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**IN THE SUPREME COURT OF THE UNITED STATES**

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GREG ABBOTT, IN HIS OFFICIAL CAPACITY AS THE GOVERNOR OF  
THE STATE OF TEXAS, *et al.*,

*Applicants,*

v.

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

*Respondents.*

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**GONZALES RESPONDENTS' OPPOSITION TO  
EMERGENCY APPLICATION FOR STAY**

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## INTRODUCTION<sup>1</sup>

After a nine-day hearing, the district court reached a rather obvious conclusion. Texas adopted new congressional districts in August for exactly the reason the Governor announced on television: to “make sure that we have maps that don’t impose coalition districts” after the Fifth Circuit held the Voting Rights Act no longer required them. Brooks Ex. 325T at 3–4, ECF No. 1327-25<sup>2</sup>; see *Petteway v. Galveston County*, 111 F.4th 596 (5th Cir. 2024) (en banc).<sup>3</sup> Asked directly on CNN if he was not really “doing this to give Trump and Republicans in the House of Representatives five additional seats,” the Governor denied it: “the reason we are doing this is because of that court decision.” Brooks Ex. 335T at 5, ECF No. 1328-1.<sup>4</sup>

These are not cherry-picked statements—this was the entire thrust of the Governor’s justification for authorizing redistricting. See App. 62–64. The Governor expressly echoed that same justification in his formal special session proclamation. See Gonzales Ex. 43, ECF No. 1389-2. Legislators throughout the legislative process

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<sup>1</sup> This Response is filed on behalf of the Respondents who are plaintiffs in *Gonzales v. Nelson*, No. 1:21-CV-00965, one of five separate cases consolidated for all purposes below. The Gonzales Respondents are thirteen Black and Latino Texas voters, one or more of whom is an eligible voter in each of the districts challenged.

<sup>2</sup> All “ECF No.” citations are to the corresponding docket entry in *LULAC v. Abbott*, No. 3:21-cv-259 (W.D. Tex.). Pincite pages are to the electronic page of the PDF file.

<sup>3</sup> The full video of the FOX 4 interview, which is in the record and much of which was played at the hearing, is available here: <https://youtu.be/PHsYs0NTPTY?si=vOTj25G0uBWq9S97&t=193>.

<sup>4</sup> The full video of the CNN interview, which is in the record and much of which was played at the hearing, is available here: <https://youtu.be/Ip4ZILggIuM?si=1MPEvXvKcz5-crPQ&t=183>.

repeated the same rationale, again and again: They were adopting a new map to eliminate coalition districts because of *Petteway*. See App. 66–78. And that is what they did. The 2021 Map had nine districts in which no one racial group made up a majority of eligible voters; the 2025 Map that Governor Abbott signed has just four. See Gonzales Ex. 39, ECF No. 1385, tbl. 5, 6; see also Gonzales Exs. 17, 19, ECF Nos. 13881-1, 1388-3.

Texas lawmakers’ express motivation to eliminate coalition districts is so undeniably unconstitutional that Texas has never tried to defend it. See App. 19–30. A “coalition district” is *defined* by its racial makeup—the presence of “two [or more] minority groups” who “form a coalition to elect the candidate of the coalition’s choice.” *Bartlett v. Strickland*, 556 U.S. 1, 13 (2009) (plurality op.). To intentionally destroy coalition districts requires targeting districts based on race and redrawing them to “separate voters into different districts on the basis of race”—the definition of racial gerrymandering. *Shaw v. Reno*, 509 U.S. 630, 649 (1993). And there was no “sufficient justification” for doing that here. *Id.* Texas does not argue, and has never argued, that the targeted districts were racial gerrymanders in the 2021 Map; it has always insisted that the 2021 Map was drawn race-blind. App. 14–15. Nor has Texas ever argued that the VRA required the creation of the additional, single-race majority-minority districts in the 2025 Map. See, e.g., Application at 24–30. The record would refute any such argument, because most of the multi-race districts Texas destroyed were already performing for minority voters, but many of the new single-race districts that replace them in the 2025 Plan will not. Gonzales Ex. 39 at 9, ECF No. 1385.

This case is therefore nothing like *Alexander v. S.C. State Conference of NAACP*, 602 U.S. 1 (2024). The record here teems with “relevant state actor[s] express acknowledgment[s] that race played a role” in the enactment of new districts in ways that Texas is utterly unable to defend. *Id.* at 8. This direct evidence of racial intent means that Respondents were not required to provide an alternative map. *Alexander*, 602 U.S. at 8–10; *Cooper v. Harris*, 581 U.S. 285, 322 (2017). And the express racial purpose is not as surprising or counterintuitive as Texas and the dissent below suggest. Lawmakers sometimes “think[] that a proposed district is more ‘sellable’ as a race-based . . . compliance measure than as a political gerrymander.” *Cooper*, 581 U.S. at 308 n.7. Texas *admitted* that the Governor’s statements reflected his desire to “cite a legal necessity (rather than political desire) as the goal” of the 2025 Map. ECF No. 1199 at 22. President Trump and national Republican Party figures *tried* pressuring Texas to redraw its districts for purely partisan reasons, but they found little traction for months. App. 15–17. When the Governor and the legislature were offered a “race-based . . . compliance” rationale instead, *Cooper*, 581 U.S. at 308 n.7, it propelled the redistricting process. App. 62.

Unable to defend its lawmakers’ own explanations for their actions, Texas prefers to focus instead on testimony from the private individual who drew the map. But for good reason, the district court found Adam Kincaid not credible. App. 96. That finding is given “singular deference” and cannot be overcome merely by the presumption of legislative good faith. *Cooper*, 581 U.S. at 309 & n.8. Texas provides no reason to think the Court will reverse it. Indeed, Texas barely acknowledges the

district court's finding. Regardless, as the Chair of the Senate Redistricting Committee himself explained, Kincaid's "methodology and [his] thoughts behind [the map] . . . are irrelevant," "because what really matters" is lawmakers' reasons for adopting the map. Brooks Ex. 308T at 31:5–15, ECF No. 1327-8; *see also Abbott v. Perez*, 585 U.S. 579, 605 (2018).

Texas also leans heavily on *Purcell v. Gonzales*, 549 U.S. 1 (2006) (per curiam). But the election is still months away and no new districts need to be drawn. When the injunction was issued, there were still 20 days before the first relevant deadline, the close of the candidate filing period. Even now—on the date of this brief—there are still two weeks to go. The only thing preventing candidates from filing and running for election under the same map that governed the last two federal elections is the administrative stay. If the Court acts promptly, no deadlines need to move. The Court should terminate the stay and let Texas conduct its elections as usual.

## COUNTERSTATEMENT OF THE CASE

I. Texas fulfilled its decennial obligation to redraw its congressional districts in October 2021, when it enacted the 2021 Map based on the 2020 census. App. 9. In the years of litigation that followed, before the same three-judge court that decided the motion below—including a nearly four-week trial in May and June of 2025—Governor Abbott and the legislators who enacted the 2021 Map consistently defended that map as having been drawn "blind to race" and in pursuit of raw partisan advantage. *E.g.*, ECF No. 986 at 8.

II. In mid-2025, national Republican Party figures began pressuring Texas to call a special legislative session to re-draw the 2021 Map to more heavily favor

Republican candidates. The *New York Times* reported on the pressure campaign on June 9, in the middle of the trial on the 2021 Map. Defs.’ Ex. 1415, ECF No. 1364-5. But the *New York Times* also reported reluctance on the part of Texas Republicans, who worried that the plan could “backfire.” *Id.* at 2. When Senator Joan Huffman, the Chairwoman of the Senate Redistricting Committee in 2021, was asked about this reporting the next day during cross examination before the three-judge court, she testified unequivocally that the Texas Legislature was “not” considering redrawing Texas’s congressional districts. App. 17. And on June 23—two weeks after the *New York Times*’ initial reporting and Senator Huffman’s firm denial—Governor Abbott issued an initial agenda for a special session of the legislature that listed nine items, none of which was redistricting. Gonzales Ex. 35, ECF No. 1388-19.

