UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ANNE HARDING, et al.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	C.A. NO. 3:15-CV-00131-D
	§	
COUNTY OF DALLAS, TEXAS, et al.,	§	
	§	
Defendants,	§	

BRIEF IN SUPPORT OF PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

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The Plaintiffs submit this brief in support of their contemporaneously filed response (the "Response") to the Defendants' Motion for Summary Judgment.[1]

I. SUMMARY

The Defendants' MSJ asks the Court for judgment on the Plaintiffs' 3 claims on both procedural and substantive grounds. Procedurally, the Defendants argue: (i) the Plaintiffs' lack standing to pursue 2 of their claims (their *Shaw*-style claim under the 14th Amendment (the "First Equal Protection Claim");[2] and their statutory claim under §2 of the Voting Rights Act (the "VRA" and the "§2 Claim")); and (ii) the Plaintiffs failed to assert a *Shaw*-style claim. Substantively, the Defendants claim that the Plaintiffs have not met their burden of proof concerning a number of required elements for these same claims, adding that the Plaintiffs' third claim (the "Alternative Equal Protection Claim") is foreclosed by binding authority.

The Defendants' MSJ should be denied, because that's almost all wrong (and even what's right would be susceptible to abuse by the Defendants at a later stage of this litigation).

The Defendants' standing argument should be dismissed out of hand, because the Plaintiffs clearly satisfy the relevant standards.

The Defendants' MSJ should be denied as to the §2 Claim, because factual issues preclude the Court from ruling on it without a trial: the Defendants' contentions notwithstanding, the record includes ample evidence to satisfy both: (a) the second *Gingles* pre-condition; and

[1] Dkt. 92. The Response refers to Dkt. 92, along with the Defendants' related brief (Dkt. 93), as the "Defendants' MSJ[,]" and to the Defendants' related brief, in isolation, as the "Defendants' MSJ Brief[.]"
[2] *Shaw v. Reno*, 509 U.S. 630 (1993).

(b) a host of factors the Court may consider in determining that Dallas Anglos have less opportunity than others to elect their preferred Commissioners.

The Defendants' MSJ should be denied as it relates to the First Equal Protection Claim, because the Defendants: (i) mischaracterize authority demonstrating the sufficiency of Plaintiffs' complaint to argue the Plaintiffs have not pled a *Shaw*-style claim; (ii) entirely ignore the record proof, cited in support of the Plaintiffs' own summary judgment motion,[3] demonstrating that race predominated over all other factors in the crafting of the map at issue in this litigation (the "EP") and each of its component Commissioners Court Districts (each a "CCD" and, together, the "CCDs"); (iii) silently elide over their (uncurable, fatal) failure to plead *any defense* to the First Equal Protection Claim, to assert two waived defenses; and (iv) allege that they've met their burden of proving these waived defenses through: (a) conclusory allegations at odds with the actual record; and (b) reference to the individual *Plaintiffs*' lack of personal knowledge of legislative intent, early in this discovery process.

Finally, the Defendants' MSJ should be denied as to the Plaintiffs' Alternative Equal Protection Claim, because, even if the Defendants don't argue for the relevant faulty construction of the VRA in their MSJ, their experts – in apparent consultation with Defendants' counsel – have testified under oath in support of *exactly* this unconstitutional interpretation of the VRA.

II. LEGAL STANDARDS

Courts grant summary judgment when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law.[4] Summary judgment must be denied if

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[3] Dkt. 89.
[4] Fed. R. Civ. P. 56(c); *LTV Ed. Sys., Inc. v. Bell*, 862 F.2d 1168, 1172 (5th Cir. 1989).

genuine, material fact issues could be resolved in favor of either party.[5] The movant bears "the initial responsibility of informing the district court of the basis of its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any' which it believes demonstrates the absence of a genuine issue of material fact."[6] Where a movant makes a proper showing, the burden shifts to the non-movant to come forward with evidence showing a genuine issue for trial.[7]

In addressing the §2 Claim, the Court must first establish whether the Plaintiffs have standing to contest the various CCDs. A member of a racial minority residing in a district where that minority has either been "packed" or "cracked" has standing under VRA §2 to challenge his or her district.[8] If standing is established, a court engages in a two-staged inquiry, first determining whether plaintiffs have met their burden in establishing three *Gingles* factors: (a) their group is sufficiently large and geographically compact that it could constitute a majority in an additional district; (b) the group is politically cohesive; and (c) the majority usually votes as a bloc to – in the absence of special circumstances – defeat the minority's preferred candidate;[9] before analyzing whether the members of the plaintiffs' minority group have been afforded an

[5] *Anderson v. Liberty Lobby*, 477 U.S. 242, 250 (1986).

[6] *Celotex Corp. v. Catrett,* 477 U.S. 317, 323 (1986). *See also Skotak v. Tenneco Resins, Inc.*, 953 F.2d 909 (5th Cir. 1992); *Russ v. International Paper Co.*, 943 F.2d 589, 592 (5th Cir. 1991).

[7] *Celotex Corp. v. Catrett*, 477 U.S. at 323.

[8] For §2 standing of "packed" minority voters, s*ee, e.g., Thornburg v. Gingles*, 478 U.S. 30, 46 at n. 11 (1986) (actionable "dilution of racial minority group voting strength may be caused by … the concentration of [such voters] into districts where they constitute an excessive minority."); *Perez v. Texas*, 2011 U.S. Dist. LEXIS 155222, *24, and *44-*46 (W.D. Tex. 2011) (denying motion to dismiss dilution claims offered in challenge to districts that "packed" minority voters into districts that ensured a loss in voting strength); for §2 standing of "cracked" minority voters, see *e.g., Gingles*. 478 U.S. at 46 at n. 11 (actionable "dilution of racial minority group voting strength may be caused by the dispersal of [such voters] into districts in which they constitute an ineffective minority of voters…."); *Perez*, 2011 U.S. Dist. LEXIS at *42-*43 (denying motion to dismiss dilution claim offered in challenge to districts fragmenting an individual plaintiff from his minority community).

