No. 25A608

In the Supreme Court of the United States

GREG ABBOTT, IN HIS OFFICIAL CAPACITY
AS GOVERNOR OF THE STATE OF TEXAS, *ET AL.*,
Applicants,

v.

LEAGUE OF UNITED LATIN AMERICAN CITIZENS, *ET AL.*,

Respondents.

RESPONDENT MEXICAN AMERICAN LEGISLATIVE CAUCUS'S OPPOSITION TO EMERGENCY APPLICATION FOR STAY

Sean J. McCaffity
Counsel of Record
George (Tex) Quesada

SOMMERMAN, McCAFFITY, QUESADA & GEISLER, L.L.P.
3811 Turtle Creek Boulevard, Suite 1400
Dallas, Texas 75219-4461
214/720-0720 (Telephone)
214/720-0184 (Facsimile)
smccaffity@textrial.com

-and-

Joaquin Gonzalez
1533 Austin Hwy.
Ste. 102-402
San Antonio, TX 782218
210/663-6727
joaquinrobertgonzalez@gmail.com

Counsel for Respondent Mexican American Legislative Caucus

RULE 29.6 STATEMENT

Pursuant to Supreme Court Rule 29.6, Respondent Mexican American Legislative Caucus represents that it does not have any parent companies and does not issue stock.

/s/ Sean J. McCaffity

Sean J. McCaffity

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INTRODUCTION

May a State follow an explicit directive to redraw congressional districts based on race, proceed to redraw the districts to satisfy explicit racial objectives, and then claim immunity from judicial review by timing its racial gerrymander to crowd an election? The answer is no.

After a nine-day evidentiary hearing, the District Court found that Texas's 2025 congressional map was drawn with race as the predominant factor. That finding rests on evidence that would be remarkable in any redistricting case: a letter from the Department of Justice ("DOJ") demanding Texas redraw districts to achieve racial targets; proclamations from the Governor directing the Legislature to redistrict specifically to address these racial concerns; statements from legislative leaders celebrating their success in achieving those racial objectives; and a map that implements racial quotas with no legitimate, much less compelling justification, creating majority-minority districts at exactly 50.2%, 50.3%, and 50.5% minority Citizen Voting Age Population ("CVAP"). *Cf. Bush v. Vera*, 517 U.S. 952, 996 (1996) (Kennedy, J., concurring) ("[W]e would no doubt apply strict scrutiny if a State decreed that certain districts had to be at least 50 percent white . . . .").

When a State receives an explicit directive to engage in racial redistricting, publicly announces it will redistrict to satisfy that racial directive, and then produces a map that achieves the directive's racial targets with mathematical precision, the Equal Protection Clause is violated. No amount of post-hoc partisan explanation can erase the record of what actually occurred. Texas does not—because it cannot—deny

these basic facts. Instead, Texas advances three principal arguments, none of which withstands scrutiny.

First, Texas invokes *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam). But Texas created its own emergency by choosing to enact a mid-decade racial gerrymander in August 2025. A State cannot insulate unconstitutional conduct from judicial review by deliberately timing that conduct close to an election. If a State chooses to engage in unnecessary mid-decade racial redistricting near an election, its maps should be reviewed and enjoined. Moreover, the merits overwhelmingly favor Respondents, and returning to the 2021 map—used in both 2022 and 2024, and currently being used in an ongoing special election—imposes no significant burden on election administration.

Second, Texas argues the District Court erred in finding racial predominance because Respondents failed to produce an "*Alexander*" map and partisan considerations might explain the map's characteristics. However, *Alexander* does not establish an inflexible rule at the preliminary injunction stage when the record contains powerful direct evidence of racial intent. And partisan considerations cannot explain why the map created new single-minority majority districts with surgical precision while leaving majority-white Democratic districts largely untouched, or the explicitly racial origin of the special session.

Third, Texas claims that its mapdrawer's testimony about race-neutral criteria for individual redistricting decisions defeats Respondents' claims. But a mapdrawer's testimony that is merely consistent with partisanship does not overcome

documentary and testimonial evidence that the map as a whole was ordered and adopted to achieve racial objectives. When a State acts pursuant to an explicit racial directive, repeatedly invokes racial considerations in adoption, and hits precise racial targets, race predominates.

The Constitution prohibits sorting citizens by race, even when urged by the DOJ, even when it might also be consistent with partisan ends, and even when it is close to an election. This Court has long understood that racial classifications are "odious to a free people whose institutions are founded upon the doctrine of equality." *Loving v. Virginia*, 388 U.S. 1, 11 (1967). That principle applies with particular force in redistricting, where racial gerrymandering "bears an uncomfortable resemblance to political apartheid." *Shaw v. Reno*, 509 U.S. 630, 647 (1993).

STATEMENT OF THE CASE

A. Factual Background

1. The Department of Justice Demands Racial Redistricting.

In July 2025, the U.S. Department of Justice sent Texas a letter that set in motion the events giving rise to this litigation. App. at 17.[1] The letter, from Assistant Attorney General Harmeet Dhillon, demanded immediate action. *Id.* at 18-19.

The letter was explicit about what it demanded: race-based redistricting. It did not suggest that Texas had failed to achieve partisan objectives or violated traditional redistricting principles. It focused exclusively on the racial composition of four identified districts—CD9, CD18, CD29, and CD33—and declared them

[1] Respondent will refer to Texas's Appendix, which consists of the operative opinions below and the order appealed.

unconstitutional "coalition districts" in which different racial and language minority groups had been combined to form majority-minority districts. *Id.* at 18. Invoking the Fifth Circuit's recent decision in *Petteway v. Galveston County*, 111 F.4th 596 (5th Cir. 2024), the letter asserted that Texas had engaged in "racial gerrymandering" and insisted that the State "rectify" this supposed violation by redrawing the identified districts. *Id.* It demanded that Texas consciously eliminate what the DOJ characterized as impermissible racial mixing and cure the "vestiges of an unconstitutional racially based gerrymandering past." *Id.*

As the District Court noted, the DOJ letter was meritless and challenging to "unpack because it contains so many factual, legal, and typographical errors." App. at 19. Despite the flaws, however, it is clear the DOJ was "urging Texas to change the racial compositions of CDs 9, 18, 29, and 33." *Id.*

2. The Governor Calls a Special Session To Implement DOJ's Racial Directive.

On July 9, 2025, Governor Greg Abbott announced he would call a special session of the Texas Legislature. App. at 30. In his proclamation adding redistricting to the special session agenda, Governor Abbott explicitly invoked DOJ's "constitutional concerns" as the motivation for legislative action. *Id.* at 31.

This was no ordinary redistricting. Texas had successfully used its 2021 congressional map in both the 2022 and 2024 elections. There was no requirement that the State redistrict, no court order compelling new maps, no census requiring reapportionment. Texas chose to redistrict mid-decade for one reason: to comply with

DOJ's racial directive and to purposefully "change the offending districts racial makeup so that they no longer qualify as coalition districts." *Id.* at 20.