**III.** With the purely-partisan effort stalled, the Trump Administration tried a new approach. On July 7, just weeks after the close of evidence in the trial on the 2021 Map, the Assistant Attorney General for the Civil Rights Division of the U.S. Department of Justice wrote to Governor Abbott and Attorney General Ken Paxton to *insist* that Texas draw a new congressional map. Gonzales Ex. 41, ECF No. 1389. The DOJ Letter purported to raise “serious concerns regarding the legality of four of Texas’s congressional districts” because of the Fifth Circuit’s decision in *Petteway v. Galveston County*, which held that Section 2 of the Voting Rights Act does not require states to create “coalition” districts where multiple minority groups together comprise a majority. *Id.*; 111 F.4th at 611. It asserted that “Congressional Districts TX-09, TX-18, TX-29 and TX-33 currently constitute unconstitutional ‘coalition districts’” and

“urge[d] the State of Texas to rectify these race-based considerations from these specific districts.” Gonzales Ex. 41, ECF No. 1389. Each of the four districts mentioned by the DOJ Letter was a majority-minority district under the 2021 Map, and three of the four—CD 9, CD 18, and CD 33—were coalition districts.

Governor Abbott knew the letter was coming—he had discussed it with White House officials and map-drawing consultant Adam Kincaid “a week before DOJ released it.” App. 98. And on July 9, 2025, after weeks without action and just two days after the DOJ Letter was sent, Governor Abbott proclaimed a special session for the Texas Legislature to “provide[] a revised congressional redistricting plan *in light of constitutional concerns raised by the U.S. Department of Justice.*” Gonzales Ex. 43 at 3, ECF No. 1389-2 (emphasis added).

IV. The Special Session began on July 21, *id.* at 2, and Governor Abbott went on a media blitz to sell the unpopular mid-decade redistricting plan. On July 22—before any proposed map was introduced—Governor Abbott explained in a televised interview that the reason for redistricting was the Fifth Circuit’s *Petteway* decision. Brooks Ex. 325T, ECF No. 1327-25. He discussed *Petteway* at length and explained that “coalition districts are no longer required. And so we want to make sure that we have maps that don’t impose coalition districts.” *Id.* at 3–4. When asked if the redistricting effort evidenced a lack of confidence in Republican performance in the upcoming midterm elections, Governor Abbott denied it: “what we’re focused on is not what may happen in the midterms.” *Id.* at 5.

V. The bill that became the 2025 Map was introduced on August 1, and it did just what the Governor said it would do. It systematically dismantled most of the 2021 Map’s multi-racial-majority districts and replaced them with districts in which members of a single race comprise a bare majority of eligible voters. *See* Gonzales Ex. 39, ECF No. 1385, tbl. 5, 6; *see also* Gonzales Exs. 17, 19, ECF Nos. 13881-1, 1388-3. Six of the eight most-altered districts in the 2025 Map were ones that were multi-racial-majority districts in the 2021 Map—including one, CD 27, that reliably voted for Republicans. Gonzales Exs. 18, 19, 32, ECF Nos. 1388-2, -3, -16. And the other two most-altered districts were also majority-minority districts. *Id.* In contrast, the 2025 Map kept intact more than half of the district populations for each of the majority-white districts from the 2021 Map, while simultaneously drawing two additional majority-white districts. Gonzales Exs. 17, 18, 19, ECF Nos. 1388-1, -2, -3.

VI. During the legislative process, members of the Texas Legislature who played key roles in the redistricting process repeatedly echoed Governor Abbott’s explicitly race-based rationale, proclaiming that *Petteway* was the reason for mid-decade redistricting, and touting the 2025 Map’s newly-created single-race majority districts. App. 66–76. When Chairman Todd Hunter, the primary sponsor of the bill that became the 2025 Map, laid it out for the first time in the Texas House, he volunteered unprompted that it was “important to note that four of the five new districts” were “majority-minority Hispanic CVAP districts, [c]itizen [v]oting [a]ge [p]opulation.” Tr. Oct. 1 PM 43:20–23, ECF No. 1337. When asked point blank: “[W]ith CD-9, just to close the loop on that, it was also purposely changed so that the

Hispanic CVAP would be over 50 percent now[?]" Chairman Hunter responded: "50.41 percent. Correct." *Id.* at 58:16–59:7. When asked to confirm that "CD 18 was purposely altered to a Black CVAP majority district rather than a 38.8 Percent Black CVAP district, right?" Chairman Hunter responded: "CD-18 was drawn to be a 50.81 percent CVAP, which is 11.82 change, plus." *Id.* at 51:10–15. When asked whether CD-35 was "purposely changed to increase its Hispanic CVAP to be about 50 percent," Chairman Hunter responded, "51.57 percent. And it also has political performance involved." *Id.* at 51:20–25; *see also* App. 76 n.267.

In an exchange with Republican Representative Katrina Pierson, who asked whether it was true that the 2025 map had "not just one, but two majority Black CVAP districts," Chairman Hunter responded that was "correct," and proceeded to "give everybody details": "CD18 was now 50.8 Percent Black CVAP. In 2021 it was only 38.8 Percent. CD30 is now 50.2 percent Black CVAP. In 2021, it was 46 percent." App. 72 & n.254. Representative Pierson made sure to point out that while the number of "Black districts" in the 2021 Map was "zero," in the 2025 Map, "Black voters in the state of Texas go from zero to two majority Black CVAP districts out of the 38 seats in Texas." *Id.* The record is full of similar statements. *See* App. 66–76.

Legislators' focus on the districts' racial makeup was explicitly tied to *Petteway*. Chairman Hunter had a copy of *Petteway* in front of him during his layout of the bill. Brooks Ex. 309T at 63, ECF No. 1327-9. He explained, in a long exchange with the bill's co-sponsor, Representative Spiller, that the 2021 Map "actually contain[ed] coalition districts," but that "[t]he law was different then," and that the 2025 Map

therefore changed multiple districts from multi-race coalition districts to single-race majority districts. *Id.* at 62–79. And in a later hearing, Representative Spiller expressly said that “one of the reasons we’re [redistricting] now is that, we feel compelled to because of the *Petteway* case and the ruling in the *Petteway* case.” App. 75 & n.264. Chairman Hunter did not disagree; he responded that it was the “combination of both” *Rucho* and *Petteway* that was “involved in this map.” *Id.*

VII. Proponents of the 2025 Map repeated their race-based rationale in press statements. In an August 4 interview with CBS news, Representative Katrina Pierson, who served on both the standing Committee and Select Committee that considered the bill and who “consistently weighed in during the hearings,” Tr. Oct. 1 PM 68:8–14, ECF No. 1337, defended HB 4 by saying that “Texas has maps that h[ave] increased minority representation,” *id.* at 67:6–7. In an interview with National Public Radio, Representative Tom Oliverson, the Chairman of the Republican caucus, denied that Texas was redistricting “because of the president’s request,” stating: “No, we are not.” App. 67–68. In a television interview on October 2, Representative Steve Toth responded to a question regarding the purpose of this redistricting by stating that it was “required” in “response to *Petteway*, to get compliant.” App. 68. And in a press release hailing the 2025 Map’s passage, Speaker of the House Dustin Burrows said: “The Texas House today delivered legislation to redistrict certain congressional districts to address concerns raised by the Department of Justice . . . .” App. 66.

The Governor also stayed consistent. In interviews during the legislative process, he focused on race, touting the 2025 Map’s creation of a majority-Black

“Barbara Jordan[] district”—referring to the longtime Black congresswoman from Houston, Tr. Oct. 1 AM 77:15–18, ECF No. 1414, and explaining that “four of the five districts that we are going to create are predominantly Hispanic districts that happen to be voting for Republican as opposed to Democrats.” *Id.* at 84:16–22; *see also* App. 34 n.117.

