

**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.

No. 4:25-cv-00587-O

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

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INTRODUCTION

Defendants’ motion to dismiss should be denied. They improperly seek a jurisdictional dismissal by attacking the merits of Plaintiffs’ claims. They conflate and confuse the various types of redistricting claims that the Supreme Court has held are “analytically distinct,” advocating the wrong legal tests for the wrong claims. And they ask the Court to construe Plaintiffs’ allegations as false and draw inference in Defendants’ favor, turning the Rule 12(b)(6) standard on its head.

The opening paragraph of Plaintiffs’ First Amended Complaint—quoting County Judge Tim O’Hare’s own racially-infused explanation for Map 7’s design and effect—alone establishes Plaintiffs’ claims. Defendants’ contrary arguments are without merit.

ARGUMENT

I. The Court has subject matter jurisdiction.

The Court has subject matter jurisdiction over Plaintiffs’ claims. Plaintiffs allege four causes of action, each presenting a justiciable claim within this Court’s subject matter jurisdiction. Plaintiffs’ four claims are: (1) Map 7 violates Section 2 of the Voting Rights Act because it results in a racially discriminatory imposition of six- rather than four-year voting cycle for commissioners court elections; (2) Map 7 violates the First and Fourteenth Amendments by imposing that 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.

Defendants contend the Court lacks subject matter jurisdiction because (1) Plaintiffs allege a nonjusticiable political question of partisan gerrymandering and (2) there is no “constitutional

injury” from the County subjecting voters to a two-year disenfranchisement period. Defendants’ arguments are without merit.

A. Plaintiffs do not allege a nonjusticiable partisan gerrymandering claim or a racial gerrymandering claim.

Plaintiffs have not alleged a nonjusticiable partisan gerrymandering claim or a racial gerrymandering claim. Defendants’ lead arguments about disentangling race from politics and justiciability (at 6-10) are thus misplaced because they target claims Plaintiffs have not advanced.

First, Defendants assert “Plaintiffs’ complaint fails to . . . disentangle race from partisan motives by showing an alternative plan could accomplish the same aim.” ECF No. 27 at 6. For this purported failing, Defendants cite *Alexander v. South Carolina State Conference of the NAACP*, 602 U.S. 1 (2024), in which the Supreme Court held that “when race and partisan preferences are highly correlated,” *id.* at 6, and where the State asserts a partisan gerrymandering defense to a racial gerrymandering claim, the plaintiff must produce “an alternative map showing that a rational legislature sincerely driven by its professed partisan goals would have drawn a different map with greater racial balance,” *id.* at 10. If the plaintiff fails to proffer such a map, the district court is to “draw an adverse inference from a plaintiff’s failure to submit one.” *Id.* at 35.

Alexander’s alternative map requirement—and its underlying charge to disentangle race from politics—has no bearing here. Plaintiffs’ First Amended Complaint contains no racial gerrymandering claim—Counts 1 and 2 relate to the two-year disenfranchisement period unequally imposed by Map 7’s configuration and Counts 3 and 4 relate to intentional racial vote dilution. These are not racial gerrymandering claims and are not subject to the pleading or evidentiary requirements of racial gerrymandering claims.

A racial gerrymandering claim alleges that “race was the ‘predominant factor motivating the legislature’s decision to place a significant number of voters within or without a particular

district.” *Id.* at 7 (quoting *Miller v. Johnson*, 515 U.S. 900, 916 (1995)). Such a claim is “‘analytically distinct’ from a vote dilution claim,” *Miller*, 515 U.S. at 911 (quoting *Shaw v. Reno*, 509 U.S. 630, 652 (1993)), because the latter focuses not on racial *predominance*, but rather on the allegation that “the State has enacted a particular voting scheme as a purposeful device ‘to minimize or cancel out the voting potential of racial or ethnic minorities,’” *id.* (quoting *Mobile v. Bolden*, 446 U.S. 55, 66 (1980)).

While a plaintiff asserting a racial gerrymandering claim must allege (and ultimately prove) racial predominance, that is not the standard for intentional *racial vote dilution* claims. Rather, for an intentional racial discrimination claim, “‘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.” (emphasis in original)).

A map becomes a racial gerrymander—regardless of *why* race was used—once a threshold amount of racial consideration is reached (*i.e.*, predominance). *See Alexander*, 602 U.S. at 38 (“A racial gerrymandering claim asks whether race predominated in the drawing of a district ‘regardless of the motivations’ for the use of race.”). On the other hand, a map intentionally dilutes minority voting strength once *any* amount of racial purpose occurs if the goal is to reduce voting strength on account of race. Thus, while the *amount* of racial consideration defines a racial

gerrymandering claim, the *purpose* behind racial consideration defines an intentional racial vote dilution claim.

Contrary to this clear precedent, Defendants invite the Court to conflate claims the Supreme Court has instructed are “analytically distinct.” *Miller*, 515 U.S. at 911. A plaintiff raising a racial gerrymandering claim must “disentangle race from politics” because of the predominance requirement— “[i]f either politics or race could explain a district’s contours, the plaintiff has not cleared its bar” to show racial predominance. *Alexander*, 602 U.S. at 9. But even if partisanship is the predominant purpose behind a map’s design, the map will still be unconstitutional if “racial discrimination [was] one purpose, *and not even a primary purpose*,” for how its districts are configured. *Veasey*, 830 F.3d at 230 (emphasis added).