3. Adam Kincaid Draws the Map.

To accomplish its objectives, Texas turned to Adam Kincaid, Executive Director of the National Republican Redistricting Trust. Kincaid testified at length that he never viewed racial data while drawing the map and had no racial objectives. App. 95-96. This testimony, while compellingly choreographed on direct examination, cannot be reconciled with what actually occurred and the District Court "nonetheless discredit[ed] his testimony that he drew the 2025 Map blind to race." *Id.* at 96. Texas offers no real response beyond simply disagreeing with the majority's credibility determination, but credibility determinations are squarely in the purview of fact-finders. *See Anderson v. Bessemer City, N.C.*, 470 U.S. 564, 575 (1985).

4. The Map Achieves DOJ's Racial Objectives with Precision.

The map Kincaid produced eliminated alleged coalition districts and created new single-minority majority districts:

- CD 9: Hispanic CVAP increased from 25.6% to 50.3%
- CD 18: Black CVAP increased from 38.8% to 50.5%
- CD 30: Black CVAP increased from 46.0% to 50.2%
- CD 35: Hispanic CVAP increased from 46.0% to 51.6%.

App. at 35, 38, 45, 49. These are not approximate majorities or substantial pluralities. They are surgical strikes a 50% threshold, accomplishing "explicit racial directives outlined in the DOJ Letter" by converting three alleged coalition districts into single-

minority majority districts. App. at 96-98. Each district exceeded majority status by a margin that would be nearly impossible to achieve without racial targeting. *Id.*

Tellingly, the map left CD37—a majority-white Democratic district—largely unchanged. *Id.* at 106-07. If the Legislature's aims were "exclusively partisan," as Texas claims, one would expect equal attention to all Democratic districts. But CD 37, which does not fit DOJ's coalition district profile, received substantially different treatment than the majority-non-white Democratic districts DOJ had identified. "The fact that the Legislature completely gutted majority-non-White CD 9 and not majority-White CD 37—even though the two districts had the same political lean—constitutes additional circumstantial evidence that the Legislature's predominant consideration was race rather than partisanship." *Id.*

5. Legislative Statements Confirm Racial Objectives.

As the map moved through the Legislature, members repeatedly confirmed they were acting on the basis of race.

Speaker of the House Dustin Burrows issued a press release stating that the House had "delivered legislation to redistrict certain congressional districts to address concerns raised by the Department of Justice." App. at 66. House Redistricting Committee Chairman Todd Hunter made multiple floor statements about the racial "improvements" in the new map, explaining that it increased minority representation and satisfied DOJ's concerns. *Id.* at 70–75. Chairman Hunter was asked succinctly and directly: "CD 18 was purposefully altered to a Black CVAP majority district rather than a 38.8 percent Black CVAP district, right?" Chair

Hunter responded, not with the denial of any racial target, but affirmation that "**CD 18 was drawn to be a 50.81% CVAP**, which is 11.82 change plus…" *Id.* at 76 n. 267 (emphasis added).

Other legislators consistently referenced *Petteway* and the need to eliminate coalition districts. *Id.* at 67–69 (citing and explaining exemplar statements of Burrows, Oliverson, Toth, and Hunter). These were not isolated comments. They reflect a consistent legislative understanding: Texas was redistricting to purposefully achieve racial objectives.

B. Procedural History

Respondent Mexican American Legislative Caucus filed a motion for preliminary injunction and supplemental claims challenging the new map as an unconstitutional racial gerrymander immediately after the map's passage in the Texas Senate. *See* Pls.' Joint Mot. for Prelim. Inj., *LULAC v. Abbott*, No. 3:21-cv-00259 (W.D. Tex. Aug. 28, 2025), ECF No. 1150. The three-judge panel held an evidentiary hearing from October 1–10, 2025. On November 18, 2025, the District Court issued a comprehensive 160-page opinion finding that Respondents demonstrated a likelihood of success on their racial gerrymandering claims for six districts: CD9, CD18, CD27, CD30, CD32, and CD35. App. at 1–160.

The District Court found that the "[s]ubstantial evidence shows that Texas racially gerrymandered the 2025 Map." *Id.* at 2. It detailed the DOJ letter, Governor Abbott's statements, legislative declarations, and the map's precision in achieving

racial targets. The court concluded that "race—not politics—was the predominant factor" in drawing the challenged districts. *Id.* at 64.

The District Court enjoined Texas from implementing the 2025 map and ordered use of the 2021 map—the plan Texas had used successfully in both 2022 and 2024. *Id.* at 160. It determined it was "impracticable" to afford the Legislature time to given the proximity of the March 3, 2026 primary election. *Id.* at 158. Texas immediately appealed and moved for a stay pending appeal, which the District Court denied on November 21, 2025. Texas now seeks emergency relief from this Court.

Texas enacted the 2025 map on August 29, 2025—101 days before the filing deadline and 186 days before the primary election. App. at 143 n. 533. The 2021 map, which the District Court ordered into effect, was used for the 2022 and 2024 general elections and is currently being used for a January 2026 special election runoff in one county. App. at 145 n. 566. Election officials statewide are familiar with it, and many candidates were already preparing to run in 2021 districts. *Id.* at 144-145.

ARGUMENT

I. *PURCELL* DOES NOT WARRANT A STAY.

Texas's principal argument is that *Purcell* requires staying the preliminary injunction because changing congressional maps during an ongoing election cycle will cause confusion and disruption. This argument fails.

First, this case is dissimilar to other recent redistricting cases where the Court applied *Purcell* given that, here, there is already a legislatively created map in place for this decade which has not been struck down by any court. Further, to the extent

there is any administrative burden, Texas created the burden by choosing to enact a mid-decade redistricting in August. A State cannot insulate unconstitutional conduct from judicial review by deliberately timing that conduct close to an election. Second, even if *Purcell* concerns were otherwise implicated, the circumstances identified in Justice Kavanaugh's concurrence in *Merrill v. Milligan*, 142 S. Ct. 879 (2022)—which warrant judicial intervention despite proximity to an election—are present here. *Purcell* cannot be interpreted to shield clear-cut racial gerrymandering from judicial review. Constitutional rights must be vindicated even when their vindication causes administrative inconvenience.

A. *Purcell* Considerations Are Less Present Here, and Texas's Unnecessary Mid-decade Redistricting Created Any Issues.

"This Court has repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election." *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U.S. 423, 424 (2020). The rationale is straightforward: last-minute changes to election procedures can confuse voters, burden election administrators, and undermine public confidence in electoral outcomes. *Democratic Nat'l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 31 (2020) (Kavanaugh, J., concurring). But *Purcell*'s concern is with judicial disruption of settled expectations, not with judicial correction of governmental disruption. *See e.g., Wise v. Circosta*, 978 F.3d 93, 98 (4th Cir. 2020). *Purcell* is also concerned with elections that are already underway, which is decidedly *not* the case here.