Most tellingly, in a CNN interview with Jake Tapper on August 11—after the 2025 Map was introduced but before it was adopted—the Governor denied that Texas was redistricting just because President Trump “personally got involved and asked [him] to do this,” and he pointed to *Petteway* instead, explaining that “one thing that spurred all this is a federal court decision.” App. 31–32. Because of that decision, the Governor said, “Texas is no longer required to have coalition districts,” and as a result “we wanted to remove those coalition districts” and draw new maps that “provide more seats for Hispanics.” App. 32. And when an incredulous Tapper pushed back, saying “that’s not really—I mean, you are doing this to give Trump and Republicans in the House of Representatives five additional seats, right?,” the Governor denied it: “Again, to be clear, Jake, the reason why we are doing this is because of that court decision . . . .” App. 32.

**VIII.** Immediately after the legislature passed the 2025 Map, the six plaintiff groups in these consolidated cases filed supplemental or amended complaints and preliminary injunction motions challenging the 2025 Map as, among other things, an unconstitutional racial gerrymander. App. 50–51. “The Plaintiff Groups asked—actually ‘begged’—the Court to set the preliminary-injunction hearing as soon as

possible, vowing that they were ready to begin the hearing any day the Court scheduled it.” App. 149. The district court held a nine-day hearing beginning on October 1, where it heard from some two dozen fact and expert witnesses and admitted over two thousand exhibits. App. 52, 148.

**IX.** On November 18, the district court issued a 160-page opinion preliminarily enjoining the 2025 Map after finding that six districts in the 2025 Map are racial gerrymanders. App. 54. It found that President Trump’s initial demands for partisan redistricting fell on deaf ears. App. 2. It found that the DOJ’s explicit demand for race-based redistricting was the precipitating cause of the Governor’s decision to call a special session. App. 3. It found that the Governor echoed the sentiments of the DOJ Letter in statements to the press: repeatedly disavowing any partisan objective and instead “repeatedly stat[ing] that his goal was to eliminate coalition districts and create new majority-Hispanic districts.” App. 3. It found that the Texas Legislature “adopted those racial objectives,” through a series of damning statements to the media and on the legislative floor. App. 3. And it found that the 2025 Map ultimately achieved most of the racial objectives that the DOJ demanded—dismantling coalition districts and replacing them with single-race majority districts throughout the state. App. 3. The district court accordingly enjoined Texas from using the 2025 Map in the 2026 election and ordered it to use the 2021 Map instead.

## **ARGUMENT**

“A stay is an ‘intrusion into the ordinary processes of administration and judicial review.’” *Nken v. Holder*, 556 U.S. 418, 427 (2009) (quoting *Va. Petroleum Jobbers Ass’n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958) (per curiam)). Texas, in

requesting a stay, “bears the burden of showing that the circumstances justify” one. *Id.* at 433–34. A stay is never “a matter of right, even if irreparable injury might otherwise result.” *Id.* at 427 (quoting *Virginian Ry. Co. v. United States*, 272 U.S. 658, 672 (1926)). To decide whether to grant a stay, the Court considers (1) whether “the stay applicant has made a strong showing that he is likely to succeed on the merits,” (2) “whether the applicant will be irreparably injured absent a stay,” (3) whether a stay “will substantially injure the other parties,” and (4) the public interest. *Id.* at 434 (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)).

Texas has not carried its burden. The district court’s thorough opinion is unlikely to be reversed, and neither the equities nor the *Purcell* doctrine justify a stay.

#### **I. Texas is unlikely to succeed on appeal.**

Texas has not made any showing that it is likely to succeed on appeal. The trial record and the district court’s reasoning include multiple, independently sufficient bases for the conclusion that the 2025 Map is unconstitutional. The district court’s decision to grant a preliminary injunction is reviewed only for abuse of discretion. *See Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 428 (2006). The decision was based on numerous factual findings reviewable only for clear error, *Cooper*, 581 U.S. at 293, and critical credibility determinations of which review is even more deferential yet, *id.* at 309. The Court will not “reweigh[] evidence” or “reconsider[] facts already weighed and considered by the district court.” *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 404 (1990).

**A. There is clear, direct evidence of racial gerrymandering.**

As Governor Abbott explained from the beginning, the whole purpose of redrawing Texas’s congressional districts was to “make sure that we have maps that don’t impose coalition districts” in light of the Fifth Circuit’s decision in *Petteway*. App. 33 n.115. This overt expression of racial purpose was no slip of the tongue. Governor Abbott eschewed any suggestion that he is “letting President Trump call the shots,” touting instead the need for districts that “fit the structure of [*Petteway*].” App. 33 n.116. When asked about the prospect of picking up five Republican seats in the midterms, he insisted “what we’re focused on is not what may happen in the midterms.” Brooks Ex. 325T at 5, ECF No. 1327-25. And three weeks later, when CNN’s Jake Tapper pressed the Governor to admit that he was really doing this to get five more Republican seats, the Governor pointed to *Petteway* instead. App. 32.

Governor Abbott did not make up this idea on his own. He adopted it from the extraordinary letter that the Department of Justice sent him on July 7, 2025. App. 17–19. The DOJ Letter alleged that four Texas congressional districts—CD 9, 18, 29, and 33—“currently constitute unconstitutional ‘coalition districts’” and demanded that they be redrawn. *Id.* After weeks of ignoring political pressure from Washington to draw new congressional districts, Governor Abbott proclaimed a special session that included redistricting two days later. Gonzales Ex. 43, ECF No. 1389-2. And the proclamation itself specified that it was prompted by the DOJ Letter, calling for “[l]egislation that provides a revised congressional redistricting plan *in light of constitutional concerns raised by the U.S. Department of Justice.*” *Id.* (emphasis added).

The DOJ Letter’s call for the intentional elimination of coalition districts was a call for race discrimination, plain and simple. The defining feature of a coalition district is its racial makeup. *Strickland*, 556 U.S. at 13. *Strickland* explained that “intentionally d[rawing] district lines in order to destroy otherwise effective *crossover* districts” would raise “serious questions under both the Fourteenth and Fifteenth Amendments.” *Id.* at 24 (emphasis added). Under *Petteway*, a coalition district is just like a crossover district for these purposes—as *Petteway* itself explains. 111 F.4th at 610.

Texas has never offered any legal argument that intentionally destroying coalition districts is lawful. Just the opposite. Texas affirmatively argued that the DOJ Letter’s demand was “legally[] unsound,” “baseless,” “erroneous,” “ham-fisted,” and “a mess.” App. 19. It had little choice. As the district court’s opinion explains in detail, none of the theoretically available defenses of the DOJ Letter holds together. App. 17–30. Merely having a coalition district is not unconstitutional, App. 21–23, and there is no evidence that the legislature intentionally used race to draw any district in the 2021 Map as a coalition district, whether in an effort to comply with the VRA or for any other reason. App. 24–30. Texas has always maintained, through four years of litigation, that the entire 2021 Map was drawn race-blind. App. 14–15. The Texas Attorney General similarly emphasized this in his response to the DOJ Letter, writing: “The evidence at that trial was clear and unequivocal: the Texas

legislature did not pass race-based electoral districts” in 2021. Defs.’ Ex. 1466 at 3, ECF No. 1380-25 (emphasis omitted).<sup>5</sup>

The record therefore shows that Governor Abbott’s express purpose for adding redistricting to the special session agenda—eliminating coalition districts—was unconstitutional. The Court could stop there. The Governor’s proclamation of a special session was an essential step in the enactment of the 2025 Map. *See* Tex. Const. art. III, § 40. The Governor’s decision to proclaim a special session for the express purpose of “mak[ing] sure that we have maps that don’t impose coalition districts,” Brooks Ex. 325T at 3–4, ECF No. 1327-25, is therefore a but-for cause of the 2025 Map’s enactment. *See Hunter v. Underwood*, 471 U.S. 222, 232 (1985). If the Governor had not taken that unconstitutionally motivated step—and then signed the bill the legislature adopted—the new map could never have taken effect.

