs were shifted from Precinct 4 to Precinct 1, while much of Precinct 1's Anglo population was shifted to Precinct 2.

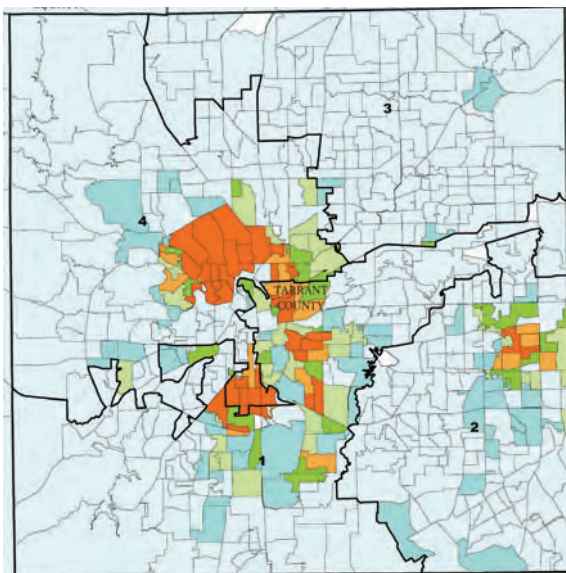
**Benchmark Map Black VAP**



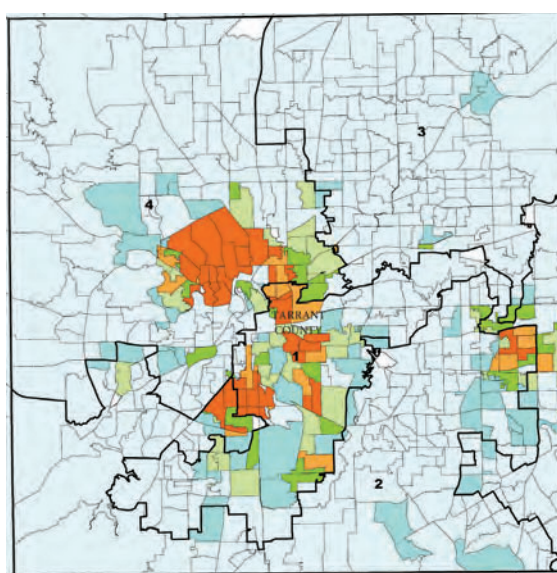
**Map 7 Black VAP**



**Benchmark Map Latino VAP**



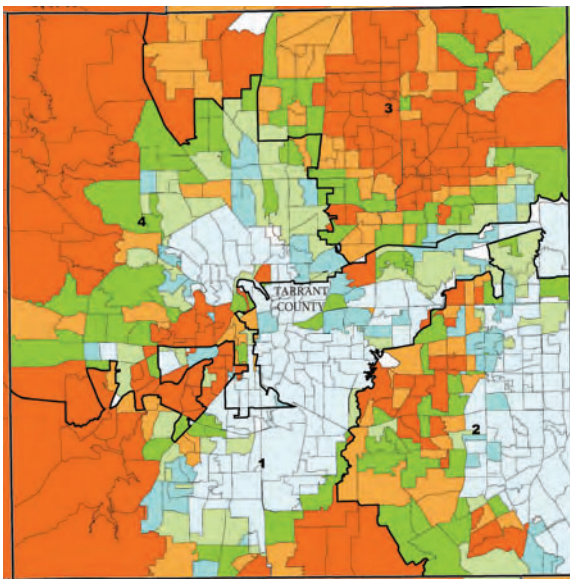
**Map 7 Latino VAP**



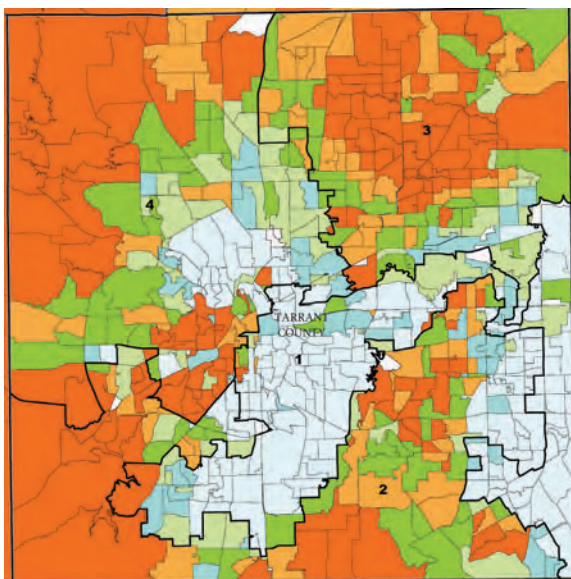
Map 7 is especially notable for its careful concentration of Black voters into Precinct 1. The racial sorting of Map 7's reconfiguration of precinct lines can also be illustrated with maps showing Anglo population, demonstrating how Anglo voters are now concentrated in Precincts

