IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

TENNESSEE STATE CONFERENCE OF THE NAACP, *et al.*, *Plaintiffs,* v. TRE HARGETT, in his official capacity as Secretary of State of Tennessee, *et al.*, *Defendants.*	)	No. 3:26-cv-00638 THREE-JUDGE COURT

DEFENDANTS' MOTION TO DISMISS
PLAINTIFFS' FIRST-AMENDED COMPLAINT
AND SUPPORTING MEMORANDUM OF LAW

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTRODUCTION 1

BACKGROUND 1

LEGAL STANDARD 3

ARGUMENT 4

I. Plaintiffs Do Not Plausibly Allege Discriminatory Purpose. 5

A. Plaintiffs do not plausibly rebut the obvious alternative explanation for the 2026 Plan: political purpose. 6

B. Allegations that the Legislature was "aware" of the 2026 Plan's racial demographics do not plausibly allege a racial purpose 9

C. Plaintiffs' remaining allegations are not evidence of racial purpose. 12

1. Plaintiffs do not plausibly allege any direct evidence of discrimination. 12

2. Redistricting after *Callais* is not circumstantial evidence of discriminatory intent. 13

3. Redistricting with census data is not circumstantial evidence of discriminatory intent. 14

4. Plaintiffs' allegations regarding the *Arlington Heights* factors do not plausibly allege discriminatory intent. 18

II. Plaintiffs Do Not Plausibly Allege Discriminatory Effect. 23

CONCLUSION 24

TABLE OF AUTHORITIES

Cases

Abbott v. LULAC,
146 S. Ct. 418 (2025) 17, 21

Abbott v. Perez,
585 U.S. 579 (2018) 6, 8-9, 14, 17, 19, 20-21

ABCDE Operating v. City of Detroit,
2011 WL 3607072 (E.D. Mich. Aug. 16, 2011) 4, 7

Alexander v. S.C. State Conf. of the NAACP,
602 U.S. 1 (2024) 1, 7, 10-12, 16

Allen v. Milligan,
599 U.S. 1 (2023) 14, 21

Ashcroft v. Iqbal,
556 U.S. 662 (2009) 3, 9-10, 14, 18, 24

Bassett v. Nat'l Collegiate Athletic Ass'n,
528 F.3d 426 (6th Cir. 2008) 4

Bell Atl. Corp. v. Twombly,
550 U.S. 544 (2007) 3

Brnovich v. Democratic Nat'l Comm.,
594 U.S. 647 (2021) 12-13

GBM v. Sec'y of State of Ala.,
992 F.3d 1299 (11th Cir. 2021) 20

Gill v. Whitford,
585 U.S. 48 (2018) 5

Hunter v. Underwood,
471 U.S. 222 (1985) 12

In re Omnicare, Inc. Sec. Litig.,
769 F.3d 455 (6th Cir. 2014) 4, 8, 15

Karcher v. Daggett,
462 U.S. 725 (1983) 15

League of Women Voters of Fla. v. Fla. Sec'y of State,
66 F.4th 905 (11th Cir. 2023) 10, 20

Louisiana v. Callais,
146 S. Ct. 1131 (2026) 2, 5, 9-12, 14, 17, 22-24

McCleskey v. Kemp,
481 U.S. 279 (1987) 19

Merrill v. Milligan,
142 S. Ct. 879 (2022) 14

Miller v. Johnson,
515 U.S. 900 (1995) 10

Northville Downs v. Granholm,
622 F.3d 579 (6th Cir. 2010) 3

Pernell v. Fla. Bd. of Governors of State Univ.,
84 F.4th 1339 (11th Cir. 2023) 17

Pers. Adm'r of Massachusetts v. Feeney,
442 U.S. 256 (1979) 4, 9

Tennessee State Conference of NAACP v. Lee,
746 F. Supp. 3d 473 (M.D. Tenn. 2024) 1-7, 10-14, 17-23

Trump v. New York,
592 U.S. 125 (2020) 15

Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.,
429 U.S. 252 (1977) 10, 12

White v. Regester,
412 U.S. 755 (1973) 5, 23

Secondary Sources

Sen. Floor Sess., 3d Day, https://wapp.capitol.tn.gov
/apps/BillInfo/Default?BillNumber=HB7003&ga=114 ..... 10, 19

Sen. Judiciary Comm. Video, https://tnga.granicus.com
/player/clip/33465?view_id=841&redirect=true 5, 9-10

Tenn. 114th Gen. Assembly, HB 7003, https://wapp.capitol.tn.gov
/apps/BillInfo/Default?BillNumber=HB7003&ga=114 ..... 5, 9, 11

INTRODUCTION

In *Tennessee State Conference of NAACP v. Lee*, 746 F. Supp. 3d 473 (M.D. Tenn. 2024), a three-judge court dismissed an intentional-discrimination claim challenging Tennessee congressional districts, little different than the claim Plaintiffs bring here. To the extent there is any daylight between *Lee* and Plaintiffs' present allegations, it is that in *Lee* there was no "publicly announce[d]" partisan goal for the redrawn Nashville-area districts. *Id.* at 498. And still, the court dismissed plaintiffs' complaint for failing to "plausibly rebut" the "more straightforward explanation" for that redraw: "naked partisanship." *Id.* at 504 (quotation marks omitted). So too here, Plaintiffs cannot plausibly allege that the 2026 Plan is the product of invidious discrimination "given the 'obvious alternative explanation' that the legislature drew the maps for a purely partisan reason." *Id.* at 506 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 682 (2009)). As Plaintiffs' own complaint admits, the Tennessee General Assembly answered the call to redistrict mid-decade and add "another Republican seat in Memphis." Dkt. 30, First Am. Compl. ("FAC") ¶75. Plaintiffs cannot survive this motion to dismiss by conflating that open and obvious political motivation with a racial one. *See, e.g.*, *Lee*, 746 F. Supp. 3d at 504-06.

