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

TENNESSEE STATE CONFERENCE OF THE NAACP, *et al.* *Plaintiffs,* V. TRE HARGETT, *et al.*, *Defendants.*	§ § § § § § § § § §	Case No. 3:26-cv-00638

OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

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I. INTRODUCTION

Plaintiffs' First Amended Complaint ("Complaint" or "FAC") chronicles a damning sequence of events that led to the dismantling of Tennessee's Ninth Congressional District ("CD 9"). It explains that, for more than 50 years and despite Tennessee's long history of racial subordination, Shelby County was home to a majority-Black congressional district. That district was drawn not as the result of any court order or statutory mandate but, rather, in accordance with traditional redistricting principles. Nevertheless, when the Supreme Court's recent decision in *Louisiana v. Callais* made it harder for Black voters to win racial discrimination claims under Section 2 of the Voting Rights Act ("VRA"), the Tennessee General Assembly seized the opportunity to eviscerate the epicenter of Black voting power in Tennessee. Within days of that decision, an all-white supermajority of lawmakers convened in extraordinary session and, in less than 48 hours, voted to undo a longstanding state law banning late-decade redistricting and enact a new map that cracks Shelby County's Black population across three elongated districts. The Complaint recounts how, in pursuing that destructive end, lawmakers departed from normal legislative procedures and traditional districting criteria, denigrated Memphis and its majority-Black population, and implausibly feigned ignorance of Memphis's racial demographics—claiming to draw lines for purely partisan purposes using exclusively racial demographic information, *i.e.*, no partisan data—to craft their desired maps.

These allegations go well beyond those at issue in *Tennessee State Conference of the NAACP v. Lee*, 746 F. Supp. 3d 473, 505-06 (M.D. Tenn. 2024). Because this Court must take them as true, the Complaint alleges a plausible—indeed, compelling—claim that Defendants purposely diluted Black voting strength to deprive Black voters of the ability to influence the outcome of elections.

Contrary to Defendants' conception, the presumption of good faith does not require the Court to look beyond the pleadings and credit their disputed account of the facts. Nor does it immunize Defendants against claims of invidious racial discrimination in redistricting so long as some of the legislators claim to have some partisan goal. No precedent justifies that approach. Because the well-pleaded Complaint far more than plausibly shows that race was a motivating factor in Defendants' redistricting, Plaintiffs have stated a violation of the Fourteenth and Fifteenth Amendments to the Constitution. Accordingly, Defendants' motion to dismiss should be denied.

II. FACTUAL BACKGROUND

Memphis, located in Shelby County, Tennessee, is the largest majority Black city in the United States, and Shelby County has the highest Black population of any county in Tennessee, at nearly 55%. FAC, ¶ 3. In 2020, the United States conducted the decennial census as required by the Constitution. The following year, Tennessee undertook the required redistricting. The State issued *A Guide to Local Government Redistricting in Tennessee*, which provides, in part:

> While Tennessee law indicates that the 2020 census population figures are the official data set used for redistricting, U.S. Public Law 94-171 also requires the Census Bureau to report these population totals to all organizations charged with redistricting. These population totals include racial categories (such as White, African American or Black, American Indian or Alaska Native, Asian, Native Hawaiian and Other Pacific Islander, or Other Race).[1]

FAC, ¶ 21. Thus, since no later than 2021, the Legislature has been acutely aware of the racial make-up of CD 9, Memphis and surrounding Shelby County, as well as the surrounding areas.

For more than 50 years, CD 9, a contiguous and compact geographic area, was the sole majority-Black district in Tennessee and included nearly all of Memphis and Shelby County. FAC, ¶ 3. As a result, Black voters in Memphis and Shelby County were able to elect candidates of their

[1] https://comptroller.tn.gov/content/dam/cot/pa/documents/lg/GuideToRedistrict.pdf at 13.

choice. There was never any suggestion that the creation of CD 9 was to avoid or respond to liability under the Voting Rights Act, and no court has ever found CD 9 to be unconstitutional or otherwise a violation of federal law.

Despite this, on May 1, 2026, the Tennessee Governor issued a proclamation calling an extraordinary session (the "Proclamation") for purposes of redistricting. FAC, ¶ 5. Beginning in 1972, however, Tennessee law forbade redistricting between apportionments. FAC, ¶ 91. Ignoring both the facts and the law, the Governor asserted that late-decade redistricting would take place so that "Tennessee's congressional districts accurately reflect the will of voters." FAC, ¶ 6. The will of the majority-Black voters in Memphis and Shelby County, however, had been accurately reflected for decades. Thus, the Proclamation necessarily called for redistricting to reflect the will of white voters outside CD 9 to the detriment of Black voters within that district. FAC, ¶ 6.