The *Purcell* calculus should be different here, when the remedy requires only continuing to use a legislatively-enacted map rather than implementing a new court-

ordered map. The 2021 map is not some novel creation that election officials must learn to administer. It is the map Texas used for the 2022 general election, the 2024 general election, and a January 2026 special election currently underway. App. at 140-141. County officials have already drawn precinct lines under it. Voters cast ballots in these districts just over a year ago. Candidates were preparing to run in 2021 districts—which everyone expected would be used again. The 2025 map, not the District Court's injunction, upset settled expectations.

Director Adkins of the Secretary of State's office testified that election officials have to proceed and move forward with the maps that are law. App. at 141. She confirmed that officials will implement whatever map is lawful. *Id.* at 151. She did not testify that implementing the 2021 map would be impossible or even particularly difficult. The District Court credited her testimony and appropriately concluded that returning to a recently used map is feasible. *Id.* at 144–45, 151.

This is different than the other redistricting cases in which the Court applied *Purcell* many months in advance of an election. *See, e.g.*, *Merrill*, 142 S. Ct. at 879; *Ardoin v. Robinson*, 142 S. Ct. 2892 (June 28 2022) (mem. op.); *Robinson v. Callais*, 144 S. Ct. 1171 (May 15, 2024) (mem. op.). In those cases, there was no legislatively-drawn map in place for the new decade that had not been found unconstitutional. There, the only choice was between a court-ordered remedial plan that had never been in place and the legislatively drawn, though putatively infirm, plan. Whatever concerns about confusion and burden were present there are minimized when "the

State is still operating under the 2021 Map," including holding an upcoming election under it on January 31, 2026. App. at 145.

Texas, rather than the District Court, unsettled expectations. Texas had no obligation to redistrict in 2025. It had used its 2021 congressional map in two election cycles—2022 and 2024. No court order compelled redistricting. No census required new districts. No change in the number of congressional seats allocated to Texas necessitated line-drawing. Texas chose to redistrict, and chose to do so in August 2025, less than four months before candidate filing was to begin for the 2026 elections.

Why? Because the Department of Justice demanded racial redistricting. Texas could have rejected DOJ's legally meritless demand (notably it was unconcerned when the DOJ sued it over purported Voting Rights Act violations in 2021). Having made that choice, Texas cannot now claim that *Purcell* prevents judicial review. Courts should not "incentivize" governmental misconduct. App. at 154. If Texas's interpretation of *Purcell* were correct, States could insulate any redistricting plan—no matter how unconstitutional—simply by enacting it close to an election. And it could engage in endless, chaotic cycles of unconstitutional tweaks each cycle to perennially evade review, undermining "*Purcell's raison d'être*." App. at 155.

Finally, Texas cannot escape responsibility by blaming Respondents for breaking quorum to delay the map's passage. Setting aside the irony of Texas faulting legislators for exercising their constitutional prerogatives, the quorum break delayed passage by mere weeks—weeks during which Texas could have abandoned its racial gerrymandering project entirely and chose to act in a more measured, transparent

and deliberative process in 2026. Texas cites no support for the notion that a party must willingly subject themself to constitutional violations to hope a court will remedy those violations after the fact.

B. The Merits Clearly Favor Respondents, and Implementation Is Feasible

Even if *Purcell* applied, this case fits squarely within the circumstances Justice Kavanaugh identified in his concurrence in *Merrill* for when an injunction may nevertheless issue.

First, the merits are clearcut in favor of Respondents. This is not a close case presenting difficult questions of law. Unlike the "notoriously unclear and confusing" *Gingles* test, *Merrill*, 142 S. Ct. at 881, there is no question that arbitrarily segregating voters on the basis of race with no justification is unconstitutional. *Shaw*, 509 U.S. at 648 (1993).

The record contains direct, documentary evidence of racial gerrymandering of a sort rarely seen in redistricting litigation:

- A letter from the U.S. Department of Justice explicitly demanding that Texas redraw specific districts because of their racial composition (App. at 17-19);
- Proclamations from the Governor calling a special legislative session specifically to implement DOJ's racial directive (App. at 30-31);
- Press releases and floor statements from legislative leaders celebrating their success in achieving DOJ's racial objectives (App. at 32, 33, 66-78);
- A map that creates majority-minority districts at precisely 50.2%, 50.3%, and 50.5% minority CVAP—mathematical precision impossible without racial targeting (App. at 97); and
- Systematic dismantling of majority-non-white coalition districts identified by DOJ, while leaving a majority-white Democratic district largely unchanged (App. at 106-107).

This evidence does not require inference or interpretation. If it looks like a racial quota and quacks like a racial quota, it's probably a racial quota. When government officials explicitly announce they are districting based on race, celebrate their success in achieving racial targets, and produce a map accomplishing those objectives with surgical precision, the Equal Protection Clause is violated. *Cf. Bush*, 517 U.S. at 1000 (Thomas, J., concurring) ("Strict scrutiny applies to all governmental classifications based on race . . . .").

Texas's counterarguments—that partisan considerations might explain some redistricting choices, that the mapdrawer testified to race-neutral criteria, that Respondents failed to produce an alternative map—do not create doubt about the merits. They are the standard defenses raised in every racial gerrymandering case. Here, those defenses cannot overcome direct evidence of racial intent.

Further, unconstitutional racial segregation constitutes irreparable injury, *cf. Allen v. Milligan*, 599 U.S. 1 (2023) (upholding preliminary injunction standard for vote dilution injury), and that filing a motion for preliminary injunction the day *before* the maps were signed is not undue delay.

Finally, implementation of the already in place 2021 map is feasible, as described above. Texas claims that seventeen days between now and the December 8 filing deadline is insufficient. But candidates have known since November 18—when the District Court issued its decision—which map would govern. Those already collecting signatures for 2025 districts can redirect their efforts. Those preparing for 2021 districts can proceed. The District Court correctly balanced *Purcell* concerns

against constitutional imperatives. It did not abuse its discretion, and its decision should be affirmed.

II. TEXAS IS UNLIKELY TO SUCCEED ON THE MERITS

"[O]utright racial balancing . . . is patently unconstitutional." *Fisher v. Univ. of Tex. at Austin*, 570 U.S. 297, 311 (2013) (internal citation and quotation marks omitted). While racial gerrymandering claims require showing "race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district," *Miller v. Johnson*, 515 U.S. 900, 916 (1995), the Court has never suggested that overtly discriminating between voters on the basis of race in order to hit arbitrary racial quotas with no legitimate, much less compelling, justification passes constitutional muster simply because the racial actions are consistent with partisan objectives. Using the equivalent of a "racial tiebreaker," *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 712 (2007), to adopt maps that are "unexplainable on grounds other than the racial quotas," leads to the "inescapable" conclusion that Texas's maps are racial gerrymanders. *Bush*, 517 U.S. at 976 (plurality opinion).

A. The Record Contains Overwhelming Direct Evidence of Racial Gerrymandering.

Direct evidence is rare in redistricting litigation. Legislators typically do not announce they are drawing districts based on race. Mapdrawers do not memorialize racial objectives in contemporaneous documents. The process usually leaves only circumstantial evidence—the map's demographic characteristics, expert testimony about alternative districting possibilities, and inferences about whether race better

explains the map than other factors. This case is different. Here, the record contains powerful direct evidence that Texas redistricted using race and racial objectives that happened to also permit partisan goals.

