

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**

---

**GONZALES APPELLEES' MOTION TO AFFIRM**

---

Abha Khanna  
ELIAS LAW GROUP LLP  
1700 Seventh Ave.  
Suite 2100  
Seattle, WA 98101  
(206) 656-0177

Renea Hicks  
LAW OFFICE OF MAX RENEA  
HICKS  
P.O. Box 303187  
Austin, TX 78703

*Counsel for Gonzales  
Appellees*

---

David R. Fox  
*Counsel of Record*  
Richard A. Medina  
James J. Pinchak  
ELIAS LAW GROUP LLP  
250 Massachusetts Ave.  
NW, Suite 400  
Washington, DC 20001  
(202) 968-4490  
DFox@elias.law

**QUESTION PRESENTED**

Whether the district court clearly erred in finding that race predominated in the drawing of Texas's 2025 congressional map.

**TABLE OF CONTENTS**

QUESTION PRESENTED..... i

TABLE OF AUTHORITIES.....iv

INTRODUCTION.....1

STATEMENT .....5

ARGUMENT .....13

I. There is clear, direct evidence of racial gerrymandering. ....13

    A. Governor Abbott’s statements are direct evidence of racial predominance. ....13

    B. Legislators’ statements are direct evidence of racial predominance. ....17

    C. The district court did not clearly err in discrediting the testimony of Adam Kincaid. 18

    D. Evidence of partisanship does not disprove evidence of racial predominance. ....22

II. *Alexander* did not require an alternative map. ..23

III. Circumstantial evidence confirms the direct evidence. ....27

IV. The district court properly applied the presumption of good faith. ....32

V. The remaining preliminary injunction factors  
were satisfied. ....33

VI.If the Court does not summarily affirm, it  
should vacate the injunction for the 2026  
election and remand for further proceedings.....35

CONCLUSION .....35

## TABLE OF AUTHORITIES

### CASES

<i>Abbott v. League of United Latin Am. Citizens</i> , 146 S. Ct. 418 (2025) .....	13, 24, 32
<i>Abbott v. Perez</i> , 585 U.S. 579 (2018).....	4, 19
<i>Alexander v. S.C. State Conf. of NAACP</i> , 602 U.S. 1 (2024) .....	3, 16, 19, 23–26, 30
<i>Anderson v. Bessemer City</i> , 470 U.S. 564 (1985).....	21
<i>Bartlett v. Strickland</i> , 556 U.S. 1 (2009) .....	2, 14
<i>Benisek v. Lamone</i> , 585 U.S. 155 (2018).....	34
<i>Bush v. Vera</i> , 517 U.S. 952 (1996).....	24
<i>Cooper v. Harris</i> , 581 U.S. 285 (2017).....	3, 4, 18–23, 29, 30, 32
<i>Davis v. Wakelee</i> , 156 U.S. 680 (1895).....	17
<i>Hirabayashi v. United States</i> , 320 U.S. 81 (1943) .....	33

<i>Hunter v. Underwood</i> , 471 U.S. 222 (1985).....	16
<i>Jackson v. Tarrant County</i> , No. 25-11055, 2025 WL 3019284 (5th Cir. Oct. 29, 2025) .....	22
<i>Jones v. Robinson Prop. Grp., L.P.</i> , 427 F.3d 987 (5th Cir. 2005) .....	24
<i>In re Kincaid</i> , No. 1:22-mc-00067, 2023 WL 6459801 (D.D.C. Oct. 4, 2023).....	26
<i>League of Women Voters of N.C. v. North Carolina</i> , 769 F.3d 224 (4th Cir. 2014) .....	33
<i>Miller v. Johnson</i> , 515 U.S. 900 (1995).....	4, 21
<i>New Hampshire v. Maine</i> , 532 U.S. 742 (2001).....	17
<i>Petteway v. Galveston County</i> , 111 F.4th 596 (5th Cir. 2024) .....	1, 6, 14
<i>Phillips Chem. Co. v. Dumas Ind. Sch. Dist.</i> , 361 U.S. 376 (1960).....	21
<i>Reynolds v. Sims</i> , 377 U.S. 533 (1964).....	34

<i>SD Voice v. Noem</i> , 60 F.4th 1071 (8th Cir. 2023).....	21
<i>Shaw v. Reno</i> , 509 U.S. 630 (1993).....	2, 28, 33
<i>Smiley v. Holm</i> , 285 U.S. 355 (1932).....	17
<i>United States v. Baptiste</i> , 8 F.4th 30 (1st Cir. 2021) .....	21
<i>United States v. McBride</i> , 94 F.4th 1036 (10th Cir. 2024).....	21
<i>Upham v. Seamon</i> , 456 U.S. 37 (1982) .....	34
<b>STATE CONSTITUTIONAL PROVISIONS</b>	
Tex. Const. art. III, § 40.....	16

## INTRODUCTION

After a nine-day hearing, the district court reached the unsurprising conclusion that Texas adopted new congressional districts in August for exactly the reason the Governor announced on television: to “make sure that we have maps that don’t impose coalition districts” after the Fifth Circuit held the Voting Rights Act no longer required them. Brooks Ex. 325T at 3–4, ECF 1327-25<sup>1</sup>; see *Petteway v. Galveston County*, 111 F.4th 596 (5th Cir. 2024) (en banc).<sup>2</sup> Asked directly on CNN if he was not really “doing this to give Trump and Republicans in the House of Representatives five additional seats,” the Governor denied it: “the reason we are doing this is because of that court decision.” Brooks Ex. 335T at 5, ECF 1328-1.<sup>3</sup>

These are not cherry-picked statements—this was the entire thrust of the Governor’s justification for authorizing redistricting. See App.60a–65a. The Governor expressly echoed that same justification in his formal special session proclamation. See Gonzales Ex.

---

<sup>1</sup> All “ECF” citations are to the corresponding docket entry in *LU-LAC v. Abbott*, No. 3:21-cv-259 (W.D. Tex.). Pincite pages are to the electronic page of the PDF file.

<sup>2</sup> The full video of the FOX 4 interview, which is in the record and much of which was played at the hearing, is available here: <https://youtu.be/PHsYs0NTPTY?si=vOTj25G0uBWq9S97&t=193>.

<sup>3</sup> The full video of the CNN interview, which is in the record and much of which was played at the hearing, is available here: <https://youtu.be/Ip4ZILggIuM?si=1MPEvXvKcz5-crPQ&t=183>.

43, ECF 1389-2. Legislators throughout the legislative process repeated the same rationale, again and again: They were adopting a new map to eliminate coalition districts because of *Petteway*. See App.67a–85a. And that is what they did. The 2021 Map had nine districts in which no one racial group made up a majority of eligible voters; the 2025 Map that Governor Abbott signed has just four. See Gonzales Ex. 39, tbls. 5 & 6, ECF 1385; see also Gonzales Exs. 17, 19, ECF 1388-1, -3.

