IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

RENE ROMO, an individual; BENJAMIN WEAVER, an individual; *et. al*,

Plaintiffs,

vs. CASE NO. 2012-CA-00412

KEN DETZNER, in his official capacity as Florida Secretary of States, PAMELA JO BONDI, in her official capacity as Attorney General,

Defendants.
_____/

THE LEAGUE OF WOMEN VOTERS OF FLORIDA; THE NATIONAL COUNCIL OF LA RAZA; *et al.*,

Plaintiffs,

vs. CASE NO. 2012-CA-00490

KEN DETZNER, in his official capacity as Florida Secretary of State; THE FLORIDA SENATE; *et al.*,

Defendants.
_____/

LEGISLATIVE DEFENDANTS' JOINT MOTION TO DISMISS ROMO PLAINTIFFS' SECOND AMENDED COMPLAINT

Pursuant to Florida Rule of Civil Procedure 1.140(b), the Hon. Dean Cannon, in his official capacity as the Speaker of the Florida House of Representatives, the Florida House of Representatives, the Hon. Mike Haridopolos, in his official capacity as President of the Florida Senate, and the Florida Senate (the "Legislative Defendants") move to dismiss Count I of the Second Amended Complaint filed by Plaintiffs Rene Romo, Benjamin Weaver, *et al.*, on April 3, 2012 (the "Romo Complaint").

BACKGROUND

The Romo Plaintiffs initiated this action by filing their complaint on February 9. They subsequently amended their complaint, and Defendants moved to dismiss because the amended complaint included only naked legal conclusions. Rather than oppose the motion to dismiss or defend their complaint, the Romo Plaintiffs filed a second amended complaint. Like its predecessors, the second amended complaint ("SAC") is legally deficient and must be dismissed.

THE ROMO PLAINTIFFS HAVE NOT ALLEGED THE EXISTENCE OF AN ADDITIONAL HYPOTHETICAL MAJORITY-MINORITY DISTRICT, SO THEY CANNOT ASSERT ANY CLAIM THAT THE CONGRESSIONAL PLAN DENIES OR ABRIDGES THE EQUAL OPPORTUNITY OF RACIAL AND LANGUAGE MINORITIES TO PARTICIPATE IN THE POLITICAL PROCESS

The SAC includes one lone count, which attacks multiple districts for multiple reasons. But because the lone count depends on the Romo Plaintiffs' flawed legal theory—that the Congressional Plan denies or abridges the equal opportunity of racial or language minorities to participate in the political process even absent the possibility of an additional majority-minority district—the count fails.

First, sorting out their various attacks on various districts is difficult because the Romo Plaintiffs combined all attacks into a single count. *See Dubus v. McArthur*, 682 So. 2d 1246, 1247 (Fla. 1st DCA 1996) ("It is apparent that the task of the trial court here was made more difficult because the appellants' amended complaint improperly attempts to state in a single count separate causes of action for vicarious liability and for negligent entrustment.") (citing Fla. R. Civ. P. 1.110(f)). But because the sole count depends on an erroneous legal theory—and thus fails to state a cause of action—this Court must dismiss it. *See Eagletech Communications, Inc. v. Bryn Mawr Inv. Group, Inc.*, 79 So. 3d 855, 863 (Fla. 4th DCA 2012) ("[T]he trial court correctly dismissed [Plaintiff's] single fraud count because [Plaintiff] impermissibly comingled separate and distinct fraud claims in a single count.") (citing Fla. R. Civ. P. 1.110(f) ("Each claim founded upon a separate transaction or occurrence ... shall be stated in a separate count ...

when a separation facilitates the clear presentation of the matter set forth.")); *see also K.R. Exch. Servs., Inc. v. Fuerst, Humphrey, Ittleman, PL*, 48 So. 3d 889, 893 (Fla. 3d DCA 2010) ("A party should plead each distinct claim in a separate count, rather than plead the various claims against all of the defendants together."). If the Romo Plaintiffs seek to present challenges independent of this flawed theory, they must plead them separately.

Next, Amendment Six's minority protections actually encompass two separate standards. First, districts must not "deny or abridge the equal opportunity of . . . minorities to participate in the political process." Art. III. § 20(a), Fla. Const. As the Florida Supreme Court announced, this imperative "is essentially a restatement of Section 2 of the Voting Rights Act (VRA), which prohibits redistricting plans that afford minorities 'less opportunity than other members of the electorate to participate in the political process.'" Op. at *49. Like Section 2, this prohibits dilution of minority voting strength. *Id.*; *see also Thornburg v. Gingles*, 478 U.S. 30, 51 (1986). Second, Amendment Six prohibits diminishment from the status quo of minority electoral opportunities, effectively imposing a statewide VRA Section 5 standard. *Compare* 42 U.S.C. § 1973c(b) (prohibiting districts that "diminish[] the ability of [minorities] to elect their preferred candidates of choice") *with* Art. III. § 20(a), Fla. Const. (disallowing districts that "diminish [minorities'] ability to elect representatives of their choice").

