

In the Supreme Court of the United States

GREG ABBOTT, IN HIS OFFICIAL CAPACITY AS
GOVERNOR OF THE STATE 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

**BRIEF IN OPPOSITION TO
MOTIONS TO AFFIRM, DISMISS, OR REMAND**

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TABLE OF CONTENTS

	Page
Table of Contents.....	i
Table of Authorities.....	ii
Introduction.....	1
Argument.....	2
I. The District Court Erred by Not Drawing an Adverse Inference from Plaintiffs' Failure to Produce an Alternative Map.....	2
II. The District Court Misapplied <i>Alexander</i> in Finding Direct Evidence of Racial Predominance.	4
III. The District Court Misapplied <i>Alexander</i> in Finding Circumstantial Evidence of Racial Predominance.	8
IV. The Remaining Preliminary Injunction Factors Favor the State.....	10
V. This Court Should Not Vacate and Remand.	11
Conclusion	12

TABLE OF AUTHORITIES

Page(s)

Cases:

<i>Abbott v. LULAC</i> , 146 S. Ct. 418 (2025)	1, 3
<i>Alexander v. S.C. State Conf. of the NAACP</i> , 602 U.S. 1 (2024)	1, 2, 3, 4, 5, 7, 8, 9, 10
<i>Brnovich v. Democratic Nat'l Comm.</i> , 594 U.S. 647 (2021)	6
<i>Cooper v. Harris</i> , 581 U.S. 285 (2017)	6, 7
<i>Hunter v. Underwood</i> , 471 U.S. 222 (1985)	5
<i>Miller v. Johnson</i> , 515 U.S. 900 (1995)	6
<i>Republican Nat'l Comm. v. Democratic Nat'l Comm.</i> , 589 U.S. 423 (2020)	10
<i>Shaw v. Hunt</i> , 517 U.S. 899 (1996)	7
<i>Vill. of Arlington Heights v. Metro Hous. Dev. Corp.</i> , 429 U.S. 252 (1977)	5
<i>Winter v. Nat. Res. Def. Council, Inc.</i> , 555 U.S. 7 (2008)	2

Other Authorities:

Federal Judicial Center, Reference Manual on Scientific Evidence (4th ed. 2025), https://www.fjc.gov/sites/default/files/materials/15/Reference%20Manual_02052026.pdf	9
Stern & Gressman, Supreme Court Practice, chs. 4.27(A), 5.18 (11th ed. 2019)	1

INTRODUCTION

The State’s appeal presents legal issues that warrant review now. This Court correctly recognized that “Texas is likely to succeed on the merits of its claim that the District Court committed at least two serious errors.” *Abbott v. LULAC*, 146 S. Ct. 418, 419 (2025).

The district court erroneously held that *Alexander’s* alternative-map requirement does not apply at the preliminary injunction stage and failed to apply the presumption of legislative good faith. *Id.* This Court’s guidance regarding the issuance of preliminary injunctions will avoid the need for emergency relief in future redistricting cases.

Plaintiffs’ reliance on the clear error standard is misplaced. “If a trial court bases its findings upon a mistaken impression of applicable legal principles, the reviewing court is not bound by the clearly erroneous standard,” and the applicable standard of proof here “has a very substantial legal component.” *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 18, 19 (2024).

For example, the error of not applying the alternative-map requirement infected all of the district court’s findings. Plaintiffs rely on allegedly suspicious statistics regarding the map, but failing to submit an alternative map operates as a concession that they “cannot draw a map that undermines the legislature’s defense that the districting lines were based on a permissible, rather than a prohibited, ground.” *Id.* at 35 (cleaned up).

Plaintiffs have not shown that the decision below is so “clearly correct” that “oral argument and further briefing would be a waste of time.” Stern & Gressman, *Supreme Court Practice*, chs. 4.27(A), 5.18 (11th ed. 2019). This Court should deny the motions, note probable jurisdiction, set the case for argument, and reverse.

