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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ROGELIO MONTES and MATEO ARTEAGA,

Plaintiffs,

v.

CITY OF YAKIMA, MICAH CAWLEY, in his official capacity as Mayor of Yakima, and MAUREEN ADKISON, SARA BRISTOL, KATHY COFFEY, RICK ENSEY, DAVE ETTL, and BILL LOVER, in their official capacity as members of the Yakima City Council,

Defendants.

NO. 12-CV-3108 TOR

PLAINTIFFS' RESPONSE TO DEFENDANTS' SUMMARY JUDGMENT MOTION

NOTED FOR HEARING: August 18, 2014

Telephonic Argument
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I. INTRODUCTION

Defendants' motion for summary judgment rests on a legal premise no court has ever adopted and which the Ninth Circuit has expressly rejected. The Court should deny the motion.

Section 2 of the Voting Rights Act requires creation of majority-minority districts where certain criteria are met. Specifically, under *Thornburg v. Gingles*, 478 U.S. 30, 50 (1986), Plaintiffs must show a reasonably compact majority-minority district can be drawn. There is little real dispute about this in the present case—the Latino population of Yakima is concentrated in East Yakima, and Plaintiffs have demonstrated that there are any number of ways to draw at least one compact district where Latinos form a majority of eligible voters. In keeping with well-established constitutional principles, Plaintiffs' demonstrative plans are drawn with reference to population equality.

In apparent recognition that Plaintiffs meet this threshold precondition, Defendants' motion seeks to invent a new standard. Defendants raise the unsupported contention that a Section 2 claim fails unless Plaintiffs comport with the vague concept of "electoral equality." They advance three species of this core contention, all of which attempt to nullify Plaintiffs' claim for failing to adhere to Defendants' fabricated criteria. But no court has ever recognized "electoral equality" as a legitimate districting principle, let alone a prerequisite to a claim under Section 2 of the Voting Rights Act, and the Ninth Circuit has *specifically* stated that drawing a districting plan on the basis of "electoral equality" violates basic equal protection principles.

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Defendants' advancement of a fictional standard, in the absence of any authority in support of their position, presents an attempt to skirt the actual requirements of the Voting Rights Act. Plaintiffs respectfully request the Court deny Defendants' Summary Judgment Motion.

II. ARGUMENT

A. There Is No Legal Basis for Defendants' Assertion that Plaintiffs' Demonstrative Plans Must Balance Electoral Equality

Defendants' summary judgment motion rests on the notion that Section 2 requires Plaintiffs to propose demonstrative plans that attempt to balance "electoral equality," which Defendants define as "the relative weight of each adult citizen's vote." ECF No. 67 ("Defs.' Summ. J. Mot.") at 1, 8-9. Defendants fail to cite a single authority for this position. This is not an oversight. There *is* no authority supporting Defendants' position. To Plaintiffs' knowledge, no court has ever held that the *Gingles* inquiry encompasses a consideration of "electoral equality."

1. Electoral Equality Is Not a Traditional Districting Principle

Defendants assert that "electoral equality" is a "traditional districting principle" that must be taken into account when drawing demonstrative maps for purposes of establishing a violation of Section 2 of the Voting Rights Act. Defs.' Summ. J. Mot. at 8-9. This claim is remarkable, as the entire body of redistricting jurisprudence will be searched in vain for a single case so holding.

The concept of "traditional districting principles" derives from United States Supreme Court case law regarding racial gerrymandering. *See Shaw v. Reno*, 509 U.S. 630, 647 (1993) ("We emphasize that these criteria are

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important not because they are constitutionally required—they are not—but because they are objective factors that may serve to defeat a claim that a district has been gerrymandered on racial lines.") (citation omitted). *Shaw* itself referred to the traditional districting principles of "compactness, contiguity, and respect for political subdivisions." *Id.* Implicit in the term "traditional districting principles" is that these criteria are customarily considered by map-drawers when drawing district lines.