BACKGROUND

Two years ago, the Supreme Court clarified that a State may prioritize nonracial considerations in redistricting without being faulted for racially gerrymandering. *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 20-21 (2024). And two months ago, the

Court clarified that States may advance their "political goals" in redistricting without being faulted for vote dilution under §2 of the Voting Rights Act. *Louisiana v. Callais*, 146 S. Ct. 1131, 1155-57 (2026).

With those clarifications, Tennessee convened a special session to redistrict in May ahead of the 2026 congressional primary elections in August. *See* FAC ¶1. U.S. Senator Marsha Blackburn "urge[d]" Tennessee to convene that special session and "redistrict another Republican seat in Memphis." *Id.* ¶75. The Legislature did so, redrawing its nine congressional districts to "creat[e] a new Republican seat at the expense of a Democratic incumbent." *Id.* ¶20. Legislators stated that map was a product of "'politics,'" *id.* ¶114, and based on "'population and politics,'" *id.* ¶157.

To create that "new Republican seat," *id.* ¶20, the 2026 Plan places parts of Shelby County in three districts. *Id.* ¶¶93, 140-45. Legislators "admitted that the map was drawn to add a third district in Shelby County." *Id.* ¶95. In this way, the redrawn districts in the 2026 Plan mirror the redrawn Nashville-area districts in the 2022 Plan, challenged in *Lee* for spreading Davidson County across three districts. 746. F. Supp. 3d at 484-85.

Plaintiffs filed this suit on May 13, Dkt.1, and amended their complaint on June 5, Dkt. 30. Plaintiffs' sole claim is that the 2026 Plan "was adopted with the purpose of dis-advantaging Black voters" in violation of the Fourteenth and Fifteenth Amendments. *See* FAC ¶¶188-201.

LEGAL STANDARD

Rule 12 tests the legal sufficiency of the complaint. To survive a motion to dismiss, a complaint must contain enough "[f]actual allegations" to "raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Plaintiffs must allege "more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678. Where there is an "obvious alternative explanation" for the government's action, Plaintiffs do not clear that bar. *Id.* at 682 (quoting *Twombly*, 550 U.S. at 567). Applied in a redistricting case like this one, Plaintiffs' allegations must "plausibly rebut the more straightforward 'explanation'" for districts—"naked partisanship." *Lee*, 746 F. Supp. 3d at 504.

At the motion-to-dismiss stage, the presumption of good faith applies. That is because the presumption is "part of the *constitutional* test that invariably applies at the 'various stages of litigation.'" *Id.* at 494. Even at the pleading stage, courts must "'draw the inference that cuts in the legislature's favor when confronted with [a complaint's allegations] that could plausibly support multiple conclusions.'" *Id.* (alteration in original).

Also at the motion-to-dismiss stage, the Court may take judicial notice of the entire legislative record for the 2026 Plan. *See, e.g.*, *Northville Downs v. Granholm*, 622 F.3d 579, 586 (6th Cir. 2010). Considering the whole of the legislative record is especially warranted where, as here, Plaintiffs have "incorporated the legislative record into the pleadings." *ABCDE Operating v. City of Detroit*, 2011 WL 3607072, at *2 (E.D. Mich. Aug. 16, 2011). *See,*

e.g., FAC ¶¶75-76, 80-82, 94-97, 103-106, 109-110, 116. Where "a plaintiff references or quotes certain documents, … a defendant may attach those documents to its motion to dismiss, and a court can then consider them in resolving the Rule 12(b)(6) motion[.]" *In re Omnicare, Inc. Sec. Litig.*, 769 F.3d 455, 466 (6th Cir. 2014).[1] "Fairness and efficiency require this practice," lest "complaints that quoted only selected and misleading portions of such documents could not be dismissed under Rule 12(b)(6) even though they would be doomed to failure.'" *Id.*; *see also, e.g.*, *Bassett v. Nat'l Collegiate Athletic Ass'n*, 528 F.3d 426, 430 (6th Cir. 2008).

ARGUMENT

To state a claim for unconstitutional vote dilution, Plaintiffs must plausibly allege they can "prove two elements: a discriminatory *purpose* and a discriminatory *effect*." *Lee*, 746 F. Supp. 3d at 499. "Discriminatory purpose" requires plausible allegations that the State acted "because of" race, not merely with an "awareness" of racial "consequences." *Pers. Adm'r of Massachusetts v. Feeney*, 442 U.S. 256, 279 (1979) (quotation marks omitted); *Lee*, 746 F. Supp. 3d at 502. Discriminatory effect requires plausible allegations that districts are not "equally open" or provide "less opportunity" for minority voters. *White v. Regester*, 412 U.S. 755, 766 (1973). That inquiry must account for "the State's combination

[1] All redistricting committee and floor proceedings are publicly available online. *See* Tenn. 114th Gen. Assembly, HB 7003, https://wapp.capitol.tn.gov/apps/BillInfo/Default?BillNumber=HB7003&ga=114; *see also* Sen. Judiciary Comm. Video, https://tnga.granicus.com/player/clip/33465?view_id=841&redirect=true.

of permissible criteria"—including politics. *Callais*, 146 S. Ct. at 1155-56. Plaintiffs fail to plausibly allege either element here, instead pleading only a *political* purpose with a predictable *political* effect on Democrats.[2]

