UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

NATALIE JOHNSON-LEE, DEAN ZIMMERMAN, ERIC MAKELA, SHANE PRICE, TOM TAYLOR, LISA CROCKETT, TRAVIS LEE, PAULINE THOMAS, LANI HOGAN, LOWELL NELSON, BRUCE SHOEMAKER, STEPHEN GOODELL, BRADY BAKER, STEVEN WASH, KEN BRADLEY, and CAM GORDON,

Plaintiffs,

v.

CITY OF MINNEAPOLIS,

Defendant.

Civil No. 02-1139 (JRT/FLN)

MEMORANDUM OPINION AND ORDER ON CROSS MOTIONS FOR SUMMARY JUDGMENT

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Clifford M. Greene, Kevin G. Ross, and Pamela L. VanderWiel, GREENE ESPEL, 200 South Sixth Street, Suite 1200, Minneapolis, MN 55402, for defendant.

In this wide-ranging legal challenge to the City of Minneapolis' 2002 redistricting of the Minneapolis City Council wards, plaintiffs allege that the City violated multiple provisions of the Minneapolis City Charter, Minnesota state law, and federal law. Both parties have moved for summary judgment. For the following reasons, the Court denies

plaintiffs' motion for summary judgment and grants defendant's motion for summary judgment.

BACKGROUND

Minnesota law mandates an extensive redistricting process following the decennial federal census. Following the 2000 census, a Redistricting Commission ("Commission") was appointed to redraw the City Council wards in Minneapolis. The Commission met on multiple occasions between February 20, 2002 and April 18, 2002, and held several public hearings to obtain public comments. The Commission filed its Redistricting Plan ("plan") with the Minneapolis City Clerk on April 18, 2002. Plaintiffs bring nine claims challenging the lawfulness of the redistricting process and the resulting ward plan under the Minneapolis City Charter, state law and federal law. Plaintiffs request the Court to declare the plan null and void, and issue a Writ of Mandamus (1) directing the City Council to consider and either approve or reject the plan; (2) directing the Commission to reconsider and revise the plan; and/or (3) directing appointment of a new Commission to create a new plan. Alternatively, plaintiffs ask the Court to develop and adopt a new plan.

ANALYSIS

I. Standard of Review

Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a

judgment as a matter of law." Only disputes over facts that might affect the outcome of the suit under the governing substantive law will properly preclude the entry of summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Summary judgment is not appropriate if the dispute about a material fact is genuine, that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Id.* Summary judgment is to be granted only where the evidence is such that no reasonable jury could return a verdict for the nonmoving party. *Id*.

The moving party bears the burden of bringing forward sufficient evidence to establish that there are no genuine issues of material fact and that the movant is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The nonmoving party is entitled to the benefit of all reasonable inferences to be drawn from the underlying facts in the record. *Vette Co. v. Aetna Casualty & Surety Co.*, 612 F.2d 1076, 1077 (8th Cir. 1980). However, the nonmoving party may not merely rest upon allegations or denials in its pleadings, but it must set forth specific facts by affidavits or otherwise showing that there is a genuine issue for trial. *Forrest v. Kraft Foods, Inc*., 285 F.3d 688, 691 (8th Cir. 2002).

II. Interpretation of the Charter (counts 1-4)

Plaintiffs' first four claims allege violation of different sections of the Minneapolis City Charter ("Charter").[1] The Court will first review the generally applicable law, and then discuss each count.

Construction and application of a statute to undisputed facts is a legal determination that is properly determined on summary judgment. *Wiegel v. City of St. Paul*, 639 N.W.2d 378, 381 (Minn. 2002). In construing the Charter, the Court's goal is to ascertain and effectuate the intention of the Charter Commission. *See Amaral v. Saint Cloud Hosp.*, 598 N.W.2d 379, 385-86 (Minn. 1999). The Court first looks to the language of the statute. *Id.* at 384. Longstanding canons of statutory construction dictate that words and phrases are to be construed according to their plain and ordinary meaning. *American Family Ins. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). A statute should be interpreted, whenever possible, to give effect to all of its provisions, so that no part is rendered superfluous, void, or insignificant. *Boutin v. LaFleur*, 591 N.W.2d 711, 716 (Minn. 1999). The Court reads and construes a statute as a whole, interpreting each section in light of the surrounding sections in order to avoid conflicting interpretations. *American Family Ins.*, 616 N.W.2d at 277 (citations omitted). Finally, statutes are to be construed so as to avoid absurd results and unjust consequences. *Id.* at 278.

[1] In count 5, plaintiffs allege that defendant acted in an arbitrary and capricious manner relative to its responsibilities to reasonably redistrict the City's wards in violation of the Minnesota Administrative Procedure Act, Minn. Stat. § 14. Plaintiffs have not provided the Court with any evidence or argument related to this count, and the Court therefore considers it waived. The Court therefore grants summary judgment in favor of defendant on count 5.

A. Violation of City Charter Ch. 1, § 3(B) (count 3)

The Charter governs appointment of the Redistricting Commission. It is undisputed under the Charter that the members of the political party currently in the majority on the City Council are entitled to appoint one Redistricting Commissioner ("Commissioner"), and that the remaining City Council members are entitled to appoint one Commissioner. Minneapolis City Charter, Ch. 1, § 3(B)(1). Following a nomination process, the Charter Commission, the body charged with reviewing and formulating Charter proposals and amendments, appoints two Commissioners from each major political party. In this case, the Charter Commission determined that the Democratic, Independent, and Republican parties qualified as major parties and selected two members of each party to serve as Redistricting Commissioners. Plaintiffs contend that the Green Party should also have been accorded major party status and, therefore, the Commission did not include the required number of representatives from the Green Party.[2]

The Charter Commission is directed to request a list of nominees to serve on the Commission from "each major party, as defined by Minnesota Statute 200.02, subd. 7, whose candidate for governor or for United States senator in the preceding election

[2] Plaintiffs also allege that the Commission included an insufficient racial and geographical representation. The Charter does not require a particular degree of racial or geographical representation. Rather, the Charter directs each major political party to nominate between six and ten persons who are "broadly representative of the city population" including "persons from groups traditionally under represented in city government, including racial minorities," of which at least one will be appointed. Minneapolis City Charter, Ch. 1, § 3(B)(2). Plaintiffs have not alleged that the Charter Commission failed to request nominations, that any of the major parties did not submit appropriate lists of nominees, or, in any event, that defendant could be responsible for the parties' failure to do so.

received five (5) percent of the total ballots cast for that office in the City of Minneapolis." Minneapolis City Charter, Ch. 1, § 3(B)(2). The Charter Commission then selects two members from each major party, at least one of which is from the lists provided by the parties, to serve on the Commission. Minneapolis City Charter, Ch. 1, § 3(B)(3). Plaintiffs contend that the term "major party" as it is used in section 3(B)(3), is broader than "major party," as it is used and defined in section 3(B)(2). Specifically, plaintiffs argue that the term "major party" in section 3(B)(3) is defined only by Minn. Stat. § 200.02, subd. 7, which requires the party's candidate to have received five percent of the state-wide vote. As a result, plaintiffs claim, section 3(B)(3) is not subject to the additional requirement in section 3(B)(2) that the party's candidate for governor or senator in the preceding election received five percent of the vote **in the City of Minneapolis**. The Court disagrees with plaintiffs' interpretation.

