No. 25A608

IN THE SUPREME COURT OF THE UNITED STATES

ALEXANDER GREEN, ET AL.,
Plaintiff-Intervenors,

v.

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

PLAINTIFF-INTERVENORS' RESPONSE IN OPPOSITION TO STATE DEFENDANT'S MOTION TO STAY PRELIMINARY INJUNCTION 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**

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RULE 29.6 STATEMENT

Pursuant to Supreme Court Rule 29.6, Intervenors represent that they do not have any parent companies and do not issue stock.

/s/ Gary L. Bledsoe

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

PAGE(S)

CASES:

INTRODUCTION

The State's application for a stay of the Panel's preliminary injunction is fundamentally inconsistent with controlling law, the equities governing this case, and the extensive evidentiary record assembled below . After conducting a comprehensive nine-day evidentiary hearing and carefully weighing voluminous testimonial and documentary evidence, the Panel court entered detailed findings establishing that Texas's 2025 congressional map was the product of unconstitutional racial gerrymandering. (Order at 1–4.) The evidence demonstrated a clear and unmistakable progression: first, Texas lawmakers resisted calls for redistricting when framed purely as a partisan initiative aimed at securing five additional Republican seats in Congress; but "when the Trump Administration reframed its request as a demand to redistrict congressional seats based on their racial makeup, Texas lawmakers immediately jumped on board." (Order at 2–3.)

The Panel's order meticulously documented how the United States Department of Justice, at the direction of the Trump Administration, sent an unprecedented letter to Texas state officials on July 7, 2025, demanding that the State dismantle four congressional districts—CDs 9, 18, 29, and 33—solely because of their racial composition. (Order at 17–19; Brooks Prelim. Inj. Ex. 253, ECF No. 1326, at 1–2.) The DOJ letter, riddled with legal and factual errors, incorrectly asserted that these districts were "unconstitutional coalition districts" that Texas was required to "rectify" by changing their racial makeup. (Id.) This demand was based on a fundamental misreading of *Petteway v. Galveston County*, 111 F.4th 596 (5th Cir. 2024) (en banc), which held only that Section 2 of the Voting Rights Act does not require legislatures to draw coalition districts—not that such districts are per se unlawful or must be dismantled. (Order at 19–24.)

Within two days of receiving the DOJ letter, Governor Abbott issued a proclamation adding redistricting to the Legislature's special session agenda, explicitly directing lawmakers to address DOJ's race-based concerns. (Order at 30–31; Brooks Prelim. Inj. Ex. 254, ECF No. 1326-1, at 3.) In contemporaneous press interviews, the Governor repeatedly and expressly disavowed any partisan objective, stating plainly that "we wanted to remove those coalition districts and draw them in ways that in fact turned out to provide more seats for Hispanics." (Order at 32–34; Brooks Prelim. Inj. Ex. 335-T, ECF No. 1328-1, at 4–5.) When directly asked by a national television reporter whether the redistricting effort was motivated by President

Trump's demand for five additional Republican seats, the Governor demurred and insisted instead that "the reason why we are doing this is because of that court decision" in *Petteway* and the goal of eliminating coalition districts. (Order at 32; Prelim. Inj. Hrg Tr. Day 1 Morning, ECF No. 1414, at 12–14.)

The Texas Legislature then proceeded to implement precisely the racial objectives articulated by DOJ and the Governor. The enacted 2025 map achieved all but one of DOJ's demands: the Legislature dismantled CDs 9 (held by Intervenor Green), 18, 29, and 33 (Intervenor Crockett was moved from her district 30 to the new 33 in the 2025 map), leaving them "unrecognizable" from their prior configurations, and systematically eliminated seven coalition districts across the State, converting them into bare-majority single-race districts with surgical precision. (Order at 35–50.) Congressional District 9 , for example, was so radically reconfigured that "only 2.9% of the people who were in CD 9 under the 2021 Map remain in the district under the 2025 Map." (Order at 36; Brooks Prelim. Inj. Ex. 267, ECF No. 1326-14, at 2.) The new CD 9 achieved exactly 50.3% Hispanic Citizen Voting Age Population ("CVAP")—just barely surpassing the 50% threshold demanded by DOJ. (Order at 35; Brooks Prelim. Inj. Ex. 265, ECF No. 1326-12, at 1.) Similarly, CD 18, where Green's residence was moved, was transformed from a coalition district into a bare-majority Black district at 50.5% Black CVAP, accomplished primarily by importing large numbers of predominantly Black voters from the old CD 9. (Order at 38; Brooks Prelim. Inj. Ex. 267, ECF No. 1326-14, at 3.)

These transformations were not coincidental. The Panel found that legislative sponsors made "numerous statements suggesting that they had intentionally manipulated the districts' lines to create more majority-Hispanic and majority-Black districts," and that sponsors emphasized these changes would make the map "an easier sell than a purely partisan one." (Order at 3, 75–76.) Chairman Hunter (who was previously found to have racially discriminated against minorities int Texas by a Federal Court), the House redistricting bill's primary sponsor, engaged in detailed colloquies with Representative Spiller on the House floor, systematically identifying each coalition district and confirming its conversion to a single-race-majority district "in compliance with *Petteway*." (Order at 75; Brooks Prelim. Inj. Ex. 309-T, ECF No. 1327-9, at 75, 80–82; Brooks Prelim. Inj. Ex. 316-T, ECF No. 1327-16, at 79–80.) When Representative Turner directly asked whether CD 18 "was purposely altered to a Black CVAP majority district,"

Chairman Hunter did not deny the allegation but instead confirmed the new racial percentage. (Order at 76; Prelim. Inj. Hrg Tr. Day 1 Afternoon, ECF No. 1337, at 51.)

The Panel's credibility findings were devastating to the State's defense. The court found that Chairman King, the Senate Redistricting Committee chair, "played a much less significant role in the 2025 Map's development and passage than other legislators" and that his testimony was undermined by "inconsistencies" with other evidence. (Order at 81–87.) Most significantly, the court determined that it could not "credit" the testimony of Adam Kincaid, the outside mapmaker, who insisted he drew the map "blind to race." (Order at 96–98.) The court found "extremely unlikely that Mr. Kincaid could have created so many districts that were just barely 50% [CVAP] by pure chance," noting the "on-the-nose attainment of a 50% CVAP in three districts" as direct evidence that racial criteria predominated. (Id.) This finding directly parallels the Supreme Court's reasoning in *Cooper v. Harris*, 581 U.S. 285, 313–15 (2017), where similarly precise racial targeting belied claims of race-neutral mapmaking.

Expert testimony further reinforced the unconstitutionality of the 2025 map. Dr. Moon Duchin, a pioneer in computational redistricting analysis, generated tens of thousands of hypothetical congressional maps using race-neutral criteria including Republican partisan advantage, traditional districting principles, and incumbency protection. (Order at 109–12; Tex. NAACP Prelim. Inj. Ex. 208, ECF No. 1384-8, at 22–23.) Not one of these simulated maps—drawn to favor Republicans by various metrics—reproduced the stark racial demographics of the enacted plan. (Order at 127.) In the Houston area, where three of the four DOJ-targeted districts are located, five of ten districts in the 2025 map fell outside the statistical range Dr. Duchin's simulations predicted, with several districts registering at the 1st percentile or smaller for minority CVAP. (Order at 117–18; Tex. NAACP Prelim. Inj. Ex. 208, ECF No. 1384-8, at 15.) The court concluded that "the racial composition of the districts is highly atypical of random plans whose partisan performance is at least as favorable to Republicans," and 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." (Order at 122, 127.)

Critically, no State expert challenged Dr. Duchin's methodology or findings. (Order at 122; Prelim. Inj. Hrg Tr. Day 9 Afternoon, ECF No. 1345, at 46–47, 164; Prelim. Inj. Hrg Tr.

Day 5 Morning, ECF No. 1418, at 8.) The State Defendants attempted to distinguish *Alexander v. South Carolina State Conference of the NAACP*, 602 U.S. 1 (2024), where the Supreme Court found defects in Dr. Duchin's analysis, but the district court explained that Dr. Duchin's report here "doesn't suffer from the same defects" because it fully accounted for partisanship, core retention, and other race-neutral criteria throughout. (Order at 122–27.)