[9] *See, e.g., Benavidez v. Irving I.S.D.*, Civil Action No. 3:13–CV–0087–D, 2014 U.S. Dist. LEXIS 113239, *11-*12 (N.D. Tex. Aug. 15, 2014) (Fitzwater, C.J.) (citing *Gingles*, 478 U.S. at 50-51; *LULAC v. Clements*, 986 F.2d 728, 741 (5th Cir. 1993) (other internal citations omitted)).

equal opportunity to elect their preferred candidates to office.[10] In conducting the latter balancing inquiry, courts consider a list of factors from the VRA's legislative history that is "neither comprehensive nor exclusive[,]" along with "other factors [that] may also be relevant[.]"[11]

For the First Equal Protection Claim, the Court must verify the Plaintiffs' standing to challenge the CCDs and, if they have it, determine if "race was the predominant factor motivating [a] legislature's decision to place a significant number of voters within or without a particular district."[12] The "Supreme Court has held that residents of a district allegedly the product of racial gerrymandering have standing to challenge the district."[13] Race predominated if it was the "dominant and controlling rationale" for the lines drawn and served as "the criterion that, in the [government]'s view, could not be compromised[,]" leaving "race neutral criterion" to "c[o]me into play only after race-based decision[s] had been made."[14]

Finally, the Plaintiffs' Alternative Equal Protection Claim is governed by the 14th Amendment and its general case law concerning the Constitutionality of legislative enactments providing protections to some races, but not others. Binding authority establishes that enactments providing races with disparate treatment (either on their face or as applied) are unconstitutional, unless they survive strict scrutiny.[15]

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[10] *Benavidez*, 2014 U.S. Dist. LEXIS at *11-*12.

[11] *Fabela v. City of Farmers Branch*, Civil Action No. 3:10–CV–1425–D, 2012 U.S. Dist. LEXIS 108086, *73 n.37 (N.D. Tex. Aug. 2, 2012) (Fitzwater, C.J.) (citing *Gingles*, 478 U.S. at 45).

[12] *Miller v. Johnson,* 515 U.S. 900, 916 (1995) .

[13] *Hays v. Louisiana*, 936 F.Supp. 360, 366 (W.D. La. 1996) (citing *Hays v. Louisiana*, 515 U.S. 737, ___; 115 S.Ct. 2431, 2436 (1995).

[14] *Bethune-Hill v. Va. St. Bd. of Elections*, 580 U.S. ___, ___; 137 S.Ct. 788, 798 (2017).

[15] *Fisher v. Univ. of Tex.*, 136 S.Ct. 2198, 2207-08 (2016) ("'because racial characteristics so seldom provide a relevant basis for disparate treatment … [r]ace may not be considered … unless [such usage] can withstand strict

III. UNCONTESTED FACTS

Gregory Jacobs lives in CCD 1.[16] Mr. Jacobs self-identifies as "white or Caucasian."[17] Holly Morse lives in CCD 2.[18] Ms. Morse self-identifies as part of the "Caucasian" minority of Dallas County.[19] Johannes Peter Schroer lives in CCD 3.[20] Mr. Schroer self-identifies as a member of Dallas's Anglo community.[21] Anne Harding lives in CCD 4.[22] Ms. Harding self-identifies as either Anglo or white.[23] CCDs 1, 3, and 4 were designed to have and retain non-Anglo majorities.[24] CCD 2 was designed to be and remains overwhelmingly Anglo.[25]

When Matt Angle drew the EP, he knew (from personal expertise) that Dallas Anglos prefer different candidates than do either Dallas African Americans or Hispanics.[26] He understood that the Commissioners Court had ordered him to draw the EP to include at least 3 CCDs with non-Anglo majorities that would perform for Hispanics, African Americans, or Hispanics and African Americans acting together;[27] necessarily, he knew he was drawing them to reject the Anglo community's preferred candidates. Mr. Angle expressly understood the Commissioners Court's order *not* to include Anglos among the racial minorities entitled to an opportunity to elect their preferred candidates where their populations were large and compact

scrutiny[.]" (internal citations omitted)).

16 *See* Dkt. 90 (the "Plaintiffs' MSJ Appendix"), at APP 98 - APP 99.
17 *See* Dkt. 94 (the "Defendants' MSJ Appendix"), at APP. 743.
18 *See* Plaintiffs' MSJ Appendix, at APP 100- APP 101.
19 *See* Defendants' MSJ Appendix, at APP 712 – APP 713.
20 *See* Plaintiffs' MSJ Appendix, at APP 104 – APP 105.
21 *See* Defendants' MSJ Appendix, at APP – 687.
22 *See* Plaintiffs' MSJ Appendix, APP 102 – APP 103.
23 *See* Defendants' MSJ Appendix, at APP 784.
24 *Id.* at APP 17 & APP 804.
25 *Id.*
26 *See* Plaintiffs' MSJ Appendix, APP 18 – APP 19.
27 *Id.* at APP 29 – APP 30.

enough to do so.[28] As Mr. Angle followed these instructions, "the population makeup of all these [CCDs] mattered" to how he drew them.[29] And he understood the Commissioners Court to include *no* partisan aims or goals in the criteria he must follow in drawing the EP.[30]

IV. ARGUMENT

A. DEFENDANTS NOT ENTITLED TO SUMMARY JUDGMENT ON BASIS OF STANDING ARGUMENT

The Defendants argue that the Plaintiffs lack standing to pursue their claims, because they have suffered no particularized harms. They dwell at length on the individual Plaintiffs' testimony concerning their personal knowledge of Dallas County policies and lack of interactions with Commissioners, under the seeming belief that, unless the Commissioners directly denied the Plaintiffs services or personally insulted them, the Plaintiffs cannot contest the EP under either the VRA or the Constitution.

