UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

CLEVE DUNN, JR., ET AL.	**CIVIL ACTION NO. 3:24-CV-00521**
VERSUS	**CHIEF JUDGE DICK**
EAST BATON ROUGE PARISH, CITY OF BATON ROUGE, ET AL.	**MAGISTRATE JUDGE WILDER-DOOMES**

EAST BATON ROUGE PARISH/CITY OF BATON ROUGE'S REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS PURSUANT TO RULE 12

NOW INTO COURT, through undersigned counsel, comes Defendant, City of Baton Rouge, Parish of East Baton Rouge, *through the Baton Rouge Metropolitan Council* ("Metro Council" or "Council"), who replies to the *Opposition to the Parish's Motion to Dismiss* filed by Plaintiffs, Chauna Banks, Darryl Hurst, Cleve Dunn, Jr., LaMont Cole, Carolyn Coleman, Lael Montgomery, and Eugene Collins (collectively, "Plaintiffs") as follows:

I. Plaintiffs Urge the Court to Use an Outdated Pleading Standard.

To be entitled to have their claims litigated in this Court, Plaintiffs must have Article III standing. To have standing, each Plaintiff must show they have (1) suffered a concrete and particularized injury-in-fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that it is likely, as opposed to merely speculative, that the injury could be redressed by a favorable judicial decision.[1] Because these elements are an indispensable part of Plaintiffs' case, the standard by which Plaintiffs must prove these elements becomes gradually stricter through the "successive stages of the litigation."[2]

[1] *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).
[2] *In re Deepwater Horizon*, 739 F. 3d 790, 799 (5th Cir. 2014) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)).

Plaintiffs have asserted a standard for the pleading stage which is no longer applicable. Specifically, Plaintiffs cite to the 5th Circuit's opinion in *Ramming v. United States* as support for the notion that "a motion to dismiss for lack of subject matter jurisdiction should be granted only if it appears certain that the plaintiff cannot prove any set of facts in support of her claim which would entitle her to relief."[3] However, this standard, which stems from the Supreme Court's 1957 decision in *Conley v. Gibson*, was later abrogated by the Court in *Bell Atlantic Corp. v. Twombly*.[4]

The current pleading standard set forth in *Twombly* and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), by which the Court must review Plaintiffs' allegations is quite clear. At the pleading stage, "a complaint must present enough facts to state a plausible claim to relief."[5] This does not require exhaustive detail but must allow the court to reasonably infer that the plaintiff would prevail on the merits.[6] However, facts that only conceivably give rise to relief are not sufficient.[7]

Put simply, at the pleading stage, a plaintiff may have sufficiently alleged Article III standing if the well-pleaded facts render it plausible, not merely conceivable, that the plaintiff has suffered a non-hypothetical and particularized injury-in-fact which is likely to be redressed by a favorable decision by this Court.

Further, Plaintiffs are incorrect in arguing that the factors laid out in *Thornburg v. Gingles*, 478 U.S. 30, are "post-trial" issues. They are threshold issues deemed "preconditions" by the Supreme Court. As the Court stated in *Growe v. Emison*¸ "[u]nless these points are established, there neither has been a wrong nor can [there] be a remedy."[8] The *Gingles* factors set forth jurisprudential

[3] R. Doc. 20, p. 3 (quoting *Ramming v. United States*, 281 F. 3d 158, 161 (5th Cir. 2001)).
[4] 550 U.S. 544, 564 (2007)
[5] *League of United Latin American Citizens v. Abbott*, 604 F. Supp. 3d 463, 482 (W.D. Tex. 5/23/22) (citations omitted).
[6] *Id.*
[7] *Mandawala v. Northeast Baptist Hospital*, 16 F. 4th 1144, 1150 (5th Cir. 2021).
[8] *Growe v. Emison*, 507 U.S. 25, 40-41 (1993)

"preconditions" to a Section 2 claim. In other words, the *Gingles* factors are the facts necessary to logically establish Article III standing for a Section 2 claim.

Without alleging well-pleaded facts which render the existence of a sufficiently large, geographically compact, and politically cohesive minority population plausible, the possibility that this Court could order the creation of a hypothetical and legally valid, sixth majority-minority district to encompass such a population is merely conceivable, not plausible.[9] Likewise, without alleging well-pleaded facts which render it plausible that a politically cohesive White majority usually votes to defeat the preferred candidate of the above-described population, the possibility that this hypothetical, large, geographically compact, and politically cohesive minority population was harmed is merely conceivable, not plausible.[10] Therefore, to establish Article III standing at the pleading stage, Plaintiffs must have alleged facts sufficient to allow the Court to reasonably infer that Plaintiffs have satisfied the *Gingles* factors, which they have not.