Against this backdrop, the State now seeks extraordinary relief from this Court to lift the injunction and permit use of the likely unconstitutional map for the 2026 elections. The request fails every element of the stay analysis. The State cannot demonstrate a strong likelihood of success on the merits when the Panel findings—supported by direct admissions, documentary evidence, circumstantial evidence, statistical analysis, and credibility determinations—establish racial gerrymandering. The State cannot show irreparable harm when the record confirms that election officials are prepared to administer the 2021 map and that doing so would be administratively easier than implementing the novel 2025 map. (Order at 90–92, 105–06.) The balance of equities decisively favors protecting voters' constitutional rights over administrative convenience. And the public interest is unquestionably served by ensuring that Texas conducts its elections under lawful, constitutional district lines rather than maps drawn with race as the predominant, non-compromisable criterion.

This Court should deny the stay and permit the Panel's carefully crafted and factually supported preliminary injunction to remain in effect.

STANDARD FOR ISSUANCE OF A STAY PENDING APPEAL

A stay pending appeal is an extraordinary form of relief, reserved for exceptional circumstances and granted only in the exercise of sound judicial discretion. The Supreme Court has made clear that "a stay is not a matter of right, even if irreparable injury might otherwise result. It is instead an exercise of judicial discretion, and the party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion." *Nken v. Holder*, 556 U.S. 418, 425 (2009). As this Court emphasized decades ago in *Scripps-Howard Radio v. FCC*, 316 U.S. 4, 9–10 (1942), stays represent "extraordinary remedies preserved for exceptional circumstances." The movant's burden is especially weighty when, as here, the requested stay would suspend a Panel's protection of fundamental constitutional rights in the context of

redistricting and elections—an area where federal courts have long recognized a duty to safeguard the franchise from state overreach.

To obtain a stay, the State must satisfy four demanding requirements: (1) a strong showing of likelihood of success on the merits of its appeal; (2) a demonstration that it will suffer irreparable injury absent a stay; (3) proof that the balance of harms tips in its favor; and (4) evidence that the public interest supports a stay. *Nken*, 556 U.S. at 426. Each element is independently necessary, and failure on any one prong is fatal to the application. The State's burden is particularly acute here, where the Panel made extensive factual findings after a full evidentiary hearing, and where those findings are entitled to clear-error deference on appeal. See *Anderson v. City of Bessemer City*, 470 U.S. 564, 573–74 (1985).

The State's litigation posture further undermines any claim to equitable relief. As the Panel documented, Texas initially defended the challenged districts as products of race-neutral, partisan mapmaking during litigation over the 2021 map. (Order at 14–15; Prelim. Inj. Hrg Tr. Day 1 Morning, ECF No. 1414, at 17–19.) Senator Huffman, the 2021 map's sponsor, testified unequivocally and repeatedly that "the 2021 Map was drawn race blind" and that mapmakers "did not look at any racial data." (Order at 14; Prelim. Inj. Hrg Tr. Day 1 Morning, ECF No. 1414, at 17–19.) Yet within months of the DOJ letter, the State reversed course entirely, embracing race-conscious justifications and asserting compliance with the Voting Rights Act as interpreted by *Petteway*. This "lack of credibility" in the State's shifting positions, as the Panel found, "reinforces the lack of any equitable foundation for a stay." (Order at 27, 85, 91–93.). The Panel Judges sat through 9 days of testimony, observed the witnesses directly and were in the best position to give a thorough and independent analysis of the witnesses. They issued a well reasoned decision without ideological bias.

The exceptional circumstances requirement is plainly not met. The stay the State seeks would perpetuate ongoing constitutional violations during the pendency of appeal, harm thousands of Texas voters, and undermine public confidence in the integrity of electoral processes. Extraordinary relief is appropriate only when the status quo must be preserved to prevent irreparable harm to the movant—not, as here, when granting the stay would itself inflict irreparable constitutional injury on the opposing parties and the public. For these threshold reasons alone, the application for a stay of the Preliminary Injunction should be denied.

ARGUMENT

I. THE STATE CANNOT DEMONSTRATE A STRONG LIKELIHOOD OF SUCCESS ON THE MERITS

A. The Panel's Factual Findings Establish Racial Predominance and Are Entitled to Clear-Error Deference

The Panel's conclusion that Texas engaged in racial gerrymandering rests on meticulously developed factual findings drawn from direct evidence, circumstantial evidence, and statistically supported expert testimony presented over a nine day hearing. These findings, made after the court observed witnesses, assessed credibility, and weighed conflicting evidence, are entitled to substantial deference under the clear-error standard. See *Anderson v. City of Bessemer City*, 470 U.S. 564, 573 (1985) ("A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed."). The State cannot overcome this deference, particularly where, as here, the factual findings are supported by overwhelming direct admissions from state officials, contemporaneous documentary evidence, compelling circumstantial evidence, and unchallenged expert analysis.

The legal framework governing racial gerrymandering claims is well-established. In *Miller v. Johnson*, 515 U.S. 900, 916 (1995), this Court held that to prove unconstitutional racial gerrymandering, plaintiffs must show that "race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district" and that "traditional race-neutral districting principles [were] subordinated to racial considerations." The Court clarified that this showing can be made through "direct evidence of legislative intent" or "circumstantial evidence of a district's shape and demographics." *Id.* More recently, in *Alexander v. South Carolina State Conference of the NAACP*, 602 U.S. 1, 7–9 (2024), the Court reiterated that disentangling race from politics is challenging but that plaintiffs "need not show that the legislature 'could only have' acted with racial motives"—they must merely demonstrate that race was the predominant, overriding consideration.

The district court applied these standards rigorously and found that Plaintiffs satisfied their burden by a substantial margin. The court's analysis proceeded systematically through multiple categories of evidence, each independently sufficient to support the preliminary injunction, and cumulatively overwhelming.

1. Direct Evidence: The DOJ Letter and Executive Directives

The most powerful evidence of racial intent came directly from the federal government and state executive officials. On July 7, 2025, the DOJ's Civil Rights Division sent a letter to Governor Abbott and Attorney General Paxton asserting that four Texas congressional districts—CDs 9, 18, 29, and 33—were "unconstitutional coalition districts" that Texas was legally required to "rectify" by changing their racial composition. (Order at 17–19; Brooks Prelim. Inj. Ex. 253, ECF No. 1326, at 1–2.) The letter demanded that Texas "immediately" dismantle these districts and threatened federal litigation if the State failed to comply. (Id. at 2.) Critically, as the district court found, "the DOJ Letter targeted only majority-non-White districts. Any mention of majority-White Democrat districts—which DOJ presumably would have also targeted if its aims were partisan rather than racial—was conspicuously absent." (Order at 2.).

The district court thoroughly analyzed the DOJ letter and concluded that it was both legally and factually erroneous. (Order at 19–24.) As the court explained, *Petteway* held only that Section 2 of the Voting Rights Act does not require plaintiffs to satisfy the *Gingles* preconditions by aggregating multiple minority groups into coalition districts—it did not hold that coalition districts are per se unconstitutional or that states must dismantle them. (Order at 20–21; *Petteway*, 111 F.4th at 610, 614.) Indeed, *Bartlett v. Strickland*, 556 U.S. 1, 23–24 (2009) (plurality opinion), expressly cautioned that while Section 2 does not require legislatures to create crossover or coalition districts, "States that wish to draw [such] districts are free to do so," and warned that "if a State intentionally drew district lines in order to destroy otherwise effective [coalition] districts, that would raise serious questions under both the Fourteenth and Fifteenth Amendments." Performing *Petteway*'s "word-replacement exercise" with *Bartlett*'s language, the district court concluded that DOJ's demand to eliminate coalition districts was not only legally unfounded but affirmatively unconstitutional—it directed Texas to engage in racial gerrymandering. (Order at 23, 59–60.)

DOJ's racial directive did not occur in a vacuum. Within two days of receiving the letter, Governor Abbott issued a proclamation adding redistricting to the special legislative session agenda. (Order at 30–31; Brooks Prelim. Inj. Ex. 254, ECF No. 1326-1, at 3.) The proclamation's language incorporated DOJ's race-based request "by reference," directing the Legislature to enact "[l]egislation that provides a revised congressional redistricting plan in light of constitutional concerns raised by the U.S. Department of Justice." (Order at 31; Brooks Prelim. Inj. Ex. 254, ECF No. 1326-1, at 3 (emphasis added).) As the court found, the proclamation "contains no request that the Legislature revise the congressional map for partisan purposes." (Order at 31.) Had the Governor "explicitly directed the Legislature to amend the congressional map to improve Republican performance, the Plaintiff Groups would then face a higher burden to prove that the motivation for the 2025 redistricting was racial rather than political." (Order at 31.) Instead, by framing the redistricting imperative entirely in terms of DOJ's race-based concerns, "the Governor was asking the Legislature to give DOJ the racial rebalancing it wanted—and for the reasons that DOJ cited." (Order at 31.)

