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' REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

Defendants offer no contrary evidence, testimony, expert report, or data. They dispute none of Plaintiffs' evidence or testimony and cite no record evidence in their brief. Instead, they mix together different legal tests and oppose a claim (racial gerrymandering) that Plaintiffs have not advanced. Put simply, a county cannot redraw its district lines to intentionally minimize minority voting strength and disenfranchise them. And it certainly cannot do so with the County Judge—who cast the deciding vote—justifying it because he disagrees with how "Black people" vote demands that "people of all races" switch their candidate preferences. App. 16.

ARGUMENT

I. Plaintiffs are likely to succeed on their disenfranchisement claims.

A. Plaintiffs are likely to prevail on their Section 2 claim.

Plaintiffs are likely to prevail on their Section 2 disenfranchisement claim. As Plaintiffs explain in their opening brief, ECF No. 12 at 8-12, each of the five "important factors" set forth in *Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647 (2021), is present. The racially discriminatory effect is stark. For example, Black voters account for 31.2% of the disenfranchised voters despite accounting for 17.9% of the County's voting age population. App. 3. That contrasts to Anglo voters, who comprise 46.9% of the County's voting age population yet are just 25.7% of those disenfranchised by Map 7. App. 3. The raw differential is likewise extreme. There are 8,408 more disenfranchised Black adults than Anglo adults, even though Tarrant County has 456,901 more Anglo adults than Black adults. App. 3-4. The burden is severe—affected voters are entirely fenced out of the 2026 commissioners election in which they were otherwise eligible to vote. And the County's justifications—Judge O'Hare's disapproval of the voting preferences of "Black people," App. 16, and a purported desire to gerrymander, are illegitimate. *See* ECF No. 12 at 11.

Defendants do not dispute any of the evidence proffered by Plaintiffs—Dr. Cortina's expert analysis, the Census data, or Texas Legislative Council ("TLC") data showing the stark racially discriminatory impact. They do not offer any expert analysis or evidence of any kind themselves. Instead, they invite the Court to misconstrue Section 2 and its governing precedent.

Defendants contend that "[t]he ability to vote for one local office two years later than expected does not constitute a denial or abridgement of voting rights under any reasonable interpretation of Section 2." ECF No. 28 at 9. But as the Supreme Court has emphasized, "§ 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. Section 2's text straightforwardly encompasses the County's imposition of a voting system that disproportionately removes Black and Latino voters, but not Anglo voters, from those eligible to cast ballots for commissioner in the next election. Map 7 literally causes those voters to have "less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 52 U.S.C. § 10301(b).

Defendants also object that "statistical disparities do not alone establish a violation of Section 2," and that "neutral regulations" may result in such disparities given differences in "employment, wealth, and education." ECF No. 28 at 11 (citing *Brnovich*, 594 U.S. at 668-69). But this is unlike the out-of-precinct voting and ballot collection rules at issue in *Brnovich* in which these socioeconomic differences played a role in the racial disparity; here the County has simply isolated a disproportionately large group of Black and Latino voters for disenfranchisement. That is not some happenstance consequence of a neutral regulation interacting with socioeconomic

factors—it harms 1 out of every 6 Black voters and 1 out of every 8 Latino voters, compared to just 1 out of every 20 Anglo voters. App. 3-4.

Defendants also assert that Plaintiffs have presented "no evidence that the Commissioners Court considered race in drawing Map 7, much less that race was the predominant factor." ECF No. 28 at 11. This is wrong in several ways. First, "§ 2 does not demand proof of discriminatory purpose." *Brnovich*, 594 U.S. at 674. Second, as they repeatedly do in their brief and in their motion to dismiss brief, Defendants conflate the racial predominance standard with the claims Plaintiffs actually advance. Redistricting law is not some undifferentiated stew of legal tests and case quotations that can be simply fused together, as Defendants do throughout their briefing. These are analytically distinct claims with different requirements. Plaintiffs do not assert a racial gerrymandering claim. Racial predominance, along with its accompanying obligation to "disentangle race from politics," ECF No. 28 at 14, are simply inapplicable to Plaintiffs' claims. Section 2 contains *no* requirement to show racial purpose, and to prevail on intentional racial vote dilution claims, "'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)). Third, and relatedly, Plaintiffs *have* shown that racial vote dilution was at least *a* purpose in Map 7's enactment—both through the express words of Judge O'Hare explaining his vote in a television interview, *see* App. 16 (disagreeing with how "Black people" vote and demanding that it is "time for people of all races" to "get on board" with his views), and through the *Arlington Heights* evidence Plaintiffs proffer, *see* ECF No. 12 at 18-23; App. 7-16 (Report of Dr. Cortina).

