IN THE CIRCUIT COURT OF THE

SECOND JUDICIAL CIRCUIT, IN AND

FOR LEON COUNTY, FLORIDA

RENE ROMO, an individual; BENJAMIN WEAVER, an individual; WILLIAM EVERETT WARINNER, an individual; JESSICA BARRETT, an individual; JUNE KEENER, an individual; RICHARD QUINN BOYLAN, an individual; and BONITA AGAN, an individual,

Plaintiffs,

v.

KEN DETZNER, in his official capacity as Florida Secretary of State, and PAM BONDI, in her official capacity as Attorney General of the State of Florida,

Defendants.

CASE NO. 2012-CA-00412

THE LEAGUE OF WOMEN VOTERS OF FLORIDA, *et al.*

Plaintiffs,

v.

KEN DETZNER, in his official capacity as Florida Secretary of State; THE FLORIDA SENATE; MICHAEL HARIDOPOLOS, in his official capacity as President of the Florida Senate; THE FLORIDA HOUSE OF REPRESENTATIVES; and DEAN CANNON, in his official capacity as Speaker of the Florida House of Representatives,

Defendants.

CASE NO. 2012-CA-00490

ROMO PLAINTIFFS' RESPONSE IN OPPOSITION TO MOTION TO DISMISS

In yet another attempt to avoid judicial scrutiny of the Florida Legislature's unconstitutional congressional plan, Defendants' most recent motion to dismiss ignores both the plain language of Plaintiffs' complaint and controlling Supreme Court precedent. Plaintiffs respectfully submit that Defendants' motion should be firmly denied. This litigation raises critical issues with respect to the fundamental rights to fair districts guaranteed to all Florida citizens. Defendants' invitation to this Court to avoid resolution of the merits of this dispute should be declined.

A. The Romo Plaintiffs Have Stated a Claim for Unconstitutional Denial and Abridgement of Minority Voting Rights.

Defendants first contend that Plaintiffs fail to state a claim under either Section 2 of the Voting Rights Act or "Amendment Six's counterpart." Leg. Defs.' Jt. Mot. to Dismiss Romo Pls.' Second Am. Compl. ("Mot. to Dismiss") at 4.[1] But as Defendants point out, the Romo Plaintiffs have not brought a federal claim under the Voting Rights Act. *Id.* It is hardly surprising that Plaintiffs have focused their arguments in this state court solely on the 2012 Congressional Plan's violations of state constitutional law.

What is surprising, however, is Defendants' effort to litigate a hypothetical Section 2 claim that is not before this Court rather than confront the Florida Supreme Court's interpretation of the state constitution—which governs the claim that *is* before this Court. According to Defendants, "[t]he 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." *Id.* Remarkably absent from Defendants' motion, however, is any citation to the Florida Supreme Court's specific holding that, even where a challenger "does not demonstrate that an additional majority-minority district can be created," "a violation of the

[1] The Secretary of State and Attorney General have adopted the arguments set forth in the Legislative Defendants' Joint Motion to Dismiss. The Romo Plaintiffs hereby respond to all of the motions to dismiss filed by Defendants.

Florida minority voting protection provision could be established by a pattern of overpacking minorities into districts where other coalition or influence districts could be created." *In Re: Senate Joint Resolution of Legislative Apportionment 1176*, No. SC12-1, slip op. at 126-27 (Fla. Mar. 9, 2012) ("Op."). The Romo Plaintiffs' Second Amended Complaint plainly alleges a pattern of overpacking minorities into a handful of congressional districts with both the intent and result of diluting minority influence in surrounding districts. *See* Second Am. Compl. ¶¶ 19(b), 20(b), 21, 22(b), 24(b). Defendants' suggestion that "Plaintiffs simply are advancing a *made-up claim* that finds no support in federal or state law," Mot. to Dismiss at 4-5 (emphasis added), baldly ignores the law governing the claims presented in this litigation. Plaintiffs' specific claims have been expressly recognized and permitted by the Florida Supreme Court. Defendants' effort to disregard the Supreme Court's opinion in defending the 2012 Congressional Plan is, to put it mildly, unavailing.