2, 3, and 4, shown below (with the same color gradation of increasing Anglo share from blue to green to orange). While Benchmark Map Precincts 1 and 2 were racially diverse, Map 7's precincts are racially segregated, as illustrated below.

**Benchmark Map Anglo VAP**



**Map 7 Anglo VAP**



In addition, I have reviewed a racially polarized voting analysis conducted by the UCLA Voting Rights Project.<sup>8</sup> It found that Black voters and Latino voters in Tarrant County cohesively support the same candidates, with around 70% of Latino and 90% of Black voters casting ballots for the same candidates, while Anglo voters support opposing candidates at rates ranging from 72% to 88%.<sup>9</sup> The report shows that under the Benchmark Map, candidates supported by Black and Latino voters regularly carry both Precincts 1 and 2. By contrast, under Map 7 those candidates only carry Precinct 1. Map 7 therefore reduces the electoral power of Black and Latino voters.

Overall, the Benchmark Map accords with the underlying demographic makeup of the County. By contrast, Map 7 negatively affects Black voters and Latino voters and disproportionately benefits Anglo voters.

#### **4. Comparison of 2025 and Prior Redistricting Processes**

The 2025 Tarrant County redistricting differed in procedure and substance from the County's prior redistricting processes. Following each decennial Census from 1991 through 2021, the Commissioners Court retained the Texas-based law firm Bickerstaff, Health, Delgado, Acosta LLP to facilitate the County's redistricting process.<sup>10</sup>

<sup>8</sup> Attached at Appendix E. At my request, I was provided the data underlying the UCLA report. I concur in the report's conclusions regarding racially polarized voting in Tarrant County.

<sup>9</sup> *Id.*

<sup>10</sup> Tarrant County Commissioners Court, Aug. 24, 2021 Meeting Video at 2:06:50, <https://tarrantcounty.primegov.com/Portal/Meeting?meetingTemplateId=698>.

**A. 2011 Process**

The 2011 process began on March 1, 2011 with the Commission voting unanimously to approve the retention of Bickerstaff.<sup>11</sup> A little over two months later at the Commission's May 10, 2011 meeting, Attorney Bob Heath from Bickerstaff presented an Initial Assessment of redistricting to the Commission.<sup>12</sup> Mr. Heath's oral presentation was accompanied by a slide presentation and he provided an overview of the legal requirements for redistricting under the Voting Rights Act and the Constitution. The Assessment provided population data for the then-benchmark map (adopted in 2001) showing the map had an overall population deviation of 15.12%, proposed redistricting criteria, and a proposed timeline.<sup>13</sup> At its June 28, 2011 meeting, the Commission voted unanimously to adopt redistricting criteria.<sup>14</sup> There were nine adopted criteria focusing on traditional redistricting principles and legal compliance, as shown below:

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<sup>11</sup> Tarrant County Commissioners Court, Mar. 1, 2011 Meeting Video at 45:39, <https://tarrantcounty.primegov.com/Portal/Meeting?meetingTemplateId=3026>.

<sup>12</sup> Tarrant County Commissioners Court, May 10, 2011 Meeting Video at 44:35, <https://tarrantcounty.primegov.com/Portal/Meeting?meetingTemplateId=2986>.

<sup>13</sup> Tarrant County 2011 Redistricting, Bickerstaff Health Delgado Acosta LLP, <https://tarrantcounty.primegov.com/Portal/viewer?id=1306389&type=2> (copy included in Appendix C).