Texas lawmakers’ express motivation to eliminate coalition districts is so undeniably unconstitutional that Texas has never tried to defend it. See App.21a–32a. A “coalition district” is *defined* by its racial makeup—the presence of “two [or more] minority groups” who “form a coalition to elect the candidate of the coalition’s choice.” *Bartlett v. Strickland*, 556 U.S. 1, 13 (2009) (plurality op.). To intentionally destroy coalition districts requires targeting districts based on race and redrawing them to “separate voters into different districts on the basis of race”—the definition of racial gerrymandering. *Shaw v. Reno*, 509 U.S. 630, 649 (1993). And there was no “sufficient justification” for doing that here. *Id.* Texas does not argue, and has never argued, that the targeted districts were racial gerrymanders in the 2021 Map; it has always insisted that the 2021 Map was drawn race-blind. App.14a–15a. Nor has Texas ever argued that the VRA required the creation of the new single-race majority-minority districts in the 2025 Map. The record would refute any such argument, because most of the multi-race districts Texas destroyed were already performing for

minority voters, but many of the new single-race districts that replace them in the 2025 Plan will not. Gonzales Ex. 39 at 9, ECF 1385.

This case is therefore nothing like *Alexander v. South Carolina State Conference of NAACP*, 602 U.S. 1 (2024). The record here teems with “relevant state actor[s] express acknowledgment[s] that race played a role” in the enactment of new districts in ways that Texas is utterly unable to defend. *Id.* at 8. This direct evidence of racial intent means that Respondents were not required to provide an alternative map. *Id.* at 8–10; *Cooper v. Harris*, 581 U.S. 285, 322 (2017). And the express racial purpose is not as surprising or counterintuitive as Texas and the dissent below suggest. Lawmakers sometimes “think[] that a proposed district is more ‘sellable’ as a race-based ... compliance measure than as a political gerrymander.” *Cooper*, 581 U.S. at 308 n.7. Texas *admitted* that the Governor’s statements reflected his desire to “cite a legal necessity (rather than political desire) as the goal” of the 2025 Map. ECF 1199 at 22. President Trump and national Republican Party figures *tried* pressuring Texas to redraw its districts for purely partisan reasons, but they got little traction for months. App.16a–18a. When the Governor and the legislature were offered a “race-based ... compliance” rationale instead, *Cooper*, 581 U.S. at 308 n.7, it propelled the redistricting process. App.62a.

Unable to defend its lawmakers’ own explanations for their actions, Texas prefers to focus instead on testimony from the private individual who drew the map. But, for good reason, the district court found Adam

Kincaid not credible. App.107a–111a. That finding is given “singular deference” and cannot be overcome merely by the presumption of legislative good faith. *Cooper*, 581 U.S. at 309 & n.8. Texas does not even try to argue that it was clear error. Regardless, as the Chair of the Senate Redistricting Committee himself explained, Kincaid’s “methodology and [his] thoughts behind [the map] ... are irrelevant,” “because what really matters” is lawmakers’ reasons for adopting the map. Brooks Ex. 308T at 31:5–15, ECF 1327-8; see also *Abbott v. Perez*, 585 U.S. 579, 605 (2018).

Recognizing that it faces an uphill climb under this Court’s deferential clear-error standard of review, Texas attempts to recast its objections to the district court’s adverse factual findings as assignments of legal error. But, in light of all the direct evidence in this case, it was not legal error for the district court to find that race predominated in the enactment of the 2025 Map, even without an alternative map showing that Texas could have achieved its partisan goals without sorting by race. And, contrary to Texas’s argument, the district court carefully considered and applied the presumption of legislative good faith and made a factual finding that it was overcome here. A state’s good faith is presumed only “until a claimant makes a showing” of “race-based decisionmaking.” *Miller v. Johnson*, 515 U.S. 900, 915 (1995). The presumption is not a “super-charged, pro-State presumption on appeal, trumping clear-error review.” *Cooper*, 581 U.S. at 309 n.8.

The Court should summarily affirm. If, however, the Court thinks it is now too late for relief to be effectuated for the 2026 election, the Court should vacate the preliminary injunction and reserve further consideration of this matter until after a trial on the merits.

## STATEMENT

**I.** Texas fulfilled its decennial obligation to redraw its congressional districts in October 2021, when it enacted the 2021 Map based on the 2020 census. App.10a. In the years of litigation that followed, before the same three-judge court that decided the motion below—including a nearly four-week trial in May and June of 2025—Governor Abbott and the legislators who enacted the 2021 Map consistently defended that map as having been drawn “blind to race” and in pursuit of raw partisan advantage. *E.g.*, ECF 986 at 8.

**II.** In mid-2025, national Republican Party figures began pressuring Texas to call a special legislative session to re-draw the 2021 Map to more heavily favor Republican candidates. The *New York Times* reported on the pressure campaign on June 9, in the middle of the trial on the 2021 Map. Defs.’ Ex. 1415, ECF 1364-5. But the *New York Times* also reported reluctance on the part of Texas lawmakers, who worried that the plan could “backfire.” *Id.* at 2. When Senator Joan Huffman, the Chairwoman of the Senate Redistricting Committee in 2021, was asked about this reporting the next day during cross examination before the three-judge court, she testified unequivocally that the Texas Legislature was “not” considering redrawing Texas’s congressional districts. App.17a–18a. And on

June 23—two weeks after the New York Times’ initial reporting and Senator Huffman’s firm denial—Governor Abbott issued an initial agenda for a special session of the legislature that listed nine items, none of which was redistricting. Gonzales Ex. 35, ECF 1388-19.

III. With the purely-partisan effort stalled, the Trump Administration tried a new approach. On July 7, just weeks after the close of evidence in the trial on the 2021 Map, the Assistant Attorney General for the Civil Rights Division of the U.S. Department of Justice wrote to Governor Abbott and Attorney General Ken Paxton to *insist* that Texas draw a new congressional map. Gonzales Ex. 41, ECF 1389. The DOJ Letter purported to raise “serious concerns regarding the legality of four of Texas’s congressional districts” because of the Fifth Circuit’s decision in *Petteway v. Galveston County*, which held that Section 2 of the Voting Rights Act does not require states to create “coalition” districts where multiple minority groups together comprise a majority. *Id.*; 111 F.4th at 611. It asserted that “Congressional Districts TX-09, TX-18, TX-29 and TX-33 currently constitute unconstitutional ‘coalition districts’” and “urge[d] the State of Texas to rectify these race-based considerations from these specific districts.” Gonzales Ex. 41, ECF 1389. Each of the four districts mentioned by the DOJ Letter was a majority-minority district under the 2021 Map, and three of the four—CD 9, CD 18, and CD 33—were coalition districts.

Governor Abbott knew the letter was coming—he had discussed it with White House officials and map-

drawing consultant Adam Kincaid “a week before DOJ released it.” App.110a. And on July 9, 2025, after weeks without action and just two days after the DOJ Letter was sent, Governor Abbott proclaimed a special session for the Texas Legislature to “provide[] a revised congressional redistricting plan *in light of constitutional concerns raised by the U.S. Department of Justice.*” Gonzales Ex. 43 at 3, ECF 1389-2 (emphasis added).