Because an intentional vote dilution claim can prevail even if partisanship was the primary or predominant factor in the mapdrawing, *Alexander*’s requirement that partisanship and race be disentangled by way of an alternative map does not apply in this case. In the context of an intentional racial vote dilution claim, the plaintiff accomplishes that disentanglement by proving *why* race was *a* factor—to purposefully reduce minority voting strength on account of race. As Defendants later acknowledge (at 19), the relevant inquiry is of the direct and circumstantial evidence of an intent to dilute voting strength on account of race, including through the factors set forth in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977).

Defendants cannot obtain dismissal of a claim (racial gerrymandering) that Plaintiffs’ operative complaint does not plead. *Alexander*’s alternative map requirement is not an

evidentiary—and certainly not a pleading¹—requirement for Plaintiffs’ claims, and thus not a basis for a Rule 12(b)(1) jurisdictional dismissal.

Second, Defendants invoke the Supreme Court’s partisan gerrymandering jurisprudence, which culminated in holding that such claims are not justiciable in federal court. *See* ECF No. 27 at 7-9 (citing and discussing, *inter alia*, *Rucho v. Common Cause*, 588 U.S. 684 (2019), and *Vieth v. Jubiliter*, 541 U.S. 267 (2004)). “[A] plaintiff asserting a partisan gerrymandering claim based on a theory of vote dilution must establish standing by showing he lives in an allegedly ‘cracked’ or ‘packed’ district” such that “a party’s supporters are divided among multiple districts” or “a party’s supporters are highly concentrated.” *Rucho*, 588 U.S. at 693. These claims attack the composition of districts and assert that voters of one political party will be able to elect fewer representatives of their political party because of the packing and/or cracking of their voters.

Plaintiffs’ First Amended Complaint contains no partisan gerrymandering claim. Plaintiffs do not ask for Map 7 to be enjoined because it packs or cracks voters because of their partisan affiliation. Plaintiffs raise no claim that an insufficient number of *Democrats* will be elected commissioner under Map 7. Plaintiffs’ sole vote dilution claims (Counts 3 and 4) allege intentional *racial* vote dilution in violation of the Fourteenth and Fifteenth Amendments, which the Supreme Court acknowledged in *Rucho* are justiciable in federal courts. *Id.* at 700, 709-10; *see also Alexander*, 602 U.S. at 38-39. To be sure, Count 2 of Plaintiffs’ First Amended Complaint does allege that one way (among several) in which Map 7 violates the First and Fourteenth Amendments

¹ Even if Plaintiffs *had* asserted a racial gerrymandering claim in their operative complaint, *Alexander*’s alternative map requirement is (1) an evidentiary requirement not a pleading requirement and (2) gives rise to an adverse inference in the absence of a proffered map, not a jurisdictional dismissal. *See Alexander*, 602 U.S. at 34. While irrelevant here given the absence of a racial gerrymandering claim, Defendants are wrong to convert *Alexander*’s evidentiary requirements into jurisdictional ones.

is by disproportionately targeting Democratic voters for a two-year period of *disenfranchisement* from casting a ballot at all for commission. *See* Plaintiffs’ Br. in Support of Mot. for Preliminary Inj. at 14-15, ECF No. 12. But that is not a partisan gerrymandering—*i.e.*, partisan vote dilution—claim. 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. *See, e.g., 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) (nothing that viewpoint discrimination is a “particularly egregious form of content discrimination”) (cleaned up).

Defendants cannot, in a motion to dismiss, recharacterize Plaintiffs’ claims as partisan gerrymandering claims and obtain a jurisdictional dismissal of an unpled claim. Indeed, courts have rejected exactly that effort. *See, e.g., Petteway v. Galveston County*, 667 F. Supp. 3d 432, 439 (S.D. Tex. 2023) (denying motion to dismiss on grounds that the plaintiffs “dressed their partisan desires as racial problems to find judicial relief” because the plaintiffs in fact alleged justiciable race-based claims).

Third, Defendants contend that the Court lacks subject matter jurisdiction because “Plaintiffs fundamentally rely on a retrogression standard,” ECF No. 27 at 9, and because “the Benchmark Map, and even Map 7, over-represent Black population,” *id.* at 10. To begin, Defendants cannot obtain a jurisdictional dismissal because they think Plaintiffs’ claims lack merit. *See, e.g., See In re KSRP, Ltd.*, 809 F.3d 263, 267 (5th Cir. 2015) (“Both the Supreme Court and this court have gravitated away from conflating jurisdiction and merits”). But more

importantly, Defendants misstate the claims and law. Plaintiffs do not “rely on a retrogression standard” that governed pre-*Shelby County* Section 5 litigation, ECF No. 27 at 9, but rather the well-established (and current) law that the County cannot reconfigure district boundaries to intentionally dilute voting strength on account of race. *See e.g., LULAC*, 601 F. Supp. 3d at 161 (“Plaintiffs may show intentional vote dilution merely by establishing that race was *part* of Defendants’ redistricting calculus”); *Bartlett v. Strickland*, 556 U.S. 1, 24 (2009) (plurality opinion) (explaining that while “crossover” districts—in which minority voters are not a majority—are not required to be created under Section 2, “if there were a showing that a State intentionally drew district lines in order to destroy otherwise effective crossover districts, that would raise serious questions under both the Fourteenth and Fifteenth Amendments”). Plaintiffs’ First Amended Complaint alleges that the County dismantled Precinct 2 and packed minority voters into Precinct 1 for the purpose of minimizing the voting strength of Black and Latino voters. That is unlawful under Fourteenth and Fifteenth Amendment standards and is not an application of a “retrogression standard.”

