

**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' REPLY IN SUPPORT OF MOTION FOR EXPEDITED PRELIMINARY
INJUNCTION DECISION AND SEVERANCE, ADVANCEMENT, AND
CONSOLIDATION OF THE TRIAL AND PRELIMINARY INJUNCTION HEARING
ON COUNTS 1 AND 2**

The Court should grant Plaintiffs' motion to expedite the preliminary injunction decision on all claims and to sever and advance the trial on the merits on Counts 1 and 2. If, however, the Court agrees with Defendants' request to first decide their motion to dismiss, Plaintiffs respectfully request that the Court order that Defendants file their reply brief in support of that motion by **Friday, August 15, 2025** and then issue its decision on the motion to dismiss by **Friday, August 22, 2025**. If the Court denies the motion to dismiss (as it should), this schedule will allow it adequate time to then adjudicate Plaintiffs' preliminary injunction motion and issue its decision by **Friday, September 12, 2025**, as Plaintiffs originally requested. This schedule is necessary to ensure that Plaintiffs' request for relief is decided by this Court with sufficient time to allow for appellate proceedings to complete in advance of the 2026 election cycle deadlines.

ARGUMENT

I. Expedition is warranted.

Expedited adjudication of Plaintiffs' preliminary injunction motion is warranted. Plaintiffs' claims involve two discrete injuries: (1) being precluded from voting for commissioner

in 2026 and thereby subjected to a two-year period of disenfranchisement on account of race and viewpoint and (2) being sorted into commissioner precincts for the 2026 and subsequent elections at least in part to intentionally dilute their voting strength on account of race.

These claims require expedited adjudication. The first category of harm—being disenfranchised from participating in the 2026 election—is specifically about the next election and must be finally decided—including any appellate proceedings in the Fifth Circuit and Supreme Court—before the candidate filing deadline. Without expedition, Plaintiffs’ statutory and constitutional rights will be denied by the mere passage of time, contrary to the Court’s obligation to “secure the just, speedy, and inexpensive determination of every action and proceeding.” Fed. R. Civ. P. 1. Plaintiffs have a right to a decision on their claims, especially given the speed with which they have advanced them. Likewise, the second category of harm involve the unconstitutional abridgment of the right to vote on account of race and the denial of equal protection on account of race for the 2026 and subsequent elections. Plaintiffs have expeditiously advanced these claims so that a decision can be issued in time to obtain relief before the 2026 election cycle deadlines. Given that, the Court must adjudicate them expeditiously because “violation of constitutional rights constitutes irreparable harm as a matter of law.” *DeLeon v. Abbott*, 791 F.3d 619 (5th Cir. 2015). The Court should reject Defendants’ invitation for delay.

First, Defendants contend that their motion to dismiss should be decided first based upon their assertion that “the Court lacks subject matter jurisdiction because Plaintiffs fail to plead a case on which the Court may grant relief.” ECF No. 25 at 2. But that conflates Rule 12(b)(1) with Rule 12(b)(6), as Plaintiffs explain in their opposition brief to Defendants’ motion to dismiss. Defendants cannot obtain a Rule 12(b)(6) dismissal, however, because adequate facts are alleged to state a claim for relief on each of Plaintiffs’ four claims. If the Court agrees that it should first

decide Defendants' motion to dismiss, Plaintiffs respectfully request that it order Defendants' reply brief in support of that motion be filed by **Friday, August 15, 2025**, and that the Court issue its decision on Defendants' motion to dismiss by **Friday, August 22, 2025**. This schedule would allow preliminary injunction proceedings to thereafter occur, should the Court deny Defendants' motion to dismiss, in an expeditious manner to be completed by **September 12, 2025**. This will ensure that effective appellate relief can be obtained by the party against whom the Court rules in advance of the 2026 election cycle deadlines.

Second, Defendants mischaracterize Plaintiffs' claims and the proceedings to date. Contrary to Defendants' assertion, Plaintiffs did not "originally plead a vote dilution case under Section 2 of the Voting Rights Act." ECF No. 25 at 2. Plaintiffs' Section 2 claim, in both the original and First Amended Complaint, has remained solely about the racially discriminatory two-year disenfranchisement period occasioned by Map 7. Compare ECF No. 1 ¶¶ 83-91 with ECF No. 8 ¶¶ 93-101. Defendants' discussion of the *Gingles* preconditions and *Petteway*'s holding regarding Section 2 coalition districts is thus beside the point. See ECF No. 25 at 2.¹

Third, Defendants assert that "*Brnovich* does not apply to these facts because this is a redistricting case normally governed by *Gingles*." ECF No. 25 at 3. But *Gingles* is not a

