No. 25-845

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**

## MOTION OF LULAC APPELLEES TO REMAND FOR FURTHER PROCEEDINGS OR AFFIRM

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March 19, 2026

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D.C. 20002

## QUESTIONS PRESENTED

This appeal follows entry of this Court's stay of a preliminary injunction that blocked implementation of the 2025 Texas congressional redistricting plan for the 2026 election cycle. *Abbott v. League of United Latin Am. Citizens*, 146 S. Ct. 418, 419 (2025). As a result, Texas conducted its primary elections under the 2025 redistricting plan and will use that plan for the remainder of the 2026 elections.

The questions presented are:

1. Whether this Court should remand for further proceedings when the issue of preliminary injunctive relief has already been resolved by this Court, Texas's 2025 redistricting plan will be used in the 2026 elections, and the remaining questions of ultimate liability and appropriate permanent relief must be decided by the three-judge panel after discovery and trial.

2. In the unlikely event that this Court does not remand, whether the district court properly preliminarily enjoined Texas's 2025 congressional redistricting plan for the 2026 elections.

## RULE 29.6 DISCLOSURE STATEMENT

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Southwest Voter Registration Education Project is a non-profit organization. There are no parents, subsidiaries and/or affiliates of Southwest Voter Registration Education Project that have issued shares or debt securities to the public.

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## MOTION OF LULAC APPELLEES TO REMAND FOR FURTHER PROCEEDINGS OR AFFIRM

The only question over which the Court has mandatory appellate jurisdiction is whether or not the Texas 2025 redistricting map should be enjoined for the 2026 elections. The Court resolved that issue when it granted the stay. The remaining questions in this case go to whether the 2025 map should be used in elections *after* 2026, and this Court should remand to give the district court the opportunity to hold a trial on those issues after discovery.

If this Court chooses to note probable jurisdiction, the district court's preliminary injunction warrants summary affirmance because the district court properly concluded, based on abundant direct and circumstantial evidence, that Appellees were likely to succeed on their claim that the Texas Legislature made predominant use of race in the 2025 congressional map. The district court also correctly concluded that the remaining preliminary injunction factors weighed in favor of Appellees.

The district court extended Texas legislators a presumption of legislative good faith, but that presumption was overcome by the mountain of evidence showing that Texas made predominant use of race in crafting its 2025 map, even if the goal was to achieve partisan advantage. J.S. App. 57a-58a, 71a–72a, 75a n.251.[1] Similarly, with respect to the "alternative map," the district court properly

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[1] "J.S. App." refers to the Appendix filed with Appellants' Jurisdictional Statement. "LULAC Stay App." refers to the Appendix filed with LULAC Appellees' opposition to the stay application in *Abbott v. League of United Latin American Citizens*, No. 25A608 (Nov. 24, 2025).

concluded that any adverse inference against Appellees was overcome, under *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1 (2024), by the "substantial direct evidence indicating that race was the predominant driver in the 2025 redistricting process." J.S. App. 145a.

The remaining preliminary injunction factors favored Appellees because the 2021 redistricting plan was the *status quo* and had been used in the November 2025 election a few weeks earlier. The change to the 2025 map forced election officials to reassign over ten million Texans to new districts (36% of the State's population) in the few weeks before the start of mail balloting for the primary elections.

## STATEMENT

Talk of redrawing the Texas congressional map started in the Texas Legislature in early 2025, specifically as a response to *Petteway v. Galveston County*, 111 F.4th 596 (5th Cir. 2024) (en banc), according to Representative Tom Oliverson, a member of the Texas House Redistricting Committee and chair of the Texas House Republican Caucus. J.S. App. 69a ("[T]he first conversations that I heard about and had myself regarding redistricting began before the legislative session began in January as a result of a court case where a federal appeals court basically rejected the idea of the coalition districts as being consistent with the Voting Rights Act.").

Representative Todd Hunter, the author of the 2025 congressional redistricting bill, explained during the legislative debates that "it had been discussed since April that congressional redistricting could be an issue, especially with the new case law and the new

population trends, and I made the decision that I would file this Bill." LULAC Stay App. 51.

Several weeks after President Trump began calling publicly for Texas to redraw its congressional map, Texas Governor Greg Abbott announced his intent to call a special legislative session. However, the Governor did not put redistricting on the special session agenda. J.S. App. 16a-17a. Instead, Governor Abbott spoke by phone with the U.S. Department of Justice ("DOJ") and White House officials about the letter that DOJ later sent to Texas about redistricting. J.S. App. 110a.

A week later, DOJ sent its now-infamous letter. J.S. App. 3a, 110a. Citing *Petteway*, the letter claimed that four Texas congressional districts were "unconstitutional" because they were majority-non-White districts in which no single racial group constituted a 50% majority. J.S. App. 18a-21a ("It is well-established that so-called 'coalition districts' run afoul the [sic] Voting Rights Act and the Fourteenth Amendment . . . . It is the position of this Department that several Texas Congressional Districts constitute unconstitutional racial gerrymanders, under the logic and reasoning of *Petteway*."). Although the letter purported to identify four "unconstitutional 'coalition districts,'" one of those four districts (Congressional District ("CD") 29) was in fact a majority Hispanic district by citizen voting age population ("CVAP"). J.S. App. 13a ("By CVAP, the 2021 configuration of CD 29 was 63.5% Hispanic[.]"); *see also* J.S. App. 26a-27a.

The DOJ letter threatened to sue Texas if the State did not "rectify these race-based considerations from these specific districts." J.S. App. 20a. The letter made no mention of partisanship or Democratic congressional districts in Texas that are majority White. *See generally* J.S. App. 18a-21a.