One of the most fundamental districting principles is population equality, which requires that state and local districting maps be drawn to include "substantial equality of population among the various districts." *Reynolds v. Sims*, 377 U.S. 533, 579 (1964); *see also id.* at 560-61 ("[T]he fundamental principle of representative government in this country is one of equal representation for equal numbers of people, without regard to race, sex, economic status, or place of residence within a State."); *Mahan v. Howell*, 410 U.S. 315, 321 (1973) ("[T]he basic constitutional principle [is] equality of population among the districts."); *Kirkpatrick v. Priesler*, 394 U.S. 526, 530 (1969) ("'[E]qual representation for equal numbers of people [is] the fundamental goal for the House of Representatives.'") (quoting *Wesberry v. Sanders*, 376 U.S. 1, 18 (1964)). Consistent with this basic constitutional principle, courts have routinely recognized population equality as a traditional districting criterion. *See, e.g., Shaw*, 509 U.S. at 651-52 (referring to New York statute's adherence to "traditional districting principles" "'such as compactness and population equality'") (quoting *United Jewish Orgs. of Williamsburgh, Inc. v. Carey*, 430 U.S. 144, 168 (1977)); *United States v. Vill.*

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of Port Chester, 704 F. Supp. 2d 411, 439-40 (S.D.N.Y. 2010) (noting plaintiffs' illustrative districts "comport with traditional districting principles of population equality and compactness" and that "traditional districting principles typically require the use of total population in drawing district boundaries"); *Benavidez v. City of Irving, Tex.*, 638 F. Supp. 2d 709, 728 (N.D. Tex. 2009) (noting that plaintiffs' demonstrative districts "comport with traditional districting principles of population equality and respect for existing official geographic boundaries"); *Rodriguez v. Pataki*, 308 F. Supp. 2d 346, 352 (S.D.N.Y. 2004) ("[T]he 2002 Senate Plan reflects traditional districting principles including: maintaining equality of population, preserving the 'cores' of existing districts, preventing contests between incumbents, and complying with the requirements of the Voting Rights Act."), *aff'd*, 543 U.S. 997 (2004); *Robertson v. Bartels*, 148 F. Supp. 2d 443, 457 (D.N.J. 2001) (map drawer "considered traditional redistricting principles," including "equal population"), *aff'd* , 534 U.S. 1110 (2002).

By contrast, not a single court has identified "electoral equality," or the notion that districts must contain substantially equal numbers of voters, as a traditional districting principle. Not a single court has indicated that map-drawers are required to account for electoral equality in drawing district lines. Not a single court has itself openly considered electoral equality in issuing a court-drawn districting plan. Certainly, Defendants have failed to cite any authority directly to that effect.

Instead Defendants rely heavily on Judge Kozinski's *dissent* in *Garza v. County of Los Angeles*, 918 F.2d 763 (9th Cir. 1990). But nothing in that

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opinion supports Defendants' novel position that electoral equality is a traditional districting principle that must be considered in drawing a district plan. In *Garza*, the Ninth Circuit was asked to decide whether a court-ordered reapportionment plan—designed as a remedy *after* the plaintiffs had established Section 2 liability—was constitutionally invalid because it "employ[ed] statistics based upon the total population of the County, rather than the voting population." *Id.* at 773. Defendants in *Garza* raised a similar argument as Defendants advance here: that a redistricting plan based on population alone in which Latinos are concentrated in one district "unconstitutionally weights the votes of citizens in that district more heavily than those of citizens in other districts." *Id.* The Ninth Circuit specifically rejected the claim because "districting on the basis of voting capability . . . would constitute a denial of equal protection to the[] Hispanic plaintiffs and rejection of a valued heritage" of population equality. *Id.* at 776. The majority opinion in *Garza* set forth its reasoning for districting based on total population rather than voting population, citing the framers' intent, Supreme Court precedent, and the significant constitutional implications of discounting non-voters in constructing a district plan. *Id.* at 774-75. Judge Kozinski dissented in part, suggesting that reapportionment based on total population violates the principle of one person, one vote. *Id.* at 779 (Kozinski, J., dissenting).