Moreover, Defendants’ citation of racial proportionality and *Johnson v. De Grandy*, 512 U.S. 997 (1994), is misplaced. *De Grandy* involved a claim that a Florida legislative map resulted in discrimination against Hispanic voters in violation of Section 2 of the Voting Rights Act because of its district configuration. *Id.* at 1003. The Court held that, even though plaintiff could demonstrate that additional Hispanic majority districts were possible, the number of Hispanic-majority seats statewide was proportional to the Hispanic voting age population share and thus Section 2 was not violated. *Id.* at 1013.

De Grandy is relevant to Section 2 discriminatory *results* vote dilution claims—and those claims alone. The Supreme Court has never—and nor would it make sense—applied it outside that

context as a safe harbor against *intentional* vote dilution claims. States and political subdivisions have no “*De Grandy* safe harbor,” as Defendants’ contend (at 10), to dilute voting strength on account of race intentionally. The Fourteenth and Fifteenth Amendments of the Constitution preclude Defendants’ actions. The Constitution contains no safe harbors for violations of its commands. “The intentional-vote-dilution analysis . . . is derived from the Constitution, and the *Arlington Heights* framework deployed in that analysis states merely that effects are discriminatory when they ‘bear[] more heavily on one race than another.’” *LULAC*, 601 F. Supp. 3d at 163 (quoting *Arlington Heights*, 429 U.S. at 266). The intentional racial vote dilution injury is a personal one, and a State or political subdivision has no “safe harbor” from liability merely because other minority voters in a different part of the jurisdiction have not suffered that injury.

In any event, the premise of Defendants’ argument is wrong. They contend that “Black population” is “over-represent[ed]” under both the Benchmark Map and Map 7. ECF No. 27 at 10. This is so, Defendants say, because “[t]he Benchmark Plan would see Black elected official representing 50 percent of the body while only representing 19 percent of the county population. . . . Fifty percent of seats when the population is 19 percent is acute over-representation.” *Id.* This analysis is wrong at every step. Even if this were a Section 2 vote dilution case and *De Grandy* were applicable, both the Benchmark Plan and Map 7 have *zero* Black majority precincts. Instead, the Benchmark Plan had two precincts in which *non-Anglos* collectively constituted a majority of eligible voters. See ECF No. 8, ¶¶ 11, 53. It is the racial composition of the *districts*, not the race of elected official, that is relevant to the *De Grandy* proportionality inquiry. 512 U.S. at 1014. And non-Anglos comprise roughly half of the County’s voting age population—in line with the

Benchmark Map but far below proportionality under Map 7. ECF No. 8, ¶ 26.² On the other hand, the County has made seventy-five percent of the precincts Anglo-majority under Map 7, despite Anglos comprising roughly half of the County’s voting age population. *De Grandy* would do Defendants no good even if it were applicable (it is not).

De Grandy’s proportionality inquiry has no bearing on this case, Plaintiffs’ application of it is in any event flawed, and none of this bears on subject matter jurisdiction.

B. The Court has jurisdiction to adjudicate Plaintiffs’ two-year disenfranchisement period claims.

The Court has jurisdiction to adjudicate Count 1 and 2 of Plaintiffs’ First Amended Complaint, which challenge Map 7’s discriminatory imposition of a two-year period of disenfranchisement from participating in commissioner elections in service of no compelling, legitimate, or even rational, government purpose. Defendants’ four-and-a-half pages of argument on this issue (at 11-15) have nothing to do with jurisdiction whatsoever but rather contend that there is no cause of action or that, if there is, Plaintiffs will not prevail on the merits. These are not proper bases for a Rule 12(b)(1) dismissal motion.

“Where the defendant’s challenge to the court’s jurisdiction is also a challenge to the existence of a federal court of action, . . . [t]he Supreme Court has made clear that in that situation no purpose is served by indirectly arguing the merits in the context of federal jurisdiction.” *Williamson v. Tucker*, 645 F.2d 404, 415 (5th Cir. 1981). In such circumstances, the proper course is to construe the Rule 12(b)(1) motion as a Rule 12(b)(6) motion to dismiss for failure to state a claim.

² Defendants wrongly contend (at 20 n.13) that Anglo’s share of the total population—instead of voting age population—should be used as a benchmark. That is not so. *See, e.g., League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 438 (2006) (using citizen voting age population data for Latino voters); *De Grandy*, 512 U.S. at 1000 (using voting age population for Latino voters).

This refusal to treat indirect attacks on the merits as Rule 12(b)(1) motions provides, moreover, a greater level of protection to the plaintiff who in truth is facing a challenge to the validity of this claim: the defendant is forced to proceed under Rule 12(b)(6) (for failure to state a claim upon which relief can be granted) or Rule 56 (summary judgment)—both of which place greater restrictions on the district court’s discretion.

Id. “Therefore, as a general rule a claim cannot be dismissed for lack of subject matter jurisdiction because of the absence of a federal cause of action.” *Id.* at 416. Only “narrowly drawn exceptions” apply, when the claim is “clearly immaterial or insubstantial, . . . ‘has no plausible foundation,’ or ‘is clearly foreclosed by a prior Supreme Court decision.’” *Id.* (quoting *Bell v. Health-Mor, Inc.*, 529 F.2d 342 (5th Cir. 1977)).