1. The DOJ Letter Demanded Racial Redistricting.

The impetus for Texas's redistricting was an official governmental demand for immediate racial redistricting. App. at 17-18 .Texas argues that DOJ's intent cannot be imputed to the Legislature, but misunderstands the letter's relevance.

The letter is probative not because DOJ's intent becomes the Legislature's intent by some theory of imputation, but because the letter establishes the context in which Texas's redistricting occurred and explains why Texas chose to redistrict at all. The letter demanded action based on race. Texas took that action. And the action Texas took accomplished the racial objectives DOJ specified. This sequence of events—explicit racial demand, responsive governmental action, achievement of demanded racial result—is powerful, and direct, evidence that race motivated the redistricting.

Texas did not have to comply with DOJ's demand. The letter had no legal force. DOJ threatened litigation, but Texas could have defended its existing map in court (as it did in response to the DOJ's lawsuit against the 2021 maps), where DOJ's new legal theory (that coalition districts violate the Constitution) almost certainly would have failed. Yet Texas chose to comply. That choice is telling.

Second, the Governor and Legislative leaders explicitly and repeatedly invoked the letter to justify the redistricting. App. at 61, 62, 63, 64, 66, 67, 68, 69-73. Texas

is misguided when it says there was "no evidence that a majority of the 181 legislators ratified these motivations." Application at 26. This Court has never required a head count to determine legislative intent. Rather, when legislative leadership announces and characterizes the map on the floor, that has served as direct evidence of intent. *See, e.g.*, *Abbott v. Perez*, 585 U.S. 579, 620 (2018) (affirming district court's reliance on floor statements by author, such as "Members, Representative Burnam has revised his amendment and it now keeps this district a Hispanic district—brings the numbers back over 50 percent," to establish legislative intent for racial gerrymander) (citing *Perez v. Abbott*, 267 F. Supp. 3d 750, 789-90 (W.D. Tex. 2017)).

2. Governor Abbott Directed Racial Redistricting.

Governor Abbott's actions provide independent direct evidence of racial intent. After receiving DOJ's letter, Governor Abbott called a special session and added congressional redistricting to the session's agenda explicitly to address DOJ's "constitutional concerns" about existing districts. App. 61–64. The Governor did not cite changed circumstances requiring new districts. He did not identify problems with existing districts beyond those DOJ had raised. He specifically invoked DOJ's racial objections as the justification for redistricting.

The Governor's subsequent statements reinforce this racial motivation. After signing the 2025 map into law, Governor Abbott publicly celebrated that the new map increased "majority-Hispanic districts." *Id.* at 62–64. Governor Abbott described the purpose behind the 2025 redistricting "was to 'take the people who were in those coalition districts'—specifically, 'Hispanics and [B]lacks'—and place them 'in districts

that really represent the voting preference[] of those people who live . . . in Texas." *Id.* at 63. These statements confirm that the Governor understood the redistricting effort as achieving racial targets that also assisted partisan ends.

Texas argues that Governor Abbott's statements came after the map was drawn. First, the Governor's initial proclamation calling the special session—which came before the map was drawn—explicitly invoked DOJ's racial concerns as the reason for redistricting. Additionally, statements made during the legislative process itself are, if anything, more pertinent than pre-drafting statements, given that it is the intent in adopting the map that ultimately matters. Governor Abbott was no mere bystander offering post-hoc commentary. He called the session, set the agenda, and certainly was a "relevant state actor" when he signed the bill into law in time for the 2026 elections. His role makes his statements about the law's objectives relevant intent evidence. The question is not whether the Governor himself drew district lines. The question is whether the Governor's actions and statements shed light on why the State chose to redistrict and what objectives it pursued.

3. Legislative Statements Confirm Racial Objectives.

Statements by members of the Legislature provide additional direct evidence of racial intent. These statements came from legislators at every stage of the redistricting process—from initial committee hearings through final passage—and from legislators in positions of leadership over the redistricting effort.

Speaker of the House Dustin Burrows issued a press release immediately after House passage stating that the chamber had "delivered legislation to redistrict

certain congressional districts to address concerns raised by the Department of Justice." App. at 66. This statement, from the leader of the Texas Legislature, explicitly ties the redistricting to DOJ's racial demands.

House Redistricting Committee Chairman Todd Hunter made multiple floor statements explaining and defending the map's racial characteristics. During floor debate, Chairman Hunter discussed at length how the new map improved minority representation, increased the percentage of minority voters in certain districts, and addressed the concerns DOJ had raised. *Id.* at 70–75. When questioned about these demographic changes, Chairman Hunter did not disclaim racial considerations or emphasize that the changes were incidental to partisan goals. He embraced the racial characteristics as improvements and acknowledged the racial targets were the goal. *Id.* at 76 n. 267.

Other legislators similarly acknowledged racial objectives. Representatives Oliverson and Toth both cited *Petteway*—the Fifth Circuit decision about coalition districts—as a motivation for redistricting. *Id.* at 67–69.

The pattern of these statements is significant. They span multiple legislators in different roles. They occurred at different times throughout the redistricting process. They consistently reference DOJ's racial concerns and consistently characterize the new map's racial demographics as achieving objectives. This pattern reflects a shared legislative understanding that redistricting substantially motivated or predominated the map's adoption.

Texas argues these statements are insufficient direct evidence because they do not amount to an explicit confession that race predominated over all other considerations. But this Court has never required such magic words. In *Cooper v. Harris*, this Court found that statements by legislative leaders about the importance of achieving particular racial demographic targets, combined with evidence that the mapdrawer followed racial instructions, constituted sufficient evidence of predominance. 581 U.S. 285, 299–300 (2017); *see also Abbott*, 585 U.S. at 620 (citing *Perez*, 267 F. Supp. 3d at 789-90). Here, the evidence is even stronger because it includes an entire course of conduct, starting with heeding the DOJ letter.

Moreover, Texas's argument proves too much. If direct evidence requires a mechanical statement that "we are subordinating all other considerations to racial factors," then direct evidence would essentially never exist. Legislators are unlikely to make such damning statements.[2] *See Hunt v. Cromartie*, 526 U.S. 541, 553 (1999) ("Outright admissions of impermissible racial motivation."). Accepting Texas's interpretation would effectively eliminate the direct evidence cases, forcing plaintiffs to rely exclusively on circumstantial evidence even when—as here—the record contains explicit racial directives and acknowledgments of racial objectives.

4. The Map Speaks for Itself.

The racial characteristics of the 2025 map provide further evidence corroborating the direct evidence of racial intent. Three districts became majority

[2] This is especially troubling given the recent decisions protecting nearly all communications from legislators as privileged under a broad and ambiguous "legislative privilege." *See e.g., La Union del Pueblo Entero v. Abbott*, 93 F.4th 310, 322-323 (5th Cir. 2024).

single-minority at just over 50% CVAP:

CD 9: Hispanic CVAP increased from 25.6% to 50.3%

CD 18: Black CVAP increased from 38.8% to 50.5%

CD 30: Black CVAP increased from 46.0% to 50.2%

CD 35: Hispanic CVAP increased from 46.0% to 51.6%.