Garza thus all but forecloses Defendants' claim that a districting plan must take voting population disparities into account. The Ninth Circuit specifically and unequivocally held that total population is the proper

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apportionment base and that the use of voting population in redistricting is contrary to equal protection principles. Indeed, even the dissent recognized that much of the language from Supreme Court precedent, "*as well as tradition*," supports the majority's emphasis on total population over voting population. *Id.* at 785 (Kozinski, J., dissenting) (emphasis added); *see also id.* (noting that the Supreme Court "has always used raw population figures, not electors" in calculating population deviations). While Defendants may find Judge Kozinski's position appealing, it simply does not support their bare assertion that electoral equality is a traditional districting principle.

Defendants also vaguely allude to "precedent from other Circuits," Defs.' Summ. J. Mot. at 9, to suggest that, even if the Ninth Circuit—which this Court must follow—has rejected their emphasis on electoral equality, other jurisdictions have held otherwise. In fact, no court anywhere has endorsed Defendants' position. To the contrary, other Circuits have likewise held that total population is the appropriate measure for apportioning districts.

Although Defendants cite *Chen v. City of Houston*, 206 F.3d 502 (5th Cir. 2000), for the proposition that "electoral equality *must* be accounted for and preserved insofar as possible because it is protected by the Fourteenth Amendment to the United States Constitution," Defs.' Summ. J. Mot. at 9 (emphasis added), *Chen* says no such thing. Instead, the Fifth Circuit rejected the plaintiffs' claim that Houston's use of total population in redistricting violated the principle of one-person, one-vote, 206 F.3d at 504-05, indicating that history and tradition favors population equality over electoral equality. *See id.* at 527 ("We also note that the drafters of the Fourteenth Amendment,

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on which *Reynolds* itself rests, do appear to have debated the question, and rejected a proposal rooted in—among other things—the principle of electoral equality."). Thus, while *Chen* ultimately determined that "the choice of population figures is a choice left to the political process," *id.* at 523, it did not *mandate* consideration of electoral equality in drawing district lines, as Defendants suggest. *See also id.* at 526 (case law relied upon by Judge Kozinski is not a "command" regarding electoral equality).

In *Daly v. Hunt*, 93 F.3d 1212, 1225 (4th Cir. 1996), which Defendants do not cite, the Fourth Circuit similarly rejected the claim that districting plans based on total population violate equal protection principles, and indicated that "courts should generally defer to the state to cho[o]se its own apportionment base, provided that such method yields acceptable results." Like *Chen*, *Daly* does not mandate electoral equality in redistricting. In fact, it rebuked the district court for considering "the deviation among the voting-age populations of the districts," *id.* at 1214, noting that "[e]ven if electoral equality were the paramount concern of the one person, one vote principle, the district court's approach in this action would lead federal courts too far into the 'political thicket,'" *id.* at 1227 (quoting *Colegrove v. Green*, 328 U.S. 549, 556 (1946)). The Fourth Circuit found "no reason to believe that voting-age population is significantly better than total population in achieving the goal of one person, one vote," and determined that the district court "erred in reaching out to extend the federal judiciary's authority in the apportionment process." *Id.* Thus, even those jurisdictions that, unlike the Ninth Circuit, have allowed

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legislative bodies leeway to consider voting population in drawing district lines have affirmatively disavowed any requirement regarding electoral equality.

