IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

WINNIE JACKSON, JARRETT "JAY" JACKSON, CELINA VASQUEZ, DUANE BRAZTON, NADIA BHULAR, AMJAD BHULAR, CHERYL MILLS-SMITH, and RICHARD CANADA,

Plaintiffs,

v. Civil Case No. 4:25-cv-000587-O

TARRANT COUNTY, TEXAS; TARRANT COUNTY COMMISSIONERS COURT; TIM O'HARE, in his official capacity as Tarrant County Judge,

Defendants.

DEFFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION TO EXPEDITE

Plaintiffs ask the Court to expedite, separate, advance, and consolidate claims for which there is no relief. Plaintiffs' request is not supported by precedent, nor does it serve judicial economy. Plaintiffs' motion to expedite should be denied.

ARGUMENT

I. Plaintiffs Provide Inadequate Justification for an Expedited Hearing and Adjudication Schedule.

A. Holding Duplicate Trials on the Merits is Not Expeditious.

There is no justification to expedite a preliminary injunction hearing of a case that has no merit. Federal district courts have wide discretion in managing their docket, and judges can order parties to proceed "in any manner" they deem "just and expeditious."[1] Plaintiffs propose a schedule

[1] N.D. Tex. L.R. 83.1.

that is neither just nor expeditious. The Court should consider Defendants' Motion to Dismiss, EFC No. 22, before it expedites a preliminary injunction hearing or bifurcates the case into multiple trials. Even considering all facts pleaded as true, the Court lacks subject matter jurisdiction because Plaintiffs fail to plead a case on which the Court may grant relief. *See* Defendant's Memorandum in Support of its Motion to Dismiss ECF No. 22-1, at 6-15.

Plaintiffs originally pleaded a vote dilution case under Section 2 of the Voting Rights Act. *See* Pls.' Compl., ECF No. 1, at 14 ¶ 62. Plaintiffs now concede that this is *not* a vote dilution case. *See* Pls.' Br. in Supp. of Mot. For Prelim. Inj., ECF No. 12, at 13; *see also* Defendant's Memorandum in Support of its Motion to Dismiss ECF No. 22-1, at 6-10 (explaining Plaintiffs' inability to make a vote dilution claim). The first *Gingles*' precondition cannot be met as there is no minority group in Tarrant County that can alone form a sufficient majority-minority single-member district, and Plaintiffs do not argue otherwise. *See Thornburg v. Gingles*, 478 U.S. 30, 50 (1986) (stating that the first *Gingles* precondition requires the ability to form a "sufficiently large and geographically compact" majority-minority district); *see also Petteway v. Galveston Cnty.*, 111 F.4th 596, 604-05 (5th Cir. 2024) (holding that Section 2 of the Voting Rights Act does not authorize race coalition claims to satisfy the first *Gingles* precondition).[2] Therefore, Plaintiffs cannot bring a vote dilution case based on Section 2 of the VRA.[3]

[2] Plaintiffs admit that Commissioner Precinct 2 is an "influence" district and not a majority-minority district. *See* Dr. Cortina Report, ECF No. 13, at 5 (table showing Black CVAP in Precinct 2 at 24.1% and Latino CVAP at 20.6%); ECF No. 12, at 13; UCLA Report, App. E, ECF No. 13-3, at 32 ¶ 4(e), 41-42 ¶ 8 ("Black and Hispanic voters are more evenly distributed across districts 1 and 2 that create opportunity districts"), 46 ¶ 12 ("limiting their influence"), ¶ 14 ("cannot meaningfully influence electoral outcomes"), and ¶ 17 ("preserve … effective minority opportunity districts.").

[3] The safe harbor of proportional representation in *Johnson v. DeGrady*, 512 U.S. 997, 1017 (1994) further insulates the County from a vote dilution claim.