The Defendants fail to appreciate the Supreme Court's repeated lesson that the "harms that flow from racial sorting 'include being personally subjected to a racial classification as well as being represented by a legislator who believes his primary obligation is to represent only the members of a particular racial group.'"[31] The very use of "unjustified racial classifications" *is* the particularized harm.[32] Accordingly, courts ask of each VRA plaintiff only if "he has suffered an injury because his vote for his preferred candidate in his district has been diluted as a result of the redistricting plan" – if the answer is yes, "[t]hat is a personalized injury sufficient to confer

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[28] *See* Plaintiffs' MSJ Appendix, at APP 30.
[29] *See* Plaintiffs' MSJ Appendix, at APP 37.
[30] *See* Plaintiffs' MSJ Appendix, at APP 39 ("Q: … we've agreed the Court ordered you to comply with these criteria, yes? A: Correct. Q: And that partisanship isn't on it? A: That's correct.").
[31] *Bethune-Hill*, 580 U.S. at ___; 137 S.Ct. at 797 (citing *Alabama Legislative Black Caucus v. Alabama,* 575 U.S. ___, ____, 135 S. Ct. 1257, ___, 191 L. Ed. 2d 314, 326 (2015)).
[32] *Bethune-Hill*, 580 U.S. at ___; 137 S.Ct. at 798.

standing."[33] Similarly, all courts ask to establish the standing of plaintiffs bringing *Shaw*-style claims is that they be "residents of a district allegedly the product of racial gerrymandering."[34]

There is no dispute that a Plaintiff lives in each of the CCDs. There is no dispute that each Plaintiff self-identifies as Anglo. Accordingly, the Plaintiffs have standing to pursue the §2 Claim, challenging the "packing" and "cracking" Dallas's Anglos between the CCDs. They also have clear standing, as residents within CCDs drawn on the basis of race, to challenge the CCDs through their First Equal Protection Claim.[35] The Defendants' belaboring of the individual Plaintiffs' interactions with the Commissioners Court is irrelevant.

B. DEFENDANTS NOT ENTITLED TO SUMMARY JUDGMENT ON THE §2 CLAIM

The Defendants' MSJ asks the Court for summary judgment on the §2 Claim on 4 additional bases. They claim that nothing in the record suggests that Dallas's Anglo community votes "cohesively." They, relatedly, claim that the *Clements* case requires dismissal.[36] They claim that the record is devoid of evidence suggesting that the EP denies Dallas Anglos an equal opportunity to elect their preferred candidates to office. And they argue the EP yields proportional representation to Dallas's Anglos.

The Defendants are not entitled to summary judgment on the §2 Claim, because 3 of those contentions are flatly wrong, while that regarding *Clements* misreads that decision, ignores intervening case-law, and relies on a misstatement of the record.

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[33] *Perez*, 2011 U.S. Dist. LEXIS at *42.
[34] *Hays*, 936 F.Supp. at 366 (citing *Hays*, 515 U.S. at ___, 115 S.Ct. at 2436.
[35] *Id*.
[36] *LULAC v. Clements*, 999 F.2d 831 (5th Cir. 1993).

1) Defendants' MSJ Addresses Only One (1) *Gingles* I Factor (Anglo Vote Cohesion) and the Record Includes Evidence of Its Satisfaction

The Defendants' MSJ entirely ignores 2 of the 3 *Gingles* I factors, arguing only that summary judgment is proper because it is allegedly *uncontested* that Anglos do not vote cohesively. That allegation is utterly wrong. In order to advance it, the Defendants entirely ignore *the reports of the* ***only*** *expert in this case to actually analyze the results of* ***all*** *the contested election to the Commissioners Court* over the last 10 years.[37] The relevant expert is M.V. Hood, III,[38] whose initial report analyzed all 6 endogenous, contested, general elections to represent a CCD over that period, as well as the same period's results in each CCD of the 3 quasi-endogenous elections of County Judges to the Commissioners Court.[39] In his rebuttal report, Mr. Hood analyzed the only 2 contested Republican primaries for seats on the Commissioners Court over the same 10 year period.[40]

Mr. Hood's analysis is clear and undisputed: the Anglo community had a clear preference in 100% of the endogenous and near-endogenous elections analyzed (whether general or primary);[41] the Anglo community clearly preferred the same candidate in the 2 analyzed primary

[37] While the Defendants omit any acknowledgement of the most relevant evidence in the record, they *do* include, allegedly as proof of Anglo's lack of cohesion both: (a) a mis-citation of a fact witness's testimony (Jeff Turner *did not* testify that "among Dallas County Anglos, there are three factions: Democrats, members of the Tea Party, and Republicans unaffiliated with the Tea Party" – he merely agreed that there are Anglos in each such group); and (b) the irrelevant fact testimony of one of the Plaintiffs' lawyers, offered in another case, concerning divides among *Republicans* (not *Anglos*) in voting for a position outside the Commissioners Court. *See*, Defendants' MSJ, at ¶¶ 16-19 and p. 26, and Defendants' MSJ Appendix, at APP 301 and APP 376 – APP 377. The Plaintiffs object that this citation to Ms. Alvarez's testimony is inappropriate, as it is irrelevant, cumulative, and available from other sources; the Plaintiffs expressly reserve their right to challenge any future use of Ms. Alvarez as a witness or future introduction of Ms. Alvarez's testimony in this case as inadmissible on these bases.

[38] Mr. Hood's reports are attached as Exhibit "A" and Exhibit "B" to this Response Brief, at APP 1 – APP 40.

[39] Initial Hood Report, at APP 7 – APP 15.

[40] Rebuttal Hood Report, APP 37.

[41] Rebuttal Hood Report, APP 37. Mr. Baretto, in his rebuttal report, looked at some of the same elections and agreed in each case with Mr. Hood's assessment of whom the Anglo-preferred candidate in a contested election was. Defendants' MSJ Appendix, at APP 918.

elections that it preferred in the ensuing general elections.[42] Indeed, *no* expert has concluded that *any* election to the Commissioners Court lacked a clear Anglo preference.

So the Defendants' contention that the record is uncontested in demonstrating that Dallas Anglos fail to vote cohesively is flatly wrong. At best, their analysis of discrete, exogenous elections (cherry-picked by Mr. Barreto for analysis from the hundreds of exogenous elections available over the recent past on the basis, not of their representativeness or similarity to any election to the Commissioners Court that has ever occurred, but of which were "more interesting")[43] *create* a fact question. But that analysis is certainly not the *only* record evidence relevant to Dallas Anglo cohesiveness or sufficient to *resolve* the resulting fact question. The record simply does not support summary judgment on the basis of a lack of Anglo cohesion.

2) Defendants' Reliance on *Clements* Misplaced

The Defendants also argue that the en banc 5th Circuit's decision in *Clements* requires summary judgment denying the §2 Claim, because "politics, not race, explains Anglo voters' choices" of their preferred candidates.[44] They are wrong because: (a) *Clements* didn't say what they think it did; (b) intervening cases have clarified that it cannot have the impact they wish it to; and (c) the record differs materially from their representation of it.

