

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

TERRY PETTEWAY, the HON.  
DERRICK ROSE, and the HON.  
PENNY POPE,  
*Plaintiffs,*

v.

GALVESTON COUNTY, TEXAS,  
and the HON. MARK HENRY, in  
his official capacity as Galveston  
County Judge,  
*Defendants.*

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Civil Action No. 3:22-cv-57  
(consolidated action)

**DEFENDANTS’ ANSWER TO THE PETTEWAY PLAINTIFFS’  
SECOND AMENDED COMPLAINT**

Defendants Galveston County, Texas and County Judge Mark Henry in his official capacity as Galveston County Judge (collectively “Defendants”) file this Answer to the Second Amended Complaint (Dkt. 42, or “Complaint”) filed by Plaintiffs Terry Petteway, Constable Derrick Rose, and the Hon. Penny Pope (collectively, the “Petteway Plaintiffs”).<sup>1</sup>

**I. Response to Introduction<sup>2</sup>**

1. Defendants admit that a County Commissioners precinct map was adopted on or about November 12, 2021 (“2021 Redistricting Plan”). Otherwise, denied.

2. Defendants admit that under the Voting Rights Act (“VRA”) in 2011, Galveston County was required to obtain judicial or administrative preclearance before implementing a

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<sup>1</sup> Sonny James dismissed his claims on January 27, 2023. Dkt. 100. The Court dismissed Michael Montez’s claims on March 30, 2023. Dkt. 125.

<sup>2</sup> The paragraphs here are numbered to correspond with the Complaint paragraphs to which they respond.

voting change such as a redistricting plan. Otherwise, denied.

3. Defendants admit that the pleadings in Cause No. 3:11-cv-00511 (“2011 Redistricting Case”) speak for themselves, and further admit, as stated in *Petteway, et al. v. Galv. Cnty, et al.*, No. 12-40856, 2013 WL 6634558 (5th Cir. Dec. 17, 2013) that:

- Galveston County sought preclearance from the Department of Justice (“DOJ”) for its County Commissioners, Justice of the Peace and Constable redistricting plans in October 2011,
- only after the County sought preclearance, Plaintiffs filed the 2011 Redistricting Case seeking, in part, an injunction to prevent use of unprecleared maps,
- the County assured the DOJ and the court in the 2011 Redistricting Case that it would not implement any unprecleared maps,
- on November 21, 2011, a temporary restraining order was entered in the 2011 Redistricting Case that a majority of a three-judge panel vacated on December 9, 2011,
- the DOJ did not issue an objection to the submitted plan until March 5, 2012 and, afterward, the County promptly entered into discussions with the DOJ and negotiated a new Commissioner Court plan that was precleared and submitted in the 2011 Redistricting Case,
- despite agreement among the parties about the submitted map, the court in the 2011 Redistricting Case permanently enjoined the County from implementing plans for 2012 elections that were not precleared,
- the Fifth Circuit made clear on appeal that the injunction had no effect on the implementation of the electoral map before or after preclearance, that preclearance had always been an express condition of any election and the County always unequivocally committed itself to that condition, and that the plaintiffs were not prevailing parties because their suit did not materially change any conduct of the County and the plaintiffs did not benefit from the injunction where the County had already voluntarily, on the record, committed to forbear from making any permanent changes without preclearance as was required by law, and
- (as the 2011 Redistrict Case records show), on remand, the district court

entered a take-nothing judgment dismissing Plaintiffs' case.

Otherwise, the allegations in paragraph 3 are denied.

4. Defendants incorporate Paragraph 3 here. Otherwise, denied.

5. The 2020 census data speaks for itself. Defendants admit that the data reflects Galveston County's population grew by 59,373 or approximately 20% since 2010, with the majority of the growth in the northern part of the County, in League City. Admit that the total Latino population grew from approximately 65,270 in 2010 to 88,636 in 2020, and the total non-Latino Black population grew from 39,229 to 43,120. Otherwise, denied.

