

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

SHAUNA WILLIAMS, et al.,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House Standing
Committee on Redistricting, et al.,

Defendants.

Civil Action No. 23 CV 1057

NORTH CAROLINA STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

PHILIP BERGER, in his official capacity as the
President Pro Tempore of the North Carolina
Senate, et al.,

Defendants.

Civil Action No. 23 CV 1104

***WILLIAMS* PLAINTIFFS' MEMORANDUM IN OPPOSITION TO
LEGISLATIVE DEFENDANTS' MOTION FOR PARTIAL SUMMARY
JUDGMENT**

NATURE OF MATTER BEFORE THE COURT

Legislative Defendants’ motion for partial summary judgment largely ignores the claims brought by the *Williams* Plaintiffs, instead making broad-based objections to the consolidated plaintiffs’ standing. Without actually engaging with the *Williams* Plaintiffs’ allegations, Legislative Defendants appear to challenge *Williams* Plaintiffs’ standing to bring their intentional discrimination and intentional vote dilution claims, on the basis that such claims require allegations of district-specific injury. But *Williams* Plaintiffs have plainly alleged a district-specific injury in Congressional Districts 1, 6, 12, and 14—districts in which they reside and intend to vote. And although *Williams* Plaintiffs offer evidence of discriminatory intent underlying the enactment of the entire challenged congressional plan, such evidence is permissible—and in fact required—to demonstrate their intent claims. Because *Williams* Plaintiffs have sufficiently demonstrated standing to bring their intentional discrimination and intentional vote dilution claims, Legislative Defendants’ motion for partial summary judgment on these claims should be denied.

STATEMENT OF FACTS

On October 25, 2023, the North Carolina General Assembly enacted Senate Bill 757, which created new congressional districts (“2023 Congressional Plan”). 2023 N.C. Senate Bill 757, N.C. Sess. Law 2023-145.

The *Williams* Plaintiffs—18 Black and Latino North Carolina voters, Am. Compl. ¶¶ 7–24, ECF No. 30—filed this lawsuit on December 4, 2023, Compl., ECF No. 1, and an Amended Complaint on March 4, 2024, ECF No. 30, challenging the 2023 Congressional

Plan on three independent grounds. First, they contend that Congressional Districts 1, 6, 12, and 14 in the 2023 Congressional Plan are racial gerrymanders in violation of the Fourteenth Amendment. Am. Compl. ¶¶ 133–35. Second, they allege that the 2023 Congressional Plan intentionally discriminates against them in violation of the Fourteenth and Fifteenth Amendments because it “intentionally dismantles CD-6 and CD-14, which were effective crossover districts under the previous plan, and weakens CD-1, which was a historically performing minority opportunity district.” Am. Compl. ¶ 146. Third, they allege that the 2023 Congressional Plan intentionally dilutes the votes of *Williams* Plaintiffs in violation of Section 2 of the Voting Rights Act because “under the totality of the circumstances, it has the purpose and effect of diluting the voting power of Black and Latino voters in CDs 1, 6, 12, and 14.” *Id.* ¶ 154.

The congressional districts in which the *Williams* Plaintiffs reside under the 2022 Congressional Plan and under the 2023 Congressional Plan are listed below. *Id.* ¶¶ 7–24, Ge Decl., Exs. 1–11.

Plaintiff	Residence under 2022 Congressional Plan	Residence under 2023 Congressional Plan
Shauna Williams	Congressional District 1	Congressional District 1
Flor Herrera-Picasso	Congressional District 1	Congressional District 1
Minerva Freeman	Congressional District 1	Congressional District 3
Maura Aceto	Congressional District 1	Congressional District 3
Javier Limon	Congressional District 1	Congressional District 3
Armenta Eaton	Congressional District 1	Congressional District 13

James Adams	Congressional District 6	Congressional District 6
Luciano Gonzalez-Vega	Congressional District 6	Congressional District 6
Chenita Johnson	Congressional District 6	Congressional District 10
Pamlyn Stubbs	Congressional District 6	Congressional District 5
Earl Jones	Congressional District 6	Congressional District 5
Allison Shari Allen	Congressional District 14	Congressional District 12
Laura McClettie	Congressional District 14	Congressional District 12
Nelda Leon	Congressional District 14	Congressional District 12
German De Castro	Congressional District 14	Congressional District 12
Alan Rene Oliva Chapela ¹	Congressional District 14	Congressional District 14
Virginia Keogh	Congressional District 14	Congressional District 14
Natalee Nanette Nieves	Congressional District 14	Congressional District 14

