No. 25A608

In the Supreme Court of the United States

GREG ABBOTT, in his official role as Governor of Texas, *et al.*,

Applicants,

v.

LEAGUE OF UNITED LATIN AMERICAN CITIZENS, *et al.*,

Respondents.

BROOKS RESPONDENTS' RESPONSE IN OPPOSITION TO EMERGENCY APPLICATION FOR STAY

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PARTIES TO THE PROCEEDING

The parties to the proceeding are listed in Applicants' ("Texas's") application ("Stay App"). *See* Stay App. at i.

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TO: The Honorable Samuel A. Alito, Jr., Circuit Justice for the Fifth Circuit

On July 7, the federal Department of Justice ("DOJ") threatened to sue Texas if it did not eliminate multiracial majority "coalition" congressional districts and replace them with single-race majority districts. Ignoring that Texas spent years asserting in court that its map was drawn blind to race, DOJ insisted that Texas racially gerrymandered its map by including minority coalition districts, and demanded that Texas dismantle those districts on account of their racial composition.

Rather than reject this self-defeating demand from DOJ, Governor Abbott seized on it. He immediately called a special session of the Texas legislature to redistrict on account of DOJ's racial objections. He then went on a TV interview spree, broadcasting over and over his desire to eliminate multiracial majority districts in the map and replace them with single-race majority districts. In an interview with CNN's Jake Tapper, when asked to confirm that his actual justification for redistricting was political not racial, Governor Abbott demurred and instead *doubled down on his race-based motivation*. No, it wasn't politics. He wanted to eliminate multiracial majority coalition districts.

The Legislature took this race-based assignment and ran with it. Where the 2021 Legislature took pains to assert, ad nauseum, that its maps were "race blind," the 2025 Legislature heralded its racial goals ad infinitum. The Legislature eliminated seven multiracial majority districts and created an unnatural number of single-race majority districts—an incredible feat in a state lacking a majority racial group statewide.

The district court held a nine-day evidentiary hearing, observed dozens of witnesses testify, watched hours of video footage of legislators and Governor Abbott discussing their motives and the map's features, and concluded that Plaintiffs had presented a clearcut case of racial gerrymandering established principally by strong direct evidence of racial predominance.

The district court found the State's star witnesses—mapdrawer Adam Kincaid and Senate Redistricting Committee Chair King—to have given untruthful, noncredible testimony. Sen. King was the only legislator with whom Mr. Kincaid interacted and nearly every aspect of their testimony was contradictory. Almost nothing the one said matched what the other said. The district court rightfully discredited their testimony.

This is as stark a case of racial gerrymandering as one can imagine. Accordingly, the State emphasizes *Purcell*. But the election is a year away. The candidate filing deadline for the spring primary is open for weeks yet, and the *State* submitted declaration testimony—affirmed live at trial—that the filing period could be extended for at least an additional week without causing any disruption. And the district court's remedy—returning to the map that governed Texas's elections for the past four years—will impose *less* work and *less* confusion than proceeding under a new map. *Purcell* is inapplicable. This is an exceptional case that demands the injunction the district court ordered.

The federal government cannot insist that a state dismantle districts on account of race. States cannot dismantle districts on account of race. This Court hears hard cases. This is not a hard case.

FACTUAL BACKGROUND AND PROCEEDINGS BELOW

I. Texas resists calls to redistrict for partisan purposes.

In the spring of this year, national Republicans and White House officials encouraged Texas Republicans to redistrict the state's congressional map to gain Republican seats. App.16. Texas Republicans resisted those calls. App. 16. Governor Abbott excluded congressional redistricting from his June 23, 2025 list of special session legislative topics. App. 16. Following news reports of this pressure campaign, the chair of the senate redistricting committee from the 2021 cycle testified under oath that the legislature was not considering a mid-decade redraw. App. 17.

II. DOJ demands that Texas redistrict on account of race.

After their calls for a partisan gerrymander went unheeded, national officials changed course and demanded that Texas redistrict on account of the racial composition of its congressional districts. On July 7, 2025, DOJ sent a letter to Governor Abbott and Attorney General Paxton objecting to the inclusion of "coalition" districts—*i.e.*, districts where Black and Latino voters combine to form a majority of voters—in Texas's congressional map. App. 17. Specifically, the letter asserted that "Congressional Districts TX-09, TX-18, TX-29 and TX-33 currently constitute unconstitutional 'coalition districts' and we urge the State of Texas to rectify these race-based considerations from these specific districts." App. 17. The letter cited the Fifth Circuit's decision in *Petteway v. Galveston County*, No. 23-40582 (5th Cir. 2024),

in which the en banc court overruled its prior precedent that coalition districts could be required under Section 2 of the Voting Rights Act. App. 18.

The letter continued, stating that "[i]t is the position of this Department that several Texas Congressional Districts constitute unconstitutional racial gerrymanders, under the logic and reasoning of *Petteway*. Specifically, the record indicates that TX-09 and TX-18 sort Houston voters along strict racial lines to create two coalition seats, while creating TX 29, a majority Hispanic district." App. 18. "Additionally," the letter continued, "TX-33 is another racially based coalition district that resulted from a federal court order years ago, yet the Texas Legislature drew TX-33 on the same lines in the 2021 redistricting. Therefore, TX-33 remains as a coalition district." App. 18. The letter states that "the State's interest when configuring these districts was to comply with Fifth Circuit precedent prior to the 2024 *Petteway* decision, that interest no longer exists. Post-*Petteway*, the Congressional Districts at issue are nothing more than vestiges of an unconstitutional racially based gerrymandering past, which must be abandoned, and must be corrected by Texas." App. 18.[1] Although the letter was dated July 7, 2025, it demanded a response by July 7, 2025, and threatened that "[i]f the State of Texas fails to rectify the racial gerrymandering of TX-09, TX-18, TX-29 and TX-33, the Attorney General reserves the right to seek legal action against the State, including without limitation under the 14th Amendment." App. 18.

[1] In fact, Texas has insisted through multiple redistricting cycles that it never intentionally draws coalition districts. Brooks Prelim. Inj. Ex. 280 at 16-17.

The letter made no mention of partisanship or desiring more Republican congressional districts. App. 30. Nor did it mention that Texas had spent four years defending its 2021 maps in court as having been drawn blind to race (and thus not possibly racially gerrymandered). App. 15, 24.

As the district court explained, "[i]t's challenging to unpack the DOJ Letter because it contains so many factual, legal, and typographical errors," causing Texas's litigation counsel to describe it as "legally[] unsound," "baseless," "erroneous," ham-fisted," and "a mess." App. 19. But this is clear: "the letter [] commands Texas to change four districts for one reason and one reason alone: the racial demographics of the voters who live there." App. 30.

It worked.

III. Governor Abbott calls special session to redraw congressional map on account of race.

Two days later, Governor Abbott called a special session of the legislature to consider "[l]egislation that provides a revised congressional redistricting plan *in light of constitutional concerns raised by the U.S. Department of Justice*." App. 30-31 (emphasis added). But for Governor Abbott's decision to follow DOJ's command to dismantle districts on account of their racial composition, Texas would not have redistricted its congressional map. Only the Governor can call a special session and only he can determine what topics may be considered for legislation during a special session. *See* Tex. Const. art. III, § 40.

"Contemporaneous media interviews reinforce that the Governor was asking the Legislature to redistrict for racial rather than partisan reasons." App. 31. On

August 11, 2025, Governor Abbott appeared on CNN and asserted that race, not politics, motivated the redistricting. Abbott explained that *Petteway* meant "Texas is no longer required to have coalition districts" and that "we wanted to remove those coalition districts and draw them in ways that, in fact, turned out to provide more seats for Hispanics." App. 31-32. Jake Tapper responded incredulously:

> MR. TAPPER: But that's not really—I mean, you're doing this to give Trump and Republicans in the House of Representatives five additional seats, right? I mean, that's the motivation, is to stave off any midterm election losses.
>
> GOVERNOR ABBOTT: Again, to be clear, Jake, the reason why we are doing this is because of that court decision . . . .

App. 31-32. As the district court observed, "[w]hen given the opportunity to publicly proclaim that his motivation for adding redistricting to the legislative agenda was solely to improve Republicans' electoral prospects at President Trump's request, the Governor denied any such motivation." App. 33. Indeed, Abbott did not claim any political motive whatsoever. *Id.* "Instead," the court noted, "the Governor expressly stated that his predominant motivation was racial: he "wanted to remove . . . coalition districts" and "provide more seats for Hispanics." App. 33.

This was not a one-off statement.

