
IN THE
Supreme Court of the United States

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

v.

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

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE WESTERN DISTRICT OF TEXAS

MOTION TO AFFIRM

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QUESTIONS PRESENTED

1. Whether this Court should affirm the finding of the district court that Texas racially gerrymandered the 2025 Congressional Map in violation of the Equal Protection Clause of the Fourteenth Amendment?
2. Whether this Court, now that elections have occurred under the challenged 2025 Map, should vacate the preliminary injunction and remand to the lower court for discovery and a trial on the merits of the Appellees' claims?

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INTRODUCTION

On November 18, 2025, two federal judges entered a preliminary injunction because, they found, Texas had impermissibly considered race when drawing its new district lines. Both judges had previously rejected a similar request to preliminarily enjoin Texas's 2021 state senate map. Yet, after weighing nine days of evidence from over twenty witnesses and thousands of exhibits, both could not escape the conclusion that Texas had unlawfully drawn its 2025 congressional map based on race. In fact, they found that the evidence was "clearcut in favor of the Plaintiff Groups." J.S.A. 152a.

Now, Texas asks this Court to reverse that decision, to reweigh the evidence, and even to "credit the testimony" of a witness whom the lower court found not credible. J.S. 25. This Court, in the State's view, should assume the role of trier of fact and replace the lower court's extensive findings with what the State thinks is "the 'more plausible explanation.'" J.S. 24.

But the United States Supreme Court does not sit to resolve factual disputes. The trial court's finding that race drove the drawing of district lines is intensely fact-bound, and this Court reviews it "only for clear error." *Cooper v. Harris*, 581 U.S. 285, 293 (2017). The 160-page opinion by the district court meticulously collects, filters, and analyzes the evidence of racial gerrymandering, which it finds to be predominant. The clear error standard dictates affirmance of such a finding even if this Court "would have decided the matter differently." *Id.* Based on this standard of review, the Court should summarily affirm the district court decision. Indeed, the trial

court's resolution of purely factual issues does not even present a substantial federal question.

Texas cannot transmute the district court's factual determinations into issues of law by invoking the presumption of legislative good faith. The court below correctly articulated the presumption, quoting this Court's formulation of it in *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 6 (2024): "When 'confronted with evidence that could plausibly support' either a racial or a non-racial motivation for a legislature's action, 'district courts [must] draw the inference that cuts in the legislature's favor.'" J.S.A. 58a. The trial court properly treated this presumption as imposing an onerous burden on Appellees. But, after considering all the evidence, the district court concluded that Appellees' showing was sufficiently compelling to overcome the presumption. *Id.* at 99a-100a. This factual determination is not clear error.

The steps the district court undertook in evaluating the evidence reflect what trial courts do every day. Nothing in *Alexander* invalidates this exercise, nor does the decision grant the State a pass on clear error review. As this Court noted repeatedly in *Alexander*, that case addressed a record devoid of direct evidence showing discriminatory intent to rebut the presumption. That evidentiary vacuum made the inference of good faith dispositive. *Id.* at 145a. This case is distinguishable. As the district court found, "Unlike the challengers in *Alexander*, who 'provided no direct evidence of a racial gerrymander,' the Plaintiff Groups here have produced substantial direct evidence indicating that race was the predominant driver in the 2025 redistricting process." *Id.* On the deferential review that the law requires, this factual determination must stand, dictating summary affirmance of the district court's ruling. Further,

because the State is asking the Court to reweigh the evidence rather than decide unresolved legal issues, the Court should dismiss the State's appeal for want of a substantial federal question.

The State does no better with its claim that the Plaintiffs' alleged failure to present an alternative race-blind map satisfying the State's partisan goals raises an adverse inference fatal to their case. The district court in fact did draw an adverse inference but found that it could not withstand the overpowering evidence of racial intent. *Id.* That reflects a factual, not legal conclusion, and it is, in any event, an evidentiary ruling well within the district court's discretion. Further, Dr. Moon Duchin, the Texas NAACP's expert witness, did provide the State such a map—many of them, in fact—in digital form. The Court therefore should summarily affirm the trial court's judgment that the adverse inference did not displace the weight of the evidence and should find that the lower court's exercise of discretion does not raise a question worthy of this Court's review.