Two days after receiving the DOJ letter, Governor Abbott, the only official who can call the Texas Legislature into a special session, and the only official who can add items to a special session agenda, directed the Legislature to redraw the congressional map "in light of constitutional concerns raised by the U.S. Department of Justice." J.S. App. 32a.

Governor Abbott stated publicly that he called the Legislature into a special session to redistrict because of *Petteway* and to remove coalition districts from the map. J.S. App. 34a ("[O]ne thing that spurred all of this is a federal court decision that came out last year . . . [that] said that Texas is no longer required to have coalition districts" and "we wanted to remove those coalition districts[.]").

Indeed, when asked whether his redistricting push was in response to President Trump's desire to create additional Republican districts, the Governor rejected the idea. J.S. App. 35a (TAPPER: "[Y]ou're doing this to give Trump and the Republicans in the House of Representatives five additional seats, right? I mean, that's the motivation is to stave off any midterm election losses." ABBOTT: "Again, to be clear, Jake, the reason why we're doing this *is because of that court decision*.") (emphasis added).

In the Texas Legislature, the bill author, Representative Hunter, took up the Governor's baton.

**1. Dismantling of Multi-Racial Districts**

During his bill layout of the new congressional plan, Representative Hunter agreed that the new map "is in compliance with the *Petteway* case[.]" J.S. App. 81a n.266. Representative Hunter also stated on the House floor that *Petteway* was a reason for the redistricting:

> REP. SPILLER: . . . So, now, in Texas, one of the reasons that we're [redistricting] now is that, we feel compelled to because of the *Petteway* case and the ruling in the *Petteway* case . . . as it relates to these coalition districts, correct?
>
> REP. HUNTER: Well, I think it's a combination, Mr. Spiller. I think you have a U.S. Supreme Court [case], *Rucho*. You have a Fifth Circuit [case], *Petteway*. The combination of both of those cases are involved in this map.

J.S. App. 79a n.264 (alterations in original) (referencing *Rucho v. Common Cause*, 588 U.S. 684 (2019)).

The Legislature's 2025 redistricting plan followed the DOJ letter's instruction to "rectify" coalition districts by reducing their number throughout the state. In Houston, the new redistricting plan collapsed two congressional districts that had previously elected Black members of Congress (CDs 9 and 18) into each other, leaving one district with a Black CVAP majority. J.S. App. 39a-40a. Also in Houston was Hispanic-majority CD 29, which the DOJ letter had confusingly characterized as an unconstitutional coalition district. J.S. App. 18a. In response, the new map "rectif[ied] these race-based considerations," J.S. App. 18a, by dismantling CD 29's Hispanic majority and reducing the Hispanic CVAP from 63.5% to 43.3%, J.S. App. 40a-41a.

In Central Texas, the new map dismantled CD 35, a district which, in 2018, this Court held that Texas "had 'good reasons' to believe . . . was a viable Latino opportunity district that satisfied the *Gingles* factors" under Section 2 of the Voting Rights Act. *Abbott v. Perez*, 585 U.S. 579, 616 (2018) (referencing *Thornburg*

*v. Gingles*, 478 U.S. 30 (1986)); *see also* J.S. App. 47a-48a. In Dallas, the new map increased the Black CVAP of CD 30 to just over 50% by pulling in Black population from the adjacent multi-racial CD 33. J.S. App. 46a, 74a n.247.

**2. Use of Racial Targets**

Legislators created districts with single-race bare CVAP majorities:

(1) CD 9 (Hispanic CVAP 50.3%);

(2) CD 18 (Black CVAP 50.5%);

(3) CD 30 (Black CVAP 50.2%); and

(4) CD 35 (Hispanic CVAP 51.6%).

J.S. App. 39a-40a, 46a, 48a, 107a-109a.[2]

In addition to confirming that CD 9 was purposefully changed to be just over 50% Hispanic CVAP (LULAC Stay App. 40-41), Representative Hunter also stated that increasing the Black CVAP above 50% was "better" for CD 18. J.S. App. 77a-78a n.259.

Representative Hunter similarly explained that increasing the Hispanic CVAP of CD 35 above 50% was one of the purposes of drawing that district. J.S. App. 81a n.267 ("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.").

The increased Hispanic CVAP majorities in CDs 9 and 35 were particularly important to Representative

[2] The 2025 map also made CDs 22 and 27 into bare majority White non-Hispanic CVAP districts; in the 2021 map these districts had no single racial majority. J.S. App. 43a-45a.

Hunter as he discussed the five additional Republican districts in the plan: "The five new districts we have, CD 9, 50.15 percent what we call Hispanic citizen voting age population. That's HCVAP . . . CD 35, 51.57 percent, HCVAP." LULAC Stay App. 50. *See also* J.S. App. 77a & nn.257-58 ("Chairman Hunter himself said multiple times during the process that it was 'important [for other legislators] to note that four of the five new [Republican] districts [were] majority[-]minority Hispanic CVAP districts.' He said it was 'good,' 'great,' and a 'strong message' that those four districts were majority-Hispanic.") (alterations in original).

Representative Hunter repeatedly emphasized the Hispanic CVAP of the four new Republican-leaning districts in committee and on the House floor:

> So there are five new districts: 9, which is Houston area; 28, which is the Valley, South, Rio Grande Valley; 32, Dallas area; 34, Coastal and South; and 35, San Antonio area. Congressional District 9, the new district, has a 50.5-percent Hispanic CVAP. CD 28 -- that's the Valley South -- has an 86.70-percent Hispanic CVAP. CD 32 is a -- and remains a non-minority direct [sic]; CD 34, 71.9 percent, is now a Hispanic CVAP. And CD 35, which is San Antonio, is now a 51.6-percent Hispanic CVAP.