Moreover, even if it were only legislators’ intent that mattered, and not the intent of the Governor who called the session and signed the bill, legislators repeatedly said essentially the same thing. Representative Oliverson, the Chairman

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<sup>5</sup> In an amicus brief, the Solicitor General tries to defend the DOJ Letter by arguing that, *if* the prior districts were drawn with the predominant racial purpose of creating coalition districts, then the letter would be correct that they are unconstitutional. U.S. Amicus at 10–12. But Texas has always vociferously denied that the prior districts were drawn for race-based reasons, and nothing in the record suggests that they were. *See* App. 24–30. The Solicitor General also argues that the DOJ Letter did not demand the elimination of multi-racial-majority districts, but merely the enactment of race-blind ones. U.S. Amicus at 12–13. But that is not how the Governor understood it—he vowed to “make sure that we have maps that don’t impose coalition districts,” App. 33 n.115, and the 2025 Map systematically replaced multi-race majority districts with single-race majority ones, *see* Gonzales Exs. 17, 19, ECF Nos. 1388-1, 1388-3; App. 35–50.

of the Republican caucus, flatly denied that Texas was redistricting “because of the president’s request.” App. 67–68. Representative Toth told reporters redistricting was “required” in “response to *Petteway*, to get compliant.” App. 68. And Speaker Burrows expressly tied the 2025 map to “concerns raised by the Department of Justice . . . .” App. 66. Those are just a few examples; the district court’s opinion details them all. App. 66–79.

In response, Texas urges the Court to avert its eyes from the actual lawmaking process in Austin and to focus instead on what a private individual working for the Republican National Committee was doing in Washington. Application at 25. Somehow, Adam Kincaid—despite having no legal relationship with the State of Texas—becomes the *only* “relevant state actor” for purposes of deciding why Texas enacted its new districts. *Id.* There are at least two fatal problems with this argument.

First, while the Court has sometimes considered testimony by map-drawers, it has never suggested that a race-blind map-drawer could save districts that a state adopted for explicitly racial reasons. *Cf. Perez*, 585 U.S. at 605, 607–14 (holding that it is the enacting legislature’s intent that matters, even where plans were drawn by the third party). *Alexander* accepted as direct evidence *any* “relevant state actor’s express acknowledgment that race played a role in the drawing of district lines”—it did not say that the map-drawer’s testimony is dispositive. 602 U.S. at 8. The Fourteenth Amendment prohibits race discrimination by *states*, so it is the Governor’s decision to call a special session and the legislature’s decision to enact the 2025 Map that constitute unconstitutional discrimination here—not a private consultant’s

decision to align his proposed district boundaries with one road rather than another. As Chairman King put it during the special session, “the mapdrawer’s “methodology and their thoughts behind it . . . are irrelevant . . . because what really matters to us is . . . determining ourselves is [the map he drew] good policy for the State of Texas.” Brooks Ex. 308T at 31:5–12, ECF No. 1327-8. Even if Kincaid drew the map race-blind, that would do nothing to help Texas where the record shows that Texas enacted it only because it answered the DOJ Letter’s call to eliminate multiple coalition districts. After all, if Kincaid’s map had not suited lawmakers’ goals, they would have enacted a different one.

Second, the district court found Kincaid’s testimony not credible—for good reason. App. 96–99; *see also* App. 83–87. Only Kincaid knows what he looked at while he drew the 2025 Map. But on the subject of Kincaid’s meetings with Texas legislators, there were direct contradictions and inconsistencies everywhere Respondents turned. App. 83–87, 99. Kincaid testified that he told Chairman King how many seats Republicans would pick up under his map; Chairman King denied it. App. 84. Kincaid testified that their meeting was prearranged; Chairman King insisted it was an unplanned coincidence. App. 86 & n.13. Kincaid testified that Chairman King called him to invite him to testify on the Senate floor; Chairman King denied that, too. App. 87 n.14. The district court properly did not take Kincaid’s self-serving, unverifiable race-blind story at face value when he was contradicted about so much else, and when

his story was—as the district court explained—so hard to square with the objective features of the districts he drew. App. 96–99.<sup>6</sup>

This Court is exceedingly unlikely to reverse that credibility determination. The Court “give[s] singular deference to a trial court’s judgments about the credibility of witnesses, . . . 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.” *Cooper*, 581 U.S. at 309 (citing *Anderson v. Bessemer City*, 470 U.S. 564, 575 (1985)). And the presumption of legislative good faith does not change that—while it is important, it does not become a “super-charged, pro-State presumption on appeal, trumping clear-error review” and overcoming such a finding. *Id.* at 309 n.8. The issue here is directly analogous to the similar issue in *Cooper*, and Texas offers no explanation for why the result would be different here.

Texas also implies—and the district court dissent said repeatedly—that finding a racial purpose is illogical because the “most obvious reason for mid-cycle redistricting, of course, is partisan gain.” App. 168 (quoting *Jackson v. Tarrant County*, No. 25-11055, 2025 WL 3019284, at \*14 (5th Cir. Oct. 29, 2025)); *see also* App. 170 n.12, 170–71 n.17, 172–73, 177, 185, 204. But that reasoning is entirely divorced

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<sup>6</sup> Texas, and the dissent below, emphasize Kincaid’s detailed descriptions of geographic features of the districts he drew—that they split this town and not that one, and that the borders followed this road and that river, and so on. Application at 29; App. 188–203. But of course, Texas has hundreds of towns, thousands of waterways, and at least tens of thousands of roads. Having drawn the districts, it is easy enough to describe the boundaries in geographic terms. The ability to do so hardly means there are not unstated racial reasons for having picked, say, one road rather than another.

from the long factual record in this case—it assumes that racial gerrymandering could *never* be proved.

Regardless, any mystery is readily solved. As the Court has explained, lawmakers sometimes “think[] that a proposed district is more ‘sellable’ as a race-based . . . compliance measure than as a political gerrymander.” *Cooper*, 581 U.S. at 308 n.7. The record shows that is exactly what happened here. When the President first demanded Texas draw new districts, he got little traction; when the DOJ Letter reframed it as a demand for racial compliance, lawmakers publicly embraced the racial excuse and quickly got on board. App. 2, 15–17, 30–31. Texas admitted this below, writing that it “agree[s] with Gonzales Plaintiffs that the claim that any of Texas’s [prior] districts were racially gerrymandered is a ‘baseless assertion’ that *serves as a poor attempt at ‘cover’ for Texas’s decision to redistrict mid-decade,*” and that the Governor’s statements reflect his desire to “cite a legal necessity (rather than political desire) as the goal” of redistricting. ECF No. 1199 at 20, 22 (emphasis added). And the resulting map systematically eliminated coalition districts, just like the Governor said. App. 35–50; *see also* Gonzales Ex. 39, ECF No. 1385, tbl. 5, 6; Gonzales Exs. 17, 19, ECF Nos. 13881-1, 1388-3. As *Cooper* holds, intentional racial gerrymandering is unconstitutional even if lawmakers’ “end goal” in using race is “advancing their partisan interests.” 581 U.S. at 308 n.7.

**B. *Alexander* did not require an alternative map.**

Texas is also wrong to argue that Respondents needed to provide an alternative map to distinguish racial from partisan gerrymandering in this case. Application at 21–24. No such map is needed in a case like this, with direct evidence of racial intent.

*See Alexander*, 602 U.S. at 8. Rather, as the Court held in *Cooper*, when a case turns “not on the possibility of creating more optimally constructed districts, but on direct evidence of the [state’s] intent in creating the actual” districts, the direct evidence itself debunks the partisanship defense. 581 U.S. at 322. “[T]here [is] no need for an alternative map to do the same job.” *Id.* And that is the case here. The Court knows that Texas lawmakers were motivated by race and not just partisanship because they said so in proclamations and press releases, on television and on the floor. Respondents do not need an alternative map to prove that point. Texas’s only answer—to deny the existence of direct evidence—ignores the record. *Supra* Part I.A.