6. Defendants admit that the 2020 census revealed population imbalances under the 2011 Commissioner precincts which required redistricting in 2021. Otherwise, denied.

7. Defendants deny that the 2021 Redistricting Plan is intentionally discriminatory or that it violates the VRA or the Fourteenth or Fifteenth Amendments.

## **II. Response to Jurisdiction and Venue**

8. Defendants admit the Court has jurisdiction to hear this case and deny that the Plaintiffs' claims have merit.

9. Defendants admit the Court has jurisdiction to determine costs and fees, and deny that any fees or costs should be awarded to Plaintiffs.

10. Admitted.

11. Admitted.

## **III. Response to Parties**

12. Defendants deny that Michael Montez and Sonny James are Plaintiffs in this case, as their claims have been dismissed. Otherwise, admitted.

13. Defendants lack knowledge or information sufficient to form a belief about the truth of the facts stated in Paragraph 13, and therefore deny same.

14. Admit that, on information and belief, Plaintiff Terry Petteway is an African American resident of Galveston County who resides in current Commissioner Precinct 2, and formerly served as a Galveston County Constable. Otherwise, denied.

15. Admitted.

16. Admitted.

17. Denied.

18. Admit that, on information and belief, Plaintiff the Honorable Derrick Rose is an African American resident of Galveston County who resides in current Commissioner Precinct1, and currently serves as a Galveston County Constable. Otherwise, denied.

19. Admitted.

20. Admitted.

21. Denied.

22. Denied.

23. Denied.

24. Denied.

25. Denied.

26. Admit that, on information and belief, Plaintiff Penny Pope is an African American resident of Galveston County who resides in current Commissioners Precinct 3 and formerly served as a Galveston County Justice of the Peace. Otherwise, denied.

27. Admitted.

28. Denied.

29. Denied.

30. Denied.

31. Denied.

32. Admitted.

33. Admitted.

#### **IV. Response to Facts**

##### ***Response to “2011 Commissioners Court Plan”***

34. Admit that in 2011 Defendants adopted a County Commissioner redistricting plan and submitted the same to the DOJ for preclearance. Otherwise, denied.

35. Denied.

36. Admit that in 2011 Galveston County was required to obtain judicial or administrative preclearance under the VRA before implementing a redistricting plan, and that Galveston County submitted such plans to the DOJ for approval in 2011. Otherwise, denied.

37. The quoted letter speaks for itself. Defendants incorporate Paragraph 3 here. Otherwise, denied.

38. The quoted letter speaks for itself. Defendants incorporate Paragraph 3 here. Otherwise, denied.

39. The quoted letter speaks for itself. Defendants incorporate Paragraph 3 here.

Otherwise, denied.

40. The quoted letter speaks for itself. Defendants incorporate Paragraph 3 here.

Otherwise, denied.

41. The quoted letter speaks for itself. Defendants incorporate Paragraph 3 here.

Otherwise, denied.

42. The quoted letter speaks for itself. Defendants incorporate Paragraph 3 here.

Otherwise, denied.

43. The quoted letter speaks for itself. Defendants incorporate Paragraph 3 here.

Otherwise, denied.

44. Defendants incorporate Paragraph 3 here. Otherwise, denied.

45. Admitted.

46. Defendants admit that they negotiated with the DOJ prior to the 2011 County Commissioners precinct map's implementation. Otherwise, denied.

***Response to "The 2020 Census "***

47. Admit that the U.S. Census Bureau released 2020 Census redistricting data in a largely unusable format in August of 2021. Otherwise, denied.

48. Admitted.

49. Denied.

50. Denied.

51. Admit.

52. Defendants lack sufficient knowledge to admit or deny, so deny same.

53. Admit that Anglo voting age population in Galveston County went from 62.75% percent in 2010 to 57.98% in 2020. Otherwise, denied.

