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 TEXAS NAACP'S RESPONSE IN OPPOSITION TO EMERGENCY APPLICATION FOR STAY PENDING APPEAL

**Directed to the Honorable Samuel A. Alito, Jr.,
Associate Justice of the Supreme Court of the United States
and Circuit Justice for the Fifth Circuit**

LAWYERS' COMMITTEE FOR CIVIL RIGHTS
UNDER LAW
DAMON HEWITT*
ROBERT WEINER
Counsel of Record
DAVID ROLLINS-BOYD
JENNIFER NWACHUKWU
1500 K Street, Suite 900
Washington, DC 20005
robert.weiner@lawyerscommittee.org

DECHERT LLP
NEIL STEINER
LINDSEY B. COHAN
JEREMY LEWIS
515 Congress Avenue
Suite 1400
Austin, Texas 78701

THE BLEDSOE LAW FIRM PLLC
GARY BLEDSOE
6633 Highway 290 East #208
Austin, Texas 78723-1157
(512) 322-9992

NAACP OFFICE OF THE GENERAL COUNSEL
JANETTE M. LOUARD
CARROLL RHODES
ANTHONY P. ASHTON
4805 Mt. Hope Drive
Baltimore, Maryland 21215

LAW OFFICE OF ROBERT NOTZON
ROBERT S. NOTZON
1502 West Avenue
Austin, Texas 78701

Counsel for Respondents Texas State Conference of NAACP Branches

STATEMENT PURSUANT TO SUPREME COURT RULE 29.6

Pursuant to Rule 29.6, none of the Respondents filing the instant Opposition to Emergency Application has a parent corporation or issues stock. The Texas State Conference of NAACP Branches is an affiliate of the national NAACP.

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TO THE HONORABLE SAMUEL A. ALITO, JR., ASSOCIATE JUSTICE OF THE UNITED STATES SUPREME COURT AND CIRCUIT JUSTICE FOR THE FIFTH CIRCUIT:

This case presents a far clearer, stronger, and more direct showing of racial gerrymandering than in *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1 (2024). In *Alexander*, this Court noted multiple times in its decision that the plaintiffs failed to present direct evidence of racial gerrymandering. *Id.* at 1, 18-19, 33. Here, the direct evidence of racial intent was overwhelming, and more than sufficient to overcome the presumption of legislative good faith. The District Court documented a sequence of events that demonstrated the predominance of race in Texas's 2025 redistricting process. First, the U.S. Department of Justice directed the State, in a public letter to Governor Abbott, to dismantle four identified majority-minority Congressional districts based on their racial composition. *See* App. 17-19. In response, the Governor put redistricting on the agenda for the Legislature's special session and pledged repeatedly in videotaped interviews that Texas would follow DOJ's directive to "remove" so-called coalition Congressional districts. App. 61-63. The Legislature fell quickly in line, with the Lieutenant Governor, the House Speaker, and key legislators reaffirming this exactly-stated legislative mission—in writing, on television, on podcasts, and in the legislative proceedings—before, during, and after the legislative special sessions in which the 2025 map was considered and passed. App. 67. They enacted a map that redrew the same specific districts DOJ had targeted. In doing so, they took a sledgehammer to the voting power of Black and Latino citizens in those districts.

The public statements of legislators and key state actors by themselves proved the racial motivation behind the 2025 redistricting process. But there was more: unrebutted statistical evidence demonstrating that race—not partisanship—is the principal explanation for the decision to adopt these maps. App. 66-67, 105. The expert analysis, moreover, was tailored to address each of this Court's critiques of similar evaluations in *Alexander*. In short, the firsthand, verbatim, and direct evidence of racial gerrymandering, along with the refined expert analysis, distinguishes this case from *Alexander* and validates the District Court's careful factual findings. They are entitled to deference from this Court. There was also substantial circumstantial evidence the court found in support of the racial motivation of the Legislature's 2025 Congressional Plan. *See* App. 105-08.

In the face of all this evidence recounted by the District Court in its Order, the State cannot meet its "heavy burden" to justify the "extraordinary" relief of a stay of the District Court's preliminary injunction. *Ruckelshaus v. Monsanto Co.*, 463 U.S. 1315, 1316 (1983). Indeed, such relief is "rarely" warranted. *Heckler v. Lopez*, 463 U.S. 1328, 1330 (1983) (Rehnquist, J., in chambers). The State "must show a likelihood that it will suffer irreparable harm absent a stay." *Trump v. CASA, Inc.*, 606 U. S. 831, 859 (2025). As argued below, Texas cannot meet its burden. The District Court's well-reasoned and legally sound 160-page opinion is unlikely to be "reverse[d]" by this Court, and the State fails to show any "irreparable harm [that] will result from the denial of a stay." *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010).

Beyond denying that the Governor and legislators said what they were recorded saying, the State has two principal attacks on the District Court opinion. The first relies on misdirection, citing the testimony of map-drawer, Adam Kincaid, of the National Republican Redistricting Trust, that he did not consider race in crafting the map. But this case turns on ***the Legislature's intent***, not Mr. Kincaid's. Mr. Kincaid is not a member of the Legislature; he was not retained by the Legislature; and he did not report to the Legislature. App. 90, 100. In fact, key legislators testified that they did not know how he drew the maps. TXNAACP App. 29, 33, 104. The evidence shows, and the District Court found, that the legislative intent here was to follow DOJ's directive and target the majority-minority districts specifically identified by DOJ in the 2025 redistricting process. On their face, the maps the Legislature adopted do that.