Moreover, in several of the relevant districts, race is not correlated with partisanship in the way that in some cases makes separating the two so difficult. *See Alexander*, 602 U.S. at 9. In particular, the 2025 Map includes two new districts—CD 9 and CD 35—that were drawn to be majority-Latino but to consistently elect Republican candidates. Tr. Oct. 3 AM 33:18–34:3; 35:5–10; 37:17–39:2, ECF No. 1416. But Latino voters in those districts consistently favor Democratic candidates, while white voters favor Republicans. *Id.* at 34:4–16; 37:20–25. As a result, Texas’s partisan and racial goals worked at cross-purposes in crafting these districts—making the districts more Republican would be expected to make them *less* Latino, not more Latino. There is therefore no reason to believe that map drawn purely based on partisanship would generate majority-Latino districts as “a side effect of the Legislature’s partisan goal” in those areas, Application at 32 (quoting *Alexander*, 602

U.S. at 20–21)—it would require “special tinkering” with race, *see* Tr. Oct. 2 PM at 129:18–20, ECF No. 1338.

Finally, there is no basis for an adverse inference where Texas concealed the partisan criteria that would have been needed to draw an alternative map in any event. It is not just a matter of five new Republican districts. Kincaid testified—on the sixth and seventh days of the nine-day hearing, after the close of Respondents’ case-in-chief—that he pursued a set of eight extraordinarily specific partisan requirements, some with subparts, all based on proprietary partisan data. App. 92–95; Application at 36. And Respondents *still* do not have the complete set of objectives, because Kincaid claimed privilege over a set of “significant requests” from members of Congress that he “had to consider” as he drew the districts, and of which he honored “[a]s many as [he] could.” Tr. Oct. 8 AM 128:25–29:16, ECF No. 1420. Under the circumstances, it would not have been “remarkably easy to produce” an alternative map that satisfied the State’s asserted goals. *Alexander*, 602 U.S. at 36.<sup>7</sup>

**C. Circumstantial evidence confirms the direct evidence.**

The circumstantial evidence of racial predominance is also extremely strong. Texas ignores most of it and instead quibbles with the inferences the district court

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<sup>7</sup> Texas criticizes Respondents for not seeking pre-hearing discovery from Kincaid to uncover his partisan objectives before the hearing. Application at 10. But the last time Respondents subpoenaed Adam Kincaid in these cases, about the 2021 Map, it set off a protracted fight in D.C. that took more than a year to resolve. *See In re Kincaid*, No. 1:22-mc-00067 (JEB) (RMM), 2023 WL 6459801 (D.D.C. Oct. 4, 2023). There was simply no time to do that again, particularly because Respondents did not know until immediately before the hearing that Texas would call Kincaid to testify—Texas had not called him in the trial over the 2021 Map.

drew from individual pieces of circumstantial evidence taken in isolation. But, taken together with the powerful direct evidence in this case, the circumstantial evidence points decisively in one direction: Texas racially gerrymandered the 2025 Map. That is true even if one credits the testimony of Adam Kincaid, on which nearly all of Texas’s arguments are based, but which the district court rejected for good reason. *Supra* Part I.A.

Start with evidence that Texas ignores: the 2025 Map systematically eliminates many of the prior map’s coalition districts and replaces them with ones in which members of a single race comprise a bare majority of eligible voters. Six of the eight most-altered districts in the 2025 Map were ones in which no one racial group made up a majority of voters—including one, CD 27, that reliably voted for Republicans. Gonzales Exs. 18, 19, 32, ECF Nos. 1388-2, -3, -16. Another one of the eight most-altered districts was CD 29, which the DOJ Letter erroneously identified as a coalition district but was in fact a majority-Latino district. App. 24. In contrast, the 2025 Map kept intact more than half of the district populations for each of the majority-white districts from the 2021 Map, while simultaneously drawing two additional majority-white districts. Gonzales Exs. 17, 18, 19, ECF Nos. 1388-1, -2, -3. The net result: the 2025 Map has *five more districts* in which a single race forms a majority of eligible voters than the 2021 Map had. *Compare* Gonzales Ex. 17, ECF No. 1388-1, *with* Gonzales Ex. 19, ECF No. 1388-3. It goes much farther in “separat[ing] voters into different districts on the basis of race” than the 2021 Map did. *Shaw*, 509 U.S. at 649.

Focusing on particular regions confirms the point. In Dallas–Fort Worth, the 2025 Map “completely reconfigured” CD 33—one of the districts listed in the DOJ Letter—along with another coalition district, CD 32. App. 39, 47. And it added just enough Black voters to CD 30 to make it just barely majority-Black CVAP (50.2 percent). App. 45, 97. Even Kincaid had no reasonable, race-neutral explanation for how that happened. He testified that when drawing CD 30 and CD 33, he first created a “super district” by “just lumping a bunch of Democrat areas together.” Tr. Oct. 7 AM 108:10–14, ECF No. 1419. He said he then divided that “super district” into two, choosing to put “the most heavily Democrat contiguous precincts” in CD 30, *id.* at 113:18–21, and “using the footprint of 30 as it currently existed.” Tr. Oct. 7 PM 71:18–19, ECF No. 1342. There was no partisan reason for putting the most Democratic precincts in CD 30 rather than CD 33 because, as Kincaid admitted, he was simply sorting voters between two unassailably strong Democratic districts. Tr. Oct. 7 AM 114:1–12, ECF No. 1419. But Kincaid’s formula was practically guaranteed to make CD 30 majority-Black because, as Kincaid was well aware, Black voters are the most reliably Democratic voters in Dallas County. Tr. Oct. 8 AM 93:18–22, ECF No. 1420. Kincaid’s choices mirror those made by the map-drawer in *Cooper*, who was explicitly seeking to draw majority-Black districts. *Cooper*, 581 U.S. at 300 (explaining that the map-drawer had “moved the district’s borders to encompass the heavily black parts of Durham (and only those parts)”).

Next, consider Harris County. The 2025 Map rendered unrecognizable all three Harris County districts listed in the DOJ Letter. Out of all the Houston-area

Democratic districts, Kincaid testified that he started by consolidating the cores of two plurality Black coalition districts from the prior map that were listed in the DOJ Letter, CD 9 and CD 18, into a single *barely* majority-Black CVAP district (50.5 percent), CD 18. Tr. Oct. 8 AM 98:3–4, ECF No. 1420 (Kincaid) (“[T]he core of Texas 9 is now in Texas 18.”); App. 38. Even Kincaid had no partisan explanation for why he started there. And only *after* he did that did he consider whether he could *also* eliminate other Democratic districts, too. Tr. Oct. 8 AM 140:24–41:13, ECF No. 1420. It was this order of priorities, not Kincaid’s “incumbent-protection requirement,” that “prevented him from eliminating CD7 as a Democratic district.” Application at 32. Once CD 9 and CD 18 were consolidated, there was nowhere to go with CD 7 without dislodging the Republican incumbents to the west—but Kincaid testified that he did not even consider starting with the elimination of CD 7. *See* Tr. Oct. 8 AM 140:12–15, ECF No. 1420 (“It wasn’t an either/or. It was a both sort of thing.”).

Kincaid also drew a completely new CD 9 in Houston, transforming it into a bare majority Latino district in which Latino voters will be unable to elect their candidates of choice. Tr. Oct. 3 AM 35:5–10, ECF No. 1416; Gonzales Exs. 17, 39, ECF Nos. 1388-1, 1385. Indeed, he did that *twice*. When the Committee Substitute for the 2025 Map, which Kincaid also drew, added an *entire county* to make CD 9 more Republican-leaning than Kincaid’s initial proposal, changes were made elsewhere to the district lines to maintain CD 9’s razor-thin Latino majority. Tr. Oct. 7 AM 173:18–174:1, ECF No. 1419; Gonzales Ex. 17, ECF No. 1388-1. Here, disentangling race and party is easy: there can be no partisan explanation for the racial makeup of new CD

9 because it is undisputed that Latino voters in this district cohesively prefer Democrats. Gonzales Ex. 39 at 2, 4, ECF No. 1385; Tr. Oct. 8 AM 133:19–134:1, ECF No. 1420.