54. Admitted.

***Response to “The 2021 Galveston County Redistricting Process Featured Intentional Racial Discrimination”<sup>3</sup>***

55. Denied.

56. Admitted.

57. Defendants lack sufficient knowledge to admit or deny, so deny same.

58. Defendants lack sufficient knowledge to admit or deny, so deny same.

59. Admit that the image in paragraph 59 appears to outline the 2011 County Commissioners precincts. Admit that the blue shading into other counties, not just Galveston County, and it is not clear whether the shading completely or accurately represents voting tabulation districts in 2011; therefore, Defendants deny the remaining allegations in paragraph 59.

60. Defendants admit that precinct 3 under the 2011 map was a performing majority-minority district. Otherwise, denied.

61. Admitted.

62. Defendants lack sufficient knowledge or information to form a belief about the truth of the facts stated in Paragraph 62, and therefore deny same.

63. Admitted.

64. Denied.

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<sup>3</sup> Defendants deny the allegation in this subheading.

65. Denied.

66. Denied

67. Denied.

68. Denied.

69. The contents of any DOJ correspondence speaks for itself. Defendants incorporate Paragraph 3 here. Otherwise, denied.

70. Denied.

71. Denied.

72. The Map 1 proposal speaks for itself. Otherwise, denied.

73. Defendants lack sufficient information to admit or deny, so deny same.

74. Defendants lack sufficient information to admit or deny, so deny same.

75. Admit that Map 2 did not maintain the same precinct boundaries. It speaks for itself. Otherwise, denied.

76. Admitted.

77. Admit that at the public meeting the Commissioners Court heard public testimony on both Map 1 and Map 2. Otherwise, denied.

78. The recording of the public testimony at the November 12, 2021 meeting speaks for itself. Admit that many speakers did not comment specifically on either map proposal. Otherwise, denied.

79. Defendants incorporate paragraph 78 here as if stated in full. Otherwise, denied.

80. Defendants incorporate paragraph 78 here as if stated in full. Otherwise, denied.



81. Admit that the 2020 Census data was first released in August 2021 and that data was not released in a usable format until September 2021, which caused delays with the drafting and adoption of redistricting plans. Otherwise denied.

82. Admit that, prior to the adoption of the 2011 County Commissioners precinct map, there were five public meetings held at different sites across the County with time to receive and consider feedback from the public before the deadline to adopt a plan. Defendants incorporate paragraph 81 as if stated here in full. Otherwise, denied.

83. Admit that prior years' public meetings on redistricting have been held at various times of the day, including the evening. Otherwise, denied.

84. Admit that the November 12, 2021 meeting was held from 1:30 p.m. until approximately 3:00 p.m., fourteen days after the Map 1 and Map 2 proposals were released to the public. Admit that public comment was available online at the Galveston County website between October 29, 2021 and November 12, 2021. Admit that the November 12, 2021 meeting was the only public meeting regarding the map proposals due to the time constraints imposed by law, including notice for the meeting and the imposed deadline for adopting a redistricting plan. Otherwise, denied.