IV. The Special Session began on July 21, *id.* at 2, and Governor Abbott went on a media blitz to sell the unpopular mid-decade redistricting scheme. On July 22—before any proposed map was introduced—Governor Abbott explained in a televised interview that the reason for redistricting was the Fifth Circuit’s *Petteway* decision. Brooks Ex. 325T, ECF 1327-25. He discussed *Petteway* at length and explained that “coalition districts are no longer required. And so we want to make sure that we have maps that don’t impose coalition districts.” *Id.* at 3–4. When asked if the redistricting effort was not motivated instead by partisan concerns about the midterm elections, Governor Abbott denied it: “what we’re focused on is not what may happen in the midterms.” *Id.* at 5.

V. The bill that became the 2025 Map was introduced on August 1, and it did just what the Governor said it would do. It systematically dismantled most of the 2021 Map’s multi-racial-majority districts and replaced them with districts in which members of a single race comprise a bare majority of eligible voters. See Gonzales Ex. 39, tbls. 5 & 6, ECF 1385; *see also* Gonzales Exs. 17, 19, ECF 1388-1, -3. Six of the eight

most-altered districts in the 2025 Map were multi-racial-majority districts in the 2021 Map—including one, CD 27, that reliably voted for Republicans. Gonzales Exs. 18, 19, 32, ECF 1388-2, -3, -16. And the other two most-altered districts were also majority-minority districts. *Id.* In contrast, the 2025 Map kept intact more than half of the district populations for each of the majority-white districts from the 2021 Map, while simultaneously drawing two additional majority-white districts. Gonzales Exs. 17, 18, 19, ECF 1388-1, -2, -3.

VI. During the legislative process, members of the Texas Legislature who played key roles in the redistricting process repeatedly echoed Governor Abbott’s explicitly race-based rationale, proclaiming that *Petteway* was the reason for mid-decade redistricting, and touting the 2025 Map’s newly-created single-race majority districts. App.67a–82a. When Chairman Todd Hunter, the primary sponsor of the bill that became the 2025 Map, laid it out for the first time in the Texas House, he volunteered unprompted that it was “important to note that four of the five new districts” were “majority-minority Hispanic CVAP districts, [c]itizen [v]oting [a]ge [p]opulation.” Tr. Oct. 1 PM 43:20–23, ECF 1337. When asked point blank: “[W]ith CD9 ... just to close the loop on that, it was also purposely changed so that the Hispanic CVAP would be over 50 percent now[?]” Chairman Hunter responded: “50.41 percent. Correct.” *Id.* at 58:16–59:7. When asked to confirm that “CD 18 was purposely altered to a Black CVAP majority district rather than a 38.8 Percent Black CVAP district, right?” Chairman Hunter responded: “CD18 was drawn to be a 50.81 percent

CVAP, which is 11.82 change, plus.” *Id.* at 51:10–15. When asked whether CD-35 was “purposely changed to increase its Hispanic CVAP to be about 50 percent,” Chairman Hunter responded, “51.57 percent. And it also has political performance involved.” *Id.* at 51:20–25; *see also* App.81a n.267.

In an exchange with Republican Representative Katrina Pierson, who asked whether it was true that the 2025 map had “not just one but two majority Black CVAP districts,” Chairman Hunter responded that was “correct,” and proceeded to “give everybody details”: “CD18 is now 50.8 Percent Black CVAP. In 2021 it was only 38.8 Percent. CD30 is now 50.2 percent Black CVAP. In 2021, it was 46 percent.” App. 75a–76a & n.254. Representative Pierson made sure to point out that while the number of “Black districts” in the 2021 Map was “zero,” in the 2025 Map, “Black voters in the state of Texas go from zero to two majority Black CVAP districts out of the 38 seats in Texas.” *Id.* The record is full of similar statements. *See* App.67a–82a.

Legislators’ focus on the districts’ racial makeup was explicitly tied to *Petteway*. Chairman Hunter had a copy of *Petteway* in front of him during his layout of the bill. Brooks Ex. 309T at 63, ECF 1327-9. He explained, in a long exchange with the bill’s co-sponsor, Representative Spiller, that the 2021 Map “actually contain[ed] coalition districts,” but “[t]he law was different then,” and the 2025 Map therefore changed multiple districts from multi-race coalition districts to single-race majority districts. *Id.* at 62–79. And in a later hearing, Representative Spiller expressly said

that “one of the reasons we’re [redistricting] now is that, we feel compelled to because of the *Petteway* case and the ruling in the *Petteway* case.” App.79a–80a & n.264. Chairman Hunter did not disagree; he responded that it was the “combination of both” *Rucho* and *Petteway* that was “involved in this map.” *Id.*

VII. Proponents of the 2025 Map repeated their race-based rationale in press statements. In an August 4 interview with CBS news, Representative Katrina Pierson, who served on both the standing Committee and Select Committee that considered the bill and who “consistently weighed in during the hearings,” Tr. Oct. 1 PM 68:8–14, ECF 1337, defended HB 4 by saying that “Texas has maps that h[ave] increased minority representation,” *id.* at 67:6–7. In an interview with National Public Radio, Representative Tom Oliverson, the Chairman of the Republican caucus, denied that Texas was redistricting “because of the president’s request,” stating: “No, we are not.” App. 69a. In a television interview on October 2, Representative Steve Toth responded to a question regarding the purpose of this redistricting by stating that it was “required” in “response to *Petteway*[,] to get compliant.” App.70a. And in a press release hailing the 2025 Map’s passage, Speaker of the House Dustin Burrows said: “The Texas House today delivered legislation to redistrict certain congressional districts to address concerns raised by the Department of Justice ... .” App.67a.

The Governor also stayed consistent. In interviews during the legislative process, he focused on race, touting the 2025 Map’s creation of a majority-Black

“Barbara Jordan[] district”—referring to the longtime Black congresswoman from Houston, Tr. Oct. 1 AM 77:15–18, ECF 1414, and explaining that “four of the five districts that we are going to create are predominantly Hispanic districts that happen to be voting for Republican as opposed to Democrats.” *Id.* at 84:16–22; *see also* App.37a n.117.

Most tellingly, in a CNN interview with Jake Tapper on August 11—after the 2025 Map was introduced but before it was adopted—the Governor denied that Texas was redistricting just because President Trump “personally got involved and asked [him] to do this,” and he pointed to *Petteway* instead, explaining that “one thing that spurred all this is a federal court decision.” App.34a. Because of that decision, the Governor said, “Texas is no longer required to have coalition districts,” and as a result “we wanted to remove those coalition districts” and draw new maps that “provide more seats for Hispanics.” App.34a. And when an incredulous Tapper pushed back, saying “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 denied it: “Again, to be clear, Jake, the reason why we are doing this is because of that court decision ... .” App.35a.