The Defendants characterize *Clements* as requiring the Plaintiffs to prove not only that voting in Dallas's Commissioners Court elections is polarized by race, but that race, rather than non-racial factors, drives the voting decisions of both Dallas's Anglo minority and the majority

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[42] Rebuttal Hood Report, APP 37 – APP 38.

[43] A copy of the cover page, relevant excerpts to this Response, and certification from the transcript of Mr. Baretto's deposition is attached as Exhibit "C", at APP 41 – APP 56. For Mr. Baretto's selecting on the "interesting" variable, see APP 198 – APP 199.

[44] Defendants' MSJ, p. 27 (citing *LULAC v. Clements*, 999 F.2d at 850).

out-voting them. But the *Clements* court expressly held that it "need not resolve … today" whether "the racial bloc voting inquiry" requires "a determination whether or not divergent voting patterns are attributable to partisan differences or an underlying divergence in interests [that] best captures the mandate of § 2."[45] Instead, it "recognize[d] that even partisan affiliation may serve as a proxy for illegitimate racial considerations" and instructed lower courts not to "summarily dismiss vote dilution claims in cases where racially divergent voting patterns correspond with partisan affiliation as 'political defeats' not cognizable under § 2."[46]

Accordingly, courts have been wary to sheepishly follow the language of *Clements* relied on by the Defendants – three different trial courts within the 5th Circuit have refused to do so *this year*,[47] and multiple Courts of Appeals have either limited that language from *Clements* to stand for the opportunity for a jurisdiction to offer counter-evidence at trial to statistically proven racially polarized voting or rejected it outright.[48]

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[45] *Id.* at 860.

[46] *Id*. at 860-61.

[47] *Terrebonne Parish Branch NAACP v. Jindal*, 2017 U.S. Dist. LEXIS 135194, *48-*49 (M.D. La. 2017) (following *Clements* in holding that "presenting statistical evidence" to prove *Gingles* pre-conditions 2 and 3 creates "a presumption … in favor of the plaintiff that 'racial bias [is] operating in the electoral system.' In other words, a plaintiff does not need to bring forward 'conclusive proof that a minority group's failure to elect representatives of its choice is caused by racial animus.' By introducing sufficient statistical evidence of [racial bloc voting], the plaintiff effectively shows that race played a role at the polls. Once this showing is made, the burden then shifts to a defendant to show that race did not play a role in these elections and that other race-neutral factors explain the voting outcomes."); *Perez v. Abbott*, 2017 U.S. Dist. LEXIS 129982, n. 56 (W.D. Tex. 2017) (recognizing that the parties – including the plaintiffs represented *by all 3 lawyers for the Defendants in this case* – "vigorously dispute the application of *LULAC v. Clements* and whether the role of partisanship must be disproved as a cause of racial voting behavior" before declining to "address this dispute"); and *Lopez v. Abbott*, 2017 U.S. Dist. LEXIS 50216, *7 (S.D. Tex. 2017) (denying motion to dismiss on basis that determination of whether "alternate causes" than race drove bloc voting majority's defeat of minority-preferred candidates was an issue resolvable only at trial).

[48] *Sanchez v. Colorado*, 97 F.3d 1303, 1322 (10th Cir. 1996) (reversing a district court that "rejected plaintiffs' evidence of racial bloc voting, even though they used the same statistical method approved in *Gingles*"); *Vecinos de Bario Uno v. Holyoke*, 72 F.3d 973, 983 (1st Cir. 1995) (recognizing both the "high hurdle for those who seek to defend the existing system despite meaningful statistical evidence that suggests bloc voting along racial lines" and that "establishing vote dilution does not require the plaintiffs affirmatively to disprove every other possible explanation for racially polarized voting").

So authority from in-and-outside the 5th Circuit interprets the language from *Clements* that the Defendants rely on, at most, to allow a jurisdiction to challenge at trial a statistically-based showing of racially polarized voting. Most agree that raising that challenge is a defense, on which the jurisdiction would bear the burden of proof (it is worth noting that the Defendants did not plead such a defense in this matter, so have waived it).[49] More, the Defendants fail to cite *any* evidence of what drives the voting of either Anglos-as-a-group or the Dallas majority in elections to the Commissioners Court;[50] and mischaracterize the lay testimony they cite at all.[51] Accordingly, to the extent this argument remains available to the Defendants, it can do no more than add an additional fact question concerning the §2 Claim, which could only be resolved at trial.

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[49] Plaintiffs' MSJ Appendix, at APP 106 - APP 112.

[50] Defendants MSJ Brief, p. 28.

[51] The sole evidence the Defendants cite in support of their argument that politics drives Dallas voting behavior is their mischaracterization of three of the Plaintiffs' deposition testimony, coupled with testimony from Ms. Alvarez in the Texas Congressional map litigation. None even hypothetically reflect the voting motivations of Anglos as a whole or relate, even in passing, to how Anglos-as-a-group vote in elections to the Commissioners Court. The Defendants assert that Mr. Jacobs testified to blind partisanship, Ms. Morse to blinding ideology, and Ms. Harding to partisanship having driven the design of the EP. Defendants' MSJ Brief, p. 28.The first two are inaccurate: (a) Mr. Jacobs testified that Anglos generally prefer Republican candidates, but that "the ability of a group to choose its preferred officials is obviously important," with partisan affiliations serving only as a metric for whether that occurs (Defendants' MSJ Appendix, at APP 754); and (b) Ms. Morse testified that, while she shared with typical Anglos a preference for more conservative candidates (*Id*. at APP 716) and would prefer one in her own CCD (*Id*. at 713), what she wanted out of this lawsuit was "fairness" for the Anglo minority, and the chance to have "your person elected[,]" without regard to the ideology of such a candidate (*Id.* at 712). The third is irrelevant to *any* voting behavior. The Defendants describe Ms. Alvarez as having "testified that Republican primary choice differences are 'politically based,' and not race-based." Defendants' MSJ Brief, p. 28. Ms. Alvarez: (a) did not address *Anglo* voting behavior in her testimony at all; (b) spoke regarding how particular elections (to other levels of government) had divided the Republican electorate, while acknowledging that these patterns did not appear in all contested elections; and (c) drew a distinction between some Republican primaries and Democratic primaries (where different racial groups lob allegations of racism against each other) – taken together, her testimony reflects *greater* cohesion among Republicans than Democrats, but says *nothing* concerning the preferences of Anglos as a group. Defendants' MSJ Appendix, at APP 377.