LULAC Stay App. 15-16.

Representative Hunter described new district demographics in the same breath as partisan performance, weaving the two together. J.S. App. 37a n.117 ("Four of the five districts that we are going to create are predominantly Hispanic districts that *happen to be* voting for Republicans as opposed to

Democrats."; "Four of the five districts we are drawing, they would be *Hispanic* districts. They *happen to be* Hispanic *Republican* districts.") (cleaned up) (emphases added in J.S. App.).

In his bill layout, and without prompting, Representative Hunter announced that "four of the five" new Republican districts proposed by the bill were "majority[-]minority Hispanic CVAP districts." J.S. App. 72a-73a. With Representative Katrina Pierson—one of the redistricting bill's joint authors—Representative Hunter also reviewed the map's increase of Black CVAP in CDs 18 and 30 to above 50%. J.S. App. 75a-76a n.254 ("REP. PIERSON: . . . Well, this current map that you have submitted actually shows where there's not just one but two majority Black CVAP districts drawn on this map; is that true? | REP. HUNTER: That is correct. And let me give everybody details. CD 18 is now 50.8 percent Black CVAP; in 2021 it was only 38.3 percent. CD 30 is now 50.2 percent Black CVAP; in 2021 it was 46 percent.").

After pointing out that the new map would take the number of Black majority districts from zero to two, Representative Pierson concluded: "So would it be fair to say that your proposed map directly resolves many of the concerns that were expressed during those field hearings in your proposed map and would, in fact, strengthen minority representation in our state. Would you agree?" Representative Hunter responded: "The answer is, 'Yes.'" J.S. App. 75a-76a n.254.

Representative Hunter compared the new congressional districts to the existing 2021 plan to highlight the increase in single-race majority districts. J.S. App. 74a nn.244-45 ("In the 2021 plan, there were 7 Hispanic citizen voting age districts; and under this plan, there are 8. . . . There were no majority Black

CVAP . . . districts under the 2021 plan. In the proposed plan today, there are 2 . . . .").

The Legislature even maintained the 50% single-race CVAP targets in the map after making significant revisions to the Harris County area districts between the penultimate and final versions of the map. *Compare* LULAC Stay App. 97 *with* LULAC Stay App. 100 (showing that the Hispanic CVAP of CD 9 changed from 50.5% to 50.3%, and the Black CVAP of CD 18 changed from 50.8% to 50.5%). Despite changes between these last two versions of the map involving what the State's expert characterized as a "complex chain of events involving almost 700,000 residents in 12 districts, 667,000 of whom lived in the Houston area[,]" the Hispanic CVAP of CD 9 changed by only 0.2 percentage points—from 50.5% to 50.3%. LULAC Stay App. 164-65.

Despite their heavy focus on the creation of new districts with majority Black or Hispanic CVAP, legislators never offered a legal justification, under the Voting Rights Act or otherwise, for increasing the CVAP in those districts.

Representative Hunter admitted he had no evidence that Latino voters in CD 35, or Black voters in CDs 18 and 30, were unable to elect the candidate of their choice in the 2021 versions of those districts. LULAC Stay App. 41-43.

Representative Hunter also said he did not conduct a racial polarization analysis and did not ask his law firm to conduct such an analysis. *See* LULAC Stay App. 53 (REP. HUNTER: "Well, I don't know what you mean by 'racial polarization analysis.' I know about data that was done by HCVAP, HVAP, Black CVAP, Black VAP which is a little bit different. That's what

I'm relying on."); *see also* LULAC Stay App. 43-44 (REP. TURNER: "Yeah. Has -- has Butler Snow conducted a racially polarized voting analysis within the new CD 9 to ascertain who the candidates of choice are between Hispanic voter -- with Hispanic voters and also with Anglo voters?" REP. HUNTER: "I don't know . . . ." REP. TURNER: "You haven't asked them to?" REP. HUNTER: "No. I haven't asked anybody on that.").

In the Texas Senate, bill sponsor Senator Phil King stated that he was unaware of whether anyone had performed a racial polarization ("RPV") analysis of the new map. *See* LULAC Stay App. 69 (SENATOR ZAFFIRINI: "No. Have the map drawers or anyone else including your legal counsel done an RPV analysis of the mapping proposal?" SENATOR KING: "I don't have any personal knowledge of that.").

**3. Reliance on Racial Stereotypes**

Governor Abbott spoke of a second reason to redraw the congressional map, in addition to "rectifying" districts that contained multi-racial majorities. The new map would purposefully create Hispanic majority districts that would elect Republicans. *See* J.S. App. 34a-35a ("One thing that's happened in the state of Texas is the Hispanic community, a lot of it, have [sic] decided they are no longer with the Democrats . . . . And they instead align with Republicans. What we want to do is to draw districts that give those Hispanics and African Americans in the state of Texas the ability to elect their candidate of choice.").

Although legislators claimed that the creation of Republican-leaning districts in Houston and San Antonio would expand Hispanic electoral opportunity, they relied on broad generalizations that Latinos

preferred Republican candidates, and did not examine the candidate preferences of the specific Hispanic populations they placed into the "new" CDs 9 and 35.

Representative Hunter relied on the Hispanic CVAP majorities in the new Republican districts to argue the map expanded Hispanic electoral opportunity. J.S. App. 77a ("REP. HUNTER: . . . [W]e created four out of five new seats of Hispanic majority. I would say that's great.").

On the House floor, Representative Hunter shared his belief that Hispanic "performance and trend is going that direction, to support Republicans. Absolutely." LULAC Stay App. 52-53.