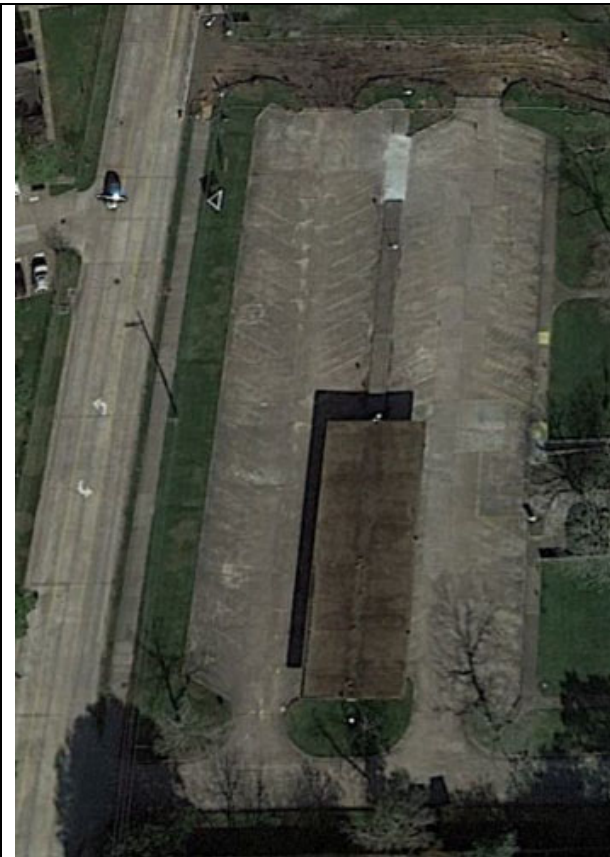
85. Admit that Judge Henry addressed a recurring theme from public comments and stated that the State-imposed deadline for the County to adopt a map was November 13, 2021.

86. Admit that Judge Henry explained the time constraints for adopting a map, that public comment was available online prior to the November 12, 2021 meeting, and that 440 people had provided comments online as of approximately one hour before the November 12,

2021 meeting. Otherwise, denied.

87. Admit that, as a special Commissioners Court meeting and not a regularly scheduled Commissioners Court meeting, the November 12, 2021 was noticed for and occurred in a courtroom at 174 Calder Road in League City, located approximately halfway between Houston and Galveston Island.

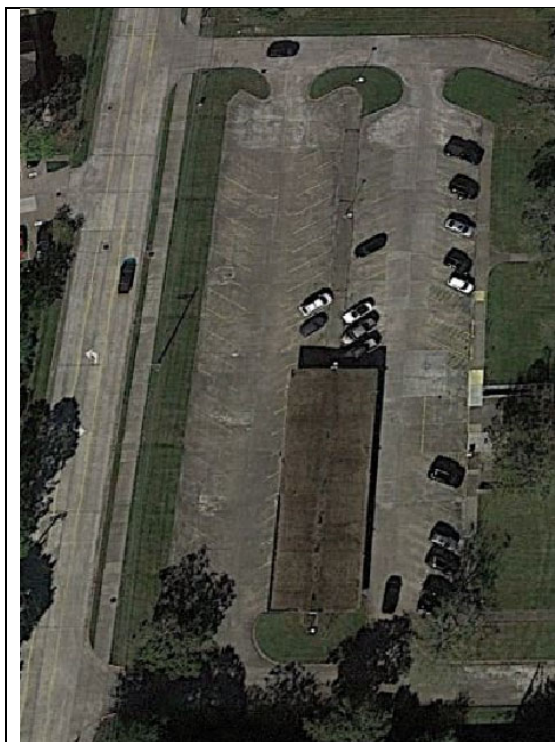
88. Admit that the Calder Road courtroom was the usual location for special Commissioners Court meetings, that construction was occurring along the north parking entrance, and that the south parking entrance was open (see images below). Otherwise, denied.



(Above - December 11, 2021 Google Earth image showing north lot construction and open south lot entrance)



(Above - April 6, 2022 Google Earth image showing completed north lot entrance and open south lot entrance)



(Left – November 16, 2020 showing open north and south lot entrances with no construction)

89. Admit that the County Judge and Commissioners heard public comment without microphones, that the County Judge and Commissioners did not have microphones, that the meeting was recorded and livestreamed, and that members of the public could view proceedings in an overflow room. Otherwise, denied.

90. Denied.

91. The recording of the meeting speaks for itself. Otherwise, denied.

92. The recording of the meeting speaks for itself. Admit that no one was expelled from the meeting at any time. Otherwise, denied.

93. The recording of the meeting speaks for itself. Otherwise, denied.

94. The recording of the meeting speaks for itself. Admit that arrangements were made for members of the public to view the meeting in an overflow room. Otherwise, denied.