Furthermore, the call for redistricting was not in response to any dramatic shift in population since the 2020 Census. FAC, ¶ 5. In fact, a sponsor of the redistricting legislation openly admitted that the drafters relied on the 2020 Census data in drawing the 2026 Map. FAC, ¶ 20. Thus, nothing had changed that required redistricting.

The sole predicate for redistricting was the Supreme Court decision in *Louisiana v. Callais* two days earlier that made it more difficult to prove racial discrimination under Section 2 of the VRA. FAC, ¶ 5. Following that court decision: the Governor issued the Proclamation on a Friday; the following Tuesday, the special session began; and within 48 hours, the session concluded and CD 9 had been "cracked" into three districts. FAC, ¶¶ 1, 18-19, 83, 137.

The new Congressional map parcels out segments of the geographically compact city of Memphis to new districts that snake hundreds of miles across the state into rural counties in Middle and West Tennessee—largely white, non-Hispanic communities that have no historical ties to

Memphis and which have divergent social and policy interests. This reconfiguration deliberately "cracks" Black voters and dilutes their voting strength. In doing so, the Legislature subordinated traditional redistricting principles, such as geographic compactness, preserving communities of interest, and respect for political subdivisions, to racially-motivated objectives. FAC, ¶¶ 10, 13. Because of this new map, Black voters in Shelby County no longer have an opportunity to elect their candidates of choice. FAC, ¶¶ 10, 12, 15, 93, 141-143. Succinctly, the extraordinary session included: dismantling of a more than 50-year-old law forbidding late-decade redistricting; a truncated proceeding; a limitation on the number of witnesses; no advance notice of the proposed map; and the reliance purely on demographic data to draw the new map.

Tennessee has an undeniably long, pernicious, and recent history of racial discrimination. *See* FAC, ¶¶ 176-87. Discriminatory acts by the General Assembly have continued to the present, and, as discussed below, recent legislation has repeatedly slighted, supplanted, or subverted the political decisions of Memphis residents and the leaders they have elected. *Id.* In 2026, during this regular session, this Legislature voted to take over the Memphis Shelby County School Districts, the Memphis light, gas, and water utility board, and the Memphis Airport Authority. Institution by institution, board by board, systematically with surgical precision, the Assembly overrode the interests of this cohesive and predominantly Black community. FAC, ¶ 187.

Accordingly, for the above reasons and those reflected elsewhere in the First Amended Complaint, Plaintiffs brought this intentional vote-dilution claim under the Fourteenth and Fifteenth Amendments seeking to enjoin Defendants from enforcing or giving effect to the redistricting plan under HB 7003 as it relates to CD 9.

III. LEGAL STANDARD

A complaint need only contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). To survive a motion to dismiss under Federal

Rule of Civil Procedure 12(b)(6), plaintiff must "allege[] facts that 'state a claim to relief that is plausible on its face' and that, if accepted as true, are sufficient to 'raise a right to relief above the speculative level.'" *Handy-Clay v. City of Memphis*, 695 F.3d 531, 538 (6th Cir. 2012) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "[C]rediting the defendant's, rather than the plaintiff's version of facts [ ] unduly raises the pleading standard beyond the heightened level of *Iqbal* and *Twombly*, forcing the plaintiff's well-pleaded facts to be not only plausible, but persuasive. That is not the appropriate burden at this stage of litigation." *Id.* at 548. At the pleadings stage, courts do not weigh evidence or resolve factual disputes. *See, e.g.*, *Mediacom Southeast LLC v. BellSouth Telecommunications, Inc.*, 672 F.3d 396, 401 (6th Cir. 2012) (reversing dismissal where district court weighed competing factual assertions and found plaintiff's allegations to be "unpersuasive").

The "presumption of good faith" does not alter the fundamental standards under Rule 12(b)(6). It merely requires that the well-pled allegations of the complaint, taken as true, be sufficient to overcome the presumption. *See Singleton v. Allen,* 740 F. Supp. 3d 1138, 1152 (N.D. Ala. 2024) (the facts pleaded by plaintiffs regarding development of redistricting map "are enough at the motion-to-dismiss stage to overcome this good faith presumption").