The Governor's contemporaneous press statements removed any ambiguity about his racial motivations. In a nationally televised August 11, 2025 interview, Governor Abbott was asked directly whether his decision to add redistricting to the legislative agenda was motivated by "President Trump's demand for five additional Republican seats." (Order at 32; Prelim. Inj. Hrg Tr. Day 1 Morning, ECF No. 1414, at 12–13.) The Governor explicitly denied any such partisan motivation, stating instead: "To be clear, Jake, this is something that I have been interested in for a long time.... [O]ne thing that spurred all this is a federal court decision that came out last year.... The federal court decision that came out last year said that Texas is no longer required to have coalition districts. And as a result, we had drawn maps with coalition districts in it. Now we wanted to remove those coalition districts and draw them in ways that, in fact, turned out to provide more seats for Hispanics." (Order at 32; Prelim. Inj. Hrg Tr. Day 1 Morning, ECF No. 1414, at 12–14. When the interviewer pressed again—"But that's not really—I mean, you are doing this to give Trump and Republicans in the House of Representatives five additional seats, right?"—the Governor responded, "Again, to be clear, Jake, the reason why we are doing this is because of that court decision." (Order at 32–33; Prelim. Inj. Hrg Tr. Day 1 Morning, ECF No. 1414, at 13–14 (emphasis added).)

These statements are dispositive. The Governor "expressly stated that his predominant motivation was racial: he wanted to 'remove ... coalition districts and provide more seats for Hispanics.'" (Order at 33.) He characterized improved Republican performance as merely a "fortuitous coincidence"—stating it "just coincides it's going to be Hispanic Republicans elected to those seats." (Order at 33; Prelim. Inj. Hrg Tr. Day 1 Morning, ECF No. 1414, at 14 (emphasis added).) The district court found that the Governor "consistently used language suggesting that he viewed the map's improved Republican performance not as an end in itself, but as a coincidental by-product of the plan's goal of increasing the number of majority-Hispanic districts." (Order at 33–34.)

Under *Miller* and *Cooper*, such direct statements by high-ranking state officials are powerful evidence of predominant racial motive. See *Miller*, 515 U.S. at 916 (noting that direct evidence of legislative intent can overcome the presumption of good faith); *Cooper*, 581 U.S. at 291 ("Direct and circumstantial evidence may show that race, not politics, was the predominant factor driving district lines."). The State cannot credibly argue likelihood of success on the merits when the Governor himself publicly disavowed partisan objectives and repeatedly emphasized racial goals as the "reason" for redistricting.

2. Direct Evidence: Legislative Sponsors' Public Statements and Floor Colloquies

The Legislature ratified and implemented the racial objectives articulated by DOJ and the Governor. The district court found that "the redistricting bills' sponsors made numerous statements suggesting that they had intentionally manipulated the districts' lines to create more majority-Hispanic and majority-Black districts." (Order at 3.) These statements were not isolated or ambiguous—they were systematic, detailed, and directly tied to the racial composition of specific districts.

Speaker of the House Burrows issued a press release "celebrating that the bill satisfactorily addressed DOJ's concerns." (Order at 3, 66; Brooks Prelim. Inj. Ex. 326-T, ECF No. 1327-26, at 1–2.) Representative Oliverson, in a national media interview, stated that the Legislature 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." (Order at 3, 67–68; Brooks Prelim. Inj. Ex. 324-T, ECF No. 1327-24, at 2–3.) Representative

Toth confirmed in a press interview that redistricting was done "in response to *Petteway* to get compliant." (Order at 68; Brooks Prelim. Inj. Ex. 320-T, ECF No. 1327-13, at 3–4.)

Chairman Hunter, the House redistricting bill's primary sponsor and the legislator most intimately involved in the map's development, engaged in extraordinarily revealing colloquies on the House floor. (Order at 70–76.) In exchanges with Representative Spiller—who shared DOJ's mistaken belief that *Petteway* required elimination of coalition districts—Chairman Hunter systematically catalogued the transformation of coalition districts into single-race-majority districts:

- Regarding CD 18: "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] percent Black. REP. HUNTER: That is correct." (Order at 75; Brooks Prelim. Inj. Ex. 309-T, ECF No. 1327-9, at 75; Brooks Prelim. Inj. Ex. 316-T, ECF No. 1327-16, at 79.)

- Regarding CD 9: "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." (Order at 75; Brooks Prelim. Inj. Ex. 316-T, ECF No. 1327-16, at 80.)

- Regarding general compliance with *Petteway*: "REP. SPILLER: So, in summary, is it your testimony here today that you believe that the map created under your bill is in compliance with the *Petteway* case ...? REP. HUNTER: Yes." (Order at 75; Brooks Prelim. Inj. Ex. 309-T, ECF No. 1327-9, at 81–82.)

Chairman Hunter repeatedly invoked both *Petteway* and *Rucho v. Common Cause*, 588 U.S. 684 (2019), as justifications for the map, often in the same breath. (Order at 77; Brooks Prelim. Inj. Ex. 315-T, ECF No. 1327-15, at 6, 29; Brooks Prelim. Inj. Ex. 316-T, ECF No. 1327-16, at 77.) He stated that the map was drawn "primarily using political performance" but also to address coalition districts identified in *Petteway*. (Order at 77; Brooks Prelim. Inj. Ex. 309-T,

ECF No. 1327-9, at 52.) Yet as the district court observed, "if Chairman Hunter's motives were exclusively partisan ... why mention *Petteway* at all? Why not just base the 2025 redistricting exclusively on *Rucho*?" (Order at 79.) The answer, the court found, is that "race and *Petteway* were essential ingredients of the map, without which the 2025 redistricting wouldn't have occurred." (Order at 79.)

When Representative Turner directly confronted Chairman Hunter about racial targeting, Hunter did not deny the allegations but instead confirmed the new racial percentages:

"REPRESENTATIVE TURNER: CD18 was purposely altered to a Black CVAP majority district rather than a 38.8 percent Black CVAP district, right? REPRESENTATIVE HUNTER: CD18 was drawn to be a 50.81 percent CVAP, which is 11.82 change plus. ... REPRESENTATIVE TURNER: And similarly, the proposed CD35 was purposely changed to increase its Hispanic CVAP to be about 50 percent, correct? ... REPRESENTATIVE HUNTER: 51.57 percent. And it also has political performance involved ... in all of this." (Order at 76; Prelim. Inj. Hrg Tr. Day 1 Afternoon, ECF No. 1337, at 51.)

The district court found these admissions fatal to the State's defense. "All the evidence discussed so far overcomes the presumption of legislative good faith. Chairman Hunter and the other joint authors evidently strategized that a map that eliminated coalition districts and increased the number of majority-Hispanic and majority-Black districts would be 'more sellable' than a nakedly partisan map." (Order at 76.) The legislators compiled "a legislative record replete with racial statistics and references to *Petteway*—which is exactly what they did." (Order at 76.) This behavior tracks precisely the scenario described in *Cooper*, where the Court noted that "if legislators use race as their predominant districting criterion with the end goal of advancing their partisan interests—perhaps thinking that a proposed district is 'more sellable' as a race-based VRA compliance measure than as a political gerrymander and will accomplish much the same thing—their action still triggers strict scrutiny." *Cooper*, 581 U.S. at 308 n.7.

The district court concluded: "Even though partisanship was undoubtedly a motivating factor in the 2025 redistricting process, race was the criterion that, in the State's view, could not be compromised. It wasn't enough for the map to merely improve Republican performance; it also needed to convert as many coalition districts to single-race-majority districts as possible.

That best explains the House bill's authors' comments during the legislative process and the map's stark racial characteristics. The bill's main proponents purposefully manipulated the districts' racial numbers to make the map more palatable. That's racial gerrymandering." (Order at 77.)

