IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

NEIL PARROTT, *et al*.,	*	
Plaintiffs,	*	
	*	
v.	*	Civil Action 1:15-cv-01849-GLR
LINDA H. LAMONE, *et al*.,	*	
Defendants.	*	

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DEFENDANTS' REPLY MEMORANDUM
IN SUPPORT OF MOTION TO DISMISS

The plaintiffs' lawsuit is grounded upon a plainly erroneous legal premise. In their Opposition to the Motion to Dismiss, the plaintiffs attempt to justify or excuse their failure to plead elements necessary to prove political gerrymandering by equating their claim to that of voters in malapportioned districts, asserting that they "need only plead that they are voters in congressional districts that are less than half as compact as they could be." (ECF-13 at 29.) This is not a plausible legal theory and the plaintiffs have cited no authority to support their assertion. Any attempted analogy between a lawsuit alleging population inequality and one alleging that congressional districts are less compact than the plaintiffs believe they should be breaks down at the most basic level. Article I, § 2 of the United States Constitution requires districts of equal population.

Reynolds v. Sims, 377 U.S. 533 (1964); *Wesberry v. Sanders*, 376 U.S. 1 (1964). No part of the Constitution requires that congressional districts be of any shape or relative compactness, much less the arbitrarily-chosen standard espoused by the plaintiffs. *Shaw v. Reno*, 509 U.S. 630, 647 (1993) (traditional districting criteria such as compactness, contiguity, and respect for political boundaries are not "constitutionally required"); *Duckworth v. State Admin. Bd. of Elections*, 332 F.3d 769, 775 (4th Cir. 2003) ("[A]llegations that districts have a bizarre appearance . . . are not probative as to the discriminatory effect that must be proven in political gerrymandering cases . . ."). Under Article I, § 2, population inequality *is* the representational injury that must be avoided or justified as "necessary to achieve some legitimate goal." *Karcher v. Daggett*, 462 U.S. 725, 731 (1983). That is, of course, not true of non-compactness, as the plaintiffs concede. (ECF-13 at 22.)

The plaintiffs are also clearly wrong in asserting that the non-justiciability of political gerrymandering claims is limited to claims based on the Equal Protection Clause, on which they disavow any reliance. (ECF-13 at 25.) In other words, the plaintiffs suggest that the non-justiciability problem that has doomed all previous political gerrymandering claims disappears once it is realized that Article I, § 2 actually does require the degree of relative compactness they prescribe. Again, the plaintiffs cite no authority for this remarkable proposition, nor do they offer any explanation why so simple a solution has eluded litigants and the courts for decades. In fact, the claim is

demonstrably untrue and, further, completely ignores what gerrymandering is. *First*, courts have examined political gerrymandering claims from a variety of perspectives, including Article I, § 2, and have always found them, from any angle, non-justiciable. *See, e.g.*, *Vieth v. Jubelirer*, 541 U.S. 267, 305 (2004) ("We conclude that neither Article I, § 2 nor the Equal Protection Clause, nor . . . Article I, § 4, provides a judicially enforceable limit on the political considerations that the States and Congress may take into account when districting."); *see also Pope v. Blue*, 809 F. Supp. 392, 397-98 (W.D.N.C. 1992) ("[T]he Court has made it clear that Article I, § 2 only proscribes districts of unequal population. Claims regarding the political makeup of those districts must be judged by the more rigorous standards of the Fourteenth Amendment, as outlined in *Davis v. Bandemer*.") (quoting *Badham v. March Fong Eu*, 694 F. Supp. 664, 674-75 (N.D. Cal. 1988), *aff'd mem.*, 488 U.S. 1024 (1989)).

Second, the concept of discrimination, and thus equal protection, cannot be separated from a gerrymandering claim. "The act of drawing district lines to favor the majority party (*i.e.*, "political gerrymandering") *is* the act of discriminating against voters based on their political beliefs." *Radogno v. Illinois State Bd. of Elections*, No. 1:11-cv-04884, 2011 WL 5868225, at *5 (N.D. Ill. Nov. 22, 2011) (emphasis in original). A political gerrymandering claim does not cease to involve discrimination simply because a plaintiff fails to plead any specifics about the kind of gerrymander he or she is alleging, including which cohesive political group is allegedly harmed. Such omissions do not in

any way strengthen the plaintiffs' claim, as they appear to believe, but fatally undermine it. In sum, the plaintiffs' failure to plead discrimination cannot be excused simply because they do not allege a violation of the Equal Protection Clause, nor does that questionable choice transform an otherwise non-justiciable political gerrymandering claim into a justiciable one. Rather, the failure even to recognize why a discriminatory effect must be alleged and proved only reinforces the implausibility and insubstantiality of the legal theory asserted in the complaint.

Finally, the plaintiffs incorrectly assert that "legislators' misappropriation of the people's power to select legislators has never been addressed by any court." (ECF-13 at 25.) The plaintiffs' embrace of this "misappropriation" metaphor does not represent a new legal theory or cause of action; it is not even a new metaphor. All political gerrymandering cases, including this one, are about an alleged "power grab" by mapmakers through the intentional manipulation of district lines. The activity that the plaintiffs complain of is illegal districting, not theft. Thus, *every* court that has addressed, and rejected, political gerrymandering claims has ruled on this issue.

CONCLUSION

The defendants' motion to dismiss should be granted and the plaintiffs' request to convene a three-judge district court should be denied.

Respectfully submitted,

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