ARGUMENT

I. The District Court Erred by Not Drawing an Adverse Inference from Plaintiffs' Failure to Produce an Alternative Map.

The district court erred by failing to draw an adverse inference against Plaintiffs for not producing an alternative map. J.S. 14-18; *Alexander*, 602 U.S. at 36. Plaintiffs' failure to do so was particularly glaring because their expert purportedly generated thousands of alternative maps, but they did not introduce any into evidence. J.S. 15. Plaintiffs rely on four primary excuses, but none helps.

First, some Plaintiffs defend the district court's conclusion that *Alexander* does not apply at the preliminary injunction stage. MALC Mot. 20; App. 145a-147a. Such a rule is backwards. A preliminary injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22, 24 (2008). Nothing in *Alexander* holds that this basic evidentiary inference applies only at later stages of the litigation. 602 U.S. at 36-37. And as detailed below, by supplying an alternative method of achieving a legislature's political goals, the alternative-map requirement helps ensure that racial gerrymandering claims are not used to make courts a vehicle for securing partisan advantage. *Id.* at 6, 11.

Second, Plaintiffs contend that their expert Dr. Duchin generated thousands of maps. MALC Mot. 21-22; NAACP Mot. 24 & n.3; Green Mot. 19; LULAC Mot. 29. But the same was true in *Alexander*, where the plaintiffs' experts conducted a similar analysis. 602 U.S. at 24-34. LULAC Plaintiffs assert that their expert

David Ely testified that he *could have* drawn an alternative map. LULAC Mot. 28.

But as the district court recognized, Plaintiffs “have not submitted an *Alexander* map,” App. 144a, “[n]or do any of Dr. Duchin’s randomly generated maps qualify as an *Alexander* map . . . since none of those maps were introduced into evidence,” App. 144a n.488; *see Abbott*, 146 S. Ct. at 419. Plaintiffs’ unwillingness to defend the district court’s reasoning undercuts their request for summary affirmance.

Alexander’s requirement is simple: produce an alternative map. Doing so is straightforward, *Alexander*, 602 U.S. at 36, 37, and Dr. Duchin allegedly produced many. There is no excuse not to have introduced one into evidence. On a single page, NAACP both asserts that an alternative map was “not easily available due to the limited time” and that “Dr. Duchin in fact provided the State with the required maps in digital form.” NAACP Mot. 24 & n.3. That Plaintiffs allegedly possessed alternative maps but failed to introduce them into evidence strongly suggests that their omission was strategic.

Third, Gonzales Plaintiffs assert that Adam Kincaid might have asserted privilege regarding certain information, that discovery relating to Kincaid might have taken too long, and that they did not know until immediately before the preliminary injunction hearing that Kincaid would testify. Gonzales Mot. 25-26. But Plaintiffs told the district court that they did not need discovery, ECF 1436-1 at 35, agreed on the date by which witnesses would be disclosed, ECF 1160, 1161, 1168, 1172, and the preliminary injunction motion of three Plaintiffs (filed a month before the hearing) repeatedly identifies Kincaid as the mapmaker, ECF 1150 at 35-36. Plaintiffs knew the publicly announced goal of achieving five additional

Republican seats and knew that Kincaid drew the map but chose not to conduct discovery.

Fourth, some Plaintiffs contend that an alternative map is unnecessary in areas that are “entirely Democratic or Republican where there is nothing to disentangle.” Brooks Mot. 30; *see* Gonzales Mot. 24-25. That is wrong. The purpose of an alternative map is “[t]o untangle race from *other permissible considerations*,” not just partisan advantage. *Alexander*, 602 U.S. at 7 (emphasis added). A “plaintiff must prove that the State subordinated race-neutral districting criteria such as compactness, contiguity, and core preservation to racial considerations.” *Id.* (cleaned up). Even if one area of a State consists solely of members of one political party, an alternative map must show how the State could have achieved its other goals without the same effect on race. Further, no area is “entirely Democratic or Republican,” and there are political considerations in the relative partisanship of even Democratic or Republican districts.