Defendants can hardly claim electoral equality is a traditional districting principle when they can point to no tradition whatsoever of its use or consideration in redistricting plans. Indeed, the City of Yakima was apparently unaware of this "traditional" districting principle when it drew its current primary electoral districts. As Defendants concede, Yakima's primary electoral districts suffer from the same electoral imbalance they argue nullifies Plaintiffs' demonstrative plans. Defs.' Summ. J. Mot. at 12 n.4; *see also* Pls.' Responses and Objections to Defendants' Statement of Material Facts (July 22, 2014) ¶ 33 (overall deviation for Yakima's 2011 plan based on CVAP is 43.33%).

Defendants' suggested mandate of electoral equality consideration finds no basis in traditional districting principles or case law.

2. Electoral Equality Is Irrelevant to the *Gingles* Analysis

More pointedly, Defendants have not and cannot cite a single case requiring consideration of electoral equality in establishing the first prong of *Gingles*. No court has ever suggested that plaintiffs in a Section 2 case must demonstrate that electoral equality was considered in drawing demonstrative maps.

In fact, the only courts to have considered the claim Defendants advance here have rejected it. In *Fabela v. City of Farmers Branch, Tex.*, No. 3:10-CV-1425-D, 2012 WL 3135545, at *6 n.13 (N.D. Tex. Aug. 2, 2012), the district court "disagree[d] with defendants' position" that the existence of a substantial

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number of non-voters in plaintiffs' demonstrative districts "precludes a finding of a violation of section 2 of the Voting Rights Act." The court found that "defendants' contention[] that plaintiffs cannot prove a § 2 violation when it is necessary to include so many non-citizens in the demonstration district . . . must fail absent binding authority" that any resulting imbalance "is a basis for rejecting a § 2 claim." *Id.* ("[D]efendants do not cite any binding decision that holds that a plaintiff cannot satisfy the first prong of *Gingles* by including a particular number of non-citizens in the demonstration district.").

Similarly, in *Benavidez*, the district court addressed the challenge advanced by defendants' experts "that Plaintiff's illustrative districts result in vote dilution by relying on total population for district size, rather than considering citizen-voting-age-population." 638 F. Supp. 2d at 714. The court noted that even defendants' expert acknowledged that "total population (not CVAP) is generally accepted as the proper measure for equalizing the size of districts," and concluded that "applying the total population standard on the illustrative districts is entirely appropriate." *Id.*[1]

Defendants' bald assertion that failure to consider electoral equality precludes a finding that the first prong of *Gingles* has been satisfied is thus belied by all available authority. Defendants feign outrage that Plaintiffs'

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[1] The *Benavidez* court specifically referred to defendants' expert Dr. John Alford, who is also an expert on behalf of Defendants in the present case. *See* ECF No. 65 (Statement of Undisputed Material Facts in Support of Pls.' Mot. for Summ. J.) ¶ 108.

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expert "did not even *attempt* to reduce the imbalance of eligible voters" in drawing demonstrative plans, Defs.' Summ. J. Mot. at 12, but neglect to mention that no court has ever relied upon this criterion in conducting the *Gingles* analysis. They rely upon legal theories advanced by their expert, Dr. Morrison, regarding the alleged shortcomings of Plaintiffs' demonstrative plans, *id*. at 12; ECF No. 68 ¶ 27, but cite no actual legal authority to this effect. In short, Defendants' argument that Plaintiffs have "failed to carry their burden under Section 2" by "neglecting" electoral equality, Defs.' Summ. J. Mot. at 1, is foreclosed by the absence of any authority in favor of their position.[2]

B. Defendants Have Not Established a Claim of Vote Dilution Resulting from Plaintiffs' Demonstrative Plans

Defendants alternatively contend that Plaintiffs' demonstrative plans are illegal because they would "systematically devalue[]" the voting strength of minority voters residing outside of Districts 1 and 2. Defs.' Summ. J. Mot. at 13. Defendants' apparent concern for minority voters in Yakima, however, is misplaced.