Representative Pierson, when explaining her vote in support of the new map, explained that the new map would increase minority representation. *See* J.S. App. 76a n.254 ("REP. PIERSON: . . . They say we're diluting the minority districts. They call us racist, but the facts don't match your rhetoric. Texas currently has zero Black CVAP districts. And under the new map, there are two. Now, I haven't been to third grade in a really long time, but when you go from zero to two, that's an increase; or perhaps you're using liberal logic. . . . Increasing minority representation is the right thing to do . . . .").

Nevertheless, legislators conducted no analysis, in the form of a racially polarized voting study or otherwise, of Hispanic voter preferences in CDs 9 and 35, and thus had only assumption and stereotypes, not information, to support their claim that creating these new districts would "give those Hispanics and African Americans in the state of Texas the ability to elect their candidate of choice." J.S. App. 35a; *see also* LULAC Stay App. 41-43 (Representative Hunter

stating he does not have any evidence showing that Latino voters are unable to elect the candidates of their choice).

## REASONS FOR GRANTING THE MOTION

### I. The Court Should Reserve Further Review of This Case Until an Appeal from Final Judgment

As this Court observed in granting a stay, the district court "enjoined the use of the new map in the 2026 elections." *Abbott v. League of United Latin Am. Citizens*, 146 S. Ct. 418, 419 (2025); *accord* J.S. App. 2a (district court injunction for "the 2026 congressional election"). This Court concluded that a stay was warranted, in part, because the "2026 campaign [was] underway." *Abbott*, 146 S. Ct. at 419. Nothing has changed since then.

The only question over which the Court has mandatory appellate jurisdiction is whether the 2025 redistricting map should be enjoined for the 2026 elections. The Court already resolved that issue when it granted a stay, and the 2026 elections will proceed under the 2025 map. Any additional questions, such as whether the 2025 map is constitutional, must be resolved in the first instance by the district court.[3]

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[3] Perhaps in recognition of this reality, the plaintiffs in the California congressional redistricting litigation have informed the district court that they "do not intend to pursue their appeal of the [District] Court's order" denying a preliminary injunction and the parties have jointly requested an order dismissing Plaintiffs' Notice of Appeal. *See* Joint Stipulation of Dismissal of Appeal Pursuant to Supreme Court Rule 18.5, *Tangipa v. Newsom*, No. 2:25-cv-10616 (C.D. Cal. Mar. 13, 2026), ECF No. 237.

This Court acknowledged in its stay order that it had before it only material sufficient for a "preliminary evaluation of this case[.]" *Id*. This Court's preliminary evaluation has concluded and resulted in a decision that will govern the 2026 elections. The remaining question in this case is whether the challenged 2025 redistricting plan should be used in elections *after* 2026, or whether the map should be permanently enjoined. This Court need not and should not answer that question now. And deferring consideration of the case poses no harm to the State of Texas given that the State will use the challenged plan for the 2026 elections.

Appellees respectfully request that the Court defer adjudicating their claims until there has been full discovery and trial. *Cf. Veasey v. Abbott*, 580 U.S. 1104, 1104 (2017) (noting that claim "is in an interlocutory posture" and thus Texas could raise it "again after entry of final judgment") (Roberts, C.J., respecting the denial of certiorari). If it chooses to defer, the Court can note probable jurisdiction, vacate the preliminary injunction and remand to the district court for further proceedings, including discovery and trial.

## II. The Court Should Affirm the Preliminary Injunction

If this Court does not remand the case on the grounds that, as explained in Section I, *supra*, the question of which map Texas should use for the 2026 elections has already been decided, the Court should affirm the preliminary injunction. As explained below, the district court relied on overwhelming evidence of race-based redistricting to conclude that the 2025 map made unconstitutional use of race in pursuing partisan goals.

Appellants consistently mischaracterize the district court's order as concluding that Texas "adopted a map that sacrificed political opportunity in favor of racial discrimination[.]" J.S. 1. The district court concluded no such thing. On the contrary, the district court explained:

> 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. . . . The bill's main proponents purposefully manipulated the districts' racial numbers to make the map more palatable. That's racial gerrymandering.

J.S. App. 82a (quoting *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 189 (2017)).

Appellants ask this Court to turn a blind eye to the frank statements of Texas legislators that reveal their predominant use of race, and focus instead on the testimony of a map-drawer whom legislators refused to acknowledge and whom the district court found not credible. Appellants further urge the Court to apply the good faith presumption afforded to states under *Alexander* to cancel out even direct evidence of the predominant use of race. Finally, with respect to the *Alexander* alternative map, Appellants ask this Court to convert the adverse inference into an immediate forfeit. This Court should decline each of Appellants' invitations.

Under the clear error standard, the district court's findings of fact with respect to the racial intent underlying the 2025 map must stand. *See Cooper v. Harris*, 581 U.S. 285, 293 (2017) ("[T]he [district] court's findings of fact—most notably, as to whether racial considerations predominated in drawing district lines—are subject to review only for clear error."). And, as explained below, the district court faithfully and correctly applied both the presumption of legislative good faith and the alternative map holding in *Alexander*.

### A. The District Court Properly Found Direct and Circumstantial Evidence of Racial Discrimination

The district court properly found, based on abundant direct evidence, that the Texas Legislature made predominant use of race in the 2025 congressional map.