**VIII.** Immediately after the legislature passed the 2025 Map, the six plaintiff groups in these consolidated cases filed supplemental or amended complaints and preliminary injunction motions challenging the 2025 Map as, among other things, an unconstitutional racial gerrymander. App.49a–50a. “The Plaintiff Groups asked—actually ‘begged’—the Court

to set the preliminary-injunction hearing as soon as possible, vowing that they were ready to begin the hearing any day the Court scheduled it.” App.164a. Texas, for its part, asserted that it could not “envision any scenario ... in which it could be prepared to proceed to a hearing ... before the week of October 6, 2025,” while complaining that, in litigation over the prior, 2021 Map, “Plaintiffs repeatedly chose discovery fights over a trial date.” ECF 1129 at 5. The district court held a nine-day hearing beginning on October 1, where it heard from some two dozen fact and expert witnesses and admitted over two thousand exhibits. App.162a.

**IX.** On November 18, the district court issued a 160-page opinion preliminarily enjoining the 2025 Map after finding that six districts in that map are racial gerrymanders. App.53a. It found that President Trump’s initial demands for partisan redistricting fell on deaf ears. App.2a–3a. It found that the DOJ’s explicit demand for race-based redistricting was the precipitating cause of the Governor’s decision to call a special session. App.3a. It found that the Governor echoed the sentiments of the DOJ Letter in statements to the press: repeatedly disavowing any partisan objective and instead “repeatedly stat[ing] that his goal was to eliminate coalition districts and create new majority-Hispanic districts.” App.3a. It found that the Texas Legislature “adopted those racial objectives,” through a series of damning statements to the media and on the legislative floor. App.3a–4a. And it found that the 2025 Map ultimately achieved most of the racial objectives that the DOJ demanded—dismantling coalition districts and replacing them with

single-race majority districts throughout the state. App.4a. The district court accordingly enjoined Texas from using the 2025 Map in the 2026 election and ordered it to use the 2021 Map instead.

X. This Court stayed the district court’s preliminary injunction order on December 4, 2025. *Abbott v. League of United Latin Am. Citizens*, 146 S. Ct. 418 (2025).

## ARGUMENT

### I. **There is clear, direct evidence of racial gerrymandering.**

#### A. **Governor Abbott’s statements are direct evidence of racial predominance.**

As Governor Abbott explained from the beginning, the whole purpose of redrawing Texas’s congressional districts was to “make sure that we have maps that don’t impose coalition districts” in light of the Fifth Circuit’s decision in *Petteway*. App.36a n.115. This overt expression of racial purpose was no slip of the tongue. Governor Abbott eschewed any suggestion that he was “letting President Trump call the shots,” touting instead the need for districts that “fit the structure of [*Petteway*].” App.36a–37a n.116. When asked about the prospect of picking up five Republican seats in the midterms, he insisted “what we’re focused on is not what may happen in the midterms.” Brooks Ex. 325T at 5, ECF 1327-25. And three weeks later, when pressed to admit that he was really doing this to

get five more Republican seats, the Governor pointed to *Petteway* instead. App.35a.

Governor Abbott did not make up this idea on his own. He adopted it from the extraordinary letter that the Department of Justice sent him on July 7, 2025. App.18a–21a. The DOJ Letter alleged that four Texas congressional districts—CDs 9, 18, 29, and 33—“currently constitute unconstitutional ‘coalition districts’” and demanded that they be redrawn. App.18a. After weeks of ignoring political pressure from Washington to draw new congressional districts, Governor Abbott proclaimed a special session that included redistricting two days later. Gonzales Ex. 43, ECF 1389-2. And the proclamation itself specified that it was prompted by the DOJ Letter, calling for “[l]egislation that provides a revised congressional redistricting plan *in light of constitutional concerns raised by the U.S. Department of Justice.*” *Id.* at 3 (emphasis added).

The DOJ Letter’s call for the intentional elimination of coalition districts was a call for race discrimination, plain and simple. The defining feature of a coalition district is its racial makeup. *Strickland*, 556 U.S. at 13. *Strickland* explained that “intentionally d[rawing] district lines in order to destroy otherwise effective *crossover* districts” would raise “serious questions under both the Fourteenth and Fifteenth Amendments.” *Id.* at 24 (emphasis added). Under *Petteway*, a coalition district is just like a crossover district for these purposes—as *Petteway* itself explains. 111 F.4th at 610.

Texas does not suggest otherwise. It has offered no legal argument that intentionally destroying coalition

districts because of their racial makeup is lawful. It has never defended the approach articulated in the DOJ Letter. Just the opposite. Texas affirmatively argued that the DOJ Letter’s demand was “legally[] unsound,” “baseless,” “erroneous,” “ham-fisted,” and “a mess.” App.21a. It had little choice. As the district court’s opinion explains in detail, none of the theoretically available defenses of the DOJ Letter holds together. App.21a–23a. Merely having a coalition district is not unconstitutional, App.23a–26a, and there is no evidence that the legislature intentionally used race to draw any district in the 2021 Map as a coalition district, whether in an effort to comply with the VRA or for any other reason. App. 27a. Texas has always maintained, through four years of litigation, that the entire 2021 Map was drawn race-blind. Statement at 3; *see also* Defs.’ Ex. 1466 at 3, ECF 1380-25 (“The evidence at that trial was clear and unequivocal: the Texas legislature did not pass race-based electoral districts” in 2021. (emphasis omitted)).<sup>4</sup>

---

<sup>4</sup> In an amicus brief, the Solicitor General tried to defend the DOJ Letter by arguing that, *if* the prior districts were drawn with the predominant racial purpose of creating coalition districts, then the letter would be correct that they are unconstitutional. U.S. Amicus at 10–12. But Texas has always vociferously denied that the prior districts were drawn for race-based reasons, and noth-

The record therefore shows that Governor Abbott’s express purpose for adding redistricting to the special session agenda—eliminating coalition districts—was unconstitutional. The Court could stop there.

In arguing otherwise, Texas relies almost entirely on the extraordinary proposition that the Governor is not even a “relevant state actor,” *Alexander*, 602 U.S. at 8, because he does not “exercise ‘Legislative power,’ or draft legislation.” Statement at 21 (citation omitted). But the Governor’s proclamation of a special session was an essential step in the enactment of the 2025 Map. *See* Tex. Const. art. III, § 40. The Governor’s decision to proclaim a special session for the express purpose of “mak[ing] sure that we have maps that don’t impose coalition districts,” Brooks Ex. 325T at 3–4, ECF 1327-25, was therefore a but-for cause of the 2025 Map’s enactment. *See Hunter v. Underwood*, 471 U.S. 222, 232 (1985). If the Governor had not taken that unconstitutionally motivated step—and then signed the bill the legislature adopted—the new map could never have taken effect.

---

ing in the record suggests that they were. *See* App.27a. The Solicitor General also argued that the DOJ Letter did not demand the elimination of multi-racial-majority districts, but merely the enactment of race-blind ones. U.S. Amicus at 12–13. But that is not how the Governor understood it—he vowed to “make sure that we have maps that don’t impose coalition districts,” App.36a n.115, and the 2025 Map systematically replaced multi-race majority districts with single-race majority ones, *see* Gonzales Exs. 17, 19, ECF 1388-1, -3.

