IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

WINNIE JACKSON, JARRETT "JAY" JACKSON, CELINA VASQUEZ, DUANE BRAZTON, NADIA BHULAR, AMJAD BHULAR, CHERYL MILLS-SMITH, and RICHARD CANADA,

Plaintiffs,

v.

TARRANT COUNTY, TEXAS, TARRANT COUNTY COMMISSIONERS COURT, and TIM O'HARE, in his official capacity as Tarrant County Judge,

Defendants.

Civil Case No. 4:25-cv-000587-O

BRIEF OF THE STATE OF TEXAS AS AMICUS CURIAE IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

The State of Texas, as amicus curiae, files this brief in support of Defendants' Motion to Dismiss, Dkt. 22, and would respectfully show the Court as follows:

INTRODUCTION

In April of this year, pursuant to its Constitutionally delegated power, *see* Tex. Const. art. V, § 18, the Tarrant County Commissioners Court began the process of redrawing the Tarrant County precinct maps. ECF No. 8 at ¶ 54. From the inception of this process, Tarrant County's intent was explicitly clear—it sought to increase Republican control over the Commissioners Court. ECF No. 22 at 6. But some Democrats seeking to maintain control were perturbed by this. Plaintiffs, a group of Tarrant County Democrat voters, sued Tarrant County, its Commissioners Court, and its County Judge (collectively, the Defendants) and asserted a litany of challenges to the maps. *See generally* ECF No. 8. Defendants responded in kind with a motion to dismiss, wherein it outlined several reasons that Plaintiffs' claims lacked merit. *See generally* ECF No. 22.

Given the many significant Constitutional and statutory implications of Plaintiffs' claims, the State of Texas, as *amicus curiae*, now files this brief in support of Defendants' Motion to

Dismiss. ECF No. 22. This brief addresses two discrete issues: 1) that the Court should show great deference to the Commissioners Court in its review of maps enacted pursuant to legislative or quasi-legislative power, and 2) that Tarrant County's act of reapportioning its precincts mid-decade is permissible and not prohibited by the United States Constitution, the Texas Constitution, or any relevant statute.

ARGUMENT AND AUTHORITIES

I. The Court should defer to the legislative body responsible for redistricting.

The Supreme Court has long recognized that—absent a clear constitutional or statutory violation—courts should show great deference to legislative bodies empowered to conduct redistricting. Indeed, "state legislatures have 'primary jurisdiction' over legislative reapportionment." *White v. Weiser*, 412 U.S. 783, 795 (1973). Further, the Supreme Court "has repeatedly held that redistricting and reapportioning legislative bodies is a legislative task which the federal courts should make every effort not to pre-empt." *Wise v. Lipscomb*, 437 U.S. 535, 539 (1978). This is due in large part to the fact that "redistricting is an inescapably political enterprise." *See e.g.*, *Alexander v. S.C. State Conference of the NAACP*, 602 U.S. 1, 6 (2024); *see also* U. S. Const., Art. I, §§ 2, 4. This deference to legislative bodies is part of the Court's "longstanding recognition of the importance in our federal system of each State's sovereign interest in implementing its redistricting plan." *Bush v. Vera*, 571 U.S. 952, 978 (1996). Because "[r]edistricing 'is primarily the duty and responsibility of the State,' and '[f]ederal-court review of districting legislation represents a serious intrusion on the most vital of local functions,'" courts must exercise great deference in considering challenges to districting decisions. *Abbott v. Perez*, 585 U.S. 579, 604 (2018) (quoting *Miller v. Johnson*, 515 U.S. 900, 915 (1995)). This concern for the autonomy of "local functions" is only magnified when the reapportionment in question is performed by a local governmental body exercising quasi-legislative authority.

Moreover, the good faith of the state legislature at issue "must be presumed." *Alexander*, 602 U.S. at 6; *Abbott*, 585 U.S. at 603. The Supreme Court has repeatedly emphasized that the

courts must exercise "extraordinary caution" in adjudicating claims that a state has drawn district lines on the basis of race. *Alexander*, 602 U.S. at 7; *Miller*, 515 U.S. at 915–16. To overcome this strong presumption, Plaintiff *must* separate race from other, permissible considerations such as partisanship or incumbent protection; race must be shown to be a predominant factor motivating the legislature's decisions in redistricting. *Alexander*, 602 U.S. at 7; *Miller*, 515 U.S. at 916.

