

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

AMBER SHERMAN, *et al.*

Plaintiffs,

V.

TRE HARGETT, *et al.*,

Defendants.

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Case No. 3:26-cv-00616
[Lead Case]

TENNESSEE STATE CONFERENCE
OF THE NAACP, *et al.*

Plaintiff,

V.

TRE HARGETT, *et al.*,

Defendants.

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Case No. 3:26-cv-00638
[Consolidated Case]

**PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR A PRELIMINARY
INJUNCTION**

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. ARGUMENT	1
A. Defendants Misstate the Applicable Legal Standard	1
1. <i>Arlington Heights</i> Outlines the Applicable Legal Standard in This Case.....	3
2. Plaintiffs Need Not “Rule Out” Partisan Motivations in this Case.	3
3. Defendants Misconstrue the Presumption of Good Faith	4
B. While Not Required, Plaintiffs’ Expert Evidence Disentangles Race and Politics.....	5
C. Plaintiffs Have Proffered Significant Evidence of Intentional Vote Dilution.....	7
D. Plaintiffs Are Entitled to An Injunction Even Assuming <i>Purcell</i> Applies	10
III. CONCLUSION.....	10

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Abbott v. Perez</i> , 585 U.S. 579 (2018).....	5
<i>Agostini v. Felton</i> , 521 U.S. 203 (1997).....	2
<i>Alexander v. South Carolina State Conference of the NAACP</i> , 602 U.S. 1 (2024).....	<i>passim</i>
<i>Allen v. Milligan</i> , 146 S.Ct. 1377 (2026).....	2, 6
<i>Bush v. Vera</i> , 517 U.S. 952 (1996).....	5, 6
<i>Louisiana v. Callais</i> , 146 S.Ct. 1131 (2026).....	1, 2, 8
<i>Cooper v. Harris</i> , 581 U.S. 285 (2017).....	3, 6
<i>Flowers v. Mississippi</i> , 588 U.S. 284 (2019).....	8
<i>Foster v. Chatman</i> , 578 U.S. 488 (2016).....	3
<i>Fusilier v. Landry</i> , 963 F.3d 447 (5th Cir. 2020)	4
<i>Hunter v. Underwood</i> , 471 U.S. 222 (1985).....	6
<i>Tennessee State Conference of NAACP v. Lee</i> , 746 F. Supp. 3d 473	8
<i>Loper Bright Enterprises v. Raimondo</i> , 603 U.S. 369 (2024).....	2
<i>Mallory v. Norfolk Southern Railway Co.</i> , 600 U.S. 122 (2023).....	2

<i>Miller v. Johnson</i> , 515 U.S. 900 (1995).....	3, 4, 5
<i>North Carolina NAACP v. McCrory</i> , 831 F.3d 204 (2016).....	8
<i>Perez v. Abbott</i> , 235 F. Supp. 3d 864 (W.D. Tex. 2017).....	9, 10
<i>Reeves v. Sanderson Plumbing Products, Inc.</i> , 530 U.S. 133 (2000).....	9
<i>Rodriguez de Quijas v. Shearson/American Express, Inc.</i> , 490 U.S. 477 (1989).....	2
<i>Shaw v. Reno</i> , 509 U.S. 630 (1993).....	2
<i>Shelby County v. Holder</i> , 570 U.S. 529 (2013).....	8
<i>Students for Fair Admissions, Inc. v. President & Fellows of Harvard College</i> , 600 U.S. 181 (2023).....	4
<i>Veasey v. Abbott</i> , 830 F.3d 216 (5th Cir. 2016)	4
<i>Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.</i> , 429 U.S. 252 (1977).....	<i>passim</i>
<i>White v. Register.</i> , 412 U.S. 755 (1973).....	4
Statutes	
28 U.S.C. § 2284(b)(3)	10
Other Authorities	
<i>A Guide to Local Government Redistricting in Tennessee</i> (2021), https://comptroller.tn.gov/content/dam/cot/pa/documents/lg/GuideToRedistrict.pdf	9