The Florida Supreme Court explained that Amendment Six's minority protections are properly interpreted consistent with the federal VRA:

> Consistent with the goals of Sections 2 and 5 of the VRA, Florida's corresponding state provision aims at safeguarding the voting strength of minority groups against both impermissible dilution and retrogression. Interpreting Florida's minority voting protection provision in this manner gives due allegiance to the principles of constitutional construction, under which the Court considers "the purpose of the provision, the evil sought to be remedied, and the circumstances leading to its inclusion in our constitutional document." *In re Apportionment Law–1982*, 414 So.2d at 1048. Before its placement on the ballot and approval by the citizens of Florida, sponsors of this amendment, including the Florida State Conference of NAACP Branches (NAACP) and Democracia Ahora, acknowledged that

> Florida's provision tracked the language of Sections 2 and 5 and was perfectly consistent with both the letter and intent of federal law. See Amici Curiae Br. of Fla. State Conference of NAACP Branches & Democracia Ahora, Inc., at 3–5, *Roberts v. Brown*, 43 So.3d 673 (Fla.2010) (No. SC10-1362). Those groups further contended that viewing "the requirements of [Florida's provision as being] thoroughly consistent with the Voting Rights Act's text and [placing an] emphasis on protecting the equal opportunities of minorities" did "not require extended analysis to see." Id. at 8.
>
> Moreover, all parties to this proceeding agree that Florida's constitutional provision now embraces the principles enumerated in Sections 2 and 5 of the VRA. Because Sections 2 and 5 raise federal issues, our interpretation of Florida's corresponding provision is guided by prevailing United States Supreme Court precedent. This approach not only corresponds to the manner in which this Court addressed Federal VRA claims in 1992, see In re Apportionment Law–1992, 597 So.2d at 280–82, but it squares with how other jurisdictions have interpreted comparable state provisions.

Op. at *21-22.

It is clear that the Romo Plaintiffs have no federal claim under Section 2 (they don't even bring one), so they likewise have no claim under Amendment Six's counterpart. A successful vote-dilution claim requires a showing that minorities were denied a majority-minority district that—but for the purported dilution—would have existed. In other words, it requires a showing that minorities could have constituted a majority in an additional compact district. *See Johnson v. De Grandy*, 512 U.S. 997, 1008 (1994) (in dilution claim, "the first *Gingles* condition requires the possibility of creating more than the existing number of reasonably compact [minority] districts"). The showing of a hypothetical additional minority-performing district is insufficient; "the minority population in the potential election district [must be] greater than 50 percent." *Bartlett v. Strickland*, 556 U.S. 1, 19-20 (2009).

The Romo Plaintiffs do not—and cannot—allege that the Legislature should have created an *additional* majority-minority district. That precludes any claim based on Section 2 or its Florida counterpart. Nor do they allege the existence of a hypothetical alternative plan that shows the ability to create such an additional district. Accordingly, Plaintiffs simply are

advancing a made-up claim that finds no support in federal or state law.

THE ROMO PLAINTIFFS HAVE NOT ALLEGED A CAUSE OF ACTION REGARDING DIMINISHMENT

Regarding the second provision of Amendment Six's minority protections—that districts shall not diminish minorities' ability to elect representatives of their choice—the Romo Plaintiffs likewise fail to state a cause of action. They include the conclusory allegation that "Congressional District 5 was drawn with the intent to diminish the ability of racial and language minorities to elect representatives of their choice," (SAC ¶ 20(b)), and similar conclusory allegations regarding other districts, (*Id.* ¶¶ 22(c), 23(c), 24(c)) but have not alleged any ultimate facts to support that. They simply allege it, just as their earlier complaint did. At bottom, the Romo Plaintiffs have failed to state a claim regarding the racial provisions, and their lone count must be dismissed.

THE COURT SHOULD STRIKE PLAINTIFFS' REQUEST FOR THIS COURT TO DRAW A REMEDIAL MAP

Last, to the extent the Romo Plaintiffs ask the Court to draw a new map, the Court should strike the request. This Court has no authority to regulate federal elections, which the federal constitution expressly grants to state legislative processes. The Legislative Defendants incorporate the arguments they made in their March 12, 2012 filings on this issue.

WHEREFORE, the Legislative Defendants respectfully move the Court to dismiss Count I of the Romo Plaintiffs' Second Amended Complaint.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was sent by United States mail on April 18, 2012, to the persons listed on the attached Service List.

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