Defendants briefly tick through the *Brnovich* factors on page 12 of their brief but cite no evidence and identify no factual dispute. They recast the outright denial of participation in the

2026 commissioner election as a "minimal" burden. They posit that mid-decade redistricting is legal but cite no example of a jurisdiction doing so in such a manner that imposes racially discriminatory disenfranchisement. Defendants also contend that "[t]he statistical disparities Plaintiffs rely on do not demonstrate that the plan was adopted 'on account of race'" and that Section 2 claims are "not actionable without proof of discriminatory motive or effect." ECF No. 28 at 12. This misunderstands Section 2's text and case law. The vast racial disparities Plaintiffs have shown—which Defendants do not dispute—*are* the discriminatory effect. *Brnovich*'s five factors are aimed at meeting the *second* requirement of Section 2—showing under the "totality of the circumstances" that the challenged political process is not "equally open." 52 U.S.C. § 10301(b); *Brnovich*, 594 U.S. at 674. Plaintiffs have done so.

Defendants contend that Plaintiffs can vote in *other* 2026 election contests, but that does not establish an alternative means to vote in the commissioner election. And Defendants assert the following supposed interests to justify Map 7's racially discriminatory disenfranchisement: "rebalance populations, improve precinct continuity, prepare for future growth, as well as elect an additional Republican commissioner." ECF No. 28 at 12. They cite no record evidence for any of this. The precincts were already near perfectly populated, App. 11, 119, it is unclear what "precinct continuity" means,[1] "future growth" was not proffered or measured (the Census was in 2020), and a Section 2 violation is not overcome by partisan goals.

Finally, applying Section 2's plain text to find a violation here will not jeopardize future staggered election redistricting. *Contra* ECF No. 28 at 13. The reason this claim arises for the first

[1] If this term refers to the system of staggered elections, Plaintiffs do not challenge that. They challenge the racially discriminatory manner in which Defendants have imposed the disenfranchisement under Map 7. A governmental interest in staggered elections is not the same as a governmental interest in imposing disenfranchisement in a racially discriminatory manner such that, *e.g.*, 1 in 6 Black voters suffer it but only 1 in 20 Anglo voters do.

time in this case is because Tarrant County is the first jurisdiction to ever impose this type of disenfranchisement in a racially discriminatory manner. *See infra* Part I.B (collecting cases).

B. Plaintiffs are likely to prevail on their First and Fourteenth Amendment disenfranchisement claims.

Plaintiffs are likely to prevail on their First and Fourteenth Amendment disenfranchisement claims, as Plaintiffs explain in their opening brief. ECF No. 12 at 12-15. Defendants list all the cases in which courts have rejected equal protection challenges for such disenfranchisement following redistricting, but nearly all of those cases recognize that a showing of discrimination in the application of that disenfranchisement would render it unconstitutional. For example, the California Supreme Court held that "[t]he inequalities among groups of electors are the inevitable byproduct of reapportioning a legislative body whose members are elected to staggered four-years terms . . . . [W]e are not free to obviate them *unless they constitute invidious discrimination* violative of the equal protection clause of the fourteenth amendment" *Legislature v. Reinecke*, 516 P.2d 6, 12 (Cal. 1973) (emphasis added). Likewise, the Nebraska Supreme Court excused this phenomenon where the particular plan "makes no invidious discrimination between classes of electors." *Barnett v. Boyle*, 250 N.W.2d 635, 638 (Neb. 1977). This is a universal principle. *See, e.g.*, *Republican Party of Oregon v. Keisling*, 959 F.2d 144, 145-46 (9th Cir. 1992) (observing that disenfranchisement is "inevitable consequence of redistricting following the [] census" and holding that temporary disenfranchisement does not violate the Fourteenth Amendment unless it "unduly burden[s] a particular group"); *Donatelli v. Mitchell*, 2 F.3d 508, 514 (3d Cir. 1993) (applying rational basis to claim where disenfranchisement did not affect "a discrete group of voters based on some personal characteristic"); *Pate v. El Paso Cnty.*, 337 F. Supp. 95, 96-97 (W.D. Tex. 1970), *summarily aff'd*, 400 U.S. 806 (1970) (rejecting facial and as-applied challenge to Texas Constitution's provision of staggered terms for county commissioners where redistricting

