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

WINNIE JACKSON, JARRETT "JAY" JACKSON, CELINA VASQUEZ, DUANE BRAZTON, NADIA BHULAR, AMJAD BHULAR, CHERYL MILLS-SMITH, and RICHARD CANADA,

Plaintiffs,

v. Civil Case No. 4:25-cv-000587-O

TARRANT COUNTY, TEXAS; TARRANT COUNTY COMMISSIONERS COURT; TIM O'HARE, in his official capacity as Tarrant County Judge,

Defendants.

DEFENDANTS' REPLY TO PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

Assuming all of Plaintiffs' factual allegations to be true, there is no cause of action pleaded for which the Court may provide a remedy. Accordingly, this Court lacks subject-matter jurisdiction and a claim for which relief may be granted.

Knowing this, Plaintiffs struggle to entangle facts into a cause of action which will afford them a remedy.[1] One example of the "now we plead it, now we don't" ambiguity is evidenced in whether Plaintiffs plead a vote dilution claim under § 2 of the Voting Rights Act, or not.

In Paragraph 95 of the Amended Complaint Plaintiffs explicitly plead the 1982 amendments to the Voting Rights Act that codified the results and dilution theories into § 2 –

[1] Plaintiffs admit to this struggle when they write: "[t]o be sure, this is 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." ECF No. 34, "*Plaintiffs Reply in Support of Motion for Expedited Preliminary Injunction Decision*," at 4.

namely 52 U.S.C. § 10301(b). ECF No. 8, "*Plaintiffs' First Amended Complaint for Declaratory Relief*," at 23 (alleging a § 2 violation under 52 U.S.C. § 10301(b)). The 1982 addition of subsection (b) created the dilution or results cause of action to the Voting Rights Act that did not exist before 1982, or in subsection (a). Plaintiffs plead a traditional vote dilution case, "in that its members have less opportunity to participate in the political process and to elect representatives of their choice," and cite VRA § 2(b), a traditional effects claim. See ECF No. 8, at 23 ¶ 95.

Yet, in Plaintiffs' Opposition to Defendants' Motion to Dismiss, they write, "Plaintiffs' First Amended Complaint contains no racial gerrymandering claim." ECF. No. 31 at 6.

Defendants will straighten out the tangle below.

ARGUMENT

Plaintiffs Fail to Plead a Cognizable Claim.

Plaintiffs assert four injuries: (1) Vote Denial or Abridgment through Disenfranchisement under Section 2 of the Voting Rights Act (52 U.S.C. § 10301, 42 U.S.C. § 1983); (2) Unconstitutional Burden on the Right to Vote under the First and Fourteenth Amendments to the United States Constitution (U.S. Const. amend. I & IV; 42 U.S.C. § 1983); (3) Intentional Racial Discrimination under the Fourteenth Amendment to the United States Constitution (U.S. Const. amend. XIV; 42 U.S.C. § 1983; 52 U.S.C. § 10301, *et seq.*); and (4) Intentional Racial Discrimination under the Fifteenth Amendment to the United States Constitution (U.S. Const. amend. XV; 42 U.S.C. § 1983; 52 U.S.C. § 10301). *See* ECF No. 8, at 23-29. These claims amount to nothing more than an attempt to recast a politically drawn map and to delay the political consequences of permissible redistricting.

Count 1 – Plaintiffs are Precluded from their Section 2(b) Claim

Plaintiffs' § 2 claims fail because they do not allege or prove a denial or abridgement of voting rights that the VRA prohibits. Plaintiffs do not satisfy the first precondition in a vote dilution claim under *Thornburg v. Gingles*. *See* 478 U.S. 30, 50-51 (1986). There is no single majority-minority district to protect.[2] *See Petteway v. Galveston Cnty.*, 111 F. 4th 596, 604-5 (5th Cir. 2024) (holding that §2 of the VRA does not authorize coalition claims to satisfy the first *Gingles* precondition); ECF No. 31, at 2 (admitting that Plaintiffs' First Amended Complaint contains no racial gerrymandering claim).

Instead, Plaintiffs challenge the reassignment of voters into precincts with a different staggered election schedule for County Commissioners, an outcome permitted under federal and State law. *See Pate v. El Paso Cnty.*, 337 F. Supp. 95, 96-98 (W.D. Tex. 1970), *aff'd*., 400 U.S. 806 (1970); *Carr v. Brazoria County*, 341 F. Supp. 155, 159-61 (S.D. Tex. (1972). Count 1 fails to state a claim.

Count 2 – Unconstitutional Burden on the Right to Vote

Plaintiffs admit that the Court lacks Article III jurisdiction to adjudicate partisan gerrymandering claims. ECF No. 8, at 26 ¶ 106. Under Count 2 they reframe partisan gerrymandering as "viewpoint discrimination." *Id.* at 27, ¶ 111. Again, as in Count 1, Plaintiffs assert that the viewpoint discrimination "unduly burdens a particular group – a coalition of Black voters and Latino voters." *Id.*

[2] Plaintiffs' proposed expert, Geronimo Cortina, reports that the Benchmark Precinct 2 has Black VAP/CVAP of 23.9%/24.1% and Latino VAP/CVAP of 25.3%/20.6%. ECF No. 13, at 7 (Table 7).The Black and Latino voting age populations/citizen voting age populations do not equal 50% of the district. Precinct 2 cannot be a protected district as a matter of law under any theory.