The State's second line of attack is that Respondents' preliminary injunction motions, which on the one hand the State disparages because they were filed before the Governor signed the 2025 redistricting legislation, came too late to remedy this intentional discrimination. The thrust of the State's argument is that the Court should excuse and allow racial discrimination to go unchecked because stopping it entails too much dislocation. Defendants are wrong for two reasons. First, *Purcell v. Gonzalez,* 549 U.S. 1 (2006) (per curiam), compels an equitable balance. The rights of voters weigh in that balance, and the State utterly disregards them. Second, contrary to the State's claims, the sky is not about to fall in Texas. The District Court ordered that the 2026 Elections proceed under the 2021 districts put in place and

used by voters for ***the last four years*** (and maps the state defended only months ago), rather than the never-before-used maps enacted just three months ago. Weighed against the rights of the voters subject to racial gerrymandering, returning to the status quo is not a substantial imposition. The State, moreover, could have avoided even that minimal imposition simply by following the law and not embracing DOJ's directive to target minority voters of Texas in a mid-decade redistricting mere months before the deadlines, within its control, which it complains are too close or cannot be extended.

BACKGROUND

Far from being predisposed to overturn Texas's redistricting process, the three-judge panel below unanimously denied a request by some of the Plaintiffs in 2021 for a preliminary injunction against the then-newly adopted Texas Senate map. But when Texas drew new maps in 2025, the panel confronted a mountain of direct evidence—nine days of testimony from 24 witnesses, thousands of exhibits, videotaped statements of key participants in the redistricting process—and two out of the three judges could not avoid the conclusion that race had predominated in the process. In a carefully reasoned 160-page ruling containing more than 600 citations to the evidence, the District Court found the following:

1. In the 2025 regular legislative session that ran from January through May 2025, Republican lawmakers did not consider any legislation concerning redistricting. TXNAACP App. 37. On June 10, 2025, during the trial of Plaintiffs' claims relating to the 2021 Plan, the Chair of the Senate Redistricting Committee

testified that, despite partisan pressure, the Texas Legislature was not considering redrawing their congressional districts. *See* App. 17.

2. Sometime in early 2025, the Republican National Committeeman for Texas and Galveston County Commissioner, Robin Armstrong, contacted Adam Kincaid about redrawing Texas's Congressional map. TXNAACP App. 76-76.[1] Neither the Texas Legislature nor any of its members retained Mr. Kincaid. In fact, the chairs of both legislative committees—Senator King and Representative Vasut—testified that they were unsure of the extent of Mr. Kincaid's involvement in the map drawing. *See, e.g.*, App. 82 n. 297, 83 n. 300; TXNAACP App. 103-04.

3. During February or March of 2025, Mr. Kincaid, White House officials, and Robin Armstrong, met to discuss Texas's mid-decade redistricting. App. 470-71. During these conversations, Mr. Armstrong told Mr. Kincaid that the *Petteway* case provided Texas an opportunity to redraw the Texas congressional map. TXNAACP App. 80-81.

4. In June 2025, Governor Greg Abbott began discussing redistricting with the White House and Mr. Kincaid. One such conversation involved discussion of a draft of a letter that the U.S. Department of Justice intended to send to Governor Abbott related to redistricting. Not only did the White House share a draft of that letter with Mr. Kincaid prior to sending it, but they also alerted Governor Abbott of its existence a week before DOJ sent it. App. 98.

[1] In 2021, Mr. Kincaid was retained by members of the Texas Legislature to draw the maps eventually passed in 2021 and that were the subject of the May/June 2025 trial. App. 14.

5. On June 23, 2025, Governor Abbott announced a planned special session to begin on July 21, 2025, that did not include mid-decade congressional redistricting as an agenda item. *See* App. 2.

6. On July 7, 2025, the United States Department of Justice issued the letter to Governor Abbott and Texas Attorney General Ken Paxton (the "DOJ Letter"), which had previously been discussed between the Governor, the White House, and Mr. Kincaid. *Id*. This letter, signed by the Chief of the DOJ Civil Rights Division, Harmeet Dhillon and another DOJ attorney Michael Gates, stated that "Congressional Districts TX-09, TX-18, TX-29, and TX-33 currently constitute unconstitutional 'coalition districts'" and urged the state to change the racial composition of those districts. App. 17-19. Of the supposedly "racially gerrymandered" districts targeted by the DOJ letter, three (TX-9, TX-18, and TX-29) are in Houston. One, TX-29 was not a "coalition district" but rather majority Hispanic CVAP. App. 24.

7. The DOJ Letter further stated:

> It is the position of this department that several Texas congressional districts constitute unconstitutional racial gerrymanders under the logic and reasoning of *Petteway*. Specifically, the record indicates that TX-9 and TX-18 sort Houston voters along strict racial lines to create two coalition seats, while creating TX-29, a majority Hispanic district. Additionally, TX-33 is another racially based coalition district that resulted from a federal court order years ago, yet the Texas Legislature drew TX-33 on the same lines in the 2021 redistricting. Therefore, TX-33 remains as a coalition district.

App. 17-19

8. As the District Court noted, the DOJ Letter, contains "many factual, legal, and typographical errors." Even Counsel for Defendants has described the

letter as, "legally[] unsound," "baseless," "erroneous," "ham-fisted," and "a mess." App. 19.

9. This, however, was not the State's view at that time. On July 9, 2025, two days after receiving the letter, Governor Abbott issued a new proclamation for the July 21, 2025 special session that added redistricting to the call. App. 30.

10. Specifically, Governor Abbott's proclamation called a special session to enact "***legislation that provides a revised congressional redistricting plan in light of constitutional concerns raised by the U.S. Department of Justice.***" App. 30-31 (emphasis added).

11. Two days later, on July 11, 2025, Lieutenant Governor Dan Patrick (President of the Texas Senate) and Speaker of the House Dustin Burrows also identified the DOJ letter as central to the redistricting effort. They issued a joint statement "highlighting the close collaboration between the House and Senate on legislation to address concerns raised by the U.S. Department of Justice over Texas congressional districts." TXNAACP App. 1.

12. During a public interview on July 22, 2025, Governor Abbott reiterated, "[W]e want to make sure that we have maps that don't impose coalition districts[.]" App. 33 n.115.

13. On August 6, Rep. Oliverson—chair of the House Republican Caucus—denied that the Legislature was taking up redistricting for political reasons and said redistricting discussions began "as a result of a court case where the federal appeals court basically rejected the idea of coalition districts[.]" App. 67-68.

