

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

WINNIE JACKSON, *et al.*,

Plaintiffs,

v.

TARRANT COUNTY, TEXAS, *et al.*,

Defendants.

CIVIL ACTION NO. 4:25-cv-00587-O

**PLAINTIFFS’ OPPOSITION TO DEFENDANTS’ MOTION TO STRIKE**

The Court should deny Defendants’ motion to strike, which falls far short of the Rule 12(f) standard to strike pleadings. It is Judge O’Hare’s statements that are impertinent and scandalous, not Plaintiffs’ quotation of them.

**ARGUMENT**

Defendants do not meet the standard for a Rule 12(f) motion to strike. “[I]t is well established that the action of striking a pleading should be sparingly used by the courts. It is a drastic remedy to be resorted to only when required by purposes of justice. The motion to strike should be granted only when the pleading to be stricken has no possible relation to the controversy.” *Augustus v. Bd. of Pub. Instruction of Escambia Cnty., Fla.*, 306 F.2d 862, 868 (5th Cir. 1962). “Motions to strike are disfavored and rarely granted. Unless the matter of which they movant complains bears no possible relation to the controversy or may cause the objecting party prejudice, such motions should be denied.” *OKC Corp. v. Williams*, 461 F. Supp. 540, 550 (N.D. Tex. 1978) (citation omitted). Rule 12(f) applies only to “pleadings” and thus cannot be employed to strike material from a motion, brief, or other filing. *See, e.g., Skinner Capital LLC v. Arbor E&T, LLC*, No. 3:23-CV-2320-D, 2024 WL 1219235, at \*5 (N.D. Tex. Mar. 21, 2024) (noting that

Rule 12(f) applies only to the types of pleadings identified in Rule 7(a) and thus was not an available mechanism to strike content from briefs).

**I. Rule 12(f) does not apply to Plaintiffs' preliminary injunction brief.**

Defendants' request to strike various sentences from Plaintiffs' preliminary injunction brief should be denied because it is not a "pleading" to which Rule 12(f) applies. *See Skinner*, 2024 WL 1219235, at \*5; *see also Jackson v. Wray*, No. 3:23-CV-0558-M-BH, 2023 WL 3635632, at \*1 (N.D. Tex. May 23, 2023) ("Because the motions to dismiss which the plaintiff seeks to strike are not pleadings, Rule 12(f) does not apply"); *See* ECF No. 23 at 3, 4, 6 (seeking for parts of ECF No. 12 to be stricken).

**II. Defendants do not satisfy the standard to strike any of the material to which they object.**

Defendants do not satisfy the standard to show that the sentences to which they object bear "no possible relation to the controversy." *Augustus*, 306 F.2d at 868. To the contrary, each is relevant to the intentional racial vote dilution analysis under the Fourteenth and Fifteenth Amendments.

1. Defendants object to Plaintiffs' references to Judge O'Hare's statement: "[t]he policies of Democrats continue to fail Black people over and over and over, but many of them keeping voting them in. It's time for people of all races to understand the Democrats are a lost party, they are a radical party, it's time for them to get on board with us and we'll welcome them with open arms." ECF No. 23 at 3 (quoting ECF No. 12 at 5). As Defendants acknowledge in their motion to dismiss, Judge O'Hare said this in a television interview on the day of the vote on Map 7 "[i]n answer to a reporter's question regarding the impact of the redistricting decision o[n] minority voters." ECF No. 27 at 21.

Defendants wrongly contend that Plaintiffs did not put the full quotation in their First Amended Complaint but rather included only “fragmented quote[s]” of it until they filed their preliminary injunction motion. ECF No. 23 at 3. Not so. The *first paragraph* of Plaintiffs’ First Amended Complaint provides the full quotation. ECF No. 8 ¶ 1. For this reason, Plaintiffs’ subsequent quotation of parts of the statement to fit within Plaintiffs’ allegations cannot plausibly be considered “deceptively cut and rephrased” because the entire quotation is in the opening paragraph of the complaint and provides the appropriate context. Moreover, Defendants do not, and could not, contend that Plaintiffs have attributed quoted material to Judge O’Hare that he did not say. Indeed, Defendants nowhere explain *how* Plaintiffs’ characterizations of the quoted statement are “redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). They merely make a list of the times that Plaintiffs reference this statement in their First Amended Complaint (and preliminary injunction motion) and demand that those sentences be stricken. But Rule 12(f) does not prohibit transparently omitting material from quotes or quoting portions of a statement and characterizing other portions, and Defendants cite no authority to suggest that it does. Defendants must at least explain *how* Plaintiffs’ characterization of the quoted statement is supposedly deceptive. But they do not, because it *is* not. Judge O’Hare explained his vote for Map 7 by noting that he disagrees with how “Black people” cast their ballot and believes it is time for “people of all races” to “get on board” with his views.