For example, in a July 22, 2025, television interview with Fox 4 Dallas-Fort Worth, Governor Abbott affirmed his racial motivation for directing the Legislature to redistrict: "Since the last time we did redistricting, the law has changed. In a lawsuit that was filed by Democrats, and the decision came out last year, it says that coalition districts are no longer required. *And so we want to make sure that we have*

maps that don't impose coalition districts . . . ."[2] In response to a question regarding the fact that the State—including himself as a Defendant in this case—defended the 2021 map in court, Governor Abbott said: "The map that was drawn was drawn before this recent court decision that said coalition districts were not required and the map I believe [the map] as drawn could be upheld. That said, we are no longer compelled to have coalition districts and as a result we can draw maps, not have coalition districts, and through that process maximizing [sic] the ability of Texans to elect their candidates of choice."[3]

In an August 7, 2025, interview posted on Governor Abbott's YouTube channel, Governor Abbott said: "Texas is no longer required to have what are called coalition districts. And as a result, *we're able to take the people who were in those coalition districts, and make sure they're gonna be in districts that really represent the voting preference of those people who live here in Texas.*"[4] He continued, saying "We saw the aftermath of the Trump election, that an overwhelming number of Hispanics, and Blacks, as well as others, chose to vote for Trump. Four of the five districts we're going to create are predominantly Hispanic districts that they're going to be voting for Republicans as opposed to Democrats."[5] He continued, saying "We're creating four new Hispanic oriented districts that are gonna vote Republican. And Joe – something else that is going to happen in this process and that is the consolidation of what is known as the Barbara Jordan district over in the Houston area. A Black woman who

[2] Brooks Prelim. Inj. Ex. 325-T, ECF No. 1327-25 at 3-4 (emphasis added).
[3] *Id.*
[4] Brooks Prelim. Inj. Ex. 332-T, ECF No. 1411-3 at 2 (emphasis added).
[5] *Id.*

served there for a long time – they've been begging to protect her district and that's exactly what we're doing."[6]

As the district court observed in summarizing Governor Abbott's media tour, "the Governor consistently used language suggesting that he viewed the map's improved Republican performance not as an end in itself, but as a coincidental by-product of the plan's goal of increasing the number of majority-Hispanic districts." App. 34. At best, the Governor's media parade confirms that whatever partisan goals he had, he intended consideration of race to be the means by which the Legislature achieved them.

IV. The 2025 map reconfigured districts to be single-race majority.

The 2025 map "did all but one of the things that DOJ and the Governor expressly said they wanted the Legislature to do." App. 35.

CD 9. The Legislature "eliminated CD 9's status as a coalition district by making it a district in which a single racial group (Hispanics) are just barely a majority by CVAP[7] (50.3%). App. 35. This "satisfied not just DOJ's command that Texas convert CD 9 from a coalition district to a single-race-majority district, but also the Governor's goal of increasing the number of majority-Hispanic districts in the State." App. 35.

CD 18. The Legislature "likewise eliminated CD 18's status as a coalition district" instead "making it just barely a majority Black district (50.5%)." App. 38.

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[6] *Id.*

[7] Citizen voting age population.

CD 29. This district was wrongly identified as a coalition district in DOJ's Letter despite being majority Hispanic. As the district court found, "[p]erhaps perplexed by DOJ's request, . . . the Legislature eliminated CD 29's status as a majority-Hispanic district," dropping its Hispanic CVAP by 20 percentage points. App. 38.

CD 33. While CD 33 remained a multiracial majority district in the 2025 map, it was "completely reconfigured and unrecognizable when compared to the old CD 33." App. 39.

* * *

As the district court observed, "[i]n keeping with the spirit of DOJ's request, the Legislature also eliminated five coalition districts that DOJ didn't mention." App. 41.

CD 22. The Legislature converted CD 22, which was "just shy of being a majority-White district (49.2%)" to a majority-White district (50.8%). App. 41.

CD 27. CD 27 was a coalition district, with a plurality Hispanic population of 48.6% under the 2021 map. App. 43. The Legislature converted it to a majority-White (52.8%) district in the 2025 map. App. 43. The district remained Republican in both maps, but its Republican performance decreased as it was converted to a majority-White district, belying any partisan explanation for the change.[8]

[8] *Compare* Brooks Prelim. Inj. Ex. 262, ECF No. 1326-9 *with* Brooks Prelim. Inj. Ex. 261, ECF No. 1326-8.

CD 30. No single race formed a majority of CD 30 under the 2021 map, which was plurality Black. App. 45. The Legislature increased the district's Black population from 46.0% to 50.2% in the 2025 map. App. 45.

CD 32. Under the 2021 map, CD 32 was "a majority-non-White coalition district." App. 47. "The 2025 map radically reshapes the boundaries of CD 32 and converts it to a single-race-majority district by making it 58.7% White." App. 47.

CD 35. CD 35 was a "coalition district" with a 46.0% Hispanic plurality. App. 49. The 2025 map "converts CD 35 to a single-race-majority district by making it just barely majority Hispanic (51.6%). App. 49.

"In sum," the district court observed, the 2025 Map:

> (1) fundamentally changed the racial character of three of the four districts identified in the DOJ Letter, and dramatically dismantled and left unrecognizable all four districts;
>
> (2) eliminated seven total coalition districts;
>
> (3) created two new bare-majority-Hispanic districts, while eliminating an existing strongly majority-Hispanic district identified in the DOJ Letter; and
>
> (4) created two new bare-majority-Black districts.

App. 50.

V. The sponsoring and supporting legislators justified and sold the 2025 map based on its racial characteristics.

Like Governor Abbott, the sponsoring and supporting legislators justified and sold the 2025 map on account of its racial characteristics. For example, at the August 1, 2025, House Redistricting Committee hearing, Chair Hunter cited *Petteway*'s coalition district holding as a basis for undertaking redistricting and said "[i]t is

important to note that four of the five new districts are majority minority Hispanic CVAP districts."[9] Describing the districts' racial composition in detail, Chair Hunter explained that "Congressional District 9, the new district, has a 50.5% Hispanic CVAP. CD 28 – that's the Valley South – has an 86.7% Hispanic CVAP. CD 32 is a – and remains a nonminority district; CD 34, 71.9%, is now Hispanic CVAP. And CD 35, which is San Antonio, is now at 51.6% Hispanic CVAP."[10] He continued: "In the 2021 plan, there were 9 – that's 9 – Hispanic majority voting age districts. In this plan, there are 10 Hispanic majority voting age districts. In the 2021 plan, there were 7 Hispanic citizen voting age districts, and under this plan there are 8. There were no majority Black CVAP . . . districts under the 2021 plan. In the proposed plan today, there are 2 majority [Black] CVAP districts. CD 18 is now 50.8% Black CVAP. In 2021, it was 38.8. CD 30 is now 50.2% Black CVAP; in 2021, it was 46%."[11]

In a colloquy with Republican Rep. David Spiller, Chair Hunter agreed that the 2021 plan contained coalition districts and *Petteway* no longer required the creation of such districts. Rep. Spiller said: "Let's talk about District 18 in Harris County, what is referred to as the Barbara Jordan district. Is it your understanding that district 18 was, or currently is, a coalition district?"[12] Chair Hunter responded: "I can tell you that under this plan that it becomes a real performing Black CVAP district."[13] Rep. Spiller continued, regarding CD 18, "I would submit to you that it is

[9] Brooks Prelim Inj. Ex. 309-T, ECF No. 1327-9 at 54.
[10] *Id.* at 57-58.
[11] *Id.* at 58.
[12] *Id.* at 74.
[13] *Id.* at 74-75

currently a coalition district; under HB 4 it would not be . . . it goes from a coalition district to a majority Black CVAP district, being 50.81% Black." Chair Hunter responded, "That is correct."[14] Rep. Spiller then asked about CD 9, saying "Let's talk about District 9. My understanding is District 9 was also a coalition district and under HB 4, it changes from a coalition district to a majority Hispanic CVAP district, do you know whether that's correct or not?"[15] Chair Hunter responded, "Well, what we're doing, it moves District 9 is basically – in 2021, the Hispanic CVAP was 25.73[%]. The Black CVAP was 45.06[%]. In this proposal, the Hispanic CVAP is 50.41[%]."[16] Rep. Spiller responded, "So previously Hispanics did not hold a majority in that district and under this scenario, HB 4, they now do, correct?" Chair Hunter responded, "According to CVAP."[17]

Discussing CD 29 with Rep. Spiller, Chair Hunter said "It moves from a Hispanic majority CVAP district to what they call a non-Hispanic majority CVAP district. For example, in [CD] 29, the Black CVAP goes from 18.31% in 2021 to 32.79% under this proposal."[18] In a later exchange with Democratic Rep. Chris Turner, Rep. Turner asked: "On CD 29, in that district Hispanic CVAP was actually reduced by 20 percent to be less than 50%, why is that?" Chair Hunter responded, "Okay, on 29, Congressman [sic] Garcia's district, the Black CVAP went from 18.31 to 32.79, a plus

[14] *Id.* at 75.
[15] *Id.* at 77.
[16] *Id.*
[17] *Id.* at 77-78.
[18] *Id.* at 79.

14.48; the Hispanic CVAP went from 63.53 to 43.12, . . . it moves from a Hispanic majority CVAP to a non-Hispanic majority CVAP, increasing Black percentage."[19]

Republican Rep. Katrina Pierson also had a colloquy with Chair Hunter about the racial composition of the districts. About CD 35, Rep. Pierson asked, "This is one of the coalition districts that is now one of the majority Hispanic CVAP districts, is that correct?"[20] And Chair Hunter responded that CD 35 is now majority Hispanic CVAP, with an "increase of 5.71 change" in its Hispanic CVAP. *Id.* Rep. Pierson and Chair Hunter also discussed how the map created 50%+1 targets for Black CVAP. Rep. Pierson started by saying "There was a fear that if the lines were redrawn, that the new map would put in jeopardy the historic Barbara Jordan majority minority district in the Houston area. They felt like that might go away. Do you recall that?"[21] Chair Hunter responded, "That is correct, yes."[22] Rep. Pierson continued, "Well there were also stakeholders who testified during those field hearings that felt like the population of Black voters in the state did not have appropriate representation. Do you recall that testimony?"[23] Chair Hunter responded in the affirmative.[24] Next, Rep. Pierson asked, "This current map that you have submitted actually shows there's not just one but two majority Black CVAP districts drawn on this map; is that true?"[25] Chair Hunter responded, "That is correct. And let me give everybody details. CD 18 is now 50.8% Black CVAP; in 2021 it was only 38.8%. CD 30 is now 50.2% Black

[19] *Id.* at 878-9.
[20] *Id.* at 97.
[21] *Id.* at 99.
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id.* at 100.