I. INTRODUCTION

This intentional vote dilution case is governed by the framework established in *Vill of Arlington Heights v. Metropolitan Housing Development Corporation*, 429 U.S. 252 (1977). The Amended Complaint shows a single cause of action set forth for intentional vote dilution.¹ Here, Defendants attempt to convince this Court to apply an inaccurate standard and argue incorrectly that a rebuttable presumption of good faith overrides the clear evidence of discriminatory intent. Because Plaintiffs are the masters of their Complaint, this Court should apply the standard relevant to the cause of action pled. Substantial evidence demonstrates that racial discrimination motivated the Legislature’s decision to eradicate a compact, Memphis-based district—the only congressional district in the state where Black voters were able to elect a candidate of choice – to deny Black Memphians representation and influence in Congress. And *Purcell* does not leave this Court powerless to remedy the proven unconstitutional discrimination against Black voters.

II. ARGUMENT

A. Defendants Misstate the Applicable Legal Standard

Citing no relevant authority, Defendants try to import the Supreme Court’s Voting Rights Act Section 2 effects-based vote dilution and racial gerrymandering standards into this intentional vote-dilution case to argue that “redistricting plaintiffs” bear a “special evidentiary burden” of disentangling race and politics, repeatedly citing *Callais* and *Alexander*—two racial gerrymandering cases. Opp. at 10-11. But their argument relies on the law as Defendants wish it to be, *not* as it stands.

“A[n] [intentional] vote-dilution claim is ‘analytically distinct’ from a racial-gerrymandering claim and follows a ‘different analysis.’” *Alexander v. South Carolina State*

¹ At footnote 12 of the Opposition, Plaintiffs indicate they have not been served. On Friday, June 26, 2026, the Court issued summonses for the Defendants, Defendants were served, and they acknowledged such service in writing.

Conference of the NAACP, 602 U.S. 1, 38 (2024) (citing *Shaw v. Reno*, 509 U.S. 630, 650 (1993)). In *Alexander*, the Court found legal error when a district court relied on the same facts in analyzing both an intentional vote-dilution claim and a racial gerrymandering claim, noting the “differences between vote-dilution and racial-gerrymandering claims.” *Id.*

Callais did not address and does not govern claims of intentional vote-dilution. *Callais* changed the standard for proving vote-dilution under Section 2’s “results test” to ensure liability is not imposed based on results alone. 146 S.Ct. 1131, 1161 (2026) (characterizing its decision as an update to the Section 2 results standard). It did not address—much less overrule—the well-established standard for proving intentional discrimination. A lower court must “follow the case which directly controls, leaving to [the] [Supreme] Court the prerogative of overruling its own decisions.” *Mallory v. Norfolk Southern Railway Co.*, 600 U.S. 122, 137 (2023) (quoting *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484 (1989)); see also *Agostini v. Felton*, 521 U.S. 203, 238 (1997); *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 406 (2024) (lower courts are “bound by even our crumbling precedents”).

Likewise, the Supreme Court’s stay decision in *Allen v. Milligan* does not move the needle. 146 S.Ct. 1377 (2026). There, the Court treated the district court’s finding of intentional vote dilution claim as derivative of its finding of a Section 2 violation. *Id.* at 1381. The Court determined that the plaintiffs’ Section 2 claim likely did not satisfy the *Callais* standard. *Id.*; accord *Alexander*, 602 U.S. at 38 (rejecting the separate finding of intentional vote dilution when that finding rested on the “same findings of fact and reasoning” that guided its erroneous Section 2 finding). Plaintiffs here do **not** present a Section 2 claim and thus it is not the predicate of their intentional discrimination claim. Because *Arlington Heights* remains the law of the land for intentional vote-

dilution claims, this Court must apply the *Arlington Heights* standard and the decades of precedent governing such claims.