was necessitated by population deviation and there was "no arbitrary and invidious discrimination" in who was disenfranchised following redistricting); *Mader v. Crowell*, 498 F. Supp. 226, 231 (M.D. Tenn. 1980) (finding no violation where disenfranchisement was in response to court order to equalize districts and there was "no evidence that the General Assembly made these shifts for invidious or discriminatory purposes"); *Pereira v. Town of N. Hampstead*, 682 F. Supp. 3d 234, 246 (E.D.N.Y. 2023) (noting that heightened scrutiny would apply if disenfranchisement were based upon suspect classification).

Tarrant County has done something no other jurisdiction has before. It meted out disenfranchisement following a mid-decade redistricting unwarranted by any population deviation or nonarbitrary justification in a manner that vastly disproportionately targets vastly Black and Latino voters and Democrats. Judge O'Hare explained his vote in favor of Map 7 by objecting to the candidates of choice of "Black people" and demanding "people of all races" change their views to favor him. App. 16. And partisan targeting of voters for disenfranchisement—Defendants do not dispute the electoral data or intent in this regard—fares no better. *Rucho* dealt only with partisan *vote dilution* claims. The justiciability problems the Court identified in that case do not arise in answering this question: Can the government target voters for exclusion from the electorate in the next election because it disfavors their viewpoints? It is judicially manageable to say "no" to that without worrying about line drawing. *See 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.").

C. Plaintiffs are likely to prevail on their Fourteenth and Fifteenth Amendment intentional racial vote dilution claims.

Plaintiffs are likely to prevail on their Fourteenth and Fifteenth Amendment intentional racial vote dilution claims. Plaintiffs proffered extensive evidence and expert analysis on these claims—both direct evidence from Judge O'Hare explaining his decisive vote on the grounds of his disapproval of how "Black people" vote, App. 16, and circumstantial evidence applying the *Arlington Heights* factors, ECF No. 12 at 16-23; App. 1-17 (Report of Dr. Cortina). Defendants dispute none of it and offer no contrary evidence or testimony in response. Instead, Defendants focus this section of their brief (at 16-19) on mistaking the relevant legal standard.

Defendants identify (at 17) the test for racial gerrymandering claims, but Plaintiffs advance no such claim. Then they identify (at 17) the *Arlington Heights* factors—these *are* relevant—but in the next sentence say: "Plaintiffs have not provided *Arlington Heights* evidence showing that race predominated over conventional redistricting factors." ECF No. 28 at 18. To reiterate—*that is not the test*. As Defendants earlier acknowledge, an intentional racial vote dilution claim is proved by showing "that the County acted *at least in part* because of its adverse effects on minority voters." ECF No. 28 at 17 (emphasis added); *see Veasey*, 830 F.3d at 230 (racial motive "need only be one purpose, and not even a primary purpose" to render law unconstitutional).

Defendants then type one paragraph that cites two allegations from Plaintiffs' First Amended Complaint regarding racially discriminatory statements from a prior commissioner and discriminatory conduct by Judge O'Hare. ECF No. 28 at 18. But Plaintiffs filed a preliminary injunction motion accompanied by evidence and testimony. Defendants engage with none of that, simply quibbling instead with two paragraphs of the complaint. Tellingly, they do not even mention Judge O'Hare's day-of-the-vote explanation that he disapproves of the candidate choices of "Black people." App. 16.

That one paragraph is the entirety of Defendants' response to the substance of Plaintiffs' intentional racial vote dilution evidence and arguments. The final two paragraphs of this section of Defendants' brief (at 18-19) return to discussing the legal standard for *racial gerrymandering* claims—which, again, is not a claim advanced by Plaintiffs.

II. Plaintiffs will be irreparably harmed if Map 7 is not enjoined.

Plaintiffs will be irreparably harmed if Map 7 is not enjoined. For their disenfranchisement claims (Counts 1 and 2), that harm is exclusively about the 2026 election—if they miss that election the disenfranchisement has occurred. For their intentional racial vote dilution claims (Counts 3 and 4), being forced to vote in the 2026 election under a map that was designed at least in part to dilute minority voting strength likewise will irreparably harm them. This is not a controversial proposition. *See DeLeon v. Abbott*, 791 F.3d 619 (5th Cir. 2015) ("Federal courts at all levels have recognized that violation of constitutional rights constitutes irreparable harm as a matter of law."). Defendants' contrary arguments are meritless.