In sum, the issues here are factual, not legal. The amount and nature of the inculpatory evidence before the district court—including DOJ's smoking gun letter—was unprecedented in modern civil rights litigation. It amply supports the trial court's conclusion "that the Legislature had redistricted not for the political goal of appeasing President Trump nor of gaining five Republican U.S. House seats, but to achieve DOJ's racial goal of eliminating coalition districts." *Id.* at 4a. Weighing the evidence and second-guessing discretionary trial court rulings are not proper functions for this Court. The Court should summarily affirm this case or dismiss the appeal for lack of a substantial federal question.

Alternatively, the Court could reserve review of this case until an appeal from a final judgment. As this Court observed in granting a stay, the district court “enjoined the use of the new map in the 2026 elections.” *Abbott v. League of United Latin Am. Citizens*, 146 S. Ct. 418, 419 (2025); see also J.S.A. 2a (district court injunction for “the 2026 congressional elections”). This Court then concluded that preliminary injunctive relief was inappropriate because the “2026 campaign [was] underway.” *Abbott*, 146 S. Ct. at 419. If, following the March 2026 primary election, that is still the case, this Court can exercise discretion to defer adjudicating the appeal until there is a final judgment. *Cf. Veasey v. Abbott*, 580 U.S. 1104 (2017) (noting that claim was “in an interlocutory posture” and thus Texas could raise it “again after entry of final judgment.”) (Roberts, C.J., respecting the denial of certiorari). The controlling question over which the Court has mandatory appellate jurisdiction is whether the 2025 redistricting map should be enjoined for the 2026 elections, which has effectively been resolved. The remaining questions pertain to the use of the 2025 map in elections after 2026, which are best decided by the district court after discovery and trial, not on the current record compiled on an emergency motion, without discovery and on an accelerated timetable. If the case were to return to this Court for review, the Court would have the benefit of a full record in rendering its decision. In the interest of judicial efficiency and a considered appellate process, the Court should vacate the preliminary injunction and remand to the district court for final proceedings without requiring merits briefing and argument on this appeal.

STATEMENT OF THE CASE

A. Proceedings Below

Appellee challenged clusters of Congressional districts in the Dallas-Fort Worth (CD 32, CD 33), Houston (CD 9), and Travis/Bexar County (CD 35) areas both as racial gerrymanders and because they were adopted with racially discriminatory intent.¹ After nine days of testimony from 23 witnesses and thousands of exhibits, including extensive video clips of statements by Texas legislators and other officials, the district court granted Appellee's Motion for Preliminary Injunction as to its racial gerrymandering claim, enjoining the 2025 congressional map and ordering Texas to use the 2021 congressional map in its stead. J.S.A. 176a.

Meticulously cataloging and analyzing the evidence, the court found that race was the predominant motivation for the Legislature's adoption of the 2025 congressional map and that the Legislature had subordinated traditional districting principles in favor of race. *Id.* at 142a. This conclusion relies on detailed factual findings, including:

- Direct evidence that Texas followed the command in the DOJ Letter “to meet a 50% racial target,” which was “consistent with the map the Legislature ultimately passed.” *Id.* at 59a. This included both statements by Governor Abbott and state legislators reflecting a

¹ This brief addresses Appellee Texas NAACP's racial gerrymandering claim as the district court decided only that claim.

predominantly racial motivation. *Id.* at 60a-65a, 67a-85a.

- Appellee’s direct evidence of racial motivation outweighed the “contemporaneous statements of legislators involved in the 2025 redistricting” offered by Appellants to suggest partisan motives. *Id.* at 99a.
- The precision of the racial demographics for Congressional Districts 9, 18, 29, and 35 drawn by external map drawer Adam Kincaid indicate that he “had both racial and partisan data turned on while drawing the 2025 Map and that he used the former to achieve the racial targets that DOJ and the Governor had explicitly announced as he simultaneously used the latter to achieve his partisan goals.” *Id.* at 111a.
- “Significant inconsistencies” between the testimony of Appellants’ outside map drawer Adam Kincaid and Senate Redistricting Committee Chair Phil King led the court to question the veracity of both witnesses. *Id.*
- Appellee’s expert Dr. Moon Duchin offered testimony demonstrating that “the best possible explanation for the 2025 Map’s racial makeup is that the Legislature based the 2025 Map on racial considerations, and those racial considerations predominated over partisan ones.” Moreover, her results were “fully consistent” with the direct and circumstantial evidence in the record. The State’s experts did not attempt to rebut her testimony. *Id.* at 132a-133a.