These numbers reflect surgical precision in achieving racial targets. As this Court explained in *Cooper*, hitting specific racial percentages—particularly percentages just exceeding key thresholds—is strong evidence of racial targeting. 581 U.S. at 299–300, 312–13. The district court in *Cooper* found that the mapdrawer had followed explicit instructions to achieve a specific BVAP percentage, and this Court held that "on-the-nose attainment" of that target supported the finding of racial predominance. App. at 98.

Here, the precision is even more striking because it occurs in multiple districts. To create three majority-minority districts, each exceeding 50% by margins between 0.1% and 0.5%, strongly suggests that the mapdrawer targeted those percentages. Random partisan mapdrawing would not produce such consistent near-threshold results across multiple districts. App. at 108-22.

Texas argues that these percentages might be coincidental—side effects of pursuing partisan objectives in areas where race and partisanship correlate. But this argument cannot account for the systematic pattern. One district at 50.1% might be coincidence. Two districts just over 50.1% is unlikely. Three districts systematically just over 50%, each corresponding to districts DOJ had identified or to new majority-

minority districts DOJ had demanded, defies coincidence. Add to that a fourth majority Hispanic district at 51.6% HCVAP, and the fact that the Governor and legislators repeatedly touted "increasing the number of majority-Hispanic districts." *See, e.g.*, App. 34, 62–64, 69-76.

The pattern is particularly telling when considering what was not done. The 2025 map substantially changed CD9, CD18, CD30, CD32, and CD35—all majority-non-white districts. But it left CD37—a majority-white Democratic district in Austin—largely unchanged. App. at 106. If the Legislature's goal were purely partisan, one would expect equal attention to all Democratic districts. The selective focus on majority-non-white districts tracks DOJ's racial directive, not a race-neutral partisan strategy. Consistent with a racial, and not partisan focus, the 2025 Map altered racial demographics of an existing majority-non-White Republican district to make it a majority-White district. App. at 107-108. Unless the focus was to alter racial demographics, "one would expect the Legislature not to make fundamental changes to the racial demographics of Republican districts, as doing so would net no gain in the number of Republican seats." App. at 107.

5. The Evidence Exceeds Alexander's Standard for Direct Evidence.

In *Alexander v. S.C. State Conf. of the NAACP*, this Court described direct evidence as including "a relevant state actor's express acknowledgement that race was a motivating factor" or "leaked e-mails from state officials instructing their mapmaker to pack as many black voters as possible into a district." 602 U.S. 1, 8 (2024).

The evidence here meets and exceeds the *Alexander* standard. DOJ's letter is the functional equivalent of "e-mails from state officials instructing their mapmaker" to draw districts based on race. Governor Abbott's proclamation and the numerous legislative statements celebrating the map's racial characteristics are an "express acknowledgement that race was a motivating factor." *Id.* at 8. These are not inferences from circumstantial evidence. They are explicit statements and directives about racial objectives, preserved in official documents and public records.

Texas's argument would stretch *Alexander* to shield unconstitutional redistricting efforts. *Alexander* did not establish that direct evidence requires a document literally titled "Confession of Racial Gerrymandering" or the express use of a racial slur in describing a new district's size, shape, or existence. Yet, that is precisely what Texas's reading of *Alexander* would require. *Alexander* established that direct evidence includes express acknowledgments of racial motivation, which is exactly what the record contains here.

Indeed, the evidence here is stronger than in most cases where this Court has found constitutional violations. In *Cooper*, the evidence of racial targeting included the mapdrawer's testimony about following racial instructions and achieving racial targets, plus legislative statements about the importance of racial demographics. Here, the racial instructions came not from informal conversations but from an official federal letter. The legislative statements are not isolated comments but a pattern spanning multiple legislators and stages of the process. And the map's precision in achieving racial targets in multiple districts is even more pronounced.

B. The District Court Correctly Applied This Court's Precedents.

Texas's principal legal argument is that the District Court erred by failing to require an alternative map, by not properly disentangling race and politics, and by not following the presumption of legislative good faith. Each argument lacks merit.

1. Plaintiffs Satisfied the Standard for a Preliminary Injunction.

Texas argues Respondents' failed to produce an alternative map and that failure is fatal. This misreads *Alexander* and misconstrues the requirements for preliminary injunctive relief.

In *Alexander*, this Court held that in a racial gerrymandering claim where race and politics are highly correlated, a plaintiff bears the burden to disentangle race and politics. 602 U.S. at 8-10. One way of disentangling race from politics is to provide an alternative map that shows how "a rational legislature sincerely driven by its professed partisan goals would have drawn a different map with greater racial balance." *Id.* at 10. "The Court explained that alternative maps are 'easy to produce' and have significant 'evidentiary force' because they show whether partisan objectives could have been achieved through districts with different racial compositions." *Id.* at 35–36. Accordingly, "trial courts should draw an adverse inference from a plaintiff's failure to submit" an alternative map. *Id.* at 35.

This holding must be understood in context. *Alexander* was an appeal from final judgment after a full trial based solely on circumstantial evidence—the racial composition of District 1, expert testimony about alternative districting possibilities, and inferences about whether race better explained the district's characteristics than

politics. There was no direct evidence, such as statements from legislators acknowledging racial objectives or documentary evidence of racial directives.

In that circumstantial-evidence only, final judgment, context, this Court held that alternative maps are essential evidence. Without an alternative map showing that partisan objectives could have been achieved through districts with different racial demographics, a plaintiff cannot carry the burden of proving that race, rather than politics, predominated. In *Alexander*, the circumstantial evidence was the *only way* to establish a causal connection between racial motive and the inherently political act of redistricting. In that situation, it made logical sense to require a plaintiff relying exclusively on circumstantial evidence to overcome the legislative presumption of good faith with, at a minimum, an alternative map demonstrating the fallacy of a "partisan-only" excuse.

But this case is fundamentally different in three ways.

First, this is a preliminary injunction, not final judgment. The standard for preliminary relief is whether the plaintiff has demonstrated a likelihood of success on the merits, not whether the plaintiff has conclusively proven each element of the claim. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). At the preliminary injunction stage, especially in cases proceeding under expedited schedules, courts do not demand the same complete evidentiary record required at trial. *Univ. of Texas v. Camenisch*, 451 U.S. 390, 396 (1981).

Alexander does not establish that alternative maps are mandatory at every stage of litigation. It establishes that at trial, where plaintiffs must prove their claims

by a preponderance of the evidence, the absence of an alternative map in a circumstantial-evidence case creates an inference against the plaintiff. That principle does not mean preliminary injunctions can never issue without alternative maps and this Court did not explicitly so hold.