CVAP, in 2021 it was 46%."[26] Rep. Pierson summarized, "So overall Black voters go from zero to two majority Black CVAP seats out of the 38 seats in Texas."[27]

Republican Rep. Terry Wilson also engaged in a colloquy with Chair Hunter, saying: "And, what I also understood, and to just be brass tacks, is that we went from seven to eight Hispanic and from zero to two Black, is that accurate?"[28] Chair Hunter agreed.[29]

Democratic Rep. Christian Manuel noted to Chair Hunter that CDs 9 and 35 were changed to be just above 50% Hispanic CVAP and CDs 18 and 30 were changed to be just above 50% Black CVAP and asked Chair Hunter if that was "just a coincidence."[30] Chair Hunter responded: "Nothing's a coincidence."[31]

Rep. Turner asked a series of questions regarding the justification for the purposeful use of race in redrawing these districts. Rep. Turner said, "Is there any evidence or data you have that would suggest that Black voters in CD 18 or CD 30 are unable to elect the candidates of their choice in the current configuration?" Chair Hunter responded "I don't have any evidence. You said do I have evidence? I don't, I don't have any evidence."[32] Rep. Turner continued, "Similarly, is there any evidence or data that shows that Latino voters in the existing CD 35 are unable to elect the candidates of their choice?" Chair Hunter responded, "As I told you, I don't have any

[26] *Id.*
[27] *Id.*
[28] *Id.* at 856-57.
[29] *Id.*
[30] *Id.* at 106.
[31] *Id.* at 107.
[32] *Id.* at 867-68.

data or any evidence."[33] Rep. Turner also asked, "Has [your law firm] conducted a racially polarized voting analysis within the new CD 9 to ascertain who the candidates of choice are with Hispanic voters and also Anglo voters?" Chair Hunter responded, "I don't know."[34] Asked by Rep. Turner whether he had "'purposely altered' certain coalition districts to make them single-race-majority districts, Chairman Hunter did not deny that he had." App. 76.

Asked by Rep. Thompson whether the map was drawn "race neutral," Chair Hunter responded: "I don't what you mean by race neutral. We're all talking race. We're all talking neutral."[35]

The House held its floor debate on August 20, 2025. Though Chair Hunter at times suggested that political performance was a factor motivating the map, he never provided any political data for the members to consider. Instead, he spoke in granular detail—and for hours—about the racial composition of the districts, trumpeting that the map met various racial targets. For example, he said early in his presentation, "It is important to note – please note members – four of the five new districts are majority minority Hispanic, what we call CVAP districts. That's the citizen voting age population. Each of these newly drawn districts now trend Republican in political performance."[36] He continued, "The five new districts we have. CD 9, 50.15% what we call Hispanic citizen voting age population. That's HCVAP. CD 28, which is

[33] *Id.*
[34] *Id.*
[35] *Id.* at 90.
[36] Brooks Prelim. Inj. Ex. 316-T, ECF No. 1327-16 at 29.

approximately 86.72% HCVAP. CD 32 remains a nonminority district. CD 34 71.93% HCVAP. CD 35, 51.57% HCVAP."[37]

He then spoke for over two minutes rattling off racial data—unprompted—about specific districts before claiming that political performance was a motivator. Here's what he said:[38]

> Some data points in comparison to 2021: In 2021 there were nine Hispanic majority age districts. In this plan, there are ten Hispanic majority age districts. In the 2021 plan, there were seven Hispanic citizen voting age districts, and under this plan there are eight. There are no Black CVAP districts under the 2021 plan. In the proposed plan there are two majority Black CVAP districts. CD 18, 50.71% Black CVAP compared to 38.99% in 2021. CD 30, 50.41% Black CVAP 46% in 2021. In the Harris County/Houston area, there are currently what they call two coalition districts and one Hispanic CVAP district. In the proposed plan CD 18 becomes a new Black CVAP district. CD 9 becomes a new HCVAP district. And CD 29 becomes a majority Hispanic VAP district – that's voting age population – which should continue their political performance. CD 9 – 50.15% HCVAP, CD 18 – 50.71% Black CVAP, CD 29 - 43.45 HCVAP and 32.69% Black CVAP. All surrounding Republican districts to continue to perform for the Republicans. This is a good plan, I urge its adoption. But Mr. Speaker, Members, you can use political performance, and that is what we've done.

So, Chair Hunter provided members racial data to consider in how to cast their votes, with an emphasis on HB 4's dismantling of multiracial majority districts in favor single-race majority districts. Chair Hunter did not present this data off the cuff, or in response to leading questions by Democratic members, but rather based on carefully prepared talking points that bulleted out the racial demographics of the map. App.71.

[37] *Id.* at 30.
[38] *Id.* at 30-31.

In a colloquy with Rep. Spiller, Rep. Spiller asked: "We talked about district 18, what we call the Barbara Jordan historic district. When we went to Houston we heard a lot of testimony about that. But it was under HB 4. It was – it's currently one of these coalition districts and under HB 4 [it] changes to a majority Black CVAP district, is that correct?"[39] Chair Hunter responded, "That's correct, it is now 50.71% Black CVAP. In 2021, it was 38.99% Black CVAP."[40] Then Rep. Spiller continued, "And so previously, Black voters in that district did not hold a majority, but under your bill, under HB 4, they actually do, is that correct?"[41] And Chair Hunter responded, "That is correct."[42] Rep. Spiller continued: "And also, relative to Harris County, we talked about District 9 - which was also second one in Harris County – a coalition district – and the district that was addressed in the *Petteway* case – and now under your HB 4, it changed from a coalition district to a majority Hispanic CVAP district, is that correct?"[43] Chair Hunter answered: "Yes. For the record, the Hispanic CVAP of congressional district 9 under this plan, the Hispanic CVAP is 50.15%. In 2021, it was 25.73%."[44]

Spiller summarized, unironically: "[T]his claim, that a lot of this stuff is racially motivated and race negative – let me ask you, and you've touched on it before, but we went under the current map from zero majority Black CVAP districts in the state of Texas. And now, under your map we added two to that list who weren't there.

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[39] *Id.* at 79.
[40] *Id.*
[41] *Id.*
[42] *Id.*
[43] *Id.* at 80.
[44] *Id.*

There are now two majority Black CVAP districts, correct?"[45] Chair Hunter responded: "Correct. 18, and – [that] is one of the ones that we've talked about – and 30."[46] Chair Hunter later asserted that "I think my map is much more improving [sic]" than the 2021 map because CD 18 was 50.8% Black in the 2025 map compared to 38.8% in the 2021 map.[47]

Later, Chair Hunter acknowledged that there was no partisan purpose or effect to the map's 50%+1 racial target for Black CVAP in CD 30, saying "Congressional [District] 30 . . . the political performance is unchanged. There was no Black CVAP in 2021. Now there is a Black CVAP in 2025. So, everybody has the information. The Black CVAP in [CD] 30 is 50.41%. The political performance is still Democrat."[48]

After the House passed HB 4, Speaker Dustin Burrows posted a statement on his X.com account, in which the first sentence reads: "The Texas House today delivered legislation to redistrict certain congressional districts *to address concerns raised by the Department of Justice* and to ensure fairness and accuracy in Texans' representation in Congress." App. 66.

The Senate debated HB 4 on August 22, 2025, and it passed early in the morning on August 23, 2025.

[45] *Id.* at 82.
[46] *Id.*
[47] *Id.* at 220.
[48] *Id.* at 336.

VI. The district court preliminarily enjoins the 2025 map as a racial gerrymander after a nine-day evidentiary hearing.

The district court held a nine-day evidentiary hearing featuring 23 witnesses and thousands of exhibits. It issued a well-reasoned, 160-page opinion granting Plaintiffs' motion for a preliminary injunction on November 18, 2025, concluding that Plaintiffs were likely to succeed in proving that six congressional districts from across the state (CDs 9, 18, 27, 30, 32, and 35) were unconstitutionally racially gerrymandered. App. 54. The court carefully considered the direct and circumstantial evidence.

"The direct evidence here is strong," the court concluded. App. 59. The court explained that the DOJ Letter "impos[ed] a 50% racial target for Texas to meet when drawing its districts." App. 59. The court found that "[l]awmakers initially showed little appetite to redistrict when the Trump Administration pressed the State to redistrict for exclusively partisan reasons. What triggered the redistricting process was the Administration reframing the request in exclusively racial terms." App. 62.

The court found Governor Abbott's Proclamation and subsequent press statements to be strong direct evidence of racial predominance. App. 61-64. "According to the Governor, the 2025 Map's *modus operandi* was to: (1) specifically target Hispanic and Black voters based on the assumption that Texan voters of color—especially Hispanics—now trend Republican; (2) take those voters out of their existing districts; and (3) place those voters into new districts—all because of their race." App. 63. The court found that Governor Abbott made a "stark admission" in his direct press statements to this effect. App. 63. "At the same time," the Court found,

"Governor Abbott consistently rejected the idea that Texas was redistricting to fulfill President Trump's demand for additional Republican districts." App. 64.