First, Defendants contend that "[t]he only harm Plaintiffs allege is that some voters will not be able to vote for a county commissioner in 2026 because they have been reassigned to odd-numbered precincts that will vote next in 2028." ECF No. 28 at 19. Not so. Plaintiffs' intentional racial vote dilution claims challenge the *configuration* of districts that were designed at least in part to dilute minority voting strength. Or, in the words of Judge O'Hare, because he disapproves of how "Black people" vote. App. 16.

Second, Defendants merely dispute the severity of the harm, not the fact that Plaintiffs *will* be subjected to disenfranchisement. ECF No. 28 at 20. Moreover, Defendants wrongly contend that there is no irreparable harm in the absence of an injunction now because later "the Court could order appropriate relief, including a declaratory judgment, injunctive relief applicable to future

cycles, or even remedial elections if truly warranted." ECF No. 28 at 20. But none of that solves the irreparable harm Plaintiffs face from either being disenfranchised from voting in the 2026 commissioner election or under intentionally racially dilutive precinct configurations.

Third, Defendants mention, without any analysis, the *Purcell* doctrine. ECF No. 28 at 21. The 2026 election is over a year away and the earliest deadline is the candidate filing period, which closes December 8, 2025.[2] While that deadline means that this Court must act expeditiously as Plaintiffs have urged—including to allow sufficient time for appellate and Supreme Court review as warranted—there is no credible argument and no precedent to support the contention that the *Purcell* deadline has been reached for an election that is over a year away.

III. The balance of equities and the public interest favor injunctive relief.

The balance of equities and public interest favor injunctive relief. Plaintiffs face a two-year disenfranchisement period imposed in a racially-discriminatory manner and that targets them for their viewpoint. They further face voting under map designed in part to dilute their voting strength on account of race. Defendants face being blocked from implementing a map that was abruptly adopted mid-decade, supported by no population deviation rationale, and imposed because the County Judge disapproves of how "Black people" vote, App. 16, and for alleged partisan gain. The balancing falls heavily in Plaintiffs' favor and Defendants are not harmed by continuing to implement the same map that has governed Tarrant County commissioner elections for decades.

Defendants' vague contention that the prior map is "constitutionally suspect" has no support in law or fact. Indeed, during Mr. Nixon's only presentation to the Commission, when asked if there was anything illegal about the existing map, he responded "that is not anything I've

[2] Tex. Sec'y of State, *Important 2026 Election Dates*, https://www.sos.state.tx.us/elections/voter/important-election-dates.shtml#2026.

been hired to provide an answer to."[3] Moreover, the County will face no difficulty "reorganizing block assignments," ECF No. 28 at 21, by reverting the status quo *ex ante*.

The public interest favors an injunction because the public interest favors preventing constitutional violations. Defendants' arguments are unpersuasive. They raise the specter of voter confusion. But it is the new map—radically redrawing district lines into serpentine shapes after decades of a consistent, quadrant-based configuration—that is disruptive. And the election is over a year away—suggesting voter confusion now is not credible. Nor is preventing the legal violations imposed by Map 7 a litigation risk to "[a]ll 254 Texas counties" using staggered elections. Those counties have not targeted voters for disenfranchisement on account of race or viewpoint. Indeed, the public interest is heightened here because if Defendants are not enjoined, it will create a roadmap to *permanently* disenfranchise Tarrant County's Black and Latino voters or its Democratic voters. The County could simply swap precinct numbers on the map every two years and 25% of the county would never vote again for commissioner. That possibility proves that this is a justiciable claim that requires remedy now. Finally, an injunction here would be, contrary to Defendants' protestation, squarely in the zone of appropriate judicial intervention to prevent unlawful and unconstitutional discrimination in voting.

CONCLUSION

For the foregoing reasons, the Court should grant Plaintiffs' motion for a preliminary injunction against Map 7's implementation.

[3] Tarrant County Comm'rs Court Meeting Video at 1:47:10 (May 6, 2025), https://prod-agendamanagement-publicportal.azurewebsites.us/HtmlAgenda/e86a9f86-cfcb-41c5-f5c2-08dd617d51b0.

Dated: August 11, 2025

Respectfully submitted,

/s/ Chad W. Dunn

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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