

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

JULIE BAROODY, and
WILLIAM B. FARMER,

PLAINTIFFS,

v.

Case No. 4:20-cv-217-AW-MAF

CITY OF QUINCY, FLORIDA,
KEITH A. DOWDELL, in his official
capacity as Commissioner and Mayor
of the City of Quincy, RONTE R.
HARRIS, in his official capacity as
Commissioner and Mayor Pro-Tem of
the City of Quincy, and ANGELA G.
SAPP, in her official capacity as
Commissioner of the City of Quincy,

DEFENDANTS.

**DEFENDANTS' UNOPPOSED MOTION FOR LEAVE TO FILE
SUPPLEMENTAL MEMORANDUM DIRECTED AT PLAINTIFFS'
REPLY IN SUPPORT OF THEIR PRELIMINARY INJUNCTION MOTION**

In footnote 5 of their Reply Brief in Further Support of Motion for Preliminary Injunctive Relief (ECF 22), Plaintiffs assert no “binding authority imposes . . . [a] requirement to utilize [Voting Age Population] or [Citizen Voting Age Population]” when assessing the first of three preconditions for maintain a Section 2 claim under the Voting Rights Act. ECF 15, at 5, n. 5; *see also Thornburg v. Gingles*, 478 U.S.

30 (1986) (setting forth preconditions). Plaintiffs cite no authority for the proposition. Defendants seek leave to file the attached Supplemental Memorandum (attached as **Exhibit A**) addressing Plaintiffs' assertion. Plaintiffs do not oppose the request to file the Supplemental Memorandum.

Respectfully submitted by:

/s/ Joseph A. Brown

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Dated: June 3, 2020

Counsel for Defendants

* * *

CERTIFICATE OF COMPLIANCE WITH LOCAL RULES

The undersigned certifies that he conferred with counsel for the Plaintiffs regarding this filing, who do not oppose this Motion. Plaintiffs' counsel indicated that they may file a reply to Defendants' attached Supplemental Memorandum, to which Defendants have no objection. The undersigned further certifies that this filing complies with the size, font, and formatting requirements of Local Rule 5.1(C), and that this filing complies with the word limit in Local Rule 7.1(F) because it contains 1,046 words, excluding the case style, signature block, and certificates.

* * *

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via electronic mail to the following on this 3rd day of June, 2020:

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EXHIBIT A

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Case No. 4:20-cv-217-AW-MAF

**DEFENDANTS' SUPPLEMENTAL MEMORANDUM IN DIRECTED AT
PLAINTIFFS' REPLY BRIEF IN FURTHER SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTIVE RELIEF**

The U.S. Supreme Court's decision in *Thornburg v. Gingles*, 478 U.S. 30 (1986) requires that Plaintiffs satisfy three preconditions when pursuing any claim under Section 2 Voting Rights Act. The first of these preconditions requires that Plaintiffs prove that Whites in the City of Quincy, as an alleged minority, are

“sufficiently large and geographically compact to constitute a majority in a single member district.” *Gingles*, 478 U.S. at 51-51. Plaintiffs assert in their most recent filing that no “binding authority imposes [on them] . . . [a] requirement to utilize [Voting Age Population] or [Citizen Voting Age Population]” when carrying their burden under the first *Gingles* precondition. ECF 15, at 5, n. 5. Not true.

Controlling Eleventh Circuit precedent mandates that Plaintiffs utilize Voting Age Population, as further refined by Citizen Voting Age Population, to prove that a minority group is “sufficiently large” to constitute a majority (e.g., that they are sufficiently numerous). *See Negron v. City of Miami Beach*, 113 F.3d 1563, 1569 (11th Cir. 1997). Specifically, as the Eleventh Circuit held in *Negron*:

We agree with the Ninth Circuit that because a section 2 claim will fail unless the plaintiff can establish that the minority group constitutes an effective voting majority in a single-member district, *the proper statistic for deciding whether a minority group is sufficiently large and geographically compact is voting age population as refined by citizenship. Of course, the requirement that voting age population data be further refined by citizenship data applies only where there is reliable information indicating a significant difference in citizenship rates between the majority and minority populations.*