I. Plaintiffs Do Not Plausibly Allege Discriminatory Purpose.

Plaintiffs do not dispute that Tennessee redistricted with the stated intent to advantage Republicans. *See* FAC ¶¶12, 20, 75, 114, 157. Plaintiffs' theory is that this avowed political goal was just "pretext" for racial animus. *Id.* ¶¶156-57. But Plaintiffs' complaint does not contain plausible allegations supporting that theory. The repeated allegation that the Legislature was made "aware" of the 2026 Plan's racial demographics, *id.* ¶¶11, 21, 199, falls well short of plausible allegations that lawmakers redistricted "*because of*" race, *Lee*, 746 F. Supp. 3d at 502 (emphasis added; quotation marks omitted). The districts "are readily explainable" by the Legislature's stated political goal. *Id.* at 504 (quotation marks omitted). Because Plaintiffs nowhere "plausibly rebut" that "obvious alternative explanation," Plaintiffs' complaint must be dismissed. *Id.* at 504-06.

[2] As for standing, a plaintiff may challenge only "the boundaries of the particular district in which he resides." *Gill v. Whitford*, 585 U.S. 48, 66 (2018). A single plaintiff may not obtain "statewide" relief—for instance, an injunction precluding the use of all districts statewide. *Id.* at 66-68, 73. At this stage, Plaintiffs appear to seek relief localized to their challenged districts. *See* FAC pp.55-56 ¶C.

A. Plaintiffs do not plausibly rebut the obvious alternative explanation for the 2026 Plan: political purpose.

1. Plaintiffs admit that the stated motivation for the 2026 Plan was *political*, not racial. Plaintiffs acknowledge that the special session came in response to Senator Blackburn's public statement urging the Legislature "'to reconvene to redistrict another Republican seat in Memphis.'" FAC ¶75. Plaintiffs allege the 2026 Plan created "a new Republican seat at the expense of the Democratic incumbent," *id.* ¶20, or what some called a "9-0" plan, *id.* ¶121. Plaintiffs allege legislators stated they redistricted for "'partisan reasons,'" *id.* ¶12, and based "'on politics,'" *id.* ¶114, or "'population and politics,'" *id.* ¶157.

Those allegations should make dismissal even more straightforward than the dismissal in *Lee*. In *Lee*, the three-judge court observed that legislators "did *not* publicly announce a partisan gerrymander during the redistricting." 746 F. Supp. 3d at 498 (emphasis added). And still, the court dismissed plaintiffs' intentional discrimination claim given the "obvious alternative explanation" that redistricting was politically motivated, not racially motivated. *Id.* at 506. Plaintiffs' intentional discrimination claim here is all the less viable given that Plaintiffs themselves admit the Legislature's expressly stated *political* goal. If the presumption of legislative good faith means anything,[3] it is that the truth of the Legislature's stated political goal "'must be presumed.'" *Alexander*, 602 U.S. at 36.

[3] That presumption of good faith applies in this vote-dilution case, no less than any other redistricting case. *See Abbott v. Perez*, 585 U.S. 579, 603-05 (2018); *Lee*, 746 F. Supp.

2. Plaintiffs resist that "obvious alternative explanation," *contra Lee*, 746 F. Supp. 3d at 506, and allege in conclusory fashion that the stated political motivation was "pretext," *id.* ¶¶156-57. Plaintiffs say there is no "evidence in the legislative record to support [the Legislature's] claims of partisanship. *Id.* ¶12; *see id.* ¶159 (similar). But even the few snippets of the legislative record in Plaintiffs' own complaint concede the 2026 Plan's stated political purpose. *E.g.*, *id.* ¶¶20, 75, 114, 157.

Plaintiffs' bald assertion, moreover, that there is no "evidence in the legislative record" of a political purpose (*id.* ¶12) opens the door to the Court's consideration of the whole legislative record. *See, e.g.*, *ABCDE Operating*, 2011 WL 3607072, at *2. Should the Court take judicial notice of the whole legislative record—which would be appropriate given Plaintiffs' cherry-picked allegations, *supra* pp.3-4—myriad statements omitted in Plaintiffs' complaint corroborate the Legislature's political purpose.[4] The "intent" of redistricting was "to maximize" Republicans' chances of maintaining the majority in Congress, in response to other mid-decade redistricting efforts across the country.[5]

3d at 504. Thus, even at the pleading stage, the Court must "draw the inference that cuts in the legislature's favor" when evidence "could plausibly support multiple conclusions." *Lee*, 746 F. Supp. 3d at 494.

[4] *See, e.g.*, Sen. Judiciary Comm. Video 3:10-20 (Sen. Stevens) (calling for a map that "ensures" a "conservative delegation" to reflect that "Tennessee is a conservative state"); House Redistricting Comm. Video 1:24:18-32 (Speaker Sexton) ("[T]he map was generated based on population and politics, no racial data was used, and no incumbents were paired together."); *id.* at 1:40:04-09 (similar).

[5] *See* Sen. Judiciary Comm. Video 1:12:54-1:13:15, 1:14:07-19 (Sen. Stevens); *see also id.* 1:00:57-1:06:06 (Sen. Stevens) (describing New York and California mid-decade redistricting).

3. Likewise, Plaintiffs open the door regarding statements in the legislative record about how the State redistricted to mitigate litigation risk. FAC ¶109. In *Abbott*, the Supreme Court explained it was "entirely reasonable" for a State to redistrict to avoid "expensive and time consuming" litigation. 585 U.S. at 608. But here, Plaintiffs *fault* legislators for "canned, uninformative statement[s]" in the legislative record about lawmakers' stated desire to mitigate the risk of future litigation. FAC ¶110.

