IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

JACKIE WILLIAMS SIMPSON, *et al.*, **PLAINTIFFS,**

v. **Case No. 4:22-cv-00213-JM-DRS-DPM (three-judge court)**

JOHN THURSTON, *et al.*, **DEFENDANTS.**

Supplemental Brief Addressing *Alexander v. South Carolina State Conference of the NAACP*

The Court requested the parties to brief "the effect of the Supreme Court's decision in *Alexander v. South Carolina State Conference of the NAACP*, 602 U. S. __ (2024) on the issues before" this Court.[1] This Court has twice concluded that Plaintiffs failed to plausibly allege that the Arkansas General Assembly's adoption of the 2021 congressional map violated the Constitution. For the reasons explained below, the Supreme Court's decision in *Alexander* confirms that this Court was correct to dismiss Plaintiffs' claims with prejudice.

ARGUMENT

Under *Alexander*, the standard for racial gerrymandering claims remains the same. "[G]iven the complex interplay of forces that enter a legislature's redistricting calculus, [the Supreme Court] ha[s] repeatedly emphasized that federal courts must exercise extraordinary caution in adjudicating claims that a State has drawn district lines on the basis of race." *Alexander v. S.C. State Conf. of the NAACP*, 144 S. Ct. 1221, 1233-34 (2024) (cleaned up). "Such caution is necessary because federal-court review of districting legislation represents a serious intrusion on the most vital of local functions." *Id.* at 1234 (cleaned up). "To untangle race from other

[1] *Alexander* only addressed racial-gerrymandering and vote-dilution claims, which are Counts IV and V of Plaintiffs' Amended Complaint. That decision thus has no effect on this Court's previous dismissal of Plaintiffs' various other state and federal constitutional claims, nor their claim under the Voting Rights Act.

permissible considerations, we require the plaintiff to show that race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." *Id.* (internal quotation marks omitted). This means that a plaintiff must show "that the State subordinated race-neutral districting criteria such as compactness, contiguity, and core preservation to racial considerations." *Id.* (internal quotation marks omitted).

Alexander clarified how that standard is applied in three ways. Each accords with how this Court previously approached this case and supports dismissal.

First, *Alexander* reaffirmed that, when it comes to racial gerrymandering claims, "[a] circumstantial-evidence-only case is especially difficult when the State raises a partisan-gerrymandering defense." 144 S. Ct. at 1235. "That is because partisan and racial gerrymanders are capable of yielding similar oddities in a district's boundaries when there is a high correlation between race and partisan preference." *Id.* (internal quotation marks omitted). "To prevail, a plaintiff must disentangle race from politics by proving that the former drove a district's lines." *Id.* (cleaned up). The plaintiff bears the burden of "ruling out the competing explanation that political considerations dominated the legislature's redistricting efforts." *Id.* "If either politics or race could explain a district's contours, the plaintiff has not cleared its bar." *Id.*

Second, *Alexander* made clear that a plaintiff's burden is particularly heavy where the "case hinge[s] on circumstantial evidence of a racial gerrymander such as . . . discrepancies between the relevant district lines and traditional districting criteria." 144 S. Ct. at 1235. In such a case, the plaintiff must show "that the legislature could have achieved its legitimate political objectives in alternative ways that are comparably consistent with traditional districting principles," such as with an alternative map. *Id.* (cleaned up). Indeed, the Court confirmed that a district court "critically err[s] by failing to draw an adverse inference against" a plaintiff "for not

providing a substitute map that shows how the State could have achieved its legitimate political objectives" in its districting decisions "while producing significantly greater racial balance." *Id.* at 1249 (cleaned up).

Third, *Alexander* centered that already demanding burden of proof within the "starting presumption that the legislature acted in good faith." *Id.* at 1235. Ordinarily "[t]he burden of showing something by a preponderance of the evidence . . . simply requires the trier of fact to believe that the existence of a fact is more probable than its nonexistence before he may find in favor of the party who has the burden to persuade the judge of the fact's existence." *Concrete Pipe & Prod. of Cal., Inc. v. Constr. Laborers Pension Tr. for S. Cal.*, 508 U.S. 602, 622 (1993) (cleaned up). But in a racial gerrymandering case, the "presumption of legislative good faith directs district courts to draw the inference that cuts in the legislature's favor when confronted with evidence that could plausibly support multiple conclusions." *Alexander*, 144 S. Ct. at 1235-36. Thus, a plaintiff's proffered facts must not just support an inference of "a racial motive" but must be "sufficient to support an inference that can overcome the presumption of legislative good faith." *Id.* at 1241. Where both racial and partisan motivations are alleged, the plaintiff must "rule out the possibility that politics drove the districting process." *Id.* at 1243. Where the plaintiff fails to do so, "that possibility is dispositive." *Id.* at 1241.

The Court's previous orders are entirely consistent with *Alexander*'s mandates. There is therefore no need for the Court to reexamine those decisions. Indeed, far from alleging that the General Assembly's districting decisions are unexplainable other than by racial motivations, "[P]laintiffs' complaint recognizes that there are obvious alternative explanations, including the preservation of the existing boundaries between counties and other political subdivisions," and "a purely partisan motive." *Simpson v. Hutchinson*, 636 F. Supp. 3d 951, 956-57 (E.D. Ark.

2022) (*Simpson I*). So the Court should reaffirm its previous conclusion that the "allegations" in Plaintiffs' complaint "do not create a plausible inference that race was the 'predominant factor' behind the adoption of Arkansas's new congressional map." *Simpson v. Thurston*, No. 4:22-CV-213, 2023 WL 3993040, at *1 (E.D. Ark. May 25, 2023) (*Simpson II*) (quoting *Easley v. Cromartie*, 532 U.S. 234, 241 (2001)). That decision was correct under *Alexander*.