14. On August 11, 2025, Governor Abbott reiterated the central role of the DOJ Letter during an interview with CNN's Jake Tapper, where he stated: "Again, to be clear Jake the reason we're doing this is because of that court decision." App. 31-33.

15. Discussion about redistricting among members of the House Redistricting Committee did not begin until Governor Abbott received the DOJ Letter. TXNAACP App. 37-38. After that, the DOJ Letter and its directive to target majority-minority districts for legally unsupported reasons was central to the legislative discussion. *Id*.

16. Representative Todd Hunter was also appointed to serve alongside Rep. Gervin-Hawkins on the Redistricting Committee in the Special Sessions and was the sponsor of Plan C2333 (the redistricting plan that would ultimately be passed into law). In a prior round of redistricting, a panel of three federal judges found evidence "that the map drawers, including specifically Rep. Hunter, racially gerrymandered the districts that remained in Nueces County to further undermine Latino voting strength." TXNAACP App. 39-40.

17. On August 18, 2025, Mr. Kincaid called Sen. King to get Rep. Toth's contact information. Mr. Kincaid also told Sen. King that a new map was going to be released. TXNAACP App. 97-99. That same day the House Redistricting Committee departed from ordinary procedure by giving only same day notice of a special meeting of the committee. TXNAACP App. 43-45. At this meeting, Rep. Hunter introduced a

new map, Plan C2333, that the committee voted out less than an hour later, giving members no time to meaningfully review it. *Id*.

18. On August 20, 2025, the full House debated Plan C2333. During these debates, Rep. Gervin-Hawkins asked Rep. Hunter directly about the DOJ letter. Rep. Hunter acknowledged that the DOJ letter was considered in the formation of a map. TXNAACP App. 49.

19. Later in their exchange, Rep. Hunter conceded that he considered race in the redistricting process. TXNAACP App. 55.

20. As the District Court noted, "[u]ltimately, the 2025 Map did all but one of the things that DOJ and the Governor expressly said they wanted the Legislature to do"; namely, it "fundamentally changed the racial character of three of the four districts identified in the DOJ Letter, and dramatically dismantled and left unrecognizable all four districts." App. 35, 50.

21. Rep. Toth—one of the few legislators Kincaid sought to contact—still maintains that Plan C2333 was not a partisan gerrymander but rather was drawn to dismantle coalition districts following *Petteway*. As recently as October 2, one day after the District Court's preliminary injunction hearing began, Rep. Toth rejected the idea that Plan C2333 was motivated by politics. Rather, in a videotaped interview, he said emphatically that "it was required of us to do it [in] response to *Petteway* to get compliant." App. 68.

22. Additionally, following the adoption of the map, Speaker Burrows issued a press release announcing that the House had just "delivered legislation to redistrict

certain congressional districts ***to address concerns raised by the Department of Justice*** and ensure fairness and accuracy in Texans' representation in Congress." App. 66 (emphasis in original). As the District Court found, this press release "publicly announces that high-ranking legislators honored and followed the instruction in the Governor's proclamation to redistrict for the racial reasons cited in the DOJ Letter." *Id*

23. It was confirmed during the preliminary injunction hearing that Kincaid was responsible for drawing all or most of the 2025 Congressional Plan. App. 83. Mr. Kincaid, however, was not a member of the Texas Legislature, was not retained by the Texas Legislature, and did not include legislators in his map drawing process; in fact, Mr. Kincaid admitted that he had no direct contact with members of the respective legislative redistricting committees regarding their criteria, goals, objectives, or parameters. App. 90, 100.

ARGUMENT

I. The District Court Properly Applied this Court's Precedent to Deny Applicant's Request for Stay Pending Appeal

Defendants cannot satisfy their "heavy burden" to justify the "extraordinary" relief of a stay of the District Court's preliminary injunction. *Ruckelshaus*, 463 U.S. at 1316. The District Court's well-reasoned order is not likely to be "reverse[d]" on appeal, and no "irreparable harm" will come to Defendants if a stay pending appeal is not issued. *Hollingsworth*, 558 U.S. at 190. The District Court's preliminary injunction order directs that the 2026 elections proceed under the 2021 maps enacted by the Texas Legislature—maps that Defendants staunchly defended in a trial held

before the District Court less than six months ago, and which are still under challenge by the Plaintiffs in this litigation as unlawfully racially discriminatory, as well. The Legislature enacted the new plan three months ago, preliminary injunction motions were filed immediately, an evidentiary hearing was held on the earliest dates the District Court was available, and the District Court's opinion was issued promptly, and nearly two weeks before the current candidate filing deadline. Under the State's suggested approach, from the day of its enactment, the Legislature locked in the 2025 Congression Plan for the 2026 elections, even though, in the District Court's assessment, Plaintiffs are "likely to prove [the plan was] racially gerrymandered." *See* App. 3. A stay of the District Court's decision would require voters to vote in racially gerrymandered districts, and would send a message that mid-decade, racially gerrymandered redistricting passed close to filing deadlines is insulated from judicial review. That is not the law.

A. Overwhelming Evidence Demonstrates That Applicants are Not Likely to Succeed on the Merits.

The District Court's finding that "Plaintiff[s] have successfully shown a likelihood of success on their racial-gerrymandering challenges to CDs 9, 18, 27, 30, 32, and 35" is based on the substantial and often undisputed record evidence detailed above. App. 54. Unlike *Alexander,* where the Court noted multiple times the absence of direct evidence showing racial intent, *see* 602 U.S. at 18-19, 33, the record here is replete with such direct evidence.