LEGAL STANDARD

In order to grant a motion for summary judgment, this Court must find that “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The Court must view the facts and draw reasonable inferences in the light most favorable to the nonmoving party. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Perini Corp. v. Perini Constr., Inc.*, 915 F.2d 121, 123–24 (4th Cir. 1990). A movant is only “entitled to judgment as a matter

¹ Plaintiff Alan Rene Oliva Chapela previously resided in Congressional District 12 under the 2023 Congressional Plan. Since the filing of the Amended Complaint, he has changed residences and currently lives and is registered to vote in Congressional District 14 under the 2023 Congressional Plan.

of law” when the nonmoving party “fail[s] to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).²

STATEMENT OF QUESTIONS PRESENTED

1. Do the *Williams* Plaintiffs have standing to bring their intentional discrimination and intentional vote dilution claims?

ARGUMENT

Legislative Defendants’ motion for partial summary judgment largely ignores *Williams* Plaintiffs’ claims but seems to contest whether *Williams* Plaintiffs have standing to bring their intentional discrimination (Count II) and intentional vote dilution (Count III) claims. Legis. Defs.’ Mem. in Supp. of Mot. for Partial Summ. J. (“Partial MSJ”) at 5–7, ECF No. 79. As set forth below, *Williams* Plaintiffs have properly alleged standing for their intent-based claims, and Legislative Defendants’ characterization of their claims as “statewide” ignores that plaintiffs may introduce evidence about entire redistricting plans in support of their claims and requested remedies. Legislative Defendants’ motion should accordingly be denied.

² Legislative Defendants do not challenge the factual allegations in *Williams* Plaintiffs’ pleadings. Their challenge to the justiciability of *Williams* Plaintiffs’ intent claims is a legal dispute that is properly understood as a motion to dismiss for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1). *GEICO Gen. Ins. Co. v. Farag*, 597 F. App’x 1053, 1055 (11th Cir. 2015). Because Legislative Defendants bring a facial challenge to the sufficiency of *Williams* Plaintiffs’ standing allegations, “all the facts alleged in the complaint are assumed to be true.” *Adams v. Bain*, 697 F.2d 1213, 1219 (4th Cir. 1982).

I. *Williams* Plaintiffs properly pled their intentional discrimination and intentional vote dilution claims.

Williams Plaintiffs have demonstrated the requisite harm for both of their intent-based claims. Legislative Defendants demand that Plaintiffs demonstrate “individualized, district-specific harm” and that their claims “concern[] only ‘the particular district in which [each plaintiff] resides.’” Partial MSJ at 6–7. Notwithstanding Legislative Defendants’ crabbed understanding of redistricting claims, *Williams* Plaintiffs’ allegations fit squarely within the requirements they demand.

Williams Plaintiffs have sufficiently alleged “individualized, district-specific harm” for their intentional discrimination claim. *Id.* *Williams* Plaintiffs alleged that the 2023 Congressional Plan “will have a discriminatory impact on minority North Carolinians—a fact that was foreseeable when Defendants drafted and passed the Plan”—by “limit[ing] minority voters’ ability to elect or even influence elections through the purposeful cracking and packing of minority voters.” Am. Compl. ¶ 145. Specifically, *Williams* Plaintiffs alleged that the 2023 Congressional Plan “intentionally dismantles CD-6 and CD-14, which were effective crossover districts under the previous plan, and weakens CD-1, which was a historically performing minority opportunity district.” *Id.* ¶ 146. *Williams* Plaintiffs have also sufficiently pled their intentional vote dilution claim, alleging that the 2023 Congressional Plan “violates Section 2 of the Voting Rights Act because under the totality of the circumstances, it has the purpose and effect of diluting the voting power of Black and Latino voters in CDs 1, 6, 12, and 14.” *Id.* ¶ 154.

Williams Plaintiffs reside in each of these affected districts under the 2023 Congressional Plan: Shauna Williams and Flor Herrera-Picasso reside in CD-1; James Adams and Luciano Gonzalez-Vegas reside in CD-6; Allison Shari Allen, Laura McClettie, Nelda Leon, and German De Castro reside in CD-12; and Alan Rene Olivia Chapela, Virginia Keogh, and Natalee Nanette Nieves reside in CD-14. *Ge Decl.*, Exs. 1–11. *Williams* Plaintiffs therefore have standing to challenge the 2023 Congressional Plan’s intentional dismantling of CD-1, CD-6, and CD-14, packing of CD-12, and purposeful dilution of minority voting power in CD-1, CD-6, CD-12, and CD-14. *Am. Compl.* ¶¶ 145–46, 154.