<sup>14</sup> Tarrant County Commissioners Court, June 28, 2011 Meeting Video at 3:05, <https://tarrantcounty.primegov.com/Portal/Meeting?meetingTemplateId=2946>. The Resolution listing the criteria are available at the agenda item link and the signed version (Tarrant County Order 110675) is attached in Appendix C and available at <https://tarrantcounty.primegov.com/Portal/Meeting?meetingTemplateId=58961>.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED, that the County, in its adoption of a redistricting plan for Commissioner Precincts, will adhere to the following criteria to the greatest extent possible when drawing Commissioner Precinct boundaries:

1. Where possible, easily identifiable geographic boundaries should be followed.
2. Communities of interest should be maintained in a single Commissioner Precinct, where possible, and attempts should be made to avoid splitting neighborhoods.
3. To the extent possible, Commissioner Precincts should be composed of whole voting precincts. Where this is not possible or practicable, Commissioner Precincts should be drawn in a way that permits the creation of practical voting precincts and that ensures that adequate facilities for polling places exist in each voting precinct.

4. Although it is recognized that existing Commissioner Precincts will have to be altered to reflect new population distribution, any districting plan should, to the extent possible, be based on existing Commissioner Precincts.
5. Commissioner Precincts must be configured so that they are relatively equal in total population according to the 2010 federal census. In no event should the total deviation between the largest and the smallest Commissioner Precincts exceed ten percent.
6. The Commissioner Precincts should be compact and composed of contiguous territory. Compactness may contain a functional, as well as a geographical dimension.
7. Consideration may be given to the preservation of incumbent-constituency relations by recognition of the residence of incumbents and their history in representing certain areas.
8. The plan should be narrowly tailored to avoid retrogression in the position of racial minorities and language minorities as defined in the Voting Rights Act with respect to their effective exercise of the electoral franchise.
9. The plan should not fragment a geographically compact minority community or pack minority voters in the presence of polarized voting so as to create liability under Section 2 of the Voting Rights Act, 42 U.S.C. § 1973c.

The Commissioners Court will review all plans in light of these criteria and will evaluate how well each plan conforms to the criteria.

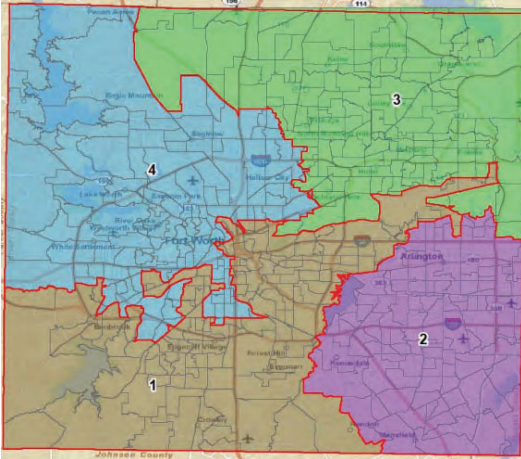
At the Commission's July 26, 2011 meeting, the Commissioners scheduled a public hearing for August 17, 2011 at 7 pm.<sup>15</sup> It was set for the evening "so that people who are working have the ability to come down and voice their opinion."<sup>16</sup> The commissioners discussed approving a preliminary map so that the public could have the proposal under consideration available to them at the public hearing. Because commissioners were interested in additional changes being made to the preliminary map before approving it, approval was delayed until the

<sup>15</sup> Tarrant County Commissioners Court, July 26, 2011 Meeting Video at 10:45, <https://tarrantcounty.primegov.com/Portal/Meeting?meetingTemplateId=2938>.

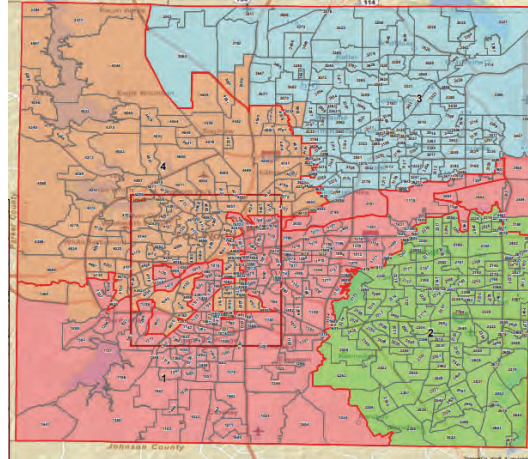
<sup>16</sup> *Id.* at 12:32.