Defendants have not contended—and could not—that the Court should apply that “narrowly drawn exception” here and entertain their arguments under Rule 12(b)(1) rather than Rule 12(b)(6). They do not dispute, nor could they, that Plaintiffs have standing to challenge the two-year disenfranchisement period. Among Plaintiffs are voters who suffer that disenfranchisement, *see* ECF No. 8 ¶¶ 13-17, the imposition of Map 7 is traceable to Defendants, and the requested injunctive relief would redress the injury. The claims are not “clearly immaterial or insubstantial,” as Defendants themselves cite a case in which this claim prevailed. ECF No. 27 at 12 (citing and quoting *Dollinger v. Jefferson Cnty. Comm’rs Ct.*, 335 F. Supp. 340, 344 (E.D. Tex. 1971) (granting injunctive relief on Fourteenth Amendment claim on account of two-year disenfranchisement caused by redrawing commissioners court boundaries)).³

Defendants principally rely on *Pate v. El Paso County*, 337 F. Supp. 95 (W.D. Tex. 1970) (per curiam), *summ. aff’d*, 400 U.S. 806 (1970), in which a three-judge district court rejected an

³ Defendants selectively quote *Dollinger* and introduce the discussion of the case law as though all cited cases reject claims related to disenfranchisement caused by redistricting, but do not mention that *Dollinger* found a violation and the court granted relief. *See* ECF No. 27 at 11-12.

equal protection and due process challenge to the Texas Constitution's provision creating staggered terms for commissioners, ruling that "Section 65 of Article XVI, neither on its face or as applied in the instant case, effectuates an unconstitutional denial of the right to vote." *Id.* at 96. In doing so, the court observed that "[i]f there is no arbitrary or invidious discrimination arising from the action of the state, the courts will not sit in judgment upon the wisdom of the policy prompting such action." *Id.* at 97. The Supreme Court summarily affirmed. *Pate v. El Paso Cnty.*, 400 U.S. 806 (1970).

Pate addressed different claims and different circumstances. Here, Plaintiffs challenge Map 7, not Texas's constitutional provision creating staggered commissioner terms. *Pate* arose from the Supreme Court's decision requiring Texas commissioner precincts to be equally populated for the first time. *See id.* at 96 (citing *Avery v. Midland Cnty.*, 390 U.S. 474 (1968)). Here, the Benchmark Map was equally populated within legal requirements and achieving population equality was not the purpose of the mid-decade redraw or its substantial scope. In this case, Plaintiffs raise claims under Section 2 of the Voting Rights Act, the First Amendment, and the Fourteenth Amendment. Indeed, Defendants note that Plaintiffs' Section 2 claim "has never been discussed by the Fifth Circuit." ECF No. 27 at 12. And unlike *Pate*, Plaintiffs allege that Map 7's imposition of disenfranchisement is "arbitrary or invidious discrimination." *Id.* at 97; *see* ECF No. 8, ¶¶ 84-92.

The Supreme Court's summary affirmance of *Pate* has no bearing on this case. "Although summary dispositions by the Supreme Court are binding on this court, those decisions extend only to 'the precise issues presented and necessarily decided by those actions.'" *Lamar Outdoor Advertising, Inc. v. Miss. State Tax Comm'n*, 701 F.2d 314, 330 (5th Cir. 1983) (quoting *Mandel v. Bradley*, 432 U.S. 173, 176 (1977)); *see Mandel*, 432 U.S. at 177 (explaining that "[t]he

precedential significance of [] summary action . . . is to be assessed in the light of all the facts of the case” and rejecting application where “those facts are very different from the facts of this case”). The same is true for the Fifth Circuit’s summary affirmance of *Carr v. Brazoria County*, 341 F. Supp. 155 (S.D. Tex. 1972), *aff’d*, 468 F.2d 950 (5th Cir. 1972), where the district court relied entirely on *Pate*. On its face, *Pate* excepts from its holding claims of arbitrary or invidious discrimination—exactly the claims at issue here. Defendants thus do not—and could not—contend that this case law “clearly foreclose[s]” Plaintiffs’ claims so as to warrant consideration of the merits under a Rule 12(b)(1) motion, *Williamson*, 645 F.2d at 416, because the cited cases expressly except this type of claim from their disposition; *see also Republican Party of Oregon v. Keisling*, 959 F.2d 144, 145-46 (9th Cir. 1992) (holding that temporary disenfranchisement from redrawn map would be unconstitutional if it “unduly burden[s] a particular group”).

The Court must therefore construe Defendants’ argument as seeking dismissal under Rule 12(b)(6), and that request plainly fails because Defendants merely ask the Court to take the First Amended Complaint’s allegations as false. But the Court cannot do that on a motion to dismiss. Rather, the Court must “accept all well-pled facts as true, construing all reasonable inferences in the complaint in the light most favorable to the plaintiff.” *White v. U.S. Corrections, LLC*, 996 F.3d 302, 306-07 (5th Cir. 2021). “To survive a Rule 12(b)(6) motion to dismiss, a complaint does not need detailed factual allegations, but must prove the plaintiff’s ground for entitlement to relief—including factual allegations in a complaint that when assumed to be true raise a right to relief above the speculative level.” *Id.* at 307 (cleaned up).

Plaintiffs’ allegations regarding the two-year disenfranchisement period, taken as true with all inferences drawn in their favor, plainly state a claim for relief under Counts 1 and 2. Defendants begin by contending that “[t]he two-year delay in voting for county commissioners is a foreseeable

result of Texas’ constitutional mandate to periodically redistrict for population changes, coupled with Texas’ use of stagger terms.” ECF No. 27 at 11-12. But this hardly aids Defendants, as the First Amended Complaint alleges that the 2025 redistricting—conducted in the middle of the decennial Census period in the absence of any new population data—was not in response to population changes and that the Benchmark Map’s districts were within legal population standards. ECF No. 8 ¶¶ 8, 35-36, 84, 91, 99, 106.