B. Evidence Presented at Trial

The trial record supported the panel's findings.

1. *The Trial Court Found that the DOJ Letter and Governor Abbott's Actions are Direct Evidence of a Predominantly Racial Motivation.*

The district court aptly recognized the July 7, 2025 DOJ Letter as the key link in the chain of events culminating in the 2025 map. The Letter, misstating the holding of *Petteway v. Galveston*, 111 F.4th 596 (5th Cir. 2024) (en banc), demanded that Texas dismantle CDs 9, 18, 29, and 33 because, according to DOJ, these coalition districts constituted unlawful racial gerrymanders. DOJ thus targeted these districts "solely because of their racial composition" and effectively required that they meet a "50% racial target." J.S.A. 59a.

As the court observed, "the DOJ Letter urges Texas to inject racial considerations into what Texas insists was a race-blind process" and just as notably does not include "any mention of partisanship." *Id.* at 25a, 30a.

Two days after receiving the Letter, Governor Abbott issued his proclamation exhorting the legislature to revise Texas's congressional map to address DOJ's concerns. *Id.* at 30a-31a, 60a-62a. Moreover, Governor Abbott made several public statements confirming that DOJ's flawed understanding of *Petteway* was the impetus for congressional redistricting during the 2025 special legislative session.

2. The Trial Court Determined that Key Legislators' Contemporaneous Statements Demonstrate Racial Motivation.

As the trial court found, the contemporaneous statements of several key legislators corroborated the racial motives evident in the DOJ Letter and statements by Governor Abbott, including:

1. House Speaker Dustin Burrows: Upon passage of the new congressional map, Speaker Burrows issued a press release declaring that the House had “delivered legislation to redistrict certain congressional districts to address concerns raised by the Department of Justice.” *Id.* at 67a.

2. House Republican Caucus Chair, Representative Tom Oliverson: In an interview with NPR, Rep. Oliverson made clear that the goal of the 2025 redistricting process was not partisan gain, but the undoing of coalition districts:

Q: “So this congressional map. It’s being redrawn after your party already drew it in 2021. And one of the main objections to what you all are doing is that Texas Republicans are doing this only because President Trump asked you to do so. Let me just ask you directly. Is that true? Are you redoing this map now specifically because of the [P]resident’s request?”

Rep. Oliverson: “No, we are not. And in fact, the first conversations that I heard about and had myself regarding redistricting began before the legislative session began in January as a result of a court case where a federal appeals court

basically rejected the idea of the coalition districts as being consistent with the Voting Rights Act.” *Id.* at 69a.

3. Representative Steve Toth: Rep. Toth rejected the notion that partisanship motivated the 2025 redistricting process, stating:

Q: “[Y]ou pointed out something important here, which is that the storyline Democrats and their liberal friends like to say is, oh, this is being done by Texas for gerrymandering and for political gain in the [2026] election. But in fact, the Justice Department required the state to do this because there were appellate court rulings that said Texas was out of compliance with the current law. So, this isn’t actually gerrymandering. This was actually required to be done, right?”

Rep. Toth: “It was required of us to do it in . . . response to *Petteway* to get compliant.” *Id.* at 70a.

4. Representative Todd Hunter: Rep. Hunter made numerous statements confirming that *Petteway*, not partisanship, was the impetus for the 2025 redistricting, including:

a. “[*Petteway*] says there’s not a requirement that you have to use coalition [districts]. . . So, today, this map is taking th[at] in factor [sic].” *Id.* at 79a n. 263.

b. Q: “So, what else happened between the last redistricting and this [b]ill that causes you comfort to make these changes?”

Rep. Hunter: “Well, number one, in 2024 the *Petteway* case . . . was decided. . . . And there they said, Section 2 of the Voting Rights Act does not authorize separately protected minority groups to aggregate their populations for purposes of a vote dilution claim, and it does not require political subdivisions to draw precinct lines for these particular groups. So, this changed a lot of the law that happened in 2021.” *Id.* at 78a n. 260.

c. “[W]e created four out of five new seats of [sic] Hispanic majority. I would say that’s great. That doesn’t ensure that a political party wins them, but the Hispanic—four out of five Hispanic majority out of those new districts—that’s a pretty strong message, and it’s good.” *Id.* at 78a n. 259.

d. “Under the Fifth Circuit—and this is a recent decision; they changed the law [c]oalition districts were held by the Court that Section 2 no longer requires the drawing of coalition districts.” *Id.* at 78a n. 260.