As an initial matter, the City is explicitly permitted to adopt Charter provisions relating to local elections that conflict with general state law. *See* Minn. Stat. § 410.21. Thus, the City may adopt a more limited definition of "major party" than the state.

It seems obvious to the Court that the term "major party" plainly and logically carries the same meaning in section 3(B)(3) that it does in section 3(B)(2). The two sections refer to the same aspect of the redistricting process and therefore are properly read and understood together. *See American Family Ins.*, 616 N.W.2d at 278 (court interprets each section in light of the surrounding sections to avoid conflicting interpretations). It is logical that the City would explicitly seek to populate the Redistricting Commission with representatives of those political parties that have a

presence in Minneapolis. This is accomplished by appointing an equal number of Redistricting Commissioners from each party that garners at least 5% of the Minneapolis vote in the preceding gubernatorial or senatorial election. (*See* Dziedic Dep. at 25-28 (Charter Commission adopted two prong requirement for major party status in order to ensure party had support in Minneapolis).)

To adopt plaintiffs' interpretation would violate basic rules of statutory construction. Interpreting "major party" as plaintiffs do could lead to the Redistricting Commission including representatives of parties with little or no support, knowledge, or interest in Minneapolis, which would of course be an absurd result. Such an interpretation would also produce the equally absurd result of requiring the Charter Commission to solicit input from some major parties but not others. *See* Minn. Stat. § 645.17(1) (statutes should not be construed to produce an absurd result). Finally, if the additional limitation found in section 3(B)(2) applies only to determining the parties from which nominations are to be solicited, but not to determining the parties from which Redistricting Commissioners will be appointed, the additional limitation is at best insignificant, if not void. *See Boutin*, 591 N.W.2d at 716 (statute must be construed so that all terms have meaning).

The Green Party's candidates for governor and United States Senate did not receive five percent of the vote in Minneapolis. (Griffin Aff. at ¶¶ 6-7.) Thus, the Charter Commission was not required either to solicit nominees from the Green Party or appoint Green Party representatives to the Commission. Summary judgment is therefore granted to defendant on the claims in Count 3.

B. Violation of City Charter Ch. 1, § 3(A) (count 2)

The Charter provides that "[e]ach ward shall consist of contiguous compact territory not more than twice as long as it is wide, provided that the existence of any lake within any ward shall not be contrary to this provision." Minneapolis City Charter § 3(A)(2). The Charter does not include a definition of "long" or "wide," and, as might be expected, the parties disagree over the proper definition. Specifically, plaintiffs contend that "long" means the greatest straight-line distance between two points located on the perimeter of the ward, and that "wide" means the greatest straight-line distance between any two other points located on the perimeter such that the line is perpendicular to the length. Defendant, on the other hand, asserts that length and width should be measured from the northernmost to the southernmost point and from the easternmost to westernmost point. Plaintiffs hired an expert surveyor who, applying plaintiffs' definitions of length and width, determined that ward 3 is 2.73 times longer than it is wide. Applying defendant's definitions, all wards conform to the 2:1 ratio requirement.

The plain language of the Charter provides no indication of how the length and width of the wards are to be measured. The dictionary definitions of length and width provided by plaintiffs are of little help because, while they define these terms in the abstract, they do nothing to indicate how or where length should be measured on a particular shape.

The surrounding language of the Charter, however, is more helpful. The first sentence of section 3(A)(2) of the Charter mandates the 2:1 length to width ratio. The second sentence of the section requires ward boundaries to, as nearly as practicable, "run

due East and West or North and South." This second sentence reasonably indicates that the Charter Commission intended wards to be drawn and considered, to the extent possible, according to the cardinal directions. Defendant's proposed method of measuring length and width – from northernmost point to southernmost point, and from easternmost point to westernmost point – is consistent with this intention. Plaintiffs' assertion that other uses of "long" and "wide" in the City Code do not refer or relate to north-south or east-west does little to help the Court determine the Charter's meaning because the terms are not explicitly defined anywhere in the Code, and in the other sections of the Code are used in very different contexts.

The appropriate definition of length and width was discussed and clarified during a Commission meeting, resulting in the use of defendant's definition. (*See* Sheckleton Dep. at 12-13.) Members of the Commission understood the language of the Charter to indicate that length and width should be measured east and west, and north and south.[3] (*See, e.g.*, Markus Dep. at 16; Stafford Dep. at 31.) The Director of Elections for the City of Minneapolis, Susanne Griffin, testified, based on her first-hand knowledge and observations of the redistricting process, that the Commission has historically applied the

[3] Plaintiffs counter that their expert surveyor, Daniel Nickols, testified that plaintiffs' definitions are common in the field, while defendant's definitions are unconventional. The Court has reviewed Nickols' deposition testimony, and does not find it helpful with respect to this question. Nickols testified that multiple definitions of length and width were possible in his field, that he asked plaintiffs to specify definitions for him to use in preparing his report, that he had never before applied plaintiffs' definitions in the context of measuring ward or district boundaries, and that he found the City's definitions, as explained to him by plaintiffs' counsel, unconventional. Nickols did not offer the opinion that plaintiffs' definitions were more correct than that offered by defendant, let alone conclusive in this situation. Rather, he testified that many definitions were possible, and that it was important to have a fixed definition before proceeding to determine the ratio of length to width.

defendant's proposed definition of length and width.[4] (*See* Griffin Aff. ¶ 8.) Although not an agency, *see* Minn. Stat. § 14.02, the Commission is a specialized executive body similar to an agency. As such, the Court finds that the Commission's interpretation of the terms used in the statutes it administers is entitled to some weight. *Cf. Geo. A. Hormel & Co. v. Asper*, 428 N.W.2d 47, 50 (Minn. 1988) (stating that an agency's interpretation is entitled to deference); *Matter of Annexation of a Portion of Service Territory of People's Co-op Power Ass'n by City of Rochester (North Park Additions),* 470 N.W.2d 525, 527 (Minn. Ct. App. 1991).

According to plaintiffs, adopting defendant's definition would vitiate the 2:1 ratio because a ward that violates the necessary minimum 2:1 ratio under defendant's method of measuring can be made to fit the ratio by rotating the ward 45 degrees and remeasuring. This argument is not persuasive because it ignores the fact that the City as a whole is divided into wards. The wards are not drawn individually or in isolation, but in relation to the surrounding wards. Further, the wards are designed to meet and take into account a number of different requirements and considerations such as population density, demographics, and neighborhood lines. A ward cannot simply be rotated because to do so would amount to redrawing that ward, requiring that all of the other wards be redrawn, remeasured to ensure that the 2:1 ratio is met, and reexamined to ensure that the population requirements and other considerations are met.