As an initial matter, Defendants' claim of illegality is premature. According to Defendants, "[b]y proposing redistricting plans that neglect of electoral equality [sic], and presumably intending to rely on them in a potential

[2] *Cf. Kalson v. Paterson*, 542 F.3d 281, 290 (2d Cir. 2008) (holding plaintiffs' argument that congressional districts should be apportioned by voting-age population is "meritless" and "insubstantial").

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remedy phase, Plaintiffs are violating Section 2's prohibition on vote dilution." *Id.* at 13. Defendants' alternative argument does not dispute that Plaintiffs have satisfied their burden under Section 2, but rather challenges a hypothetical remedy map stemming from a hypothetical remedial process that would follow after a liability determination. Defendants cannot credibly argue that Plaintiffs' Section 2 claim *necessitates* only one kind of remedy and therefore Plaintiffs have necessarily violated Section 2 merely by bringing the claim.

In any event, Defendants' claim of illegality fails as a matter of law. Once again, Defendants fail to cite a single authority in support of their bald assertion of vote dilution. In fact, their argument that Plaintiffs' demonstrative plans would have a dilutive effect on Latino voters outside of the proposed majority-minority districts, *see id*. at 13, is foreclosed by Ninth Circuit precedent. In *Gomez v. City of Watsonville*, 863 F.2d 1407, 1414 (9th Cir. 1988), the Ninth Circuit found that the district court had "erred in considering that approximately 60% of the Hispanics eligible to vote in Watsonville would reside in five districts outside the two single-member, heavily Hispanic districts in appellants' plan." It further held that "[d]istricting plans with some members of the minority group outside the minority-controlled districts are valid." *Id.* (citing cases); *see also Campos v. City of Baytown, Tex.*, 840 F.2d 1240, 1244 (5th Cir. 1988) ("The fact that there are members of the minority group outside the minority district is immaterial."); *Farmers Branch*, 2012 WL 3135545, at *6 n.13 (rejecting contention that demonstrative district "packed with non-citizens" "dilut[es] the power of voters (including Hispanics) in other districts"). Similarly here, "the fact that the proposed remedy does not benefit

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all of the Hispanics in the City does not justify denying any remedy at all." *Gomez*, 863 F.2d at 1414.[3]

Defendants' attempt at advocacy on behalf of Yakima's Asian and Native American voters fares no better. First, while Defendants do not bother to actually present data or calculations regarding Yakima's Asian or Native American voters, they assure us that "it's obvious that [vote dilution] would be the effect" of Plaintiffs' demonstrative plans. Defs.' Summ. J. Mot. at 14 (alteration in original); *see also id.* ("Tabulating these data would reveal that a majority of voting-age American Indians and Asians reside outside of Districts 1 and 2 from Mr. Cooper's hypothetical plans."). Notably, Defendants do not contend that Plaintiffs' demonstrative plans dilute Asian and Native American voting strength relative to the current at-large system. In fact, Defendants ignore Mr. Cooper's *actual* calculation that, under his illustrative plans, over 60% of Yakima's minority population (including Latinos, Asians, and Native Americans) "would reside in three single-member districts where a minority candidate for city council could be expected to fare better than under an at-large citywide election system." Pls.' Responses and Objections to Defendants' Statement of Material Facts (July 22, 2014) ¶ 26; *see also id.* ("This would not represent a dilution of votes for minority voters vis-à-vis the current electoral scheme.").

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[3] Dr. Peter Morrison, the expert upon whose opinion Defendants rely in advancing this argument, Defs.' Summ. J. Mot. at 13, was also an expert on behalf of the City of Watsonville, *see Gomez*, 863 F.2d at 1415.