The story is the same in Central Texas, where the 2025 Map created a new, majority-Latino CD 35. That district, too, is expected to elect Republicans, even though its Latino majority cohesively prefers Democrats. Gonzales Ex. 39 at 8, ECF No. 1338. This cannot be explained as a “side effect of the legislature’s partisan goal.” *Alexander*, 602 U.S. at 20–21. There is no partisan reason for a map-drawer to achieve this result. There was, however, a *political* reason: to allow the Governor and the legislature to go on TV and sell their unpopular mid-decade map as a “race-based . . . compliance measure,” by pointing to their new majority-Latino districts. *Cooper*, 581 U.S. at 308 n.7.

Texas selectively attacks the district court’s reliance on the 2025 Map’s treatment of CD 37—the only majority-White Democratic district in Texas. Texas argues that because CD 37 is the only Democratic district in Austin, it would be hard to eliminate—a point for which they notably lack a record citation, as even Kincaid never said that. And CD 37 was a new district in 2021, so it is obviously possible to draw a map without it, and it is notable that Texas left CD 37 intact while demolishing other equally Democratic districts with larger minority populations.

In CD 27—which is adjacent to CD 37—the opposite story played out. There, the 2025 Map took a *Republican*, multi-racial majority-minority district and transformed it into a majority-white Republican district. App. 107–08. CD 27 was

altered so substantially that it retained only 39.8 percent of its population from the prior map. Gonzales Exs. 18, 19, ECF Nos. 1388-2, -3. Texas—and the dissent—dismiss this as a product of moving Republican voting strength from CD 27 into neighboring Democratic districts. Application at 35. But the evidence showed that non-white voters in both old and new CD 27 cohesively prefer Democrats, while white voters cohesively prefer Republicans. Gonzales Ex. 39 at tbls. 7 & 8, ECF No. 1385. One would expect, then, that shifting Republican strength from this district would *decrease*, rather than increase, the White population of the district.

Finally, Texas attacks the district court's reliance on the testimony of Dr. Moon Duchin. Application at 35–38. Dr. Duchin's testimony provides but one additional piece of cumulative circumstantial evidence confirming that the Texas legislature did exactly what they said they were doing publicly. Her "results are fully consistent with the direct evidence and other circumstantial evidence in the record" and her "testimony was effectively unchallenged; no defense expert submitted a report rebutting Dr. Duchin's findings." App. 122. The expert report of Dr. Trende, which Texas now relies on, does not mention her findings even once. *See* State Defs.' Ex. 571, ECF No. 1332. The district court found her "testimony and report highly credible and persuasive." App. 122. Having failed to present any expert testimony rebutting Dr. Duchin's findings, Texas cannot demonstrate that the district court's reliance on them was clearly erroneous.

Taken together, the circumstantial evidence tells a remarkably consistent story that confirms what Governor Abbott and key legislators said on television: the

2025 Map sorted Texans into single-race majority districts on the basis of race to eliminate as many coalition districts as possible after *Petteway*.

**D. There are also strong alternative bases for affirmance.**

While the district court’s amply supported racial gerrymandering ruling is the most straightforward path to affirmance, Respondents are also likely to succeed on other claims that would provide an alternative basis for the district court’s judgment. See *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 38 (1989) (“[A] prevailing party may, of course, ‘defend its judgment on any ground properly raised below whether or not that ground was relied upon, rejected, or even considered by the District Court . . . .’” (quoting *Washington v. Yakima Indian Nation*, 439 U.S. 463, 479 n. 20 (1979))). Gonzales Respondents have three such grounds.

1. For many of the same reasons that districts in the 2025 Map are racially gerrymandered, they are intentionally race-discriminatory. In addition to prohibiting racial gerrymandering, the Equal Protection Clause “prohibits intentional vote dilution—invidiously minimizing or canceling out the voting potential of racial or ethnic minorities.” *Perez*, 585 U.S. at 586 (quoting *Mobile v. Bolden*, 446 U.S. 55, 66–67 (1980) (plurality op.)). Intentional vote dilution is “analytically distinct” from racial gerrymandering. *Miller v. Johnson*, 515 U.S. 900, 911 (1995). It occurs when “the State has enacted a particular voting scheme as a purposeful device” to “disadvantage[e] voters of a particular race.” *Id.* (quoting *Shaw*, 509 U.S. at 652).

All of the direct and circumstantial evidence recounted above shows that HB 4 was enacted “at least in part ‘because of,’ not merely ‘in spite of,’ its adverse effects upon an identifiable group.” *Pers. Adm’r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979).

The record demonstrates that the 2025 Map would not have been passed without the “political cover” provided by the DOJ Letter. And to achieve that political cover, Texas had to do what the DOJ Letter demanded: dismantle majority-minority coalition districts and replace them with single-race majority districts. And critically, doing so harmed Black and Latino voters, by packing Black voters who had previously elected their candidates of choice in coalition districts into a smaller number of majority-Black districts, and by creating Potemkin Latino-majority districts that reliably will not perform for Latino voters. *Gonzales Ex. 39* at 9, ECF No. 1385.

The purposefully sought-after result is a map that reduced *both* the overall number of majority-minority districts *and* the number of districts in which Black and Latino voters have an opportunity to elect their candidates of choice. *Id.* That is unconstitutional even if the 2025 Map was motivated also by partisanship. “Intentions to achieve partisan gain and to racially discriminate are not mutually exclusive.” *Veasey v. Abbott*, 830 F.3d 216, 241 n.30 (5th Cir. 2016) (en banc).

2. The 2025 Map is unjustifiably malapportioned in violation of Article I, Section 2 of the U.S. Constitution because, while the districts in the 2025 Map have equal populations based on the 2020 census, it is now 2025, and Texas’s population has shifted considerably. To succeed on this claim, Respondents must show “the existence of population differences that ‘could practically be avoided,’” in response to which Texas must “‘show with some specificity’ that the population differences ‘were necessary to achieve some legitimate state objective.’” *Tennant v. Jefferson Cnty.*

*Comm'n*, 567 U.S. 758, 760 (2012) (quoting *Karcher v. Daggett*, 462 U.S. 725, 730 (1983)).

The “existence of population differences” between districts is undisputed—the Texas Legislature’s own analysis shows that the 2025 Map’s districts’ total populations vary by tens of thousands. Gonzales Ex. 25, ECF No. 1388-9. And those differences “could have been avoided,” *Tennant*, 567 U.S. at 759, by simply maintaining Texas’s existing districts until the next census. States generally “operate under the legal fiction” that plans remain constitutionally apportioned for ten years after they are adjusted for a given census. *Georgia v. Ashcroft*, 539 U.S. 461, 488 n.2 (2003). But the purpose of that legal fiction is to “*avoid* constant redistricting, with accompanying costs and instability,” as population patterns shift. *LULAC v. Perry*, 548 U.S. 399, 421 (2006) (plurality op.) (emphasis added).

The Court has never extended that legal fiction of continuing apportionment to uphold an unnecessary, mid-decade change to districts that had already been enacted by the state legislature. *Cf. id.* at 416 (explaining that where the prior plan was court-drawn, “a lawful, legislatively enacted plan should be preferable to one drawn by the courts”). To do so would perversely convert a protection against “constant redistricting” into a license for it—as voters across the country are discovering to their dismay. *See id.* at 422 (noting that the test “turns not on whether a redistricting furthers equal-population principles but rather on the justification for redrawing a plan in the first place”). And aside from invoking the legal fiction, Texas has never offered any other argument that the population deviations were “necessary

to achieve some legitimate state objective.” *Tennant*, 567 U.S. at 760 (quoting *Karcher*, 462 U.S. at 730).

3. Texas’s indisputable consideration of racial data and professed pursuit of partisan advantage in enacting the 2025 Map are unconstitutional because they were undertaken in furtherance of a wholly unnecessary mid-decade revision to Texas’s existing, legislatively-enacted congressional districts.

