

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

**REPLY IN SUPPORT OF DEFENDANTS’
MOTION TO DISMISS PLAINTIFFS’ FIRST-AMENDED COMPLAINT**

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REPLY

Plaintiffs emphasize they need only allege that race was “*a* ‘motivating factor,’” Opp. 11-12, as though an indefinite article can save their implausible discrimination claim from dismissal. That did not save plaintiffs’ complaint in *Tennessee State Conf. of NAACP v. Lee*, 746 F. Supp. 3d 473 (M.D. Tenn. 2024). And here, the “partisanship explanation for the maps” is even more “obvious” for the 2026 Plan, *id.* at 501, and compels dismissal.

I. Plaintiffs Misunderstand Their Burden.

Plaintiffs observe their allegations “must be taken as true.” Opp. 15. Of course. But whether those allegations amount to unconstitutional discrimination is a *legal* conclusion that “must be supported by *factual* allegations.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (emphasis added). And where, as here, there is an “‘obvious alternative explanation’” for the 2026 Plan, “discrimination is not a plausible conclusion.” *Id.* at 682; *infra* Part II.

Plaintiffs also insist that the Court must “look to multiple ‘evidentiary source[s]’ to ascertain invidious intent” and cannot apply the presumption of good faith to allegations “individually.” Opp. 7. That is a false choice. *See, e.g., Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 20 (2024) (applying presumption to individual evidentiary sources); *Lee*, 746 F. Supp. 3d at 504-05 (same); *Abbott v. LULAC*, 146 S. Ct. 418, 419 (2025) (finding three-judge court “failed to honor the presumption of legislative good faith by construing ambiguous direct and circumstantial evidence against the legislature”). However many “sources” Plaintiffs offer, *contra* Opp. 7, their allegations come up short

because they “‘could plausibly support multiple conclusions’”—namely that the Legislature’s motivation was political, not racial. *Lee*, 746 F. Supp. 3d at 494. Just as multiplying even very large numbers by zero is still zero, aggregating numerous claims with obvious non-racial explanations does not suggest discrimination. *Contra* Opp. 12-13.

II. Plaintiffs Do Not Plausibly Allege Discriminatory Purpose.

A. Plaintiffs cannot distinguish *Lee*.

Plaintiffs do not contest *Lee* dismissed a redistricting challenge when there was an “obvious partisanship explanation” for districts. 746 F. Supp. 3d at 501. Instead, they contend their factual allegations “go well beyond” *Lee*. Opp. 1. They do not.

First, Plaintiffs note that the *Lee* plaintiffs did not allege the use of Census data shows discriminatory intent. Opp. 13. The *Lee* plaintiffs were right not to. Faulting lawmakers’ use of Census data would render redistricting everywhere constitutionally suspect. *See Lee*, 746 F. Supp. 3d at 484; *see* Mot. 15-17. Yet Plaintiffs double down on their allegations the Legislature used racial data as a proxy for politics. That theory is implausible. Legislators said they used “population and politics.” Mot. 14-18. And Plaintiffs now acknowledge legislators said they “‘filtered out’ racial data.” Opp. 18.¹

¹ Plaintiffs insist the Court cannot assume “the truth of” those statements and can only take note of the “fact” they were said. Opp. 6 n.2. But these statements from the “legislative record” have been “incorporated ... into the pleadings.” *ABCDE Operating v. City of Detroit*, 2011 WL 3607072, at *2 (E.D. Mich. Aug. 16, 2021). Even on Plaintiffs’ crabbed view, their allegations would require presuming legislators effected a racist conspiracy and then publicly lied about it. *See* Mot. 16-17. Plaintiffs’ misreading of a floor

Second, Plaintiffs would distinguish *Lee* because it “involved Nashville—a majority-white city—not Memphis.” Opp. 15. But Plaintiffs never explain why Nashville’s demographics matter; the *Lee* plaintiffs pressed the same claim on the same theories. As for Plaintiffs’ arguments regarding “recent legislative actions” addressing Memphis schools or the Shelby County District Attorney, *id.*, they have nothing to do with redistricting and nothing to do with race. *See infra* Part II.B.