Particularly because of Plaintiffs' claim involving discriminatory purpose in violation of the Fourteenth and Fifteenth Amendments, analyzing motivation is a heavy fact-intensive inquiry, making resolution a matter of law at this stage inappropriate. *See generally Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977) (creating a multi-factor framework and emphasizing that "[d]etermining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available"); *see also Wesley v. Campbell*, 779 F.3d 421, 433-34 (6th Cir. 2015) (reversing

dismissal on 12(b)(6) ground because of fact-intensive nature of applicable test and collecting cases). There is no singular requirement for how plaintiffs can allege facts establishing a claim involving discriminatory purpose.[2]

IV. ARGUMENT

Throughout the Complaint, Plaintiffs plausibly allege more than sufficient facts showing that, in cracking Tennessee's sole majority-Black district into three non-compact districts and depriving Black voters of the ability to elect candidates of their choice, the Legislature had a discriminatory intent and that its conduct had a discriminatory effect. As they did in their opposition to Plaintiffs' currently pending Motion for Preliminary Injunction, Defendants repeatedly mischaracterize the legal standard applicable to this vote-dilution case. Accordingly, Defendants' motion to dismiss should be denied.

A. Defendants Disregard the Legal Standards Applicable at the Pleadings Stage

This Court should decline Defendants' improper invitation to disregard well-established pleading standards. Defendants' repeated invocation of the "presumption of legislative good faith" amounts to an effort to turn the applicable pleading standard on its head. As Defendants would have it, the presumption of legislative good faith negates the well-established rule that, at the pleading stage, a court "asks ***only*** whether the complaint's factual allegations, if ***taken as true***, 'state a claim to relief that is plausible on its face,'" and "draw[s] all reasonable inferences in favor of the plaintiff." *Berk v. Choy*, 607 U.S. 187, 193 (2026) (quoting *Twombly*, 550 U.S. at 570 (2007) (emphasis added)); *DIRECTV, Inc. v. Treesh*, 487 F.3d 471, 476 (6th Cir. 2007). But the Supreme Court has never applied the presumption of legislative good faith in the rote fashion Defendants

[2] Defendants request that this Court take judicial notice of certain public statements. Unlike allegations in a complaint, however, which must be accepted as true, judicial notice of public documents offered in support of a motion to dismiss is generally proper only for the fact of the documents' existence or other permissible purposes under the hearsay rule, not for the truth of the matters asserted therein. *See Blackwell v. Nocerini,* 123 F.4th 479, 487–88 (6th Cir. 2024) (citing *Passa v. City of Columbus*, 123 Fed. Appx. 694, 697 (6th Cir. 2005)). Thus, this Court should deny Defendants' request.

suggest. Instead, when the Court has applied the presumption, it has done so after trial based on a developed factual record. *See Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 11 (2024) (noting in a case decided following a trial that the presumption of good faith "explains why we have held that the plaintiff 's evidentiary burden in these cases is especially stringent"); *Abbott v. Perez*, 585 U.S. 579, 605 (2018) (recognizing the good faith presumption must inform the burden of proof a plaintiff must satisfy at trial). Defendants' argument that this Court must evaluate the truth of Plaintiffs' allegations at the motion to dismiss stage has no basis in precedent and flies in the face of the rule that the "manner and degree of evidence" required to satisfy a plaintiff's burden of proof varies at successive stages of the litigation. *See, e.g.*, *Mackinac Ctr. for Pub. Policy v. U.S. Dep't of Educ.*, 175 F.4th 692, 700 (6th Cir. 2026) (internal quotation omitted); *see also Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).

Even assuming that the presumption may be applied in some form at the pleading stage, Defendants misunderstand its force. Defendants treat the rebuttable presumption as a dispositive rule of decision, asking this Court to examine each of Plaintiffs' allegations individually and determine whether, viewed in isolation, each allegation might be enough to overcome the good faith accorded to legislatures. But this approach would transform a mere "starting presumption," *Alexander*, 602 U.S. at 10, into a fixed rule that even the most robust accumulation of allegations evidencing discriminatory intent could not overcome. That is not the law. Rather, accepting the truth of the well-pled allegations of the complaint, a court must weigh the allegations *as a whole* to assess whether a plaintiff has plausibly alleged facts sufficient to support a finding of discriminatory intent. Any other approach would contravene *Arlington Heights*, which expressly recognized that a court must look to multiple "evidentiary source[s]" to ascertain invidious intent. *Arlington Heights*, 429 U.S. at 266–67 (1977). Here, Plaintiffs' allegations are more than sufficient

to rebut any presumption of legislative good faith at this early stage and plausibly—indeed, persuasively—allege that the General Assembly's 2026 plan was enacted as a "purposeful device to minimize or cancel out the voting potential of racial or ethnic minorities." *Alexander*, 602 U.S. at 38–39 (quoting *Miller v. Johnson*, 515 U.S. 900, 911 (1995)).