[4] Although plaintiffs argue that Griffin's "understanding" of past practice is insufficient evidence to rely on, plaintiffs do not supply any evidence that her understanding is incorrect.

In addition, the entire municipal redistricting process must be completed within approximately five weeks. Defendant's definitions are more practical and sensible because they can be easily used in connection with computer mapping software to quickly calculate length to width ratios. (*See* Shekelton Dep. at 12-13; Markus Dep. at 6, 30, 51, 57-59.) This allows the Commission to create and test many different ward shapes and plans in order to develop a comprehensive redistricting plan within the relatively compressed time period allowed. Plaintiffs' definitions are not as quickly or easily applied, since it may require significant amounts of time to take and compare multiple measurements, whether with a ruler on a map, with a computer, or using survey equipment, in order to determine which two points are farthest apart. (*See* Nickols Dep. at 52-55.) Thus, in the context of the rapid redistricting process, it would be absurd to conclude that the Charter Commission intended a definition that would stretch, if not exceed, the time constraints of the process. The ease of use of defendant's definitions persuades the Court that they are the appropriate definitions for the Commission to have used in this instance.

The Court finds that under the Charter, the length and width of the wards should be measured from the northernmost to the southernmost point and from the easternmost to westernmost point on the figure. The Commission properly applied this definition in redrawing the ward map, and summary judgment is therefore appropriate in favor of defendant on this claim.

C. Violation of City Charter Ch. 1, § 3(c) - (count 1)

Minnesota Statute § 375.025, subd. 1 requires: "Before a redistricting, the board must first give public notice and then consider the matter at a hearing." The City Charter elaborates, stating, "The Commission, with appropriate notice, shall hold at least two public hearings prior to adoption of the plan. At least one of the public hearings shall be for the purpose of reviewing the tentative plan." Minneapolis City Charter, ch. 1, § 3(C). Plaintiffs contend that section 3(C) requires that the final redistricting plan be presented and approved at a public hearing.

The Commission held public hearings on March 21 and April 11, 2002. At the second hearing, the Commission displayed a tentative map and received comments on the proposed districts. The Commission met again the following day. Changes were made to the tentative map, which was then finalized and filed with the Clerk shortly thereafter. Plaintiffs contend that the map displayed at the April 11 hearing was significantly different from the map ultimately filed with the Clerk, depriving them of the opportunity to comment on the plan actually being considered, in contravention of the terms and intent of the Charter. Specifically, plaintiffs point out that the map at the meeting did not indicate that the current representatives from ward 6 and 8, Dean Zimmerman and Robert Lilligren, would be drawn out of their wards.

The Commission is comprised of members representative of the voters in the City, Minneapolis City Charter Ch. 1, § 3(B), and is charged with designing a new ward map that conforms to certain specifications, Minneapolis City Charter Ch. 1, § 3(A). The Commission is required to solicit public input on the process on at least two occasions,

Minneapolis City Charter Ch. 1, § 3(C), but the authority to adjust ward boundaries resides solely with the Commission, Minneapolis City Charter Ch. 1, § 3(H). Neither the City Council nor voters have any power to readjust ward boundaries. *Id.*

The plain language of the Charter mandates public presentation of a *tentative* ward map. A tentative map, by definition, is not final and may be changed.[5] The Commissioners received extensive public testimony, and, properly, considered a variety of factors as part of the redistricting process. (*See, e.g.*, Markus Dep. at 34-35; Stafford Dep. at 48); *see also Reynolds v. Sims*, 377 U.S. 533, 578-79 (1964) (discussing traditional districting factors). For example, during the second hearing, it was pointed out that the tentative plan split the Little Earth Housing Project between two wards. (*See* Markus Dep. at 40; Stafford Dep. at 60-63.) It was determined that keeping the Little Earth community intact was an important goal that required altering the tentative plan. (*See, e.g.*, Markus Dep. at 40.) It was also determined that protecting incumbent City Council members was not as important a consideration as keeping communities of interest, like Little Earth and other neighborhoods, intact. (*See, e.g.*, Markus Dep. at 40, 75; Stafford Dep. at 53-55, 60-63; *see also* Leventhal Aff. Ex. 21 at pp. 3-9.) The Commission's changes to the tentative plan, far from being unrelated to the public hearing, were directly responsive to the issues raised by the public at the public hearing. That some members of the public, or plaintiffs, might disagree with the solutions arrived

[5] *See Merriam-Webster's Collegiate Dictionary* 1211 (10th ed. 2001) (defining "tentative" as not fully worked out or certain).

at by the Commission does not require the amended plan to be presented to the public or invalidate the plan. The Court grants summary judgment to defendant on this claim.

D. Violation of Minneapolis City Charter Ch. 1, § 3(F) (count 4)

Chapter 1, § 3(C) of the Minneapolis City Charter provides that a redistricting plan "shall state the boundaries and population of each ward and shall be completed when filed with the city clerk with signatures of a majority of the members of the commission." Section 3(F) provides that "[t]he City Council shall enact the ordinances necessary to implement this section . . ." Minneapolis City Charter Ch. 1, § 3(F). Plaintiffs contend that section 3(F) requires the City Council to enact an ordinance implementing the redistricting plan developed by the Commission, which it did not do in this case. Again, the Court disagrees with plaintiffs.

Section 3(H) of the Charter states: "The method herein provided shall be the sole method for readjusting Ward boundaries, and the City Council shall have no power to readjust Ward boundaries except as in this section provided." Minneapolis City Charter Ch. 1, § 3(H). Interpreting section 3(F) as requiring the City Council to adopt or reject the Commission's plan would effectively permit the City Council to readjust ward boundaries, either violating or rendering void section 3(H). The Court construes the Charter so as to give effect to all of its provisions, *see Boutin*, 591 N.W.2d at 716, and therefore finds that section 3(F) does not require the City Council to enact an ordinance implementing the Commission's plan.

Further, even if the City Council were required to adopt or reject the Commission's plan, the Council *de facto* adopted the plan. The plan was presented to the

City Council on April 19, 2002, and referred to the elections committee for consideration. (Leventhal Aff. Ex. 22 at p. 1.) At the April 26, 2002 meeting, based on the recommendation of the elections committee, the City Council officially resolved

> [t]hat the elections precincts and boundaries thereof in the several Wards of the City of Minneapolis be and they hereby are as designated and prescribed on the map on file and of record in the office of the City Clerk (Petn No 267868), pursuant to Chapter 1, Section 3 of the Minneapolis City Charter.

(Leventhal Aff. Ex. 22 at p. 2.) The precinct boundaries necessarily are coextensive with the ward boundaries. Thus, the City Council was obviously aware of the plan and of its duties under the Charter, took no steps to attempt to alter the plan, and effectively endorsed the plan by enacting voting precincts within the ward boundaries created by the plan.

The Commission unanimously delivered the redistricting plan to the Minneapolis City Clerk, who filed the report, on April 18, 2002. The plan was thus final and completed on April 18, 2002. Summary judgment is granted to defendant on this claim.