II. The Facts Before The Court Do Not Lead To The Conclusion That The *Gingles* Factors Are Plausibly Satisfied.

As an alternative argument, Plaintiffs contend that their allegations satisfy the *Gingles* factors. Plaintiffs are wrong. For reference: The three *Gingles* factors require Plaintiffs to show that (1) the minority group is "sufficiently large and geographically compact to constitute a majority in a single-member district"; (2) the minority group is "politically cohesive"; and (3) the "White majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate."[11]

[9] *Growe*, 507 U.S. at 40.
[10] *Id.*
[11] *Gingles*¸ 478 U.S. 30, 50-51 (1986).

A. *Gingles* Factor 1: Sufficiently Large and Geographically Compact Minority Group

In the Complaint, Plaintiffs proffer Map 7A as proof that there exists a large and reasonably compact minority population sufficient to create an additional majority-minority district.[12] As discussed in the Metro Council's supporting memorandum, Map 7A was created based solely on race in an effort to force District 1 to become a majority-black district without regard for traditional redistricting principles. The principles are not just bureaucratic roadblocks for progress, but requirements meant to ensure that citizens are fairly represented in the Metro Council. The adoption of Map 7A would cut the city of Baker in half and have citizens of Cheneyville (a rural community with a population of 449) be represented by the same councilmember as citizens of Mid-City Baton Rouge (the state capital with a population of 227,470).

Plaintiffs argue that the Court cannot "eyeball one map at the motion to dismiss stage and conclude that compactness would be impossible for *any* map that complies with the Voting Rights Act."[13] Relying on the outdated pleading standard in *Ramming*, Plaintiffs misstate the issue before the Court: The Court need not conclude that there is no set of facts under which a large and geographically compact minority group could exist. Indeed, the existence of such a group is quite conceivable, as exemplified by Districts 2, 5, 6, 7, and 10 in the currently enacted map. Rather, the issue before the Court is whether, under the facts before it, it can reasonably infer that a sufficiently large group of Black voters resides close enough together to create an additional Black-majority District without violating other legal considerations.

Plaintiffs cite to *LULAC v. Abbott*, 2022 WL 4597782,[14] for the notion that the division of communities is not dispositive of the compactness inquiry; however, this is not the holding of the

[12] R. Doc. No. 1, ¶¶ 56-65.
[13] R. Doc. No. 20, at 7.
[14] *Id.*

court. Rather, the district court in *LULAC* simply found that the proposed districts were reasonably compact because, even though neighborhoods were split by district lines, the districts were limited to the boundaries of singular cities.[15] Here, the Metro Council did not point out that district boundaries in Map 7A bisect neighborhoods and communities within Baton Rouge, such as Shenandoah being split between Districts 8 and 9, although this fact is certainly relevant and adds to the issues with Map 7A. Instead, the Metro Council pointed out that an entire town was split between districts and that dissimilar communities were paired together for the sole purpose of racially gerrymandering District 1 into a Black-majority district.

Further, Plaintiffs alleged that "size and compactness are evidenced by, among other things, the multiple maps proposed to the Metro Council . . . that contain six majority black districts."[16] As discussed more fully in the Motion to Dismiss, the three maps proposed to the Metro Council containing a sixth majority-Black District were not reasonably compact.[17] Moreover, if this Court were to order the adoption of any of these three maps, it would likely be ordering the Council to violate the Equal Protection Clause because of the race-based drawing of district lines.

The facts alleged in the Complaint struggle to shift the possibility that a favorable decision from this Court could result in the creation of a legally valid sixth Black-majority district into the realm of the conceivable, much less that of the plausible.

B. *Gingles* Factors 2 & 3: Racially Polarized Voting

As with the first *Gingles* factor, Plaintiffs' allegations do not actually support a reasonable inference that there exists a politically cohesive White majority that usually thwarts the election of candidates preferred by a politically cohesive Black population. Instead, Plaintiffs tie together

[15] *League of United Latin American Citizens* (LULAC) *v. Abbott*, 2022 WL 4597782, at *3 (W.D. Tex. 9/29/22).
[16] R. Doc. No. 1, ¶ 58.
[17] R. Doc. No. 18-1, at 14-17.

loose correlations using incomplete statistics and faulty logic which may make Plaintiffs' claims conceivable, but not plausible.

The Supreme Court has made clear that "it is the *status* of the candidate as the *chosen representative of a particular racial group*, not the race of the candidate that is important."[18] "[T]he fact that race of voter and race of candidate is often correlated is not directly pertinent to a § 2 inquiry."[19] Therefore, Plaintiffs' allegations correlating the race of certain candidates with the racial demographics of the parish are impertinent and grounded in faulty logic.