August 2, 2011 meeting.<sup>17</sup> The preliminary map was approved at the August 2, 2011 meeting,<sup>18</sup> and the public hearing was held as scheduled on August 17, 2011.<sup>19</sup> Attorney Heath gave a presentation and there was a Spanish translator available at the public hearing for any members of the public needing translation as well as a person translating into American Sign Language.<sup>20</sup> No members of the public spoke in support or opposition of the map. On August 30, 2011, the Commissioners Court voted unanimously to adopt the map.<sup>21</sup> The map made relatively minor changes to the boundaries that were in place since 2001, as illustrated below.<sup>22</sup>

**2001 Map**



**2011 Map**



**B. 2021 Process**

The COVID pandemic delayed the release of the 2020 Census redistricting data, with the redistricting data not released until late August 2021. As a result, the 2021 process was conducted more quickly than the 2011 process. It began with the August 17, 2021 Commissioners Court Meeting, when the commissioners had an initial discussion with Attorney Heath from Bickerstaff to discuss the timeline of the process and the release of Census data.<sup>23</sup> At the August 24, 2021 meeting, the Commission unanimously approved the retention of Bickerstaff to facilitate the redistricting process.<sup>24</sup> Bickerstaff presented regarding the redistricting legal requirements and gave its Initial Assessment and proposed redistricting criteria

<sup>17</sup> *Id.* at 13:40.

<sup>18</sup> Tarrant County Commissioners Court Aug. 2, 2011 Meeting Video at 1:55:33, <https://tarrantcounty.primegov.com/Portal/Meeting?meetingTemplateId=2934>.

<sup>19</sup> Tarrant County Commissioners Court Aug. 17, 2011 Meeting, <https://tarrantcounty.primegov.com/Portal/Meeting?meetingTemplateId=2918>.

<sup>20</sup> *Id.*

<sup>21</sup> Tarrant County Commissioners Court Aug. 30, 2011 Meeting Video at 23:41, <https://tarrantcounty.primegov.com/Portal/Meeting?meetingTemplateId=2906>.

<sup>22</sup> Tarrant County Commissioners Court 2011 Adopted Map, [https://tarrantcounty.primegov.com/meeting/attachment/1304934.pdf?name=2011%20REDISTRICTING%20MAP; App. C \(2001 Map, Bickerstaff Initial Assessment Slides\)](https://tarrantcounty.primegov.com/meeting/attachment/1304934.pdf?name=2011%20REDISTRICTING%20MAP; App. C (2001 Map, Bickerstaff Initial Assessment Slides)).

<sup>23</sup> Tarrant County Commissioners Court Aug. 17, 2021 Meeting Video at 1:27:30, <https://tarrantcounty.primegov.com/Portal/Meeting?meetingTemplateId=702>.

<sup>24</sup> Tarrant County Commissioners Court Aug. 24, 2021 Meeting Video at 2:02:05, <https://tarrantcounty.primegov.com/Portal/Meeting?meetingTemplateId=698>.

at the September 28, 2021 Commissioners Court meeting.<sup>25</sup> According to the 2020 Census, the existing map was well within equal population requirements, with an overall deviation of just 1.97%.<sup>26</sup> At the meeting, the Commissioners Court passed a Resolution adopting redistricting criteria focusing on traditional redistricting principles and legal compliance, as shown below.<sup>27</sup>

NOW, THEREFORE, BE IT RESOLVED AND ORDERED, that the County, in its adoption of a redistricting plan for commissioner precincts, will adhere to the following criteria to the greatest extent possible when establishing new commissioner precinct boundaries:

To the extent practicable:

1. Easily identifiable geographic boundaries should be followed.
2. Communities of interest should be maintained in a single commissioner precinct, and attempts should be made to avoid splitting neighborhoods.
3. Commissioner precincts should be composed of whole voting precincts. Where this is not possible or practicable, commissioner precincts should be drawn in a way that permits the creation of practical election precincts and that ensures (i) that adequate facilities for polling places exist in election precincts; or, as applicable, (ii) that efficient ballot preparation be facilitated for elections conducted at vote centers in the County. Avoid splitting census blocks unless necessary.

4. Although it is recognized that existing commissioner precincts will have to be altered to reflect new population distribution in the County, any districting plan should be based on existing commissioner precincts.
5. Commissioner precincts must be configured so that they are relatively equal in total population according to the 2020 federal census. In no event should the total population deviation between the largest and the smallest commissioner precinct exceed ten percent as compared to the ideal precinct size.
6. The commissioner precincts should be compact and composed of contiguous territory. Compactness may contain a functional, as well as a geographical, dimension.
7. Consideration may be given to the preservation of incumbent-constituency relations by recognition of the residence of incumbents and their history in representing certain areas.
8. The plan should be narrowly tailored to avoid racial gerrymandering in violation of *Shaw v. Reno*.
9. The plan should not fragment a geographically compact minority community or pack minority voters in the presence of polarized voting or otherwise discriminate against protected groups so as to create liability under the Voting Rights Act.