B. Plaintiffs Have Sufficiently Alleged Discriminatory Effect

In an intentional vote-dilution case, the established framework, derived from the Constitution and set out by the Supreme Court in *Arlington Heights*, explains that effects are discriminatory when they "bear[ ] more heavily on one race than another." 429 U.S. at 266 (quoting *Washington v. Davis*, 426 U.S. 229, 242 (1976)); *Davis*, 426 U.S. at 242 (While "[d]isproportionate impact is not irrelevant, . . . it is not the sole touchstone of an invidious racial discrimination forbidden by the Constitution."); *see also Bos. Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. For City of Bos*., 145 S. Ct. 15, 17 (2024) (Alito, J., dissenting from the denial of certiorari) ("[A]ll a party must show in order to rely on disparate impact as circumstantial evidence of discriminatory intent is that" the challenged policy "reduced one racial group's" opportunities and "increased [those of] another racial group [].") . This Circuit has never held otherwise. *See Lee*, 746 F. Supp. 3d at 500 (noting that that Tennessee's counsel conceded that the intentional drawing of a single-member district's lines to harm racial minorities would likely show that the legislature predominately used race during the redistricting).

In their attempt to overcome clear allegations that the 2026 Map deprives Black Memphians of the opportunity they previously enjoyed to elect candidates of their choice, Defendants conflate the results test of Section 2 and the discriminatory effects element of an intentional discrimination claim. Mot. at 28. This effort to alter the *Arlington Heights* standard is unsupported and must be rejected. Proving discriminatory effects under *Arlington Heights* simply requires showing that the protected class has less opportunity to elect candidates of their choice

than they did before the challenged state action. Indeed, the Supreme Court has repeatedly rejected the notion that an intentional discrimination claim subsumes Section 2's legal standard. For example, in *Bartlett v. Strickland*, the Supreme Court noted that the requirement to offer an illustrative majority-minority district under Section 2 would not apply "to cases in which there is intentional discrimination against a racial minority." 556 U.S. 1, 20 (2009). And the plurality further cautioned, that if "a State intentionally drew district lines in order to destroy otherwise effective crossover districts, that would raise serious questions under both the Fourteenth and Fifteenth Amendments," even though it would be insufficient to establish a Section 2 violation. *Id.* at 24; *see also Reno v. Bossier Par. Sch. Bd.*, 528 U.S. 320, 332 (2000) (holding under § 5 of the VRA that a challenger who proves intent is "spared the necessity" of proving "effect—which, in vote-dilution cases, is often a complex undertaking"); *cf. Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 687 (2021) (analyzing intent claim and results claim separately).

Nor does the Supreme Court's decision in *Callais* alter this distinction. In fact, *Callais* does not discuss intentional racial discrimination under the Fourteenth Amendment—only claims under Section 2 and the "analytically distinct" doctrine of racial gerrymandering. *Alexander*, 602 U.S. at 38. Its holding therefore did not change the standard for proving Plaintiffs' intent claim. Defendants further contend, Mot. at 28, that because Congress borrowed language from *White v. Regester*, 412 U.S. 755 (1973)—a case involving a constitutional vote dilution claim—in enacting Section 2, the current constitutional standard must subsume *White* and later Section 2 precedent. But the *Callais* Court made clear that "*White* did not say anything one way or another about proof of discriminatory purpose or intent." *Callais*, 146 S. Ct. at 1145. So, while *White* informs the current standard of proof under Section 2, *see id.* at 1162, it does not follow that plaintiffs bringing intentional discrimination claims under *Arlington Heights* must meet the *Callais* results standard.

That standard operates to cabin claims of discriminatory effects under the VRA within constitutional bounds and has no application to claims alleging discriminatory purpose in direct violation of the Constitution.

Here, the Complaint alleges that the Legislature's intentional decision to target Black voters in Shelby County bears more heavily on Black voters than white voters. Shelby County, which contains Memphis, is a majority-Black County (51.4% BVAP), home to 493,757 Black people, which is over 40% of the State's Black population. FAC, ¶ 71. By exclusively targeting Shelby County—the County where the vast majority of Black Tennesseans live—and by trisecting the Black population there, the 2026 Plan bears significantly more heavily on Black Tennesseans than white Tennesseans. FAC, ¶ 71.