95. Denied.

96. The recording of the meeting speaks for itself. Admit Commissioner Holmes stated that he met with a lawyer for the County and was invited to submit a map proposal. Otherwise, denied.

97. Correspondence from the DOJ speaks for itself. Otherwise, denied.

98. The recording of the meeting speaks for itself. Otherwise, denied.

99. The recording of the meeting speaks for itself. Otherwise, denied.

100. The recording of the meeting speaks for itself. Otherwise, denied.

101. The recording of the meeting speaks for itself. Otherwise, denied.

102. Admit that only Map 1 and Map 2 were published prior to the November 12, 2021 meeting for public comment, and that prior to the November 12, 2021 meeting, Commissioner Holmes did not present any other map to any of the Commissioners for consideration, publication, or otherwise request that any other map be considered. Admit that because of this, no analysis of any such maps was made, and no vote could be held on any previously undisclosed map.

103. Admitted.

104. Admitted.

105. Admitted.

106. Denied.

107. Defendants lack sufficient knowledge to admit or deny, so deny same.

108. Defendants lack sufficient knowledge to admit or deny, so deny same.

109. Defendants lack sufficient knowledge to admit or deny, so deny same.

110. Denied.

***Response to “Racial Predominance in the Adoption of Commissioner Precinct Lines”***

111. Denied.

112. Denied.

113. Denied.

114. Denied.

115. Denied.

116. Denied.

117. Denied.

118. Denied.

***Response to “VRA Section 2 Factual Allegations”***

119. Denied.

120. Defendants lack sufficient knowledge to admit or deny, so deny same.

121. Denied.

122. Admit that the 2021 Redistricting Plan changes the precinct boundaries from the 2011 plan. Otherwise, denied.

123. Denied.

124. Denied.

125. Denied.

126. Defendants lack sufficient knowledge to admit or deny so deny same.

127. Defendants lack sufficient knowledge to admit or deny so deny same.

128. Denied.

129. Denied.

130. Defendants need not respond to any legal arguments. Otherwise, denied.

131. Denied. Admit that in 2006, a committee on minority concerns that was headed up by Rev. Kerry W. Tillmon and included Leon Phillips, found no patterns of discrimination or harassment in Galveston, including with the police department.

132. Admitted.

133. Defendants incorporate paragraph 3 as if stated in full here. Otherwise, denied.

134. Denied.

135. Defendants incorporate paragraph 3 as if stated in full here. Otherwise, denied.

136. Admit that the County negotiated with the DOJ in 2007 regarding Spanish language assistance for voters. Otherwise, denied.

137. Admit that Galveston Independent School District was under federal court supervision for school desegregation from 1959 to 2009. Otherwise, denied.

138. Denied.

139. Admit that an August 2019 post on a League City Police Department Facebook page asked the public for help in identifying two women caught on camera stealing from a perfume shop, one of whom was holding an infant during the theft. Admit that the post called the women “buffoonish besties” and “sorry excuses for adults,” and that the post was deleted within hours after the League City Police Chief called it unacceptable and ordered it removed. Otherwise, denied.

140. Defendants lack sufficient information to admit or deny this allegation, and therefore deny same.

141. Admit that Hurricane Ike was a devastating storm that sent 110 mile-per-hour winds and 12-to-15-foot storm surges across Galveston Island and the Bolivar Peninsula and impacted virtually all residents of Galveston County. Otherwise, denied.

142. The City of Galveston administered public housing developments within its jurisdiction, not Galveston County. Admit that, on information and belief, three public housing developments in the City of Galveston were damaged beyond repair and demolished. Otherwise, denied.

143. Defendants incorporate paragraph 142 here as if set out in full. Defendants further admit that residents of damaged public housing structures in the City of Galveston were displaced by Hurricane Ike. Otherwise, denied.