III. Violation of 42 U.S.C. § 1973 (count 6)

Plaintiffs allege violation of § 2 of the Voting Rights Act, 42 U.S.C. §§ 1973-1973p. Plaintiffs contend that the redistricting plan impermissibly packs African-American voters into ward 5, operating to dilute African-American voting power in other wards. Further, plaintiffs contend that the new redistricting plan cracks the Native-American presence in ward 6, diluting Native-American influence in that ward.

A voting procedure violates § 2 if it has the "result" under the "totality of the circumstances" of affording minority voters less opportunity than white voters "to elect

representatives of their choice." 42 U.S.C. § 1973(b). In order to make out a § 2 claim, plaintiffs must first demonstrate three conditions: (1) the minority group is sufficiently large and geographically compact to constitute an effective majority in a single-member district; (2) the minority group is politically cohesive; and (3) the majority votes sufficiently as a bloc to enable it usually to defeat the minority's preferred candidate.[6] *Thornburg v. Gingles*, 478 U.S. 30, 49-51 (1986); *Stabler v. County of Thurston, Neb.*, 129 F.3d 1015, 1020-21 (8th Cir. 1997). Assuming that African-American and Native-American voters are politically cohesive, satisfying the second *Gingles* condition,[7] the

[6] Once the preconditions have been met, § 2 plaintiffs must further show that, under the totality of the circumstances, vote dilution has occurred because the challenged plan denies minority voters equal political opportunity. *Harvell v. Blytheville Sch. Dist. No. 5*, 71 F.3d 1382, 1385 (8th Cir. 1995); *Gingles*, 478 U.S. at 43. The Court considers the following factors: (1) a history of official discrimination in the political subdivision that touched the right of minority group members to register, vote, or otherwise participate in the democratic process; (2) the extent to which voting in the elections of the political subdivision is racially polarized; (3) the political subdivision's use of unusually large election districts, majority-vote requirements, anti-single shot provisions (discouraging voters from using only one of their multiple votes), or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group; (4) whether the minority group members have been denied access to a candidate-slating process, where one exists; (5) the extent to which minority group members in the political subdivision bear the effects of discrimination in such areas as education, employment, and health which hinder their ability to participate effectively in the political process; (6) whether political campaigns have been characterized by overt or subtle racial appeals; and (7) the extent to which minority group members have been elected to public office in the jurisdiction. *Id.* (citing *Gingles*, 478 U.S. at 36-37). Additional factors that may be probative of vote dilution are whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group and whether the policy underlying the political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice, or procedure is tenuous. *Id.* In light of the Court's determination that plaintiffs have not met the three preconditions, the Court need not apply these factors to this case.

[7] The Court notes that plaintiffs, their experts, and some of the evidence presented refer to "minority" population as including all non-white population. In support, plaintiffs assert that "the racial minority historically forms a voting bloc and constitutes a single majority for purpose of court analysis regarding its residential patterning under the teachings of *Hollman v. Martinez*, 2002 WL 31317388 (D. Minn. Jul 12, 2002)." (Pl. Opp. to Def. Mot. for Summ. J. at 47.)

(Footnote continued on next page.)

Court nevertheless will grant summary judgment to defendant because plaintiffs have not established either the first or the third *Gingles* conditions.

A. First *Gingles* Condition

"When applied to a claim that single-member districts dilute minority votes, the first *Gingles* condition requires the possibility of creating more than the existing number of reasonably compact districts with a sufficiently large minority population to elect candidates of its choice." *Stabler*, 129 F.3d at 1021 (quoting *Johnson v. De Grandy*, 512 U.S. 997, 1008 (1994)). Plaintiffs contend that African-American votes were "packed" into ward 5 and that the African-American bloc in ward 5 is large enough that it could be split to create at least two wards in which African-American voters plus cross-over or coalition opportunities would result in election of African-American preferred candidates. Additionally, plaintiffs contend that the Native-American population in ward 9 was "cracked," or split, from the Native-American population in ward 6 in order to prevent the election of Native-American preferred candidates.

1. Packing of African-American Votes

Under the redistricting plan, ward 5 has a 54.8% African American population. (Griffin Aff. Ex. 8.) Ward 5 is bordered to the north by ward 4, to the north-east by

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(Footnote continued.)

There is no evidence before the Court that the minority population as a whole, that is, all voters classified as African-American, Hispanic, Native-American, Asian, Hawaiian and Other, is a politically cohesive group. *Hollman* merely makes the unsurprising observation that there has been a history in the Twin Cities area of racial discrimination in the siting and construction of housing. 2002 WL 31317388, at *1. Thus, the Court considers plaintiffs' claims as they relate specifically to the African-American and Native-American populations.

ward 3, and to the south-east by ward 7. (Griffin Aff. Ex. 12.) Under the redistricting plan, ward 4 has 27.7%, ward 3 has 19.8%, and ward 7 has 13.8% African-American population respectively. (Griffin Aff. Ex. 8.) Plaintiffs' expert testified that although a higher percentage would be preferred, an African-American population of 30% could constitute a sufficiently large minority population to elect candidates of its choice. (Charles Dep. at 196.) Based on this estimate, the African-American population appears to have an excellent chance of electing a candidate of choice in ward 5, a very good chance of electing a candidate of choice in ward 4, and a good chance of electing a candidate of choice in ward 3.

Plaintiffs' expert testified that it was "plausible" that if some of the voters placed in ward 5 had been included in ward 7, ward 7 could also have elected a minority-preferred candidate. (Charles Dep. at 197.) Theoretically, if 20% of ward 5's population, all African-American, could be reassigned to ward 7, both wards would have approximately 34% African-American population. The Court attaches little weight to this testimony because, although it is plaintiffs' burden to establish the *Gingles* conditions, plaintiffs' expert did not undertake any analysis to determine whether his "plausible" hypothesis was, in fact, possible.[8] (*Id.*) The location of the African-American population in ward 5, established neighborhood boundaries, and other considerations could make it impossible to reassign such a large portion of ward 5 to ward 7.

[8] Defendants' expert did not conduct any analysis related to the first *Gingles* precondition because plaintiffs did not present an alternative redistricting plan that allegedly would have permitted the election of more minority preferred candidates. (Engstrom Dep. at 62, 68.)

Absent any analysis from the experts in this case, it appears to the Court that the strongest support for plaintiffs' claim comes from the alternative redistricting plan proposed by the NAACP. Under the NAACP plan, the African-American population in ward 5 is reduced to 44%, while the African-American population in wards 4 and 3 rises to 48% and 25% respectively. The African-American population in ward 7, however, drops to 4% under the NAACP plan. Thus, the African-American population retains an excellent chance of electing a preferred candidate in ward 5, while apparently increasing its chance of electing a preferred candidate to excellent in ward 4 and very good in ward 3.