II. The District Court Misapplied *Alexander* in Finding Direct Evidence of Racial Predominance.

The district court erred by concluding that the preliminary injunction record contains direct evidence of racial discrimination. Neither the DOJ letter nor Governor Abbott’s statements, which Plaintiffs continue to misinterpret, constitute direct evidence of racial gerrymandering. J.S. 19-22; *compare* App. 35a (describing political motive to help Republican voters “trapped in a Democrat congressional district”), *with* Brooks Mot. 4 (claiming no “political motive whatsoever”). Regardless, *Alexander* instructs that neither is “a relevant state actor[]” because neither “played a role in the drawing of district lines.” 602 U.S. at 8. Nor can the ambiguous and

inconsistent statements of four legislators supply direct evidence. J.S. 22-25. Even if they could speak for the Legislature as a whole, the presumption of legislative good faith required the district court to “draw the inference that cuts in the legislature’s favor when confronted with evidence that could plausibly support multiple conclusions.” *Alexander*, 602 U.S. at 10. The district court erred by failing to do so, and it compounded that error by rejecting the best direct evidence in the record: Kincaid’s testimony detailing the “political or practical—*i.e.*, non-racial—rationales for his decisions at every step of the mapdrawing process.” App. 107a.

Plaintiffs’ rejoinders lack merit. *First*, they contend that the DOJ letter and statements by Governor Abbott constitute direct evidence of racial predominance, not because (as the district court found, App. 66a) their alleged motives could be “imputed” to the Legislature, but instead because they evidence the “sequence of events” showing the “context in which Texas’s redistricting occurred.” MALC Mot. 10, 12-13; *see* LULAC Mot. 16-17; NAACP Mot. 17-20. But the “sequence of events” leading up to a given action is a classic form of *circumstantial* evidence. J.S. 21 (quoting *Vill. of Arlington Heights v. Metro Hous. Dev. Corp.*, 429 U.S. 252, 267 (1977)).

Second, Plaintiffs contend that the DOJ and Governor Abbott are relevant actors for purposes of direct evidence because each was a “but-for” cause of the map’s passage. Brooks Mot. 22-23, 26-27; Gonzales Mot. 16-17. But as explained before, the case on which they rely, *Hunter v. Underwood*, 471 U.S. 222 (1985), does not support this novel theory, J.S. 21-22. Nowhere in *Hunter* did this Court say that a racial-gerrymandering claim can be sustained based on a single non-legislator’s actions that were a “but-for” cause of a law’s passage. This novel but-

for test proves too much and too little: Kincaid was a but-for cause of the map's passage, but Plaintiffs ignore him; the Governor's July 9th proclamation was *not* a but-for cause because it produced no legislation, but Plaintiffs seize upon it.

Third, Plaintiffs acknowledge that they lack evidence of the intent of the Legislature as a whole but insist that "statements by legislative leaders" should be a sufficient stand-in and that contrary statements by "peripheral" legislators should be discounted. MALC Mot. 14; LULAC Mot. 20. But "the legislators who vote to adopt a bill are not the agents of the bill's sponsor or proponents." *Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 689 (2021). This principle strongly applies here, where there was contrary evidence from several key legislators—including Chairman Vasut and Chairman King, "legislative leadership" by any metric—disclaiming any racial motivation. App. 79a-90a.

Cooper v. Harris, 581 U.S. 285 (2017), does not compel a contrary conclusion. *Contra* LULAC Mot. 15; Gonzales Mot. 17-18; Brooks Mot. 29. There, the Court had "[u]ncontested evidence" that the legislature "purposefully established a racial target" "to comply with the VRA," not only from two bill sponsors but also from the mapmaker who drew the district lines. *Cooper*, 581 U.S. at 299-300. No such evidence exists here.

Plaintiffs nevertheless insist that the floor statements of several legislators describing the racial makeup of certain redrawn districts show that the Legislature set racial targets. *See* MALC Mot. 13-14; Brooks Mot. 8-16, 29; LULAC Mot. 6-10; Gonzales Mot. 8-9. But "[r]edistricting legislatures will . . . almost always be aware of racial demographics," *Miller v. Johnson*, 515 U.S. 900, 916 (1995), so there is "nothing

nefarious” about the legislators’ “aware[ness] of the racial makeup of the various districts,” *Alexander*, 602 U.S. at 37.