Moreover, in the trial court, Texas successfully invoked legislative privilege over the Governor's communications *with the map drawer* on the theory that the Governor was a "legislative actor" in that context ECF 1262 at 3; *see also id.* (arguing "a Governor is part of the 'legislative action in districting the state for congressional elections'" (quoting *Smiley v. Holm*, 285 U.S. 355, 372–73 (1932))). Having succeeded on that argument, Governor Abbott is judicially estopped from denying his legislative role. *See New Hampshire v. Maine*, 532 U.S. 742, 749 (2001) ("Where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position[.]" (quoting *Davis v. Wakelee*, 156 U.S. 680, 689 (1895))).

**B. Legislators' statements are direct evidence of racial predominance.**

Even if it were only legislators' intent that mattered, and not the intent of the Governor who called the session and signed the bill, legislators repeatedly said essentially the same thing. Representative Oliverson, the Chairman of the Republican caucus, flatly denied that Texas was redistricting "because of the president's request." App.69a. Representative Toth told reporters redistricting was "required" in "response to *Petteway*, to get compliant." App.70a. And Speaker Burrows expressly tied the 2025 map to "concerns raised by the Department of Justice ... ." App.67a. Those are just a few examples; the district court's opinion details them all. App.67a–85a.

Texas urges the Court to disregard these statements, too, because they represent only a sample of the legislators who voted on the bill—going so far as to suggest that statements of racial intent constitute “direct evidence” only if “ratified” by “a majority” of the legislators. Statement at 20, 22. But this Court has never required such a showing. In *Cooper*, the Court relied on the statements of two sponsors of a redistricting bill to find racial predominance. 581 U.S. at 299–300. Texas dismisses this parallel because the statements in *Cooper* were “instructions to the mapmaker.” Statement at 23. That is wrong. While Senator Rucho and Representative Lewis did provide instructions to the mapmaker in *Cooper*, the Court also emphasized that they “repeatedly told their colleagues that District 1 had to be majority-minority” including “[d]uring a Senate debate” and in the House and Senate redistricting committees. 581 U.S. at 299–300.

**C. The district court did not clearly err in discrediting the testimony of Adam Kincaid.**

Texas urges the Court to avert its eyes from the actual lawmaking process in Austin and to focus instead on what a private individual working for the Republican National Committee was doing in Washington. Statement at 25. Somehow, Adam Kincaid—despite having no legal relationship with the State of Texas—becomes the *only* “relevant state actor” for purposes of deciding why Texas enacted its new districts. *Id.* There are at least two fatal problems with this argument.

*First*, while the Court has sometimes considered testimony by map-drawers, it has never suggested that a race-blind map-drawer could save districts that a state adopted for explicitly racial reasons. *Cf. Perez*, 585 U.S. at 605, 607–14 (holding that it is the enacting legislature’s intent that matters, even where plans were drawn by the third party). *Alexander* accepted as direct evidence *any* “relevant state actor’s express acknowledgment that race played a role in the drawing of district lines”—it did not say that the map-drawer’s testimony is dispositive. 602 U.S. at 8. The Fourteenth Amendment prohibits race discrimination by *states*, so it is the Governor’s decision to call a special session and the legislature’s decision to enact the 2025 Map that constitute unconstitutional discrimination here—not a private consultant’s decision to align his proposed district boundaries with one road rather than another.

The map drawer was a “relevant state actor” in *Cooper* because he was hired by the legislature to draw the maps and acted on their instructions to draw districts in a certain way—not merely because he was the individual physically manipulating the district lines. 581 U.S. at 300. Here, in contrast, as Chairman King put it during the special session, “the map-drawer’s “methodology and their thoughts behind it ... are irrelevant ... because what really matters [is] ... determining ourselves is [the map he drew] good policy for the state of Texas.” Brooks Ex. 308T at 31:5–12, ECF 1327-8. After all, if Kincaid’s map had not suited lawmakers’ goals, they would have enacted a different one.

*Second*, the district court found Kincaid’s testimony not credible—for good reason. App.107a–111a; *see also* App.90a–96a. There were direct contradictions and inconsistencies everywhere Kincaid turned. App.90a–96a. Kincaid testified that he told Chairman King how many seats Republicans would pick up under his map; Chairman King denied it. App.92a–93a. Kincaid testified that their meeting was prearranged; Chairman King insisted it was an unplanned coincidence. App.95a & n.313. Kincaid testified that Chairman King called him to invite him to testify on the Senate floor; Chairman King denied that, too. App.96a n.314. The district court properly did not take Kincaid’s self-serving, unverifiable race-blind story at face value when he was contradicted about so much else, and when his story was—as the district court explained—so hard to square with the objective features of the districts he drew. App.107a–111a.<sup>5</sup>

Texas criticizes the district court’s refusal to credit Kincaid’s testimony because it was “uncontradicted.” Statement at 25. But of course, only Kincaid knows what he looked at while he drew the 2025 Map, by

---

<sup>5</sup> Texas, and the dissent below, emphasize Kincaid’s detailed descriptions of geographic features of the districts he drew—that they split this town and not that one, and that the borders followed this road and that river, and so on. Statement at 25; App.212a–232a. But of course, Texas has hundreds of towns, thousands of waterways, and at least tens of thousands of roads. Having drawn the districts, it is easy enough to describe the boundaries in geographic terms. The ability to do so hardly means there are not unstated racial reasons for having picked, say, one road rather than another.

himself. That his other testimony was so badly contradicted undermines his credibility generally, as the district court properly found. Moreover, as a consultant to an outside advocacy group with no official legislative role, Kincaid—unlike Senator King—is not entitled to the “presumption of good faith” that Texas seeks to invoke over his testimony. Statement at 25; *see Miller*, 515 U.S. at 915 (“[T]he good faith of a *state legislature* must be presumed[.]” (emphasis added))

In any event, the Court “give[s] singular deference to a trial court’s judgments about the credibility of witnesses, ... because the various cues that ‘bear so heavily on the listener’s understanding of and belief in what is said’ are lost on an appellate court later sifting through a paper record.” *Cooper*, 581 U.S. at 309 (citing *Anderson v. Bessemer City*, 470 U.S. 564, 575 (1985)). And Texas does not argue that the adverse credibility determination satisfies the high, clear error standard. It has therefore waived any challenge to it on appeal. *See Phillips Chem. Co. v. Dumas Ind. Sch. Dist.*, 361 U.S. 376, 386 n.12 (1960) (“Only issues raised by the jurisdictional statement ... are considered by the Court.”); *e.g.*, *SD Voice v. Noem*, 60 F.4th 1071, 1077 n.3 (8th Cir. 2023) (“In its opening brief, South Dakota does not argue the district court’s factual findings are clearly erroneous. Accordingly, South Dakota has waived any argument challenging the factual findings.”); *United States v. McBride*, 94 F.4th 1036, 1044 (10th Cir. 2024) (holding that an appellant’s failure to argue the proper standard of review waives the issue); *United States v. Baptiste*, 8 F.4th 30, 42 (1st Cir. 2021) (“[A]n appellant risks waiver if its opening brief does not properly develop

arguments showing how its claims can succeed under the proper review standard.”).