These elementary observations are not sufficient, however, for the Court to conclude that there is an alternative plan available that satisfies *Gingles'* first condition. Plaintiffs' expert based his 30% number, in part, on the "fairly high level of crossover voting." (Charles Dep. at 196.) A fairly high level of crossover voting, i.e., non-African-Americans voting for African-American preferred candidates, could result in an even smaller percentage of the population being able to effectively select and elect a candidate. Under the redistricting plan, 6 wards (3, 4, 5, 6, 8, and 9) retain greater than 18% African-American population. (Griffin Aff. Ex. 8.) The Redistricting Commission, based upon their research, felt that these districts "provid[ed] opportunities for people of color to be elected from at least four wards and probably six." (Leventhal Aff. Ex. 21.) Under the NAACP plan, wards 3, 4, 5, 6, 9, and 10 retain greater than 18% African-American population.

Absent more specific and reliable guidance, the Court cannot determine what percentage of African-American population in any given ward is actually significant enough to be able to elect a preferred candidate. Thus, the Court cannot say, with any certainty, that the NAACP plan, or any other plan, would provide the possibility of creating more than the existing number of reasonably compact districts with a sufficiently large minority population to elect candidates of its choice.

2. Cracking of Native-American Votes

With respect to Native Americans, defendant's expert expressed the opinion that "it is quite clear that there is no way to create a majority minority Native American voting age population district." (Engstrom Dep. at 85.) The Court agrees. Under the redistricting plan, ward 9 is 8.54% Native-American, while adjacent ward 6 is 4.2% Native American. Under the NAACP plan, ward 6 has approximately 10% Native-American population, while ward 9 has approximately 3%. A third plan, presented by the Green Party, has 7.74% in ward 6 and 4.33% in ward 9. In short, none of the plans considered by the Redistricting Commission and presented to this Court was able to create a larger Native-American concentration in any one ward, let alone create a concentration that might be able to elect a preferred candidate.

B. Third *Gingles* Condition

"In order to prove that the third *Gingles* precondition exists, the plaintiffs must identify the minority preferred candidates and show that, due to majority bloc voting, they usually are not elected." *Clay v. Board of Educ. of City of St. Louis*, 90 F.3d 1357,

1361 (8th Cir. 1996) (citing *Gingles*, 478 U.S. at 55-56). A finding that voting is racially polarized weighs heavily in favor of finding that the third *Gingles* condition is satisfied. *Harvell*, 71 F.3d at 1386.

In *Clay*, the Eighth Circuit affirmed the district court's determination that plaintiffs' Voting Rights Act claim failed because plaintiffs did not adequately identify the minority preferred candidates or show that, due to majority bloc voting, such candidates usually are not elected. 90 F.3d at 1361. The plaintiffs implicitly defined the "minority preferred candidates" by presuming that African-American voters preferred African-American candidates, but did not otherwise explicitly identify candidates of choice or a methodology for making such a determination. *Id.* The court stated that "plaintiffs must prove, on an election-by-election basis, which candidates are minority-preferred" and found that as a matter of law, "[i]nferences based solely on race are insufficient to establish which candidate is minority-preferred." *Id.* at 1361 (citing *Harvell*, 71 F.3d at 1386). Because the plaintiffs in *Clay* failed to offer the necessary evidence, the district court properly relied entirely on defendants' expert evidence identifying the minority preferred candidates as the top African-American vote-getters and demonstrating that these candidates were elected more than 50% of the time. *Id.* at 1361-62.

Like the plaintiffs in *Clay*, the plaintiffs in this case have not identified any minority-preferred candidates, beyond pointing out that white candidates have been elected over minority candidates in wards with significant minority population. Defendant's expert, on the other hand, based on extensive statistical analysis, identified

specific minority-preference candidates and concluded that there was sufficient crossover voting so that "more often than not, the African American candidate has been . . . elected" even though that candidate was not the majority/white candidate of choice. (Engstrom Dep. at 101.)

In *Harvell*, the court emphasized the importance of evidence of racially polarized voting in finding *Gingles'* third precondition satisfied. Like the plaintiffs in *Harvell*, plaintiffs argue that the election of white Democrats to the City Council, even from wards with significant minority candidates and population, is evidence of racially polarized voting. However, unlike the plaintiffs in *Harvell*, who provided specific statistical and historical support for their claim, 71 F.3d at 1386-88, plaintiffs in this case have not provided the Court any support for this argument. Both of plaintiffs' experts assert that packing ward 5 and cracking ward 6 constitute violations of the Voting Rights Act, but do not provide any supporting analysis for their conclusion or address the *Gingles* conditions. (*See, e.g.*, Charles Dep. at 118 (agreeing that he "did not do any statistical computations" because "the raw numbers spoke for themselves"), 127, 145-152 (basing opinion on apparently inaccurate visual comparison of color coded maps).)

Further, different than *Harvell*, the defendant's expert in this case testified that "there is not evidence of politically significant racial polarized voting in Minneapolis to satisfy prong 3 of *Thornburg v. Gingles*." (Engstrom Dep. at 69, 100.) Additionally, plaintiffs' expert agreed with defendant's expert, testifying that "there is also crossover voting, meaning that whites will vote for candidates of color" and that he was not "making a claim that there is a strong case of racially polarized voting at this time."

(Charles Dep. at 122, 196.) *Clay* and *Harvell* clearly establish that unsupported assertions are insufficient to satisfy the third *Gingles* condition.

In light of plaintiffs' failure to establish the first and third *Gingles* conditions and defendant's evidence that there is not significant polarized voting in Minneapolis and that minority-preferred candidates can be elected, the Court will grant summary judgment to defendant on plaintiffs' Voting Rights Act claim.

IV. Violation of 42 U.S.C. § 1983 and 14th and 15th Amendments (counts 7 and 9)

A. Political Gerrymandering

Plaintiffs contend that the new redistricting plan constitutes a political gerrymander in violation of 42 U.S.C. § 1983 and the 14th and 15th Amendments. Specifically, plaintiffs assert that defendant "alter[ed] the Ward boundaries without regard to traditional districting principles, in bizarre shapes and . . . as punishment to voters of wards who have elected Council representatives who are affiliated with the Green Party." (Compl. ¶ 70.) As noted previously, under the final redistricting plan, one of the two sitting Green Party City Council members (plaintiff Dean Zimmerman) was drawn out of his ward.

In *Davis v. Bandemer*, 478 U.S. 109, 123 (1986), the Supreme Court held that political gerrymandering claims are justiciable, but could not agree upon a standard under which to adjudicate them. Lower courts have generally applied the standard suggested by Justice White, writing for the plurality, and have almost uniformly denied relief. *See Vieth v. Jubelirer*, 124 S. Ct. 1769, 1777-78 (2004) (listing lower courts applying *Bandemer* and noting that relief had been granted in exactly one case, which did not

involve redistricting). Justice White[9] created a two-prong test: plaintiffs must show "both intentional discrimination against an identifiable political group and an actual discriminatory effect on that group." *Bandemer*, 478 U.S. at 127.

The second prong is by far the more difficult to establish, requiring plaintiffs to show that, taking into account a variety of historic factors and projected election results, the group had been "denied its chance to effectively influence the political process" as a whole. *Id*. at 132-33. Relief cannot be awarded merely because a particular political group fails to achieve representation in proportion to its numbers, or that the apportionment scheme makes winning elections more difficult for that group. *Id*. at 132. Rather, the inquiry focuses on the opportunity of members of the group to participate in party deliberations in the slating and nomination of candidates, to register and vote, to secure the attention of the winning candidate, or otherwise directly or indirectly influence the election of representatives. *Id*. at 133.