Second, this case involves powerful direct evidence, not pure circumstantial inference. The need for alternative maps is greatest in cases where plaintiffs rely entirely on showing that the enacted map's racial characteristics are unusual and that alternative maps with different racial demographics could have achieved the same partisan objectives. In such cases, alternative maps are the primary evidence supporting plaintiffs' theory and ensure the judiciary does not tread on an otherwise good faith legislative prerogative.

Here, Respondents rely primarily on ample direct evidence of racial intent, diminishing the need for alternative maps. To be sure, alternative maps can be helpful even in direct-evidence cases. They can corroborate that race predominated by showing that other configurations were available. But it would be absurd to consider them mandatory even when direct evidence alone establishes predominance.

Third, Respondents' experts did generate tens of thousands of alternative maps. Dr. Moon Duchin testified that she created more than 50,000 computer simulations of possible Texas congressional maps, and that the 2025 map is an extreme racial outlier compared to those simulations. App. at 108-122. These simulations show what Texas's congressional map would likely look like if drawn

without racial targeting while still respecting traditional redistricting principles and achieving partisan objectives.

Texas argues that these simulations do not count as "alternative maps" under *Alexander* because they were not introduced into evidence as specific proposed remedial maps and because Dr. Duchin's methodology did not perfectly replicate all of the 2025 map's criteria. But this argument conflates two distinct purposes alternative maps can serve and reads into *Alexander* more stringent evidentiary standards than necessary.

One purpose of a map is remedial: to show the court what a constitutional map might look like, facilitating implementation of an injunction. For this purpose, a specific proposed map is indeed necessary, and Respondents will provide one if this case proceeds to trial. But any alternative remedial map is not necessarily the same as or must be identical to what a plaintiff may use to satisfy *Alexander's* requirement of an alternative map to corroborate circumstantial evidence of intent.

The other purpose of alternative maps is evidentiary: to demonstrate that districts with different racial characteristics could have achieved the same legitimate objectives, thereby supporting the inference that race predominated in the enacted map. *Alexander*, 602 U.S. at 35. For this purpose, computer simulations showing the distribution of racial demographics across thousands of possible maps serve the same function as a single alternative map. They establish a baseline of what racially diverse maps would look like if drawn without racial targeting, and they show that the enacted map is an outlier. *Alexander* did not dictate precisely what form an

"*Alexander* map" must take or state that simulated maps through expert testimony showing multiple potentialities are insufficient at the preliminary injunction stage of a proceeding. If direct evidence establishes predominant, arbitrary racial considerations and is corroborated by computer simulated models showing multiple potential satisfactory alternatives, the District Court did not commit error, much less clear error, in its ruling despite the lack of a formally designated "*Alexander* map."

Importantly, the unrebutted testimony of Dr. Duchin and her simulations serve this evidentiary function, particularly at this stage of the proceedings. The unrebutted testimony demonstrates that if Texas drew congressional maps to achieve partisan objectives without racial targeting, those maps would look systematically different from the 2025 map in terms of racial composition. App. at 122 ("Dr. Duchin's testimony was effectively unchallenged; no defense expert submitted a report rebutting Dr. Duchin's findings."). The 2025 map's precise creation of majority-minority districts at just over 50% CVAP is unusual—indeed nearly impossible—without racial targeting. App. at 121-122.

Texas's critique that Dr. Duchin's simulations did not use identical criteria to Kincaid's goes to weight, not admissibility or relevance. Importantly, Texas made no *Daubert* challenge to Dr. Duchin's opinions, methodologies, or qualifications and offered no rebuttal testimony to her at all. The trial court is given great deference in its factual findings at the preliminary injunction phase. *See, e.g.*, *Ashcroft v. Am. Civil Liberties Union*, 542 U.S. 656, 664 (2004) (reviewing for abuse of discretion). "[W]hen a trial judge's finding is based on his decision to credit the testimony of one

of two or more witnesses, each of whom has told a coherent and facially plausible story that is not contradicted by extrinsic evidence, that finding, if not internally inconsistent, can virtually never be clear error." *Anderson*, 470 U.S. at 575.

Finally, the District Court's treatment of this issue was appropriate. The court acknowledged that Respondents had not produced a single specific alternative map proposed as a remedy. App. at 132. But the court reasonably concluded that at the preliminary injunction stage, with powerful direct evidence of racial intent, the absence of a single proposed remedial map was not fatal. App. at 132–34. The court expressed confidence that Respondents would produce such a map if the case proceeded to trial. App. at 134. There is no reason for this Court to second guess that ruling at this stage of the proceedings and it was not "clear error."

2. Respondents Successfully Disentangled Race and Politics.

Texas's second argument is that Respondents failed to "disentangle race and politics" as *Alexander* requires. This argument fails because the direct evidence in this case accomplishes the disentangling that alternative maps serve to achieve in circumstantial-evidence cases.

In *Alexander*, this Court explained that "when partisanship and race correlate, it naturally follows that a map that has been gerrymandered to achieve a partisan end can look very similar to a racially gerrymandered map." 602 U.S. at 9. Because of this correlation, plaintiffs must "disentangle race and politics" by showing that the legislature's choices were motivated by race rather than by the partisan goals that race happens to correlate with. *Id.*

Here, direct evidence, supplemented by expert testimony and common-sense review of the map's demographics, accomplish the disentangling.

First, DOJ's letter targeted only majority-non-white districts. DOJ identified four districts for elimination: CD9, CD18, CD29, and CD33. App. at 16-18. What do these districts have in common? Each was a coalition district in which different racial or language minority groups were combined to create a majority-minority district. DOJ did not identify any majority-white Democratic districts for change, even though eliminating those districts would serve partisan objectives.

Second, the Governor explicitly disavowed partisan objectives. When calling the special session, Governor Abbott did not announce that Texas needed to redistrict for partisan advantage. Instead, he invoked DOJ's racial concerns. App. at 32-33. When celebrating the final map, he emphasized its racial characteristics—the increase in majority-Hispanic districts. App. at 34 n. 117. These statements show that state officials understood the redistricting as substantially motivated by racial objectives, not purely by partisanship.

Third, legislative statements consistently emphasized racial objectives. While legislators also discussed partisan goals, they repeatedly and specifically highlighted the map's racial characteristics as improvements. App. at 72-73. This emphasis on race disentangles racial from partisan motivation.

Fourth, the map selectively altered majority-non-white districts while leaving the majority-white Democratic district largely unchanged. CD37 in Austin is a heavily Democratic district that could have been eliminated or substantially

weakened through partisan gerrymandering. Yet the 2025 map left it relatively untouched. App. at 106. By contrast, CD9, CD18, CD30, CD32, and CD35—all majority-non-white districts—were substantially reconfigured. This selective treatment tracks DOJ's racial directive, not a race-neutral partisan strategy.

Fifth, the map creates single-minority districts with surgical precision. Four districts land at 50.2%, 50.3%, 50.5%, and 51.6% minority CVAP, App. at 35, 38, 45, 49. This precision in achieving racial thresholds—across multiple districts—suggests racial targeting rather than incidental correlation between race and partisanship.