Legislative Defendants do not contend otherwise. Instead, without engaging with the specifics of *Williams* Plaintiffs’ allegations, Legislative Defendants mistake *Williams* Plaintiffs’ allegations about the intent underlying the 2023 Congressional Plan as a “theory of statewide injury.” Partial MSJ at 5. But, as set forth above, *Williams* Plaintiffs have sufficiently alleged injury based on their residence and voting power in specific districts under the 2023 Congressional Plan. Legislative Defendants’ passing suggestion that *Williams* Plaintiffs have instead brought statewide intent-based claims appears to be based on the short-hand section headers in the Amended Complaint rather than the actual, substantive allegations that comprise each claim. *See id.* at 2, 5; *Randall v. Potter*, 366 F. Supp. 2d 120, 123 (D. Me. 2005) (“[H]eadings, like captions, are not technically part of a pleading and only assist the reader to locate and place the asserted fact in its proper context”).

Notably, *Williams* Plaintiffs’ claims are pled in precisely the same way as other intent-based claims that proceeded to trial. For instance, in *Harding v. County of Dallas*, the plaintiffs alleged that the “Discriminating Map . . . illegally dilutes the vote of [plaintiffs]” by intentionally “isolating” some plaintiffs in specific districts where “they have a less-than-equal opportunity to elect a candidate they prefer or the candidate preferred by their racial minority” and “super-concentrating” other plaintiffs in a specific district where “their racial minority is so drastically over-represented as to substantially waste” their votes. Second Am. Compl. ¶¶ 26–28, *Harding v. County of Dallas*, No. 3:15-cv-00131-D, 2015 WL 10427709 (N.D. Tex. July 10, 2015). The Fifth Circuit affirmed that each plaintiff “asserts a legally cognizable injury,” noting that, where “[i]t is conceded that each voter resides in a district where their vote has been cracked or packed[,] [t]hat is enough” for standing.” *Harding v. County of Dallas*, 948 F.3d 302, 307 (5th Cir. 2020). Similarly, in *Committee for a Fair & Balanced Map*, the plaintiffs alleged that the “Proposed Congressional Plan intentionally discriminates against Latino voters on the basis of their race” by packing and cracking Latino voters in specific proposed districts, Am. Compl. ¶¶ 109–112, *Comm. for a Fair & Balanced Map v. Ill. State Bd. of Elections*, No. 1:11-cv-5065 (N.D. Ill. Nov. 4, 2011), ECF No. 103, and the district court proceeded to analyze their intentional vote dilution claim after trial, *Comm. for a Fair & Balanced Map v. Ill. State Bd. of Elections*, 835 F. Supp. 2d 563, 580 (N.D. Ill. 2011).

Even if *Williams* Plaintiffs hadn’t alleged district-specific harm in their operative complaint, that would not preclude their ability to establish district-specific harm at trial,

as courts regularly permit intentional vote dilution claims against a redistricting plan to proceed and allow plaintiffs to prove their district-specific injuries. *Compare, e.g.*, First Am. Compl. ¶ 58, *Quesada v. Perry*, No. SA-11-CV-360 (W.D. Tex. Aug. 2, 2011), ECF No. 105 (alleging that “[t]he State’s proposed Congressional Plan violates Section 2 of the Voting Rights Act . . . in that, under the totality of the circumstances, Plaintiffs and minority voters are denied an equal opportunity to participate effectively in the political process and to elect candidates of their choice”), *with Abbott v. Perez*, 585 U.S. 579, 591 (2018) (reviewing district court finding of intentional vote dilution).

Likewise, courts have regularly found that plaintiffs had standing to bring intentional discrimination claims where they alleged discrimination from the entire redistricting plan. *Compare* Second Am. Compl. ¶¶ 121, 126, *Common Cause Fla. v. Byrd*, No. 4:22-cv-109 (N.D. Fla. Feb. 7, 2023), ECF No. 131 (alleging that “[t]he Enacted Plan intentionally discriminates against Black Floridians on the basis of race, in violation of the Fourteenth Amendment” and “[t]he Enacted Plan intentionally denies or abridges Black Floridians’ right to vote on the basis of race, in violation of the Fifteenth Amendment”), *with Common Cause Fla. v. Byrd*, 726 F. Supp. 3d 1322, 1358 (N.D. Fla. 2024) (finding it sufficient for standing that a plaintiff resided in an impacted district); *compare* Second Am. Compl. ¶¶ 171, 173, *Petteway v. Galveston*, No. 3:22-cv-00057 (S.D. Tex. May 25, 2022), ECF No. 42 (alleging that the “adopted Commissioners Court plan was enacted with the intent to discriminate on the basis of race and national origin, and has a discriminatory

effect on that basis”), with *Petteway v. Galveston County*, 667 F. Supp. 3d 447, 463 (S.D. Tex. 2023) (finding standing because a plaintiff resides in the impacted district).