5. 2025 Map Joint Sponsor Representative Spiller: Rep. Spiller’s colloquies with Rep. Hunter demonstrate that coalition districts were targeted in the 2025 redistricting process:

a. Rep. Spiller: “I would submit to you that [CD 18] is currently a coalition district; under [your

proposed map], it would not be. Coalition districts are the type that are addressed in the *Petteway* case; and so I would submit to you that it goes from a coalition district to a majority Black CVAP district, being 58.1 [sic]² percent Black.”

Rep Hunter: “That is correct.”

b. Rep. Spiller: “. . . District 9 . . . was also . . . a coalition district and the [type of] district that was addressed in the *Petteway* case. And now, under your HB 4, it changed from a coalition district to a majority Hispanic CVAP district. Is that correct?”

Rep. Hunter: “Yes. For the record, the Hispanic CVAP of Congressional District 9 under this plan . . . is 50.15 percent. In 2021, it was 25.73 percent.” *Id.* at 80a n. 265.

The trial court correctly found that the post hoc justifications from Appellants’ legislative witnesses failed to overcome these and other contemporaneous statements reflecting the predominance of race in the redistricting process.

For example, Chair of the Senate Redistricting Committee Phil King played a minimal role in the redistricting process and testified that the House, not the Senate, led the effort. He confirmed that he had “[no role] whatsoever” in the drafting of the 2025 map and was “out of the loop.” *Id.* at 88a-89a. Senator King’s testimony at trial included multiple

² CD 18 was not drawn to be 58.1% Black CVAP. Rather, it was drawn to precisely 50.71%.

inconsistencies that discredited it in the eyes of the court, such as: (1) whether or not Senator King planned a meeting with map drawer Adam Kincaid at the July 2025 American Legislative Exchange Council (“ALEC”) conference; (2) whether he discussed the 2025 congressional map with Kincaid during this meeting; and (3) whether he discussed the use of racial data with Kincaid. *Id.* at 90a-96a.

Similarly, Senator Adam Hinojosa had minimal “involvement in the redistricting process beyond voting for the bill and delivering a brief speech in support.” *Id.* at 97a. Although House Redistricting Committee Chairman Cody Vasut’s contemporaneous statements offer a partisan rationale, the district court found that the testimony of one witness did not outweigh the overwhelming direct evidence presented by the Appellees. *Id.* at 99a.

In sum, having properly articulated the strongest formulation of the presumption of legislative good faith, the lower court made the factual finding that Appellees’ direct evidence, taken as a whole, was sufficiently compelling to overcome that presumption.

3. The Trial Court Concluded that the Enacted Plan is a Racial Gerrymander and Partisanship Does Not Explain the Enacted Districts.

In addition to the ample direct evidence, the trial court found that circumstantial evidence corroborated that the 2025 map was a racial gerrymander.

The court first considered the testimony of Adam Kincaid of the National Republican Redistricting Trust, who was hired by the Republican National Committee as an outside mapmaker to draw the State’s

congressional plan. *Id.* at 100a. As the court noted, the 2025 map “did all but one of the things that DOJ and the Governor expressly said they wanted the Legislature to do.” *Id.* Specifically:

- CD 9 was radically redrawn, maintaining only 2.9% of its old population, ending up with a surgically precise 50.3% majority Hispanic CVAP. *Id.* at 109a.
- CD 18 was redrawn, incorporating a predominantly Black portion of CD 9 ending up with a similarly precise 50.5% Black CVAP. *Id.*
- CD 29 was redrawn from 63.5% Hispanic CVAP to 43.3%. *Id.*
- Five “coalition districts” were redrawn such that a single racial group now comprised near exactly 50% of CVAP. CD 22 went from 49.2% White CVAP to 50.8%. CD 27 went from 44.1% White CVAP to 52.8% CVAP. CD 30 went from 46% Black CVAP to 50.2%. CD 32 went from 43.9% white CVAP to 58.7%. And CD 35 went from 46% Hispanic CVAP to 51.6%. *Id.* at 43a-48a.