¹ Nor do Plaintiffs "admit that Commissioner Precinct 2 is an 'influence' district and not a majority-minority district." ECF No. 25 at 2. The purpose of this assertion is not obvious, but the demographic data from the Texas Legislative Council ("TLC") is authoritative and not in dispute. Prior to Map 7, Precinct 2 was 40.1% Anglo by voting age population and 45.9% Anglo by citizen voting age population. App. 5. In other words, the Benchmark Map's Precinct 2 was majority minority. Moreover, Plaintiffs did not "amend their complaint and now base their case on" *Brnovich*. ECF No. 25 at 3. That was the original claim and *Brnovich* was invoked in the original complaint. ECF No. 1 ¶ 91. In any event, the overall demographic makeup of Benchmark Precinct 2 is irrelevant to Plaintiffs' Section 2 claim, which is about the people subjected to disenfranchisement. Likewise inapposite is *Johnson v. De Grandy*, 512 U.S. 997 (1994), which is about proportionality in the composition of districts in a Section 2 vote dilution claim, as Plaintiffs explain in their motion-to-dismiss opposition brief. There is no such claim in this case.

“redistricting” test, it is a test to determine whether an alternative district must be configured to remedy racial vote dilution in the absence of a showing of intentional discrimination. That is not Plaintiffs’ claim. To be sure, this appears to be the first time a plaintiff has advanced a Section 2 claim based upon racially discriminatory effects of disenfranchisement occasioned by the configuration of a redistricting map. But this is likely so because no jurisdiction has configured its staggered election districts to cause racially discriminatory disenfranchisement before—likely because courts have repeatedly warned that doing so would be unconstitutional, as Plaintiffs’ Count 2 alleges. Yes, most Section 2 redistricting challenges are about vote dilution and thus most Section 2 redistricting cases involve a *Gingles* analysis, but this suit is not and does not.

In this circumstance, Plaintiffs’ claim is most akin to a time, place, and manner restriction—in that Plaintiffs are being forced to have their enfranchisement delayed from 2026 to 2028—and thus *Brnovich*’s factors more sensibly apply. But in any event, the ultimate authority is the text of Section 2. The statutory text, and not a judicially created test created to adjudicate most applications of the statute, is what governs the existence of a claim. And “§ 2 applies to a broad range of voting rules, practices, and procedures; [] an ‘abridgement’ of the right to vote under § 2 does not require outright denial of the right; [] § 2 does not demand proof of discriminatory purpose; and [] a ‘facially neutral’ law or practice may violation that provision.” *Brnovich*, 594 U.S. at 674. A racially discriminatory result that leads to an unequal opportunity to participate in the electoral process under the totality of the circumstances is what the statutory text requires be shown. *See* 52 U.S.C. §§ 10301(a) & (b). Looming large over the totality of circumstances here is Judge O’Hare’s open announcement on the day of the decision of his disapproval of how “Black people” vote. App. 16. Whatever the contours of a Section 2 test for

racially discriminatory disenfranchisement caused by a map's design should be, Defendants' conduct in enacting Map 7 violates it.

II. There are no current *Purcell* concerns and expedition is necessary to avoid them.

There are no *Purcell* concerns at this time, but expedition of this Court's proceedings is necessary to avoid them. It is August 2025. The next general election is over a year away in November 2026. But candidate filing for the primary election (held in March 2026) closes on December 8, 2026.² To avoid *Purcell* issues, expedition is required so that appellate proceedings can conclude in advance of the candidate filing deadline.

Defendants object to Plaintiffs' citation to the *Petteway* proceedings because the *Petteway* district court's injunction was stayed (including with a plurality of the Fifth Circuit's judges concluding that was warranted on the merits). ECF No. 25 at 3-4. This misses the point. Plaintiffs cited the *calendar dates* of the *Petteway* proceedings to show that earlier adjudication in the district court is required here given the lessons of *Petteway*. The merits of *Petteway* have no bearing on the speed with which adjudication is needed.

Defendants also suggest that *Purcell* may already be a concern, citing a law review note indicating that "six months before the relevant election" is the deadline. ECF No. 25 at 4. Of course, a law review note is not authoritative, and, in any event, the relevant election is in November 2026, which is over a year away. We are nowhere near the "eve" of an election. Voters will not be confused if Map 7 is enjoined prior to the candidate filing deadline and the map that

² Defendants refer to the filing period as being from December 1, 2025 to January 5, 2026. It is unclear where they got these dates, but they are incorrect. The filing period for offices for the November 2026 election ends on December 8, 2025. *See* Tex. Sec'y of State, Important 2026 Election Dates, <https://www.sos.state.tx.us/elections/voter/important-election-dates.shtml#2026>.

governed Tarrant County's elections for *decades* until June of this year is instead implemented again in 2026's election.