The Commissioners Court will review all plans considering these criteria and will evaluate how well each plan conforms to the criteria.

<sup>25</sup> Tarrant County Commissioners Court Sept. 28, 2021 Agenda and Materials, <https://tarrantcounty.primegov.com/Portal/Meeting?meetingTemplateId=126417> (Initial Assessment attached in Appendix D).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* A copy of the signed Order adopting redistricting principles is attached in Appendix D and is available at <https://tarrantcounty.primegov.com/Portal/Meeting?meetingTemplateId=56957>.

A total of six public input sessions and two public drawing sessions were held between October 12, 2021 and October 26, 2021 at locations across the county.<sup>28</sup> Every comment from the public received at those sessions was in favor of maintaining the existing map.<sup>29</sup> At the October 19, 2021 Commissioners Court meeting, another public input session was held regarding redistricting.<sup>30</sup> Attorney Heath presented and noted that the precincts were actually closer to population equality than they were when originally adopted in 2011 and that there was no legal requirement to change the precinct lines.<sup>31</sup> No members of the public made any comments at the hearing.<sup>32</sup>

On November 1, 2021, a proposed map was submitted for the Commissioners Court's consideration by former State Representative Bill Zedler. The image scanned as part of the Commission's records of the proposal is shown below, with darker black lines and shading illustrating the boundaries.<sup>33</sup>

**Zedler 2021 Proposal**



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<sup>28</sup> Tarrant County Commissioners Court Communication re Court Order 136729, Nov. 2, 2021, <https://tarrantcounty.primegov.com/Portal/viewer?id=1237609&type=2>.

<sup>29</sup> Tarrant County Commissioners Court Nov. 2, 2021 Meeting Video at 2:10:14, <https://tarrantcounty.primegov.com/Portal/Meeting?meetingTemplateId=126393>.

<sup>30</sup> Tarrant County Commissioners Court Oct. 19, 2021 Meeting Video at 1:21:26, <https://tarrantcounty.primegov.com/Portal/Meeting?meetingTemplateId=126405>.

<sup>31</sup> *Id.* at 1:22:19.

<sup>32</sup> *Id.* at 1:28:40.

<sup>33</sup> Tarrant County Commissioners Court Nov. 2, 2021 Meeting Data Archive, Scan Page 2444070, <https://tarrantcounty.primegov.com/Portal/Meeting?meetingTemplateId=126457>.

Several members of the public, including former Rep. Zedler, spoke in favor of the proposal. Speaking to its features, Rep. Zedler explained that it “accounts for growth of minority communities and attempts to include them within common districts.”<sup>34</sup> Attorney Heath noted that he had received a copy of the map the day prior and noted that the map did not follow several of the adopted redistricting criteria and that “it moves a substantial minority population out of District 2 and into District 1, and of course as I mentioned, pairs the two minority commissioners. I don’t want to get into in public session the details of any legal analysis about litigation risk, but there are at least questions under the Voting Rights Act.”<sup>35</sup> Commissioner Brooks spoke against the proposal, as did then-County Judge Whitley. Ultimately, the Commissioners Court voted 4-1 to adopt the existing precinct lines.<sup>36</sup> The Zedler proposal appears by its configuration, however, to be a prototype of seven proposals considered during the 2025 process.

### C. 2025 Process

The 2025 process differs at the outset—not just from prior Tarrant County redistricting but from redistricting generally at the local, state, and national level—because it was conducted in the middle of the decennial Census period. This is extremely rare, and was especially so in the twentieth century in the absence of a court order to redistrict. Indeed, it was uncommon for Texas Commissioners Courts to redistrict at all until the 1960s, when the U.S. Supreme Court ruled that they were required to balance population.<sup>37</sup> It was not a common phenomenon in 1982 when Congress reauthorized Section 2 of the Voting Rights Act. Texas’s congressional map mid-decade redistricting in the early 2000s, addressed by the United States Supreme Court in *LULAC v. Perry*, is the most notable modern mid-decade redistricting, though it like most other examples followed a court-imposed map that governed the prior elections.

