In the Supreme Court of the United States

GREG ABBOTT,

IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF TEXAS, ET AL., Applicants,

v.

LEAGUE OF UNITED LATIN AMERICAN CITIZENS, ET AL., Respondents.

APPENDIX TO EMERGENCY APPLICATION FOR STAY AND ADMINISTRATIVE STAY PENDING APPEAL

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UNITED STATES DISTRICT COURT WESTERN DISTRICT OF TEXAS **EL PASO DIVISION**

LEAGUE OF UNITED LATIN	§	
AMERICAN CITIZENS, et al.,	§	
	§	
Plaintiffs,	§	
ALEXANDER GREEN, et al.,	§ §	EP-21-CV-00259-DCG-JES-JVB [Lead Case]
Plaintiff-Intervenors,	§	&
v.	§	X
	§	All Consolidated Cases
GREG ABBOTT, in his official capacity as	§	
Governor of the State of Texas, et al.,	§	
	§	
Defendants.	§	

MEMORANDUM OPINION AND ORDER **GRANTING PRELIMINARY INJUNCTION**

JEFFREY V. BROWN, United States District Judge:¹

In August 2025, the State of Texas enacted a new electoral map to govern elections for the U.S. House of Representatives (the "2025 Map"). Claiming that the 2025 Map is racially discriminatory, six groups of Plaintiffs (the "Plaintiff Groups") ask the Court to preliminarily enjoin the State from using the 2025 Map for the 2026 elections.

For the reasons explained below, the Court **PRELIMINARILY ENJOINS** the State from using the 2025 Map. The Court ORDERS that the 2026 congressional election in Texas shall proceed under the map that the Texas Legislature enacted in 2021 (the "2021 Map").

¹ U.S. District Judge Jeffrey V. Brown delivers the opinion of the Court, which Senior U.S. District Judge David C. Guaderrama joins. U.S. Circuit Judge Jerry E. Smith will file a dissenting opinion.

I. INTRODUCTION

"The way to stop discrimination on the basis of race is to stop discriminating on the basis of race."²

—Chief Justice John Roberts

The public perception of this case is that it's about politics. To be sure, politics played a role in drawing the 2025 Map. But it was much more than just politics. Substantial evidence shows that Texas racially gerrymandered the 2025 Map. Here's why.

Earlier this year, President Trump began urging Texas to redraw its U.S. House map to create five additional Republican seats. Lawmakers reportedly met that request to redistrict on purely partisan grounds with apprehension. When the Governor announced his intent to call a special legislative session, he didn't even place redistricting on the legislative agenda.

But when the Trump Administration reframed its request as a demand to redistrict congressional seats based on their racial makeup, Texas lawmakers immediately jumped on board. On July 7, Harmeet Dhillon, the head of the Civil Rights Division at the Department of Justice ("DOJ"), sent a letter ("the DOJ Letter") to the Governor and Attorney General of Texas making the legally incorrect assertion that four congressional districts in Texas were "unconstitutional" because they were "coalition districts"—majority-non-White districts in which no single racial group constituted a 50% majority. In the letter, DOJ threatened legal action if Texas didn't immediately dismantle and redraw these districts—a threat based entirely on their racial makeup. Notably, the DOJ Letter targeted only majority-non-White districts. Any mention of majority-White Democrat districts—which DOJ presumably would have also targeted if its aims were partisan rather than racial—was conspicuously absent.

² Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 748 (2007) (Roberts, C.J., writing for Justices Scalia, Thomas, and Alito).

Two days later, citing the DOJ Letter, the Governor added redistricting to the special session's legislative agenda. In doing so, the Governor explicitly directed the Legislature to draw a new U.S. House map to resolve DOJ's concerns. In other words, the Governor explicitly directed the Legislature to redistrict based on race. In press appearances, the Governor plainly and expressly disavowed any partisan objective and instead repeatedly stated that his goal was to eliminate coalition districts and create new majority-Hispanic districts.

The Legislature adopted those racial objectives. The redistricting bill's sponsors made numerous statements suggesting that they had intentionally manipulated the districts' lines to create more majority-Hispanic and majority-Black districts. The bill's sponsors' statements suggest they adopted those changes because such a map would be an easier sell than a purely partisan one. The Speaker of the House also issued a press release celebrating that the bill satisfactorily addressed DOJ's "concerns." Other high-ranking legislators stated in media interviews that the Legislature had redistricted not for the political goal of appearing President Trump nor of gaining five Republican U.S. House seats, but to achieve DOJ's racial goal of eliminating coalition districts.

The map ultimately passed by the Legislature and signed by the Governor—the 2025 Map—achieved all but one of the racial objectives that DOJ demanded. The Legislature dismantled and left unrecognizable not only all of the districts DOJ identified in the letter, but also several other "coalition districts" around the State.

For these and other reasons, the Plaintiff Groups are likely to prove at trial that Texas racially gerrymandered the 2025 Map. So, we preliminarily enjoin Texas's 2025 Map.

II. BACKGROUND

A. The Law Governing Racial Discrimination Challenges to Redistricting Plans

Because "racial discrimination in voting . . . cannot coexist with democratic self-government," federal law provides various avenues for challenging an electoral map as racially discriminatory.³ There are at least three avenues to do so.

1. Racial Gerrymandering

First, a plaintiff can bring a racial-gerrymandering claim under the Fourteenth and Fifteenth Amendments.⁴ A racial-gerrymandering claim alleges that the "State, without sufficient justification," has "separat[ed] its citizens into different voting districts on the basis of race." The plaintiff "must prove that the State subordinated race-neutral districting criteria . . . to racial considerations," such that race was "the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district."

2. Intentional Vote Dilution

Second, a plaintiff can bring an intentional vote-dilution claim, which is "analytically distinct from a racial-gerrymandering claim and follows a different analysis." An intentional vote-

We adhere to our prior ruling that we must follow published Fifth Circuit opinions as binding precedent, *see League of United Latin Am. Citizens v. Abbott*, 767 F. Supp. 3d 393, 401 & n.18 (W.D. Tex. 2025), even though any appeals from this order will go directly to the Supreme Court instead of the Fifth Circuit, *see* 28 U.S.C. § 1253.

³ Jackson v. Tarrant County, --- F.4th ----, 2025 WL 3019284, at *7 (5th Cir. Oct. 29, 2025) (citation modified).

⁴ See, e.g., League of United Latin Am. Citizens v. Abbott, No. 3:21-cv-00259, 2022 WL 4545757, at *1 n.9 (W.D. Tex. Sept. 28, 2022) [hereinafter Intervenors MTD Op.] (noting that "[c]ourts agree that racial gerrymandering can violate the Fourteenth and Fifteenth Amendments alike").

⁵ E.g., Bethune-Hill v. Va. State Bd. of Elections, 580 U.S. 178, 187 (2017) (citation modified).

⁶ E.g., Alexander v. S.C. State Conf. of the NAACP, 602 U.S. 1, 7 (2024) (citation modified).

⁷ E.g., id. at 38 (citation modified).

dilution claim alleges that the State has "enacted a particular voting scheme as a purposeful device to minimize or cancel out the voting potential of racial or ethnic minorities."8 Intentional vote dilution violates both the Constitution⁹ and Section 2 of the Voting Rights Act ("VRA § 2"). ¹⁰ To prevail on an intentional vote-dilution claim, "the plaintiff must show that the State's districting plan has the purpose and effect of diluting the minority vote."11

Effects-Based Vote Dilution ("Gingles" Claims) 3.

Both of the first two claims require the plaintiff to prove that the Legislature acted with some sort of unlawful intent.¹² To supplement these intent-based causes of action, Congress amended VRA § 2 to enable plaintiffs to challenge electoral maps based on their racially dilutive effects alone. 13

⁸ E.g., id. (citation modified).

⁹ We have no occasion or need to decide whether intentional vote dilution violates the Fourteenth Amendment to the Constitution, the Fifteenth Amendment, or both. See, e.g., Intervenors MTD Op., 2022 WL 4545757, at *1 n.7 (noting that "[t]he Supreme Court has not yet [answered that question] conclusively").

¹⁰ See, e.g., Garza v. County of Los Angeles, 918 F.2d 763, 766 (9th Cir. 1990) ("To the extent that a redistricting plan deliberately minimizes minority political power, it may violate both the Voting Rights Act and the Equal Protection Clause of the fourteenth amendment.").

¹¹ E.g., Alexander, 602 U.S. at 39 (citation modified).

¹² See, e.g., League of United Latin Am. Citizens v. Abbott, 601 F. Supp. 3d 147, 162 (W.D. Tex. 2022) [hereinafter Ist Prelim. Inj. Op.] (remarking that racial-gerrymandering and intentional vote-dilution claims "both require discriminatory intent").

¹³ See, e.g., League of United Latin Am. Citizens v. Abbott, 604 F. Supp. 3d 463, 493 (W.D. Tex. 2022) ("Before [the 1982 amendments to the VRA], intent was integral to any Section 2 claim The 1982 amendments removed that requirement, allowing plaintiffs to show a violation by demonstrating discriminatory effect." (citations omitted)).

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To prevail on an effects-based vote-dilution claim under VRA § 2, a plaintiff must satisfy what are known as the three "Gingles" preconditions. ¹⁴ The first and second Gingles preconditions are both defined with reference to a "minority group": Precondition #1 asks whether a "minority group [is] sufficiently large and geographically compact to constitute a majority in a reasonably configured district" that the Legislature could have drawn, while Precondition #2 asks whether "the minority group . . . is politically cohesive." ¹⁵

Critical to this case, the law governing how to define the requisite "minority group" has shifted over time. From 1988 to 2024, a Fifth Circuit case, Campos v. City of Baytown, permitted Gingles claimants to define the "minority group" as a coalition of two or more races. 16 Campos thus permitted plaintiffs to satisfy the Gingles prerequisites by showing that it would be possible to draw a "coalition district"—a district in which no single race constitutes more than 50% of the voting population, but in which the total minority CVAP exceeds 50% in the aggregate. ¹⁷ To avoid the possibility that a court might invalidate their districting plans under Campos, legislatures sometimes needed to preemptively enact maps that contained one or more coalition districts.

¹⁴ See generally Thornburg v. Gingles, 478 U.S. 30 (1986); see also, e.g., Abbott v. Perez, 585 U.S. 579, 614 (2018) ("To make out a § 2 'effects' claim, a plaintiff must establish the three so-called 'Gingles factors.'").

The plaintiff must also "show, under the totality of the circumstances, that the political process is not equally open to minority voters." Allen v. Milligan, 599 U.S. 1, 18 (2023) (citation modified). That additional requirement isn't pertinent here.

¹⁵ See, e.g., Allen v. Milligan, 599 U.S. 1, 18 (2023).

¹⁶ See Campos v. City of Baytown, 840 F.2d 1240, 1244 (5th Cir. 1988) ("There is nothing in the law that prevents the plaintiffs from identifying the protected aggrieved minority to include both Blacks and Hispanics."), overruled by Petteway v. Galveston County, 111 F.4th 596 (5th Cir. 2024) (en banc).

¹⁷ See, e.g., Bartlett v. Strickland, 556 U.S. 1, 13 (2009) (plurality opinion) (defining a "coalition" district" as one "in which two minority groups form a coalition to elect the candidate of the coalition's choice").

In 2024, however, the en banc Fifth Circuit overruled Campos in Petteway v. Galveston County. 18 Petteway holds that "Section 2 of the Voting Rights Act does not authorize separately protected minority groups to aggregate their populations for purposes of a vote dilution claim."19 To satisfy Gingles's 50% threshold, a plaintiff in this Circuit must now prove that a single racial group could constitute a numerical majority in the plaintiff's proposed district—not a coalition of two or more racial groups.²⁰

Petteway changed the applicable standard only for effects-based vote-dilution claims under VRA § 2 and Gingles. 21 Petteway did not modify the legal standards governing intentional votedilution claims or racial-gerrymandering claims under the Constitution because no such claims were before the en banc court.²²

¹⁸ See Petteway, 111 F.4th at 599 ("We OVERRULE Campos").

¹⁹ *Id.* at 603.

²⁰ See, e.g., id. at 610 ("When, as here, a minority group cannot constitute a majority in a singlemember district without combining with members of another minority group, Section 2 does not provide protection.").

²¹ See, e.g., id. at 599 ("The issue in this en banc case is whether Section 2 of the Voting Rights Act authorizes coalitions of racial and language minorities to claim vote dilution in legislative redistricting."); id. at 601 ("The primary issue here concerns the first Gingles precondition").

²² See id. at 600 ("Following a ten-day bench trial, the district court found that the enacted plan violated Section 2 The district court declined to reach the intentional discrimination and racial gerrymandering claims brought by the Petteway Plaintiffs and NAACP Plaintiffs because the relief they requested with respect to those claims was no broader than the relief they were entitled to under Section 2.").

See also, e.g., id. at 599 n.1 ("[T]he issue of intentional discrimination was not part of the district court's Section 2 ruling. The court withheld ruling on that constitutional issue, which we remand for further consideration.").

Furthermore, *Petteway* holds only that "Section 2 does not require" legislatures "to draw precinct lines for the electoral benefit of' multiracial coalitions. 23 Petteway nowhere implies that legislatures must deliberately avoid drawing coalition districts—or that a legislatively drawn map that happens to contain one or more coalition districts is somehow unlawful.²⁴ This point is critical to this case.

Partisan Gerrymandering 4.

In Rucho v. Common Cause, the Supreme Court ruled that partisan gerrymandering claims aren't cognizable in federal court.²⁵ Subject to legal restrictions that exist in some states, but not in Texas, ²⁶ it is not illegal for a legislature to enact a redistricting plan with the purpose of favoring one political party over another.²⁷ When a plaintiff brings race-based gerrymandering claims, "partisan motivation [acts] as a defense, not a jurisdictional bar." These principles will likewise prove critically important below.²⁹

²³ See id. at 614.

²⁴ See generally id. at 599–614; see also infra Section II.D.

²⁵ See 588 U.S. 684, 718 (2019) ("[P]artisan gerrymandering claims present political questions beyond the reach of the federal courts.").

²⁶ See id. at 719–20 (noting that "numerous other States" have "restrict[ed] partisan considerations in districting through legislation," and that several States "have outright prohibited partisan favoritism in redistricting"); see also id. at 720–21 (remarking that the U.S. Congress could theoretically pass legislation to restrict partisan gerrymandering).

²⁷ See, e.g., Alexander, 602 U.S. at 6 ("[A]s far as the Federal Constitution is concerned, a legislature may pursue partisan ends when it engages in redistricting.").

²⁸ Jackson, 2025 WL 3019284, at *6.

²⁹ See infra Section III.B.2.

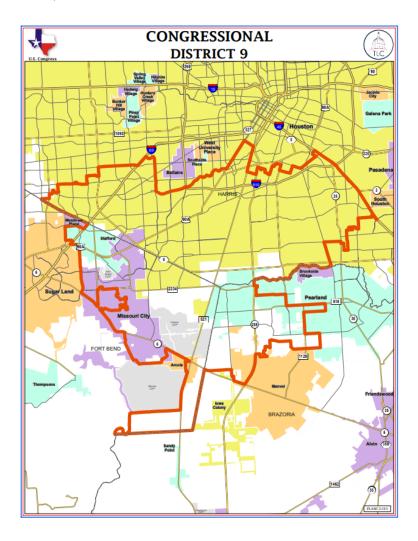
B. **The 2021 Map**

In 2021—four years before the Legislature enacted the 2025 Map challenged here—the State redrew its congressional map to account for population shifts in the 2020 census.³⁰ Four of the 2021 Map's congressional districts ("CDs") are especially relevant here.

³⁰ See, e.g., 1st Prelim. Inj. Op., 601 F. Supp. 3d at 155–56.

See also, e.g., Jackson, 2025 WL 3019284, at *2 ("To comply with the federal 'one person, one vote' principle . . . states and their political subdivisions must generally redistrict upon release of the decennial census to account for any changes or shifts in population." (citation modified)).

The first is **CD 9**, in the Houston area:



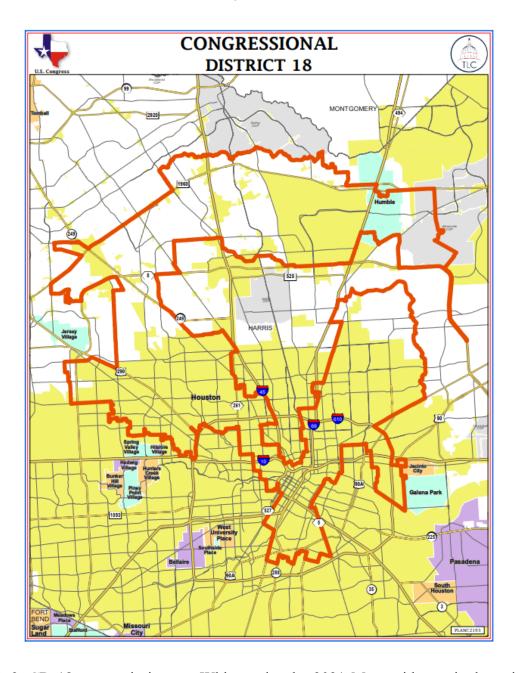
Although CD 9 was majority non-White under the 2021 Map, no single racial group constituted a 50%+ majority by CVAP. The district was 45.0% Black, 25.6% Hispanic, 18.1% White, and 9.3% Asian.31

Here and below, the numbers don't add up to 100% because the Court has omitted the percentages of voters belonging to racial groups that are not numerous in Texas, such as Native Hawaiians and American Indians. See, e.g., id. (noting that the 2021 version of CD 9 was 0.2% American Indian by CVAP). The Court of course does not imply any disrespect for those voters by doing so.

Additionally, all CVAP figures in this opinion are subject to a margin of error. See, e.g., id.

³¹ See Brooks Prelim. Inj. Ex. 258, ECF No. 1326-5, at 1.

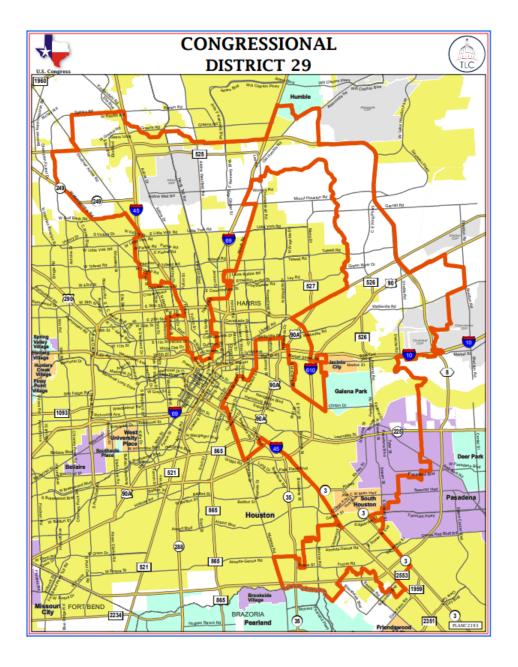
The second relevant district is **CD 18**, also in the Houston area:



Like CD 9, CD 18 was majority non-White under the 2021 Map, with no single racial group constituting a 50%+ majority. The district was 38.8% Black, 30.4% Hispanic, 23.4% White, and 5.3% Asian.³²

³² See id.

The third relevant district is **CD 29**, also in the Houston area:

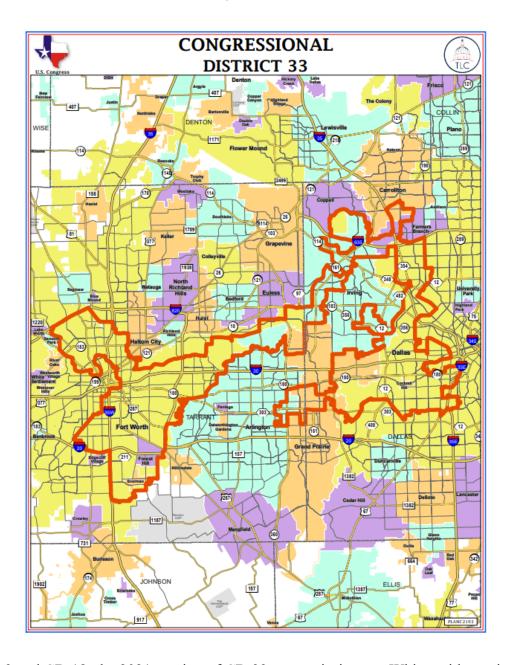


Unlike CD 9 and CD 18, the 2021 version of CD 29 was a single-race majority district—specifically, majority-Hispanic. By CVAP, the 2021 configuration of CD 29 was 63.5% Hispanic, 18.4% Black, 13.7% White, and 3.2% Asian.³³

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³³ *See id.*

The fourth relevant district is **CD 33**, in the Dallas/Fort Worth area:



Like CD 9 and CD 18, the 2021 version of CD 33 was majority non-White, with no single racial group constituting a 50%+ majority by CVAP. The district was 43.6% Hispanic, 25.2% Black, 23.4% White, and 5.7% Asian. 34

³⁴ See id.

When the Legislature enacted the 2021 Map, the Fifth Circuit had not yet decided Pettewav. 35 Because the 2021 versions of CDs 9, 18, and 33 were more than 50% non-White, with no single racial group constituting a numerical majority by CVAP, those districts were coalition districts.

The sponsor of the bill that became the 2021 Map, Senator Joan Huffman, stated repeatedly that the mapmakers did "not look[] at any racial data as [they] drew" the 2021 Map. ³⁶ Instead, they based the district boundaries exclusively on race-neutral considerations like partisanship.³⁷ The

See also, e.g., id. at 17 ("[The 2021 Map] was drawn race blind. Any work we did on it was race blind."); id. at 19 ("Based on [the Supreme Court's] warning against race-based redistricting, I drafted all the proposed maps totally blind to race.").

³⁷ See id. at 17 ("[T]he maps were drawn blind to race. So adjustments were made for population. Sometimes for partisan shading and so forth. But those were the priorities that we used."); id. ("All the race neutral objectives were used . . . in drawing the maps ").

Mr. Adam Kincaid—who was the outside mapmaker who drew all of the 2021 Map except for the four districts highlighted above (CDs 9, 18, 29, and 33), see, e.g., Prelim. Inj. Hr'g Tr. Day 6 (Afternoon), ECF No. 1342, at 58–59—likewise testified that he didn't look at racial data when drawing the map. See, e.g., Prelim. Inj. Hr'g Tr. Day 7 (Morning), ECF No. 1420, at 19 ("I didn't look at the minority numbers in 2021 "); Prelim. Inj. Hr'g Tr. Day 6 (Afternoon), ECF No. 1342, at 87 ("[T]he entire 2021 map was drawn race-blind as far as I drew it.").

The four districts that Mr. Kincaid didn't draw resulted from amendments in the Texas House after the Senate passed Senator Huffman's bill. See, e.g., Prelim. Inj. Hr'g Tr. Day 6 (Afternoon), ECF No. 1342, at 58–59. Here too, the preliminary-injunction record contains no evidence that the Legislature made any of those changes to comply with Campos. The record instead suggests that the Legislature passed those amendments to eliminate incumbent pairing, respect communities of interest, and preserve economic engines within the districts. See, e.g., Prelim. Inj. Hr'g Tr. Day 2 (Morning), ECF No. 1415, at 79–86, 139; see also Chen v. City of Houston, 206 F.3d 502, 515 (5th Cir. 2000) (noting that "concern about communities of interest is a valid traditional districting tool that may serve to deflect an inference that race predominated in districting").

³⁵ See Petteway, 111 F.4th 596 (decided August 1, 2024); see also supra Section II.A.3.

³⁶ See Prelim. Inj. Hr'g Tr. Day 1 (Morning), ECF No. 1414, at 18.

plan that the mapmakers drew on partisan grounds appeared to also satisfy VRA § 2 as Campos interpreted it, so the Legislature passed the map. ³⁸

If we take Senator Huffman at her word, ³⁹ then any coalition districts that ended up in the 2021 Map were a coincidental by-product of the Legislature's decisions to draw district lines based on race-neutral considerations like partisanship. In other words, there's no evidence in the preliminary-injunction record that the Legislature purposefully drew coalition districts that it wouldn't have otherwise drawn based on concerns that a court would otherwise invalidate the 2021 Map under VRA § 2 and Campos. 40 Thus, there's no indication that the 2021 Legislature placed a thumb on the scale in favor of minority coalitions based on a now-discredited interpretation of § 2.

C. Calls to Redistrict for Political Purposes

Beginning in February or March 2025, and continuing in earnest in April and May, Republicans met with contacts in the White House to discuss the prospect of Texas redrawing its congressional map. 41 On June 9, 2025, the New York Times published an article reporting that

³⁸ See, e.g., Prelim. Inj. Hr'g Tr. Day 1 (Morning), ECF No. 1414, at 19 ("Once I drafted the maps, I ensured that they underwent a legal compliance check to ensure that there were no inadvertent violations of the law, including the Voting Rights Act."); id. at 17 ("All the race neutral objectives were used . . . in drawing the maps that were drawn blind to race and then submitted [to outside attorneys for a legal compliance check]. And then our attorneys gave us—we were advised that [the maps] did not violate the Voting Rights Act. They were legally compliant.").

³⁹ Given the current procedural posture, we have no occasion to make binding, definitive findings about the 2021 Legislature's intent when devising and enacting the 2021 congressional map—or, for that matter, the Texas House and Senate maps that the Legislature also enacted in 2021. The latter were the subject of a bench trial we held several months ago, and the Court has yet to rule on them.

See also, e.g., Univ. of Tex. v. Camenisch, 451 U.S. 390, 395 (1981) ("[F]indings of fact and conclusions of law made by a court granting a preliminary injunction are not binding at trial on the merits.").

⁴⁰ See, e.g., Prelim. Inj. Hr'g Tr. Day 9 (Afternoon), ECF No. 1345, at 123 (the State Defendants' closing argument at the preliminary-injunction hearing, agreeing that none "of the districts in the 2021 map were drawn based on race"); Defs.' Post-Hr'g Br., ECF No. 1284, at 30 (insisting that "districts in 2021 ... were drawn race-blind").

⁴¹ See, e.g., Prelim. Inj. Hr'g Tr. Day 6 (Afternoon), ECF No. 1342, at 7–9, 17.

"President Trump's political team [was] encouraging Republican leaders in Texas to examine how House district lines in the state could be redrawn ahead of next year's midterm elections to try to save the party's endangered majority."42 Contemporaneous press coverage indicated that partisan—rather than racial—motivations were behind the White House's redistricting push.⁴³

By all appearances, however, Republican lawmakers didn't have much appetite to redistrict on purely partisan grounds—even at the President's behest. The same New York Times article reported that "[t]he push from Washington ha[d] unnerved some Texas Republicans, who worr[ied] that reworking the boundaries of Texas House seats to turn Democratic districts red by adding reliably Republican voters from neighboring Republican districts could backfire in an election that is already expected to favor Democrats."44 "Rather than flip the Democratic districts," Texas lawmakers feared that "new lines could endanger incumbent Republicans." 45 At an emergency meeting in the Capitol shortly before the New York Times article was published, "congressional Republicans from Texas professed little interest in redrawing their districts." 46

Perhaps due to this apparent lack of interest, when the Governor announced on June 23, 2025, that he was calling a special legislative session to address various issues, redistricting was not among them. ⁴⁷ As far as some influential members of the Legislature were aware, the prospect

⁴² See Defs.' Prelim. Inj. Ex. 1415, ECF No. 1364-5, at 2.

⁴³ See id.

⁴⁴ See id.

⁴⁵ See id.

⁴⁶ See id.

⁴⁷ See Gonzales Prelim. Inj. Ex. 35, ECF No. 1388-19, at 1–2; see also Prelim. Inj. Hr'g Tr. Day 7 (Morning), ECF No. 1420, at 119-20; Prelim. Inj. Hr'g Tr. Day 8 (Afternoon), ECF No. 1344, at 19.

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of redistricting in 2025 was just a rumor. 48 In fact, at the bench trial this Court held on the 2021 Map in May–June 2025, 49 when counsel asked Senator Huffman whether "the Texas Legislature might be considering redrawing the [c]ongressional [d]istricts" as the New York Times had reported just one day earlier, Senator Huffman unequivocally responded: "They are not." 50

The DOJ Letter D.

Instead, what ultimately spurred Texas to redistrict was a letter that DOJ sent to the Governor and the Texas Attorney General on July 7, 2025.⁵¹ The DOJ Letter exhorted Texas to redistrict for a very different reason than the political objectives mentioned in the New York Times article. Because the letter is critical to our analysis, we reproduce it here in full:

Re: Unconstitutional Race-Based Congressional Districts TX-09, TX-18, TX-29 and TX-33

Dear Governor Abbott and Attorney General Paxton,

This letter will serve as formal notice by the Department of Justice to the State of Texas of serious concerns regarding the legality of four of Texas's congressional districts. As stated below, Congressional Districts TX-09, TX-18, TX-29 and TX-33 currently constitute unconstitutional "coalition districts" and we urge the State of Texas to rectify these race-based considerations from these specific districts.

⁴⁸ See, e.g., Prelim. Inj. Hr'g Tr. Day 2 (Morning), ECF No. 1415, at 90–91 ("Q. "Now, it's been stated by others that redistricting was in the conversation prior to [the DOJ Letter discussed later in this opinion] What do you say to that? | [REPRESENTATIVE THOMPSON:] I heard it all during the session, and I made inquiries about it. And I asked [Chairman Hunter] . . . if they were going to be redistricting. . . . [H]e said he didn't know. You know, I think he told me he was unaware of any redistricting. And he kind of brushed it off as though it just might have been just a rumor or something, you know.").

⁴⁹ The Legislature amended the State's congressional map before our panel was able to rule on the 2021 Map's legality.

⁵⁰ Trial Tr. (June 10, 2025), ECF No. 1413, at 54.

⁵¹ See generally Brooks Prelim. Inj. Ex. 253, ECF No. 1326.

In Allen v. Milligan, 599 U.S. 1, 45 (2023), Justice Kavanaugh noted that "even if Congress in 1982 could constitutionally authorize race-based redistricting under § 2 for some period of time, the authority to conduct race-based redistricting cannot extend indefinitely into the future." 599 U.S. 1, [sic] (Kavanaugh, J., concurring). In SFFA v. Harvard, the Supreme Court reiterated that "deviation from the norm of equal treatment" on account of race "must be a temporary matter." 600 U.S. 181, 228 (2023). When race is the predominant factor above other traditional redistricting considerations including compactness, contiguity, and respect for political subdivision lines, the State of Texas must demonstrate a compelling state interest to survive strict scrutiny.

It is well-established that so-called "coalition districts" run afoul the [sic] Voting Rights Act and the Fourteenth Amendment. In Petteway v. Galveston County, No. 23-40582 (5th Cir. 2024), the en banc Fifth Circuit Court of Appeals made it abundantly clear that "coalition districts" are not protected by the Voting Rights Act. This was a reversal of its previous decision in Campos v. City of Baytown, 840 F.2d 1240 (5th Cir. 1988). In Petteway, the Fifth Circuit aligned itself with the Supreme Court's decision in 52

Bartlett v. Strickland, 556 U.S. 1 (2009), and determined that a minority group must be geographically compact enough to constitute more than 50% of the voting population in a single-member district to be protected under the Voting Rights Act. See also Thornburg v. Gingles, 478 U.S. 30 (1986). Opportunity and coalition districts are premised on either the combining of two minority groups or a minority group with white crossover voting to meet the 50% threshold. Neither meets the first Gingle's [sic] precondition. Thus, the racial gerrymandering of congressional districts is unconstitutional and must be rectified immediately by state legislatures.

It is the position of this Department that several Texas Congressional Districts constitute unconstitutional racial gerrymanders, under the logic and reasoning of *Petteway*. Specifically, the record indicates that TX-09 and TX-18 sort Houston voters along strict racial lines to create two coalition seats, while creating TX 29, a majority Hispanic district. Additionally, TX-33 is another racially-based coalition district that resulted from a federal court order years ago, yet the Texas Legislature drew TX-33 on the same lines in the 2021 redistricting. Therefore, TX-33 remains as a coalition district.

Although the State's interest when configuring these districts was to comply with Fifth Circuit precedent prior to the 2024 Petteway decision, that interest no longer exists. Post-Petteway, the Congressional Districts at issue are nothing more than vestiges of an unconstitutional racially based gerrymandering past, which must be abandoned, and must now be corrected by Texas.

⁵² Abrupt line break in original. *See id.* at 2.

Please respond to this letter by July 7, 2025, and advise me of the State's intention to bring its current redistricting plans into compliance with the U.S. Constitution. If the State of Texas fails to rectify the racial gerrymandering of TX-09, TX-18, TX-29 and TX 33, the Attorney General reserves the right to seek legal action against the State, including without limitation under the 14th Amendment.⁵³

It's challenging to unpack the DOJ Letter because it contains so many factual, legal, and typographical errors. Indeed, even attorneys employed by the Texas Attorney General—who professes to be a political ally of the Trump Administration⁵⁴—describe the DOJ Letter as "legally[] unsound,"55 "baseless,"56 "erroneous,"57 "ham-fisted,"58 and "a mess."59

The gist of the letter, though, is that DOJ is urging Texas to change the racial compositions of CDs 9, 18, 29, and 33. From the premise that Petteway forbids a plaintiff from proposing a coalition district for purposes of an effects-based vote-dilution claim under VRA § 2,60 DOJ leaps to the conclusion that whenever a legislature enacts a map that happens to contain one or more coalition districts, that legislature has necessarily and unconstitutionally engaged in "racial

⁵³ *Id.* at 1–2.

⁵⁴ See Defs.' Prelim. Inj. Ex. 1466, ECF No. 1380-25, at 4 ("My office stands ready to support President Trump, Governor Abbott, and the Texas Legislature in their redistricting goals and will defend any new maps passed from challenges by the radical Left.").

⁵⁵ See Defs.' Resp. Gonzales Pls.' Prelim. Inj. Mot., ECF No. 1199, at 12.

⁵⁶ See id. at 20.

⁵⁷ See Defs.' Resp. J. Prelim. Inj. Mot., ECF No. 1200, at 13, 30.

⁵⁸ See id. at 13.

⁵⁹ See Prelim. Inj. Hr'g Tr. Day 9 (Afternoon), ECF No. 1345, at 123.

⁶⁰ See supra Section II.A.3.

gerrymandering."61 The remedy for such racial gerrymandering, according to DOJ, is to change the offending districts' racial makeup so that they no longer qualify as coalition districts.⁶²

That reading of *Petteway* is clearly wrong. Nowhere in *Petteway* does the Fifth Circuit hold that merely having a coalition district in an electoral map is *per se* unconstitutional. ⁶³ The *Petteway* court had no occasion to opine about the constitutionality of coalition districts. Instead, the en banc court remanded the case to the district court to consider the plaintiffs' constitutional claims in the first instance.⁶⁴

Nor could *Petteway* stand for such a proposition. That would contradict the Supreme Court's admonition that "the Constitution does not place an affirmative obligation upon the legislature to avoid creating districts that turn out to be heavily . . . minority."65 Rather, the Constitution "simply imposes an obligation not to create such districts for predominantly racial, as opposed to political or traditional, districting motivations."66 Thus, even though federal courts in this Circuit can no longer force a legislative body to create a coalition district under VRA § 2,

⁶¹ See Brooks Prelim. Inj. Ex. 253, ECF No. 1326, at 1 (describing "coalition districts" as "unconstitutional"); id. at 2 (claiming that "coalition districts' run afoul the [sic] Voting Rights Act and the Fourteenth Amendment"); id. ("It is the position of this Department that [CDs 9, 18, 29, and 33] constitute unconstitutional racial gerrymanders, under the logic and reasoning of *Petteway*.").

⁶² See id. at 1 ("Congressional Districts TX-09, TX-18, TX-29 and TX-33 currently constitute unconstitutional 'coalition districts' and we urge the State of Texas to rectify these race-based considerations from these specific districts."); id. at 2 ("If the State of Texas fails to rectify the racial gerrymandering of TX-09, TX-18, TX-29 and TX 33, the Attorney General reserves the right to seek legal action against the State ").

⁶³ See generally Petteway, 111 F.4th at 599–614.

⁶⁴ See supra note 22.

⁶⁵ Easley v. Cromartie, 532 U.S. 234, 249 (2001) [hereinafter Cromartie II] (emphasis omitted).

⁶⁶ *Id*.

that doesn't prohibit such a body from voluntarily creating a coalition district for political or other race-neutral reasons.⁶⁷

The Supreme Court's plurality opinion in *Bartlett v. Strickland*⁶⁸ further reinforces this point. Even if VRA § 2 doesn't require a legislature to create a particular type of district, VRA § 2 and the Constitution don't prohibit the legislature from drawing that type of district. Nor is it lawful for a legislature to purposefully target such districts for destruction. 69 *Bartlett* involved a slightly different type of district 70—a "crossover district," in which the minority population "make[s] up less than a majority of the voting-age population," but "is large enough to elect the candidate of its choice with help from voters who are members of the majority and who cross over

Under the "Marks rule," "[w]hen a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds." Marks v. United States, 430 U.S. 188, 193 (1977). The plurality opinion in Bartlett decides the case on much narrower grounds than the concurrence. Contrast 556 U.S. at 6–26 (plurality opinion) (concluding that a VRA § 2 plaintiff cannot satisfy the Gingles factors by proposing a crossover district), with id. at 26 (Thomas, J., concurring) (concluding that VRA § 2 "does not authorize any vote dilution claim, regardless of the size of the minority population in a given district"). The plurality opinion is therefore the precedential one under Marks.

⁶⁷ Cf. Voinovich v. Quilter, 507 U.S. 146, 156 (1993) ("[T]he federal courts may not order the creation of majority-minority districts unless necessary to remedy a violation of federal law. But that does not mean that the State's powers are similarly limited. Quite the opposite is true" (citation omitted)); id. at 155 ("Section 2 contains no per se prohibitions against particular types of districts Instead, § 2 focuses exclusively on the consequences of apportionment. Only if the apportionment scheme has the effect of denying a protected class the equal opportunity to elect its candidate of choice does it violate § 2; where such an effect has not been demonstrated, § 2 simply does not speak to the matter.").

⁶⁸ 556 U.S. 1.

⁶⁹ See, e.g., 1st Prelim. Inj. Op., 601 F. Supp. 3d at 163 (our prior opinion interpreting Bartlett to mean that "it must be possible for a state to violate the Constitution by dismantling a district that does not meet all three *Gingles* requirements").

Given that *Bartlett* undermines DOJ's argument, it's puzzling that DOJ cited *Bartlett* in its letter. *See* Brooks Prelim. Inj. Ex. 253, ECF No. 1326, at 2.

⁷⁰ See 556 U.S. at 13–14 (noting that *Bartlett* did "not address th[e] type of coalition district" that is at issue here).

to support the minority's preferred candidate."71 Much like Pettewav would subsequently hold with respect to coalition districts, Bartlett held that a plaintiff may not satisfy the Gingles preconditions by proposing a crossover district.⁷² Thus, legislatures need not create crossover districts to avoid violating VRA § 2.73

Critically, however, the *Bartlett* Court emphasized that its "holding that § 2 does not require crossover districts" did not address "the permissibility of such districts as a matter of legislative choice or discretion."74 The Supreme Court cautioned that Bartlett "should not be interpreted to entrench majority-minority districts by statutory command, for that, too, could pose constitutional concerns."⁷⁵ The Court stressed that "States that wish to draw crossover districts are free to do so where no other prohibition [against such districts] exists."⁷⁶ But the *Bartlett* Court also admonished that if a State "intentionally drew district lines in order to destroy otherwise effective crossover districts, that would raise serious questions under both the Fourteenth and Fifteenth Amendments."77

⁷¹ *See id.* at 13.

⁷² See id. at 23 ("\s 2 does not require crossover districts").

⁷³ See id.

⁷⁴ See id.

⁷⁵ *Id.* at 23–24.

⁷⁶ *Id.* at 24.

⁷⁷ *See id.* at 24.

Although the State Defendants dismiss this language as mere dicta, see Defs.' Post-Hr'g Br., ECF No. 1284, at 22–23, Fifth Circuit precedent requires us to "take [dicta] from the Supreme Court seriously." See, e.g., Croft v. Perry, 624 F.3d 157, 164 (5th Cir. 2010).

Fifteen years after Bartlett, Petteway determined that all the same legal considerations that apply to crossover districts apply equally to coalition districts. ⁷⁸ To underscore the point, the Fifth Circuit took the *Bartlett* opinion, replaced each instance of the word "crossover" with "coalition," and pronounced that the opinion's logic remained sound.⁷⁹

Performing *Petteway*'s word-replacement exercise with the above-quoted passages from Bartlett yields the following propositions: Petteway's "holding that § 2 does not require [coalition] districts" has no bearing on "the permissibility of such districts as a matter of legislative choice or discretion."80 "States that wish to draw [coalition] districts are free to do so where no other prohibition exists."81 "And if there were a showing that a State intentionally drew district lines in order to destroy otherwise effective [coalition] districts, that would raise serious questions under both the Fourteenth and Fifteenth Amendments."82 Those propositions directly contradict the DOJ Letter's assertion that coalition districts are per se "unconstitutional"—as well as its argument that Texas can and must "rectify" any coalition districts that exist in the 2021 Map. 83

⁷⁸ See Petteway, 111 F.4th at 610 ("Each of the[] reasons articulated in Bartlett for rejecting crossover claims applies with equal force to coalition claims.").

⁷⁹ See id. ("One need only transpose Bartlett's language to indicate the problems [with coalition districts]: 'What percentage of [black] voters supported [Hispanic]-preferred candidates in the past? How reliable would the [coalition] votes be in future elections? What types of candidates have [black] and [Hispanic] voters supported together in the past and will those trends continue? Were past [coalition] votes based on incumbency and did that depend on race? What are the historical turnout rates among [black] and [Hispanic] minority voters and will they stay the same?" (quoting *Bartlett*, 556 U.S. at 17)).

⁸⁰ Cf. Bartlett, 556 U.S. at 23.

⁸¹ Cf. id. at 24.

⁸² Cf. id.

⁸³ Contra Brooks Prelim. Inj. Ex. 253, ECF No. 1326, at 1–2.

Besides those legal errors, the DOJ Letter also contains factual inaccuracies. Most egregiously, the letter lumps CD 29 in with CDs 9, 18, and 33 as examples of "coalition districts" that Texas must "rectify." As DOJ realizes halfway through the letter, however, 85 CD 29 was not a coalition district under the 2021 Map; it was a majority-Hispanic district. 86 Nothing in *Petteway* has any bearing on single-race-majority districts like CD 29,87 so *Petteway* doesn't provide any legal basis to attack CD 29's racial composition.

All that said, DOJ might have had a decent argument if there were evidence that the Legislature intentionally drew the 2021 Map to include coalition districts that the Legislature wouldn't have otherwise drawn. As noted above, however, the preliminary-injunction record reveals no such thing. Again, nothing in the current record indicates that the Legislature drew the 2021 Map with an eye toward creating coalition districts. We thus presume that any coalition districts that ended up in the 2021 Map were coincidental by-products of the Legislature applying race-neutral redistricting criteria like partisanship. There's consequently no indication that the Legislature would have drawn its maps differently if *Petteway* had been the governing law in 2021 instead of *Campos*.

⁸⁴ See Brooks Prelim. Inj. Ex. 253, ECF No. 1326, at 1 ("Congressional Districts TX-09, TX-18, TX-29 and TX-33 currently constitute unconstitutional 'coalition districts' and we urge the State of Texas to rectify these race-based considerations from these specific districts.").

⁸⁵ See id. at 2 (describing CD 29 as "a majority Hispanic district" on the very next page).

⁸⁶ See Brooks Prelim. Inj. Ex. 258, ECF No. 1326-5, at 1 (indicating that CD 29's Hispanic CVAP was 63.5% under the 2021 Map); see also supra Section II.B.

⁸⁷ See generally Petteway, 111 F.4th at 599–614.

⁸⁸ See supra Section II.B.

Legally and factually, DOJ had no valid argument that the Legislature should restore the House map to some preexisting racial equilibrium since *Petteway* supplanted *Campos*. Far from seeking to "rectify . . . racial gerrymandering," ⁸⁹ the DOJ Letter urges Texas to inject racial considerations into what Texas insists was a race-blind process.

But what about DOJ's assertion that "TX-33 is [a] racially-based coalition district that resulted from a federal court order years ago"? If a court forced Texas to draw CD 33 as a coalition district based on *Campos*'s discredited interpretation of VRA § 2, can't the Legislature redraw that district now that VRA § 2 no longer requires coalition districts?

The short answer is that this is another one of the DOJ Letter's many inaccuracies. It's true that CD 33 traces its lineage to a court-ordered map that a different three-judge panel of this Court imposed in 2012 when the State couldn't get its own map precleared under VRA § 5.91 It's also true that the three-judge panel based CD 33's boundaries partly on racial considerations.92 The

See also, e.g., id. at 390–91 (explaining the VRA § 5 preclearance process).

But see Perez v. Texas, 970 F. Supp. 2d 593, 598 (W.D. Tex. 2013) (explaining that, in *Shelby County v. Holder*, 570 U.S. 529 (2013), the Supreme Court "str[uck] down the coverage formula in § 4(b) of the Voting Rights Act which, in turn, means that Texas is no longer automatically subject to § 5 preclearance requirements").

Texas legislatively adopted the court-drawn map as its own in 2013. *E.g.*, *Abbott v. Perez*, 585 U.S. at 590 ("The 2013 Legislature . . . enacted the Texas court's interim plans The federal congressional plan was not altered at all").

⁸⁹ Contra Brooks Prelim. Inj. Ex. 253, ECF No. 1326, at 2.

⁹⁰ See id.

⁹¹ See, e.g., Perry v. Perez, 565 U.S. 388, 391–92 (2012) ("As Texas' 2012 primaries approached, it became increasingly likely that the State's newly enacted plans would not receive preclearance in time for the 2012 elections. And the State's old district lines could not be used, because population growth had rendered them inconsistent with the Constitution's one-person, one-vote requirement. It thus fell to the District Court in Texas to devise interim plans for the State's 2012 primaries and elections.").

⁹² See Perez v. Texas, 891 F. Supp. 2d 808, 830 (W.D. Tex. 2012) [hereinafter Perez v. Texas 2012] (acknowledging that "race was necessarily considered in drawing CD 33 to some degree").

challengers in the VRA § 5 preclearance proceedings had raised potentially viable claims that the Legislature had intentionally discriminated when drawing CD 33, and the panel configured CD 33 to address that concern. 93

But it's not true that the 2012 panel drew CD 33 as a "racially[] based coalition district" based on a now-overruled interpretation of VRA § 2.94 Because the panel was "unable to conclude" that the plaintiffs were "likely to succeed on their § 2 claims premised upon coalition districts," the panel said it would have been "inappropriate to intentionally create a coalition district on the basis of race or otherwise intentionally unite populations based on race."95 Thus, in its order imposing the court-drawn map, the panel emphasized that its configuration of CD 33 was "not a minority coalition district and was not drawn with the intention that it be a minority coalition district." ⁹⁶ In a subsequent order issued five years later, the panel again reiterated that "CD 33 was not intentionally drawn as a minority coalition district under § 2. Rather, it was created to remedy the alleged intentional discrimination (cracking) claims" raised in the VRA § 5 preclearance proceedings.⁹⁷

See also Perez v. Abbott, 274 F. Supp. 3d 624, 652 (W.D. Tex. 2017) ("To address the § 5 discrimination claims, [the court-drawn map] included new CD 33, spanning Dallas and Tarrant Counties. [The court-drawn map] withdrew many of the encroachments into minority communities from the Anglo districts surrounding DFW, and the population left behind in DFW from the removed encroachments was placed in new CD 33, while accommodating congressional incumbents and taking into account population growth."), rev'd and remanded, Abbott v. Perez, 585 U.S. 579 (2018).

⁹³ See id. ("The contours of CD 33 are a result of addressing the 'not insubstantial' § 5 claims of cracking and packing and the application of neutral redistricting criteria. . . . [T]he use of race was appropriate to remedy the alleged race-based discrimination that occurred The Court finds that [the court-drawn map] adequately resolves the 'not insubstantial' § 5 claims ").

⁹⁴ Contra Brooks Prelim. Inj. Ex. 253, ECF No. 1326, at 2.

⁹⁵ See Perez v. Texas 2012, 891 F. Supp. 2d at 830.

⁹⁶ See id.

⁹⁷ See Perez v. Abbott, 274 F. Supp. 3d at 653.

While it might be accurate to say that CD 33 ultimately became a coalition district based on its electoral performance and racial composition, PDOJ's implication that the Legislature purposefully drew CD 33 as a "racially-based coalition district" based on pre-*Petteway* law is demonstrably false. Petago Because the prior three-judge panel didn't force Texas to draw CD 33 as a coalition district under VRA § 2, nothing about *Petteway*'s subsequent reinterpretation of § 2 casts any doubt on CD 33's legality.

Even if the three-judge panel had drawn CD 33 as a coalition district based on VRA § 2 and *Campos*, CD 33's lines changed when the Legislature redistricted in 2021, as the blue arrows on the following maps reflect:

⁹⁸ See id. ("[CD 33] is majority-minority CVAP when Black and Hispanic CVAP are combined, and it has elected an African-American, Mark Veasey. It has thus performed as a minority coalition district under most [p]laintiffs' view that such districts require minority cohesion only in the general elections.").

⁹⁹ Contra Brooks Prelim. Inj. Ex. 253, ECF No. 1326, at 2.

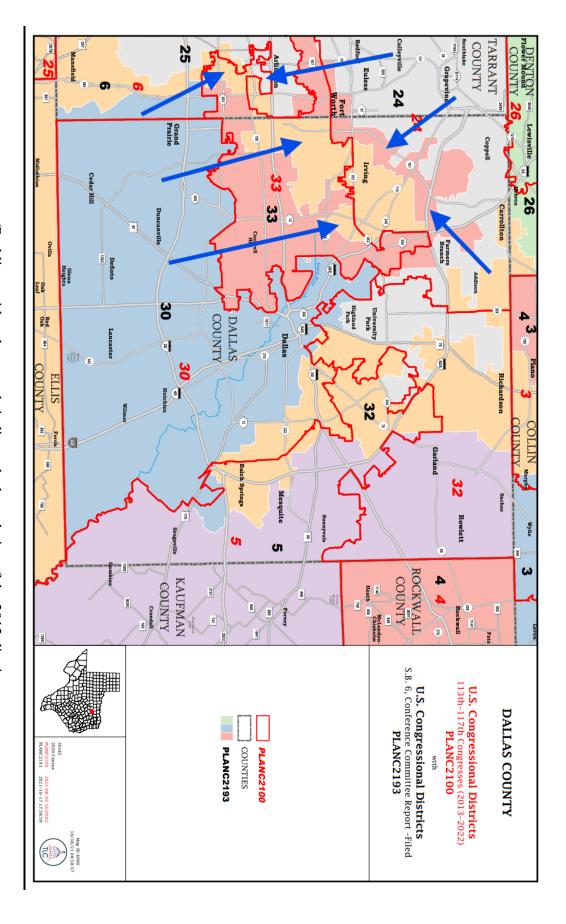
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JOHNSON COLINTY

COUNTY

ELLIS

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(Red lines with red numerals indicate the boundaries of the 2012 districts; white lines with black numerals reflect the boundaries of the 2021 districts.)

To the extent the DOJ Letter accuses the Legislature of "dr[awing] TX-33 on the same lines" as the 2012 court-drawn map "in the 2021 redistricting," that is also factually inaccurate.

The DOJ Letter is equally notable for what it doesn't include: any mention of partisanship. 101 Had the Trump Administration sent Texas a letter urging the State to redraw its congressional map to improve the performance of Republican candidates, the Plaintiff Groups would then face a much greater burden to show that race—rather than partisanship—was the driving force behind the 2025 Map. But nothing in the DOJ Letter is couched in terms of partisan politics. 102 The letter instead commands Texas to change four districts for one reason and one reason alone: the racial demographics of the voters who live there. 103

E. The Governor Adds Redistricting to the Legislative Agenda Immediately After **Receiving the DOJ Letter**

Though the Trump Administration's plea to redistrict for political reasons failed to gain any immediate traction, 104 the Administration's demand that Texas redistrict for racial reasons achieved quick results. 105 On July 9, 2025—just two days after the DOJ Letter 106—Governor Abbott issued a proclamation adding the following item to the agenda for the upcoming special legislative session: "Legislation that provides a revised congressional redistricting plan in light of

¹⁰⁰ See id.

¹⁰¹ See id. at 1–2.

¹⁰² See id.

¹⁰³ See id.

¹⁰⁴ See supra Section II.C.

¹⁰⁵ See Brooks Prelim. Inj. Ex. 322-T, ECF No. 1327-22, at 3 (Harmeet Dhillon's statement that the DOJ Letter "is what triggered the Texas legislature and the Texas governor to call the legislature into session to put new maps together").

¹⁰⁶ See Brooks Prelim. Inj. Ex. 253, ECF No. 1326, at 1.

constitutional concerns raised by the U.S. Department of Justice." The Governor shared—or, at minimum, wanted the Legislature to take legislative action to address—DOJ's "concerns" that CDs 9, 18, 29, and 33 were "unconstitutional" because of their racial makeup. ¹⁰⁸

Like the DOJ Letter, the Governor's proclamation contains no request that the Legislature revise the congressional map for partisan purposes. 109 Here too, if the Governor had explicitly directed the Legislature to amend the congressional map to improve Republican performance, the Plaintiff Groups would then face a higher burden to prove that the motivation for the 2025 redistricting was racial rather than political. 110 Instead, by incorporating DOJ's race-based redistricting request by reference, the Governor was asking the Legislature to give DOJ the racial rebalancing it wanted—and for the reasons that DOJ cited.

Contemporaneous media interviews reinforce that the Governor was asking the Legislature to redistrict for racial rather than partisan reasons. When asked during an August 11, 2025, press interview whether his decision to add redistricting to the legislative agenda was motivated by President Trump's demand for five additional Republican seats, the Governor demurred and insisted that the real impetus for redistricting was *Petteway*:

MR. TAPPER: The Texas Tribune reports that in June you told Texas Republicans delegation [sic] of Congress that you were reluctant to add redistricting to the legislative agenda in Austin. The Tribune says that President Trump then called you to discuss redistricting, and you agreed to put it on the special session agenda.

Would you have gone forward with redistricting if President Trump had not personally got involved and asked you to do this?

¹⁰⁷ Brooks Prelim. Inj. Ex. 254, ECF No. 1326-1, at 3 (emphasis added).

¹⁰⁸ See Brooks Prelim. Inj. Ex. 253, ECF No. 1326, at 1–2.

¹⁰⁹ See Brooks Prelim. Inj. Ex. 254, ECF No. 1326-1, at 3.

¹¹⁰ See supra Section II.A.4 (discussing Rucho).

GOVERNOR ABBOTT: To be clear, Jake, this is something that I have been interested in for a long time.

First of all, I have been involved in redistricting litigation for more than 20 years now.

Second, one thing that spurred all this is a federal court decision that came out last year, by the way, a case that was filed by Democrats. The federal court decision that came out last year said that Texas is no longer required to have coalition districts. And as a result, we had drawn maps with coalition districts in it. Now we wanted to remove those coalition districts and draw them in ways that, in fact, turned out to provide more seats for Hispanics. For example, four of the districts are predominantly Hispanic. It just coincides it's going to be Hispanic Republicans elected to those seats.

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 who believe in open border policies, who believe in going against our law enforcement, who believe that men should play in women's sports. 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.

MR. TAPPER: But that's not really—I mean, you are doing this to give Trump and Republicans in the House of Representatives five additional seats, right? I mean, that's the motivation, is to stave off any midterm election losses.

GOVERNOR ABBOTT: Again, to be clear, Jake, the reason why we are doing this is because of that court decision, Texas is now authorized under law that changed that was different than in 2021 when we last did redistricting. Under new law, as well as new facts that served us in the aftermath of the Trump election, showing that many regions of the state that historically had voted Democrat that were highly Hispanic now chose to vote Republican and vote for Trump as well as other Republican candidates. Districts where the electorate voted heavily for Trump, they were trapped in a Democrat congressional district that have every right to vote for a member of congress who is a Republican. We will give them that ability. 111

¹¹¹ Prelim. Inj. Hr'g Tr. Day 1 (Morning), ECF No. 1414, at 12–14; *see also* Brooks Prelim. Inj. Ex. 335-T, ECF No. 1328-1, at 4–5.

When given an opportunity to publicly proclaim that his motivation for adding redistricting to the legislative agenda was solely to improve Republicans' electoral prospects at President Trump's request, the Governor denied any such motivation. 112 Instead, the Governor expressly stated that his predominant motivation was racial: he "wanted to remove . . . coalition districts" and "provide more seats for Hispanics." 113 The fact that the racially reconfigured districts would happen to favor Republicans was, to paraphrase the Governor's own words, just a fortuitous coincidence. 114

In other press statements around the same time, the Governor similarly stated that his motivation for directing the Legislature to redistrict was to eliminate coalition districts 115—not for political reasons like appeasing President Trump. 116 And the Governor consistently used language suggesting that he viewed the map's improved Republican performance not as an end in itself, but

¹¹² Compare Prelim. Inj. Hr'g Tr. Day 1 (Morning), ECF No. 1414, at 13 ("[Y]ou are doing this to give Trump and Republicans in the House of Representatives five additional seats, right?"), with id. at 14 ("[T]he reason why we are doing this is because of that court decision.").

¹¹³ See id.

¹¹⁴ See id. ("It just coincides it's going to be Hispanic Republicans elected to those seats." (emphases added)).

¹¹⁵ See Brooks Prelim. Inj. Ex. 325-T, ECF No. 1327-25, at 3-4 (July 22, 2025, interview in which the Governor stated that "we want to make sure that we have maps that don't impose coalition districts"); see also Prelim. Inj. Hr'g Tr. Day 1 (Morning), ECF No. 1414, at 32.

See also, e.g., Prelim. Inj. Hr'g Tr. Day 1 (Morning), ECF No. 1414, at 84 ("[The Fifth Circuit] decided that Texas is no longer required to have what are called coalition districts and, as a result, we [']re able to take the people who were in those coalition districts and make sure they are going to be in districts that really represent the voting preference of those people who live here in Texas."); see also Brooks Prelim. Inj. Ex. 332-T, ECF No. 1411-3, at 2.

¹¹⁶ See, e.g., Brooks Prelim. Inj. Ex. 325-T, ECF No. 1327-25, at 4–5 ("STEVEN DIAL: . . . There's been criticism of you saying you're letting President Trump call the shots. | GOV. GREG ABBOTT: Listen, people are always going to lodge criticisms. I'm not worried about stuff like that. What I'm worried about is making sure that we are going to have congressional districts . . . that fit the structure of [Petteway] '').

as a coincidental by-product of the plan's goal of increasing the number of majority-Hispanic districts. 117

F. The Texas Attorney General's Response to the DOJ Letter

At the same time the Governor was announcing the 2025 Map's racial objectives to the press, the Attorney General of Texas was saying the opposite. Just two days after the Governor added redistricting to the legislative agenda based on DOJ's "constitutional concerns," the Attorney General sent DOJ a response to its letter. That response said essentially the same thing we say above that the change in law effected by *Petteway* cast no doubt on the legality of the 2021 Map, since there's no indication that the 2021 Legislature drew any coalition districts for legal-compliance reasons that it wouldn't have drawn anyway for race-neutral reasons like partisanship. Although the Attorney General doesn't say so explicitly, the purpose behind his letter appears to have been to refocus the redistricting dialogue toward permissible considerations

¹¹⁷ See Prelim. Inj. Hr'g Tr. Day 1 (Morning), ECF No. 1414, at 84 ("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." (emphasis added)); *id.* at 77 ("Four of the five districts we are drawing, they would be *Hispanic* districts. They *happen to be* Hispanic *Republican* districts." (emphases added)).

¹¹⁸ See supra Section II.E.

¹¹⁹ See Defs.' Prelim. Inj. Ex. 1466, ECF No. 1380-25, at 2.

¹²⁰ See supra Section II.D.

¹²¹ See Defs.' Prelim. Inj. Ex. 1466, ECF No. 1380-25, at 2–3 ("I am . . . keenly aware of the Fifth Circuit's decision in *Petteway* We . . . agree that, had the Texas legislature felt compelled under pre-*Petteway* strictures to create coalition districts, the basis for such decisions—as you say—'no longer exists.' However, my office has just completed a four-week trial against various plaintiff groups concerning the constitutionality of Texas's congressional districts The evidence at that trial was clear and unequivocal: *the Texas legislature did not pass race-based electoral districts* Texas State Senator Joan Huffman, who chaired the Senate Redistricting Committee, testified under oath that she drew Texas districts blind to race, and sought to maximize Republican political advantage balanced against traditional redistricting criteria. . . . The Texas Legislature . . . has drawn its current maps in conformance with traditional, non-racial criteria to ensure Texas continues to adopt policies that will truly Make America Great Again. As permitted by federal law, the congressional maps in 2021 were drawn on a partisan basis." (citations omitted)).

like partisanship, politics, and traditional districting criteria—and away from legally fraught considerations like race. 122

If that was the letter's purpose, it didn't work. The Governor continued to declare publicly that *Petteway* was the impetus for the 2025 redistricting, and that Texas's reason for redistricting was to change the map's racial characteristics by eliminating coalition districts and increasing the number of majority-Hispanic districts. ¹²³ And the Legislature proceeded to do just that.

G. The Legislature Enacts the 2025 Map

Ultimately, the 2025 Map did all but one of the things that DOJ and the Governor expressly said they wanted the Legislature to do.

1. CD 9

First, the Legislature eliminated CD 9's status as a coalition district by making it a district in which a single racial group (Hispanics) are just barely a majority by CVAP (50.3%). ¹²⁴ By doing so, the Legislature simultaneously satisfied not just DOJ's command that Texas convert CD 9 from a coalition district to a single-race-majority district, but also the Governor's goal of increasing the number of majority-Hispanic districts in the State. The Legislature reached that outcome by

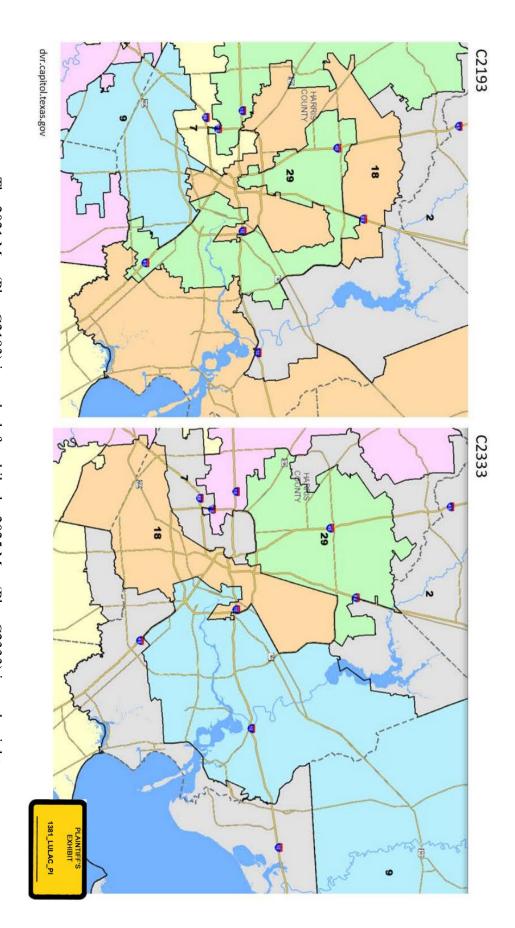
¹²² See id. at 3–4 ("The Texas Legislature has led the Nation in rejecting race-based decision-making in its redistricting process—it has drawn its current maps in conformance with traditional, non-racial redistricting criteria to ensure Texas continues to adopt policies that will truly Make America Great Again. . . . For these reasons, I welcome continued dialogue about how Texas's electoral districts can best serve Texas voters without regard to outdated and unconstitutional racial considerations. My office stands ready to support President Trump, Governor Abbott, and the Texas Legislature in their redistricting goals").

¹²³ See supra Section II.E.

¹²⁴ See Brooks Prelim. Inj. Ex. 265, ECF No. 1326-12, at 1.

reconfiguring CD 9's boundaries so radically that only 2.9% of the people who were in CD 9 under the 2021 Map remain in the district under the 2025 Map: 125

¹²⁵ See Brooks Prelim. Inj. Ex. 267, ECF No. 1326-14, at 2 (indicating that 12.6% of new CD 9 consists of voters from old CD 2, 2.9% consists of voters from old CD 9, 43.7% consists of voters from old CD 29, and 40.7% consists of voters from old CD 36).



The 2021 Map (Plan C2193) is on the left, while the 2025 Map (Plan C2333) is on the right.

2. **CD 18**

The Legislature likewise eliminated CD 18's status as a coalition district—another one of the "asks" in DOJ's Letter ¹²⁶—by making it just barely a majority Black district (50.5%). ¹²⁷ The Legislature did so primarily by importing large numbers of predominantly Black voters from CD **9** 128

3. CD 29

Perhaps perplexed by DOJ's request to "rectify" CD 29's status as a "coalition" district when it wasn't actually a coalition district, ¹²⁹ the Legislature eliminated CD 29's status as a majority-Hispanic district. Under the 2025 Map, CD 29's Hispanic CVAP drops from 63.5% to 43.3. Here too, the Legislature achieved that result by radically reconfiguring the district's boundaries¹³¹ to remove various Latino communities.¹³²

See also Prelim. Inj. Hr'g Tr. Day 2 (Afternoon), ECF No. 1338, at 36–37.

¹²⁶ See Brooks Prelim. Inj. Ex. 253, ECF No. 1326, at 1–2.

¹²⁷ See Brooks Prelim. Inj. Ex. 265, ECF No. 1326-12, at 1.

¹²⁸ See Brooks Prelim. Inj. Ex. 267, ECF No. 1326-14, at 3 (indicating that 64.5% of new CD 18's population came from old CD 9, and that a plurality of the population that the Legislature moved from old CD 9 (46.1%) was Black).

¹²⁹ See Brooks Prelim. Inj. Ex. 253, ECF No. 1326, at 1–2.

¹³⁰ Compare Brooks Prelim. Inj. Ex. 258, ECF No. 1326-5, at 1 (CD 29's CVAP statistics under the 2021 Map), with Brooks Prelim. Inj. Ex. 265, ECF No. 1326-12, at 1 (CD 29's CVAP statistics under the 2025 Map).

¹³¹ See Brooks Prelim. Inj. Ex. 267, ECF No. 1326-14, at 5 (indicating that only 37.2% of the voters who were in CD 29 under the 2021 Map remain in CD 29 under the 2025 Map).

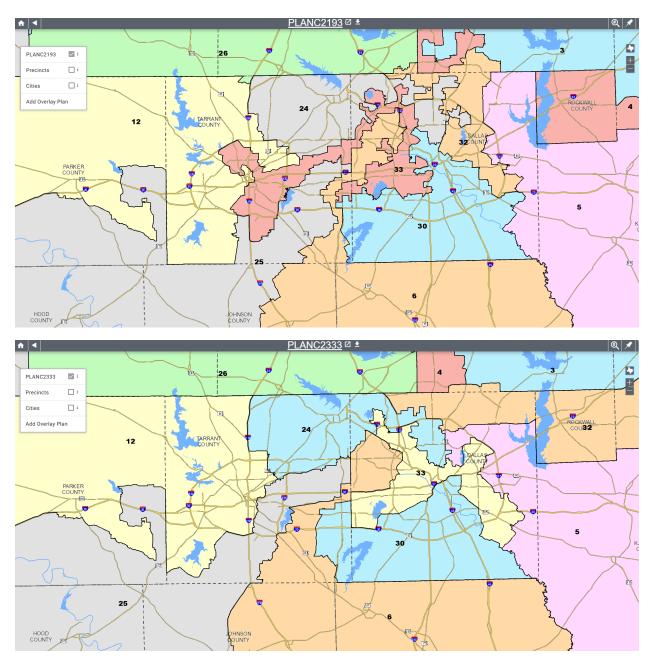
¹³² See Prelim. Inj. Hr'g Tr. Day 2 (Afternoon), ECF No. 1338, at 44–45 (stating that "Latino neighborhoods like Denver Harbor, Magnolia Park, Second Ward, Manchester, and Northside"—"historic centers of Latino political strength"—were "carved out" of CD 29).

4. CD 33

There is, admittedly, one thing that DOJ requested that the Legislature didn't do: eliminate CD 33's status as a coalition district. Under both the 2021 Map and the 2025 Map, CD 33 remains majority non-White. Nevertheless, the district—like CDs 9, 18, and 29—is completely reconfigured and unrecognizable when compared to the old CD 33:

¹³³ See Brooks Prelim. Inj. Ex. 253, ECF No. 1326, at 1–2; see also supra Section II.B.

¹³⁴ Compare Brooks Prelim. Inj. Ex. 258, ECF No. 1326-5, at 1 (indicating that, under the 2021 Map, CD 33 was 43.6% Hispanic, 25.2% Black, 23.4% White, and 5.7% Asian), with Brooks Prelim. Inj. Ex. 265, ECF No. 1326-12, at 1 (indicating that, under 2025 Map, CD 33 is 38.2% Hispanic, 19.6% Black, 35.5% White, and 4.4% Asian).



In these and the following figures, the 2021 Map (Plan C2193) is on top, while the 2025 Map (Plan C2333) is on the bottom.

5. Other Districts Converted to Single-Race-Majority Districts (CDs 22, 27, 30, 32, and 35)

In keeping with the spirit of DOJ's request, the Legislature also eliminated five coalition districts that DOJ didn't mention. 135

First was CD 22. Under the 2021 Map, CD 22 was just shy of being a majority-White district (49.2%). 136 The remaining 50.8% was made up of voters of various other races, making the district majority-non-White. 137 Thus, at least with respect to its racial composition (though maybe not with respect to its electoral performance), ¹³⁸ the 2021 version of CD 22 could have been described as a coalition district. The 2025 Map increased CD 22's White CVAP to 50.8%, thereby making it just barely a single-race-majority district: ¹³⁹

See also, e.g., Prelim. Inj. Hr'g Tr. Day 3 (Morning), ECF No. 1416, at 40 ("Under [the 2021 Map]. CD 22 was a plurality White district. That is, the majority of the population were [sic] of no particular racial group; but the largest group were [sic] White.").

¹³⁷ See Brooks Prelim. Inj. Ex. 258, ECF No. 1326-5, at 1 (indicating that the 2021 version of CD 22 was 24.6% Hispanic, 12.7% Black, and 11.3% Asian).

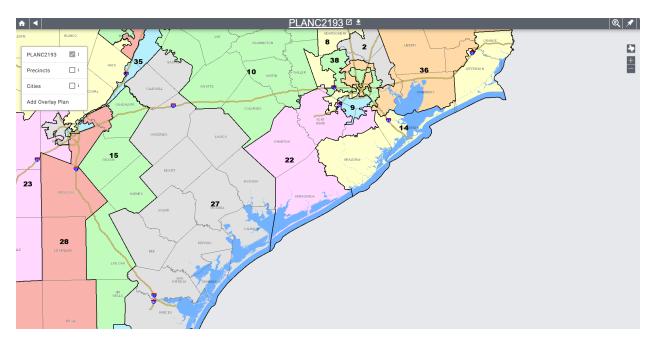
See also, e.g., Prelim. Inj. Hr'g Tr. Day 3 (Morning), ECF No. 1416, at 40 ("[T]he remainder would be non-Whites. So it was a majority non-White district.").

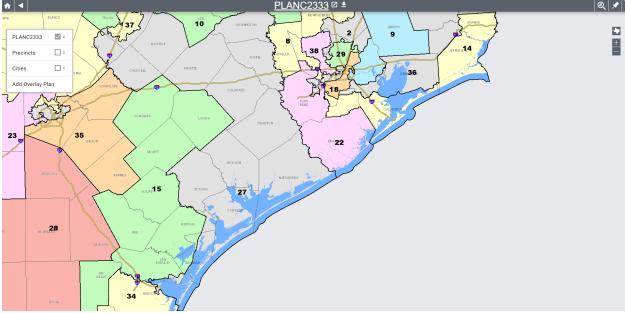
138 Coalition districts are also defined by whether the two aggregated minority groups can successfully "elect the candidate of the coalition's choice." See, e.g., Bartlett, 556 U.S. at 13. The preliminary-injunction record indicates that the 2021 version of CD 22 did not elect minorities' candidate of choice. See Tex. NAACP Prelim. Inj. Ex. 208, ECF No. 1384-8, at 9.

¹³⁵ See Brooks Prelim, Inj. Ex. 253, ECF No. 1326, at 1–2.

¹³⁶ See Brooks Prelim. Inj. Ex. 258, ECF No. 1326-5, at 1.

¹³⁹ See Brooks Prelim. Inj. Ex. 265, ECF No. 1326-12, at 1; see also, e.g., Prelim. Inj. Hr'g Tr. Day 3 (Morning), ECF No. 1416, at 41 ("New CD 22 is majority White.").





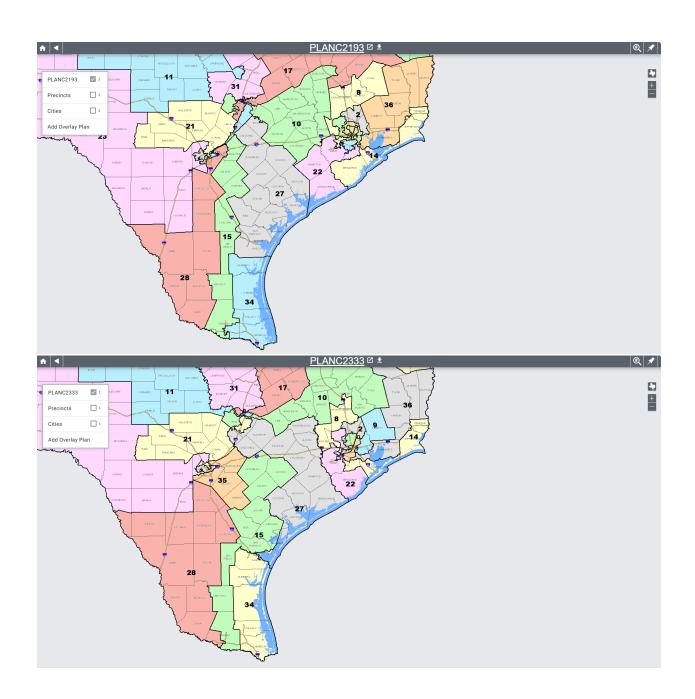
Second was CD 27. No single race constituted a majority in the 2021 version of CD 27 either; the electorate was split relatively equally between Hispanics (48.6%) and Whites (44.1%), with voters of other races constituting the remainder. ¹⁴⁰ Here too, CD 27 could be described as a coalition district with respect to its racial composition, even if it might not be so described with respect to its electoral performance. 141 The 2025 Map increased CD 27's White CVAP to 52.8% while decreasing Hispanic CVAP to 36.8%—thereby making CD 27 another new single-racemajority district: 142

¹⁴⁰ See Brooks Prelim. Inj. Ex. 258, ECF No. 1326-5, at 1.

See also, e.g., Prelim. Inj. Hr'g Tr. Day 3 (Morning), ECF No. 1416, at 41 ("[The 2021 version of] CD 27 was a Hispanic plurality district. 48.8 percent of the CVAP were [sic] Hispanic.").

¹⁴¹ The preliminary-injunction record indicates that the 2021 version of CD 27 did not elect a minority coalition's candidate of choice. See Tex. NAACP Prelim. Inj. Ex. 208, ECF No. 1384-8, at 9.

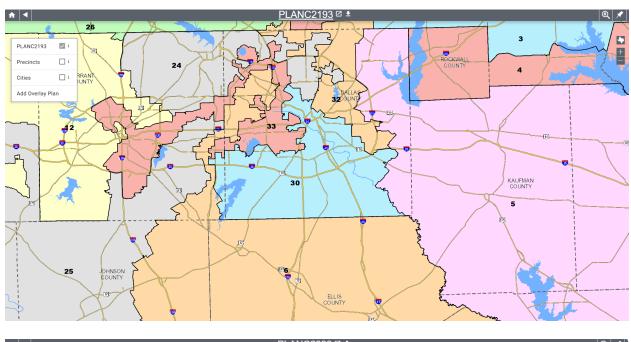
¹⁴² See Brooks Prelim. Inj. Ex. 265, ECF No. 1326-12, at 1; Prelim. Inj. Hr'g Tr. Day 3 (Morning), ECF No. 1416, at 41 ("[The 2025 version of] CD 27 is . . . majority White.").