Count 1 of Plaintiffs’ First Amended Complaint alleges that their right to vote in the 2026 commissioners court election has been denied or abridged on account of race because of the discriminatory imposition of the two-year disenfranchisement period. The parties agree this is not a Section 2 vote *dilution* claim about the racial composition of the districts, but rather a claim about how Map 7’s exchange of population between even- and odd-numbered precincts creates what is akin to a time, place, and manner restriction on some voters’ right to vote in the 2026 commissioners court election. ECF No. 27 at 13. Defendants express some consternation that the Supreme Court’s *Brnovich* test⁴—and not its *Gingles* test—could apply to a redistricting map, but *Gingles* is not about maps *per se*, but rather the particular issue of vote dilution caused by a map’s configuration. *Gingles* is only relevant when a plaintiff is seeking, under Section 2, the imposition of additional district(s) in which minority preferred candidates could be elected. *See, e.g., Allen v. Milligan*, 599 U.S. 1, 18 (2023). That is not Plaintiffs’ Section 2 claim in this case. Instead, their claim is about how Map 7 results in a discriminatory two-year disenfranchisement period. That claim is governed by the text of Section 2 as interpreted in *Brnovich*, given the similarity here to a time, place, and manner restriction on voting. And Plaintiffs plainly allege facts sufficient to state a claim under the *Brnovich* standard.

⁴ *See Brnovich v. Democratic Nat’l Comm.*, 594 U.S. 647 (2021).

First, Plaintiffs allege that the “size of the burden imposed” is great and exceeds “[m]ere inconvenience.” *Brnovich*, 594 U.S. at 669. Map 7 does not just make it more difficult for voters shifted from even- to odd-numbered precincts to vote for commissioner in 2026—when they were next eligible to do so—it makes it impossible for them to do so unless they physically move residences. ECF No. 8 ¶¶ 84, 89, 90, 96, 97. Defendants recharacterize this as “having to wait for their precinct’s election to vote (a burden shared by the entire electorate).” ECF No. 27 at 14. The injury cannot be swept away by mere wordplay. As the First Amended Complaint alleges, “Map 7 [] disenfranchises over 150,000 people of voting age in Tarrant County who were next entitled to vote for a commissioner candidate in the November 2026 election . . . forcing them to wait six years” instead of four, to participate in commissioner elections. ECF No. 8 ¶ 7. As a result of Map 7, some voters will vote on a four-year cycle, others will get to 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, It cannot be merely recast as “a burden shared by the entire electorate” as Defendants contend.

Imagine were it otherwise. Under that framework, the County could, after the 2026 election, pass a new map that merely swaps the numbers for Precincts 1 and 2. That would allow the same people (Anglo majority) who have been redrawn into Map 7’s Precinct 2 to vote in both 2026 *and* 2028—and exacerbate the extent of the disenfranchisement of Precinct 1’s voters (majority-minority), making it eight years since some were allowed to cast a ballot. If the County repeated this renumbering exercise every four years, it could forever fence out Precinct 1’s voters—whose race and political viewpoints the County disfavors, *see* ECF No. 8 ¶¶ 1-4, 114—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.

Second, Plaintiffs have alleged that this type of mid-decade redistricting—not in response to a Census or a court order and causing racially discriminatory disenfranchisement—was a rare to nonexistent practice in 1982 when Section 2 was last amended and thus could not have been a “standard practice” Congress did not mean to regulate. ECF No. 8 ¶ 91; *Brnovich*, 594 U.S. at 669-70. Defendants do not contend otherwise.

Third, Plaintiffs have alleged facts showing “[t]he size of any disparities in the rule’s impact on members of different racial or ethnic groups.” *Brnovich*, 594 U.S. at 671. As Plaintiffs’ First Amended Complaint alleges, “Anglos make up 47% of Tarrant County’s voting age population yet comprise just 24% of the voting age population disenfranchised” by the even-to-odd precinct switch, which only 1 in 20 Anglo voters affected. ECF No. 8 ¶ 85. Meanwhile, “African Americans make up 18% of Tarrant County’s voting age population yet comprise 29% of voting age population disenfranchised.” ECF No. 8 ¶ 86. “That means that nearly 1 in 5 eligible Black voters (19%) suffer disenfranchisement in the 2026 election under Map 7. ECF No. 8 ¶ 86. For Latino voters, the complaint alleges that 12% suffer disenfranchisement. ECF No. 8 ¶ 87. And “Black voters are therefore four times more likely than Anglo voters to be disenfranchised in the 2026 election, and Latino voters are over twice as likely as Anglo Tarrant County voters to be disenfranchised in the 2026 election.” ECF No. 8 ¶ 88. This is not a “slight racial disparity” as Defendants suggest. ECF No. 27 at 13. The affected total population of voters is 150,000—making the impact of this large racial disparity in disenfranchisement immense. ECF No. 8 ¶ 84.

Fourth, Plaintiffs allege facts showing that that there are not “multiple ways [for them] to vote” in the 2026 commissioner election under the “entire system of election.” *Brnovich*, 594 U.S. at 671; ECF No. 8 ¶ 90. Only if they physically move their residence—a plainly unreasonable burden—could they vote in 2026 as they were previously eligible to do. ECF No. 8 ¶ 90.