The court likewise found that "[d]irect evidence . . . shows that key legislators in the 2025 redistricting process had the same racial objectives as the DOJ and the Governor." App. 66. Speaker Burrows, for example, issued a press release upon the map's passage "announcing that the House had just 'delivered legislation to redistrict certain congressional districts *to address concerns raised by the Department of Justice* . . . .'" App. 66. The Chair of the House Republican Conference, Rep. Oliverson, was interviewed on August 6, 2025, on NPR, and when asked if the Legislature was redistricting in response to President Trump's request for more Republican seats answered: "No we are not. And in fact, the first conversations that I heard about and had myself regarding redistricting began before the legislative session began in January as a result of a court case where a federal appeals court basically rejected the idea of the coalition districts as being consistent with the Voting Rights Act." App. 68. Rep. Toth made similar comments in an interview. App. 68.

The court likewise found that the dozens of statements (some of which are recounted above) by Chair Hunter and his joint authors throughout the House proceedings provided direct evidence of racial predominance and were "more probative of the full Legislature's intent than those of other legislators." App. 69. The court found that Chair Hunter frequently volunteered, without prompting, "that the introduced map increased the total number of majority-Hispanic and majority-Black

congressional districts," and "the CVAP statistics for the majority-Hispanic and majority-Black districts in the introduced plan." App. 70-71.

The court found that "Chairman Hunter's floor statements and exchanges with other legislators suggest that he and the bill's joint authors viewed the plan's racial numbers not merely as raw statistical facts, but as selling points of the bill." App. 72. These included numerous exchanges with Reps. Pierson and Spiller and others discussed above. *See supra*; App. 72-79.

The court found that race was the overriding concern that could not be compromised:

> All the evidence discussed so far overcomes the presumption of legislative good faith. Chairman Hunter and the other joint authors evidently strategized that a map that eliminated coalition districts and increased the number of majority-Hispanic and majority-Black districts would be more 'sellable' than a nakedly partisan map. The legislators could point to the map's increased number of majority-minority districts to rebut accusations of racism. The Governor could promote the map to Hispanic voters who might be inclined to swing Republican. And legislators could deny they were redistricting for purely partisan reasons or to placate President Trump, and instead say that DOJ and *Petteway* forced their hand. It was, therefore, critical for the redistricting bill authors to compile a legislative record replete with racial statistics and references to *Petteway*—which is exactly what they did.

App. 76.

The court considered, and was unpersuaded, by contrary statements of legislators proffered by Texas. App. 79-90. The court found that Sen. Phil King, the chairman of the Senate Redistricting Committee, played a minimal role in the redistricting process. App. 81-2. The court thus "f[ou]nd Chairman Hunter's

statements regarding the purposes underlying the 2025 redistricting much more probative." App. 82.

What Sen. King *did* have to say in his testimony led the court to discredit and disbelieve this testimony. Sen King was the *only* legislator to communicate with Adam Kincaid, the outside mapdrawer, and the testimony from both men was inconsistent as to nearly *every* communication they had. App. 83-87. They gave different testimony about whether or not Sen. King sought information from Mr. Kincaid about the map that was under development, App. 83-84, leading the court "to question whether Chairman King, Mr. Kincaid, or neither one was accurately relaying the substance of their meeting . . . and whether anything happened during that meeting that would betray an unlawful legislative motive." App. 84. The court found that Sen. King's testimony was inconsistent with his Senate floor statements regarding his phone calls with Mr. Kincaid about the use of race in drawing the map, App. 85, causing the court to "further question his credibility." App. 86. "[T]he number of inconsistencies regarding potentially critical exchanges between the Chair of the Senate Redistricting Committee and the person who drew the 2025 Map makes us doubt the veracity of Chairman King's testimony." App. 87. The court thus concluded that it "d[id] not credit" his testimony. App. 87.

The court also discredited the testimony of Mr. Kincaid—who asserted an exclusively partisan purpose behind the map—and in any event found his state of mind not probative of the legislators' purpose in adopting the map. App. 91-104. "We [] discredit his testimony that he drew the 2025 Map blind to race." App. 96. Having

observed Mr. Kincaid on the witness stand, the court disbelieved his testimony that "he just coincidentally happened to transform not one, but *three*, coalition districts into districts that are single-race majority by half a percent or less." App. 97. The court noted that Mr. Kincaid saw a draft of the DOJ letter at a White House meeting the week before it was released, App. 98, and concluded that it was "far more plausible that Mr. Kincaid had both racial and partisan data turned on while drawing the 2025 Map and that he used the former to achieve racial targets that DOJ and the Governor had explicitly announced as he simultaneously used the latter to achieve his partisan goals," App. 99.

The court also "reiterate[d] the significant inconsistencies between Mr. Kincaid's testimony and Chairman King's testimony and his contemporaneous statements on the Senate floor. Just as those contradictions caused us to question Chairman King's credibility, they lead us to question Mr. Kincaid's veracity as well." App. 99.

In addition to the strong direct evidence, the court assessed the circumstantial evidence, including the map's characteristics and unrebutted computer-simulated map evidence from Dr. Duchin showing that maps achieving the purported partisan goals would not have the racial features of the 2025 map, and concluded that this evidence likewise pointed toward racial predominance. App. 105-128.

The court found that the equities favored an injunction and *Purcell* did not warrant withholding an injunction. The primary election is four months away and the general election a year away, the court reasoned. App. 144. It found that the

candidate filing period remains open for several weeks, App. 144, and the State is still operating elections under the 2021 map, App. 145. Even if *Purcell* concerns applied, the court found that Plaintiffs satisfied the heightened standard set forth in Justice Kavanaugh's *Milligan* concurrence. App. 148-49. In particular, the court found that "the underlying merits are clearcut in favor of the Plaintiff group." App. 152. The court thus ordered implementation of the 2021 map for the 2026 election. App. 157.

Judge Smith issued what he labeled a "dissent."

REASONS TO DENY A STAY

I. The district court correctly found that Plaintiffs' merits case was clearcut.

The district court correctly found that the merits were clearcut in Plaintiffs' favor, App. 152, including under this Court's *Alexander* decision, App. 130-134. The Fourteenth Amendment prohibits a governing body from "separat[ing] its citizens into different voting districts on the basis of race" without sufficient justification. *Miller v. Johnson*, 515 U.S. 900, 911 (1995). Plaintiffs establish a racial gerrymandering violation by showing "either through circumstantial evidence of a district's shape and demographics or more direct evidence going to legislative purpose, that race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." *Miller*, 515 U.S. at 916; *see also Cooper v. Harris*, 581 U.S. 285, 291 (2017); *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 187 (2017). "[R]ace may predominate even when a reapportionment plan respects traditional principles, if '[r]ace was the

criterion that, in the State's view, could not be compromised,' and race-neutral considerations 'came into play only after the race-based decision had been made.'" *Bethune-Hill*, 580 U.S. at 189 (quoting *Shaw v. Hunt*, 517 U.S. 899, 907 (1996)); *see also Miller*, 515 U.S. at 913, 916. While legislatures enjoy a presumption of good faith in redistricting their legislative maps, that presumption is overcome "when there is a showing that a legislature acted with an ulterior racial motive." *League of United Latin Am. Citizens v. Abbott*, 601 F. Supp. 3d 147, 181 (W.D. Tex. 2022) ("*LULAC I*"). "If a plaintiff can demonstrate that race drove the mapping of district lines, then the burden shifts to the State to prove that the map can overcome the daunting requirements of strict scrutiny." *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 11 (2024). "Under that standard, we begin by asking whether the State's decision to sort voters on the basis of race furthers a compelling governmental interest. We then determine whether the State's use of race is narrowly tailored—*i.e.*, necessary—to achieve that interest. This standard is extraordinarily onerous . . . ." *Id.* (cleaned up).

In *Alexander*, the Court explained that "[a] circumstantial-evidence-only case is especially difficult when the State raises a partisan-gerrymandering defense" in areas where "there is a high correlation between race and partisan preference." *Id.* at 9. *Alexander* thus establishes that if these three conditions are present, *i.e.*, (1) insufficient direct evidence of a predominant racial purpose, (2) a high correlation of race and partisan preference, and (3) invocation of a partisan gerrymandering defense, then a plaintiff bears "special challenges" and "must 'disentangle race from

politics' . . . ." *Id.* (quoting *Cooper*, 581 U.S. at 308). In cases where these three circumstances are present, *Alexander* held that challengers face an adverse inference if they do not produce an alternative map demonstrating that the state could have achieved its political objectives without the challenged racial effect. *Id.* at 34.

The Fourteenth and Fifteenth Amendments impose a "but for" causation standard. *See Hunter v. Underwood*, 471 U.S. 222, 232 (1985) (holding that Alabama's felony disenfranchisement law was intentionally discriminatory in violation of the Fourteenth Amendment's Equal Protection Clause because discrimination against Blacks was a "'but for' motivation for the enactment"); U.S. Const. amend. XV (prohibiting voting discrimination "on account of" race, color, or previous condition of servitude); *accord Bostock v. Clayton Cnty.*, 590 U.S. 644, 656 (2020) ("As this Court has previously explained, "the ordinary meaning of 'because of' is 'by reason of' or 'on account of.' . . . That form of causation is established whenever a particular outcome would not have happened 'but for' the purported cause.") (internal citations omitted). Plaintiffs' burden in a racial gerrymandering case is thus not to prove that all or even a majority of participating governmental actors harbored a predominant racial motivation, but rather to show that the map would not have been enacted "but for" the actions of those harboring a predominantly racial purpose.