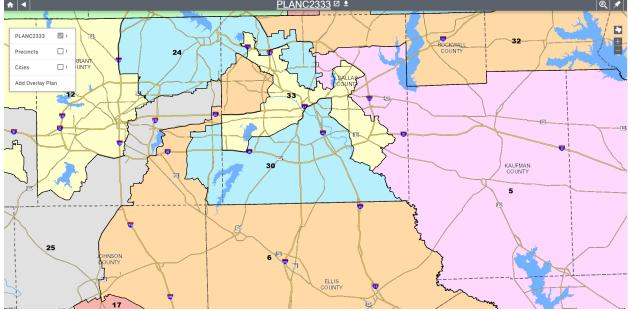


Third was CD 30. Under the 2021 Map, CD 30 was a coalition district: it was majority non-White by CVAP, with no single racial group constituting more than 50% of eligible voters. 143 The 2025 Map converts CD 30 to a single-race-majority district by making it just barely majority-Black (50.2%): 144

¹⁴³ See Brooks Prelim. Inj. Ex. 258, ECF No. 1326-5, at 1 (indicating that, under the 2021 Map, CD 30 was 46.0% Black, 24.5% Hispanic, 24.0% White, and 3.2% Asian).

¹⁴⁴ See Brooks Prelim. Inj. Ex. 265, ECF No. 1326-12, at 1.

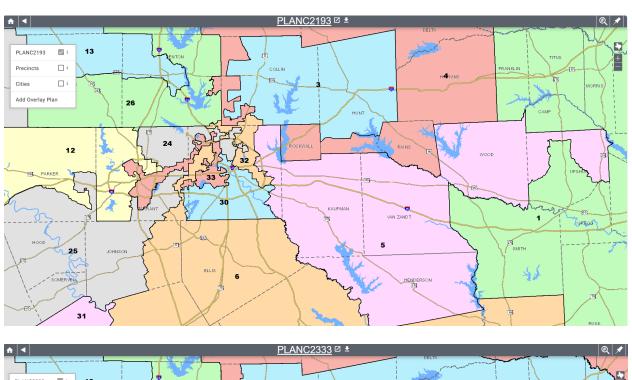


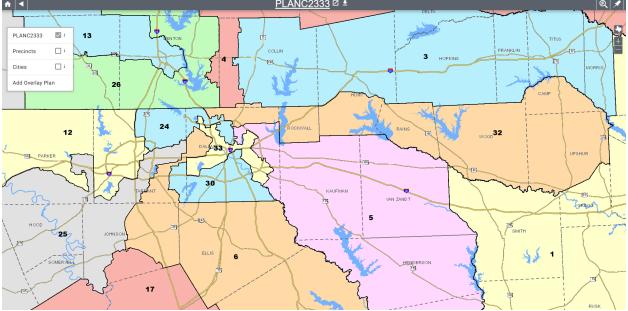


Fourth was CD 32. Although Whites constituted a plurality of eligible voters (43.9%) under the 2021 version of CD 32, it was nevertheless a majority-non-White coalition district. ¹⁴⁵ The 2025 Map radically reshapes the boundaries of CD 32 and converts it to a single-race-majority district by making it 58.7% White: 146

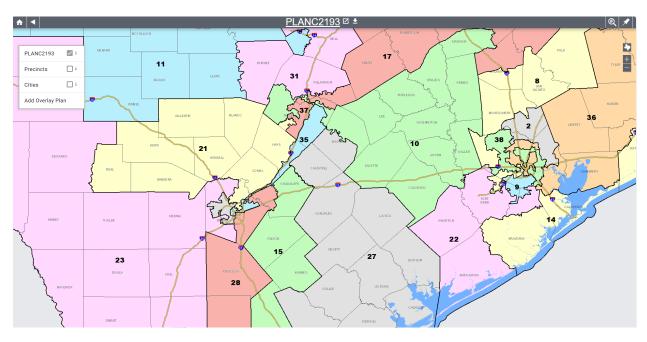
¹⁴⁵ See Brooks Prelim. Inj. Ex. 258, ECF No. 1326-5, at 1 (indicating that, under the 2021 Map, CD 32 was 43.9% White, 23.4% Black, 22.9% Hispanic, and 6.9% Asian).

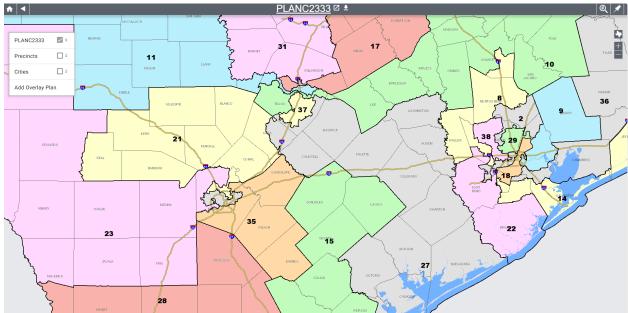
¹⁴⁶ See Brooks Prelim. Inj. Ex. 265, ECF No. 1326-12, at 1.





The final district was CD 35, which was also a coalition district. ¹⁴⁷ The 2025 Map converts CD 35 to a single-race-majority district by making it just barely majority Hispanic (51.6%): ¹⁴⁸





¹⁴⁷ See Brooks Prelim. Inj. Ex. 258, ECF No. 1326-5, at 2 (indicating that, under the 2021 Map, CD 35 was 46.0% Hispanic, 35.7% White, 13.0% Black, and 2.7% Asian).

¹⁴⁸ See Brooks Prelim. Inj. Ex. 265, ECF No. 1326-12, at 2.

In sum, the 2025 Map:

- (1) fundamentally changed the racial character of three of the four districts identified in the DOJ Letter, and dramatically dismantled and left unrecognizable all four districts;
- (2) eliminated seven total coalition districts;
- (3) created two new bare-majority-Hispanic districts, while eliminating an existing strongly majority-Hispanic district identified in the DOJ Letter; and
- (4) created two new bare-majority-Black districts.

H. The Plaintiff Groups' Preliminary Injunction Motions

Immediately after the Texas Senate passed the 2025 Map on August 23, 2025—and, indeed, before the Governor even signed the bill¹⁴⁹—the Plaintiff Groups moved to preliminarily enjoin the State from using the 2025 Map for the upcoming U.S. House elections.¹⁵⁰ The Plaintiff Groups' theory of the case is that:

- (1) DOJ unlawfully demanded that Texas "redraw certain congressional districts because of their multiracial majority status";
- (2) "In response, Governor Abbott called the Texas Legislature into a Special Session specifically to eliminate the coalition and majority minority districts identified by DOJ"; and
- (3) "Over the course of the redistricting process . . . the Governor, DOJ, and multiple Texas legislators repeatedly, publicly, and explicitly stated that Texas was redistricting to eliminate multiracial majority districts." ¹⁵¹

¹⁴⁹ See H.B. 4, 89th Leg., 2d Spec. Sess. (Tex. 2025) (signed on August 29, 2025).

¹⁵⁰ See generally Tex. NAACP Prelim. Inj. Mot., ECF No. 1142; Intervenors' Prelim. Inj. Mot., ECF No. 1143; Gonzales Pls.' Prelim. Inj. Mot., ECF No. 1149; Brooks, LULAC, & MALC Pls.' Joint Prelim. Inj. Mot., ECF No. 1150.

¹⁵¹ E.g., Brooks, LULAC, & MALC Pls.' Post-Hr'g Br., ECF No. 1281, at 2 (emphasis omitted).

The Plaintiff Groups thus claim that Texas's actions in the 2025 redistricting amount to unconstitutional racial gerrymandering. 152 Altogether, 153 the Plaintiff Groups challenge the following districts on racial-gerrymandering grounds: CDs 9, 18, 22, 27, 30, 32, 33, and 35. 154

The State Defendants, by contrast, insist that the motives underlying the 2025 redistricting were exclusively partisan and political 155—not racial. 156 According to the Defendants, the Legislature enacted the 2025 Map solely to satisfy President Trump's demand that Texas create

The Plaintiff Groups also raise intentional vote-dilution challenges that we need not address in this opinion. See Chart of Claims, ECF No. 1208-1, at 2-4; see also infra text accompanying note 163.

¹⁵² See, e.g., id. at 4–38.

¹⁵³ Each Plaintiff Group challenges a slightly different set of districts. See Chart of Claims, ECF No. 1208-1, at 2–4.

¹⁵⁴ See id.

No Plaintiff Group challenges CD 29 under a racial-gerrymandering theory, as opposed to an intentional vote-dilution theory. See id. at 2. Although we discuss CD 29 at various points in this opinion to illuminate the Legislature's intent in drawing the map more broadly, we do not base our ruling on the State's alleged gerrymandering of CD 29. See Bethune-Hill, 580 U.S. at 191-92 (explaining that although plaintiffs "can present statewide evidence in order to prove racial gerrymandering in a particular district," "[r]acial gerrymandering claims" must ultimately "proceed district-by-district" (citation modified)).

¹⁵⁵ See, e.g., Defs.' Resp. Intervenors' & Tex. NAACP's Prelim. Inj. Mot., ECF No. 1195, at 6 ("The Texas Legislature passed [the] 2025 congressional map on precisely partisan lines."); Defs.' Post-Hr'g Br., ECF No. 1284, at 11 ("Texas's 2025 map is, and always has been, about partisanship.").

¹⁵⁶ See, e.g., Defs.' Post-Hr'g Br., ECF No. 1284, at 23 ("Race was not used here.").

five more Republican seats in the U.S. House of Representatives 157 and counteract threatened partisan gerrymanders in Democrat states. 158

To resolve the preliminary-injunction motions, the Court held a nine-day hearing from October 1–10, 2025, at which the parties introduced voluminous documentary and testimonial evidence. Having now carefully reviewed that evidence and the applicable caselaw, the Court rules as follows.

¹⁵⁷ See, e.g., id. at 21 ("[T]he redistricting occurred because President Trump wanted a chance for Texas to elect up to five more Republicans to Congress in 2026." (citation modified)); Defs.' Resp. Gonzales Pls.' Prelim. Inj. Mot., ECF No. 1199, at 10–11 ("Mindful of history showing that a president's political party tends to lose House seats in mid-term election years and concerned that a Democrat majority would disrupt his national agenda, President Trump . . . called on Texas lawmakers to find five additional congressional seats It is this political arms-race that motivated Texas legislators to redistrict middecade, not race.").

¹⁵⁸ See, e.g., Defs.' Resp. Intervenors' & Tex. NAACP's Prelim. Inj. Mot., ECF No. 1195, at 23– 24 ("Given the danger to President Trump's legislative agenda posed by [the] 2026 elections and the historical trend of the presidential party doing poorly in non-presidential election years, there was a great deal of political pressure placed on the State of Texas to match the political gerrymandering of Democrat states. This pressure only intensified when other states, especially California, pledged to perform middecade redistricting to make their already one-sided congressional maps even more favorable to Democrats.... None of those factors indicate race was involved").

After we held the preliminary-injunction hearing in this case, California passed Proposition 50, which increases the number of Democrat-leaning congressional districts in California to counterbalance the 2025 Map's creation of additional Republican-leaning congressional seats in Texas.

III. **DISCUSSION**

The Legal Standard for Obtaining a Preliminary Injunction A.

To obtain a preliminary injunction, the Plaintiff Groups must show:

- "a likelihood¹⁵⁹ of success on the merits" of their claims; **(1)**
- "a likelihood of suffering irreparable harm if an injunction is not granted;" **(2)**
- "that the balance of equities tips in their favor;" and (3)
- "that an injunction would serve the public interest." ¹⁶⁰ **(4)**

"In considering these four prerequisites, the court must remember that a preliminary injunction is an extraordinary and drastic remedy which should not be granted unless the movant clearly carries the burden of persuasion." ¹⁶¹

¹⁵⁹ Some Fifth Circuit opinions state that a plaintiff seeking a preliminary injunction must show "a substantial likelihood that he will prevail on the merits," see, e.g., TitleMax of Tex., Inc. v. City of Dallas, 142 F.4th 322, 328 (5th Cir. 2025) (emphasis added), whereas others state that the plaintiff need only show "a likelihood of success on the merits," see, e.g., Jackson, 2025 WL 3019284, at *3 (emphasis added).

We will go with the language in the Fifth Circuit's most recent redistricting opinion, since it's the preliminary-injunction opinion that's most factually and procedurally analogous to the instant case. See Jackson, 2025 WL 3019284, at *3.

Either way, given the Fifth Circuit's sliding-scale approach to the likelihood-of-success inquiry, see infra note 167 and accompanying text, we perceive no substantive difference between the two formulations of the standard.

¹⁶⁰ Jackson, 2025 WL 3019284, at *3 (citing Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008)).

¹⁶¹ TitleMax, 142 F.4th at 328 (quoting Canal Auth. of Fla. v. Callaway, 489 F.2d 567, 573 (5th Cir. 1974)).

See also, e.g., Mazurek v. Armstrong, 520 U.S. 968, 972 (1997) (case cited by the State Defendants for a similar proposition); Barber v. Bryant, 860 F.3d 345, 352 (5th Cir. 2017) (same).

B. The Plaintiff Groups Have Demonstrated a Likelihood of Success on the Merits of Most of their Racial-Gerrymandering Claims

For the reasons explained below, the Plaintiff Groups have successfully shown a likelihood of success on their racial-gerrymandering challenges to CDs 9, 18, 27, 30, 32, and 35. 162 Because that alone suffices to preliminarily enjoin the 2025 Map—and given the short timeframe the Court had to write this complex and record-intensive opinion—the Court will not address the Plaintiff Groups' intentional vote-dilution claims at this time. 163

1. **Applicable Procedural Standards**

The "likelihood of success on the merits" factor is "the most important." ¹⁶⁴ To demonstrate a likelihood of success on the merits, the Plaintiff Groups don't need to prove that they're definitely going to win at the trial on the merits; they need only prove that they're likely to win at trial. 165

The Court's ruling on the Gonzales Plaintiffs' motion to enter an appealable partial final judgment on that claim is forthcoming. See generally Gonzales Pls.' Mot. Rule 54(b) Entry of Final J., ECF No. 1265.

¹⁶² The Plaintiff Groups have not shown that they're likely to succeed on their racialgerrymandering challenge to CD 33. See infra Section III.B.6.a. Nor have the Plaintiff Groups shown that they're likely to succeed on their racial-gerrymandering challenge to CD 22. See infra note 358. Thus, we do not base our grant of a preliminary injunction on those claims.

¹⁶³ Nor do we base our preliminary injunction ruling in any way on the Gonzales Plaintiffs' malapportionment claim. See Gonzales Pls.' Post-Hr'g Br., ECF No. 1278, at 3 n.2 (stating that "[t]he Gonzales Plaintiffs continue to seek preliminary relief as to this claim"). We dismissed the count on which that claim was based on September 30, 2025. See generally Mem. Op. & Order, ECF No. 1226.

¹⁶⁴ E.g., Jackson, 2025 WL 3019284, at *3.

¹⁶⁵ See, e.g., Janvey v. Alguire, 647 F.3d 585, 596 (5th Cir. 2011) (noting that a plaintiff "need not show that he is certain to win" to obtain a preliminary injunction (quoting CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, 11A FEDERAL PRACTICE & PROCEDURE § 2948.3 (2d ed. 1995))).

The exact quantum of evidence that a plaintiff must present to satisfy the likelihood-ofsuccess factor varies from case to case. 166 The Fifth Circuit applies a "sliding scale" approach, whereby a plaintiff who makes a strong showing on the other three preliminary injunction factors bears a lesser burden on the likelihood-of-success requirement (and vice versa). 167 "Where the other factors are strong," the movant need only show "some likelihood of success on the merits" to obtain a preliminary injunction. 168

To preview our conclusions below, the Plaintiff Groups have made a very strong showing on the irreparable-injury factor ¹⁶⁹ and a compelling showing on the balance-of-equities and publicinterest factors. 170 Under the Fifth Circuit's sliding-scale approach, the Plaintiff Groups need to show more than just "some likelihood of success on the merits" to obtain a preliminary injunction, but not much more. 171

¹⁶⁶ See, e.g., Jefferson Cmty. Health Care Ctrs., Inc. v. Jefferson Par. Gov't, 849 F.3d 615, 626 (5th Cir. 2017) ("[T]here is no particular degree of likelihood of success that is required in every case"); TitleMax, 142 F.4th at 328 ("The importance and nature of the likely success on the merits requirement can vary significantly" (citation modified)); Fla. Med. Ass'n v. U.S. Dep't of Health, Educ. & Welfare, 601 F.2d 199, 203 n.2 (5th Cir. 1979) ("[F]inding a substantial likelihood that [the] movant will ultimately prevail on the merits does not contemplate a finding of fixed quantitative value." (citation modified)).

¹⁶⁷ See, e.g., TitleMax, 142 F.4th at 328 ("This court has applied a sliding-scale analysis to the four preliminary injunction requirements. The importance and nature of the likely success on the merits requirement can vary significantly, depending upon the magnitude of the injury which would be suffered by the movant in the absence of interlocutory relief and the relative balance of the threatened hardship faced by each of the parties." (citation modified)).

¹⁶⁸ E.g., id.

¹⁶⁹ See infra Section III.C.

¹⁷⁰ See infra Section III.D.

¹⁷¹ Cf., e.g., TitleMax, 142 F.4th at 328.

2. Applicable Substantive Standards

"To assess the likelihood of success on the merits," we must "look to standards provided by the substantive law." 172

A plaintiff asserting a racial-gerrymandering claim may "make the required showing through direct evidence of legislative intent," such as "a relevant state actor's express acknowledgement that race played a role in the drawing of district lines," "circumstantial evidence of a district's shape and demographics, or a mix of both." The court must "make a sensitive inquiry into all circumstantial and direct evidence of [the legislature's] intent" to determine whether "race . . . drove [the challenged] district's lines."

Although a plaintiff pressing a racial-gerrymandering claim need not prove that the enacted map has racially dilutive effects, ¹⁷⁷ there are several other significant obstacles that a racial-gerrymandering plaintiff must surmount. First, in a state like Texas—where race and partisan affiliation are closely correlated ¹⁷⁸—"a map that has been gerrymandered to achieve a partisan end can look very similar to a racially gerrymandered map." ¹⁷⁹ Again, though, partisan-

¹⁷² See id. at 329 (citation modified).

¹⁷³ E.g., Cooper v. Harris, 581 U.S. 285, 291 (2017) (citation modified).

¹⁷⁴ E.g., Alexander, 602 U.S. at 8.

¹⁷⁵ E.g., Cooper, 581 U.S. at 291 (citation modified).

¹⁷⁶ E.g., id. at 308 (citation modified).

¹⁷⁷ See, e.g., Jackson, 2025 WL 3019284, at *7 ("[B]ecause the gravamen of a [racial-gerrymandering] claim is the sorting of persons with an intent to divide by reason of race, and this holds true regardless of the motivations of those doing the sorting, plaintiffs raising such a claim need not show that the legislature either intended or succeeded in diluting any particular racial group's voting strength. Rather, the racial classification itself is the relevant harm in that context." (citation modified)).

¹⁷⁸ See, e.g., Perez v. Abbott, 253 F. Supp. 3d at 945.

¹⁷⁹ E.g., Alexander, 602 U.S. at 9.

gerrymandering claims aren't cognizable in federal court. ¹⁸⁰ So, to prevail on a racial-gerrymandering claim, "a plaintiff must disentangle race from politics by proving that the former drove a [challenged] district's lines." ¹⁸¹

Second, the mere fact that a legislature was aware of a particular district's racial demographics when it made its districting decisions doesn't necessarily mean that the legislature engaged in illegal racial gerrymandering. "Redistricting legislatures will . . . almost always be aware of racial demographics[,] but it does not follow that race predominates in the redistricting process." Thus, litigants and courts must be mindful of "[t]he distinction between being aware of racial considerations and being motivated by them." 183

Finally—and most importantly—"federal courts must exercise extraordinary caution in adjudicating claims that a State has drawn district lines on the basis of race." The Constitution entrusts state legislatures"—not federal courts—"with the primary responsibility for drawing

¹⁸⁰ E.g., id. at 6; see also supra Section II.A.4.

¹⁸¹ E.g., Alexander, 602 U.S. at 9 (emphasis omitted).

¹⁸² Miller v. Johnson, 515 U.S. 900, 916 (1995).

See also, e.g., Hunt v. Cromartie, 526 U.S. 541, 551 (1999) ("[A] jurisdiction may engage in constitutional political gerrymandering, even if it so happens that the most loyal Democrats happen to be black Democrats and even if the State were *conscious* of that fact.").

¹⁸³ E.g., Miller, 515 U.S. at 916.

¹⁸⁴ E.g., Alexander, 602 U.S. at 7 (citation modified).

congressional districts." 185 "Federal-court review of districting legislation" thus "represents a serious intrusion on the most vital of local functions." ¹⁸⁶

Aside from those federalism concerns, federal courts must also be mindful that "[e]lectoral districting is a most difficult subject for legislatures" and that "the States must have discretion to exercise the political judgment necessary to balance competing interests." ¹⁸⁷ Courts must therefore "be sensitive to the complex interplay of forces that enter a legislature's redistricting calculus." ¹⁸⁸

For those reasons, courts must "presum[e] that the legislature acted in good faith" when devising and enacting a redistricting plan. 189 When "confronted with evidence that could plausibly support" either a racial or a non-racial motivation for a legislature's action, "district courts [must] draw the inference that cuts in the legislature's favor." ¹⁹⁰

"If a plaintiff can demonstrate that race drove the mapping of district lines, then the burden shifts to the State" 191 "to prove that its race-based sorting of voters serves a 'compelling interest' and is 'narrowly tailored" to that end." ¹⁹² The Court will expound on those requirements below. ¹⁹³

See also U.S. CONST. art. I, § 4, cl. 1 ("The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of ch[oo]sing Senators.").

¹⁸⁵ E.g., id. at 6 (citation modified).

¹⁸⁶ E.g., Alexander, 602 U.S. at 7 (citation modified).

¹⁸⁷ E.g., Miller, 515 U.S. at 915.

¹⁸⁸ E.g., id. at 915–16.

¹⁸⁹ E.g., Alexander, 602 U.S. at 6.

¹⁹⁰ E.g., id. at 10.

¹⁹¹ E.g., id. at 11.

¹⁹² E.g., Cooper, 581 U.S. at 292.

¹⁹³ See infra Section III.B.8.

3. **Direct Evidence of Racial Gerrymandering**

The direct evidence here is strong. In conjunction with the circumstantial evidence discussed below, ¹⁹⁴ the direct evidence indicates that the Plaintiff Groups have more than some likelihood of prevailing on their racial-gerrymandering claims at trial.

DOJ Asked Texas to Engage in Unlawful Racial Gerrymandering

By directing Texas to "separate its citizens into different voting districts on the basis of race," DOJ directed Texas to engage in racial gerrymandering. 195 The letter asserts incorrectly 196—that CDs 9, 18, and 29, and 33 are unlawful because they happen to be coalition districts. 197 That is, the districts are objectionable to DOJ solely because of their racial composition. 198 Although the letter doesn't specify how DOJ wants Texas to "rectify" and "correct[]" the listed districts, 199 there's only one way to remedy a district whose only "objectionable" characteristic is that no single racial group constitutes a 50% majority by CVAP: redraw it so a single racial group constitutes a 50% majority by CVAP. 200 We therefore interpret the DOJ Letter as imposing a 50% racial target for Texas to meet when redrawing its districts.

¹⁹⁴ See infra Section III.B.5.

¹⁹⁵ E.g., Miller, 515 U.S. at 911.

¹⁹⁶ See supra Section II.D.

¹⁹⁷ See Brooks Prelim. Inj. Ex. 253, ECF No. 1326, at 1–2.

¹⁹⁸ See id.

¹⁹⁹ See id.

²⁰⁰ For that reason, we reject the State Defendants' argument that the DOJ Letter was not "a demand for race-based redistricting," but was instead a demand to conduct race-neutral redistricting. Contra Defs.' Post-Hr'g Br., ECF No. 1284, at 30–31 (emphasis omitted).

Even if the State Defendants' interpretation of the DOJ Letter was correct, that's not how the Legislature interpreted it.

Our interpretation—that DOJ commanded Texas to meet a 50% racial target—is consistent with the map the Legislature ultimately passed. As discussed, the Legislature took two of the three true coalition districts mentioned in the DOJ Letter and increased their CVAP figures to just barely over 50%: CD 9 (50.3% Hispanic); CD 18 (50.5% Black). 201

Supreme Court precedent establishes that when:

- (1) a relevant political actor "purposefully establishe[s] a racial target" that voters of a single race "should make up no less than a majority" of the voting population; and
- the Legislature "follow[s] those directions to the letter, such that the 50%-(2) plus racial target ha[s] a direct and significant impact on [the districts'] configuration,"

a court may permissibly conclude "that race predominated in drawing" those districts. ²⁰² DOJ and the Governor did the first of those things. The Legislature did the second.

²⁰¹ See Brooks Prelim. Inj. Ex. 265, ECF No. 1326-12, at 1–2.

Cf. Cooper, 581 U.S. at 313 (concluding that "the redistricters' on-the-nose attainment of a 50% BVAP" supported the district court's finding that the legislature "deliberately redrew [the challenged district] as a majority-minority district"); see also infra Section III.B.5.b.

²⁰² See Cooper, 581 U.S. at 299–301 (citation modified).

b. The Governor's Actions Suggest a Predominantly Racial Motivation

i. The Governor's Proclamation

By explicitly referring to DOJ's "constitutional concerns" in his proclamation, ²⁰³ the Governor:

(1) endorsed DOJ's erroneous view that *Petteway* required the Legislature to fundamentally change the targeted districts' racial character; ²⁰⁴ and

Notably, the Legislature did not pass redistricting legislation during the first called special session due to a quorum break. *See* Prelim. Inj. Hr'g Tr. Day 8 (Afternoon), ECF No. 1344, at 109–110. The Governor then called a second special session, *see* Defs.' Prelim. Inj. Ex. 1055, ECF No. 1373-16, at 2–3, during which the Legislature passed the 2025 Map. The Governor's August 15, 2025, proclamation placing redistricting on the agenda for the second special session omits any reference to DOJ's "constitutional concerns." *Contrast* Defs.' Prelim. Inj. Ex. 1054, ECF No. 1373-15, at 2–3 (directing the Legislature "to consider and act upon . . . [l]egislation that provides a revised congressional redistricting plan *in light of constitutional concerns raised by the U.S. Department of Justice*" (emphasis added)), *with* Defs.' Prelim. Inj. Ex. 1055, ECF No. 1373-16, at 2–3 (merely directing the Legislature "[t]o consider and act upon . . . [l]egislation that provides *a congressional redistricting plan*" (emphasis added)). *See also* Prelim. Inj. Hr'g Tr. Day 8 (Afternoon), ECF No. 1344, at 49–50.

We don't interpret that omission as evidence that the Governor abandoned the racial goals he had espoused in the media just four days earlier. *See* Brooks Prelim. Inj. Ex. 335-T, ECF No. 1328-1, at 1, 4–5 (Governor Abbott's August 11, 2025, interview proclaiming that he "wanted to remove . . . coalition districts and draw them in ways that . . . provide more seats for Hispanics").

Nor do we agree with the State Defendants' suggestion that removing the reference to DOJ's constitutional concerns from the second proclamation somehow cleansed the first proclamation's racial taint. *Contra* Prelim. Inj. Hr'g Tr. Day 8 (Afternoon), ECF No. 1344, at 50 ("Q. . . . [E]ven if, as Plaintiffs allege, that the Governor's stated reasoning for adding the subject of redistricting to the call had some significance to the Legislature during the first legislative session, could the Legislature be legally permitted to consider that language during the Second Special Session?" | A. No."). The map that the Legislature passed during the second session was largely identical to the first, indicating that racial considerations have already infected the map by the time the Governor issued the second proclamation. *See* Brooks Prelim. Inj. Ex. 264, ECF No. 1326-11, at 1–3 (showing the significant overlap between the map introduced in the first session and the map introduced in the second); Brooks Prelim. Inj. Ex. 266, ECF No. 1326-13, at 1–4 (showing the significant overlap between the map introduced in the enacted map).

In any event, the Legislature acted under the DOJ Letter's directive even after the second proclamation. When the House passed the bill in the second session, the Speaker's press release explicitly stated that the House had just "delivered legislation to . . . address concerns raised by the Department of Justice." *See* Brooks Prelim. Inj. Ex. 282, ECF No. 1326-28, at 1; *see also infra* Section III.B.3.d.i.

²⁰⁴ See supra Section II.D.

(2) exhorted the Legislature to redistrict for the same racial reasons that DOJ gave in its letter.

The DOJ Letter is dated July 7. On July 9, the Governor issued a proclamation adding redistricting to the legislative agenda to advance DOJ's racial objectives. This close temporal proximity undermines the State Defendants' position that the motivation for the 2025 redistricting was political rather than racial. Lawmakers initially showed little appetite to redistrict when the Trump Administration pressed the State to redistrict for exclusively partisan reasons. 205 What triggered the redistricting process was the Administration reframing the request in exclusively racial terms.²⁰⁶

ii. The Governor's Contemporaneous Press Statements

In his contemporaneous press statements, the Governor framed his objectives for the 2025 redistricting in slightly different terms than the DOJ Letter. Governor Abbott said that *Petteway* permitted Texas to "remove . . . coalition districts" from the congressional map, and that this provided an opportunity for the Legislature to replace those coalition districts with majority-Hispanic districts, as opposed to single-race-majority districts more generally. 207 That was

²⁰⁵ See supra Section II.C.

²⁰⁶ See supra Sections II.D–E.

President Trump's July 15, 2025, press statement that he "want[ed] the Republicans to draw . . . five seats" is not particularly probative of the motivation underlying the 2025 redistricting. Contra Defs.' Prelim. Inj. Ex. 1352, ECF No. 1360-2, at 7-8; see also Prelim. Inj. Hr'g Tr. Day 2 (Morning), ECF No. 1415, at 127-29 (introducing that statement to support the State Defendants' argument that Texas redistricted for political rather than racial reasons). By the time President Trump made that statement, DOJ had already asked Texas to redistrict for exclusively racial reasons on July 7, 2025, and the Governor had already asked the Legislature to redistrict based on DOJ's letter on July 9, 2025. See supra Sections II.D-E.

²⁰⁷ See, e.g., Brooks Prelim. Inj. Ex. 335-T, ECF No. 1328-1, at 4–5 ("[W]e wanted to remove those coalition districts and draw them in ways that in fact turned out to provide more seats for Hispanics."); see also supra Section II.E.

fortuitous, according to the Governor, because many Hispanic voters had recently "decided they're no longer with the Democrats who believe in open border policies, who believe in going against our law enforcement[,] who believe that men should play in women's sports[,] and they instead align with the Republicans."²⁰⁸ The purpose behind the 2025 redistricting was to "take the people" who were in those coalition districts"—specifically, "Hispanics and [B]lacks"—and place them "in districts that really represent the voting preference of those people who live . . . in Texas." ²⁰⁹

That's a stark admission. The Governor wanted Texas to "use[] race as a basis for separating voters into districts."²¹⁰ According to the Governor, the 2025 Map's modus operandi was to:

- specifically target Hispanic and Black voters based on the assumption that (1) Texan voters of color—especially Hispanics—now trend Republican;²¹¹
- take those voters out of their existing districts; and (2)
- (3) place those voters into new districts—all because of their race.

See also Brooks Prelim. Inj. Ex. 332-T, ECF No. 1411-3, at 2 ("[W]e saw in the aftermath of the Trump election[] that an overwhelming number of Hispanics and [B]lacks as well as others[] chose to vote for Trump. . . . Democrats think they have an ownership right to voters who are Hispanic or Black. They're now learning the hard way. Those voters are supporting Republicans.").

²⁰⁸ See Brooks Prelim. Inj. Ex. 335-T, ECF No. 1328-1, at 5.

²⁰⁹ See Brooks Prelim. Inj. Ex. 332-T, ECF No. 1411-3, at 2.

²¹⁰ See, e.g., Miller, 515 U.S. at 911.

²¹¹ The Governor's assertions regarding Hispanic voting preferences are factually inaccurate. The preliminary-injunction record indicates that Hispanic voters in the relevant areas of Texas still favor Democrats over Republicans by a comfortable margin. See Prelim. Inj. Hr'g Tr. Day 4 (Morning), ECF No. 1417, at 60–63. The record further indicates that the shift in Hispanic support towards President Trump in the 2024 general election did not carry over to other Republican candidates on the ballot. See id. at 61–63.

That's tantamount to using "race . . . as a proxy for political characteristics" and "stereotyp[ing]" voters based on race. 212 "[D]istricting decisions that rely on stereotypes about racial voting are constitutionally suspect." As the Supreme Court has explained, "[w]hen the State assigns voters [to particular districts] on the basis of race, it engages in the offensive and demeaning assumption that voters of a particular race, because of their race, think alike, share the same political interests, and will prefer the same candidates at the polls." 214

At the same time, Governor Abbott consistently rejected the idea that Texas was redistricting to fulfill President Trump's demand for additional Republican districts. The Governor "subordinated race-neutral districting criteria" like partisanship "to racial considerations." Race—not politics—was "the predominant factor motivating the . . . decision to place a significant number of voters within or without a particular district." 217

²¹² See Bush v. Vera, 517 U.S. 952, 968 (1996) (plurality opinion).

See also Tenn. State Conf. of NAACP v. Lee, 746 F. Supp. 3d 473, 488 (M.D. Tenn. 2024) ("Just as a State should not use race to identify the schools that children may attend, so too it should not use race to determine the districts in which citizens should vote.").

²¹³ See Jackson, 2025 WL 3019284, at *10.

²¹⁴ Miller, 515 U.S. at 911–12 (citation modified).

See also Bush, 517 U.S. at 968 (1996) ("[T]o the extent that race is used as a proxy for political characteristics, a racial stereotype requiring strict scrutiny is in operation.").

²¹⁵ See supra Section II.E.

²¹⁶ See, e.g., Alexander, 602 U.S. at 7 (citation modified).

²¹⁷ See, e.g., id. (citation modified).

c. The Motives of State and Federal Executive Branch Actors Aren't Automatically Imputable to the Legislature

The mere fact that the federal and state executive branches told the Legislature to engage in racial gerrymandering is not dispositive. "[L]egislators who vote to adopt a bill are not the agents of the bill's sponsor or proponents," as "legislators have a duty to exercise their [own independent] judgment" when crafting and passing legislation. ²¹⁸ What ultimately matters is the Legislature's motivation for devising and enacting the 2025 Map—not the motivations of political actors outside the legislative branch. ²¹⁹ The unlawful motivations of DOJ and the Governor "do not become those of the [Legislature] as a whole unless it is shown that a majority of the [Legislature's] members shared and purposefully adopted (*i.e.*, ratified) the [Governor and DOJ's] motivations." ²²⁰

The Northern District of Florida's recent decision in *Common Cause Florida v. Byrd* illustrates this point. There, the Governor of Florida proposed a congressional districting map that eliminated a district that elected Black voters' candidates of choice.²²¹ The Florida Legislature ultimately enacted that map.²²²

The district court assumed without deciding that the Governor had "acted with some unlawful discriminatory motive in creating and proposing the redistricting map that was ultimately enacted into law." Even assuming that "the Governor was motivated in part by racial animus,"

²¹⁸ Brnovich v. Democratic Nat'l Comm., 594 U.S. 647, 689–90 (2021).

²¹⁹ See Common Cause Fla. v. Byrd, 726 F. Supp. 3d 1322, 1364 (N.D. Fla. 2024) ("A public and collective decision-making body, like the . . . Legislature, is answerable only for its own unconstitutional actions and motivations." (emphasis omitted)).

²²⁰ *Id.* at 1364–65.

²²¹ See, e.g., id. at 1343–44.

²²² See, e.g., id.

²²³ *Id.* at 1361.

however, the plaintiffs also needed to "prove that the Florida Legislature itself acted with some discriminatory purpose when adopting and passing the Enacted Map"²²⁴—such as by introducing "evidence that the [legislators] themselves agreed with the discriminatory motives," or that they passed the map "for the purpose of giving effect to the [Governor's alleged] discriminatory motives."²²⁵ Because "not one legislator said or did anything to suggest . . . that any legislator voted for the Enacted Map because they shared or intended to effectuate any racially discriminatory motive on the Governor's part," the plaintiffs failed to prove "that the Legislature acted with race as a motivating factor in passing the Enacted Map."²²⁶

d. Legislators' Statements

This case is very different from *Common Cause Florida*. Direct evidence in the preliminary-injunction hearing shows that key legislators in the 2025 redistricting process had the same racial objectives as DOJ and the Governor.

i. Speaker Burrows

When the Texas House passed the 2025 Map, the Speaker of the House, Representative Dustin Burrows, issued a press release favorably announcing that the House had just "delivered legislation to redistrict certain congressional districts to address concerns raised by the Department of Justice and ensure fairness and accuracy in Texans' representation in Congress."

This press release publicly announces that high-ranking legislators honored and followed the instruction in the Governor's proclamation to redistrict for the racial reasons cited in the DOJ

²²⁴ *Id.* (citation modified).

²²⁵ Id. at 1363.

²²⁶ *Id.* at 1366 (emphases omitted).

²²⁷ Brooks Prelim. Inj. Ex. 282, ECF No. 1326-28, at 1 (emphasis added); *see also* Prelim. Inj. Hr'g Tr. Day 8 (Afternoon), ECF No. 1344, at 132–33.

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Letter.²²⁸ The Speaker's press release also undermines other legislators' assertions (discussed below) that the DOJ Letter did not influence the Legislature during the 2025 redistricting process.²²⁹

In the same press release, the Speaker also praised the House for "deliver[ing] the *legal*, *remedied maps* Texas voters deserve." Speaker Burrows shared DOJ's erroneous view that the 2021 Maps were illegal because they contained coalition districts and that the Legislature needed to "remedy" that defect by extirpating those districts.

To be sure, the press release is also peppered with statements that could suggest a partisan motive. Speaker Burrows celebrates that "the new map . . . secures Republican representation in Congress." For that reason, the press release does not establish by itself that race predominated over partisan concerns during the 2025 redistricting cycle. But the press release is not the only direct evidence of racial motivation in the record.

ii. Representative Oliverson

In contemporaneous interviews and press releases, several other high-ranking legislators espoused that the Legislature's motivation for redistricting was not to fulfill President Trump's demand for more Republican congressional seats, but rather to eliminate coalition districts as DOJ requested. In an August 6, 2025, interview with National Public Radio ("NPR"), the Chair of the Texas House Republican Caucus, Representative Tom Oliverson, said the following:

²²⁸ See Common Cause Fla., 726 F. Supp. 3d at 1363 (stating that "[r]atification of another's discriminatory motives . . . may be demonstrated with evidence that the decision-makers knowingly chose a particular course of action for the purpose of giving effect to the discriminatory motives").

²²⁹ See infra notes 277, 286, 321 and accompanying text.

²³⁰ Brooks Prelim. Inj. Ex. 282, ECF No. 1326-28, at 1 (emphasis added).

²³¹ See id.

AILSA CHANG: ... So this congressional map. It's being redrawn after your party already drew it in 2021. And one of the main objections to what you all are doing is that Texas Republicans are doing this only because President Trump asked you to do so.

Let me just ask you directly. Is that true? Are you redoing this map now specifically because of the [P]resident's request?

REP. TOM OLIVERSON: No, we are not. And in fact, the 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. 232

Another stark admission: the desire to eliminate coalition districts drove the 2025 redistricting not pressure from President Trump to redistrict for partisan gain.

iii. **Representative Toth**

In a press interview following the 2025 Map's enactment, Representative Steve Toth similarly insisted that the motive behind the 2025 redistricting was not to achieve political gains, but rather because DOJ had commanded Texas to redistrict in response to *Petteway*:

JOHN SOLOMON: . . . [Y]ou pointed out something important here, which is that the storyline Democrats and their liberal friends like to say is, oh, this is being done by Texas for gerrymandering and for political gain in the [2026] election. But in fact, the Justice Department required the state to do this because there were appellate court rulings that said Texas was out of compliance with the current law. So, this isn't actually gerrymandering. This was actually required to be done, right?

STEVE TOTH: It was required of us to do it in . . . response to *Petteway* to get compliant.²³³

²³² Brooks Prelim. Inj. Ex. 327-T, ECF No. 1327-27, at 2–3; see also Prelim. Inj. Hr'g Tr. Day 1 (Afternoon), ECF No. 1337, at 68-69.

²³³ Brooks Prelim. Inj. Ex. 339-T, ECF No. 1411-5, at 3; see also Prelim. Inj. Hr'g Tr. Day 9 (Afternoon), ECF No. 1345, at 67 (admitting that interview into the record).

Like the Governor, Speaker Burrows, and Representative Oliverson, Representative Toth shared DOJ's erroneous legal position that *Petteway* affirmatively required Texas to eliminate coalition districts. He therefore shared and adopted DOJ's racial objective of erasing coalition districts from the map. Representative Toth's statements reinforce that "Justice Department pressure led the State to act based on an overriding concern with race."234

iv. **Chairman Hunter and His Joint Authors**

Further evidence that race was a key factor motivating the 2025 redistricting comes from Chairman Todd Hunter's statements and exchanges with other legislators on the House floor. 235 Because Chairman Hunter introduced and championed the bill that ultimately became the 2025 Map,²³⁶ we consider his and his joint authors' statements to be more probative of the full Legislature's intent than those of other legislators. ²³⁷

All we're saying is that (1) Chairman Hunter's statements about his reasons for introducing and passing the redistricting bill are relevant when assessing the intent of the Legislature as a whole, and (2) Chairman Hunter's role as the redistricting bill's sponsor makes his statements more probative than those of rank-and-file legislators who had minimal personal involvement with the bill. See, e.g., Brock v. Pierce County, 476 U.S. 253, 263 (1986) (stating that although statements by a bill's sponsor "should not be given controlling effect," they nonetheless "provide evidence of [the legislature's] intent" if "they are consistent with the statutory language and other legislative history"); Campbell v. McCarthy, 952 F.3d 193, 204 (4th

²³⁴ See Abrams v. Johnson, 521 U.S. 74, 87–88 (1997).

²³⁵ We refer to Representative Hunter as "Chairman" because he was the Chair of the Calendars Committee during the 89th Legislature. We emphasize that Representative Vasut—not Representative Hunter—was the Chair of both the House Redistricting Committee and the House Select Committee on Congressional Redistricting in 2025. See, e.g., Prelim. Inj. Hr'g Tr. Day 8 (Afternoon), ECF No. 1344, at 60; see also infra note 285 and accompanying text.

²³⁶ See, e.g., Prelim. Inj. Hr'g Tr. Day 8 (Afternoon), ECF No. 1344, at 106.

²³⁷ To be clear, we do not treat Chairman Hunter's floor statements as dispositive of the intent of the Legislature as a whole. "[S]tatements of individual legislators"—"even the sponsors of legislation"— "should not be given controlling effect." N. & S. Rivers Watershed Ass'n v. Town of Scituate, 949 F.2d 552, 555 n.6 (1st Cir. 1991), overruled on other grounds by Blackstone Headwaters Coal., Inc. v. Gallo Builders, Inc., 32 F.4th 99 (1st Cir. 2022); see also, e.g., Fusilier v. Landry, 963 F.3d 447, 466 (5th Cir. 2020) (cautioning "against overemphasizing statements from individual legislators").

Chairman Hunter introduced a redistricting bill on July 30, 2025, during the first special legislative session.²³⁸ With certain changes, the Legislature would ultimately pass Chairman Hunter's bill in the second special session.²³⁹ In his August 1, 2025, layout of that bill, ²⁴⁰ Chairman Hunter volunteered—without prompting from any other legislator²⁴¹—that "four of the five" new Republican districts proposed by the bill were "majority[-]minority Hispanic CVAP districts."²⁴² Chairman Hunter likewise volunteered, again without prompting: ²⁴³

Cir. 2020) ("In determining legislative intent, the statements of a bill's sponsor made during debate are entitled to weight." (citation modified)).

Our panel reached the same conclusion in our previous preliminary-injunction opinion in this case. See 1st Prelim. Inj. Op., 601 F. Supp. 3d at 175 n.13 ("[S]tatements of discriminatory intent by a committee chair made during floor debate would doubtless be of some weight in judging the intentions of the body as a whole, particularly at this preliminary stage.").

- ²³⁸ See Brooks Prelim. Inj. Ex. 309-T, ECF No. 1327-9, at 46; see also H.B. 4, 89th Leg., 1st Spec. Sess. (Tex. 2025).
- ²³⁹ See, e.g., Brooks Prelim. Inj. Ex. 315-T, ECF No. 1327-15, at 4-6 (identifying changes the mapmaker made between the first special session and the second); Brooks Prelim. Inj. Ex. 316-T, ECF No. 1327-16, at 32-33 (Chairman Hunter's statement that "[h]e and [his] lawyers" made changes between the version introduced in the first legislative session and the enacted version to "increase[] Republican political performance"); see also H.B. 4, 89th Leg., 2d Spec. Sess. (Tex. 2025).
 - ²⁴⁰ See Brooks Prelim. Inj. Ex. 309-T, ECF No. 1327-9, at 1, 45-46.
- A "layout" is when a bill's sponsor first presents the bill to the body in a public hearing. Prelim. Inj. Hr'g Tr. Day 1 (Afternoon), ECF No. 1337, at 43. The layout was Chairman Hunter's "first opportunity to talk about the map as it was introduced." *Id*.
- ²⁴¹ See Prelim. Inj. Hr'g Tr. Day 1 (Afternoon), ECF No. 1337, at 44 ("O. Did anybody ask Chairman Hunter at this stage of the proceedings, 'Tell us what the racial makeup of these five new districts are that you're drawing?' | [SPEAKER MOODY:] No. This is his layout of the bill, so this is him explaining the bill to the members and to the public for the first time.").

See also Jackson, 2025 WL 3019284, at *10 (indicating that statements related to race are more probative of intent when unprompted, as opposed to a response to a question phrased in racial terms).

- ²⁴² See Brooks Prelim. Inj. Ex. 309-T, ECF No. 1327-9, at 54.
- ²⁴³ See Prelim. Inj. Hr'g Tr. Day 1 (Afternoon), ECF No. 1337, at 48 ("Q. So these comments that Chairman Hunter is giving, are they in response to a question? | [SPEAKER MOODY:] No, I don't believe so. I think this is all still part of his layout. | Q. In other words, this is something he came in with his own notion to say? | A. I mean, that's typically how a layout works.").

- (1) that the introduced map increased the total number of majority-Hispanic²⁴⁴ and majority-Black²⁴⁵ congressional districts; and
- (2) the CVAP statistics for the majority-Hispanic²⁴⁶ and majority-Black²⁴⁷ districts in the introduced plan.²⁴⁸

Taken by themselves, those factual statements about the bill's racial statistics do not imply anything more than mere awareness of race, which is not actionable.²⁴⁹ Chairman Hunter could have had an innocuous reason to preemptively mention the districts' racial characteristics in his layout—namely, to stave off the criticism that opposing legislators had made during the previous redistricting cycle, which was that he didn't have certain racial data ready in response to legislators' questions.²⁵⁰ These statements alone do not clear the presumption of legislative good

²⁴⁴ See Brooks Prelim. Inj. Ex. 309-T, ECF No. 1327-9, at 58 ("[CHAIRMAN HUNTER:] In the 2021 plan, there were 7 Hispanic citizen voting age districts; and under this plan, there are 8.").

 $^{^{245}}$ See id. ("[CHAIRMAN HUNTER:] There were no majority Black CVAP . . . districts under the 2021 plan. In the proposed plan today, there are 2").

²⁴⁶ See id. at 57–58 ("[CHAIRMAN HUNTER:] Congressional District 9, the new district, has a 50.5-percent Hispanic CVAP. CD 28 . . . has an 86.70-percent Hispanic CVAP. . . . CD 34, 71.9 percent, is now a Hispanic CVAP. And CD 35, which is in San Antonio, is now a 51.6-percent Hispanic CVAP.").

²⁴⁷ See id. at 58 ("[CHAIRMAN HUNTER:] CD 18 is now 50.8 percent Black CVAP; in 2021 it was 38.8. CD 30 is now 50.2 percent Black CVAP; in 2021 it was 46 percent.").

²⁴⁸ See also Prelim. Inj. Hr'g Tr. Day 1 (Afternoon), ECF No. 1337, at 44 (Speaker Moody's testimony that he saw the notes that Chairman Hunter had prepared to deliver the layout, which contained "Black CVAP, HCVAP[,] [t]he shifts between this map and that map," etc.); *id.* at 45 ("[SPEAKER MOODY:] [T]hey were like bulleted out it looked like talking points. . . . like you're presenting a bill, you've got that broken down.").

²⁴⁹ See supra notes 182–183 and accompanying text.

²⁵⁰ See, e.g., Defs.' Post-Hr'g Br., ECF No. 1284, at 27 ("Rep. Hunter was criticized for not providing the racial makeup in 2021 Democrat legislators wanted racial data during the [2025] layout. . . . In the [Texas S]enate, Sen. Menendez criticized Sen. King for not providing racial data like Rep. Hunter."); Prelim. Inj. Hr'g Tr. Day 8 (Afternoon), ECF No. 1344, at 129 ("[CHAIRMAN VASUT:] [T]he last time we went through this in 2021 . . . [Chairman Hunter] was asked questions about CVAP by everybody, and every amendment that came up, it was constantly a question asked, particularly by members of the Democratic Party.").

faith.²⁵¹ But the combination of these statements with Chairman Hunter's additional direct evidence overcomes that presumption.

Chairman Hunter's floor statements and exchanges with other legislators suggest that he and the bill's joint authors viewed the plan's racial numbers not merely as raw statistical facts, but as selling points of the bill. After Chairman Hunter's layout, ²⁵² a Republican legislator and one of the bill's joint authors, Representative Katrina Pierson, ²⁵³ engaged in a colloquy with Chairman Hunter about the proposed plan's racial makeup. The purpose of that exchange was apparently to elicit for the legislative record that, by increasing the number of majority-Black districts, the bill would improve representation for voters of color, thereby addressing concerns about minority representation raised earlier in the legislative process. ²⁵⁴ One of the bill's other joint authors,

See also Brooks Prelim. Inj. Ex. 316-T, ECF No. 1327-16, at 370, 373 ("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").

²⁵¹ See, e.g., Alexander, 602 U.S. at 10 ("Th[e] presumption of legislative good faith directs district courts to draw the inference that cuts in the legislature's favor when confronted with evidence that could plausibly support multiple conclusions."); see also supra notes 189–190 and accompanying text.

²⁵² See Brooks Prelim. Inj. Ex. 309-T, ECF No. 1327-9, at 59.

²⁵³ See, e.g., id. at 95 ("REP. PIERSON: . . . Chairman Hunter, I just want to say: thank you for bringing the bill. I'm proud to be a joint author.").

[[]that the Legislature conducted before Chairman Hunter introduced the redistricting bill] testified that the population of Black voters in the state did not have proportionate representation. . . . 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. | REP. PIERSON: So that's two Black CVAP districts. How many Black districts are there on the [2021 Map]? | REP. HUNTER: I don't have all the counts on that. | REP. PIERSON: The answer is zero. So overall, Black voters in the state of Texas go from zero to two majority Black CVAP seats out of the 38 seats in Texas; is that accurate? | REP. HUNTER: It's accurate | REP. PIERSON: . . . 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? | REP. HUNTER: The answer is, 'Yes.'").

Representative David Spiller,²⁵⁵ likewise engaged in a colloquy with Chairman Hunter. In this colloquy, Representative Spiller emphasized that the proposed map increased the number of majority-Black and majority-Hispanic districts to rebut opponents' arguments that the map was "racially motivated" and "race negative." 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.²⁵⁸ Chairman Hunter also made value-laden statements indicating that he thought his map's racial numbers were "better" and "improv[ed]" over the 2021 Map.²⁵⁹

²⁵⁵ See, e.g., Brooks Prelim. Inj. Ex. 309-T, ECF No. 1327-9, at 59 ("REP. SPILLER: . . . [T]hank you for allowing me the opportunity to joint author [the redistricting bill].")

²⁵⁶ See Brooks Prelim. Inj. Ex. 316-T, ECF No. 1327-16, at 82 ("REP. SPILLER: . . . And this claim, that a lot of this stuff is racially motivated and race negative—let me ask you, and you've touched on it before, but we went under the [2021 Map] from zero majority Black CVAP districts in the State of Texas. And now, under your map, we added two to the list [that were] there. There there [sic] are two majority Black CVAP districts, correct? | REP. HUNTER: Correct. 18 and . . . 30. | REP. SPILLER: And on the current map we have seven majority Hispanic CVAP districts, and that is increased . . . under your [b]ill to 8. So, we're adding one more majority Hispanic CVAP district, correct? | REP. HUNTER: Yeah.").

²⁵⁷ Brooks Prelim. Inj. Ex. 309-T, ECF No. 1327-9, at 54 (emphasis added).

See also Brooks Prelim. Inj. Ex. 316-T, ECF No. 1327-16, at 29 ("It's important to note—please note members—four of the five new districts are majority/minority Hispanic").

²⁵⁸ See Brooks Prelim. Inj. Ex. 316-T, ECF No. 1327-16, at 122 ("REP. HUNTER: . . . [W]e created four out of five new seats of [sic] Hispanic majority. I would say that's great. That doesn't ensure that a political party wins them, but the Hispanic—four out of five Hispanic majority out of those new districts—that's a pretty strong message, and it's good.").

²⁵⁹ See, e.g., Brooks Prelim. Inj. Ex. 309-T, ECF No. 1327-9, at 77 (Chairman Hunter's statement that "the percentage for Black CVAP [was] better" under his proposed map); Brooks Prelim. Inj. Ex. 316-T, ECF No. 1327-16, at 220 ("REP. HUNTER: . . . CD 18 now becomes a 50.8 percent Black CVAP. [The 2021 version of CD 18 was] 38.8 percent [Black] CVAP. I think my map is much more improving [sic].").

The joint authors also repeatedly invoked *Petteway*. Chairman Hunter referred again and again to *Petteway* as one of the main impetuses for the 2025 redistricting. ²⁶⁰ He said that he and his joint authors had "redrawn the congressional map" based on *Petteway*'s "clarification" that "Section 2 does not require [the Legislature] to draw coalition districts." He likewise commented that *Petteway* had given the Legislature a new "justification . . . to look at redistricting" since the 2021 Map's enactment. ²⁶² And he indicated that his proposed map had taken into account *Petteway*'s holding that "there's not a requirement" to have coalition districts. ²⁶³ That all suggests

²⁶⁰ See, e.g., Brooks Prelim. Inj. Ex. 316-T, ECF No. 1327-16, at 357-58 ("REP. DUTTON: So, what else happened between the last redistricting and this [b]ill that causes you comfort to make these changes? | REP. HUNTER: Well, number one, in 2024 the *Petteway* case . . . was decided. . . . And there they said, Section 2 of the Voting Rights Act does not authorize separately protected minority groups to aggregate their populations for purposes of a vote dilution claim, and it does not require political subdivisions to draw precinct lines for these particular groups. So, this changed a lot of the law that happened in 2021.").

See also Brooks Prelim. Inj. Ex. 309-T, ECF No. 1327-9, at 53 ("[CHAIRMAN HUNTER:] Under the Fifth Circuit—and this is a recent decision; they changed the law [c]oalition districts were held by the Court that Section 2 no longer requires the drawing of coalition districts.").

See also Brooks Prelim. Inj. Ex. 315-T, ECF No. 1327-15, at 6, 11, 29 (similarly referencing Petteway); Brooks Prelim. Inj. Ex. 316-T, ECF No. 1327-16, at 34, 49, 93, 121, 215, 326, 328, 329, 343-44, 357–58 (same).

²⁶¹ Brooks Prelim. Inj. Ex. 316-T, ECF No. 1327-16, at 28–29 ("[T]he [Fifth] Circuit, in Petteway v. Galveston indicates that the law has changed. The court held that Section 2 does not require us to draw coalition districts. So, giving partisan political performance as an acceptable reason and clarification from these courts, we have redrawn the congressional map with that emphasis.").

See also Brooks Prelim. Inj. Ex. 309-T, ECF No. 1327-9, at 53 (similarly stating that the bill authors had "redrawn the congressional map" based in part on the "clarification from the Fifth Circuit on coalition districts").

²⁶² See Brooks Prelim. Inj. Ex. 316-T, ECF No. 1327-16, at 110 ("You have had a discussion about a U.S. Supreme Court [case] and a [Fifth] Circuit [case] that has new impact on the law, which gives us justification further to look at redistricting. And we looked at redistricting, and we created five new congressional seats, four are Hispanic majority.").

²⁶³ See id. at 122 ("[Petteway]] says there's not a requirement that you have to use coalition [districts].... So, today, this map is taking th[at] in factor [sic].").

that the mapdrawers purposefully manipulated the districts' racial demographics to convert coalition districts into single-race-majority districts.

Chairman Hunter's exchanges with Representative Spiller reinforce this point. Representative Spiller shared DOJ's mistaken view that Petteway "compelled" the Legislature to systematically eliminate coalition districts from the 2021 Map. 264 Representative Spiller and Chairman Hunter identified districts that the bill would transform from coalition districts into single-race-majority districts. ²⁶⁵ In doing so, they emphasized that changing the coalition districts in this way brought the map into "compliance" with *Petteway*. ²⁶⁶

²⁶⁴ See id. at 76–77 ("REP. SPILLER: ... [U]nder the [2021 Map], there are coalition districts that were created as such in '21 because of the law as it existed in Texas under the 5th Circuit at that time. Is that fair to say? | REP. HUNTER: That is correct "); id. at 77 ("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.").

²⁶⁵ See Brooks Prelim. Inj. Ex. 309-T, ECF No. 1327-9, at 75 ("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."); Brooks Prelim. Inj. Ex. 316-T, ECF No. 1327-16, at 79 ("[REP. SPILLER:] [CD 18 was] one of these coalition districts, and under HB 4, [it] changes to a majority Black CVAP district. Is that correct? | REP. HUNTER: That is correct. It is now 50.71 percent Black CVAP. In 2021, it was 38.99 percent Black CVAP. | REP. SPILLER: And so, previously, Black voters in that district did not hold a majority, but under your [b]ill, under HB 4, they actually do. Is that correct? | REP. HUNTER: That is correct."); id. at 80 ("REP. SPILLER: . . . District 9 . . . was also . . . a coalition district and the [type of] district that was addressed in the Petteway case. And now, under your HB 4, it changed from a coalition district to a majority Hispanic CVAP district. Is that correct? | REP. HUNTER: Yes. For the record, the Hispanic CVAP of Congressional District 9 under this plan . . . is 50.15 percent. In 2021, it was 25.73 percent.").

²⁶⁶ See Brooks Prelim. Inj. Ex. 309-T, ECF No. 1327-9, at 81-82 ("REP. SPILLER: . . . So, in summary, is it your testimony here today that you believe that the map created under [your bill] is in compliance with the *Petteway* case . . . ? | REP. HUNTER: Yes.").

Finally, when a legislator from the opposing party directly asked Chairman Hunter whether he had "purposely altered" certain coalition districts to make them single-race-majority districts, Chairman Hunter did not deny that he had. 267

All the evidence discussed so far overcomes the presumption of legislative good faith. Chairman Hunter and the other joint authors evidently strategized that a map that eliminated coalition districts and increased the number of majority-Hispanic and majority-Black districts would be more "sellable" than a nakedly partisan map. 268 The legislators could point to the map's increased number of majority-minority districts to rebut accusations of racism.²⁶⁹ The Governor could promote the map to Hispanic voters who might be inclined to swing Republican. ²⁷⁰ And legislators could deny they were redistricting for purely partisan reasons or to placate President Trump, and instead say that DOJ and *Petteway* had forced their hand.²⁷¹ It was, therefore, critical for the redistricting bill's authors to compile a legislative record replete with racial statistics and references to Petteway—which is exactly what they did.

²⁶⁷ See Prelim. Inj. Hr'g Tr. Day 1 (Afternoon), ECF No. 1337, at 51 ("REPRESENTATIVE TURNER: . . . CD18 was purposely altered to a Black CVAP majority district rather than a 38.8 percent Black CVAP district, right? | REPRESENTATIVE HUNTER: CD18 was drawn to be a 50.81 percent CVAP, which is 11.82 change plus. . . . | REPRESENTATIVE TURNER: . . . And similarly, the proposed CD35 was purposely changed to increase its Hispanic CVAP to be about 50 percent, correct? . . . | REPRESENTATIVE HUNTER: 51.57 percent. And it also has political performance involved . . . in all of this.").

²⁶⁸ Cf. Cooper, 581 U.S. at 308 n.7 ("[I]f legislators use race as their predominant districting criterion with the end goal of advancing their partisan interests—perhaps thinking that a proposed district is more 'sellable' as a race-based VRA compliance measure than as a political gerrymander and will accomplish much the same thing—their action still triggers strict scrutiny.").

²⁶⁹ See supra notes 252–259 and accompanying text.

²⁷⁰ See supra Sections II.E & III.B.3.b.ii.

²⁷¹ See supra notes 264–266; see also supra Section III.B.3.d.iii.

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." 272 It wasn't enough for the map to merely improve Republican performance; it also needed to convert as many coalition districts to single-race-majority districts as possible. That best explains the House bill's authors' comments during the legislative process and the map's stark racial characteristics. The bill's main proponents purposefully manipulated the districts' racial numbers to make the map more palatable. That's racial gerrymandering. ²⁷³

We reach that conclusion even though Chairman Hunter stated repeatedly that the bill was primarily driven by non-racial partisan motivations. ²⁷⁴ Chairman Hunter often referred to *Rucho* as another primary driver for the 2025 redistricting—sometimes in the same breath as *Petteway*, ²⁷⁵

²⁷² E.g., Bethune-Hill, 580 U.S. at 189 (citation modified).

²⁷³ See, e.g., Abbott v. Perez, 585 U.S. at 585-86 ("The Equal Protection Clause forbids racial gerrymandering, that is, intentionally assigning citizens to a district on the basis of race without sufficient justification." (citation modified)).

²⁷⁴ See, e.g., Brooks Prelim. Inj. Ex. 309-T, ECF No. 1327-9, at 52 ("[W]e are allowed to draw congressional districts . . . based on political performance, political partisanship. That's recognized by the United States Supreme Court. These districts were drawn . . . primarily using political performance "); Brooks Prelim. Inj. Ex. 316-T, ECF No. 1327-16, at 28 ("You want transparency? Here's the U.S. Supreme Court legal transparency. The underlying goal of this plan is straightforward, improve Republican political performance."); Brooks Prelim. Inj. Ex. 315-T, ECF No. 1327-15, at 4 ("[T]his map is based on partisanship, political performance [I]t has enhanced and increased Republican partisanship enhanced performance [sic].").

²⁷⁵ See, e.g., Brooks Prelim. Inj. Ex. 315-T, ECF No. 1327-15, at 6 ("So based on Rucho, based on Petteway, this, Mr. Chairman, is what the Committee substitute addresses."); id. at 29 ("I'm following Rucho, the U.S. Supreme Court [sic] in Petteway. And it allows us to do this "); Brooks Prelim. Inj. Ex. 316-T, ECF No. 1327-16, at 77 ("[Ilt's a combination . . . 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.").

sometimes not.²⁷⁶ Chairman Hunter also stated on the House floor that he was "not guided" by the DOJ Letter in the redistricting process.²⁷⁷ He mentioned at various times that he had taken other race-neutral districting criteria like compactness into account.²⁷⁸ And he said on the floor that he "didn't go at" any coalition districts. 279

²⁷⁶ See, e.g., Brooks Prelim. Inj. Ex. 316-T, ECF No. 1327-16, at 28 ("We are allowed to draw congressional districts on the basis of political performance as recognized by the U.S. Supreme Court in Rucho v. Common Cause."); Brooks Prelim. Inj. Ex. 309-T, ECF No. 1327-9, at 68-69 ("REP. SPILLER: ... Is it fair to say that the map in HB 4 based [sic] on political performance or partisan performance? REP. HUNTER: The answer is, 'Yes.' And I want everybody to know that. . . . [I]t's based on Rucho, a United States Supreme Court case.").

²⁷⁷ See Prelim. Inj. Hr'g Tr. Day 2 (Morning), ECF No. 1415, at 131 ("[T]he Department of Justice letter is a letter. . . . That's not guiding me. I'm presenting a plan. And they can review the plan. . . . And if they . . . believe that I've addressed issues, good. If they believe I haven't, good. But whatever they've sent, I'm not ignoring, I'm not accepting. I'm doing this plan. So whatever their involvement is, they just sent a letter, as far as I'm concerned.").

See also Brooks Prelim. Inj. Ex. 309-T, ECF No. 1327-9, at 61 ("I don't know if [the 2025 redistricting] was caused by the Department of Justice. I keep hearing that, and I keep hearing about a letter. All I know is we're here by proclamation of the [G]overnor. Now, what the letter has to do with it, I've got no personal knowledge. I have no knowledge. And I will tell you: I don't know what that has to do with this. That wasn't part of me. All I know is we had a Special Session called and this was the topic and I agreed, by the request of [Chairman Vasut], to file this bill.").

See also Brooks Prelim. Inj. Ex. 316-T, ECF No. 1327-16, at 108-09 ("REP. GARVIN HAWKINS: ... What was your understanding of the DOJ's letter regarding redistricting? | REP. HUNTER: Well, my answer hasn't changed one bit. There was a DOJ letter. It's out there. DOJ will get to review this. I have no criticism. I have no feedback. They do what they want. We do what we want. Nothing any different. | REP. GARVIN HAWKINS: Okay. So you've read [the DOJ Letter] now. . . . | REP. HUNTER: I have not . . . I just read parts of it.").

However, Chairman Hunter also made a statement suggesting that the lawyers he hired to produce the map had "t[aken the DOJ Letter] into account" when creating the map. See Brooks Prelim. Inj. Ex. 316-T, ECF No. 1327-16, at 111 ("REP. HUNTER: Look, there was a DOJ letter. . . . [T]he lawyers looked at it, took it all into account, and then we came up with this plan which set it dot [sic]. It mapped the threshold. It mapped the requirements.").

²⁷⁸ See, e.g., Brooks Prelim. Inj. Ex. 309-T, ECF No. 1327-9, at 95 ("REP. PIERSON: . . . This has been redrawn, as you stated in your opening statement, to reflect political performance but also compactness; is that right? | REP. HUNTER: Yes.").

²⁷⁹ See Brooks Prelim. Inj. Ex. 316-T, ECF No. 1327-16, at 344 ("I didn't go at coalition districts." I had the lawyers come up with five seats and enhance the Republican performance, and that's what we did. I didn't go at a coalition.").

But if Chairman Hunter's motives were exclusively partisan as the State Defendants contend, why mention *Petteway* at all? Why not just base the 2025 redistricting exclusively on Rucho?²⁸⁰ The answer must be that race and Petteway were essential ingredients of the map, without which the 2025 redistricting wouldn't have occurred. ²⁸¹ The fact that *Rucho* was already the law when the Legislature redistricted in 2021²⁸² further cements the notion that *Petteway* was the primary driver behind the 2025 redistricting. Petteway was the only thing about the legal landscape that had changed since 2021.²⁸³

Contrary Direct Evidence of Legislative Intent 4.

The State Defendants' contrary direct evidence regarding the Legislature's intent primarily comes from:

- Senator Phil King, the Chairman of the Senate Redistricting Committee and (1) the sponsor of the Senate counterpart to the House redistricting bill;²⁸⁴
- Senator Adam Hinojosa; and (2)
- Representative Cody Vasut, who was the Chairman of the House Select (3) Committee on Congressional Redistricting in 2025. 285

²⁸⁰ See supra Section II.A.4.

²⁸¹ See supra Section II.C (recounting that requests to redistrict for purely partisan reasons went nowhere).

²⁸² See Rucho v. Common Cause, 588 U.S. 684 (decided June 27, 2019).

²⁸³ See Petteway v. Galveston County, 111 F.4th 596, 600 (5th Cir. 2024) (en banc) (decided August 1, 2024); see also supra Section II.B.

²⁸⁴ See, e.g., Prelim. Inj. Hr'g Tr. Day 5 (Afternoon), ECF No. 1341, at 77.

²⁸⁵ See, e.g., Prelim. Inj. Hr'g Tr. Day 8 (Afternoon), ECF No. 1344, at 60.

These legislators each testified at the preliminary-injunction hearing that race played no role in the 2025 redistricting process. But their testimony is less probative than the Plaintiff Groups' evidence.

a. Chairman King

At the preliminary-injunction hearing, as well as on the Senate floor, Chairman King insisted that the DOJ Letter did not motivate his votes and actions during the 2025 redistricting process.²⁸⁶ He claimed that he did not look at racial data at all,²⁸⁷ and that, to his knowledge, the 2025 Map was drawn blind to race.²⁸⁸

Chairman King maintained that his goals in the 2025 redistricting were to achieve three lawful, race-neutral objectives:

- (1) to increase the likelihood that the districts would elect Republicans;
- (2) to enact a map that complied with all applicable law; and
- (3) to make several of the districts more compact. ²⁸⁹

See also Brooks Prelim. Inj. Ex. 319-T, ECF No. 1327-12, at 208 (Chairman King's statement on the Senate floor that he "thought the DOJ Letter . . . unnecessarily confused the redistricting process").

²⁸⁶ See, e.g., Prelim. Inj. Hr'g Tr. Day 5 (Afternoon), ECF No. 1341, at 80 ("Q. What significance did [the DOJ L]etter play in Texas redistricting in 2025? | A. Well, I can't speak for everyone else in the Legislature, but for me it didn't really carry any significance."); Prelim. Inj. Hr'g Tr. Day 1 (Morning), ECF No. 1414, at 107 ("[M]y support . . . of [the redistricting bill] does not in any way take into account the DOJ letter."); Prelim. Inj. Hr'g Tr. Day 8 (Morning), ECF No. 1421, at 139 ("I honestly never took the [DOJ L]etter into account. I didn't think it mattered.").

²⁸⁷ See, e.g., Prelim. Inj. Hr'g Tr. Day 5 (Afternoon), ECF No. 1341, at 111 ("Q.... Did you review any racial data associated with [the redistricting bill]? | A. No, I didn't look at any racial data."); Prelim. Inj. Hr'g Tr. Day 2 (Morning), ECF No. 1415, at 32 ("I have not taken racial data into consideration in drawing the map.").

²⁸⁸ See, e.g., Prelim. Inj. Hr'g Tr. Day 5 (Afternoon), ECF No. 1341, at 111 ("Q. To your knowledge, was race used in the drawing of the map? | A. It was not.").

²⁸⁹ See, e.g., id. at 85.

Chairman King said that he sponsored and voted for the enacted map because it achieved all three of those race-neutral objectives.²⁹⁰ Chairman King further testified that the motives of the Legislature as a whole were partisan rather than racial.²⁹¹ Chairman King's testimony thus supports the State Defendants' position that race didn't play any role whatsoever, let alone predominate, in the 2025 redistricting process. ²⁹²

For the following reasons, though, we find Chairman King's testimony and legislative statements less probative of the Legislature's intent than those of Speaker Burrows, Chairman Hunter, Representative Oliverson, Representative Toth, Representative Spiller, and Representative Pierson.

i. Chairman King's Minimal Role in the Redistricting Process

First, Chairman King played a much less significant role in the 2025 Map's development and passage than other legislators, even though he served as Chairman of the Senate Redistricting Committee. He testified that the House—not the Senate—took "the lead on redistricting." ²⁹³ He further admitted that he played "[no role] whatsoever" in drafting the map that the Legislature

²⁹⁰ See, e.g., id. at 115 ("Q. And did the map that ultimately passed both houses of the Legislature, did it meet all three of your stated goals? | A. Yes. It was a legal map, it should elect more Republican members to the U.S. House, and it did improve compactness in some districts."); Prelim. Inj. Hr'g Tr. Day 8 (Afternoon), ECF No. 1344, at 52–53 (similar).

²⁹¹ See, e.g., Prelim. Inj. Hr'g Tr. Day 5 (Afternoon), ECF No. 1341, at 77 ("Q. And what is your understanding of why . . . redistricting was being considered in Texas? | A. Well, it was absolutely to create more Republican seats in the U.S. Congress."); id. at 99-100 ("Q. And so was Texas Congressional Redistricting, and the reasons for it, widely publicized both prior to it being placed on the call and during the redistricting effort? | A. Oh, yes. I think it was apparent to everyone the purpose of it was partisan '').

²⁹² See supra notes 155–158 and accompanying text.

²⁹³ Prelim. Inj. Hr'g Tr. Day 5 (Afternoon), ECF No. 1341, at 91.

See also, e.g., id. at 121-22 ("The Lieutenant Governor... had told me that [he and the Speaker had] divided up all the major issues between the House and the Senate. . . . He informed me that the House would take the lead [on redistricting] ").

ultimately enacted.²⁹⁴ Chairman King merely took the same map that the House had introduced during the Legislature's first special session and introduced it, unchanged, in the Senate.²⁹⁵ He stated on the Senate floor that he didn't "really have any personal knowledge of the inner workings that went into who participated in drawing the maps."²⁹⁶ And, by his own admission, Chairman King was "out of the loop" for key milestones in the 2025 redistricting process.²⁹⁷ Thus, as between Chairman King and Chairman Hunter—the latter of whom was far more intimately involved in the 2025 Map's development and passage—we find Chairman Hunter's statements regarding the purposes underlying the 2025 redistricting much more probative.

²⁹⁴ See id. at 91 ("Q. Did you play any role in drawing the map for [the Senate counterpart to the House redistricting bill] during the first Special Session? | A. No, none whatsoever. | Q. And did you draw any map for redistricting in 2025? | A. No, I did not. | Q. Did you open any map-drawing software? | A. No, I did not.").

See also Prelim. Inj. Hr'g Tr. Day 8 (Morning), ECF No. 1421, at 127 ("Q. . . . [Y]ou only saw the final product, right? You only saw the versions that were filed in the House that you then filed during each of the special sessions, correct? | A. That is correct. | Q. You weren't involved in any interim steps of the map, true? | A. That is correct.").

²⁹⁵ See, e.g., Prelim. Inj. Hr'g Tr. Day 5 (Afternoon), ECF No. 1341, at 91 ("A. . . . [The House] passed their bill out of committee and then, before it got to the floor, the Democrats broke quorum and left the state. And so at that point I went ahead and filed the companion bill, which was SB4. | Q. Where did you get the map that was associated with Senate Bill 4? | A. Well, it was the same map that was being considered by the House.").

²⁹⁷ See Prelim. Inj. Hr'g Tr. Day 8 (Morning), ECF No. 1421, at 140–41 ("Q.... Do you have any idea when it is that the map that Mr. Kincaid drew landed with the lawyers for Chairman Hunter? | A. No. Q. The testimony here is that that took place on July the 23rd. And it sounds to me like you were out of the loop in terms of the delivery of that map. Is that fair to say? | A. Yes.").

See also Prelim. Inj. Hr'g Tr. Day 1 (Morning), ECF No. 1414, at 119 ("CHAIRMAN KING: ... [The mapdrawer, Adam Kincaid] called me and asked me if I was aware that the House was going to be putting out a map that had some changes from the original H.B. 4. And I said, no, I wasn't.").

See also Prelim. Inj. Hr'g Tr. Day 1 (Morning), ECF No. 1414, at 120 ("SENATOR GUTIERREZ: ... There were some changes between the final version of H.B. 4 and the committee sub[stitute]? ... My understanding of that is those changes were made at the behest of incumbent congresspeople. Is that accurate? | CHAIRMAN KING: I do not know.").

²⁹⁶ Prelim. Inj. Hr'g Tr. Day 1 (Morning), ECF No. 1414, at 108.

ii. Inconsistencies in Chairman King's Testimony

Second, a concerning portion of the hearing evidence was inconsistent with Chairman King's testimony and floor statements.

On direct- and cross-examination, the parties thoroughly explored conversations between Chairman King and Adam Kincaid during the legislative process. Mr. Kincaid was the outside mapmaker who drew nearly all of the 2025 Map.²⁹⁸ Significant aspects of Chairman King's testimony about those conversations were inconsistent with other evidence.

For instance, Chairman King spoke briefly with Mr. Kincaid at the American Legislative Exchange Council ("ALEC") conference in mid-July 2025.²⁹⁹ As Chairman King tells it, he told Mr. Kincaid that he didn't want to talk about the redistricting maps, because he believed he'd likely be chairing the Senate Redistricting Committee, and he wanted all information about redistricting to come through public channels.³⁰⁰ By contrast, Mr. Kincaid testified that Chairman King openly questioned him about the redistricting efforts during their conversation at ALEC—without ever stating that he'd prefer not to talk about the maps due to his likely future position on the

²⁹⁸ See infra Section III.B.4.d.