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More importantly, Defendants' suggestion that Plaintiffs' demonstrative plans would give rise to a Section 2 claim on behalf of Asian and Native American voters ignores a fundamental principle underlying the Voting Rights Act. There is no violation of Section 2 where a minority group is not "sufficiently large and geographically compact to constitute a majority in a single-member district." *Gingles*, 478 U.S. at 50; *see also Barnett v. City of Chicago*, 141 F.3d 699, 701 (7th Cir. 1998) ("[A] minority group that accounted for less than 1 percent of Chicago's population and was scattered evenly throughout the City . . . would be helpless to elect representatives of its choice to the City Council. Yet there would be no violation of the Voting Rights Act, because it would be infeasible to devise a plan that was more favorable to this minority group."). Yakima's Asian and Native American population comprise 1.41% and 1.44% , respectively, of the City's total population. *See* Pls.' Responses and Objections to Defendants' Statement of Material Facts (July 22, 2014) ¶ 26; *see also Barnett*, 141 F.3d at 703 (noting that only three percent of the city's population is Asian, "and even if Asians voted as a bloc their distribution throughout the City makes it impossible to create an Asian-majority ward"). Although Defendants rely exclusively on Dr. Morrison's expert opinion in advancing their claim of illegality, even he "doubt[ed]" that Yakima's Asian or Native American population is sufficiently numerous or geographically compact to form a majority in a single member district. Pls.' Responses and Objections to Defendants' Statement of Material Facts (July 22, 2014) ¶ 55 (Morrison Dep. at 175:17-176:4). If Defendants were right that vote dilution is established whenever an expert speculates that a

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single minority voter might be relatively disadvantaged by an electoral system, Plaintiffs would have won this case at its inception. Instead, *Gingles* lays out a clear threshold for vote dilution claims, and Defendants' purported attempt to protect Asian and Native American voters falls far short of that standard.

In sum, Defendants' cynical suggestion that Plaintiffs are entitled to no remedy unless and until each and every minority voter would benefit equally from a districting plan runs counter to the purpose of the Voting Rights Act and finds no basis in law. Accordingly, the Court should deny Defendants' summary judgment motion on this ground.

C. Defendants' Racial Gerrymandering Claim Fails on Every Level

Undeterred by the absence of case law endorsing "electoral equality" as a relevant factor in this case, Defendants contend that "Mr. Cooper's neglect of electoral equality constitutes unconstitutional gerrymandering under the Fourteenth Amendment to the United States Constitution." Defs.' Summ. J. Mot. at 15. In other words, according to Defendants, Plaintiffs' failure to consider a factor no court has recognized as a traditional districting principle in a demonstration plan no court or jurisdiction has adopted violates the constitutional rights of phantom plaintiffs in a potential future lawsuit, thereby nullifying Plaintiffs' claim for relief under the Voting Rights Act. The flaws in this theory run deep.

First, Defendants fail even to properly allege—let alone establish—a racial gerrymander. Racial gerrymandering is "the deliberate and arbitrary distortion of district boundaries . . . for [racial] purposes." *Shaw*, 509 U.S. at 640 (internal quotation marks and citation omitted). The Supreme Court has

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deemed redistricting plans invalid where they "rationally cannot be understood as anything other than an effort to segregate citizens into separate voting districts on the basis of race without sufficient justification." *Id*. at 652. A plaintiff challenging the constitutionality of a redistricting plan on racial grounds first must prove that race was the "predominant factor" motivating the districting decision in question. *Miller v. Johnson*, 515 U.S. 900, 916 (1995). This showing triggers strict scrutiny, which requires invalidation of racially motivated aspects of a plan unless the state that adopted the plan can show, first, that it had a compelling governmental interest in making the relevant decision, and, second, that the decision was narrowly tailored to achieve that interest. *Bush v. Vera*, 517 U.S. 952, 976 (1996).

The burden to establish racial predominance is "a demanding one." *Miller*, 515 U.S. at 928 (O'Connor, J., concurring). "To invoke strict scrutiny, a plaintiff must show that the State has relied on race in *substantial* disregard of customary and traditional districting practices. . . . [A]pplication of the Court's standard helps achieve *Shaw*'s basic objective of making *extreme instances* of gerrymandering subject to meaningful judicial review." *Id.* at 928-29 (emphasis added).