The Complaint also plausibly alleges that candidates of choice of Black voters will consistently lose election in every district in the 2026 plan, denying Black voters any opportunity to elect candidates of choice to Congress. FAC, ¶153. Moreover, Plaintiffs here have alleged, not merely that the Black population will lose proportional representation, but that the Legislature capitalized on its awareness of racial polarization in voting to ensure that Black voters have less opportunity than white voters in Shelby County to elect their preferred candidates, even in primary elections. FAC, ¶¶ 150–152. The splitting of Memphis into three districts to ensure the BVAPs in each district remain under 32% has a substantial effect on Black voters' ability to participate in the political process at the primary level. FAC, ¶ 152.

Statements by Black legislators made clear the discriminatory effect the 2026 Plan has on Black Memphians, and the emotional impact of that discrimination. FAC, ¶¶ 97, 165. For example, Representative Torrey C. Harris stated, "[A]s a Black man, as a Black man who lives in Memphis, as a Black man who lives in Congressional District 9, that I lose part of my voting power by this

piece of map . . . . We all know it, whether we say it or not, that this map impacts Black people negatively." FAC, ¶ 117. Another Black legislator, Representative Antonio Parkinson, said "Nearly half—nearly half—of the Black population in the state of Tennessee lives in Memphis, in Shelby County. Nearly half. How can we sit here and say that this is not about race." FAC, ¶ 118. Black Legislators in the Senate offered similar insight into the effect of the 2026 Plan and thus put all legislators on notice prior to the challenged governmental actions. Senator Lamar stated, "This map does not reflect Memphis. It diminishes Memphis. It slices our city into pieces and stretches our communities hundreds of miles away to places of different needs, different economies, different histories, and different lived realities. You cannot take a majority Black city, fracture its voting power, and then tell us race has nothing to do with it." FAC, ¶ 122. Put simply, Plaintiffs have more than sufficiently pled discriminatory effect.

C. Plaintiffs Have Sufficiently Pled Discriminatory Purpose

i. *Arlington Heights* Requires Only that Race Is a Motivating Factor.

Although Defendants invoke the standard applicable to racial gerrymander—that race was a "predominant purpose" of the redistricting—Plaintiffs in this case allege ***only*** intentional vote dilution. To state such a claim, Plaintiffs need only allege facts demonstrating that the legislature drew the 2026 Map, at least in part, "to minimize or cancel out the voting potential" of Black voters in Shelby County. *Miller*, 515 U.S. at 911. "Demonstrating discriminatory intent, [the Court has] long held, 'does not require a plaintiff to prove that the challenged action rested solely on racially discriminatory purpose [].'" *Allen v. Milligan*, 599 U.S. 1, 37 (2023) (quoting *Arlington Heights*, 429 U.S. at 265). And so the Complaint need only allege that this objective was one purpose, and not even a "dominant" or "primary" purpose, of the enacted plan. *Arlington Heights*, 429 U.S. at 265. Requiring at the pleading stage that Plaintiffs rule out other possible motivations might be appropriate in a racial-gerrymandering case, but here, the controlling issue is whether race was ***a***

"motivating factor" in the redistricting process. *Foster v. Chatman*, 578 U.S. 488 (2016) (quoting *Arlington Heights*, 429 U.S. at 266). The Complaint's allegations satisfy that standard. *See, e.g.,* FAC, ¶¶ 10–14, 23, 73–129, 156–165.

Defendants assess each of Plaintiffs' allegations in isolation, disregarding precedent that requires a "sensitive inquiry" into the totality of the circumstances relevant to whether legislators passed the challenged law to harm minorities. *Arlington Heights*, 429 U.S. at 266–68; *see also Flowers v. Miss.*, 588 U.S. 284, 302 (2019) (intent can be inferred from all "relevant circumstances that bear upon the issue of racial discrimination"). "Any individual piece of evidence can seem innocuous when viewed alone, but gains an entirely different meaning when considered in context." *N.C. State Conf. of the NAACP v. McCrory,* 831 F.3d 204, 233 (4th Cir. 2016).

Defendants' ubiquitous reference to the presumption of legislative good faith does not alter this long-established method of assessing intent. And it definitively does not require, as Defendants demand, *see* Mot. at 12-13, that Plaintiffs "produce a 'smoking gun,' *especially not in their initial complaint*, to make a plausible allegation of racial intent." *League of United Latin Am. Citizens v. Abbott*, No. 1:21-cv-00991, 2022 WL 174525, at *3 (W.D. Tex. Jan. 18, 2022) (emphasis added); *see also Rogers v. Lodge*, 458 U.S. 613, 618 (1982) (recognizing that "discriminatory intent need not be proved by direct evidence"); *Hunt v. Cromartie*, 526 U.S. 541, 548–49 (1999). At every turn, Defendants improperly invoke the presumption of legislative good faith to urge this court to disregard its duty under Fed. R. Civ. P. 12(b)(6) to treat Plaintiffs' allegations as true, rather than weigh evidence. This is not the law. *See supra* at § III. A.