There is no legal authority to reframe an adverse political outcome as "viewpoint discrimination." *See Rucho v. Common Cause*, 588 U.S. 684, 714 (2019) (quoting *Gaffney v. Cummings*, 412 U.S. 735, 752 (1973)) (rejecting the theory that partisan redistricting equates to viewpoint discrimination and stating "[i]t would be idle . . . to contend that any political consideration taken into account in fashioning a reapportionment plan is sufficient to invalidate it.'"). The First Amendment does not protect voters from the consequences of redistricting based on lawful, political considerations. *Id* at 714-15.

Plaintiffs' best efforts to create an injury out of a politically drawn map does not create jurisdiction of a non-justiciable issue. *See Rucho*, 588 U.S. at 718 (holding that political gerrymandering is non-justiciable under the federal Constitution).

Count 3 – Inadequate Intentional Racial Discrimination Allegations under the 14th Amendment

Count 3 is a combination of intent and results claims against a coalition of "… both Black voters and Latino voters . . . disproportionately disenfranchising them from voting in the 2026 election for commissioner" (ECF No. 8, at 28 ¶ 115) and again claiming the new map "minimize[s] the political power of Black voters and Latino voters by limiting their ability to influence commissioner court elections" (*Id.* at ¶ 114).

Influence districts are not protected under §2 of the VRA. *Barlett v. Strickland*, 556 U.S. 1, 13 (2009). Coalition districts are not protected under §2 of the VRA. *Petteway*, 111 F.4th at 604-05. Moving voters from one staggered district to another does not invoke constitutional protections. *See Pate*, 337 F. Supp. at 95; *Carr*, 341 F. Supp. at 155.

Plaintiffs scattering of quotes from their political opponents do not adequately plead direct or circumstantial evidence of racial intent. If the quotes were sufficient allegations of racial intent, elected officials (and their supporters, apparently) could never opine about contemporary issues

touching on race, particularly the perception that some factions promote allegations of racial animus or intent to steer political outcomes or reduce others to cowed silence.

Count 4 – Intentional Racial Discrimination under the 15th Amendment Retrogression Does Not Demonstrate Intent

Finally, Plaintiffs claim an "intentional discriminatory effect" (ECF No. 8, at 29 ¶ 119) by "… reducing from two to one the number of precincts in which minority voters can elect their candidate of choice." This is the sort of gauntlet a new redistricting plan had to run before *Shelby County v. Holder*, 570 U.S. 529, 530 (2013) (rendering § 4(b) of the VRA unconstitutional). The Supreme Court scraped that burden. Further, there can be no retrogression claim when there is no minority-majority district enjoying protection under the Voting Rights Act.

No Illegal Discriminatory Effect in a Staggered Election Schedule

Plaintiffs state that "…Map 7 was drawn to intentionally discriminate against both Black and Latino voters by vastly and disproportionately disenfranchising them from voting in 2026 election for commissioner." ECF No. 8, at 29-30 ¶ 119. *Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 674 (2021) bars a claim based solely on a disproportionate effect and *Pate* and *Carr* bar constitutional claims to not be moved from one staggered district to another.

Plaintiffs Seek Super-proportionality

According to Plaintiffs' Amended Complaint, Tarrant County is 19.3% Black. *See* ECF No. 8, at 8 ¶ 25. This demographic forecloses the possibility of proving vote dilution of Tarrant County's Black population because, "as a matter of law no dilution occurs whenever the percentage of single member districts in which minority voters form an effective majority mirrors voters' percentage of the relevant population." *Johnson v. De Grandy*, 512 U.S. 997, 1017 (1994) (an electoral map cannot violate § 2 if the districting plan allows voters to form effective voting majorities in several districts roughly proportional to their share of the voting-age population).

Cohesion Between Black and Latino Voters is Irrelevant

Plead as they may that Black and Latino voters demonstrate "strong political cohesion" (ECF No. 8, at 18 ¶ 80) and that Precinct 2 is a majority-minority precinct (*Id.* at 19 ¶ 83), *Petteway* forecloses Precinct 2 from being a protected coalition minority-majority district, period. Under *Rucho* and *Shelby County*, Precinct 2 may be deliberately and lawfully altered to elect a Republican. If Plaintiffs' claims are given validity, jurisdictions would be prohibited from altering a district held by a Democrat minority official just because of their race or the race of the voters in the district. Retrogression, by any other name, would once again become the standard, and the 15th Amendment would be offended.

Plaintiffs Fail to Allege an Injury.

Plaintiffs can still vote for every elected official in their district.