The District Court's findings, summarized below, stand unless they are clearly erroneous. *See Glossip v. Gross*, 576 U.S. 863, 881 (2015) ("[W]e review the District

Court's factual findings under the deferential 'clear error'" standard. This standard does not entitle us to overturn a finding 'simply because we are convinced that we would have decided the case differently.'" (quoting *Anderson v. Bessemer City*, 470 U.S. 564, 573 (1985))). The Court should accept the District Court's well-substantiated conclusions and the evidence marshaled in support of them, including that:

a. ***The Governor directed the Legislature to undertake redistricting in response to DOJ's instructions to target coalition districts.*** Prior to receiving the DOJ Letter, the Governor and the Legislature "showed little appetite to redistrict . . . for exclusively partisan reasons," including during the 2025 regular legislative session. App. 62. Even when the Governor called the first special legislative session, redistricting did not appear on the agenda. App. 2.

DOJ's July 7, 2025 Letter directed Texas to dismantle four minority-controlled districts. As the District Court found, the Letter "command[ed] Texas to change four districts for one reason and one reason alone: the racial demographics of the voters who live there." App. 30.

It was not until Governor Abbott received the DOJ Letter that he placed redistricting on the agenda for the first special session. App. 3. The amended agenda specifically stated that redistricting was being added "***in light of constitutional concerns raised by the U.S. Department of Justice***." App. 30-31. The Governor's media statements during this time confirm that he "was asking the Legislature to redistrict for racial rather than partisan reasons." App. 31.

b. ***The 2025 Congressional Plan specifically targeted coalition districts.*** As the Court below found, the 2025 Congressional Plan "did all but one of the things that DOJ and the Governor expressly said they wanted the Legislature to do." App. 35. As detailed more fully below, legislators repeatedly and publicly stated that the 2025 Congressional Plan was motivated by the DOJ's and Governor's directive to remove coalition districts. App. 66-79.

c. ***The testimony of legislators that the 2025 Congressional Plan was motivated by partisanship is unsupported by the record***. During the preliminary injunction hearing, the State called several legislators to testify that partisanship, not race, was the impetus behind the drawing of the 2025 Congressional Plan. That self-serving revisionism, however, was less probative than, inconsistent with, or directly contradicted by contemporaneous recorded statements of those same legislators, and which the District Court found was direct evidence of the Legislature's intent.

d. ***The testimony of the map-drawer, Adam Kincaid, was irrelevant and not credible***. While Mr. Kincaid testified that he focused on partisan gain and did not look at racial data in drawing districts, App. 91-96, the District Court found that it was "extremely unlikely that Mr. Kincaid could have created so many districts that were just barely 50%+ CVAP by pure chance." App. 96. Specifically, it was not credible that Mr. Kincaid "with racial data [available to him] on his mapping program turned off, and relying purely on race-neutral criteria . . . coincidentally happened to transform not one, but ***three***, coalition districts into districts that are single-race-

majority by half a percent or less." App. 97. Further straining credulity is that the three coalition districts where Mr. Kincaid achieved these pinpoint results were the ones identified in the DOJ Letter—CDs 9, 18, and 30. Whether Mr. Kincaid had racial data on his screen, he knew what DOJ wanted. He conceded that he had reviewed and discussed the DOJ Letter with the White House and DOJ before DOJ sent it to the Governor. App. 98. Mr. Kincaid also admitted, while drawing the 2025 map, he had knowledge of the racial composition of the districts at issue based on his drawing of the 2021 maps. App. 187.

e. ***The testimony of Plaintiff's expert, Dr. Duchin, confirms that the maps were drawn with racial, not partisan, intent.*** Dr. Duchin's analysis, presented at the preliminary injunction hearing, demonstrates that "it is highly unlikely that a Legislature drawing a map based purely on partisan and other race-neutral considerations would have drawn a map with the 2025 Map's racial characteristics." App. 121. Dr. Duchin's conclusion that race predominated in the process that led to the passage of the 2025 Congressional Plan was presented through three distinct forms of evidence presented to the Court: (1) racial dot-density maps with a conspicuous race-based pattern in the line drawing; (2) primary and general election data for the districts, which showed that the net loss in Democratic-favoring districts specifically targeted those aligned with minority preferences; (3) an analysis of alternative maps (referred to as an "ensemble") to illustrate that the level of "packing and cracking" of minority voters in the 2025 Plan was seldom or never

observed in alternative maps, even when accounting for partisanship. *See* Duchin Report; App. 108-21.

Dr. Duchin's ensemble analysis follows a series of steps to create a suitable set of maps for comparison. First, Dr. Duchin randomly generates large samples of alternative maps for each of the district clusters at issue, applying traditional redistricting principles such as contiguity, compactness, and core retention, among others. App. 108. In addition, the maps are generated to prefer districts that perform just as well for Republicans ***and*** President Trump as in prior election cycles. *Id*. After generating these generally Republican-favoring maps, Dr. Duchin further winnowed the results by limiting the universe of maps to only those maps that performed as well for Republicans and President Trump as the 2025 Congressional Plan. App. 109. Dr. Duchin ultimately sub-sampled 40,000 maps for each cluster of districts that matched all of these criteria. App. 109. In this way, she confirmed that any maps generated were ***at least as favorable*** to Republicans and President Trump as the 2025 Congressional Plan.

Dr. Duchin then compared the racial demographics of each set of 40,000 maps for each district cluster to the 2025 Congressional Plan. App. 110. The results of these comparisons are reflected in the box-and-whiskers plots included in her report and introduced into evidence at the hearing. *See* App. 116. These plots show that the 2025 Congressional Plan's "racial composition is a statistical outlier," *i.e.*, the level of packing and cracking of minority voters in the 2025 Congressional Plan was observed in an extremely low percentage of the 40,000 ensemble maps for each

cluster—and in some instances, the same levels ***were never observed at all***. App. 118-21.

As an expert that also provided testimony and evidence in *Alexander*, Dr. Duchin incorporated the critiques of *Alexander* to refine and reinforce her methodology and analysis in this case. Specifically, Dr. Duchin incorporated an additional checklist of principles that might reasonably be viewed as having relevant impact on the findings, including increased margins of Trump advantage, urban-rural balance similar to the 2025 Congressional Plan, incumbency protection, and heightened preservation of counties and county subdivisions. App. 122-27. Thus, the District Court held, "the issues that caused the Supreme Court to discredit Dr. Duchin's conclusions in *Alexander* don't lead us to do the same here." App. 123.