113 F.3d at 1569 (emphasis added) (internal citations and quotations omitted).

Negron remains binding precedent. More recent cases make this clear. *See, e.g., United States v. Osceola Cty.*, 475 F. Supp. 2d 1220, 1229 (M.D. Fla. 2006) (“[C]ourts *must* consider the *citizen voting-age population* of the group challenging the electoral practice when determining whether the minority group is sufficiently

large and geographically compact to constitute a majority.” (emphasis added) (quoting *Perez v. Pasadena Indep. Sch. Dist.*, 165 F.3d 368, 372 (5th Cir. 1999) (internal citation and quotation omitted)); *United States v. Sch. Bd. of Osceola Cty.*, No. 6:08-cv-582-ORL-31DAB, 2008 U.S. Dist. LEXIS 33490, at *4-5 (M.D. Fla. Apr. 23, 2008) (finding Hispanics would constitute a majority based on “*citizen voting age population*” (emphasis added)); *Rios-Andino v. Orange Cty.*, 51 F. Supp. 3d 1215, 1223 (M.D. Fla. 2014) (quoting the Eleventh Circuit in *Negron* to hold that “the proper statistic for deciding whether a minority group is sufficiently large and geographically compact is voting age population as refined by citizenship . . . where there is reliable information indicating a significant difference in citizenship rates between the majority and minority populations. . . .” (internal quotations and citations omitted)); *Ga. State Conf. of the NAACP v. Fayette Cty. Bd. of Comm'rs*, 996 F. Supp. 2d 1353, 1360 n.7 (N.D. Ga. 2014) (“The Eleventh Circuit, like its sister circuits, has held that the focus should be on the *voting-age rather than overall population* in determining whether the minority population is ‘sufficiently large’ under *Thornburg v. Gingles*, 478 U.S. 30, 50, 106 S. Ct. 2752, 92 L. Ed. 2d 25 (1986).” (emphasis added)); *Jones v. Jefferson Cty. Bd. of Educ.*, No. 2:19-cv-01821-MHH, 2019 U.S. Dist. LEXIS 223556, at *9 (N.D. Ala. Dec. 16, 2019) (evaluating whether a district has a “a majority-Black *citizen voting age population*” (emphasis added)); *Ala. State Conf. of the NAACP v. Alabama*, No. 2:16-CV-731-

WKW [WO], 2020 U.S. Dist. LEXIS 18938, at *56 (M.D. Ala. Feb. 5, 2020) (“A minority group is ‘sufficiently large’ if it makes up more than 50% of the *voting-age population* in the proposed remedial district.” (emphasis added)). In addition, citizen voting age population is at issue in this case, as opposed to just voting age population, because of Plaintiffs’ reliance on Hispanics in their claims and the fact that there is a significant difference in citizenship rates for voting-age population Hispanics as compared to voting-age-population Whites and Blacks. See ECF 21-1, at 51 (reflecting 55.2% of voting-age-population Latinos are not U.S. Citizens)

Finally, even the U.S. Supreme Court has indicated that the voting age population is the relevant metric, *not* total population as Plaintiffs suggest. *See, e.g., Growe v. Emison*, 507 U.S. 25, 38 n.4, 113 S. Ct. 1075, 1083 (1993) (“To establish whether a § 2 violation has occurred (which presumably requires application of the same standard that measures whether a § 2 violation has been remedied) other courts have looked to, *not the district's total minority population, but the district's minority population of voting age*. *Gingles* itself repeatedly refers to the *voting population*. We have no need to pass upon this aspect of the District Court's opinion.” (emphasis added) (internal citations omitted)); *Bartlett v. Strickland*, 556 U.S. 1, 18, 129 S. Ct. 1231, 1245 (2009) (“[T]he majority-minority rule relies on an objective, numerical test: Do minorities make up more than 50 percent of the *voting-age population* in the relevant geographic area? That rule provides straightforward

guidance to courts and to those officials charged with drawing district lines to comply with § 2.”) (emphasis added) (plurality opinion)).

In sum, binding precedent *does* foreclose Plaintiffs’ use of total population to satisfy the first of the *Gingles* precondition. They offer no case to the contrary. They offer no legal argument to the contrary. An unsupported statement is all they have.