Plaintiffs allege those statements were inconsistent with assertions that the existing districts were "'legal.'" *Id.* But Plaintiffs omit the context for those statements, again cherry-picking only self-serving snippets from the legislative record in their complaint. *See In re Omnicare*, 769 F.3d at 466. In context, legislators explained they took the opportunity to "modernize" redistricting by *removing* racial data from the process—and that's what mitigated the State's future risk of litigation.[6] After *Callais*, the concern that Tennessee's existing districts might be challenged for considering race *too much* was no hypothetical concern. Louisiana and South Carolina just faced costly litigation for claims that they used race too much in recent redistricting efforts. *Callais*, 146 S. Ct. 1131; *Alexander*, 602 U.S. 1. Whether or not such a challenge would have ultimately succeeded in Tennes-

[6] Sen. Floor Sess., 3d Day, Video 2:04:56-2:05:06 (Sen. Stevens) ("This map … modernizes Tennessee's redistricting process by removing racial data from the map-making process entirely"); *accord* House Redistricting Comm. Video 1:24:18-1:24:32 (Speaker Sexton) ("no racial data was used").

see, it was "entirely reasonable and certainly legitimate" for Tennessee to take the opportunity to redistrict without racial data and thereby mitigate the risk of any similar "expensive and time consuming" litigation. *Abbott*, 585 U.S. at 608.

B. Allegations that the Legislature was "aware" of the 2026 Plan's racial demographics do not plausibly allege a racial purpose

Plaintiffs' complaint recites, at length, the resulting racial demographics of the 2026 Plan. *See, e.g.*, FAC ¶¶9-10, 139-46. And Plaintiffs allege legislators were made aware of the 2026 Plan's racial demographics and the close correlation between race and politics. *See, e.g.*, *id.* ¶¶11, 21, 23, 91, 110, 150, 163, 199.[7] These allegations about the 2026 Plan's resulting racial demographics do not nudge Plaintiffs' theory of racial animus "'across the line from conceivable to plausible.'" *Iqbal*, 556 U.S. at 680.

Plaintiffs cannot plausibly allege racial animus by complaining about a law's effects alone. Laws might have an "overwhelmin[g]" effect on one group, *Feeney*, 442 U.S. at 259, but that "impact alone is not determinative," *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977). Take a "capital-punishment law [that] dispar-

[7] Plaintiffs create a catch-22 for lawmakers, elsewhere alleging lawmakers should be faulted for *not* acknowledging the racial effects of the 2026 Plan. *See, e.g.*, FAC ¶94 (faulting House Speaker for not "acknowledg[ing] the demographic makeup of each jurisdiction"); ¶104 (faulting legislator for stating he "had no awareness" of racial demographics); ¶161 (same); ¶162 ("The notion that bill sponsors and proponents in the General Assembly did not know that the vast majority of the population of Memphis is Black is far-fetched and defies credulity.").

ately affects minority defendants," or a hiring preference for veterans that overwhelmingly favors men. *Lee*, 746 F. Supp. 3d at 502. Plaintiffs must allege the legislature acted "'*because of*' this racial effect" or *because of* a desire "to harm women[]," not merely that legislators were aware of these disparate effects. *Id.* If, more likely, the legislature enacted such laws because of a desire "to deter crime" or "to help veterans," plaintiffs have not proved invidious purpose. *Id.*

Relevant here, redistricting to advance a political goal will have racial effects when "race and partisan preference are highly correlated." *Alexander*, 602 U.S. at 6; *Callais*, 146 S. Ct. at 1158; *see, e.g.*, *Alexander*, 602 U.S. at 20 ("there is strong evidence that the district's BVAP of 17% was simply a side effect of the legislature's partisan goal"). Plaintiffs admit that race and party are highly correlated in Tennessee. *See* Compl. ¶¶150-55.[8] It would thus be error to conflate Tennessee's politically motivated redistricting with racially motivated redistricting simply because politically motivated redistricting might have racial effects. *See, e.g.*, *Lee*, 746 F. Supp. 3d at 504 ("[T]he Complaint must do more than plausibly

[8] Plaintiffs quote Democratic lawmakers' remarks that Republican legislators' intent was "to dismantle the only majority Black congressional district in Tennessee." FAC ¶117; *see also, e.g.*, *id.* ¶121 (Sen. Oliver alleging "[t]he racial effect is the partisan goal"); ¶122 (Sen. Lamar alleging map was "designed to … dilute Black voting power"). Such "bare assertions" are insufficient, *Iqbal*, 556 U.S. at 681, particularly considering that the "good faith of [the] state legislature must be presumed," *Miller v. Johnson*, 515 U.S. 900, 915 (1995); *see also League of Women Voters of Fla. v. Fla. Sec'y of State*, 66 F.4th 905, 940 (11th Cir. 2023) ("[T]he concerns expressed by political opponents [about disparate impact on black voters] during the legislative process are not reliable evidence of legislative intent.").

allege that Tennessee's legislators knew that their Republican friendly map would harm voters who preferred Democratic candidates—including the higher percentage of minority voters who preferred those candidates."); *accord Alexander*, 602 U.S. at 10-11; *Callais*, 146 S. Ct. at 1157-58, 1163.

Where, as here, the complaint concedes that the stated motivation for redistricting mid-decade was partisanship, *see supra*, Part I.A, Plaintiffs must "plausibly rebut" that "naked partisanship" explains the 2026 Plan's resulting racial demographics. *Lee*, 746 F. Supp. 3d at 504. Anything less would forget "that the presumption of legislative good faith extends to vote-dilution claims alleging that legislators acted with racial animus," including at the pleading stage. *Id.*; *see also Alexander*, 602 U.S. at 11 (identifying the presumption of good faith as the justification for requiring plaintiffs to disentangle race and politics).