1. *Arlington Heights* Outlines the Applicable Legal Standard in This Case

Where racial discrimination is “a motivating factor,” for the challenged state action even when other motives are at play, that is sufficient to show that the State engaged in unconstitutional discrimination. *Foster v. Chatman*, 578 U.S. 488, 501 (2016) (quoting *Arlington Heights*, 429 U.S. at 266). Thus, if race motivated—even only in part—the State’s decision to target and dismantle the Memphis-based, majority-Black congressional district, the State’s actions cannot withstand constitutional scrutiny.

2. Plaintiffs Need Not “Rule Out” Partisan Motivations in this Case.

Defendants rely on *Alexander* to argue that Plaintiffs must satisfy an “especially stringent” burden to disentangle race and partisanship, producing an alternative map that achieves the State’s objectives “at least as well as the State’s map” before any racial motivation can be inferred. Opp. 1011. That requirement is inapplicable to an intentional vote-dilution claim. Unlike here, a plaintiff alleging racial gerrymandering must establish that “race was the predominant factor motivating the legislature’s decision to place a significant number of voters within or without a particular district.” *Cooper v. Harris*, 581 U.S. 285, 291 (2017) (quoting *Miller v. Johnson*, 515 U.S. 900, 916 (1995)); see also *Alexander*, 602 U.S. at 7. When a legislature articulates a partisan motivation, the plaintiff must “rule out” politics as the reason for the line-drawing decisions. *Id.* at 24.

Plaintiffs’ intentional vote-dilution claim, in contrast, requires proof that the Legislature drew the maps “to minimize or cancel out the voting potential” of a racial group. *Miller*, 515 U.S. at 911. “Racial discrimination need only be one purpose, and not even a primary purpose, of an official act’ for a violation to occur.” *Fusilier v. Landry*, 963 F.3d 447, 463 (5th Cir. 2020).

A state's partisan goals do not justify or render irrelevant racially discriminatory intent because "[i]ntentions to achieve partisan gain and to racially discriminate are not mutually exclusive." *Veasey v. Abbott*, 830 F.3d 216, 241 n.30 (5th Cir. 2016). Nor can legislatures use race as a proxy for partisan preference. Regardless of any convenience in using race to achieve partisan ends, a state still cannot intentionally target a racial group's electoral opportunity because of who the members of the racial group cohesively support at the polls. *White v. Register*, 412 U.S. 755, 765-70 (1973).

The Supreme Court's fundamental position on using race in governmental decisions is that "treating someone differently because of their skin color is *not* like treating them differently because they are from a city or from a suburb, or because they play the violin poorly or well." *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181, 222 (2023) (emphasis added). Just as states cannot use race as one among multiple factors to achieve diversity in admissions, they cannot use race as a factor to achieve partisan advantage in elections. *Id.* Absent a compelling state interest—not even argued here—intentional vote dilution based on race for alleged political advantage is unconstitutional.

3. Defendants Misconstrue the Presumption of Good Faith

Defendants invoke the "presumption of legislative good faith" at every turn in their brief, asking this Court to examine each piece of evidence in isolation and treat it as harmless, transforming a mere "starting presumption," *Alexander*, 602 U.S. at 10, into a fixed rule that even a massive cumulation of evidence cannot establish discriminatory intent.² The presumption of

² This position is akin to arguing that the presumption of innocence cannot be rebutted, and thus guilt never proven, regardless of evidence that the defendant committed the crime of which he is accused. Evidence may be circumstantial, with a need to present many pieces of evidence and multiple witnesses, but if the "combination of direct and circumstantial evidence" proves a defendants' guilt beyond a reasonable doubt (the highest burden under the law), the presumption is overcome. So too here. The combination of evidence shows that race was a motivating factor.

good faith does not require courts to examine individual pieces of evidence in a vacuum and then ask whether each alone suffices to establish legislative bad faith. Rather, it requires a court to weigh *all* the available direct and circumstantial evidence of the legislature's intent. *See Abbott v. Perez*, 585 U.S. 579, 607 (2018). Any other approach would contravene *Arlington Heights*, which expressly recognized that a court must look to multiple "evidentiary source[s]" to ascertain invidious intent. 429 U.S. at 266-67.