Defendants' invocation of the test Justice Kavanaugh proposed in his *Merrill v. Milligan* stay decision is misplaced. 142 S. Ct. 879 (2022) (Mem.) (Kavanaugh, J., concurring); ECF No. 25 at 5. Justice Kavanaugh suggested that test for injunctions issued "close to an election." *Id.* at 881. In *Milligan*, the Supreme Court was considering whether to stay an injunction issued just over one month before the relevant primary *election*. *Id.* at 879-80. Here, Texas's March 2026 primary election is seven months away. It is merely the candidate filing deadline for that election that is four months away. Expedition is needed to *avoid Purcell* concerns in advance of that deadline. In any event, Justice Kavanaugh's test would be satisfied here. Courts have repeatedly held that reconfigured maps cannot mete out staggered election disenfranchisement periods in a discriminatory manner and Defendants do not—and could not—dispute the TLC data showing that Map 7 does exactly that with respect to race and viewpoint. Moreover, Map 7 became constitutionally invalid the moment that Judge O'Hare admitted his disapproval for the voting behavior of "Black people" and his command that "people of all races" alter their candidate preferences to match his on the day of his decisive vote in favor of Map 7. App. 16. Plaintiffs have shown that they suffer irreparable harm in the absence of an injunction. They acted with haste, filing suit the day after Map 7 was adopted. Finally, injunctive relief here would merely spring back to life the Benchmark Map that complies with equal population requirements and that the County has implemented for decades. There would be no "significant cost, confusion, or hardship" from maintaining the status quo *ex ante*. *Milligan*, 142 S. Ct. at 881 (Kavanaugh, J., concurring).

The Court must act with expedition to avoid *Purcell* concerns. But *Purcell* is no barrier to relief at this time.

III. Severed and advanced trial on Counts 1 and 2 are warranted.

Severance and advanced trial on Counts 1 and 2 are warranted. Those claims are about how Map 7 imposes discriminatory disenfranchisement for the 2026 election and so must be decided before the relevant election deadlines for that election. Counts 3 and 4 pertain to harms that will recur with every subsequent election too, and so Plaintiffs have sought preliminary injunctive relief with the understanding that further proceedings could occur before final judgment on those claims. On the contrary, Counts 1 and 2 have short lifespans before the passage of time will make relief impossible. Plaintiffs have a right to final adjudication on those claims, and thus severance and advancement of the trial on those claims is warranted.

Defendants object that “Tarrant County is entitled to defend itself,” that Plaintiffs proffered expert reports with their preliminary injunction motion that “contain statistical analysis and conclusions which are subject to further discovery” and that “Tarrant County is further entitled to obtain expert analysis which will support its own redistricting policy choices and, if necessary, contradict the analysis and opinion of Plaintiffs’ experts.” ECF No. 25 at 5. These objections are misplaced.

First, Plaintiffs filed their preliminary injunction motion with accompanying expert analysis, TLC demographic and election data, and supporting declarations on June 27, 2025—just over three weeks after Map 7 was adopted. Defendants obtained an extension of the time to respond to that motion until August 5, 2025—over five weeks later. Defendants could have retained their own expert(s) and submitted expert analysis along with their opposition brief. Indeed, they had a more generous time schedule to do so than Plaintiffs did. Defendants could have sought to conduct discovery during that five-week period. But they did not. They do not even cite the evidentiary record Plaintiffs proffered in their opposition brief to Plaintiffs’ preliminary injunction motion.

Moreover, Defendants do not—and could not—dispute the authoritative demographic and election data from TLC regarding the population that is disenfranchised from voting in the 2026 election under Map 7. They do not dispute the identification of the population that will suffer that disenfranchisement. While they dispute the *legal standard* for Counts 1 and 2, discovery would not illuminate the resolution of that issue. It is unclear then what disputed facts necessitating discovery of *Plaintiffs* could even exist with respect to Counts 1 and 2.

Second, Defendants contend that separate trials on Counts 1 and 2 would be inefficient because those counts “share the same witnesses, facts, and action as Counts 3 and 4.” ECF No. 25 at 6. But this concern is likewise misplaced. Plaintiffs have moved for a preliminary injunction on all four claims. They merely ask that, for Counts 1 and 2, the preliminary injunction proceeding serve as the trial on the merits as well, given the limited duration of the life of Counts 1 and 2. This approach would both afford Plaintiffs the ability to achieve final judgment on those claims *and* ensure efficiencies because the evidentiary record from the preliminary injunction proceeding would carry forward to the ultimate trial on Counts 3 and 4. *See* Fed. R. Civ. P. 65(a)(2). If Plaintiffs prevail in obtaining a permanent injunction against Map 7 on Counts 1 or 2, further proceedings regarding Counts 3 or 4 would not even be necessary. Plaintiffs’ proposal is thus the most efficient, contrary to Defendants’ contentions.

CONCLUSION

For the foregoing reasons, Plaintiffs’ motion should be granted.

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
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