Moreover, Plaintiffs ignore critical context: these legislators were “publicly attacked” for having drawn an allegedly discriminatory map in 2021, so their commentaries on the racial makeup of various districts in the redrawn map are easily explained by a desire to defend themselves against such charges. App. 236a (Smith, J., dissenting). The presumption of legislative good faith required the district court to draw that inference. *Alexander*, 602 U.S. at 10. The notion that opponents of a map can freely criticize its racial makeup but proponents cannot make “value-laden” statements in defense, App. 73a, finds no support in this Court’s jurisprudence.

Not only did the district court err by mischaracterizing Plaintiffs’ evidence as direct evidence, but it also erroneously rejected the key direct evidence supporting the State: the testimony of the mapmaker, Kincaid. This Court routinely considers the testimony of the mapmaker in assessing racial-gerrymandering claims. *See, e.g., Alexander*, 602 U.S. at 19, 22, 37; *Cooper*, 581 U.S. at 314; *Shaw v. Hunt*, 517 U.S. 899, 906 (1996). The mapmaker’s testimony is often the best evidence of the reasons for “the drawing of district lines” and the “decision to place a significant number of voters within or without a particular district.” *Alexander*, 602 U.S. at 7, 8.

In this case, the district court unanimously recognized that Kincaid’s detailed testimony was “compelling.” App. 107a. But the majority erred in finding it not credible—not because of anything about Kincaid’s

demeanor—but because of the majority’s erroneous analysis of the circumstantial evidence. App. 111a.¹

III. The District Court Misapplied *Alexander* in Finding Circumstantial Evidence of Racial Predominance.

The district court’s analysis of the circumstantial evidence was influenced heavily by its failure to apply *Alexander*’s presumption. Because Plaintiffs did not present an alternative map, the factfinder was required to assume that they *could not* draw a map showing that the Legislature, “driven only by its professed mapmaking criteria, could have produced a different map with [different] racial balance.” 602 U.S. at 34 (cleaned up).

The district court erred by not following this Court’s instruction. Its analysis assumes that the Legislature could have satisfied its professed mapmaking criteria—achieving five new Republican seats and Republican incumbency protections—through maps with a different racial balance. *Alexander* compels the opposite inference.

First, Plaintiffs rely heavily on three districts having “just barely 50%+ [minority] CVAP,” claiming this would be “impossible without racial targeting.” NAACP Mot. 20; MALC Mot. 8. But Plaintiffs cite only the district court for support, which relied only on its own *ipse dixit*. App. 96a. This is nothing more than a “layman’s conjecture.” U.S. Amicus Br. 17.

¹ Any inconsistency between the testimony of Kincaid and Senator King concerned a minor detail about a conversation they had at a conference. *See* App. 83a-84a. This alleged inconsistency has nothing to do with the basis upon which the district lines were drawn. *Alexander*, 602 U.S. at 8.

Judges cannot simply look at numbers and declare them “suspicious.” The Federal Judicial Manual on Scientific Evidence cautions: “Almost any large dataset—even pages from a table of random digits—will contain some unusual pattern that can be uncovered by diligent search.” Federal Judicial Center, Reference Manual on Scientific Evidence 525 (4th ed. 2025), https://www.fjc.gov/sites/default/files/materials/15/Reference%20Manual_02052026.pdf. This is particularly true in election cases, where “partisan and racial gerrymanders are capable of yielding similar oddities in a district’s boundaries.” *Alexander*, 602 U.S. at 9 (cleaned up). Plaintiffs failed to present evidence disentangling race and politics on this point, and the district court’s *ipse dixit* that the map was “suspicious” did not justify rejecting Kincaid’s testimony. App. 109a n.358.