B. The Romo Plaintiffs Have Stated a Claim for Intent to Diminish Minority Voting Rights.

Defendants next contend that the Romo Plaintiffs have failed to "allege[] any ultimate facts to support" their claim that certain districts were drawn with an improper intent to diminish the ability of racial or language minorities to elect representatives of their choice. Mot. to Dismiss at 5. But Defendants have either neglected to read the Second Amended Complaint or have chosen to ignore it. In either event, the contention is squarely refuted by even a cursory review of that document.

The Second Amended Complaint plainly alleges that the Legislature's improper intent with regard to minority voting rights is reflected in its failure to conduct a proper functional analysis of minority voting rights when drawing the Plan. *See* Second Am. Compl. ¶¶ 19(c), 20(c), 22(c), 23(c), 24(c). For instance, paragraph 19(c) of the Complaint provides that "[t]he

2012 Congressional Plan was drawn with the intent to diminish the ability of racial and language minorities to elect representatives of their choice, as indicated by, among other things, the fact that the Plan was drawn without a proper functional analysis of minority voting rights." Indeed, the Florida Supreme Court made clear that the extent to which the Legislature performed a functional analysis was pivotal in its review of the constitutionality of the state legislative plans. *See, e.g.*, Op. at 151 ("[B]ecause the Senate never performed an appropriate functional analysis. the reliability of [its minority voting protection] justification is questionable."); *id.* at 161 ("[I]n light of the Senate's failure to conduct a functional analysis as to District 12, we conclude that there is no valid constitutional justification for District 10.").

In their summary judgment response brief, the Legislative Defendants expressly conceded that "the 'functional analysis' was a cornerstone of the Florida Supreme Court's decision to invalidate eight of forty Senate Districts." Legislative Defs.' Jt. Resp. in Opp'n to Pls.' Mots. for Summ. J. at 30. But while Defendants' summary judgment brief addressed Plaintiffs' arguments about the lack of a proper functional analysis, their present motion pretends Plaintiffs never made such allegations.

C. Defendants Misunderstand the Interrelated Criteria Established by Article III, Section 20.

Defendants next argue that the Court should dismiss the Romo Plaintiffs' entire complaint if it finds no violation relating to minority voting rights. *See* Mot. to Dismiss at 5 ("At bottom, the Romo Plaintiffs have failed to state a claim regarding the racial provisions, and their lone count must be dismissed.").[2] Defendants' suggestion that Plaintiffs' entire challenge rises and falls with their minority voting rights claim ignores the plain meaning of Article III, Section 20. The 2012 Congressional Plan must abide by *all* of the standards in that constitutional

[2] Although the basic structure of the Romo Plaintiffs' complaint has not changed since it was originally filed on February 9, 2012, Defendants' prior motion to dismiss did not include this argument.

provision. *See* Op. at 39 ("[T]he Legislature's obligation is to draw legislative districts that comport with all of the requirements enumerated in Florida's constitution."); *id.* at 97 ("[T]he Court's obligation is to ensure that 'every clause and every part' of the language of the constitution is given effect where 'an interpretation can be found which gives it effect.'") (quoting *In re Apportionment Law Senate Joint Resolution 1305*, 263 So.2d 797, 807 (1972)). It is no defense that the Plan satisfies one standard where it unjustifiably fails other constitutional requirements. Thus, even if the plan complied with the minority voting rights provisions, that would hardly inoculate it from further constitutional scrutiny. *See id.* at 97 ("It is critical that the requirement to protect minority voting rights when drawing district lines should not be used as a shield against complying with Florida's other important constructional imperatives."). Because the constitutional requirements set forth in Article III, Section 20 are interdependent, such that a proper review requires an evaluation of "how these standards interact," *id.* at 92, Defendants' suggestion that a finding that the Plan does not violate minority voting rights somehow precludes consideration of all other constitutional requirements is inconsistent with the constitutional principles adopted by the Florida voters and interpreted by the Florida Supreme Court.