Plaintiffs have not satisfied that pleading standard here with allegations that the legislators must have been "aware" of the 2026 Plan's so-called racial "side effect[s]." *Alexander*, 602 U.S. at 20. Their allegations, conflating a political motivation with a racial one would "exploit[] the" concededly "tight link between race and political preference" in Tennessee. *Id.* at 21. Were Plaintiffs' alleged changes to "Black VAP" between the 2022 and 2026 Plans sufficient to infer discriminatory intent, "a plaintiff could simply reverse-engineer the partisan data into racial data and argue that the State impermissibly set a

particular BVAP target." *Id.* The presumption of legislative good faith "cannot be evaded with such ease." *Id.*

C. Plaintiffs' remaining allegations are not evidence of racial purpose.

Despite Tennessee's open and obvious political motivation, Plaintiffs contend the Legislature harbored a "substantial or motivating" racial purpose. *Hunter v. Underwood*, 471 U.S. 222, 225 (1985). Plaintiffs' remaining factual allegations come nowhere close.

1. Plaintiffs do not plausibly allege any direct evidence of discrimination.

Plaintiffs all but concede there is no direct evidence of racial purpose. Direct evidence takes the form of legislators' express "zeal for white supremacy r[unning] rampant" throughout the lawmaking process, *Hunter*, 471 U.S. at 229, or a redistricting plan that is "unexplainable on grounds other than race," *Arlington Heights*, 429 U.S. at 266; *accord Lee*, 746 F. Supp. 3d at 504 (distinguishing *Hunter* from circumstantial evidence in *Lee*). The evidence, moreover, must show "the legislature *as an institution*, as opposed to certain individual[s]," was "motivated by race." *Callais*, 146 S. Ct. at 1156 (emphasis added); *see, e.g.*, *Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 689 (2021) (rejecting "cat's paw" theory of discrimination for legislative bodies, where a single legislator's statement could be imputed to the body as a whole); *accord Lee*, 746 F. Supp. 3d at 502 (describing "'hazards' of trying to divine the 'intent' of a collective body made up of many legislators with many motivations").

To the extent Plaintiffs gesture at any such evidence here, it is Plaintiffs' allegation of a single legislator's statement that "cracking Memphis across three congressional districts would reduce crime and add resources to make Memphis feel 'safer.'" FAC ¶97. Plaintiffs construe that statement in the worst light, contending it was a "not-so-subtle appeal to race and racial stereotypes of Black criminality." *Id*. A single legislator's suggestion that three Memphis-area districts could "add resources" and thereby improve safety is not evidence of racial purpose harbored by the Legislature as a whole. *See Brnovich*, 594 U.S. at 689. And when legislators say they enacted a law to improve safety, the presumption of good faith compels taking them at their word absent something rebutting the truth of those statements. *See Lee*, 746 F. Supp. 3d at 504 ("federal courts should act cautiously before we hurl such accusations [of discrimination] at the political branches" (quotation marks omitted)); *see also id.* at 502 ("If the legislature enacted the law to deter crime, the law would pass muster.").

2. Redistricting after *Callais* is not circumstantial evidence of discriminatory intent.

Plaintiffs allege that Tennessee's decision to redistrict on the heels of *Callais* "manifests the intent to discriminate." FAC ¶7; *see also, e.g.*, *id.* ¶5 ("The sole predicate for redistricting was … *Callais*"), ¶74 (alleging "legislators recognized CD 9 was majority-Black and saw *Callais* as removing the legal prohibition of discrimination as a barrier to its dismantling"). That "conclusory" allegation is not entitled "the presumption of truth," *Iqbal*,

556 U.S. at 681, nor can it surmount the presumption of legislative good faith, *Lee*, 746 F. Supp. 3d at 504.

Before *Callais*, uncertainty prevailed about whether States could advance nonracial redistricting priorities, including politics, without being faulted for unintended vote dilution under §2 of the VRA. *See, e.g.*, *Allen v. Milligan*, 599 U.S. 1 (2023) (affirming Alabama likely violated §2 by failing to draw an additional majority-minority district in its 2021 congressional plan); *see Merrill v. Milligan*, 142 S. Ct. 879, 882-83 (2022) (Roberts, C.J., dissenting) ("it is fair to say that *Gingles* and its progeny have engendered considerable disagreement and uncertainty regarding the nature and contours of a vote dilution claim"). Before *Callais*, it was "entirely reasonable" for the State to refrain from advancing its political goals, given the §2 litigation that was all but guaranteed to follow. *Abbott*, 585 U.S. at 608. Whether that costly §2 litigation would have ultimately succeeded or not, it was "certainly legitimate" for the State to avoid it. *Id.* There is nothing nefarious about the State's decision to wait to redistrict until after *Callais* clarified that Tennessee could advance its political goals. *See Callais*, 146 S. Ct. at 1155-57.

3. Redistricting with census data is not circumstantial evidence of discriminatory intent.

Plaintiffs allege that the Legislature must have used race as a "proxy" for politics because the Legislature used census data, FAC ¶124, without also sufficiently disclosing

what additional "partisan data on which it supposedly relied," *id.* ¶12; *see id.* ¶23 (similar). Those allegations are fanciful and contrary to the presumption of good faith. Redistricting based on census data is not evidence of discriminatory intent.