3) The Record Includes Evidence of 7 Factors Relevant to the Court's *Gingles* II Totality-of-the-Circumstances Analysis

The Defendants' contention that "the undisputed evidence precludes a finding that the totality of the circumstances warrants [§]2 relief" badly misstates the actual record.

While the Defendants cite 9 factors relevant to a totality of the circumstances analysis, they omit another that the 5th Circuit has held to be relevant – intent. But the 5th Circuit has held both that: (a) VRA §2 forbids maps born of "an intent to discriminate" in addition to those with "discriminatory results[;]" and (b) "discriminatory intent of itself will normally render a plan illegal."[52] The Plaintiffs have extensively briefed, in support of their own MSJ, the record evidence of Defendants' intent to discriminate against Anglos through the EP, so (to avoid redundancy) incorporate by reference their recitation of that evidence here.

Even among the factors identified by the Defendants, their contentions concerning the status of the record (that all-but-one disfavor the Plaintiffs' claims)[53] are deeply wrong. The Defendants concede that 1 of the 2 most important factors to courts is the presence of racially polarized voting,[54] but fail to mention either Mr. Hood's analysis or their own expert's admission that voting is racially polarized in Dallas County.[55] They stress that the other most important factor is the extent of the Plaintiffs' minority's success in electing its preferred candidates to office; but claim support for this factor from the election of Anglos to the Commissioners Court

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[52] *U.S. v. Brown*, 561 F.3d 420, 432-33 (5th Cir. 2009) (citing *McMillan v. Escambia County*, 748 F.2d 1037, 1046 (Former 5th Cir. 1984); U.S. Code Cong. & Admin. News. 1982, 177, 205; and *Seastrunk v. Burns*, 772 F.2d 143, 149 n.15 (5th Cir. 1985)); *see* also *Perez v. Abbott*, 253 F.Supp.3d 864, 944 (Tex. W.D. 2017) ("when discriminatory purpose (intentional vote dilution) is shown, a plaintiff need not satisfy the first *Gingles* precondition to show discriminatory effects.").

[53] The Defendants admit that record includes evidence of racial appeals. Defendants MSJ, pp. 34-35.

[54] Defendants' MSJ at p. 29.

[55] Defendants' MSJ Appendix, at APP 130 and APP 525.

who are not preferred by the Anglo community.[56] Binding authority prohibits this use of conveniently complected officials against similar-looking communities who do not support them.[57]

The record also includes evidence supporting the applicability of other factors, including: (a) the tenuousness of the policy served by the EP;[58] and (b) the Commissioners' Court's lack of responsiveness to Dallas's Anglo minority.[59]

Finally, the Defendants argue that the "proportionality" Senate-factor disfavors the Plaintiffs' claims.[60] To get there, the Defendants misread the Supreme Court's opinions in *De*

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[56] For Defendants' reliance on the race of officeholders, *see* Defendants' MSJ at p. 30. For contrary Anglo preferences and Anglos' lack of success at elections, see Initial Hood Report, at APP 9 – APP 11 and Rebuttal Hood Report at APP 38. For Defendants' admission of Anglo preferences, see Barreto Transcript, at APP 46 – APP 48.

[57] *LULAC v. Perry*, 548 U.S. 399, 436-42 (2006) (holding VRA §2 to forbid drawing of district to protect a Hispanic incumbent from Hispanic voter opposition); *see* also, *Sanchez*, 97 F.3d at 1320-21 (recognizing that the "*Gingles* majority" "concluded [that] the candidate's race is never irrelevant but, generally, is 'of less significance than the race of the voter[,]" before announcing that "the VRA ensures members of a protected class equal opportunity 'to elect representatives of their choice,' not 'necessarily members of their class.'").

[58] The Defendants have never identified any policy that the EP served, and have produced no evidence that it serves *any* legitimate policy. It's hard to imagine a more tenuous justification than none at all.

[59] Many different kinds of evidence have been relied on by courts in finding a lack of responsiveness, including the presence of employment discrimination against the minority community of a plaintiff. *Pol. Civ. Voters Org. v. Terrell*, 565 F. Supp. 338, 346 (N.D. Tex. 1983) ("the percentage [of a minority] hired by the City of Terrell is significantly less than" their percentage of the population, so "the City has not been responsive to minority needs"). Relevant evidence in the record includes: (a) a formal recruitment policy, adopted by the Commissioners Court in April 2011 (contemporaneous with the preparation of the EP), which requires Dallas's director of human resources to specifically "[s]olicit assistance in recruitment from well known and predominantly minority … groups" (the cover pages and relevant excerpt are attached as Exhibit "D", at APP 57 – APP 59); and (b) admissions by Dallas's director of human resources (a copy of the cover page, relevant excerpt (including the referenced deposition exhibit), and certification from the transcript of Dallas's HR director is attached as Exhibit "E", at APP 60 – APP 83) that: (i) in this policy, "minorities" excludes non-Hispanic whites (at APP 65 – APP 66); (ii) to comply with this policy, Dallas's HR department interacts primarily with the Hispanic Chamber of Commerce and the Black Chamber of Commerce (at APP 68 – APP 70); and (iii) proportioned to population, Dallas's workforce is excessively African American (at APP 73 – APP 76, and APP 83) and insufficiently Anglo (at APP 77 – APP 78, and APP 83); but (iv) Dallas has neither undertaken any special efforts to recruit Anglo employees (at APP 79 – APP 80) or considered amending the existing policy requiring the special recruitment of the over-represented race for its workforce (at APP 75 – APP 76). The record also includes many additional kinds of proof of the Commissioners Court's non-responsiveness to Anglo needs, but given that this evidence of employment discrimination and under-employment of Anglos creates a fact-issue concerning this factor, Plaintiffs will not belabor the point with the entirety of that record.

Grandy, ignore the binding, on-point authority of the 5th Circuit's *Reyes* opinion,[61] and invent an entirely novel theory of proportionality without referencing any supporting authority at all.

The Defendants note the *De Grandy* court upheld as sufficient a map allowing a minority constituting 47% of a jurisdiction's VAP to elect 45% of its officials, before asserting that Dallas's 36.3% Anglo VAP "requires entry of judgment for defendants[.]" The problems are myriad. 47% is far closer to 45% than 36% is to 25%, so the cases self-distinguish. More importantly, the Supreme Court never stated in *De Grandy* that VAP is the proper measure to assess proportionality – the Court merely used the record before it, without comment on whether another measure may be better. Indeed, as the group in question in *De Grandy* had *lower* citizenship numbers than did other groups,[62] the case was overdefined and no use of CVAP would have been relevant.