Each piece of evidence disentangles race and politics by showing that the redistricting followed racial rather than purely partisan logic. Partisan gerrymandering would not produce a letter targeting only non-white districts. It would not produce gubernatorial statements emphasizing racial objectives. It would not produce surgical precision in hitting racial thresholds across multiple districts. And it would not leave a white Democratic district untouched while systematically reconfiguring non-white Democratic districts.

Texas responds that partisan objectives might explain each individual redistricting choice. Perhaps CD9 was changed to protect a nearby Republican incumbent. Perhaps CD30 was drawn to create a new Republican seat in Dallas. Perhaps CD35 was extended to accomplish partisan goals in San Antonio. But this response misses the point. Texas does not explain how these general contours could wholly account for what would be an extraordinarily "statistically anomalous" result

of creating three districts that are exactly between 50–51% single minority and a fourth that is 51.57%. App. at 116-121.

Even if the mapdrawer did, through some statistical fluke, draw such precisely segregated districts, that would not overcome the evidence of the Legislature's actual intent in adopting the maps. DOJ demanded racial redistricting. Texas complied with that demand and legislative leaders highlighted the map's *racial* impact repeatedly and emphatically.

Cooper v. Harris is instructive. There, North Carolina argued that its mapdrawer had followed partisan objectives in drawing District 1, and that racial demographics were merely incidental. This Court rejected that argument, finding that the mapdrawer had followed explicit racial instructions to achieve a specific BVAP target. 581 U.S. at 299–300, 312–13. Once the Court determined the mapdrawer was targeting a racial percentage, the fact that some line-drawing choices might also have served partisan goals did not defeat the finding of racial predominance.

Texas also argues that the high correlation between race and partisanship in Texas means that any partisan gerrymander would produce similar racial results. But this argument cannot account for the precision with which the 2025 map achieves racial targets or the selective focus on non-white districts. If race and partisanship were perfectly correlated such that partisan gerrymandering automatically produces racial effects, then partisan gerrymandering would target all Democratic districts equally. It would not distinguish between white and non-white Democratic districts.

Yet the 2025 map does distinguish—dramatically. That distinction reveals racial motivation beyond mere correlation.

Here, the evidence shows that Texas did not merely pursue partisan objectives through means that happened to have racial effects. Texas received explicit racial instructions, announced it was following those instructions, and produced a map accomplishing the racial objectives those instructions specified. That is racial gerrymandering, not incidental correlation.

3. Presuming Good Faith Does Not Prevent Finding Bad Faith When Evidence Compels It.

Texas's final argument regarding *Alexander* is that the District Court failed to honor the "presumption of legislative good faith" that should apply in redistricting cases. This argument misunderstands what the presumption means and how it operates.

In *Alexander*, this Court explained that courts "start with a presumption that the legislature acted in good faith," and that this presumption "directs District Courts to draw the inference that cuts in the legislature's favor when confronted with evidence that could plausibly support multiple conclusions." 602 U.S. at 10.

This presumption serves an important function. It prevents courts from second-guessing legitimate legislative judgments based on ambiguous evidence. It ensures that when evidence could support either permissible or impermissible motivations, courts give legislators the benefit of the doubt. But the presumption of good faith is rebuttable. It does not mean that courts must ignore clear evidence of unconstitutional motivation. It does not immunize racial gerrymandering from

judicial review. And it does not require courts to credit partisan explanations for racial outcomes when direct evidence shows racial intent.

Here, the presumption of good faith is rebutted by overwhelming evidence. DOJ's letter explicitly demanded racial redistricting. The Governor explicitly called a special session to accomplish racial objectives. Multiple legislators explicitly celebrated achieving racial goals. The map explicitly achieves racial targets with precision. This is not ambiguous evidence susceptible to multiple interpretations. It is clear evidence of racial motivation.

Texas argues that the District Court "resolved ambiguities against the Legislature" and "presumed bad faith." But presuming good faith does not displace the factfinder's role, which includes making "[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). The District Court carefully considered all evidence, including extensive legislator and mapdrawer testimony about race-neutral criteria. The court found that testimony credible as to certain mapping choices, but concluded it did not overcome documentary and testimonial evidence, particularly when Legislators themselves confirmed that they adopted districts to hit minority percentage targets. *Cf. Prejean v. Foster*, 227 F.3d 504, 510 (5th Cir. 2000) ("in *Bush*, [517 U.S. at 972–73,] the trial court and the Supreme Court ultimately disbelieved the testimony of legislative employees and even state legislators to the effect that non-racial considerations motivated Texas's congressional redistricting, where the objective contemporary evidence showed otherwise.").

The court's conclusion is not a failure to presume good faith and it is not "clear error." It is a finding that the presumption has been rebutted. The difference is critical. The presumption of good faith is a tie-breaker when evidence is ambiguous. It is not armor against clear proof of unconstitutional motivation.

Texas also argues that the District Court erred by not fully crediting Kincaid's testimony that he was completely blind to race. But credibility determinations are for the trial court, and appellate courts defer to those determinations unless clearly erroneous. *See, e.g.*, *Anderson*, 470 U.S. at 575; *Inwood Laboratories, Inc. v. Ives Laboratories, Inc.*, 456 U.S. 844, 855 (1982) (noting appellate court must accept fact findings of trial court unless a "definite and firm conviction that a mistake has been committed"). Here, although the District Court found Kincaid's testimony "compelling" in describing his district-by-district reasoning, App. at 96, it ultimately found his testimony not credible and contested its veracity based on the record as a whole.

That conclusion reflects a proper understanding of how racial gerrymandering claims work. The question is not whether the mapdrawer can articulate race-neutral reasons for specific lines, but rather whether race predominated in the *Legislature's* adopting new districts. *See, e.g.*, *Prejean*, 227 F.3d at 510 (distinguishing between the non-legislator map drawer's rationale and the Legislature's intent). A mapdrawer who receives instructions to achieve racial targets might well pursue those targets through considering multiple factors—geography, compactness, incumbent

protection, and communities of interest. The fact that race-neutral factors play some role does not mean race did not predominate.

Cooper again provides guidance. There, the mapdrawer testified about various race-neutral considerations that affected the drawing of District 1. But this Court found racial predominance because the mapdrawer was following instructions to achieve a specific BVAP target. 581 U.S. at 312–13. The race-neutral considerations explained how the mapdrawer achieved the racial target, but they did not negate the fact that achieving the racial target was the primary objective.

C. Texas's Alternative Arguments Lack Merit

Texas advances several additional arguments that warrant brief response.

First, Texas argues that the District Court's remedy—reverting to the 2021 map—is inappropriate because that map was also allegedly unconstitutional and because the court should have afforded the Legislature an opportunity to draw new districts. This argument fails. The 2021 map, whatever its alleged flaws, is legislatively drawn, has been used in two election cycles, and has not been struck down. It provides an appropriate interim remedy pending final resolution of this litigation.