3. Circumstantial Evidence: Surgical Achievement of DOJ's and the Governor's Racial Objectives

Beyond direct admissions, the district court found overwhelming circumstantial evidence that the Legislature adopted and implemented DOJ's and the Governor's racial objectives with surgical precision. (Order at 35–50, 105.) The enacted 2025 map "achieved all but one of the racial objectives that DOJ demanded." (Order at 3.) The Legislature "dismantled and left unrecognizable not only all of the districts DOJ identified in the letter, but also several other coalition districts around the State." (Order at 3.)

The transformation of individual districts provides stark illustration :

Congressional District 9 (Houston area): Under the 2021 map, CD 9 was a coalition district with 45.0% Black CVAP, 25.6% Hispanic CVAP, and 18.1% White CVAP. (Order at 10; Brooks Prelim. Inj. Ex. 258, ECF No. 1326-5, at 1.) The 2025 map reconfigured the district so radically that "only 2.9% of the people who were in CD 9 under the 2021 Map remain in the district under the 2025 Map." (Order at 36; Brooks Prelim. Inj. Ex. 267, ECF No. 1326-14, at 2.) The new CD 9 achieved exactly 50.3% Hispanic CVAP—just barely surpassing the 50% threshold, precisely as DOJ demanded. (Order at 35; Brooks Prelim. Inj. Ex. 265, ECF No. 1326-12, at 1.)

Congressional District 18 (Houston area): The 2021 version of CD 18 was a coalition district with 38.8% Black CVAP, 30.4% Hispanic CVAP, and 23.4% White CVAP. (Order at 11; Brooks Prelim. Inj. Ex. 258, ECF No. 1326-5, at 1.) The Legislature converted it into a bare-majority Black district at 50.5% Black CVAP, accomplished primarily by importing large numbers of predominantly Black voters from the old CD 9—64.5% of the new CD 18's population came from old CD 9, and a plurality (46.1%) of those moved voters were Black. (Order at 38; Brooks Prelim. Inj. Ex. 267, ECF No. 1326-14, at 3.)

Congressional District 29 (Houston area): Although CD 29 was already a majority-Hispanic district under the 2021 map (63.5% Hispanic CVAP) and thus not a coalition district, the Legislature nevertheless dismantled it in response to DOJ's erroneous demand. (Order at 38–39; Brooks Prelim. Inj. Ex. 258, ECF No. 1326-5, at 1; Brooks Prelim. Inj. Ex. 253, ECF No. 1326, at 1–2.) The 2025 map reduced CD 29's Hispanic CVAP from 63.5% to 43.3%, removing historic Latino communities including "Denver Harbor, Magnolia Park, Second Ward, Manchester, and Northside—historic centers of Latino political strength." (Order at 38–39; Prelim. Inj. Hrg Tr. Day 2 Afternoon, ECF No. 1338, at 44–45.) Only 37.2% of the voters in the old CD 29 remain in the new CD 29. (Order at 38; Brooks Prelim. Inj. Ex. 267, ECF No. 1326-14, at 5.)

Congressional District 33 (Dallas-Fort Worth area): CD 33 was a coalition district under the 2021 map (43.6% Hispanic CVAP, 25.2% Black CVAP, 23.4% White CVAP). (Order at 13; Brooks Prelim. Inj. Ex. 258, ECF No. 1326-5, at 1.) Although the Legislature did not convert CD 33 into a single-race-majority district, the one DOJ demand it failed to satisfy, nonetheless completely reconfigured the district's boundaries, rendering it "completely ... unrecognizable when compared to the old CD 33." (Order at 39.)

Beyond the four districts identified in the DOJ letter, the Legislature systematically eliminated five additional coalition districts: CDs 22, 27, 30, 32, and 35. (Order at 41–49.) Each was converted into a bare-majority single-race district:

- **CD 22:** Increased from 49.2% White CVAP to 50.8% White CVAP. (Order at 41; Brooks Prelim. Inj. Ex. 258, ECF No. 1326-5, at 1; Brooks Prelim. Inj. Ex. 265, ECF No. 1326-12, at 1.)
- **CD 27:** Increased from 44.1% White CVAP to 52.8% White CVAP. (Order at 43; Brooks Prelim. Inj. Ex. 258, ECF No. 1326-5, at 1; Brooks Prelim. Inj. Ex. 265, ECF No. 1326-12, at 1.)
- **CD 30:** Increased from 46.0% Black CVAP to 50.2% Black CVAP. (Order at 45; Brooks Prelim. Inj. Ex. 258, ECF No. 1326-5, at 1; Brooks Prelim. Inj. Ex. 265, ECF No. 1326-12, at 1.)

- **CD 32:** Increased from 43.9% White CVAP to 58.7% White CVAP. (Order at 47; Brooks Prelim. Inj. Ex. 258, ECF No. 1326-5, at 1; Brooks Prelim. Inj. Ex. 265, ECF No. 1326-12, at 1.)
- **CD 35:** Increased from 46.0% Hispanic CVAP to 51.6% Hispanic CVAP. (Order at 49; Brooks Prelim. Inj. Ex. 258, ECF No. 1326-5, at 2; Brooks Prelim. Inj. Ex. 265, ECF No. 1326-12, at 2.)

The district court summarized: "In sum, the 2025 Map: (1) 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; (2) eliminated seven total coalition districts; (3) created two new bare-majority-Hispanic districts, while eliminating an existing strongly majority-Hispanic district identified in the DOJ Letter; and (4) created two new bare-majority-Black districts." (Order at 50.)

This systematic dismantling of coalition districts and precise achievement of 50% racial thresholds is powerful circumstantial evidence of predominant racial motive. As the Supreme Court explained in *Cooper*, the "on-the-nose attainment of a 50% BVAP" supports a finding that "the legislature deliberately drew a majority-minority district for racial reasons." *Cooper*, 581 U.S. at 313. Here, the Legislature created multiple districts with CVAPs hovering just above 50%—CD 9 at 50.3% Hispanic, CD 18 at 50.5% Black, CD 22 at 50.8% White, CD 30 at 50.2% Black, CD 35 at 51.6% Hispanic. (Order at 35–49.) The district court found this pattern "extremely unlikely ... by pure chance," noting that it "could not credibly arise by accident" and demonstrated that "the Legislature was following a 50-plus racial target to the letter." (Order at 96–98, 105.)

This Court has consistently recognized that achieving precise racial targets provides telltale evidence of racial predominance. See *Cooper*, 581 U.S. at 313–15 (precise 50% BVAP target evidenced racial motive); *Bethune-Hill v. Virginia State Bd. of Elections*, 580 U.S. 178, 191 (2017) ("Race may predominate even when a reapportionment plan respects traditional districting principles—if race was the criterion that, in the state's view, could not be compromised, and race-neutral considerations came into play only after the race-based decision had been made."). The State cannot overcome this powerful circumstantial evidence.

4. Credibility Findings: Rejection of Defense Witnesses

The district court's credibility determinations provide an independent basis for affirming the likelihood of success finding . After observing witnesses testify over nine days, the court made specific, adverse credibility findings regarding key State witnesses—findings entitled to even greater deference than ordinary factual determinations. See *Anderson*, 470 U.S. at 575 ("When findings are based on determinations regarding the credibility of witnesses, [the clearly erroneous] standard is even more deferential.").

Chairman King: Although Chairman King served as the Senate Redistricting Committee chair and sponsored the Senate redistricting bill, the district court found his testimony "less probative of the Legislature's intent" than the testimony of House sponsors and joint authors. (Order at 81.) The court identified three principal reasons for discrediting his testimony.

First, Chairman King "played a much less significant role in the 2025 Map's development and passage than other legislators." (Order at 81.) He testified that "the House—not the Senate—took the lead on redistricting" and admitted that he "played no role whatsoever in drafting the map that the Legislature ultimately enacted." (Order at 81–82; Prelim. Inj. Hrg Tr. Day 5 Afternoon, ECF No. 1341, at 91.) He merely introduced the House's map unchanged in the Senate, and stated on the Senate floor that he "didn't really have any personal knowledge of the inner workings that went into who participated in drawing the maps." (Order at 82; Prelim. Inj. Hrg Tr. Day 1 Morning, ECF No. 1414, at 108.) He was "out of the loop for key milestones in the 2025 redistricting process." (Order at 82; Prelim. Inj. Hrg Tr. Day 8 Morning, ECF No. 1421, at 140–41; Prelim. Inj. Hrg Tr. Day 1 Morning, ECF No. 1414, at 119–20.)