Unfortunately for Defendants, Judge O’Hare’s statement—and every cited instance in their motion to strike of Plaintiffs discussing it in their First Amended Complaint—is *highly* relevant to all four of Plaintiffs’ claims. It is direct evidence of the person casting the deciding vote in favor of Map 7 doing so at least in part because the map minimizes the voting strength of Black voters by reducing from two to one the number of commissioner precincts in which they are likely to

elect their preferred candidate—in a situation in which two Black Democratic commissioners currently represent those precincts. Defendants do not even attempt to contend that the allegations about which they complain have “no possible relation to the controversy.” *Augustus*, 306 F.2d at 868. Instead, they endeavor to resuscitate Judge O’Hare by contending that his statement “is an appeal for minority support and a partisan call for some voters to abandon the Democratic party.” ECF No. 23 at 4. In their motion to dismiss, Defendants try a different spin, contending that “[t]he full quote is an appeal by a politician to court minority voters and opine about broader issues touching on race and politics nationwide.” ECF No. 27 at 21. But Rule 12 does not envision the Court making inferences in *Defendants’* favor. And nor are these efforts to spin away the plain meaning of Judge O’Hare’s blunt statement even plausible.

Undoubtedly Defendants wish the statement had not been made. But it was, and they cannot use Rule 12(f) to erase Plaintiffs’ allegations about it from the case.

2. Next Defendants object that Plaintiffs’ First Amended Complaint quotes the following 2022 campaign statement from Judge O’Hare: “If you’re a Republican officeholder and you haven’t been called a racist, then you probably haven’t done a thing.” ECF No. 23 at 4. Defendants complain that this quote was included in a paragraph that discussed the passage of Map 7 because “the statement was made when Judge O’Hare was running for office—not in relation to redistricting—and is an opinion expressed about the state of political discourse in the country, not about Map 7.” ECF No. 23 at 4.

But during the June 3, 2025, debate on Map 7, Judge O’Hare emphasized: “I campaigned on redrawing districts dating back to 2021. There’s people in this room who’ve heard me say it. Heard me say it in their homes. Heard me say it on the campaign trail. . . . In 2021 when I talked about this all over the campaign trial . . . this was something I campaigned on doing literally four

years ago.”<sup>1</sup> So Defendants’ effort to separate Judge O’Hare’s 2022 campaign statements from the motivation for the 2025 redistricting is defeated by Judge O’Hare’s own characterization of this 2021-22 campaign. In any event, recent racial comments by the person who cast the deciding vote in favor of a map challenged as intentionally discriminatory are plainly relevant to the *Arlington Heights* analysis, which looks in part at the historical background of discrimination in the jurisdiction and contemporary statements by members of the decisionmaking body. *See Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 267 (1977); *League of United Latin Am. Citizens v. Abbott*, 601 F. Supp. 3d 147, 170 (W.D. Tex. 2022) (“LULAC”). When Judge O’Hare is emphasizing that for him the decisionmaking regarding redistricting began in 2021, his 2022 comments certainly count as contemporary.

Defendants also ask the Court to view Judge O’Hare’s statement in the light most favorable to him—that the statement reflected his belief that “some actors inappropriately brand speakers as racist to prevent them from speaking.” ECF No. 23 at 4. But what Judge O’Hare literally said was that Republicans are not accomplishing things if they have not been called racist. ECF No. 8 ¶ 8. The most natural understanding of that statement is *not* what Defendants ask the Court to infer in their favor, contrary to the standards governing the Rule 12 posture.