Rather than allege an injury, Plaintiffs simply identify members of two different minority groups who have been moved from a precinct with an election in 2026 to one with an election in 2028 and assert a claim for issue disenfranchisement and/or temporary disenfranchisement on account of race. The problem for Plaintiffs is that neither of these causes of action exists. Because the failure to state a claim is jurisdictional, and Plaintiffs have failed to state a justiciable case or controversy under Article III, the Court lacks jurisdiction to provide a remedy to Plaintiffs' non-existent injury. *See* U.S. Const. art. III § 2. *City of Los Angeles v. Lyons*, 461 U.S. 95, 101-102 (1983).

Disparate Impact is Not Enough to Prove a Violation

Plaintiffs' novel cause of action here under *Brnovich* is a disparate impacts theory regardless of what they call it. The Supreme Court has rejected a cause of action driven by disparate impacts. In their effects claim under 52 U.S.C. § 10301(b) in their First Amended Complaint, they

reject *Gingles* and erroneously rely on a novel *Brnovich* theory. Yet, *Brnovich* specifically proscribed stand-alone disparate impact claims because "differences in employment, wealth, and education may make it virtually impossible for a State to devise rules that do not have some disparate impact" and emphasized that § 2(b) of the VRA is not a disparate impact test. *See Brnovich*, 594 U.S. at 677; *see also id*. at 674 ("The dissent, by contrast, would rewrite the text of §2 and make it turn almost entirely on just one circumstance—disparate impact."). A dissent is not the law. The Plaintiffs, however, advance a cause of action that focuses on only one of the five elements discussed in *Brnovich* – namely the disparate burden element. The rest of the elements are a clumsy fit in a redistricting case. Courts rely on *Gingles* to untangle a redistricting dispute, not *Brnovich*.[3]

No Abridgment of the Right to Vote

Section 2 of the VRA prohibits voting practices or procedures that result in a denial or abridgment of the right to vote on account of race or color. 52 U.S.C. 10301(a). This necessitates Plaintiffs do more than assert disparate outcomes. They must show that Map 7 has caused an actual denial or abridgment of the right to vote and was motivated by an impermissible racial intent. *See Brnovich*, 594 U.S. at 668-69. Plaintiffs failed to allege actual direct or circumstantial facts supporting an intentional denial or abridgment of voting. All that they have left is the quizzical claim that routine reassignment between precincts with staggered election schedules demonstrates impermissible racial intent rather than an unavoidable result of redistricting expressly permitted under federal and State law. *See Carr*, 341 F. Supp. at 159-60.

[3] The Court should note that in Plaintiffs' Opposition to Defendants' Motion to Dismiss, it appears as if Plaintiffs abandoned every claim other than intentional vote dilution by insisting that they only plead under 52 U.S.C. § 10301(a). *See* ECF No. 31, at 2-3.

Failure to Plead Real *Arlington Heights* Allegations

Plaintiffs just see the world differently. Their catalog of facts to establish evidence of racial intent either under *Arlington Heights* or through direct evidence is wildly out of touch and inapplicable. *See Vill. Of Arlington Heights*, 429 U.S. at 266-68. Nothing in the Amended Complaint alleges actual evidence of an element of *Arlington Heights* regarding the motivations of the plan. Plaintiffs rely on a world view where race can never be mentioned by certain elected officials in any context, including trying to appeal to all voters, where statements by third parties burden Defendants, and where bending over backwards to hear public input is not bending over backwards enough. Plaintiffs have failed to provide factual allegations supporting any of the *Arlington Heights* factors and resort to boilerplate. *See Johnson*, 512 U.S. at 1015-16 ("some dividing by district lines and combining within them is virtually inevitable and befalls any population group of substantial size. Attaching the labels 'packing' and 'fragmenting' to these phenomena, without more, does not make the result vote dilution when the minority group enjoys substantial proportionality."). Plaintiffs' factual allegations are the too common and divisive sort where innocuous, benign, and even earnest engagement is recast through the lens of race.

CONCLUSION

Without a cause of action, there is no injury. Without an injury, there is no cause of action. After much briefing, that is where this case is now, lacking both a cognizable cause of action and an identifiable injury.

The Fifth Circuit in *Petteway* strongly rejected maintaining meritless redistricting claims when it wrote: "[t]he court will not remain in the forefront of authorizing litigation, not compelled by law or the Supreme Court, whose principal effects are to (a) supplant legislative redistricting by elected representatives with judicial fiat, (b) encourage divisively counting citizens by race and

ethnicity, and (c) displace the fundamental principle of democratic rule by the majority with balkanized interests." *Petteway*, 111 F.4th at 612. Plaintiffs ask this Court to ignore all three principals.

For these reasons and those in the Defendants' Motion to Dismiss, this Court should grant Defendants' Motion to Dismiss.

Dated: August 21, 2025

Respectfully submitted,

For the Defendants

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CERTIFICATE OF SERVICE

I, Joseph M. Nixon, do hereby certify that service of a true and correct copy of this document has been forwarded to all counsel of record via electronic notification and sent to non-parties via regular and/or certified mail.

DATED: August 21, 2025

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