Fifth, Plaintiffs allege facts showing that “the strength of the state interest served by [the] challenged voting rule” is exceedingly weak. *Brnovich*, 594 U.S. at 671-72; ECF No. 8 ¶¶ 84, 92, 99. Defendants assert (at 15) “the heavy government interest in preserving power over drawing lines, even if for partisan ends.” But merely exercising the general power to pass laws cannot plausibly constitute a sufficient government, otherwise no law could ever be challenged. Defendants need to show a sufficient governmental interest in drawing lines *that result in racially discriminatory disenfranchisement*—and a purported partisan desire does not cut it. *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.”) (cleaned up). Moreover, the First Amended Complaint alleges that one of Defendants’ goals was racial vote dilution—plainly an illegitimate governmental interest. ECF No. 8 ¶¶ 1-4, 112-29.

Count 2 alleges that Map 7 violates the First and Fourteenth Amendment by unequally treating similarly situated voters for disenfranchisement, including on account of their race and viewpoints. ECF No. 8 ¶¶ 102-111. Defendants do not contend that Plaintiffs have failed to allege facts sufficient to state claims under the First or Fourteenth Amendments, they merely contend that the case law discussed above forecloses those claims. *See* ECF No. 27 at 11-12; *supra* at 10-12. Plaintiffs plainly allege sufficient facts for Count 2’s claims, including that Map 7 unduly burdens Plaintiffs by preventing them from casting ballots for commissioner in 2026 when they were otherwise eligible, does not impose that harm on other similarly situated voters, disproportionately harms Black and Latino voters, and was imposed for that racial purpose and to target voters based on their viewpoints, and that the County lacked any sufficient justification. ECF No. 8 ¶¶ 102-111. These alleged facts state First and Fourteenth Amendment claims.

II. Plaintiffs have stated claims upon which relief can be granted.

A. Plaintiffs have pleaded a Section 2 claim.

As Plaintiffs explain above, they have pleaded sufficient facts to state a claim that Map 7's racially discriminatory imposition of a two-year disenfranchisement period violates Section 2 of the Voting Rights Act. Defendants challenge that claim in the Rule 12(b)(1) section of their motion, ECF No. 27 at 11-15, but that is improper as addressed above. On pages 15-19 of their motion to dismiss, Defendants contend that Plaintiffs have not stated a Section 2 discriminatory results *vote dilution* claim, discussing the *Gingles* preconditions and the fact that, as a result of the Fifth Circuit's decision in *Petteway v. Galveston County*, 111 F.4th 596 (5th Cir. 2024) (en banc), plaintiffs can no longer advance Section 2 discriminatory results claims that depend upon aggregating different minority groups to satisfy the first *Gingles* precondition.

Plaintiffs have not alleged a Section 2 discriminatory results vote dilution claim. Their Section 2 claim focuses solely on how Map 7 racially discriminates in which voters are shifted from even- to odd-numbered precincts and thus subjected to a two-year period of disenfranchisement. The affected Plaintiffs "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice" for the 2026 commissioner election because Black and Latino voters have disproportionately had their ability to participate in that election vitiated. 52 U.S.C. § 10301(b). Because the claim is not about vote dilution, Defendants' discussion of that issue (at 15-19) is not relevant to Plaintiffs' claims.

Nevertheless, some of Defendants' statements require a response. First, Defendants contend that "[a]fter *Petteway*, districts that are based on racial coalitions of different minority groups do not enjoy protections as a matter of law. They can be eliminated and deconstructed" ECF No. 27 at 15. Districts cannot be "eliminated and deconstructed" on account of race to prevent minorities from electing their preferred candidates, even if they are composed of a

multiracial, rather than single race, majority of voters. *See, e.g.*, U.S. Const. amend XV. In *Bartlett*, a plurality of the Supreme Court (Kennedy and Alito, JJ., Roberts, C.J.) explained that although Section 2 did not require the *creation* of “crossover” districts—districts in which minority voters falls shy of a majority but their candidates prevail because of white “crossover” support—it could violate the Constitution to purposefully *eliminate* those districts. “[I]f there were a showing that a State intentionally drew district lines in order to destroy otherwise effective crossover districts, that would raise serious questions under both the Fourteenth and Fifteenth Amendments.” *Bartlett*, 556 U.S. at 24 (plurality). That is especially so for majority-minority coalition districts.

Second, Defendants’ discussion about “[c]oalition districts that trace their origins to the pre-*Shelby* retrogression standard” is particularly irrelevant here because the 2021 map’s configuration of Precinct 2 does not. It is an exceedingly compact precinct, *see* ECF No. 8 ¶ 28, and when it was created—and for decades thereafter—it was majority Anglo, ECF No. 8 ¶ 29. It naturally became majority minority through population and demographic changes in the area. ECF No. 8 ¶ 33.

Third, Defendants question why the First Amended Complaint includes factual allegations about the cohesive Black and Latino populations in Precincts 1 and 2 and their success in electing their preferred candidates. ECF No. 27 at 18-19. Plaintiffs include these allegations not because they allege a Section 2 discriminatory results claim, but because they allege Fourteenth and Fifteenth Amendment intentional racial vote dilution claims. Plaintiffs must still make a showing of discriminatory effects if they prove discriminatory intent, but for constitutional claims, “Plaintiffs may show discriminatory effect *without* making a full *Gingles* showing. . . . *Gingles* and its progeny do not articulate general legal principles for intentional discrimination but, instead, offer an interpretation of one section of the VRA.” *LULAC*, 601 F. Supp. 3d at 162. “The

intentional vote dilution analysis [] is derived from the Constitution, and the *Arlington Heights* framework deployed in that analysis states merely that effects are discriminatory when they ‘bear[] more heavily on one race than another.’” *Id.* (quoting *Arlington Heights*, 429 U.S. at 266). In *LULAC*, the court found discriminatory effects where “it is apparent that the cracking of the district bears more heavily on Black and Hispanic voters.” *Id.* at 169. Given the evidence that Black and Latino voters preferred the same candidates, which Anglo voters opposed, the court concluded that “the redrawing of SD 10 results not just in an incremental diminishment in minority voting strength but also in the loss of a seat in which minorities were able to elect candidates they preferred.” *Id.* at 169-70.