3. Defendants next object to paragraph 46 of Plaintiffs’ First Amended Complaint, which alleges Judge O’Hare’s association with the True Texas Project, whose leaders made comments justifying the actions of the El Paso mass shooter. Defendants do not contend that Judge O’Hare did *not* associate with this organization or that its leaders did *not* make such comments. Rather he contends that it does not pertain to Map 7. But Judge O’Hare cast the deciding vote in

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<sup>1</sup> Tarrant County Commr’s Court Meeting Video at 5:37:10 (June 3, 2025), <https://prod-agendamanagement-publicportal.azurewebsites.us/HtmlAgenda/515a6602-2fb1-40ef-eea7-08dd8d6d95d5>.

favor of Map 7, and his past conduct and tolerance for racially discriminatory statements by associates is plainly relevant to the totality of circumstances that form the basis for the *Arlington Heights* factors, including historical background and actions by the decisionmakers. Defendants offer no argument that it has “no possible relation to the controversy.” *Augustus*, 306 F.2d at 868.

4. Defendants object to paragraphs 48-49 of the First Amended Complaint, which discuss Judge O’Hare’s promotion of 2020 election conspiracies and his campaign to push out Tarrant County’s former election administrator, Heider Garcia, who was widely praised for his competent management of the job. ECF No. 23 at 5. They say that “[t]his case has nothing to do with Heider Garcia, John Scott, or the validity of the 2020 elections.” *Id.* But the campaign to spread misinformation and conspiracies about the 2020 election was widely viewed as racially discriminatory.<sup>2</sup> And Congressman Veasey of Tarrant County even wrote the Department of Justice asking for an investigation into Judge O’Hare’s conduct and statements regarding elections, including his effort to push out Heider Garcia, and the racially discriminatory effect of his efforts.<sup>3</sup> This is all relevant to this historical background *Arlington Heights* factor. Defendants offer no argument that it has “no possible relation to the controversy.” *Augustus*, 306 F.2d at 868.

5. Defendants also seek to strike paragraphs 44 and 45 of Plaintiffs’ First Amended Complaint, which allege facts regarding Judge O’Hare’s past divisive actions seeking to prevent

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<sup>2</sup> See, e.g., Brandon Tensley, *The racist rhetoric behind accusing largely Black cities of voter fraud*, CNN (Nov. 20, 2020), <https://www.cnn.com/2020/11/20/politics/trump-giuliani-black-cities-analysis>.

<sup>3</sup> Harrison Mantas, Eleanor Dearman, & Abby Church, *Congressman, others urge feds to investigate Tarrant County judge over voting rights*, Fort Worth Star-Telegram (May 16, 2023), <https://www.star-telegram.com/news/politics-government/article275433646.html>.

Defendants do not explain why they believe Plaintiffs’ correct allegation that Mr. Garcia faced threats suggests that Judge O’Hare “had something to do with” them. Plaintiffs do not allege that O’Hare threatened Mr. Garcia.

undocumented immigrants from obtaining housing. ECF No. 23 at 5. But again, Judge O’Hare’s historical background as the deciding vote in favor of the challenged map is plainly relevant to the *Arlington Heights* analysis. Defendants do not show that the allegation has “no possible relation to the controversy.” *Augustus*, 306 F.2d at 868.

6. Next, Defendants seek to strike paragraph 50 of Plaintiffs’ First Amended Complaint, which alleges that Judge O’Hare scheduled a vote to close voting sites convenient to minority citizens for a time when the only two Black commissioners could not attend. ECF No. 27 at 6. This allegation relates to the historical background of the decision making, as it is an example of a recent discriminatory voting-related action attempted by Judge O’Hare. It does not matter that it was on a different topic than Map 7 for it to be relevant to this analysis. *See LULAC*, 601 F. Supp. 3d at 170. Defendants do not—and could not—allege that the allegation has “no possible relation to the controversy.” *Augustus*, 306 F.2d at 868.

7. The next allegation Defendants seek to strike is in paragraph 51, which quotes Judge O’Hare telling Commissioner Simmons (who is Black): “I’m the one talking now, so you’ll sit there and be quiet and listen to me talk.” ECF No. 23 at 6. Defendants contend that “[t]his relates to a commissioner speaking out of order, not racial intent.” *Id.* But again, Defendants cannot obtain inferences that are favorable to *Defendants* in the context of Rule 12. Judge O’Hare’s comment was widely considered to be racially insensitive. *See, e.g.,* Kamal Morgan, ‘You can’t say that to a woman in 2024’: Tarrant judge’s words called racist, misogynistic, Fort Worth Star-Telegram (Apr. 18, 2024), <https://www.star-telegram.com/news/politics-government/article287802410.html>. As with his other statements, Judge O’Hare’s behavior toward Commissioner Simmons is relevant to the historical background and his contemporary statements,

which are *Arlington Heights* factors. Defendants do not—and could not—allege that the allegation has “no possible relation to the controversy.” *Augustus*, 306 F.2d at 868.