²⁹⁹ See, e.g., Prelim. Inj. Hr'g Tr. Day 5 (Afternoon), ECF No. 1341, at 82 (Chairman King's testimony); Prelim. Inj. Hr'g Tr. Day 6 (Afternoon), ECF No. 1342, at 20 (Mr. Kincaid's testimony).

³⁰⁰ See Prelim. Inj. Hr'g Tr. Day 5 (Afternoon), ECF No. 1341, at 82 ("I told him at that—when we met that I would not—or that I would probably be chairing the Redistricting Committee and that I preferred that we not discuss the redistricting maps."); *id.* at 118 ("Q. . . . [W]hat you stated here today is that you told Mr. Kincaid you didn't want to hear anything about the Texas Redistricting Map. Did I hear that correctly? | A. Yes."); *id.* at 119 ("Q. . . . Why did you tell Adam Kincaid you didn't want to know anything about the Texas map that you were about to facilitate the passage of? | A. . . . I wanted all information that came to me to come in a public forum."); *id.* ("I said, 'Let's not talk about the map.").

See also Prelim. Inj. Hr'g Tr. Day 1 (Morning), ECF No. 1414, at 117–18 (Chairman King's floor statement that he "specifically told" Mr. Kincaid: "Don't tell me anything you are doing with regard to map drawing. Don't tell me about the details of any map if you are involved in it."); Prelim. Inj. Hr'g Tr. Day 5 (Afternoon), ECF No. 1341, at 128 (Chairman King's floor statement that he "specifically told" Mr. Kincaid: "Don't tell me anything about the maps you're drawing. I don't want to discuss that.").

committee. 301 While Chairman King testified that he never asked how many seats Republicans would potentially gain under the 2025 Map, ³⁰² Mr. Kincaid unequivocally testified that Chairman King specifically asked him how many seats Republicans could pick up under the new map, and Mr. Kincaid told him. 303 When counsel confronted Chairman King with that discrepancy at the preliminary-injunction hearing, he conceded that either he was misremembering or Mr. Kincaid's testimony was incorrect.³⁰⁴ That leads us to question whether Chairman King, Mr. Kincaid, or neither one was accurately relaying the substance of their meeting at ALEC—and whether anything happened during that meeting that would betray an unlawful legislative motive.

³⁰¹ See Prelim. Inj. Hr'g Tr. Day 6 (Afternoon), ECF No. 1342, at 20–22 ("Q. And what did you discuss? | [MR. KINCAID:] . . . He said, 'How many seats are we talking?' I said, 'Five seats. It's going to be a five-seat pickup.' . . . | Q. . . . But you did talk about the map? | A. Broadly, yes. There was kind of open questioning at that point in time whether or not we would actually be able to pick up five seats. . . . Q. And he was curious about that? | A. Yeah. He was curious, like, 'Is it actually five seats?' And I said, 'Yes, five seats.' | Q. And you confirmed that for him? | A. I believe so. . . . | Q. Do you remember anything else he said to you in that meeting? | A. He mentioned something about, you know, getting the map done or, you know, working together to get the map done, something along those lines.").

³⁰² See Prelim. Inj. Hr'g Tr. Day 5 (Afternoon), ECF No. 1341, at 119 ("Q. You left that meeting with not a bit of knowledge over what this map would look like? | [CHAIRMAN KING:] I don't recall us discussing any details of the map. . . . I said, 'Let's not talk about the map.' | O. He didn't tell you how many Republican seats might be harvested? | A. Not that I recall.").

³⁰³ See Prelim. Inj. Hr'g Tr. Day 6 (Afternoon), ECF No. 1342, at 20–22 ("[ADAM KINCAID:] ... He said, 'How many seats are we talking?' I said, 'Five seats. It's going to be a five-seat pickup.' ... | Q. And he was curious about that? | A. Yeah. He was curious, like, 'Is it actually five seats?' And I said, 'Yes, five seats."").

³⁰⁴ See Prelim. Inj. Hr'g Tr. Day 8 (Morning), ECF No. 1421, at 131–32 ("Q. . . . I specifically asked you if you were told [during the ALEC] meeting whether or not the map was going to make changes to five districts. . . . And you said, no, I didn't want to know anything about the map. That was your testimony here. [CHAIRMAN KING:] My recollection of the meeting was that when we sat down and I told Adam it looks like I'm going to be the chairman of the committee and so I don't want to talk anything about the map. | Q. And so if it's been stated under oath here in this courtroom in that chair by a different witness that . . . you specifically asked about the number of districts that would be affected and were told five would be affected, that testimony was false, in your opinion? | A. It's either incorrect or I'm remembering incorrectly.").

Chairman King's testimony at the preliminary-injunction hearing was also inconsistent with statements he gave on the Senate floor. He testified that "sometime late in the first-called Special Session"³⁰⁵—*i.e.*, sometime shortly before August 15, 2025³⁰⁶—he called Mr. Kincaid to ask whether he "use[d] racial data in drawing the map." According to Chairman King, Mr. Kincaid answered that he hadn't used racial data. 308

However, on August 22, 2025—shortly after that call allegedly occurred—Senator Roland Gutierrez directly asked Chairman King on the Senate floor if he knew whether the mapdrawer "looked at race in creating the [] map." ³⁰⁹ Despite having allegedly called Mr. Kincaid a little over a week earlier to ask him exactly that question, Chairman King told Senator Gutierrez that he didn't know whether the mapdrawer had looked at race. 310 In fact, Chairman King told Senator Gutierrez during that same exchange that he hadn't even "inquired as to who physically drew the

³⁰⁵ Prelim. Inj. Hr'g Tr. Day 5 (Afternoon), ECF No. 1341, at 82–83.

³⁰⁶ See Prelim. Inj. Hr'g Tr. Day 8 (Afternoon), ECF No. 1344, at 110 (testimony that the firstcalled special session adjourned on August 15, 2025).

³⁰⁷ Prelim. Inj. Hr'g Tr. Day 5 (Afternoon), ECF No. 1341, at 83 ("I had been repeatedly asked on the floor and in hearings if racial data was used to draft the map. I had always answered that, to my knowledge, it was not. I finally just picked up the phone and called Adam [Kincaid] and said, 'Adam, I just have one question to ask you. Did you use racial data in drawing the map?"").

See also Prelim. Inj. Hr'g Tr. Day 8 (Morning), ECF No. 1421, at 128–29 ("I did call [Mr. Kincaid] and ask him if he used racial data because I had been asked so many times on the floor and in committee. And I finally thought, well, I'll just call him and ask him. And so I picked up the phone and I said, [']Mr. Kincaid, just one question for you. I don't want to talk about the map. Did you use racial data in drawing this map?[']").

³⁰⁸ See Prelim. Inj. Hr'g Tr. Day 8 (Morning), ECF No. 1421, at 129 ("[H]e responded, [']no, I did not.[']").

³⁰⁹ See id. at 176; see also Brooks Prelim. Inj. Ex. 319-T, ECF No. 1327-19, at 14.

³¹⁰ See Prelim. Inj. Hr'g Tr. Day 8 (Morning), ECF No. 1421, at 176 ("SENATOR GUTIERREZ: And you don't know whether [the mapdrawer] looked at race in creating these maps, do you? | SENATOR KING: What I—no."); see also Brooks Prelim. Inj. Ex. 319-T, ECF No. 1327-19, at 14.

maps."311 Yet Chairman King clearly knew Mr. Kincaid had drawn the map, since he had allegedly called Mr. Kincaid just a week or two earlier to ask him whether he had based that map on race. Chairman King's testimony in court thus conflicts with his responses to Senator Gutierrez on the Senate floor—causing us to further question his credibility. 312

The record also contains discrepancies regarding:

whether Chairman King's meeting with Mr. Kincaid at ALEC was (1) unplanned or prearranged; 313 and

See also Prelim. Inj. Hr'g Tr. Day 8 (Morning), ECF No. 1421, at 130–31 ("Q. And so if it's been stated under oath in this courtroom that you didn't run into Mr. Kincaid, you had a phone call with him the day before to arrange a meeting with Mr. Kincaid, that testimony is false, in your opinion? | [CHAIRMAN KING: I don't remember a phone call with Adam Kincaid . . . during the ALEC.").

³¹¹ See Prelim. Inj. Hr'g Tr. Day 8 (Morning), ECF No. 1421, at 176; see also Brooks Prelim. Inj. Ex. 319-T, ECF No. 1327-19, at 14.

³¹² Respectfully, we disbelieve Chairman King's assertion that his conversation with Mr. Kincaid about whether he used racial data simply slipped his mind during his exchange with Senator Gutierrez because Chairman King was drained from a lengthy legislative debate. Contra Prelim. Inj. Hr'g Tr. Day 8 (Morning), ECF No. 1421, at 129 ("[T]hat was in the middle or toward the end . . . of a four- to six-hour debate where I had been standing on the floor as the sole member representing that map, that bill. And, you know, it's just easy to make a mistake when you have been through that long a debate."). We find it unlikely that Chairman King would have forgotten about a particularly recent conversation that he personally initiated with one of the key participants in the redistricting process about an issue critical to the map's legality. See id. ("Q.... [I]t seems like when Senator Gutierrez asked you about your contacts with Kincaid ... that might be the first one at the front of your lobe that you would think of. Don't you agree? A. I don't disagree with that ").

³¹³ Contrast, e.g., Prelim. Inj. Hr'g Tr. Day 8 (Morning), ECF No. 1421, at 130 (Chairman King's testimony at the preliminary-injunction hearing that he and Mr. Kincaid "bumped into each other" at ALEC), and Prelim. Inj. Hr'g Tr. Day 5 (Afternoon), ECF No. 1341, at 82 (similarly testifying that he and Mr. Kincaid "ran into each other at the ALEC . . . conference"), and Prelim. Inj. Hr'g Tr. Day 1 (Morning), ECF No. 1414, at 117 (Chairman King's floor statement that he "ran into [Adam Kincaid] at the ALEC Annual Conference"), with Prelim. Inj. Hr'g Tr. Day 6 (Afternoon), ECF No. 1342, at 21–22 (O. And you just, like, happened to run into each other or had you made a plan to— | [ADAM KINCAID:] We planned to meet. | Q. Okay. How did that planning process happen? Did he call you, text you? | [ADAM KINCAID:] I think we spoke briefly the day before and said, 'Hey, let's meet up at ALEC.' | Q. Okay. And that was a phone call that he made? [ADAM KINCAID:] Yeah. Or I made. I can't remember . . . who called who.").

(2) the substance and existence of other communications between Chairman King and Mr. Kincaid during the 2025 redistricting process.³¹⁴

We might dismiss those inconsistencies as innocuous memory lapses if we considered either one of them in a vacuum. But the number of inconsistencies regarding potentially critical exchanges between the Chair of the Senate Redistricting Committee and the person who drew the 2025 Map makes us doubt the veracity of Chairman King's testimony.

For the foregoing reasons, we do not credit Chairman King's testimony about the Legislature's motives.

b. Senator Hinojosa

We next consider the testimony of Senator Adam Hinojosa. Senator Hinojosa delivered a speech on the Senate floor stating that he was voting for the 2025 Map for partisan rather than

See also Prelim. Inj. Hr'g Tr. Day 8 (Morning), ECF No. 1421, at 147–48 ("Q. Now, you recall the testimony here on Monday, I asked you . . . did it ever occur to you, since you had [Mr. Kincaid's] number and your colleagues were asking for it, to just call him up and ask him to come down and talk to the committee? . . . | [CHAIRMAN KING:] I do. | Q. And you said nobody ever asked me to do that. Do you remember that? | A. That sounds correct. Nobody did ever ask me to do that. | Q. And so if it's been the testimony here that in fact you did call Mr. Kincaid and ask him to come to the committee and testify, and he told you he was too busy and couldn't spare three days, that testimony, in your view, is false? | A. It would be incorrect. I sent him a letter as an invitation.").

³¹⁴ Contrast Prelim. Inj. Hr'g Tr. Day 5 (Afternoon), ECF No. 1341, at 142 (Chairman King's testimony at the preliminary-injunction hearing that he never "call[ed] up Adam Kincaid" to "ask him to come give his testimony to the Senate" because he'd "already sent him a letter formally inviting [Mr. Kincaid] to do so"), with Prelim. Inj. Hr'g Tr. Day 6 (Afternoon), ECF No. 1342, at 23 ("[ADAM KINCAID:] [Chairman King] called me one time during the hearings He wanted to make sure . . . I had received the invitation to testify. | Q. Okay. And what did you say? | A. 'Yes.' | Q. And what else did you say? | A. 'I couldn't make it to Austin.' | Q. And how did he respond to that? | A. 'Okay.' | Q. And so . . . the general nature of that phone call was just calling you to . . . ask if you'd gotten the invitation? | A. He wanted to make sure I knew I was invited to come. . . . He made a point to say that he had made a promise to the Democrat he was working with to, you know—he would do that, so he did.").

racial reasons.³¹⁵ While we have no reason to doubt the truthfulness or sincerity of that speech, we don't think Senator Hinojosa's testimony and contemporaneous legislative statements move the needle. Senator Hinojosa had little involvement in the redistricting process beyond voting for the bill and delivering a brief speech in support. 316 Thus, Senator Hinojosa's testimony tells us, at most, why one single legislator voted for the 2025 Map. Precedent cautions us not to "overemphasiz[e] statements from individual legislators,"317 as "[w]hat motivates one legislator to make a speech about a statute is not necessarily what motivates scores of others to enact it."318 We find the contemporaneous statements of the 2025 Map's sponsors and primary champions more probative of the Legislature's intent. 319

See also id. at 65 (Senator Hinojosa's testimony that he didn't serve on the Senate Redistricting Committee in 2025).

³¹⁵ See Prelim. Inj. Hr'g Tr. Day 7 (Afternoon), ECF No. 1343, at 67–70 ("[L]et's stop pretending that this is all about race. It is about values. It is about representation—real representation. The fact that we are redrawing the maps is to ensure that . . . the people are able to have representation that reflects their values, not their last name, not their skin color. . . . And with that, members, I proudly stand and look forward to casting my vote in favor of House Bill 4."); see also Defs.' Prelim. Inj. Ex. 1325, ECF No. 1357-5, at 63–66.

³¹⁶ See Prelim. Inj. Hr'g Tr. Day 7 (Afternoon), ECF No. 1343, at 78–79 ("Q. This record reflects that at no point prior to [your speech on the floor] had you engaged in the legislative process on the map. Isn't that true? | A. Right, drawing maps or anything like that, no. | Q. There was [sic] no public comments from you in committee, either on the dais or as a participant, as a witness, or in any of the Senate floor proceedings on this map until that speech that we saw here in Court today. Is that fair to say? | A. Fair to say."); id. at 80 ("Q. . . . [Y]ou weren't involved in the drawing of the lines that are made up of this new congressional map. Is that fair to say? | A. That's correct, sir.").

³¹⁷ See Fusilier, 963 F.3d at 466.

³¹⁸ United States v. O'Brien, 391 U.S. 367, 384 (1968); see also, e.g., Fusilier, 963 F.3d at 466 (indicating that the quoted language from O'Brien remains good law).

³¹⁹ See supra note 237 and accompanying text.

Chairman Vasut c.

Finally, Chairman Vasut. In contemporaneous statements to the media, Chairman Vasut insisted that the 2025 Map was motivated by partisan rather than racial considerations, ³²⁰ and that the DOJ Letter did not influence the Legislature in the redistricting process.³²¹ Chairman Vasut likewise stated in legislative hearings that he wasn't influenced by the Governor's media statements conveying a desire to eliminate coalition districts.³²²

We do not disregard Chairman Vasut's testimony on credibility grounds like Chairman King's. And unlike Senator Hinojosa, Chairman Vasut held a key position in the redistricting process as Chair of the House Select Committee on Congressional Redistricting³²³ and as one of the House bill's joint authors. 324 Accordingly, we do not dismiss Chairman Vasut's statements as the views of a rank-and-file legislator who wasn't intimately involved in the redistricting process.

See also id. at 81 (Chairman Vasut's testimony that the "DOJ [L]etter did not factor into [his] decision to make any vote on" the 2025 Map).

³²⁰ See, e.g., Prelim. Inj. Hr'g Tr. Day 8 (Afternoon), ECF No. 1344, at 117 ("I have not seen any evidence that this map was racially based. What I have seen is evidence that this map was politically based.").

³²¹ See id. at 118 ("I disagree with the assumption that this process had anything to do with the DOJ letter. Yeah, they sent us a letter, but as you know, the proclamation called us in to do congressional redistricting, and we did congressional redistricting when we passed HB4 based off of political performance. So I frankly don't care what the DOJ letter said—and I think it's pretty clear that no one does. . . . So this bill was not based off of that DOJ letter. That bill was based off of improving political performance.").

³²² See id. at 93–94 ("REPRESENTATIVE WU: Do you know whether the Governor's true intent is to remove coalition districts from Texas maps? . . . Would you be surprised if the Governor specifically said, point blank, quote, We have the ability now to draw maps that don't have coalition districts, end quote? ... | REPRESENTATIVE VASUT: I'm aware of the Governor making remarks [b]ut it's not the [C]hair's intention to be taking action based off the . . . expressed words of the Governor in a private setting. The Governor has given a proclamation, and, as the [C]hair has indicated, the [C]hair is going to act on that proclamation.").

³²³ See supra note 286 and accompanying text.

³²⁴ See H.B. 4, 89th Leg., 1st Spec. Sess. (Tex. 2025); H.B. 4, 89th Leg., 2d Spec. Sess. (Tex. 2025).

On balance, however, the direct evidence of a predominant racial motive outweighs the direct evidence on the other side. The fact that one witness provided testimony that challenges the Plaintiff Groups' claims doesn't prevent them from meeting their burden at this stage.

We conclude that the contemporaneous statements of legislators involved in the 2025 redistricting are more indicative of racial motives than partisan ones. When we consider that direct evidence with the circumstantial evidence of racial gerrymandering, the totality of the record persuades us that the Plaintiff Groups have shown the requisite likelihood of success on the merits of most of their racial-gerrymandering claims.

d. **Adam Kincaid**

As previewed above, the person who drew all but a small portion³²⁵ of the 2025 Map was Mr. Adam Kincaid. 326 Mr. Kincaid wasn't a member of the Legislature; instead, the Republican National Committee hired Mr. Kincaid as an outside mapmaker to draw the State's congressional plan.³²⁷

³²⁵ The Legislature made certain changes to the introduced map that Mr. Kincaid didn't draw. See, e.g., Prelim. Inj. Hr'g Tr. Day 6 (Morning), ECF No. 1419, at 159 ("Q. . . . [D]id the border you drew that we see in [the introduced version of the 2025 Map] between [CDs] 16 and 23 make it into the final map? A. It did not. | Q. Did you draw the change between 16 and 23 between [the introduced map] and [the enacted map]? | A. I did not."); id. at 173 ("The . . . change was in El Paso. . . . [T]hat was a change that had come from the Texas House. I did not draw that.").

No Plaintiff Group challenges those non-Kincaid-drawn districts on racial-gerrymandering grounds, see Chart of Claims, ECF No. 1208-1, at 2-4, so nothing about Mr. Kincaid's non-involvement with those districts affects our legal conclusions.

³²⁶ See Prelim. Inj. Hr'g Tr. Day 6 (Morning), ECF No. 1419, at 33–34.

³²⁷ See id. at 59–62.

i. Mr. Kincaid's Testimony

At the preliminary-injunction hearing, Mr. Kincaid testified extensively about his thought process when drafting the 2025 Map. ³²⁸ He stated that although he has the ability to display racial demographic data on his mapdrawing software, ³²⁹ he did not look at any racial data when drafting the 2025 Map. ³³⁰ Mr. Kincaid thus testified unequivocally that he drew the 2025 Map completely blind to race.

We leave undetermined the issue of whether Mr. Kincaid's testimony amounted to undisclosed expert testimony that we must exclude from the preliminary-injunction record. *See id.* at 6–32 (the parties' arguments on that issue). Either way the Court were to rule on that issue would not substantively change the Court's determination of the preliminary-injunction motions.

³²⁹ See id. at 43 ("Q: Is the census data that comes preloaded in . . . your redistricting software, your map drawing software, is there racial data in there? | A. Yes."); id. at 45 ("Q. Can you help the Court understand whether you can ever see racial data on this screen? How that happens? | A. Sure. So . . . [the software] has at the top left corner is a . . . demographics tab. You click on that. . . . [I]t will have all the census data that's provided by the [B]ureau So you can select or not select . . . whatever datasets you are looking to work with.").

See also, e.g., Prelim. Inj. Hr'g Tr. Day 7 (Morning), ECF No. 1420, at 54 ("Q. . . . [I]f you had [CVAP] by race on your platform . . . you could also set it up in [a display box on the screen] so that every time you moved geography into and out of the district, even if you are using shading on political performance, you could watch those numbers changing as you are adding or taking out geography with respect to, for example, Hispanic [CVAP]? | A. You could do that, yes.").

³³⁰ See, e.g., Prelim. Inj. Hr'g Tr. Day 6 (Morning), ECF No. 1419, at 46 ("[W]hen you draw a map . . . do you have racial data visible? | A. I do not.").

See also id. at 57–58 ("Q. Do you ever become aware of racial data after you draw a map? | A. Yes. | Q. Do you then incorporate that racial data into your next draw of the map? . . . So let's say—have you ever been in a situation where you drew a map without looking at race? | A. Uh-huh. | Q. And then found out the racial makeup of a given district and then gone back and made changes to that district based on that racial understanding? | A. No."); id. at 191 ("Q. Did you make any changes as a result of becoming aware of the racial demographic character of the districts in [the first version of the 2025 Map you drew]? | A. I did not. | Q. Why not? | A. I don't draw based off of race.").

³²⁸ See id. at 76–191.

Mr. Kincaid testified that he instead based his districting choices entirely on partisan, political, and other race-neutral criteria:

- "[E]very Republican incumbent who lived in their seat" under the 2021 Map (1) needed to "stay[] in their seat" under the 2025 Map. 331
- (2) "[E]very Republican incumbent who was in a district that President Trump had won with 60 percent of the vote or more in 2024" needed to "stay[] in a district that President Trump won . . . with 60 percent of the vote or more.",332
- (3) For incumbent Republican members "who were in districts that President Trump had carried but by less than 60 percent of the vote," Mr. Kincaid "either had to improve" the Republican performance of those districts "or keep their Partisan Voting Index" ("PVI") "the same." 333

See also Prelim. Inj. Hr'g Tr. Day 7 (Morning), ECF No. 1420, at 125–26 (testifying that the requirement that "incumbent Republicans who lived in their seats stayed in their seats" was an "instruction[] from the White House").

³³² See Prelim. Inj. Hr'g Tr. Day 6 (Morning), ECF No. 1419, at 65.

See also, e.g., id. ("I was not allowed to take any incumbent Republican who was above 60 below 60."); Prelim. Inj. Hr'g Tr. Day 7 (Morning), ECF No. 1420, at 125–26 (testifying that "the 60 percent threshold for incumbent [Republican] members of [C]ongress" was an "instruction[] from the White House").

³³³ See Prelim. Inj. Hr'g Tr. Day 6 (Morning), ECF No. 1419, at 65.

See also Prelim. Inj. Hr'g Tr. Day 7 (Morning), ECF No. 1420, at 125-26 (testifying that the requirement not to "decrease [the partisan performance of] the districts that were under 60 percent" was an "instruction[] from the White House").

See also Prelim. Inj. Hr'g Tr. Day 6 (Morning), ECF No. 1419, at 65–66 (defining PVI); Prelim. Inj. Hr'g Tr. Day 9 (Morning), ECF No. 1422, at 59-61 (expert testimony further explaining how PVI is measured).

³³¹ See id. at 64.

(4)

- The map needed to create five new Republican-leaning seats ("pickup opportunities")³³⁴ in which:
 - (a) President Trump carried the district by at least 10% in the 2024 Presidential Election; 335 and
 - Senator Ted Cruz carried the district in the 2024 U.S. Senate (b) Election.³³⁶

³³⁴ See Prelim. Inj. Hr'g Tr. Day 6 (Morning), ECF No. 1419, at 67 ("Another [criterion] was the five pickup opportunities. . . . five districts that Republicans could gain that we currently did not hold in the 2026 midterms.").

Mr. Kincaid testified that he was free to decide which specific districts to flip, and that he based those decisions on the "political realities as [he] worked through the map." See Prelim. Inj. Hr'g Tr. Day 7 (Morning), ECF No. 1420, at 129-30.

335 See Prelim. Inj. Hr'g Tr. Day 6 (Morning), ECF No. 1419, at 67 ("[T]he five [new districts], at a minimum, every single one of them had to be a district that President Trump carried by ten points or more"); id. at 68–69 ("[T]he 10 points was a minimum result. He had to win it by a minimum of 10 percent. It didn't mean I couldn't draw a district at Trump plus 20 "); id. at 69 ("Q. . . . If you had the opportunity to draw a district that was more Republican than Trump plus 10 in '24, did you try to take that opportunity? A. Absolutely.").

³³⁶ See, e.g., id. at 68 ("[E] very one of those seats had to be carried by Ted Cruz in 2024. There was no set amount of range on how much he had to win it by, but he had to win each of those five seats.").

Where possible, Mr. Kincaid also configured those districts such that Governor Abbott carried the district by a comfortable margin in 2018 and 2022. See id. at 72 ("I also looked at Governor Abbott's performance in 2022 and 2018. We wanted to make sure that all of those districts, or at least most of them, were seats that he carried by as decent a margin as possible within the criteria in [20]22 and [20]18 because, obviously, the first test of this map would be in a midterm election versus a presidential election."). Mr. Kincaid occasionally deviated from that criterion, however. See id. at 161 ("Q. Did you look at the Abbott 2022 numbers when you were drawing District 28? | A. I did. | O. How, if at all, did that inform the way that you drew it? | A. Governor Abbott didn't carry those districts down there, but I was able to get them the Cruz and Trump numbers that did. So that's what I looked at.").

- (5) It needed to appear likely, based on various predictors, that the map's Republican districts would remain Republican after the 2026 midterms. 337
- (6) Mr. Kincaid also sought to improve the map's compactness and respect for municipal and geographical boundaries. 338
- To comply with the constitutionally mandated "one person, one vote" **(7)** requirement, 339 the districts needed to be as close to equipopulous as possible.³⁴⁰

337 See id. at 73 ("[O]ne thing that I did is I went back and I did a durability test on all of these districts. . . . We have a national redistricting dataset that has disaggregated results down to the block level going back . . . decades. So what I was able to do is, with Texas, look at the 2012 Romney results. And so I looked at every presidential, [U.S.] senate, and governor's race in Texas . . . from 2012 through 2024. And the reason I did that is[,] obviously, Texas has been . . . politically . . . volatile for . . . several years now. It's been . . . wide Republican wins, narrow Republican wins, wide Republican wins again. And the coalition[] that Republicans have been winning elections with has changed significantly from 2012 to now. And so what I wanted to do is look at how those districts performed over the last three iterations of the Republican coalition.").

338 See, e.g., id. at 66–67 ("I wanted to improve the overall compactness of the map. That was another criteri[on].... I just wanted to take [the districts in the 2021 Map] and make them cleaner, more compact, more city-based, more county-based, where I could than the previous one. That's more of a personal preference more than anything else. I like, when I can, to draw clean districts.").

See also, e.g., id. at 70-72 (discussing how Mr. Kincaid assesses compactness both visually and numerically when drawing maps); id. at 74-75 (exploring how Mr. Kincaid accounts for geographical boundaries when drawing maps).

339 See, e.g., Abrams, 521 U.S. at 98 ("[T]he constitutional guarantee of one person, one vote . . . requires congressional districts to achieve population equality as nearly as is practicable." (citation modified)).

³⁴⁰ See, e.g., Prelim. Inj. Hr'g Tr. Day 6 (Morning), ECF No. 1419, at 54 ("I have to balance the population of every district across the state . . . perfectly. Because we're not allowed to deviate from perfect population. So every district has to be about the same."); id. at 75–76 ("Q. . . . [Y]ou mentioned earlier that drawing the maps with the appropriate equality in population was part of the process. Generally, is that something you did when you drew the Texas maps? | A. Yes. I equalized the populations when drawing the maps, yes.").

(8) Finally, Mr. Kincaid needed to comply with certain district-specific instructions from the Republican congressional delegation, like keeping certain counties together³⁴¹ or keeping district offices within the district.³⁴²

Even when Mr. Kincaid opted not to follow certain traditional districting criteria, he did so in a partisan fashion. For example, while Mr. Kincaid prioritized protecting Republican incumbents, ³⁴³ he gave no consideration to keeping Democrat incumbents in their districts. ³⁴⁴ Mr. Kincaid likewise prioritized core retention in Republican districts but not Democrat districts. ³⁴⁵

On the stand, Mr. Kincaid went district by district—sometimes line by line—explaining the logic behind each of the redistricting choices he made.³⁴⁶ Rather than relaying a blow-by-blow recitation of Mr. Kincaid's testimony, we'll simply acknowledge that Mr. Kincaid gave political or practical—*i.e.*, non-racial—rationales for his decisions at every step of the mapdrawing

³⁴¹ See, e.g., id. at 89–90 ("[MR. KINCAID:] . . . [A] nonnegotiable for Texas 5 was that I had to keep Kaufman, Van Zandt, and Henderson Counties whole. I could not split those. So they had to remain the core of Texas 5. | Q. Is that, again, the instruction from the Texas Republican congressional delegation? | A. Yes.").

³⁴² See, e.g., id. at 95 ("[T]he city of Addison is slightly split there; and that was to make sure that the district office for Texas 24 stayed in Texas 24.").

³⁴³ See supra note 331 and accompanying text.

³⁴⁴ See, e.g., Prelim. Inj. Hr'g Tr. Day 6 (Morning), ECF No. 1419, at 97–98 ("Q. What consideration, if any, did you give to keeping Democratic incumbents in the districts where they were under the 2021 map? | A. I didn't.").

³⁴⁵ See, e.g., id. at 129–30 ("Q. As the map drawer, did you consider core retention more closely when dealing with districts with a Republican incumbent or did that—did that partisan consideration not matter? | A. I was definitely trying to minimize the disruption in the Republican incumbent seats, yes. | Q. What about the Democratic incumbent seats? | A. No. I was trying—I had to rework most of the Democrat seats to create new pickup opportunities. So that wasn't a consideration.").

³⁴⁶ See id. at 76–191.

process.³⁴⁷ In Mr. Kincaid's own words, he "drew the map using political data from start to finish."348

ii. The Court Does Not Credit Mr. Kincaid's Testimony

While Mr. Kincaid's statewide tour of his map was compelling, ³⁴⁹ we nonetheless discredit his testimony that he drew the 2025 Map blind to race. We find it extremely unlikely that Mr. Kincaid could have created so many districts that were just barely 50%+ CVAP by pure chance.

The Supreme Court's opinion in Cooper v. Harris illustrates the point. 350 As here, lawmakers commissioned an outside (i.e., non-legislator) mapmaker "to assist them in redrawing district lines."351 Like Mr. Kincaid, the outside mapmaker in Cooper claimed that "he displayed only [political] data, and no racial data, on his computer screen while mapping the [challenged] district."352

However, the mapmaker achieved an "on-the-nose attainment of a 50% BVAP" in the challenged district³⁵³—a feat that, in the district court's view, the mapdrawer would have been unlikely to achieve by blind adherence to partisan data alone.³⁵⁴ The district court deemed it far

³⁴⁷ See id. at 76–191.

³⁴⁸ See Prelim. Inj. Hr'g Tr. Day 7 (Morning), ECF No. 1420, at 101.

³⁴⁹ See Prelim. Inj. Hr'g Tr. Day 9 (Afternoon), ECF No. 1345, at 134 (observing that Mr. Kincaid testified "totally without notes").

³⁵⁰ See 581 U.S. at 313–15.

³⁵¹ See id. at 295.

³⁵² See id. at 313–14.

³⁵³ *See id.* at 313.

³⁵⁴ See id. at 315 ("Whether the racial make-up of the county was displayed on his computer screen" or just fixed in his head, the court thought, [the mapmaker]'s denial of race-based districting rang hollow." (citation modified)).

more likely that the mapdrawer used a 50% racial target to "deliberately redr[a]w [the challenged district] as a majority-minority district."355 The district court "disbelieved [the mapmaker's] asserted indifference to the new district's racial composition,"356 and the Supreme Court ruled that the district court didn't clearly err by doing so. 357

The facts here are even starker. Mr. Kincaid would have us believe that, with racial data on his mapping program turned off, and relying purely on race-neutral criteria like partisan performance, compactness, and incumbency protection (for Republicans), he just coincidentally happened to transform not one, but three, coalition districts into districts that are single-racemajority by half a percent or less:

- CD 9 (whose Hispanic CVAP increased from 25.6% to 50.3%); (1)
- CD 18 (whose Black CVAP increased from 38.8% to 50.5%); and (2)
- CD 30 (whose Black CVAP increased from 46.0% to 50.2%). 358 (3)

We recognize that part of the reason why the district court disbelieved the outside mapmaker's testimony in Cooper was because he gave "self-contradictory testimony" at his deposition and at trial. See id. at 314–15. In our view, nothing that Mr. Kincaid said at the preliminary-injunction hearing was selfcontradictory; it was instead inconsistent with the testimony of other witnesses and the enacted map's raw racial demographics. Nonetheless, Cooper remains illustrative.

We have purposefully omitted CD 22 from this list of "suspicious" districts. CD 22 went from being just 0.8% below 50% White to just 0.8% above. Contrast Brooks Prelim. Inj. Ex. 258, ECF No. 1326-5, at 1, with Brooks Prelim. Inj. Ex. 265, ECF No. 1326-12, at 1. That's the sort of negligible variation that could easily happen by chance.

For that reason, we conclude that the Plaintiff Groups haven't shown a sufficient likelihood of success on the merits of their challenge to CD 22.

³⁵⁵ See id. at 313.

³⁵⁶ See id. at 314.

³⁵⁷ See id. at 316.

³⁵⁸ Contrast Brooks Prelim. Inj. Ex. 258, ECF No. 1326-5, at 1, with Brooks Prelim. Inj. Ex. 265, ECF No. 1326-12, at 1. See also supra Section II.G.

While we acknowledge the possibility that Mr. Kincaid might have done that for one district by pure chance, ³⁵⁹ it is very unlikely that he would have hit a barely 50% CVAP three times by pure chance. Mr. Kincaid's "on-the-nose attainment of a 50% [C]VAP" in three districts causes us to doubt his testimony that "he displayed only [partisan] data, and no racial data, on his computer screen while mapping" those districts. 360 We find it far more likely that Mr. Kincaid "deliberately redrew [those districts as] majority-minority district[s]."361

Mr. Kincaid would also have us believe that it's just a coincidence that the 2025 Map achieves three of the four explicit racial directives outlined in the DOJ Letter:

- (1) eliminating CD 9's status as a coalition district;
- eliminating CD 18's status as a coalition district; and (2)
- radically transforming the racial demographics of CD 29.³⁶² (3)

Mr. Kincaid was well aware of the DOJ Letter. He saw a preliminary draft of it in the West Wing of the White House and discussed it with key White House and DOJ officials—and Governor Abbott—a week before DOJ released it. 363

³⁵⁹ See Prelim. Inj. Hr'g Tr. Day 2 (Afternoon), ECF No. 1338, at 123–24 (eliciting that one of the Plaintiff Groups' expert cartographers once drew a 50.1% Black district without purposefully trying to do so).

³⁶⁰ Cf. Cooper, 581 U.S. at 313–14.

³⁶¹ Cf. id. at 313.

³⁶² Contrast Brooks Prelim. Inj. Ex. 258, ECF No. 1326-5, at 1, with Brooks Prelim. Inj. Ex. 265, ECF No. 1326-12, at 1. See also supra Section II.D.

³⁶³ See Prelim. Inj. Hr'g Tr. Day 6 (Afternoon), ECF No. 1342, at 51–52, 54–55.

Finally, Mr. Kincaid would have us believe that it's just a coincidence that blindly following the political objectives that Governor Abbott expressly disclaimed happened to achieve the Governor's publicly stated racial goal of creating several new majority-Hispanic districts.³⁶⁴

But, as Chairman Hunter announced on the House floor, "Nothing's a coincidence." 365 It is far more plausible that Mr. Kincaid had both racial and partisan data turned on while drawing the 2025 Map and that he used the former to achieve the racial targets that DOJ and the Governor had explicitly announced as he simultaneously used the latter to achieve his partisan goals. ³⁶⁶ Only that would explain how Mr. Kincaid could point to putatively race-neutral criteria to justify his districting decisions at each step of the process while still arriving at such precise racial numbers.

Apart from the 2025 Map's racial numbers, we also reiterate the significant inconsistencies between Mr. Kincaid's testimony and Chairman King's testimony and his contemporaneous statements on the Senate floor.³⁶⁷ Just as those contradictions caused us to question Chairman King's credibility, they lead us to question Mr. Kincaid's veracity as well.

³⁶⁴ See supra Section II.E.

³⁶⁵ Brooks Prelim. Inj. Ex. 309-T, ECF No. 1327-9, at 105–07.

We agree with the State Defendants that the "nothing's a coincidence" comment is not direct evidence of racial intent. See also Defs.' Post-Hr'g Br., ECF No. 1284, at 28-29. In context, Chairman Hunter's "nothing's a coincidence" comment was not an admission of racial motives, but rather a preface to a discussion of traditional districting criteria. See Brooks Prelim. Inj. Ex. 309-T, ECF No. 1327-9, at 107.

³⁶⁶ See supra note 329 and accompanying text (establishing that Mr. Kincaid had the ability to display both racial and partisan data in his mapmaking software and base his districting decisions on race accordingly).

³⁶⁷ See supra Section III.B.4.ii.

iii. Mr. Kincaid's Professed Lack of Racial Motive Isn't Attributable to the Legislature

Even if Mr. Kincaid just happened to hit those precise racial bullseyes without enabling racial shading in his mapmaking software, Mr. Kincaid's professed lack of racial intent still would not defeat the Plaintiff Groups' racial-gerrymandering claims. Mr. Kincaid is not a member of the Legislature. The record contains no indication that the Legislature ever told Mr. Kincaid to draw the 2025 Map race-blind; Mr. Kincaid's instructions for how to draw the map came from the White House³⁶⁸ and the Republican congressional delegation³⁶⁹ rather than the Legislature or the Governor. 370 Just as we can't automatically impute DOJ's or the Governor's racial intent to the Legislature,³⁷¹ we can't automatically impute Mr. Kincaid's alleged lack of racial intent to the Legislature either. 372 What ultimately matters is why the Legislature—not Mr. Kincaid—did what it did.

³⁶⁸ See, e.g., Prelim. Inj. Hr'g Tr. Day 7 (Morning), ECF No. 1420, at 125–26 (discussing "the instructions from the White House" regarding how to draw the map).

³⁶⁹ See, e.g., Prelim. Inj. Hr'g Tr. Day 6 (Morning), ECF No. 1419, at 89–90 (discussing a mapdrawing instruction Mr. Kincaid received "from the Texas Republican congressional delegation").

³⁷⁰ See Prelim. Inj. Hr'g Tr. Day 6 (Afternoon), ECF No. 1342, at 43 ("Q. . . . [W]hen you were drawing the map . . . there were no legislators present for that process? | [MR. KINCAID:] When I was drawing the map? No. | Q. . . . [T]he Governor wasn't there? | A. He was not looking over my shoulder, no."); id. at 46 (Q. . . . So no legislators present for the map drawing. You did not speak directly to any member of the House. You did not speak to anyone directly in the Senate other than Senator King. Is that right? | A. That's correct, as far as . . . during the map-drawing process.").

³⁷¹ See supra Section III.B.4.d.iii.

³⁷² Cf. Brnovich, 594 U.S. at 689–90 (emphasizing that "the legislators who vote to adopt a bill are not the agents of the bill's . . . proponents," as "legislators have a duty to exercise their judgment" when deciding whether to vote for a particular piece of legislation).

The Fifth Circuit's decision in *Prejean v. Foster* is illustrative. ³⁷³ There—as here—a nonlegislator drew an electoral map that the legislature ultimately adopted.³⁷⁴ There, too, the nonlegislator mapmaker swore that he drew the map for predominantly political, non-racial reasons.³⁷⁵ The map contained a majority-Black district, which the plaintiffs challenged as a racial gerrymander.³⁷⁶

The Fifth Circuit concluded that the outside mapdrawer's stated "intent in drawing the [map]" could not be "taken as conclusive proof of the legislature's intent."³⁷⁷ Instead, the Fifth Circuit focused on why the legislature introduced and enacted the map that the mapmaker drew.³⁷⁸ The Court indicated that even if the mapdrawer had truly based the map primarily on political rather than racial considerations, the Legislature's decision to introduce and pass that map for predominantly racial reasons could support a finding of racial gerrymandering.³⁷⁹

³⁷³ See generally 227 F.3d 504 (5th Cir. 2000).

³⁷⁴ See id. at 510 ("Judge Turner, formerly a lawyer in and unsuccessful candidate for an at-large judgeship in the 23rd [Judicial District Court ("JDC")] . . . drew the district lines . . . for the 23rd JDC, and the legislature adopted his proposed subdistricting scheme."); id. ("Judge Turner was not a member of the state legislature.").

³⁷⁵ See id. ("Judge Turner averred that race did not predominate over traditional districting principles; he stated that, while following traditional districting principles, he drew the district lines to accommodate his candidacy.").

³⁷⁶ See id. at 508.

³⁷⁷ *Id.* at 510; see also id. at 514 ("Although Judge Turner's affidavit provides some insight into the legislature's intent, it is far from determinative.").

³⁷⁸ See id. at 510 (emphasizing that "Judge Turner was not a member of the state legislature," and that a factfinder could plausibly infer "that the legislature was ready to adopt whatever proposal would satisfy its objective of creating a black subdistrict").

³⁷⁹ See supra note 378.

The Fifth Circuit then explained that DOJ had been pressuring the state to create a majority-Black subdistrict. 380 The outside mapdrawer's plan proposed to do exactly that. 381 The court reasoned that if the legislature had introduced and passed the mapmaker's plan because "the legislature was ready to adopt whatever proposal would satisfy its objective of creating a black subdistrict," then that could support a finding of racial gerrymandering³⁸²—irrespective of the mapmaker's insistence that he based the map predominantly on political and other race-neutral principles.³⁸³

"[C]ontemporaneous statements attributable to the State suggest[ed] that the major purpose of" the enacted plan in Prejean "was to create a majority-minority subdistrict" as DOJ had demanded—not to achieve the mapdrawer's subjective political goals.³⁸⁴ By all objective appearances, "the state was rushing headlong into the arms of DOJ regardless of legal consequences."385 Perceiving a "disjunction . . . between [the mapmaker's professed] intent and the intent of the legislature," the Fifth Circuit concluded that the mapmaker's declarations

³⁸⁰ See 227 F.3d at 510 ("To end [litigation with voters over the state's system for electing judges], and to address the Justice Department's [objections to preclearance], the state agreed to implement a subdistrict election plan . . . that would contain at least one subdistrict with a majority black voter registration." (citation modified)); id. at 511 ("[O]ne could readily infer that the state was motivated to pass [the challenged plan] by the desire to secure Section 5 preclearance, which, under DOJ's policy, meant creating racially-based subdistricts.").

³⁸¹ See id. at 508.

³⁸² See id. at 510.

³⁸³ See id. at 510 n.8 (noting that the non-racial "factors [the mapmaker] considered in redrawing the district lines" included "contiguity, non-splitting of precincts, the one-person/one-vote principle, protection of incumbents, the political preference of incumbents to include parts of each parish in each subdistrict, and the location of [the mapdrawer]'s own [political] supporters").

³⁸⁴ See id. at 511; see also id. (noting that "the state forthrightly declared that the reason for the change . . . was to reapportion" the challenged district to have "a majority black population").

³⁸⁵ See id.

regarding his own thought process when drawing the map were "far from determinative" of "the legislature's intent."386

While we readily acknowledge factual and procedural distinctions between this case and *Prejean*, ³⁸⁷ *Prejean* stands for the principle that when an outside mapdrawer professes to have drawn a redistricting plan based on political rather than racial criteria, courts should not automatically impute the mapdrawer's lack of racial intent to the legislature. 388 The court should instead inquire why the legislature introduced and passed the map that the mapmaker drew. If other evidence in the record indicates that the legislature adopted the mapmaker's purportedly race-blind map because it happened to achieve some racial objective—such as creating a new single-racemajority district at DOJ's behest—that can potentially support a finding that race was the legislature's predominant motivation.³⁸⁹

³⁸⁶ See id. at 514.

³⁸⁷ Prejean arose in a summary judgment posture. See id. at 508. The Prejean court was therefore "required to view the evidence and all inferences therefrom in the light most favorable to" the plaintiffs challenging the map. Id. at 510. Here, by contrast, the Plaintiff Groups face a much heavier burden to show a sufficient likelihood that they'll ultimately succeed on the merits. See supra Section II.B.1. Our analysis accounts for that procedural distinction.

We also recognize that the mapmaker's affidavit in *Prejean* constituted far weaker evidence than Mr. Kincaid's extensive and detailed testimony. See 227 F.3d at 514 ("There is no supporting documentation showing who [the mapdrawer's] supporters were, and where they would be found—or not found—in the proposed subdistrict. No evidence of his previous candidacies' vote distribution was offered. Yet [the mapdrawer's] statement [that he drew the district lines to include his political supporters from his previous attempts at elective office] cries out for objective verification."). We've thus been careful not to read more into *Prejean* than is supportable.

³⁸⁸ See 227 F.3d at 510 (refusing to treat the mapmaker's "affidavit describing his intent in drawing the subdistricts . . . as conclusive proof of the legislature's intent"); id. at 514 ("Although Judge Turner's affidavit provides some insight into the legislature's intent, it is far from determinative.").

³⁸⁹ See id. (opining that the record permitted a "plausible inference... that the legislature was ready to adopt whatever proposal would satisfy its objective of creating a black subdistrict").

Even if we credited Mr. Kincaid's testimony that he drew the 2025 Map completely blind to race, the fact remains that the map he gave to the Legislature proposed to eliminate numerous coalition districts and replace them with single-race-majority districts. Mr. Kincaid gave the Legislature a map that achieved DOJ's and the Governor's objectives, while enabling the Legislature to portray the map as being more favorable to minority voters than its 2021 predecessor. If the reason why the Legislature introduced and enacted that map is because it just happened to achieve those objectives, then Mr. Kincaid's subjective lack of racial motivation is irrelevant.

"[C]ontemporaneous statements attributable to the State" and other direct and circumstantial evidence "suggest that the major purpose of" the 2025 Plan "was to create [more] majority-minority [districts]." Mr. Kincaid's professed lack of racial intent is therefore "far from determinative" of "the legislature's [own] intent." The "disjunction . . . between" Mr. Kincaid's stated intent and the apparent "intent of the legislature" leads us to conclude that Mr. Kincaid's testimony does not preclude the Plaintiff Groups from obtaining a preliminary injunction. 392

³⁹⁰ Cf. id. at 511; see also Section III.B.3.

³⁹¹ Cf. 227 F.3d at 514.

³⁹² Cf. id.

5. **Circumstantial Evidence of Legislative Intent**

Having canvassed the available direct evidence, we now discuss the circumstantial evidence.

The 2025 Map Achieved DOJ's and the Governor's Goals a.

First, the fact that the Legislature fulfilled almost everything that DOJ and the Governor desired supports the notion "that a majority of the [Legislature's] members shared and purposefully adopted (i.e., ratified) the [Governor and DOJ's racial] motivations."³⁹³ It further suggests that the Legislature "was rushing headlong into the arms of DOJ regardless of legal consequences." 394

b. The Sheer Number of Just-Barely-50%-CVAP Districts Suggests that the Legislature Set and Followed a Racial Target

The 2025 Map's "on-the-nose attainment of a 50% [C]VAP" for so many districts³⁹⁵ further suggests that the Legislature was following a "50%-plus racial target" "to the letter," such that the "racial target had a direct and significant impact on [those districts'] configuration[s]."³⁹⁶ This fact is as much circumstantial evidence as it is direct.

³⁹³ Common Cause Fla., 726 F. Supp. 3d at 1364–65.

Cf. Reno v. Bossier Par. Sch. Bd., 520 U.S. 471, 487 (1997) ("[T]he impact of an official action is often probative of why the action was taken in the first place since people usually intend the natural consequences of their actions.").

³⁹⁴ Cf. Prejean, 227 F.3d at 511.

³⁹⁵ See Cooper, 581 U.S. at 313.

³⁹⁶ See id. at 300 (citation modified); see also supra Sections III.B.3.a & III.B.4.d.ii.

The Legislature Left a Majority-White Democrat District Largely c. Unchanged

If the Legislature's aims were exclusively partisan rather than predominantly racial, it is reasonable to assume the Legislature would have also reconfigured single-race-majority Democrat districts to make them Republican. In particular, we'd expect the Legislature to also make significant modifications to CD 37, a majority-White district³⁹⁷ that generally elected Democrats.³⁹⁸ Yet CD 37 remains a Democrat district under the 2025 Map.³⁹⁹ It also remains majority-White. 400

That stands in stark contrast to how the Legislature treated majority-non-White districts with the same partisan attributes as CD 37. To illustrate, here is the most telling example. Whereas 67.8% of the 2021 configuration of majority-White CD 37 remains intact in 2025 Map, 401 only 2.9% of majority-non-White CD 9 remains intact in the new map. 402 The fact that the Legislature completely gutted majority-non-White CD 9 and not majority-White CD 37—even though the two

³⁹⁷ See Brooks Prelim. Inj. Ex. 258, ECF No. 1326-5, at 2 (indicating that CD 37 was 60.7% White by CVAP under the 2021 Map).

³⁹⁸ See Prelim. Inj. Hr'g Tr. Day 3 (Morning), ECF No. 1416, at 39 ("In [the 2021] version of CD 37, White voters voted for Democratic candidates. On average they voted 80 percent for Democrats."); see also, e.g., Tex. NAACP Prelim. Inj. Ex. 208, ECF No. 1384-8, at 9.

³⁹⁹ See, e.g., Prelim. Inj. Hr'g Tr. Day 3 (Morning), ECF No. 1416, at 40 ("Q. So did the legislature" change the nature of CD 37 as a majority White Democratic voting district? | A. No."); id. ("In new CD 37 the Whites . . . prefer Democratic candidates."); see also, e.g., Tex. NAACP Prelim. Inj. Ex. 208, ECF No. 1384-8, at 9.

⁴⁰⁰ See, e.g., Brooks Prelim. Inj. Ex. 265, ECF No. 1326-12, at 2 (indicating that CD 37 is 54.0%) White by CVAP under the 2025 Map); Prelim. Inj. Hr'g Tr. Day 3 (Morning), ECF No. 1416, at 39 ("New CD 37 remains a White majority district.").

⁴⁰¹ See Brooks Prelim. Inj. Ex. 267, ECF No. 1326-14, at 6.

⁴⁰² See id. at 2.

districts had the same political lean—constitutes additional circumstantial evidence that the Legislature's predominant consideration was race rather than partisanship. 403

The Legislature Transformed a Republican Coalition District into a d. **Republican Majority-White District**

Coming at it from the opposite angle, if the Legislature's aims were partisan rather than racial, one would expect the Legislature not to make fundamental changes to the racial demographics of Republican districts, as doing so would net no gain in the number of Republican seats. Yet the 2025 Map takes an existing majority-non-White Republican district (CD 27) and

While Mr. Kincaid provided putatively partisan and practical rationales for drafting CD 37 the way he did, see Prelim. Inj. Hr'g Tr. Day 6 (Morning), ECF No. 1419, at 146-48, we discredit that testimony for the reasons given above. See supra Section III.B.4.d.ii.

The Legislature also left CD 7 in the Houston area largely untouched. See Brooks Prelim. Inj. Ex. 267, ECF No. 1326-14, at 1-2 (indicating that 74.6% of the voters in the old CD 7 remain in the new CD 7). Though CD 7 was not a majority-White district, see Brooks Prelim. Inj. Ex. 258, ECF No. 1326-5, at 1, it generally elected candidates preferred by White Democrats under the 2021 Map, and it will likely continue to do so under the 2025 Map. See, e.g., Tex. NAACP Prelim. Inj. Ex. 208, ECF No. 1384-8, at 9. That shows the Legislature radically transformed districts that elected Democratic candidates preferred by voters of color while leaving districts that elected Democrats preferred by White voters mostly unchanged. See, e.g., Tex. NAACP Prelim. Inj. Ex. 208, ECF No. 1384-8, at 9 (indicating that the Legislature changed the political performance of CD 9 but not CD 7). That reinforces that racial concerns predominated over partisanship. See, e.g., Tenn. State Conf., 746 F. Supp. 3d at 494.

We likewise discredit Mr. Kincaid's proffered race-neutral rationales for CD 7's configuration. Contra Prelim. Inj. Hr'g Tr. Day 6 (Morning), ECF No. 1419, at 140–44. See also supra Section III.B.4.d.ii.

⁴⁰³ See, e.g., Tenn. State Conf., 746 F. Supp. 3d at 494 (opining that if a map "treat[s] minority voters of one party worse than white voters of the same party," "that could undercut the possibility that partisan politics were to blame for the decision" (citation modified)).

decreases the Hispanic CVAP from 48.6% to 36.8%, while raising the White CVAP from 44.1% to 52.8% to make it majority-White. 404

The Testimony of Dr. Moon Duchin e.

Finally, the expert report and testimony of Dr. Moon Duchin (Professor of Data Science, University of Chicago) supplies additional circumstantial evidence that race, not politics, best explains the 2025 Map's contours.

i. Dr. Duchin's Methodology

Dr. Duchin is one of the pioneers of a technique for assessing whether an electoral map is more consistent with race-based decision-making than with race-neutral criteria, such as partisanship and traditional districting considerations. 405 Using a computer program, Dr. Duchin randomly generates hundreds of thousands of congressional maps that the Legislature might have hypothetically drawn. 406 The program is coded to generate maps that a Republican-controlled Legislature might have realistically enacted. The maps favor Republicans by various metrics, 407

⁴⁰⁴ Compare Brooks Prelim. Inj. Ex. 258, ECF No. 1326-5, at 1, with Brooks Prelim. Inj. Ex. 265, ECF No. 1326-12, at 1; see also supra Section II.G.5.

See also Prelim. Inj. Hr'g Tr. Day 3 (Morning), ECF No. 1416, at 41 (testimony affirming that CD 27 remains a district that "Republican candidates will consistently win").

Here too, Mr. Kincaid provided partisan and race-neutral rationales for CD 27's boundaries. See Prelim. Inj. Hr'g Tr. Day 6 (Morning), ECF No. 1419, at 146-51. We discredit that testimony too. See supra Section III.B.4.d.ii.

⁴⁰⁵ See, e.g., Prelim. Inj. Hr'g Tr. Day 5 (Morning), ECF No. 1418, at 56–60; Tex. NAACP Prelim. Inj. Ex. 208, ECF No. 1384-8, at 14 & n.7.

⁴⁰⁶ See, e.g., Tex. NAACP Prelim. Inj. Ex. 208, ECF No. 1384-8, at 23.

⁴⁰⁷ See, e.g., id. at 22–23 ("Partisanship favoring Republican candidates in general [elections] is accounted for with a score based on the number of Republican district wins across a set of 29 general elections "); id. at 23 ("Partisanship specific to the performance of Donald Trump is accounted for in two ways: counting the number of Trump district wins in three elections (2016, 2020, 2024) and by simply considering the most recent election ").

and they obey (or at least favor) traditional districting criteria like contiguity, compactness, respect for municipal subdivisions, and core retention. 408

After generating those hundreds of thousands of maps, the program "winnows" the maps down according to political criteria like Republican performance and incumbency protection. 409 That winnowing process yields approximately 40,000 hypothetical maps that the Republicancontrolled Legislature could have conceivably passed. 410

None of the programmed criteria for generating or filtering the maps is race-based; they are all race-neutral. 411 The program thus generates an enormous number of maps that the Legislature might have drawn if—as the State Defendants assert here 412—the Legislature had truly

See also Tex. NAACP Prelim. Inj. Ex. 208, ECF No. 1384-8, at 23 (winnowing down to only include maps in which "Republicans overall have at least as many wins" as they do in the enacted map); id. (further winnowing down to only include maps in which "at least as many districts have a plurality win for Donald Trump from the 2024 election as in" the enacted map); id. (further winnowing down to only include maps in which "the double-bunking of incumbents . . . is no greater than in" the enacted map).

See also Prelim. Inj. Hr'g Tr. Day 5 (Morning), ECF No. 1418, at 64 (explaining that the program winnows down the universe of randomly generated maps to only include maps in which "the number [of districts] won by Republicans" is "at least as high as in" the Enacted Map); id. (explaining that "the winnowing, the filter, ensures that [the surviving maps] are getting at least as strong Republican performance as the [enacted] plan").

⁴⁰⁸ See, e.g., id. at 22; Prelim. Inj. Hr'g Tr. Day 5 (Morning), ECF No. 1418, at 58 ("[T]he basic method creates plans that take into account population balance [and] ensure contiguity and that prioritize compactness ").

⁴⁰⁹ See Prelim. Inj. Hr'g Tr. Day 5 (Morning), ECF No. 1418, at 62–63 ("Q. So these parameters, do they generate a large number of maps? | [DR. DUCHIN:] Under these parameters I then generate a very large number of maps, correct. | Q. And do you winnow them down? | A. Right. . . . The second stage is to filter it. So by winnowing, . . . I mean I'll take all those maps and I'll filter them down by whether they meet some checklist of other conditions.").

⁴¹⁰ See. e.g., Tex. NAACP Prelim. Inj. Ex. 208, ECF No. 1384-8, at 23.

⁴¹¹ See, e.g., id. at 22–23.

⁴¹² See supra notes 155–158 and accompanying text.

based its redistricting decisions exclusively on race-neutral considerations like partisanship and traditional districting criteria.

Dr. Duchin's program then compares the racial demographics of the enacted map to those of the hypothetical race-neutral maps. 413 The idea is that, if the Legislature had truly drawn the 2025 Map based solely on race-neutral criteria, then the enacted map's racial characteristics would likely fall somewhere within the expected range of the maps generated by the program. 414 By contrast, if the enacted map's racial characteristics fall outside the demographic ranges of the randomly generated maps, then the enacted map is a statistical outlier. 415 This finding would suggest that the Legislature was predominantly motivated by race rather than partisanship. 416 This technique provides a mathematical method to "disentangle partisanship and race",417—just as the Supreme Court has instructed courts and litigants to do in racial-gerrymandering cases. 418

To visually depict the distribution of the randomly generated maps' racial characteristics, Dr. Duchin's expert report displays her results in the form of "box-and-whiskers" or "box" plots, 419 which look like this:

⁴¹³ See, e.g., Prelim. Inj. Hr'g Tr. Day 5 (Morning), ECF No. 1418, at 68 (explaining that Dr. Duchin's method permits her "to compare the racial attributes of the [enacted] map to a baseline that's been constructed according to [the] parameters" discussed above).

⁴¹⁴ See. e.g., id. at 57 ("The point of this is just to show you what plans look like when created by known rules. So it lets you assess whether a proposed plan behaves as though it was created by the stated rules.").

⁴¹⁵ See, e.g., id. at 66.

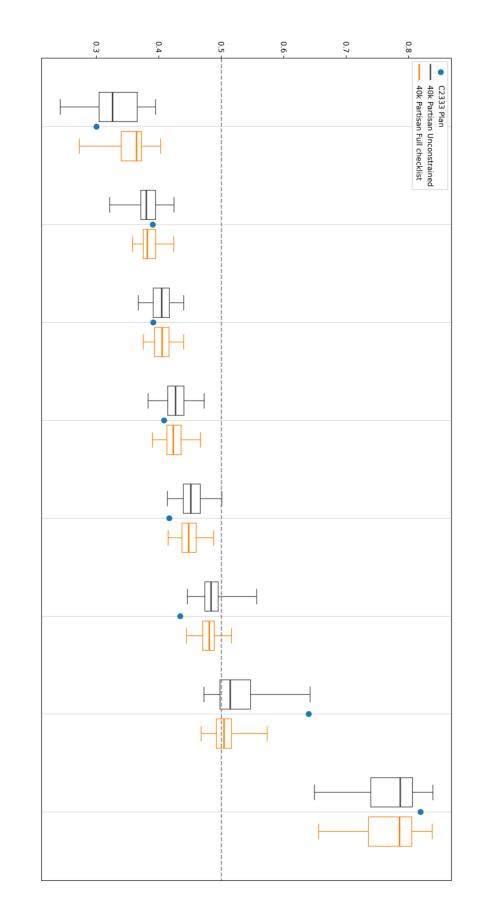
⁴¹⁶ See id. at 72 (explaining that if "race-blind comparators . . . don't reproduce [the] racial composition" of the enacted map, that would suggest "that race was used in making" the map).

⁴¹⁷ See id. at 68.

⁴¹⁸ See, e.g., Alexander, 602 U.S. at 6.

⁴¹⁹ See Prelim. Inj. Hr'g Tr. Day 5 (Morning), ECF No. 1418, at 68.

Dallas/Fort Worth Area (CDs 5, 6, 12, 24, 25, 30, 32, 33)⁴²⁰



⁴²⁰ See Tex. NAACP Prelim. Inj. Ex. 208, ECF No. 1384-8, at 2, 14.

The boxplots don't correspond with specific district numbers. See Prelim. Inj. Hr'g Tr. Day 5 (Morning), ECF No. 1418, at 69 ("[T]hey are arranged not in order of the district numbers but from lowest to highest POC CVAP.").

The y-axis represents the minority population of each district in each randomly generated map, with the dotted line showing the 50% mark. 421 The x-axis arranges the districts in each randomly generated map from lowest to highest by share of minority population. 422

The orange figures—which are the ones we're most interested in for our purposes 423 represent the range of minority populations for each district in each randomly generated map. 424 The "whiskers" (the T-shaped appendages on each end) measure from the 1st percentile to the 99th percentile. 425 Taking the orange figure on the far left as an example, in nearly all of Dr. Duchin's

⁴²¹ See id. at 14; see also Prelim. Inj. Hr'g Tr. Day 5 (Morning), ECF No. 1418, at 68 ("I'm showing") you what is abbreviated POC CVAP, which means the minority citizen voting age percentage in each of the districts.").

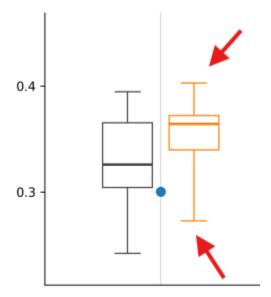
⁴²² See Tex. NAACP Prelim. Inj. Ex. 208, ECF No. 1384-8, at 14.

⁴²³ The black figures represent "a 40,000 plan subsample" without "filtering conditions" like "rural composition and various kinds of tests that the partisanship matches or exceeds that in the State's plan." Prelim. Inj. Hr'g Tr. Day 5 (Morning), ECF No. 1418, at 68. We're more interested in the orange figures, which "only include plans that meet the full checklist of districting principles." See Tex. NAACP Prelim. Inj. Ex. 208, ECF No. 1384-8, at 14.

⁴²⁴ See Prelim. Inj. Hr'g Tr. Day 5 (Morning), ECF No. 1418, at 69.

⁴²⁵ See id.

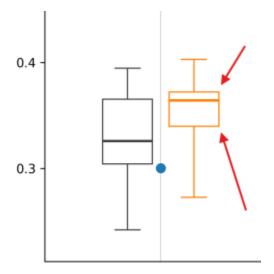
randomly generated maps, the district with the lowest minority population in the Dallas/Fort Worth area had a minority population percentage somewhere between 26% and 41%: 426



⁴²⁶ See Tex. NAACP Prelim. Inj. Ex. 208, ECF No. 1384-8, at 14.

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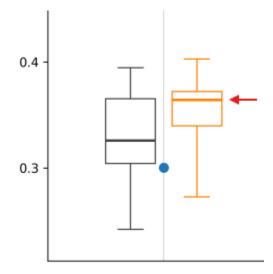
The edges of the "boxes," meanwhile, measure "from the 25th to the 75th percentile[,] [m]eaning that 50 percent of the plans fall in the box."427 So, in about half of Dr. Duchin's randomly generated maps, the district with the lowest minority population in the Dallas/Fort Worth area had a minority voter percentage between roughly 34% and 37%: 428



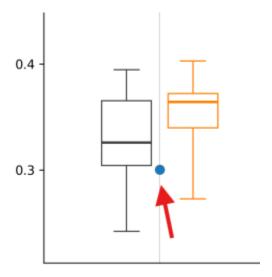
⁴²⁷ See Prelim. Inj. Hr'g Tr. Day 5 (Morning), ECF No. 1418, at 69.

⁴²⁸ See Tex. NAACP Prelim. Inj. Ex. 208, ECF No. 1384-8, at 14.

The line in the box marks "the median or 50th percentile": 429



The blue dots, meanwhile, represent the minority population of each district in the enacted map. 430 For instance, the minority population of the lowest-minority-percentage district in the Dallas/Fort Worth area in the enacted map is around 30%:



⁴²⁹ See Prelim. Inj. Hr'g Tr. Day 5 (Morning), ECF No. 1418, at 69.

⁴³⁰ See id. at 68 (explaining that "the blue dots" represent the "districts drawn by the State").

The "box-and-whiskers" plot is a pictorial method for comparing the enacted map's racial demographics to those of race-neutral hypothetical maps. If any particular dot falls within the same range as the "box," the enacted district's minority population is within the range we'd expect if the Legislature were relying exclusively on partisanship and other race-neutral districting criteria. If a dot falls outside the box but within the "whiskers," the enacted district's minority population is on the outer edge of what we'd expect if the Legislature were relying exclusively on partisanship and other race-neutral considerations. If the dot falls outside the whiskers entirely, none of the race-neutral maps that Dr. Duchin generated has the racial characteristics approximating that of the enacted district—and, thus, the enacted map is statistically anomalous. 431 These results would in turn suggest that race—not partisanship—is the variable that best explains the enacted map's configuration.⁴³²

ii. Dr. Duchin's Findings and Conclusions

Dr. Duchin applied that technique to the Houston area, 433 where three of the four districts mentioned in the DOJ Letter are located (CDs 9, 18, and 29). 434 The results are jarring:

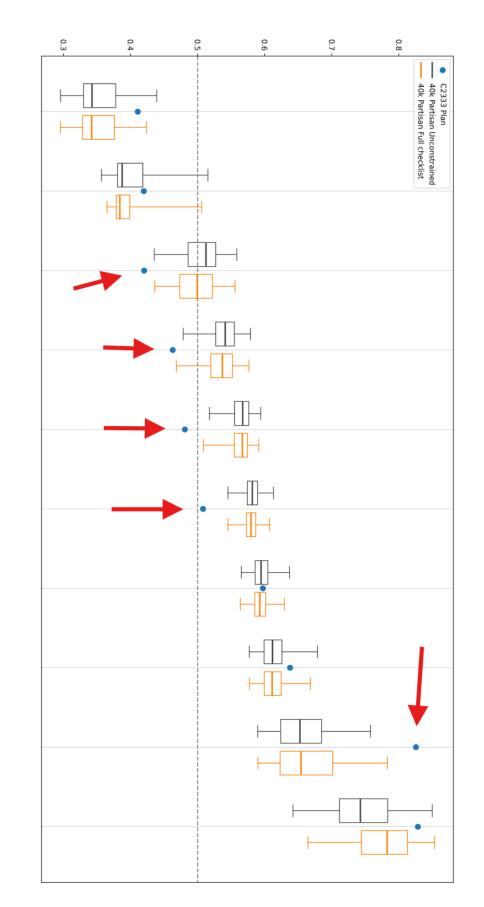
⁴³¹ See id. at 70 (testifying that "if the dot is outside the whiskers altogether," that means "that no plan [that Dr. Duchin] generated in the sample ever had as low [or high] of a minority CVAP").

⁴³² See id. at 72 ("[T]hat is suggestive that race was used in making these plans because these raceblind comparators, even made with layer upon layer of different assumptions about partisanship and other principles, don't reproduce that kind of racial composition.").

⁴³³ See Tex. NAACP Prelim. Inj. Ex. 208, ECF No. 1384-8, at 15.

⁴³⁴ See supra Section II.D.

Houston Area (CDs 2, 7, 8, 9, 18, 22, 29, 36, 38)⁴³⁵



⁴³⁵ See Tex. NAACP Prelim. Inj. Ex. 208, ECF No. 1384-8, at 2, 15.

Five of the dots fall outside of the whiskers—some by a sizable amount—while only one dot falls within its respective box. Four of the ten districts in the Houston area "have outlying low levels of minority citizens" under the enacted map, "while one district far above 50% is elevated to an outlying degree."436 These results suggest that a Legislature motivated exclusively by partisan and other race-neutral concerns would be unlikely to produce a configuration of the Houston-area districts with racial characteristics similar to the 2025 Map. 437 This evidence supports the notion that the Legislature purposefully manipulated the racial statistics of Houston-area districts like CDs 9, 18, and 29 at DOJ's behest.

While the patterns in the Dallas/Fort Worth area (where CDs 30, 32, and 33 are located) are less visibly stark than those in the Houston area, and those in the Travis/Bexar County area (where CDs 27 and 35 are located) are even less so, they nonetheless reinforce the conclusion that the enacted map's racial composition is a statistical outlier:

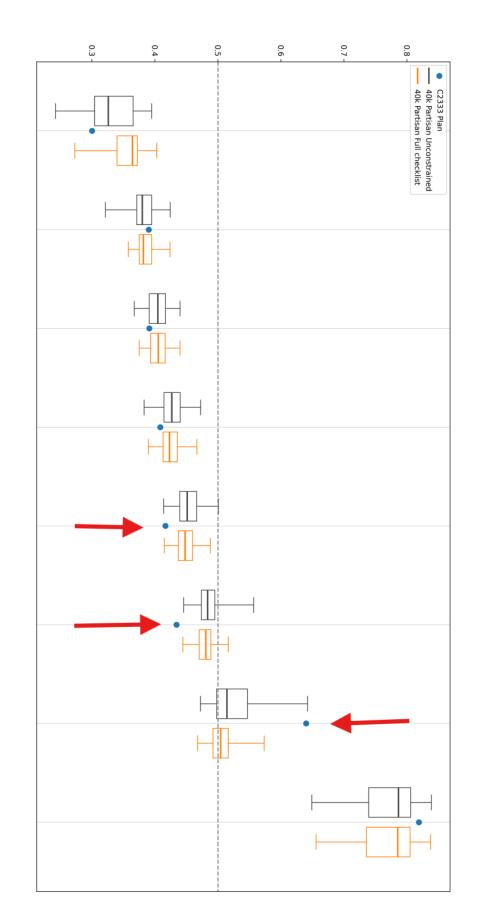
⁴³⁶ See id. at 15.

See also Prelim. Inj. Hr'g Tr. Day 5 (Morning), ECF No. 1418, at 73 ("The second [column] from the [right] is off the charts in the direction of packing. Where you would expect POC CVAP in the 60 to 70[%] range; instead, it's over 80 percent.").

⁴³⁷ See Tex. NAACP Prelim. Inj. Ex. 208, ECF No. 1384-8, at 14 (concluding that "the racial composition of the districts is highly atypical of random plans whose partisan performance is at least as favorable to Republicans generally and to Donald Trump in particular").

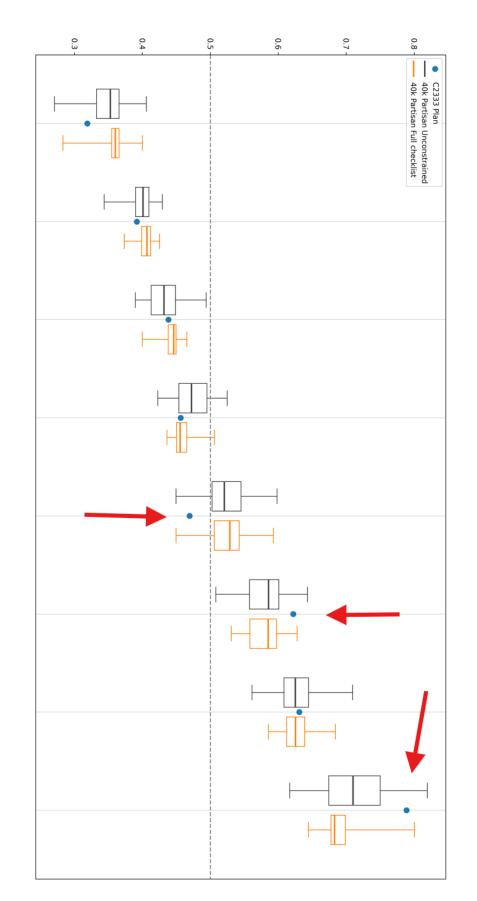
See also Prelim. Inj. Hr'g Tr. Day 5 (Morning), ECF No. 1418, at 73 ("O. So does this mean that the racial composition of the district was something you did not see in any of your maps? | [DR. DUCHIN:] Right. In several of these instances, it's past anything ever observed.").

Dallas/Fort Worth Area (CDs 5, 6, 12, 24, 25, 30, 32, 33)⁴³⁸



⁴³⁸ See Tex. NAACP Prelim. Inj. Ex. 208, ECF No. 1384-8, at 2, 14.

Travis/Bexar County Area (CDs 10, 11, 20, 21, 23, 27, 35, 37)⁴³⁹



⁴³⁹ See id. at 2, 15.

In the Dallas/Fort Worth area, one of the dots falls outside the whiskers entirely, while two dots fall precisely on a whisker's edge. 440 Though all of the districts in the Travis/Bexar County area fall within the whiskers, there are three dots that are a comfortable distance away from their respective boxes. 441

According to Dr. Duchin's analysis, it is highly unlikely that a Legislature drawing a map based purely on partisan and other race-neutral considerations would have drawn a map with the 2025 Map's racial characteristics. 442 In other words, the best possible explanation for the 2025

440 See id. at 14 ("[T]wo of the eight districts [in the Dallas/Fort Worth area]—both where we would expect districts near the 50% mark—show that the POC CVAP is outlyingly low. In the next district, it is outlyingly high.").

See also Prelim. Inj. Hr'g Tr. Day 5 (Morning), ECF No. 1418, at 70 ("A. . . . There are two districts where the minority citizen voting age population is really anomalously low. You can see that . . . in the fourth and the third column from the end In one case, the blue dot is at the whisker, which means it's at the 1st percentile. In the other case, it's below the whisker, suggesting that it is lower than whatever is observed in this large generation process to make plans under the assumptions reported earlier. | Q. What does it mean if . . . the dot is in the 1st percentile? A. That means that . . . only 1 percent of the plans have a lower minority CVAP.").

441 See Tex. NAACP Prelim. Inj. Ex. 208, ECF No. 1384-8, at 15 ("The signs of packing and cracking are less severe in the [Travis/Bexar County area], but the characteristic pattern is still present: one district near an expected 50% POC CVAP status has markedly diminished minority citizen share, while the next district is elevated to over 60%.").

See also Prelim. Inj. Hr'g Tr. Day 5 (Morning), ECF No. 1418, at 73–74 ("[W]hile directionally the same, [the Travis/Bexar County area] doesn't show as extreme or as strong of a pattern. However, you can see that in one district there is what looks like about a 5th percentile level of cracking. And in that top district there is what looks to be about a 5th percentile showing of packing. So you see directionally the same pattern, never the reverse. But the evidence here isn't as strong as in the previous two clusters.").

442 See, e.g., Prelim. Inj. Hr'g Tr. Day 5 (Morning), ECF No. 1418, at 66 ("[T]he State's plan is an outlier in its racial composition.").

Map's racial makeup is that the Legislature based the 2025 Map on racial considerations, and those racial considerations predominated over partisan ones. 443

Dr. Duchin's results are fully consistent with the direct evidence and other circumstantial evidence in the record. Even more notably, Dr. Duchin's testimony was effectively unchallenged; no defense expert submitted a report rebutting Dr. Duchin's findings. 444 For all those reasons, we find Dr. Duchin's testimony and report highly credible and persuasive.

iii. The State Defendants' Critiques

The State Defendants—though none of their experts—attack Dr. Duchin's methods and conclusions on several fronts. They first note that in a different case in which Dr. Duchin served as an expert, Alexander v. South Carolina State Conference of the NAACP, the Supreme Court determined that Dr. Duchin's analysis suffered from "serious problems," and thus had "no probative force with respect to [the plaintiffs'] racial-gerrymandering claim."445

Dr. Duchin's report here doesn't suffer from the same defects that led the Alexander Court to reject her findings. For example, the Supreme Court discredited Dr. Duchin's report in Alexander because "various parts of [her] report did not account for partisanship or core

⁴⁴³ See, e.g., id. at 30 (concluding that "there is strong evidence that race was used in the creation of" the 2025 Map, and that the 2025 Map is not "consistent with... the race neutral pursuit of pure partisan aims"); id. at 72 ("[The results are] suggestive that race was used in making [the Enacted Map] because these race-blind comparators, even made with layer upon layer of different assumptions about partisanship and other principles, don't reproduce that kind of racial composition.").

