

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

ANNE HARDING, et al.,

Plaintiffs,

V.

COUNTY OF DALLAS, TEXAS, et

al.,

Defendants,

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C.A. NO. 3:15-CV-00131-D

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

The plaintiffs in the above-captioned action (the “Plaintiffs”) ask the Court (through this “Plaintiffs’ MSJ”) to grant summary judgment in this matter.

As explained further in the Plaintiffs’ contemporaneously filed brief in support of this Plaintiffs’ MSJ, the Plaintiffs are entitled to judgment on their first claim asserted under the 14th Amendment (the “First Equal Protection Claim”) that all four (4) Commissioners Court districts (each a “Commissioners Court District” or “CCD”) that the Dallas County Commissioners Court enacted in 2011 as part of the map it approved on June 10, 2011 are unconstitutional.

The sole element of this *Reno*-style First Equal Protection Claim on which the Plaintiffs bear the burden of proof is whether race was the predominant factor motivating the Defendants to place a significant number of voters within or without a particular challenged district. The Plaintiffs are entitled to judgment on this claim, because the uncontested evidence establishes that: (i) as the Defendants crafted the map under challenge in this litigation (the “Enacted Plan” or “EP”), they ordered into place criteria the EP must meet, which required race to predominate over

any and all traditional redistricting factors in defining the CCDs; (ii) during discovery, the man who actually drew the EP for the Defendants admitted under oath that he: (a) understood the Court's ordered criteria to require him to create a map including three (3) racially defined CCDs where the Plaintiffs and their racial group would be an out-of-power minority, unable to elect its preferred candidates; (b) understood those criteria to require a map with such racial characteristics, while leaving any partisan interests "[no more than an]other goal [to potentially be] achieved in the map ... in addition;" (c) followed those instructions by drawing each of the CCDs and the EP as a whole based on racial and ethnic demography; and (d) did so with the understanding that the resulting population numbers for each racial group within each CCD, including the population numbers for the Plaintiffs' racial minority in each CCD, "mattered" to the final actual design of the CCDs and the EP; (iii) as the Defendants considered and revised the maps he so designed into the EP, the Defendants as a whole, through their redistricting counsel J. Gerald Hebert, publically admitted on the record that race was the predominant factor that had driven the EP's design; (iv) over the course of the public hearings on the EP, literally every member of the Dallas Commissioners Court who eventually voted to pass the EP either described the EP in purely racial terms or explained that they would not vote for any map that lacked the EP's allocation of Commissioners Court seats to particular racial groups within the Dallas County electorate's bloc-voting majority; and (v) after the Defendants passed the EP, in 2011, they bragged to the U.S. Department of Justice, again through their redistricting counsel J. Gerald Hebert, that they had crafted the EP on the basis of race to empower racial groups within Dallas's ethnic-bloc-voting majority to elect Commissioners from three (3) of the four (4) CCDs (so, necessarily, denying the Plaintiffs and their racial minority the chance to elect more than one (1) Commissioner).

Accordingly, the undisputed evidence establishes that the Defendants have admitted the sole element of the First Equal Protection Claim on which the Plaintiffs bear the burden of proof. While Courts usually engage in analysis of a second factor before ruling on this kind of claim (considering whether a district predominantly defined by race passes strict scrutiny), that element is inapplicable here, because it is a defense, and *the Defendants have pled no defenses* to the First Equal Protection Claim. Indeed, the Defendants have never: (a) contended that the EP can survive strict scrutiny as an enactment narrowly tailored to achieve a compelling interest; (b) produced any evidence or analysis to meet the burden of proof they would bear had they pled such a defense; nor (c) argued that the EP was primarily motivated by politics, rather than race (a contention that the Court-ordered criteria and the EP-drafter's admissions would conclusively disprove, regardless).

PRAYER

Because the undisputed evidence demonstrates that race predominated over any and all traditional redistricting criteria, and the Defendants have neither pled, nor provided any evidence to support any defense to the First Equal Protection Claim, the Plaintiffs ask for Summary Judgment on the First Equal Protection Claim that all four (4) CCDs within the EP are unconstitutional.

Dated December 1, 2017.

Respectfully submitted,

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COUNSEL TO THE PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that on December 1, 2017, I served a copy of this Plaintiffs' Motion for Summary Judgment on all other counsel of record by electronic filing through the Court's CM/ECF system.

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