

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

THE UNITED STATES OF AMERICA,)	CASE NO. 1:06CV01652
)	
Plaintiff,)	JUDGE KATHLEEN O'MALLEY
)	
v.)	MAGISTRATE JUDGE VECCHIARELLI
)	
CITY OF EUCLID, OHIO; <i>et al.</i> ,)	<u>MOTION OF DEFENDANTS CITY</u>
)	<u>OF EUCLID, OHIO AND EUCLID</u>
Defendants.)	<u>CITY COUNCIL FOR DISMISSAL</u>
)	<u>AND/OR FOR MORE DEFINITE</u>
)	<u>STATEMENT</u>

Now come the Defendants, City of Euclid, Ohio and Euclid City Council by and through their counsel to file this Motion to Dismiss Plaintiff's Complaint as to them.

Defendants' state that the plaintiff's complaint "fails to state a cause which relief can be granted" in as much as it fails to meet the requirements set forth by the United Supreme Court for "dilution" claims under the Voting Rights Act of 1965.

Further, defendant Euclid City Council is not *sui juris* and, therefore, may not be a proper defendant in this case.

Defendants further pray, in the alternative, for a more definite statement in as much as plaintiff's complaint is so broad and vague as to some issue that defendants hereby request more specificity as to the claims.

For the above reasons, and those more fully set forth in their Brief, defendants pray that plaintiff's complaint be dismissed as to them.

Respectfully submitted

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CERTIFICATE OF SERVICE

A copy of the foregoing Motion of Defendants City of Euclid, Ohio and Euclid City Council for Dismissal and/or for More Definite Statement was served via through the electronic filing system, this 26th day of July, 2006.

/s/Hilary S. Taylor

HILARY S. TAYLOR

*Counsel for Defendants, City of Euclid, Ohio
And Euclid City Council*

AFFIDAVIT OF HILARY S. TAYLOR, ESQ.

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

Now comes HILARY S. TAYLOR, ESQ., being first duly sworn and states as follows:

1. I am one of the attorneys representing the Defendants City of Euclid, Ohio and Euclid City Council in *The United States of America v. City of Euclid, et al.*, U.S. District Court Case No. 1:06CV01652, pending before Judge Kathleen O'Malley in the Northern District of Ohio, Eastern Division.

2. This matter is assigned to the Standard Case Management Track.

3. The within Motion for Dismissal and/or More Definite Statement adheres to the page limitations set forth for Standard Track cases.

FURTHER AFFIANT SAYETH NAUGHT.


HILARY S. TAYLOR, ESQ.

SWORN TO and subscribed before me this _____ day of July, 2006.


NOTARY PUBLIC

My Commission expires:

JAY S. HANSON, Atty. At Law
NOTARY PUBLIC - STATE OF OHIO
My Commission Has No Expiration Date
Sec. 147.03 RC

BRIEF

I. STATEMENT OF FACTS.

The plaintiff is the United States of America who brings this action pursuant to the Voting Rights Act of 1965 by and through the United States Department of Justice (“DOJ”).

The plaintiff’s complaint complains of an at-large ward method of electing Euclid City Council which dilutes the voting strength of Black (African-American¹).

The complaint further alleges at paragraph 8 a total Black population of 30.5 percent and 65.7 percent white population. More specifically, and more relevantly, the voting age population is 27.8 percent Black and 69.7 percent white (*Id.* at paragraph 9).

The plaintiff brings this claim as a “dilution” claim rather than an “influence claim”.

At paragraph 11 of the complaint, the plaintiff alleges that the Black population is sufficiently numerous and geographically compact that a “properly apportioned” single-member district plan for electing city council can be draw in which Black citizens would constitute a majority of the total population. (*Id.*). They contemplate a majority population in two districts (*Id.*). However, it would require the redrawing of the present districts to create the two majority minority districts (*Id.*).

¹ Undersigned council is personally sensitive to this issue. The use of the term “African-American” is not part of this counsel’s parlance. Counsel considers himself a Black person or Black citizen. This is more specific. For example, under plaintiff’s parlance Ernie Els (one of my favorite golfers) and Gray Player are likewise African-Americans. Born on the African continent they to counsel’s best knowledge and belief are American citizens. *See also Johnson v. DeGrandy*, 512 U.S. 997, 1004 (1999).