⁴⁴⁴ See Prelim. Inj. Hr'g Tr. Day 9 (Afternoon), ECF No. 1345, at 46–47, 164; Prelim. Inj. Hr'g Tr. Day 5 (Morning), ECF No. 1418, at 8.

⁴⁴⁵ See 602 U.S. at 33.

See also Defs.' Post-Hr'g Br., ECF No. 1284, at 12 ("[The Plaintiff Groups'] case depends on the very methods the Supreme Court rejected in Alexander . . . and even some of the same experts. Alexander contains a section labeled 'Dr. Moon Duchin' that finds a district court clearly erred in relying on her opinions. Yet here, Plaintiffs come to this Court with Dr. Moon Duchin and ask it to discredit [Mr. Kincaid's testimony] based on her work." (emphases omitted) (citation modified)).

retention."446 Here, Dr. Duchin's report explicitly took both of those variables into consideration. 447 The Alexander Court also discredited Dr. Duchin because her conclusions were "based on an assessment of the map as a whole rather than [the challenged district] in particular."448 Here, instead of examining the State of Texas as a whole, Dr. Duchin focused exclusively on three geographic clusters containing only the challenged districts and their adjacent neighbors. 449 Therefore, the issues that caused the Supreme Court to discredit Dr. Duchin's conclusions in *Alexander* don't lead us to do the same here.

The State Defendants also attack the criteria that Dr. Duchin used to generate and winnow her numerous hypothetical maps. To ensure that Dr. Duchin's computer-generated maps resemble plans that the Legislature might realistically have enacted, the program's variables must resemble the race-neutral partisan and political parameters that the Legislature purported to follow when

⁴⁴⁶ See 602 U.S. at 33.

⁴⁴⁷ See Tex. NAACP Prelim. Inj. Ex. 208, ECF No. 1384-8, at 22 ("Core retention with respect to the State's new plan is implemented with a surcharge of 0.2 on edges that span across two of the State's new enacted congressional districts."); id. at 22-23 ("Partisanship favoring Republican candidates in general is accounted for with a score based on the number of Republican district wins across a set of 29 general elections . . . "); id. at 23 ("Partisanship specific to the performance of Donald Trump is accounted for in two ways: counting the number of Trump district wins in three elections (2016, 2020, 2024) and by simply considering the most recent election "); id. (listing winnowing conditions that explicitly take partisanship into account).

⁴⁴⁸ See 602 U.S. at 33.

See also, e.g., Ala. Legis. Black Caucus v. Alabama, 575 U.S. 254, 262 (2015) ("A racial gerrymandering claim . . . applies to the boundaries of individual districts. It applies district-by-district. It does not apply to a State considered as an undifferentiated 'whole."").

⁴⁴⁹ See Tex. NAACP Prelim. Inj. Ex. 208, ECF No. 1384-8, at 2, 14–15.

See also Prelim. Inj. Hr'g Tr. Day 5 (Morning), ECF No. 1418, at 32 (explaining that focusing on these geographic clusters "make[s] [the analysis] local," while still "acknowledg[ing] that the drawing of lines in one district has an impact on neighboring districts").

drawing and enacting the actual map. 450 In other words, if you don't tell the computer to follow the same race-neutral criteria that the Legislature purported to follow, then the maps it generates won't tell you anything reliable about whether the enacted map is an outlier. The State Defendants argue that Dr. Duchin didn't program her computer to follow the same partisan and political criteria that the Legislature followed—and, consequently, that her maps aren't appropriate comparators.

For example, the State Defendants claim that Dr. Duchin set her partisanship thresholds too low. 451 As one of her winnowing conditions, Dr. Duchin culled the randomly generated maps to only include plans in which "at least as many districts ha[d] a plurality win for Donald Trump from the 2024 election as in" the enacted map. 452 As a robustness check, Dr. Duchin then "executed a run seeking to match the number of districts with Trump's 2024 major-party vote

⁴⁵⁰ See, e.g., Prelim. Inj. Hr'g Tr. Day 5 (Morning), ECF No. 1418, at 118–20 ("Q. When you are putting the parameters in your [computer program] to draw maps, you are putting those in there because you want for the maps the [program] draws to match your understanding of the stated intent of the map, right? A. I am testing versions of that. That's right. . . . | Q. So the similarities between the maps you draw and the enacted map matter for the precision of your analysis? | A. The similarities between my parameters and the stated intent are important. I agree with that.").

⁴⁵¹ See Defs.' Post-Hr'g Br., ECF No. 1284, at 51–52.

⁴⁵² See Tex. NAACP Prelim. Inj. Ex. 208, ECF No. 1384-8, at 23.

See also Prelim. Inj. Hr'g Tr. Day 5 (Morning), ECF No. 1418, at 65 ("[DR. DUCHIN:] [O]ne set of runs were done under just simple Trump wins. Did Trump have more votes?").

share over 55%,"453 and achieved results consistent with her prior findings. 454 The State Defendants argue that Dr. Duchin needed to set those thresholds higher to emulate the Republican performance of the 2025 Map, 455 since "President Trump carried many of the disputed districts with nearly 60% of the vote in 2024."456

We're not convinced that Dr. Duchin's 55% Trump threshold caused her to generate maps that deviated materially from the enacted one. While the State Defendants are correct that some of the challenged districts in the enacted map have Trump numbers that equal or approach 60%, 457 there are also districts that fall short of 60%, 458 including multiple districts hovering right around Dr. Duchin's 55% threshold. 459 Additionally, Dr. Duchin's 55% threshold was a floor rather than a ceiling—meaning that it would capture districts with Trump percentages closer to 60% like those

See also Prelim. Inj. Hr'g Tr. Day 5 (Morning), ECF No. 1418, at 65 ("[DR. DUCHIN:] But later, as a check, I also sought out plans in which Trump's percentage was at least 55 percent, to make sure that that 50 percent line wasn't guiding the findings."); id. at 67 ("[I]t's my understanding that when trying to execute partisan gerrymandering, you don't just want to win narrowly. You would like it to be durable and withstand some swing in partisan performance. So 55[%] is a threshold that tells you that even if the vote were to swing by 5 percent you would still win.").

⁴⁵³ See Tex. NAACP Prelim. Inj. Ex. 208, ECF No. 1384-8, at 23.

⁴⁵⁴ See Tex. NAACP Prelim. Inj. Ex. 208, ECF No. 1384-8, at 23.

See also Prelim. Inj. Hr'g Tr. Day 5 (Morning), ECF No. 1418, at 66 ("[DR. DUCHIN:] [S]ometimes layering in additional principles can change the observed range. But it never changes the finding that the State's plan is an outlier in its racial composition. And that includes the Trump 55 plus.").

⁴⁵⁵ See Defs.' Post-Hr'g Br., ECF No. 1284, at 52 ("Applying a 55% or 50%-plus-one threshold is too low to fairly model the political performance of the 2025 Plan ").

⁴⁵⁶ See id.

⁴⁵⁷ See LULAC Prelim. Inj. Ex. 1202, ECF No. 1402-6, at 5 (CD 9 = 59.5%); id. at 13 (CD 22 = 59.9%); *id.* at 16 (CD 27 = 60.0%).

 $^{^{458}}$ See id. at 19 (CD 32 = 57.7%).

⁴⁵⁹ See id. at 20 (CD 34 = 54.6%); id. at 21 (CD 35 = 54.6%).

in the enacted map. 460 The State Defendants have therefore failed to persuade us that Dr. Duchin's 55% figure is disqualifying.

In any event, if raising the floor to a value closer to 60% would have undermined Dr. Duchin's conclusions, the State Defendants could have introduced expert rebuttal testimony to that effect. Again, though, the State Defendants let Dr. Duchin's testimony go unrebutted. 461 The State Defendants have therefore given us no concrete reason to think that Dr. Duchin's results would have looked significantly different had she selected different partisanship thresholds.

The same goes for the State Defendants' arguments that Dr. Duchin:

(1) should have programmed her computer to favor only core retention and incumbency protection in Republican districts (like Mr. Kincaid did); 462 and

See also supra notes 343–345 and accompanying text.

⁴⁶⁰ See Prelim. Inj. Hr'g Tr. Day 5 (Morning), ECF No. 1418, at 141–42 ("Q. And you executed a run seeking to match the number of districts with Trump's 2024 major party vote share over 55 percent, right? | [DR. DUCHIN:] Right. | Q. Does that mean that 55 percent was a minimum? | A. That's what that is. | O. And so the districts that achieved more than 55 percent would be accounted for in that run? | A. That's right. That would include districts that achieve 60 percent or more.").

⁴⁶¹ See supra note 444 and accompanying text.

⁴⁶² See Defs.' Post-Hr'g Br., ECF No. 1284, at 53 ("While Dr. Duchin attempted to model core retention by having her [program] surcharge simulated districts with a lower core retention, it did not differentiate between core retention of Republican-held districts versus Democratic-held districts " (citation modified)).

See also id. at 54 ("[W]hile Dr. Duchin required the algorithm to draw simulated plans that did not pair more incumbents than [the enacted map], she failed to consider whether the simulated plans paired Republican or Democrat incumbents with each other. But incumbents are not fungible—and given the Legislature's partisan goal of flipping five Democrat-held seats to Republican-held seats, it is not reasonable to assume that a plan that paired two sets of Republican incumbents would be equally preferred to a plan that paired two sets of Democrats. Nor is Dr. Duchin's assumption consistent with [Mr. Kincaid's] testimony in this case that only Republican incumbents were not paired together in the mapmaking process." (citations omitted)).

used an out-of-date list of incumbent addresses. 463 (2)

Absent any rebuttal expert testimony that programming the computer to address those critiques would have significantly changed Dr. Duchin's results, we have no basis to dismiss her testimony as unreliable. And the record shows Dr. Duchin made a good-faith effort to update incumbent addresses for her preliminary-injunction report but was unable to do so for reasons outside of her control.464

In sum, Dr. Duchin generated tens of thousands of congressional maps that follow traditional districting criteria and favor Republicans by various metrics, and not one of them had racial demographics that looked anything like those in the 2025 Map. 465 That is entirely consistent with the rest of the direct and circumstantial evidence. The 2025 Map's racial characteristics did not result from the blind pursuit of partisan gain, but from the intentional manipulation of the districts' racial makeup. 466

⁴⁶³ See Defs.' Post-Hr'g Br., ECF No. 1284, at 54 ("Dr. Duchin performed her incumbency analysis using an out-of-date list of incumbent addresses . . . Dr. Duchin did not dispute that ten of the incumbents on the list she used were not in Congress in 2024–2025. Former members of Congress are not incumbents the Legislature would want to protect in 2025; therefore Dr. Duchin's use of outdated incumbent addresses severely impacts her analysis.").

⁴⁶⁴ See Prelim. Inj. Hr'g Tr. Day 5 (Morning), ECF No. 1418, at 108–09 ("[DR. DUCHIN:] I have been aware for some time that these incumbent addresses are out of date and have been requesting updated incumbent addresses for months.").

⁴⁶⁵ See, e.g., id. at 73 ("Q. So does this mean that the racial composition of the district was something you did not see in any of your maps? | [DR. DUCHIN:] Right. In several of these instances, it's past anything ever observed.").

⁴⁶⁶ See, e.g., id. at 72 ("[The results are] suggestive that race was used in making [the Enacted Map] because these race-blind comparators, even made with layer upon layer of different assumptions about partisanship and other principles, don't reproduce that kind of racial composition.").

6. **Contrary Circumstantial Evidence**

A few brief notes about circumstantial evidence that points in the opposite direction:

CD 33 Remains a Coalition District a.

Although the DOJ Letter instructs Texas to eliminate CD 33's status as a coalition district, CD 33 remains a coalition district under the 2025 Map. 467 At least for CD 33, neither the DOJ Letter nor racial considerations more generally were the primary factor motivating the Legislature's reconfiguration of the district. Therefore, the Plaintiff Groups have not demonstrated a likelihood of success on the merits of their racial-gerrymandering challenge to CD 33.

That finding does not undermine our conclusion that the Plaintiff Groups have demonstrated a likelihood of success on the merits of most of their other racial-gerrymandering claims. Because "[r]acial gerrymandering claims proceed district-by-district," 468 it's entirely possible for the Legislature to gerrymander one district without gerrymandering another. CD 33 is the lone exception to the Legislature's general pattern of converting as many coalition districts to single-race-majority districts as possible.

b. The 2025 Map Comports with Traditional Districting Principles

As stated above, a plaintiff asserting a racial-gerrymandering claim bears the burden to "prove that the State subordinated race-neutral districting criteria such as compactness, contiguity, and core preservation to racial considerations."469 To make that showing, plaintiffs "often need to

See also supra Section II.B.4.

⁴⁶⁷ Compare Brooks Prelim. Inj. Ex. 258, ECF No. 1326-5, at 1 (reflecting that, under the 2021 Map, CD 33 was 43.6% Hispanic, 25.2% Black, 5.7% Asian, and 23.4% White), with Brooks Prelim. Ini. Ex. 265, ECF No. 1326-12, at 1 (reflecting that, under the 2025 Map, CD 33 is 38.2% Hispanic, 19.6% Black, 4.4% Asian, and 35.5% White).

⁴⁶⁸ See, e.g., Bethune-Hill, 580 U.S. at 191 (citation modified).

⁴⁶⁹ E.g., Alexander, 602 U.S. at 7 (citation modified).

show that the State's chosen map conflicts with" those "traditional redistricting criteria." 470 "That is because it may otherwise be difficult for challengers to find other evidence sufficient to show that race was the overriding factor causing neutral considerations to be cast aside."471

By some measures, the 2025 Map is more consistent with traditional districting criteria than its predecessors. For instance, the 2025 Map scores better on certain compactness measurements⁴⁷² and core-retention metrics⁴⁷³ than the 2021 Map.

That hurdle is not dispositive here. Even though plaintiffs "often need to show that the State's chosen map conflicts with traditional redistricting criteria" to prevail on a racialgerrymandering claim, 474 "a conflict or inconsistency between the enacted plan and traditional redistricting criteria is not a threshold requirement or a mandatory precondition in order for a challenger to establish a claim of racial gerrymandering." "Race may predominate"—"even when a reapportionment plan respects traditional [districting] principles"—if:

- "race was the criterion that, in the State's view, could not be compromised," **(1)** and
- "race-neutral considerations came into play only after the race-based (2) decision had been made."476

See also, e.g., id. ("Of course, a conflict or inconsistency [with traditional districting principles] may be persuasive circumstantial evidence tending to show racial predomination, but there is no rule requiring challengers to present this kind of evidence in every case.").

⁴⁷⁰ E.g., id. at 8.

⁴⁷¹ E.g., id. (citation modified).

⁴⁷² See, e.g., Prelim. Inj. Hr'g Tr. Day 5 (Morning), ECF No. 1418, at 78–80.

⁴⁷³ See, e.g., id. at 81.

⁴⁷⁴ See. e.g., Alexander, 602 U.S. at 8.

⁴⁷⁵ E.g., Bethune-Hill, 580 U.S. at 190.

⁴⁷⁶ E.g., id. at 189 (citation modified).

"[T]here may be cases where challengers will be able to establish racial predominance"—even "in the absence of an actual conflict" between the enacted map and traditional districting principles— "by presenting direct evidence of the legislative purpose and intent or other compelling circumstantial evidence."477

The Plaintiff Groups have introduced direct and circumstantial evidence that race was the criterion that could not be compromised in the 2025 redistricting 478 and that racial considerations predominated over political ones. 479 Therefore, the fact that the 2025 Map generally complies with traditional districting criteria isn't fatal.

7. The Plaintiff Groups' Failure to Produce an Alexander Map

Finally, we address whether the Plaintiff Groups needed to present a so-called "Alexander map" to obtain a preliminary injunction. An "often highly persuasive way to disprove a State's contention that politics drove a district's lines" is for the plaintiff to introduce "an alternative map that achieves the legislature's political objectives while improving racial balance." ⁴⁸⁰ Such a map "show[s] that the legislature had the capacity to accomplish all its partisan goals without moving so many members of a minority group" between electoral districts. 481 The idea is that if the Legislature was "really sorting by political behavior instead of skin color," it "would have done or, at least, could just as well have done—this."482 "Such would-have, could-have, and (to round

⁴⁷⁷ E.g., id. at 191.

⁴⁷⁸ See supra note 272 and accompanying text.

⁴⁷⁹ See supra Sections III.B.3 & 5.

⁴⁸⁰ Cooper, 581 U.S. at 317.

⁴⁸¹ *Id*.

⁴⁸² *Id*.

out the set) should-have arguments are a familiar means of undermining a claim that an action was based on a permissible, rather than a prohibited, ground."483

In Alexander v. South Carolina State Conference of NAACP, the Supreme Court ruled that, "[w]ithout an alternative map" of the sort described above, "it is difficult for plaintiffs to defeat [the] starting presumption that the legislature acted in good faith."⁴⁸⁴ The *Alexander* Court further remarked that such alternative maps are not "difficult to produce"; "[a]ny expert armed with a computer can easily churn out redistricting maps that control for any number of specified criteria, including prior voting patterns and political party registration."485 The Court thus held that "[t]he evidentiary force of an alternative map, coupled with its easy availability, means that trial courts should draw an adverse inference from a plaintiff's failure to submit one."486 The Supreme Court further opined that this "adverse inference may be dispositive in many, if not most, cases where the plaintiff lacks direct evidence or some extraordinarily powerful circumstantial evidence."487

⁴⁸³ *Id*.

⁴⁸⁴ 602 U.S. at 10; see also supra notes 189–190 and accompanying text.

⁴⁸⁵ 602 U.S. at 35 (citation modified).

⁴⁸⁶ *Id*.

⁴⁸⁷ *Id*.

At this early phase of the proceedings, the Plaintiff Groups have not submitted an *Alexander* map. ⁴⁸⁸ For the following reasons, that is not fatal.

For one thing, *Alexander* states that "[t]he adverse inference may be dispositive in many, if not most, cases where the plaintiff lacks direct evidence" of the legislature's intent. 489 Unlike the challengers in *Alexander*, who "provided no direct evidence of a racial gerrymander," 490 the Plaintiff Groups here have produced substantial direct evidence indicating that race was the predominant driver in the 2025 redistricting process. 491 This case is not the sort of "circumstantialevidence-only case" in which Alexander's adverse inference is typically dispositive. 492

Moreover, it's not even clear that Alexander requires us to draw an adverse inference against the Plaintiff Groups at this early phase of the case. The logic behind *Alexander*'s adverse inference is that, because an alternative map is relatively easy to generate as a technical matter, ⁴⁹³

⁴⁸⁸ The map that counsel produced while fiddling with map-drawing software in front of the State Defendants' expert for several hours doesn't qualify as a proper Alexander map. See Prelim. Inj. Hr'g Tr. Day 9 (Morning), ECF No. 1422, at 82–141; see also Prelim. Inj. Hr'g Tr. Day 9 (Afternoon), ECF No. 1345, at 29 ("[H]e's trying to draw an Alexander district through me." If the Plaintiff Groups intended that to be their Alexander map, they should have presented it through expert testimony during their case-inchief. See Prelim. Inj. Hr'g Tr. Day 9 (Afternoon), ECF No. 1345, at 50 ("Q. To your knowledge, did Plaintiffs offer an expert to draw an alternative map, an Alexander map, as you discussed on crossexamination? | A. I have a feeling I am their *Alexander* witness.").

Nor do any of Dr. Duchin's randomly generated maps qualify as an Alexander map for our purposes, since none of those maps were introduced into evidence (as opposed to a pictorial representation of their racial demographics). See Tex. NAACP Prelim. Inj. Ex. 208, ECF No. 1384-8, at 14-15; see also supra Section III.5.e.

⁴⁸⁹ See 602 U.S. at 35.

⁴⁹⁰ See id. at 18.

⁴⁹¹ See supra Section III.3.

⁴⁹² Contra Alexander, 602 U.S. at 9.

⁴⁹³ See id. at 35 ("Nor is an alternative map difficult to produce. Any expert armed with a computer can easily churn out redistricting maps that control for any number of specified criteria, including prior voting patterns and political party registration.").

if a plaintiff fails to present such a map at trial, it must be because it's impossible to draw a map that achieves the legislature's partisan goals "while producing significantly greater racial balance."494

But unlike *Alexander*, which reached the Supreme Court at the permanent injunction stage, 495 after the district court had conducted a full-fledged trial, 496 this case is still at the preliminary injunction phase. It's one thing to draw an adverse inference if a plaintiff fails to produce a suitable *Alexander* map after preparing for a trial for a year or more; it's quite another if a plaintiff fails to produce a suitable *Alexander* map at an accelerated, preliminary phase of the litigation. For that reason, at least one lower court has ruled that Alexander's alternative map requirement does not apply at a redistricting case's preliminary phases. 497 It would be improper here to infer that the reason the Plaintiff Groups didn't produce an Alexander map at the

See also id. at 35 ("A plaintiff's failure to submit an alternative map—precisely because it can be designed with ease—should be interpreted by district courts as an implicit concession that the plaintiff cannot draw a map that undermines the legislature's defense that the districting lines were based on a permissible, rather than a prohibited, ground." (citation modified)); id. ("The Challengers enlisted four experts who could have made these maps at little marginal cost." (emphasis omitted)).

⁴⁹⁴ See id. at 34 (citation modified).

⁴⁹⁵ See id. at 15.

⁴⁹⁶ See id. at 13.

⁴⁹⁷ Cf. Tenn. State Conf., 746 F. Supp. 3d at 482, 497 ("Alexander arose after a trial. This case, by contrast, remains at the pleadings stage. . . . We agree that the Challengers do not have to satisfy any alternative-map obligation at this stage.").

preliminary-injunction hearing is because it's impossible to create one. The most likely reason is that they simply didn't have time. 498

If anything, the preliminary-injunction record suggests that the Plaintiff Groups will be able to present an acceptable Alexander map at trial. Although the Plaintiff Groups didn't offer any of Dr. Duchin's randomly generated maps as an *Alexander* map at the preliminary-injunction hearing, 499 the fact that she generated tens of thousands of pro-Republican maps that obey traditional redistricting principles without producing the enacted map's exaggerated racial features makes us confident that the Plaintiff Groups will be able to produce a suitable Alexander map once the Court ultimately tries this case on the merits. 500

Thus, while Alexander will be a hurdle that the Plaintiff Groups will need to surmount at trial, it does not bar the Plaintiff Groups from obtaining a preliminary injunction here.

8. Texas's Use of Race When Drawing the 2025 Map Wasn't Narrowly Tailored to Achieve a Compelling Interest

We've thus determined that, at trial, the Plaintiff Groups will likely satisfy their initial burden to show that race predominated over partisanship for many of the districts they challenge.

⁴⁹⁸ Cf., e.g., Prelim. Inj. Hr'g Tr. Day 3 (Morning), ECF No. 1416, at 81, 116–19 (another expert's testimony that, due to the "limited time" he had to prepare his analysis, he had to restrict his focus to six prior elections); Prelim. Inj. Hr'g Tr. Day 7 (Afternoon), ECF No. 1343, at 139-40 ("Q. Now, you said in your report that you did not have enough time to run ecological inference analysis yourself, right? | [DR. JEFFREY LEWIS:] That's right. . . . [F]rom the time that . . . I was asked to provide opinions on the matters that I described, I think I had more on the order of ten days.").

⁴⁹⁹ *See supra* note 488.

⁵⁰⁰ See supra Section III.5.e.

Assuming they do so, the burden will then shift to the State Defendants⁵⁰¹ "to prove that its racebased sorting of voters serves a 'compelling interest' and is 'narrowly tailored'" to that end."502

Because the State Defendants' theory of the case is that the Legislature didn't base the 2025 Map on race at all, 503 they make no serious effort to argue that the Legislature's use of race was narrowly tailored to achieve a compelling interest. 504 For that reason alone, we could rule against the State Defendants on this issue at this stage of the proceedings.

It's nevertheless prudent to consider whether DOJ's claim—that Texas needed to systematically eliminate coalition districts to break from its supposed "racially based gerrymandering past"505—constitutes a compelling interest to support race-based redistricting here. "There is a significant state interest in eradicating the effects of past racial discrimination." ⁵⁰⁶ "When a state governmental entity seeks to justify race-based remedies to cure the effects of past discrimination," however, courts "do not accept the government's mere assertion that the remedial action is required."507 Instead, courts "insist on a strong basis in evidence of the harm being remedied."508

⁵⁰¹ E.g., Alexander, 602 U.S. at 11; see also supra note 191 and accompanying text.

⁵⁰² E.g., Cooper, 581 U.S. at 292; see also supra note 192 and accompanying text.

⁵⁰³ See, e.g., Defs.' Post-Hr'g Br., ECF No. 1284, at 17 (insisting that the Plaintiff Groups "cannot" "demonstrate [any] use of race in the development of the map"); id. at 23 ("Race was not used here.").

⁵⁰⁴ See generally Defs.' Resp. Intervenors' & Tex. NAACP's Prelim. Inj. Mot., ECF No. 1195; Defs.' Resp. Gonzales Pls.' Prelim. Inj. Mot., ECF No. 1199; Defs.' Resp. J. Prelim. Inj. Mot., ECF No. 1200; Defs.' Post-Hr'g Br., ECF No. 1284.

⁵⁰⁵ See Brooks Prelim. Inj. Ex. 253, ECF No. 1326, at 2.

⁵⁰⁶ Miller, 515 U.S. at 920 (citation modified).

⁵⁰⁷ *Id.* at 922.

⁵⁰⁸ *Id*.

As discussed, the evidence in the preliminary-injunction record suggests that the 2021 Legislature didn't discriminate in favor of minority coalitions—whether to comply with Campos or for any other purpose. ⁵⁰⁹ Again, as far as the preliminary-injunction record reveals, the 2021 Legislature drew the 2021 Map based strictly on race-neutral criteria like partisanship. 510 By all current appearances, there was no past discrimination in favor of minority coalitions for the State to remedy—and, therefore, no "strong basis in evidence" to support the State's purposeful and predominant consideration of race in the 2025 redistricting process.

Besides remedying past discrimination, the Supreme Court has also "long assumed that complying with the VRA is a compelling interest."511 The DOJ Letter appears to take the position that, post-Petteway, coalition districts violate the VRA. 512 Therefore, we consider whether we can excuse the State's race-based redistricting as a well-intentioned but misguided attempt to comply with the VRA.

We can't. "Although States enjoy leeway to take race-based actions reasonably judged necessary under a proper interpretation of the VRA,"513 courts cannot "approve a racial gerrymander... whose raison d'être is a legal mistake."514 As this opinion makes clear, the DOJ's interpretation of *Petteway*—that VRA § 2 and the Constitution render coalition districts per se

⁵⁰⁹ See supra Section II.B: see also supra Section II.F.

⁵¹⁰ See supra Section II.B.

⁵¹¹ E.g., Cooper, 581 U.S. at 301.

⁵¹² See Brooks Prelim. Inj. Ex. 253, ECF No. 1326, at 2 ("It is well established that so-called 'coalition districts' run afoul the [sic] Voting Rights Act ").

⁵¹³ See Cooper, 581 U.S. at 306; see also Wis. Legis. v. Wis. Elections Comm'n, 595 U.S. 398, 404 (2022) (explaining that "State have breathing room to make reasonable mistakes" regarding whether the VRA requires the State to enact a particular compliance measure).

⁵¹⁴ See Cooper, 581 U.S. at 306.

unlawful—is obviously wrong. 515 Thus, the State's systematic, purposeful elimination of coalition districts and creation of new single-race-majority districts "was not reasonably necessary under a constitutional reading and application of [the VRA]."516

Nor, if the State were so inclined, could it avoid liability by arguing that it was just following orders from DOJ. "[T]he Justice Department's objection" to a state's map is not "itself ... a compelling interest adequate to insulate racial districting from constitutional review."517

We therefore conclude that, once this case proceeds to trial, the State Defendants will be unlikely to carry their burden to show that the Legislature's use of race was narrowly tailored to achieve a compelling interest. The Plaintiff Groups have therefore shown that they're likely to succeed on their racial-gerrymandering challenges to CDs 9, 18, 27, 30, 32, and 35.

C. Irreparable Harm

Besides showing that they're likely to succeed on the merits, the Plaintiff Groups have also established that they are "likely to suffer irreparable harm in the absence of preliminary relief." ⁵¹⁸ "In general, a harm is irreparable where there is no adequate remedy at law, such as monetary damages."⁵¹⁹ Here, the Plaintiff Groups' alleged harm is the violation of their constitutional rights under the Fourteenth and Fifteenth Amendments. 520 "[T]he loss of constitutional freedoms," such

⁵¹⁵ See supra Section II.D.

⁵¹⁶ See Miller, 515 U.S. at 921.

⁵¹⁷ See id. at 922.

⁵¹⁸ Winter, 555 U.S. at 20.

⁵¹⁹ SO Apartments, L.L.C. v. City of San Antonio, 109 F.4th 343, 353 (5th Cir. 2024) (quoting Janvey, 647 F.3d at 600 (quotation marks omitted)).

⁵²⁰ TX NAACP's Mot. Prelim. Inj., ECF No. 1142, at 22–23; Congr. Intervenors' Mot. Prelim. Inj., ECF No. 1143, at 14-15; Gonzales Pls.' Mot. Prelim. Inj., ECF No. 1149, at 24-25; Brooks, LULAC, and MALC Pls.' Joint Mot. Prelim. Inj., ECF No. 1150, at 44-45. See also U.S. CONST. amend. XIV § 1; id. amend. XV § 1.

as the right to equal protection of the law and to exercise the right to vote free from racial discrimination, "for even minimal periods of time unquestionably constitutes irreparable injury."521 The inability to vote for and to elect a congressional representative under a constitutional map is undoubtedly "an injury that cannot be compensated with damages, making it irreparable."522 No legal remedy, including monetary damages, can make up for losing a constitutional right.

The State Defendants do not dispute that a violation of a constitutional right is an irreparable harm. 523 Rather, the State Defendants argue that since the Plaintiff Groups are unlikely to succeed on the merits of their claims, the Plaintiff Groups also cannot show that they are likely to suffer irreparable harm. 524 Since the Court finds otherwise, the State Defendants' arguments fail.

Accordingly, the Court finds the Plaintiff Groups will suffer irreparable harm if the 2025 Map remains Texas's operative congressional map.

⁵²¹ BST Holdings, L.L.C. v. OSHA, 17 F.4th 604, 618 (5th Cir. 2021) (citation modified) (quoting Elrod v. Burns, 427 U.S. 347, 373 (1976)). See also DeLeon v. Perry, 975 F. Supp. 2d 632, 663 (W.D. Tex. 2014) ("Federal courts at all levels have recognized that violation of constitutional rights constitutes irreparable harm as a matter of law."), aff'd sub nom. DeLeon v. Abbott, 791 F.3d 619 (5th Cir. 2015); Obama for Am. v. Husted, 697 F.3d 423, 436 (6th Cir. 2012) ("When constitutional rights are threatened or impaired, irreparable injury is presumed . . . A restriction on the fundamental right to vote therefore constitutes irreparable injury.").

⁵²² Ist Prelim. Inj. Op., 601 F. Supp. 3d at 182; see also Deerfield Med. Ctr. v. City of Deerfield Beach, 661 F.2d 328, 338 (5th Cir. 1981); Obama for Am., 697 F.3d at 436.

⁵²³ See generally Defs.' Resp. to Texas NAACP and Congr. Intervenors' Mtn. for Prelim. Inj., ECF No. 1195; Defs.' Resp. to Gonzales Pls.' Mtn. for Prelim. Inj., ECF No. 1199; Defs.' Resp. to Brooks, LULAC, and MALC Pls.' Joint Mtn. for Prelim. Inj., ECF No. 1200. See also Defs.' Post-Hr'g Br., ECF No. 1284, at 88.

⁵²⁴ See the sources cited supra note 523.

D. **Balance of Equities and the Public Interest**

The Court next addresses the remaining two factors necessary for imposing a preliminary injunction: (1) the balance of equities must favor the movant and (2) an injunction would not disserve the public interest. 525 The Plaintiff Groups have satisfied both factors.

The balance of equities addresses "the relative harm to both parties if the injunction is granted or denied."526 "The public-interest factor looks to the public consequences of employing the extraordinary remedy of injunction."527 Because these two factors "overlap considerably," federal courts routinely consider them together. 528 Indeed, "[t]hese factors merge when the Government is the opposing party."529 This is because "[w]hen a statute is enjoined, the State necessarily suffers the irreparable harm of denying the public interest in the enforcement of its laws, and the State's interest and harm thus merge with that of the public."530 Accordingly, the Court considers both factors together.

⁵²⁵ TitleMax, 142 F.4th at 328; see also Texas v. United States, 809 F.3d 134, 150 (5th Cir. 2015), aff'd by an equally divided court, 579 U.S. 547 (2016) (per curiam).

⁵²⁶ Ist Prelim. Inj. Op., 601 F. Supp. 3d at 183 (quotation marks omitted) (quoting Def. Distributed v. U.S. Dep't of State, 838 F.3d 451, 459 (5th Cir. 2016)).

⁵²⁷ *Id.* (citation modified) (quoting *Winter*, 555 U.S. at 24).

⁵²⁸ Texas v. United States, 524 F. Supp. 3d 598, 663 (S.D. Tex. 2021) (citing Texas v. United States, 809 F.3d at 187).

⁵²⁹ Nken v. Holder, 556 U.S. 418, 435 (2009).

⁵³⁰ Ist Prelim. Inj. Op., 601 F. Supp. 3d at 183 (citation modified) (quoting Veasev v. Abbott, 870 F.3d 387, 391 (5th Cir. 2017) (per curiam)).

1. Purcell Does Not Require the Court to Deny a Preliminary Injunction in This Case

The State Defendants argue that these factors weigh strongly against an injunction based on Purcell v. Gonzalez, 549 U.S. 1, 4–5 (2006) (per curiam). 531 Purcell stands for the principles "(i) that federal district courts ordinarily should not enjoin state election laws in the period close to an election, and (ii) that federal appellate courts should stay injunctions when . . . lower federal courts contravene that principle."532 These principles "require[] courts to consider the effect of late-breaking judicial intervention on voter confusion and election participation."533

"[T]he Supreme Court has never specified precisely what it means to be 'on the eve of an election' for *Purcell* purposes."534 Instead, courts have applied *Purcell* as "a consideration, not a prohibition," based on a variety of factors and pre-election and election deadlines. 535 Applying the same analysis to this case, the Court finds that *Purcell* does not require us to deny a preliminary injunction. 536

⁵³¹ State Defs.' Resp. to Gonzales Pls.' Mtn. for Prelim. Inj., ECF No. 1196-1, at 36–39; State Defs.' Post-Hr'g Br., ECF No. 1284, at 91.

⁵³² Merrill v. Milligan, 142 S. Ct. 879, 879 (2022) (mem.) (Kavanaugh, J., concurring).

⁵³³ Petteway v. Galveston Cnty., 87 F.4th 721, 723 (5th Cir. 2023) (per curiam) (Oldham, J., concurring) [hereinafter Petteway Purcell Op.].

⁵³⁴ League of Women Voters of Fla., Inc. v. Fla. Sec'y of State, 32 F.4th 1363, 1371 (11th Cir. 2022) (quoting Republican Nat'l Comm. v. Democratic Nat'l Comm., 589 U.S. 423, 424 (2020) (per curiam)).

⁵³⁵ Kim v. Hanlon, 99 F.4th 140, 160 (3d Cir. 2024), See Milligan, 142 S. Ct. at 880 (Kayanaugh, J., concurring) (collecting cases); Petteway Purcell Op., 87 F.4th at 723 (Oldham, J., concurring) (collecting cases); McClure v. Jefferson Cntv. Comm'n, Nos. 25-13253, 25-13254, 2025 WL 2977740, at *2 (11th Cir. Oct. 16, 2025) (per curiam) (collecting cases).

⁵³⁶ See Jacksonville Branch of NAACP v. City of Jacksonville, No. 22-13544, 2022 WL 16754389, at *2-3 (11th Cir. Nov. 7, 2022) (per curiam).

Two Supreme Court applications of *Purcell* are especially relevant here.⁵³⁷ First is the Robinson line of cases. The Court will not belabor here these cases' complex development. 538 For this opinion's purposes, what matters is that the three-judge panel in *Callais* enjoined Louisiana's newly drawn congressional plan 189 days (about six months) before the November 5, 2024, general election. 539 On May 15, 2024, the Supreme Court stayed the injunction on Purcell grounds. 540 The Supreme Court's stay order included only a naked citation to *Purcell* without any accompanying reasoning or analysis about why Purcell compelled the stay. 541

Then there is Merrill v. Milligan. 542 In that case, the three-judge panel issued its preliminary injunction on January 24, 2022. 543 The panel declined to stay the injunction on *Purcell* grounds because "the primary election [would not] occur [until] May 24, 2022, approximately four months from" the panel's preliminary-injunction order. 544 The Supreme Court disagreed and stayed the injunction. 545 Here again, the Supreme Court provided no reasoning for the stay. 546 In

⁵³⁷ State Defs.' Resp. to Gonzales Pls.' Mtn. for Prelim. Inj., ECF No. 1196-1, at 37–38; State Defs.' Post-Hr'g Br., ECF No. 1284, at 89-91.

⁵³⁸ For an exhaustive discussion of this development, see Callais v. Landry, 732 F. Supp. 3d 574, 585-87 (W.D. La. 2024).

⁵³⁹ See generally id.

⁵⁴⁰ Robinson v. Callais, 144 S. Ct. 1171, 1171 (2024) (mem.).

⁵⁴¹ See id.

⁵⁴² 142 S. Ct. 879 (2022).

⁵⁴³ See generally Singleton v. Merrill, 582 F. Supp. 3d 924 (N.D. Ala. 2022).

⁵⁴⁴ Singleton v. Merrill, No. 2:21-cv-1291, 2022 WL 272636, at *11 (N.D. Ala. Jan. 27, 2022).

⁵⁴⁵ *See Milligan*, 142 S. Ct. at 879.

⁵⁴⁶ See id.

fact, the Supreme Court did not cite to a single case to support its stay—not even to Purcell. 547 The only reasoning offered to support the stay was in Justice Kavanaugh's concurrence discussing Purcell, which Justice Alito joined. 548

In his concurrence in *Petteway v. Galveston County*, Judge Oldham cited to the Supreme Court's stay order in Milligan to observe that "the Supreme Court . . . refused to bless judicial intervention in State elections . . . 120 days before the primary election date" in that case. 549 In addition to noting the Supreme Court's stay in Milligan, Judge Oldham noted the Fifth Circuit's own calendar constraints. The Fifth Circuit had already taken the case en banc, and the court's next en banc sitting was not until January 23–25, 2024, less than two months before the primary election. 550 But unlike in *Petteway*, allowing time for intermediate appellate review of this opinion is not a complicating factor.

The State Defendants argue that these cases preclude the Plaintiff Groups from obtaining injunctive relief here. 551 Texas's congressional primary election is March 3, 2026, about four months from now. 552 If the Court were to apply Robinson's timeframe to the next scheduled election, then the window to issue a preliminary injunction in this case before the March 3 primary election closed on August 26, 2025—three days before Governor Abbott even signed the

⁵⁴⁷ See id.

⁵⁴⁸ See id. at 879–82 (Kavanaugh, J., concurring) (basing his vote on *Purcell*).

⁵⁴⁹ Petteway Purcell Op., 87 F.4th at 723 (Oldham, J., concurring).

⁵⁵⁰ See id. at 724 (Oldham, J., concurring).

⁵⁵¹ State Defs.' Resp. to Gonzales Pls.' Mtn. for Prelim. Inj., ECF No. 1196-1, at 37–38; State Defs.' Post-Hr'g Br., ECF No. 1284, at 89-91.

⁵⁵² State Defs.' Resp. to Gonzales Pls.' Mtn. for Prelim. Inj., ECF No. 1196-1, at 37–38; State Defs.' Post-Hr'g Br., ECF No. 1284, at 89–91.

redistricting bill into law. 553 Similarly, under Milligan, if 120 days from the primary election is the cutoff, then the panel would have had only until November 3, 2025, to draft this opinion. If the Court applied these timeframes even further under *Purcell* precedent and considered the next scheduled election to begin when absentee ballots are issued for the primary election, those cutoff deadlines would be even earlier: July 12, 2025, under Robinson and September 19, 2025, under Milligan.554

We disagree with the State Defendants. *Robinson* and *Milligan* are not dispositive. "Purcell is [not] just a tallying exercise"555 or a "magic wand that bars [c]ourts from issuing injunctions some amount of time out from an election."556 That is for good reason. If it were, the Purcell principle would effectively be "absolute"—and it is not. 557 It is not the case "that a district court may never enjoin a State's election laws in the period close to an election."558 Purcell "simply heightens the showing necessary for a plaintiff to overcome the State's extraordinarily strong interest in avoiding late, judicially imposed changes to its election laws and procedures."559 Rather than setting a hard cut-off, Purcell sets a flexible standard based on a fact-intensive analysis that

⁵⁵³ See Robinson, 144 S. Ct. at 1171; see also H.B. 4, 89th Leg., 2d Spec. Sess. (Tex. 2025) (signed on August 29, 2025).

⁵⁵⁴ See Milligan, 142 S. Ct. at 879 (Kavanaugh, J., concurring) ("The District Court declined to stay the injunction for the 2022 elections even though the primary elections begin (via absentee voting) just seven weeks from now...."). Primary absentee voting begins January 17, 2026, in the 2026 Texas congressional election. Seven weeks before then is November 29, 2025.

⁵⁵⁵ Robinson v. Ardoin, 37 F.4th 208, 228–29 (5th Cir. 2022) (per curiam) (collecting cases).

⁵⁵⁶ Get Loud Ark. v. Thurston, 748 F. Supp. 3d 630, 665 (W.D. Ark. 2024).

⁵⁵⁷ Milligan, 142 S. Ct. at 881 (Kavanaugh, J., concurring).

⁵⁵⁸ *Id*.

⁵⁵⁹ Id.

considers the disruption an injunction would cause. 560 It's not just about counting the number of days until the next election.

An injunction in this case would not cause significant disruption. The Legislature passed the 2025 Map in August 2025, more than a year before the general election in November 2026. As of this writing, we are still one year out from the general election and four months out from the primary election. Even "critical deadlines that arise before election day itself," like overseas and absentee primary voting, are more than two months away. 561 And the candidate-filing period remains open for several weeks.

Based on the credible testimony of Christina Adkins, the director of elections for the Texas Secretary of State, some preliminary election preparations have begun. The State has begun educating county election officials, including holding trainings about the 2025 Map, and some counties have started drawing county election voter registration precincts based on this map. 562 Candidates have also started relying on the 2025 Map, including determining which district to run in, collecting signatures, and campaigning. 563 The Court also recognizes there is a trickle-down effect among elections because a candidate's decision to run for Congress means that candidate

⁵⁶⁰ See Tenn. Conf. of the NAACP v. Lee, 105 F.4th 888, 897 (6th Cir. 2024) ("As others have recognized, the Supreme Court has not adopted any categorical answer to the question of 'how close is too close?' The answer might depend on injunction-specific factors about the nature of the required changes and the burdens they will impose." (citation modified)). See also Milligan, 142 S. Ct. at 881 n.1 (Kavanaugh, J., concurring) ("How close to an election is too close may depend in part on the nature of the election law at issue, and how easily the State could make the change without undue collateral effects."); Jacksonville Branch of NAACP, 2022 WL 16754389, at *2–3.

⁵⁶¹ McClure, 2025 WL 2977740, at *2; cf. Milligan, 142 S. Ct. at 880 (Kavanaugh, J., concurring) (noting that primary elections by absentee voting began seven weeks from the date of the Supreme Court's stay).

⁵⁶² Prelim. Inj. Hr'g Tr. Day 7 (Morning), ECF No. 1420, at 152:9–154:13.

⁵⁶³ *Id.* at 154:14–155:21.

cannot run for another elected position. 564 Candidates may make different choices under different congressional maps.

Yet in several critical respects, the State is still operating under the 2021 Map. The State's counties used the precinct boundaries under the 2021 Map for the November 4, 2025, election, and the State used the 2021 Map's lines for the special election in CD 18 on November 4, in addition to having used the 2021 Map for all congressional districts in the 2022 and 2024 elections. ⁵⁶⁵ The special election in CD 18 is now proceeding to a runoff election under the 2021 Map on January 31, 2026. 566 This means the runoff election for CD 18 under the 2021 Map will occur almost two months after the candidate-filing deadline for the November 3, 2026, election, two weeks after the overseas and absentee 2026 primary ballots are mailed, and mere weeks before the 2026 primary election—all of which is set to take place under the 2025 Map. 567 This runoff also means that Harris County, the State's largest, will retain both its voter precinct boundaries and its district boundaries under the 2021 Map until after CD 18's special election has formally concluded. 568

So, it is not the case that the entire State has been operating under the 2025 Map for months. The map wasn't even law three months ago, and Texas voters will continue to vote under the 2021 Map after several key pre-election deadlines for the 2025 Map have already passed. Although the filing period for precinct chairs opened in September 2025, its December 8, 2025, closing date will

⁵⁶⁴ See Thompson v. Dewine, 959 F.3d 804, 813 (6th Cir. 2020) ("Moving one piece on the game board invariably leads to additional moves.").

⁵⁶⁵ Prelim. Inj. Hr'g Tr. Day 7 (Afternoon), ECF No. 1343, at 18:16–19:24.

⁵⁶⁶ "Abbott sets Jan. 31 runoff for special election to replace U.S. Rep. Sylvester Turner." Texas Tribune. Nov. 17, 2025. https://www.texastribune.org/2025/11/17/texas-18th-congressional-districtspecial-election-runoff-date-jan-31-houston/. (Accessed Nov. 17, 2025).

⁵⁶⁷ *Id*.

⁵⁶⁸ Prelim. Inj. Hr'g Tr. Day 7 (Afternoon), ECF No. 1343, at 20:10–18.

accommodate any changes to precinct filings that result from an injunction. ⁵⁶⁹ And the Court is issuing its ruling well before the candidate-filing deadline of December 8. Simply put, the 2026 congressional election is not underway. 570

In any event, any disruption that would happen here is attributable to the Legislature, not the Court. 571 The Legislature—not the Court—set the timetable for this injunction. The Legislature—not the Court—redrew Texas's congressional map weeks before precinct-chair and candidate-filing periods opened. The State chose to "toy with its election laws close to" the 2026 congressional election, though that is certainly its prerogative. ⁵⁷² But any argument that *this Court* is choosing "to swoop in and re-do a State's election laws in the period close to an election" is wholly misdirected. 573 In this case, "[1]ate judicial tinkering" with Texas's congressional map is not what could "lead to disruption and to unanticipated and unfair consequences for candidates,

⁵⁶⁹ Brooks, LULAC, and MALC Post-Hr'g Br., ECF No. 1281, at 39–40; Prelim. Inj. Hr'g Tr. Day 7 (Afternoon), ECF No. 1343, at 17:19–18:11.

⁵⁷⁰ Contra La Union Del Pueblo Entero v. Abbott, 119 F.4th 404, 408 (5th Cir. 2024) (determining a stay pending appeal was warranted in part because the district court issued the injunction after counties had started to mail absentee ballots); Pierce v. North Carolina State Bd. of Elections, 97 F.4th 194, 226 n.11, 227 (4th Cir. 2024) (affirming the district court's denial of a preliminary injunction in part under Purcell because the election at issue was "well underway," including the primary election results having already been certified by the time the opinion was publicly released).

⁵⁷¹ Cf. Chancev v. Ill. State Bd. of Elections, 635 F. Supp. 3d 627, 645 (N.D. Ill. 2022) ("And to the extent the State claims any prejudice, the problem is in large measure self-inflicted; the State, not the plaintiffs, enacted these amendments, which raise substantial constitutional concerns, less than a year before the election.").

⁵⁷² Milligan, 142 S. Ct. at 881 (Kavanaugh, J., concurring).

⁵⁷³ *Id*.

political parties, and voters."574 The Legislature—not the Court—opened that door. 575 No one disputes the fact that "state and local election officials need substantial time to plan for elections."⁵⁷⁶ But for *Purcell* purposes, that fact became moot when the Legislature enacted a new congressional map days before the precinct chair filing period opened and two months before the candidate filing period opened. As between the Plaintiff Groups, who have a constitutional right to vote under a lawful map, and the State, who invited this issue by enacting a new map within *Purcell's* range, the equities favor the Plaintiff Groups.

This finding is bolstered by the fact that the parties' swift action has mitigated to the greatest extent possible the risk of "significant logistical challenges" for Texas election officials and of voter confusion. 577 Unlike in other cases where the district court's injunction "would require heroic efforts by [] state and local authorities," in this case the Legislature's decision to enact a new congressional map has required "heroic efforts" certainly by the parties, and to a lesser extent by the Court. 578 The parties had approximately one month to prepare for a preliminary-injunction hearing in the most significant mid-decade redistricting case in recent memory. The Court likewise worked diligently to schedule a preliminary-injunction hearing at the earliest possible date and to issue substantive rulings on motions filed in the interim. ⁵⁷⁹ Not to mention the Court's considerable

⁵⁷⁴ *Id*.

⁵⁷⁵ Democratic Nat'l Comm. v. Bostelmann, 977 F.3d 639, 642 (7th Cir. 2020) ("The Justices have deprecated but not forbidden all change close to an election. A last-minute event may require a last-minute reaction.").

⁵⁷⁶ Milligan, 142 S. Ct. at 880 (Kayanaugh, J., concurring).

⁵⁷⁷ See Jacksonville Branch of NAACP, 2022 WL 16754389, at *3 (affirming the district court's finding that "the primary reason for applying [Purcell's heightened] standard—risk of voter confusion— [is] lacking").

⁵⁷⁸ Milligan, 142 S. Ct. at 880 (Kavanaugh, J., concurring).

⁵⁷⁹ See, e.g., ECF Nos. 1205, 1226.

efforts to issue its preliminary-injunction ruling on a nearly impossibly short fuse. Issuing a thoroughly researched and well-reasoned preliminary-injunction opinion of over 150 pages in just 38 days—after awaiting expedited proposed fact findings, legal conclusions, and briefing from the parties, which followed a nine-day evidentiary hearing featuring 23 witnesses and thousands of exhibits on the entire congressional map for the second-largest state in the country—is a Herculean task. Nevertheless, the panel has done everything in its power to rule as quickly as possible.

This case is *not* one in which "local elections [are] ongoing," poll workers have already been trained, the voter registration deadline is looming, state election officials have been fully operating under the new map for months, a signature deadline has passed, or the state is only days or weeks away from an election. 580 This case is one in which, despite the time constraints imposed by the Legislature, sufficient time remains for an injunction to take effect. Therefore, *Purcell* does not apply.

2. If Purcell Applies, the Plaintiff Groups Satisfy Purcell's Heightened Showing

Even if *Purcell* were to apply, the Plaintiff Groups have satisfied its requirements. This litigation—under *Purcell*—is the prototypical "extraordinary case where an injunction" is "proper." ⁵⁸¹ Under *Purcell*'s heightened showing, a plaintiff "might be [able to] overcome [the Purcell principle] even with respect to an injunction issued close to an election if a plaintiff establishes at least the following: (i) the underlying merits are entirely clearcut in favor of the plaintiff; (ii) the plaintiff would suffer irreparable harm absent the injunction; (iii) the plaintiff has

⁵⁸⁰ Contra League of Women Voters of Fla., Inc., 32 F.4th at 1371; Thompson, 959 F.3d at 813; Tenn. Conf. of the NAACP v. Lee, 105 F.4th at 898.

⁵⁸¹ League of Women Voters of Fla., Inc., 32 F.4th at 1372 n.7 (citation modified); see Milligan, 142 S. Ct. at 881 (Kavanaugh, J., concurring); see La Union Del Pueblo Entero, 119 F.4th at 409 (noting that Purcell is not "absolute").

not unduly delayed bringing the complaint to court; and (iv) the changes in question are at least feasible before the election without significant cost, confusion, or hardship."582 Although the full Supreme Court has not adopted this *Purcell* exception, the Fifth Circuit has done so, so we apply it accordingly. 583

First, undue delay. Without question, the Plaintiff Groups satisfy their showing on this element. The Court has already discussed this point and will re-emphasize it here: the Plaintiff Groups (as well as the State Defendants and the Court for that matter) could not possibly have acted faster or more diligently. On August 18, 2025, the Plaintiff Groups moved "the Court to schedule an expedited September preliminary injunction hearing on Texas's soon-to-be-enacted congressional map."584 Two days later, the Court scheduled a status conference for August 27.585 By then, or within a day thereafter, all of the Plaintiff Groups had filed their motions for preliminary injunction—before Governor Abbott even signed the bill into law. 586 During the status conference, the Court heard extensive argument on timing.⁵⁸⁷ 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. 588

⁵⁸² Milligan, 142 S. Ct. at 881 (Kavanaugh, J., concurring); La Union Del Pueblo Entero, 119 F.4th at 409.

⁵⁸³ Milligan, 142 S. Ct. at 881 (Kavanaugh, J., concurring); La Union Del Pueblo Entero, 119 F.4th at 409.

⁵⁸⁴ Brooks, LULAC, and Gonzales Pls. Mtn. to Schedule Prelim. Inj. Hearing, ECF No. 1127, at 2.

⁵⁸⁵ Order Scheduling Status Conf., ECF No. 1128.

⁵⁸⁶ See generally Texas NAACP's Mot. for Prelim. Inj., ECF No. 1142; Congr. Intervenors' Mot. for Prelim. Inj., ECF No. 1143; Gonzales Pls.' Mot. for Prelim. Inj., ECF No. 1149; and Brooks, LULAC, and MALC Pls.' Joint Mot. for Prelim. Inj., ECF No. 1150.

⁵⁸⁷ See Aug. 27, 2025, Minute Entry, ECF No. 1145.

⁵⁸⁸ See id.

The Court scheduled the preliminary-injunction hearing for October 1 to give the parties time to prepare while still giving the Plaintiff Groups the earliest possible hearing date. 589 Preparing for a nine-day preliminary-injunction hearing in just one month—including the preparation of briefing, arguments, examinations, expert reports, witnesses, and exhibits—is no small feat. The Plaintiff Groups and the State Defendants met that challenge and in doing so exceeded the Court's expectations for preparedness, thoroughness, and professionalism. ⁵⁹⁰ There is no evidence that the Plaintiff Groups unduly delayed bringing their claims to the Court. In fact, everyone—the Plaintiff Groups, the State Defendants, and the Court—worked as quickly as possible at every stage of these preliminary-injunction proceedings.

"This is not a situation in which [the Plaintiff Groups] were sleeping on their rights." ⁵⁹¹ The Plaintiff Groups moved for a preliminary-injunction hearing, the Court held a status conference on that motion and scheduled the preliminary-injunction hearing, and the Plaintiff Groups filed their motions for preliminary injunction all before Governor Abbott signed the 2025 Map into law. Then all parties proceeded one month later with a nine-day preliminary-injunction hearing—including a full day of trial on a Saturday—that involved more witnesses and exhibits than most trials on the merits. If that's not maximum diligence, what is?

Second, feasibility of changes close to the election. Because of the Plaintiff Groups' (and the State Defendants') rapid response to the new map, the changes necessary to use a map other

⁵⁸⁹ See Aug. 28, 2025, Minute Entry.

⁵⁹⁰ The lawyers in this case have exhibited exemplary legal acumen, advocacy skills, and professionalism, all under intense pressure. The Court is not surprised. Throughout this years-long litigation, the lawyers on both sides have conducted themselves in the ways we hope all lawyers will, including during this case's 18-day full merits trial only five months ago. All of the advocates and parties in this matter have earned this sincere commendation by the Court.

⁵⁹¹ Carey v. Wis. Elections Comm'n, 624 F. Supp. 3d 1020, 1035 (W.D. Wis. 2022).

than the 2025 Map are feasible at this stage of the election without "undue collateral effects." ⁵⁹² The Court has already discussed in detail the ways in which enjoining the 2025 Map would not disrupt the election or cause voter confusion. ⁵⁹³ The Court need not repeat them here. The Court adds that even Ms. Adkins testified that the Texas election officials and systems are more than capable of proceeding with the 2026 congressional election under any map that is the law. ⁵⁹⁴As a result, any burden the State would incur is not only minimal, but also far outweighed "by the overwhelming public interest in enjoining C2333 [the 2025 Map] and protecting Plaintiffs' constitutional rights."595

That leads to the third element: irreparable harm. For the same reasons previously discussed, the Plaintiff Groups would suffer irreparable harm absent the injunction. The obvious harm here is the likely violation of the Plaintiff Groups' constitutional rights absent the injunction. 596 The Plaintiff Groups will be forced to proceed under a congressional map that likely unconstitutionally sorts voters on the basis of race. Proceeding in this way deprives the Plaintiff Groups of their right to participate in a free and fair election. That deprivation is a *per se* irreparable harm. 597 And this irreparable harm outweighs any marginal voter confusion not already present because of the Legislature's late-breaking passage of the 2025 Map.

⁵⁹² Milligan, 142 S. Ct. at 881 n.1 (Kavanaugh, J., concurring).

⁵⁹³ See supra Section III.D.1.

⁵⁹⁴ Prelim. Inj. Hr'g Tr. Day 7 (Morning), ECF No. 1420, at 153:13–18.

⁵⁹⁵ Brooks, LULAC, and MALC Joint Mot. for Prelim. Inj., ECF No. 1150, at 45; Brooks, LULAC, and MALC Post-Hr'g Br., ECF No. 1281, at 40.

⁵⁹⁶ See supra Section III.C.

⁵⁹⁷ See DeLeon v. Perry, 975 F. Supp. 2d at 663 ("Federal courts at all levels have recognized that violation of constitutional rights constitutes irreparable harm as a matter of law.").

Fourth, the underlying merits. Again, the Court will not rehash its painstaking analysis of the merits. As explained above in great detail, this Court's majority finds the underlying merits are clearcut in favor of the Plaintiff Groups.⁵⁹⁸ The Court recognizes the panel's non-unanimous decision weighs against this finding.⁵⁹⁹ But given the indubitable direct evidence in this case, the circumstantial evidence, and the Court's inability to assign the mapdrawer's intent to the Legislature, 600 "[a]t this preliminary juncture, the underlying merits" do not "appear to be close."601 The Plaintiff Groups have clearly shown a likelihood of proving that at trial.

As Both a Legal and Practical Matter, *Purcell* Cannot Apply to This Case 3.

These legal conclusions are further buttressed by the fact that applying *Purcell* to this case would lead to absurd results. 602

If the Court were to consider Robinson and Milligan dispositive, as the State Defendants suggest, the Plaintiff Groups would have had a right to bring their constitutional claims without any real opportunity for their requested remedy of a preliminary injunction. As this Court explained above, Robinson's 189-day line would have foreclosed the Plaintiff Groups from even filing a

⁵⁹⁸ See supra Section III.B.

⁵⁹⁹ See Milligan, 142 S. Ct. at 881 n.2 (Kavanaugh, J., concurring) (finding the underlying merits "not clearcut in favor of the plaintiffs" in part because "[e]ven under the ordinary stay standard outside the election context, the State has at least a fair prospect of success on appeal—as do the plaintiffs, for that matter"). But see Lower Brule Sioux Tribe v. Lyman Cntv., 625 F. Supp. 3d 891, 933 (D.S.D. 2022) ("What is 'entirely clearcut' is somewhat in the eye of the beholder, and here the probability of a VRA violation is sufficiently clearcut to allow for relief as discussed above.").

⁶⁰⁰ See, e.g., Brnovich, 594 U.S. at 689–90 ("[T]he legislators who vote to adopt a bill are not the agents of the bill's sponsor or proponents. Under our form of government, legislators have a duty to exercise their judgment and to represent their constituents. It is insulting to suggest that they are mere dupes or tools."); see also supra Section III.B.4.D.iii.

⁶⁰¹ Milligan, 142 S. Ct. at 881 (2022) (Kavanaugh, J., concurring); cf. La Union Del Pueblo Entero, 119 F.4th at 409 (applying the conditions under which *Purcell* can be overcome to a permanent injunction at the district court level).

⁶⁰² League of Women Voters of Fla., Inc, 32 F.4th at 1371, 1372 n.7 (citation modified).

motion for preliminary injunction, and Milligan's 120-day line would have rendered that motion futile. 603 Applying *Purcell* under either timeframe would mean the Plaintiff Groups' motions for preliminary injunction were dead on arrival. Purcell and its progeny, like Robinson and Milligan, would bar the Plaintiff Groups from seeking a remedy that they have a legal right to seek. Reading Purcell and its progeny to lead to this result is diametrically opposed to the fundamental right of access to the courts that the Constitution affords plaintiffs. 604

Even without an injunction, the Plaintiff Groups would not have been left without any remedy. The Plaintiff Groups could proceed with their claims to a full trial on the merits. Indeed, "practical considerations sometimes require courts to allow elections to proceed despite pending legal challenges," even if those legal challenges may prove meritorious. 605

But this case is not one of those times. The practical considerations that courts refer to in cases like this one are the "imminence of the election" and "inadequate time to resolve the factual disputes."606 Here, those practical considerations arise solely because of how close to the election the Legislature drew the 2025 Map. A final adjudication on the merits after one or more election cycles have passed would run roughshod over the purpose of a preliminary injunction to provide merited, immediate relief. That is especially the case when, as here, the Court is working within not creating—the timeframe dictated by the Legislature and when the Court finds in favor of the Plaintiff Groups on the merits of their preliminary injunction. Denying the injunction based on

⁶⁰³ See supra Section III.D.1.

⁶⁰⁴ See Graham v. Nat'l Collegiate Athletic Ass'n, 804 F.2d 953, 959 (6th Cir. 1986) (collecting cases).

⁶⁰⁵ Milligan, 142 S. Ct. at 882 (2022) (Kavanaugh, J., concurring) (quotation marks omitted) (quoting Riley v. Kennedy, 553 U.S. 406, 426 (2008)).

⁶⁰⁶ Riley, 553 U.S. at 426 (citing Purcell, 549 U.S. at 5–6).

such practical considerations would also eschew this Court's obligation to bestow the Plaintiff Groups' merited, preliminary relief. Purcell cannot be read to gut the Plaintiff Groups' right to seek a preliminary injunction and this Court's obligation to award one when merited.

Applying *Purcell* to this case would also incentivize legislatures to redistrict as close to elections as possible. The Governor first placed redistricting on the proclamation for the first called special session on July 9, but the session didn't start until July 21.607 That means the first day the Legislature could even take up redistricting was less than eight months before the congressional primary election, less than four months before the candidate filing period opened, and less than two months before the precinct chair filing period opened. About seven weeks later, the Legislature passed the new map, and five days after that Governor Abbott signed it into law. Solely because of the Legislature's and the Governor's timing, the Court had less than seven months before the primary election and less than three months before the candidate filing period to determine whether the new map was constitutional. By acting late, the State has not wholly surrendered the reasonable deference Purcell provides it to run elections as it pleases. ⁶⁰⁸ But if under Purcell this Legislatureimposed timeframe mandates denying an injunction, then the State would be immune from any immediate, legitimate constitutional challenge to its redistricting efforts. To secure an unchallenged election under a new map, the Legislature would need only to pass the map close enough to an election to foreclose any judicial review. No court has applied *Purcell* to mean legislatures have a license to belatedly redistrict at the expense of voters' constitutional rights for even one election, if not more.

⁶⁰⁷ Brooks Prelim. Inj. Ex. 254, ECF No. 1326-1, at 3.

⁶⁰⁸ See State Defs.' Resp. to Gonzales Pls.' Mtn. for Prelim. Inj., ECF No. 1196-1, at 38 (first citing Wise v. Circosta, 978 F.3d 93, 98 (4th Cir. 2020) (per curiam); then citing Pierce, 97 F.4th at 226–27).

Taking this logic one step further, applying *Purcell* based on the timeframe established by the Legislature and the Governor would allow the State's executive and legislative branches to hamstring the courts. The Plaintiff Groups had a viable legal claim against the 2025 Map as soon as the 2025 Map became law on August 29. As the Court has explained, some readings of *Purcell* could foreclose that claim as early as July or at a variety of dates from then through November 3. Applying *Purcell* in this way would mean the Plaintiff Groups had a viable legal claim against the 2025 Map only *after* the point at which the Court could reasonably adjudicate any claim against that map for preliminary-injunctive relief. That application of *Purcell* would amount to placing the starting line beyond the finish line.

This particular dynamic has serious implications for the interplay between legislatures and the courts in the election context. To allow legislatures to redistrict as close to elections as possible while limiting the courts' ability to review the constitutionality of that action—even in extraordinary cases like this one—would unduly tip the balance of the separation of powers between the legislative and judicial branches and impair the effectiveness of the Constitution's protections of voting rights. If all parties and the Court act with maximum diligence, and the Court finds the map is likely unconstitutional, and yet that likely unconstitutional map can still be deployed, then a legal proceeding like this one is a waste of time and a perversion of the Constitution. If the rule were otherwise and *Purcell* precluded relief in this case, any legislature could pass a blatantly unconstitutional new congressional map the day before the election, and the courts would be impotent to do anything about it. Denying an injunction in this case on the basis of *Purcell* permits such a scenario—a scenario that would allow for *more* election chaos, thereby undermining *Purcell*'s raison d'être.

It is precisely because of cases like this that *Purcell* is not "absolute." The Court does not presume here "to articulate Purcell's precise boundaries." 610 "Whatever Purcell's outer bounds" may be, this case does not fall within them. 611 If it did, the law would hollow out the Plaintiff Groups' right to seek a preliminary injunction, foreclose this Court's obligation to award a meritorious remedy, license legislatures to flout plaintiffs' constitutional rights, and undermine the delicate balance of power between the State's law-making branches and the judiciary's obligation to review the constitutionality of even hastily passed redistricting legislation. The law does not and cannot compel that result, and this Court won't either.

This Court has been attuned to *Purcell* from the moment the Plaintiff Groups moved this Court for a preliminary-injunction hearing. At the August 27, 2025, status conference, this Court questioned the parties about how *Purcell* could affect a possible injunction. ⁶¹² The Supreme Court has made clear that "lower federal courts should ordinarily not alter the election rules on the eve of an election."613 Indeed, the Supreme Court has stayed a lower federal court's election-related injunctions at least six times in the last 11 years. 614 This Court is not naïve to that reality. 615 But this Court is also not naïve to the likely unconstitutional realities of the 2025 Map.

⁶⁰⁹ Milligan, 142 S. Ct. at 881 (2022) (Kavanaugh, J., concurring).

⁶¹⁰ League of Women Voters of Fla., Inc., 32 F.4th at 1372 n.6.

⁶¹¹ *Id.* at 1372.

⁶¹² Aug. 27, 2025, Minute Entry, ECF No. 1145.

⁶¹³ Republican Nat'l Comm. v. Democratic Nat'l Comm., 589 U.S. at 424 (per curiam) (citations omitted).

⁶¹⁴ See Petteway Purcell Op., 87 F.4th at 723 (Oldham, J., concurring) (collecting cases).

⁶¹⁵ See id. (staying orders issued by Judge Jeffrey V. Brown affecting the maps of Galveston County Commissioners Court precincts).

Without an injunction, the racial minorities the Plaintiff Groups represent will be forced to be represented in Congress based on likely unconstitutional racial classifications for at least two years. 616 In this case, the Plaintiff Groups' constitutional right to participate in free and fair elections is not outweighed by minor inconveniences to the State's election administrators and to candidates nor by any residual voter confusion, which would be marginal at best given the short timeframe since the 2025 Map was passed.

Based on the foregoing, this Court finds that the balance of equities and the public interest favor the Plaintiff Groups.

IV. REMEDY

Having found all four preliminary-injunction elements weigh in favor of the Plaintiff Groups, the Court next considers the appropriate remedy. Reverting to the 2021 Map is the proper remedy here. Despite the Plaintiff Groups' previous legal challenges to the 2021 Map, there are several reasons why reverting to that map is the most legally sound and reasonable solution. First, this remedy is the one the Plaintiff Groups request. 617 Second, the 2021 Map was drawn by the Legislature, and courts favor legislative-drawn maps over judicial ones. 618 Third, the State has already used the 2021 Map in two previous congressional elections and is still using it in one special election that is ongoing, as we have already discussed. 619 As a result, the State could

^{616 &}quot;[T]he loss of constitutional freedoms for even minimal periods of time unquestionably constitutes irreparable injury." BST Holdings, 17 F.4th at 618 (citation modified) (emphasis added).

⁶¹⁷ See generally Texas NAACP's Mot. for Prelim. Inj., ECF No. 1142; Congr. Intervenors' Mot. for Prelim. Inj., ECF No. 1143; Gonzales Pls.' Mot. for Prelim. Inj., ECF No. 1149; and Brooks, LULAC, and MALC Pls.' Joint Mot. for Prelim. Inj., ECF No. 1150.

⁶¹⁸ See In re Landry, 83 F.4th 300, 303 (5th Cir. 2023) (collecting cases).

⁶¹⁹ See Veasey v. Perry, 769 F.3d 890, 895 (5th Cir. 2014) (noting that a law's "use[] in at least three previous elections" was a key fact in determining and "maintaining the status quo").

"easily...make the change" back to the 2021 Map. 620 No "complex or disruptive implementation" is involved. 621

Reverting to the 2021 Map is also more proper than giving the Legislature an opportunity to redraw the map before issuing an injunction, as the State Defendants ask the Court to do. 622 "Since 1966, the Supreme Court has repeatedly reminded lower federal courts that if legislative districts are found to be unconstitutional, the elected body must usually be afforded an adequate opportunity to enact revised districts before the federal court steps in to assume that authority."623 Courts should usually afford legislatures this opportunity because "redistricting and reapportioning legislative bodies is a legislative task which the courts should make every effort not to preempt."624

Here, the Court does not need to afford that opportunity for both practical and legal reasons. Giving the Legislature that opportunity is impracticable. 625 "Since the [L]egislature is not scheduled to be in session this year" or even next year, giving the Legislature an opportunity to fix the map "would require that the Texas Governor call a special session." 626 It is highly unlikely that the Governor could call a special session and that the Legislature could draw and pass a new map in that special session before the candidate filing deadline of December 8. Additionally, the Court

⁶²⁰ Milligan, 142 S. Ct. at 881 n.1 (Kavanaugh, J., concurring).

⁶²¹ *Id*.

⁶²² State Defs.' Post-Hr'g Brief, ECF No. 1284, at 90. See In re Landry, 83 F.4th at 303.

⁶²³ In re Landry, 83 F.4th at 303.

⁶²⁴ *Id.* (quoting *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978)).

⁶²⁵ See Veasey v. Abbott, 830 F.3d 216, 270 (5th Cir. 2016) (en banc) (collecting cases).

⁶²⁶ *Id.* at 271.

has identified a serious legal flaw in the 2025 Map,⁶²⁷ and the 2021 Map is already a viable congressional map that was drawn by the Legislature. 628 By reverting to the 2021 Map, this Court will not preempt the Legislature's authority to draw its congressional districts. Rather, this Court will uphold the Legislature's authority while requiring the least amount of change and disruption to both Texas's election officials and voters.

⁶²⁷ Contra Perry v. Perez, 565 U.S. at 395–97.

⁶²⁸ See Veasey v. Perry, 769 F.3d at 895 (noting that a law's "us[e] in at least three previous elections" was a key fact in determining and "maintaining the status quo").

V. **CONCLUSION**

For the foregoing reasons, the Court GRANTS the Plaintiff Groups' motions for preliminary injunction as to their racial-gerrymandering claims:

- (1) "Plaintiff Texas NAACP's Motion for a Preliminary Injunction" (ECF No. 1142);
- "Plaintiff-Intervenors' Motion for Preliminary Injunction" (ECF No. 1143); (2)
- The "Gonzales Plaintiffs' Motion for Preliminary Injunction" (3) (ECF No. 1149); and
- The "Brooks, LULAC, and MALC Plaintiffs' Joint Motion for Preliminary (4) Injunction" (ECF No. 1150).

The Court thereby ENJOINS the State of Texas from using the 2025 congressional map and **ORDERS** the State to use the 2021 Map, as it did in the 2022 and 2024 elections.

So ORDERED and SIGNED on Galveston Island this 18th day of November 2025.

U.S. DISTRICT JUDGE

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF TEXAS EL PASO DIVISION

LEAGUE OF UNITED LATIN	§	
AMERICAN CITIZENS, et al.,	§	
	§	
Plaintiffs,	§	
	§	ED 31 GV 00350 DGG TEG
ALEXANDER GREEN, et al.,	§	EP-21-CV-00259-DCG-JES-
	§	JVB
Plaintiff-Intervenors,	§	[Lead Case]
v.	§	&
	§	X
GREG ABBOTT, in his official capacity as	§	All Consolidated Cases
Governor of the State of Texas, et al.,	§	THE COMPONIATION CUSES
	§	
Defendants.	§	

DISSENT FROM THE MEMORANDUM OPINION AND ORDER GRANTING PRELIMINARY INJUNCTION

JERRY E. SMITH, Circuit Judge, dissenting:

"Fasten your seatbelts. It's going to be a bumpy night!"1

I dissent from the entirety of Judge Brown's opinion granting a preliminary injunction.

* * * * *

PRELIMINARY STATEMENT

I append this Preliminary Statement to dispel any suspicion that I'm responsible for any delay in issuing the preliminary injunction or that I am or saw slow-walking the ruling. I also need to highlight the pernicious judicial misbehavior of U.S. District Judge Jeffrey Vincent Brown.²

¹ Bette Davis (as Margo Channing), All About Eve (20th Century Fox 1950).

² When misbehavior, or even irregular procedural behavior, occurs, there's ample precedent for bringing it to the attention of the public. *See Grutter v. Bollinger*, 288 F.3d 732, 810-14 (6th Cir. 2002) (en banc) (Boggs, J., dissenting) (describing the misbehavior of the Chief Judge in

In my 37 years on the federal bench, this is the most outrageous conduct by a judge that I have ever encountered in a case in which I have been involved.

In summary, Judge Brown has issued a 160-page opinion without giving me any reasonable opportunity to respond. I will set forth the details. The readers can judge for themselves.

This three-judge district court held a nine-day evidentiary hearing/trial on the motion for preliminary injunction. That hearing was concluded Friday October 10. The judges immediately retired to confer. Judges Brown and Guaderrama voted to grant the preliminary injunction. I voted to deny. It was understood that the majority judges would begin putting together an opinion.

During the next 26 days, there was silence—nary a word from either judge.

On Wednesday November 5, Judge Brown sent me a 13-page outline of the expected majority opinion "so that you and your chambers might be able to begin preparing your dissenting opinion."

Nothing else for a week.

On Wednesday November 12, Judge Brown sent a message stating, "We currently anticipate issuing our injunction on Saturday, November 15. We will endeavor to get you a draft before we issue it. Sadly, we do not believe we can wait for a dissenting opinion before we rule—the fuse is simply too short in light of *Purcell*. We will, however, note on the opinion that you are dissenting. We are not trying to cut you out, we just don't have the time. Ideally, of course, we'd have liked to have seen your dissent before we issue our opinion, but that will also be impossible."

manipulating en banc court proceedings); see also Dunn v. Price, 587 U.S. 929, 933 (2019) (arguing that the Supreme Court's decision to vacate a stay without full discussion was improper); see also id. ("To proceed in this matter in the middle of the night without giving all Members of the Court the opportunity for discussion tomorrow morning is, I believe, unfortunate."); see Department of State v. Aids Vaccine Advocacy Coalition, 606 U.S. ____ (2025) (contending that a stay should not be granted "with scant briefing, no oral argument, and no opportunity to deliberate in conference.").

Yes, you heard it right. To summarize, in case the reader doesn't get the point: Judge Brown was announcing that he would issue an opinion three days later—an opinion that I hadn't even seen and might not be furnished before its issuance. That is unthinkable, but it occurred—and not accidentally.

A day later, at 10:31pm Thursday November 13, Judge Brown sent a message stating, "I've attached a complete draft of our memorandum opinion and order granting the injunction. We still have revisions to make, but we wanted to get this to you to assist in the preparation of your dissent." The draft was 168 pages, 655 footnotes, and departed noticeably from the outline I had received. Again, this was the very first actual opinion draft that I had been allowed to see (five calendar days before the actual opinion was sprung).

I was out of town on Thursday and Friday, November 13 and 14, to attend the funeral of (coincidentally) a District Judge of the Western District of Texas, having driven all day Thursday. In my absence, my staff continued working. I drove back home Friday, arriving after midnight, so that my staff and I could spend all day Saturday and Sunday working on the dissent.