1. The Direct Evidence of Racial Intent Overcomes the Presumption of Legislative Good Faith

The direct evidence detailed above shows conduct that is more overt, more racially explicit, and more unapologetically racially discriminatory than those in the cases Defendants cite. The District Court correctly held that the direct evidence of racial motivation underlying the 2025 Congressional Plan surmounted the presumption of legislative good faith. *See* App. 72. As this Court observed in *Alexander*, there is a "starting presumption that the legislature acted in good faith," but that this presumption is overcome—and "the burden shifts to the State"—when, as here, a plaintiff "demonstrate[s] that race drove the mapping of district lines." *Alexander*, 602 U.S. at 11.

"Direct evidence often comes in the form of a relevant state actor's express acknowledgment that race played a role in the drawing of district lines." *Id*. at 8. Defendants do not dispute that state legislators are "relevant state actors" whose express acknowledgement that race played a role is direct evidence of intentional discrimination. *See* App. 281-84. At the preliminary injunction hearing, Plaintiffs introduced statement after statement by Texas state legislators acknowledging, either explicitly or by reference to the DOJ letter, that race played a motivating role.

As discussed above, the District Court detailed at length the contemporaneous statements made by legislators in the legislative proceedings themselves, as well as in the public domain, demonstrating that the 2025 redistricting process was directed at dismantling minority coalition districts under an illegal, misleading, and distorted reading of *Petteway*. *See supra* Section I.A.

This evidence "plausibly support[s]" the District Court's conclusion that the Texas Legislature was directed by DOJ and Governor Abbott to target districts ***on the basis that they were majority-minority districts***, and it did just that. *Alexander*, 602 U.S. at 10; *cf. Abbott v. Perez*, 585 U.S. 579, 608 (2018) (applying the presumption of good faith where "[t]he only direct evidence . . . suggests that the . . . Legislature's intent was legitimate"). To be sure, these statements by Texas legislators relieve the Court of having to make the uncomfortable inference that the Legislature "engaged in offensive and demeaning conduct that . . . resemble[s] political apartheid." *Alexander*, 602 U.S. at 11 (internal quotations and citations omitted). Rather, these statements stand on their own to "rule[] out [the] possibility"

that partisanship rather than race drove the decision-making in enacting the 2025 Congressional Plan. *Id*. at 20. When legislators not only concede, but publicly aver, that the objective of the redistricting process was to break up districts ***precisely because they were majority-minority districts***, it is appropriate, as the District Court did here, to take those legislators at their word.

Further, the District Court correctly determined that the DOJ letter and statements of Governor Abbott constitute additional direct evidence of the Legislature's racial intent. While Defendants now claim that Governor Abbott and DOJ are not "relevant state actor[s]," *see* Mot. at 25, that was not Defendants' position throughout the District Court's 9-day hearing. Then, Defendants and counsel for Governor Abbott repeatedly asserted the ***legislative*** privilege to block inquiry into Governor Abbott's discussions concerning redistricting. They argued that "the Governor's participation in possible redistricting legislation was a ***legislative*** function." TXNAACP App. 83-84 (emphasis added). They further claimed ***legislative privilege*** on behalf of Governor Abbott on the basis that the discussions would have included "deliberations on whether to issue a special session call. If so, how? [and] What the scope of it might have been." TXNAACP App. 87. And they further maintained that the Governor's legislative privilege could be asserted ***even*** as to his discussions with federal officials—including discussions about the DOJ letter—because those federal officials were "third parties that inform[ed] the legislative process." TXNAACP App. 85. Defendants cannot have it both ways. The DOJ Letter and the Governor's statements are direct evidence for the same reason

they claim those discussions were privileged: the Governor who called the special session, set its agenda, and signed the new map into law, is a "relevant state actor." *See, e.g.*, *Diaz v. Silver*, 978 F. Supp. 96, 116 (E.D.N.Y, Feb. 26, 1997) (relying in part on statements by the Governor to conclude race predominated in the passing of the state's redistricting plan). Indeed, but for the Governor's actions, neither the special session nor the 2025 redistricting would have taken place. And even if that were not the case, DOJ's and the Governor's statements before and during legislative deliberations still would be probative regarding the Legislature's intent.

Taken together, the direct evidence is substantial, straightforward, and compelling. The DOJ told Texas to dismantle districts based on their racial composition. App. 17-19. Governor Abbott said Texas would do it. App. 62-63. Governor Abbott convened the Legislature and told them to do it. App. 61-62. Legislators said they would do it. App. 67. Legislators did it. App. 105. Legislators said that they did it. App. 66-67. And Governor Abbott signed it into law.

2. The Intent of the Map Drawer, a Non-State Actor, is Irrelevant to Legislative Intent

The District Court correctly concluded that the intent of the map-drawer, Adam Kincaid, was "irrelevant" to the question whether the Texas Legislature enacted the 2025 Congressional Plan with racial intent. App. 104. Perplexingly, after arguing that Governor Abbott's statements are irrelevant because he was not part of

the Legislature (Application at 25), Defendants rest their case on Mr. Kincaid.[2] But Mr. Kincaid is ***not*** a member of the Legislature, was ***not*** hired by the Legislature, was ***not*** paid by the Legislature, and did ***not*** take instruction from the Legislature when he initially drew the proposed maps. Mr. Kincaid never even explained to the Legislature how he drew the maps, despite being invited to appear before the Legislature to testify as to the maps that he drew. App. 87 n. 314. He provided the Legislature a product: a redistricting map, one that on its face reflected compliance with the DOJ mandate when it came to the Legislature for adoption. What matters here is not Mr. Kincaid's purported intent in manufacturing the product, but the Legislature's intent in using it.