The court found Kincaid’s testimony that he drew the maps race-blind inconsistent and implausible. But most importantly in the court’s estimation, the testimony was irrelevant, as Kincaid was not a member of the Legislature and had minimal contact with anyone who was. Thus, even if the court had found Kincaid credible, his testimony could not reveal the intent of legislators when passing the new map. *Id.* at 107a-117a.

Appellee Texas NAACP also offered the expert testimony of Dr. Moon Duchin, who demonstrated

that race predominated in the creation of the 2025 map. The court found that “[u]sing a computer program, Dr. Duchin randomly generate[d] hundreds of thousands of congressional maps that the Legislature might have hypothetically drawn”. *Id.* at 121a. The court further found that Dr. Duchin’s analysis generated maps that a Republican-controlled Legislature might have realistically enacted. *Id.* Specifically, Dr. Duchin’s analysis created maps that “favor[ed] Republicans by various metrics,” obeyed (or at least favor[ed]) traditional districting criteria like contiguity, compactness, respect for municipal subdivisions, and core retention; were winnowed down according to political criteria like Republican performance and incumbency protection, and were all race-neutral. *Id.* at 122a-123a.

In support of her findings, Dr. Duchin provided the court with visual depictions of the distribution of the randomly generated maps’ racial characteristics for each of the cluster of districts she analyzed, in the form of “box-and-whiskers” or “box” plots. *Id.* at 124a-133a. These plots show that the 2025 Congressional Plan’s “racial composition is a statistical outlier,” meaning that 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. *Id.* at 129a-133a. The court found that Dr. Duchin’s “results are fully consistent with the direct evidence and other circumstantial evidence in the record.” *Id.* at 133a. Her analysis supported the conclusion that race, not partisanship, better explained the features of Texas’s new congressional map. *Id.* at 132a-133a. Neither of Texas’s expert witnesses even attempted to rebut Dr. Duchin’s analysis, and the court found her

testimony and report highly credible and persuasive. *Id.* at 133a.

In its determination that Appellees' evidence overcame the presumption of legislative good faith, the district court properly considered the State's evidence. It recognized that CD 33 remained a coalition district after redistricting but found that a "legislature [could] gerrymander one district without gerrymandering another." *Id.* at 140a (citing *Bethune-Hill*, 580 U.S. at 191). The court also found it unpersuasive that, in some instances, districts drawn complied with traditional redistricting principles, because "race may predominate" "even when a reapportionment plan respects traditional [districting] principles." *Id.* at 142a. In sum, this circumstantial evidence was not sufficient to undermine the significant evidence presented by the plaintiffs. *Id.*

Finally, the court applied *Alexander's* negative inference arising because Appellees had not submitted an alternative map. But it found that the inference was "not fatal," as it was in *Alexander*, because in this case, unlike that one, the plaintiffs had produced substantial direct evidence, an alternative map was not easily available, and the evidence suggested it was not impossible to create one. *Id.* at 144a.

Thus, the district court found that the circumstantial evidence bolstered the direct evidence of racial predominance in the drawing of the 2025 map and, even after applying *Alexander's* negative inference, nevertheless concluded that the plaintiffs had "shown that they're likely to succeed on their racial gerrymandering challenges[.]" *Id.* at 150a.

ARGUMENT

I. THIS COURT SHOULD SUMMARILY AFFIRM BECAUSE THE 2025 MAP IS RACIALLY GERRYMANDERED

A. The panel resolved a purely factual question applying the proper legal standards.

The lower court faithfully applied the legal standards articulated by this Court, including the presumption of legislative good faith and *Alexander's* adverse inference, to make detailed, well-documented factual findings. Texas takes issue with those factual findings. But that does not present a legal question worthy of plenary review by this Court. Because the lower court decision merely applies established precedent to facts reflecting undisguised racial intent, it should be summarily affirmed or dismissed for lack of a substantial federal question.