The Supreme Court recently addressed the continuing vitality of *Bandemer* in *Vieth v. Jubelirer*, 124 S. Ct. 1769 (April 28, 2004). A plurality, in an opinion by Justice Scalia, concluded that political gerrymandering claims are nonjusticiable because no

[9] Justice Powell's proposed standard also required plaintiffs to demonstrate intent and discriminatory effect. However, it required courts to consider, essentially, the totality of the circumstances to determine whether the redistricting had been drawn for partisan ends to the exclusion of "all other neutral factors relevant to the fairness of redistricting." *Bandemer*, 478 U.S. at 161. Justice Powell suggested that courts examine a non-exclusive list of factors, including the shapes of voting districts, adherence to established political subdivision boundaries, the nature of the legislative procedures by which the apportionment law was adopted, legislative history reflecting contemporaneous legislative goals, evidence concerning population disparities, and statistics tending to show vote dilution. *Id.*. at 173. Although Justice Powell's proposed standard is attractive to this Court, the *Vieth* plurality rejects such a "fairness" standard as equally unworkable. 124 S. Ct. at 1784.

judicially discernible and manageable standards for adjudicating such claims exist. *Id.* at 1778; *see also Baker v. Carr*, 369 U.S. 186 (1962) ("A lack of judicially discoverable and manageable standards for resolving it" indicates a nonjusticiable political question.). Justice Kennedy, concurring in the judgment in *Vieth*, agreed that no manageable standards existed, but concluded that political gerrymandering claims remain justiciable because a limited and precise rationale may yet be found to correct such an established constitutional violation. *Vieth*, 124 S. Ct. at 1793. The four Justice plurality and Justice Kennedy agreed that the *Bandemer* standard has been proven unmanageable. This Court therefore concludes that *Vieth* overrules the *Bandemer* standard for deciding political gerrymandering cases. *See Coe v. Melahn*, 958 F.2d 223, 225 (8th Cir. 1992) ("Where a majority of the Court refuses to apply a legal standard, that standard ceases to be the law of the land.").

However, as noted above, Justice Kennedy concurred in the judgment, not in the opinion, because he still considers political gerrymandering claims justiciable.[10] Four dissenters, in three opinions, agreed that political gerrymandering claims remain justiciable. *Vieth*, 124 S. Ct. at 1804 (Stevens, J., dissenting), 1817 (Souter, J., dissenting), 1829 (Breyer, J., dissenting). This Court finds, therefore, that plaintiffs'

[10] Notwithstanding Justice Kennedy's statement that political gerrymander claims remain viable, the *Vieth* plurality notes Justice Kennedy's statement that he "know[s] of no discernible and manageable standard that can render this claim justiciable" and suggests that Justice Kennedy must be treated "as a reluctant fifth vote against justiciability" because it is not permissible for the court to hold a claim justiciable without providing a standard under which to decide it. *Vieth*, 124 S. Ct. at 1792. Justice Kennedy explicitly disagrees with the plurality's assessment of his opinion, stating that the plurality "is wrong. . . . The Fourteenth Amendment standard governs; and there is no doubt of that." *Id.* at 1797.

political gerrymandering claim is justiciable. It remains the task of the Court, however, to determine the proper standard under which to examine plaintiffs' claim.

"When a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, 'the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds.'" *Marks v. United States*, 430 U.S. 188, 193 (1977) (quotation omitted). The Court therefore applies the standard enunciated in Justice Kennedy's concurrence in *Vieth*.

According to Justice Kennedy, although a more specific standard, such as exists for racial gerrymandering claims, may emerge with respect to political gerrymandering claims, in the meantime, "[t]he Fourteenth Amendment standard governs; and there is no doubt of that." *Id.* at 1797. The general rule is that legislation is presumed valid under the Fourteenth Amendment and will be sustained if the classification drawn by the statute is rationally related to a legitimate government interest. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985); *Stiles v. Blunt*, 912 F.2d 260, 263 (8th Cir. 1990). A heightened strict scrutiny review is applied when an equal protection challenge involves a fundamental constitutional right or a suspect class. *Stiles*, 912 F.2d at 263 (citing *Massachusetts Bd. of Ret. v. Murgia*, 427 U.S. 307, 312 (1976)).

The Court finds that plaintiffs' political gerrymandering claim is properly analyzed under the rational relation test. This conclusion is based, initially, on Justice Kennedy's direction that "[a] determination that a gerrymander violates the law must rest on . . . the conclusion that political classifications, . . . though generally permissible, were

applied in an invidious manner or in a way unrelated to any legitimate legislative objective." *Vieth*, 124 S. Ct. at 1793. The Court interprets Justice Kennedy's choice of language – "generally permissible" and "unrelated to any legitimate legislative objective" – as referring to the rational relation standard.

Further, the Court notes that the Supreme Court has repeatedly indicated that political affiliation is not afforded the same protection as a suspect class or a fundamental constitutional right. *See, e.g., Vieth*, 124 S. Ct. at 1785 (plurality opinion) ("A purpose to discriminate on the basis of race receives the strictest scrutiny under the Equal Protection Clause, while a similar purpose to discriminate on the basis of politics does not."); *Bush v. Vera*, 517 U.S. 952, 964 (1996) (plurality opinion) ("We have not subjected political gerrymandering to strict scrutiny."); *Shaw v. Reno*, 509 U.S. 630, 650 (1993) ("[N]othing in our case law compels the conclusion that racial and political gerrymanders are subject to precisely the same constitutional scrutiny. In fact, our country's long and persistent history of racial discrimination in voting – as well as our Fourteenth Amendment jurisprudence, which always has reserved the strictest scrutiny for discrimination on the basis of race – would seem to compel the opposite conclusion.") (citation omitted).

Plaintiffs complain that the Green Party incumbent in ward 6 was removed from his ward. "Thus deprived of a popular leader who could obtain cross-over votes from non-Green Party voters, the Sixth Ward Green Party voters will be consistently degraded in their influence on the political process as a whole in the Sixth Ward." (Pl.'s Opp'n to Def.'s Mot. for Summ. J. at 48) As discussed previously, defendant presented evidence that the Commission considered multiple plans, including two proposed by the Green

Party. The Commission selected the plan that, in its opinion, best satisfied statutory requirements, such as population and compactness, and traditional goals, such as respecting neighborhoods and other communities of interest. The specific changes that led to the revision of ward 6 were instituted in order to correct the inadvertent division of the Little Earth housing area. (*See* Leventhal Aff. Ex. 21; Rasmussen Aff. Ex. A.) The Redistricting Commission's decision to remove the Green Party incumbent from ward 6 was reasonably related to legitimate government interests. Plaintiffs claim of political gerrymandering, therefore, fails and summary judgment is appropriate.