Plaintiffs amended their complaint and now base their case on a Supreme Court decision which does not apply to redistricting, *Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647 (2021). The United States Supreme Court in *Brnovich* created five non-exhaustive "totality of the circumstances" factors as to "time, place and manner" voting procedure changes because it viewed the *Gingles* preconditions as a "clumsy fit" for non-redistricting cases. *See id.* at 668-73. However, *Brnovich* does not apply to these facts because this is a redistricting case normally governed by *Gingles*. Tarrant County made no changes to the "time, place and manner" of voting procedures, it merely redistricted commissioner precinct lines.

In their amended complaint, Plaintiffs heavily rely on the disparate impact element of *Brnovich*—which the Supreme Court rejected as a stand-alone cause of action. *Id.* at 674-75. The other factors are irrelevant to redistricting, leaving only a claim the Supreme Court has clearly foreclosed. *Id.* Even assuming that the other four factors are not a "clumsy fit," Plaintiffs still have not pleaded facts sufficient to support a Section 2 claim under *Brnovich*.

Finally, "A two-year postponement of the franchise" does not constitute a "constitutional deprivation." *Carr v. Brazoria Cnty.*, 341 F. Supp. 155, 160 (S.D. Tex. 1972) (citing *Pate v. El Paso Cnty.*, 337 F. Supp. 95 (W.D. Tex. 1970), *aff'd* 400 U.S. 806 (1970)), *aff'd* 468 F.2d 950 (5th Cir. 1972). Plaintiffs' Counts 1 and 2, based upon temporary delay of voting, assert an injury that has long been denied by the Supreme Court, the Fifth Circuit, and this Court's sister district courts. *Id.* Additionally, there can be no disparate impact on a non-existent right.

B. *Nken* and *Purcell* Dissuade a Hasty Trial.

Plaintiffs argue that the example of the district court in *Petteway* should be followed here, implying that the court of appeals' stay in *Petteway* was only issued because of the proximity to the candidate filing deadline. ECF No. 11 at 2. This argument is wrong. The Fifth Circuit stayed

every attempt of the district court to impose a remedy or a court-drawn map. *Petteway v. Galveston Cnty.*, No. 23-40582, 2023 U.S. App. LEXIS 31977, at *3 (5th Cir. Oct. 18, 2023) (granting a temporary administrative stay of the district court's orders); *Petteway v. Galveston Cnty.*, No. 23-40582, 2023 U.S. App. LEXIS 32515 (5th Cir. Oct. 19, 2023) (extending the administrative stay); *Petteway v. Galveston Cnty.*, 87 F.4th 721, 723 (5th Cir. 2023) (staying the district court's orders and "any further action altering the boundaries"). In his concurrence, Judge Oldham relied both on *Purcell* and that Galveston County would likely prevail on the merits. *Petteway*, 87 F.4th at 728 (Oldham, J., concurring) (citing *Nken v. Holder*, 556 U.S. 418 (2009)) ("[t]he County has also shown the other stay factors required by *Nken"*); *see also Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam). The "likelihood of success" on the merits is one of *Nken*'s most important factors. *Id.* at 726 (Richman, C.J., concurring).

Plaintiffs' assertion that their motion to expedite should be granted to "avoid *Purcell* issues," implies that *Purcell* does not yet apply to the present case. However, Plaintiffs provide no rationale for how *Purcell* concerns can be avoided by having a ruling now, just a few months before the filing period of December 1, 2025 to January 5, 2026. While there is no concrete rule for the timing element, "six months before the relevant election" is the most recent Supreme Court benchmark for applying *Purcell* in a redistricting case. *See* Casey P. Schmidt, Comment, *Disrupting Election Day: Reconsidering the Purcell Principle as a Federalism Doctrine*, 110 Va. L. Rev. 1493, 1542-43 (2024); *see also Robinson v. Callais*, 144 S. Ct. 1171 (2024).