**D. Evidence of partisanship does not disprove evidence of racial predominance.**

Texas also implies—and the district court dissent said repeatedly—that finding a racial purpose is illogical because the “most obvious reason for mid-cycle re-districting, of course, is partisan gain.” App.186a (quoting *Jackson v. Tarrant County*, No. 25-11055, 2025 WL 3019284, at \*14 (5th Cir. Oct. 29, 2025)); see also App.189a n.12, 190a n.17, 193a, 198a, 208a, 232a. But that reasoning incorrectly assumes that racial and political motives are mutually exclusive, ignoring the extensive factual record in this case. The district court’s conclusion does not “rest[] on the premise that the Republican-controlled Texas Legislature ... adopted a map that sacrificed political opportunity in favor of racial discrimination.” Statement at 1. It instead recognized that racial sorting was a necessary step along the way to achieving Texas’s ultimate political goals.

This is a concept directly grounded in recent precedent. As the Court has explained, lawmakers sometimes “think[] that a proposed district is more ‘sellable’ as a race-based ... compliance measure than as a political gerrymander.” *Cooper*, 581 U.S. at 308 n.7. The record shows that is exactly what happened here. When the President first demanded Texas draw new districts, he got little traction; when the DOJ Letter reframed it as a demand for racial compliance, lawmakers publicly embraced the racial excuse and

quickly got on board. App.3a, 16a–18a, 32a–33a. This was undisputed below. Texas told the district court that the DOJ letter’s framing was “a ‘baseless assertion’ that *serves as a poor attempt at ‘cover’ for Texas’s decision to redistrict mid-decade,*” and that the Governor’s statements reflect his desire to “cite a legal necessity (rather than political desire) as the goal” of re-districting. ECF 1199 at 20, 22 (emphasis added). As *Cooper* holds, intentional racial gerrymandering is unconstitutional even if lawmakers’ “end goal” in using race is “advancing their partisan interests.” 581 U.S. at 308 n.7. And the resulting map systematically eliminated coalition districts, just like the Governor said he sought to do. App.39a–48a; *see also* Gonzales Ex. 39, tbls. 5 & 6, ECF 1385; Gonzales Exs. 17, 19, ECF 1388-1, -3.

## **II. *Alexander* did not require an alternative map.**

Given the ample direct evidence of racial intent, Plaintiffs were not required to provide an alternative map to distinguish racial from partisan gerrymandering in this case. No alternative map is needed in a case like this, with direct evidence of racial intent. *See Alexander*, 602 U.S. at 8. Rather, as the Court held in *Cooper*, when a case turns “not on the possibility of creating more optimally constructed districts, but on direct evidence of the [state’s] intent in creating the actual” districts, the direct evidence itself debunks the partisanship defense. 581 U.S. at 322. “[T]here [is] no need for an alternative map to do the same job.” *Id.* *Alexander* did not overrule that holding. *See* 602 U.S. at 8. Contrary to the Court’s stay ruling, it is *Cooper*

and not *Alexander* that controls here. *Abbott*, 146 S. Ct. at 419. The Court knows that Texas lawmakers were motivated by race and not just partisanship because they said so in proclamations and press releases, on television and on the floor. Respondents do not need an alternative map to prove that point.

Texas confuses the issue by suggesting that Plaintiffs' evidence is not "direct" because *other* evidence in the record shows the purpose of the 2025 Maps was to increase Republican performance. That is irrelevant: Direct evidence of racial intent is still *direct* evidence even if it exists alongside evidence of other motivations. "Direct evidence is evidence which, if believed, proves the fact without inference or presumption." *Jones v. Robinson Prop. Grp., L.P.*, 427 F.3d 987, 992 (5th Cir. 2005). Direct evidence need not be conclusive or un rebutted. The existence of seemingly contradictory evidence goes to weight and credibility—questions soundly in the domain of the district court. It does not make the evidence of racial purpose any less "direct." The fact that legislators and the Governor repeatedly cited purported "compliance" with *Petteway* to justify the 2025 Map is direct evidence that compliance with *Petteway* motivated the 2025 Map—even if those same legislators *also* cited partisanship. *Cf. Bush v. Vera*, 517 U.S. 952, 959 (1996) (affirming a finding that race was the "predominant factor" in the drawing of districts even though "[t]he record d[id] not reflect a history of *purely* race-based districting revisions" (citation modified)).

Moreover, in several of the relevant districts, race is not correlated with partisanship in the way that in

some cases makes separating the two so difficult, and that an *Alexander* map is intended to disentangle. See *Alexander*, 602 U.S. at 9. In particular, the 2025 Map includes two new districts—CD 9 and CD 35—that were drawn to be majority-Latino but to consistently elect Republican candidates. Tr. Oct. 3 AM 33:18–34:3, 35:5–10, 37:17–39:2, ECF 1416. But Latino voters in those districts consistently favor Democratic candidates, while white voters favor Republicans. *Id.* at 34:4–16; 37:20–25. As a result, Texas’s partisan and racial goals worked at cross-purposes in crafting these districts—making the districts more Republican would be expected to make them *less* Latino, not more Latino. There is therefore no reason to believe that a map drawn purely based on partisanship would generate majority-Latino districts as “a side effect of the Legislature’s partisan goal” in those areas, Statement at 26 (quoting *Alexander*, 602 U.S. at 20–21)—rather, it would require “special tinkering” with race, see Tr. Oct. 2 PM at 129:18–20, ECF 1338. Likewise, as the district court found, the 2025 Map destroys both Democratic *and* Republican-leaning districts where no single race comprised a majority. App.120a–121a (discussing CD 27).

Finally, the lack of an *Alexander* map is relevant only insofar as it can be interpreted as “an implicit concession” that such a map cannot be drawn. *Alexander*, 602 U.S. at 35. But here, Texas concealed the partisan criteria that would have been needed to draw an alternative map in any event. It is not just a matter of five new Republican districts. Kincaid testified—on the sixth and seventh days of the nine-day hearing, after the close of Respondents’ case-in-chief—that he

pursued a set of eight extraordinarily specific partisan requirements, some with subparts, all based on proprietary partisan data. App.102a–106a; Statement at 33. And Respondents *still* do not have the complete set of objectives, because Kincaid claimed privilege over a set of “significant requests” from members of Congress that he “had to consider” as he drew the districts, and of which he honored “[a]s many as [he] could.” Tr. Oct. 8 AM 128:25–29:16, ECF 1420. Thus, even if Kincaid could qualify as a relevant state actor, *but see supra* at 19, the full extent of his purportedly partisan criteria was cloaked in asserted privilege. Under the circumstances, it would not have been “remarkably easy to produce” an alternative map that satisfied the State’s asserted goals. *Alexander*, 602 U.S. at 36.