The 2025 Tarrant County mid-decade redistricting process began on the April 2, 2025 Commissioners Court meeting, with an agenda item from County Judge O’Hare to approve a legal services agreement between Tarrant County and the Virginia-based Public Interest Legal Foundation (PILF) to manage redistricting of the commissioners’ precincts for the 2026 election.<sup>38</sup> There was no open bidding for the legal services contract, despite the fact that the proposed legal services agreement would depart from using the services of the Texas-based Bickerstaff law firm that had conducted the past four decennial redistricting processes for the County. At the meeting, Judge O’Hare noted that 77 members of the public had signed up to speak (though some did not actually speak) and informed the attending public that they would be

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<sup>34</sup> Tarrant County Commissioners Court Nov. 2, 2021 Meeting Video at 1:36:00, <https://tarrantcounty.primegov.com/Portal/Meeting?meetingTemplateId=126393>.

<sup>35</sup> Tarrant County Commissioners Court Nov. 2, 2021 Meeting Video at 2:13:30, <https://tarrantcounty.primegov.com/Portal/Meeting?meetingTemplateId=126393>.

<sup>36</sup> Tarrant County Commissioners Court Nov. 2, 2021 Meeting Video at 2:30:20, <https://tarrantcounty.primegov.com/Portal/Meeting?meetingTemplateId=126393>. The signed Order is attached at Appendix D and is available as Documents 2444061-62 at <https://tarrantcounty.primegov.com/Portal/Meeting?meetingTemplateId=126457>.

<sup>37</sup> *Avery v. Midland County, Texas*, 390 U.S. 474 (1986).

<sup>38</sup> Tarrant County Commissioners Court April 2, 2025 Meeting Agenda, Communication, and Proposed Legal Services Contract, <https://prod-agendamanagement-publicportal.azurewebsites.us/HtmlAgenda/68560312-58cb-4116-9a51-08dd51c9e075>.

limited to 1 minute to speak and that no clapping would be allowed.<sup>39</sup> Most spoke against the contract and mid-decade redistricting. Judge O'Hare explained his intention that the map proposals be available for 2-2.5 weeks for public consideration before the Commission voted to approve a map.<sup>40</sup> Asked by Commissioner Simmons how PILF was selected, Judge O'Hare responded: "These are people that I researched and found."<sup>41</sup> When Commissioner Simmons asked how many phases there would be to the contract, given its reference to an initial phase, Judge O'Hare responded: "I don't know, but I don't answer to you . . . I'm not going to answer any of your questions."<sup>42</sup> When a member of the public spoke up following this exchange, Judge O'Hare threatened to remove her.<sup>43</sup> The Commissioners Court voted 3-2 to approve the legal services contract, with both Black commissioners (Miles and Simmons) voting no.<sup>44</sup>

At the May 6, 2025 Commissioner Court meeting, Attorney Joe Nixon of PILF spoke and complimented the Commission for placing five map options on the County's website.<sup>45</sup> Unlike prior redistricting processes in which Attorney Heath presented at length about redistricting law and requirements, Mr. Nixon gave no presentation about the legal requirements for redistricting and did not recommend that redistricting criteria be adopted. Asked by Commissioner Simmons about his prior work in redistricting on behalf of PILF, Mr. Nixon interrupted Commissioner Simmons, saying "let me stop you right there," and then said "I have never once had anyone say anything that you just said publicly, and I am embarrassed for you for having said those things about me."<sup>46</sup> Later, Commissioner Simmons asked Mr. Nixon whether there was any legal reason to change boundaries mid-decade, Judge O'Hare interjected, saying: "He's not going to keep coming up here every time you have a new question."<sup>47</sup> Later in the meeting, Commissioner Simmons asked Judge O'Hare whether the mapdrawer, Mr. Kincaid, could attend a Commissioners Court meeting or the public hearings but Judge O'Hare refused to answer - saying he would not answer questions during the "Announcements and Comments" agenda portion of the meeting.<sup>48</sup>

A public hearing was held in each precinct between May 13, 2025 to May 21, 2025.<sup>49</sup> Commissioner Ramirez did not attend the meeting held in his precinct, citing a canceled flight.<sup>50</sup> A PILF lawyer attended the Precinct 1 hearing on May 14, 2025, but stayed at the back of the room and then left the room and would not come to the front when invited by Commissioner

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<sup>39</sup> Tarrant County Commissioners Court April 2, 2025 Meeting Video at 1:40:57, <https://prod-agendamanagement-publicportal.azurewebsites.us/HtmlAgenda/68560312-58cb-4116-9a51-08dd51c9e075>.