The district court's "findings of fact—most notably, as to whether racial considerations predominated in drawing district lines—are subject to review only for clear error." *Cooper*, 581 U.S. at 293. "A finding that is 'plausible' in light of the full

record—even if another is equally or more so—must govern." *Id.* (quoting *Anderson v. Bessemer City*, 470 U.S. 564, 573 (1985)).

> And in deciding which side of that line to come down on, we give singular deference to a trial court's judgments about the credibility of witnesses. *See* Fed. R. Civ. P. 52(a)(6). That is proper, we have explained, because the various cues that 'bear so heavily on the listener's understanding of and belief in what is said' are lost on an appellate court later sifting through a paper record.

Id. (quoting *Anderson*, 470 U.S. at 575).

A. An *Alexander* alternative map is unnecessary because the district court found strong direct evidence of racial predominance.

An *Alexander* alternative map is unnecessary because the district court found that "the direct evidence [of racial predominance] is strong." App. 59. When the government officials *say they're doing racial gerrymandering*, courts don't need to sift through hypothetical maps to circumstantially assess their motivations.

The district court found that Governor Abbott resisted initial requests to call a special legislative session to pass a partisan gerrymander. App. 62. It was only once DOJ shifted gears and directed the State to eliminate multiracial majority "coalition" districts on account of their racial composition that Abbott called a special session to redistrict, citing those racial objections. App. 61-62.[49] Governor Abbott then did a media tour repeatedly confirming that he was directing redistricting to occur on account of race and refusing to say otherwise when skeptically asked point blank on CNN to confirm that his true motivation was partisan. App. 31-32, 62-64.

[49] The United States filed an amicus brief in this Court today suggesting (at 12-13) that its letter merely instructed Texas to ensure that three racial groups in its coalition districts prefer different candidates. That neither makes sense nor demonstrates a race-neutral instruction.

The district court, observing hours of video evidence of legislators' statements in committee, on the floor, in press interviews, and in court likewise found that the mountain of race-based statements demonstrated substantial direct evidence of a racially predominant purpose. App. 66-79. The court carefully assessed the testimony of the mapdrawer, Mr. Kincaid, and the only legislator to whom Mr. Kincaid spoke to during the redistricting process, Sen. King, and concluded that neither were credible or believable witnesses. App. 83-87, 96-99. This is an unsurprising conclusion because they contradicted each other, under oath, on *nearly every* aspect of their interactions. *See* App. 83-87, 96-99 (recounting inconsistencies in Sen. King's and Mr. Kincaid's testimony); App. 83 (finding Sen. King's and Mr. Kincaid's testimony a "concerning portion of the hearing evidence"); App. 86 (questioning Sen. King's "credibility"); App. 86 ("Respectfully, we disbelieve Chairman King . . . ."); App. 87 ("But the number of inconsistencies regarding potentially critical exchanges between the Chair of the Senate Redistricting Committee and the person who drew the 2025 Map makes us doubt the veracity of Chairman King's testimony."); App. 87 ("[W]e do not credit Chairman's King's testimony about the Legislature's motives."); App. 96 ("The Court Does Not Credit Mr. Kincaid's Testimony"); App. 97 ("Mr. Kincaid would have us believe . . . ."); App. 97 (noting that Mr. Kincaid's testimony "was inconsistent with the testimony of other witnesses and the enacted map's raw racial demographics"); App. 99 ("[W]e also reiterate the significant inconsistencies between Mr. Kincaid's testimony and Chairman King's testimony and his contemporaneous statements on

the Senate floor. Just as those inconsistencies caused to us to question Chairman King's credibility, they lead us to question Mr. Kincaid's veracity as well.").

There was only one legislator who interacted with Mr. Kincaid during the redistricting process, and the two got their stories straight on almost *nothing* during their testimony. The district court reasonably disbelieved both of their testimony—a determination this Court gives "singular deference." *Cooper*, 581 U.S. at 309 ("[W]e give singular deference to a trial court's judgments about the credibility of witnesses.").

The district court did not clearly err in concluding that "[t]he direct evidence here is strong." App. 59. The Governor declined to gerrymander on account of partisanship, the DOJ ordered him to do so on account of race, he immediately called a special session specifically to redistrict on account of race, the map matched those objectives, converting multiracial majority districts into single-race majority districts, the legislators trumpeted those facts at every opportunity, and the court found the mapdrawer's assertion he did not look at race be untruthful and not credible after observing him on the witness stand.

Because there is "strong" direct evidence that race was the predominant purpose, *Alexander* does not require Plaintiffs to produce additional circumstantial evidence (in the form of an alternative map) disentangling partisanship and race. The direct evidence accomplishes that disentanglement. *See Alexander*, 602 U.S. at 8 ("In such instances, if the State cannot satisfy strict scrutiny, direct evidence of this sort amounts to a confession of error."); *id.* at 9 (noting obligation to disentangle race and

politics in "circumstantial-evidence-only case" where race and politics are correlated and partisan gerrymandering defense is asserted).

Texas's contrary arguments are unavailing.

First, Texas contends (at 25) that neither DOJ's nor Governor Abbott's statements are relevant direct evidence because "[n]either is a 'relevant state actor' for purposes of the racial gerrymandering inquiry" as they did not draw the map. According to Texas (at 25), only Adam Kincaid is the relevant state actor because he drew the map "without staff, the Governor, or legislators present."

You will search the Texas Constitution in vain trying to find mention of Adam Kincaid. The contention that the *Governor* is an irrelevant state actor to the lawmaking process is head spinning. To the contrary, Governor Abbott's intent is of singular importance because *but for* his decision to call a special session of the legislature and include congressional redistricting as a legislative topic, the 2025 map would not exist. He is the *only* "relevant state actor" who could do that. *See* Tex Const. art. III, § 40. And as the district court found, Governor Abbott disclaimed a partisan purpose and expressly claimed a racial one live on television, many times over. App. 31-32. The Court could start and stop its analysis there because there would be no 2025 map absent the Governor's racially predominant purpose. *See Hunter*, 471 U.S. at 232 (noting "but for" causation standard for Fourteenth Amendment claim). Likewise, without the state House and Senate, the 2025 map would not exist. And, given that the map did not clear a veto-proof threshold of support, without the Governor's signature on the bill, the 2025 map would not exist. Texas also is wrong

to discount DOJ's relevance. Indeed, this Court in *Miller* relied heavily on the evidence that Georgia had acquiesced to DOJ's "max Black" demands in finding that state's congressional map to be racially gerrymandered. 515 U.S. at 920-23. Here, the district court found that Governor Abbott expressly set off the redistricting—which was his exclusive power to do—based upon DOJ's race-based demands and threat to sue. App. 59-64. That was not clear error.

Texas misreads *Alexander* (at 25) for the proposition that only the actual mapdrawer can provide direct evidence that race was the predominant purpose in a map's adoption. *Alexander* said that "[d]irect evidence *often* comes in the form of a relevant state actor's express acknowledgment that race played a role in the drawing of the lines." 602 U.S. at 8 (emphasis added). The point is that direct evidence often comes from those with knowledge regarding the map's configuration and the power to make it become law. *Alexander* does not say—and it would make zero sense for it to say—that a private out-of-state consultant is the only relevant person from whom direct evidence can be obtained in adjudicating whether a map became law for racially predominant reasons.[50]

Second, Texas's reliance on Mr. Kincaid's partisan-focused testimony is misplaced because the district court observed his testimony and demeanor on the witness stand for a day-and-a-half and found him not credible and not believable. App. 96-99. This Court did not have that opportunity and thus it gives "singular

[50] Indeed, Sen. King said during the committee hearings that the mapdrawer's intent was "irrelevant" because "the methodology gets wiped out by our legal scrub and the mental state gets knocked out by our policy decisions." Brooks Prelim. Inj. Ex. 308-T at 31, ECF No. 1327-8.

deference" to the district court's credibility determination. *Cooper*, 581 U.S. at 309. Texas is thus wrong (at 24, 29-30) to ask this Court to credit Mr. Kincaid's testimony when the district court emphatically discredited it. For the same reason, Mr. Kincaid's recitation of the timing of his map drawing does not "vitiate" the district court's findings, as Texas suggests (at 25-26). The district court rightly disbelieved Mr. Kincaid based upon his testimony and demeanor in court.[51] And Mr. Kincaid and White House officials ensured that their communications during this time would be undiscoverable, having programmed the Signal messaging platform to auto-delete them every day.[52] In any event, the timing of Mr. Kincaid's map drawing is not relevant to the legislators and Governor's purpose in adopting the map.