The complaint further alleges as follows:

13. African-Americans in the City of Euclid have suffered from a history of official discrimination.

* * *

14. Significant socioeconomic disparities exist between white and African-American residents of the City of Euclid. Such disparities have the effect of limiting African-American participation in Euclid City Council elections.

* * *

15. Social, civic, and political life in the City of Euclid is divided along racial lines. This racial separation results in African-American candidates for city office having less opportunity than white candidates to solicit the votes of the majority voters, who are white.

II. LAW AND ARGUMENT.

A. Overview.

Defendants state that in this “dilution” claim under the Voting Rights Act of 1965 a population of 27 percent fails, as a matter of law, to meet the first precondition set forth in *Thornburg v. Gingles* 478 U.S. 30, 1986. Our own Sixth Circuit has described these preconditions as “a set of three necessary, but not sufficient, conditions for a plaintiff to succeed in a Voting Rights Act claim. *Mallory v. Ohio* 173 F.3d 377, 380 (6th Cir. 1999), *Gingles*, 478 U.S. at 50-51.

With a total population of 27 percent, the only way in which plaintiff’s objectives can be met would be to draw the districts along racial lines. This, however, is proscribed by the United States Supreme Court as racial gerrymandering. *Shaw v. Hunt* 517 U.S.

899 (1996). In a 5-4 decision, the majority held that racial gerrymandering in the state of North Carolina for the express purpose of creating two majority Black voting districts in order to remedy past racial discrimination in the state of North Carolina violated the Equal Protection Clause. Since race would be the criteria for the selection, strict scrutiny is required.

A city council is generally not *sui juris*.

The defendants are entitled to a more definite statement as to certain of the paragraphs in the complaint. The allegations as to paragraph 13, 14, and 15 require more specificity than the boilerplate set forth therein.

B. The First Prong of The *Gingles* Burden of Proof is Not Met.

A plaintiff's *prima facie* case of "dilution" violations of the Voting Rights Act involve three pre-conditions. See *Thornburg v. Gingles* 478 U.S. 30, 50-51. The three pre-conditions are:

- (1) The racial minority must constitute a majority in a geographic district;
- (2) The racial minority must be politically cohesive; and
- (3) The white majority must constitute a polarized voting block that usually defeats the minorities preferred candidate.

The plaintiff's complaint alleges that the Black voting population of the City of Euclid is 27.8 percent. Perforce to create a majority minority district redrawing of the lines of the wards, along racial lines is necessary. Recently, in a re-apportionment case a distinguished three judge panel had the opportunity to opine as to just what percentage a Black population meets the *Gingles, supra*, first pre-condition. In *Parker v. State of Ohio* 263 F.Supp.2d 1100 Judges Boyce F. Martin, Jr. Chief Circuit Judge, Graham and Gwin

analyzed plaintiffs Section 2 Voting Rights Act case. This case involved a citizen complaint involving re-apportionment. The court refused to modify the first *Gingles* pre-condition and distinguished between “influence” claims and “dilution” claims. (*Id.* at 1104).

The court cited *Voinovich v. Quilter* 507 U.S. 146 156-60 (1993) and held that so-called “influence-dilution” claims could not be considered by a court unless the first *Gingles* pre-condition was modified or eliminated. Furthermore, that the Sixth Circuit did not at the time recognize “influence” claims. See *Cousin v. Sundquist* 145 F.3d 818, 828 (6th Cir. 1998). The courts holding on the *Gingles* first pre-condition (given the fact that Blacks did not constitute a majority in any demographic area in which they lived,) held:

Because influence claims are not cognizable in our circuit and if plaintiffs have failed to establish the first *Gingles* pre-condition, we certainly don’t need to discuss whether or not plaintiffs satisfy the second and third pre-conditions. The plaintiff’s claim under Section 2 of the Voting Rights Act must fail. (It should be noted that Judge Gwin did not join in the majority racial but concurred in the final decision). 263 F.Supp. 2d 1104.

A plaintiff cannot maintain a §2 claim for a racial group that makes up less than 50 percent of the population, *Johnson vs. DeGrandy* 512 U.S. 997, 1009 (1994), *Cousin v. Sandquist* 145 F.3d 818, 828 (6th Cir. 1998) holding that a 50.3% majority is too “razor thin” to meet muster. Further, the court has held that a plan itself can cause dilution where Blacks are jammed into a district with a super majority:

. . . as a result, we have recognized that ‘dilution of racial minority group voting strength may be caused’ either ‘by the dispersal of Blacks into districts in which they constitute an ineffective majority of voters or from

the concentration of Blacks into districts where they constitute an excessive majority.