As for affording the Legislature time to redraw districts, the District Court correctly found that impracticable given election deadlines. App. at 158. The Legislature is not currently in session and would need to be called into special session. Even if that occurred, drawing a new map, securing passage, and implementing it for the 2026 election would be virtually impossible given the time remaining. The court

acted appropriately in ordering use of an existing, legislatively drawn map rather than attempting to facilitate a last-minute legislative redraw, even if that map is also subject to a pending constitutional challenge.

Second, Texas argues that the six districts the District Court found problematic are too many, suggesting the court was not carefully analyzing individual districts but instead engaging in wholesale rejection of the map. However, the District Court carefully analyzed racial predominance for each specific district. App. 35–141. The fact that the court found likely violations in six districts merely reflects the scope of the State's racial considerations.

Third, Texas argues Dr. Duchin's methodology was flawed. Its critiques go to weight, not admissibility, and the District Court appropriately considered them in weighing her testimony. More fundamentally, the District Court's finding of racial predominance does not rely on expert testimony. Put simply, the expert testimony corroborated the direct evidence. The decision to enjoin rests on the direct evidence—the DOJ letter, the Governor's statements, the legislative explanations, and the map's precision in achieving racial targets. Dr. Duchin's testimony corroborates the evidence, but even without it, the direct evidence suffices.

Fourth, Texas incorrectly suggests the District Court's opinion conflicts with precedents regarding when race may be considered in redistricting. But the District Court carefully distinguished between awareness of racial demographics—permissible and indeed inevitable—and use of race as the predominant factor in

drawing districts, which is unconstitutional. The court found that Texas crossed from awareness to predominance based on direct evidence of racial motivation.

None of these arguments undermines the District Court's core finding: that Texas redistricted in response to an explicit racial directive, that state officials announced they were pursuing racial objectives, and that the resulting map achieved those objectives with precision. That finding is supported by the record and correctly applies this Court's precedents.

III. TRADITIONAL STAY FACTORS DECISIVELY FAVOR RESPONDENTS.

The traditional stay factors — likelihood of success on the merits, irreparable harm, injury to other parties, and the public interest — all favor Respondents.

A. Respondents Will Suffer Irreparable Constitutional Injury.

At the structural level, racial gerrymandering "bears an uncomfortable resemblance to political apartheid." *Shaw*, 509 U.S. at 647. It reinforces racial divisions in politics. It suggests that representation depends on race rather than on persuasion and coalition-building across racial lines. These harms to democratic legitimacy cannot be remedied through damages or other subsequent relief. If Respondents are forced to participate in the 2026 elections under the 2025 map, they will vote in racially gerrymandered districts. Candidates will campaign in districts drawn based on race. Winners will represent districts configured to achieve racial targets. These are irreparable harms that warrant preliminary injunctive relief.

B. Texas's Self-Inflicted Harms Do Not Warrant a Stay.

Texas claims it will suffer irreparable harm from the disruption of reverting to

the 2021 map mid-election-cycle. However, Texas's harms are self-inflicted. Texas chose to enact the 2025 map in August, disrupting the settled expectation that the 2021 map would continue to govern. Texas chose to enact a racial gerrymander despite warnings from its own legislators that doing so was legally unnecessary and constitutionally problematic. Having created this mess, Texas cannot now claim that cleaning it up imposes irreparable harm.

Additionally, Texas's claimed harms are overstated. The 2021 map is not some novel plan requiring extensive preparation. It is the map Texas used in 2022, 2024, and is currently being used for a special election. Election officials are familiar with it. Reverting to it requires no new training, no new systems, no new procedures. Director Adkins testified that officials will implement whatever map is law. App. at 144. The supposed disruption is minimal.

C. The Public Interest Lies in Constitutional Elections.

The public interest decisively favors denying a stay. There is a strong public interest in conducting elections pursuant to constitutional requirements. There is no public interest in allowing racial gerrymandering to proceed, only public harm.

Texas argues that the public interest lies in avoiding electoral disruption and maintaining confidence in electoral outcomes. But electoral disruption has already occurred—it occurred when Texas enacted the 2025 map. Indeed, this Court's own administrative stay pending resolution of Texas's application for emergency relief contributes to that disruption by injecting uncertainty back into the electoral

processes. Quickly reverting to the 2021 map restores constitutional conformity and stability rather than undermining it.

As for confidence in electoral outcomes, nothing would undermine that confidence more than allowing an election to proceed under an overtly racially gerrymandered map. Public confidence depends on the perception that elections are conducted fairly, pursuant to constitutional requirements, without governmental sorting of voters by race. The District Court's injunction protects that confidence.

Texas suggests the public interest includes respecting the Legislature's policy choices, but there is no public interest in respecting unconstitutional policy choices. In any event, the 2021 map represents the Legislature's policy choice. Using it pending final resolution of this litigation respects legislative authority while protecting constitutional rights. Permitting Texas to pass an unconstitutional map at the last moment and avoid judicial review is not in the public's interest, but a sanction of the laundering of racial discrimination through an unchallengeable legislative process. That simply cannot be the law.

The balance of equities and the public interest both favor Respondents.

CONCLUSION

This case presents explicit racial gerrymandering of a sort rarely seen in modern redistricting litigation. A federal agency sent Texas a letter explicitly demanding that districts be redrawn because of their racial composition. The Governor called a special session explicitly to implement that racial directive. The Legislature redistricted, with members explicitly celebrating racial objectives. And

the resulting map accomplishes those racial objectives with surgical precision—creating single-minority majority districts at 50.1%, 50.2%, and 50.4% CVAP.

This is racial gerrymandering. It violates the Equal Protection Clause. And it cannot be shielded from judicial review by invoking *Purcell* or by post-hoc assertions that partisan considerations might explain individual line-drawing choices.

The District Court carefully considered nine days of testimony, weighed extensive direct and circumstantial evidence, and correctly concluded that Respondents demonstrated a likelihood of success on their claims. The court appropriately ordered use of the 2021 map—a legislatively drawn plan used successfully in two recent elections—pending final resolution of this litigation. The Constitution does not permit racial sorting of voters, even when close to an election, even when urged by federal officials, and even when consistent with partisan ends.

This Court should deny Texas's emergency application, deny an administrative stay, and allow the District Court's preliminary injunction to remain in effect. The voters of Texas are entitled to participate in congressional elections free from racial gerrymandering. The citizens of Texas are entitled to live in a democracy where they are not subject to arbitrary racial sorting and classification.

DATED: November 24, 2025

Respectfully submitted,

SOMMERMAN, MCCAFFITY, QUESADA &GEISLER, L.L.P.

/s/ Sean J. McCaffity
Sean J. McCaffity
State Bar No. 24013122
Email: smccaffity@textrial.com

George (Tex) Quesada
State Bar No. 16427750
Email: quesada@textrial.com

3811 Turtle Creek Boulevard, Suite 1400
Dallas, Texas 75219-4461
214/720-0720 (Telephone)
214/720-0184 (Facsimile)

-and-

Joaquin Gonzalez
Texas Bar No. 24109935
1533 Austin Hwy.
Ste. 102-402
San Antonio, TX 78218
joaquinrobertgonzalez@gmail.com

ATTORNEYS FOR MALC