As an initial matter, the district court applied the presumption of legislative good faith and concluded that the presumption was overcome by the strong direct evidence of the predominant use of race and the State's failure to provide a compelling interest for its use of race. J.S. App. 57a-58a, 74a-75a, 81a-82a, 147a-150a. "Legislative motivation or intent is a paradigmatic fact question." *Prejean v. Foster*, 227 F.3d 504, 509 (5th Cir. 2000) (citing *Hunt v. Cromartie*, 526 U.S. 541, 549 (1999)). Appellants incorrectly argue that the good faith presumption should bless every redistricting map, even when officials state that they were motivated by race and met racial goals in the map. On the contrary, the presumption of legislative good faith includes taking legislators at their word when they say they adopted districts for racial reasons.

Appellants cannot escape the overwhelming amount of evidence that legislators made predominant use of race in the 2025 map.

First, the reason for the 2025 redistricting was explicitly racial. When Texas legislators proved reluctant to redistrict in response to the Administration's call for a more partisan map, Governor Abbott met with White House officials to discuss the letter that later came from DOJ. J.S. App. 110a. That letter, instead of calling for partisan redistricting, demanded that Texas "rectify" "unconstitutional 'coalition districts'[.]" J.S. App. 18a-20a, 31a. Two days after receiving the letter, Governor Abbott directed the Texas Legislature to consider, in a special session, "[l]egislation that provides a revised congressional redistricting plan *in light of constitutional concerns raised by the U.S. Department of Justice*." J.S. App. 60a n.203 (emphasis added in J.S. App.). Governor Abbott steadfastly denied that his call to redistrict was motivated by President Trump's pressure to create more Republican districts, and asserted instead that Texas "wanted to remove those coalition districts" from the congressional map and was spurred to action by "a federal court decision that came out last year." J.S. App. 34a, 63a & n.207.

Key legislators, including the redistricting bill's author, repeatedly emphasized that the new plan eliminated "coalition" districts in favor of drawing minority-majority districts, and redrew districts for specific racial groups to elect Republicans. J.S. App. 3a-4a, 35a-36a.[4] Lawmakers, including the bill's author,

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[4] These legislators were leaders in crafting the 2025 map and include: Representative Todd Hunter (the bill author), Representative Tom Oliverson (Chair, Texas House Republican Caucus), Representative Steve Toth (House member; later U.S.

declared that coalition districts must be redrawn because "minority vote dilution coalitions are impermissible." LULAC Stay App. at 17; *see also* J.S. App. 78a n.260. Legislators then changed the boundaries of districts specifically to alter their racial composition. J.S. App. 39a-48a (describing the reconfiguration of multi-racial CDs 9, 18, 22, 27, 30, 32, and 35 to single-race majority districts).

Even after the Texas House passed the map, legislators continued to stress their racial motivations. For example, the Speaker of the Texas House marked passage of the map in that chamber by announcing that the House had just "delivered legislation to redistrict certain congressional districts and to *address concerns raised by the Department of Justice* and ensure fairness and accuracy in Texans' representation in Congress." J.S. App. 67a (emphasis added in J.S. App.).

Second, the district court properly found that legislators created districts at just barely 50%-plus citizen voting age population. During his bill layout for the new congressional map, Representative Hunter explained that the new map's CD 9 was above 50% Hispanic CVAP "because of *Petteway*." LULAC Stay App. 39. During the floor debate, Representative David Spiller, a member of the House Redistricting Committee and a joint author of the bill, referred to CD 9 as "a coalition district and the district that was addressed in the *Petteway* case" and asked Representative Hunter to confirm that "now, under

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House candidate), Representative Katrina Pierson (House member; joint author), Representative David Spiller (House member; joint author), Representative Dustin Burrows (Speaker of the House). J.S. App. 67a-71a, 75a-76a, 79a-80a.

your HB 4, it changed from a coalition district to a majority Hispanic CVAP district. Is that correct?" Representative Hunter agreed. J.S. App. 80a n.265.

Representative Hunter described the increase of Black CVAP in CD 18 from 38.8% to 50.8% as "much more improving" and emphasized that under his map "you have two that are majority Black CVAP districts in Texas." J.S. App. 78a n.259; LULAC Stay App. 62.

Representative Spiller questioned Representative Hunter in committee "about District 18 in Harris County, what is referred to as the Barbara Jordan district." Representative Hunter responded "under this plan, that *it becomes a real performing Black CVAP district*." LULAC Stay App. 18-19 (emphasis added). They continued their exchange:

> 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.

J.S. App. 80a n.265.

Representatives Hunter and Pierson, another co-author of the bill, discussed in committee that CD 35 "is one of the coalition districts that is one of the new majority Hispanic CVAP districts[.]" LULAC Stay App. 25.

Legislators offered no information or analysis to support the use of 50% CVAP targets to comply with the Voting Rights Act or any other legal requirement:

> REP. TURNER: Is there any evidence or data you have that would suggest that Black voters in CD 18 or CD 30 are unable to elect the candidate of their choice --
>
> REP. HUNTER: I -- I don't have any evidence.
>
> REP. TURNER: -- in current configuration?
>
> REP. HUNTER: I don't have -- you said, "do I have evidence?" I don't. I don't have any evidence.

LULAC Stay App. 41-42; *see also id.* (Representative Hunter stating "I don't have any data or any evidence" showing that Latino voters in the 2021 version of CD 35 are unable to elect the candidates of their choice).

Third, the district court properly found that legislators made use of racial stereotypes when they described creating districts that would fulfill the political desires of Hispanic voters, but they had no information about how the Hispanic voters in those districts vote. Legislators claimed broadly that the "new" Hispanic majority districts increased minority representation because Hispanic voters prefer Republicans. LULAC Stay App. 34-35 ("REP. PIERSON: President Trump did win the majority of the Hispanic votes in the state; in fact, he flipped, I believe it was, ten counties in the state. So don't you think that is reflective of this map, this proposed map, that the minorities who are here with the new majority minority districts that have been created, it is reflective?").