<sup>40</sup> Tarrant County Commissioners Court April 2, 2025 Meeting Video at 2:48:48, <https://prod-agendamanagement-publicportal.azurewebsites.us/HtmlAgenda/68560312-58cb-4116-9a51-08dd51c9e075>.

<sup>41</sup> *Id.* at 2:50:15.

<sup>42</sup> *Id.* at 2:51:05.

<sup>43</sup> *Id.* at 2:52:30.

<sup>44</sup> *Id.* at 3:06:50.

<sup>45</sup> Tarrant County Commissioners Court May 6, 2025 Meeting Video at 1:14:57, <https://prod-agendamanagement-publicportal.azurewebsites.us/HtmlAgenda/e86a9f86-cfcb-41c5-f5c2-08dd617d51b0>.

<sup>46</sup> *Id.* at 1:23:30.

<sup>47</sup> *Id.* at 1:42:10.

<sup>48</sup> *Id.* at 2:52:04.

<sup>49</sup> Tarrant County Redistricting 2025, Public Hearing, <https://www.tarrantcountytexas.gov/redistricting>.

<sup>50</sup> Tarrant County Precinct 4 Public Meeting May 13, 2025 Video at 1:13:10, [https://www.youtube.com/watch?v=Hm7BtsU\\_wY0&t=8s](https://www.youtube.com/watch?v=Hm7BtsU_wY0&t=8s).

Miles.<sup>51</sup> PILF was invited to attend the May 17, 2025 public hearing in Precinct 2 by Commissioner Simmons and Mr. Nixon initially accepted, though noted he would not be willing to speak to the public or answer questions.<sup>52</sup> But on the morning of the hearing, Mr. Nixon canceled, claiming he feared for his life were he to attend the Precinct 2 public hearing.<sup>53</sup>

At the May 20, 2025 Commissioners Court meeting, Commissioner Simmons commented on the absence of any presentation by PILF, and had her staff make a presentation to the Court.<sup>54</sup> Included in that presentation were the Benchmark Map, Map 1, and a map showing the racial demographics of Map 1.<sup>55</sup> Commissioner Ramirez asked, regarding the racial shading map, “is that all one race, or is that just anybody who’s not white?”<sup>56</sup>

Two new map proposals—Maps 6 and 7—were posted to the County’s website on May 29, 2025, with backup data revealing a May 27, 2025 creation date.<sup>57</sup> The new maps were posted just five days—and three business days—before the scheduled vote on June 3, 2025. This rushed timing contradicted Judge O’Hare’s statement at the April 2, 2025 meeting that maps would be posted for 2-2.5 weeks before a vote to give the public time to consider the proposals.

As soon as the redistricting agenda item was announced at the June 3, 2025 Commissioners Court meeting, Commissioner Krause moved to adopt Map 7, which motion Commissioner Ramirez seconded.<sup>58</sup> During the public comments, Judge O’Hare had constables remove a member of the public for criticizing the commissioners for what they viewed to be a racist action.<sup>59</sup> Another person was removed for clapping.<sup>60</sup>

When Commissioner Simmons asked for the PILF lawyers to come into the room and be available for questions, Judge O’Hare said that the PILF lawyers would only speak to commissioners in private and had declined to be available for questions in a public setting, stating that “you don’t have subpoena power to make them come out here.”<sup>61</sup> After a break, Judge O’Hare threatened that if any member of the public made any further noise, “we are clearing the chamber and we will conduct business with us and staff present only. The end, no more warnings.”<sup>62</sup>

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<sup>51</sup> Tarrant County 2025 Redistricting Public Hearing Video at 19:30, May 14, 2025, <https://www.youtube.com/watch?v=8bJuZD3V2f0>.

<sup>52</sup> Tarrant County 2025 Redistricting Public Hearing Video at 2:40, May 17, 2025, <https://www.youtube.com/watch?v=Gdksws4YhcY>.

<sup>53</sup> *Id.* at 4:00.

<sup>54</sup> Tarrant County Commissioners Court May 20, 2025 Meeting Video at 1:18:15, <https://prod-agendamanagement-publicportal.azurewebsites.us/HtmlAgenda/645a15f3-3deb-4345-634e-08dd7b9cb9b5>.

<sup>55</sup> *Id.* at 1:33:26.