Here, there is ample evidence of discriminatory intent, including the Legislature's singular reliance on data sources that contained information on race but not on partisan affiliation or electoral results, *see Bush v. Vera*, 517 U.S. 952, 962-63 (1996); statistical analyses showing that the challenged map cracks the Black voting population of Shelby County so much as to yield stunted population levels unexplainable by partisan motive alone; discriminatory statements and actions by individual lawmakers; and credulity-straining assertions by several of the map's cosponsors that they were unaware that most Shelby County voters are Black. Inconsistency and implausibility of the sponsors' racially-charged assertions are more than sufficient to rebut the presumption of legislative good faith and, when weighed with all other evidence relevant to the *Arlington Heights* analysis, establishes that race was 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*, 515 U.S. at 911).

B. While Not Required, Plaintiffs' Expert Evidence Disentangles Race and Politics

Because, under *Arlington Heights*, the Equal Protection Clause bars state action if race was a motivating factor, *Arlington Heights*, 429 U.S. at 266, Plaintiffs need not disentangle race and politics or otherwise rule out politics as an additional motivation. *See Cooper*, 581 U.S. at 291 n.1; *Hunter v. Underwood*, 471 U.S. 222, 225 (1985).

Although no such proof is required, Plaintiffs have adduced evidence showing that the 2026 Plan is inexplicable on political grounds alone because the intentional targeting of Shelby County's Black population to ensure it remained below 32% across three districts exceeds what could be explained by partisan advantage. ECF No. 31-1 at 8; *Vera*, 517 U.S. at 961-62 (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 bloc level).

Dr. Duchin demonstrates that even redistricting plans targeting a 60% Republican supermajority did not replicate the 2026 Plan's cracking of the Black vote across three districts in Memphis and Shelby County: only the use of racial targets came close to matching these features of the 2026 Plan.³ ECF No. 31-4 at 6 (Duchin Decl.); Exh. A at 4-5 (Duchin Rebuttal). Defendants' expert Dr. Barber contends, based on a flawed analysis, that Dr. Duchin's alternative maps do not "achieve[] 'partisan advantage ... at least as well' as the 2026 Plan," because they do not achieve a greater than 60% vote share in a composite of six elections selected by Dr. Barber.⁴ In rebuttal, Dr. Duchin sought plans with higher levels of partisan advantage and concluded that they had a negligible impact on the racial composition of the resulting districts as compared to her prior partisan-targeted ensembles. Dr. Duchin offered an additional set of maps in which the least

³ The Supreme Court's summary admonition in *Milligan* that Plaintiffs had failed to adduce an alternative plan that adhered to the State's prioritization of a White community of interest after *Callais* says nothing about, and certainly does not undermine, its earlier favorable treatment of Dr. Duchin's simulation analysis. *Compare Allen*, 146 S. Ct. at 1381 ("The District Court found a violation even though the plaintiffs' alternative map would not perform just as well as to the State's constitutionally permissible criteria of keeping together the Gulf Coast community of interest"), *with* 599 U.S. 1, 34 n.7 (favorably citing Dr. Duchin's randomized algorithms).

⁴ Dr. Barber offers no basis whatsoever for assuming that the six-elections he examined to determine Republican advantage were ever considered by the General Assembly or that the General Assembly was targeting the minimum partisan vote margin he uses. Doc. 38-1 at 32. Indeed, as Dr. Duchin explains, contrary to Dr. Barber's unsupported claim that the 2018 Senate and Governor races offer "closer contests" for pursuing partisan advantage in 2026, those decade old elections are less likely to reflect today's electoral dynamics in Tennessee than an election from merely two years ago.