B. The Lower Court Did Not Commit “Clear Error” in Finding That the 2025 Map Was an Impermissible Racial Gerrymander.

The panel’s finding of racial predominance is subject to clear error review, *Cooper*, 581 U.S. at 293 (2017). “Plausible” findings in light of the full record “must govern.” *Id.*

1. *The Record Supports a Finding That Race Predominated in the Creation of the 2025 Maps.*

a. *The Trial Court Did Not Commit Clear Error in Finding That Appellees Rebutted the Presumption of Legislative Good Faith.*

The lower court applied the presumption of legislative good faith. J.S.A. 57a-58a (citing *Alexander*, 602 U.S. at 6-7). As the trial court held, courts assessing racial gerrymandering claims “must ‘presum[e] that the legislature acted in good faith.’” *Id.* The trial court recognized further that it must construe ambiguous evidence in favor of the state when it is plausible to do so. *Id.* at 58a (citing *Alexander*, 602 U.S. at 10). But the district court was not required to treat the presumption as “super-charged” in the State’s favor. *Cooper*, 581 U.S. at 309 n.8.

The panel began its factual review with the DOJ Letter, which, it found, had “incorrectly” asserted that CDs 9, 18, 29, and 33 were unlawful coalition districts ripe for redrawing because of their racial makeup. J.S.A. 58a-59a. The district court deemed this demand for redistricting tantamount to a 50% racial target, which the Texas Legislature then achieved in the 2025 map by converting multiple of these coalition districts to majority-CVAP districts barely over the 50% threshold. *Id.* at 59a.

The court also determined that Governor Abbott’s proclamation and press statements relating to the special legislative sessions were

direct evidence of predominant racial motivation. Governor Abbott issued the proclamation calling for redistricting on July 9, 2025, two days after receiving the DOJ Letter. The proclamation explicitly called for Congressional redistricting to address the concerns over coalition districts raised in the DOJ Letter. The panel found that this step suggested racial rather than partisan motives for redistricting. *Id.* at 60a-62a. As the court noted, “Lawmakers initially showed little appetite to redistrict when the Trump Administration pressed the state to redistrict for exclusively partisan reasons. What triggered the redistricting process was the Administration reframing the request in exclusively racial terms.” *Id.* at 62a. In the court’s assessment, Governor Abbott did not cleanse “the first proclamation’s racial taint” by not mentioning the DOJ Letter in his second special session proclamation. *Id.* at 61a.

Governor Abbott’s press statements underscore a racial motive for redistricting, repeatedly citing *Petteway* as the basis for redrawing coalition districts into single-race majority-CVAP districts. He stated that the purpose for redistricting was to take Hispanic and Black voters in coalition districts and move them into “districts that really represent the voting preference [] of those people who live. . . in Texas.” *Id.* at 63a-64a. The court aptly determined that his statements were equivalent to using race as a proxy for partisanship, which this Court has found unconstitutional. *See Miller v. Johnson*, 515 U.S. 900, 911-12 (1995). Moreover, Governor Abbott’s public statements “consistently rejected the idea

that Texas was redistricting to fulfill President Trump's demand for additional Republican districts," leading the panel to conclude that race, not partisanship, was the predominant factor motivating the decision to move voters within or out of specific districts. J.S.A. 65a.

Even so, the trial court withheld any inference against the Legislature, recognizing that "[t]he mere fact that the federal and state executive branches told the Legislature to engage in racial gerrymandering is not dispositive." *Id.* The court thus continued its inquiry into the Legislature's motivation for adopting the 2025 Map by evaluating legislators' contemporaneous statements and trial testimony.

The court found the record to be replete with statements by key legislators in the 2025 redistricting process echoing "the same racial objectives as DOJ and the Governor." *Id.* at 67a; *supra* at 8-11. Still, consistent with the presumption of legislative good faith, the court weighed contemporaneous statements and testimony from Chair King, Sen. Hinojosa, and Chair Vasut claiming partisan motivation. Nevertheless, the court concluded, "On balance...the direct evidence of a predominant racial motive outweighs the direct evidence on the other side." J.S.A. 99a.

The panel then considered the testimony of mapmaker Adam Kincaid, acknowledging "that Mr. Kincaid gave political or practical—i.e., non-racial—rationales for his decisions at every step of the mapdrawing process." *Id.* at 107a. But the court determined this testimony not to be credible

in part because it was “extremely unlikely that Mr. Kincaid could have created so many districts that were just barely 50%+ CVAP by pure chance,” as this Court determined in similar circumstances in *Cooper*. *Id.* at 108a. Moreover, Mr. Kincaid testified that he had seen a preliminary draft of the racially-tinged DOJ Letter and discussed it with key White House and DOJ officials, as well as Governor Abbott, a week before DOJ sent it. *Id.* at 110a. Finally, applying the Fifth Circuit’s decision in *Prejean v. Foster*, 227 F.3d 504 (5th Cir. 2000), the court also determined that in any event, it could not extend Mr. Kincaid’s proffered partisan motives to the Legislature. *Id.* at 112a-113a.