Even if Mr. Kincaid's intent were at issue (and it is not), Defendants provide no good reason to second guess the adverse credibility determination of the two-judge majority of the District Court. This Court gives "singular deference to a trial court's judgment about the credibility of witnesses." *Cooper v Harris*, 581 U.S. 285, 309 (2017); *see also Glossip v. Gross*, 576 U.S. 863 (2015) (holding that when multiple courts (*i.e.,* multiple judges) have reached the same finding review is even more deferential).

Here, Defendants time and again describe Mr. Kincaid's testimony as "uncontroverted." Application at 25. It is not. The analysis of Plaintiffs' expert, Dr.

[2] Contrast, *Cooper v. Harris,* 581 U.S. 285, 299-301 (2017), where the mapmakers whose intent this Court found probative included the chairs of the State House and Senate Committees overseeing redistricting, a fact the U.S. Amicus Brief fails to note.

Moon Duchin, disproves Mr. Kincaid's claims that he drew the maps race blind. And, while much of Mr. Kincaid's testimony dwelled on unwitnessed acts in his office and matters over which privilege was asserted, nearly every time Mr. Kincaid testified as to something within the personal knowledge of another witness, the other witness disputed his testimony. *See, e.g.,* App. 83-84, 99.

Finally, Mr. Kincaid failed to provide any basis other than his self-serving testimony that he drew the map race blind. Mr. Kincaid conceded that the images he prepared for the District Court in the form of demonstratives were not accurate representations of what he viewed when he was drawing the maps. TXNAACP App. 91. Instead, the images displayed during the evidentiary hearing in the District Court were generated from his proprietary software to make his district lines look as partisanly-drawn as possible, even though the parameters applied to produce those images were indisputably not the ones he applied when he actually generated the maps. *Id*. Further, Mr. Kincaid exhibited detailed knowledge of precisely where people of color lived in the challenged areas, based, at least in part, on his extensive work drawing all of the 2021 maps for the State of Texas. App. 187. And he knew which districts DOJ had demanded be modified, because he had read DOJ's letter (before it was even sent). App. 98. Mr. Kincaid did not need to consult demographic data to implement DOJ's directive. App. 96-98.

B. Respondents Were Not Required to Produce an Alternative Pictorial Map

Defendants claim that Plaintiffs failed to meet their burden under *Alexander* because they "fail[ed] to produce an alternative map." Application at 21. Defendants misstate the facts and the law.

The Court in *Alexander* recognized that an alternative map is essential "when all plaintiffs can muster is 'meager direct evidence of a racial gerrymander.'" 602 U.S. at 30 (quoting *Cromartie II,* 532 U.S. at 258). As already discussed, and as exhaustively cataloged by the District Court, the direct evidence of racial predominance was by no means "meager." *See, e.g.,* App. 59-79. In modern redistricting litigation, it is extremely rare, if not unprecedented, for plaintiffs to provide evidence that is so voluminous, diverse, pervasive, and unequivocal as the evidence adduced here. App. 6. In light of this direct evidence confirming that "race furnished 'the overriding reason'" for the districts drawn in the 2025 Congressional Plan and for their adoption by the Texas Legislature, "a further showing of 'inconsistency between the enacted plan and traditional redistricting criteria,'" through an alternative map "is unnecessary to a finding of racial predominance." *Cooper v. Harris*, 581 U.S. 285, 301 (2017). *Alexander*, where there was no such direct evidence, does not hold otherwise.

Moreover, even if Plaintiffs had not introduced a mountain of direct evidence showing the Legislature's discriminatory intent (which it did) and this was a "circumstantial-evidence-only case" (which it is not), Plaintiffs have nevertheless satisfied their burden under *Alexander* to show through alternative maps that "a

rational legislature sincerely driven by its professed partisan goals would have drawn a different map with greater racial balance." *Alexander*, 602 U.S. at 10.

While Plaintiffs do not dispute the Court's finding that Plaintiffs did not introduce an alternative map into evidence at the hearing (*see* App. 132), Defendants are wrong that Plaintiffs produced no alternative maps in this litigation. Indeed, Plaintiffs' expert, Dr. Duchin, produced tens of thousands of alternative maps. *See id.* As Dr. Duchin explained, the ensemble analysis she performed generated alternative maps adhering to traditional redistricting principles for each of the relevant "clusters" of districts. *See* TXNAACP App. 3, 58-70. All these maps were provided to Defendants as part of Dr. Duchin's report. Counsel for Defendants acknowledged during cross-examination of Dr. Duchin that she did, in fact, provide her alternative maps to Defendants:

> Q. In the weeks leading up to this hearing, I asked for you to produce the data -- to produce data in support of your reports; and you provided a ton of it, right?
>
> A. Yes. Quite a lot.
>
> Q. 300 gigabytes, something like that, right?
>
> A. I -- that's a lot. I believe you.
>
> Q. And that data you provided in support of your map drawing project included the code that you used, right?
>
> A. Definitely.
>
> Q. The inputs that you would have then -- the input data that you would have then run through the code; is that right?
>
> A. Yes.
>
> **Q. And then also the outputs or the literal maps; is that right?**

A. Yes.

TXNAACP App. 72-73 (emphasis added).

Moreover, Defendants' expert, Dr. Sean Trende, conceded as much in his report, stating that "Dr. Duchin has provided her chains to defense to examine." App. 599. The "chains" to which Dr. Trende refers are the Markov chains, which are sequences of districting plans and would have allowed Dr. Trende (or any other redistricting software user) to regenerate Dr. Duchin's same set of maps. Dr. Duchin's report, in turn, which was introduced as evidence at the hearing, demonstrates that the vast majority (and in some cases, every one) of the alternative maps she generated for the relevant clusters could have achieved the same (or better) partisan results "with greater racial balance." *Alexander*, 602 U.S. at 10; *see also* App. 121 ("According to Dr. Duchin's analysis, it is highly unlikely that a Legislature drawing a map based purely on partisan and other race-neutral considerations would have drawn a map with the 2025 Map's racial characteristics.").