Moreover, to the extent Defendants claim to be confused by the nature of Plaintiffs' cause of action, *see* Mot. to Dismiss at 2, their claim is disingenuous. Plaintiffs' claims have already been thoroughly briefed and argued on facial review, and Defendants' eighty-page brief in opposition to summary judgment and lengthy argument hardly suggest they failed to understand Plaintiffs' claims or were at a loss regarding how to respond. Defendants are plainly on notice of Plaintiffs' specific claims and allegations. *See Dawson v. Blue Cross Ass'n*, 293 So.2d 90, 92 (Fla. 1st DCA 1974) ("If the complaint contains sufficient allegations to inform the

defendant of the charges of wrongdoing which constitutes the real basis for the plaintiff's complaint so that the defendant may intelligently answer, it should be held sufficient.").

D. This Court Has Authority to Draw a Remedial Map.

Finally, Defendants once again argue that this Court "has no authority to regulate federal elections" and should therefore strike Plaintiff's prayer for relief that the Court impose a remedial map. This issue has already been fully briefed by the parties, and accordingly the Romo Plaintiffs incorporate the arguments made in their March 12, 2012 filing. Indeed, Defendants' suggestion that the Court's hands are tied—that the judiciary has no authority to meaningfully review the Legislature's compliance with constitutional criteria or order a remedy to protect Florida voters' constitutional rights—is, by now, a familiar theme. Unfortunately for Defendants, the argument lacks any basis in state or federal law. As the Florida Supreme Court made clear, "'a denial of constitutionally protected rights demands judicial protection; our oath and our office require no less of us.'" Op. at 19 (quoting *Reynolds v. Sims*, 377 U.S. 533, 566 (1964)).

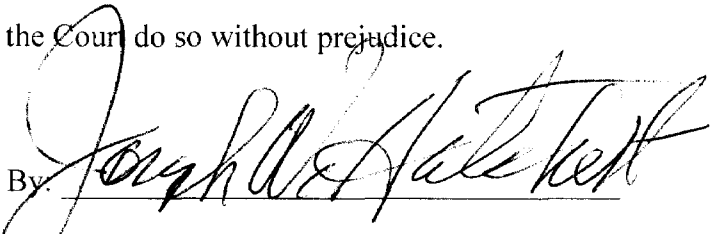
E. If the Court Grants the Motion to Dismiss, It Should Do So Without Prejudice.

Even if Defendants were to prevail on their motion, any order of dismissal should be without prejudice. *See, e.g.*, *Horton v. Freeman*, 917 So.2d 1064, 1066 (Fla. 4th DCA 2006) ("[T]rial courts must generally afford a litigant an opportunity to cure a defect in the pleading before dismissing it with prejudice."); *Mortgage Elec. Registration Sys., Inc. v. Azize*, 965 So.2d 151, 153 (Fla. 2d DCA 2007) ("In most circumstances, the trial court's dismissal of a complaint should be without prejudice to the plaintiff's amendment to the complaint to cure the deficiencies."). Indeed, Defendants do not suggest otherwise.

CONCLUSION

For all of the foregoing reasons, the Romo Plaintiffs respectfully request that the Court deny Defendants' Motion to Dismiss. In the event the Court sees fit to grant the Motion to Dismiss, the Romo Plaintiffs respectfully request the Court do so without prejudice.

Dated: May 15, 2012

By: 

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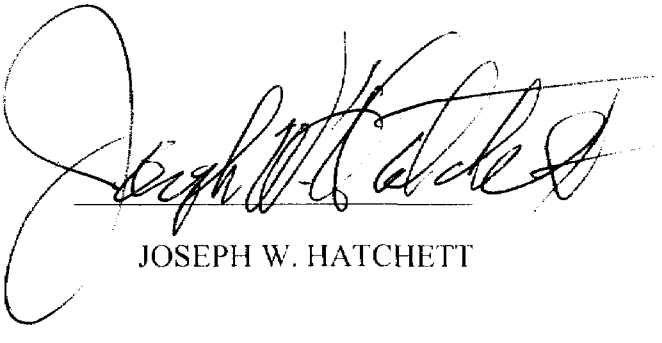
this 15th day of May, 2012.



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