8. Defendants next object to paragraph 32 of the First Amended Complaint, which quotes former Commissioner Andy Nguyen, who in 2016 said “[i]f being called a racist is the price I have to pay to preserve America, I am will to pay 100-fold.” ECF No. 23 at 6. Defendants contend that this was a statement made by Nguyen during his 2016 reelection campaign, but that is not true. He was an incumbent commissioner at the time and not up for reelection until 2018—it was a statement made during a Trump campaign event in 2016. In any event, racially offensive comments in recent historical past by members of the Tarrant County Commissioners Court are relevant to the historical background *Arlington Heights* factor. See *LULAC*, 601 F. Supp. 3d at 170. Defendants do not—and could not—allege that the allegation has “no possible relation to the controversy.” *Augustus*, 306 F.2d at 868.

9. Remarkably, Defendants next ask the Court to strike from the First Amended Complaint paragraph 79, which merely alleges that the cities of Fort Worth and Arlington opposed the County’s redistricting effort. ECF No. 23 at 6-7. It is not clear why Defendants are scandalized by this allegation, but the fact that the County underwent mid-decade redistricting over opposition from its largest municipalities bears on the procedural and substantive departures *Arlington Heights* factors and is also simply background factual information regarding the redistricting. Defendants do not—and could not—allege that the allegation has “no possible relation to the controversy.” *Augustus*, 306 F.2d at 868.

10. Finally, Defendants ask the Court to strike as “incivil” the allegation that Mr. Nixon, who led the redistricting process for the County and was later retained as litigation counsel, refused to attend a community meeting in Commissioner Simmons’s precinct claiming that he

feared for his safety if he were to attend. ECF No. 23 at 7. As Plaintiffs’ preliminary injunction brief demonstrates, however, the refusal of PILF counsel to attend community meetings and answer the public’s questions was a stark departure from the prior processes run by the Bickerstaff Heath law firm. *See, e.g.*, ECF No. 12 at 4-5. The allegation thus relates to the substantive and procedural deviations *Arlington Heights* factors. Moreover, as former Precinct 2 Commissioner Devan Allen testified, “[i]t is hard not to see the racial undertone in Mr. Nixon’s claim that he would be unsafe if he attended a public input session in a majority-minority community represented by a Black Commissioner.” App. 219. It is likewise relevant to the *Arlington Heights* analysis on that basis. Defendants do not—and could not—allege that the allegation has “no possible relation to the controversy.” *Augustus*, 306 F.2d at 868.

Defendants characterize this as “attacks on counsel.” ECF No. 23 at 7. But Mr. Nixon was not litigation counsel for Defendants at the time the First Amended Complaint was filed. PILF was not retained by the County for that purpose until later. The County made the choice to engage litigation counsel that was involved in the facts that gave rise to the lawsuit and who indeed was a fact witness to the matters that are the subject of the lawsuit. That was their choice. Defendants cannot have allegations regarding their counsel’s involvement in the underlying events of the lawsuit stricken because he happens to also be their litigation counsel.

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Defendants’ motion does not even mention the legal standard that governs a Rule 12(f) motion to strike—the requirement that they show the complained of allegations have “no possible relation to the controversy.” *Augustus*, 306 F.2d at 868. That is not surprising, because none of their complaints come close to meeting that standard. Plaintiffs cannot be foreclosed from making factual allegations on the topic of race in a case about intentional racial discrimination. Defendants’ motion should be denied.

## CONCLUSION

For the foregoing reasons, Defendants' motion to strike should be denied.

Dated: August 11, 2025

Respectfully submitted,

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## CERTIFICATE OF SERVICE

On August 11, 2025, I served the foregoing on all counsel of record via the Court's CM/ECF system.

/s/ Chad W. Dunn  
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