Republican district has 58-62% share in that contest, matching Dr. Barber's benchmark and easily meeting or beating the 2026 Map's Republican vote share.⁵ Exh. A at 4-5. Like the earlier analysis, attempts to achieve the levels of partisan advantage Dr. Barber touted did not require cracking the Black population to the extent seen in the 2026 Plan. *Id.* Similarly, this new set consistently produced at least one district with a BVAP percentage in the high 30s. *Id.* Only by intentionally targeting lower BVAPs did the ensembles produce maps matching the 2026 Plan's cracking of the Black population. *Id.*

Dr. Duchin also found that the 2026 Plan, while offering no measurable partisan advantage, significantly impacts electoral opportunities of Black voters in Districts 5, 8 and 9. ECF No. 31-4 at 6; Exh. A at 6-8. By intentionally depressing the BVAP to around 30% across all three districts, well below what was necessary to ensure a near 60% Republican advantage, the Legislature ensured that Black voters cannot elect their preferred candidates in primary or general elections. *Id.* A BVAP of around 36.9%, like the levels produced by Dr. Duchin's purely partisan-targeted ensemble analysis, provides Black voters an equal opportunity to nominate their preferred candidate in primaries. *Id.* at 7. Deprivation of electoral opportunity was wholly unnecessary to achieve the Legislature's alleged partisan goals and cannot be explained by them. *Id.* at 8.

C. Plaintiffs Have Proffered Significant Evidence of Intentional Vote Dilution

In addition to Plaintiffs' evidence of discriminatory effect, Plaintiffs proffer evidence of each of the remaining *Arlington Heights* categories. Federal courts have recognized Tennessee's history of discrimination in voting, ECF No. 31-5 at 29-30, and Dr. McKinney catalogued past

⁵ Moreover, Dr. Barber offers no basis whatsoever for assuming that the six-elections he examined to determine Republican advantage were ever considered by the General Assembly or that the General Assembly was targeting the minimum partisan vote margin he uses. Doc. 38-1 at 32. Indeed, as Dr. Duchin explains, contrary to Dr. Barber's unsupported claim that the 2018 Senate and Governor races offer "closer contests" for pursuing partisan advantage in 2026, those decade old elections are less likely to reflect today's electoral dynamics in Tennessee than an election from merely two years ago.

discrimination and instances “contemporaneous with the challenged decision.” The destruction of Tennessee’s only majority-Black congressional district dovetails with this Legislature’s adoption of multiple laws undermining the self-governance and political will of Black voters in the same location, including the takeover of the Memphis-Shelby County school board just two weeks prior to enacting HB 7003. *Cf. Flowers v. Mississippi*, 588 U.S. 284, 306-07 (2019); ECF No. 31-5 at 37. This “series of official actions taken for invidious purposes,” *Arlington Heights*, 429 U.S. at 267, reprises Tennessee’s recent history of targeting and diminishing Black political power. *See* Opening Br. at 14. The court in *Tennessee State Conference of NAACP v. Lee*, 746 F. Supp. 3d 473, 505-06 (M.D. Tenn. 2024) did not have evidence of this nature before it.

The sequence of events regarding HB 7003 showing intentional discrimination is straightforward: (1) the U.S. Supreme Court issued the *Callais* decision on April 29; (2) on May 1, Governor Lee called for an extraordinary session for redistricting; and (3) that session began on May 5 and ended in less than 48 hours with the rushed passage of HB 7003. Noting redistricting in other states before *Callais* does not dispel the “obvious inference” here, especially as Tennessee did not even attempt such redistricting until after *Callais*, targeting Tennessee’s only majority-Black congressional district. *See North Carolina NAACP v. McCrory*, 831 F.3d 204, 227 (2016) (drawing “the obvious inference” of discriminatory intent based on the sequence of events of North Carolina legislature’s expansion of an earlier photo ID bill and rushed legislative process immediately after *Shelby County v. Holder*, 570 U.S. 529 (2013)), *cert denied* 137 S. Ct. 1399 (2017). Arguments about mitigating litigation risk or advancing “nonracial redistricting priorities, including politics, without being faulted for unintended vote dilution under § 2 of the VRA” fail because the prior CD-9 was not drawn to remedy or avoid a § 2 violation. *See* Opp. at 14.