For example, Defendants mischaracterize Plaintiffs' factual allegations regarding the use of Census data during the redistricting process. Mot. at 14-18. Plaintiffs' point is clear. Despite several legislators' incantation of "population and politics" as the basis for redistricting, the only

source legislators cited as the basis for the 2026 plan was the 2020 Census. FAC, ¶¶ 96, 111, 113. No bill sponsor proffered any political data or analysis, or suggested that they relied on such information, to develop an allegedly partisan map. FAC, ¶¶ 111, 113-115. The Census, however, does not provide information on voting patterns or election results, or on partisan affiliations. FAC, ¶ 20. The Complaint alleges that the map drawers could not draw lines to achieve partisan gains without this information unless they instead relied on race. FAC, ¶ 115.

And indeed, the Census data the map-drawers used was data containing "detailed data on the racial composition of the populations" included in existing and proposed districts. FAC, ¶ 20. The facts in the Complaint allege that it is implausible that, without considering race, the map drawer constructed CD 5, CD 8, and CD 9 with Black VAP at nearly equal levels. The Complaint reasonably alleges that Defendants' explanations are pretextual and that the legislature used race either for its own sake or as a proxy for party affiliation. *See* FAC, ¶¶ 95, 156-157, 159. These are some of the many distinctions between the allegations in this case and those in *Lee.*

ii. Plaintiffs Plausibly Allege Intentional Discrimination Under *Arlington Heights*.

Courts assessing claims of intentional discrimination consider evidence of the impact of the changes the legislature adopted, the historical background surrounding the decision, the sequence of events, procedural and substantive departures, and contemporaneous statements made by legislators. *See Arlington Heights*, 429 U.S. at 267–68.

a. Impact of the Redistricting on Black Voters

As described above, *supra* § IV.B, the allegations in the Complaint demonstrate disproportionate impact as *Arlington Heights* sets out. The 2026 plan eliminated the only majority-Black congressional district in Tennessee, divided the Black community of Shelby County and Memphis into three parts, and submerged them in three majority-white districts, extinguishing the

previously existing opportunity to elect candidates of their choice in both general and primary elections.

b. Historical Background

The recent history of acts by the Tennessee legislature shows an effort to override the electoral and policy choices of the majority Black population of Memphis. That is entirely consistent with the decision to dilute their vote in Congress. Indeed, the dilution by redistricting is merely a more broad-gauged means of accomplishing the same objective, "minimizing or cancelling out the voting potential" of Black voters. *Miller*, 515 U.S. at 911.

Memphis is the only majority-Black city in Tennessee. The Complaint alleges that in 2018, the Legislature penalized Memphis financially for removing statues of the founder of the Ku Klux Klan and the President of the Confederacy. FAC, ¶ 180. It alleges further that in 2019, the legislature passed draconian and punitive new regulations imposing penalties on voter registration organizations in response to effective voter registration drives in Memphis. FAC, ¶¶ 185-186. The Complaint details how in 2023, the Legislature expelled two Black representatives, one elected by the people of Memphis, for participating in anti-gun protests in the Capitol, but did not expel a white legislator who engaged in the same conduct. FAC, ¶¶ 22, 168. The Complaint further alleges that, in 2024, the Legislature overrode police reform measures enacted by the duly elected City Council of Memphis. FAC, ¶ 171. It asserts that shortly before the passage of the 2026 Map, the Legislature authorized an unprecedented takeover of the Memphis Shelby County School Districts, the Memphis utility board, and the Memphis Airport Authority, elected by the majority-Black voters of that community. FAC, ¶¶ 173-174 187. And the Complaint avers that, in the same session, the Legislature authorized an audit of the elected District Attorney in Shelby County and his potential replacement. FAC, ¶ 174.