"[T]he census count represents the 'best population data available,'" *Karcher v. Daggett*, 462 U.S. 725, 738 (1983), which all States and other localities use to redistrict. *See Trump v. New York*, 592 U.S. 125, 129 (2020) (per curiam). During Tennessee's 2026 redistricting, legislators made clear that they relied on this gold-standard "'census population'" data and also considered "'politics'" in the mapmaking process. FAC ¶114. The map was based on "'population and politics.'" *Id.* ¶157.

Plaintiffs' complaint misconstrues the legislative record in service of an implausible theory that the Legislature as a whole perpetuated a racially motivated conspiracy. Plaintiffs assert that "Census data were the *sole source*" of data for the 2026 Plan. *Id.* ¶160. And because the Census "contains racial demographics, but not data on party affiliation," so goes Plaintiffs' theory, the Legislature *must* have used racial data to achieve its professed partisan outcome. *Id.* ¶111; *see also id.* ¶¶12, 20, 23, 113, 115, 124.[9] They insist that legislators deceived the public with "[f]alse statements" about their express political goal.

[9] Plaintiffs' repeated allegations that legislators redistricted with racial data ignore portions of the legislative record that are inconvenient for that narrative. *But see In re Omnicare*, 769 F.3d at 466 ("[f]airness and efficiency" require considering the whole document relied upon by plaintiffs, not only a complaint's "selected and misleading portions"). Contrary to Plaintiffs' narrative, legislators from the Senate and House explained they filtered *off* the racial components of the Census data. Sen. Floor Sess., 3d Day, Video 2:04:56-2:05:06.

Id. ¶20. To support such far-flung allegations about a legislature's use of census data to redistrict, a litigant should have strong evidence before "hurl[ing] such accusations at the political branches." *Alexander*, 602 U.S. at 11.

Here, however, Plaintiffs' implausible theory that the Legislature used the Census's racial data as a "proxy" for partisanship rests entirely on a floor colloquy between Representatives Clemmons and Zachary. Rep. Clemmons asked Rep. Zachary whether "the census data was the sole basis for drawing these lines for 2020." FAC ¶113. Rep. Zachary responded, "Yes, it is my understanding that the census was used to draft the map you have in front of you—based on the population." *Id*. Based on that exchange, Plaintiffs assert (repeatedly) "that Census data was the ***only*** data source used to draw maps." *Id.* ¶158 (emphasis in original); *see id.* ¶¶20, 111, 114, 124.

But neither Rep. Zachary nor any other legislator said the "only" data considered during the redistricting process was Census data, let alone that they even considered the Census's racial data. *Supra*, p.15, n.9. Rep. Zachary simply affirmed the questioner's statement that "census data" informed the "numbers"—*i.e.*, the population figures to create equally populated districts. FAC ¶113. As Plaintiffs acknowledge, Rep. Zachary also said districts were "'absolutely drafted on politics.'" *Id.* ¶114. And as Plaintiffs acknowledge, Speaker Sexton said districts were based on "'population and politics'"—that is, population numbers from the Census and politics informed by past election returns. *Id.* ¶157. That understanding avoids the remarkable presumption that legislators acted in bad

faith, lying about their political motivations to such a degree that "the legislature as an institution" was secretly motivated by race. *Callais*, 146 S. Ct. at 1156; *see also Lee*, 746 F. Supp. 3d at 504 (emphasizing presumption of good faith). At worst, Rep. Zachary's response is ambiguous and "support[s] multiple conclusions," in which case the presumption of legislative good faith requires the Court to "'draw the inference that cuts in the legislature's favor.'" *Lee*, 746 F. Supp. 3d at 494; *see, e.g.*, *Abbott v. LULAC*, 146 S. Ct. 418, 419 (2025).[10]

Nor can Plaintiffs chide the Legislature for not detailing exactly what past election returns informed the 2026 Plan. *Contra* FAC ¶115. While legislators could have chosen to disclose further details about how exactly they evaluated the partisan advantage of the new districts, legislators were under no legal obligation to disclose all the political inner-workings of the map-drawing process. *See Pernell v. Fla. Bd. of Governors of State Univ.*, 84 F.4th 1339, 1343-45 (11th Cir. 2023) (discussing legislative privilege). For instance in *Lee*, legislators did not even "publicly announce" any "partisan" goal. 746 F. Supp. 3d at 498. Here, legislators did. *Supra*, Part I.A. Plaintiffs' contradicted and conclusory assertion that

[10] Without elaboration, Plaintiffs contend that "any claim that during the map drawing … legislators did not look at the racial data is negated by the fact that such racial data was provided to the Legislature following the 2020 census." FAC ¶160. If Plaintiffs' theory is that the 2026 redistricting process was race-based because legislators used racial data "five years before," *id.*, that is conclusory, contrary to the presumption of good faith, and contrary to the principle that past discrimination, to the extent any even existed, would not operate "in the manner of original sin," tainting present-day lawmakers, *Abbott*, 585 U.S. at 603.

there is "no evidence" of the Legislature's reliance on partisan data, FAC ¶159, "does not warrant the presumption of truth," *Lee*, 746 F. Supp. 3d at 505. Plaintiffs themselves acknowledge legislators said the map was "'drafted on politics'" or based on "'population and politics.'" FAC ¶¶114, 157.

4. Plaintiffs' allegations regarding the *Arlington Heights* factors do not plausibly allege discriminatory intent.

Plaintiffs' allegations regarding the *Arlington Heights* factors likewise fail to nudge Plaintiffs' complaint "across the line from conceivable to plausible." *Iqbal*, 556 U.S. at 680. For those allegations of "circumstantial factors," too, the "presumption of legislative good faith" applies. *Lee*, 746 F. Supp. 3d at 504. The three-judge court in *Lee*, involving the same Plaintiff's challenge to Nashville-area districts, already rejected the bulk of these allegations as insufficient. *Id.* at 504-06. The remaining allegations fare no better.