144. Defendants incorporate paragraph 142 here as if set out in full. On information and belief, there was a debate over how to rebuild public housing, not whether to rebuild. Otherwise, denied.

145. Denied.

146. The article cited quoted a fair housing advocate who made such claims. Otherwise, denied.

147. The article speaks for itself. Otherwise, denied.

148. The article speaks for itself. Defendants lack sufficient knowledge to admit or deny, and so deny same.



149. The article speaks for itself. Otherwise, denied.

150. The article speaks for itself. Defendants lack sufficient knowledge to admit or deny, and so deny same.

151. Defendants lack sufficient knowledge to admit or deny, and so deny same.

152. The article speaks for itself. Otherwise, denied.

153. Defendants lack sufficient knowledge to admit or deny, and so deny same.

154. The article speaks for itself. Otherwise, denied.

***Response to “Ongoing Effects of the History of Discrimination”<sup>4</sup>***

155. Denied as written.

156. Defendants lack sufficient knowledge to admit or deny, and so deny same.

157. Defendants lack sufficient knowledge to admit or deny, and so deny same.

158. Defendants lack sufficient knowledge to admit or deny, and so deny same.

159. Defendants lack sufficient knowledge to admit or deny, and so deny same.

***Response to “Racial Appeals in Political Campaigns”***

160. Denied as written. Any political campaign materials speak for themselves.

161. Defendants incorporate paragraph 160 here as if set out in full. Otherwise, denied.

162. Defendants lack sufficient knowledge about where the photograph came from and cannot admit or deny such allegation. Defendants incorporate paragraph 160 here as if set out in full. Otherwise, denied.

163. The article speaks for itself. Otherwise, denied.

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<sup>4</sup> To the extent a response to this subheading is required, denied.



164. The cited article speaks for itself. Admit that it was reported in late 2019 that then-Galveston County GOP chairwoman Yolanda Waters, who is Latina and Black, faced demands for her resignation from several members of the Republican party in Galveston County, including a request from Judge Henry, when they learned she used a racial slur in a text message. Otherwise, denied.

165. Defendants incorporate paragraph 164 as if stated in full here. Defendants further admit that Waters was not reelected as the County Republican Chair. Otherwise, denied.

***Response to “Limited Success of Black and Latino Candidates”<sup>5</sup>***

166. Denied.

167. Denied.

168. Defendants lack sufficient knowledge to admit or deny, and so deny same.

169. Upon information and belief, denied.

**V. Response to Claims**

***Response to “Count 1 - Intentional Racial Discrimination in Violation of the Fourteenth Amendment”<sup>6</sup>***

170. Defendants incorporate the above paragraphs.

171. Denied.

***Response to “Count 2 - Intentional Racial Discrimination in Violation of the Fifteenth Amendment”<sup>7</sup>***

172. Defendants incorporate the above paragraphs.

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<sup>5</sup> To the extent a response to this subheading is required, denied.

<sup>6</sup> To the extent a response to this subheading is required, denied.

<sup>7</sup> To the extent a response to this subheading is required, denied.

173. Denied.

***Response to “Count 3 - Racial Gerrymandering in Violation of the Fourteenth Amendment”<sup>8</sup>***

174. Defendants incorporate the above paragraphs.

175. Denied.

***Response to “Count 4 - Discriminatory Results in Violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301 et seq.”<sup>9</sup>***

176. Defendants incorporate the above paragraphs.

177. Denied.

178. Denied.

179. Denied.

180. Denied.

181. Denied.

182. Defendants do not need to respond to legal argument. Otherwise, denied.

***Response to “Count 5 - Intentional Racial Discrimination in Violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301 et seq.”<sup>10</sup>***

183. Defendants incorporate the above paragraphs.

184. Denied.

**VI. Response to Prayer for Relief**

1. Defendants deny that Plaintiffs are entitled to any relief and oppose the relief prayed for in paragraphs 1 through 9 of the Prayer for Relief in their Complaint.