Second, "significant aspects of Chairman King's testimony about [his conversations with mapmaker Adam Kincaid] were inconsistent with other evidence." (Order at 83.) Chairman King testified that during a July 2025 meeting with Kincaid at an American Legislative Exchange Council conference, he told Kincaid "he didn't want to talk about the redistricting maps" because he expected to chair the Senate Redistricting Committee and wanted information to come through public channels. (Order at 83; Prelim. Inj. Hrg Tr. Day 5 Afternoon, ECF No. 1341, at 82, 118–19.) By contrast, Kincaid testified that Chairman King "openly questioned him about the redistricting efforts" and specifically asked, "How many seats are we talking?" to which Kincaid

responded, "Five seats. It's going to be a five-seat pickup." (Order at 83–84; Prelim. Inj. Hrg Tr. Day 6 Afternoon, ECF No. 1342, at 20–22.) When confronted with this contradiction, Chairman King conceded that "either he was misremembering or Mr. Kincaid's testimony was incorrect." (Order at 84; Prelim. Inj. Hrg Tr. Day 8 Morning, ECF No. 1421, at 131–32.) The district court found these inconsistencies sufficient to "question whether Chairman King, Mr. Kincaid, or neither one was accurately relaying the substance of their meeting" and whether anything occurred "that would betray an unlawful legislative motive." (Order at 84.)

Third, the court found Chairman King's testimony less reliable because he was not involved in critical aspects of the mapmaking process and because his stated motivations—creating more Republican seats, ensuring legal compliance, and improving compactness—did not explain the specific racial transformations documented in the map. (Order at 80–81, 85–87.)

Adam Kincaid: The court's rejection of mapmaker Adam Kincaid's testimony was even more definitive. Kincaid, the outside consultant who drew nearly all of the 2025 map, testified that he created the map "blind to race" and used "political data from start to finish." (Order at 95–96; Prelim. Inj. Hrg Tr. Day 7 Morning, ECF No. 1420, at 101; Prelim. Inj. Hrg Tr. Day 2 Morning, ECF No. 1415, at 32.) The district court flatly rejected this testimony: "While Mr. Kincaid's statewide tour of his map was compelling, we nonetheless discredit his testimony that he drew the 2025 Map blind to race. We find it extremely unlikely that Mr. Kincaid could have created so many districts that were just barely 50% CVAP by pure chance." (Order at 96.)

The court relied on *Cooper v. Harris* as directly analogous. There, as here, an outside mapmaker claimed to have displayed "only political data, and no racial data, on his computer screen while mapping the challenged district," yet achieved "on-the-nose attainment of a 50% BVAP." *Cooper*, 581 U.S. at 313–14. The district court in *Cooper* deemed it "far more likely" that the mapmaker was "actually and deliberately" using racial data, and the Supreme Court affirmed. *Id.* at 313–15. Here, the district court applied the same reasoning: "Whether the racial make-up of the [districts was] displayed on his computer screen or just fixed in his head ... the mapmaker's denial of race-based districting rang hollow." (Order at 96–98 (citing *Cooper*, 581 U.S. at 315).)

The court further found that even if Kincaid subjectively drew the map without considering race, his intent was irrelevant if "the Legislature introduced and enacted that map ... because it just happened to achieve [DOJ's and the Governor's racial] objectives." (Order at 104.) Citing *Prejean v. Haddad*, 227 F.3d 499, 511, 514 (5th Cir. 2000), the court explained that "if the reason why the Legislature introduced and enacted [the] map is because it just happened to achieve those objectives, then Mr. Kincaid's subjective lack of racial motivation is irrelevant." (Order at 104.) The court found a "disjunction ... between Mr. Kincaid's stated intent and the apparent intent of the legislature," leading to the conclusion that "Mr. Kincaid's testimony does not preclude the Plaintiff Groups from obtaining a preliminary injunction." (Order at 104.)

These credibility findings are devastating to the State's case. The district court found the testimony of the two principal State witnesses—the Senate sponsor and the mapmaker—less credible than the direct admissions of House sponsors, the Governor's public statements, and the circumstantial evidence of the map's racial characteristics. On appeal, these credibility determinations are entitled to "even more deferential" review under the clear-error standard. *Anderson*, 470 U.S. at 575. The State cannot demonstrate a strong likelihood of success when the foundational testimony supporting its defense has been discredited by the factfinder.

5. Expert Evidence: Dr. Duchin's Unchallenged Statistical Analysis

Dr. Moon Duchin's expert analysis provided independent, scientifically rigorous confirmation that the 2025 map's racial characteristics could not plausibly result from race-neutral redistricting. Dr. Duchin, a Professor of Data Science at the University of Chicago and a pioneer in computational redistricting methods, used computer simulations to generate tens of thousands of hypothetical congressional maps that adhered strictly to race-neutral criteria while favoring Republican candidates. (Order at 109–12; Tex. NAACP Prelim. Inj. Ex. 208, ECF No. 1384-8, at 22–23; Prelim. Inj. Hrg Tr. Day 5 Morning, ECF No. 1418, at 56–60.)

Dr. Duchin's methodology satisfied the Supreme Court's directive in *Alexander* to "disentangle race from politics." *Alexander*, 602 U.S. at 9. Her program generated maps that: (1) balanced population and ensured contiguity; (2) prioritized compactness; (3) respected municipal subdivisions; (4) favored Republican partisan performance at levels equal to or greater than the enacted map; (5) protected incumbents to the same degree as the enacted map; and (6)

maintained Donald Trump's plurality wins from the 2024 election in at least as many districts as the enacted map. (Order at 109–10; Tex. NAACP Prelim. Inj. Ex. 208, ECF No. 1384-8, at 22–23; Prelim. Inj. Hrg Tr. Day 5 Morning, ECF No. 1418, at 58, 62–63.) After generating a large universe of such maps, Dr. Duchin winnowed them to approximately 40,000 maps that "the Republican-controlled Legislature could have conceivably passed" based solely on race-neutral considerations. (Order at 110; Tex. NAACP Prelim. Inj. Ex. 208, ECF No. 1384-8, at 23.)

Dr. Duchin then compared the racial demographics of the enacted map to the racial demographics of her race-neutral simulations. The results, displayed in box-and-whisker plots, demonstrated that the enacted map was a stark statistical outlier. (Order at 112–21; Tex. NAACP Prelim. Inj. Ex. 208, ECF No. 1384-8, at 14–15.)

In the **Houston area**, where CDs 9, 18, and 29 are located, the results were "jarring." (Order at 116.) Five of ten districts in the enacted map fell outside the expected statistical range (the "whiskers"), and several registered at or below the 1st percentile for minority CVAP. (Order at 117–18; Tex. NAACP Prelim. Inj. Ex. 208, ECF No. 1384-8, at 15; Prelim. Inj. Hrg Tr. Day 5 Morning, ECF No. 1418, at 70, 73.) As Dr. Duchin testified, "if the dot is outside the whiskers altogether, that means that no plan that [she] generated in the sample ever had as low or as high of a minority CVAP" as the enacted district. (Order at 116; Prelim. Inj. Hrg Tr. Day 5 Morning, ECF No. 1418, at 70.) In one Houston district, the enacted map showed minority CVAP "over 80 percent," where Dr. Duchin's race-neutral simulations predicted a range of "60 to 70 [percent]"—a result she characterized as "off the charts in the direction of packing." (Order at 118; Prelim. Inj. Hrg Tr. Day 5 Morning, ECF No. 1418, at 73.) The court summarized: "These results suggest that a Legislature motivated exclusively by partisan and other race-neutral concerns would be unlikely to produce a configuration of the Houston-area districts with racial characteristics similar to the 2025 Map." (Order at 118.)