In the example given by Plaintiffs, it is conceivable that the women of District 1 banded together to defeat Eric Lewis, who Plaintiffs arbitrarily label as Black voters' preferred candidate; however, it is certainly not plausible. Yet, as the Metro Council stated in its Motion to Dismiss, such an absurd notion is actually more plausible under the facts alleged and logic employed in the Complaint than the claims made.[20]

The Metro Council appreciates the clarity provided by Plaintiffs regarding the charts offered in Paragraphs 70 and 71 of the Complaint and understands that Vice President Kamala Harris was technically on the 2020 election ballot. However, it is disingenuous to argue that her minority status makes a comparison of support for a vice-presidential candidate to that of a presidential candidate in a national race the "most probative evidence" of racial bloc voting for the purpose of local metro council redistricting. Plaintiffs' reliance upon such an imbalanced and impertinent comparison is inappropriate and does not shift the allegations that the White population votes as a bloc to defeat a politically cohesive Black population into the realm of the plausible.

[18] *Gingles*, 478 U.S. at 68.
[19] *Id.*
[20] R. Doc. No. 18-1, p. 20.

III. Plaintiffs Have Failed to Allege a Concrete and Particularized Harm.

"Packing" refers to the concentration of Black voters into districts where they constitute an excessive majority, and "cracking" refers to the dispersal of Black voters into districts where they constitute an ineffective minority. Although Plaintiffs argue that they have alleged that the Metro Council has violated the VRA by "packing" and "cracking" Districts, the Complaint does not allege that the Metro Council engaged in any "cracking." It alleges that the Metro Council diluted Black voting strength by "'packing' large numbers of Black voters into majority-Black council districts where they constitute an ineffective minority unable to participate equally in the electoral process."[21] This allegation, in itself, is confusing, as it conflates the two practices.

To the extent that the Complaint contains allegations that Plaintiffs were either "cracked" or "packed," the Metro Council concedes only that such allegations of harm could be sufficiently particularized for purposes of Article III standing at the pleading stage. However, it does not. If Plaintiffs intended to allege that the Metro Council both "packed" and "cracked" districts, the Complaint must, at least, be amended to accurately reflect Plaintiffs' allegations.

Even still, as mentioned above and discussed in the Motion to Dismiss, Plaintiffs have not plausibly established the existence of a compact, politically cohesive minority group nor a majority voting bloc who usually votes against the group's preferred candidate.[22] As such, Plaintiffs have not plausibly alleged that a concrete harm exists. While it is conceivable that such groups may exist, the facts alleged in the Complaint do not make the existence of such a harm plausible.

[21] R. Doc. No. 1, ¶¶ 1-2.
[22] R. Dox. No. 18-1, p. 12.

IV. Plaintiffs have Not Plausibly Alleged Discriminatory Intent.

Paragraph 187 of the Complaint contains a conclusory allegation of discriminatory intent. However, it is not enough for Plaintiffs to offer "threadbare recitals of a cause of action's elements, supported by mere conclusory statements."[23] Such statements are not entitled to be presumed true by the Court.[24] Indeed, Plaintiffs must plead factual allegations which would support a reasonable inference that the Metro Council adopted the Ordinance with the purpose of diluting the votes of Black voters and treating voters unequally under its laws.[25] Yet, Plaintiffs have not. Thus, Plaintiffs constitutional claims should be dismissed.

CONCLUSION

At the pleading stage, the well-pleaded facts must render it plausible, not merely conceivable, that Plaintiffs have suffered a non-hypothetical and particularized injury-in-fact which is likely to be redressed by a favorable decision by this Court. The Metro Council is not of the position that Plaintiffs have not asserted factual allegations in its Complaint. Rather, the facts alleged in the Complaint do not lead to a plausible conclusion that a large and politically cohesive minority group who usually has its preferred candidates defeated by the White majority exists in a geographically compact area sufficient to create an additional majority-minority district which comports with traditional redistricting principles. Under such facts, it cannot be plausibly concluded that Plaintiffs have suffered a concrete and particularized injury-in-fact, nor that this Court could redress the alleged harm through a favorable decision. Therefore, Plaintiffs' Section 2 claim must be dismissed. Likewise, Plaintiffs have not alleged facts to plausibly support its allegation that the

[23] *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009).
[24] *Id.* at 686-87.
[25] *See* R. Doc. No. 1, ¶ 187.

Metro Council adopted the Ordinance with discriminatory intent. Therefore, Plaintiffs' constitutional claims must be dismissed.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANT, CITY OF BATON ROUGE, PARISH OF EAST BATON ROUGE, THROUGH THE BATON ROUGE METROPOLITAN COUNCIL

CERTIFICATE OF SERVICE

I hereby certify on November 12, 2024, the foregoing *East Baton Rouge Parish/City Of Baton Rouge's Reply Memorandum in Support of Motion to Dismiss Pursuant to Rule 12* was electronically filed with the Clerk of Court by using the CM/ECF system which will send a notice of electronic filing to all counsel of record.

/s/ Christopher J. Vidrine.
Christopher J. Vidrine