Defendants cannot dispute that the late-decade redistricting process itself was a departure from decades of procedure—including a ban on such redistricting—and that legislators disregarded most traditional redistricting criteria. *See id.* at 20-21. The mapmaker and bill sponsors “shut out” Black legislators from participating in the drawing process by withholding access to the map until the day before passage, marking a key component of the sequence of events analysis and a stark departure from the 2022 congressional redistricting process. ECF No. 31-4 at 6. The delayed map release and rushed session also precluded timely considered amendments or alternative plans, another departure from past redistricting cycles. ECF No. 31-4 at 5-7.

Further, false statements during legislative debate also show discriminatory intent, *e.g.*, a key sponsor of the bill claimed that the new districts were drawn to achieve partisan advantage but map drawers relied only on census data. Opening Br. at 4. Yet the Census contains no partisan data, making the partisan explanation implausible. Moreover, any notion that legislators were unaware of the racial make-up of the majority-Black district it split in three is defeated by Tennessee’s practice in disseminating such data to the legislature. “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).”⁶ Proving “that the defendant’s explanation is unworthy of credence is simply one form of circumstantial evidence that is probative of intentional discrimination, and it may be quite persuasive.” *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 147 (2000); *see also Perez v. Abbott*, 253 F. Supp. 3d 864, 952 (W.D. Tex. 2017) (testimony that map drawers did not

⁶ 2021 edition of *A Guide to Local Government Redistricting in Tennessee*, at 13, available at <https://comptroller.tn.gov/content/dam/cot/pa/documents/lg/GuideToRedistrict.pdf>.

know accurate political data, unlike racial data, was unavailable below the precinct level was not credible, “suggesting that many precinct splits have a racial basis”); *id.* at 886 (committee chair’s false statements showed discriminatory intent). Taken together, as required under *Arlington Heights*, Plaintiffs’ circumstantial evidence demonstrates intentional vote dilution.

D. Plaintiffs Are Entitled to An Injunction Even Assuming *Purcell* Applies

Defendants gallingly claim that Plaintiffs are “too late” to obtain relief, asserting that the *Purcell* principle renders their recent unconstitutional acts a fait accompli. *See* Opp. at 1, 6-8. It would be a perverse rule of equity that would permit a state to engage in intentional racial discrimination as long as it does so sufficiently late in the election process. *Purcell* does not provide such immunity. *See, e.g., Mich. State A. Philip Randolph Inst. v. Johnson*, 833 F.3d 656, 662-66 (6th Cir. 2016).

Nor can Defendants fault Plaintiffs for any delay in seeking relief: Plaintiffs filed this case within days of the 2026 Map’s enactment and sought preliminary relief just over a week after the three-judge panel of this Court—the only panel that could consider a preliminary-injunction motion under 28 U.S.C. § 2284(b)(3)—was constituted. Defendants’ claim that compliance with any injunction in this case would be “impossible,” Opp. at 6, rings hollow. The State operated for years under the congressional map that Plaintiffs seek to restore, yet it is now forcing election officials to turn on a dime—apparently “work[ing] around the clock,” Opp. at 6—to prepare for elections under an entirely new map. In these circumstances, it would likely be substantially easier for state election officials to comply with the injunction Plaintiffs seek than to press forward with elections under the State’s abruptly and unconstitutionally adopted 2026 Map.

III. CONCLUSION

For these reasons, the Court should grant Plaintiffs’ motion for a preliminary injunction.

Dated: June 30, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing motion was filed on June 30, 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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