In the **Dallas-Fort Worth area**, where CDs 30, 32, and 33 are located, "one of the dots falls outside the whiskers entirely, while two dots fall precisely on a whisker's edge," meaning these districts achieved minority CVAPs at the 1st percentile or below. (Order at 121; Tex. NAACP Prelim. Inj. Ex. 208, ECF No. 1384-8, at 14; Prelim. Inj. Hrg Tr. Day 5 Morning, ECF No. 1418, at 70.) Even in the **Travis-Bexar County area**, where CDs 27 and 35 are located, the pattern persisted: "there are three dots that are a comfortable distance away from their respective

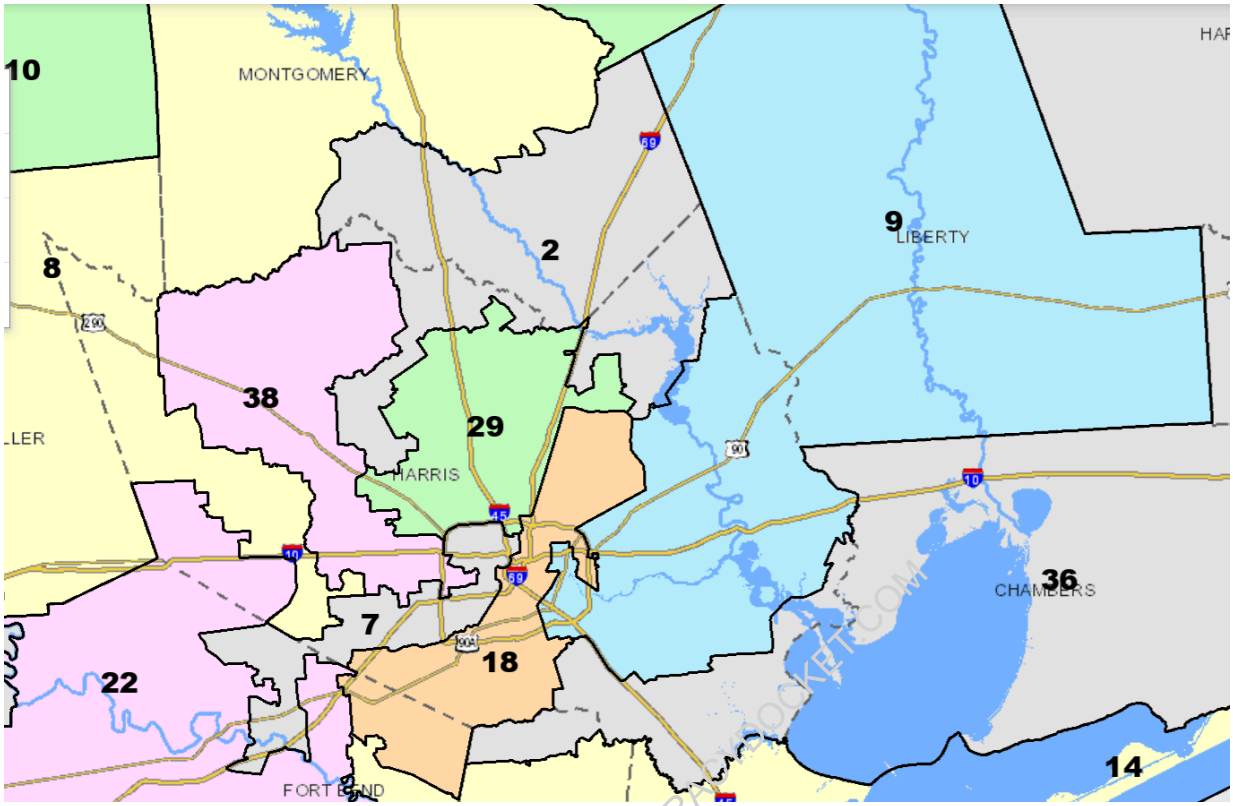
boxes," indicating statistically improbable minority CVAP levels. (Order at 121; Tex. NAACP Prelim. Inj. Ex. 208, ECF No. 1384-8, at 15; Prelim. Inj. Hrg Tr. Day 5 Morning, ECF No. 1418, at 73–74.)

Dr. Duchin concluded 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." (Order at 121–22.) She testified that "the racial composition of the districts is highly atypical of random plans whose partisan performance is at least as favorable to Republicans generally and to Donald Trump in particular," and that her results were "suggestive that race was used in making the map because these race-blind comparators ... don't reproduce the racial composition of the enacted map." (Order at 122; Tex. NAACP Prelim. Inj. Ex. 208, ECF No. 1384-8, at 14, 30; Prelim. Inj. Hrg Tr. Day 5 Morning, ECF No. 1418, at 72.)

Critically, the State offered no expert rebuttal. "Dr. Duchin's testimony was effectively unchallenged—no defense expert submitted a report rebutting Dr. Duchin's findings." (Order at 122; Prelim. Inj. Hrg Tr. Day 9 Afternoon, ECF No. 1345, at 46–47, 164; Prelim. Inj. Hrg Tr. Day 5 Morning, ECF No. 1418, at 8.) The district court found Dr. Duchin's testimony and report "highly credible and persuasive." (Order at 122.)

The State's attempt to distinguish *Alexander v. South Carolina State Conference of the NAACP*, 602 U.S. 1 (2024)—where the Supreme Court found defects in Dr. Duchin's analysis—fails. The district court explained that Dr. Duchin's report here "doesn't suffer from the same defects that led the *Alexander* Court to reject her findings." (Order at 122–23.) Unlike in *Alexander*, where Dr. Duchin's simulations did not adequately account for partisanship or core retention, here "Dr. Duchin's report ... fully accounted for partisanship, core retention, and other race-neutral criteria throughout." (Order at 122–27.) The court methodically addressed each of the State's critiques and found them unpersuasive. (Order at 122–27.)

Dr. Duchin's analysis provides mathematical confirmation of what the direct and circumstantial evidence already established: 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." (Order at 122, 127.).



The disparate treatment of Congressional District 7 ("CD 7")—Houston's sole majority-white, Democratic-held district—provides especially revealing circumstantial evidence of the Legislature's predominant racial motive. Unlike every coalition or minority-opportunity district in the Houston area, which were disassembled and reconfigured to ensure the creation of new single-race-majority districts meeting DOJ's demands, CD 7 was the only Democratic-leaning district in Houston left substantially unchanged. The district court found that "while the Legislature radically transformed CDs 9, 18, and 29—each previously a coalition or minority-majority district—CD 7, despite its Democratic partisanship, remained largely intact, with nearly 70% of its voters retained in the new plan" (Order at 106; Brooks Prelim. Inj. Ex. 267, ECF No. 1326-14, at 6).

This sharp contrast in treatment cannot plausibly be explained on the basis of partisanship alone; were the State motivated solely by political considerations, it would have fragmented CD 7 along with the others to maximize Republican gains. Instead, the Legislature preserved CD 7—even as it targeted similarly performing Democratic districts with greater minority populations for elimination—demonstrating that the distinguishing criterion was race, not

politics. The district court correctly recognized this pattern as "additional circumstantial evidence that the Legislature's predominant consideration was race rather than partisanship" (Order at 106). This finding aligns with Supreme Court precedent holding that, when presented with alternative political opportunities, a legislature's asymmetric treatment of districts based on racial, rather than partisan, criteria provides powerful evidence of unconstitutional racial gerrymandering. See *Cooper v. Harris*, 581 U.S. 285, 308 n.7 (2017); *Miller v. Johnson*, 515 U.S. 900, 916–17 (1995)

B. The District Court Correctly Distinguished Racial Predominance from Partisan Motivation

The State's principal defense—that the 2025 map was driven exclusively by permissible partisan objectives rather than impermissible racial motives—cannot overcome the district court's findings. This Court has recognized that disentangling race from politics is "a difficult task," especially where "the two are closely correlated," but has made clear that difficulty does not excuse unconstitutional race-based districting. *Alexander*, 602 U.S. at 7–9. The district court applied the correct legal standards and found that race, not politics, was the predominant, non-compromisable criterion.

The evidence overwhelmingly supports this conclusion. First, the Governor and legislative sponsors repeatedly and expressly disavowed partisan motivations while emphasizing racial objectives. Governor Abbott, when given multiple opportunities to publicly proclaim that his goal was to secure five additional Republican seats for President Trump, instead stated: "To be clear, Jake, the reason why we are doing this is because of that court decision" in *Petteway* and the goal of "remov[ing] those coalition districts." (Order at 32–33; Prelim. Inj. Hrg Tr. Day 1 Morning, ECF No. 1414, at 12–14.) Representative Oliverson told a national audience that the Legislature 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." (Order at 3, 67–68.)