Legislative Defendants’ imaginary dispute with *Williams* Plaintiffs’ purported theories of “statewide injury” rests largely on *Gill v. Whitford*, 585 U.S. 48 (2018), but *Gill* is inapposite. In *Gill*, partisan gerrymandering plaintiffs claimed injury from the partisan performance of the plan *as a whole* rather than the specific districts in which they resided. See Compl. ¶ 85, *Whitford v. Nichol*, No. 3:15-cv-00421 (W.D. Wis. July 8, 2015), ECF No. 1 (“The Current Plan’s efficiency gap means that there is close to a zero percent chance that the Plan will ever favor Democrats.”). *Williams* Plaintiffs, by contrast, have not rested their theory of injury on the overall partisan or racial composition of the North Carolina delegation under the 2023 Congressional Plan but have instead identified specific districts in which they reside where the district lines harm their voting power—precisely as the Supreme Court instructed in *Gill*. See 585 U.S. at 69.

II. Plaintiffs may introduce statewide evidence in support of their claims and requested remedy.

Legislative Defendants seem to have conflated the requirements for standing with the permissible evidence that may be brought to support *Williams* Plaintiffs’ claims and requested remedy. While *Williams* Plaintiffs intend to introduce evidence of intent regarding the passage of the 2023 Congressional Plan as a whole—and the remedy for a finding of intentional discrimination or vote dilution may be a redrawing of the entire congressional map—*Williams* Plaintiffs’ statewide allegations have no bearing on whether they have standing based on district-specific injuries.

By definition, plaintiffs who bring intent-based claims must analyze the intent underlying the enactment of the redistricting plan as a whole. For an intentional discrimination claim, “plaintiff[s] must plead that the challenged redistricting plan was enacted with a discriminatory purpose and has discriminatory effects.” *Petteway v. Galveston County*, 667 F. Supp. 3d 432, 444 (S.D. Tex. 2023). Courts evaluating intent claims must consider “five nonexhaustive factors” that pertain to the plan as a whole, including its historical background, procedure for enactment, and legislative history. *Id.* at 445 (citing *Veasey v. Abbott*, 830 F.3d 216, 231 (5th Cir. 2016)); *see also N.C. State Conf. of the NAACP v. Raymond*, 981 F.3d 295, 303 (4th Cir. 2020). And plaintiffs who bring a vote dilution claim must “allege[] that the State has enacted a particular voting scheme as a purposeful device ‘to minimize or cancel out the voting potential of racial or ethnic minorities,’ an action disadvantaging voters of a particular race.” *Perez v. Abbott*, 253 F. Supp. 3d 864, 932 (W.D. Tex. 2017); *see also Harding*, 948 F.3d at 312 (“[An intentional] vote dilution claim alleges that the [government] has enacted a particular voting scheme as a purposeful device to maintain or cancel out the voting potential of racial or ethnic minorities.” (citation omitted)). That is, plaintiffs must offer evidence about the circumstances surrounding the enactment of the redistricting plan. *Cf. Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 263 (2015) (“Voters, of course, can present statewide evidence in order to prove racial gerrymandering in a particular district.”). That is exactly what *Williams* Plaintiffs intend to offer in this case. *See, e.g., Am. Compl.* ¶¶ 145–47, 151–54.

Just as *Williams* Plaintiffs may introduce statewide evidence of intent, the remedy they seek may also require reconfiguration of the entire congressional map. *See League of United Latin Am. Citizens v. Abbott*, 604 F. Supp. 3d 463, 486 (W.D. Tex. 2022) (“[T]he question of standing is quite separate from the question of remedy. . . it may be necessary to redraw every other district in the state.”); *Larios v. Perdue*, 306 F. Supp. 2d 1190, 1210 (N.D. Ga. 2003) (recognizing that altering one district’s boundaries necessarily affects the remaining districts’ lines). Ultimately, *Williams* Plaintiffs’ analysis of the 2023 Congressional Plan as a whole for evidence of discriminatory intent and for remedial purposes is entirely irrelevant to *Williams* Plaintiffs’ standing to bring their intent-based claims.

CONCLUSION

Williams Plaintiffs respectfully request that the Court deny Legislative Defendants’ motion for partial summary judgment.

Dated: January 7, 2025

By: /s/ Abha Khanna

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** Special Appearance pursuant to
Local Rule 83.1(d)*

CERTIFICATE OF WORD COUNT

I certify that this brief complies with the requirements of Local Rule 7.3. This response contains 2,709 words exclusive of the caption, signature lines, and this certificate.

Dated: January 7, 2025

By: /s/ Abha Khanna