Third, Texas wrongly discounts (at 27-29) the district court's factual findings regarding the mountain of race-focused statements by Chair Hunter and his joint authors. Texas contends (at 28) that the district court clearly erred in finding that the "value-laden" nature of the legislators' racial comments indicate purpose rather than awareness, suggesting that this "creates a trap" for legislators. But the district court reached this conclusion by *watching videos* in live court of the legislators making these statements—including their tone, expressions, and demeanor in making the statements—and determined from doing so that the statements communicated a racial purpose, not merely a racial awareness. App. 73 (recounting

[51] The United States argues (at 20) that the Court should disbelieve Sen. King, not Mr. Kincaid. The district court, not DOJ, gets to make credibility determinations, and DOJ was absent from the courtroom so had no occasion to observe Mr. Kincaid's testimony. The district court apparently viewed Mr. Kincaid's certainty during his testimony as suspect given that the portions of it that were testable by another witness's testimony were all contradicted. This Court defers to the district court's credibility determinations, not those of a non-party amicus.

[52] Tr. Day 6 PM (Oct. 7, 2025) at 16.

legislator statements casting the racial changes as purposeful and desirable). It was not clear error for the district court to physically observe these statements and determine the speakers' body language, demeanor, and purpose. It would be error for this Court to cast aside the district court's factual findings.

Moreover, Texas is wrong to contend (at 27) that the district court clearly erred in finding the statements of Chair Hunter and his joint authors more probative of legislative intent given that that there are many other legislators who voted in favor of the bill. The Fourteenth and Fifteenth Amendments impose a "but for" causation standard, and it is not error for the district court to conclude that but for the racially predominant purpose of the bill authors, the map would not have passed in its racially gerrymandered configuration. In *Cooper*, this Court affirmed a finding of racial predominance based primarily upon the statements of the two bill sponsors, North Carolina Sen. Rucho and Rep. Lewis. 581 U.S. at 299-300, 310. The Court did not demand—and never has—that a plaintiff prove up the mental state of every supporting legislator. One "but for" cause suffices to prove a violation.

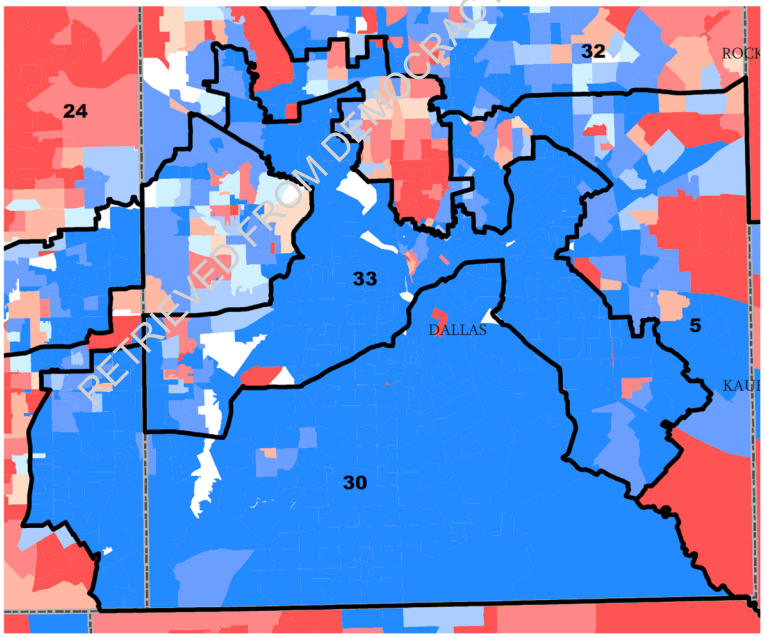
The "strong" direct evidence of racial predominance makes *Alexander*'s alternative map analysis irrelevant to this case.

B. *Alexander*'s alternative map analysis is irrelevant to the districts in areas that are entirely Democratic or Republican where there is nothing to disentangle.

Even absent the strong direct evidence, *Alexander*'s alternative map analysis is wholly irrelevant to the district court's findings regarding several congressional

districts where there is no plausible disentanglement of race and politics to accomplish.

CD 30. Mr. Kincaid testified that he took the territory that became CDs 30 and 33 "and drew one megadistrict, for lack of a better term, of the most Democrat VTDs I could find in Dallas and Tarrant County and put them all in one district."[53] He did this so that he could just set aside the Democratic territory to deal with later. *Id.* He testified that he did not pay attention to core retention or incumbent residence for the Democratic districts. App. 95. That "megadistrict" of CD 30 and 33—with the partisan shading for the 2024 presidential election—can be visualized in the image below:[54]



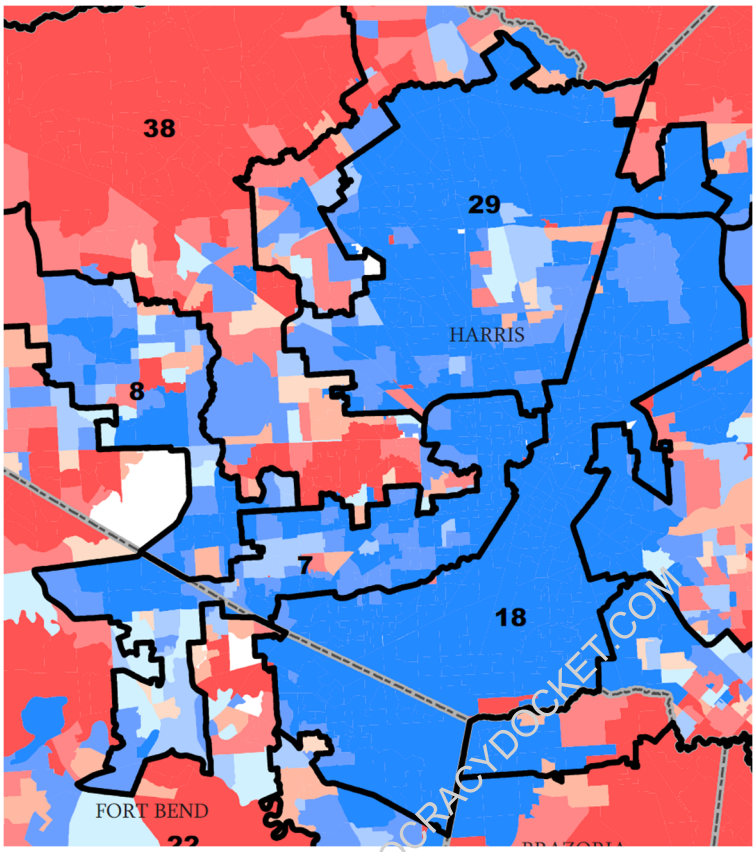
For CD 30, Plaintiffs' racial gerrymandering claim on which they prevailed was that in selecting which territory to include in CD 30 versus CD 33, the State racially

[53] Day 6 (Oct. 7, 2025) AM Tr. at 102, ECF No. 1419.
[54] Brooks Prelim. Inj. Ex. 349, ECF No. 1328-8.

gerrymandered to convert CD 30 from a coalition district into a Black CVAP majority district. That is what the district court concluded happened. App. 45-46, 97, 137. An *Alexander* map serves no purpose in that assessment because nearly *all* of the relevant territory's voting precincts are Democratic, shown in blue above. There is not a partisan motive for dividing Black, Latino, and White Democrats across two districts, to ensure that one of the two resulting Democratic districts will be majority Black. Nor is there any credible evidence that the racial makeup of these districts likely would have been achieved by pure chance. By contrast, Dr. Duchin's testimony indicates this is statistically unlikely. *See infra*. Thus, there is no disentangling of race and politics to do among the precincts divided between CDs 30 and 33.

CD 18. The same is true for CD 18. There is no disentangling of politics to accomplish in determining whether the State racially gerrymandered CD 18 from among the territory available for Democratic districts (CD 7, 18, and 29) to make CD 18 transform from a coalition district to a Black CVAP majority district.[55]

[55] Brooks Prelim. Inj. Ex. 347, ECF No. 1328-6.



Texas's explanation (at 32)—that CD 29 was made a "Democratic vote sink" and that CD 7 remained because Mr. Kincaid was unable to eliminate two Houston area Democratic districts—does nothing to explain the division of votes along racial lines among Democratic districts in CDs 7, 18, and 29. The district court reasonably found it non-credible that intentionally sinking Democratic voters from racially diverse districts into CD 29 without considering race would have the accidental effect of raising CD 18's Black CVAP from 38.8% to a bare majority 50.8%.[56] This finding was particularly reasonable in light of the fact that Chair Hunter and his joint authors loudly trumpeted this change as a selling point for the map.

[56] Brooks Prelim. Inj. Ex. 316-T, ECF No. 1327-16 at 220.

CD 27. An *Alexander* map would likewise have no relevance for CD 27 because while it was converted from a multiracial majority coalition district to a single-race White majority district, App. 43-44, it was a Republican district in the 2021 map and remained one in the 2025 map. App. 107-08. And while Texas cites (at 35) Mr. Kincaid's explanation for the changes to CD 27 as "dispositive," the district court discredited and disbelieved Mr. Kincaid. An *Alexander* alternative map is not necessary to disentangle politics from race when there is no change to the affected district's politics.

An *Alexander* alternative map cannot plausibly be a requirement to prove a racial gerrymandering claim about districts where there is no disentanglement of race and politics to accomplish.

C. Circumstantial evidence disentangled race from partisanship.

The record contains substantial circumstantial evidence that disentangled race from partisanship. The court credited the expert analysis and testimony of Dr. Duchin, who generated computer-simulated maps designed to control for the 2025 map's Republican partisan performance. App. 125. Her analysis showed that the racial outcomes of the 2025 map were a statistical outlier if partisanship were the aim. App. 108-127. Dr. Duchin's testimony went unrebutted by Texas's experts. App. 122. Texas contends that the district court clearly erred in crediting her testimony, but that is not so.