Representative Hunter also referred to the four "new" Hispanic majority districts in his bill as "trend[ing] Republican in political performance" and "Hispanic performing" without explaining whether the

Hispanic voters in the districts would be able to elect their preferred candidates. LULAC Stay App. 14, 59.

Appellants do not (and cannot) dispute that legislators and other state officials made these statements about the DOJ letter, *Petteway*, and the creation of single-race majority districts. Instead, Appellants rely on explanations by legislators who were peripheral to the mapping process. *See* J.S. 8-9 (referencing statements by Senator Phil King and Representative Cody Vasut). The district court properly gave this evidence less weight because it was inconsistent, after-the-fact or both. *See, e.g.*, J.S. App. 96a, 99a-100a, 111a (not crediting the testimony of Sen. King in part because of "the number of inconsistencies regarding potentially critical exchanges" with Adam Kincaid).

Moreover, after emphasizing that only legislators can provide evidence of legislative intent (J.S. 22-23), Appellants reverse course and argue that map-drawer Adam Kincaid, who is neither a legislator nor worked at the direction of legislators, should supply the legislative intent. J.S. 25.

### 1. Adam Kincaid Did Not Work for Texas Legislators

The district court properly observed, "[t]he record contains no indication that the Legislature ever told Mr. Kincaid to draw the 2025 Map race-blind[.]" J.S. App. 112a ("Mr. Kincaid's instructions for how to draw the map came from the White House and the Republican congressional delegation rather than the Legislature or the Governor."). In fact, legislators who sponsored the redistricting bill consistently asserted that they did not know the identity of the map-drawer,

did not work with him on drawing the map, and did not know if Mr. Kincaid was drawing the new map.[5]

The 2025 congressional map originated in the Texas House. Representative Hunter, the redistricting bill author, explained that he did not know where his law firm got the map but that he had met with the firm to go over data. LULAC Stay App. 32.

During the redistricting bill layout in committee on August 1, 2025, Representative Hunter repeatedly denied knowing anything about Mr. Kincaid drawing the new map. Representative Hunter said "I have no idea" whether Mr. Kincaid sent the map to Representative Hunter's law firm to give to him, and he emphasized (in the third person) that "Todd Hunter has no knowledge of Adam Kincaid involved in this." LULAC Stay App. 31-32. Representative Hunter stated that Mr. Kincaid did not help him draw the map, even saying that "if the individual Adam Kincaid was involved on this side [the Texas House], I have no knowledge, absolutely none." LULAC Stay App. 31-32.

On July 21, 2025, Senator King, the Chair of the Senate Special Committee on Redistricting, stated, in response to a question about who was drawing the congressional map, "I'm not drawing a map. I don't know of anyone here today. They may be -- others may be trying to draw a map. I'm not aware of that." LULAC Stay App. 113.

On August 22, 2025, during the last Senate debate on the redistricting bill and the day before its final passage, Senator King stated "I don't really have any personal knowledge of the inner workings that went

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[5] Mr. Kincaid testified that he did not work at the direction of any State legislator. J.S. App. 112a.

into who participated in drawing the maps" and "I'm assuming it was a product of the House author and their counsel." LULAC Stay App. 70-71; J.S. App. 89a.

Senator King also stated "I haven't inquired as to who physically drew the maps. I haven't inquired as to the process, who all was involved in that." LULAC Stay App. 74. Although Senator King admitted during the debate that he knew Mr. Kincaid was "involved in that process" of Texas redistricting, Senator King explained that when he saw Mr. Kincaid at a conference, "I specifically told him, 'Don't tell me anything you're doing with regard to map drawing. Don't tell me about the details of any map if you're involved in it.'" LULAC Stay App. 76-78; J.S. App. 91a.

Even at the preliminary injunction hearing in this case, Senator King maintained that he did not think of the map as related to Mr. Kincaid. LULAC Stay App. 111-112 ("I'm sorry. I just never thought of [the map] in those terms. I thought of it as being the House Map that was filed by the -- by Senator Hunter [sic].").

The testimony of legislators establishes that they neither directed Mr. Kincaid's mapping nor conveyed their intent to Mr. Kincaid. Legislators described the map they enacted as having satisfied their objectives to target multi-racial districts on the basis of race, and create single-race majority districts that met 50%-plus population targets. *See Prejean*, 227 F.3d at 510 (even if the map-drawer claimed that his map was based on political and not racial considerations, when the legislature was under pressure from DOJ to create a majority Black district, a "plausible inference is that the legislature was ready to adopt whatever proposal would satisfy its objective of creating a black subdistrict").

### 2. Adam Kincaid's Testimony Was *Post Hoc* and Not Credible

Although Mr. Kincaid testified at length in the preliminary injunction hearing, his testimony focused largely on geographic areas and districts not challenged in the preliminary injunction motions. *See, e.g.*, LULAC Stay App. 119 ("I started work on the DFW area in actually the Panhandle."); LULAC Stay App. 120 (By examining counsel: "So in our efforts to understand how you drew DFW, we're now in far northeast Texas. Can you bring us back to DFW and tell us what happened next in that area as the map drawer?").

The district court, which had the opportunity to evaluate Mr. Kincaid's testimony and demeanor, and to assess his credibility, properly did not credit his testimony.