Second, the same errors exist in Plaintiffs’ complaint that the 2025 Map modified two coalition districts identified in the DOJ letter. Gonzales Mot. 23; NAACP Mot. 17. To disentangle race and politics, Plaintiffs needed to show, at minimum, that the Legislature could have equally served its political goals without modifying these districts. With no alternative map presented, the district court was required to assume that no such map could be drawn and that modifying these districts was necessary for the Legislature to achieve its political goals. *Alexander*, 602 U.S. at 10.

Third, like the district court, Plaintiffs fault the Legislature for not dismantling CD37, a majority-White Democratic district in Austin. Gonzales Mot. 30-31; Brooks Mot. 35. No Plaintiff has offered any reason that the Legislature should have targeted CD37, much less presented evidence that doing so would have served the

Legislature’s political goals better than its actual map. The district court—and Plaintiffs—simply declare that because CD37 is majority-White, its presence in the 2025 Map demonstrates racial intent. App. 118a-119a; Brooks Mot. 35; NAACP Mot. 21. It was error to assume that the Fourteenth Amendment required the Legislature to eliminate *every* majority-White Democratic district. App. 118a, 119a & n.403.

Fourth, the district court erred in relying on Dr. Duchin, who admittedly did not simulate “the principles used to create the enacted map.” Stay App. 438. Indeed, her testimony is consistent with Kincaid’s: Disregarding protections for Republican incumbents and applying a lower Republican vote threshold for newly created districts would have allowed many different maps to be drawn. Stay App. 436-38. She also used outdated data for incumbents. Stay App. 583-85. As in *Alexander*, her testimony has no relevance to whether the enacted map was an outlier among maps that “track the considerations that governed the legislature’s redistricting decision.” 602 U.S. at 25.

IV. The Remaining Preliminary Injunction Factors Favor the State.

At least some Plaintiffs “recognize that with respect to the 2026 election, the analysis of the equitable factors would be different now that Texas has already held primary elections under the 2025 Map.” Gonzales Mot. 35. Summary affirmance now, after Texas held primary elections in March, would throw the State’s upcoming general election into chaos and violate *Purcell*. *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 589 U.S. 423, 424 (2020). Plaintiffs will suffer no harm without an injunction because the 2025 Map is not a racial

gerrymander. *See also* J.S. 34 (balance of equities and public interest factors merge when State is a party).

Moreover, according to Plaintiffs, the 2021 Map that the district court imposed as a remedy does not alleviate their harm. J.S. 34. Plaintiffs spent years arguing that the 2021 Map was illegal and racially discriminatory. J.S. 34. In response, some Plaintiffs say that although the 2021 Map was racially discriminatory, the new map is “worse.” Gonzales Mot. 34; Brooks Mot. 36.

But Plaintiffs never explain how a court can properly impose an allegedly discriminatory map as a remedy. This underscores Plaintiffs’ failure to provide an alternative map under *Alexander*. Had they done so, the district court might have imposed it as a remedy, imposing a different map that still achieved the Legislature’s political goals. But the district court did the opposite: imposing a map that defeats the Legislature’s political goals without (according to Plaintiffs) curing legal violations.

V. This Court Should Not Vacate and Remand.

Plaintiffs alternatively ask this Court to vacate the preliminary injunction (presumably without opinion), remand, and delay review until an appeal following final judgment. *See, e.g.*, Brooks Mot. 37; Gonzales Mot. 35.

Although the district court’s errors are straightforward and may well warrant summary reversal, this Court should provide guidance for the district court in this case and future cases. The standard for issuance of a preliminary injunction in redistricting litigation is an important issue, and as this case illustrates, the erroneous grant of a preliminary injunction can create electoral chaos and require expedited action. To avoid such disruption in future cases, this Court should squarely hold that *Alexander*’s alternative-map requirement and the

presumption of legislative good faith apply with equal force at the preliminary injunction stage.

And unless they are corrected by this Court, the additional errors discussed above may well recur at trial, leading to reversal and a waste of both judicial and party resources.

CONCLUSION

The Court should deny the motions, note probable jurisdiction, set this case for argument, and reverse.

Respectfully submitted.

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