Early Sunday morning, November 16, Judge Brown sent a message stating, "I've attached a newly revised draft of our majority opinion. We're still making revisions, but this is pretty close to the final version. We are now intending/hoping to issue it on Tuesday, November 18." That second draft was 161 pages and contained some substantial revisions from the first (November 13) draft.

I replied that I had been out of town; was writing the dissent all weekend; and would be on the road all of the next day (Monday) to attend graveside services for the deceased federal judge. I said Judge Brown had no business issuing an opinion as soon as Tuesday.

At 11:27am Tuesday November 18, Judge Brown wrote the following: "I've attached a final version. We still intend to issue it today. I'm sorry that we can't wait on your dissent. *Purcell* compels us to get the ruling out as soon as we possibly can. It turns out that's today." That third version, 160 pages, was issued

a few minutes later (with a small number of additional changes) and was signed "So ORDERED and SIGNED on Galveston Island this 18th day of November 2025."

This outrage speaks for itself. Any pretense of judicial restraint, good faith, or trust by these two judges is gone. If these judges were so sure of their result, they would not have been so unfairly eager to issue the opinion *sans* my dissent, or they could have waited for the dissent in order to join issue with it. What indeed are they afraid of?

Judges on multi-judge courts understand how important is the deliberative process to fair and accurate judicial decisionmaking. As I say later in this dissent, judges get paid to disagree as well as to find common ground. Judges in the majority don't get to tell a dissenting judge or judges that they can't participate. If the two judges on this panel get away with what they have done, it sets a horrendous precedent that "might makes right" and the end justifies the means.

The majority might even say "We don't need to wait for your dissent and wouldn't read it if we did." Here, that sort of happened: The entry on the district court docket brings up only Judge Brown's opinion; the reader has no access to this dissent without opening a separate, non-consecutive docket entry. So this majority has "won" in terms of diminishing the impact of the dissent and the public's access to it. In the interest of justice, one can hope it is only a Pyrrhic victory.

When I was a newer on the bench, a friend asked me, "Now that you've been a judge for a few years, do you have any particular advice?" I replied, "Always sit with your back to the wall."

DISSENT

The main winners from Judge Brown's opinion are George Soros and Gavin Newsom. The obvious losers are the People of Texas and the Rule of Law.

I dissent.

* * * * *

In the interest of time, this dissent is, admittedly, disjointed. Usually, in dissenting from an opinion of this length, I would spend more days refining and reorganizing the dissent for purposes of impact and readability. But that approach is not reasonably possible here because these two judges have not allowed it.

The resulting dissent is far from a literary masterpiece. If, however, there were a Nobel Prize for Fiction, Judge Brown's opinion would be a prime candidate.

* * * * *

Judge Brown could have saved himself and the readers a lot of time and effort by merely stating the following:

I just don't like what the Legislature did here. It was unnecessary, and it seems unfair to disadvantaged voters. I need to step in to make sure wiser heads prevail over the nakedly partisan and racially questionable actions of these zealous lawmakers. Just as I did to the lawmakers in Galveston County in *Petteway*, I'm using my considerable clout as a federal district judge to put a stop to bad policy judgments. After all, I get paid to do what I think is right.

* * * * *

In 37 years as a federal judge, I've served on hundreds of three-judge panels. This is the most blatant exercise of judicial activism that I have ever witnessed.

There's the old joke: What's the difference between God and a federal district judge? Answer: God doesn't think he's a federal judge. Or a different version of that joke: An angel rushes to the head of the Heavenly Host and says, "We have a problem. God has delusions of grandeur." The head angel calmly replies, "What makes you say that?" The first angel whispers, "He's wearing his robe and keeps imagining he's a federal judge."

Only this time, it isn't funny.

I dissent.

* * * * *

Judge Brown is no stranger to a spirited attack on a legislative body's exercise of its duly-elected power to redistrict. Before being roundly reversed by the Fifth Circuit sitting en banc, Judge Brown, imagining himself to be a legislator, wrote the following:

The 2021 redistricting process . . . occurred within a climate of ongoing discrimination affecting Black and Latino voting participation.

. . .

... Black and Latino residents of Galveston County bear the effects of discrimination . . .

. .

Anglo commissioners are evidently not actively engaged in specific outreach to Galveston County's minority residents.

. . .

Black residents in Galveston County are more likely to be arrested, and Black and Latino residents comprise a disproportionate percentage of jail and prison inmates

• •

[T]he plaintiffs do not need to initially show that partisan affiliation does not cause divergent voting patterns.

. . .

... Practices exist in Galveston County, including voter purges and racially disparate access to polling places.

. . .

. . . [I]t is stunning how completely the county extinguished the Black and Latino communities' voice on its commissioners court during 2021's redistricting."

. . .

This is not a typical redistricting case. What happened here was stark and jarring. The commissioners court transformed

Precinct 3 from the precinct with the highest percentage of Black and Latino residents to that with the lowest percentage. The circumstances and effect of the enacted plan were "mean-spirited" and "egregious" given that "there was absolutely no reason to make major changes to Precinct 3.

Petteway v. Galveston Cnty., 698 F. Supp. 3d 952, passim (S.D. Tex. 2023) (Brown, J.), rev'd, 111 F.4th 596 (5th Cir. 2024) (en banc).

Concluding that the district court "was wrong," the en banc court remanded "for the district court to consider the intentional discrimination and racial gerrymandering claims" 111 F.4th at 614. Today, as a legislator/activist jurist, Judge Brown finds a likelihood of success on the instant racial gerrymandering claims.

In regard to the Galveston County matter: Stay tuned for what Judge Brown will rule on remand. In regard to the preliminary injunction in the case at hand, read on.

* * * * *

The ultimate question is whether unrestrained ideological judicial zeal should prevail over legislative choice. This isn't my first rodeo. Fourteen years ago, dissenting from a flawed three-judge redistricting order in this very court, I wrote the following:

... "[R]eapportionment is primarily a matter for legislative consideration and determination." White v. Weiser, 412 U.S. 783, 794... (1973). Accordingly, district courts are bound to "follow the policies and preferences of the State, . . . in the reapportionment plans proposed by the state legislature, whenever adherence to state policy does not retract from the requirements of the Federal Constitution." Id. at 795... (emphasis added). The aim of giving such due regard to plans proposed by the State is so the court will "not preempt the legislative task nor intrude upon state policy any more than necessary." Id.

. . .

Justice Samuel Alito, in a recent debate discussing "activist

judges," explained that judges are not theorists or social reformers. . . . Because the conscientious and well-intentioned majority has ventured far beyond its proper role . . ., I respectfully dissent . . ., in the hope that on appeal, the Supreme Court will provide appropriate and immediate guidance.[]

Two weeks later, the High Court noted probable jurisdiction and set a special oral argument. Less than two weeks after argument, the Court unanimously vacated the order from which I had dissented.

Unfortunately, here we go again.

I dissent.

* * * * *

Speaking of fortune: Just a few weeks ago, the Fifth Circuit answered the main question at hand, holding that "[t]he most obvious reason for mid-cycle redistricting, of course, is partisan gain." The question for this three-judge district panel is whether the Texas Legislature did its mid-decade congressional redistricting to gain political advantage or, instead, because the main goal of Texas's Republican legislators is to slash the voting rights of persons of color.

Once again, here we go again: Criticizing the behavior of DOJ lawyers in last decade's redistricting battle, I noted the following:

It was obvious, from the start, that the DoJ attorneys viewed state officials and the legislative majority and their staffs as a bunch of backwoods hayseed bigots who bemoan the abolition of the poll tax and pine for the days of literacy tests and lynchings. And the DoJ lawyers saw themselves as an expeditionary landing party arriving here, just in time, to rescue the state from oppression The [DoJ] moreover views Texas redistricting litigation as the potential grand prize and lusts for the day when it can reimpose preclearance via Section 3(c). [4]

Although the United States is no longer participating in the instant case, the

³ Jackson v. Tarrant Cnty., No. 25-11055, --- F.4th ---, ---, 2025 WL 3019284, at *14 (5th Cir. Oct. 29, 2025) (citing Justice Stevens).

⁴ Perez v. Abbott, 253 F. Supp. 3d 864, 988 (W.D. Tex. 2017) (three-judge redistricting court) (Smith, J., dissenting), affirmed in part and reversed in part, 138 S. Ct. 2305 (2018).

same attitudes about Texas Republican legislators have been reflected in the testimony of multiple experts and witnesses presented by these plaintiffs and, occasionally but not always, by their talented counsel and the statements of some parties.⁵

Because the "obvious reason" for the 2025 redistricting "of course, is partisan gain," Judge Brown commits grave error in concluding that the Texas Legislature is more bigoted than political.

I dissent.

* * * * *

It's all politics, on both sides of the partisan aisle. George and Alex Soros have their hands all over this.

One of the plaintiffs' top experts is Matt Barreto. He is a paid Soros operative and does not attempt to hide it. His CV confirms it. He expects to receive \$2.5 million⁶ from George and Alexander Soros.⁷ Nor is this something new. Soros has been pumping money into Barreto's UCLA Voting Rights Project for years.⁸ And this steady supply of money won't stop until 2026, at the earliest. Unsurprisingly, Barreto has been on quite a road show for years, parading across the country opposing Republican redistricting.⁹

That is the tip of the iceberg. The lawyers are involved as well.¹⁰

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⁵ Just a few days ago, plaintiff Congressman Al Green described the 2025 redistricting as "corrupt racist election rigging." *Houston Chronicle*, Nov. 12, 2025, at A1.

⁶ Brooks Ex. 269 (Barreto-CV 8) (receiving a \$2.5 million Open Society Foundation Grant over a 36-month term ending in February 2026).

⁷ Open Society Foundations, opensocietyfoundations.org/who-we-are. The Open Society Foundation was founded by George Soros, and Alex Soros is the chair of its Board of Directors.

⁸ Tr. 10/4/2025 AM 22:7-8 (acknowledging that Barreto is the faculty director of the UCLA Voting Rights Project).

⁹ Pierce v. N.C. State Bd. of Elections, 713 F. Supp. 3d 195, 229 (E.D.N.C.), affirmed but criticized, 97 F.4th 194 (4th Cir. 2024) (noting "profound discrepancies between the methods of analysis [Barreto] performed in his initial report and in his supplemental declaration" and finding his "belated explanation" to be "unpersuasive").

¹⁰ Before describing the connections of these attorneys, I emphasize that all of them serve, as officers of this court, with integrity and professionalism. Their partisan circumstance does not detract from the fact that they meet the highest standards of the profession and assist this court in

To his credit, the lead counsel for plaintiffs does not try to hide it, either. Chad Dunn acknowledged so in open court—he works with Barreto at the same Voting Rights Project¹¹ that receives Soros funding. Dunn is a respected attorney in Texas election law cases, most recently serving as counsel in the *Jackson* case,¹² in which the Fifth Circuit squarely declared the political nature of middecade redistricting. Mr. Dunn, along with his Voting Rights Project colleague Sonni Waknin, also represented the plaintiffs before Judge Brown in the *Pettemay* case, which was overturned by the en banc Fifth Circuit.¹³

Mark Gaber also appeared in *Petteway* and *Jackson*. He is the Senior Redistricting Director at Campaign Legal Center, a Soros-funded group.¹⁴

It does not stop there. The Elias Law Group draws from the Soros coffers, too. Counsel for the instant Gonzales plaintiffs, David Fox, is a partner at Elias, which "has collected more than \$104 million" from Democrat Party committees and donors, including Mr. Soros.¹⁵ Firm Chair Marc Elias formed entities, "tucked inside large existing nonprofits," that "raised tens of millions of dollars from some of the richest donors on the left—including from foundations funded by Mr. Soros."¹⁶

On a silver platter, Judge Brown hands Soros a victory at the expense of the People of Texas and the Rule of Law.¹⁷ Judge Brown won't tell you that. I

the administration of justice. The same is true of the State's counsel in this case.

¹¹ Tr. 10/4/2025 AM 26:3-11.

¹² Jackson v. Tarrant Cnty., No. 25-11055, --- F.4th ---, ---, 2025 WL 3019284, at *14 (5th Cir. Oct. 29, 2025) (noting that "[t]he most obvious reason for mid-cycle redistricting, of course, is partisan gain") (citing Justice Stevens).

¹³ Petteway v. Galveston Cnty., 698 F. Supp. 3d 952 (S.D. Tex. 2023), reversed and remanded, Petteway v. Galveston Cnty., 111 F.4th 596 (5th Cir. 2024) (en banc).

How the Open Society Foundations Support Election Integrity, opensocietyfoundations.org/newsroom/how-the-open-society-foundations-support-election-integrity.

¹⁵ Vogel Kenneth P., Democratic Lawyer Stymied Trump in 2020. Other Efforts Played into G.O.P. Hands, www.nytimes.com/2024/10/30/us/politics/democratic-lawyer-stymied-trump-in-2020-other-efforts-played-into-gop-hands.html.

¹⁶ Id.

¹⁷ The point is that it's all about politics. These plaintiffs, and their counsel, and their experts, are welcome, in this court, to present their partisan views, as is the State of Texas. But if we

just did.18

Relatedly, Gavin Newsom took a victory lap in Houston to celebrate the Democrat redistricting win with Proposition 50.¹⁹ Indeed, he did so "on rival Gov. Greg Abbott's home turf Saturday and called on other blue states to push back on a GOP effort to retain control of the U.S. House." And after the improperly premature issuance of Judge Brown's opinion, the *Houston Chronicle* pointed out that Governor Newsom quickly tweeted, "Donald Trump and Greg Abbott played with fire, got burned -- and democracy won . . . This ruling is a win for Texas, and for every American who fights for free and fair elections." ²¹

That tells you all that you need to know—this is about partisan politics, plain and simple.

I dissent.

* * * * *

Regardless of one's political slant, it's obvious what Texas is trying to do in 2025. The Republicans' national margin in the House of Representatives is

are to tell it like it is, we must recognize that the well-funded machinery that I have just identified is all about that political crusade that these parties are free to pursue under the First Amendment. And the public is entitled to know who's really driving this bus.

[&]quot;The most obvious reason for mid-cycle redistricting, of course, is partisan gain." That is the core of this case, and I will repeat it *ad nauseum*. Judge Brown won't tell you that. I just did.

¹⁸ I suppose someone will say that in making these comments about the Soros connections, I'm expressing a political view, not the proper role of a federal judge. To the contrary: As I say above, the political branches engage in policy and politics. It's our job as judges to let that happen, but it's also our duty to recognize the societal and political effects of what we do, regardless of whether we approve of those downstream results. Today's ruling has dramatic political consequences by meddling in the orderly processes of a duly-elected state government. It's not "political" for me to point that out by describing the political dynamics that are inherent in the litigation of redistricting cases.

Deguzman, Colleen, "You woke us up": California Gov. Gavin Newsom, energized by Prop 50 redistricting win, thanks Texas, https://www.texastribune.org/2025/11/08/texas-california-gavin-newsom-congress-redistricting-map/

²⁰ Id

²¹ John C. Moritz, *Texas' GOP-drawn Congressional map blocked by court in stunning blow to Republican hopes for 2026*, THE HOUSTON CHRONICLE, Nov. 18, 2025 (last updated at 2:00 pm) (https://www.houstonchronicle.com/news/politics/elections/article/texas-congress-redistricting-court-case-21118138.php).

so slim that squeezing out a majority might even depend, day-to-day, on whether some seats are vacant because of deaths or resignations.

In 2021, the Texas Legislature, with both houses controlled by Republicans, devised a strategy of creating safe seats for both Republicans and Democrats, but with a decided majority of the state's delegation still Republican. Whether (as a matter of political clout) that was the wisest strategy is disputed and indeed was fulsomely debated in 2021.

In mid-2025, the strategy changed: The new plan was to make more seats winnable for Republicans by moving some Democrats incumbents from their districts and rendering other districts unwinnable by Democrats. That sacrificed the wider margins in some of the old districts. The tradeoff is obvious.

There is some speculation that this new strategy will backfire on Republicans in 2026 because, if they do poorly in the mid-terms, the new Republican seats created in 2025 will be a Pyrrhic victory, because they will lose elections in the closer districts. That is purely a matter of political strategy that federal judges have no business touching.

The challenge faced by these plaintiffs and Judge Brown is to explain how it could be that the Republicans would sacrifice their stated goal of political gain for racial considerations. It makes no sense to advance the notion that the Republican Legislature would draw districts for the purpose of disadvantaging racial and ethnic minorities if, by doing so, they lessen the number of new Republican seats they might gain.

The plaintiffs' theory is both perverse and bizarre. They actually contend that if the Republicans are sincere about gaining more seats, they could have drawn not five, but six, seven, or eight additional seats and that the reason they did not is that the real reason is racial animus. The absurdity of that notion speaks for itself. Yet it's all that the plaintiffs and Judge Brown have to offer to defeat the State's claim that the 2025 lines were drawn for the sake of politics and not race.

That's the central dispute in this case. But "[t]he most obvious reason

for mid-cycle redistricting, of course, is partisan gain."

I dissent.

* * * * *

Judge Brown rushes to issue this injunction before the tension between Section 2 of the Voting Rights Act and racial-gerrymandering jurisprudence is resolved by the Supreme Court in the currently-pending *Callais* case.²² Given Judge Brown's creative read of the facts and novel approach to the law, he should have considered denying this injunction for that reason alone, recognizing that a fundamental shift in voting-rights jurisprudence is not unlikely. Because the power to stay proceedings "is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants," it would have been well within the authority of this three-judge court.²³

The fact that *Callais* may fundamentally change the nature of this case also weighs in favor of a stay. It is reckless for this court to proceed with opining on the merits, which amounts to nothing more than a general guess as to whether existing voting-rights jurisprudence will survive *Callais*.

* * * * *

Judge Brown has a lingering habit. He correctly recites *part* of a legal principle, then veers off track along a spectrum—intentionally misleading at best to false at worst. The opinion is replete with *selectively* copying and pasting parts of legal rules or standards. Beyond that, things get dicey.

This holds especially for Judge Brown's discussion of the standard for preliminary injunctions.

Judge Brown admits that the first factor—likelihood of success on the

²² Louisiana v. Callais, 3:24-cv-00122-DCJ-CES-RRS (W.D. La. Aug. 1, 2024), probable jurisdiction noted, 145 S. Ct. 434 (2025), restored to the calendar for reargument, 145 S. Ct. 2608 (2025), argued Oct. 15, 2025.

²³ Landis v. N. Am. Co., 299 U.S. 248, 254 (1936).

merits—is the "most important" and that granting a preliminary injunction is "an extraordinary and drastic remedy which should not be granted unless the movant clearly carries the burden of persuasion."²⁴

Then, the opinion entirely goes off the rails.

Judge Brown quibbles with the omission of the word "substantial" next to the phrase "likelihood of success on the merits" in the Fifth Circuit middecade redistricting opinion from just a few weeks ago," ²⁵ claiming that the omission suggests that "the plaintiff need only show 'a likelihood of success on the merits.'" This is intentionally misleading at best and disingenuously false at worst.

How does he get there?

Judge Brown justifies his wish-list formulation of the first factor by noting the factual similarities between *Jackson* and the instant case: Both involve Texas mid-decade redistricting at the preliminary-injunction stage. But surely he knows that the phrase "extraordinary and drastic remedy" never appears in *Jackson*. Judge Brown, relying on the factual and procedural analogies between the two cases, would lead the reader to think that that gives him carte blanche authority to excise the "extraordinary and drastic remedy" from his opinion, as well. Nevertheless, he keeps the phrase "extraordinary and drastic remedy" in the standard because he knows he cannot remove the phrase at will.

Judge Brown, no stranger to inconsistency, is wrong.

He should give less consideration to the *omission* and more consideration to the *actual* words on the page. Judge Brown accurately cuts and pastes the following: A preliminary injunction is "an extraordinary and drastic remedy which should not be granted unless the movant clearly carries the burden of persuasion," and the likelihood of success on the merits is "the most important"

²⁴ Brown Op. at 53.

²⁵ Jackson v. Tarrant County, --- F.4th ---, ---, 2025 WL 3019284, at *3 (5th Cir. Oct. 29, 2025) (a mid-decade redistricting case with a preliminary-injunction posture).

²⁶ See Brown Op. at 53 n.159 (emphasis in original).

factor of the framework.

But the cut-and-paste job is selective. Judge Brown left out the fact that, giving attention to the relevant cases cited in *Jackson*, "the most important" factor language in *Jackson*²⁷ is a direct quote from Mock v. Garland.²⁸ And any cursory reading of Mock easily reveals that the word "substantial" (the word Judge Brown tries to avoid) is part of the first factor in no uncertain terms: "a substantial likelihood of success on the merits." ³⁰³¹

Judge Brown doesn't tell you that. I just did.

The opinion is caught in an illogical straitjacket from which it cannot escape.

Knowing that his argument is weak, Judge Brown declares that the omission of the word "substantial" does not matter anyway because of the Fifth Circuit's sliding-scale³² approach to the first factor, which is likelihood of success.³³ With a magic wand, the quibble with the omission of "substantial" is no longer consequential and vanishes into the ether. This is part of the activist, result-oriented bag of tricks that tinkers with the allegedly "most important" first factor, such that the quibbles that he proclaimed mattered no longer do.

Judge Brown says "'[w]here the other factors are strong,' the movant need only show 'some likelihood of success on the merits" to obtain a

²⁷ See Jackson, --- F.4th at ---, 2025 WL 3019284, at *8 n.19 (emphasis added).

²⁸ Mock v. Garland, 75 F.4th 563, 587 n.60 (5th Cir. 2023) ("There is authority that the first factor—likelihood of success on the merits—is the most important of the preliminary injunction factors.").

²⁹ *Id.* at 577 (noting that the moving party must satisfy four factors, the first of which is "a *substantial* likelihood of success on the merits") (emphasis added).

 $^{^{30}}$ Id

³¹ Indeed, the language "substantial likelihood of success on the merits" is not a new formulation. It is supported by decades of precedent in the Fifth Circuit, including the case Judge Brown's opinion quotes (Brown Op. at 53 n.161). *See Canal Authority Auth. of Fla. v. Callaway*, 489 F.2d 567, 572 (5th Cir. 1974) (noting that the first perquisite for the extraordinary relief of preliminary injunction is "a *substantial* likelihood that plaintiff will prevail on the merits") (emphasis added).

³² To be clear, I do not deny that a sliding scale exists. I want to highlight Judge Brown's inconsistent and disjointed reasoning.

³³ See Brown Op. at 53 n.159 (emphasis in original).

preliminary injunction."³⁴ This is intentionally misleading at best, disingenuously false at worst.

There he goes again.

Judge Brown overlooks what immediately follows the passage on which he relies:

Where other factors are strong, a showing of some likelihood of success on the merits will *justify temporary injunctive relief*. But when a plaintiff applies for a *mandatory preliminary injunction*, such relief should not be granted except in rare instances in which the facts and law are clearly in favor of the moving party.

TitleMax, Inc. v. City of Dallas, 142 F.4th 322, 328 (5th Cir. 2025) (internal quotations omitted) (emphasis added).

Judge Brown is wrong on multiple levels. *First*, he claimed that the first factor alone suffices, indicating that the other factors do not matter. *Second*, the other factors, discussed below, are extraordinarily week in this case. *Third*, *TitleMax* differentiates between temporary injunctive relief and the narrower category of a mandatory preliminary injunction. Judge Brown must surely know that, which is likely why he cherry-picked the language he liked ("some likelihood of success on the merits"), omitted the language he didn't ("temporary injunctive relief"), and inserted what he wanted—a preliminary injunction. If this is not judicial activism, I am not sure what would be. *Fourth*, Judge Brown is issuing a mandatory preliminary injunction because he is enjoining the implementation of the 2025 Texas Congressional Map and requiring Texas to use the 2021 map. *Fifth*, the facts and law are not clearly in favor of the moving party.

If this were a law school exam, the opinion would deserve an "F."

Remember that recent Fifth Circuit redistricting case, the one that Judge Brown said was procedurally and factually analogous to the instant one. Judge Brown conveniently omits the key sentence in that mid-decade redistricting

³⁴ Brown Op. at 55.

case: The "most obvious reason for mid-cycle redistricting, of course, is *partisan gain*." Judge Brown doesn't even *pretend* to grapple with Justice Stevens's relevant quote. It is far from a mere coincidence that the opinion goes to the mats over the omission of one word, when it suits the results-driven outcome, but overlooks the most significant sentence about the most obvious reason for mid-decade redistricting, which is partisan gain.

The combined weight of the procedural and substantive law is against what these plaintiffs and Judge Brown are trying to do. Not only do plaintiffs have to show *clearly* that they are entitled to the drastic and extraordinary remedy of an injunction, but they must also do so when Supreme Court and Fifth Circuit precedent is stacked against them. Nothing in any bag of results-oriented tricks can save that wished-for result.

Judge Brown is an unskilled magician. The audience knows what is coming next.

Moving past the recitation of the preliminary-injunction factors: Judge Brown does not hesitate to make excuses for plaintiffs (and their "experts") for failing to produce an *Alexander* map. He has no other choice on the merits. He claims that "they [the experts] didn't have time" and that it would be too much to ask plaintiffs to produce an *Alexander* map at this stage in the litigation. This is not how the law works for a preliminary injunction.

Judge Brown overlooks that plaintiffs seeking a preliminary injunction bear the burden of proving that they are entitled to it. With nothing more than meager direct evidence in the instant case, *Plaintiffs* must produce an *Alexander* map, plain and simple. They either cannot or don't want to—because it's really all about politics. In any event, this court has no business coming to the rescue by giving students who didn't do their homework a homework pass. Nor should Judge Brown make excuses for them for failing to show their work.

 $^{^{35}}$ See Jackson, --- F.4th at ---, 2025 WL 3019284, at *32 n.33 (citing Justice Stevens) (emphasis added).

³⁶ Brown Op. at 134.

The last time I checked, a preliminary injunction is an extraordinary and drastic remedy. This is serious business that we are about.³⁷

Judge Brown boasts that "Plaintiff groups have successfully shown a likelihood of success on their racial-gerrymandering challenges . . . [and] that alone suffices to preliminarily enjoin the 2025 Map." Yes, you read that right. Judge Brown is so determined to issue an injunction that he does not need any help from the other factors. 39

How could that be? Because Judge Brown said so.

With his creative formulation of the preliminary-injunction standard, Judge Brown is intentionally misleading at best and disingenuously false. He engages in several layers of sophistry to water down the potency of the most important, first factor and to grease the skids for an injunction. He doesn't even make it clear which articulation of the first factor he uses.

Consider this bizarre multiple-choice question from hell: Which formulation of the first factor is he using? Is it the "likelihood of success" factor that is the (i) watered-down formulation because of the omission of the word "substantial," (ii) the watered-down formulation because of the sliding scale, (iii) the watered-down formulation because of both the sliding scale and omission of the word "substantial," (iv) the "substantial" formulation with the sliding scale, (v) the "substantial" formulation without the sliding scale, (vi) whatever Judge Brown thinks the law should be, or (vii) something else?

³⁷ Plaintiffs, during the preliminary injunction hearing, presented the testimony of six experts. However, Judge Brown, in his 161-page opinion, omits *any* discussion of the following five plaintiffs' experts: David Ely, Stephen Ansolabehere, Loren Collingwood, Matt Barreto, and Daniel Murray. Their collective testimony spanned several days, and they submitted hundreds of pages of expert reports. Yet, Judge Brown, despite his *best* efforts, fails to make a single, fleeting reference to these five experts in his lengthy opinion. This dissent, in a footnote, tells you more about these plaintiffs' experts than does Judge Brown's entire opinion does. And the reason is obvious—their testimony is unhelpful at best, or their analysis is flawed at worst. Judge Brown won't tell you that. I just did.

³⁸ Brown Op. at 54 (emphasis added).

³⁹ Unsurprisingly, that's not the law. *See Mock*, 75 F.4th at 587 n.60 ("Still, even with a strong likelihood of success, a district court cannot give the other factors short shrift.").

Confused yet? You can thank Judge Brown for that.

If we were to take him at his word that the first factor is dispositive (it is not)⁴⁰ to grant a preliminary injunction, it is not apparent why Judge Brown feels the need to discuss the other factors. His mind is made up on the first factor alone. But I will move on from that to discuss them anyway.

Judge Brown claims that the "Plaintiff Groups have made a very strong showing on the irreparable-injury factor." Not so fast. First, plaintiffs are unlikely to succeed on the merits of their racial gerrymandering claim, so they are unlikely to suffer harm. Second, plaintiffs, bearing the burden of clearly showing they are entitled to an extraordinary and drastic remedy, cannot use circular reasoning to bootstrap their alleged likelihood of success from factor one into showing irreparable harm with factor two. Indeed, "[w]hen a statute is enjoined, the State necessarily suffers the irreparable harm of denying the public interest in the enforcement of its laws." 42

He caps off the section by returning to the sliding scale again (the same one he claimed was not necessary) to reiterate his preferred standard that plaintiffs "need to show more than just 'some likelihood of success on the merits' to obtain a preliminary injunction, *but not much more*." This is wrong, again.

Judge Brown gets creative with the final two factors, balance of equities and public interest, and stands the *Purcell* framework on its head. He wants a "federal court to swoop in and re-do a State's election laws in the period close to an election"⁴⁴ and issue a "late-breaking injunction"⁴⁵ with disastrous,

⁴⁰ *Mock*, 75 F.4th at 587 n.60 ("Still, even with a strong likelihood of success, a district court cannot give the other factors short shrift.").

⁴¹ Brown Op. at 55 (emphasis added).

⁴² Veasey v. Perry, 769 F.3d 890, 895 (5th Cir. 2014).

⁴³ See id. (quoting TitleMax, Inc. v. City of Dallas, 142 F.4th 322, 328 (5th Cir. 2025) (emphasis added)).

⁴⁴ See Merrill v. Milligan, 142 S.Ct. 879, 881 (Kavanaugh, J., concurring).

⁴⁵ See id.

unintended consequences for "candidates, political parties, [] voters," ⁴⁶ the State, counties, and local officials. This injunction will affect down-ballot races because those interesting in running for Congress must make plans not to run for State House and Senate seats. And others are sure to run for the newly-vacant state seats. This trickle-down effect is only the tip of the iceberg. Judge Brown's injunction is the epitome of judicial tinkering.

The 2025 map is the *status quo*. Counties have begun preparations with 2025 map and educating local officials about the current law. Although Judge Brown acknowledges that the State has the prerogative to "toy with its election laws," he quickly contradicts himself that the State "invited this issue by enacting a new map within *Purcell*'s range." Contrary to what Judge Brown wants to hear, the State, which has the prerogative to redistrict mid-decade, is in a fundamentally different position from that of a federal court, which must exercise extraordinary caution before intermeddling with an intimately vital local prerogative such as redistricting. 49

Judge Brown parrots plaintiffs' argument that the State is using the 2021 map in some limited circumstances.⁵⁰ But Judge Brown doesn't attempt to grapple with what the Fifth Circuit has made clear: A duly enacted Texas congressional districting map is the "status quo."⁵¹ There, the Fifth Circuit said in no uncertain terms that "the Texas Legislature's duly enacted law" creating a new congressional districting map "became the new 'status quo'" under Texas law.

Instead, Judge Brown cherry-picks the "status quo" language⁵² out of

⁴⁶ See id.

⁴⁷ Brown Op. at 146.

⁴⁸ Brown Op. at 147.

⁴⁹ See Alexander v. S.C. State Conf. of the NAACP, 602 U.S. 1, 6 (2024).

⁵⁰ Brown Op. at 145.

⁵¹ See Tex. All. for Retired Americans v. Hughs, 976 F.3d 564, 568 (5th Cir. 2020) (noting that it was the "district court's eleventh-hour injunction that alter[ed] the status quo, not the Texas legislature's 2017 duly enacted law") (emphasis in original).

⁵² Brown Op. at 157 n.619; Brown Op. at 159 n.628.

another Fifth Circuit case,⁵³ where the court made it clear that "the Supreme Court has instructed that we should carefully guard against *judicially altering* the status quo on the eve of an election." Whether Judge Brown likes it, he needs to acknowledge two realities. *First*, the duly enacted 2025 Texas Congressional Map *is* the status quo. But true to form, Judge Brown prefers living in fantasyland. *Second*, Judge Brown's late-breaking, eleventh-hour injunction is the precisely the kind of "judicial tinkering"⁵⁴ and judicial altering⁵⁵ that the Court has repeatedly warned us about. I guess Judge Brown needs another reminder.

Whether Judge Brown likes it, gravity exists. So does the weight of *Purcell* against *his* late-breaking, eleventh-hour injunction.

There's more.

Judge Brown fails to recognize that some of these plaintiffs are seeking an equitable remedy, namely a preliminary injunction, with unclean hands. Contrary to his inventive contention that the State is to blame for the delay, some plaintiffs broke quorum and delayed the passage of the 2025 map for weeks. 56 Judge Brown contradicts himself again, claiming that *Purcell* does not bar him from issuing and injunction and then turns around to wag his finger at the State for the cause of the delay. He is mistaken. Plaintiffs should not get the benefit of the delay that *they* caused by breaking quorum. But, Judge Brown has no problem giving plaintiffs an equitable remedy, even though they have unclean hands. The so-called *Purcell* exception, which Judge Brown is eager to invoke, does not apply: Plaintiffs caused undue delay, the merits are not remotely in their favor, and plaintiffs have not suffered an irreparable injury.

⁵³ Veasey v. Perry, 769 F.3d 890, 895 (5th Cir. 2014) (emphasis added).

⁵⁴ Merrill v. Milligan, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring) (noting that "[l]ate judicial tinkering with election laws can lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters").

⁵⁵ Veasey, 769 F.3d at 895.

⁵⁶ Judge Brown's lengthy opinion uses the word "quorum" only twice, thus giving this significant interruption—which erased the first called session—scant mention. Judge Brown makes no effort to discuss the significance of that break. I just did.

I dissent.

* * * * *

To show the fallacies in Judge Brown's opinion, the following discussion of the direct and indirect evidence includes a granular examination of Texas's U.S. congressional districts in the 2021 maps, plan C2193,⁵⁷ and the various editions of the 2025 maps.

The 2025 maps first were offered as plan C2308,⁵⁸ in the first special legislative session on July 30, 2025.⁵⁹ Then, after August 15, the Texas legislature updated them to plan C2331.⁶⁰ The final version, introduced on August 18, passed on August 23, and signed into law on August 29 as HB4, was plan C2333.⁶¹ Immediately below, I reproduce the 2021 maps, plan C2193, and the 2025 adopted map, plan C2333.⁶² Careful consideration of these maps, and attention to changes in certain districts such as C2193-CD35 to C2333-CD35, is fundamental to understanding this case and to distinguishing between a racial gerrymander and a cynical partisan gerrymander by disentangling race from politics where "race and partisan preference are highly correlated," as is strictly required under *Alexander*.⁶³

⁵⁷ See https://senate.texas.gov/cmtes/87/c625/SB6-plan-C2193.pdf, Available in interactive format and therefore much greater visual detail at https://dvr.capitol.texas.gov/Congress/56/PLANC2193 (DistrictViewer is a website maintained by the Texas Capitol).

⁵⁸ https://dvr.capitol.texas.gov/Congress/73/PLANC2308

⁵⁹ Gonzales Plaintiffs' Second Supplemental Complaint, 3:21-cv-00259-DCG-JES-JVB, ECF No. 1147, pg. 30 (August 28, 2025) ("Second Supplemental Complaint").

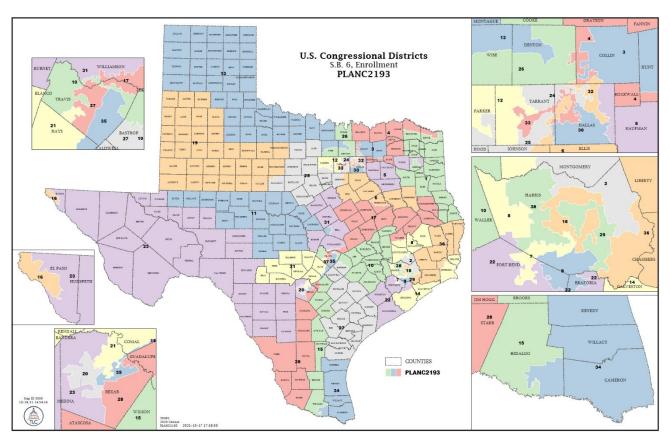
⁶⁰ https://dvr.capitol.texas.gov/Congress/0/PLANC2331; Second Supplemental Complaint at 33.

https://dvr.capitol.texas.gov/Congress/89/PLANC2333; Second Supplemental Complaint at 33-34.

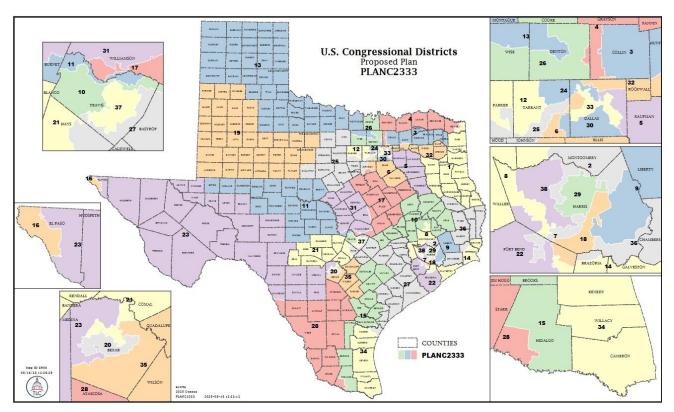
⁶² Plan C2333's summary statistics including VAP and CVAP breakdowns are also available at

 $[\]frac{https://capitol.texas.gov/tlodocs/892/districtplanrpts/pdf/HB00004H_PLANC2333.pdf.}{("C2333 summary statistics")}.$

⁶³ 602 U.S. at 6.



The 2021 Maps, C2193.



The 2025 Maps, C2333.

Everybody agrees that a plaintiff asserting a racial-gerrymandering claim may "make the required showing through direct evidence of legislative intent," such as "a relevant state actor's express acknowledgement that race played a role in the drawing of district lines," circumstantial evidence of a district's shape and demographics, or a mix of both. The legislative intent is the critical question, and the Supreme Court has instructed that "legislators who vote to adopt a bill are not the agents of the bill's sponsor or proponents," as "legislators have a duty to exercise their [own independent] judgment."

⁶⁴ Cooper v. Harris, 581 U.S. 285, 291 (2017) (citation modified).

⁶⁵ Alexander v. S.C. State Conf. of the NAACP, 602 U.S. 1, 8 (2024).

⁶⁶ Cooper, 581 U.S. at 291.

⁶⁷ Brnovich v. Democratic Nat'l Comm., 594 U.S. 647, 689-90 (2021).

So, let's talk about the direct evidence first, and then the indirect and statistical evidence.

* * * * *

This panel decides both law and fact. The salient issue of fact is whether the Legislature drew the new lines on account of race. The answer is easy: It did not. And that question is not even close.

Did I forget to mention: "The most obvious reason for mid-cycle redistricting, of course, is partisan gain."

In that regard, everyone can agree that the star witness was Adam Kincaid. For months, there was controversy as to who drew "the map." Without dispute, it turns out to be Kincaid. He is a paid, experienced, dedicated Republican operative, through and through. His lengthy testimony was the highlight of the preliminary-injunction trial.

Kincaid courageously spoke the truth, despite being the target of what authorities termed a "credible death threat" made shortly before he was scheduled to testify. As one of the finders of fact, I conclude that Kincaid was credible in every respect.

Knowing that Kincade is credible, Judge Brown makes every effort to ignore or circumvent Kincaid's solid testimony. Judge Brown avoids the details of that testimony. Because he won't tell you that, I do so now.

Adam Kincaid's testimony is credible and irrefutable. Beginning in the Panhandle and moving clockwise, he went district-by-district and described his map-drawing process with painstaking detail (and without any notes for two days). His testimony is methodically detailed, and he is a solid witness, especially on the key question of intent and race.

I begin with a roadmap. The preliminary discussion provides a brief background on Kincaid and his general approach to redistricting, which prioritizes partisanship and disclaims any reliance on race. First, I detail Kincaid's traditional redistricting criteria. Second, I highlight judges' questions

to Kincaid and Kincaid's responses. Third, I describe Kincaid's district-bydistrict testimony organized by the relevant Texas region. Fourth, I describe what Kincaid noted as at least three changes between C2308 and C2333.

Adam Kincaid drew all or most of the Texas 2025 enacted congressional map. Tr. 10/7/25 AM 33:25-34:2.⁶⁸ Specifically, he used software, "Esri for Redistricting." 41:7-13. In no uncertain terms, Kincaid stated "I don't think it's constitutional to draw maps based off of race." 46:13-14. He unequivocally said "I do not" use race as a proxy for partisanship when drawing a map. 56:7-9. Instead, he reiterated that he used partisan data at the block level. 47:20-52:19. He said, "I drew my map using politics from start to finish and provided that to the Legislature." Tr. 10/7/25 PM 93:11-12. As if he could not be clearer, Kincaid repeated, "I drew a race-blind map using partisan results, and that's how I created the map." Tr. 10/8/25 AM 69:6-7.

Kincaid used traditional redistricting criteria. His top priority was to protect incumbents and improve or maintain existing Republican districts. His "top criteria was to make sure that every Republican incumbent who lived in their seat stayed in their seat." 64:23-25. "Another criteria was to make sure that every Republican incumbent who was in a district that President Trump had won with 60 percent of the vote or more in 2024 stayed in a district that President Trump won by — with 60 percent of the vote or more." 65:1-5. In fact, Kincaid "was not allowed to take any incumbent Republican who was above 60 below 60." 65:5-6. For Republican districts with incumbents that Trump carried by less than 10 points, Kincaid had to either "improve [these seats] or keep their Partisan Voting Index exactly the same." 65:10-11.

Kincaid's criteria in the five pickup opportunities were Trump+10, a Ted Cruz victory, a strong Abbott performance, and a durability test.

First, "every single one of [the Republican pickup opportunities] had to be a district that President Trump carried by ten points or more at a minimum"

 $^{^{68}}$ All subsequent transcript citations in this section refer to Tr. 10/7/25 AM, unless otherwise noted.

in the 2024 Presidential Election. 67:25-68:1, 68:12-14. Second, "every one of those seats had to be carried by Ted Cruz in 2024," by any margin. 68:2-5. Third, the districts were generally those in which Governor Abbott "carried by as decent a margin as possible" in 2018 and 2022 because the "first test of this map would be in a midterm election versus a presidential election." 72:9-17. Fourth, Kincaid ran a "durability test" on these districts, looking "at every presidential, senate, and governor's race in Texas, U.S. Senate and governor's race in Texas, from 2012 through 2024." 73:8-20.

Kincaid admitted that was not looking at the Cruz and Abbott numbers in Republican districts that were not pickup opportunities because "it is a fair assumption that if you are drawing a seat at 60 percent Trump, it probably went Republican down ballot as well." 150:17-25.

For other criteria, Kincaid used the balancing of population as well as compactness and neutral geographic features.

Kincaid had to balance population perfectly among the 38 districts in the state. 54:1-16. He "wanted to take [] districts [in the 2021 map] and make them cleaner, more compact, more city-based, [and] more county-based." 66:22-25. He considered neutral geographic units or boundaries when drawing districts. 75:17-23. He "tried to use neutral boundaries across the entire map where possible." 100:10-11.

Judge Brown actively questioned Mr. Kincaid. He asked, "When you drew the 2025 map, did you know that CDs 9, 18, 29, and 33 under the 2021 map were considered minority opportunity districts, in that they provided minorities an opportunity to elect candidates of their choice?" Tr. 10/8/25 AM 133:14-17.

Kincaid said that he knew. *Id.* 133:18.

Kincaid said that he was generally aware that a comfortable majority of Hispanics in Texas vote in favor of Democrat candidates, notwithstanding President Trump's better performance among Hispanics. *Id.* 133:19-134:1. Kincaid added that he "know[s] that President Trump carried Hispanic voters by about 10 percent statewide by various reports in 2024." *Id.* 134:1-3.

When asked why he changed CD 9 from Democrat to Republican but left CD 7 Democrat, Kincaid said that "[t]here were political constraints on the west side of Harris County," although he "actually wanted to flip that one." *Id.* 134:4-9. The structural orientation of Congressman Luttrell's seat (in CD 8), Congressman McCaul's seat (in CD 10), and Congressman Hunt's seat (in CD38) prevented Kincaid from "restructur[ing] the population in 7 enough to redraw that seat." *Id.* 134:12-15.

Judge Brown asked whether Kincaid received any instructions to protect (or not alter) Democrat districts similar to those instructions Kincaid received during the 2021 map drawing process. *Id.* 134:1-23. Although Kincaid testified that he received some instructions while drawing the 2021 map to protect some Democrat districts, he did not receive similar instructions regarding the 2025 map. *Id.* 134:16-23.

District by district, Kincaid drew the map by starting at the northwest corner and generally working clockwise.

I recount Kincaid's testimony in the order that it appeared in his direct examination, which typically coincides (but not necessarily) with the order in which he drew the Texas 2025 congressional map.

The only district that did not change at all was Texas District 19. 77:13-15. Beyond that, Kincaid began his map-drawing in the Texas Panhandle.

Texas 13 was the first district drawn, which is in the northwesternmost part of the state. 76:9-77:4. Intuitively, starting with the northwestern part of the state (the top left of the map) makes perfect sense. Indeed, Texas 13 is in the Panhandle and stretches across North Texas south of the Red River. 77:5-18.

Kincaid changed the lines in Wise and Denton Counties first. 77:16-18. Specifically, he moved some Democrats from the southwestern side of Denton County out of District 26 into District 13. 78:7-12. Because he had added some people into the 13th District, Kincaid had to take people out—he "took the line for Texas 26 and moved it north into Wise County." 79:12-16. He also kept the cities at the center of Wise County whole. 78:14-17.

Kincaid reiterated that he "worked in a clockwise direction through Metro DFW." 80:1-2. He took heavily Democrat precincts in the southeast corner of Denton, previously drawn out of 26 during the last redistricting, back into District 26 in this new map. 80:10-25. Kincaid put Democrats into the 26th District to "move Republican strength across the state from district to district" and "make sure that the 26th District didn't become too Republican." 81:7-13.

District 4: After the piece of Frisco in Texas 26 was taken out, District 4 took on all of Frisco, making Frisco whole in District 4. 81:23-82:5. Kincaid took the 2021 map's three-way Plano split within Collin County and made it a two-way split with a clean line dividing Plano. 82:18-83:7. To the north, the part of the city of Celina, which is in northwestern Collin County, is whole in the 4th District. 84:10-14. Kincaid fixed the population of District 4 in the east, noting that he made the county with Clarksville (presumptively Red River County) whole. 84:17-22. The military installation in Bowie County was also made whole in the 4th District. 84:23-85:4.

District 3: Kincaid also made Allen and McKinney whole in District 3. 83:25-84:2. Because the 3rd District picked up more Democrats in the Plano area that it had before, he included more Republican strength, from rural East Texas counties, into the district. 85:10-13.

For the Dallas/Fort Worth Metroplex (DFW), we begin with District 32. The border between Districts 3, 4, and 32 is the city boundary of Richardson. 85:15-16. Kincaid made Richardson whole in District 32. 86:3-5. Four years ago, Texas District 32 could have been redrawn, but Kincaid did not take the opportunity to do so. 87:2-4. He took 40% Republican areas in North Dallas County, which were more Republican than the rest of the county, and paired them with more Republican counties east of Dallas County to create a new Republican district that extended from North Dallas County to the east. 87:12-88:9.

District 5: Kincaid had to keep Kaufman, Van Zandt, and Henderson Counties whole in District 5. 89:20-22. They had to remain the core of the district, per the instruction from the Texas Republican congressional delegation.

89:23-90:2. On the eastern side of Dallas County, Kincaid made Seagoville and Mesquite whole. 90:23-91:6. Kincaid used the Garland and Dallas city line between Districts 5 and 33 to move District 5 to the northwest, including areas that are more Republican. 91:6-13. However, Kincaid added the Democrat precincts north of 33 and east of 24 to District 5, which lowered the Republican support in the district. 10/7/25 AM 91:22-92:12. To counteract this and keep the district at 60% or above, he added Anderson County, which had been there in the previous decade, back into the 5th District. 92-18-20. Finally, Kincaid included north of downtown Dallas to bring District 5 to population. 92:19-20.

District 24: Kincaid kept the Park Cities, University Park and Highland Park, whole in District 24. 93:5-11. He made Farmers Branch, which was previously split, whole as the "conduit from the Park Cities to the west." 94:22-24. Kincaid went into the southeast, where there were precincts in the "40s for President Trump versus the ones further down that are much bluer," to balance the population. 94:7-14. Because District 24 was held by a Republican under the 2021 map, Kincaid made sure to ensure that the district office for District 24 stayed in the district. 95:1-21. Therefore, Addison had to be split slightly to keep the district office in District 24. 95:11-21. Admittedly, Kincaid did not prioritize keeping district offices for Democrat incumbents in the same way. 95:22-25.

Because the 24th District gets most of its Republican strength from Northeast Tarrant County, Kincaid used Farmers Branch as a conduit to "connect the western side of the district with the eastern side of the district in one continuous seat" and make the city boundary whole. 96:17-97:6. Kincaid made the city of Coppell whole and made the split in Irving to the north to make sure that Congresswoman Beth Van Duyne continues to live in District 24. 97:13-18. In Northeast Tarrant County, he "made sure that the district boundary aligned with the cities of Euless, Hurst, and Richland Hills, as well as North Richland Hills and Watauga." 98:6-9. Kincaid made a small split of Haltom City to balance the population and added a few precincts to "clean up" the line on the western side of 24 between Districts 12 and 24. 98:10-14. The interstate forms the northwestern boundary of District 24. 98:15-20.

District 12: Kincaid left the Parker County line the same because he needed to ensure that Congressman Williams, a Republican incumbent, continued to reside in his seat in the 25th District. 99:3-8. The border between Districts 12 and 25 was set at the Haltom City line; from there, Kincaid used rivers down to the major road. 99:10-17. He balanced the population in Southwestern Tarrant County. 10/7/25 AM 99:17-18. His goal was to keep the district above 60% Trump, protect the Republican incumbent, and "absorb more Democrats in the seat." 99:19-21. He used neutral boundaries whenever possible, including Interstate 20 and the South Fork of the Trinity River. 100:23-101:9.

Districts 30 and 33: Kincaid drew one "megadistrict . . . of the most Democrat VTDs [he] could find in Dallas and Tarrant County." 102:8-11. He did so to avoid having to redraw districts that he was otherwise satisfied with. 102:2-11. After doing so, he moved to District 6. 102:23-103:4.

To divide the one "megadistrict" into two districts, Kincaid used partisan shading to put together clustered precincts south of downtown where President Trump received 20% or less of the vote ("very Democratic precincts") into one seat for District 30. 109:18-110:8. From there, Kincaid worked west, assigning Democrat precincts to District 30. 110:11-14. Kincaid took about 250,000 people from heavily Democrat precincts in southeastern Tarrant County into District 30, creating a portion that juts into Tarrant County. 110:15-111:8. Using neutral boundaries, Kincaid set the border between Districts 30 and 33 — he used Interstate 20, working north to the local metro line, and then again joined a highway. 111:20-112:3. There is a small triangle with a "little nub" south of the interstate where Kincaid balanced the population. 112:25-113:6.

Kincaid made clear that his objective was to "make [District] 30 the more heavily Democrat seat of the two" to make for a more compact seat. 113:12-114:1. He had no concern about incumbents in Democrat districts. Tr. 10/7/25 PM 67:14-16. District 33 was simply the district "left over from the creation of [District] 30 within the super district." 114:8-12.

Although there may be territory to the northeast that is in District 33 that

is more Democrat than the territory in Tarrant County, Kincaid did not go for the District 33 territory because he "was using the footprint of [District] 30 as it currently existed." Tr. 10/7/25 PM 71:11-19. Kincaid also noted that he considered building a more Democrat district by having it take on central Dallas County but did not do so because it created "a wall of a whole bunch of Democrats on the eastern side," which he would have needed to move west. 73:3-21. This decision is why Kincaid "took the 30th District down . . . and put in its current footprint." Tr. 10/7/PM 73:16-18. He said that he was generally maintaining the borders of District 33 and only moved small blocks to balance the population along the edges. *Id.* 21:10-20.

Kincaid indicated that Congresswoman Jasmine Crockett is no longer in the 30th District. *Id.* 114:22-24. He agreed that Congressman Veasey was no longer in District 33. *Id.* 114:14-21.

District 6: The areas in Irving moved significantly to Republicans in 2024 compared to 2020. 103:9-13, 104:6-13. The new District 6 was bound by the city of Irving on the eastern side. 104:16-20. In so doing, Kincaid put more Republicans into District 6 and out of Districts 30 and 33, which made the future Districts 30 and 33 as Democratic as possible. 105:2-9. Kincaid used the city boundary of Arlington and Rendon as a boundary for District 6. 106:2-6. Since the district became more compact and lost several counties to the east, Kincaid made changes to the south for population reasons. 107:3-6. Ultimately, the district "picked up a lot of Arlington." 107:7-10.

Noting one of the changes between C2308 and C2333, Kincaid made Navarro County whole in the 6th District, which allowed him to get "more Republican strength into [District] 17." 172:20-173:2.

District 25: The "entertainment district" had to remain in the 25th District. 106:8-9. While drawing the district, Kincaid prioritized the incumbency of Republican Congressman Williams, whose district office is in Cleburne and is a location of a split. See 106:22-25, 109:5-8. The border with District 6 set District 25, meaning that "the border between 6 and 25 was set between the two seats, all the way up through using the Rendon border." 108:24-

109:8.

Regarding the Houston metropolitan area: Kincaid "had already drawn the rest of the state and got to the Harris County area last" because he "like[s] to start in the corners" when drawing maps. 121:23-122:7. Because the central Texas area was the "most complicated to draw," it was the next-to-last portion of Texas that Kincaid drew. 122:18-21.

District 36: Kincaid "changed the line in Harris to come in and pick up some Democrat areas closer in toward downtown." 123:1-9. The Jefferson County line stayed "roughly the same" between Districts 14 and 36. 123:9-10. Kincaid used Interstate 10 as the dividing line between Districts 14 and 36. 174:21-22. Kincaid said that he drew CD 36 with 61.8% Trump 2024 general support. Tr. 10/8/25 AM 34:18-21.

Because Kincaid added Liberty County to District 9, District 36 became "underpopulated by about 93,000 people" and noncontiguous. 174:14-16. As a result, Kincaid had to change the way that District 36 was drawn through Jefferson County. 174:18-20. He took District 36 into the northern part of Brazoria County to "add population in 36 that was not too heavily Democrat." 175:4-176:12. Kincaid also put three VTDs, previously in District 9, into District 36 to balance the population. 185:2-11. He added these three VTDs because he wanted to make District 36 contiguous and not add more Republicans to District 9 after District 9 got sufficient Republicans from Liberty County. 186:11-18. Kincaid moved these particular VTDs because he did not want to split Baytown or the downtown area in half. 186:19-22.

When asked on cross-examination whether he could have created CD 9 at over 60% Trump by swapping precincts with CD 36, Kincaid acknowledged that he could have done so. Tr. 10/8/25 AM 35:9-12. Responding to a hypothetical that if he had swapped those precincts back and forth to make CD 9 60% Trump whether the Hispanic CVAP would have dropped below 50%, Kincaid said, "I don't know that. That's certainly possible. But I wasn't targeting the Hispanic CVAP numbers." *Id.* 35:15-20.

District 14: Kincaid moved District 14 "down through Galveston County and changed the orientation of Brazoria." 123:11-12. Because he added Liberty County to District 9, the 14th District "ended up growing into Fort Bend County." 176:17-19.

Kincaid said that he drew CD 14 with 61.5% Trump 2024 general support. Tr. 10/8/25 AM 35:5-7.

District 18: The goal of the redistricting process was to pick up five seats. 123:19-21. Because there used to be four Democrat seats in the middle of Harris County, "one of those seats had to be flipped." 123:18-21. Kincaid "shaded on the partisanship and looked for the most partisanly Democrat precincts in Harris County and then into Ford Bend and Brazoria Counties and put all of those together in the 18th District." 124:1-8.

In the northeast portion of District 18, there is an epiglottis-shaped region that sticks down, which consists of "two or three very Democrat VTDs," a feature that also exists on the 2021 map. 130:10-18.

The 18th District needed to grow in population because District 14 moved into the southern part of Fort Bend County and both Districts 14 and 36 moved into the northern part of Brazoria County. 180:16-21. Therefore, Kincaid brought up District 18 to the Sam Houston Parkway to add population. 181:15-19. The Sam Houston Parkway was the northern border set in District 18. 181:16-19. On the eastern and northern borders between Districts 18 and 29, the more Republican VTDs were drawn in Republican districts. 189:17-21.

District 22: First, Kincaid "changed the southwestern Harris County a little bit . . . and then changed some of the area where 7 came down into 22." 140:18-22. Specifically, he put the Sugar Land areas that were performing better for Republican candidates into District 22 to make the district as Republican as he could. 141:12-142:6.

On the border between District 14 in Brazoria County and District 22, Kincaid took territory to the south of District 14 and put it into District 22 to "keep the district at a good Republican Trump number... or better than it had

been before." 142:14-143:2. The northern part of Brazoria County is Republican, but not as Republican as the area that Kincaid swapped out of District 14 into District 22. 142:18-22. The 22nd District picked up more of Brazoria County, and the area in southwestern Harris County changed. 176:25-177:2. Kincaid moved Republicans from District 22 into District 8, and vice versa, to balance populations. 177:23-178:2. He was able to make District 22 a district that President Trump carried with 60% or more. 178:3-6.

Kincaid considered the Fort Bend County line between Districts 18 and 22 to make sure that District 22, "stayed as Republican as it had been before or got better." 125:4-21. Indeed, some of the precincts between Districts 18 and 22 are not as "deep blue" as those in District 18, "but they are still much more Democrat than the rest of 22." 126:21-24.

District 9: Kincaid drew District 9 after he drew District 18. 130:23-24. In fact, Kincaid notes that the "9th kind of drew itself" after he drew Districts 18 and 36 — the eastern border of District 18 and northern border of District 18 were set, so he "took the 9th District up the eastern side of Harris County." 131:2-7. However, the 9th District did not completely encompass the area north of Baytown because Republican Congressman Crenshaw lives in that area and Kincaid drew around his house to avoid putting him into the 9th District. 131:8-20. Kincaid was "trying to make the 9th district as Republican" as he could so District "36 ended up taking Baytown" and he "took the 9th north from there." 132:4-13.

When asked where he started when redrawing the Harris County map for Plan 2333, Kincaid said that he "added Liberty County to the 9th District" to make it "redder." 173:15-174:1. Indeed, Kincaid said that he drew CD 9 in Plan C2333 with about Trump '24 general support at 59.5%. Tr. 10/8/25 AM 34:8-11. Kincaid said that he did not make any change to District 9 based on racial data. 174:5-6. Adding Liberty County to District 9 "created a clockwise rotation around the Houston area." 176:13-17.

Comparing C2193 to C2333, Kincaid acknowledged that District 29 has been distributed into five districts, the biggest chunk (43%) of which went into

the new 9th District. *Id.* 24:13-20. Kincaid indicated that Congressman Green no longer lives in Congressional District 9—he lives in the new 18th District. *Id.* 114:25-115:16.

District 2: Indeed, Congressman Crenshaw lives in District 2, a district that President Trump carried with at least 60% of the vote. 131:24-25. If Kincaid drew him in District 9, Congressman Crenshaw would be in a district that President Trump did not carry with at least 60% of the vote. 131:25-132:3.

Kincaid drew District 2 after he drew District 9. 132:17-19. Because District 2 lost population in eastern Harris County based on the way District 9 was drawn, Kincaid added Humble, slightly above 40% Trump support and "redder than the other areas around it," into District 2. 132:21-133:5.

Kincaid brought District 2 further north into the Conroe area in Montgomery County to add more Republicans because District 2 "had shed a whole bunch of Republicans in northeastern Harris" County. 133:7-20. To keep District 2 above 60% Trump support, Kincaid extended District 2 "along the northwestern side of 29," where there "are a series of competitive but Democrat-leaning precincts." 133:23-134:17. He also made sure that The Woodlands was "relatively whole" in District 2, as it had been before. 135:5-9.

Kincaid added the Kingwood area in northeastern Harris County back into District 2 to help make it a reliable 60%+ Trump seat. 179:19-22.

District 29: District 29, north of District 18, was a "pretty straightforward draw." 125:2-3. Kincaid drew District 29 after he drew District 2. 135:11-12. He took the heavily Democratic precincts on the northern border of the district and eastern side of Humble and put them in District 29, working his way south to create the most Democratic seat in the area. 135:15-21, 136:20-22. Kincaid could not have put the finger-like portion of eastern Humble, a heavily Democratic VTD, in District 2 "because that would have endangered the 60 percent Trump target in 2." 136:5-15.

From the west side of CD 29 where a "finger... carves down on the right side" bordering District 2 to the bottom part of the district bordering the 610

Loop, Kincaid captured heavily Democrat precincts. 136:23-137:13. Notably, he used the 610 Loop as the southern border of District 29 because it was a natural boundary. 137:11-18. Kincaid brought in a small area south of the 610 Loop to balance the population. 138:8-10. Between Districts 18 and 29, Kincaid used a railroad track, instead of the VTD line, to clean it up. 139:7-14. And between Districts 7, 18, and 29, Kincaid used roads, interstates, and railroad tracks as boundaries, as done in the Dallas area. 140:7-11.

When asked about the change in District 29 from C2193 to C2333, Kincaid acknowledged that District 29 was "definitely reworked." Tr. 10/8/25 AM 23:6-9. Comparing C2193 to C2333, Kincaid acknowledged that District 29 has been distributed into five districts, the biggest chunk (43%) of which went into the new 9th District. *Id.* 24:13-20. About 37% of District 29 remained in District 29. *Id.* 24:21-23. The remainder of the district went into District 7 (2%), District 18 (8%), and District 36. *Id.* 24:24-25:9.

District 38: Kincaid was trying to give District 38 as Republican a character as he could, so he tweaked the line between Districts 29 and 38 to make sure he got as many Republicans as possible into District 38 and out of District 29. 138:13-139:2. He adjusted the line between Districts 8 and 38 to "get the 38th District back to where it had been in the previous draw." 145:6-9. District 38, which had lost Republican territory to District 2, was the last piece to fall into place in its area. 145:15-22.

District 14: The Congressman in District 14 wanted all seven ports that he represented to remain in the 14th District, which is why 14 is shaped the way it is at the bottom. 143:3-13. A heavily Democrat precinct on the south side of District 18 in C2308 was added to District 14 to make District 14 contiguous with the area just below District 18. 177:15-18.

District 7: When asked why he changed CD 9 from Democrat to Republican but left CD 7 Democrat, Kincaid said that "[t]here were political constraints on the west side of Harris County," although he "actually wanted to flip that one" as well. Tr. 10/8/25 AM 134:4-9. The structural orientation of Congressman Luttrell's seat (in CD 8), Congressman McCaul's seat (in CD 10),

and Congressman Hunt's seat (in CD 38) prevented Kincaid from "restructur[ing] the population in 7 enough to redraw that seat." *Id.* 134:12-15. On cross-examination with Mr. Bledsoe, Kincaid added the 22nd District (with Congressman Nehls) as one of the seats, in addition to those listed above (CD 8, CD 10, CD 38), that constrained him. *Id.* 141:9-13. Specifically, the 22nd District has "a hook down in the middle of Fort Bend County," which is a "carve-out for Mr. Nehls' home and a lot of population . . . [t]hat has to go somewhere." *Id.* 142:2-6.

Kincaid said that he could not change District 7 from Democrat to Republican because of "the other parameters that [he] had and the constraints with the incumbents." *Id.* 140:18-20. He reiterated that "[i]t was just an impossible thing to do," even though he tried to "create only two Democrat seats in Houston instead of three." *Id.* 140:20-23. The structuring of the neighboring seats, incumbent needs, and partisanship thresholds made it impossible to flip District 7 from Democrat to Republican. *Id.* 142:7-9. Kincaid said that putting the heavily Democrat areas of Harris County in District 18 "into one district on purpose" prevented him, in part, from flipping District 7. *Id.* 141:18-142:2.

Kincaid tried to "put as many Democrats" as possible into District 7, particularly to the north of District 18. 142:7-9, 143:23-144:2. After working on District 22, he addressed Districts 7, 8, and 38, simultaneously. 143:18-21. Kincaid cleaned up the border between what had been the 9th District and the 7th District, running the border along the bayou that runs to the highway and down to the county line. 144:6-10.

The line between Districts 7 and 22 changed slightly. 177:12-13. Kincaid moved some population from District 18 into District 7 to balance the population. 181:4-9.

District 8: Kincaid put some Republican-leaning, less Democrat VTDs bordering Districts 7 and 8 into District 8. 145:2-5. District 10 comes in over the top of District 8 and picked up Republican precincts from District 8. 124:20-23. District 8 lost some population it had in southwestern Harris County to District 22. 177:3-11. Indeed, Kincaid moved Republicans from District 22 into

District 8, and vice versa, to balance populations. 177:23-178:2. Kincaid was "able to put a little more Republican strength back into the 8th District so it didn't sink too far down." 178:7-9.

District 10: District 10 comes in over the top of District 8 and picked up Republican precincts from District 8. 124:20-23.

Kincaid then addressed the Travis County area.

District 37: Every VTD in District 37, which encompasses the Austin area, was less than 30% Trump support in 2024. 146:22-147:4. Controlling for population equality, the line between Districts 27 and 37 was a "strictly partisan" draw that differentiated along the 30% Trump number. 147:19-148:2.

District 27: Every VTD in District 27 was "30 percent or more Trump in 2024." 146:22-25. Kincaid wanted to keep District 27 above 60% Trump support. 148:10-11. He moved the 27th District to the north along the Gulf and made sure that Victoria County, where the incumbent lives, was in the 27th District. 148:23-149:1. From there, Kincaid fit the 27th District underneath the 10th District and brought part of Hays County into District 27 to help get above 60% Trump support. 149:1-3, 150:2-8. Although he tried to avoid a split in Refugio, Aransas, and San Patricio Counties, Kincaid made sure that the 27th District was contiguous by road because, otherwise, it would have been only contiguous by water. 149:21-25.

District 34: Kincaid "had to carve out some heavily Democrat precincts in Nueces County and Corpus Christi" to get the 34th District to be a Trump+10 district. 148:18-22. Kincaid said, "Working up from the border, I knew 34 and 28 were already Trump seats, and I knew I was going to make those redder." 10/8/25 AM 131:20-22.

District 21: Kincaid pulled the 21st District out of Travis County. 155:12-13. He had to keep this district a "60 percent Trump seat" because it was an incumbent Republican seat. 163:12-13, 163:25-164:3.

Kincaid then testified as to what he did with the Central Texas, Bexar County, and Travis County areas.

Districts 31, 17, 11, and 10 are all stacked above the 37th District in the form of a "layer cake." 151:23-25. The 10th, 17th, 27th, and 31st Districts were all "barely over 60 percent Trump seats," so much of Kincaid's work was to balance the partisanship among those districts. 152:1-5, 154:21-25.

District 10: Kincaid had to fit District 27 underneath District 10 because the 10th District had been stretched from western Travis County to the east to pick up Brazos County for at least two reasons—first, to accommodate incumbent Republican Congressman McCaul, who lived there, and second to keep the district above 60% Trump support. 149:6-10, 153:1-7 (referencing the "McCaul hook"). In District 10, the "McCaul hook" is so slender because Kincaid had to avoid picking up Democrats closer to downtown and by the university in Brazos County. 154:4-16.

Kincaid was "trying to get as few Democrat areas as possible" in District 10. 171:18-21.

District 11: Kincaid pulled Lee County out of the 11th District and brought north Travis County into the 11th District. 152:6-10. This allowed the 11th District to pick up more Democrat areas in Pflugerville, which is whole in the 11th District. 152:9-10, 153:20-21.

But the southern line of district 11 stayed the same. 155:9. Kincaid did not move any counties into District 11 between Districts 11 and 21 or between Districts 11 and 23. 155:10-11. He kept the north boundary between Districts 11 and 23 unchanged. 160:6-7.

District 31: Kincaid also wanted to make District 31 more compact than it had been under the previous draw. 154:25-155:2.

District 35: District 27 "abuts" District 35, which is in Central Texas. 151:4-5. Kincaid indicated that the drawing of the districts by the border, namely Districts 15, 16, 28 and 34, influenced the way in which he drew District 35. See generally 156:1-161:25. Based on the movement in the border counties (see infra), Guadalupe, Wilson, and Karnes Counties were "free to be worked with" and indeed were combined with the area of Bexar County to make the 35th

District. 161:23-162:4.

Like the other pickup opportunities, District 35 needed to be a "Trump plus 10 seat that Ted Cruz had also carried in 2024." 162:9-11. Kincaid looked at Governor Abbott's strong performance there and performed a durability analysis. 162:15-19. The south side of Bexar County approaching District 35 (but below District 20) allowed Kincaid to make District 35 more Republican. 167:9-12.

Although Kincaid technically could have evened out the Trump performance between adjacent Districts 21 and 35 by giving more heavily Republican precincts to CD 35 (54.6% Trump support in C2333), he could not do so without running afoul of the criteria that 60%+ Republican incumbent districts needed to be at 60%+ Trump support: He could not drop the 21st District (which had 60.2% Trump support and a Republican incumbent) much more. Tr. 10/8/25 AM 38:15-39:16. Kincaid acknowledged that as many as eight precinct splits occurred in a heavily Hispanic area in CD 35. *Id.* 41: 11-17.

District 20: To allow District 35 to become a true Republican pickup opportunity, District 20 had to "absorb as many Democrats" as possible. 164:10-14. Kincaid wanted to make District 20 as Democrat as he could. 164:16-19. Kincaid put parts that had previously been in District 35 into District 20. 164:7-22. He made a straight line between Castle Hills and Olmos Park as the northern border of District 20. 166:10-19. He said that San Antonio "had to be split no matter what." Tr. 10/8/25 AM 38:1-5.

Kincaid noted that he drew the Kirby area into District 20, not District 35, because there is a "steady line of heavily Democrat precincts that are contained within 20 and then a smattering of 20 percent [Trump] precincts – or heavily Democrat precincts with smaller ones clustered in [the] Kirby area." 168:16-22. He did so because he wanted to "maximize the Trump and Cruz numbers," not simply maximize Republican performance overall. Tr. 10/7/25 PM 74:9-17. Kincaid was not concerned about an incumbent in District 20 or 35. Tr. 10/7/25 PM 76:6-15.

Kincaid remarked that the draw In Bexar County (Districts 20, 21, 23) was very complicated. For one, the 21st District could not move more to the west. 165:3-4. In an ideal world, Kincaid would have put the precincts on the west side of District 20 into a more Republican seat. 165:5-7. However, Kincaid could not do so because moving those precincts to District 23 would make District 23 more Democrat, causing it to miss its political targets. 165:6-10.

District 21: Kincaid made three small cities whole in the 21st District. 166:6-10. Although Kincaid could have evened out the Trump performance between adjacent Districts 21 and 35 by giving more heavily Republican precincts to CD 35 (54.6% Trump support in C2333) as a technical matter, he could not do so without running afoul of the criteria that 60%+ Trump districts with Republican incumbents in the 2021 map needed to remain at 60%+ Trump support — he could not drop the 21st District (which had 60.2% Trump support and a Republican incumbent) much more. Tr. 10/8/25 AM 38:15-39:16.

Kincaid then addressed the border counties.

District 34: Kincaid drew the 34th District as a "series of whole counties all the way up the Gulf Coast" until he "ran out of population in Corpus Christi." 156:2-5. This took the 34th District out of Hidalgo County, making it a more compact district in the north. 156:5-7.

District 15: This was a complicated draw for Kincaid because the district was an "R plus seven district" for incumbent Republican Congresswoman Monica De La Cruz, and Kincaid needed to keep the district at the same margin. 156:15-23. Kincaid "had to pick up the eastern Hidalgo County part" that he "had just drawn out of 34," which made things complicated because this part of Hidalgo County consisted of 52% Trump VTDs. 156:24-157:5. As a result, Kincaid included counties that had previously been part of District 34 into District 15 this time. 157:6-9.

Kincaid had to make sure that the incumbent congresswoman continued to live in her seat. 157:14-18. He reiterated that he starts at the corners while map drawing. 158:3-5. Overall, District 15 moved to the east. 161:20-21.

District 23: Kincaid needed to ensure that the 23rd District stayed at "R plus seven or greater during the draw" because it had a Republican incumbent. 158:20-25. Kincaid made Horizon City whole in District 23. 159:18-19. He included VTDs north of "where it says El Paso" in District 23 because those VTDs were 50% Trump. 159:19-24. Generally, Kincaid included Republican areas of El Paso County in District 23. 160:2-4. Kincaid kept the north boundary between Districts 11 and 23 unchanged. 160:6-7.

District 16: Kincaid's border between Districts 16 and 23 did not make it into the final map, and Kincaid did not draw the change between Districts 16 and 23 between C2308 and C2333. 7-14. Kincaid made Socorro whole in District 16. 159:19.

District 28: Kincaid took the remainder of Hidalgo County and put it into District 28. 160:12-14. Then, he "used whole counties up to Atascosa and balanced the population of [District] 28 in Maverick County." 160:14-16. District 28 was a Republican pickup opportunity drawn to be a "Trump plus 10 seat." 160:22-23. Overall, District 28 moved south. 161:21. Kincaid said, "Working up from the border, I knew 34 and 28 were already Trump seats, and I knew I was going to make those redder." 10/8/25 AM 131:20-22.

Kincaid noted at least three changes between C2308 and C2333.

First, he made Navarro County whole in the 6th District. 172:20-25.

Second, the Texas House changed a part of the map in El Paso—Kincaid did not draw this change. 173:3-4.

Third, there was a rotation of seats in the Houston metropolitan area. 173:6-7.

In conclusion, Kincaid's testimony is credible and irrefutable. His twoday testimony (without any notes) was detailed, methodical, and meticulous. When given the opportunity to do so, on both direct and cross, he had a perfectly legitimate and candidly partisan explanation for his every decision.

Despite testifying under a death threat, Kincaid was calm and

straightforward. He is a solid witness on the key question of intent and race, and I easily credit his testimony as wholly convincing and unassailable.

Kincaid's testimony is fully consistent with the law: "The most obvious reason for mid-cycle redistricting, of course, is partisan gain." As Kincaid cogently explained, he was put in charge of that partisan gain for Texas in 2025. And as his testimony shows, it was all about politics, not race.

I dissent.

* * * * *

After outlining Mr. Kincaid's compelling testimony on the map-drawing process, we need to consider his statements, along with those of Senators Phil King and Adam Hinojosa, and Chairman Cody Vasut, which Judge Brown considers to be defense-favorable direct evidence,⁶⁹ and weigh them against those of Chairman Todd Hunter,⁷⁰ Speaker of the House Dustin Burrows, Representatives David Spiller, Tom Oliverson, and Steve Toth, which Judge Brown considers to be damaging direct evidence.⁷¹ Of course, Judge Brown buries this question of legislative intent—the principal question in the case—after a lengthy recitation of ambiguous and contradictory direct evidence on the White House's pressure, outside media coverage, the DOJ's letter, the Texas AG's letter, and Governor Abbott's statements,⁷² *none* of which can easily be attributed to the Legislature, and all of which butts up against *Alexander*'s presumption of good faith for legislatures.⁷³

⁶⁹ Brown Op. at 79-104.

⁷⁰ To avoid ambiguity, it is important to note that Representative Hunter was Chairman of the Special Select Committee on Redistricting, while Chairman Vasut is Chairman of the overall Redistricting Committee.

⁷¹ Brown Op. at 66-79.

⁷² Brown Op. at 59-66.

⁷³ See Alexander, 602 U.S. 1, 10 (2024) ("This presumption of legislative good faith directs district courts to draw the inference that cuts in the legislature's favor when confronted with evidence that could plausibly support multiple conclusions.") (citing *Abbott v. Perez*, 585 U.S. 579, 610-612 (2018)).

So, how should you weigh the evidence in this case? Judge Brown admits, as he must, that legislative intent remains the fundamental question.⁷⁴ Yet legislative intent is notoriously challenging to discern.⁷⁵

These are the main competing bodies of evidence:

- first, the Texas legislators' statements, notably including Hunter, Burrows, Vasut, Hinojosa and King;
- second, the actual outcomes on the map drawn in Plan C2333;
- third, Adam Kincaid's testimony as the map-drawer;
- fourth, Governor Abbott and other Texas politicians' statements, generally to the media;
- fifth, the Department of Justice and Donald Trump's statements.