Texas blames Appellees for not seeking pre-hearing discovery from Kincaid to uncover his precise partisan criteria before the hearing. Statement at 17. But the last time Respondents subpoenaed Adam Kincaid in these cases, about the 2021 Map, it set off a protracted fight in D.C. that took more than a year to resolve. *See In re Kincaid*, No. 1:22-mc-00067 (JEB) (RMM), 2023 WL 6459801 (D.D.C. Oct. 4, 2023). There was simply no time to do that again, particularly because Respondents did not know until immediately before the hearing that Texas would call Kincaid to testify—Texas had not called him in the trial over the 2021 Map. And while Texas attempts to blame Appellees for seeking an injunction “disrupting a State’s electoral process at the eleventh hour,” Statement at 16, Appellees “could not possibly have acted faster or more diligently.” App.164a.

### **III. Circumstantial evidence confirms the direct evidence.**

The circumstantial evidence of racial predominance is also extremely strong. Texas ignores most of it and instead quibbles with the inferences the district court drew from individual pieces of circumstantial evidence taken in isolation. But, taken together with the powerful direct evidence in this case, the circumstantial evidence points decisively in one direction: Texas racially gerrymandered the 2025 Map. That is true even if one credits the testimony of Adam Kincaid, on which nearly all of Texas's arguments are based, but which the district court rejected for good reason. *Supra* Part I.C.

Start with evidence that Texas ignores: the 2025 Map systematically eliminates many of the prior map's coalition districts and replaces them with ones in which members of a single race comprise a bare majority of eligible voters. Six of the eight most-altered districts in the 2025 Map were ones in which no one racial group made up a majority of voters—including one, CD 27, that reliably voted for Republicans. *Gonzales Exs. 18, 19, 32, ECF 1388-2, -3, -16*. Another one of the eight most-altered districts was CD 29, which the DOJ Letter erroneously identified as a coalition district but was in fact a majority-Latino district. *App.26a–27a*. These districts, as reconfigured in 2025, retained between 2.9 percent and 41.2 percent of their 2021 district populations. *Gonzales Ex. 18, ECF 1388-2*. In contrast, the 2025 Map kept intact more than half of the district populations for each of the major-

ity-white districts from the 2021 Map, while simultaneously drawing two additional majority-white districts. Gonzales Exs. 17, 18, 19, ECF 1388-1, -2, -3. The net result: the 2025 Map has *five more districts* in which a single race forms a majority of eligible voters than the 2021 Map had. *Compare* Gonzales Ex. 17, ECF 1388-1, *with* Gonzales Ex. 19, ECF 1388-3. It goes much farther in “separat[ing] voters into different districts on the basis of race” than the 2021 Map did. *Shaw*, 509 U.S. at 649.

Focusing on particular regions confirms the point. In Dallas–Fort Worth, the 2025 Map “completely reconfigured” CD 33—one of the districts listed in the DOJ Letter—along with another coalition district, CD 32. App.41a, 47a. And it added just enough Black voters to CD 30 to make it just barely majority-Black CVAP (50.2 percent). App.46a. Even Kincaid had no reasonable, race-neutral explanation for how that happened. He testified that when drawing CD 30 and CD 33, he first created a “super district” by “just lumping a bunch of Democrat areas together.” Tr. Oct. 7 AM 108:10–14, ECF 1419. He said he then divided that “super district” into two, choosing to put “the most heavily Democrat contiguous precincts” in CD 30, *id.* at 113:18–21, and “using the footprint of 30 as it currently existed.” Tr. Oct. 7 PM 71:18–19, ECF 1342. There was no partisan reason for putting the most Democratic precincts in CD 30 rather than CD 33 because, as Kincaid admitted, he was simply sorting voters between two unassailably strong Democratic districts. Tr. Oct. 7 AM 114:1–12, ECF 1419. But Kincaid’s formula was practically guaranteed to make CD 30 majority-Black because, as Kincaid was

well aware, Black voters are the most reliably Democratic voters in Dallas County. Tr. Oct. 8 AM 93:18–22, ECF 1420. Kincaid’s choices mirror those made by the map-drawer in *Cooper*, who was explicitly seeking to draw majority-Black districts. *Cooper*, 581 U.S. at 300 (explaining that the map-drawer had “moved the district’s borders to encompass the heavily black parts of Durham (and only those parts)”).

Next, consider Harris County. The 2025 Map rendered unrecognizable all three Harris County districts listed in the DOJ Letter. Out of the four Houston-area Democratic districts, Kincaid testified that he started by consolidating the cores of two plurality Black coalition districts from the prior map that were listed in the DOJ Letter, CD 9 and CD 18, into a single *barely* majority-Black CVAP district (50.5 percent), CD 18. Tr. Oct. 8 AM 98:3–4, ECF 1420 (Kincaid) (“[T]he core of Texas 9 is now in Texas 18.”); App.40a. Even Kincaid had no partisan explanation for why he started there. And only *after* he did that did he consider whether he could *also* eliminate other Democratic districts, too. Tr. Oct. 8 AM 140:24–41:13, ECF 1420.

Kincaid also drew a completely new CD 9 in Houston, transforming it into a bare majority Latino district in which Latino voters will be unable to elect their candidates of choice. Tr. Oct. 3 AM 35:5–10, ECF 1416; Gonzales Exs. 17, 39, ECF 1388-1, 1385. Indeed, he did that *twice*. When the Committee Substitute for the 2025 Map, which Kincaid also drew, added an *entire county* to make CD 9 more Republican-leaning than Kincaid’s initial proposal, changes were made

elsewhere to the district lines to maintain CD 9’s razor-thin Latino majority. Tr. Oct. 7 AM 173:18–74:1, ECF 1419; Gonzales Ex. 17, ECF 1388-1. The story is the same in Central Texas, where the 2025 Map created a new, majority-Latino CD 35. That district, too, is expected to elect Republicans, even though its Latino majority cohesively prefers Democrats. Gonzales Ex. 39 at 8, ECF 1338.

In these districts, disentangling race and party is easy: there can be no partisan explanation for the racial makeup of new CD 9 and CD 35 because it is undisputed that Latino voters in these districts cohesively prefer Democrats. Gonzales Ex. 39 at 2, 4, ECF 1385; Tr. Oct. 8 AM 133:19–34:1, ECF 1420. Drawing a majority-Latino, majority-Republican district in those areas therefore cannot be explained as a “side effect of the legislature’s partisan goal.” *Alexander*, 602 U.S. at 20–21. Drawing such districts, however, allowed the Governor and the legislature to go on TV and sell their unpopular mid-decade map as a “race-based ... compliance measure” by pointing to their new majority-Latino districts. *Cooper*, 581 U.S. at 308 n.7. And to do that, they needed the districts to clear fifty percent—not some arbitrary threshold like the 17% BVAP districts in *Alexander*. Statement at 27. Even the dissenting judge below acknowledged that the achievement of these bare majority thresholds was “quite a coincidence.” Tr. Oct. 10 PM 129:20, ECF 1345.