Purcell emphasized the important factor of election imminence in considering a stay and articulated the principle that "lower federal courts should ordinarily not alter the election rules on the eve of an election." *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U.S. 423, 424 (2020) (per curiam); *see also Purcell*, 549 U.S. at 5. This principle "might be overcome … if a

plaintiff establishes at least the following: (i) the underlying merits are *entirely clearcut* in favor of the plaintiff; (ii) the plaintiff would suffer irreparable harm absent the injunction; (iii) the plaintiff has not unduly delayed bringing the complaint to court; and (iv) the changes in question are at least feasible before the election without significant cost, confusion, or hardship." *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring); *see also Petteway*, 87 F.4th at 728 (Richman, C.J., concurring) (endorsing Kavanaugh's four element test for overcoming *Purcell*); *Pierce v. N.C. State Bd. of Elections*, 97 F.4th 194, 229 (4th Cir. 2024) (applying Kavanaugh's four element test for overcoming *Purcell*). Assuming *Purcell* does apply because of its mandate for courts to "consider the effect of late-breaking judicial intervention" in elections, Plaintiffs fail to establish *any* of the four elements required to overcome *Purcell*. *See Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring).

II. Plaintiffs Provide Inadequate Justification to Bifurcate the Trial and Advance Counts 1 and 2 with the Preliminary Injunction Hearing.

Tarrant County is entitled to defend itself. Plaintiffs have submitted two expert reports, Dr. Jeronimo Cortina of the University of Houston, ECF No. 13, ECF No. 13-1, and ECF No. 13-2, and Mr. Michael Rios of the UCLA Voting Rights Project, ECF No. 13-3. Both reports contain statistical analyses and conclusions which are subject to further discovery. As a matter of fairness, Defendants are entitled to discovery. Tarrant County is further entitled to obtain expert analysis which will support its own redistricting policy choices and, if necessary, contradict the analysis and opinion of Plaintiffs' experts. Hastily trying half of Plaintiffs' case is not judicial, economical, or fair to Tarrant County.

For the reasons set forth in Defendants' Motion to Dismiss and Response to Motion for Preliminary Injunction, Counts 1 and 2 lack merit and should be dismissed, not bifurcated and hastily tried. The Fifth Circuit has "cautioned that separation of issues is not the usual course that

should be followed" and that "the issue to be tried must be so distinct and separable from the others that a trial of it alone may be had without injustice." *Response of Carolina, Inc. v. Leasco Response, Inc.,* 537 F.2d 1307, 1323-24 (5th Cir. 1976) (quoting *Swofford v. B & W Inc.*, 336 F.2d 406, 415 (5th Cir. 1964)).

Plaintiffs request separate trials for the first two counts that all share the same witnesses, facts, and action as Counts 3 and 4. Plaintiffs' motion carries inefficiencies for the justice system and fails to satisfy the "distinct and separable" standard. *See Response of Carolina*, 537 F.2d at 1323-24. It is "within the sole discretion of the trial court" to deny a request for separate trials. *See Nester v. Textron, Inc.*, 888 F.3d 151, 162 (5th Cir. 2018) (quoting *First Tex. Sav. Ass'n v. Reliance Ins. Co.*, 950 F.2d 1171, 1174 n.2 (5th Cir. 1992)). While "[p]rejudice is the Court's most important consideration in deciding whether to order separate trials under Rule 42(b)," *Laitram Corp. v. Hewlett-Packard Co.*, 791 F. Supp. 113, 115 (E.D. La. 1992), separate trials to avoid prejudice are unnecessary for a bench trial. *See United States v. IBM*, 60 F.R.D. 654, 655-58 (S.D.N.Y. 1973) (explaining that in a bench trial, "the kind of prejudice contemplated by Rule 42(b) does not come into play"). It also imposes a manifest unfairness on Defendants in that it creates two trials where either of the two attempts would yield the relief Plaintiffs seek while Defendants must run the table. Plaintiffs' shaky justification of avoiding prejudice due to "the passage of time," ECF No. 15, at 3, does not mandate that a judge grant their request for separate trials.

CONCLUSION

For the foregoing reasons, the Motion to Expedite should be denied.

Respectfully submitted,

For the Defendants:

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CERTIFICATE OF SERVICE

I, Joseph M. Nixon, do hereby certify that service of a true and correct copy of this Motion has been forwarded to all counsel of record via electronic notification and sent to non-parties via regular and/or certified mail.

DATED: August 4, 2025

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