B. Racial Gerrymandering

Plaintiffs allege that the redistricting plan was created predominantly based on racial considerations in violation of 42 U.S.C. § 1983 and the Fourteenth and Fifteenth Amendments. Specifically, plaintiffs claim that ward 5 was drawn to include a supermajority of African-Americans with the intent of limiting African-American voting power in surrounding wards.[11] The burden of proof in a racial gerrymandering claim, which rests on the plaintiffs, is a demanding one. *Easley v. Cromartie*, 532 U.S. 234, 241 (2001). The plaintiffs "must show at a minimum that the [Commission] subordinated

[11] Plaintiffs also allege that ward 6 was drawn to split the Native-American community and ward 8 was drawn to exclude the incumbent City Council member, Native-American Robert Lilligren, thereby limiting the influence of Native-American voters. The Court has already established that the boundaries of ward 6 were, appropriately, drawn to avoid splitting the Little Earth Housing community and that no alternative ward plan would have substantially increased Native-American influence. *See supra* Parts III.A.2 and IV.A. Further, the Court notes that Robert Lilligren resides in the new ward 6, arguably providing the Native-American ward 6 residents with a particularly attentive representative and Lilligren with a particularly receptive constituency. (*See* Second Cope Aff. Ex. G.)

traditional race-neutral districting principles . . . to racial considerations. Race must not simply have been *a* motivation for the drawing of a majority-minority district, but the *predominant* factor motivating the [Commission's] districting decision." *Id*. (emphasis in original) (quotations and citations omitted). The Court, in considering any challenge to a redistricting plan, must always be mindful that the redistricting body "must have discretion to exercise the political judgment necessary to balance competing interests and . . . must exercise *extraordinary caution* in adjudicating claims that [it] has drawn district lines on the basis of race." *Id*. (emphasis in original).

Plaintiffs in this case rely on their own testimony, the adopted map, several proposed maps, and the testimony of their expert, Charles, in support of this claim. Having closely examined the record in this case, the Court finds that, particularly in light of the heavy burden of proof, plaintiffs' evidence cannot sustain their claim.

Plaintiff Natalie Johnson-Lee provided the most extensive testimony regarding the racial gerrymandering claims. In her deposition, Johnson-Lee stated that the Democratic-Farmer-Labor Party members of the Redistricting Commission, Rick Stafford, Steve Claypatch, and Everrett Pettiford, intentionally acted to diminish minority influence through the redistricting process, and that other members of the Redistricting Commission acquiesced in their plan. (Johnson-Lee Dep. at 67-69, 77.) Johnson-Lee based these allegations on "conversations that [she] ha[d] had with individuals outside of the Redistricting Commission who were part of the DFL Party" indicating that the Redistricting Commission intended to remove a portion of downtown Minneapolis from ward 5 in order to create a downtown ward. (*Id*. at 69-75.) According to Johnson-Lee,

such a change would reduce the economic power base of ward 5, thereby reducing the influence of the minority population in ward 5. (*Id*. at 78-79.)

Johnson-Lee also testified, however, that the changes to ward 5 were the result of "a move afoot by the DFL Party," through the party's representatives on the Redistricting Commission, and that these three Commissioners "were politically motivated" to diminish minority influence. (*Id*. at 78, 82-83.) At another point, Johnson-Lee stated that she thought "race was one of the factors" in drafting ward 5, but did not "believe it was the predominate." (*Id*. at 29; *see also* Lee Dep. at 25.) Rather, she thought "there were several factors and they [were] all combined together." (Johnson-Lee Dep. at 29.)

Johnson-Lee's testimony clearly indicates that politics may have been a motivating factor that resulted in the racial composition of the wards, and that the Redistricting Commission did not accord race undue weight in the drafting process. As the Supreme Court has recognized, a redistricting process that aims to secure certain political aims may, depending on the correlation of political affiliation to race, end up with districts containing a greater number of African-Americans without having considered race in the process. *Easley*, 532 U.S. at 245. Such an outcome does not necessarily constitute a constitutional violation, and, indeed, does not even lead to a heightened standard of review. *See id*.; *see also Bush v. Vera*, 517 U.S. 952, 958 (1996) (O'Connor, J., principal opinion) ("strict scrutiny does not apply merely because redistricting is performed with consciousness of race"); *Miller v. Johnson*, 515 U.S. 900, 916 (1995) (stating that redistricting bodies "will . . . almost always be aware of racial demographics").

Johnson-Lee's testimony could be understood to allege that the Redistricting Commission included heavily African-American areas in ward 5 while excluding heavily white areas, like parts of downtown, which would have created a more compact district. Such evidence cannot support an allegation of improper motive unless such evidence also shows that these alternatives would have better satisfied the Redistricting Commission's other non-racial goals, such as creation of a downtown ward or maintenance of neighborhood boundaries. *Easley*, 532 U.S. at 249. No such evidence exists in the record, and the remaining evidence – such as it is – is not persuasive.

Other named plaintiffs also testified to believing that race was a significant consideration in the outcome of the redistricting process, and a number of the plaintiffs testified that they believed that racial considerations predominated. (*See, e.g.*, Bradley Dep. at 36; Hogan Dep. at 11-12; Makela Dep. at 12-14; Price Dep. at 29.) In support of this belief, the plaintiffs pointed out that the new ward 5 now has a higher minority population than did the old ward 5, while the new wards 4 and 3 have a smaller minority population. (*See, e.g.*, Bradley Dep. at 36; Crockett Dep. at 22; Goodell Dep. at 14-15; Hogan Dep. at 12; Lee at 9-10, 12-17.) In other words, plaintiffs infer from the result that the Redistricting Commission acted discriminatorily, but do not have any direct or personal knowledge of the Redistricting Commission's intent to discriminate. (*See, e.g.*, Price Dep. at 30-32; Taylor Dep. at 13-14; Zimmerman Dep. at 71.) Additionally, several of the plaintiffs testified to having heard from unspecified sources that race played a significant role in the redistricting process. (*See* Bradley Dep. at 44; Lee Dep. at 19-25; Price Dep. at 33.)

Comparative racial and population densities in different wards may provide persuasive evidence of improper motive. *Stabler*, 129 F.3d at 1025. However, "evidence that [African-Americans] constitute even a supermajority in one [ward] while amounting to less than a plurality in a neighboring [ward] will not, by itself, suffice to prove that a jurisdiction was motivated by race in drawing its [ward] lines" when the evidence also shows a highly probable non-racial explanation for the ward lines. *Easley*, 532 U.S. at 242 (quoting *Hunt v. Cromartie*, 526 U.S. 541, 551-52 (1999)). In this case, ward 5, which is 54.8% African American, is neighbored by 27.7% African-American ward 4, 19.8% African-American ward 3, and 13.8% African-American ward 7. Initially, 54.8% does not constitute a supermajority. Further, it is highly likely that expanding ward 5 into any of the surrounding wards would have altered the population deviation, decreased the compactness and contiguity of ward 5 and the surrounding wards, and/or split neighborhoods between more than one ward – all traditional, race-neutral considerations. (*See* Griffin Aff. Exs. 7, 8, 12.) Thus, the testimony of plaintiffs that the Redistricting Commission's racial focus is obvious from the resulting map cannot, without corroborating evidence, support their claim. Similarly, unsupported rumor cannot be considered reliable evidence in support of this claim.