On the other hand, the Fifth Circuit *has* spoken directly to this question in *Reyes*. In the Fifth Circuit, courts use CVAP, not VAP, to determine if the *Gingles* factors have been satisfied.[63] It necessarily follows that, in this circuit, the proper metric for proportionality must be CVAP.[64] And, there, the record's math of disproportionality is clear. The Defendants

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[60] Defendants' MSJ, pp. 30-32.

[61] *Johnson v. DeGrandy*, 512 U.S. 997, 1002 (1994); *Reyes v. City of Farmers Branch*, 586 F.3d 1019, 1023-25 (5th Cir. 2009).

[62] *De Grandy*, 512 U.S. at 1008.

[63] *Reyes,* 586 F.3d 1019, 1023. *See* also, *Perez v. Abbott*, 253 F.Supp.3d at 957-58 (determining proportionality on the basis of arguments from CVAP).

[64] The Defendants argue that *Evenwel v. Abbott*, 136 S.Ct. 1120, 1132 (2016), requires a different result, but they do so by badly misstating the holding of *Evenwel*. *Evenwel* did not hold that "[t]otal population was the most appropriate metric for considering proportionality of representation." It merely recognized it as *a* metric a sovereign *could* use in satisfying the one-man, one-vote principle, expressly taking no position on whether a sovereign *could* equalize the population of districts' voter-eligible population. *Id.* at 1132-33. Taking no position on the subject does not silently overrule *Reyes* and the parallel decisions of other Courts of Appeals.

concede that 45% of Dallas's CVAP is Anglo,[65] but that Dallas Anglos may elect no more than 1 of their preferred candidates to the Commissioners Court.[66] 45% of the electorate afforded the chance to elect only 25% of the Commissioners Court's districted members is simply not proportional.

To avoid this obvious conclusion, the Defendants assert, without even the cover of a supporting law review article, that in looking at the proportionality of the share of the Commissioners Court the Anglo community has been afforded the chance to elect, the Court must discount Dallas's Anglo population to reflect the community's dissenting minority. This novel argument is entirely foreign to law: no Court has ever held that a cohesive minority's representation must be discounted for the degree of opposition within it – for example, the *Perez* panel made its findings concerning proportionality on the basis of Texas's Hispanic CVAP, without regard to the forty-percent (40%) share of Texas Hispanics that regularly dissent from their larger community's preferences in elections.[67]

So rather than the record reflecting evidence of only 1 of 9 relevant factors favoring the Plaintiffs, as the Defendants contend, the record actually reflects evidence of 7 of 10 factors favoring the Plaintiffs. To say the least, this establishes a wide variety of fact issues that would preclude the Court from ruling in favor of the Defendants on the §2 Claim on this basis without

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[65] Defendants' MSJ, p. 2.

[66] *See* Plaintiffs' MSJ Appendix, at APP 29 – APP 30 (Matt Angle confirming that 3 CCDs afford African Americans and Hispanics the chance to elect their preferred candidates); Defendants' MSJ Appendix, at APP 545-APP 547 (Mr. Lichtman testifying that he was not surprised that none of Judge Jenkins, Commissioner Daniel, Commissioner Price, and Commissioner Garcia ever achieved as much as 40% support from the Anglo community in any district in any contested election over the last 10 years, and that he viewed none of these 4 as Anglo candidates of choice).

[67] *Perez v. Abbott*, 253 F.Supp.3d at 958. For an example of the typical split among Texas Hispanics in elections, see: http://www.houstonchronicle.com/news/houston-texas/houston/article/Texas-Latino-vote-splits-5876952.php (reporting Senator John Cornyn to have won Texas's Hispanic vote 48%-47% and Greg Abbott to have won 44% support from Texas Hispanics).

trial.

4) Conclusion: Genuine, Material Fact Questions Exist Precluding Summary Judgment for the Defendants on the §2 Claim

The record before the Court reflects clear, genuine, material, factual issues. It includes clear evidence of Anglo voting cohesion in all contested races to the Commissioners Court within a decade (and less clear evidence to the contrary, from cherry-picked exogenous races); to the extent they Defendants have identified any evidence in the record supportive of their preferred reading of *Clements*, that evidence merely gives rise to an additional factual issue concerning Anglo voting cohesion. It includes evidence that 7 of 10 factors relevant to the Court's eventual totality-of-the-circumstances analysis indicate that the Plaintiffs, like the rest of Dallas's Anglos, have been denied the chance to equally participate in the political process and to elect their preferred Commissioners (and clear evidence that other factors do not).

Given these genuine, material, factual issues, the Court cannot grant summary judgment on the §2 Claim and must leave its resolution for trial.

C. DEFENDANTS NOT ENTITLED TO SUMMARY JUDGMENT ON FIRST EQUAL PROTECTION CLAIM

The Defendants' arguments for summary judgment denying the First Equal Protection Claim are markedly weaker, so the Court must also deny the Defendants' MSJ on that claim.

1) Defendants' Authority Proves that Plaintiffs Pled a *Shaw*-style Claim

The Defendants maintain that the Court must grant summary judgment against the Plaintiffs on the First Equal Protection Claim, because "Plaintiffs' live complaint does not allege

a racial gerrymandering claim."[68] They cite to the *Perez* decision as one the Court must follow in holding that the Plaintiffs' live complaint fails to allege a *Shaw*-style claim.[69]

A review of *Perez* proves the opposite. There, a number of plaintiff groups argued the state had allowed race to predominate in its crafting of North Texas Congressional districts.[70] While the *Perez* panel found that several groups had not done so, it held that one set of plaintiffs "has clearly pleaded a *Shaw*-type racial gerrymandering claim with regard to the DFW districts in their live Complaint [–] the Latino Redistricting Task Force."[71]

So what allegations had the LRTF made that "clearly pleaded a *Shaw*-type racial gerrymandering claim[?]" The LRTF's live complaint was its fourth amended.[72] The LRTF Complaint's relevant allegations include only: (a) the map under challenge "uses race as a predominant factor to allocate Latino voters … across districts in the Dallas-Fort Worth Metroplex[;]"[73] (b) the incorporation of that allegation, by reference, into the LRTF's claim under the "Equal Protection Clause of the 14th Amendment to the U.S. Constitution[;]"[74] and the conclusion that (c) the map "discriminate[s] against Plaintiffs on the basis of race and national origin in violation of the 14th Amendment to the U.S. Constitution."[75]