Each one is relevant and probative, but some are more relevant than others. In particular, the (1) legislators' statements, (2) actual map adopted by them, and (3) the map-drawer's explanation—as agent for the legislature—of *every* choice made during drawing the map look the most probative.

Meanwhile, statements of politicians in Texas's executive branch (including the governor and attorney general) or statewide delegation to the United States congress are less probative of the Texas *legislature's* intent.

Further, statements by non-Texas federal politicians in Washington D.C. are even less probative, though Judge Brown repeatedly hangs his hat on this nigh-irrelevant body of information, contrary to *Alexander* and the manifest weight of the evidence.⁷⁶ Opposite to the clearly-established law, they fail to draw competing inferences as they are required to.⁷⁷ I will point

⁷⁴ Brown Op. at 56.

⁷⁵ See, e.g., Antonin Scalia, Common-Law Courts in a Civil-Law System: The Role of the United States Federal Courts in Interpreting the Constitution and Laws, A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW, 16-17 (Amy Gutmann, ed., 1997).

⁷⁶ Brown Op. at 15-35.

⁷⁷ Alexander, 602 U.S. at 10.

out each of these wrong turns, so we can make a U-turn and get back on track.

To unwind this narrative, we may have to bounce around, so bear with $\mathrm{me.^{78}}$

* * * * *

Judge Brown singles out representatives Hunter, Oliverson, Burrows, and Toth.⁷⁹ Simultaneously, it buries Vasut, Hinojosa and King's contrary evidence with little basis.⁸⁰ It also relies upon statements from members of the opposing party—notably Representative Thompson to Chairman Hunter and Senator Gutierrez to Senator King.

Judge Brown centrally focuses on Chairman Hunter's exposition of the racial demographics of the new map on the floor of the Texas House, including his colloquies with Representatives Pierson and Spiller.⁸¹

The Supreme Court, however, has emphasized that legislators will "almost always be aware of racial demographics" when drawing districts, so it imposes a higher standard before subjecting districts drawn with awareness of racial data to strict scrutiny—otherwise, redistricting might be impossible.⁸²

Nothing Judge Brown says gets past ambiguity. He argues that Hunter's reciting demographics and mentioning *Petteway* jointly "suggests that the mapdrawers purposefully manipulated the districts' racial demographics to convert coalition districts into single-race-majority districts. Suggestion, as against the *Alexander* presumption of good faith, is not enough.

⁷⁸ I did tell you to buckle up, didn't I?

⁷⁹ Brown Op. at 67-69.

⁸⁰ Brown Op. at 79-90.

⁸¹ See Brown Op. at 67-79 (covering Hunter's recitation of demographic statistics and mentions of *Petteway* and *Rucho*).

⁸² Miller v. Johnson, 515 U.S. 900, 916 (1995).

⁸³ Brown Op. at 74-75.

So, how to best interpret Chairman Hunter's exposition of these facts and figures? Interpreting Hunter's invocation of both *Rucho* and *Petteway*, Judge Brown flouts *Alexander*'s presumption of good faith to draw the forbidden rather than permitted inference.⁸⁴

Faithfully applying the presumption of good faith, the more plausible explanation is that Chairman Hunter was publicly attacked in the 2021 redrawing, again bound-up in the history of this case, and felt motivated to defend his reputation and that of the Texas house by expositing the racial statistics of the new map. That easily covers his presentation of the new maps on August 1, 2025, and why he "volunteered" Hispanic CVAP statistics. Hunter had previously been attacked and pilloried as a racist in the 2021 cycle—so, for him to present figures that he explained were *increasing* the number of majority-Hispanic districts easily fits the inference that he was aiming to defend the bill and bolster his credibility.

Further, drawing this positive inference is consistent with legislative awareness of race—which Judge Brown concedes, but then breezily walks by, contrary to *Alexander*. Hunter provided more than enough favorable commentary to support the positive inference—discussing the race-blind drawing process, apparently delighting in the partisan advantage of *Rucho*—so, for Judge Brown to insist that he harbored inward racial animus on this ambiguous fact pattern unfairly paints Hunter, a former democrat, as an unreformed, unrepentant racist maintaining a flagging veneer of partisan nastiness over Strom Thurmond-like segregationism. This upside-down fantasy entertained by Judge Brown is plain error and justifies reversal.

But Judge Brown compounds his error of drawing a negative rather than positive inference from individual legislators' mixed and conflicting statements. He interprets Speaker Burrows' mix of partisan and post-

⁸⁴ Brown Op. at 77; *contra* Prelim. Inj. Hr'g Tr. Day 8 (Afternoon), ECF No. 1344, at 115:2-7 (Hunter: "As based in my previous commentary on *Rucho*, this map is based on partisanship, political performance. And for all of you here, it has enhanced and increased Republican partisanship, enhanced performance. The intent of the changes was to increase Republican political performance in existing Republican districts from the proposed plan.").

Petteway or anti-coalitional thinking in a post-passage press release from August 20 as showing racist intent.⁸⁵ Keep in mind, this was weeks after drawing the maps and after heated floor debates involving *Rucho* and *Petteway*.⁸⁶ In that direct, 1:1 tradeoff, *Alexander* commands this court to draw the positive inference.

Similarly, out of 88 House Republicans voting for the bill, he snipes at Representative Oliverson's and Toth's statements to the press. In Oliverson's NPR interview, he mentions *Petteway*, but in the next breath disclaims specific knowledge of the bill and invokes *Rucho*.⁸⁷ On this conflicted piece of evidence, *Alexander* requires the partisan inference. Toth's statement was similarly made during a sprawling TV interview, with the added context that Toth is running for the U.S. House of Representatives. There, he said, "Texas just went ahead when we drew these maps, as Joan Huffman said, I drew the maps blind to race. And that's what we did," while offering a wide range of conflicting purely-partisan and *Petteway* rationales. Again, *Alexander* demands the partisan inference.

Judge Brown also hand-waves past Chairman Vasut, Senator Hinojosa, and even Senator King's statements showing partisan intensity as the legislature's motive.⁸⁹

Judge Brown ignores Chairman (of the Redistricting Committee)

⁸⁵ Brown Op. at 74-75; *see* Brooks Prelim. Inj. Ex. 282, ECF No. 1326-28 at 1 (Burrows: "I want to thank Representative Todd Hunter for carrying this bill and for his tireless efforts ensuring the new map is not only constitutional, but secures Republican representation in Congress Today's passage of the congressional map has ushered in a new chapter of Republican unity...").

⁸⁶ How can you avoid talking about *Petteway*? If representatives asked about *Petteway* had said, for example, "I don't want to talk about that," Judge Brown's motivated reasoning could twist such a response into *concealing* their racist intent. That style is conspiracy-theorist thinking.

⁸⁷ Brooks Prelim. Inj. Ex. 327-T, ECF No. 1327-27 at 3 ("So I am on the main redistricting committee also, but I'm not on the special select committee that's reviewing these particular maps I think what I would say is that I know that we certainly have the right to look at the maps and make changes. I think the courts have consistently held that redistricting for purposes of political performance by either party is acceptable.").

⁸⁸ Brooks Prelim. Inj. Ex. 339-T, ECF No. 1411-5, at 1-2.

⁸⁹ Brown Op. at 79-90.

Vasut's contemporaneous statements, made during the map-drawing process on August 2.90 Judge Brown also downplays Senator Hinojosa's speech defending the bill on partisan grounds, despite that speech, delivered *in* the legislature, having equal or greater probative significance than errant remarks from Oliverson or Toth *outside* the legislature.91

Where Judge Brown attacks Senator King for his minimal involvement in the bill-drafting process, he does not apply the same lens to Burrows, Toth, or Oliverson. Almost all the house Republicans cosponsored the bill: 78 in total. And worse for him, Chairman Hunter disclaimed any knowledge of the redistricting process earlier in the summer until he was asked to carry it on the floor. Given King's prior discussions with Kincaid at ALEC, how can Judge Brown claim that King was uninvolved, but everyone else knew and embodied the legislative intent?

Instead of weighing those against Chairman Hunter's statements in the aggregate and applying the presumption of legislative good faith to the entire collective body of the Texas legislature, Judge Brown seizes onto a

⁹⁰ See Prelim. Inj. Hr'g Tr. Day 8 (Afternoon), ECF No. 1344, at 117:11 - 118:18 (Vasut: "I see no evidence that this was racially drawn. This is a political performance map. I haven't looked at those. The question I had when I, you know, looked at this - and I was evaluating it myself, was does this improve the political performance of Republicans in Texas? Which is where we have been trending and what we need to do to respond nationally. This is not just a Texas issue. It's a nationwide issue, it's perhaps one of the biggest issues that we're taking up. And when we've seen all of these blue states over-perform with their maps and Texas is underperforming, that puts Republicans at a distinct disadvantage nationwide, and it's right for Texas to step up. So I have not seen any evidence that this map was racially based. What I have seen is evidence that this map was politically based. And that's totally legal, totally allowed, totally fair. . . . I disagree with the assumption that this process had anything to do with the DOJ letter. Yeah, they sent a letter, but as you know, the proclamation called us in to do congressional redistricting, and we did congressional redistricting when we passed HB4 based off of political performance. So I frankly don't care what the DOJ letter said - and I think it's pretty clear that no one does. And I ought to probably prepare to sign this bill. So this bill was not based off of that DOJ letter. That bill was based off of improving political performance.").

⁹¹ See Prelim. Inj. Hr'g Tr. Day 7 (Afternoon), ECF No. 1343, at 67-70 ("[L]et's stop pretending that this is all about race. It is about values. It is about representation—real representation. The fact that we are redrawing the maps is to ensure that... the people are able to have representation that reflects their values, not their last name, not their skin color.... And with that, members, I proudly stand and look forward to casting my vote in favor of House Bill 4.").

⁹² Brown Op. at 66-69.

tendentious interpretation of Hunter's statements and then imputes that to the whole legislature—House and Senate alike!

Worse for Judge Brown, there is no evidence that Hunter *drew* the maps, so any of his exposition of the racial statistics resulting from the outcome of that process is *a posteriori*, rather than probative of the legislature's invidious racial intent in *drawing* the maps.⁹³ Is it really credible to think that Hunter could have had his own self-contained invidious intent to enact a clean map? That stretches credulity.

Instead, Kincaid presented remarkably credible and ultimately unrebutted evidence proving his drawing of the maps on race-blind criteria including partisan affiliation, natural geographic boundaries, representatives' home and office addresses, and greater compactness in the 2025 than 2021 maps.

Another big problem for Judge Brown is that Kincaid started drawing the maps before the DOJ letter, and far before Chairman Hunter was asked to carry the bill on the floor.⁹⁴ Kincaid was told about upcoming redistricting in Texas in March while on a visit to the White House.⁹⁵ Kincaid also drew the maps last time around, and regularly explores "what is possible or what would have been possible... across the entire country." ⁹⁶ Concretely, he

⁹³ The earliest that Hunter was involved with the maps was apparently July 23. *See* Prelim. Inj. Hr'g Tr. Day 8 (Morning), ECF No. 1420, at 140-141.

⁹⁴ See Prelim. Inj. Hr'g Tr. Day 1 (Morning), ECF No. 1414, at 127:18-128:9; 129:1-3.

⁹⁵ Asked when he became aware that the White House was having conversations about redistricting, Kincaid answered, "It would have been earlier in 2025... I was aware that people were meeting with White House officials on redistricting probably [in] February or March." *Morning Transcript*, 10/7/2025, 58:13-17 (Direct Exam of Adam Kincaid). And when asked when he first began speaking with a Texas national committeeman about redistricting in Texas, Kincaid answered, "I believe it was in March was when I first had a conversation with Robin [Armstrong] about this." *Id.* at 59:22-23.

⁹⁶ In response to defendant counsel's question, "How often would you say you draw maps. . .?" Kincaid replied, "We do a lot of different things in [the National Republican Redistricting Trust]. But when it's quiet, I'll sit down and I'll look at a map and see what I can do in different places. So it's regularly that part of my job is to look at maps and see what is possible or what would have been possible, yeah, across the entire country." Prelim. Inj. Hr'g Tr., 10/7/2025, 36:24 – 37:4 (Direct Exam of Adam Kincaid).

states that he started drawing these maps as early as June⁹⁷—weeks before the DOJ letter—and apparently around the time he told Senator King that five pickups statewide were possible.⁹⁸

So, contrary to what Chairman Hunter told his political opponent Representative Thompson on the floor of the Texas House, the Legislature was redistricting during June. The probative value of Chairman Hunter's statement to his rival is nada and zilch—where Judge Brown relies upon it, that exposes the weakness of his position. Similarly, where Judge Brown invokes New York Times articles from June discussing the mixed impressions of U.S. representatives from Texas in Washington, D.C., that is minimally probative of the Texas state legislature's intent in Austin. They are different people in different places, months before the final enactment.

Looks like Judge Brown's so-called "direct evidence" doesn't amount to a hill of beans.

⁹⁷ See id. at 58-59.

⁹⁸ See Prelim. Inj. Hr'g Tr. Day 6 (Afternoon), ECF No. 1342, at 20–22. Senator King either had a lapse of memory or was concealing the number of conversations he had with Kincaid. Given Kincaid's remarkably lucid, rapid-fire, and forthright demeanor on the stand—compared to King's calculated demeanor—I think it is obvious that Kincaid is telling the truth. Additionally, Kincaid's was entirely consistent with Senator Hinojosa, who had a sober demeanor and was another sponsor of the bill.

⁹⁹ Prelim. Inj. Hr'g Tr. Day 2 (Morning), ECF No. 1415, at 90–91 ("Q. "Now, it's been stated by others that redistricting was in the conversation prior to [the DOJ Letter discussed below] What do you say to that? | [REPRESENTATIVE THOMPSON:] I heard it all during the session, and I made inquiries about it. And I asked [Chairman Hunter] . . . if they were going to be redistricting. . . . And subsequent he said he didn't know. You know, I think he told me he was unaware of any redistricting. And he kind of brushed it off as though it just might have been just a rumor or something, you know."); *Morning Transcript*, 10/7/2025, 62:1-3 ("I think the final phase of the redistricting for 2025 probably started late June or early July").

¹⁰⁰ Brown Op. at 17 n.48.

¹⁰¹ See Brown Op. at 15-17; also Defs.' Resp. Intervenors' & Tex. NAACP's Prelim. Inj. Mot., ECF No. 1195, at 23-24 ("Given the danger to President Trump's legislative agenda posed by [the] 2026 elections and the historical trend of the presidential party doing poorly in non-presidential election years, there was a great deal of political pressure placed on the State of Texas to match the political gerrymandering of Democrat states. This pressure only intensified when other states, especially California, pledged to perform mid-decade redistricting to make their already one-sided congressional maps even more favorable to Democrats. . . . None of those factors indicate race was involved").

* * * * *

On legislative intent, to the extent Judge Brown attributes Hunter's intent to the whole legislature, he likely violates *Prejean v. Foster*.¹⁰² There, the Fifth Circuit rejected on summary judgment and while granting every inference to the nonmoving party—rather than on preliminary injunction and assessing likelihood of success on the merits—the argument that the intent of an external mapdrawer who averred zero racial motivation could be "taken as conclusive proof of the legislature's intent."¹⁰³ Instead, the fact that the Legislature adopted the external mapdraw's districting plan at best "support[ed] an inference that racial considerations did not predominate."¹⁰⁴

Here, under a different procedural posture, the question is whether the fact that Kincaid's map was adopted by the Legislature suggests that his intent can be attributed to the legislature. Evaluating this as a standard piece of evidence, rather than granting every reasonable inference to the opposite party, the answer must clearly be yes (in part). At a minimum, Kincaid's intent is probative of the Legislature's intent, given that he acted as their agent in drawing the maps and was given numerous instructions related to incumbency protection at the level of voting thresholds, home addresses, district office addresses, and communities of interest.¹⁰⁵

Judge Brown also rushes past the nuance that courts must be careful not to "overemphasiz[e] statements from individual legislators," ¹⁰⁶ as "[w]hat motivates one legislator to make a speech about a statute is not necessarily what motivates scores of others to enact it." ¹⁰⁷ But in dismissing Chairman Vasut's

¹⁰² 227 U.S. F.3d 504 (5th Cir. 2000).

¹⁰³ *Id*. at 510.

 $^{^{104}}$ *Id*.

¹⁰⁵ Supra, Kincaid testimony at 31-32.

¹⁰⁶ See Fusilier v. Landry, 963 F.3d 447, 466 (5th Cir. 2020).

¹⁰⁷ United States v. O'Brien, 391 U.S. 367, 384 (1968); also Fusilier v. Landry, 963 F.3d 447, 466 (5th Cir. 2020) (discussing O'Brien); N. & S. Rivers Watershed Ass'n v. Town of Scituate, 949 F.2d 552, 555 n.6 (1st Cir. 1991) ("[S]tatements of individual legislators, even the sponsors of legislation, should not be given controlling effect."), overruled on other grounds by Blackstone Headwaters Coal., Inc. v. Gallo Builders, Inc., 32 F.4th 99 (1st Cir. 2022).

and Senator Hinojosa's statements disclaiming racist intent, Judge Brown reduces them and dozens of the other members of the Texas legislature to mere cat's paws, or dupes, mopes and muppets following the leader, which theory the Supreme Court criticized in *Brnovich v. Democratic National Committee*. ¹⁰⁸ There, the Court wrote,

The 'cat's paw' theory has no application to legislative bodies. The theory rests on the agency relationship that exists between an employer and a supervisor, but the legislators who vote to adopt a bill are not the agents of the bill's sponsor or proponents. Under our form of government, legislators have a duty to exercise their judgment and to represent their constituents. It is insulting to suggest that they are mere dupes or tools.¹⁰⁹

The rule is clear: Judge Brown cannot treat the statements of Hunter or Burrows as dispositive of the intent of the full legislative body, not only excluding over 80 other Republicans in the House, but scores more in the Senate.

In sum, *Prejean*'s refusal to equate the intent of an external mapdrawer to the legislature itself cuts in both directions: the statements of an outside drawer are not conclusive in either direction, and need to be weighed for their probativity and credibility, like any piece of evidence. Here, Hunter's statements are minimally probative, while Kincaid's statements are highly probative, consistently delivered, and credible. It is plainly in error for Judge Brown to reach the opposite conclusion. ¹¹⁰

* * * * *

Having considered the mixed legislative statements—which individually and aggregately fail to overcome the presumption of legislative good faith—we consider Judge Brown's discussion of the maps' outcomes.

Judge Brown's tour of the circumstantial evidence is lackluster, especially considering his overarching theory of the facts is that "the redistricting bill's

¹⁰⁸ 594 U.S. 647 (2021).

¹⁰⁹ *Id.* at 689-90.

¹¹⁰ Brown Op. at 100-104.

sponsors made numerous statements suggesting that they had intentionally manipulated the districts' lines to create more majority-Hispanic and majority-Black districts... [which] suggest that they did so because such a map would be an easier sell than a purely partisan one." Judge Brown begins by arguing that the Legislature "fulfilled almost everything that DOJ and the Governor desired." 112

This is fanciful framing at best and intentionally deceptive at worst.

The DOJ letter erroneously singled out four districts as coalition districts. One of those, CD 29, was a majority Hispanic CVAP, meaning the DOJ was incorrect as flagging it as a coalition district in the first instance. However, Judge Brown appears to suggest that changing CD 29 fulfilled the DOJ's goals, even though the Hispanic CVAP dropped below 50% and created a district where no race or ethnic group is a majority of the citizen voting age population. 113 If the Legislature intends to sell this map by emphasizing how many Hispanic majority CVAP districts there are and to claim they were required to eliminate coalition districts, why in the world would they get rid of an Hispanic majority CVAP district and create what at least has the outward appearance of a coalition district? Judge Brown has no answer to that question. With the map's not fulfilling the DOJ's vision of CD 29 and CD 33 remaining a coalition district, the tally stands at 2-2 for doing things that the DOJ letter suggested. Two districts looked like the DOJ wanted them to look and two didn't. Far from the record's making it obvious that Kincaid and the Legislature did the DOJ's bidding, it seems as though Kincaid drew his map blind to race and the bill sponsors, who had virtually no input on the lines in question, just sought to pay lip service to Petteway.

As for Governor Abbott, Judge Brown claims that Abbott wanted to "increase[e] the number of majority-Hispanic districts," and the Legislature

¹¹¹ Brown Op. at 3.

¹¹² Brown Op. at 105.

¹¹³ Brown Op. at 38.

obliged. However, Judge Brown doesn't connect the dots correctly.

There is no evidence in the record, before the map was revealed at the end of July, that the Governor said anything about increasing the number of Hispanic majority CVAP districts. Rather, it's only after the map is revealed that the Governor says anything that can be construed as stating the lines were drawn to increase Hispanic majority districts.¹¹⁴

Far from the map's being drawn with an eye toward achieving the Governor's goal, it appears he adjusted his rhetoric to defend the map in a forward-facing capacity. If the Governor's concern throughout the redistricting process was increasing the number of Hispanic majority CVAP districts, then one imagines he would have said something about it before the legislature revealed a map which happens to have a higher number of Hispanic majority CVAP districts.

Judge Brown then talks about how the map's "on-the-nose attainment of a 50% [C]VAP' for so many districts suggests that the Legislature was following a 50%-plus racial target' to the letter,' such that the 'racial target had a direct and significant impact on those districts' configurations[s].'" While it may feel odd or uncomfortable to see four of the thirty-eight districts right at that 50% mark, Judge Brown provides no serious rebuttal to the reasons Kincaid gave for the lines that he drew in those districts.

The Kincaid testimony is thorough and largely based on testable claims about the areas in which he drew the lines. Even if we assume that the plaintiffs don't need to produce an *Alexander* map, when provided with thorough reasoning concerning the lines that exist and contrary evidence, as found throughout this dissent, that undermines the existence of a racial target, it seems concerning that the only conclusion Judge Brown can come to is that these numbers suggest legislature followed the DOJ's order to the letter, even though they only did half of what the DOJ suggested.

¹¹⁴ See, e.g., Brooks Prelim. Inj. Ex. 335-T, ECF No. 1328-1.

¹¹⁵ Brown Op. at 105.

Judge Brown also suggests that the fact that the legislature left a majority white Democrat district largely unchanged is further evidence of racial motivations. This claim does not even fit Judge Brown's theory of the facts. Across his lengthy opinion, Judge Brown's theory is that the legislature conspired to make a map that's easier to sell by intentionally creating more minority districts while also still achieving partisan aims. However, here he appears to pivot into a suggestion that the legislature is outright bigoted and that a partisan legislature would try and make significant modifications to CD37 just like it did to the non-white district of CD 9, but failed to do so because CD37 was a white Democratic district. 117

This is cherry-picking of the highest order. Of the 5 pick-up opportunities that were majority-minority, CD28 (53.6%) and CD34 (61.6%) kept a majority of their 2021 district intact. In comparison, CD32(41.2%) is a white majority CVAP district and kept the third least of its original territory out of the five pickup opportunities. It is hard to imagine how a rational actor comes to the conclusion that majority-white CVAP CD37 keeping 6% more of its territory than majority-minority pick-up district CD34 and 26% more than majority white CD32 is evidence of racial predomination. Judge Brown's argument here is just plain faulty, and his discrediting of Kincaid's testimony is more of a judicial handwave than a legitimate, reasoned explanation.

Judge Brown also claims that the fact that a Republican coalition district (CD27) became majority-white is circumstantial evidence of racial gerrymandering. Here, Judge Brown truly shows his biases and nakedly shows that he has no true desire to disaggregate race and politics. Judge Brown doesn't seem to realize that in a political gerrymander, the voting power for flipped districts must come from somewhere. So, one should not "expect the

¹¹⁶ Brown Op. at 106-7.

¹¹⁷ Brown Op. at 106.

¹¹⁸ See Brooks Prelim. Inj. Ex. 267, ECF No. 1326-14 at 5-6.

¹¹⁹ Id. at 6.

¹²⁰ Brown Op. at 107 n.403.

Legislature not to make fundamental changes to the racial demographics of Republican districts" because the only way one is going to pick up seats in a partisan gerrymander is by taking strength from heavily Republican districts and adding them to slightly Democrat districts (or some similar formulation).¹²¹

It's entirely plausible and even expected that the racial composition of some of the Republican districts might change as a result. After all, the people that got added to the district are not the same ones who got removed from the district. When looking back at the record, it's unsurprising to find that, sure enough, CD27 was a district where Republican strength was taken, and Kincaid had to work to keep the Trump numbers above 60%. 122

From the very outset, Kincaod admits that the 2025 maps "achieved *all but one* of the racial objectives demanded by DOJ." Specifically, CD-27 in Houston remains a 'coalition' district as previously authorized by *Petteway*. But Judge Brown's *Petteway* analysis gets it logically wrong by suggesting that the outcomes were driven by the DOJ letter. If Texas had been responding to DOJ's threat, why would they have left one coalition district on the table still subjecting them to liability? That doesn't make sense.

Instead, the correct inference on *Petteway* is that if you do not *have* to draw coalition districts, you may or may not draw them.¹²⁴ And that is exactly what the state did. Texas drew some (CD-27) and dismantled others (CD-9). So, the concept that the *Petteway* change drove or explains all of the variance is at odds with the facts that some coalition districts still exist, and others do not exist—rather than every coalition district having been eliminated. The right inference is that they were conducting the draw on some other criterion than eliminating all coalition districts.

Plaintiffs also seize upon alleged racial shifts in CD-22 and CD-27,

¹²¹ Brown Op. at 107.

¹²² Tr. 10/7/25 AM 148:10-11.

¹²³ Brown Op. at 3 (emphasis added).

¹²⁴ Judge Brown states the law correctly here, Brown Op. at 89, but later misapplies it.

Republican performing districts under both Plan C2193 (2021 map) and C2333 (the final 2025 map), per *LULAC Second Supplemental Complaint* at *42, 56. They allege that the shifts in composition among those districts are performed for racial reasons. Indeed, Judge Brown suggests that changes to CDs 22, 27, 30, 32, and 35 are racial gerrymandering. Here, though, he again struggles to disentangle race from politics, given that, as in South Carolina, "race and partisan preference are highly correlated" in Texas, and these districts are drawn for Republican performance constrained by the knock-on effects from drawing other districts. 127

Indeed, there are clear knock-on effects in C2333 from creating CD-35, which pulls in Guadalupe and Wilson Counties from the C2193-CD15, which then pulls in counties from the east such as Dewitt and Lavaca, and in turn pushes CD27 further east into Wharton and Matagorda Counties to politically balance out new population from Hays and southeastern Travis Counties, in turn pushing CD-22 into Brazoria County to claw back absolute population. To accuse CD-22 and CD-27 of hewing to new racial targets neglects the far more parsimonious explanation consistent with legislative good faith, which is that those districts were moved east to reflect a *partisan* gerrymander.

Both Judge Brown and plaintiffs devote relatively little attention to CDs 15, 28 and 34 under the new plan because they reflect anodyne partisan tweaks, as well as reflect the politically-inconvenient reality of Hispanic Texans in the Rio Grande Valley shifting for Donald Trump.

CD-18 in C2333 does track Black CVAP voting precincts, but plaintiffs fail to disentangle race from politics here. While race is a proxy for partisanship, the problem is that *partisanship is also a proxy for race*. And Black voters in Harris county favor the Democratic party at overwhelming rates, north of 90%, suggesting that a *partisan* packed map grouping together

¹²⁵ Brown Op. at 41-50.

¹²⁶ Alexander, 602 U.S. at 6.

¹²⁷ Supra, Kincaid testimony at

all the most-intensive Democrat precincts would likely track racial lines, given the parallel trend of residential racial segregation. ¹²⁸ Indeed, the much celebrated "dangly bit," or the eastern prong of CD-18 reaching into CD29 on map C2193 and reaching into CD9 on C2333 tracks just such a residential concentration performing at extremely high rates for the Democrat party. To disentangle the partisan correlation from the racial correlation, where that correlation is above 0.9, requires sensitive statistical analysis. Judge Brown relies completely on Dr. Duchin's analysis—which was, unfortunately, miscalibrated. ¹²⁹

CD-33 remains a coalition district, despite being named in the DOJ letter, which undermines the 1:1 DOJ application theory advanced by Judge Brown, since there is not a pattern of actually dismantling pre-*Petteway* coalition districts. How can Judge Brown say that only eliminating *three* such districts in CD-35, CD-9 and CD-18, while leaving in one, amounts to a clear pattern of action? The state only does it 75% of the time, in the one observed instance. If they were really conducting a full-*Petteway* reversal, and abiding by the DOJ's letter, why would they leave in one coalition district that would subject them to the terrors of Harmeet Dhillon's DOJ enforcement arm? While racial gerrymandering claims may proceed "district by district," the state map drawing process indisputably took place on a map-wide draw, given Kincaid's unrebutted testimony.¹³⁰

As to Judge Brown's attack—relegated to a footnote—on CD-7, he argues that Kincaid's failure to eliminate CD-7 is probative of racial intent, because a White Democrat, Lizzie Fletcher, holds that seat. Yet Kincaid credibly testified that there were just not enough degrees of freedom, compared to the core retention constraint, given the nearby presence of CD-

¹²⁸ Supra, Kincaid testimony at 36, 48.

¹²⁹ Infra at 64 et seq.

¹³⁰ Bethune-Hill v. Va. State Bd. of Elecs., 580 U.S. 178, 191-192 (2017) (quoting Ala. Leg. Black Caucus v. Alabama, 575 U.S. 254, 262 (2015)).

¹³¹ Brown Op. at 107, n.403.

38 (Wesley Hunt's district), which was itself relatively compact, and the pressure on CD-22 to move northeast from consolidating CD-35 in Bexar county and the changes in the Rio Grande Valley districts.¹³²

* * * * *

In sum, Judge Brown does fine in his recitation of some of the law governing racial gerrymandering claims, but recitation and application are different things, and his application of law to facts is sorely wanting. To begin, it has been stated multiple times by the Supreme Court that federal courts must "'exercise extraordinary caution in adjudicating claims that a State has drawn district lines on the basis of race." We act so cautiously because reviews of districting legislation "represents a serious intrusion on the most vital of local functions." Judge Brown's analysis is not careful, nor does it appreciate how serious an intrusion is being made here.

Judge Brown's direct evidence analysis is contradictory and legally wrongheaded. He cites *Common Cause Florida v. Byrd* for the proposition that the purported motivations of the DOJ and the Governor "do not become those of the [Legislature] as a whole unless it is shown that a majority of the [Legislature's] members shared and purposefully adopted (i.e., ratified) the [Governor and DOJ's] motivations."¹³⁵ This case helps demonstrate the flaws in Judge Brown's analysis, and I thank him for pointing it out.

Assuming that *Common Cause* represents a proper reading of the law in this circuit, Judge Brown does not provide evidence that the majority of the Legislature shared and *purposefully adopted* the Governor's and DOJ's motivation. Instead, the Judge Brown collects statements from a handful of representatives and then fails to explicitly assert that the majority of the legislature specifically acted to ratify the underlying conduct. Instead Judge

¹³² Supra at Kincaid Testimony, 36-37.

 $^{^{133}}$ Alexander v. S.C. State Conference of the NAACP, 602 U.S. 1, 7 (2024) (quoting Miller v. Johnson, 515 U.S. 900, 915–16 (1995)).

¹³⁴ Id. (quoting Miller v. Johnson, 515 U.S. 900, 915 (1995)).

¹³⁵ 726 F. Supp. 3d 1322, 1364-65 (N.D. Fla. 2024).

Brown spends much of his direct evidence section talking about the secretive plan that was hatched between Hunter and his co-authors but fails to make any credible connection to the intent of the majority of the Legislature as is necessary in *Common Cause*. Judge Brown's only attempted connection is that the Legislature "fulfilled almost everything that DOJ and the Governor desired." ¹³⁶ As will be demonstrated shortly, this claim is simply untrue. Under Judge Brown's own rubric, the DOJ Letter and the statements of Governor Abbott are not direct evidence that race was the "'predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district.'" ¹³⁷

Even if Judge Brown decided to use the standard for direct evidence that was given in *Alexander*, neither the DOJ letter nor Governor Abbott's statements are direct evidence. Direct evidence "comes in the form of a relevant state actor's express acknowledgment that race played a role *in the drawing of district lines*." The logical implication of this description of direct evidence is that direct evidence needs to come from a state actor who has control over the drawing of district lines. Here, Judge Brown provides no evidence, and the record provides minimal support for the prospect that Governor Abbott or the DOJ actually controlled the drawing of district lines in any way.

* * * * *

Turning now to the "indirect evidence," mainly developed by the experts' statistical analysis, Judge Brown gets things woefully off-base.

First, and importantly, Judge Brown studiously avoids any reference to Dr. Barreto, despite the plaintiffs' heavy reliance on him in their post-trial brief, *LULAC Post-Hearing Brief* at 25, 33. Judge Brown also fails to make any reference to Dr. Murray, Dr. Ansolabehere, or Dr. Ely, apparently abandoning days of expert testimony developed in the hearing to grasp after straws.

¹³⁶ Brown Op. at 105.

¹³⁷ Alexander, 602 U.S. at 7 (quoting Miller v. Johnson, 515 U.S. 900, 916.)

¹³⁸ *Alexander*, 602 U.S. at 8.

Instead, Judge Brown depends *exclusively* on Dr. Duchin's analysis.¹³⁹ While Dr. Duchin may be a fine mathematician, she was demonstrably unaware of several of the redistricting criteria used by the State of Texas. Thus, she would likely be forced to admit that her analysis is statistically skewed. On a correct appraisal of her report for its substance—rather than merely being cowed into accepting her conclusions by her strong credentials¹⁴⁰—one will quickly realize that her report is so flawed as to be irrelevant at best and cunningly misleading at worst.

As to the role of an expert in a bench trial, normally "jurors are supposed to reach their conclusions on the basis of common sense, common understanding and fair beliefs, grounded one evidence consisting of direct statements by witnesses or proof of circumstances from which inferences can fairly be drawn." Where a fact-finder needs to draw complex inferences, however, expert testimony is helpful. But expert testimony does not supplant the factfinding role; the Supreme Court has warned that even meritless expert testimony "can be both powerful and quite misleading because of the difficulty in evaluating it." While judges normally sit as gatekeepers of expert testimony, in a bench trial we are tasked with evaluating it. Therefore, we should not hesitate in poking readily-observable holes in expert testimony—precisely as the Supreme Court did in *Alexander*—with this exact expert witness.

In *Alexander*, plaintiffs challenged redistricting around the city of Charleston, South Carolina, for racial vote dilution.¹⁴⁵ The Supreme Court faulted Dr. Duchin's vote dilution analysis for failing to account for partisanship or core retention metrics.¹⁴⁶ It also faulted, in the vote-dilution

¹³⁹ Brown Op. at 108-127.

¹⁴⁰ See Brown Op. at 108, lauding her credentials.

¹⁴¹ Schulz v. Pennsylvania R.R. Co., 350 U.S. 523, 526 (1956).

¹⁴² There are "causes of action in which the law predicates recovery upon expert testimony." *Salem v. U.S. Lines Co.*, 370 U.S. 31, 35 (1962).

¹⁴³ Daubert v. Merrell Dow Pharm., Inc., 509 U.S. 579, 595 (1993) (citation omitted).

¹⁴⁴ Federal Rules of Evidence 702, 703.

¹⁴⁵ Alexander, 602 U.S. at 15.

¹⁴⁶ *Id.* at 33, citing *Bethune-Hill*, 580 U.S. at 191 ("the basic unit of analysis for racial gerrymandering claims ... is the district"); *Ala. Legislative Black Caucus*, 575 U.S. at 262-63 (a racial

context, Dr. Duchin's report for conducting a statewide draw rather than attending to the particular district at issue to identify whether the map cracked or packed it: "Dr. Duchin's conclusion was based on an assessment of the map as a whole rather than District 1 in particular. A state-wide analysis cannot show that District 1 was drawn based on race." 147

Although her analysis was primarily directed toward claims of racial vote dilution, Duchin had three steps in her analysis relevant to a claim of racial gerrymandering.¹⁴⁸ First, she conducted a compactness analysis of the 2025 maps compared to the 2021 maps, and the 2021 maps compared to the 2012 maps.¹⁴⁹ Second, she generated ensembles of hypothetical maps across metro-area "clusters," which were defined as all the territory included in the C2333 districts that touched Travis/Bexar counties (San Antonio), Dallas/Tarrant counties (Dallas and Fort Worth), and Harris/Fort Bend (greater Houston).¹⁵⁰ These maps were the results of random walks and

gerrymandering claim "does not apply to a State considered as an undifferentiated 'whole'"); see also Alexander at 45 (Thomas, J., concurring in part) ("A legislature seeking to gerrymander a district will often proceed by "packing" or "cracking" groups of minority voters But, in areas where 'political groups ... tend to cluster (as in the case with Democratic voters in cities)' apparent packing or cracking can simply reflect 'adherence to compactness and respect for political subdivision lines' or 'the traditional criterion of incumbency protection.' This case exemplifies the problem—Judge Brown observes that Dr. Moon Duchin's report failed to 'account for' the traditional districting principles of 'partisanship or core retention' in 'assessing whether the Enacted Plan 'cracks' black voters among multiple districts... The difference between illegitimate packing and the legitimate pursuit of compactness is too often in the eye of the beholder.") (quoting Vieth v. Jubelirer, 541 U.S. 267, 278)).

¹⁴⁷ *Id*. at 33.

¹⁴⁸ We therefore pass over her analysis of effective minority representation, which was disputed at the hearing due to her changes of denominators between two recent editions of her report to include more past elections in Austin related to Rep. Lloyd Doggett. *See* Expert Report of Dr. Moon Duchin, September 7, 2025 ("Duchin Report"), ECF No. 1384-8 at 9.

Also, between the August and September editions of her report, she made several material changes to her box plot histograms, *compare* Expert Report of Dr. Moon Duchin, August 25, 2025 ("Duchin's August Report"), ECF 1142-6, pg. 14-15; *with* Duchin Report at 14-15. These changes generally ramped up her estimates of outlier behavior. But if she was so certain of her report's results in August, what can explain her materially changed results in September? What is to suggest that her results may not change again, if an out-of-state academic again needs to fly into Texas to override the will of tens-of-millions of voters in the state?

¹⁴⁹ Expert Report of Dr. Moon Duchin ("Duchin Report"), ECF 1142-6, pg. 5-6.

¹⁵⁰ Duchin Report at 1-2, 14-15.

spanning trees mapping out possible permutations within the defined areas.¹⁵¹ Third, she conducted a "winnowing" process, or adjustment of the simulation results from the second step, by applying her choice of "filters" including (i) Republican performance across the cluster, (ii) Trump performance, (iii) urban/rural composition, and (iv) a cap on incumbent double-bunking.¹⁵² The results of these latter two steps are offered at Duchin Report 14-15. ("the histograms").¹⁵³

While Duchin's analysis is an interesting simulation, it contains several internal¹⁵⁴ and external threats to validity.¹⁵⁵ Her report also contains several weaknesses in presentation—such as inadequately labelled histograms that we nevertheless do our game best to interpret, but which arguably fail the burden of production on the plaintiffs' side.¹⁵⁶ She also offers several

¹⁵¹ I use the term random walk here to refer to Markov Chain analysis, which is a step-wise outcome generation process where the prior state probabilistically influences the subsequent state. A demonstrative thought experiment is the "drunk at the lamppost" scenario. In this experiment, a drunk moves randomly from the lamppost, in any direction. Where is the most likely place for him to end up after an hour? Right back at the lamppost.

As to spanning tree analysis, this is a topological exercise that in Euclidean space collapses to geometric connection of vertices. Put simply, this is connect-the-dots, with probabilistic weights that affect the probability of the spanning tree's connecting to the next vertex. Duchin describes these weights as "surcharges" geared towards compactness. Duchin Report at 19.

¹⁵² Duchin Report at 14-15, 22-23 (the three histograms and Appendix E).

¹⁵³ See also Brown Op. at 108-122.

¹⁵⁴ In statistics, an internal threat to validity is a factor that can undermine the proposed relationship between a variable an outcome. The simplest example is "omitted variable bias," where a third factor C drives the relationship between observed factors A and B. Since Hume, we have all been aware that correlation does not imply causation. Omitted variable bias is one of the phenomena that drives this distinction.

¹⁵⁵ An external threat to validity limits the relationship between a research study and its application to the external world. While the most famous examples typically come from the medical literature, as in placebo trials affecting patients' behavior, which demands the double-blind protocol, a simpler example is that external conditions may change during and after the time of the study. Instantly, this could include Hispanic voters shifting their preferences to the Republican party in Texas, rather than remaining a constant figure, as was developed by Dr. Lewis's expert testimony and report. See Expert Report of Jeffrey B. Lewis, 3:21-cv-00259-DCG-JES-JVB ECF No. 1386 at pg. 4-6 (Exhibit 570) ("Lewis Report").

¹⁵⁶ See Duchin Report at 14-15, lacking any labels of the blue dots in her histograms. She was invited to clarify the meaning of these actual outcomes, compared to the ensemble simulation, during her oral testimony. *Morning Transcript* 10/4/2025 at *130, ll.10-24. However, she failed to do so. Neither she nor plaintiffs' counsel ever clarified which dot corresponds to which real outcome district's composition. It is best to scrutinize these small points, which compared to the broad

conclusory leaps toward assuming intent.¹⁵⁷ While expert witnesses are welcome to opine on ultimate issues, in a bench trial this cuts both ways, where judges are then responsible for scrutinizing the conclusions advanced by an expert.¹⁵⁸

First, on compactness, the 2025 maps scored better on every measure in Duchin's own analysis, supporting a soft inference that traditional redistricting criteria were used. One might say that Texas has a little less 'mander' to its 'gerry.'

Further, Duchin's analysis of precinct splits was completely rebutted by Adam Kincaid's testimony. Duchin announced the conclusion that "the state has not disclosed the use of any partisan data below the precinct level, while race data is available at the block level [so that] the high number of precinct splits ... is more indicative of a focus on race than on partisanship." However, in Kincaid's testimony, he reveals the State's use of commercially available and State-provided partisan data available below the precinct level, directly undermining Duchin's conclusions on compactness and precinct

labelling on the Y-axis provide little guidance, and compare them to the available statistics in the C2333 tables to figure out exactly what she means. *Cf.* C2333 summary statistics at pg. 13-15, https://capitol.texas.gov/tlodocs/892/districtplanrpts/pdf/HB00004H_PLANC2333.pdf.

¹⁵⁷ For example, Duchin bizarrely asserts that congressional districts CD-29, CD-18 and CD-9 were rotated in their name assignment so as to confuse any reviewing body. Duchin Report at 6. But the reason is not particularly confusing: CD-18, by virtue of having been Sheila Jackson Lee's former seat, the "Barbara Jordan district," while also being the easternmost seat in central Harris County, could not have been moved outside the county without provoking greater uproar. So, it made sense to move CD-9, at least in terms of *name*, even though CD-9 substantially swapped locations with CD-18 measured by core retention, such that CD-18 remained a safe Democrat seat. Duchin's assertion that the name change was made for conspiratorial and racist reasons suggests her motivated reasoning, as contrasted with dispassionate expert testimony.

¹⁵⁸ Federal Rule of Evidence 704; see generally, Molly Treadway Johnson et Al., Expert Testimony in Federal Civil Trials, a Preliminary Analysis, FEDERAL JUDICIAL CENTER (2000).

¹⁵⁹ See Duchin Report at 6, showing improved scored on Polsby-Popper, Reock, and Block Cut Edges in Plan C2333 as compared to Plan C2193. Higher scores on Polsby-Popper and Reock are better, reflecting greater "circle-like" nature to a district, where a perfect circle would have the highest score. Lower scores are better on Block Cut Edges, reflecting the total 'scissoring' or serration in the plan.

¹⁶⁰ Duchin Report at 5-6.

¹⁶¹ *Id.*; Duchin Report at 16 (conclusions).

splitting.¹⁶²

Second, I recognize that Dr. Duchin attempted to improve her analysis from *Alexander* by including partisanship and core retention weights in her map-drawing algorithm. However, several problems emerge. One is that she does not include the *same* partisanship constraints as those used by the map-drawer. Unlike Duchin's blanket 55-Republican metric, in real life Kincaid had included constraints to reflect that (i) any Republican in a greater than 60-R district could not be reduced below 60, (ii) any Republican in a below-60-R district had to be kept constant or improved, and (iii) any newly drawn districts were to be as Trump-favorable as possible while also winning Ted Cruz the senate seat, beginning at the 10% margin. (Judge Brown handwaves past this concern, stating "The State Defendants have... failed to persuade us that Dr. Duchin's 55% figure is off the mark," while failing to recognize that this departure likely skews Duchin's outputs. (164)

Duchin also conducted only metro-area or cluster-wide draws, rather than any state-wide draw, whereas we know that Kincaid conducted a statewide draw beginning in the northwestern corner of the state, rather than conducting metro-area or cluster-wide draws. Therefore, the knock-on effects from one district affecting another may significantly affect the *range* of results included in the simulation outputs. Each of her clusters includes a significant number of surrounding counties outside the metropolitan core of Dallas-Fort Worth, Houston, and San Antonio. However, this underrepresents the degrees of freedom available to Kincaid—we know from his testimony that he drew eastern counties into CD-32 to make it perform for Republicans, but he likely had numerous other options available across rural, Republican-performing counties generally in the Dallas-Fort Worth

¹⁶² Supra Kincaid testimony at 28-29; compare Prelim. Inj. Hr'g Tr. Day 6 (Morning), at 37-39; with Prelim. Inj. Hr'g Tr. Day 5 (Morning), at 84:15-23.

¹⁶³ See Defs.' Post-Hr'g Br., ECF No. 1284, at 51-52.

¹⁶⁴ Brown Op. at 126-127.

¹⁶⁵ Supra, Kincaid testimony at 30.

 $^{^{166}}$ See Duchin Report at 14-15, considering the core targets and tails of the generated ensembles.

¹⁶⁷ Duchin Report at 1-2.

area, such that constraining the map-drawing space to only the counties *actually* chosen underrepresents the available space and constrains the output of the ensemble.¹⁶⁸ Where Duchin then complains that the actual outcomes are outliers, that may be an artifact of her flawed map-drawing process.¹⁶⁹

A statewide map draw, rather than one localized to 7 or 8 congressional districts in the Harris and Dallas-Tarrant County metros, will necessarily have greater variance. But Dr. Duchin concedes that she limited her analysis only to the subsets of those metro areas, thereby hacking a lower variance figure that ultimately excludes the final outcomes.¹⁷⁰

While Duchin was criticized in *Alexander* for not analyzing a particular district for vote dilution purposes, Judge Brown uses her analysis to support a racial gerrymandering claim that depends on statewide statistics. ¹⁷¹ Therefore, unfortunately, the opposite criticism carries water: that she failed to conduct a statewide draw that would fully capture the range of possible outcomes in the ensemble.

If Judge Brown had pursued a vote-dilution theory, the relevant interpretation of Duchin's analysis might differ. But here, her analysis is clearly flawed by constraining the space within which the spanning trees could generate sets of possible maps. She should have realized that the metro constraint foreseeably manipulates the variance in her derivative statistics in a way that favors her preferred outcome.

Third, Duchin's winnowing criteria did not accurately capture the possible distributions available to a state map-drawer, because she chose off-base and thereby skewing filters. When selecting a subset from a wider set, or even transforming a set entirely, using accurate winnowing criteria can affect the *variance* or the *skew* of your outcome. So, where she compares her adjusted sets (in orange) to the ultimate outcomes (in blue), the probative nature of her analysis is severely limited by the fact that she used off-base

¹⁶⁸ Supra, Kincaid testimony at 30.

¹⁶⁹ Duchin Report at 16.

 $^{^{170}}$ Id. at 1-2. Judge Brown discusses her cluster method, Brown Op. at 108-110, but fails to consider its constraints on variance and how those may drive skew.

¹⁷¹ 602 U.S. at 33.

winnowing criteria.¹⁷² It is also worth pointing out that under *Alexander*, she needs to attend to particular districts—so it is legally insufficient for her to refer merely to some possible set of outcomes in black and orange without accounting for the actual outcomes in blue.¹⁷³ It is the plaintiffs' burden to establish which districts were cracked and/or packed, just as in *Alexander* it was the plaintiffs' burden to show that that specific Charleston district had been racially vote-diluted.

Dr. Duchin's generation and winnowing conditions explained in Appendix E indicate numerous loose ends. ¹⁷⁴ For instance, leaving districts within 1% of population for Ensemble Generation does not exclude the possibility of splitting precincts at the census bloc level for the last mile. ¹⁷⁵ Indeed, where districts total 766,987 leaves about 7,670 voters on the table for each district—allowing the variance in both directions actually doubles this to 15,340 potential swings, whereas the true maps were required to be strictly equi-populous. That distinction can warp the distribution in multiple ways—but the most logical inference is that the truly available sets were a more discrete or constrained set and therefore would look skewed relative to a set chosen on softer parameters. Considering that Duchin completely ignored independents, libertarians, and greens, when we are at the level of arguing about a few thousand voters, these 'silent' votes could be disruptive in years with stronger or weaker, e.g., libertarian performance or independent swings.

As to her implementation of core retention in the spanning trees with either a 0.1 or 0.2 surcharge for crossing counties, census-designated county subdivisions (natural communities of interest), or newly drawn districts, Duchin does nothing to suggest that this surcharge results in figures with equivalent core retention to the actual map, and therefore does nothing to suggest that her core retention weights resemble those actually used. If she used either lower or higher core retention rates, rather than deriving her core retention weights from real life, her departure could foreseeably skew her

¹⁷² See Duchin Report at 14-15.

¹⁷³ *Id*.

¹⁷⁴ Duchin Report at 22-23.

 $^{^{175}}$ *Id.* at 22 ("Population balance is enforced by requiring each step to leave districts within 1% of ideal population.").

results. Indeed, we know that core retention was *intentionally* violated in CD-9, given Kincaid's testimony that he planned to pull one Republican-performing district out of Harris County. Her spanning-tree analysis completely fails to distinguish between core retention for Republican incumbents (which was favored) and core retention for Democrat districts (which was actively disfavored, as through targeting Greg Casar and Lloyd Doggett in Austin through substantially changing CD-35 and CD-37).

As for Duchin's partisan weightings, her partisan score lagged considerably, including elections from 2012,¹⁷⁶ whereas Kincaid's partisan shading principally incorporated President Trump's and Ted Cruz's recent performances.¹⁷⁷ Given the recent changes in Hispanic preferences for the Republican party in Texas, using a lagging indicator could foreseeably skew the distribution of ensemble maps away from recent changes and thereby falsely represent the actual maps as outliers.

Dr. Duchin's use of a 50.1% sharp cutoff for Republican wins on her simulated map was problematic 178 and did not reflect the realities of the map-drawing process conducted by Kincaid, which aimed to provide far greater insulation. 179 Foreseeably, Dr. Duchin's ensemble likely included a bulk of sub-55 maps which drove statistical skew, at least in the original outputs, even if not in the adjusted outputs. On wider tails embracing 54%, or 53% Trump-performance benchmarks, the variance would predictably be wider because there are 'more possible ways' to draw permissible maps within that space. Fortifying in underperforming Republican incumbents such as Dan Crenshaw could also warp the map, she failed to account for wins above 51%, instead analyses win and loss at the 51% cutoff.

Keep in mind, the general goal in gerrymandering is win by a little, lose by a lot.

¹⁷⁶ *Id*. at 22-23.

¹⁷⁷ Supra, Kincaid testimony at 28-29.

¹⁷⁸ See Duchin Report at 20 ("Republican performance: Republicans overall have at least as many wins in each cluster as in C2333"). But the map-drawer did not care about 50.1% wins—he cared about safe wins. *Cf. Morning Transcript* 10/4/2025 at *63, ll. 5-12.

¹⁷⁹ Supra, Kincaid testimony at 28-29.

Further, Dr. Duchin leaves out at least three other constraints: current addresses of representatives' homes, keeping congressional offices within districts, and favoring natural geographic boundaries like highways and rivers. Duchin actually used outdated incumbent data¹⁸⁰—and while she claims that this had no effect, it can predictably have affected the skew and variance in generating thousands of maps, which discredits Judge Brown's "box-and-whiskers" histogram standard deviation interpretation.¹⁸¹ Dr. Duchin was aware that the Winnowing Condition incumbent addresses were out of date, and she has been requesting updated addresses for months from her own counsel. She knowingly conducted a flawed analysis, which would have skewed the maps in unpredictable ways—in particular by pushing the actual maps further toward outlier status. Also, the urban-rural winnowing condition forces the redrawn CDs 9 and 32 to face strong outlier conditions, given the constraint down to only 10% swing, and the substantial relocation of those districts across Harris and Dallas counties respectively.¹⁸²

Another more arcane statistical feature that likely reduces variance is the set transformation involved in her branching trees analysis, since that only moves the line between two districts at a time, excluding other permutations from its random walk.¹⁸³ The problem is that this takes the outer-boundary conditions as given and modulates down the variance, whereas the variance on unbounded line-drawing can be expected to be higher. This reflects the same principle developed *supra* as to the statewide draw, which is that *a statistic on a statistic generally loses variance*. For her to then fault the actual

¹⁸⁰ Morning Transcript 10/4/25, at 9:4-10; *see also* Defs.' Post-Hr'g Br., ECF No. 1284, at 54.

¹⁸¹ Brown Op. at 112-116.

¹⁸² As to CD29 and CD9, answering the question: What is the significance of altering the urban, rural -- the urban-rural demographics of the county? Duchin's answer: Well, this is a kind of configuration that's often consistent with taking, as I said earlier, pieces of more diverse urban population and combining them with more rural population. This is the kind of reconfiguration you would often see when trying to change the partisan composition of a district. This is consistent with partisanship, but it also has demographic markers. (Transcript Morning 10/4/25,*51, ll. 9-17).

¹⁸³ See Duchin Report at 22, 23 (on "filtering down to maps that meet all of these conditions..."). Note, this is not filtering in the sense of strictly pulling a subset—this is filtering in the sense of a matrix transformation, as is shown by the fact that the curves are sometimes non-overlapping, see Id. at 15, Figure 9, Plot 4 (non-overlap).

outcomes for being beyond her down-regulated variance tails may be in error.

Further, Dr. Duchin's conclusions derived from her ensemble analysis are misrepresented, even on her own terms. The correct interpretation, in the social science literature, of a distribution analysis such as Dr. Duchin's is that any outcome within a set number of standard deviations is not considered a statistically significant outlier. Her use of the 1st and 99th percentile cutoffs is slightly unusual, given that two standard deviations generally embrace the 95% of the central distributions, while three standard deviations embrace 99.7% of the distribution.¹⁸⁴ Even on merely two standard deviations (narrowing the tails at Duchin Report 14-15), however, her conclusions as to Travis/ Bexar Counties, suggesting that "patterns characteristic of packing and cracking... are present in each of the three clusters," is flatly untrue. The outcome needs to be an outlier to overcome the null hypothesis, which is that the map is normative and exhibits no evidence of cracking and packing. Therefore, as to the Travis/Bexar cluster, Dr. Duchin's analysis actually supports the *opposite* inference, which is that the maps were not racially gerrymandered, but instead were partisan draws. 185

This should have caused a dispassionate academic some pause. But Duchin plowed on. So next, the correct interpretation of Tarrant/Dallas suggests that *one* of the actually drawn districts (the sixth of eight in the series) was a statistically significant low outlier. And for Harris/Fort Bend, four outlier districts were low, while one was high. 187

¹⁸⁴ See Duchin Report at 15, figure 8 ("The results of the algorithmic runs are shown in the boxplots in black, where the whiskers span from the 1st to the 99th percentile in each case.").

¹⁸⁵ See Duchin Report at 15, figure 10.

¹⁸⁶ See Duchin Report at 14, figure 8.

¹⁸⁷ An additional wrinkle here is that Duchin employs the pre-*Petteway* "all persons of color" approach, meaning that she aggregates together Black, Hispanic, Asian and Pacific Island, Native American, and the growing group of 'other' and mixed-race voters. Therefore, her high outlier in Harris-Fort Bend may itself be artificially inflated through the inclusion of these voters who are not material to Judge Brown's theory and should properly have been accounted for in the ensemble analysis.

Additionally, it neglects the possibility that through the census counting of non-citizen voters, for example Hispanic voters in Colony Ridge in *Liberty County*, i.e. CD-9 in C2333, there is a deflation in the CVAP figure. Kincaid was required to draw maps equi-populously based on census results, so any counting of non-citizens may correspondingly deflate the CVAP figure for that district.

As for Dr. Duchin's conclusions elicited in testimony, she got more specific on the particular precincts. She asserts that you see residential splits by race across CD-18 and CD-7, but there is drift across in either direction of Whites and Hispanics. In CD-29, there is a significant concentration of white voters, rebutting the claim that the census lines neatly follow paths of segregation. Indeed, the CD-18-C2193 "Barbara Jordan" district in Harris County more clearly followed the Black population lines than the newly reconfigured CD-29, which has a lower Black CVAP but is overall more diverse. For CD-9 vs CD-18, she also failed to contemplate the political protection of the "Barbara Jordan district." As in *Alexander*, where the Supreme Court expressly approved South Carolina's protecting Jim Clyburn's seat with a sur-abundance of democrat voters, Duchin here again fails to disentangle race from politics by ignoring relevant political alternatives. In the supreme Court expressly approved south Carolina's protecting Jim Clyburn's seat with a sur-abundance of democrat voters, Duchin here again fails to disentangle race from politics by ignoring relevant political alternatives.

On cross-examination, Duchin also expressly ruled out using commercially available datasets with partisan data at the *house* level to interpolate data below the voting precinct level, ¹⁹² which Kincaid later discussed. ¹⁹³ The State of Texas also likely had access to specific voter registration data, which it could have provided to the legislature. ¹⁹⁴

* * * * *

All these holes having been poked, Judge Brown breathlessly wraps himself in Duchin's report.¹⁹⁵

This dynamic may negate the inference of cracking in at least one of Duchin's Harris/Fort Bend outliers, see Duchin Report at 15, Figure 9.

¹⁸⁸ Morning Transcript 10/4/2025 at *51-53.

¹⁸⁹ *Id.* at *52.

¹⁹⁰ See Plan C2333 summary statistics at pg. 14, https://capitol.texas.gov/tlodocs/892/districtplanrpts/pdf/HB00004H PLANC2333.pdf.

¹⁹¹ See Alexander, 602 U.S. at 1.

¹⁹² Generally, note that County > Voting Precinct > Census Block > House, in terms of levels of partisan (or racial) voter data.

¹⁹³ Supra Kincaid testimony at 28-29.

¹⁹⁴ Prelim. Inj. Hr'g Tr. Day 6 (Morning), at 37-39.

¹⁹⁵ Brown Op. at 108-127.

Judge Brown fails to read the maps correctly, declaring that "the orange figures—which are the ones we're most interested in—represent the range of minority populations for each district in each randomly generated map." ¹⁹⁶

Not so simple.

What they actually represent is the adjusted or transformed set of maps after application of Duchin's winnowing criteria. And it's not that these are a strict subset—they are really a transformation, given that they have different statistical features reflecting a different imputed underlying natural population.

Any statistic tries to capture, from a black box *a priori* condition or *null hypothesis*, the truth of an underlying population. The correct interpretation of the black boxes on the histogram is as representing the 50th percentile, 25th and 75th (box), and then 1st and 99th (whiskers) cutoffs on the ensembles of maps in terms of their expected all-minority "POC" CVAP composition. The orange boxes represent the ensembles after transformation.

So, when Judge Brown next says "the district with the lowest minority population in the Dallas/Fort Worth area had a minority percentage somewhere between 26% and 41%," he is a bit off. What that orange figure shows is that *after* applying the winnowing conditions, the 1st percentile of maps started around 26% POC CVAP, and the 99th percentile of maps started around 41% POC CVAP. On 40,000 maps, this means 400 were outside of the range in each direction, for 800 total. 199

Where Judge Brown concludes "if a dot falls outside the box but within the 'whiskers,' that suggests that the enacted district's minority

¹⁹⁶ Brown Op. at 112.

¹⁹⁷ See Duchin Report at 14 ("The orange boxplot shows the statistics once we have filtered the ensembles to only include plans that meet the full checklist of districting principles."); *Id.* at 22-23 (Appendix E) (explaining the first round of district generation and the second round of winnowing).

¹⁹⁸ Brown Op. at 113.

¹⁹⁹ Nevertheless, within orthodox social science, this would be a fine measure to identify outlying outcomes with a *p*-certainty value below 0.05.

population is on the outer edge of what we'd expect if the Legislature were relying exclusively on partisanship and other race-neutral considerations," he gets it subtly wrong. A C2333 outcome showing up in the simulation 'whiskers' means there is no outlying behavior identified at all. It cannot be said to be "on the outer edge," it just means nothing relative to the *null hypothesis*.

Additionally, where Judge Brown states "If the dot falls outside the whiskers entirely, that suggests that none of the race-neutral maps that Dr. Duchin generated have the racial characteristics approximating that of the enacted district," he is again without foundation.²⁰¹ It does not mean that *none* of them had that characterization—it means that less than 1% did, rendering it an outlier relative to the simulation's imputed target.

Where Judge Brown then analyzes the Houston and Dallas-Fort Worth cluster maps, he fails to account for any of the statistical phenomena discussed above, which may affect a sensitive calibration. ²⁰² If you are targeting the wrong natural imputed population because of off-base inputs, your outputs will be off-base.

Additionally, where Judge Brown suggests that "those [patterns] in the Travis/Bexar County area... are even less [stark], they nonetheless reinforce the conclusion that the enacted map is a statistical outlier," he reveals his statistical naivety. What the Travis/Bexar cluster actually reveals is that there is no statistically significant outlier behavior—so this evidence actually cuts in the opposite direction and supports an inference of a *partisan* gerrymander. ²⁰⁴

Judge Brown praises Duchin's "enormous number of maps" 205

²⁰⁰ Brown Op. at 116.

 $^{^{201}}$ *Id*.

²⁰² *Id.* at 118-20.

²⁰³ *Id.* at 119, 122.

²⁰⁴ *Id.* at 122.

²⁰⁵ *Id.* at 112.

and her "tens of thousands of congressional maps." But this is similarly clueless. It would not matter whether there was 1 map, 1 million maps, or 1 billion maps drawn, provided that the criteria used for drawing those maps were off-base. As a matter of probability theory, the underlying imputed natural population being sampled is *not* the same population as that which was actually sampled. A statewide map draw, rather than one localized to the 8-or-so congressional districts in the Harris and Dallas-Tarrant metros, will necessarily have greater variance. But Dr. Duchin concedes that she limited her analysis only to the subsets of those metro areas, thereby hacking a lower variance figure that ultimately excludes the final outcomes.

Moreover, where Judge Brown praises Duchin's consideration of partisanship, he reproduces her phrase that she "executed a run seeking to match the number of districts with Trump's 2024 major-party vote share over 55%" and achieved results consistent with her prior findings. But she offers no report of those robustness tests, which would have different variability, and instead presents the 50.1% cutoff figures, which may impact the skew of her distribution.

Plaintiffs have the burden of production of showing Duchin's robustness—merely calling something "consistent" does not mean that it showed statistically significant outlier variance, where consistency is an ambiguous term. After all, Duchin misrepresents the Travis/Bexar cluster as affirmatively showing evidence of cracking and packing where that shows nothing as a statistical matter. So, Judge Brown can handwave over Duchin's nonconformity with Kincaid's constraints, but Judge Brown has no rational basis to reject the idea that "Dr. Duchin's 55% figure is off the mark." He just does not know. And in the very next breath, he inverts the burden of proof, "if raising the floor to a value

²⁰⁷ Also, where Judge Brown claims that "not one of them had racial demographics that looked anything like the enacted map," Brown Op. 127, this is flatly without logical foundation, given that 400 maps were off either end of the tails, *supra* at 76.

²⁰⁶ *Id*. at 128.

 $^{^{208}}$ Id. at 125 (quoting Tex. NAACP Prelim. Inj. Ex. 208, ECF No. 1384-8, at 23) (Duchin Report at 23).

closer to 60% would have undermined Dr. Duchin's conclusions, the State Defendants could have introduced expert rebuttal testimony to that effect." ²⁰⁹

Exactly the same logical errors apply where Judge Brown handwaves away the internal threat to the validity of Duchin's favoring core retention for *both* Democrats and Republicans (rather than Republicans only), and using an out-of-date list of incumbent addresses.²¹⁰ Judge Brown inverts the burden of proof and claims to know things he just cannot know from this record.

Duchin failed to prepare any state-wide *Alexander* map, which certainly would have included wider variance figures, that in turn may plausibly have included the truly-chosen districts within two standard deviations of the normative draw.²¹¹ But Judge Brown hand-waves away this issue as well.²¹² In particular, his drawing a favorable inference from the absence of a map is somewhat absurd.²¹³

It would have actually been quite easy for Duchin, Barreto, or any other expert to draw *Alexander* map(s) based on a statewide draw using the same software. Therefore, plaintiffs' failure to muster such a map supports a negative inference against them, where that negative inference would be that statewide draws include the actual maps within two-standard deviations of their statistical tails—and for that reason, plaintiffs studiously avoided producing *any* statewide maps or derivative statistical figures. So, I do not assert that it is impossible to draw an *Alexander* map—I just find it damaging that plaintiffs failed to muster one when mustering one would be so easy, and from which one may infer that mustering one would potentially have been more damaging than cherry-picking by metro area.

²⁰⁹ *Id.* at 127.

²¹⁰ Id. at 127-38.

 $^{^{211}}$ In probability theory, the variance space on any larger set is larger than the variance space on a smaller set of elements using the same draw.

²¹² Brown Op. at 130-34.

²¹³ See id. at 133.

There is something wrong with this picture.

Moon Duchin contends that she could run "a million maps in a matter of seconds" on a digital watch and have her robot execute a hundred thousand simulations in about an hour.²¹⁴ Yet neither plaintiffs nor their experts produce a single *Alexander* map.

Let's think of this in the context of an on-off switch.

Suppose the switch is turned off, and plaintiffs cannot produce an *Alexander* map that achieves the same partisan mapmaking criteria and greater racial "balance." It strains credulity to suggest that they should be given a pass because the experts "didn't have time" when "[a]ny expert armed with a computer 'can *easily* churn out redistricting maps that control for any number of specified criteria.'" Dr. Duchin's digital watch (the same one she claims can run a million maps in seconds) is more than capable. Plaintiffs want the extraordinary and drastic remedy of enjoining the 2025 Texas Congressional Map, so it is their burden to clearly show that they are entitled to such drastic, equitable relief. Bearing this in mind, it is it is highly inappropriate, in light of the weight of the procedural and substantive case law, for Judge Brown to give plaintiffs a pass and suggest that timing is the *issue*.²¹⁷

The real *issue* is that Judge Brown is embarking on a results-oriented crusade against the Texas Legislature. On his misguided journey, Judge Brown does not bat an eye, improperly bestowing unearned deference to supposed "experts" such as Duchin, while conveniently omitting discussion of other "experts" such as Matt Barreto, whose testimony is so problematic that it is

²¹⁴ Tr. 10/6/2025 AM 75:25-77:5.

²¹⁵ See Brown Op. at 134.

²¹⁶ Alexander v. S.C. State Conf. of the NAACP, 602 U.S. 1, 34 (2024) (quoting Cooper v. Harris, 581 U.S. 285, 337 (2017) (emphasis added)).

²¹⁷ Plaintiffs' counsel cited Duchin's new job as reason for the delay in immediately turning over Duchin's materials to the State. Tr. 10/4/2025 14:24-15:1. When asked, plaintiffs' counsel sidestepped the question whether Duchin, a well-paid, purported "expert," did nothing between September 26th and the day of her testimony. *See id.* 15:2-14. Indeed, plaintiffs' counsel did not explicitly foreclose the possibility that nothing was done. *See id.*

²¹⁸ Plaintiffs, during the preliminary injunction hearing, presented the testimony of six experts. However, Judge Brown, in his 161-page opinion, omits any discussion of the following five

unusable.²¹⁹ Yet Judge Brown has no problem tossing the longstanding presumption of legislative good faith straight into the trashcan, as if the presumption of legislative good faith were a relic of a bygone era. Judge Brown pretends to know better—and to prove it, he is willing to contort himself into an illogical straitjacket. He cannot escape.

Now, let's consider a more nefarious scenario.

Suppose the switch is turned on, and plaintiffs or their purported "experts" *could* have produced an *Alexander* map. The fact that they did not file an alternative map curing the alleged discriminatory infirmity (the one they purport to care about) tells you all that the instant case is about —*partisan gain*. Duchin makes no bones about this, either. She, made it clear that she would not hazard to draw an alternative map, despite her extensive experience drawing maps in other states, because partisan gerrymandering is not her "motivating influence." ²²⁰

But Duchin may have a motivating influence.

Her CV gives us a clue.²²¹ Duchin notes that her amicus brief²²² was cited

plaintiffs' experts: David Ely, Stephen Ansolabehere, Loren Collingwood, Matt Barreto, and Daniel Murray. Their collective testimony spanned several days, and they submitted hundreds of pages of expert reports. Yet, Judge Brown, despite his best efforts, fails to make a fleeting reference to these five experts. If Judge Brown could, he would. For what it's worth, this dissent, in a footnote, tells you more about these plaintiffs' experts than Judge Brown's entire opinion does. And the reason is obvious—their testimony is unhelpful at best, or their analysis is flawed at worst.

Judge Brown won't tell you that. I just did.

²¹⁹ Plaintiffs' top expert Matt Barreto is a Soros operative. His CV confirms it. He expects to receive \$2.5 million in his Soros piggybank. Soros has been pumping money into Barreto's UCLA Voting Rights Project for years. And this steady supply of money will not stop until the new year, at the earliest. Unsurprisingly, Barreto has been on quite the road show, parading across the country opposing Republican redistricting. Judge Brown could not plausibly conjure up anything helpful from Barreto's testimony, which lasted from 9:20 AM – 3:43 PM (including breaks) on October 4th. If Judge Brown could, he would. His testimony is untouchable (and not in the good way).

Judge Brown won't tell you that. I just did.

²²⁰ Tr. 10/6/2025 AM 137:14-138:10.

²²¹ Duchin Decl., Ex. F at 31. (Document 1142-6).

²²² To be clear, it is perfectly appropriate for someone to file an amicus brief. In fact, amici often help judges understand complex issues and background information. I note her involvement in the *Rucho* case because she remarked, at the preliminary injunction hearing, that partisan gerrymandering is not her "motivating influence." Tr. 10/6/2025 AM 137:14-138:10.

in the *Rucho* dissent.²²³ *Partisan* gerrymandering may be her main problem.²²⁴ She had her chance in *Rucho*. Her brief was not persuasive enough to convince the Court to rule the other way.²²⁵

Rucho is not the only case where Duchin wishes the Supreme Court ruled differently or found otherwise. The Court noted, in *Allen v. Milligan*, that "Duchin's maps were based on old census data—from 2010 and 2020—and ignored certain traditional criteria, such as keeping together communities of interest, political subdivisions, or municipalities." ²²⁶²²⁷

There's more.

A few years after *Rucho*, she retooled her conclusion in *Alexander*, to say "that it is 'not plausible' that the dilution was a mere 'side effect of partisan concerns'".²²⁸ The Supreme Court kept with tradition—it discredited Duchin for "good reason" because "various parts of Dr. Duchin's report did not account for partisanship or core retention."²²⁹ The Court could have stopped there, but it didn't: "Moreover, Dr. Duchin's conclusion was based on an assessment of the map as a whole rather than District 1 in particular. A state-wide analysis cannot show that District 1 was drawn based on race."²³⁰ The Court continued: "Given these *serious problems*, it is no wonder that the challengers cite Dr. Duchin's report only in support of their racial vote-dilution claim. It has *no probative force* with respect to their racial-gerrymandering claim."²³¹

Notice the pattern.

To his credit, Judge Brown does point out how Duchin was discredited

²²³ Rucho v. Common Cause, 588 U.S. 684, 742 (2019) (Kagan, J., dissenting) (citing the Brief for Mathematicians et al. as *Amici Curiae*).

²²⁴ Rucho Brief for Mathematicians et al. as Amici Curiae at *12 (arguing that vote dilution, on the basis of partisanship, is problematic).

²²⁵ Judge Brown won't tell you that. I just did.

²²⁶ Allen v. Milligan, 599 U.S. 1, 34 (2023).

²²⁷ Judge Brown won't tell you that. I just did.

²²⁸ Alexander v. S.C. State Conf. of the NAACP, 602 U.S. 1, 33 (2024).

²²⁹ *Id.* at 33.

²³⁰ *Id*.

²³¹ *Id.* (emphasis added).

in *Alexander*. But he has no choice but to do so.²³² Her flawed methodology is so patently obvious in a case that was routinely cited in briefs and subject to great discussion at the preliminary injunction that even Judge Brown cannot escape this reality.

But merely acknowledging the truth would be an exercise unfamiliar to Judge Brown. Instead, he can't help himself. Judge Brown gives "extra credit" to Duchin for turning in the assignment the Supreme Court gave her in *Alexander*. I have news for Judge Brown. She turned it in late. But I am not surprised that Judge Brown is an easy grader—the lawyers in *Petteway* can tell you all about it. Judge Brown also uses the same exam every year, so it's easy to get an excellent grade in his class, especially if you've taken a class or two with him before.

Whether Judge Brown likes it, gravity exists. So does Alexander.

Article III courts have a solemn responsibility, especially in bench trials, to assess expert reports for what they are actually arguing and the substance of their statistical claims, rather than merely being impressed by credentials. Where an expert report fails to show anything, by virtue of its internal threats to validity and external threats to validity, it is judicial aggrandizement to leap across the bench to save an infirm expert report.

Put plainly in the light of day, given Judge Brown's lack of statistical foundation, Duchin's analysis is *irrelevant*. Plaintiffs fail as a matter of law to disentangle race and politics as is required under *Alexander*.

I dissent.

* * * * *

Relatedly, the plaintiffs' own supplemental PI briefing shows the importance of statewide changes in map drawing. While detailing the history of the editions from C2308 to C2331 and finally C2333—with which Judge Brown neglects to grapple—plaintiffs concede that the changes from C2331 to C2333

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²³² Judge Brown relies exclusively on the testimony of *one* of the six plaintiffs' experts, Duchin. The testimony of the other five is anywhere on the spectrum between unusable at best to deeply flawed at worst. It speaks for itself.

not only moved Liberty County (population approximately 115,000 compared to total districts of 766,987 persons), but then sliced off the top of C2331-CD9 and put that back into C2331-CD2, around Lake Houston and Huffman, which ultimately had knock on effects in the 36th, 14th, 10th, and 17th. So, the variance induced by these changes—where the only unchanged district statewide was in the 19th based around Lubbock—needs to be accounted for by both Judge Brown and Dr. Duchin.

As for Judge Brown's much-ballyhooed 49 and low-50 series numbers, Judge Brown makes zero effort to challenge or even discuss the prevalence of near-50 cutoffs in the opposite direction: indeed, would they suggest it is an intentional racial gerrymander when the legislature drew C2333 CD-8, a district west and north of Houston, at 49.3% Anglo?²³³ Conversely, plaintiffs also have little to say about CD-23, covering the Western reaches of the Rio Grande, but which is already held in Republican hands. Plainly, they only dispute near-50 cutoffs where those affect elected Democrats' chances in the next election—which gives away the goose that what offends plaintiffs is not racial injury, but partisan targeting permitted under *Rucho*. Nor do they identify any problems with CDs 6, 12, 14, or 25, even though those all enjoy top-line low-50s and high-49s in their relative Anglo and non-Anglo compositions. But that is because each of these districts is held by a Republican either equally advantaged or further fortified by the C2333 2025 maps, per Kincaid's undisputed map-drawing constraints.

Further, all of these top-line high 49 and low 50-51 figures reflect the statistical trend in Texas that the Black and especially Hispanic populations are *younger* than the White population, meaning that a district can have a 49.5 and 50.5 racial percentage split while enjoying the 6- or 7-point partisan percentage margin that a Republican-maximizing map-drawer is seeking to achieve, on

²³³ *Compare* Brown Op. 35-49; *with* C2333 summary statistics at 13-15, https://capitol.texas.gov/tlodocs/892/districtplanrpts/pdf/HB00004H PLANC2333.pdf.