In recognition of the “complex interplay of forces that enter a legislature’s redistricting calculus,” the Court has granted legislatures significant leeway to consider a variety of factors, including “racial demographics,” in discharging their constitutional obligation to redistrict every decade. *Miller*, 515 U.S. at 915–16. The Court has therefore imposed a high, predominance standard before subjecting districts drawn with an awareness of race to strict scrutiny—reasoning that otherwise, redistricting might be impossible. *Id.* at 916; *see also Shaw*, 509 U.S. at 646 (“[R]ace consciousness does not lead inevitably to impermissible race discrimination.”); *id.* at 661 (White, J., dissenting) (noting that “extirpating” racial considerations from the redistricting process is “unrealistic”). The Court has similarly held that prohibiting pursuit of “partisan interests” might make it impossible for partisan legislatures to draw districts, and it has held claims of partisan gerrymandering non-justiciable for that reason. *Rucho v. Common Cause*, 588 U.S. 684, 700–01 (2019) (“Politics and political considerations are inseparable from districting and apportionment.” (quoting *Gaffney v. Cummings*, 412 U.S. 735, 753 (1973))).

The rationale for this treatment, however, is grounded in legal *necessities*—including the constitutional mandate that states redistrict after a decennial census, the need to remedy a legal violation when a court invalidates a legislatively-drawn map, or the need to allow a legislature to exercise its right to replace a prior court-drawn plan. *See LULAC*, 548 U.S. at 416 (plurality op.) (emphasizing that “if a legislature acts to replace a court-drawn plan with one of its own design, no presumption of impropriety should attach to the legislative decision to act”). In each case, a legislature has to act, and the Court has given some latitude in recognition of that necessity.

There is no necessity here—Texas already had legislatively enacted congressional districts, and its decision to re-draw those districts in the middle of the decade, absent any court order, serves no legitimate interest at all. Texas cannot claim that its expressed awareness of race in redrawing districts was somehow inevitable or justifiable, where it was under no obligation to redraw districts at all. Nor can Texas seek refuge by asserting purely partisan motivation. While determining whether a particular set of districts goes “too far” in promoting partisan aims may present a difficult—and therefore nonjusticiable—question when a legislature is tasked with the mandatory duty of redrawing districts, *Rucho*, 588 U.S. at 701 (quoting *Vieth v. Jubelirer*, 541 U.S. 267, 296 (2004) (plurality op.)), a state’s voluntary decision to draw new districts on a whim poses no such difficulty. “[I]n *this* context,” it is entirely “clear what fairness”—and unfairness—“looks like.” *Id.* at 706 (emphasis added).

## II. *Purcell* does not require a stay

The *Purcell* principle does not weigh in favor of a stay here—or suggest a likelihood of reversal on the merits. See *Purcell v. Gonzales*, 549 U.S. 1 (2006) (per curiam). The *Purcell* principle is meant to avoid “voter confusion and consequent incentive to remain away from the polls” that could flow from changes to election procedures immediately before an election. *Id.* at 4–5. But the 2026 primary is still more than three months away, and the general election is nearly a year away. Nothing in the record suggests that conducting the 2026 elections under the same districts that have governed the last two congressional elections, on the same schedule that the elections would ordinarily have been conducted on, would cause any confusion. The *only* significant date on the 2026 election calendar that has passed is the opening of the candidate filing period on November 8, 2025. Tex. Elec. Code § 172.023. And that filing period does not end until December 8, 2025—nearly three weeks from the date of the injunction and two weeks from the filing of this brief. *Id.* Voting in the primary election will then begin on February 17, 2026—a full fifteen weeks after the date of the injunction—and end on election day, March 3, *id.* §§ 85.001, 41.007.

The district court’s order in no way affects the ability of Texas election officials to prepare for the March 3 primary. Texas’s projected vision of electoral chaos imagines a series of events that the district court’s order simply *will not cause*. The court’s order does not move a *single* deadline on the election calendar. It does not affect the December 8 candidate filing deadline. Application at 15. It does not impact the January 17 deadline to mail out overseas ballots. *Id.* It does not require moving

the March 3 primary election. *Id.* And it does not prevent early voting from beginning on February 17. *Id.* All of these deadlines are “tightly linked” to the December 8 filing deadline, which has not yet passed and has not been moved. *Id.*<sup>8</sup> Election officials cannot begin to “test mail ballots along with voting system ‘equipment’ and ‘programming,’” *id.* at 11, until the filing deadline passes and they know who the candidates for each contest will be. The “cascading effect[s]” Texas warns of, *id.* at 17, therefore will not even begin to cascade as long as the Court acts promptly.<sup>9</sup>

Moreover, under the Texas Constitution’s grace period for newly enacted laws, the 2025 Map does not even formally take effect until December 5, *see* Tex. Const. art. III, § 39, meaning that the 2021 Map remains in effect today. Ms. Adkins testified that counties are “in the process of redrawing their county election voter registration precincts, which is the change that counties would have to make to comply with the new maps.” Tr. Oct. 8 AM 154:2–13, ECF No. 1420. That such efforts will be wasted if Texas cannot proceed under the 2025 Map is irrelevant. Under the Texas Constitution, the 2025 Map will not even be operative for another eleven days.

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<sup>8</sup> Even if the district court’s order did require delaying the filing deadline—which it categorically does not—Christina Adkins, the Director of Elections for the Texas Secretary of State’s office, testified that the candidate filing period could be moved by “one week” without “caus[ing] significant administrative upheaval.” Tr. Oct. 8 PM at 31, ECF No. 1343.

<sup>9</sup> While Texas quibbles with the district court’s citation, Appl. 16–17, Ms. Adkins in fact did testify that “election officials are very good at adapting and moving quickly when necessary,” and that her “office is always going to comply with the law that’s provided to it,” Tr. Oct. 8 PM 30:5–17, ECF No. 1343. In any event, that testimony is irrelevant because there is nothing for election officials to “adapt” to.

Most importantly, the district court’s order does not require election officials to redraw any precincts or otherwise deviate from their normal preparations for the 2026 primary. To the contrary, it simply reinstates the status quo: the legislatively-drawn 2021 district boundaries that have governed Texas congressional elections since 2022. The record shows that counties are still prepared to conduct elections under the 2021 Map, just as they have been for years: statewide elections occurred under precincts drawn based on the 2021 Map just weeks ago. App. 145.<sup>10</sup> And a special runoff election for CD 18, in Texas’s largest county, will occur on January 31, 2026, *under the 2021 Map. Id.*

Texas’s predictions of candidate and voter confusion are also overblown. Candidates have the same deadline to make their choice as before—December 8—and if the district court’s order is not stayed, they will make that choice under the districts that were in force until just a few months ago. There is no question of filing under the 2021 or the 2025 Map—the district court’s order is clear as can be, and absent a stay, the 2021 Map will be used. Unlike *Merrill v. Milligan*, where Alabama was left without a congressional map in place, this is not a case where “candidates cannot be sure what district they need to file for.” 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring). The most that can be said is that the district court’s order shortened the candidate filing period—from 30 days to 20 days. That is hardly

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<sup>10</sup> Under Texas law, county election precincts must be drawn so that, with certain exceptions, no precinct contains territory from more than one congressional district. Tex. Elec. Code § 42.005(a)(3). Those precincts are used for all state and county elections, not just congressional elections. *Id.* § 42.002.

cause for alarm, considering that many states have filing periods that last only weeks or days. *E.g.* Ark. Stat. Ann. § 7-7-203 (eight days); Fla. Stat. § 99.061 (four days); Ga. Code § 21-2-153 (four days); Ill. Rev. Stat. ch. 10, § 5/8-9 (one week); Minn. Stat. § 204B.09, subd. 1 (two weeks); N.Y. Elec. Law § 6-158 (three days). It is *Texas* that has now shortened the candidate filing period further by seeking an administrative stay until December 1—leaving just one week before the December 8 filing deadline. *See* Tex. Elec. Code § 172.023. If Texas were really concerned about administrative implementation, it would not have sought the administrative stay.