Here, Defendants do not even allege that race was the "predominant factor" in Plaintiffs' demonstrative plans. They contend only that, because Plaintiffs' expert purposefully drew majority-minority districts, ethnicity was "a factor" motivating the plans. Defs.' Summ. J. Mot. at 16. But "race consciousness does not lead inevitably to impermissible race discrimination." *Shaw*, 509 U.S. at 646; *see also Chen*, 206 F.3d at 506 ("[T]he mere fact that

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race was given some consideration in the districting process, and even the fact that minority-majority districts were intentionally created, does not alone suffice in all circumstances to trigger strict scrutiny."). Defendants' failure even to allege that race was the predominant factor in Plaintiffs' demonstrative plans dooms their racial gerrymandering theory from the outset.[4]

Second, Defendants' argument improperly collapses an equal protection inquiry into the first prong of *Gingles*. As the district court stated in *Fayette County*:

> [E]ven if the Illustrative Plan was drawn predominantly on racial lines . . ., to determine whether it passes strict scrutiny, the court must know whether the district is necessary to avoid § 2 liability. Otherwise, the court cannot evaluate whether a plan drawn primarily along racial lines is nonetheless permissible because it does not "subordinate traditional districting principles to race substantially more than is 'reasonably necessary' to avoid § 2

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[4] Even if Defendants had attempted to establish the predominance of race, "[d]etermination of whether race was the predominant factor in designing the proposed districts is only the beginning, not the totality, of an equal-protection inquiry." *Ga. State Conference of NAACP v. Fayette Cnty. Bd. of Comm'rs*, 950 F. Supp. 2d 1294, 1305 (N.D. Ga. 2013). It is likely that a district created to comply with Section 2 would survive strict scrutiny. *See, e.g.*, *King v. State Bd. of Elections*, 979 F. Supp. 619, 626 (N.D. Ill. 1997) (majority-minority district survived strict scrutiny because it "remedied the anticipated Section 2 violation by preserving the Latino community's voting strength through vote consolidation"), *aff'd*, 522 U.S. 1087 (1998).

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> liability." In other words, the court must first determine whether *Gingles* is met before ensuring that the proposed remedy complies with the Equal Protection Clause.

Fayette Cnty., 950 F. Supp. 2d at 1305 (quoting *Vera*, 517 U.S. at 979). Defendants' suggestion that plaintiffs in a Section 2 litigation must affirmatively disprove a racial gerrymandering claim in order to satisfy the first prong of *Gingles* demands far more than the Voting Rights Act requires.

Finally, even if Defendants had a viable theory of the role of racial gerrymandering in the *Gingles* inquiry, their argument falls flat for the simple reason that "electoral equality" is not a traditional districting principle. *See Vera*, 517 U.S. at 959 ("[F]or strict scrutiny to apply, the plaintiffs must prove that other, *legitimate* districting principles were subordinated to race.") (emphasis added). Once again, Defendants have failed to cite a single case identifying "electoral equality" as a traditional districting principle. Indeed, they can point to no districting plan in the country that has been deemed a racial gerrymander for failure to balance "electoral equality." Defendants' steadfast reliance on a districting principle no court has endorsed—either in the racial gerrymandering or the Voting Rights Act context—renders their summary judgment motion baseless and futile.

III. CONCLUSION

Defendants seek "judgment as a matter of law," Fed. R. Civ. P. 56(a), despite the fact that no law whatsoever supports their motion. For all of the foregoing reasons, Plaintiffs respectfully request that the Court deny Defendants' Motion for Summary Judgment.

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DATED: July 22, 2014

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CERTIFICATE OF SERVICE

I certify that on July 22, 2014, I electronically filed the foregoing Plaintiffs' Response to Defendants' Summary Judgment Motion with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following attorney(s) of record:

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I certify under penalty of perjury that the foregoing is true and correct.

DATED: July 22, 2014

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