Plaintiffs allege the facts about which Defendants comment (at 18-19) for this purpose, and not to advance a Section 2 discriminatory results claim.

B. Plaintiffs have alleged facts that state Fourteenth and Fifteenth Amendment intentional racial vote dilution claims.

Plaintiffs have alleged sufficient facts to plead Fourteenth and Fifteenth Amendment intentional vote dilution claims.⁵ Unlike a racial *gerrymandering* claim, *see Cooper v. Harris*, 581 U.S. 285, 291 (2017), a plaintiff alleging intentional racial vote dilution need not show that racial considerations were the predominant motivation for the map to be unconstitutional, *see Alexander*, 602 U.S. at 38-39 (noting that the two claims are “analytically distinct” (cleaned up)). Rather, “‘racial discrimination need only be one purpose, and not even a primary purpose,’ of an official action for a violation to occur.” *Veasey*, 830 F.3d at 230 (quoting *Brown*, 561 F.3d at 433); *see LULAC*, 601 F. Supp. 3d at 161-62 (“Plaintiffs may show intentional vote dilution merely by

⁵ Because the analytical framework for intentional vote dilution cases is the same under both the Fourteenth and Fifteenth Amendments, *see LULAC*, 601 F. Supp. 3d at 160, Plaintiffs address the two claims together.

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.”).

“[D]iscriminatory intent need not be proved by direct evidence.” *Rogers v. Lodge*, 458 U.S. 613, 618 (1982). Rather, “direct or indirect circumstantial evidence, including the normal inferences to be drawn from the foreseeability of [the Commissioners Court’s] actions may be considered.” *Brown*, 561 F.3d at 433; *Veasey*, 830 F.3d at 230 (noting that “[i]n this day and age we rarely have legislators announcing an intent to discriminate based upon race” but that it still happens and direct evidence is thus not a required showing).

Although discriminatory purpose “implies more than intent as volition or intent as awareness of consequences,” *Personnel Adm’r of Mass. v. Feeney*, 442 U.S. 256, 379 (1979), the Supreme Court has explained that “the inevitability or foreseeability of consequences . . . bear[s] upon the existence of discriminatory intent,” *id.* at 379 n.25. 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.”).

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 (quotation marks omitted); *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).

Plaintiffs have sufficiently pled an intentional racial vote dilution claim. First, Plaintiffs have pled facts establishing *direct* evidence of a racially discriminatory intent. As the First Amended Complaint alleges, County Judge Tim O’Hare, who cast the deciding vote in favor of adopting Map 7, explained his vote in a television interview that day: “[t]he 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 No. 8 ¶ 1 (emphasis added). Defendants contend that this statement does not support a discriminatory intent claim because “it is an appeal by a politician to court minority voters and opine about broader issues touching on race and politics nationwide—not on the purpose of Map 7.” ECF No. 27 at 21. First, this reverses the Rule 12(b)(6) standard by asking the Court to draw inferences in *Defendants’* favor. The Court cannot do that. Second, the inference that Defendants seek is fatally undermined by how they themselves introduce the quoted text: “In answer to a reporter’s question

regarding the impact of the redistricting decision o[n] minority voters Judge O’Hare said” ECF No. 27 at 21.

Exactly. Judge O’Hare was asked about the impact of Map 7 on minority voters and he responded by saying he disagreed with how Black people voted and that they and “people of all races” needed to “get on board with us,” in publicly justifying a map he cast the deciding vote to adopt that day that reduced the number of majority minority commissioner precincts. This quotation alone suffices to plead—and prove—an intentional vote dilution claim. It also serves to overcome the presumption of good faith that Defendants invoke. ECF No. 27 at 20; *see LULAC*, 601 F. Supp. 3d at 181 (noting that presumption of legislative good faith is overcome if there is evidence of “ulterior *racial* motive” (emphasis in original)).

Plaintiffs also have sufficiently pled facts regarding the *Arlington Heights* factors. First, they have alleged that Map 7 bears more heavily on Black and Latino voters than Anglo voters by reducing from two to one the number of majority-minority precincts, making it unlikely minority voters will continue to elect two preferred candidates to the Commissioners Court, and subjecting Black and Latino voters disproportionately to a two-year disenfranchisement period. *Arlington Heights*, 429 U.S. at 266; ECF No. 8 ¶¶ 69-74, 83, 85-91.

Second, Plaintiffs allege sufficient facts regarding the historical context of racial discrimination in Tarrant County. *See Arlington Heights*, 429 U.S. at 267; *see* ECF No. 8 ¶ 100 (citing intentional vote dilution finding regarding the 2011 congressional map’s Tarrant County congressional districts and Tarrant County’s senate district 10, racial gerrymandering finding regarding 2013 state house map’s Tarrant County state house district, discriminatory results finding regarding Texas’s voter ID law); *id.* ¶¶ 44-51 (alleging Judge O’Hare’s history of racially discriminatory statements and actions).

Defendants resist Plaintiffs’ allegations regarding the *recent* history of federal court decisions regarding racial discrimination in Tarrant County maps—a number that likely exceeds any other county in the Nation—contending that the “2011 and 2013 redistricting decisions [] were overturned by the Fifth Circuit.” ECF No. 27 at 20.