Second, the Legislature's treatment of districts with similar partisan characteristics but different racial compositions reveals that race, not partisanship, was the driving factor. The district court found that if "the Legislature's aims were exclusively partisan rather than

predominantly racial," the Legislature would have reconfigured majority-White Democratic districts like CD 37 just as aggressively as it reconfigured majority-non-White Democratic districts like CD 9. (Order at 106.) Yet the Legislature left CD 37 largely intact—67.8% of its voters remained in the redrawn district—while completely gutting CD 9 retaining only 2.9% of its voters. (Order at 106; Brooks Prelim. Inj. Ex. 267, ECF No. 1326-14, at 2, 6.) Similarly, the Legislature transformed CD 27, a majority-non-White Republican district, into a majority-White Republican district, "net[ting] no gain in the number of Republican seats" but achieving racial change for its own sake. (Order at 107–08; Brooks Prelim. Inj. Ex. 258, ECF No. 1326-5, at 1; Brooks Prelim. Inj. Ex. 265, ECF No. 1326-12, at 1.) The court found this pattern "additional circumstantial evidence that the Legislature's predominant consideration was race rather than partisanship." (Order at 106–08.)

Third, the systematic dismantling of seven coalition districts and the creation of multiple bare-majority single-race districts—all hovering just above the 50% CVAP threshold—cannot be explained by partisan gain alone. As the district court found, "it wasn't enough for the map to merely improve Republican performance; it also needed to convert as many coalition districts to single-race-majority districts as possible." (Order at 77.) This is the essence of racial gerrymandering as defined by this Court: race was "the criterion that, in the State's view, could not be compromised." *Bethune-Hill*, 580 U.S. at 189.

Finally, Dr. Duchin's analysis mathematically disentangled race from politics by generating thousands of maps that achieved the same or greater partisan advantage as the enacted map, yet none reproduced its racial characteristics. (Order at 121–22, 127.) This directly refutes the State's claim that the racial patterns resulted incidentally from partisan mapmaking.

The State cannot demonstrate a strong likelihood of success on the merits because both the direct and circumstantial evidence—supported by uncontroverted expert testimony—demonstrate that race, not politics, was the predominant consideration in the 2025 map. This is exactly the showing the Supreme Court demanded in *Miller v. Johnson*, 515 U.S. 900, 916 (1995), and reaffirmed in *Cooper v. Harris*, 581 U.S. 285, 291, 313–15 (2017): "If legislators use race as their predominant districting criterion with the end goal of advancing their partisan interests—perhaps thinking that a proposed district is 'more sellable' as a race-based VRA compliance measure than as a political gerrymander and will accomplish much the same

thing—their action still triggers strict scrutiny." *Cooper*, 581 U.S. at 308 n.7. The record here fits that description precisely.

The State's attempt to claim race-neutral intent is further undone by the district court's adverse credibility findings. When the trial judge discredits sworn testimony—such as Chairman King's assertion that he did not know racial data would be used, or Adam Kincaid's insistence that he worked "blind to race" despite producing districts that landed exactly at racial thresholds—appellate courts grant even greater deference, particularly in the context of direct witness observation. *Anderson v. City of Bessemer City*, 470 U.S. 564, 575 (1985) ("When findings are based on determinations regarding the credibility of witnesses, [deference is] even more deferential.").

In sum, the multi-layered evidence produced at trial—the pattern of legislative statements, the precision of district manipulation, the statistical outlier status confirmed by Dr. Duchin's simulations, and the affirmatively credited admissions by state actors—leaves no doubt but that the district court's injunction is solidly grounded in law and fact. The State, facing not just an adequate but an overwhelming showing, cannot meet the threshold of demonstrating probable success on appeal.

II. PLAINTIFF-INTERVENORS AND VOTERS WILL SUFFER IRREPARABLE HARM ABSENT INJUNCTIVE RELIEF

It is a foundational principle of constitutional law that the deprivation of protected rights—even for a single election cycle—constitutes irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."). In the voting rights context, the judiciary has long recognized the necessity of preemptive relief to forestall ongoing injuries. See *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247–48 (4th Cir. 2014) ("When constitutional rights are threatened or impaired, irreparable injury is presumed.").

The district court underscored this point, stating, "the intention and effect of the 2025 Map would be to eliminate coalition districts and create new majority-Hispanic and majority-Black districts, disenfranchising communities that depend on cross-racial coalitions for

representation" (Order at 2–4, 105). This would not be a theoretical injury. As the trial record reaffirms, many voters—especially in the targeted districts—face immediate loss of coalition representation, sharp declines in political power, and confusion about district boundaries and candidate pools. Community leaders and advocacy organizations testified about the consequences: the break-up and "packing" of historic Black and Latino neighborhoods, the undermining of established voting blocs, and the splintering of effective coalitional campaigns. (Prelim. Inj. Hrg Tr. Day 3, ECF Nos. 1339–1340.)

The Supreme Court's recent decision in *Allen v. Milligan*, 599 U.S. 1 (2023), is particularly instructive. There, as here, the Court affirmed a district court's finding of irreparable harm in the ongoing use of unlawful maps, noting that "the risk of significant disenfranchisement and dilution of minority votes during a contested election season forms a sufficient basis for preliminary judicial relief." *Id.*

The administrative record, moreover, directly refutes any suggestion of offsetting hardship to the State. Election officials from county and state agencies testified at length that reverting to the prior 2021 map entails less burden, less confusion, and fewer logistical hurdles than attempting to implement an untested 2025 map on short notice. (Order at 90–92, 105–106; Prelim. Inj. Hrg Tr. Days 7–8.) Secretaries of State from major counties gave unrebutted evidence that voter rolls, precinct boundaries, and election staffing are already geared to the 2021 map, and that the alternatives proposed by the State would create administrative "chaos." (Id.) The district court credited this testimony, finding it "both credible and persuasive," and concluded that "claims of administrative disruption did not outweigh the risk of constitutional harm." (Order at 105–106.)

Therefore, absent continued enforcement of the injunction, both Plaintiff-Intervenors and affected Texas voters will experience unrecoverable harms to their constitutional rights—injuries which no post-election remedy can cure.

The evidentiary arc and legal posture of this case bear striking resemblance to the Supreme Court's seminal decision in *Alabama Legislative Black Caucus v. Alabama*, 575 U.S. 254 (2015). In both cases, plaintiffs demonstrated that the challenged redistricting plans were driven by a predominant and inflexible use of race, manifesting through the explicit pursuit of

numerical targets for minority population percentages in key districts. Just as the Alabama Legislature set out to maintain specific Black Voting Age Population ("BVAP") percentages in its legislative districts—often resulting in so-called "packing" of minority voters—the Texas Legislature reacted to DOJ and executive branch pressure by systematically dismantling coalition districts and converting them into single-race-majority districts pegged to just over 50% minority Citizen Voting Age Population. In both instances, the responsible bodies claimed a compelling interest, whether in Voting Rights Act compliance (*Alabama Black Caucus*) or supposed federal legal mandates (*see* PI Order at 23), even as their actions diverged sharply from legitimate, race-neutral redistricting principles.

Moreover, the parallel extends to the evidence marshaled at trial. Both cases relied heavily on a combination of direct legislative admissions, contemporaneous public statements, and expert simulations. In *Alabama Black Caucus*, the Supreme Court highlighted the importance of statistical and alternative map analysis to demonstrate the implausibility of the enacted map's racial features arising from neutral criteria. Likewise, the Texas district court credited testimony and simulation evidence from Dr. Moon Duchin—showing that the 2025 map's overrepresentation of majority-minority districts, achieved with mathematical precision at the 50% CVAP mark, was an extreme outlier among thousands of partisan-neutral alternatives. These factual and methodological parallels confirm what the doctrine prescribes: where plaintiffs establish, by direct and circumstantial evidence, that race—not politics—was the overriding districting principle, the constitutional inquiry is the same. As in *Alabama Black Caucus*, the trial court here correctly moved beyond surface-level claims of partisan motivation to conduct a searching examination of legislative intent, expert evidence, and the indelible imprint of race on the ultimate map.

III. THE BALANCE OF HARMS AND THE PUBLIC INTEREST DECISIVELY WEIGH IN FAVOR OF UPHOLDING THE INJUNCTION

Federal courts are entrusted with the duty of prioritizing constitutional rights over claims of administrative burden or governmental convenience, especially in matters concerning the right to vote and electoral fairness. *Winter v. NRDC*, 555 U.S. 7, 24 (2008) ("[T]he public interest is served by compliance with the law, particularly constitutional requirements."); *Salazar v. Buono*,

559 U.S. 700, 714 (2010) ("The law favors preservation of constitutional rights unless weighty interests counsel otherwise.").