Defendants may try to explain away each of these incidents. But this is improper at the pleading stage where Plaintiffs' allegations of discrimination must be taken as true. Moreover, taken together, this series of legislative impositions on Memphis supports Plaintiffs' claim that the Legislature holds the Black voters there as unworthy of self-governance and intentionally diluted their ability to elect a congressional representative of their choice. By contrast, the *Lee* case involved Nashville—a majority-white city—not Memphis, and did not address the type of linkage between recent legislative actions undermining the political voice of the Black residents there and the vote dilution in this case.

c. Sequence of Events Leading to the 2026 Map

The allegations of the Complaint showing the sequence of events leading to the passage of the 2026 Map more than plausibly support Plaintiffs' claim of intentional discrimination. FAC, ¶¶ 73–129. First, the U.S. Supreme Court announced its decision in *Callais* on April 29, interpreting Section 2 of the VRA "in a manner that made it more difficult to prevail on claims of racially discriminatory effect." FAC, ¶ 73. Before the decision, no Tennessee official mentioned late-decade redistricting. *See* FAC, ¶¶ 75-76; Mot. at 21. In fact, Tennessee law banned late-decade redistricting. But almost immediately after *Callais* came out, on May 1, the Governor called for a special session on congressional redistricting, which began on May 5. FAC, at ¶¶ 77-78. The Legislature convened, introduced, and passed the 2026 Map and additional election-related legislation in 48 hours, a stark departure from decades of adherence to the late-decade redistricting ban. FAC, ¶¶ 79–129. There was no such precipitating factor at issue in *Lee.* 746 F. Supp. 3d at 504. The hasty destruction of the state's only majority-Black congressional district mere days after *Callais* evinces racial motivation. In similar circumstances, the Court of Appeals in *McCrory,* 831 F.3d at 226, found the inference of "discriminatory intent" to be "obvious" when the North Carolina legislature adopted voter suppression measures immediately after the Court in *Shelby*

County v. Holder, 570 U.S. 529 (2013) eliminated North Carolina's coverage under Section 5 of the VRA.

Defendants do not contest that the less than 48-hour redistricting process was a procedural departure but rather claim that it was innocuous. Mot. at 21-22. To redistrict after the candidate qualifying deadline defied the "norms or scope" for redistricting in Tennessee in every previous cycle. FAC ¶¶ 80–81, 106, 130. And Plaintiffs asserted other procedural departures, such as the rejection by the Ad Hoc Rules Committee of proposals for public hearings on redistricting legislation, legal analyses for compliance with Tennessee and federal law, and various transparency measures on financial impact and disclosure of outside entities and data used. FAC, ¶¶ 85–86, 88, 131, 175. The Committee further sought to shield the process from public scrutiny by adopting a rule barring individuals who "disrupt[ed] meetings during the extraordinary session." FAC, ¶ 87. By contrast, the redistricting cycle in *Lee* lasted a month and did not involve a comparable level of exclusionary conduct that denied a meaningful opportunity for the affected Black voters to express their concerns.

Likewise, Defendants do not seriously contest that disregarding compactness, communities of interest, and other traditional redistricting principles to eliminate the lone majority-Black congressional district is a substantive departure from prior redistricting efforts. Instead, they argue that the Legislature was free to do so. Mot. at 22. But the observation that it was legally permissible for the Legislature to disregard principles it had previously adhered to does nothing to diminish this departure from past practice as evidence of discriminatory purpose. *Cf. State Farm Mut. Auto. Ins. Co. v. Campbell,* 538 U.S. 408, 422 (2003) (stating that "lawful out-of-state conduct may be probative regarding deliberateness and culpability of defendant's conduct"). A totality of the

circumstances test, as required by *Arlington Heights,* would be impracticably narrow if it only considered illegal actions. The presumption of good faith in no way undermines that logic.

D. Defendants' "Politics Not Race" Claims Misapprehend the Legal Standard and Fail to Negate the Discriminatory Purpose of the 2026 Redistricting Plan

The intentional discrimination standard is "analytically distinct" from the standard for racial-gerrymandering claims, which has no bearing on the standard for pleading intentional discrimination in the form of vote dilution. *Alexander*, 602 U.S. at 38. There is no support in the law for Defendants' central argument, Mot. at 6–7, that if partisanship formed ***any*** part of the Legislature's motives, this negates as a matter of law allegations that racial discrimination motivated the Legislature's actions. To the contrary, the Court has repeatedly rejected this argument even in the racial-gerrymandering context. *See, e.g.*, *Cooper v. Harris*, 581 U.S. 285, 308 n.7 (2017) ("[T]he sorting of voters on the grounds of their race remains suspect even if race is meant to function as a proxy for other (including political) characteristics."); *Bush v. Vera*, 517 U.S. 952, 968 (1996). And, under *Arlington Heights*, the fact that the Legislature had multiple motivations does not defeat Plaintiffs' claim of intentional discrimination. *See Milligan*, 599 U.S. at 37; *Hunter v. Underwood*, 471 U.S. 222, 230–34 (1985). At this stage, Plaintiffs have sufficiently pled facts plausibly leading to the conclusion that the Legislature acted for racial as well as partisan reasons. The Complaint clearly alleges that racial discrimination drove the State's decision and that statements regarding the partisan motivation for dismantling a Memphis-based district into three parts cannot account for the way the 2026 plan divided Memphis and Shelby County's Black population and, to that extent, was therefore pretextual. FAC, ¶¶ 160–165.