Historical Background. The "'historical background'" may be relevant where plaintiffs identify "'[p]ast discrimination' that has prohibited racial minorities from presently registering and voting in equal numbers as other groups," or where they show that "the General Assembly specifically adopted its map to keep any such 'status quo' of ongoing voting discrimination." *Lee*, 746 F. Supp. 3d at 505. Merely "point[ing] to a mix of laws, bills, or statements that have little to do with redistricting" will not suffice. *Id.*

Plaintiffs fail to plausibly allege any evidence of past discrimination that makes their claim of present-day discrimination plausible. They assert Tennessee has an "ugly history of racial discrimination" that "is long and has continued into contemporary

times." FAC ¶176; *see also id.* ¶184. They allege that statues of Jefferson Davis and Nathan Bedford Forrest stood in Memphis until "fewer than ten years ago," that the Tennessee Heritage Protection Act prohibits removal of Confederate memorials on public property, and that the General Assembly "has taken official legislative action" to preserve such memorials "several times within the past ten years." *Id.* ¶¶178-83. But allegations of "[p]ast discrimination" do not operate "in the manner of original sin" and taint "governmental action that is not itself unlawful." *Abbott*, 585 U.S. at 603. The allegations are of "little probative value" because they are not "reasonably contemporaneous with the challenged decision." *McCleskey v. Kemp*, 481 U.S. 279, 298 n.20 (1987). Especially where, as here, Plaintiffs do not allege that the past discrimination "prohibit[s] racial minorities from *presently* registering and voting in equal numbers as other groups." *Lee*, 746 F. Supp. 3d at 505 (emphasis added).

As for the more contemporaneous evidence, Plaintiffs "point to a mix of laws, bills, or statements that have little to do with redistricting." *Id.*; *see generally* FAC ¶¶167-83. They start with a law penalizing "organizations that conduct voter registration drives" that fail to comply with various voter-registration requirements. FAC ¶167. While Plaintiffs assert "[t]he impetus for the law's passage appeared to be the submission of thousands of voter registration applications filed by predominately Black voters," *id.*, they never attempt to support the "conclusory insinuation[]" that the law was racially motivated, *Lee*, 746 F. Supp. 3d at 506, much less connect it to the 2026 Plan.

This same pleading failure plagues Plaintiffs' other examples. Plaintiffs cite officials' decision to override Memphis police reforms, their alleged "move[s] to sabotage self-government in predominantly Black Memphis and Shelby County," the "'unprecedented' state takeover of Memphis-Shelby County Schools," and the "audit[ing] of the Shelby County District Attorney's Office." *See* FAC ¶¶170-74. While Plaintiffs note that some viewed the laws as "'racist,'" *id.* ¶173, such "conclusory allegation[s]" do not "warrant the presumption of truth," *Lee*, 746 F. Supp. 3d at 505. Plaintiffs must plausibly allege those laws were passed *because of* racial animus, not in spite of racial effects, *id.* at 502, and then allege some connection with the 2026 Plan, *id.* at 505. Likewise, Plaintiffs' reliance on the expulsion of "two Black representatives" (FAC ¶¶ 22, 168) is the same episode that *Lee* already deemed insufficient. *Id.* at 506. "All told," legislators' votes on these various "unrelated topics do not plausibly suggest that the whole legislature passed the legislative maps to discriminate against racial minorities." *Id. See, e.g.*, *League of Women Voters of Fla.*, 66 F.4th at 922-24 (finding similar evidence insufficient); *GBM v. Sec'y of State of Ala.*, 992 F.3d 1299, 1325 (11th Cir. 2021); *see also Abbott*, 585 U.S. at 603-05 (emphasizing plaintiffs' burden to overcome the presumption of good faith, even in a case involving a finding of past discrimination, and prove discriminatory intent of the whole "Legislature").

Sequence of Events. Applying the *Arlington Heights* framework, "[c]ourts also might ask whether the 'sequence of events' leading up to the law's passage suggests

something invidious." *Lee*, 746 U.S. at 503. But the "sequence of events" alleged in Plaintiffs' complaint is consistent with the political and otherwise lawful motivations for the 2026 Plan. First, Tennessee's mid-decade redistricting followed several other States' efforts to "redraw[] their congressional districts in ways that are predicted to favor the State's dominant political party." *Abbott*, 146 S. Ct. at 419. And while Plaintiffs describe the process as "rapid-fire," FAC ¶1, or "rushed," *id*. ¶199, the special session's quick timing is consistent with calls to redistrict before the mid-term elections. *See id.* ¶¶5, 75. Second, Tennessee redistricted only after *Callais*. Plaintiffs allege that timing is evidence of racial purpose. *E.g.*, FAC ¶74. It instead shows an "entirely reasonable and certainly legitimate" desire to avoid "expensive and time consuming" litigation, *Abbott*, 585 U.S. at 608; *see supra*, Part I.C.2, given uncertainty before *Callais* about whether States could advance their political goals. *See, e.g.*, *Allen*, 599 U.S. 1. Plaintiffs' allegations about the sequence of events do not "plausibly rebut" these lawful explanations. *Lee*, 746 F. Supp. 3d at 504.