The district court evaluated the State's claims of impending harm in detail, including the potential for voter confusion, increased costs, and election delays. But these claims, upon close examination of the record, were speculative, contradicted by the testimony of actual election administrators, and dwarfed by the tangible harm to constitutional interests. (Order at 119–120.) The administrative evidence revealed that Texas has previously implemented court-ordered maps and that the infrastructure required to do so—software, voting precincts, poll worker assignments, voter registration cards—is already in place for the 2021 map. (Prelim. Inj. Hrg Tr. Days 6–8.) County officials from Houston, Dallas, and San Antonio each independently corroborated that preparations for the 2021 map are complete, while adaptation to the 2025 map would require extensive training, public education campaigns, new GIS data, and months of work not feasible before the looming election deadline. (Id.)

Community organization leaders and civil rights advocates also attested to the greater ease of public communication and voter outreach under the familiar 2021 boundaries. (Prelim. Inj. Hrg Tr. Days 3–4.) Their testimony outlined the heightened risk of disenfranchisement when districts are suddenly changed—as would occur under a stay—and the increased likelihood of reduced voter participation, spoiled ballots, and electoral challenges. (Id.)

In 1978, Justice Thurgood Marshall wrote in the Bakke opinion about how the Fourteenth Amendment had not been properly used to remedy effects of past and current discrimination. *Regents of Univ. of Cal. v. Bakke, 438 U.S. 265, 387–88 (1978*) (Marshall, J., concurring in part and dissenting in part). This was 3 years after the Voting Rights Act was applied to Texas. *Voting Rights Act Amendments of 1975*, Pub. L. No. 94-73, § 203, 89 Stat. 400 (1975); see also *S. Rep. No. 94-295*, at 25–29 (1975), reprinted in 1975 U.S.C.C.A.N. 774, 79. Importantly, after White v. Regester in 1972, and the extension of the Voting Rights Act's Section 5 to Texas in 1975, the State of Texas has been found to have engaged in discrimination against African Americans and/or Latino in every decade of redistricting since the Voting Rights Act was passed. *White v. Regester*, 412 U.S. 755, 765–70 (1973); *Lipscomb v. Wise*, 399 F. Supp. 782, 788 (N.D. Tex. 1975) (noting continuing discriminatory effects in Dallas); *Perez v. Abbott*, 253 F. Supp. 3d 864, 886 (W.D. Tex. 2017) (finding discriminatory purpose in 2011 congressional and legislative

maps); *United States v. Texas* (W.D. Tex. 2021) (DOJ Voting Rights Act § 2 challenge to 2021 redistricting plans). .In addition to the Redistricting cases, the State was also found to have discriminated against African Americans and Latinos in adopting its voter identification law. *Veasey v. Abbott*, 830 F.3d 216, 264–65 (5th Cir. 2016) (en banc). African Americans and Latinos will lose substantial political power if the new map goes into effect. *Perez v. Abbott*, 274 F. Supp. 3d 624, 639–40 (W.D. Tex. 2017)("the 2011 Plan was motivated by discriminatory intent and had the effect of submerging minority voters in Anglo-dominated districts.") As Justice Marshall says, the idea is for all of us to have the Constitutional rights that are provided for in the Constitution. *Regents of Univ. of Cal. v. Bakke,* 438 U.S. 265, 396–98 (1978) (Marshall, J.). Clearly, the public interest is in adopting this map that further minimizes political power for interest is a majority of the State's population.

The balance of harms, in short, is not close. Upholding constitutional rights and preventing voter disenfranchisement must outweigh hypothetical burdens of election administration—burdens that, the record reflects, do not in fact exist for the implementation of the prior judicially-approved plan.

IV. PURCELL AND THE TIMING OF JUDICIAL RELIEF: WHY INTERVENTION NOW PROMOTES ORDER

The Supreme Court cautioned in *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006), that changes to election rules in the period immediately preceding an election may create confusion and disruption, and that courts must weigh such risks in balancing equities. But Purcell is not an absolute bar to pre-election intervention, particularly where ongoing constitutional harms are clear, and administration of the old map is feasible.

The district court's record demonstrates that Plaintiff-Intervenors proceeded with "diligence and dispatch," filing suit immediately upon passage of the 2025 map and pressing for expedited proceedings at every stage. (Order at 16–17, 409–412.) Any delay in litigation was the result of legislative foot-dragging, late session scheduling, and post-hoc state legal maneuvers—not Plaintiff tactics. (Id.) Courts have repeatedly stated that when delay is "due to the Legislature," judicial action remains proper to prevent constitutional harm. *Reynolds v. Sims*,

377 U.S. 533, 586 (1964) ("Where delay is due to the legislature, a court is not disabled from acting.")

The factual record, as developed in testimony and agency filings, further demonstrates that reverting to the 2021 map does not create confusion or logistical obstacles. Witnesses confirmed that precincts, voter registration files, and poll worker assignments are "ready and waiting" under prior boundaries, requiring only official certification from state agencies. (Prelim. Inj. Hrg Tr. Days 7–8.) In *Allen v. Milligan*, 599 U.S. 1 (2023), this Court affirmed the power of federal courts to enjoin unlawful maps prior to an election, where "risk of confusion [is] minimal, and implementation of a lawful remedial plan [is] feasible as established by record evidence."

Thus, rather than risk the confusion that would arise from a stay and sudden imposition of an untested 2025 map, maintaining the injunction actually preserves continuity, clarity, and voter confidence. Purcell's teaching, properly applied, supports stable and lawful administration when a court has found clear constitutional violations.

V. THE STANDARD REMEDY AND ADMINISTRATIVE FEASIBILITY OF RETURNING TO THE PRIOR MAP

The district court found, as a matter of law and fact, that returning to the court-approved 2021 map is conventional, administratively sound, and best serves both voter interests and election agencies. (Order at 1, 4, 105–106.) This approach is consistent with decades of Supreme Court precedent in redistricting remedies—including *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978) (courts should "afford a reasonable opportunity for the legislature to meet constitutional requirements by adopting a substitute measure"); see also *In re Landry*, 83 F.4th 300, 303 (5th Cir. 2023) (courts may implement interim or remedial plans when legislatures fail to act).

Detailed operational evidence in the record confirms the administrative feasibility of using the 2021 map. The Secretary of State's office and county election officials described step-by-step protocols for updating registration lists, ballot forms, and precinct boundaries, explicitly stating that "all necessary operations" for the prior map have been maintained. (Prelim. Inj. Hrg Tr. Days 7–8.) Testimony from senior staff indicated that implementation could be

initiated upon judicial order within two weeks, easily meeting statutory deadlines for candidate filing and early voting. (*Id*.)

In contrast, the State's proposal to enforce the 2025 map on short notice would require months of new GIS analysis, precinct realignment, mail notifications, and administrative retraining, and would likely overwhelm local offices—raising a serious risk of error, delayed ballots, and voting challenges. (*Id*.)

The district court credited all of this testimony and found no credible evidence that reverting to the 2021 map would do anything other than streamline administration and minimize confusion. (Order at 90–92, 105–106.)

VI. PLAINTIFFS' FAILURE TO SUBMIT AN "ALEXANDER MAP" IS NOT FATAL HERE

The Supreme Court's decision in *Alexander v. South Carolina State Conference of the NAACP*, 602 U.S. 1, 10 (2024), held that while the failure of plaintiffs to present an alternative "Alexander map" is "dispositive in many, if not most, cases," it is not a universal requirement. In exceptional cases, "extraordinarily powerful circumstantial or direct evidence" of racial intent may suffice even absent such a map. Here, as the district court found (Order at 132–134), Plaintiffs supported their claims with direct gubernatorial and legislative admissions, extensive expert testimony, and statistical analysis showing outlier racial results—collectively going well beyond the minimum threshold required for legal sufficiency.

Moreover, the record indicated ample "familiarity and readiness" among election administrators with the prior map, a point supported by cross-examination of the Secretary of State and agency staff. (Prelim. Inj. Hrg Tr. Days 7–8.) Legislative testimony confirmed that reverting to 2021 boundaries would not only be easier but would enhance voter confidence and reduce administrative risk. (*Id*.).

VII. CONCLUSION

Given the overwhelming factual record, the district court's precise credibility determinations, the direct and circumstantial evidence of legislative and executive intent, and the unrebutted expert testimony, the State cannot carry its burden on any prong of the stay test. The

continued enforcement of the injunction is essential to protect Texas voters from ongoing, irreparable constitutional harm and to preserve lawful administration in the coming election. The motion for a stay should be denied.

Respectfully submitted,

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