That could not be more wrong. The Fifth Circuit had appellate jurisdiction over *zero* of these cases—they were all three-judge district court decisions with appellate review by the Supreme Court. The State did not even appeal the *Perez v. Abbott* district court’s final judgment that the 2011 congressional map’s Tarrant County districts were intentionally discriminatory. *See Perez v. Abbott*, No. 11-CV-360-OLG, 2021 WL 12224772, at *4 (W.D. Tex. July 13, 2021) (declaring plaintiffs prevailing parties regarding claims of intentional discrimination in 2011 congressional map in DFW and noting that “[n]o post judgment appeal was taken” by the State). So that was not “overturned.” The ruling that the 2013 State House map’s configuration of HD 90 in Tarrant County was racially gerrymandered was affirmed by the Supreme Court. *See Abbott v. Perez*, 585 U.S. 579, 620 (2018). Likewise, not “overturned.” And while the D.C. three-judge federal court’s decision finding that the 2011 configuration of SD 10 was intentionally discriminatory was vacated by the Supreme Court in light of both the legislature’s enactment of a new map and the *Shelby County* decision, the Fifth Circuit sitting *en banc* in the voter ID case held that the decision “was not vacated on the merits and remains factually relevant as a contemporary example of State-sponsored discrimination based on the finding of a three-judge court.” *Veasey v. Abbott*, 830 F.3d 216, 257 n.54 (5th Cir. 2016) (*en banc*).

Likewise wrong is Defendants’ contention that this history is irrelevant to the *Arlington Heights* analysis. *See* ECF No. 27 at 21. As the *LULAC* court explained in rejecting this same argument as “feeble,” it is irrelevant that “those rulings addressed different maps passed by

different legislators, and different map drawers, at different times, [because] that is what history means. Of course, *these* maps have not been struck down—they have only just been enacted.” 601 F. Supp. 3d at 170 (emphasis in original). Remarkably, Defendants contend that Judge O’Hare’s history of racially charged statements and actions are also irrelevant. ECF No. 27 at 20-21. But he cast the deciding vote for Map 7. His statements are plainly relevant to the historical context of the decision-making, and Defendants’ effort to draw inferences in *their* favor from the statements run headlong into Rule 12(b)(6)’s standard. *White*, 996 F.3d at 306-07.

Third, Plaintiffs allege sufficient facts regarding the sequence of events and procedural and substantive deviations from the norm. *Arlington Heights*, 429 U.S. at 267.⁶ The County abruptly changed to an out-of-state law firm for redistricting despite decades of using the same Texas-based firm with unanimous support of the Commissioners Court. ECF No. 8 ¶¶ 35, 54-55. The new firm, the Public Interest Legal Foundation (“PILF”), provided no public legal analysis, as the prior law firm had. ECF No. 8 ¶ 56. The Commission adopted no redistricting criteria, as it previously had. ECF No. 8 ¶¶ 57-58. The timeline was “extremely expedited” in contrast to prior processes. ECF No. 8 ¶ 59. Unlike prior decade, the map ultimately adopted was not available at any of the public hearings prior to the day of the vote. ECF No. 8 ¶ 75. And Commissioner Ramirez, who voted to approve Map 7, criticized the procedure by which it was adopted. ECF No. 8 ¶ 81.⁷

Defendants contend that inferences should be drawn in their favor from these allegations and that they are “weak tea.” ECF No. 27 at 22. But the Court must draw inference in *Plaintiffs’*

⁶ As the *LULAC* court noted, these factors “can be difficult to disentangle.” 601 F. Supp. 3d at 171. Plaintiffs address these factors together because they all relate to the “formal, public legislative process” of Tarrant County in adopting Map 7. *Id.*

⁷ Defendants incorrectly contend this statement was made in “response to a reporter.” ECF No. 27 at 22. Commissioner Ramirez said this during the commissioners meeting explaining his vote. ECF No. 8 ¶ 81.

favor at the Rule 12(b)(6) stage, and these are indeed highly relevant allegations under the *Arlington Heights* factors. *See, e.g., 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 criteria . . . is a deviation because the commissioners court adopted criteria in prior years and other counties across the state have regularly adopted redistricting criteria.”); *id.* at 992-93 (finding similarly timed process in Galveston County “rushed” and relevant evidence under *Arlington Heights*).

Fourth, Plaintiffs have alleged contemporary statements—including Judge O’Hare’s television interview the day of the vote— revealing that racial vote dilution was at least one purpose behind Map 7’s configuration. *See Arlington Heights*, 429 U.S. at 267-68; ECF. No. 1.

The final subsection of Defendants’ motion (Part II.B.2 at pp. 23-25) is misplaced. In it, Defendants purport to oppose Plaintiffs’ Fourteenth Amendment intentional racial vote dilution claim (which is subject to the same legal standard as the Fifteenth Amendment claim) by (1) wrongly contending that Plaintiffs abandoned this claim (they did not; it is discussed above), (2) asserting that there is a *De Grandy* proportionality “safe harbor” for constitutional violation—there is not, *see supra*, and (3) conflating again the racial gerrymandering “predominance” standard and case law with the intentional racial vote dilution standard and precedent. *See* ECF No. 27 at 23-25. None of this is correct or relevant. As explained above, Plaintiffs have sufficiently pled their *actual* claims—intentional racial vote dilution in violation of the Fourteenth and Fifteenth Amendments.

CONCLUSION

For the foregoing reasons, Defendants’ motion to dismiss should be denied.

Dated: August 11, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

On August 11, 2025, I served the foregoing on all counsel of record via the Court's CM/ECF system.

/s/ Chad W. Dunn
Chad W. Dunn