Dr. Duchin's report also included visual representations—in the form of boxplots—reflecting the citizen age voting population of voters of color (POC CVAP) in the alternative maps generated by Dr. Duchin's analysis. These figures included plots both with and without constraints of a panoply of traditional redistricting principles. The boxplots compare the State's 2025 Congressional Plan to the alternative plans in the ensemble. These images demonstrate a pattern of packing and cracking of voters of color in the State's plan "above and beyond the mere consequences of pursuing partisan aims" when compared to the alternative maps reflected in Dr. Duchin's ensembles, a pattern even more noticeable in maps designed

to achieve multiple measures of partisan Republican advantage. App. 110-22; TXNAACP App. 15.

Neither the Federal Rules of Evidence nor this Court's precedent require or express a hierarchical, non-technological preference for maps in pictorial form over ones reflected in computer code, and in fact, the parameters applied by Dr. Duchin could only be viewed and verified through the production of those data files. Consequently, Dr. Duchin's report, which contains Plaintiff Texas NAACP's ensembles of alternative maps, taken together with the plots to assist in visualizing the racial demographics of those alternative maps that were put before the Court, more than satisfies Plaintiffs' burden under *Alexander* to show that "the legislature could have achieved its legitimate political objectives in alternative ways that are comparably consistent with traditional districting principles." *Alexander*, 602 U.S. at 10 (quoting *Easley v. Cromartie*, 532 U.S. 234, 258 (2001)).

Finally, Defendant's argue that Dr. Duchin's maps did not satisfy the Legislature's criteria. The Legislature alleges that its partisan goals were to "increase the likelihood that the districts would elect republicans." App. 80. Dr. Duchin's maps do just that. What Defendants actually mean, is that Dr. Duchin did not input the exact same metrics allegedly used by Mr. Kincaid when generating her maps. Of course she did not, nor could she have. Throughout this case Defendants have hidden—and continue to hide—the full list of Kincaid's considerations behind layers of privilege. *See* TXNAACP App. 93-95 (asserting privilege over certain "significant" considerations). It cannot be the case that plaintiffs are required to use

a map drawer's secret parameters when creating their alternative maps. Further, as the District Court found, the criteria Dr. Duchin used was sufficiently similar to create maps that did not "deviate[] materially" from the State's plan. *See* App. 125.

II. Neither Defendants' Harm Argument, the Balance of Equities and Public Interest, nor *Purcell* Justifies the Issuance of a Stay in this Case

Defendants' irreparable harm argument is circular; it presupposes that they will win on the merits. The District Court held, however, that Plaintiffs are "likely to prove at trial that [the Texas 2025 Congressional Plan is] racially gerrymandered." App. 3. There is no right to engage in racial gerrymandering. Being barred from racial gerrymandering is not irreparable injury. To the contrary, it is ***Plaintiffs*** who would be irreparably injured if forced "to proceed with elections under a congressional map that likely unconstitutionally sorts voters on the basis of race" and therefore "deprives the Plaintiff[s] of their right to participate in a free and fair election." *Id.* at 151. There is no adequate remedy at law for the injury Plaintiffs will suffer if forced to vote under a racially discriminatory map that violates their constitutional rights. App. at 137-38. As this Court noted, "the loss of constitutional freedoms 'for even minimal periods of time . . . unquestionably constitutes irreparable injury.'" *Id.* at 138 (citing *BST Holdings, LLC v. OSHA*, 17 F.4th 604, 618 (5th Cir. 2021), quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Federal courts have found that violations of constitutional rights "constitutes irreparable harm as a matter of law." *DeLeon v. Perry*, 975 F. Supp. 2d 632, 663 (W.D. Tex, 2014), *aff'd sub nom. DeLeon v. Abbott*, 791 F. 3d 619 (5th Cir. 2015). This case is no different. Issuing a stay will perpetuate the harm caused by constitutionally impermissible Congressional districts.

Moreover, any harm stemming from the inability of the State to enforce statutes that it has enacted is substantially mitigated when the State has in place ***another*** redistricting plan—adopted by the Legislature, signed by the Governor, and used in the last two congressional election cycles—under which it can proceed. The District Court's order granting the preliminary injunction directed Texas to "proceed under the map that the Texas Legislature enacted" four years ago in 2021, that it has used in every election since then, and that it just used in Congressional elections in 2024. *Id.* at 1. Defendants vociferously defended the 2021 Congressional maps as lawful, appropriate, and drawn free from racial considerations in a trial on the merits of those claims just six months ago. Although litigation regarding the constitutionality of that plan will continue in 2026 and beyond, by Defendants' own admission, the 2021 Congressional maps are an appropriate and functional vehicle for the 2026 elections. Accordingly, Defendants' claim that they will suffer "the irreparable harm" if they are unable to hold an election under an unlawful plan (Application at 39) cannot support a stay here.

Additionally, the balance of the equities and the public interest counsel against a stay. Courts assess the balance of the equities and the public interest together because they "overlap considerably." *Nken v. Holder*, 556 U.S. 418, 435 (2009). Here, the Plaintiffs seek to enforce the Constitution's prohibition on racial discrimination in map drawing for elections. The Fourteenth and Fifteenth Amendments guarantee citizens the right to vote free of discrimination on the basis of race, a right "preservative of all rights." *Harper v. Va. Bd. of Elections*, 383 U.S. 663, 667 (1966)

(citation omitted). Requiring Black and Brown Texans to vote under an illegally racially gerrymandered plan in the upcoming election cycle would send the message that courts are powerless to protect the rights of impacted voters and the Constitution's protections are meaningless. That outcome gravely disserves the public interest.

Finally, *Purcell* does not counsel the grant of a stay here. Defendants contend that a stay is warranted under *Purcell* for two principal reasons: (1) the candidate filing deadline is underway and changing the map would cause voter confusion and (2) Defendants are denied an opportunity to create a remedial map. *Id*. at 13.

