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

RENE ROMO, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CASE NO. 2012-CA-00412
	)	
KEN DETZNER and PAM BONDI,	)	
	)	
Defendants.	)	
	)	
_____	)	
	)	
THE LEAGUE OF WOMEN VOTERS OF FLORIDA, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CASE NO. 2012-CA-00490
	)	
KEN DETZNER, et al.,	)	
	)	
Defendants.	)	

OPPOSITION OF DEFENDANT-INTERVENOR FLORIDA NAACP TO PLAINTIFFS' PROPOSED REMEDY AND PROPOSED CHANGES TO GENERAL ELECTION SCHEDULE

I. INTRODUCTION

The Florida State Conference of NAACP Branches (hereinafter, "NAACP") intervened in this action to ensure that application of the new constitutional provisions would provide considered protections for African-American voters in the state—voters who the redistricting amendments were adopted in order to protect.

This Court made findings that impermissible partisan intent tainted the 2012 Congressional redistricting plan—the NAACP is a non-partisan organization, and did not focus on that element of the new redistricting amendments. Instead, the NAACP, as it always has been, focused on protecting the voting rights of traditionally-excluded voters, including African-American voters. That focus demands the NAACP's advocacy during this remedial stage of the litigation.

The NAACP takes no position on the appropriateness of this Court drawing a remedial plan as opposed to deferring to the legislature to remedy the flaws identified by this Court. The NAACP also takes no position with regard to the moving of election deadlines that precede the general election set for November 4, 2014. The NAACP does, however, oppose the Plaintiffs' proposed remedial plans, for the reasons set forth below, and opposes the use of a special election for any district changed in a remedial plan.

II. REMEDIAL PLAN

Both of Plaintiffs' remedial plans offer dramatic reconfigurations of Congressional District 5—a departure that will undoubtedly have a significant and detrimental effect on black voters in North Central Florida. Indeed, Plaintiffs' proposed plans would leave tens of thousands of black voters in north central Florida out in the cold, no longer able to be represented by someone who is familiar with what life is like for them.

As an overarching matter, *Thornburg v. Gingles* established, and the rule has never been departed from, that examining potential vote dilution requires an intensely local appraisal of the social and political climate in the cities and counties where the vote dilution, or potential for it, is alleged to be. 478 U.S. 30, 79 (1986). This is how jurisdictions drawing redistricting plans and

potential plaintiffs considering a vote dilution claim are required to conduct a vote dilution analysis.

All evidence before this Court is intensely local to a north-south configuration of CD 5, not to an east-west configuration. During trial, Plaintiffs proffered no evidence that a voting rights remedy was necessary or justified along the Florida-Georgia border in North Florida. Even though this Court concluded that compliance with the vote dilution prohibition did not justify the district as enacted, all evidence of dilution before the Court still related to only one orientation of such a minority opportunity district—the north-south orientation.

Between the lay testimony offered to the Court, and the expert testimony of Dr. Paulson and Dr. Cassanello, this Court was presented with the same story, over and over again. Black voters in north central Florida, along the north-south axis, are bound by a shared history, and by shared concerns and interests today. Despite living in different cities and counties along the district, these voters are all faced with impediments to participating in the political process, from inadequate public services to constantly moving polling places. Black voters in this region are struggling with the lack of affordable housing, segregated housing and segregated schools, glaring disparities in the criminal justice system, lack of city services, and urban renewal encroaching on affordable housing. And significantly, they face the persistent inability to consistently elect black candidates in local elections. These challenges mean that in this area of the state, a district is still necessary to preserve the opportunity for black voters to participate in the political process. Plaintiffs have proffered no evidence that such a district is necessary in an entirely different part of the state, which is essentially what their east-west configuration offers.

Indeed, the law does not support such an approach, either. If vote dilution, or the potential for it, exists in one part of the state, that problem is not and cannot be solved by placing

a minority opportunity district in another part of the state. *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 429 (2006) ("The vote-dilution injuries suffered by these persons [in one area of the state where vote dilution evidence is accepted] are not remedied by creating a safe majority-black district somewhere else in the State.") (citing *Shaw v. Hunt*, 517 U.S. 899, 917, n. 9 (1996)).