Texas contends (at 36) that the district court clearly erred in crediting Dr. Duchin's analysis because her simulations achieved a 55% Trump performance floor

while many enacted Republican districts exceeded that amount. But Dr. Duchin's 55% Trump floor actually *exceeds* the Trump floor achieved by the 2025 map. App. 125. And, as the district court observed, this was only a floor (not a ceiling) and thus her simulated maps did not "deviate[] materially" from the Republican performance of the 2025 map. App. 125.

Texas likewise contends (at 36) that the district court clearly erred in crediting Dr. Duchin because she used election results rather than Mr. Kincaid's "proprietary block and sub-block electoral data" to draw the map. Of course, Dr. Duchin had no access to Mr. Kincaid's "proprietary" data and nothing in *Alexander* requires that she somehow gain access to it. Rather, she matched the Republican political performance of the 2025 map—precisely the task at hand. Texas would have the Court make the *Alexander* task impossible. Dr. Duchin likewise accounted for core retention by focusing her analysis on geographic clusters rather than generating statewide maps. App. 122-123.

The district court cited other circumstantial evidence. It correctly observed that the 2025 map left the one majority-White Democratic district—CD 37—intact while focusing its dismantling on the coalition districts represented by minority members of Congress. App. 106-107. Texas cites (at 33-34) no actual evidence or testimony to support its contention that it would not have been possible to crack apart Austin's Democratic voters instead of minority Democratic voters elsewhere. Indeed, the Austin-based CD 37 was a new congressional district following the 2020 Census and the prior decade's map (last used in the 2020 election) did exactly what Texas

now says is impossible—it cracked apart White Austin Democrats rather than, for example, Hispanic and Black Democrats in neighboring CD 35.[57]

The direct evidence in this case is clearcut and easily supports the district court's injunction. The circumstantial evidence only adds to that conclusion.[58]

II. The remaining stay factors favor Plaintiffs.

To warrant a stay, Texas must show it will be irreparably harmed absent a stay and that a stay will not substantially injure the other parties or the public interest. *Nken*, 566 U.S. at 433-44. Texas fails to do so.

Texas asserts it is irreparably injured because it will be forced to effectuate congressional districting under the Legislature's previously enacted congressional districts. *Cf.* Stay App. at 38 (asserting a state is irreparably injured when enjoined from effectuating statutes enacted by the peoples' representatives). Texas cannot contend that it is seriously—much less irreparably—injured by using a map enacted by the Legislature and used for the past two congressional elections. This is particularly so given that Texas has vociferously defended that map for the past four years, including during a four-week trial earlier this year. The lack of harm to Texas is evident for at least three reasons.

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[57] Brooks Prelim. Inj. Ex. 445, ECF No. 1331-15.

[58] For all the reasons above, an *Alexander* alternative map is not necessary here. But it bears noting that the task could not even be undertaken until Mr. Kincaid's supposed mapping criteria were announced after Plaintiffs rested their case. And contrary to Defendants' contention, there was no way to confirm that Mr. Kincaid was even actually the mapdrawer until the hearing. During the legislative process, legislators denied knowing whether Mr. Kincaid was the mapdrawer. *See, e.g.*, Brooks Prelim. Inj. Ex. 300 at 20, ECF No. 1327-1. (Sen. King demurring); Brooks Prelim. Inj. Ex. 301-T at 21, ECF No. 1327-2 (Chair Vasut declining any knowledge); Brooks Prelim. Inj. Ex. 309-T at 88, 89, 127, ECF No. 1327-9 (Chair Hunter clueless as to mapdrawer's identity). Indeed, even *after* Mr. Kincaid testified, legislative leaders who subsequently testified *still* disclaimed knowing whether Mr. Kincaid was the mapdrawer. Trial Tr. PM (Oct. 9, 2025) at 127-28, ECF No. 1305 (Chair Vasut).

First, unlike in other redistricting cases, Texas here concedes that it lacked any compelling interest in amending the map in 2025, Stay App. at 3, (disclaiming any constitutional imperative for the mid-decade redistricting); *contra Merrill v. Milligan*, 142 S. Ct. 879 (2022) (involving challenge to map that was drawn pursuant to Alabama's constitutional obligation to redistrict after the decennial census).

Second, even if Texas succeeds on the merits—which it is unlikely to do, *see supra*—it will succeed only in vindicating an interest that is, by its very nature, "incompatible with democratic principles." *Ariz. State Legislature v. Ariz. Independent Redistricting Comm'n*, 576 U.S. 787, 791 (2015), and that this Court has expressly declined to condone, *Rucho v. Common Cause*, 588 U.S. 684, 719 (2019) ("Our conclusion does not condone excessive partisan gerrymandering."). Texas is not irreparably injured by a temporary injunction of an unconstitutional act, even if it could ultimately prove its unlawful actions cannot be challenged. *Contra Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (finding "likelihood" of irreparable harm where Maryland was precluded from implementing a statute that might ultimately be deemed constitutional, rather than one that might ultimately be deemed unconstitutional but nonjusticiable). Unlike in *King*, the injunction does not impose any ongoing harm to Texas's ability to enforce its criminal laws or otherwise engage in the ordinary business of the state. *Cf. id.*

Third, as the district court correctly noted—and Texas does not dispute—Texas continued to use the 2021 map even after it was purportedly "repealed" by the Legislature, including using the precinct boundaries for all November 2024 elections

and using the district lines for the CD 18 special election. And Texas will continue to use the 2021 map for the January runoff for CD 18. App. 145. Texas will not suffer an irreparable injury to its lawmaking authority by the district court's order allowing the State to continue to use the same legislatively enacted map it is currently using rather than being forced to engage in a court-ordered remedial process or implement a non-legislatively enacted map. *Cf. Merrill*, 142 U.S. 879 (stay issued where previously enacted map predated the decennial census and thus reverting to its use would violate one-person, one-vote). Indeed, this is precisely what counsel for the State agreed would happen if Plaintiffs succeeded on their preliminary injunction, even before any substantive hearing took place. *See* Aug. 27, 2025 Minute Entry, ECF No. 1145, Aug. 27, 2025, Hrg. Tr. 32:4-9 (conceding that if the 2025 map is enjoined, the 2021 map is still in place).

By contrast, allowing the 2025 map to go into effect will irreparably harm Plaintiffs and the Black and Latino voters who Texas sorted into the challenged districts based on their race. Irreparable harm occurs where it "would be difficult—if not impossible—to reverse the harm," *Hollingsworth*, 558 U.S. at 195, or where an applicant cannot "be afforded effective relief" even if she eventually prevails on the merits, *Nken*, 556 U.S. at 435. Sorting citizens into voting districts based on race is, "by [its] very nature odious to a free people whose institutions are founded upon the doctrine of equality," unless justified by a compelling interest. *Shaw v. Reno*, 509 U.S. 630, 643 (1993) (quoting *Hirabayashi v. United States*, 320 U.S. 81, 100 (1943)). No post-hoc remedy exists for subjecting citizens to racial discrimination in voting.

League of Women Voters of N.C. v. North Carolina, 769 F.3d 224, 247 (4th Cir. 2014) ("[O]nce [an] election occurs, there can be no do-over[s] and no redress. The injury to these voters is real and completely irreparable if nothing is done."); *see also* Op. at 137-38 (collecting cases establishing that the loss of constitutional rights is irreparable).

Finally, the public interest also weighs against a stay. Voters, election officials, candidates, and the general public all have an obvious interest in elections that are free from discrimination on the basis of race. *Shelby County v. Holder*, 570 U.S. 529, 557 (2013) ("any racial discrimination in voting is too much."). Moreover, the public interest is better served by preventing unconstitutional racial discrimination than allowing inactionable political discrimination. *See Shelby County*, 570 U.S. at 557 ("injunctive relief is available in appropriate cases to block voting laws from going into effect"); *cf. Arizona Indep. Redistricting Committee*, 576 U.S. at 791.

III. Defendants have not established they are entitled to a stay under *Purcell*.

Under *Nken*, "[t]he party requesting a stay bears the burden of showing the circumstances justify an exercise of that discretion." 566 U.S. at 433-34. This includes showing that *Purcell* applies. *See id.*; *cf. Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring) (suggesting that it is Plaintiffs burden to show that Defendants are *not* entitled to extraordinary equitable relief). Indeed, *Purcell* simply provides a gloss on the typical *Nken* analysis that allows defendants to obtain a stay when they can show that a "late-breaking judicial intervention" related to state election laws will have deleterious effects on "voter confusion and participation." *Purcell v. Gonzalez*, 549

U.S. 1, 4-5 (2006); *see also* Op. at 140-157 (applying *Purcell* in the context of the *Nken* factors).