Third, Plaintiffs allege that the Supreme Court’s decision in *Louisiana v. Callais*, 146 S. Ct. 1131 (2026), was a “precipitating factor” absent from *Lee*. Opp. 15. This argument supports Defendants, not Plaintiffs. *Callais* removed decades of uncertainty by clarifying States have the “prerogative to draw districts based on nonracial factors,” including “the drawing of districts to achieve partisan advantage.” 146 S. Ct. at 1156. With that clarification, Tennessee advanced a political goal. *Callais* only confirms the 2026 Plan’s “obvious partisanship explanation.” *Lee*, 746 F. Supp. 3d at 501; Mot. 21.

At bottom, the only legally relevant distinction between this case and *Lee* is that “legislators did not publicly announce a partisan gerrymander during the redistricting” in *Lee*. 746 F. Supp. 3d at 498. In 2026 they did, as Plaintiffs’ complaint concedes. *See* Mot. 6-9. If the *Lee* plaintiffs could not overcome the “obvious partisanship explanation for the [2022] maps,” 746 F. Supp. 3d at 501, Plaintiffs here come nowhere close.

exchange—a misreading they hardly try to defend in their Opposition—cannot justify “hurl[ing] such accusations at the political branches.” *Alexander*, 602 U.S. at 11.

B. Plaintiffs' *Arlington Heights* arguments do not save their complaint.

Impact. Plaintiffs argue the 2026 Plan has a “disproportionate impact” on black voters. Opp. 13. “[R]acially disparate impact” is not enough to suggest a racial purpose. *Lee*, 746 F. Supp. 3d at 494. Especially where there is a high correlation between race and partisanship, *see* FAC ¶¶150-55, a disparate racial impact is a predictable “side effect of the legislature’s partisan goal,” *Alexander*, 602 U.S. at 20; Mot. 10-11.

Historical Background. Plaintiffs’ allegations about recent legislation to improve Memphis are no different than the “mix of laws, bills or statements” having “little to do with redistricting” that were insufficient in *Lee*, 746 F. Supp. 3d at 505. Plaintiffs never plausibly suggest recent legislation—to improve schools or a District Attorney’s office—was enacted “‘because of’” race. *Pers. Adm’r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979). “[C]onclusory insinuations” are not enough. *Lee*, 746 F. Supp. 3d at 506; Mot. 18-20.

Procedural and Substantive Departures. While Plaintiffs reiterate that the redistricting process moved quickly, Opp. 16, they do not contest the State desired to redistrict before the midterms as other States had done across the country—for *political* reasons, not racial ones. Mot. 6-9. Just as in *Lee*, the “‘brevity of the legislative process’ in creating maps does not ‘overcome the presumption of legislative good faith.’” 746 F. Supp. 3d at 504. As for Plaintiffs’ assertion that the 2026 Plan “disregard[ed] ... traditional redistricting principles,” Opp. 16, Plaintiffs never allege the State could have met its conceded political objective in some other way. As *Callais* clarified, “partisan advantage”

is a legitimate districting criterion; States may “decide what weight, if any,” other criteria warrant. 146 S. Ct. at 1156; *see also Alexander*, 602 U.S. at 21 (“partisan goal” provided “reasonable explanation for the subordination of other objectives”).

III. Plaintiffs Do Not Plausibly Allege Discriminatory Effect.

Plaintiffs contend they plausibly alleged discriminatory effect because they have “less opportunity” now “than they did before the challenged state action.” Opp. 8-9. They would distinguish what *Callais* said about the relevant benchmark for evaluating such “opportunity” because *Callais* was a §2 case, not a constitutional case. *Id.* But *Callais* updated a §2 plaintiff’s burden of proof to better conform to the Constitution. 146 S. Ct. at 1155-56. And *Callais*—returning to the constitutional claim of vote dilution in *White v. Regester*, 412 U.S. 755 (1973)—clarified that proving “less opportunity” requires accounting for the State’s political “permissible” goal of “partisan advantage.” 146 S. Ct. at 1154-57.² Plaintiffs offered no such allegations, and thus have not moved allegations of discriminatory effect ““across the line from conceivable to plausible.”” *Iqbal*, 556 U.S. at 680; Mot. 23-24.

² Plaintiffs contend that the Supreme Court has declined to require the same elements for §2 claims and unconstitutional vote dilution claims. Opp. 9. But a decision like *Bartlett v. Strickland*, 556 U.S. 1, 12 (2009), is specific to the *Gingles* preconditions for §2 claims. Beyond *Gingles*, *Callais* clarifies what it means to prove “less opportunity”—a requirement of both §2 and constitutional claims. 146 S. Ct. at 1154-55; Mot. 23-24.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing motion to dismiss was filed electronically on July 17, 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:

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