Meanwhile, the Plaintiffs' live complaint includes:[76] (a) "race was the predominant factor in the Commissioners Court's crafting of the Discriminating Map as a whole and in the design of

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[68] Defendants' MSJ, at p. 40.
[69] *Id*. at p. 41.
[70] *Perez*, 253 F.Supp.3d at 930-33.
[71] *Id*. at 933. The Latino Redistricting Task Force is referred to herein as the "LRTF[.]"
[72] A copy of the Fourth Amended Complaint of the Plaintiffs Texas Latino Redistricting Task Force, et al. (the "LRTF Complaint") is attached as Exhibit "F", at APP 84 – APP 104.
[73] *Id.* at APP 95, ¶42; and APP 97, ¶ 53.
[74] *Id.* at APP 101, ¶ 81.
[75] *Id.* at APP 101, ¶ 82.
[76] Dkt. 31.

each of the Discriminating Map's component four (4) CCDs[;]"[77] (b) the incorporation of that allegation, by reference, into the Plaintiffs' claim under "Equal Protection[;]"[78] and the conclusion that (c) the "facts alleged constitute a denial of the Plaintiffs' rights guaranteed by the Equal Protection Clause of Section 1 of the 14th Amendment to the United States Constitution."[79]

Beat for beat, the Plaintiffs' complaint matches exactly that the Defendants' cited authority held to have "clearly pleaded a *Shaw*-type racial gerrymandering claim." There is no legitimate doubt that the Plaintiffs pled this claim more than 2 ½ years ago.

2) Clear Evidence Race Preponderated in Crafting the EP

The Defendants' MSJ asserts that "the undisputed facts show that the [EP] was not motivated by discriminatory intent against Anglos[.]"[80] The Plaintiffs have fully briefed the extensive record evidence to the contrary in their own summary judgment motion, and incorporated that evidence into this Response, above. They also note that the Defendants' repeated contention that the EP had no discriminatory impact, because it allegedly affords Dallas Anglos proportional representation, is wrong, as discussed above.

To say the least, to the extent the Defendants cite any evidence to the contrary, they would only create a fact question. There is no legitimate argument that the undisputed record supports summary judgment against the First Equal Protection Claim on this basis.

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[77] *Id.* at ¶ 17.
[78] *Id*. at ¶ 30.
[79] *Id*. at ¶ 31.
[80] Defendants' MSJ, at p. 37.

3) Defendants Failed to Plead (and Continue to Fail to Provide Any Evidence to Meet Their Burden of Proving) "Good Reason" to Believe VRA Would Have Compelled Their Use of Race in Crafting the EP

Finally, the Defendants maintain that they are entitled to summary judgment against the First Equal Protection Claim because they had "good reasons" to use race in crafting the EP. As the Plaintiffs highlighted in their own motion for summary judgment, this is a defense, which must be pled to prevail,[81] and on which a jurisdiction bears the burden of proof.[82, 83]

The Defendants never pled it.[84]

Even now, in support of the Defendants' MSJ, they have provided insufficient evidence to support it. Under *Cooper*, in order to prevail on such a defense, the Defendants must show proof that, as they prepared the EP, they analyzed data to support their conclusion that the VRA would have this result.[85] But they cite no evidence of any contemporaneous analysis of whether either VRA §2 or §5 would have had that result.

The Defendants' MSJ Brief includes no evidence that the Defendants considered any data in 2011 to support their purported conclusion that any African American or Hispanic plaintiff

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[81] "Ordinarily, under … the Civil Rules, a defense is lost if it is not included in the answer[.]" *Kontrick v. Ryan*, 540 U.S. 443, 459 (2004) (citing 5A C. Wright & A. Miller, Federal Practice and Procedure § 1347, p. 184 (2d ed. 1990)); Fed. R. Civ. P. 8, 12(b).

[82] *Cooper v. Harris*, 581 U.S. ___, ___; 137 S.Ct. 1455, 1464 and 1469 (2017).

[83] Further, the Plaintiffs incorporate by reference their arguments from the Plaintiffs' MSJ Brief that: (a) the Supreme Court has never held VRA compliance to qualify as a compelling interest sufficient to meet strict scrutiny; (b) purported compliance with the VRA *cannot* satisfy strict scrutiny, as an unconstitutional plan cannot have been required by statute; and (c) VRA §5 could not have required the drawing of a third CCD with a non-Anglo majority in an Anglo-minority jurisdiction, because such an interpretation would have been unconstitutional legal error, rather than a good-faith basis for the use of race in crafting and passing the EP.

[84] Plaintiffs' MSJ Appendix, at APP 106 - APP 112.

[85] *Cooper*, 581 U.S. at ___; 137 S.Ct. at 1471 ("To have a strong basis in evidence to conclude that §2 demands such race-based steps, the [jurisdiction] must carefully evaluate whether a plaintiff could establish the *Gingles* preconditions … in a new district created without those measures.") (citing *Thornburg v. Gingles,* 478 U.S. 30).

could have prevailed on a §2 claim to compel the drawing of the EP.[86] Specifically, they fail to cite any evidence that the Defendants relied on in 2011 to determine whether:

- the African American and Hispanic communities of CCD 1 had demonstrated a sufficient history of "cohesion" to satisfy *Gingles* 2 and compel the drawing of a coalition district for those communities;
- any of the groups within the bloc-voting majority coalition governing Dallas could have satisfied *Gingles* 3 and proven that, barring unusual circumstances, it was unable to elect its preferred candidate to the Commissioners Court, due to the successful blocking vote of an opposing ethnic majority;[87]
- a map including a second Anglo opportunity district would have failed to afford Dallas's African American or Hispanic communities the opportunity to elect a roughly proportional number of Commissioners to their share of Dallas's CVAP.