Moreover, if this Court does decide to develop a remedial plan, it must defer to all of the legislature's policy decisions that are not explicitly found to be unconstitutional. *Perry v. Perez*, 132 S. Ct. 934, 941 (2012) (holding that, with regard to an interim remedial plan, a court "should be guided by the legislative policies underlying a state plan--even one that was itself unenforceable--to the extent those policies do not lead to violations of the Constitution or the Voting Rights Act.") (internal citations omitted). In its Final Judgment, this Court found issue with enacted CD 5, but not the fact that it was a district that was oriented in the north-south direction. That was a valid policy decision by the legislature, one supported during the legislative process by the NAACP. Absent a finding that such a decision was unconstitutional, this Court may not order a remedy that rejects that policy decision.

Finally, in its Final Judgment, this Court performed no analysis of whether an east-west configuration of CD 5 would diminish the ability of black voters to elect their candidate of choice. In a diminishment analysis, turnout matters. Going from a district in which black voters outnumber white voters to a district where white voters outnumber black voters is a huge difference, and changes the status of the district. But this is precisely what happens with the Plaintiffs' proposed remedial plans. For example, in the Coalition Plaintiffs' proposed remedial maps, the NAACP's calculations indicate that in the 2008 general election, white voters constituted 47.14% of the electorate, while black voters constituted only 45.53% of the

electorate. In 2012, those numbers were slightly improved, with white voters constituting 46.05% of the electorate and black voters constituting 46.57%% of the electorate. But most tellingly, in the 2010 election—a mid-term election without Barack Obama on the ballot, similar to what will be seen in 2014—white voters constituted 52.68% of the electorate, while black voters only constituted 41.99% of the electorate. That is, white turnout exceeded black turnout by over 10% of the vote. Thus, Plaintiffs' proposed district is one in which white voters generally control the outcome of the election, and by a substantial margin in off-year elections. As such, that district cannot be considered equivalent to a version of CD 5 that maintains the north-south configuration, even if such a trade-off were legally acceptable (which it is not).

III. PROPOSED CHANGES TO ELECTION SCHEDULE

The NAACP vigorously opposes Plaintiffs' proposals that the general election date be abandoned and a special election be instead ordered for any districts changed by a remedial plan. To be sure, Coalition Plaintiffs have offered one plan where the general election date does not change, and Romo Plaintiffs have asserted that it is possible to maintain the current general election date. But both Plaintiffs assert that this Court has the authority to order a later, special election, and that such an outcome would be justified and desirable. It would not.

Turnout in special elections is notoriously low—Florida in recent months has demonstrated that. *See*, Paul Steinhauser and Deirdre Walsh, "What We Learned from Florida-13," April 7, 2014, available at http://www.cnn.com/2014/03/12/politics/lessons-from-florida-special-election/?c=&page=5. In a special election, get-out-the-vote infrastructure simply does not exist to the same extent it does in a typical general election. Voters who face challenges to political participation—be it financial, job scheduling, transportation, or other impediments—will be irreparably harmed by conducting the election at a time where that infrastructure does not

exist. In North Central Florida, these voters are predominantly voters of color. This cannot be an appropriate remedy to enforce the minority voting rights guarantees now embedded in the Florida Constitution.

IV. CONCLUSION

As the NAACP has consistently argued, it cannot have been the intent of voters of the state, in approving Amendment 6, to have rendered irrelevant all redistricting input from its citizens, including those citizens explicitly protected by the amendment. The Florida NAACP respectfully requests that this Court decline to adopt Plaintiffs' proposed remedial plans, and refuse to order a special election be conducted for districts changed in any remedial plan.

Dated: July 29, 2014

Respectfully submitted,

/s/ Allison J. Riggs

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this, the 29th day of July, 2014, a true and correct copy of the foregoing was sent by electronic mail to the following counsel of record on the attached service list.

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