This Anglo language itself tramples over any nuance between sub-groups of Hispanic Americans like Cubans, sub-groups of Whites such as Jewish or Arab Americans, or the growing populations of Asian, multi-racial and "other" Americans. The tri-racial vision advanced by plaintiffs, of an Anglo vs Black vs Hispanic political climate, embraces the coalitional logics overturned by *Petteway*, and defies any nuanced and mature conversation about Texas politics and its complex demographic evolution.

account of to the differently shaped population age pyramids.²³⁴ This race-neutral explanation more plausibly explains the overall trend in the data, including as applied to CD-32 and CD-9, rather than the cherrypicked explanation preferred by plaintiffs, which fails to rationally account for and explain the overall trend in the data. This kind of statistical hacking, analogous to p-hacking in random control trials, should not escape Judge Brown's notice, apart from his motivated reasoning.

Tellingly, Judge Brown also avoids revisiting other expert testimony from Dr. Barreto and even Dr. Duchin on Ecological Inference, or deriving district-level racial voting preferences from statewide averages. That is because the ecological inference data suggested that, while Hispanic voters overall favor the Democratic party, there has been a breakdown of support in recent years as the Hispanic community becomes more diverse and more Trump-supporting.²³⁵ *Tejanos* in the Rio Grande Valley turned strongly for Trump, while Cuban and Venezuelan recent arrivals are more Republican-leaning than Mexican recent arrivals.

Relatedly, Judge Brown avoids discussing any of these inconvenient developments because he explains that 2 of the 5 newly-drawn Republican pickup districts are in the Rio Grande Valley and stand to elect Hispanic-supported Republicans to Congress in the next election. Indeed, the entire preliminary injunction hearing carefully danced around discussion of the 28th and 34th districts, even as those were material to the Republican gains disputed under HB4.²³⁶ That should strike the judges as a conspicuous omission and should support the negative inference that those areas' redistricting resists statistical sniping as racial gerrymandering. In fact, that is direct evidence

²³⁴ There are also major VAP vs CVAP distinctions observable in the Hispanic population. For example, in CD-9, one of the districts analyzed by Judge Brown and Dr. Duchin, there are more than 100,000 non-citizen residents, *see* C2333 summary statistics at 15. https://capitol.texas.gov/tlodocs/892/districtplanrpts/pdf/HB00004H_PLANC2333.pdf. This distinction may account for Duchin's allegation about CD9's being "cracked" or "packed," *supra* at Duchin discussion, 73-75.

²³⁵ See Lewis Report at 4, figure 1, panel 3 ("Trump Support (G24)" y-axis, "Percent Hispanic Voters" x-axis).

²³⁶ CDs 28 and 34 appear in one footnote quoting Chairman Hunter with zero further commentary from Judge Brown. Brown Op. at 79.

cutting against racial gerrymandering that reinforces the strong positive inference of good-faith legislative intent under *Alexander*.

I dissent.

* * * * *

Beyond all of this analysis of the facts, the most egregious shortcoming of the opinion is its treatment of the presumption of legislative good faith. To be sure, Judge Brown pays ample lip service to the presumption, but the presumption is quite strong and can't easily be overcome. As a matter of fact, the presumption is so strong that it "directs district courts to draw the inference that cuts in the legislature's favor when confronted with evidence that could plausibly support multiple conclusions." After running through all of his proposed evidence, Judge Brown concludes that the "Chairman Hunter and the other joint authors evidently strategized that a map that eliminated coalition districts and increased the number of majority-Hispanic and majority-Black districts would be more 'sellable' than a nakedly partisan map" 238

Unfortunately for Judge Brown, overcoming the presumption of legislative good faith requires a stronger conclusion than race "evidently" guided the drawing of map lines, even at this preliminary stage. By implication, overcoming the presumption appears to require that the evidence be able to support no other conclusion.²³⁹ Here, the evidence can and does support alternate theories, including theories that make far more sense than Judge Brown's reading of the tea leaves. The most straightforward read of the facts is simple: The legislature had no real concern for *Petteway* and Representative Hunter and the handful of House members Judge Brown relies on were paying lip service to it in order to avoid talking about partisan gerrymandering. This conclusion is distinct from the far more involved and technical theory that Representative Hunter conspired with a man he never talked to, ²⁴⁰ on a map

²³⁷ Alexander, 602 U.S. at 10.

²³⁸ Brown Op. at 76.

²³⁹ See Alexander, 602 U.S. at 10.

²⁴⁰ Tr. 10/7/25 AM 37:20-24.

that was being drawn before he was asked to carry the bill, ²⁴¹ to create a map that doesn't even do everything the DOJ letter requests.

Judge Brown handwaves the fact that Kincaid's map doesn't do everything the DOJ letter requests because "it's entirely possible for the Legislature to gerrymander one district without gerrymandering another." This misses the mark. The problem with the map leaving a coalition district intact, as expressed earlier, is that it undermines Judge Brown's theory of the facts. Why would a legislature, conspiring to use the elimination of coalition districts as a cover for partisan gain, leave a coalition district called out by the DOJ letter in place? If race were the criterion "that, in the State's view, could not be compromised in the drawing of district lines" as part of a statewide scheme, why was it compromised in this district?

Judge Brown offers no plausible justification for this anomaly and fails to consider it when trying to discern if the presumption of legislative good faith is overcome. Such information supports the far more modest proposition that the few representatives that Judge Brown is able to point to were discussing *Petteway* pretextually in order to limit the focus on partisan gerrymandering, especially considering its unpopularity of the practice in the state and nationwide. ²⁴³ It also supports the inference that the three districts reaching just over 50% could, in fact, be a coincidence or byproduct of the partisan line-drawing in areas where race and partisanship are highly correlated, especially since Judge Brown fails to provide competent evidence disentangling race from politics. ²⁴⁴ In the face of such evidence, the plaintiffs have not produced evidence to overcome the

²⁴¹ Tr. 10/7/25 AM 61:20-24.

²⁴² Brown Op. at 128.

²⁴³ See Texas Trends 2025, Univ. of Houston, Oct. 2025, https://www.uh.edu/hobby/txtrends/2025/ (finding that 68% of Texans believe partisan gerrymandering is a major problem and 21% believe it's a minor problem); see also Alexander Rossell Hayes, Large majorities of Americans say gerrymandering is a major problem, unfair, and should be illegal, YouGov, https://today.yougov.com/politics/articles/52740-large-majorities-americans-say-gerrymandering-major-problem-unfair-should-be-illegal-redistricting-texas-california-poll (finding that 76% of Americans thinks gerrymandering is a major problem).

²⁴⁴ Supra at 75-77.

presumption of legislative good faith and thus cannot show even some likelihood of success on the merits.

I dissent.

* * * * *

In his remedial section, Judge Brown similarly hand-waves over thorny problems of remedies and the current status of the 2021 and 2025 maps.²⁴⁵

Texas's House Bill 4 ("HB4"), the statute at issue, provides:

- (a) This Act supersedes all previous enactments or orders adopting congressional districts for the State of Texas. All previous acts of the legislature adopting congressional districts for the State of Texas are repealed.
- (b) Chapter 7 (S.B. 6), Acts of the 87th Legislature, 3rd Called Session, 2021, is repealed.²⁴⁶

On a straightforward reading, this repeal provision in HB4 means that the 2021 maps were voided by the 2025 maps. Therefore, if the 2025 maps are enjoined, there can be no elections because there are no maps in place—contrary to the majority's attempt to revive the 2021 maps.

A federal court cannot reinstate a statute that the legislature has explicitly repealed and voided.²⁴⁷ That move presents grave federalism concerns, commandeers the state legislature,²⁴⁸ departs from the standard remedial process in voting rights cases, and intrudes into the "sensitive area of state legislative redistricting."²⁴⁹ The default remedy, as Judge Brown admits, is that

²⁴⁵ Brown Op. at 158-159.

²⁴⁶ Relating to the composition of the districts for the election of members of the United States House of Representatives from the State of Texas, Tex. H.B. 4, 89th Leg. 2d Spec. Sess., Art. III § 3 (2025).

²⁴⁷ See Printz v. U.S., 521 U.S. 898, 912 (1997) ("[S]tate legislatures are not subject to federal direction.") (citing New York v. U.S., 505 U.S. 144, 112 (1992).

²⁴⁸ The Tenth Amendment imposes the same anti-commandeering limit on federal courts and the federal legislature, *see Murphy v. NCAA*, 584 U.S. 453, 471 (The legislative powers granted to Congress are sizable, but they are not unlimited. The Constitution confers on Congress not plenary legislative power but only certain enumerated powers. Therefore, all other legislative power is reserved for the States, as the Tenth Amendment confirms.").

²⁴⁹ Bush v. Vera, 517 U.S. 952, 1003 (1996) (Thomas, J., concurring).

"the elected body must usually be afforded an adequate opportunity to enact revised districts before the federal court steps in to assume that authority." ²⁵⁰ But Judge Brown ignores the law and denies the state any opportunity to hold a special session to exercise its own legislative power. ²⁵¹

Judge Brown also fails to grapple with the fact that the prior maps have been voided.²⁵² Texas law is clear: the Texas Code's subchapter on "construction rules for civil statutes" provides that "The repeal of a repealing statute does not revive the statute originally repealed." Tex. Gov. Code § 312.007.²⁵³ At the time of writing, given that the law was passed on August 20 and signed into law on August 29, HB4 has been on the books for more than 75 days.

Properly understood, Judge Brown's remedy is a novel and unlawful order imposing a new map on Texas, in an activist echo of the overturned § 5 pre-clearance regime.²⁵⁴

Judge Brown embraces a dinosaur-like understanding of equitable remedies.

The up-to-date view of injunctive relief is that injunctions represent a court-ordered policy of nonenforcement *restraining* an executive from enforcing a federal or state law. As the Supreme Court recently instructed in *Trump v. CASA*, *Inc.*, "traditionally, courts issued injunctions prohibiting executive officials from enforcing a challenged law or policy only against the plaintiffs in the lawsuit." ²⁵⁵

This restrained view is deeply rooted in equitable jurisprudence: In Ex Parte Young, the Supreme Court interpreted injunctions as stripping a state actor

²⁵⁰ In re Landry, 83 F.4th 300, 303 (5th Cir. 2023).

²⁵¹ Brown Op. at 160.

²⁵² See Brown Op. at 158-59.

 $^{^{253}\,} This$ parallels the U.S. Code, 1 U.S.C. § 108 (repeal of repealing statute does not reinstate the former statute).

 $^{^{254}}$ Cf. Shelby Cnty. v. Holder, 570 U.S. 529, 557 (ending the § 5 coverage and preclearance requirement).

²⁵⁵ 606 U.S. 831, 837 (2025); see also Jonathan F. Mitchell, The Writ-of-Erasure Fallacy, 104 VA. L. REV. 933, 936 (2018).

from enforcing a statute that remains on the books:

In every case where an official claims to be acting under the authority of the state... [and] the act to be enforced is alleged to be unconstitutional; and if it be so, the use of the name of the state to enforce an unconstitutional act to the injury of complainants is a proceeding without the authority of, and one which does not affect, the state in its sovereign or governmental capacity. It is simply an illegal act upon the part of a state official in attempting, by the use of the name of the state, to enforce a legislative enactment which is void because unconstitutional. If the act which the state attorney general seeks to enforce be a violation of the Federal Constitution, the officer, in proceeding under such enactment, comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct." ²⁵⁶

In *Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund*, *Inc.*, the Supreme Court definitively stated, "[equitable] jurisdiction. . . is an authority to administer in equity suits the principles of the system of judicial remedies which had been devised and was being administered by the English Court of Chancery at the time of the separation of the two countries," ²⁵⁷ and "the equitable powers conferred by the Judiciary Act of 1789 did not include the power to create remedies previously unknown to equity jurisprudence," ²⁵⁸ such that any enlargement of district courts' equitable power was properly left to congress. ²⁵⁹

Most recently in *CASA*, the Court struck down universal injunctions for departing from the non-enforcement model and exceeding the "confin[es] of the broad boundaries of traditional relief," ²⁶⁰ and cautioned that "[w]hen a court concludes that the Executive Branch has acted unlawfully, the answer is not for the court to exceed its power, too." ²⁶¹ Judge Brown's command of the state

²⁵⁶ 209 U.S. 123, 159-160 (1908).

²⁵⁷ 527 U.S. 308, 318 (1999).

²⁵⁸ *Id.* at 332.

²⁵⁹ *Id.* at 333.

²⁶⁰ 606 U.S. at 846 (quoting *Grupo Mexicano*, 527 U.S. at 332).

²⁶¹ *Id.* at 861.

legislature not only violates the Tenth Amendment—it likely exceeds the bounds of equity, too.

Injunctions in Texas take the same, restrained form.²⁶² The Supreme Court of Texas has written, "When a court declares a law unconstitutional, the law remains in place unless and until the body that enacted it repeals it, even though the government may no longer constitutionally enforce it."²⁶³ And Texas appellate courts have noted the "Ordering the repeal of an ordinance would present grave separation-of-powers problems."²⁶⁴ This strict separation-of-powers view prevents Texas state courts from ordering the repeal of a statute—which power is reserved to the legislature—and finely delineates between calling a law unconstitutional and technically voiding it.²⁶⁵

The other view of injunctions, more consistent with the law-declaration model of judicial review, is that courts recognize that a given law was truly unconstitutional from the moment of its inception, thereby insinuating that the legislature was without power to create it in the first place.²⁶⁶

This null-and-void, or 'discernment,' approach to injunctions sometimes

 $^{^{262}}$ This matters because of the *diagonal* federalism relationship between a federal court and a state legislature, *infra* at 95.

²⁶³ Pidgeon v. Turner, 538 S.W.3d 73, 88 n.21 (Tex. 2017).

²⁶⁴ State by & Through Off. of Att'y Gen. of Texas v. City of San Marcos, 714 S.W.3d 224, 244 (Tex. App. 2025), review denied (Sept. 12, 2025).

²⁶⁵ See City of San Marcos, 714 S.W.3d at 244 ("The Texas Constitution vests the City of San Marcos, not the Court, with authority to adopt and repeal ordinances.") (quoting also Ex parte E.H., 602 S.W.3d 486, 502 (Tex. 2020) (Blacklock, J., dissenting) ("Courts are not legislatures. The Texas Constitution reserves the law-making and law-rescinding powers to the Legislature, and it prohibits the judiciary from 'exercis[ing] any power properly attached to either of the other [] [branches].'" (quoting Tex. Const. art. II, § 1))).

²⁶⁶ See Civil Rights Cases, 109 U.S. 3, 10 (1883) (The Fourteenth Amendment, "nullifies and makes void all State legislation, and State action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty, or property without due process of law, or which denies to any of them the equal protection of the laws."); *Id.* at 25 (of the Civil Rights Act of 1875, "we are of opinion that no countenance of authority for the passage of the law in question can be found in either the Thirteenth or Fourteenth Amendment of the Constitution; and no other ground of authority for its passage being suggested, it must necessarily be declared void...); *Plessy v. Ferguson*, 163 U.S. 537, 546 (1896) ("In the Civil Rights Cases... it was held that an act of congress entitling all persons within the jurisdiction of the United States to the full and equal enjoyment of the accommodations was unconstitutional and void, upon the ground that the fourteenth amendment was prohibitory upon the states only.").

crops up in state courts too, like Texas's recent *Dickson v. Afiya Center* case.²⁶⁷ Nevertheless, the weight of Texas law easily indicates that the effects of an injunction follow the first model.

Dickson was itself reversed on other grounds by the Supreme Court of Texas.²⁶⁸ Further, the Texas Constitution provides for separation of powers between the Executive, Legislative, and Judicial Departments, "no person . . . being of one of these departments, shall exercise any power properly attached to either of the others."²⁶⁹ It also vests the entire legislative power of the state of Texas in its legislature.²⁷⁰ Admittedly, "there is an overlap in the functioning of the three different branches of government."²⁷¹ Still, the division between Texas's legislative power and judicial powers appears to mirror that of the federal constitution.²⁷²

This second discernment approach is easily the incorrect view of the effect of injunctions. Otherwise, how could a law spring back into effect after a higher court vacates a lower court's injunction?²⁷³ A fine case-in-point is

²⁶⁷ 636 S.W.3d 247, 263 (Tex. App. 2021), rev'd on other grounds sub nom. Lilith Fund for Reprod. Equity v. Dickson, 662 S.W.3d 355 (Tex. 2023) ("When a legislative act is declared to be unconstitutional, the act is 'absolutely null and void,' and has 'no binding authority, no validity [and] no existence.'") (citing Ex parte Bockhorn, 138 S.W. 706, 707 (Tex. Crim. App. 1911) (an unconstitutional law should be viewed as "lifeless," as "if it had never been enacted," given that it was "fatally smitten by the Constitution at its birth.").

 $^{^{268}}$ *Id*.

²⁶⁹ Tex. Const. art. II § 1.

²⁷⁰ Tex. Const. art. III § 1.

²⁷¹ Martinez v. State, 503 S.W.3d 728, 733-34 (Tex. App.—El Paso 2016, pet. ref'd).

²⁷² Compare In re Texas Dep't of Fam. & Protective Servs., 660 S.W.3d 161, 171-172 (Tex. App. 2022) ("the trial court unduly interfered with the powers of the legislative branch when it ordered the Department [of Family and Protective Services] to submit [certain detailed] written offers to specific child-placing agencies"); with INS v. Chadha, 462 U.S. 919, 952 (1983) ("Whether actions taken by either House are, in law and fact, an exercise of legislative power depends not on their form but upon whether they contain matter which is properly to be regarded as legislative in its character and effect.") (internal quotation omitted).

²⁷³ See, e.g., Voting for Am., Inc. v. Steen, 732 F.3d 382 (5th Cir. 2013) (vacating preliminary injunction entered against Texas voter-registration laws); Planned Parenthood Ass'n, Inc. v. Suehs, 692 F.3d 343 (5th Cir. 2012) (vacating preliminary injunction entered against the enforcement of a law excluding Planned Parenthood from the Texas Women's Health Program); Tex. Med. Providers Performing Abortion Servs. v. Lakey, 667 F.3d 570 (5th Cir. 2012) (vacating preliminary injunction

Citizens United v. FEC.²⁷⁴ After that decision, while the Supreme Court's controversial ruling prevents *enforcement* of the federal campaign finance statutes, those laws actually remain on the books and are ready-to-go should First Amendment jurisprudence evolve.²⁷⁵ As mentioned *supra*, the discernment approach has been cut back by newer Supreme Court jurisprudence.²⁷⁶

Here, applying the first, nonenforcement approach, the issuance of a federal injunction cannot reinstate the 2021 maps because Texas's state legislature retains its separate power to issue or repeal statutes, leaving the 2025 maps on the books but unenforceable. Yet by the issuance of this injunction, Judge Brown's free-floating Hegelian interpretation of the law undermines the legislature's ability—and thereby the people's ability—to make laws governing themselves.²⁷⁷ As Judge Learned Hand said, this is "irksome" rule by "a bevy of Platonic Guardians."²⁷⁸

A federal court trying to reinstate a statute that the legislature has repealed may represent a limit on the equity power. A couple of recent election law cases are relevant. In *Democratic Nat'l Comm. v. Wisconsin State Legislature*, Justice Gorsuch wrote in concurrence, "[t]he Constitution provides that state legislatures—not federal judges, not state judges, not state governors, not other

entered against Texas informed-consent law).

²⁷⁴ 558 U.S. 310 (2010).

²⁷⁵ See Mitchell at 989-92 (comparing *Citizens United* with the still-extant 52 U.S.C. § 30118(a) (2012) ("It is unlawful... for any corporation... to make a contribution or expenditure in connection with any election...")).

²⁷⁶ See CASA, 606 U.S. at 837; also Brown v. Plata, 563 U.S. 493, 550 (2011) (Scalia, J., dissenting) (criticizing an overbroad structural injunction); generally Missouri v. Jenkins, 515 U.S. 70, 88 (1995) (limiting a school segregation structural injunction and remarking "the 'principle that the nature and scope of the remedy are to be determined by the violation means simply that federal-court decrees must directly address and relate to the constitutional violation'" (quoting Milliken v. Bradley, 433 U.S. 267, 281-282 (1977)).

²⁷⁷ Cf. South Bay United Pentecostal Church v. Newsom, 140 S. Ct. 1613, 1613-14 (Mem.) (Roberts, C.J., concurring) (balancing political and health considerations during the Covid Era's shutdown "should not be subject to second-guessing by an 'unelected federal judiciary,' which . . . is not accountable to the people." (quoting Garcia v. San Antonio Metro. Transit Auth., 469 U.S. 528, 545 (1985)).

 $^{^{\}rm 278}$ Learned Hand, The Bill of Rights: The Oliver Wendell Holmes Lectures, 70 (1958).

state officials—bear primary responsibility for setting election rules." ²⁷⁹ Justice Kavanaugh, likewise, has invoked the "principle of deference to state legislatures." ²⁸⁰ In *Andino v. Middleton*, reversing a lower court ruling invalidating South Carolina's witness requirement for absentee ballots, Justice Kavanaugh wrote, "a State legislature's decision either to keep or to make changes to election rules to address COVID–19 ordinarily "should not be subject to second-guessing by an 'unelected federal judiciary,' which lacks the background, competence, and expertise to assess public health and is not accountable to the people." ²⁸¹ Therefore, in addressing the *diagonal* separation of powers between federal courts and state legislatures, strict separation of powers, deference, and comity apply.

The bottom line is this: *first*, Judge Brown must permit redrawing rather than imposing his own map,²⁸² and *second*, it may violate separation of powers and exceed the equitable power for a court to order the legislature to reinstate a voided statute, contrary to Texas's anti-repealer statute, and to order the State executive to administer that voided statute. Judge Brown's remedy is unlawful judicial aggrandizement.

I dissent.

* * * * *

Also, Judge Brown's chosen remedy engenders an interesting contradiction: The plaintiffs have insisted, for years, that the 2021 maps are themselves racist and unconstitutional. While Judge Brown's opinion exactly what they asked for, it is manifestly absurd for them to mandate an

²⁷⁹ 141 S. Ct. 28, 29 (Gorsuch, J., concurring).

²⁸⁰ *Id.* at 33 (Kavanaugh, J., concurring).

²⁸¹ 141 S. Ct. 9, 10 (2020) (Mem.) (Kavanaugh, J., concurring).

²⁸² See Landry, 83 F.4th at 303 ("the Supreme Court has repeatedly reminded lower federal courts that if legislative districts are found to be unconstitutional, the elected body must usually be afforded an adequate opportunity to enact revised districts before the federal court steps in to assume that authority . . . [such that] that 'legislative reapportionment is primarily a matter for legislative consideration and determination.'" (quoting Reynolds v. Sims, 377 U.S. 533, 586 (1964); Wise v. Lipscomb, 437 U.S. 535, 540 (1978)).

unconstitutional set of 2021 maps!²⁸³ The Judiciary Act of 1789 authorizes courts to hear suits in equity²⁸⁴—but it plainly exceeds that statutory authorization to issue an unconstitutional injunction.²⁸⁵

Is Judge Brown now saying, *sotto voce*, that the 2021 maps are affirmatively constitutional? He must be, given that it would be without the Article III power to order a racist injunction. This stance then credits Chairwoman Huffman's statements from the spring trial that the 2021 maps were drawn race-blind.

Again, if they were drawn in a racist manner, then Judge Brown's order would itself be unconstitutional, exceeding the Article III power and Judiciary Act of 1789 authorizing equitable relief. And Judge Brown cannot issue an unconstitutional order, as he knows well through his related reversal in *Petteway*.²⁸⁶

Yet this conclusion also unearths another contradiction in Judge Brown's reasoning: If Huffman was right last Spring that the 2021 maps were drawn raceblind, permitting them as a remedy in this case, that then enhances the likelihood that the 2025 maps, drawn by the same map drawer in Mr. Kincaid, were drawn with the same criteria. Judge Brown's attack on Kincaid's credibility should thereby implode, given that he credits the Texas legislature's use of partisan intensity in 2021.²⁸⁷ Judge Brown seems to acknowledge, at some level, that this preliminary injunction is merely the latest round in a multi-decade partisan struggle, rather than a one-time isolated episode beginning in July 2025 with the Governor's legislative call. Otherwise, how could Judge Brown approve less-partisan-gerrymandered maps from 2021, while necessarily affirming their

²⁸⁵ See CASA, 606 U.S. at 841 (2025) ("Though flexible, this equitable authority is not freewheeling. We have held that the statutory grant encompasses only those sorts of equitable remedies 'traditionally accorded by courts of equity' at our country's inception.") (quoting *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 319 (1999)).

²⁸³ LULAC Second Supplemental Complaint at *6, No. 3:21-cv-00259-DCG-JES-JVB, ECF No. 1147 (August 28, 2025, W.D. Tex. – El Paso).

²⁸⁴ § 11, 1 Stat. 78.

²⁸⁶ Petteway v. Galveston County, 111 F.4th 596 (5th Cir. 2024) (en banc).

²⁸⁷ Cf. Brown Op. at 96-99 (refusing to credit Kincaid's testimony).

constitutionality? Here, picking and choosing between partisan maps of different intensity nakedly defies *Rucho*'s rule on the non-justiciability of partisan gerrymandering as a political question.

As mentioned *supra*, this court's intrusion into bare-fist partisan politics is particularly concerning where other states are redistricting in real time.²⁸⁸ Injunctions have a major trickle-down—indeed, the 2012 injunctions likely affected Lt. Gov. Dewhurst's and Sen. Cruz's electoral outcomes.²⁸⁹ *Rucho* is clear: federal courts do not pick partisan winners and losers—they uphold the constitution.

I dissent.

* * * * *

This injunction flies badly in the face of the *Purcell* principle, especially in light of the Supreme Court's stay of the injunction in *Merrill v. Milligan*.²⁹⁰ The *Purcell* principle reflects "a bedrock tenet of election law: When an election is close at hand, the rules of the road must be clear and settled." The principle also reflects judicial restraint so as not to interfere with the democratic process. To reiterate, it represents a policy of *judicial* restraint, as distinguished from judicial activism and meddling: The legislature, with its democratic accountability, has greater authority to intervene and regulate the rules of elections as election deadlines approach.²⁹³

Judge Brown's approach to Purcell is judicial aggrandizement, plain and

²⁹⁰ 142 S. Ct. 879, 880-81 (2022)

²⁸⁸ See, e.g., Guy Marzorati, California voters OK new congressional lines, boosting Democrats ahead of midterms, NATIONAL PUBLIC RADIO (Nov. 4, 2025) (last accessed November 16, 2025) (https://www.npr.org/2025/11/04/nx-s1-5587742/election-results-california-proposition-50-redistricting).

²⁸⁹ Supra at 21.

²⁹¹ *Id.* (Kavanaugh, J., concurring)

²⁹² See id. at 881 ("Late judicial tinkering with election laws can lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others.").

²⁹³ See id. ("It is one thing for a State on its own to toy with its election laws close to a State's elections. But it is quite another thing for a federal court to swoop in and re-do a State's election laws in the period close to an election.").

simple. Quite contrary to the presumption of legislative good faith that's supposed to undergird the judiciary's approach to these sensitive legislative questions, Judge Brown's opinion is shot through with a presumption of legislative *bad* faith.

The opinion raises the specter of the legislature's being incentivized to redistrict "as close to elections as possible." The opinion assumes that legislatures are often out to break the law when they redistrict and that it is the noble and just court who must always have the opportunity to step in and remedy this wrong, no matter how close to the election that this change has been made by the legislature. Judge Brown seems to miss that legislatures' being able to intervene later in the election cycle than the judiciary is a feature, not a bug, of the *Purcell* principle and reflects the different roles played by the courts as distinguished from the legislature. ²⁹⁵

Judge Brown's inventive reasoning effectively mutilates *Purcell*. He goes so far as to state that "*Purcell* cannot be read to gut the Plaintiff Groups' right to seek a preliminary injunction and this Court's obligation to award one when merited."²⁹⁶ But what purpose does *Purcell* serve but to deny injunctive relief that might, hypothetically, be merited and to do so because of the proximity to an election? If injunctive relief were not merited, the court would deny such relief, or the injunction would be vacated, on appeal on non-*Purcell* grounds. *Purcell* exists for those situations where injunctive relief may, in fact, be otherwise warranted but inappropriate considering the timing of the election.²⁹⁷

Judge Brown's notion of Purcell is that it exists almost exclusively to

²⁹⁴ Brown Op. at 154.

²⁹⁵ See Milligan, 142 S. Ct. at 880 (Kavanaugh, J., concurring) ("It is one thing for a State on its own to toy with its election laws close to a State's elections. But it is quite another thing for a federal court to swoop in and re-do a State's election laws in the period close to an election.").

²⁹⁶ Brown Op. at 154.

²⁹⁷See Democratic Nat'l Comm. v. Wis. State Legislature, 141 S. Ct. 28, 31 (2020) (Kavanaugh, J., concurring) ("It is one thing for state legislatures to alter their own election rules in the late innings and to bear the responsibility for any unintended consequences. It is quite another thing for a federal district court to swoop in and alter carefully considered and democratically enacted state election rules when an election is imminent.").

prevent plaintiffs from bringing challenges on the eve of the election. Judge Brown faults the legislature for making a late-breaking change to election law and essentially claims that *Purcell* can't apply if the legislature causes an injunction to be on the eve of an election. This subordinates the legislature and exalts the judiciary and is counter to the principle of judicial restraint that undergirds *Purcell*.²⁹⁸

A comparison between both the facts and the timeline of *Milligan* will demonstrate how clear the *Purcell* issue is in this case. The primary election here closer than was the primary in *Milligan*. When the district court issued the preliminary injunction on January 24, the primary election process began via absentee voting sixty-six days later on March 30. In this case, Judge Brown took well over a month to issue his opinion, leaving the state of Texas with around 60 days until absentee voting begins by ballots' being sent overseas.

Judge Brown wishes to rest much of its confidence on the fact that the 2021 maps could be used in place of the 2025 map, but those maps are no longer Texas law. The 2025 bill repealed the 2021 maps for the 2026 election, and, importantly, Texas has an anti-repealer statute, meaning that even if the act were enjoined or otherwise repealed, the repealed 2021 maps cannot spring back into life.²⁹⁹ It is noteworthy that Judge Brown does not cite a single example in which a previously enacted map has been brought back from the dead by the court's enjoining a bill or by pure judicial fiat. Furthermore, both the Supreme Court and the Fifth Circuit have made it clear that the only two options for relief are judicially crafting a map or letting the legislature work:

[T]he Court has repeatedly held that redistricting and reapportioning legislative bodies is a legislative task which the courts should make every effort not to preempt. When a federal court declares an existing apportionment scheme

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²⁹⁸ See id. ("That important principle of judicial restraint not only prevents voter confusion but also prevents election administrator confusion—and thereby protects the State's interest in running an orderly, efficient election and in giving citizens (including the losing candidates and their supporters) confidence in the fairness of the election.").

²⁹⁹ See Tex. Gov't Code § 312.007.

unconstitutional, it is therefore, appropriate, whenever practicable, to afford a reasonable opportunity for the legislature to meet constitutional requirements by adopting a substitute measure rather than for the federal court to devise and order into effect its own plan.³⁰⁰

It's actually unclear whether Judge Brown mistakenly believes the 2021 maps are still in effect for the 2026 elections or if, instead, he wishes to foist an alternate, judicially created, 2021 map on Texas. Under either theory, a fatal *Purcell* problem obviously remains.

If Judge Brown believes that the 2021 maps are still on the books in Texas, he is sorely mistaken, as discussed in the repealer section of this dissent. Under this read of Judge Brown's opinion, that means the Texas Legislature must be reconvened in a special session in order to redraw the maps.³⁰¹ The court should afford the legislature at least an opportunity to do this regardless, as the Supreme Court has clearly stated,³⁰² but it would be necessary if the ruling of the court orders Texas to follow a repealed law.³⁰³

Judge Brown's contrary assertion—that such is not necessary on account of the 2021 map's being a "viable congressional map that was drawn by the legislature"—ignores the obvious fact that the legislature repealed the map.³⁰⁴ To place that map back in place, the court must be imposing it on the state. The fact that the legislature at one point preferred these lines does not change the fact that they no longer preferred those lines and that they are an imposition on the legislature's authority. If anything, this represents a more odious form of imposition because it involves a map that the legislature has consciously decided

³⁰⁰ In re Landry, 83 F.4th 300, 303 (5th Cir. 2023) (quoting Wise v. Lipscomb, 437 U.S. 535, 540 (1978); see also Landry, 83 F.4th at 303 (stating that the above "is the law today as it was forty-five years ago.").

³⁰¹ See id. at 303 n.2 (providing myriad Supreme Court citations for the primacy of the legislature in redistricting).

³⁰² *Id.* (collecting cases).

³⁰³ At the close of the preliminary-injunction trial, the State explicitly invoked its right to redraw the map should this court decide to grant relief.

³⁰⁴ Brown Op. at 159.

to reject.

It should go without saying that the state of affairs that Judge Brown creates on these grounds is more severe than the situation in *Milligan*, where the district court required an Alabama legislature that was already in the midst of its regular session to redraw its maps.³⁰⁵ The Governor will have to issue a new call, the legislature will have to reconvene, and any hearings will necessarily be truncated and minimal because the filing deadline for candidates, which is fixed statutorily, is on December 8.³⁰⁶ This court is rendering its decision closer to the primary than in *Milligan*, with a legislature that is out of session, with less than a month before the close of the filing deadline and only two months before the first primary ballots go out to service members as required by federal law. Forcing the state to adjust to a new map would be setting the stage for bedlam beyond even the facts of *Milligan*. Scarcely more should need to be said to indicate the depth of the *Purcell* problem on this version of the facts.

Even assuming that Judge Brown were able magically to bring the 2021 map back into being through judicial fiat, the *Purcell* problem remains. While it is true that the type of relief and the ease in which the state can make the change without undue collateral effects impact "how close to an election is too close," reversion to the 2021 map by no means resolves the *Purcell* dilemma.³⁰⁷ An injunction and reversion to the 2021 map now threatens to create voter confusion, disadvantage cash poor candidates, and threaten the tight schedule of election deadlines in the state of Texas.

Christina Adkins, the Director of Elections for the Texas Secretary of

³⁰⁵ See 2022 State Legislative Session Calendar, National Conference of State Legislatures, https://www.ncsl.org/ about-state-legislatures/2022-state-legislative-session-calendar (last visited Nov. 13, 2025) (stating that the Alabama regular session convened on January 11th and Adjourned on April 7th).

³⁰⁶ Tex. Elec. Code § 172.023 ("An application for a place on the general primary election ballot must be filed not later than 6 p.m. on the second Monday in December of an odd-numbered year unless the filing deadline is extended under Subchapter C."); *see also* Tex. Elec. Code § 172.054 (allowing the filing deadline to be extended only due to death, withdrawal of an incumbent, or incapacity).

³⁰⁷ See Merrill v. Milligan, 142 S. Ct. 879, 881 n.1 (Kavanaugh, J., concurring).

State's office, provided ample testimony about the structure of Texas elections and how a reversion to the 2021 election map would sow confusion amongst the voters and harm the integrity of Texas's election process, which is a complex web of statutorily set deadlines and deadlines keyed to the date of the election.³⁰⁸

As previously mentioned, the filing period for candidates seeking public office runs from November 8 to December 8, 2025.³⁰⁹ Candidates can file to run for office only if they pay a filing fee or submit a petition in lieu of that fee.³¹⁰ The petition for congressional candidates requires 500 signatures from individuals who live in the congressional district.³¹¹ Many candidates choose to submit petitions in lieu of paying the filing fee both to avoid the "heftier" filing fee and to introduce themselves to voters.³¹² After the filing deadline, political party chairs enter candidate information into the candidate filing system, which takes several days.³¹³ After this, the counties must perform ballot draws and begin preparing ballots, which takes approximately three weeks.³¹⁴

All of this must be done before January 17, 2026, to comply with federal law.³¹⁵ Any waiver of that requirement at the federal level would require the state to create a "comprehensive plan to ensure that absent uniformed service voters and overseas voters" are able to both receive, submit their ballots in time to be counted in the election, and receive approval from the President, meaning that moving the federal deadline likely provides the state with little flexibility.³¹⁶

With the context of this complex web of interactions laid bare, Ms. Adkins testified that any change in election policy, including this injunction, would be "harder on candidates, harder on voters, [and] harder on election

³⁰⁸ Tr. 10/8/25 AM 151:18-24.

³⁰⁹ Tr. 10/8/25 AM 146:18-147:2.

³¹⁰ Tr. 10/8/25 AM 155:11-17.

³¹¹ Tr. 10/8/25 AM 155:25-156:4.

³¹² Tr. 10/8/25 PM 6:18-24.

³¹³ Tr. 10/8/25 PM 9:2-15.

³¹⁴ Tr. 10/8/25 PM 9:16-25.

³¹⁵ Tr. 10/8/25 PM 9:1-6; see also 52 U.S.C. § 20302(a)(8).

^{316 52} U.S.C. § 20302(g).

officials."³¹⁷ Ms. Adkins emphasized that there's "not much time to play with," and that delaying the opening of the filing period (and presumably extending the filing period) would threaten the ability of the counties to adequately prepare and test their ballots, thwarting the ability of the state to tabulate election results accurately.³¹⁸ Additionally, many of the counties have already began redrawing county election voter registration precincts, rendering all of that work useless.³¹⁹ Furthermore, candidates had already begun to campaign and collect signatures under the 2025 map when Ms. Adkins offered her original testimony, meeting voters and spreading their name amongst the new congressional district.³²⁰

Several weeks later and this has likely only gotten worse.

Many of these candidates will be shuffled between districts, and voters may not become aware of that fact until they enter the voting booth. In addition to the voter confusion, reverting the maps now means that some of those candidates will need to run in different districts, needing up to 500 new signatures if they need to get onto the ballot via petition. This seriously disadvantages outsider political candidate who are likely to have less money to dole out for filing fees. Furthermore, it has been reported that changing the map "could force candidates who have already filed or are considering entering the race to rethink their plans," meaning court intervention will fundamentally alter the state of these ongoing races.³²¹

As a legal and practical matter, Judge Brown's injunction turns the Texas electoral and political landscape upside down. It creates mayhem, chaos, misinformation, and confusion. Certain statutory election deadlines for the

³¹⁷ Tr. 10/8/25 PM 14:16-19.

³¹⁸ Tr. 10/8/25 PM 10:16-19.

³¹⁹ Tr. 10/8/25 AM 149:19-150:5.

³²⁰ Tr. 10/8/25 PM 8:14-23.

³²¹ John C. Moritz, Texas candidate filings open with a big question: Will Republicans' new map stick?, Houston Chronicle, Nov. 10, 2025, https://www.houstonchronicle.com/news/politics/state/article/redistricting-candidate-primaries-21151780.php. *See also id.* (describing a series of candidates who may not run or who may run elsewhere due to the alteration of the map by the court).

2026 cycle kicked in in September 2025. Candidates began filing for federal and state office beginning on the statutory launch date of November 8, 2025.

The prevailing expectation is that the 2025 congressional lines will be used to elect representatives in 2026. There is, of course, a trickle-down effect. Some incumbents have announced their retirements because of the new lines. Some have announced they will run in different districts. Officials holding other or "lower" or local offices have declared as candidates for Congress, meaning that other citizens have decided to run to replace them.

Lastly, Judge Brown claims that Ms. Adkins testified that "Texas election officials and systems are more than capable of proceeding with the 2026 congressional election under any map that is the law." 322

This is a blatant misstatement, to put it politely.

The passage that Judge Brown highlights actually says:

In all of our interactions with the counties, we have been reiterating that these [2025] maps are the maps that are in place for the primary. Unless there is something, a court order or something telling us otherwise, we have to proceed and move forward with the maps that are law, that will be law.³²³

Nowhere does Ms. Adkins indicate that the Texas is "more than capable" of proceeding under any map that's law, nor does she imply that. Rather, her statement represents the admirable but mundane proposition that Texas will do everything in its power to comply with the law under either map. Judge Brown's misrepresentation of this fact makes it clear, once again, that he is motivated by results, not a sound application of law to facts.

The concerns about timeline, voter confusion, and chaos for political candidates ring true here, just as they did with *Milligan*, even if it were possible to return to the 2021 map. As it was for Alabama in *Milligan*, the filling deadline is imminent and candidates who have already been campaigning will be shuffled

³²² Brown Op. at 151.

³²³ Tr. 10/8/25 AM 153:13-18.

between districts, meaning new petitions, a new voter base, and confusion about the options the voters have come March.³²⁴

Likewise, the minimal wiggle-room in Texas's statutorily mandated elections process means that Texas is faced with an impossible dilemma should this injunction go through, extend the filing deadline for candidates threatening the integrity of their ballot preparation process or keep the original deadline and disadvantage or outright bar cash-poor political candidates across the state from qualifying as congressional candidates. Truly, compliance with this injunction "would require heroic efforts by those state and local authorities in the next few weeks—and even heroic efforts likely would not be enough to avoid chaos and confusion." The fact that one congressional district is retaining its boundaries for a special election for the current Congress does little to remedy many of these concerns. At best, this relieves a single congressional district of a small portion of the burden generated by redistricting.

It should go without saying that the Judge Brown's notion—that this case somehow fits into the narrow exception to *Purcell* outlined in Justice Kavanaugh's concurrence in *Milligan*—is absurd.³²⁶ Far from clearcut in favor of the plaintiffs, Judge Brown must strain credulity and distort the record to reach his desired result, as has been highlighted throughout this opinion. As to the feasibility of implementing the injunction without significant cost, confusion, or hardship, this entire section is a testament to how far the plaintiffs are from satisfying that requirement.

Unfairness is the word of the day, and this injunction is laden with unfair consequences. See id. ("Late judicial tinkering with election laws can lead to disruption and to unanticipated and unfair consequences..."). It is unfair to the congressional candidates (not to mention some candidates for state office) who need to rework their entire campaigns after more than a month of campaigning. It is unfair to the election officials who will be put into an impossible bind. It is

³²⁴ See Milligan, 142 S. Ct. at 880 (Kavanaugh, J., concurring).

³²⁵ *Id*.

³²⁶ See id. at 881.

unfair to the political parties whose candidates will be chosen through a confused and muddied process as a result of judicial meddling. Most importantly, it is unfair to the Texas voters who are having a map implemented by their duly elected legislature overturned by a self-aggrandizing, results-oriented court.

I dissent.

* * * * *

Beyond the grave error in granting an injunction, Judge Brown adds insult to injury by failing to stay the order for, say, at least 72 hours to give the state a chance to appeal or move for a stay. It is obvious that there will be chaos and political posturing as soon as the injunction is announced. Any observance of judicial restraint would dictate providing an opportunity for provisional adjustments in anticipation of further judicial action. But ideological zeal sometimes overrides common sense.

District courts often stay their orders, either pending a full appeal or for a time certain, to allow for an orderly disposition on further review. A prominent recent example, in an election case, is *Nairne v. Landry*, 151 F.4th 666 (5th Cir. 2025), in which the district court wisely granted a stay pending appeal of its order enjoining certain elections.

The same should obtain here.

I dissent.

* * * * *

Judge Brown's analysis exposes either a naivete that is unbefitting of the judiciary or a willful blindness unbecoming of the judiciary. Collected below is a non-exhaustive list of misleading, deceptive, or false statements Judge Brown put forward. (The list would be considerably longer but for the press of time; there's no lack of fodder.)

- Judge Brown says "[w]hen the Trump Administration reframed its request as a demand to redistrict on exclusively racial grounds, however, Texas lawmakers immediately jumped on board." Misleading at best.
- Judge Brown says "[b]y all appearances, however, Republican lawmakers didn't have much appetite to redistrict on purely partisan grounds—even at the President's behest."³²⁸ Misleading at best.
- Judge Brown says "[a]nd as far as some influential members of the Legislature were aware, the prospect of redistricting in 2025 was just a rumor" Misleading at best.
- Judge Brown says "[w]here the other factors are strong," the movant need only show 'some likelihood of success on the merits' to obtain a preliminary injunction." Misleading at best.
- Judge Brown says "Supreme Court precedent establishes, however, that when: (1) a relevant political actor "purposefully establishe[s] a racial target" that voters of a single race "should make up no less than a majority" of the voting population; and (2) the Legislature "follow[s] those directions to the letter, such that the 50%-plus racial target ha[s] a direct and significant impact on [the districts'] configuration," a factfinder may permissibly conclude "that race predominated in drawing" those districts." Deeply misleading quote mining at best, intentionally deceptive at worst.
- Judge Brown says "[w]hy not just base the 2025 redistricting exclusively on *Rucho*? The answer must be that race and Petteway were essential ingredients of the map, without which the 2025 redistricting wouldn't have occurred." False.
- Judge Brown says "[in *Cooper v. Harris*], the mapmaker had achieved an "on-the-nose attainment of a 50% BVAP" in the challenged district—a feat that, in the district court's view, the mapdrawer would have been unlikely to achieve by blind adherence to partisan data alone. The district court deemed it far more likely that the mapdrawer used a 50% racial target to "deliberately redr[a]w [the challenged district] as a majority-

³²⁷ Brown Op. at 2.

³²⁸ Brown Op. at 16.

³²⁹ Brown Op. at 16-17.

³³⁰ Brown Op. at 55.

³³¹ Brown Op. at 60.

³³² Brown Op. at 79.

minority district."³³³ Deeply misleading quote mining at best, intentionally deceptive at worst.

- Judge Brown says "[e]ven more notably, Dr. Duchin's testimony was effectively unchallenged; no defense expert submitted a report rebutting Dr. Duchin's findings."³³⁴ Misleading.
- Judge Brown says "[i]n any event, if raising the floor to a value closer to 60% would have undermined Dr. Duchin's conclusions, the State Defendants could have introduced expert rebuttal testimony to that effect. Again, though, the State Defendants let Dr. Duchin's testimony go unrebutted"³³⁵ False.
- Judge Brown says "[i]n this case, '[l]ate judicial tinkering' with Texas's congressional map is not what could 'lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters.'"³³⁶ False.
- Judge Brown says "[t]he Court adds that even Ms. Adkins testified that the Texas election officials and systems are more than capable of proceeding with the 2026 congressional election under any map that is the law." Talse.

* * * * *

This order, replete with legal and factual error, and accompanied by naked procedural abuse, demands reversal.

* * * * *

Darkness descends on the Rule of Law. A bumpy night, indeed.

So SIGNED this 19th day of November 2025.

Jerry E. Smith U.S. Circuit Judge

³³³ Brown Op. at 98.

³³⁴ Brown Op. at 122.

³³⁵ Brown Op. at 126.

³³⁶ Brown Op. at 146.

³³⁷ Brown Op. at 151.

IN THE UNITED STATES DISTRICT COURT WESTERN DISTRICT OF TEXAS EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN

CITIZENS, et al.,

Plaintiffs,

ALEXANDER GREEN, et al.,

Plaintiff-Intervenors,

v.

GREG ABBOTT, et al.,

Defendants.

3:21-cv-00259-DCG-JES-JVB [Lead Case]

&

All Consolidated Cases

THE STATE OF TEXAS'S NOTICE OF APPEAL

Notice is hereby given that Defendants, the State of Texas; Greg Abbott, in his official capacity as Governor of Texas; Jane Nelson, in her official capacity as Secretary of State; and Dave Nelson, in his official capacity as Deputy Secretary of State, (collectively, "State Defendants") hereby appeal this Court's November 18, 2025 order granting a preliminary injunction, ECF No. 1437, to the United States Supreme Court. This appeal is taken pursuant to 28 U.S.C. § 1253.

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IN THE UNITED STATES DISTRICT COURT WESTERN DISTRICT OF TEXAS EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN	§	
CITIZENS, et al.,	§	
Plaintiffs,	§ §	Case No. 3:21-cv-00259-DCG-JES-JVV [Lead Case]
V.	§	[Loud Guse]
GREG ABBOTT, et al.,	§ §	&
Defendants.	§ §	All Consolidated Cases

STATE DEFENDANTS' OPPOSED MOTION TO STAY PENDING APPEAL

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Defendants Greg Abbott, in his official capacity as Governor of Texas, Jane Nelson in her official capacity as Secretary of State of Texas, Dave Nelson, in his official capacity as Deputy Secretary of State, and the State of Texas (collectively State Defendants) file this Motion to Stay Pending the outcome of Defendants' Appeal (*see* ECF No. 1438) of the Court's Order Granting Preliminary Injunction (ECF No. 1437).

Introduction

After a long and hard-fought preliminary injunction hearing, this Court found in favor of the various Plaintiff groups. This fact notwithstanding, the Court should stay its preliminary injunction for at least three reasons. *First*, Plaintiffs did not show a likelihood of success on the merits. *Second*, State Defendants will suffer irreparable harm in the absence of a stay. *Third*, the balance of equities and public interest, including the *Purcell* doctrine, weigh heavily in favor of State Defendants.

BACKGROUND

In 2021, the Texas Legislature enacted a Congressional map with the stated goal of improving Republican performance. The 2021 Map was drawn blind to race and then sent to outside counsel for VRA compliance review. *See* Trial Tr. 6/7/25 PM at 95:12–99:20; Trial Tr. 6/10/25 PM at 81:15–84:7; Trial Tr. 6/10/25 AM at 96:9–97:11; Trial Tr. 6/7/25 PM at 33:10–24; Trial Tr. 6/7/25 PM at 02:51:16–02:51:44. Despite the stated partisan goals, the result was a map that "left a lot" of Republican districts "on the table." Trial Tr. 05/31/25 AM at 57:24–25. When Plaintiff groups sued to enjoin the map, they argued that the Legislature's insistence that it did not consider race when drawing the maps was "suspicious." ECF No. 1; Trial Tr. 5/27/25 PM at 135:6–21.

Despite Texas's strong Republican advantage, the White House was not satisfied. On June 9, 2025, President Trump began a redistricting pressure campaign on state legislatures to redraw Congressional districts to "pick up as many as four or five House seats in 2026 " Defs.' Ex. 1415 (J. David Goodman & Shane Goldmacher, *White House Pushes Texas to Redistrict, Hoping*

to Blunt Democratic Gains, NYTIMES, (Jun. 9, 2025)). Just two weeks after Trump's pressure campaign became public, Governor Abbott announced that he planned to call a special session the following month. Defs.' Ex. 1420 (Press Release, Governor Greg Abott, Governor Abbott Announces Special Session Date, Initial Agenda (Jun. 23, 2025), https://gov.texas.gov/news/post/governor-abbott-announces-special-session-date-initial-agenda). On July 7th, 2025, prompted by President Trump's public statements, the Department of Justice issued a letter threatening to sue Texas if it failed to revise its congressional districts. ECF No. 1141-2. On July 15th, 2025, President Trump made public statements to the press that he wanted Texas to flip "five [seats]" to the Republican Party. Defs.' Ex. 1352 (ROLL CALL, Press Gaggle: Donald Trump Speaks to Reporters Before Marine One Departure - July 15, 2025 (Jul. 15, 2025), https://rollcall.com/factbase/trump/transcript/donald-trump-press-gaggle-before-marine-one-departure-july-15-2025/).

Six days later, the Texas House and Texas Senate came to order in response to Governor Abbott's Proclamation. Defs.' Ex. 1253 (H. J. of Tex. 89th Lege., 1st C.S. First Day at 1 (Jul. 21, 2025)); Defs.' Ex. 1252 (S. J. of Tex., 89th Lege., 1st C.S. First Day at 1 (Jul. 21, 2025)); Defs.' Ex. 1054 (Press Release, Greg Abbot, Governor Abbott Announces Special Session Agenda, (Jul. 9th, 2025), https://gov.texas.gov/news/post/governor-abbott-announces-special-session-agenda-). In accordance with prior precedent for redistricting, the House Select Committee on Congressional Redistricting held a series of public hearings. The first meeting, on July 24th, was met with vicious opposition by Democrats who objected to the effort because it was a partisan "power grab", a "pretext" to "get those five districts," and that any remedial basis for redistricting was an absurdity because the Texas House would never have passed a race-based map. Defs.' Ex. 1279 (House Select Comm. on Congressional Redistricting, Jul. 24, 2025 Tr.at 14:19, 67:9-11, 27:9-22). The Senate similarly held a series of public hearings to receive testimony. See e.g., Defs.' Ex. 1096 (House Select Comm. on Congressional Redistricting, Notice of Public Hearing (Jul. 24, 2025)). Democrats objected to the implementation of a map that would increase Texas's Republican advantage in Congress and acknowledged the need to paint Texas's redistricting effort as racial opposed to partisan in order to seek judicial relief. Defs.' Ex. 1284 (Hearing on H.B. 4 before the Senate Special Comm. on Congressional Redistricting, 89th Leg., 1st C.S. Tr. at 36:22-37:5 (Jul. 28, 2025) ("If we don't say that this is racial, if we don't indicate that, we're not going to get to Section 2 and we can't win.")).

Desperate to prevent Republicans from gaining five additional Republican seats, more than fifty Texas legislators—all Democrats—fled the state to deprive the House of the quorum necessary to take legislative action. Defs.' Ex. 1429 (Kayla Guo & Eleanor Klibanoff, *Texas House Democrats flee the state in bid to block GOP's proposed congressional map*, TEXAS TRIBUNE (Aug. 3, 2025)). This was not successful; the House reestablished quorum on August 18, 2025. After the Democrats returned, Republicans, rather than shying away from their partisan motives, made clear again that the purpose of the map was to "make it more Republican." Defs.' Ex. 1316 (House Select Comm. on Congressional Redistricting (Aug. 18, 2025), Tr. at 14:5–13). Republicans emphasized that the new map, like the 2021 Map, was drawn blind to race. Defs.' Ex. 1323 (Hearing on H.B. 4 on the Floor of the Senate (Part I), 89th Leg., 2nd C.S. (Aug. 22, 2025) Tr. at 7:24–8:6 (Aug. 22, 2025)). The bill passed both chambers on party lines and implemented a new congressional map that increased the number of predicted Republican congressional districts from twenty-five to thirty. Defs.' Ex. 1267 (H. J. of Tex. 89th Lege., 2nd C.S. at 65 (Aug. 20, 2025)); Defs.' Ex. 1271 (S. J. of Tex. 89th Lege., 2nd C.S. at 59–61 (Aug. 22, 2025)).

Despite Republican's clear partisan motive, Plaintiffs complain that the 2025 Map was enacted with a discriminatory purpose. This is just a façade, as their actual grievance is that Texas's 2025 Congressional Map is set to elect five more Republicans to the U.S. House of Representatives. *See, e.g.*, ECF No. 1134-1 (Brooks, LULAC, & MALC Pls.' Mot. Prelim. Inj., at 45–46 (requesting Plan C2193, a map they believe violated the VRA but has five fewer Republican seats, as their remedy)). But as Representative Al Green put it, "[i]f we don't say that this is racial, if we don't indicate that, we're not going to get to Section 2 and we can't win." Defs.' Ex. 1284 (Hearing on H.B. 4 before the Senate Special Comm. on Congressional Redistricting, 89th Leg., 1st C.S., Tr. at 36:22–37:5 (Jul. 28, 2025)).

To support their claim of discrimination, Plaintiffs pointed to statements by legislators answering questions posed by Democrats regarding the racial composition of districts. *See e.g.*, ECF No. 1282 at 13 (Prelim. Inj. Intervenor Post-Hr'g Br. (noting that Chairman Hunter answered questions from Democrats about race)). However, when remarks are made "in response to a question that itself raised the race issue" and the response to the question also mentions race, then the exchange has "little or no probative value" regarding discriminatory purpose. *See Jackson v. Tarrant Cnty.*, No. 25-11055, 2025 WL 3019284 at *10 (5th Cir. Oct. 29, 2025) (discussing the probative value of responses to questions that raise race issues in the redistricting context in the State of Texas).

This Court received post-hearing briefing on October 9. Yesterday, this Court entered a preliminary injunction preventing Texas from using the 2025 map and requiring use of the (repealed) 2021 map.

The first day of the filing period for candidates that are seeking public office was November 8, 2025. Tr. 10/08/2025 AM at 150:25–151:9. That was eleven days ago. That filing period ends in nineteen days. Candidates have already filed and are campaigning and collecting signatures under the new maps. *Id.* at 154:17–19; 155:22–156:4. The primary election is already underway under the 2025 maps. Tr. 10/8/2025 AM 150:25–151:9; Tr. 10/8/2025 PM at 8:7–9; *see, e.g.*, Proclamation, Governor of the State of Texas (Nov. 17, 2025), https://tinyurl.com/4ayrpr9u (noting "several candidates... have filed or announced to run for the current Congressional District No. 18). This Court's decision imposing court-ordered maps has thrown the State's electoral system into immediate chaos, with candidates already disrupting their plans and campaigns. Indeed, the Court's order will change the boundaries of every congressional district in the State—save one.

The State Defendants filed a notice of appeal to the Supreme Court on the same day as this Court's order. They now ask this Court to stay its injunction pending appeal. If this Court denies that relief, it should at least avoid immediate harm and stay the injunction for a brief period

(preferably until Monday, November 24 but at least until midnight on Friday, November 21) to allow the State Defendants to seek relief from the Supreme Court.

ARGUMENT

"[A]s part of its traditional equipment for the administration of justice, a federal court can stay the enforcement of a judgment pending the outcome of an appeal." *Nken v. Holder*, 556 U.S. 418, 421 (2009) (quoting *Scripps-Howard Radio, Inc. v. FCC*, 316 U.S. 4, 9-10 (1942)). In this case, the traditional stay factors govern this request for a stay pending judicial review. *See id.* at 426. These traditional factors are: "(1) a likelihood of success on the merits; (2) a likelihood of suffering irreparable harm if an injunction is not granted; (3) that the balance of equities tips in their favor; and (4) that an injunction would serve the public interest." *Jackson*, 2025 WL 3019284 at *3. "The first factor—likelihood of success on the merits—is the most important." *Scripps-Howard Radio, Inc.*, 316 U.S. at 8, 18-27 (quoting *United States v. Abbott*, 110 F.4th 700, 706 (5th Cir. 2024)) (finding that challengers were not likely to succeed on the merits of their intentional race-discrimination claim under the *Arlington Heights* framework) (cleaned up). Importantly, Plaintiffs must show a *substantial* likelihood of success on the merits. *Mock v. Garland*, 75 F.4th 568, 577 (5th Cir. 2023). Here, each of the traditional factors that courts weigh when considering whether to grant a stay tip the scales in favor of State Defendants.

I. Plaintiffs Have Not Shown a Likelihood of Success on the Merits

The Court granted Plaintiffs' request for a preliminary injunction based only on Plaintiffs' racial gerrymandering claims. ECF No. 1437 at 54. To prevail on a racial gerrymandering claim, Plaintiffs must show "that race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." *Miller v. Johnson*, 515 U.S. 900, 916 (1995). "To make this showing, a plaintiff must prove that the legislature subordinated traditional race-neutral districting principles, including but not limited to compactness, contiguity, and respect for political subdivisions or communities defined by actual shared interests, to racial considerations." *Id.* Moreover, Plaintiffs must disentangle race and

politics. Alexander v. S.C. State Conf. of the NAACP, 602 U.S. 1, 6 (2024). Plaintiffs have not done so.

A. Plaintiffs Are Unlikely to Show Discriminatory Intent

Plaintiffs may show discriminatory intent through some combination of direct and circumstantial evidence. Alexander, 602 U.S. at 8. In the absence of direct evidence, Plaintiffs must supply the Court with a "substitute map that shows how the State 'could have achieved its legitimate political objectives' in [a challenged district] while producing 'significantly greater racial balance." Id. at 34. If they fail to do so, the Court must take an adverse inference. Id. Here, Plaintiffs have no direct evidence, no alternative map, and no likelihood of success.

B. Direct Evidence

Direct evidence is "evidence which, if believed, proves the fact without inference or presumption[.]" Brown v. E. Miss. Elec. Power Ass'n, 989 F.2d 858, 861 (5th Cir. 1993). The only evidence presented that meets this standard—Kincaid's testimony—confirms that race was not a factor in redistricting.

1. Plaintiffs have produced no direct evidence of intentional discrimination

Plaintiffs have not produced any direct evidence that the legislature acted with racially discriminatory intent. "Direct evidence often comes in the form of a relevant state actor's express acknowledgment that race played a role in the drawing of district lines. Such concessions are not uncommon because States often admit to considering race for the purpose of satisfying our precedent interpreting the Voting Rights Act of 1965." Alexander, 602 U.S. at 8 (emphasis added). Plaintiffs wave the Department of Justice letter (DOJ Letter) as though it is their golden ticket, but it is nothing more than a red herring. The Court first cited the DOJ letter as direct evidence of legislative intent, though the letter was not authored by a state legislator, but rather a federal executive official. See ECF No. 1437 at 59-64. Next, the Court cited Governor Abbott's statements as direct evidence of legislative intent. ECF No. 1437 at 61-64. However, as the Supreme Court acknowledged, neither the DOJ, Harmeet Dhillon, nor Governor Abbott are "relevant state

actor[s]" for purposes of determining legislative intent. *Alexander*, 602 U.S. at 8; ECF No. 1437 at 65. Moreover, to conclude that the legislature acted with racial discrimination as its *predominant* motive based on these statements requires the factfinder to make inferences and presumptions and ignore directly contradictory statements by the legislators—and the mapdrawer—themselves. *See e.g.*, Tr. 10/6/25 PM 80:4–6 (Sen. King) ("[F]or me it really didn't carry any significance. The letter wasn't addressed to the Legislature."); Tr. 10/9/25 PM 118:8–13 (Rep. Vasut) ("I disagree with the assumption that this process had anything to do with the DOJ letter."); Tr. 10/8/25 AM 69:6–7 (Kincaid) ("I drew a race-blind map using partisan results"). As such, the DOJ Letter and Governor Abbott's statements are not direct evidence. *See E. Miss. Elec. Power Ass'n*, 989 F.2d at 861; *Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 689 (2021).

Moreover, Representative Hunter's statements concerning the racial effects of the map are not evidence of intent to discriminate. Robinson v. Ardoin, 86 F.4th 574, 593 (5th Cir. 2023) ("Awareness of race is permissible, and redistricting will often require awareness of the demographics of proposed districts."); Jackson, 2025 WL 3019284 at *10 (finding remarks about race made "in response to a question that itself raised the race issue" have "little or no probative value" regarding discriminatory purpose.). As a result, Plaintiffs have not shown any direct evidence of discriminatory intent on behalf of the Legislature.

The direct evidence on the record contradicts any finding that the Legislature had racially discriminatory motives. Adam Kincaid—the mapdrawer—testified that he drew the maps without consideration of race. Tr. 10/8/25 AM 69:6-7 ("I drew a race-blind map using partisan results"). Kincaid went into granular detail about the partisan makeup and process by which he drew the maps. See e.g., Tr. 10/7/25 AM at 64:19-65:13 (describing his criteria); Tr. 10/7/25 AM at 143:18-145:22 (describing the process of drawing 7, 8 and 38). Because direct evidence of racial intent takes the form of testimony by the mapdrawer, legislators, or both that the legislature "purposefully established a racial target[,]" Cooper v. Harris, 581 U.S. 285, 299 (2017), Kincaid's uncontroverted testimony that he did not use racial data to draw the Congressional map dooms Plaintiffs' claims.

Legislators' direct statements concerning their intent corroborate Kincaid's testimony. Both Senator King and Representative Vasut testified that race was not a consideration when they passed the map through their respective committees. Tr. 10/9/25 PM at 117:11–12, 118:20–119:5 (Rep. Vasut); Tr. 10/6/25 PM at 111:11–25 (Sen. King). Plaintiffs cite no direct evidence that contradicts this testimony.

Further, any potential direct evidence must be viewed through the lens of the presumption of legislative good faith. The presumption of good faith operates as a foundational constraint on judicial review of legislative action, reflective of the principle that duly elected lawmakers are entitled to have their motives, deliberations, and enactments viewed through a lens of legitimacy. *Miller*, 515 U.S. at 915 ("[T]he good faith of a state legislature must be presumed."). When a court declines to extend this presumption, the balance of our constitutional design is disturbed. *Id.* at 916 ("[T]he presumption of good faith that must be accorded legislative enactments, requires courts to exercise extraordinary caution."). When courts do not begin with an understanding that legislators act to advance permissible public purposes, they risk converting political disagreements into invidious and racial disputes, thereby encroaching upon the policy-making authority assigned to the legislature to settle issues through the political process. *Abbott v. Perez*, 585 U.S. 579, 603 (2018) ("Federal-court review of districting legislation represents a serious intrusion on the most vital of local functions.").

Legislatures are collective bodies, and their work product arises from compromise, debate, and the input of many actors deriving their lawmaking powers from their representative capacity. *Ariz. State Legis. v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 814 (2015); *Eastlake v. Forest City Enters., Inc.*, 426 U.S. 668, 672 (1976) ("Under our constitutional assumptions, all power derives from the people, who can delegate it to representative instruments which they create."). Because of this complexity, isolated statements cannot reliably reflect the institution's purpose. A failure to maintain the presumption then treats the legislature as though it were a unitary body rather than the representation of the political wills of the state as a whole. *Vill. of Arlington Heights*

v. Metro. Hous. Dev. Corp., 429 U.S. 252, 265 (1977) (recognizing that legislatures are not motivated "solely by a single concern").

Ignoring this context results in a disregard for the structural reality that legislative intent cannot be reconstructed through a mere tallying of statements. See United States v. O'Brien, 391 U.S. 367, 384 (1968) ("It is entirely a different matter when we are asked to void a statute that is, under well-settled criteria, constitutional on its face, on the basis of what fewer than a handful of Congressmen said about it. What motivates one legislator to make a speech about a statute is not necessarily what motivates scores of others to enact it, and the stakes are sufficiently high for us to eschew guesswork."). But the Court engaged in this tallying practice in direct contravention to O'Brien. ECF No. 1437 at 66–79. The presumption does not permit an exercise in weighing snippets of legislative statements and the actions of non-legislative parties until the scale tips. If statements are uncertain, the courts must resolve that uncertainty in favor of the legislature acting with a proper purpose. Miller, 515 U.S. at 916; O'Brien, 391 U.S. at 383–84. This presumption reflects the proper recognition that courts should not upend the result of the democratic process without valid cause.

This Court committed a legal error by mischaracterizing Plaintiffs' evidence as direct evidence and by failing to apply *Alexander*'s presumption of good faith.

2. Plaintiffs rely only upon circumstantial evidence, yet produce no alternative plan.

Because Plaintiffs lack direct evidence of discriminatory intent, they are left to rely on circumstantial evidence. "A circumstantial-evidence-only case is especially difficult when the State raises a partisan-gerrymandering defense." *Alexander*, 602 U.S. at 9. A plaintiff therefore "must 'disentangle race from politics.'" *Id.* (citation omitted). Plaintiffs have failed to do this and are thus unlikely to succeed on the merits.

The Court must take "an adverse inference" against plaintiffs who do not provide a "substitute map that shows how the State 'could have achieved its legitimate political objectives' in [a challenged district] while producing 'significantly greater racial balance.'" *Id.* at 34 (citation omitted). "If either politics or race could explain a district's contours, the plaintiff has not cleared

its bar." *Id.* at 10. Plaintiffs have not cleared it here. In fact, Plaintiffs' only attempt to shoulder their burden of proof to produce a single alternative map was to have their counsel pull up their laptop during cross examination and shuffle the edges of two districts—an exercise roundly rejected by State Defendants' expert, Dr. Sean Trende. *See e.g.*, Tr. 10/10/25 AM at 91:1–18; 113:21–114:5; Tr. 10/10/25 PM at 29:10–30:6; 47:7–20. Plaintiffs' failure is inexcusable after the Supreme Court's observation that "an alternative map [is not] difficult to produce." *Alexander*, 602 U.S. at 34.

Plaintiffs attempted to use departures from regular procedure as circumstantial evidence of a discriminatory purpose. See e.g., ECF No. 1282 at 7–8, Prelim. Inj. Intervenor Post-Hr'g Br. (characterizing the redistricting timeline, July 21st to August 22nd, as taking only "five days"). However, departures of this type "are just as easily explained by a partisan motive as a racial motive" and because "partisan gerrymandering is unlikely to be popular," "it is understandable that a legislature engaging in it would want to avoid an extensive, public process." Jackson, 2025 WL 3019284 at *12. "While that may not be consistent with the best practices of good government, it is hardly suggestive of racial motivation." Id. In addition, the Fifth Circuit stated that "the choice to redistrict mid-cycle is easily explained by a desire to reap partisan benefits in the 2026, 2028, and 2030 elections rather than waiting until 2030." Id. Because Plaintiffs "must 'disentangle race from politics,'" Alexander, 602 U.S. at 9, procedures that "are just as easily explained by a partisan motive as a racial motive," Jackson, 2025 WL 3019284 at *12, do not meet Plaintiffs' burden.

The Court's suggestion that plaintiffs may forego the *Alexander* requirement because the matter arises in a preliminary injunction improperly limits the showing required to obtain such extraordinary relief. ECF No. 1437 at 132–33. A preliminary injunction demands proof of a substantial likelihood of success on the merits, and this does not permit a relaxed standard. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) ("[Preliminary] injunctive relief [i]s an extraordinary remedy that may only be awarded upon a *clear* showing that the plaintiff is entitled to such relief." (emphasis added)); *see also Mock*, 75 F.4th at 577 (requiring a showing of a "a *substantial* likelihood of success on the merits" (emphasis added)). Under *Alexander*, success on

the merits of a vote-dilution claim based on circumstantial evidence all but requires the presentation of a viable alternate map. *Alexander*, 602 U.S. at 35 ("The evidentiary force of an alternative map, coupled with its easy availability, means that trial courts should draw an adverse inference from a plaintiff's failure to submit one. The adverse inference may be dispositive in many, if not most, cases where the plaintiff lacks direct evidence.") Plaintiffs *cannot* demonstrate a likelihood of success where they have not produced the very evidence that *Alexander* has deemed essential to proving their claim. The absence of an alternative map is not a speedbump, but a brick wall, leaving a dispositive element of their merits case entirely unsubstantiated.

Moreover, plaintiffs' inability or unwillingness to supply such a map is not attributable to the speed of the litigation. Plaintiffs themselves urged the court to accelerate the litigation, and having invited an expedited timetable, they cannot rely on it to excuse a failure of proof. *See generally Benisek v. Lamone*, 585 U.S. 155 (2018) (denying preliminary injunction where plaintiffs, through their own litigation pace choices failed to present the necessary evidentiary showing); *see also Winter*, 555 U.S. at 22 ("Injunctive relief [i]s an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief"). Moreover, Dr. Duchin's generation of millions of maps "in a matter of seconds" demonstrates that the time and tools were more than adequate to produce at least one legally compliant alternative. Tr. 10/6/2025 AM at 75:24–76:4. Litigants who demand speed cannot then leverage that speed to excuse their inability to provide crucial evidence; this is even more true when the party seeks the extraordinary remedy of a preliminary injunction that would enjoin duly and democratically enacted congressional maps.

Additionally, Plaintiffs did not rebut State Defendants' evidence showing that the 2025 Map would have passed regardless of its racial makeup. Tr. 10/9/25 PM at 119:15–119:20. *Vill. of Arlington Heights*, 429 U.S. at 270 n.21 (establishing that if the legislature would have made "the same decision" without "the impermissible purpose" then "there would be no justification for judicial interference with the challenged decision."). Witness testimony confirmed that partisanship and political goals favoring Republican candidates were the motivating reasons behind

the redistricting effort. Even Plaintiffs' own expert testified that the map looks exactly like a response to President Trump's wishes. Tr. 10/6/25 PM at 5:22-6:12.

At every turn, Plaintiffs have failed to produce compelling evidence of racial motivation on behalf of the Legislature. They have not disentangled alleged racial motivations from partisan ones and have not provided an alternative map that would show that the Legislature could have accomplished its same goals with a different racial effect. Their claims fail as a matter of law, and they have not demonstrated a likelihood of success on the merits.

II. Equitable Considerations Foreclose an Injunction

Plaintiffs also fall short when examining the "equitable considerations" courts consider when deciding whether to grant a stay of injunction. Even if Plaintiffs could show a likelihood of success (they cannot), "a preliminary injunction does not follow as a matter of course." *Benisek*, 585 U.S. at 158. At the outset, a plaintiff must also show that he is "*likely* to suffer irreparable harm." *Winter*, 555 U.S. at 20 (emphasis added). And because Plaintiffs have not shown that they are likely to prevail on their claims that the Legislature unconstitutionally discriminated on the basis of race, they cannot show that they are likely to suffer any harm at all, let alone irreparable harm. *Id.* at 22 (holding that a "possibility" of irreparable harm is not enough); *League of United Latin Am. Citizens (LULAC) v. Abbott*, 601 F. Supp. 3d 147, 182–83 (W.D. Tex. 2022) (finding Plaintiffs had not shown they were likely to suffer irreparable harm because they had not shown they were likely to succeed on the merits).

Furthermore, there are several equitable factors that weigh in favor of this Court granting a stay. *First*, "the balance of harm requirement . . . looks to the relative harm to both parties if the injunction is granted or denied." *Def. Distributed v. U.S. Dep't of State*, 838 F.3d 451, 459 (5th Cir. 2016). This Court's preliminary injunction irreparably harms Texas. "When a statute is enjoined, the State necessarily suffers the irreparable harm of denying the public interest in the enforcement of its laws." *Veasey v. Abbott*, 870 F.3d 387, 391 (5th Cir. 2017) (per curiam). Accordingly, the balance of the equities and public interest "merge when the Government is the opposing party,"

Nken, 556 U.S. at 435, and courts "should be particularly cautious when contemplating relief that implicates public interest." Salazar v. Buono, 559 U.S. 770, 714 (2010). "Redistricting constitutes a traditional domain of state legislative authority," and the Supreme Court just last year urged federal courts to "exercise extraordinary caution . . . because [f]ederal-court review of districting legislation represents a serious intrusion on the most vital of local functions." Alexander, 602 U.S. at 7 (internal quotations omitted). Here, both the balance of harm and the public interest weigh against an injunction.

Second, the Purcell doctrine cuts against a preliminary injunction. See Purcell v. Gonzalez, 549 U.S. 1 (2006) (per curiam). Purcell "stands for the principle that 'federal courts ordinarily should not enjoin a state's election laws in the period close to an election, and that when 'lower federal courts contravene that principle,' the Supreme Court will stop them." Pierce v. N.C. State Bd. of Elections, 97 F.4th 194, 266 (4th Cir. 2024) (quoting Merrill v. Milligan, 142 S.Ct. 879, 879-80 (2022) (Kavanaugh, J., concurring)); see Purcell, 549 U.S. 1; La Union Del Pueblo Entero v. Abbott, 119 F.4th 404, 408 (5th Cir. 2024). This is not a new principle. In Reynolds v. Sims, 377 U.S. 533 (1964), the Supreme Court explained that the lower court "acted wisely in declining to stay the impending primary election in Alabama," id. at 586, even though the challenged redistricting plan was plainly unconstitutional, id. at 545. "Sims has been the guidon to a number of courts that have refrained from enjoining impending elections," Chisom v. Roemer, 853 F.2d 1186, 1190 (5th Cir. 1988), "even in the face of an undisputed constitutional violation," Sw. Voter Registration Educ. Project v. Shelley, 344 F.3d 914, 918 (9th Cir. 2003); Ely v. Klahr, 403 U.S. 108, 114-115 (1971).

The injunction overturns this "bedrock tenet of election law," forbidding "[l]ate judicial tinkering with election laws." Milligan, 142 S.Ct. at 881 (Kavanaugh, J., concurring)). Purcell does not, however, prohibit state legislative action at any time. See Milligan, 142 S.Ct. at 881 (Kavanaugh, J., concurring)) (allowing "a State on its own to toy with its election laws close to a State's elections"). If there are to be any late changes to the congressional map, they should come from the state legislature, not a federal court.

This injunction cannot be squared with *Purcell*. The majority opinion faults the state legislature for supposedly acting late, see Maj. Op. 146-47, requiring it to declare Supreme Court precedents in "Robinson and Milligan are not dispositive," Maj. Op. at 143. This injunction has one key effect: "swoop[ing] in and re-do[ing]" the Texas congressional map "in the period close to an election." *Milligan*, 142 S.Ct. at 881 (Kavanaugh, J., concurring)).

Nor is this a plausible case for modifying Purcell's distinction between judicial and legislative action. Legislative passage of the congressional map was delayed by an illegal quorum break orchestrated by those opposed to the map, including plaintiffs in this litigation. See Dissent at 21 (noting "some plaintiffs broke quorum and delayed the passage of the 2025 map for weeks"). Plaintiffs should not benefit in court from delaying the legislative process. As this Court has recognized, LULAC, 601 F. Supp. 3d at 186, the Supreme Court has not hesitated to stay injunctions under the *Purcell* principle. The *Robinson* and *Callais* cases are instructive. In *Robinson*, the Fifth Circuit declined to issue a stay based on the *Purcell* principle when the "primary elections [were] five months away." Robinson v. Adroin, 37 F.4th 208, 228-29 (5th Cir. 2022). That decision was erroneous, and the Supreme Court promptly issued the stay. Ardoin v. Robinson, 142 S.Ct. 2892, 2892-93 (2022). Likewise, in *Callais*, the three-judge district court enjoined Louisiana's congressional map but declined to enter a stay based on Purcell. Callais v. Landry, 732 F. Supp. 3d 574, 613-14 (W.D. La. 2024). Despite there being more than six months between the April 2024 order enjoining the map and the November 2024 primary elections, the Supreme Court stayed the injunction, citing Purcell. Robinson v. Callais, 144 S.Ct. 1171 (2024); see also Petteway v. Galveston Cnty., 87 F.4th 721, 723 (5th Cir. 2023) (en banc) (Oldham, J., concurring and joined by a majority of the Court) (collecting cases).