To make that showing, a plaintiff must prove that the state "subordinated" race-neutral districting criteria such as compactness, contiguity, partisanship, and core preservation to racial considerations. *Miller*, 515 U.S. at 916. A plaintiff must prove that race was the "predominant factor" motivating the legislature's decision to place a significant number of voters within or without a particular district." *Id.*; *see also Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 187 (2019). Mere awareness of a potential or actual discriminatory effect is insufficient to meet this burden; a plaintiff must show that the decisionmaker acted *because of* racial intent. *See Hunt v. Cromartie*, 526 U.S. 541, 551 (1999); *Bush v. Vera*, 517 U.S. 952, 968 (1996); *see also LULAC v. Abbott*, 601 F. Supp. 3d 147, 160 (W.D. Tex 2022).

Further, the allocation of the burden of proof and the presumption of legislative good faith are not changed by past discrimination. *Abbott v. Perez*, 585 U.S. 579, 603-04. "[P]ast discrimination cannot, in the manner of original sin, condemn governmental action that is not itself unlawful." *Id.* (quoting *Mobile v. Bolden*, 446 U. S. 55, 74 (1980) (plurality opinion)). Alleged past wrongs might be considered relevant but cannot flip the evidentiary burden on its head. *Abbott*, 579 U.S. at 603-04. Just as the Supreme Court in *Shelby* held that "current burdens . . . must be justified by current needs," past acts of discrimination fail to overcome the presumption of good faith on the part of current map drawers. *See Shelby County v. Holder*, 570 U.S. 529, 542 (2013) (quoting *Northwest Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 203 (2009)). Plaintiffs' allegations fail to meet their heavy burden in showing racial intent.

Legislative bodies and quasi-legislative bodies responsible for drawing election maps are entitled to deference except when there is a clear constitutional or statutory violation. "The only limits on judicial deference to state apportionment policy," the Supreme Court has held, are "the

substantive and statutory standards to which such plans are subject." *Upham v. Seamon*, 456 U.S. 37, 42 (1982). When examining redistricting plans, courts should not "reject[] state policy choices more than [is] necessary to meet the specific constitutional violations involved." *Id.* "A district court, is 'not free . . . to disregard the political program of' a" legislative body absent a violation of the law. *North Carolina v. Covington*, 585 U.S. 969, 979 (2018). In *Abrams v. Johnson*, the Supreme Court noted that "*Upham* called on courts to correct . . . constitutional defects in districting plans." 521 U.S. 74, 85 (1997). And that correction marked the outer bounds of the Court's jurisdiction. If a redistricting plan does not contain any constitutional or statutory defects, the court should let it stand unaltered.

In Texas, local governmental bodies, including the Tarrant County Commissioners Court, "are given authority to divide the counties into precincts and to revise those precincts 'from time to time, for the convenience of the people.'" *Tarrant County v. Ashmore*, 635 S.W.2d 417, 423 (1982) (quoting Tex. Const. art. V, § 18). Consequently, "redistricting may be seen as the exercise of legislative or quasi-legislative power." *Id.* This means that, for the purposes of redistricting, the Tarrant County Commissioners Court is treated the same as a legislative body. It is thus owed the same level of deference from federal courts as a state legislature. In practice, this means that a "State's sovereign interest in implementing its redistricting plan" extends to political subdivisions of the State. *Bush*, 517 U.S. at 978. That includes Tarrant County.

The Court therefore should exercise great deference in its review of Plaintiffs' challenges to Tarrant County's newly enacted maps. The Tarrant County Commissioners Court and County Judge, as the elected officials of the County, are well informed of the issues that affect their community and how best to address them. This is especially important when it comes to drawing precinct lines—the Commissioners Court should be presumed to know its population and how best to apportion it into precincts, even if that apportionment is meant to achieve a partisan goal. *See Rucho v. Common Cause*, 588 U.S. 684, 689 (2019) (holding that partisan political gerrymandering is a nonjusticiable issue). It is therefore imperative that the Court not intrude on Defendants' power

(and duty) to reapportion precincts absent a clear constitutional or statutory defect in Defendants' maps. *Upham*, 456 U.S. at 42.