The district court correctly concluded that *Purcell* does not warrant a stay here. The only portion of the 2026 election that is currently underway is the candidate filing period, which opened on November 8, 2025, and closes on December 8, 2025. The Court issued its opinion on November 18, just ten days after the filing period opened, and twenty days before the period closes. At the hearing, Texas's Director of Elections, Christina Adkins, testified that the court could extend candidate filing period at least one week without any impact on the rest of the 2026 electoral calendar, including counties' ability to test mail ballots, which cannot begin until after the filing period closes. Trial Tr. PM (Oct. 8, 2025) 30:18-31:18, ECF No. 1304 (Adkins) (affirming declaration Texas submitted into evidence stating that candidate filing could be extended one week without causing significant administrative issues); App. 561 (Adkins noting that ballot testing begins after the candidate filing period closes). As such, even absent a stay, Texas can recoup all but three days of the candidate filing period if it determines that the public interest favors providing candidates additional time to file and ask the district court to amend its injunction accordingly. *See id.* And it can do so without affecting ballot testing or causing the "cascading effect" on deadlines presented in their application. *See* Stay App. at 11 (omitting Adkins' testimony that a week extension would be unproblematic); *see also* App. 151 (Adkins testifying that "Texas election officials and systems are more than capable of proceeding with the 2026 congressional election under any map that is the law.").

Moreover, Texas concedes that candidates have already filed and begun campaigning under both the 2021 and the 2025 maps. Stay App. at 16. While swift resolution of Texas's stay motion is certainly necessary to resolve any ongoing confusion for candidates over which map will be in place for 2026, that confusion will be remedied by a denial of the stay just as effectively as it would be by allowing the unconstitutional map to remain in place. Denying the stay would redress all the harms identified by Texas, by confirming that the 2021 districts will be used for 2026, allowing candidates to alternatively submit their candidate applications and pay the filing fee, or collect signatures in lieu of the fee. App. 553. Candidates who have already declared need only take the additional step of withdrawing their existing petition before filing in their desired district. Tex. Elec. Code § 145.001 (authorizing a candidate to withdraw from an election). Nothing in Texas's stay application suggests that potential candidates—who are undoubtedly following this Court's actions closely—will be unable to complete these actions by December 8 if this Court denies the stay, and certainly not by December 15 if Texas asks the district court to give candidates more time within the acceptable period identified by the State. *See* Trial Tr. PM (Oct. 8, 2025) 30:18-31:18, ECF No. 1304 (Adkins) (acknowledging candidate filing could be extended one week without significant effect on election calendar).

Indeed, as the district court rightly determined, it is Texas's entirely voluntary decision to engage in mid-district redistricting, shortly before candidate filing opening, that resulted in the instant confusion. App. 146-47. While it may be the

state's "prerogative" to "toy with its election laws close to" the election, *see id*. (*citing Milligan*, 142 S. Ct. at 881 (Kavanaugh, J., concurring)), the state has no prerogative to discriminate against voters based on race merely because it does so within spitting distance of the candidate filing period. As the district court correctly noted, using *Purcell* to create a blackout period in which states are able to engage in unconstitutional electoral discrimination with impunity would result in perverse effects. App. 153-56.

Moreover, Texas's voluntary mid-decade redistricting does not present the same circumstances as in *Merrill* or *Robinson*, the two cases upon which Defendants primarily rely. Both suits involved challenges to redistricting maps drawn in compliance with states' constitutional obligation to redistrict after the decennial census. *Merrill v. Milligan*, 142 S. Ct. 879 (2022); *Robinson v. Ardoin*, 37 F. 4th 208, 229 (5th Cir. June 12, 2022). Because the 2020 census data was delayed as a result of the pandemic, neither Alabama nor Louisiana began their decennial redistricting processes until late in the fall of 2021. *Singleton v. Merrill*, 582 F. Supp. 3d 924, 939 (N.D. Ala. 2022), *order clarified*, No. 2:21-CV-1291-AMM, 2022 WL 272637 (N.D. Ala. Jan. 26, 2022), and *aff'd sub nom*. *Allen v. Milligan*, 599 U.S. 1 (2023); *Robinson,* 37 F. 4th at 215. As a result, both maps were ultimately passed within mere weeks of the candidate filing deadlines for the 2022 primary elections. *See* Stay App. at 14. And, when the injunctions in both cases were issued, there was no pre-existing legislatively enacted map to return to, because all parties—including the defendants—understood that the previous maps violated one-person, one-vote.

None of those factors exist here. Texas did not adopt the 2025 map as an imperfect response to a constitutional obligation under an unfortunately truncated timeline. Instead, Texas waited until weeks before the candidate filing deadline opened to voluntarily redistrict its congressional map, while openly and intentionally dismantling districts based on race. *See supra*. In so doing, the Legislature replaced a one-person, one-vote compliant map that the State spent the past four years defending against both constitutional and statutory discrimination claims.

Unlike in *Milligan* and *Robinson*, the district court here did not require the Legislature to engage in a remedial process, but rather allowed Texas to return to its previously enacted map. *See* App. 157-58. Nor did the district court err in imposing a legislatively enacted remedy rather than waiting for the Legislature to act. *See* App. 157-58. The district court correctly determined that waiting to see if the Legislature would voluntarily adopt a new map would be "impracticable" in light of Texas's asserted concerns about the approaching election deadlines, especially given that the Legislature is not in session and is not scheduled to be in session before the 2026 election. *Id.* Instead, re-imposing the Legislature's previous map ensured that election officials can move forward with minimal disruption from the court, while also avoiding dragging the Legislature into a court-ordered remedial process. And, as the *Gonzalez* plaintiffs pointed out below, nothing in the district court's order precludes the legislature from nonetheless "tinkering with its election rules" in the wake of the injunction, though Texas's dire warnings about the potential for disruption to the 2026 election certainly counsel against any such efforts here.

Indeed, by directing Texas to revert to the legislatively enacted maps from 2021 rather than initiating remedial proceedings, the district court avoided the pitfalls of the *Merrill* and *Robinson* injunctions, which required election officials to implement an entirely new map in the lead up to an imminent election. Here, by contrast, the 2025 map is what imposes additional burdens on election officials. Indeed, Texas does not attempt to justify its stay motion based on any hardship in proceeding with the 2021 map but rather on the efforts election officials would have to undertake to be *ready* to implement the 2025 map for 2026. *See* Stay App. at 15. Even there, Adkins testified that county elections officials have only taken minimal steps towards implementing the new maps. App. 552 (noting that counties will have to redraw their precinct boundaries to comply with the new map, and that some counties had begun "mapping out" those changes); *see also* App. 568 (noting that because "large parts of Texas were not impacted by this congressional redistricting" only some precinct lines need to be changed). In other words, some election officials may have done some work that will be rendered unnecessary if they are allowed to conduct the 2026 elections under the existing district and precinct boundaries they have been using for half a decade. *See* Trial Tr. PM (Oct. 8, 2025) 21:22-22:3, ECF No. 1304 (Adkins) (testifying that the effect of an injunction on the voters would be to maintain the same district and precinct boundaries under which they last voted). Indeed, unlike in *Merrill* and *Robinson*, the injunction ultimately *reduces* election officials' work by allowing them to proceed under an existing map rather than forcing them to implement a new map.

Finally, the Brooks Plaintiffs do not come to this court with "unclean" hands. Texas asserts that a stay is warranted because certain legislators opted to invoke their right to break quorum during the first called session. But the Brooks Plaintiffs—like the vast majority of the Plaintiffs in this suit—are not legislators and had no control over the timing of the legislative process. Nor did the affected voters whom the Legislature sorted into districts based on race. Instead, Plaintiffs diligently sought relief from the courts as soon as it became clear that the 2025 map would become law and did everything in their power to obtain relief without disrupting the electoral calendar. *See* App. at 149 (noting that Plaintiffs "'begged' . . . the Court to set the preliminary-injunction hearing as soon as possible."); *compare also* Aug. 27, 2025, Minute Entry, ECF No. 1145, Hrg. Tr. at 10:16-17, 41:8-9 (Plaintiffs' counsel informing the Court they could proceed to a preliminary injunction hearing as early as September 2, 2025, and at any time thereafter with at least 48 hours' notice to get witnesses to El Paso); *cf. id*. at 26:22-25 (Defense counsel stating that the State could be prepared by October 1); *Rose v. Raffensperger,* 143 S. Ct. 58 (2022) (Mem.) (granting application to vacate stay issued based upon *Purcell* where the defendant "could not fairly have advanced" that argument having approved of the district court's schedule for trial and decision).

In light of the foregoing, and because Plaintiffs also made a clearcut showing that Texas racially gerrymandered the 2025 map, the district court correctly concluded that Plaintiffs satisfy even the heightened showing proposed by Justice Kavanaugh in his *Milligan* concurrence.

* * *

The Governor of Texas called a special session to dismantle districts on account of their racial composition. He did so at the demand of the federal government, which wanted Texas to eliminate multiracial majority districts and replace them with single-race majority districts. The legislative record is replete with statements by the map proponents heralding not only those goals, but the successful racial balkanization achieved in pursuing those aims. The map in fact does exactly what DOJ, the Governor, and the legislators stated. Meanwhile, the testimony of the mapdrawer and the only legislator with whom he interacted was inconsistent in nearly every way, causing the district court reasonably to discredit both. This may be the clearest direct evidence of racial gerrymandering ever to land at this Court's feet.

And the election is over a year away. No one will be confused by using the map that has governed Texas's congressional elections for the past four years. Denying the stay would cause *less* work for Texas election officials.

It would be a travesty of justice if this Court were to stay the district court's well-reasoned opinion enjoining this map under these exceptional circumstances.

CONCLUSION

For the foregoing reasons, the application for a stay should be denied.

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