The panel expressly recognized the presumption of good faith as required in *Alexander* and weighed all the direct evidence of both racial and partisan motivation in the record—multiple statements by the Governor, the Lieutenant Governor, the Speaker, and legislators against the backdrop of the DOJ letter. It found as a matter of fact that Appellees had decisively rebutted the presumption of legislative good faith. Far from being clear error, that finding is correct.

*b. The Trial Court Did Not Commit
Clear Error in Finding
Circumstantial Evidence of Racial
Discrimination*

The trial court evaluated three categories of circumstantial evidence: (1) the correlation between the 2025 Map and the goals of DOJ and the Governor; (2) the racial demographics of

reconfigured districts; and (3) Dr. Duchin's expert report and testimony. The panel determined that the 2025 Map "fulfilled almost everything that DOJ and the Governor desired" in its destruction of three of the four districts identified in the DOJ Letter. *Id.* at 117a.

First, the court acknowledged CD 33 as "the lone exception" to the Legislature's pattern of dismantling coalition districts but did not find this to be fatal to Appellee's claim because it was "entirely possible for the Legislature to gerrymander one district without gerrymandering another." *Id.* at 140a-141a.

Then, the panel found that the 2025 Map's "on-the-nose attainment of a 50% [C]VAP" for multiple challenged districts suggested that the Legislature followed a 50%-plus racial target "to the letter" that had a "direct and significant impact" on the districts' configuration. *Id.* at 118a. The trial court also compared this reconfiguring to that of CD 37, a majority-white district that typically elected Democrats and was not redrawn to elect a Republican. For example, CD 37 maintained 67.8% of its configuration from the 2021 Map compared to only 2.9% of the configuration of CD 9, a "majority-non-white" district redrawn to elect a Republican, in the 2025 map. When controlling for partisanship, the disparate treatment of majority-white versus majority-non-white Congressional districts further illustrated racial predominance. *Id.* at 119a.

Finally, Dr. Duchin's expert report and testimony "supplie[d] additional circumstantial evidence that race, not politics, best explain[ed] the

2025 map's contours" that was "fully consistent with the direct evidence and circumstantial evidence in the record." *Id.* at 121a, 133a. The trial court weighed Appellants' critiques of Dr. Duchin's methodology and determined that:

- Dr. Duchin explicitly addressed the critiques in *Alexander* in the design of her ensembles by accounting for partisanship and core retention, as well as analyzing specific geographic clusters comprised of the challenged districts and their adjacent neighbors rather than the entire state. *Id.* at 134a-135a. The court determined that "the issues that caused the Supreme Court to discredit Dr. Duchin's considerations in *Alexander* don't lead us to do the same here." *Id.* at 135a.
- The criteria and winnowing conditions Dr. Duchin applied did not yield "maps that deviated materially" from the State's 2025 plan. The court explicitly recognized that Dr. Duchin's 55% Trump threshold in her robustness check was a "floor" that captured districts near 60% Trump support like those in the 2025 map. *Id.* at 137a.
- Appellants failed to provide the court *any* expert rebuttal to Dr. Duchin's conclusions or any reason to dismiss her testimony as unreliable or otherwise "think that Dr. Duchin's results would have looked significantly different" had she used Kincaid's similar criteria. *Id.* at 138a-139a.

The trial court even weighed the 2025 map's compliance with traditional redistricting principles, finding that the map's compliance and even improvement in certain metrics was not fatal to Appellees' claims because of the considerable direct and circumstantial evidence of racial intent in the record. *Id.* at 141a-142a.

In its fact-finding role, the trial court assessed the circumstantial evidence, evaluated its probative force, and determined that, added to Appellees' powerful direct evidence, it rebutted the presumption of legislative good faith. This was a typical function of a trial court, and it applied the legal standards articulated by this Court. There is no basis to overturn it.