District shapes that are so bizarre and irregular that only racial consideration can explain them can, alone, lead to strict scrutiny analysis. *Shaw*, 509 U.S. at 642-49. Lesser degrees of bizarre shape may also be "persuasive circumstantial evidence that race for its own sake, and not other districting principles, was [the Commission's] dominant and controlling rationale in drawing [the proposed] district lines." *Stabler*, 129 F.3d at

1025 (citation omitted). However, examination of the redistricting maps clearly demonstrates that the ward shapes in this case are neither bizarre nor irregular. The Court is not alone in reaching this conclusion. Plaintiffs' expert testified that "it would be hard to conclude that either [the previous wards or the redistricting plan wards] are bizarre." (Charles Dep. at 220.) Similarly, defendant's expert testified that, based on his review of numerous redistricting plans, he did not find any of the districts to be "bizarre in terms of their shapes." (Engstrom Dep. at 104.)

As discussed previously, each ward must conform to the 2:1 length to width ratio. Additionally, the Redistricting Commission is directed, to the extent possible, to draw ward boundaries running north-south and east-west. However, these mandates are not easily met, as demonstrated by the variety of shapes contained in the various maps submitted to and considered by the Redistricting Commission. All have wards whose orientation is more diagonal than square, that are somewhat crescent shaped, and that have small outcroppings. (*See* Griffin Aff. Exs. 12, 31, 32.) The redistricting plan ward shapes are, from the Court's perspective, no more oddly shaped than the wards in one of the Green Party's proposed plans or in the NAACP plan. (*Id.*) Thus, the ward shapes created by the redistricting plan do little to indicate that race was the predominant consideration in drafting the redistricting plan.

In his expert report, plaintiffs' expert offered the opinions that the new ward 5 contains an unnecessarily high number of racial minorities, resulting in the reduced influence of minority voters in adjacent wards. (Charles Report ¶ 1; *see also* Charles Dep. at 109-113.) According to plaintiffs' expert, the optimal redistricting plan would

redistribute some of ward 5's minority voters to ward 7. (Charles Report ¶ 3; Charles Dep. at 196-97.) Plaintiffs' expert agreed that he did not perform any mathematical or statistical analysis of the data he was provided. (Charles Dep. at 118, 127, 158-60.) Some of the data relied on only distinguished between whites and non-whites, and did not further separate out data related to African-Americans or Native-Americans as opposed to any other minority group. (Charles Dep. at 159-60.) The bulk of plaintiffs' expert's opinion appears to be based on little more than "eyeballing" the numbers and maps. Plaintiffs' expert's conclusions are further called into question by his apparent misreading of the maps upon which he based his conclusion. *See Easley*, 532 U.S. at 249 (discounting expert conclusion based on an "erroneous impression"). Plaintiffs' expert's deposition demonstrates that he was not aware that certain areas apparently lacking minority representation were a lake, a cemetery, and a country club. (Charles Dep. at 145-50.) Thus, plaintiffs' expert did not consider that some of the non-minority areas he identified as having been excluded from ward 5 were only lightly populated, despite the fact that such information would have been relevant. (*Id*. at 152.) Untested conclusions based on imprecise information amount to little more than hypotheses, and thus provide scant support for plaintiffs' claim. *See Easley*, 532 U.S. at 248 (discounting "untested" expert conclusion).

The Court has also read and considered the deposition testimony of the Commission members. A number of the Commissioners stated that one of the goals of the Commission was to create majority minority districts. (*See* Pettiford Dep. at 18; Stafford Dep. at 12-13; Markus Dep. at 67; Trostel Dep. at 12; Schwarzkopf Dep. at 17.)

Such evidence is significant and indicative of the Commission's awareness of race. *See Vera*, 517 U.S. at 959 (O'Connor, J., principal opinion); *Miller*, 515 U.S. at 907. However, as stated previously, mere awareness of race is not constitutionally improper. *See Vera*, 517 U.S. at 958 (O'Connor, J., principal opinion). More significant, however, is the unanimous testimony of the Redistricting Commissioners that race and the creation of minority majority wards was only one of many considerations. (Claypatch Dep. at 10-12; Pettiford Dep. at 14-16; Stafford Dep. at 12-13, 31, 44-46; Markus Dep. at 67-68, 71; Trostel Dep. at 8, 11-13; Collier Dep. at 6-8; Ferrara Dep. at 7, 26, 36; Finch Dep. at 11; Schwarzkopf Dep. at 11, 13, 16-21.) In fact, the minutes and transcription of the Redistricting Commission's April 12, 2002 meeting demonstrate that the Redistricting Commission was focused largely on keeping neighborhoods together. (Leventhal Aff. Ex. 21; Rasmussen Aff. Ex. A.)

In light of the minimal support in the record for plaintiffs' claim, the heavy burden that plaintiffs bear on the issue of racial gerrymandering, and the strong evidence contradicting plaintiffs' allegations, the Court finds that plaintiffs have failed to establish a material question of fact with respect to their racial gerrymandering claim. The Court concludes, and no jury could fail to conclude, that the Commission considered multiple legitimate and traditional districting principles, and that race was not impermissibly dominant. The Court therefore grants summary judgment on the racial gerrymandering claim in favor of defendant.

V. Violation of 42 U.S.C. §§ 1985, 1986 (count 8)

Claims brought under 42 U.S.C. §§ 1985 and 1986 require an underlying violation of an independent federal right or statute. *Federer v. Gephardt*, 363 F.3d 754, 758 (8th Cir. 2004). A § 1986 claim must be predicated upon a valid § 1985 claim. *Gatlin ex rel. Estate of Gatlin v. Green*, 362 F.3d 1089, 1095 (8th Cir. 2004). In light of the Court's decision to grant summary judgment in favor of defendant on plaintiffs' federal claims, the Court will also grant summary judgment to defendant with respect to count 8

CONCLUSION

The plaintiffs have raised important issues in their challenge to the City of Minneapolis' 2002 redistricting of City Council wards. And in recent years, the Court has observed that a considerable number of redistricting plans in other states have been drawn in potentially unfair and bizarre ways. However, that is not the case in the City of Minneapolis. After a thorough review of the plan chosen by the Redistricting Commission and careful consideration of the extensive record in this case, the Court can reach only one obvious conclusion: the City's plan passes all legal and constitutional tests and as such, it is a plan well done. That other parties or interests, or even the Court for that matter, may have chosen a different plan is immaterial. The plaintiff's challenge fails.

ORDER

Based on the foregoing, all the records, files, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. Plaintiffs' Motion for Summary Judgment [Docket No. 11] is **DENIED**.

2. Defendant's Motion for Summary Judgment [Docket No. 16] is **GRANTED**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: September 30, 2004
at Minneapolis, Minnesota.

s/ John R. Tunheim
JOHN R. TUNHEIM
United States District Judge