First, the Court properly analyzed this case as "[a] circumstantial-evidence-only case" where "the State raises a partisan-gerrymandering defense." *Alexander*, 144 S. Ct. at 1235. The Court recognized that the allegations in Plaintiffs' complaint were entirely circumstantial in nature. *See Simpson I*, 636 F. Supp. 3d at 956 ("There is no smoking gun here: neither the plan's sponsors nor other members of the General Assembly provided a rationale or explanation for the new map other than equalizing the number of voters across Arkansas's four congressional districts." (cleaned up)). And "[t]he complaint itself . . . revealed obvious alternative explanations for the General Assembly's decision, including partisan politics." *Christian Ministerial All. v. Thurston*, No. 4:23-CV-471, 2024 WL 398428, at *3 (E.D. Ark. Feb. 2, 2024) (cleaned up); *see also Simpson I*, 636 F. Supp. 3d at 957 (detailing allegations of partisan motivations in the complaint). This Court thus recognized that Plaintiffs were required to "disentangle race and politics if [they] wishe[d] to prove that the legislature was motivated by race as opposed to partisanship." *Alexander*, 144 S. Ct. at 1233; *see Simpson I*, 636 F. Supp. 3d at 957 ("If a partisan motive is predominant, then a racial motive cannot be."). So the Court's analysis was in accord with *Alexander*.

Second, the Court properly analyzed Plaintiffs' allegations of "discrepancies between the relevant district lines and traditional districting criteria." *Alexander*, 144 S. Ct. at 1235. Plaintiffs alleged that the map "splits the black community in southern and eastern Pulaski County

into two congressional districts," *Simpson I*, 636 F. Supp. 3d at 957, which the Court recognized may be "consistent with racially motivated redistricting," but "does not plausibly establish this purpose on its own." *Id.* (cleaned up). Indeed, far from alleging that traditional redistricting principles were subordinated to race, the "complaint recognizes that there are obvious alternative explanations . . . including the preservation of the existing boundaries between counties and other political subdivisions." *Simpson I* at 956. But Plaintiffs made no effort to "show[] how the State could have achieved its legitimate political objectives" in redrawing the congressional map "while producing significantly greater racial balance." *Alexander*, 144 S. Ct. at 1249 (cleaned up); *see Simpson I*, 636 F. Supp. 3d at 956 (concluding that Plaintiffs failed to "explain how the rejection of . . . other maps . . . shows a discriminatory purpose"). Because Plaintiffs made no effort to show that the General Assembly subordinated traditional redistricting criteria to race, nor how the legislature could have "achieved its legitimate political objectives while producing significantly greater racial balance," *Alexander*, 144 S. Ct. at 1249, they failed to meet *Alexander*'s demanding standard. This Court's decision is in perfect accord.

Third and finally, this Court recognized that it was required to "presume that the General Assembly acted in good faith." *Simpson II*, 2023 WL 3993040, at *2 (cleaned up). It applied this principle as *Alexander* later directed: courts must "draw the inference that cuts in the legislature's favor when confronted with evidence that could plausibly support multiple conclusions." *Alexander*, 144 S. Ct. at 1236. In lockstep with *Alexander*, the Court explained that Plaintiffs were required to plead facts supporting more than just an inference of possible racial motivation, but "'an inference that is strong enough to overcome the presumption of legislative good faith.'" *Simpson II*, 2023 WL 3993040, at *2 (quoting *Abbott v. Perez,* 138 S. Ct. 2305, 2329 (2018)). None of Plaintiffs' allegations cleared that hurdle. For example, the Court recognized that the

presumption of good faith means that in assessing statements by members of the General Assembly about the redistricting process, the Court "cannot simply leap to the conclusion that they were lying about their motives." *Id.* This led the Court to reject Plaintiffs' argument for "a negative inference from the absence of racially charged rhetoric" in the districting process. *Id.* That approach was appropriate in light of *Alexander*'s guidance that inferences which could cut in multiple directions must be resolved "in the legislature's favor." *Alexander*, 144 S. Ct. at 1236. The presumption of good faith was threaded throughout this Court's two decisions and does not need revisiting.

This Court's treatment of Plaintiffs' claims was entirely consistent with *Alexander*. Plaintiffs were required, and failed, to plead factual allegations which defeat any "obvious alternative explanations that make a predominant racial motive implausible." *Simpson II*, 2023 WL 3993040, at *2. (cleaned up) (emphasis omitted). This includes the explanation from Plaintiffs' own allegations that the congressional districting "was pure 'partisan gerrymandering,' designed to bolster the Republican Party's electoral prospects in Arkansas." *Id.* (quoting Am. Compl. ¶ 3). Because Plaintiffs raised no allegations "that could not also support the inference that politics drove the mapmaking process," *Alexander*, 144 S. Ct. at 1242, the Court should reaffirm its previous orders dismissing Plaintiffs' complaint with prejudice.

Finally, a word on Plaintiffs' separate vote-dilution claim. *Alexander* clarified that "[a] plaintiff pressing a vote-dilution claim cannot prevail simply by showing that race played a predominant role in the districting process," but must rather "show that the State's districting plan ha[d] the purpose and effect of diluting the minority vote." *Alexander*, 144 S. Ct. at 1252 (cleaned up) (emphasis omitted). Because this Court correctly concluded that Plaintiffs' complaint is "[m]issing . . . facts plausibly showing that race motivated the General Assembly's

decision" at all, *Simpson I*, 636 F. Supp. 3d at 955-56, it need not revisit that decision nor separately analyze any alleged dilutive effect of the congressional map.

CONCLUSION

For the foregoing reasons, the Court should once again dismiss Plaintiffs' complaint with prejudice.

Dated: August 21, 2024

Respectfully submitted,

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