Procedural Departures. Plaintiffs allege that "[o]ver the course of 48 hours … the white supermajority hastily discarded a legal prohibition on late-decade redistricting that had been in place for over 50 years and allowed for the redrawing of congressional lines in May of an election year." FAC ¶83. As just explained, the "'brevity of the legislative process' in creating maps does not 'overcome the presumption of legislative good faith'—at least when the legislature had a good reason for the shortened process." *Lee*, 746 F.

Supp. 3d at 504-05 (quoting *Abbott*, 585 U.S. at 610-11). Plaintiffs highlight that "good reason" (*id.*) in their pleadings, admitting the Legislature acted quickly to "'redistrict another Republican seat in Memphis'" ahead of the midterms. FAC ¶75.[11]

Substantive Departures. Plaintiffs allege that in enacting the 2026 map, "the Legislature subordinated traditional redistricting principles, such as geographic compactness, preserving communities of interest, and respect for political subdivisions." FAC ¶10; *see also id.* ¶¶146-48 (reciting compactness and other district features). Like the rest of Plaintiffs' allegations, the alleged departures from traditional redistricting principles "'have an obvious alternative explanation' that would establish no wrongdoing." *Lee*, 746 F. Supp. 3d at 482. Just as the Legislature effectuated an "obvious" political goal by spreading Davidson County across three districts in the 2022 Plan, *id.* at 484-85, 506, the Legislature effected the same political goal by spreading Shelby County across three districts in the 2026 Plan. *Supra*, p.2. The Legislature is free to advance that political goal, even if it means sacrificing a district's compactness or other criteria. *Lee*, 746 F. Supp. 3d at 506. It is "up to each State to decide what weight, if any" these traditional districting factors "warrant." *Callais*, 146 S. Ct. at 1156.

[11] Plaintiffs never explain how the Legislature's "suspension of statutory residency requirements," FAC ¶137—which *relaxed* candidate-qualifying requirements for candidates of all parties and in all districts to appear on the 2026 ballots—shows an invidious motive.

II. Plaintiffs Do Not Plausibly Allege Discriminatory Effect.

Plaintiffs have not plausibly alleged the second element of their intentional discrimination claim: discriminatory effect. *See Lee*, 746 F. Supp. 3d at 499. Plaintiffs allege voters "no longer have an opportunity to elect their candidates of choice," FAC ¶¶10, 150, because the 2026 Plan will preclude them from electing the Democratic candidates they prefer, *see e.g.*, *id.* ¶¶1, 6, 13, 40, 49, 57-62, 153-54. But the Supreme Court just clarified in *Callais* that more is required. Just as a §2 plaintiff must allege districts are not "equally open" and provide "less opportunity" for minority voters to prove a discriminatory effect for purposes of the Voting Rights Act, *Callais*, 146 S. Ct. at 1154-60, Plaintiffs likewise must plausibly allege districts are not "equally open" and provide "less opportunity" to prove discriminatory effect for their constitutional claim, *White*, 412 U.S. at 766. The §2 standard is lifted "almost verbatim" from *White*'s standard for proving unconstitutional vote dilution. *Callais*, 146 S. Ct. at 1144-45. As clarified by *Callais*, plausibly alleging that districts provide "less opportunity" to minority voters requires plausibly accounting for the State's "permissible criteria," which "include[] partisan advantage." 146 S. Ct. at 1154-55, 1157.

But here, Plaintiffs' assertion that they "no longer have an opportunity to elect their candidates of choice" (FAC ¶10) falls short of Plaintiffs' obligation to plausibly allege that they have "*less* opportunity" than nonminority voters in Shelby County to elect their candidates of choice after accounting for the State's political considerations. *Callais*,

146 S. Ct. at 1154-57 (emphasis added). Those political considerations include "the creation of a new Republican seat at the expense of the Democratic incumbent." FAC ¶20. Having failed to account for that open and obvious political goal, *contra Callais*, 146 S. Ct. at 1156-57, Plaintiffs fail to "nudge[]" their allegations about discriminatory effect from "possibility" to "plausibility." *Iqbal*, 556 U.S. at 678, 680.

CONCLUSION

For all these reasons, the Court should dismiss Plaintiffs' First-Amended Complaint.

Dated: June 26, 2026

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

/s/ *Zachary L. Barker*
ZACHARY L. BARKER (BRP #035933)
Senior Assistant Attorney General

ANDREW DENNING (BPR #042208)
Assistant Attorney General
Office of the Tennessee Attorney General
P.O. Box 20207
Nashville, Tennessee 37202-0207
Phone: (615) 532-7400
Zachary.barker@ag.tn.gov
Andrew.denning@ag.tn.gov
(615) 532-4098

TAYLOR A.R. MEEHAN (admitted PHV)
BRYAN K. WEIR (PHV forthcoming)
THOMAS A. WILSON (PHV forthcoming)
SOREN GEIGER (admitted PHV)
Consovoy McCarthy PLLC
1600 Wilson Blvd., Suite 700
Arlington, VA 22209
taylor@consovoymccarthy.com
bryan@consovoymccarthy.com
orogers@consovoymccarthy.com

Counsel for Defendants

CERTIFICATE OF SERVICE

I certify that the foregoing motion to dismiss was filed electronically on June 26, 2026. A true and correct copy of that filing was forwarded via the Court's CM/ECF system and/or U.S. Mail postage prepaid upon the following:

Van Davis Turner, Jr.
Turner Field, PLLC
2650 Thousand Oaks Boulevard
Ste 2325
Memphis, TN 38118
901-290-6610
Fax: 901-290-6611
Email: vturner@turnerfeildlaw.com

/s/ Zachary L. Barker
ZACHARY L. BARKER
Senior Assistant Attorney General