*2. The Trial Court Properly Applied
Alexander's Alternative Map
Requirement*

The trial court explicitly applied the principle articulated in *Alexander* that "trial courts should draw an adverse inference from a plaintiff's failure to submit" an alternative map. *Id.* at 144a (*citing Alexander*, 602 U.S. at 35). The trial court set forth this Court's rationale for such an inference, the ability of an alternative map to "show that the legislature had the capacity to accomplish all its partisan goals without moving so many members of a minority group" *Id.* at 143a (*citing Cooper*, 581 U.S. at 317). "The logic behind *Alexander*'s adverse inference," the trial court explained, is that, because an alternative map is relatively easy to generate as a technical matter, if a plaintiff fails to present such a map at trial, it must be

because it's impossible to draw a map that achieves the legislature's partisan goals 'while producing significantly greater racial balance.'" J.S.A.145a (footnotes omitted) (citing *Alexander*, 602 U.S. at 34). That inference, as this Court explained and the trial court acknowledged, "may be dispositive in many, if not most, cases where the plaintiff lacks direct evidence or some extraordinarily powerful circumstantial evidence." *Alexander*, 602 U.S. at 35; J.S.A. 144a.

The trial court appropriately found the inference not to be dispositive. First, unlike the plaintiffs in *Alexander*, the plaintiffs here had produced compelling direct evidence, *compare id.* at 58a-117a *with Alexander*, 602 U.S. at 18 (noting plaintiffs "provided no direct evidence of a racial gerrymander"), including the paradigmatic direct evidence set forth in *Alexander*. *See Alexander*, 602 U.S. at 8 ("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"). Second, unlike in *Alexander*, an alternative map was not easily available due to the limited time plaintiffs had to challenge the map after its enactment. And finally, unlike in *Alexander*, the unrebutted testimony of Dr. Duchin shows that plaintiffs can produce an alternative map once they are able to proceed with discovery.³ For these reasons, the

³ The record established that Dr. Duchin in fact provided the State with the required maps in digital form, even if the maps were not entered into evidence. The State's expert had merely to push a button to extract them. The trial court nonetheless applied the adverse inference because these maps were not introduced into evidence. *See generally* J.S.A. 144a n. 488. But the adverse inference arises from the "implicit concession that the plaintiff cannot draw a map." *Alexander*, 602 U.S. at 35. To

trial court properly concluded that the adverse inference was not dispositive.

C. The Remaining Preliminary Injunction Factors Support the Lower Court's Ruling.

The remaining preliminary injunction factors are: (1) plaintiffs would likely suffer irreparable harm if the injunction were not granted; (2) the balance of the equities weighs in plaintiffs' favor; and (3) the injunction would serve the public interest. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7 (2008). Each weigh in Appellees' favor.

Irreparable harm. Harm is irreparable when there is no adequate remedy at law. *Winter*, 555 U.S. at 20. Here, the lower court found Appellees' constitutional rights to equal protection and to vote free from racial discrimination were likely violated by Texas's 2025 congressional map. A deprivation of one's constitutional rights "unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

Balance of the equities and the public interest. 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, absent an injunction, the court found that Appellees' members would suffer ongoing violations of their Fourteenth and Fifteenth Amendment rights. With an injunction, Texas will revert to a map they passed just five years ago,

suggest such a concession here, where Dr. Duchin provided all the map data to the State, is counterfactual.

intended to use until 2030, and have continued to use, or the State will adopt a nondiscriminatory plan, instead of the current illegal racial gerrymander. The equities and public interest are in favor of Appellees.

II. THIS COURT SHOULD DEFER RESOLUTION OF THE APPEAL.

On December 4, 2025, this Court opined that *Purcell v. Gonzalez*, 549 U.S. 1 (2006), barred injunctive relief for the 2026 election. *See Abbott v. League of United Latin Am. Citizens*, 146 S. Ct. 418, 419 (2025). Because there is no alternative to the 2025 plan for the 2026 election, the issues remaining in the case only apply to future elections. Those issues are best decided in the first instance by the district court after discovery and a trial on the merits, which did not happen in the abbreviated preliminary injunction proceedings below. As an exercise of its mandatory jurisdiction, this Court has authority to vacate the injunction and remand to the lower court for a trial on the merits of plaintiffs' claims. *See Veasey v. Abbott*, 580 U.S. 1104 (2017). The Court should exercise that authority. If the case were then to return to this Court on appeal, review could proceed based on a full record.

CONCLUSION

Appellee's Motion should be granted for the foregoing reasons.

Respectfully submitted.

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