In the preliminary injunction hearing, Mr. Kincaid showed a series of demonstrative maps that purported to illustrate how he redistricted on the basis of partisanship but conceded that he made the demonstratives for the purpose of the hearing and did not keep screenshots of his actual work. LULAC Stay App. 139. Mr. Kincaid used an inconsistent color scheme in each of his after-the-fact demonstratives, and testified that he chose the color schemes to best fit the boundaries of each district after he drew it, as opposed to reflecting the data he looked at while mapping. LULAC Stay App. 140-146 (using color schemes based on support for President Trump of, variously, 20%, 29.1%, 30%, 31%, 35%, 38.7%, 40%, 42.9%, 44% and 50%). *See Bethune-Hill*, 580 U.S. at 189–90 ("The racial predominance inquiry concerns the actual considerations that provided the essential basis for the lines drawn, not *post hoc* justifications the

legislature in theory could have used but in reality did not.").

Mr. Kincaid testified that he was aware of the racial composition of the population he was mapping, even as he claimed not to see racial data while he worked. Mr. Kincaid conceded that when drawing CDs 9 and 18 in Houston, he "knew it was a heavily African American area" and that CD 29 was a majority Hispanic district that was able to elect the Latino candidate of choice. LULAC Stay App. 149-50. Mr. Kincaid had drawn a Hispanic majority version of CD 29 in 2021 for the Texas Republican congressional delegation, knew the district had elected Congresswoman Sylvia Garcia, and knew in 2025 that he was assigning geography from CD 29 to the new Republican CD 9. *See* LULAC Stay App. 135-36.

Mr. Kincaid conceded that, because of the data in his computer system, he could turn on and view the real-time impact of his changes on the racial makeup of districts as he made them if he chose to do so, even if he was otherwise shading based on political performance. LULAC Stay App. 147. He also acknowledged that, when he finishes a map, he is able to produce a report that says what is the Hispanic CVAP of a particular district. LULAC Stay App. 133.

Finally, the district court concluded that the "significant inconsistencies between Mr. Kincaid's testimony and [Senate Redistricting Committee] Chairman King's testimony . . . lead us to question Mr. Kincaid's veracity as well." J.S. App. 111a.

Ultimately, the district court properly concluded that Mr. Kincaid was not credible when he insisted that he drew districts race-blind but somehow achieved the results demanded by the DOJ letter and

with margins of between 50 and 51% single-race CVAP in the districts named by DOJ. J.S. App. 110a.

### B. The District Court's Presumption of Legislative Good Faith was Overcome by Evidence of the Predominant Use of Race

In response to the DOJ letter, Texas legislators repeatedly stated that they had to respond to DOJ's constitutional concerns and "compl[y]" with *Petteway*. J.S. App. 80a-81a & n.266. Legislators' statements demonstrate that they achieved their goals by using race for its own sake to create single-race majority districts. Representative Hunter, the redistricting bill author, conceded that the new majority districts were purposefully created to exceed 50% Black or Hispanic CVAP. *See e.g.* LULAC Stay App. 40-41 ("REP. TURNER: . . . [J]ust to close the loop on [CD 9]. It was also purposely changed so that the Hispanic CVAP would be over 50 percent now. REP. HUNTER: 50.41 percent. Correct."). *See also Bush v. Vera*, 517 U.S. 952, 1000 (1996) (Thomas, J., concurring in judgment) (a state's "concession that it intentionally created majority-minority districts [i]s sufficient to show that race was a predominant, motivating factor in its redistricting") (citing *Miller v. Johnson*, 515 U.S. 900, 918-19 (1995)).

The district court properly concluded that legislators' statements provide conclusive "[d]irect evidence . . . in the form of a relevant state actor's express acknowledgment that race played a role in the drawing of district lines." *Alexander*, 602 U.S. at 8. *See also North Carolina v. Covington*, 585 U.S. 969, 977 (2018) ("[A] plaintiff can rely upon either 'circumstantial evidence of a district's shape and demographics or more direct evidence going to legislative purpose' in proving a

racial gerrymandering claim.") (quoting *Miller*, 515 U.S. at 916).

The district court applied a presumption of legislative good faith (J.S. App. 57a-58a) but, after carefully reviewing the evidence, concluded that the presumption was overcome by statements of the legislators themselves, which constituted direct evidence of the predominant use of race. J.S. App. 75a ("[T]he combination of these statements [about the bill's racial statistics] with Chairman Hunter's additional direct evidence overcomes that presumption."). The district court's conclusion that race predominated in drawing these new single-race majority districts "warrants significant deference[.]" *Cooper*, 581 U.S. at 293; *see also id.* ("[T]he court's findings of fact—most notably, as to whether racial considerations predominated in drawing district lines—are subject to review only for clear error."); *see also Allen v. Milligan*, 599 U.S. 1, 23 (2023). This Court regularly affirms if the racial-predominance finding "is plausible in light of the full record," and even if it would have decided differently *ab initio*. *Cooper*, 581 U.S. at 293 (quoting *Anderson v. Bessemer City*, 470 U.S. 564, 573-74 (1985)).

Using race as the predominant means to sort voters is unconstitutional even if done for partisan goals. *Cooper*, 581 U.S. at 308 n.7. And even if the Texas Legislature sought to create single-race majority districts as a selling point for the redistricting plan, or to ward off allegations of race discrimination, "their action still triggers strict scrutiny." *Id.*; *see also Shaw v. Hunt*, 517 U.S. 899, 907 (1996) ("partisan politicking" can be "actively at work in the districting process" while "race [remains] the legislature's predominant consideration"); *Easley v. Cromartie*, 532 U.S. 234, 266 (2001) (Thomas, J., dissenting) ("[T]he District Court

was assigned the task of determining *whether*, not *why*, race predominated.") (emphasis in original); *Miller*, 515 U.S. at 914.