II. Redrawing district in between the decennial census is a common and permissible practice.

Despite Plaintiffs' pleas to the contrary, mid-decade redistricting, especially for bodies of local government, is not an anomalous practice. Indeed "[w]ith respect to a mid-decade redistricting to change districts drawn earlier in conformance with a decennial census, the Constitution and Congress state no explicit prohibition." *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 415 (2006) (plurality opinion) ("*LULAC*"). And the Supreme Court has previously "assumed that state legislatures are free to replace court-mandated remedial plans by enacting redistricting plays of their own." *Id.* at 416. There is, in fact, no functional difference between a governmental body replacing court-mandated maps with its own and the governmental body replacing previously enacted maps with new ones later in the decade. The result is the same—the maps simply change mid-decade. "The text and structure of the Constitution and our case law indicate there is nothing inherently suspect" about a governmental body changing maps mid-decade. *Id.* at 418–19.

This conclusion is further bolstered by the fact that the Supreme Court has repeatedly considered challenges to redistricting maps adopted mid-decade and never taken issue with the timing of those maps. As explained above, the Court considered such a circumstance in *LULAC* and found no constitutional violation. Likewise, in *Gill v. Whitford*, the Court acknowledged that *LULAC* arose from a challenge to "a mid-decade redistricting map passed by the Texas Legislature." 585 U.S. 48, 63 (2018). But the Court focused on the fact that the plaintiffs in *LULAC* challenged the map on the grounds that it was a partisan gerrymander, not that the redistricting occurred mid-decade. *Id.* That fact played no role in the Court's discussion of its permissibility. Again, in *Rucho v. Common Cause*, the Supreme Court upheld a partisan gerrymander in North Carolina adopted outside of the traditional post-census redistricting cycle. 588 U.S. 684 (2019). At no point in its decision did the court flag the fact that the redistricting occurred mid-decade as

problematic. The Court even went as far as to take note of the fact that the plaintiffs in *LULAC* "challenged a mid-decade redistricting map approved by the Texas legislature." *Id.* at 703. At no point did the Court suggest that the decision to redistrict mid-decade was impermissible. Instead, it focused on the Court's inability to "find a justiciable standard for resolving the plaintiffs' partisan gerrymandering claims." *Id.*

Further, as noted above, courts show great deference to legislative bodies in making redistricting decisions. The fact that a state or county chooses to redistrict in the middle of a decade is part of the "most vital of local functions" upon which the Supreme Court has recognized that courts should not intrude absent extreme circumstances. *Miller*, 515 U.S. at 915. Like redistricting in general, *when* a legislative body chooses to redistrict is part of the State's "primary jurisdiction." *White*, 437 U.S. at 795. Once again, because it is a core legislative task, "federal courts should make every effort not to pre-empt" such mid-decade redistricting decisions. *Wise*, 437 U.S. at 539. In sum, nothing about the fact that a legislative body is seeking to redistrict mid-decade changes the court's calculus in these cases. As noted above, this clearly extends to the powers of political subdivisions of a State—such as counties—to redistrict when they see fit. So long as the redistricting does not violate a constitutional or statutory provision, the legislative body is free to redistrict whenever it likes.

Taken together, the case law makes it clear that states and their political subdivisions can and occasionally do redistrict outside the regular ten-year cycle for various reasons. Some, such as Texas in 2003 and North Carolina in 2016 do so for partisan gain. The fact that the Supreme Court has openly acknowledged this reality without once rejecting it shows that it is perfectly permissible, so long as no violation of voters' constitutional or statutory rights occurs. Further, the Supreme Court has made it clear that unless there is such a violation, courts owe great deference to the map-making bodies. Such decision-making lies entirely within their prerogative as the local governments of the areas in question and the most direct representatives of the people. Any interference with legislative decision making here would thwart the democratic process and impermissibly insert the courts into local decision-making.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Civil Procedure 5(a), I hereby certify that on August 11, 2025, a true and correct copy of the above and foregoing document has been served using the CM/ECF system to all counsel and parties of record.

/s/ Zachary L. Rhines
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