Similarly, while the Defendants' MSJ references VRA §5, they fail to cite any evidence that the Defendants relied on in 2011 to determine that CCD 1's predecessor was a performing Hispanic or African American opportunity district, such that drawing it to allow the election of an Anglo-preferred candidate would have had "the effect of diminishing the ability of [members of a

[86] The only relevant fact mentioned in the Defendants' MSJ Brief is the fact that the predecessor to CCD 3 had an "extremely high concentration of blacks and Latinos[,]" which "could [have] constitute[d] packing[.]" But that lone fact, in isolation, falls far below *Cooper*'s threshold, for the reasons discussed, below, among others.

[87] There is ample evidence to the contrary in the record. Plaintiffs' MSJ Appendix, at APP 73 ("It's not a coincidence that Democratic candidates began winning county wide on a consistent basis as Hispanic and African American residents became a comfortable majority in this county. In 2006, and 2008 and 2010, every Democratic candidate running for county wide won regardless of whether they were the incumbent or challenger.")

relevant minority group] to elect their preferred candidates of choice[.]" Indeed, as highlighted in the Plaintiffs' MSJ, the record includes admissions to the contrary.[88]

The Defendants never asserted a VRA defense to the First Equal Protection Claim, have produced insufficient evidence to meet their burden of proving one, and face counter-evidence in the record. Accordingly, the record before the Court bars any grant of summary judgment to the Defendants on the First Equal Protection Claim based on their purported "good cause."

4) Conclusion: If Defendants Produced Any Evidence, Would Generate a Genuine, Material Fact Question, Not Justify Summary Judgment

The Defendants' own authority proves that the Plaintiffs "clearly" pled a *Shaw*-style claim. The record is filled with evidence that race predominated in the crafting of the EP. The Defendants did not plead and have produced insufficient evidence to support a defense that their use of race was required by statute; more, even the evidence cited is contradicted by the record. To say the least, the record will not support a conclusion that it is uncontested, in a manner that would entitle the Defendants to summary judgment against the First Equal Protection Claim.

D. Court Should not Grant Summary Judgment to Defendants on the Alternative Equal Protection Claim, When The Record Reflects Defendants' Experts' Testimony, in Apparent Consultation with Defendants' Counsel, that No Anglo Community, Anywhere, Could be Protected by the VRA

Finally, the Defendants' MSJ asks the Court to grant summary judgment against the Plaintiffs' Alternative Equal Protection Claim on the basis that the "claim is foreclosed by

[88] Plaintiffs' MSJ Appendix, at APP 74 ("Numbers in [the predecessor to EP CCD 1], obviously an example of minority population growth undermined by the configuration of the district, minority Democrats whose populations are increasing in the Southern and western parts of the district, are overcome by highest stronger Republican neighborhoods in the north part, in the … of the district."). *Cf.* Plaintiffs' MSJ Appendix, at APP 96 (stating that EP CCD 1's predecessor "under the benchmark map was also drawn as an Anglo dominated Precinct configured to elect a Republican candidate. [CCD 1's predecessor] saw significant demographic change from 2001 to 2010 and is now a majority minority Precinct. [That predecessor CCD] is currently represented by Commissioner Mike Cantrell, an Anglo Republican.").

binding precedent."[89] As is abundantly clear from the Plaintiffs' assertion of a claim under VRA §2, the Plaintiffs entirely agree with this statement. However, the Defendants apparently do not -- two of their retained experts have testified (in apparent consultation with the Defendants' counsel) that the VRA does not protect Dallas Anglos.

Matt Angle testified both that: (a) he "relied on his counsel"[90] in concluding that the EP complied with the Commissioners Court's order that "All plans shall be constructed to comply with the Voting Rights Act" by avoiding "retrogression of racial and language minorities" and "provid[ing] racial and language minorities the opportunity to elect their candidates of choice where their populations are significantly large and compact[;]"[91] and (b) that he personally understood these requirements to protect "African Americans and Hispanics[,]" but not Anglos.[92] That counsel could only have been J. Gerald Hebert or Rolando Rios, both of whom are the Defendants' counsel in this litigation.[93]

Dr. Matthew Baretto testified that *Gingles* 2's requirement of minority "cohesion" is more than a measure of "an outcome" in elections, instead requiring "a cohesive community that thinks of itself as having shared experiences and needing to work together…."[94] He testified that "cohesiveness is the result of some sort of psychological and emotional reaction to politics. That it's not just an end."[95] He explained that this kind of "in-group attachment is typically a

[89] Defendants' MSJ Brief, p. 45.
[90] Plaintiffs' MSJ Appendix, at APP 27.
[91] *Id*. at APP 66 & APP 27.
[92] *Id.* at APP 29 – APP 30.
[93] *Id.* at APP 1 – APP 2.
[94] Barreto Transcript, at APP 49.
[95] *Id*. at APP 53.

response" of the "historically … disadvantaged"[96] and cited to social science literature for the conclusion that "group identity develops over many decades."[97] Taken together, these positions (all seemingly reached in consultation with Defendants' counsel) would mean that VRA §2 *does not* protect Anglos in America as it does other races, *and cannot do so* for decades to come.

The Plaintiffs hold these interpretations to be legal error and will oppose them at trial, if, as seemingly intended, the Defendants then advance them. The Court should not allow the Defendants to engage in the gamesmanship of arguing that the race-neutrality of the VRA requires summary judgment against the Alternative Equal Protection Claim today, only to then argue at trial for interpretations of the VRA which, as applied, would render it unconstitutional, exactly as argued in the Alternative Equal Protection Claim.

V. CONCLUSION

The Court cannot render summary judgment to the Defendants on the basis of their standing argument, because it is wrong on the law and the Plaintiffs have clearly demonstrated standing under binding authority. The Court cannot render summary judgment against either the §2 Claim or the First Equal Protection Claim, because the Defendants have done no more than generate material fact questions, to the extent they have done that. And the Court should not render summary judgment against the Alternative Equal Protection Claim, because the record includes evidence that the Defendants intend to try to prove at trial *exactly* what they claim today that binding authority forecloses: that the VRA does not protect Anglos as it does other racial minorities and will not do so for decades to come – the Court should refuse the Defendants'

[96] *Id*. at APP 50 & APP 52.
[97] *Id*. at APP 51.

tactical invitation to rule against the Alternative Equal Protection Claim now, only to see them prove its applicability later.

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CERTIFICATE OF SERVICE

I certify that on December 22, 2017, I served a copy of this Brief in Support of Plaintiffs' Response to Defendants' Motion for Summary Judgment on all other counsel of record by electronic filing through the Court's CM/ECF system.

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