Similarly, although legislators praised the creation of Republican districts with Hispanic CVAP majorities as consistent with the idea that Hispanic voters support President Trump, the legislators' assumptions are insufficient, particularly when they did not analyze the voting preferences of Latinos in the new districts. *See Miller*, 515 U.S. at 914 (the "use of race as a proxy" for "political interest[s]" is "prohibit[ed]").

### C. The District Court Properly Concluded that *Alexander*'s "Adverse Inference" was Overcome by Direct Evidence

Contrary to Appellants' assertion, the district court did not fail to draw an adverse inference against Appellees with regard to producing an alternative map. The district court followed this Court's holding in *Alexander*, and drew an adverse inference after finding that Appellees had not submitted an *Alexander* map. J.S. App. 144a. However, the district court concluded that the adverse inference was not fatal because, as this Court instructed, an "adverse inference may be dispositive in many, if not most, cases *where the plaintiff lacks direct evidence or some extraordinarily powerful circumstantial evidence*." *Id.* (quoting *Alexander*, 602 U.S. at 35) (emphasis added).

The panel properly concluded that, in light of the "substantial direct evidence" produced by Appellees "indicating that race was the predominant driver in the 2025 redistricting process[, t]his case is not the sort of 'circumstantial-evidence-only case' in which *Alexander's* adverse inference is typically dispositive." J.S. App. 145a. *Alexander* held that the adverse

inference "may be" (but is not always) dispositive, and suggested it was dispositive in "cases where the plaintiff lacks direct evidence." *Alexander*, 602 U.S. at 35. The district court carefully and correctly applied *Alexander* to conclude that Appellees overcame the adverse inference here with "substantial direct evidence." J.S. App. 145a.

Appellants' only response to the district court's sound reasoning is to deny the existence of the copious amounts of direct evidence provided by legislators and other Texas officials. But the district court's factual findings are subject to the clear-error standard, and Appellants cannot deny away the facts of the case. *Cooper*, 581 U.S. at 293 ("Under that standard, we may not reverse just because we 'would have decided the [matter] differently.'" (quoting *Anderson*, 470 U.S. at 573) (alteration in original).

Even if Appellees were required to provide an alternative map (and they were not in light of the substantial direct evidence), Appellees demonstrated that the State could meet its partisan goals with alternative configurations that did not make predominant use of race. For example, LULAC Appellees' expert David Ely, who has decades of experience drawing redistricting plans in litigation and for jurisdictions, testified that he could have maintained CD 29 as a Hispanic CVAP majority district while creating a majority Republican CD 9. LULAC Stay App. 109 ("[Y]ou would be able to maintain this CD9 as a Republican district and leave 29 as -- as an effective majority Latino district, and not disrupt the partisan balance of the other Republican districts.").

Mr. Kincaid conceded that he could have created a CD 9 that met his 60% Trump target for Republican incumbents, but that it was "certainly possible" that

CD 9's Hispanic CVAP would have dropped below 50%. LULAC Stay App. 137. Finally, the district court noted that Dr. Duchin "generated tens of thousands of pro-Republican maps that obey traditional redistricting principles without producing the enacted map's exaggerated racial features[.]" J.S. App. 147a.

### D. The Remaining Preliminary Injunction Factors Favored Appellees

This Court's stay set the 2025 redistricting plan in place for the 2026 elections. However, even at the time of the stay, Appellees demonstrated that the equities tipped in their favor. The harm to Appellees and other Texas voters far outweighed any interest of State officials, whose only purported injury would have been to continue to employ a congressional redistricting plan that they created and that they had been using for the past four years.

Appellants did not show that the remaining factors tipped in their favor. Although "[w]hen a statute is enjoined, the State necessarily suffers the irreparable harm of denying the public interest in the enforcement of its laws . . . neither [the State] nor the public has any interest in enforcing a regulation that violates federal law." *Book People, Inc. v. Wong*, 91 F.4th 318, 341 (5th Cir. 2024) (cleaned up).

Any harm to the State in using the 2021 redistricting plan, which, until August 2025, was the State's only redistricting plan, "pales in comparison and importance to the harms" threatened to Appellees' members who are now forced to cast their ballots in unconstitutionally racially gerrymandered districts. *Louisiana v. Biden*, 55 F.4th 1017, 1035 (5th Cir. 2022).

Furthermore, because the 2021 congressional redistricting plan contained the precinct boundaries under which Texas voters cast ballots in November 2025, maintaining the 2021 plan would have created the least confusion for voters because it did not involve changes in either district or precinct boundaries. *See Am. Encore v. Fontes*, 152 F.4th 1097, 1121 (9th Cir. 2025) ("Only 'under certain circumstances, such as where an impending election is imminent and a State's election machinery is already in progress' is *Purcell* [*v. Gonzalez*, 549 U.S. 1 (2006)] implicated."). The *Purcell* doctrine protects voters, first and foremost.

The 2021 congressional redistricting plan was correctly apportioned and the product of what Appellants maintained was a race-blind mapping process by the Texas Legislature. *See* J. S. App. 14a-15a. Texas election administrators had the district and precinct boundaries for the 2021 plan in their county systems, and continued use of the 2021 plan would have imposed no additional costs on the election infrastructure of Texas.

The candidate filing period for Congress did not close until December 8, 2025. J.S. App. 160a. The district court's injunction preserved the *status quo* for voters and afforded candidates weeks to make a final decision about the districts in which they planned to run for office. The special election runoffs in two of Texas's largest counties at the end of January 2026 only reinforced that the *status quo* was the 2021 redistricting plan, and the public interest was best served by denying a stay.

## CONCLUSION

The appeal should be remanded to the district court for further proceedings. Alternatively, the Court should affirm the preliminary injunction of the three-judge court.

Respectfully submitted,

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March 19, 2026