Voinovich v. Quilter 507 U.S., 154 (1993).

The rationale from *Quilter, supra.*, is exactly the result plaintiff would impose upon the City of Euclid. Presently Blacks have the ability to run at-large or in a ward. By carving out two majority Black wards, the plaintiff would create a situation where:

- (1) The at-large opportunity for Blacks to run and attract cross-over votes will be eliminated; and
- (2) The other six wards would become super majority white wards. Plaintiff seeks then to limit the number of Blacks with an opportunity to run in the other wards. This would be more a form of segregation than integration! *See Cousin* at 828-834.

Given the potential of this litigation to polarize the community is another potential fallout. The plaintiff's complaint ignores other factors in their being no Blacks elected to office. They do not even consider questions of voter turn-out, the city's ability to make an attempt to attract qualified Black candidates, and other alternatives to carving up that which the citizens of the city have enacted.

The above considerations aside, 27% Black voter population fails miserably to meet the first *Gingles* precondition. Failure of one is failure of all. *Cousin, supra* t 823.

C. The Plaintiff's Claims Would Violate The Equal Protection Rights of The Citizens of the City of Euclid.

The plaintiff cannot ignore the fact that they would be creating districts drawn along racial lines. The Equal Protection Clause of the Fourteenth Amendment requires that if race is a predominate factor in a redistricting plan strict scrutiny must be used to

determine whether the Equal Protection Clause has been violated. Racial gerrymandering is “constitutionally suspect.” *Shaw v. Hunt* 517 U.S. 899, 904, 907 (1996). In the *Shaw* case, the court rejected a number of rationales for drawing the districts along racial lines (*Id.* at 908, 914).

D. The Euclid City Council Is Not *Sui Juris*.

See Roland v. Ohio, 2002 WL 1584280 S.D. Ohio 2002 citing *State Ex Rel. Cleveland Municipal Court vs. Cleveland City Council*, 34 Ohio St. 120 (1973) Syllabus ¶1. *See also Edmunds v. Dillin* 485 F.Supp. 722, 724 (D.C. Ohio 1980).

E. Defendants Are Entitled To A More Definite Statement.

Federal Rule of Civil Procedure 12(e) allows that where the pleading is “vague or ambiguous” that defendants cannot reasonably make a responsive pleadings. Paragraphs 13, 14, and 15 allege a history of “official discrimination”, significant socioeconomic disparities that the social civic and political life of the City is divided along racial lines.

The Court will note that originally The Voting Rights Act of 1965 focused on the south as a source of voting discrimination. The Court will note there were literacy tests and poll taxes and voter intimidation. The complaint is styled along those lines though there is no specific mention of the instances which gave rise to such spurious charges against the City of Euclid. The defendants are entitled to know just which “official discrimination” arose from this administration or any other administration.

The “significant socioeconomic disparities” is written as if the City of Euclid were Birmingham, Alabama or Selma, Alabama or Cleveland, Mississippi. An allegation of this nature should be more fully set forth so that possible affirmative defenses to such

claims can be set forth. How the City or our society can be responsible for “social, civic, and political life in the City of Euclid is divided along racial lines” is a mystery. Perhaps the plaintiff is able to give examples of this and how it is different from any other community in this County! These allegations appear to be more boilerplate than they are a presentation of relevant and admissible issues.

The courts have allowed a motion for definite statement where the defendants have received an impermissible “shotgun” complaint. The defendants are entitled to a more definite statement as to certain of the paragraphs in the complaint. The allegations as to paragraphs 13, 14, and 15 require more specificity than the boilerplate set forth therein.

III. CONCLUSION.

The City vows to address the dearth of Black elected officials. It will proceed with candidate recruitment, training and encouragement. Also a Black voter dime. These initiatives are not supplied by the URA or a part of this litigation. Nevertheless, they are more responsible for the present state of affairs than a ward system in place since the 1950’s altered in 1990. There were no Black citizens in Euclid in the 1950’s.

Plaintiff’s claim fails when it fails to meet the first *Gingles* precondition. This divisive and expensive case should be dismissed.

Respectfully submitted

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