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<sup>8</sup> To the extent a response to this subheading is required, denied.

<sup>9</sup> To the extent a response to this subheading is required, denied.

<sup>10</sup> To the extent a response to this subheading is required, denied.

## DEFENSES

1. Nonjusticiable Political Question. The Petteway Plaintiffs’ claims are barred because they raise nonjusticiable political questions. The consideration of party affiliation in redistricting is not actionable before the Court.
2. Plaintiffs request an unconstitutional racial gerrymander. The relief sought by the Petteway Plaintiffs would result in an unconstitutional racial gerrymander and therefore cannot be granted.
3. Not a violation.
  - a. The County Commissioners precincts were drawn without consideration of race. Not considering race in a redistricting plan is not a violation of any of the claims herein.
  - b. Any alleged vote dilution is not on account of race or color, and is not a violation of any of the claims herein.
  - c. Defendants did not “crack” or “pack” voters based on race in the County Commissioner redistricting plan.
  - d. Defendants did not intend to discriminate with the adoption of the 2021 Redistricting Plan.
4. Unconstitutional.
  - a. The County Commissioners Precincts proposed amount to an unconstitutional racial gerrymander.
  - b. The County Commissioners Precincts proposed violate the one-person, one-vote rule.
  - c. The County Commissioners Precincts proposed are inconsistent with traditional districting criteria.
  - d. To the extent Section 2 is held to require the plan to be redrawn with consideration of race, or without respect to traditional districting criteria, Section 2 is unconstitutional.

- e. To the extent Section 2 is held to permit a finding of liability without proof of intentional discrimination, Section 2 is unconstitutional.
- f. To the extent Section 2 is held to require a court to assume that polarized voting is evidence of racial bias, Section 2 is unconstitutional.
- g. To the extent Section 2 is held to require a court to assume that a white voter's support of Republican candidates is evidence of racial bias, Section 2 is unconstitutional.
- h. To the extent Section 2 recognizes the claim(s) asserted herein, or permits the relief sought, it is not proportional and congruent under the United States Constitution.

5. No private right of action. Section 2 of the VRA does not provide a private right of action.

6. No 15th Amendment intentional vote dilution claim. There is no cause of action for intentional vote dilution under the Fifteenth Amendment. *Prejean v. Foster*, 227 F.3d 504, 519 (5th Cir. 2000).

7. Timing. Complaints about the timing of the redistricting process are attributable to the Census Bureau's considerable delays in delivering districting data as statutorily required, and those delays required the Galveston County Commissioners Court to move quickly to comply with State law to timely adopt plans for the 2022 election.

8. No Gingles Preconditions. The Petteway Plaintiffs fail to satisfy the *Thornburg v. Gingles*, 478 U.S. 30 (1986) requirements of cohesion, compactness, and majority bloc voting (i. the minority group is sufficiently large and geographically compact to constitute a majority in a single-member district, ii. the minority group is politically cohesive, and iii. the majority votes sufficiently as a bloc so it can usually defeat the minority group's preferred candidate).

**PRAYER**

Defendants pray that the Court dismiss the Pettway Plaintiffs' claims in full. Pursuant to 42 U.S.C. § 1988(b) and 52 U.S.C. § 10310(e), upon prevailing Defendants may recover their reasonable attorney's fee, reasonable expert fees, and other reasonable litigation expenses as part of the costs. Defendants pray the Court award Defendants their reasonable attorney's fees, expert fees, and costs. Defendants pray for all other relief to which they are entitled.

Respectfully Submitted,

HOLTZMAN VOGEL BARAN  
TORCHINSKY & JOSEFIK PLLC

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*\*admitted pro hac vice*

*Counsel for Defendants*

**CERTIFICATE OF SERVICE**

I certify that on the 21st day of April, 2023, a true and correct copy of the foregoing was served via email upon all counsel of record.

*/s/ Angie Olalde* \_\_\_\_\_