Plaintiffs here sufficiently pled that racial discrimination was a motivating factor behind the State's actions. FAC, ¶¶ 73-187. As one example, Plaintiffs alleged that the Chairman of the House Congressional Redistricting Committee reasoned that the 2026 plan should be passed

because cracking Memphis across three congressional districts would somehow reduce crime and make Memphis "safer"—a non-sequitur that is also a clear racial dog whistle invoking stereotypes of Black criminality in the majority-Black city of Memphis. FAC ¶ 97; *see also Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 630–31 (1991) ("If our society is to continue to progress as a multiracial democracy, it must recognize that the automatic invocation of race stereotypes retards that progress and causes continued hurt and injury."). And, contrary to Defendants' claim, Mot. at 7, plaintiffs alleging intentional discrimination are not required to rebut or "rule out" an "alternative explanation" or prove that partisan purpose was entirely absent in the legislative record and legislators' minds. Nor do plaintiffs need to prove that race was the "sole []" or even "primary" motivating factor for the Legislature's actions. *Arlington Heights*, 429 U.S. at 265–66. At the pleading stage, Defendants' assertion of partisan motivations cannot fully explain—and are alleged to be pretext for—the race-based division of Shelby County, and the Court is not required to draw an inference excluding ***any*** meaningful role for race. FAC, ¶¶ 156–57, 162–165. Indeed, at this point, all such inferences must benefit Plaintiffs and their well-pled Complaint.

Plaintiffs also plausibly allege that the Legislature used racial, not partisan, data to draw the 2026 plan, meaning any partisan effect of their line drawing remains unconstitutional. The Complaint alleges that Representative Jason Zachary and House Speaker Cameron Sexton, two of the sponsors of the redistricting bill, stated the 2026 plan was drawn using only Census data, which includes population and racial demographic data but no "partisan scores or partisan data." FAC, ¶ 113; *see also id.* ¶¶ 96, 114–16, 158, 160. Defendants' citation to legislators' statements elsewhere in the record claiming to have "filtered out" racial data—with no explanation how they could have achieved their partisan ends without it—does not undermine the plausibility of plaintiffs' allegation that race was used to create the 2026 plan. *See Blackwell v. Nocerini,* 123 F.4th 479, 487–88 (6th

Cir. 2024) (acknowledging that at the motion to dismiss stage, generally a court may take judicial notice of public documents to "conclude only that the record exists" but not "to treat all information in the record as true"). And a map designed to achieve partisan aims by using racial data is presumptively unconstitutional. *Bush v. Vera*, 517 U.S. 952, 961–62 (1996) (describing and affirming finding that race, not politics, explained redistricting decisions in part based on legislature's use of highly detailed racial, but not political data, that correlated to district lines at the census block level). That is precisely what Plaintiffs allege here. And that fact, combined with all the other evidence that race was a motivating factor in the Legislature's decision-making, is sufficient to support the conclusion that the 2026 plan was intentionally discriminatory in violation of the Fourteenth Amendment. Defendants may dispute those factual allegations, but this Court is bound to accept and draw inferences in favor of Plaintiffs' allegations at this point. No authority suggests that intentional reliance on racial data for discriminatory purposes becomes constitutional merely because it also produces a partisan effect. Moreover, even in the inapplicable racial-gerrymandering context, the Legislature's singular reliance on data that contained only racial information, but not partisan affiliation or electoral results, to redraw districts for racial reasons, also satisfies that test. *See Vera*, 517 U.S. at 962–63.

V. CONCLUSION

Because the facts alleged in the Complaint plausibly allege intent to dilute the electoral power of Black voters and fully rebut the presumption of good faith, assuming *arguendo* such rebuttal is necessary at this stage, this Court should deny Defendants' Motion to Dismiss.

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Respectfully submitted,

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*Admitted *pro hac vice*
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing motion was filed on July 10, 2026. A true and correct copy of that filing was forwarded on the same day via the Court's CM/ECF system on all counsel of record.

/s/ Jennifer Nwachukwu
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