<sup>56</sup> *Id.*

<sup>57</sup> Tarrant County Redistricting 2025, Maps 6 and 7 Data, <https://www.tarrantcountytx.gov/redistricting>; Rachel Royster, *Tarrant County presented with new redistricting maps option ahead of June 3 vote*, Fort Worth Star-Telegram (May 30, 2025), <https://www.star-telegram.com/news/politics-government/article307455841.html>.

<sup>58</sup> Tarrant County Commissioners Court June 3, 2025 Meeting Video at 53:09, <https://prod-agendamanagement-publicportal.azurewebsites.us/HtmlAgenda/515a6602-2fb1-40ef-eea7-08dd8d6d95d5>.

<sup>59</sup> For example, see *id.* at 3:23:20.

<sup>60</sup> *Id.* at 1:32:00.

<sup>61</sup> *Id.* at 4:42:00.

<sup>62</sup> *Id.* at 5:19:29.

Speaking about the redistricting process, Commissioner Ramirez later observed “I would agree with what a lot of folks said. I think the process – it had flaws. I think that the process could have been a lot more comprehensive.”<sup>63</sup> Commissioner Miles moved to postpone a decision until a future meeting after the public had time to review Map 7, which had been released just days earlier.<sup>64</sup> After Commissioner Miles explained that Map 7 was not available at the time of the public hearings and he had no time to consider it, Judge O’Hare asked if anyone wished to speak on the motion. When Commissioner Simmons responded in the affirmative, Judge O’Hare interrupted her, saying “hang on, I will recognize who the speakers are - so - you may go.”<sup>65</sup> That motion was defeated 3-2, and thereafter Map 7 was adopted 3-2.<sup>66</sup>

Overall, the 2025 process deviated significantly in procedure and substance from prior Tarrant County redistricting efforts. It was rushed despite there being no need for a truncated process, the public-facing involvement of PILF dramatically differed from the robust public engagement by Bickerstaff in prior processes, there was open hostility toward members of the public and Commissioner Simmons by Judge O’Hare, and the adopted map—available for mere days despite Judge O’Hare’s commitment to have it available to the public for 2-2.5 weeks—greatly differed in substance from decades of maps. Indeed, when a similar map configuration was proposed to the Commissioners Court in 2021 and explained in part by its proponent as placing minorities in a common district, the Commissioners Court rejected it after the County’s legal counsel Mr. Heath noted that the map’s movement and concentration of minorities in one district raised legal questions.

#### **5. Judge O’Hare’s June 3, 2025 television interview**

I have watched a television interview by NBC 5 with Judge O’Hare from the day of the vote on Map 7. Judge O’Hare said: “The policies of Democrats continue to fail Black people over and over and over, but many of them keep voting them in. It’s time for people of all races to understand the Democrats are a lost party, they are a radical party, it’s time for them to get on board with us and we’ll welcome them with open arms.”<sup>67</sup>

In my experience as a political scientist, I have seldom seen a government official explain their vote for a particular redistricting map as justified by their disagreement with how a racial group casts their ballots. This is a remarkable statement in the modern era.

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<sup>63</sup> *Id.* at 5:33:50.

<sup>64</sup> *Id.* at 5:43:24.

<sup>65</sup> *Id.* at 5:45:20.

<sup>66</sup> *Id.* at 5:46:35.

<sup>67</sup> Lone Star Politics: June 8, 2025, NBC 5 at 16:20, <https://www.nbcdfw.com/news/politics/lone-star-politics/lone-star-politics-june-8-2025-video/3858717/>.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 27, 2025



Executed by: \_\_\_\_\_

Jeronimo Cortina, Ph.D.

**CERTIFICATE OF SERVICE**

I hereby certify that on September 29, 2025, this document was electronically served on all counsel of record via the Court's CM/ECF system.

/s/ Chad W. Dunn

***United States Court of Appeals***

FIFTH CIRCUIT  
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September 30, 2025

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No. 25-11055 Jackson v. Tarrant County  
USDC No. 4:25-CV-587

Dear Mr. Dunn, Mr. Gaber,

We are taking no action on your brief and record excerpts. They were filed prematurely in light of there was no briefing notice issued at the time of filing. They must be refiled.

Sincerely,

LYLE W. CAYCE, Clerk

*Lisa E. Ferrara*

By: \_\_\_\_\_  
Lisa E. Ferrara, Deputy Clerk  
504-310-7675

cc: Mr. Joseph M. Nixon