This case is also nothing like the three cases Texas relies on most heavily: *Robinson*, *Callais*, and *Milligan*. The Supreme Court's stays in *Robinson* and *Callais* were each issued in the middle of a general election year—not months earlier the year before. *See Ardoin v. Robinson*, 142 S. Ct. 2892 (Mem) (2022) (staying, on June 28, an injunction entered on June 6); *Robinson v. Callais*, 144 S. Ct. 1171 (2024) (staying, on May 15, an injunction issued on April 30).<sup>11</sup> Similarly, in *Milligan*, 142 S. Ct. at 879, the Court stayed an order issued seven weeks before early voting began in the 2022 primary—weeks shorter than here. And in all three cases, the district court's order had left the state without any lawful plan at all—unlike here, where the 2021

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<sup>11</sup> Looking simply at the time between the order and the next primary election is a misleading comparison, because while Texas has an unusually early primary, Louisiana has an unusually late one: it holds its “primary” on the day of the general election in November, followed by a runoff if needed. *See Robinson v. Ardoin*, 605 F. Supp. 3d 759, 854 (M.D. La. 2022). To equate an injunction granted in June of an election year with an injunction granted a full year before the next general election blinks reality.

Map is waiting in the wings. This Court is not “swoop[ing] in and re-do[ing]” the Texas congressional map, *Milligan*, 142 S. Ct. at 881 (Kavanaugh, J., concurring); it is simply returning to the status quo that has been in place for more than two full election cycles. “How close to an election is too close may depend in part on the nature of the election law at issue, and how easily the State could make the change without undue collateral effects. Changes that require complex or disruptive implementation must be ordered earlier than changes that are easy to implement.” *Id.* at 881 n.1. Here, unlike in *Milligan*, the changes needed are indeed easy to implement. Indeed, as explained, they require virtually no implementation at all.

The district court also did not “err[] legally,” Application at 17, by observing that applying *Purcell* to a case like this one would effectively immunize blatantly unconstitutional conduct. This Court has held that “it would be the unusual case in which a court would be justified in not taking appropriate action to insure that no further elections are conducted under [an] invalid plan.” *Reynolds v. Sims*, 377 U.S. 533, 585 (1964). It is true that, in *Reynolds*, this Court said the district court “acted wisely in declining to stay the impending primary election in Alabama,” *id.* at 586, which was scheduled *less than two months* after the date the plaintiffs’ preliminary injunction motion *was filed*, *id.* at 542. But the district court’s order here did not “stay” an election—or any other date in the election calendar, for that matter.

The district court also rightly concluded that any confusion or administrative burden lies squarely at the feet of the Governor and the Texas Legislature, who could have avoided any inconvenience for election administrators, voters, and candidates

by refraining from engaging in an unconstitutional redistricting conducted expressly for racial purposes just months before an upcoming primary. Contrary to Texas’s contention, Appl. at 18, this is wholly distinguishable from the actions of the Alabama legislature in *Milligan*, which was delayed in enacting a new congressional map due to the belated disclosure of census data during the COVID-19 pandemic. See *Singleton v. Merrill*, 582 F. Supp. 3d 924, 944 (N.D. Ala. 2022). Texas was under no such time pressure—the Governor and the legislature *chose* to enact a new map less than a year before the 2026 primary, at a special session over the summer instead of during the regular session earlier in the year. And Texas’s attempt to pin the timing of the 2025 Map on “Democratic members of the Texas Legislature who broke quorum by fleeing the state,” Application at 18, ignores that the Gonzales Respondents, at least, are individual Texas voters who had no role in the quorum break and no say in whether it occurred. Regardless, the special legislative session called by the Governor did not even begin until July 21—it was the Governor and the legislature, not anyone else, who created the emergency. App. 154.

Texas’s complaint that the Texas Legislature has not been given an opportunity to enact a *new* set of districts as a remedial plan, Application at 18–19, has nothing to do with *Purcell*. It is hard to understand why Texas, having argued that changing the map now has such dreadful consequences, would want to saddle its election officials, candidates, and voters with implementing some different, yet to be enacted set of new districts instead. The district court, on the other hand, *honored* the *Purcell* principle by ordering the least disruptive remedy available—a return to

the pre-2025 Map status quo. And the remedy was completely consistent with the Court's precedent, which requires an opportunity for the legislature to adopt a substitute plan only "whenever practicable," and not when the election schedule precludes it. *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978).

Finally, even if *Purcell* might ordinarily bar relief here, it is overcome because "(i) the underlying merits are entirely clearcut in favor of the plaintiff; (ii) the plaintiff would suffer irreparable harm absent the injunction; (iii) the plaintiff has not unduly delayed bringing the complaint to court; and (iv) the changes in question are at least feasible before the election without significant cost, confusion, or hardship." *Milligan*, 142 S. Ct. at 881 (Kavanaugh, J., concurring). As the district court found, and as explained above, "the underlying merits are clearcut in favor of the Plaintiff Groups," App. 152—lawmakers announced their unconstitutional motivations on television. Second, as explained further below, the "likely violation of the Plaintiff Groups' constitutional rights" is an "obvious" irreparable harm. *Id.* Third, Respondents undisputedly acted with "maximum diligence" in bringing their claims. App. 150; see Application at 13–14 n.5 (not disputing this element). The Gonzales Respondents filed their supplemental complaint challenging the 2025 Map within hours of its passage, and filed their preliminary injunction motion the next day. ECF Nos. 1131, 1133. At a status conference held three days later, Respondents "begged" the district court to set a preliminary injunction hearing "as soon as possible." App. 149. And in just a month, the parties all prepared "briefing, arguments, examinations, expert reports, witnesses, and exhibits" for a nine-day preliminary injunction hearing.

App. 150. For the reasons already described, the district court's order is perfectly feasible to implement before the 2026 primary.

### **III. Other equitable considerations weigh heavily against a stay.**

Texas also does not meet its burden to show that it will be “irreparably injured absent a stay,” nor that the stay will not “substantially injure the other parties” or the public interest. *Nken*, 556 U.S. at 434. Indeed, Texas devotes just three short paragraphs to these required elements of their request for relief.

Texas does not face irreparable harm from the continued use of congressional districts that the Texas Legislature enacted just four years ago, that have been used for the past two federal elections, and that Texas has consistently defended in court as fair and constitutional. As explained above, the district court properly concluded that the 2025 Map is an unconstitutional racial gerrymander, and there is no state interest in enforcing an unconstitutional law. And Texas offers nothing to support its contention that the district court's injunction poses any “risk of preventing candidates from being placed on the ballot” or “call[ing] into question the integrity of the upcoming election.” Application at 39. Further, the comparatively modest relief granted here is far less of an intrusion on state sovereignty than would be involved with the crafting of a new, court-drawn plan.

Meanwhile, the Gonzales Respondents—and voters in districts across Texas—will be substantially and irreparably injured if a stay is granted. If elections are allowed to occur under the 2025 Map, millions of Texans would be forced to vote in congressional districts to which they were unconstitutionally assigned on the basis of race for no adequate reason. Such classifications “are by their very nature odious to

a free people whose institutions are founded upon the doctrine of equality.” *Shaw*, 509 U.S. at 643 (quoting *Hirabayashi v. United States*, 320 U.S. 81, 100 (1943)). And “once the election occurs, there can be no do-over and no redress” for voters whose rights were violated. *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014). For that reason, this Court has stated that subjecting voters to an unlawful redistricting plan for even one election would require an “unusual” showing that doing so is a “[n]ecessity.” *Upham v. Seamon*, 456 U.S. 37, 44 (1982); *see also Reynolds*, 377 U.S. at 585 (“[I]t would be the unusual case in which a court would be justified in not taking appropriate action to insure that no further elections are conducted under [an] invalid plan.”). And there is no necessity here—it is perfectly possible to conduct the 2026 election under the 2021 Map.

### CONCLUSION

The Court should lift its administrative stay and deny Texas’s application for stay pending appeal.

Respectfully submitted,

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