Texas next attacks the district court’s reliance on the 2025 Map’s treatment of CD 37—the only majority-white Democratic district in Texas. Statement at

29–30. Texas notes that CD 37 is the only Democratic district in Austin, but fails to explain why that matters. And CD 37 was a new district in 2021, so it is obviously possible to draw a map without it, and it is notable that the legislature left CD 37 intact while demolishing other equally Democratic districts with larger minority populations.

In CD 27—which is adjacent to CD 37—the opposite story played out. There, the 2025 Map took a *Republican*, multi-racial majority-minority district and transformed it into a majority-white Republican district. App.120a–21a. CD 27 was altered so substantially that it retained only 39.8 percent of its population from the prior map. Gonzales Exs. 18, 19, ECF 1388-2, -3. Texas—and the dissent—dismiss this as a product of moving Republican voting strength from CD 27 into neighboring Democratic districts. Statement at 31. But the evidence showed that non-white voters in both old and new CD 27 cohesively prefer Democrats, while white voters cohesively prefer Republicans. Gonzales Ex. 39 at tbls. 7 & 8, ECF 1385. One would expect, then, that shifting Republican strength from this district would *decrease*, rather than increase, the white population of the district.

Finally, Texas attacks the district court’s reliance on the testimony of Dr. Moon Duchin. Statement at 32–32. Dr. Duchin’s testimony provides but one additional piece of cumulative circumstantial evidence confirming that the Texas legislature did exactly what they said they were doing publicly. Her “results are fully consistent with the direct evidence and other cir-

cumstantial evidence in the record,” and her “testimony was effectively unchallenged; no defense expert submitted a report rebutting Dr. Duchin’s findings.” App.133a. The district court found her “testimony and report highly credible and persuasive.” App.133a. Having failed to present any expert testimony rebutting Dr. Duchin’s findings, Texas cannot demonstrate that the district court’s reliance on them was clearly erroneous.

Taken together, the circumstantial evidence tells a remarkably consistent story that confirms what Texas lawmakers repeatedly told Texas voters on the public record: the 2025 Map sorted Texans into single-race majority districts on the basis of race to eliminate as many coalition districts as possible after *Petteway*.

#### **IV. The district court properly applied the presumption of good faith.**

Texas attempts to recast its factual disputes as legal arguments by complaining that the district court did not properly apply the presumption of legislative good faith. This Court’s stay order raised that issue as well. *Abbott*, 146 S. Ct. at 419. But the Court’s precedent is clear: the presumption, while important, cannot transmute factual findings Appellants don’t like into legal error. It is not a “super-charged, pro-State presumption on appeal, trumping clear-error review” and overcoming a finding of racial purpose. *Cooper*, 581 U.S. at 309 n.8. Rather than view the evidence as a whole, Texas takes individual pieces of evidence in isolation and argues that each, on its own, is insufficient to overcome the presumption. That is not how clear error review works. *See id.* at 316.

The district court was in fact closely attuned to the presumption of good faith. *See* App.57a, 75a, 81a. The district court acknowledged, for example, that statements from individual legislators “alone do not clear the presumption of legislative good faith.” App.75a. But “the combination of these statements” with “additional direct evidence,” it found, was enough to “overcome[] that presumption.” *Id.* That finding—that the accumulated evidence in this case is sufficiently weighty and clearcut to overcome the presumption—is a finding of *fact* that the Court must review for clear error.

**V. The remaining preliminary injunction factors were satisfied.**

The district court properly held that a preliminary injunction was necessary to prevent irreparable injury to the Gonzales Respondents and voters in districts across Texas. Under the 2025 Map, millions of Texans will be forced to vote in congressional districts to which they were unconstitutionally assigned on the basis of race for no adequate reason. Such classifications “are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.” *Shaw*, 509 U.S. at 643 (quoting *Hirabayashi v. United States*, 320 U.S. 81, 100 (1943)). And “once the election occurs, there can be no do-over and no redress” for voters whose rights were violated. *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014). For that reason, this Court has stated that subjecting voters to an unlawful redistricting plan for even one election would require an “unusual” showing that doing so is a “[n]ecessity.”

*Upham v. Seamon*, 456 U.S. 37, 44 (1982); *see also Reynolds v. Sims*, 377 U.S. 533, 585 (1964) (“[I]t would be the unusual case in which a court would be justified in not taking appropriate action to insure that no further elections are conducted under [an] invalid plan.”). And there was no necessity here—it was perfectly possible to conduct the 2026 election and future congressional elections under the 2021 Map, just as Texas has done for the past two elections.

In addition to arguing that there will be no irreparable harm because the 2025 Map is not a racial gerrymander, *but see supra* Parts I-IV, Texas argues that reverting to the 2021 Map would not, under Plaintiffs’ theory, avert irreparable harm because some of the plaintiff groups have alleged that the 2021 Map was also a racial gerrymander. The Gonzales Plaintiffs have never argued that. To be clear, the Gonzales Plaintiffs maintain their claim that the 2021 Map violates Section 2 of the Voting Rights Act. But, while the 2021 Map is bad, the 2025 Map is even worse. A return to the 2021 Map would therefore provide at least partial relief for Plaintiffs, and would reinstate the status quo, precisely as the preliminary injunction standard contemplates. *See Benisek v. Lamone*, 585 U.S. 155, 161 (2018) (“[T]he purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held.” (citation omitted)).

**VI. If the Court does not summarily affirm, it should vacate the injunction for the 2026 election and remand for further proceedings.**

The prior section was phrased in the past tense. The Gonzales Plaintiffs recognize that with respect to the 2026 election, the analysis of the equitable factors would be different now that Texas has already held primary elections under the 2025 Map. That illustrates the odd posture of this case. The Gonzales Plaintiffs only ever sought preliminary injunctive relief for the 2026 election; Plaintiffs jointly proposed a trial schedule at the end of the preliminary injunction hearing that would have allowed for the adjudication of their claims for permanent relief well in advance of the 2028 election.

Under the circumstances, the Court could reasonably vacate the preliminary injunction order and remand the case to the district court, rather than decide the merits of this appeal on an unnecessarily expedited record, based on a preliminary injunction motion that was directed to an election that will be held before the Court is able to issue a decision in this case. Doing so would allow the Court to finally adjudicate the issues presented here in a single appeal from final judgment, rather than piecemeal.

### **CONCLUSION**

The Court should summarily affirm. If it does not, it should vacate and remand.

Respectfully submitted,

Abha Khanna  
ELIAS LAW GROUP LLP  
1700 Seventh Ave., Suite  
2100  
Seattle, WA 98101  
(206) 656-0177

Renea Hicks  
LAW OFFICE OF MAX RENEA  
HICKS  
P.O. Box 303187  
Austin, TX 78703

*Counsel for Gonzales  
Appellees*

March 19, 2026

David R. Fox  
*Counsel of Record*  
Richard A. Medina  
James J. Pinchak  
ELIAS LAW GROUP LLP  
250 Massachusetts Ave.  
NW, Suite 400  
Washington, DC 20001  
(202) 968-4490  
DFox@elias.law