The present case is distinct from the situations in the three cases on which Defendants rely most heavily: *Robinson v. Ardoin*, 142 S. Ct. 2892 (2022); *Robinson v. Callais,* 144 S. Ct. 1171 (2024); and *Merrill v. Milligan*, 142 S. Ct. 879 (2022). Each of those cases presents a vastly different timeline in connection with the election than here. In *Milligan,* the order issued by the lower court and stayed by this Court came just weeks before the early voting period began in Alabama. *See* 142 S. Ct. at 879 (Kavanaugh, J., concurring). Similarly, *Robinson* and *Callais* involve scenarios in which this Court invoked *Purcell* in the middle of a general election year. *See Robinson*, 142 S. Ct. 2892 (stay granted on June 28, 2022); *Callais*, 144 S. Ct. 1771 (stay granted on May 15, 2024).

As the District Court detailed, the 2026 primary election is more than three months away and the general election nearly a year away.[3] App. 142-44. And despite claims that election officials have begun to move forward with preparations under the 2025 Congressional Plan, Texas elections held just weeks ago were conducted under the 2021 Congressional map. Indeed, Congressional District 18 will hold a runoff election under the 2021 Congressional map on January 31, 2026—approximately 31 days before the 2026 Primary. *Id*. at 144-45.

It defies common sense to argue that *Purcell* compels use of the 2025 Congressional Plan to avoid voter confusion in elections nearly three and eleven months from now, respectively, when the State has never used the 2025 Congressional Plan in any election to date and the 2021 Congressional map will still be used in an election two months from now.[4] To the contrary, the Court's order that elections continue to be conducted under the 2021 map that has been used in the last several election cycles is the prudent course of action to avoid any risk of voter confusion. At bottom, Defendants' decision to enact an entirely new Congressional map outside the mid-decade redistricting and normal legislative processes weighs in

[3] The December 8 candidate filing deadline that Texas cites to justify emergency relief is earlier than the deadlines in 47 other states. National Conference of State Legislatures, 2026 Candidate Filing Deadlines. Texas is entitled to set early deadlines if it chooses, but the practice in other states casts doubt on the frantic claim that extending them is an undue burden.

[4] Additionally, it defies common sense to argue that, under *Purcell,* states can enact a map that violates the Constitution and federal law in proximity to election filing deadlines and render courts powerless to protect the fundamental right to vote of injured voters. Equitable principles are supposed to achieve equity. The result the State advocates bears no resemblance to it.

favor of maintaining the status quo until this Court can hold a full trial on the merits of Plaintiffs' claims as they relate to the 2025 Congressional Plan. *See Callais*, 146 S. Ct. at 1172 (Jackson, J., dissenting).

Put differently, even if Defendants were correct that using the 2021 map would cause some confusion, so would using the 2025 map. As discussed above, the 2025 map was enacted just three months ago, elections proceeded under the 2021 map just weeks ago, and uncertainty has abounded since the map was passed. *See* App. 145. Therefore, this case does not present the same choice between voter confusion and voter clarity that this Court addressed in *Purcell*. Instead, even if Defendants are correct, the choice here is merely between voter confusion standing alone, and voter confusion combined with likely unconstitutional discrimination. If "eliminating racial discrimination" truly "means eliminating all of it," *Students for Fair Admissions v. Harvard*, 600 U.S. 181, 184 (2023), it means eliminating it here, over 340 days before the next election.

Finally, citing *Wise v. Lipscomb,* Defendants argue that "[w]hen a federal court declares an existing apportionment scheme unconstitutional, it is therefore, appropriate, whenever practicable, to afford a reasonable opportunity for the legislature to meet constitutional requirements by adopting a substitute measure rather than for the federal court to devise and order into effect its own plan" and the districts court's decision to allow them to redistrict again just months before the 2026 primary elections compounds their perceived *Purcell* issue. Application at 18-19 (quoting 437 U.S. at 540 (1978) (opinion of White, J.)). The critical caveat in *Wise* is

that it applies "***whenever practicable***." Here it is not. Defendants' arguments on this point, like many others, are circular and contradictory. On one hand they claim *Purcell* demands a stay because we are too close to the 2026 elections for the District Court to instruct the state to use the duly legislatively passed map that has been in effect since 2021. Application at 15-16. At the same time, they contend that the Legislature be given an opportunity to redistrict again months before the start of the 2026 primary. As the 2025 Congressional Plan has not been used in any election to date, falling back to the 2021 Plan as instructed by the District Court preserves the status quo, remedies the egregious constitutional violations in the 2025 Congressional Plan, and ensures that the State suffers no prejudice by continuing to utilize the plan it crafted, vigorously defended, and is currently using.

This Court should deny the stay.

CONCLUSION

For the reasons set forth above, Respondents respectfully request that this Court deny Applicants' motion for emergency relief, vacate the administrative stay issued by this Court, and reinstate the District Court's preliminary injunction.

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Respectfully submitted,

LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
DAMON HEWITT*
ROBERT WEINER
Counsel of Record
DAVID ROLLINS-BOYD
JENNIFER NWACHUKWU
1500 K Street, Suite 900
Washington, DC 20005
robert.weiner@lawyerscommittee.org

DECHERT LLP
NEIL STEINER
LINDSEY B. COHAN
JEREMY LEWIS
515 Congress Avenue
Suite 1400
Austin, Texas 78701

THE BLEDSOE LAW FIRM PLLC
GARY BLEDSOE
6633 Highway 290 East #208
Austin, Texas 78723-1157
(512) 322-9992

LAW OFFICE OF ROBERT NOTZON
ROBERT S. NOTZON
1502 West Avenue
Austin, Texas 78701

NAACP OFFICE OF THE GENERAL COUNSEL
JANETTE M. LOUARD
CARROLL RHODES
ANTHONY P. ASHTON
4805 Mt. Hope Drive
Baltimore, Maryland 21215

Counsel for Texas State Conference of NAACP Branches

*Admitted in Pennsylvania only. Practice limited to matters before federal courts