This Court's injunction was issued just three and a half months before Texas' primary elections, already shorter than the time periods at issue in Robinson or Callais. Texas' primary elections are on March 3, 2026, just three and a half months away. Tr. 10/8/25 AM 150:16-17. Early voting begins on February 17, 2026, and early voting for overseas and military members begins on January 17, 2026, as federal law requires the issuance of absentee ballots to such voters 45 days before the primary. Tr. 10/8/25 PM 10:1-6; 52 U.S.C. Sec. 20302(a)(8). The candidate filing period opened on November 8, 2025. Tr. 10/8/25 AM 150:25-151:14. That was eleven days ago—Texas's 2026 Congressional election is already well under way.

Indeed, "'Purcell is [not] just a tallying exercise." ECF No. 1437 at 143 (quoting Robinson, 37 F.4th at 229 (denying stay)); but see Ardoin v. Robinson, 142 S. Ct. 2892 (2022) (granting stay that Fifth Circuit did not enter). And it "is not the case 'that a district court may never enjoin a State's election laws in the period close to an election." ECF No. 1437 at 143 (quoting Milligan, 142 S.Ct. at 881 (Kavanaugh, J., concurring)). However, the dates in Robinson and Milligan remain helpful guideposts for courts. See, e.g., Petteway, 87 F.4th at 723 (Oldham, J., concurring and joined by a majority of the Court) (listing cases and considering how many days before the election did the Supreme Court apply Purcell to bar judicial intervention).

This Court's order will cut the candidate filing period in half and require potential candidates to make a difficult choice. For those, who have not yet filed, should they do so under the court-imposed map? Or should they roll the dice by filing under the map that is currently law? And "[c]hanging the opening of the candidate filing period, delaying it . . . has kind of a cascading effect." Tr. 10/8/25 PM 10:16–19. As Mrs. Christina Adkins, the Director of Elections at the Texas Secretary of State's Office explains, it could result in a change to the primary date, which "could potentially be catastrophically bad." Tr. 10/8/25 PM 11:12–25. Furthermore, "[c]hanging the opening of the candidate filing period . . . could impact the ability for counties to adequately prepare and test their ballots, and could impact their ability to meet that [federal] 45-day deadline." Tr. 10/8/25 PM 10:16–25. And testing ballots is "a very, very important piece of the process, because it ensures accuracy for your outcomes." Tr. 10/8/25 PM 11:10–11. Not only is "logic and accuracy testing" required by state law, it is also "the process by which we ensure that our equipment and the programming related to that equipment is accurate and will . . . accurately tabulate the election results." Tr. 10/8/25 PM 11:1–11.

Furthermore, Election Administrators have already begun to prepare for the 2026 primaries under the 2025 congressional map. Tr. 10/8/25 PM 14:20-22; see also Tr. 10/8/25 AM

152:11–17 ("For the upcoming primary in March, the maps that our counties would be working under at this moment would be the maps that are current law," which are the "2025 maps."). While some parts of Harris County were preparing for elections under the 2021 map and the 2025 map due to a runoff election for a single district on January 31, 2026, the same is not true for the other 253 counties in the State. To prepare for the upcoming primary election, the Secretary of State has already begun educating county election officials about the maps so that they can "determine if there [are] any additional efforts they needed to make on the local level for compliance." Tr. 10/8/25 AM 152:18–153:12. Because counties are responsible for drawing county election voter registration precincts, "many counties have already begun that process and started mapping all those changes out." Tr. 10/8/25 AM 154: 11–13.

This injunction also disrupts settled reliance interests. For congressional races, November 8, 2026 is not the start of the race. The filing period for individuals applying for a party office opened on September 9, 2025. Tr. 10/8/25 AM 150:20–24. Announced candidates have also already begun campaigning for the districts drawn under the 2025 map. Tr. 10/8/25 AM 154:17–155:3. Some candidates have even chosen to forego reelection to an office they currently hold and run in a district drawn under the 2025 map. Defs.' Ex. 1380. Disrupting the status quo by changing the congressional map will "cause some level of voter confusion." Tr. 10/8/25 PM 15:14–16. Some candidates will have to "reconsider what district they're running in." Tr. 10/8/25 PM 15:17–19. And some candidates risk their application being rejected for invalid signatures, or will have to "restart the process of collecting signatures," the "only option" some candidates "have under the law to get on the ballot." Tr. 10/8/25 PM 7:21–8:23, 12:14–20, 15:14–25.

This injunction will confuse voters and candidates, may lead to "catastrophically bad" operational concerns for Texas elections, and disrupt the orderliness of Texas's electoral process. Under *Purcell*, this should not be. Even less than 48 hours after the injunction was entered, these negative effects are already occurring. "The ruling has set off a domino effect for politicians, with Democrats who had previously announced retirement now planning to run for their current districts under the lines set in 2021." Gabby Birenbaum, *Court order striking down Texas redistricting*

plans for candidates the **KWTX** (Nov. 19, тар upends across state, 2025), https://www.kwtx.com/2025/11/19/court-order-striking-down-texas-redistricting-map-upendsplans-candidates-across-state/. "Republican candidates—especially in those districts that were completely redrawn—are now at the mercy of the Supreme Court[.]" Id. "Many GOP candidates have already filed for election, raised money and begun campaigning under the new lines, but those districts, under the ruling, would now revert to ones that favor Democrats." Id. Congressman Marc Veasey, a Fort Worth Democrat, "said the situation reminded him of his entry into Congress in the 2012 election cycle, when a panel of federal judges similarly rejected the Texas Legislature's map drawn in 2011." Id. Notably, Christina Adkins testified that the 2012 primary election cycle is an example of a time when a court's interference with the state's election process potentially had a substantive effect on the outcome of the election. See Tr. 10/8/25 PM 12:19-13:5.

Due to the injunction, Congressional candidates—at least 71 of them, both Republican and Democrat, across the State—are now running for election under different maps. See Gabby Birenbaum, Court order striking down Texas redistricting map upends plans for candidates across the (Nov. Texas Secretary of State, Candidate state, **KWTX** 19, 2025); https://goelect.txelections.civixapps.com/ivis-cbp-ui/candidate-information (database registered candidates for 2026 congressional primaries). The Court's injunction made the 2021 Maps the active maps for Congressional campaigns, essentially altering the boundaries for 37 congressional districts. ECF No. 1437 at 1. However, Congressman Briscoe Cain, a Republican in the Houston area is continuing to campaign under the 2025 maps. Id. Josh Cortez, a primary candidate in the 2025 Map's Congressional District (CD) 35 is continuing to run in the re-drawn CD 35. Id. Many more still do not know where they are running. Congressman Lloyd Doggett now plans to un-retire and run in CD 37 if the ruling is upheld. Id. Congressman Al Green does not know whether he is running in district 9 or 18. *Id.* This confusion is just the beginning.

In all events, *Purcell* protects the "status quo" a State establishes, regardless of when it does so. *Wise v. Circosta*, 978 F.3d 93, 98 (4th Cir. 2020) (per curiam). The 4th Circuit in *Wise v. Circosta* found that "it is not federal court decisions, but state decisions, that establish the status

quo." Id. In that case, North Carolina's executive and judicial branches altered state election law in late September 2020 to address COVID-related concerns known long before, and the Fourth Circuit held that *Purcell* protected that choice, id. at 96-99, over the dissent's objection that the state action came too late, id. at 116–17 (Wilkinson, J., dissenting).

"The *Purcell* principle is a presumption against disturbing the status quo. The question here is who sets the status quo? The Constitution's answer is generally the state legislature." Carson v. Simon, 978 F.3d 1051, 1062 (8th Cir. 2020). Here, H.B. 4 is the "status quo" and Purcell protects that status quo. A ruling otherwise would allow plaintiffs to make redistricting "a game of ambush." In re Landry, 83 F.4th 300, 303 (5th Cir. 2023).

Nor has Texas "invited this issue by enacting a new map within *Purcell*'s range[.]" ECF No. 1437 at 147. Supreme Court precedent does not support a conclusion that the State has unclean hands if it passes election laws too close to an election date. See, e.g., Milligan, 142 S.Ct. at 881 (Kavanaugh, J., concurring) ("It is one thing for a State on its own to toy with its election laws close to a State's elections. But it is quite another thing for a federal court to swoop in and re-do a State's election laws in the period close to an election." (emphasis added)). At the very least, Texas should not be disadvantaged any more than Alabama was in Milligan. In Milligan, the challenged statute was enacted 85 days before the candidate filing deadline closed and 201 days before the next election. See Singleton v. Merrill, 582 F. Supp. 3d 924, 935 (N.D. Ala. 2022), stay granted sub nom. Allen v. Milligan, 599 U.S. 1 (2023). Texas' statute was similarly enacted 101 days before the candidate filing deadline closed and 186 days before the next election. See Tr. 10/8/25 AM 150:16-17, 151:5-9.

Furthermore, in support of its decision, the Court concludes that "any disruption that would happen" as a result of its Order "is attributable to the Legislature, not the Court." ECF No. 1437 at 146. The Court explains that this is because "[t]he Legislature—not the Court—set the timetable for this injunction." ECF No. 1437 at 146. From there, the Court then makes another notable conclusion—one that appears novel. While not disputing the fact that "'state and local election officials need substantial time to plan for elections," the Court reasons that "for Purcell purposes, that fact became moot" because of the date the Legislature enacted the new congressional map. ECF No. 1437 at 147.

State Defendants respectfully disagree. State Defendants are unaware of precedent that supports the finding that "any disruption that would happen . . . is attributable to the Legislature, not the Court" or that "that fact became moot" because of the date the legislature enacted the congressional map. See ECF No. 1437 at 146-47. Rather, it is Texas's "prerogative" to "toy with its election laws close to" its own elections. ECF No. 1437 at 146 (quoting Milligan, 142 S.Ct. at 881 (Kavanaugh, J., concurring)). Texas's exercise of its own prerogative does not mean the Court's "'[1]ate judicial tinkering' with Texas's congressional map is not what could 'lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters.'" ECF No. 1437 at 146-47 (quoting Milligan, 142 S.Ct. at 881 (Kavanaugh, J., concurring)) (emphasis added). The Court's actions can, and will, lead to disruption and confusion on the ground. The Court's contrary view mistakes the status quo, which is the law passed by the State of Texas. Tex. Alliance for Retired Americans v. Hughs, 976 F.3d 564, 568 (5th Cir. 2020) (per curiam). That changed *only* because a federal court saw fit to inject itself mid-election cycle.

Additionally, State Defendants respectfully disagree with the Court's conclusion "that applying Purcell to this case would lead to absurd results." ECF No. 1437 at 152. The Court reasons that if it "were to consider Robinson and Milligan dispositive, . . . the Plaintiff Groups would have had a right to bring their constitutional claims without any real opportunity for their requested remedy of a preliminary injunction Reading Purcell and its progeny to lead to this result is diametrically opposed to the fundamental right of access to the courts that the Constitution affords plaintiffs." ECF No. 1437 at 152-53. State Defendants read *Purcell* differently. *Purcell* necessarily means that sometimes Plaintiff Groups have a right to bring constitutional claims, but the specific

¹ State Defendants respectfully disagree with the Court's conclusion that "even Ms. Adkins testified that the Texas election officials and systems are more than capable of proceeding with the 2026 congressional election under any map that is the law." ECF No. 1437 at 151 (citing Tr. 10/8/25 AM 153:13-18). State Defendants contend the cited portion of Ms. Adkins' testimony does not support this conclusion.

remedy of a preliminary injunction will not available. This occurs every time a Plaintiff Group ordinarily would prevail in a preliminary injunction hearing, but the *Purcell* doctrine denies them their requested remedy of a preliminary injunction. See, e.g., Merrill, 582 F.Supp.3d at 935 (granting preliminary injunction), stay granted sub nom.; Milligan, 599 U.S. at 1 (2023); Callais, 732 F.Supp.3d at 585-87 (granting preliminary injunction), stay granted sub nom.; Robinson, 144 S.Ct. at 1171. After all, it is well established that some rights do not have judicial remedies. See, e.g., Rucho v. Common Cause, 588 U.S. 684, 718-21 (2019) (partisan gerrymandering); Nixon v. United States, 506 U.S. 244, 233-38 (1993) (senate impeachment procedures).

Finally, the Court also expresses a concern that "[d]enying an injunction in this case on the basis of *Purcell* permits . . . a scenario that would allow for *more* election chaos." ECF No. 1437 at 155; see also ECF No. 1437 at 154 ("Applying Purcell to this case would also incentivize legislatures to redistrict as close to elections as possible."). But it is not clear that failing to grant an injunction in this case would ultimately result in more election chaos. At the trial on the merits, the Court may choose certain remedies to promote orderly elections. See ECF No. 1437 at 153 (stating that Plaintiffs have a remedy, even without a preliminary injunction, by proceeding to a full trial on the merits). Voters also have a political remedy. They may punish incumbents that redistrict too close to an election or pressure legislatures to limit their own redistricting power. See, e.g., Rucho, 588 U.S. at 719 ("Provisions in state statutes and state constitutions can provide standards for state courts to apply."). Voters can also pressure Congress to enact statutes to promote orderly elections by using its Elections Clause power, a power that "Congress has regularly exercised." Rucho, 588 U.S. at 698. An injunction at this time stymies this democratic process.

Perhaps worse, this injunction forbids the state legislature from enacting a remedial map. Maj. Op. at 158 (refusing to "giv[e] the Legislature an opportunity to redraw the map"); id. at 160 ("The Court . . . ORDERS the State to use the 2021 Map"). "[A] state's freedom of choice to devise substitutes for an apportionment plan found unconstitutional, either as a whole or in part, should not be restricted beyond the clear commands of the Equal Protection Clause." Wise v. Lipscomb, 437 U.S. 535, 540 (1978) (quoting Burns v. Richardson, 384 U.S. 73, 85 (1966)). That is true regardless of whether this Court thinks the State could feasibly produce new maps by a certain date and regardless of the Court's conclusions regarding the 2025 map. Perez, 585 U.S. at 603-605.

For these reasons, State Defendants seek a stay of the Court's injunction pending appeal. Alternatively, State Defendants respectfully seek a stay until the United States Supreme Court rules on a request for an administrative stay of the Court's order.

CONCLUSION

For these reasons, State Defendants respectfully request the Court grant their Motion to Stay Pending Appeal. State Defendants respectfully request a ruling on the instant motion by 10 am CST Friday, November 21, 2025.

Date: November 19, 2025

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Respectfully submitted,

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CERTIFICATE OF CONFERENCE

I certify that on November 18, 2025, counsel for State Defendants conferred with counsel for Plaintiffs regarding the foregoing motion and counsel for Plaintiffs indicated they were opposed.

Ryan G. Kercher

RYAN G. KERCHER

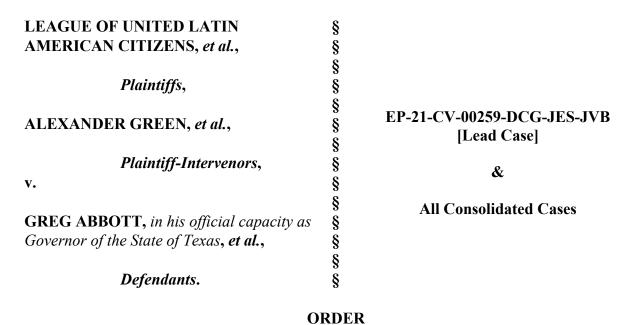
Special Counsel

CERTIFICATE OF SERVICE

I certify that on November 19, 2025, a true and accurate copy of the foregoing document was filed and served electronically (via CM/ECF).

Ryan G. Kercher
RYAN G. KERCHER
Special Counsel

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF TEXAS EL PASO DIVISION



Before the Court is the State Defendants' Opposed Motion to Stay Pending Appeal (ECF No. 1440). The Court **DENIES** the Motion.¹

"A stay pending appeal is extraordinary relief for which defendants bear a heavy burden."² To determine whether it should exercise its discretion to grant a stay pending appeal, a court considers the four *Nken* factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies."³

¹ The Court retains jurisdiction to rule on this motion under FED. R. CIV. P. 68(d). *See also* FED. R. APP. P. 8(a).

² Plaquemines Parish v. Chevron USA, Inc., 84 F.4th 362, 373 (5th Cir. 2023) (quoting Vote.Org v. Callanen, 39 F.4th 297, 300 (5th Cir. 2022)) (citation modified).

³ *Id.* (quoting *Nken v. Holder*, 556 U.S. 418, 434 (2009)).

For the reasons set forth in the Court's Memorandum Opinion and Order granting the Plaintiff Groups' Motions for Preliminary Injunction (ECF No. 1437), the Court **DENIES** the Motion (ECF No. 1440).

So ORDERED and SIGNED this 21st day of November 2025.

DAVID C. GUADERRAMA SENIOR U.S. DISTRICT JUDGE

And on behalf of:

Jeffrey V. Brown United States District Judge Southern District of Texas

U.S. Circuit Judge Jerry E. Smith would grant this motion.



- 16:45 1 A. I mean, I certainly wasn't aware of it.
 - Q. Now I'm gonna take you to page 117, line 2, to 117,
 - 3 | line 13.
 - 4 (Video played.)
 - 5 REPRESENTATIVE HUNTER: You just said the map was
 - 6 dropped, and then we heard it. The fact is, it was filed that
 - 7 Wednesday. The hearing was Friday. Let's get the specifics
 - 8 down. And I've answered everything to you in committee that
 - 9 I'm answering here.
 - Tuesday, after the Arlington hearing, the chairman of
 - 11 | the committee asked me if I would present the bill to this
 - 12 body, which, I said yes.
 - Number two, I did not see or get the information till
 - 14 that Tuesday. And then on Wednesday we filed the bill.
 - 15 UNIDENTIFIED SPEAKER: Representative --
 - 16 (Video concluded.)
 - 17 Q. (BY MR. DUNN) Does that seem like a normal redistricting
 - 18 process to you, what Chairman Hunter describes there?
 - 19 A. No. No, it doesn't.
 - 20 Q. Now if I can take you to page 336, line 14 to 336, line 24.
 - 21 (Video played.)
 - 22 REPRESENTATIVE COLLIER: The composition of CD30 under
 - 23 | the proposed plan creates a Black Majority Citizen Voting-Age
 - 24 | Population District in Dallas County. Is that correct?
 - 25 REPRESENTATIVE HUNTER: Congressional 30, to respond

- 16:46 1 | to you, the political performance is unchanged. There was no
 - 2 Black CVAP in 2021. Now it is a Black CVAP in 2025. So that
 - 3 everybody has the information, the Black CVAP in 30 is
 - 4 50.41 percent. The political performance is still Democrat.
 - 5 REPRESENTATIVE COLLIER: Did you or --
 - 6 (Video concluded.)
 - 7 Q. (BY MR. DUNN) So what is it that Chairman Hunter is saying
 - 8 about what the changes were to Congressional District 30 in
 - 9 Dallas?
 - 10 A. That there was an increase of Black CVAP, but a flat effect
 - 11 on partisan performance.
 - 12 Q. In other words, there was no partisan change at all to
 - 13 this?
 - 14 A. Correct.
 - 15 | Q. All right. At the end of the day, the bill is voted on.
 - 16 | Is that right?
 - 17 A. Correct.
 - 18 Q. How would you describe the vote?
 - 19 A. Partisan.
 - 20 Q. And did the measure pass?
 - 21 A. It did.
 - 22 Q. And at that point it moved to the Senate for its
 - 23 | consideration?
 - 24 | A. Technically it moves to third reading and then you vote
 - 25 again, and then it moves to the Senate. But, yes.

- 16:48 1 Q. And were those the events that took place?
 - 2 A. Yes. Sorry. Not to be technical.
 - 3 Q. You've heard these statements about increasing the number
 - 4 of Black majority districts, increasing the number of Hispanic
 - 5 majority districts, protecting Barbara Jordan's district. What
 - 6 is your response to that? Does this bill do any of those
 - 7 | things?
 - 8 A. Window dressing. That's the only way I can explain it.
 - 9 Q. Do Blacks and Hispanics have better or worse voting rights
 - 10 after this plan?
 - 11 A. Oh, it's going to -- it's -- ultimately, the net effect is,
 - 12 | it's going to deprive Black and Hispanic voters of the
 - 13 opportunity to elect the candidate of their choice.
 - 14 Q. Does that include the Black citizens that live in Barbara
 - 15 | Jordan's old stomping grounds?
 - 16 A. Yeah, for sure.
 - 17 Q. Thank you for your service.
 - MR. DUN: I'm gonna pass the witness to one of my
 - 19 co-counsel who has a few questions.
 - JUDGE GUADERRAMA: Yes, sir.
 - 21 DIRECT EXAMINATION
 - 22 BY MR. McCAFFITY:
 - 23 Q. Afternoon, Mr. Moody -- or Speaker Moody. I apologize.
 - 24 How are you doing?
 - 25 A. I'm doing fine.

	1	PROCEEDINGS
	2	(Call to order of the Court.)
	3	JUDGE GUADERRAMA: Good morning, everyone.
	4	Please be seated.
09:00:24	5	Mr. Dunn, who is your next witness?
	6	MR. DUNN: The plaintiffs call Senator Royce
	7	West.
	8	And not to pry, but shall we expect a ruling on the
	9	deposition issue?
09:00:37	10	JUDGE GUADERRAMA: Oh, yes. Sorry I was missing
	11	that.
	12	So we discussed it last night and considered some
	13	things and decided that we're going to grant the State's
	14	motion to quash the subpoena. So if you need a written
09:00:55	15	order, we can certainly produce one.
	16	MR. DUNN: For Brooks, it's fine to have that on
	17	the record.
	18	MS. PERALES: Your Honor, we'll withdraw the
	19	subpoena for deposition and withdraw the notice and would
09:01:11	20	simply ask if the Court would be open to considering
	21	additional latitude on cross-examination of Mr. Kincaid
	22	when he does testify.
	23	JUDGE GUADERRAMA: Well, I'm not sure what that
	24	exactly means, but I know that the jurisprudence is for
09:01:28	25	preliminary injunction hearings the Rules of Evidence are
		Laura Wells, RPR, RMR, CRR, RDR

- Now, are there members of the Democratic caucus in the 1
- Senate that are Anglo? 2
- 3 Α. Yes.
- And are there minority members of the Republican
- 5 caucus in the Senate? 10:26:04
 - 6 Α. Yes.
 - 7 MR. WASSDORF: Richard, could we pull up State's
 - Exhibit 1252 at pages -- right across the page break
 - between 7 and 8.
- BY MR. WASSDORF: 10 10:26:22
 - I'll represent to you that this is the Senate Journal 11
 - from the vote adopting the rules for redistricting S.R. 5.
 - A. 13 Okay.
 - Q. Could you tell me how the vote broke out on this?
- 15 It's right at the bottom of the first page going onto the 10:26:42
 - 16 second.
 - 17 At 11 -- the amendment Senate Bill 5 was adopted by
 - 18 the following 11 "yea"s and 11 "nay"s.
 - 19 Q. I think it's 19 --
- 19. That's it. 20 Α. 10:27:03
 - -- "yea"s and 11 "nay"s? 21
 - 22 Α. 19. Yes.
 - And now looking at the "nay"s there, can you tell me, 23 Ο.
 - is that along party lines?
- 10:27:12 25 A. It is.

MR. WASSDORF: Richard, could you pull up State's 1 Exhibit 1259 at page 2. 2 BY MR. WASSDORF: I'll represent to you that this is the Senate Journal from the first special session Senate Bill 4 on the second 10:27:29 reading. 6 7 Could you tell me whether that vote is also along 8 party lines? 11 "yea"s and 2 "nay"s. And the names --10 Ο. 10:27:47 Yes, it is. 11 Α. 12 Q. Now, I just want to point out the inconsistency here. There's a few absent members listed there. 13 14 Do you see that? 15 Α. Yes. 10:28:05 And that's because all but two of the Democrats walked 16 Q. 17 out of the Senate chamber as the bill came up for a vote; 18 is that right? 19 I believe that is the case. MR. WASSDORF: Richard, could you pull up State's 20 10:28:20 21 Exhibit 1271 at page 2. 2.2 BY MR. WASSDORF: Q. Now, this is the Senate Journal from the second 23 special session where H.B. 4 finally passed out. And could you look at that vote and tell me if it was also 10:28:37 25 Laura Wells, RPR, RMR, CRR, RDR

	1	along party lines?
	2	A. Yes.
	3	Q. Now, I don't want to belabor the point, but would you
	4	doubt me if I told you that every single vote on
10:28:54	5	redistricting in the Senate during the 2025 redistricting
	6	effort was along party lines?
	7	A. No. I would not.
	8	MR. WASSDORF: Pass the witness, Your Honor.
	9	JUDGE GUADERRAMA: Mr. Dunn.
10:29:07	10	MR. DUNN: Just a few questions.
	11	REDIRECT EXAMINATION
	12	BY MR. DUNN:
	13	Q. Senator, you were asked a number of questions about
	14	amendments being offered or not offered in the Senate.
10:29:17	15	Do you recall that?
	16	A. Yes.
	17	Q. What is your opinion as to whether amendments would
	18	have been on the map itself would have been acceptable?
	19	A. Well, it was the general consensus that no amendments
10:29:30	20	would be accepted.
	21	Q. Was it also the case that Senator King regularly said
	22	that he took the map from the House unchanged and his
	23	lawyer said it was legal and he was passing it through?
	24	A. That was the general consensus, yes.
10:29:44	25	Q. You were also asked about the video clip and the
		Laura Wells, RPR, RMR, CRR, RDR

	1	discussion that Senator King or the comment that Senator
	2	King made on the floor about why the Attorney General's
	3	office wasn't representing him in this redistricting
	4	effort.
10:29:56	5	Do you recall that generally?
	6	A. I do.
	7	Q. And it's been insinuated here that it might be because
	8	the lawyers at the Attorney General's office are now
	9	worried about becoming fact witnesses, but what was
10:30:08	10	Senator King's answer? Was it something about fact
	11	witnesses, or was it something about the Attorney
	12	General's office lacks expertise in redistricting?
	13	A. I really don't recall what it was.
	14	MR. DUNN: Thank you. Pass the witness.
10:30:19	15	MR. BLEDSOE: Your Honor.
	16	JUDGE GUADERRAMA: Mr. Bledsoe.
	17	MR. BLEDSOE: Thank you, Your Honor.
	18	REDIRECT EXAMINATION
	19	BY MR. BLEDSOE:
10:30:28	20	Q. Senator West, how many African American senators are
	21	there?
	22	A. Two.
	23	Q. Did those senators vote against all the redistricting
	24	proposals associated with H.B. 4?
10:30:37	25	A. Yes.
		Laura Wells, RPR, RMR, CRR, RDR

	1	that.
	2	REPRESENTATIVE THOMPSON: the people that
	3	makes up the population of Texas there
	4	(Video concluded.)
10:59:37	5	MR. DUNN: Ending with " just like I did in
	6	2021," completes the answer.
	7	BY MR. DUNN:
	8	Q. Had you heard Chairman Hunter in the past in 2021, for
	9	example, talk about race neutral?
10:59:47	10	A. No.
	11	Q. Why were you asking him about it?
	12	A. I was concerned because we kept I kept the DOJ
	13	letter. And then my attorney my Attorney General Ken
	14	Paxton rebutted the statement that the DOJ had made. And
11:00:06	15	I know, I had the privilege of serving with him in the
	16	House. I had the privilege of working with him when he
	17	was in the Texas Senate. And I worked with him every
	18	session that he has been the Attorney General on pieces of
	19	legislation that I have been privileged to carry for him.
11:00:24	20	I know him well. And if there was something that
	21	was race was not supposed to be considered, he would
	22	not have done it. And I could not understand how the DOJ
	23	could have accused him, the State of Texas, and how they
	24	could have accused him of allowing this to happen. There
11:00:46	25	was no way that I knew that that was going to happen by
		Laura Wells, RPR, RMR, CRR, RDR

	1	him. He just couldn't he is just not that kind of
	2	person. And I was shocked, to tell you the truth. And I
	3	was happy that he stuck up for us, the State of Texas.
	4	And he did a good job in his letter of rebuttal.
11:01:03	5	Q. Now, what happened with did you get some let me
	6	ask this: Did you get some satisfactory answers about
	7	this new proposal, when it came out, about why the racial
	8	changes were made in it?
	9	A. They said that the Petteway case was the case that
11:01:22	10	gave them the position of racial neutral. Everything is
	11	supposed to have been racial neutral.
	12	Q. All right. Again, focused on this Arlington hearing,
	13	Brooks Exhibit 309, I want to take us to page 88, line 9
	14	to 89, line 24.
11:01:45	15	JUDGE GUADERRAMA: Mr. Dunn, it's 11:00. It's
	16	time for our break. Is this a good time?
	17	MR. DUNN: Yes, sir.
	18	JUDGE GUADERRAMA: So let's all break to 11:15.
	19	Representative, be back at 11:15, please.
11:01:55	20	MR. QUESADA: Your Honor, could I make one
	21	housekeeping request?
	22	JUDGE GUADERRAMA: Yes, sir.
	23	MR. QUESADA: Chairman Romero is going to be one
	24	of our witnesses; and I would ask that he be excused from
11:02:04	25	the Rule, as he was the last time.

- process, right? 1
- That's your opinion. That's your opinion. But it's 2
- 3 not mine.
- I appreciate your diplomatic delicacy.
- Any time. 5 Α. 11:46:32
 - Mr. Dunn asked you a little bit about that letter from 6 Q.
 - 7 the Department of Justice.
 - 8 Do you recall that?
 - 9 Α. I do.
- And do you recall the response from my office 10 11:46:44
 - repudiating the claim from the Department of Justice that 11
 - 12 the maps in 2021 were drawn with racial intent, right?
 - I thought your response was good. 13 Α.
 - It's your belief, right, that Lieutenant Governor Dan 14
- 15 Patrick would never have passed a race-based map? 11:47:07
 - 16 If he did, I would be absolutely shocked. Α.
 - 17 0. And that's --
 - 18 Α. And this is -- in 2025, I would be absolutely shocked.
 - 19 Q. Would you be just as shocked if the Texas House of
- 20 Representatives passed a race-based map? 11:47:27
 - 21 Well, which one are we talking about? 2021 or 2025? Α.
 - 22 Well, let's just talk ever. Q.
 - I think that -- I think based upon -- you are talking 23 Α.
 - about congressional maps, right?
- 25 O. Yes, ma'am. 11:47:43

	1	A. Okay. I think that from the I think that no, I
	2	wouldn't be shocked about it. Because let me tell you
	3	why. We have they told us that they have they are
	4	doing what they want to do. They are doing it because
11:47:58	5	they can.
	6	So if this map proves either this is racial based
	7	and I know it is, because in the district that I live, the
	8	congressional district that I live in, you-all packed,
	9	you-all packed my district. Not you but, you know, the
11:48:11	10	district was packed.
	11	MR. KERCHER: Richard, could we please bring up
	12	State Defendants Exhibit Number 1279, page 26, line 16
	13	through page 27, line 22.
	14	(Video played.)
11:48:31	15	REPRESENTATIVE THOMPSON: Mr. Chairman, I resent
	16	the Texas Department of the United States Department of
	17	Justice sitting down here accusing our state that we have
	18	drawn some race-based maps and actually are putting scorn
	19	upon our elected officials, because you and I know that
11:48:50	20	Dan Patrick never would have passed a map out of the
	21	Senate and we never would have passed one out of the House
	22	that would have included this.
	23	(Video concluded.)
	24	MR. KERCHER: To clarify the record, that was
11:49:04	25	just page 27, line 9 through 22 from Defendants'

	1	Exhibit 1279.
	2	BY MR. KERCHER:
	3	Q. Do you remember making those remarks, Dean Thompson?
	4	A. I sure do.
11:49:15	5	Q. And during the 2025 redistricting process, Chairman
	6	Hunter talked about the partisan intent of the map.
	7	Do you remember that?
	8	A. I do.
	9	Q. Yesterday the plaintiffs played part of Chairman
11:49:28	10	Hunter's lay out of the map on the House floor on
	11	August 20th. Were you on the floor for that layout?
	12	A. I was.
	13	Q. The plaintiffs started their clip at page 29, line 20,
	14	but I want to take you back to the beginning of Todd
11:49:45	15	Hunter's layout of the bill.
	16	MR. KERCHER: Richard, could we please bring up
	17	Defendants' Exhibit Number 1319. And here let's play
	18	page 26, line 9 through 29, line 19.
	19	MR. DUNN: Date, please?
11:50:01	20	MR. KERCHER: August 20th.
	21	(Video played.)
	22	REPRESENTATIVE HUNTER: Thank you, Mr. Speaker.
	23	Members, I believe, according to the rules, I will
	24	have 20 minutes. I'm going to give a short opening
11:50:19	25	because many of you have not been involved, and I want you
		Laura Wells, RPR, RMR, CRR, RDR

	1	A. I don't. But it's the truth.
	2	Q. Do you remember that Representative Pierson objected
	3	to the way that you described the difference between a
	4	Republican and, as you put it, a Black?
12:14:40	5	A. I do not.
	6	MR. KERCHER: Richard, could you please bring up
	7	State Defendants' Exhibit 1289, which is from the
	8	August 1st House committee transcript, page 825, line 7 to
	9	page 826, line 17.
12:15:03	10	(Video played.)
	11	REPRESENTATIVE THOMPSON: 9 being a
	12	district being a district for minorities. Because the
	13	way 9 is configurated and the error that went in, it's
	14	going to elect a Republican, not a Black as previously
12:15:14	15	said.
	16	And I I live in 18 and I object to the new one. It
	17	is "packing" in 18.
	18	CHAIRPERSON VASUT: Understood, Dean.
	19	Representative Barbara Gervin-Hawkins.
12:15:22	20	REPRESENTATIVE PIERSON: I need to respond to the
	21	inquiry, since I mentioned that.
	22	CHAIRPERSON VASUT: Dean Thompson, goose gander.
	23	And, Representative Pierson, you are entitled to a brief
	24	brief response.
12:15:34	25	REPRESENTATIVE PIERSON: I just wanted to also
		Laura Wells, RPR, RMR, CRR, RDR

	1	state that just because you are a Republican doesn't mean
	2	you won't be Black if you are elected. That's all.
	3	REPRESENTATIVE THOMPSON: I didn't hear.
	4	REPRESENTATIVE PIERSON: Okay. So just because
12:15:42	5	you're Republican doesn't mean you won't be Black if you
	6	are elected.
	7	REPRESENTATIVE THOMPSON: I won't be Black?
	8	REPRESENTATIVE PIERSON: The Republican. You
	9	said the district is going to elect a Republican. And you
12:15:49	10	said, therefore, not a Black. And I'm just saying you
	11	could be Black and
	12	REPRESENTATIVE THOMPSON: I apologize. I meant
	13	to say it's not a Democratic district. It's a
	14	REPRESENTATIVE PIERSON: Thank you.
12:15:57	15	(Video concluded.)
	16	BY MR. KERCHER:
	17	Q. So according to that exchange, your objection to the
	18	way that CD 9 was drawn under the 2025 plan is because it
	19	would not elect a Democrat. Is that true?
12:16:07	20	A. Because it had previously been a Democratic district
	21	and it was taken from Democrats.
	22	Q. Some of the work that you did in the 2021 legislative
	23	session on redistricting involved you working both with
	24	Representative Green, with Congressman Green, and with the
12:16:41	25	late Congresswoman Sheila Jackson Lee; is that right?
		Jaura Walls PDP PMP CPP PDP

	1	A. Yes.
	2	Q. And your office coordinated Congressman Green and
	3	Congressman Jackson Lee, and then worked with then
	4	Chairman Hunter to make sure that those two congressional
12:16:58	5	members were not paired in the map that got drawn in '21,
	6	right?
	7	A. We worked on some amendments. He never told us he was
	8	going to not to see that those were not paired, but he
	9	did work he did work with us and he was concerned about
12:17:19	10	it. He was he was familiar with our concerns, and he
	11	was helpful.
	12	Q. Is it right to say that you worked closely with
	13	Congressman Green during the 2021 redistricting session?
	14	A. Yes.
12:17:32	15	Q. And he understands how redistricting works generally
	16	from that experience with you in the Texas Legislature.
	17	Fair to say?
	18	A. I think he had experience before that time, yes.
	19	MR. KERCHER: Richard, could you please bring up
12:17:49	20	State Defendants' Exhibit 1284 from the July 28th Senate
	21	committee, page 36, line 5 through page 37, line 7.
	22	THE WITNESS: Could I have a drink of water?
	23	JUDGE SMITH: This one is unopened. You may have
	24	it.
12:18:25	25	THE WITNESS: Thank you, Your Honor.

10:02 1 PROCEEDINGS

- 2 JUDGE GUADERRAMA: All right. The witness, Ms. Young,
- 3 on the witness stand.
- 4 Ms. Nwachukwu?
- 5 TIFFINNI YOUNG,
- 6 previously sworn by the Court, was examined and testified as
- 7 follows:
- 8 DIRECT EXAMINATION
- 9 BY MS. NWACHUKWU:
- 10 Q. Good afternoon again, Ms. Young.
- 11 A. Good afternoon.
- 12 Q. So just to reorient you a bit before we continue with your
- 13 testimony, where we left off before the lunch break, we were
- 14 talking about the 2013 Congressional Map.
- So now I want to show you the third image that's a
- 16 | part of Plaintiffs' Exhibit 219.
- 17 A. Yes.
- 18 Q. And for the record, I will represent to you that this is
- 19 CD30 from the 2013 Congressional Map that you just looked at.
- 20 | And it's just overlaid onto Google Maps so that it'll be easier
- 21 | for you to identify geographical landmarks.
- 22 A. Okay.
- Q. Now, Ms. Young, are you familiar with all of the areas that
- 24 | are shaded in yellow in the border of CD30?
- 25 A. Yes.

- INJUNCTION HEARING
- 14:17 1 Q. How are you familiar with this area?
 - 2 A. I've lived throughout the area, again, have worked in and
 - 3 around the area, and visited with friends and family in the
 - 4 area.
 - 5 Q. Now, can you -- you have a pen in front of you. Can you
 - 6 first circle everywhere that you have lived on this map from
 - 7 | 2013 to 2022?
 - 8 A. Yes. Okay. I have circled three areas.
 - 9 Q. Okay. And for the record, we will put the image that you
 - 10 | have circled onto the ELMO so that the Court can view it.
 - MS. NWACHUKWU: Your Honor, may we approach the
 - 12 | witness?
 - JUDGE GUADERRAMA: Yes, ma'am.
 - 14 A. It's not working, kind of, on this one. Okay.
 - 15 Q. (BY MS. NWACHUKWU) Now, Ms. Young, it appears that you
 - 16 | have circled three different areas within Congressional
 - 17 District 30 that you lived in under the 2013 map. Is that
 - 18 | correct?
 - 19 A. Yes.
 - 20 Q. And starting with the first place that you lived in CD30,
 - 21 | can you describe for the Court the area that you lived in under
 - 22 | this map?
 - 23 A. Yes. It went away. It is the one that kind of got messed
 - 24 | up, where it says "Dallas." And it's kind of half circled
 - 25 | there. The pen wasn't working. That's like Downtown Dallas.

- INJUNCTION HEARING
- 14:20 1 I lived near the Farmers Market in Downtown Dallas. And we
 - 2 | call it kind of the Mixmaster. Some of the highways come
 - 3 together there, so 45 and what we call 075 was kind of to
 - 4 | the -- I guess the best -- I don't know. One side of my
 - 5 building. And then 30 bordered the other side. But near the
 - 6 Farmers Market, Downtown Dallas.
 - 7 | Q. And now looking at the map again, can you describe for the
 - 8 Court the second area that you circled within CD30?
 - 9 A. Yes. The next place is up near Highway 30, and that was in
 - 10 | a neighborhood called Buckner Terrace near Highway 30. And Jim
 - 11 Miller is the cross-street, or the exit.
 - 12 Q. And now looking at the last circle on this image, can you
 - describe for the Court where you lived when you were in this
 - 14 part of CD30?
 - 15 A. Yes. That is where I currently live, and that is kind of
 - 16 | the intersection of Military Parkway and Prairie Creek.
 - 17 Highway 80 and then 635 are like the border highways.
 - 18 Q. Now going back to the first area that you lived in under
 - 19 this map, how would you describe that part of CD30?
 - 20 A. At the time that I lived there, which was like 2013, early
 - 21 | 2014, you had people moving back into Downtown Dallas. Not as
 - 22 | many residents in terms of living, as it is like now. Mixed
 - 23 population in terms of race. And urban area. Urban, downtown.
 - Q. Now, with the second area that you identified in CD30, how
 - 25 | would you describe that area?

- 15:58 1 | Congressional Map is intentionally discriminatory against
 - 2 Latinos?
 - 3 A. Against Black and Brown.
 - 4 Q. And you believe that, by voting yes for HB4, those people
 - 5 | were trying to take away the American belief in the Democratic
 - 6 process and put us on a path to dictatorship?
 - 7 A. I didn't say that.
 - 8 MS. THORBURN: Richard, could you please bring up
 - 9 | State Exhibit 1319, page 310?
 - 10 Q. (BY MS. THORBURN) Do you see that on your screen?
 - 11 A. Was this in my -- was this under the deposition?
 - 12 Q. This is from the speech that you gave on August 20th.
 - 13 A. Okay.
 - 14 Q. The August 20th hearing. Do you see where it says, "And by
 - 15 | voting 'yes' today, you're trying to take away that American
 - 16 | belief in the Democratic process, and you put us on a path to
 - 17 | dictatorship"?
 - 18 A. What I was explaining is the same thing I just said a
 - 19 moment ago.
 - 20 Q. That wasn't my question. My question was, did I read that
 - 21 | correctly?
 - 22 A. You read that correctly.
 - 23 Q. Thank you. And so you did not vote for C2333.
 - 24 A. Correct.
 - 25 Q. But you are the chair of the Mexican American Legislative

- 16:00 1 | Caucus.
 - 2 A. I am.
 - 3 Q. And that's a bipartisan committee?
 - 4 A. It is.
 - 5 Q. And the vote for C2333 was split on partisan lines?
 - 6 A. Correct.
 - 7 Q. So some members of MALC voted for the map?
 - 8 A. That's correct.
 - 9 Q. Were they censured?
 - 10 A. No.
 - 11 Q. Did you issue a letter of reprimand?
 - 12 A. No.
 - 13 Q. After you came back from quorum break this time for this
 - 14 map, you asked Representative Hunter some questions on the
 - 15 | floor. Do you remember that?
 - 16 A. I recall.
 - 17 Q. And you started by expressing concern that the public
 - 18 didn't have any reason to come testify because they wouldn't be
 - 19 heard. Do you remember that?
 - 20 A. I recall.
 - 21 Q. Do you recall Representative Hunter mentioning that you
 - 22 | chose to walk out, you kept people away, and you kept work from
 - 23 being done?
 - 24 A. He said that to many members.
 - 25 Q. You also asked Representative Hunter whether he did any

greater for Trump and then tell me what is the expected 1 2 Hispanic CVAP of those. And so here we're seeing that the highest you might 3 get is somewhere around 43 percent in that Number 7, but 4 none of them cross over 50. 5 10:41:47 Q. All right. Now let's go to Figure S5. What is shown 6 7 here? Figure S5 is a similar plot. This is for the -- what 8 we're calling South and Central Texas region that comprises CDs 21, 23, and 35. The same exact question. 10 10:42:01 If you draw these districts plus 10 or greater for Trump, 11 12 what is the probability that you would get majority Hispanic districts. 13 And what is the conclusion there? 14 The conclusion here is that on balance you should get 15 10:42:18 one majority Hispanic CVAP district. I believe in 16 17 practice that has historically been CD 23, a district in 18 South Texas that is a majority Hispanic that Mr. Trump 19 carried. 20 But even that, you see there on that Number 3, there 10:42:37 21 is at least some probability that it could be below 22 50 percent. That's the green portion underneath. And 23 then there is a second district that might have a slight 24 10 percent probability of being over, but really is sort 25 of canceled out by that green in the third column. 10:42:53

So really on balance, if you were drawing three 1 2 districts here, one should be expected to be majority 3 Hispanic, not two. All right. Let's go to Figure 7. What is this thing 4 called? It looks different than the other things. 5 10:43:09 It's basically the same as the plot we were just 6 7 looking at. It looks different because there is 38 -- there is 38 districts here now. And so this was our first effort to imply a statewide. And, again, it took us until September 5th to be able to run this. 10 10:43:26 11 Why? Q. 12 Because it was very computing power intensive. The constraints were very limiting that we were using, because 13 we were trying to match exactly what the State did. And we finally were able to get it to run. We put in a 15 10:43:39 16 55 percent constraint, saying draw districts that are 17 55 percent or greater for Trump. And we told the computer 18 you need to draw 30, because that's what the State did. 19 When we put that constraint in, this data is showing 20 -- this plot is showing it was only able to return 29. It 10:43:57 21 was not even possible, according to the computer 22 simulations here, to return 30 districts if we had a hard 23 55 percent threshold. And so that's what we were just plotting here is that, in fact, we only came back with 29. 25 Q. Well, how many districts did the State draw? 10:44:15

- The State drew 30. So we continued on that exercise 1 Α. 2 to try to match them. But at the 55 percent limit, it 3 only came back with 29.
- All right. Well, since the State was able to do it, doesn't that mean that this doesn't tell you much? 10:44:31
 - 6 Well, we were able to do it. We just had to lower the threshold a little bit.
 - Q. Is that what you are showing in S10?
- In S10 we lowered the constraint to 53. And you can see that when we do that, it is able to draw 30 districts 10 10:44:46 11 that Mr. Trump carries. And they are not necessarily at
 - 12 53, we just -- we were able to lower the threshold there.
 - So some of these are 54, 54 1/2. But the 55 percent 13
 - threshold was one that we weren't -- that the computer was
- not able to replicate what happened. When we lowered it 15 10:45:04
 - 16 to 53 and gave it a little bit more flexibility, it was
 - 17 able to draw the 30 districts; and that's what we used for
 - 18 this plot and the subsequent.
- Q. On these -- I'm using a mouse. I'm not sure if you 20 can see that on the screen. Can you see that? 10:45:21
 - 21 Α. Yes.
 - 22 All right. So where the last three red sort of boxes
 - close to the dotted line then meet the blue boxes below
 - the dotted line, are those the districts that are in the
- 25 high 40s? 10:45:31

- 15:08 1 Q. Okay. Well, I've been giving you a hard time about whether
 - 2 I agree with how you did your map-making project, but now I'm
 - 3 | gonna do something kind of like Dr. Alford, and I'm gonna say,
 - 4 let's assume your simulations were right. Okay?
 - 5 MR. KERCHER: Let's go, Richard, to Brooks
 - 6 Exhibit 269.
 - 7 Q. (BY MR. KERCHER) This is the first report you supplied for
 - 8 this hearing. You see that, Dr. Barreto?
 - 9 A. I do.
 - MR. KERCHER: Richard, let's please go to page 16,
 - 11 | Figure 1. And if you could pull out Figure 1 for us.
 - 12 Q. (BY MR. KERCHER) Now, this is your dot plot showing what
 - 13 | you say are racial outliers. Do I have that right?
 - 14 A. This is the no constraint first base map of 38 districts in
 - 15 Texas, and what they would look like if you didn't put in any
 - 16 race or partisan constraints.
 - 17 Q. And then the black dots are where the actual enacted
 - 18 districts land on the same scale. Is that right?
 - 19 A. Let me just look and see. That might be the case.
 - 20 O. You don't know?
 - 21 A. I don't recall, looking at it now, as there's a lot of
 - 22 | material I produced. Like we can -- if you want me to read the
 - 23 report and try to refresh --
 - 24 | Q. I don't think anybody wants for you to read your own report
 - 25 on the stand.

- 15:10 1 A. I think it might be right --
 - 2 Q. Did you make this -- did you make Figure 1 in your own
 - 3 report, or is this again the work of Mr. Rios?
 - 4 A. Well, we worked on the report together. I remember making
 - 5 this. This was the first statewide simulation we ran with no
 - 6 constraints. And it has no constraints on race or
 - 7 partisanship, but we said, draw 38 districts across.
 - 8 Q. You don't know or you can't tell the Court what the black
 - 9 dots are on your own figure?
 - 10 A. The black dots are typically the average simulation. You
 - 11 can also set them to be the actual simulation in the map. And
 - 12 | so I believe that our norm is to produce the average simulation
 - 13 result. These are the baseline draws with no constraints at
 - 14 all.
 - MR. KERCHER: Richard, let's please go to page 14 of
 - 16 Brooks Exhibit 269, paragraph 43.
 - 17 Q. (BY MR. KERCHER) Here you write (Reading) Map drawers
 - 18 decide to split VTDs more than 440 times, and instead draw
 - 19 boundaries on census blocks, for which only racial data exists.
 - 20 | Census blocks do not contain election results for such small
 - 21 pieces of neighborhoods, and no map drawer can be certain of
 - 22 partisan performance within a census block.
 - 23 Did I read that correctly?
 - 24 A. Yes.
 - 25 Q. That feels a little disingenuous. It's not quite true to

- 15:12 1 | say that you cannot get partisan data at the block level.
 - 2 True?
 - 3 A. You could try to impute it, but our point is that it
 - 4 doesn't exist. Partisan data only exists in a VTD. And within
 - 5 | that VTD, when you break it up into pieces, you don't know
 - 6 where any of those votes are concentrated.
 - 7 Q. Well -- but when you say you can try to impute it, what I
 - 8 hear you saying is there are ways of calculating partisan data
 - 9 from the VTD level down to a more granular geographic --
 - 10 demographic geography. True?
 - 11 A. There are ways to do that, but --
 - 12 Q. So when you say that there is no partisan data at the block
 - 13 level -- you said a moment ago, it does not exist. Well, you
 - 14 | can make it, right?
 - 15 A. You could make estimates. What I mean, just to be clear,
 - 16 is that there is no election data that you could get from a
 - 17 | county or the TLC in which you have actual votes cast in a
 - 18 | block. You only have them in the VTD, which has anywhere
 - 19 between ten and 100 blocks.
 - 20 After that, there is a lot of guesswork, saying, maybe
 - 21 these votes came from over here. Maybe they came from over
 - 22 here. You could put numbers in them, but it's not election
 - 23 data.
 - 24 Q. So there are other places in redistricting data where we
 - 25 use estimates. True?

- 15:13 1 A. Probably. I don't know what example you're thinking of.
 - 2 Q. I'm thinking of the ACS data, right? That's not a survey.
 - 3 True?
 - 4 A. Well, it is a survey.
 - 5 Q. The ACS data -- well, the census is a survey, right?
 - 6 A. They're both surveys. One is of the population, one is of
 - 7 | the sample. They're both surveys.
 - 8 Q. But in order for the ACS data to be useful, you have to
 - 9 take a sample, and then infer that the sample -- infer from the
 - 10 | sample to the whole. True?
 - 11 | A. Yes, but --
 - 12 Q. That's why there's a margin of error for the ACS, right?
 - 13 A. Correct.
 - 14 Q. And, in fact, the margin of error for the ACS one year is
 - 15 higher than the margin of the ACS for five years. True?
 - 16 A. Correct.
 - 17 Q. And you talked about, vigorously, if I may say, on direct,
 - 18 | in BISG, right, where you are combining two kinds of data using
 - 19 | a voter file. True?
 - 20 A. A voter file, census data, and a surname list.
 - 21 Q. Right. And you're not telling the Court that by doing
 - 22 | that, you can, house by house, tell them which Spanish surname
 - 23 person or voter lives in which house, right?
 - You're looking at that on a neighborhood level. True?
 - 25 | A. We aggregate it to VTDs, or neighborhoods, absolutely.

events, that additional work by Dr. Duchin is not 1 admissible. 2 3 JUDGE GUADERRAMA: So --JUDGE SMITH: You might be repeating yourself 4 5 from what you said first. But specifically, if we were to 09:25:59 agree with you -- I'm not suggesting we will or we 6 7 won't -- what specific instruction should Dr. Duchin be 8 given before she is sworn in about the limitation on her 9 testimony? I just want to be sure. It's important exactly what wording you are asking for. 10 09:26:20 11 MR. KERCHER: Dr. Duchin I think must be 12 instructed not to discuss work that she performed regarding the 2025 map that is not contained in either her 13 14 August 2025 report or her September 2025 report. 15 And that when she is asked questions by counsel on 09:26:38 either side about either of those reports, she is to 16 17 understand the -- she is to understand those questions to 18 be limited only to the information and analysis provided 19 in those reports and should not understand those questions 20 to be eliciting a response concerning work that she did 09:26:55 21 not contain in those reports. 22 That instruction will, of course, be subject to my 23 asking the right question. Right? If at some point I ask 24 a question that plaintiffs' counsel thinks opens the door to it, if I mess that up, they can stand up and object at 25 09:27:13

	1	that point. This is effectively
	2	I think that the evidence should not come into the
	3	record. At a minimum, it should be held in limine, such
	4	that it cannot come out until after the parties get the
09:27:27	5	opportunity to confer with the Court about whether the
	6	question elicits it.
	7	JUDGE BROWN: I have a question for Mr. Weiner.
	8	Am I saying your name correctly?
	9	MR. WEINER: Yes, you are, Your Honor.
09:27:48	10	JUDGE BROWN: All right. It sounds like there
	11	was no change in her methodology.
	12	MR. WEINER: That's correct.
	13	JUDGE BROWN: And it's just this one data point
	14	that is different from
09:27:59	15	MR. WEINER: Yes. And it's a data point that we
	16	did not and do not intend to bring up on direct. It's
	17	really it's one of the factors. Are you double-bunking
	18	incumbents? It doesn't happen very often. It's in her
	19	list of things. But it's not something that we were going
09:28:23	20	to have her testify about. And this was this whole
	21	issue only concerns what she will testify to on cross.
	22	And, you know, Dr. Trende, if he reviews the analysis,
	23	can testify that and he is testifying tomorrow or the
	24	next day, he can testify whether it in fact undermines her
09:28:50	25	analysis.

1	JUDGE BROWN: And none of her conclusions
2	changed, Mr. Weiner?
3	MR. WEINER: None of her conclusions changed.
4	And I have Rule 26(e)(A) and it does not articulate a
5	time limit, Your Honor. Thank you.
6	JUDGE GUADERRAMA: Yes, sir.
7	(Sotto voce discussion amongst the Courts.)
8	JUDGE GUADERRAMA: All right. Thanks.
9	So we're going to deny the State's motion with the
10	understanding that your direct of the expert will be
11	limited to those things you have said.
12	MR. WEINER: Yes, Your Honor.
13	JUDGE GUADERRAMA: In other words, we're not
14	going to get into that.
15	MR. WEINER: We are not going to get into it.
16	JUDGE GUADERRAMA: All right.
17	JUDGE BROWN: And cross is as wide open as cross
18	ever is.
19	MR. KERCHER: Understood.
20	MR. WEINER: All right. Are we ready for the
21	first witness then, Your Honor?
22	JUDGE GUADERRAMA: Yes, sir. Please. Yes, sir.
23	Is she here?
24	MR. WEINER: Yes, she is.
25	JUDGE GUADERRAMA: Okay.
	Laura Wells, RPR, RMR, CRR, RDR
	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23

	1	
	1	MR. WEINER: So, Your Honor, Dr. Duchin was
	2	previously qualified as an expert in the fields of data
	3	science and applied mathematics. I don't know whether I
	4	need to tender her again but I will do so, just to be
10:45:18	5	sure, as an expert in those two fields.
	6	JUDGE GUADERRAMA: Mr. Kercher.
	7	MR. KERCHER: No objection.
	8	JUDGE GUADERRAMA: The Court receives her.
	9	MR. WEINER: I have no further questions. I pass
10:45:29	10	the witness.
	11	JUDGE GUADERRAMA: Mr. Kercher.
	12	CROSS-EXAMINATION
	13	BY MR. KERCHER:
	14	Q. Good morning, Dr. Duchin. Nice to see you again.
10:45:50	15	A. Nice to see you.
	16	Q. Congratulations on your move to U Chicago.
	17	A. Thank you.
	18	Q. If I my son is working on his application essay to
	19	U Chicago, like right now. If I had known you were going
10:46:05	20	back, I might have structured my last cross a little bit
	21	differently. If you have, in the fall of 2026, a student
	22	named Alexander Kercher in your introduction to proofs
	23	class, no relation.
	24	Did I hear you say a moment ago this felt like an
10:46:25	25	offhand comment. I'm not sure I caught it. But it
		Laura Wells, RPR, RMR, CRR, RDR

- 1 sounded like you said that you could run something like a
- 2 million maps in a matter of seconds; is that right?
- 3 A. That's right. As a general matter. In a particular
- 4 case, it depends on details.
- 10:46:38 5 Q. Sure. And in order to do that, are you using some
 - 6 sort of Cornell or University of Chicago or Tufts super
 - 7 computer or is that on a laptop?
 - A. Oh, absolutely not. You don't use a super computer to
 - 9 do it. You could do it on a digital watch.
- 10:46:52 10 Q. On a digital watch; is that right?
 - 11 A. That's right.
 - 12 Q. At that speed; is that right?
 - 13 A. The number of steps, each -- the compute involved in
 - 14 each execution is tiny.
- 10:47:01 15 Q. Is it right to say that it might take longer depending
 - 16 upon all of the parameters that you put in? Is that
 - 17 something that would slow things down?
 - 18 A. That is correct. It can.
 - 19 Q. I think -- and if you don't remember either, that's
- 10:47:12 20 fine. But I think at trial we talked about -- I asked you
 - 21 how long it took you to run the hundred thousand
 - 22 simulations -- 100,000 maps that your robot drew then, and
 - 23 I think you said it took something like an hour; is that
 - 24 right?
- 10:47:24 25 A. It would depend. The number will be different for

- 1 please.
- 2 BY MR. KERCHER:
- 3 Q. You next discuss the availability at the block level
- 4 of racial and partisan data, right?
- 10:52:55 5 **A.** That's right.
 - 6 Q. Now, census blocks are the smallest units of
 - 7 population data from the census; is that right?
 - 8 A. That's right.
 - 9 Q. Or population geography, is that the word?
- 10:53:06 10 A. Well, they're the smallest geographic units on which
 - 11 there is population data.
 - 12 Q. There will be multiple blocks per precinct or per VTD;
 - 13 is that right?
 - 14 A. That's correct.
- 10:53:17 15 Q. Now, racial data are publicly available from the
 - 16 census at the block level.
 - Do I have that right?
 - 18 A. To be precise, yes, for total population and voting
 - 19 age population but not citizen voting age population.
- 10:53:32 20 Q. Have you ever seen in your work as an expert folks who
 - 21 are using CVAP data at the block level?
 - 22 A. Definitely.
 - 23 Q. So is it right to say that just because the CVAP data
 - 24 does not come from the census off the shelf at the block
- 10:53:48 25 level, you can derive CVAP data to the block level?

1	A.	Yes.	That's	а	common	practice.
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- 2 Q. Likewise, partisan data are not available off the
- 3 shelf at the block level. True?
- 4 A. You mean from the census?
- 10:54:03 5 Q. Anywhere. Or if you are aware.
 - 6 A. Well, you can get partisan data from many sources.
 - 7 The census doesn't provide it essentially at all. The
 - 8 TLC -- the Texas Legislative Council, I think that's what
 - 9 it stands for. TLC does provide partisan data from past
 - 10 elections or provides election results disaggregated to
 - 11 the block only.

10:54:22

- 12 Q. So if another expert in this case had represented to
- 13 the Court that there simply is not partisan data at the
- 14 block level, you would disagree with that. Fair?
- 10:54:38 15 A. I would have a slightly more complicated response.
 - 16 There are various sources from which you can get it at the
 - 17 block level. The TLC process, as I described in this
 - 18 report, from what I understand of their description,
 - 19 doesn't do anything to disaggregate below the precinct
- 10:54:59 20 level in a way that distinguishes between blocks. I take
 - 21 their description to be that they proportionally allocated
 - 22 below the precinct level.
 - 23 Q. So if a map drawer wanted to draw a district using
 - 24 partisan data at the block level, is that possible based
- 10:55:19 25 on data available in the world?

- 1 A. In the world, certainly.
- 2 Q. You begin your analysis here by saying [as read:] As
- 3 far as I'm aware, the State has not disclosed the use of
- 4 any partisan data below the precinct level, while race
- 10:55:41 5 data is available at the block level. Therefore, the high
 - 6 number of precinct splits seen in Table 2 is more
 - 7 indicative of a focus on race than partisanship.
 - 8 Did I read that correctly?
 - A. Essentially, yes.
- 10:55:56 10 Q. Disclosed where, when you talk about the State
 - 11 disclosing or not?
 - 12 A. Well, what I mean is the material provided to me
 - included nothing with partisan data below the precinct
 - 14 level.

9

- 10:56:07 15 Q. If I understood what we just talked about correctly,
 - 16 then what I think I heard you say is that in the world
 - 17 there are available both partisan data at the block level
 - 18 and racial data at the block level.
 - 19 Am I right so far?
- 10:56:21 20 A. Well, to be clear by what we mean by "the world,"
 - 21 often you can buy a commercial dataset that imputes
 - 22 partisanship to the household. So that would be an
 - 23 example.
- Q. Well, I guess my point is that you could buy partisan
 data at the block level or, if you knew what you were

- 1 and the second full paragraph.
- 2 BY MR. KERCHER:
- 3 Q. Here I read you to acknowledge that there is at least
- 4 one way to allocate precinct-level partisan data to the
- 10:58:51 5 block level. Is that fair?
 - 6 A. No. I think that is exactly the opposite of what I
 - 7 was trying to say here.
 - 8 Q. Help me understand.
 - 9 A. Well, sure. So what I'm saying here is that the plain
- 10:58:59 10 reading of the description in the TLC publication is that
 - 11 they simply prorate it, and that means they are not
 - 12 getting any sub-precinct-level information out of the
 - 13 process.
 - 14 Q. That's what -- so you are talking here just about the
- 10:59:11 15 TLC data, right?
 - 16 A. That's correct.
 - 17 Q. So if we expand the world into other kinds of data,
 - 18 this observation may not apply. True?
 - 19 A. That's absolutely true.
- MR. KERCHER: Let's go to Footnote 3, Richard.
 - 21 No. Footnote 3, the next one. Jumping around the
 - 22 outline. Apologies. It says Footnote 5. No. No. This
 - 23 is good.
 - 24 BY MR. KERCHER:
- 10:59:54 25 Q. Dr. Duchin, Footnote 5 on page 7 of your September

report, you write [as read:] Beyond this interpretation 1 of the TLC allocation process, this analysis assumes that 2 the line drawers used TLC electoral data and not ancillary 3 sources like voter registration, commercial voter files, 4 and so on. 5 11:00:09 6 Right? 7 Right. Α. 8 Q. That's what you were just saying about needing information about ancillary data sources, right? 10 Α. Exactly. 11:00:16 And what I understand your report to say is that you 11 Q. 12 just don't know whether the map drawer used ancillary data sources other than TLC data, right? 13 That's right. I wasn't provided with any information 14 15 about that. 11:00:27 Q. And because you don't know either way whether the map 16 drawer used those ancillary data, you don't know whether 17 18 or not the map drawer used partisan data allocated at the 19 block level? 20 A. Right. I wasn't given a description of the source for 11:00:40 21 partisan data. 22 And next you move on to what you call your effective 23 minority representation analysis, right? 2.4 MR. KERCHER: You've lost the page there. I 25 promise you it's true. 11:00:58

	1	redistricting that you have read generally? Or are you
	2	trying to draw 100,000 maps that in some way resemble the
	3	character of the enacted map?
	4	A. I'm trying to layer in hypotheses that I have heard
11:51:47	5	for some of the legitimate factors that might have
	6	driven some of the legitimate or arguably legitimate
	7	factors that might have driven map creation.
	8	Q. I'm not sure that answers my question.
	9	My question is whether you are trying to draw 100,000
11:52:01	10	maps that simply look like maps in Texas that would abide
	11	by these general principles or that look like maps or
	12	are you trying to draw 100,000 maps that look in some way
	13	like the enacted map?
	14	A. Well, I'm just not aware of the principles used to
11:52:18	15	create the enacted map. So I can't simulate those. What
	16	I can do is take principles that I have heard articulated
	17	as reasonable principles that might be in play, and I have
	18	tried to test how those principles interact.
	19	Q. So it doesn't matter for you if, for example, the
11:52:35	20	partisan character that you have given to the maps your
	21	robot is drawing are in no way similar to the partisan
	22	characteristics of the enacted map?
	23	A. Well, it's always possible that the partisanship
	24	measurement used by the mapmaker was something I can't
11:52:49	25	contemplate. So that's why I have tried so many different

- 1 **A.** Okay.
- 2 Q. Fair? You want to get rid of racial discrimination in
- 3 voting?
- 4 A. I think -- yeah. I think racial discrimination would
- 12:17:04 5 be bad.
 - 6 Q. Same.
 - Now you know that the Texas Legislature is controlled
 - 8 in both chambers by the Republicans, right?
 - 9 **A.** Yes. I do.
- 12:17:14 10 Q. So if Texas Republicans want five more Republican
 - 11 congressional districts, it stands to reason they could
 - 12 likely get the votes to pass a bill that does that, true?
 - 13 A. That seems reasonable.
 - 14 Q. Why not then, if the fundamental concern is
- 12:17:32 15 eliminating discrimination in voting rights, file a map
 - 16 with the Texas Legislature that meets their partisan goals
 - 17 but also resolves your concerns about the use of race in
 - 18 drawing the map? You could do that?
 - 19 A. So you are asking as a private citizen why did I not
- 12:17:51 20 file a map?
 - 21 Q. Sure. Sure. Why not use your expertise that way?
 - 22 A. I have helped draw maps in several other states. That
 - 23 is something that I think is very important.
 - 24 Q. Sure. But in this state, as a private citizen, I
- 12:18:03 25 mean, it was all over the news, right? Texas is

redistricting and Gavin Newsom was mad at us. 1 You saw that, right? 2 3 Yes. I saw a lot of news. There was this sort of sense of Texas is going to pass 4 a five -- Republican plus five map. Why not just submit a 5 12:18:15 map to DistrictViewer that helps Republicans meet their 6 7 partisan goals and resolves the racial concerns? 8 Α. In other words, why not contribute to the goal of partisan gerrymandering? I wouldn't call that my motivating influence. 10 12:18:34 Okay. That's a genuinely helpful answer. 11 12 Do I understand you to be saying that you would not hazard a partisan outcome to resolve concerns about racial 13 discrimination? 14 No. I don't think I'm saying that. 15 12:18:51 16 Can you rephrase the question? 17 That's the question I wanted an answer to. 0. 18 Α. That doesn't sound like what I was communicating. Q. When we spoke in trial I understood your position to 20 be, at least in part, that if the 2021 map was really a 12:19:08 21 partisan gerrymander, it left an awful lot of partisanship 22 on the table? 23 Right. I think there is even a quote to that effect in the report, that partisan opportunity was left on the 25 table. In other words, that it wasn't as extreme of 12:19:28

	1	partisan gerrymandering as possible.
	2	Q. And in your view, that was at least some evidence that
	3	race was used in drawing the 2021 map?
	4	A. No. I would say that led me to try to draw a set of
12:19:44	5	comparators that were as partisan as that map. And, in
	6	this analysis, I have refreshed my creation of comparators
	7	to find things that are as partisan as the new map.
	8	Q. We agree, though, don't we, that the 2025 map leaves
	9	less partisanship on the table?
12:20:01	10	A. Absolutely. I think my statement was well borne out.
	11	MR. KERCHER: Pass the witness.
	12	JUDGE GUADERRAMA: Mr. Weiner.
	13	REDIRECT EXAMINATION
	14	BY MR. WEINER:
10 00 04	15	Q. I have just a few questions, Dr. Duchin.
12:20:24		
12:20:24	16	Turning to your report, which is Exhibit 208, and
12:20:24	16 17	Turning to your report, which is Exhibit 208, and pages 22 and 23.
12:20:24		
12:20:24	17	pages 22 and 23.
12:20:24	17 18	pages 22 and 23. Now, we talked before about the difference between
	17 18 19	pages 22 and 23. Now, we talked before about the difference between district generation parameters and winnowing conditions.
	17 18 19 20	pages 22 and 23. Now, we talked before about the difference between district generation parameters and winnowing conditions. Could you remind us what the difference is?
	17 18 19 20 21	pages 22 and 23. Now, we talked before about the difference between district generation parameters and winnowing conditions. Could you remind us what the difference is? A. Yes. What I'm calling district generation parameters
	17 18 19 20 21 22	pages 22 and 23. Now, we talked before about the difference between district generation parameters and winnowing conditions. Could you remind us what the difference is? A. Yes. What I'm calling district generation parameters are the factors taken into account as the random agent
	17 18 19 20 21 22 23	pages 22 and 23. Now, we talked before about the difference between district generation parameters and winnowing conditions. Could you remind us what the difference is? A. Yes. What I'm calling district generation parameters are the factors taken into account as the random agent collects a sample of maps.

- 16:28 1 Q. What significance did that letter play in Texas
 - 2 redistricting in 2025?
 - 3 A. Well, I can't speak for everyone else in the Legislature,
 - 4 but for me it really didn't carry any significance. The letter
 - 5 | wasn't addressed to the Legislature; it was addressed to the
 - 6 Attorney General and to the Governor. I obviously read it, but
 - 7 | it -- I think people tried to make it into something of
 - 8 | influence, but I really don't believe it directed us in any
 - 9 manner.
 - 10 O. Who is Adam Kincaid?
 - 11 A. He is the Chair of the National Republican Redistricting
 - 12 Trust.
 - 13 Q. And how do you know him?
 - 14 A. We first met, probably, 2018 or 2019. We were both
 - 15 | speaking on a panel at the American Legislative Exchange
 - 16 | Council, at their annual conference or winter conference; I
 - 17 | don't recall which.
 - MR. WASSDORF: Richard, could you pull up State's
 - 19 | Exhibit 1277, page 20, lines 3 through 11?
 - 20 Q. (BY MR. WASSDORF) Senator, I'll represent to you that this
 - 21 | is the June 21st floor debate transcript regarding the adoption
 - 22 of Senate Resolution 5.
 - Based on what you see here on the screen, did Senator
 - 24 Alvarado ask you if you knew Adam Kincaid?
 - 25 A. Yes, she did.

- 16:36 1 Committee for any map that was going to be adopted during the Redistricting process?
 - 3 A. Well, I started off with two goals. The first was that it
 - 4 be a legal map, that it comply with all applicable law. And
 - 5 | second, that it improve political performance for Republican
 - 6 candidates.
 - 7 Later on, as we went through the regional hearings and
 - 8 | we had a lot of testimony about compactness, complaints about
 - 9 districts being oddly -- odd in size and description, that I
 - 10 | went ahead and added improving compactness to my goals.
 - So it was a legal map, a map that would elect more
 - 12 Republican Congressional members, and a map that would improve
 - 13 | compactness in some of the districts.
 - Q. What was the first action that the Senate took on
 - 15 redistricting during the Special Session?
 - 16 A. Well, we didn't have a Redistricting Committee, and so the
 - 17 | very first day of the first-called Special Session, which would
 - 18 have been June 21st, I filed a resolution. And we had that
 - 19 resolution up on the floor to establish the Redistricting
 - 20 | Committee, and then also to set up the rules and operations
 - 21 process for the committee.
 - 22 Q. How did -- were the members of the Redistricting Committee
 - 23 | selected?
 - 24 A. Well, they're chosen by the president of the Senate. It's
 - 25 his discretion. But he did ask me to make some

- 17:16 1 | Exhibit 1143? Could you zoom in on the top?
 - 2 | Q. (BY MR. WASSDORF) What is this document?
 - 3 A. That's the Minutes from the hearing on -- in the Senate
 - 4 | Congressional Redistricting Committee on -- of Thursday,
 - 5 August 21st.
 - 6 MR. WASSDORF: Now Richard, could you go look at the
 - 7 | bottom of the page?
 - 8 Q. (BY MR. WASSDORF) What occurred during this hearing?
 - 9 A. The committee passed out House Bill 4.
 - 10 Q. Did the committee take any public testimony?
 - 11 A. We had a public hearing. We did not take public testimony.
 - 12 Q. Why did you not take public testimony?
 - 13 A. We had had a hearing on essentially the same bill on three
 - 14 previous occasions, one being just a few days before. And so
 - 15 | there was no need to have another day of testimony essentially
 - 16 on the same map and essentially from the same parties.
 - 17 Q. Earlier we talked about your goals for a redistricting map.
 - 18 | Did HB4, as passed out of the House, and out of the Senate
 - 19 | Congressional Redistricting Committee, meet those goals?
 - 20 A. Yes, it did. It was a legal map. It would elect, I
 - 21 | believe, more Republican members to the Congress. And it also
 - 22 | improved compactness in a few districts.
 - 23 Q. How do you know that the map was legally compliant?
 - 24 A. Well, I'm not a redistricting attorney, and I had decided
 - 25 at the beginning that I would not look at any map from anyone

- 17:18 1 | until it first went through a legal analysis, a legal scrub.
 - 2 And so we had hired our own counsel for me as Senate chair, as
 - 3 | committee chair.
 - 4 And they had -- I had instructed them -- requested of
 - 5 them that they review each map I looked at and report back to
 - 6 me their conclusion of whether it complied with the law.
 - 7 Q. And did the counsel you retained give it a thumbs up or a
 - 8 thumbs down?
 - 9 A. It was given a thumbs up, that it did comply with all law.
 - 10 Q. To your knowledge, was race used in the drawing of the map?
 - 11 A. It was not.
 - 12 Q. When you talked to Adam Kincaid, did he tell you that race
 - 13 | was not used?
 - 14 AUS Atty: Objection, hearsay.
 - 15 MR. WASSDORF: It's not offered for the truth of the
 - 16 | matter asserted, Your Honor, it's offered to shape his
 - 17 understanding of what the basis of the map was.
 - JUDGE GUADERRAMA: I'll sustain the objection.
 - 19 Q. (BY MR. WASSDORF) Did you review any racial data
 - 20 | associated with HB4?
 - 21 A. No, I didn't look at any racial data.
 - 22 Q. Did the map also achieve your partisan goals?
 - 23 A. Yes, it did. It appears that it will improve Republican
 - 24 voting strength in at least five districts.
 - 25 Q. What are those districts, if you can recall?

Voting Rights Act. 1 And because they have not produced and have continued 2 3 to this date to refuse to produce any information justifying their position that Texas complied with the 4 Voting Rights Act, either it's a waiver and that 5 09:05:57 information must be disclosed to us so that we can 6 7 actually test whether or not that is true or you should 8 invoke an adverse inference that it is in fact not 9 compliant with the VRA or some other law as to why they are hiding that information. 10 09:06:12 11 We think this -- the way Texas has handled -- it's not 12 this trial team but the State of Texas during the redistricting process and this litigation to date is 13 14 ultimately a subversion of justice for the Texas voters 15 because they are not allowing Texans to understand how 09:06:27 16 their maps are drawn until literally today, the day 17 Mr. Kincaid takes the stand. 18 JUDGE GUADERRAMA: Thank you. 19 Mr. Kercher. 20 MR. KERCHER: The Court has already heard some 09:06:51 21 argument about Mr. Kincaid because when the plaintiffs 22 learned -- when we supplied our witness list in accordance 23 with this Court's scheduling order, and on a date that all 24 of the parties agreed to, that was September the 29th, the 25 same date we learned about the plaintiffs' witnesses, they 09:07:09

asked the Court to depose Mr. Kincaid. 1 The facts regarding the plaintiffs' knowledge of 2 Mr. Kincaid and his involvement in this case have not 3 materially changed since then, as I pointed out when we 4 talked about our motion to quash. 5 09:07:26 The preliminary injunction motion filed by 6 7 Mr. McCaffity on behalf of his clients, MALC, also jointly with the Brooks plaintiffs and the LULAC plaintiffs, mentioned Mr. Kincaid no fewer than 11 times. And the Court has heard over and over again portions of committee 10 09:07:43 hearings and floor debates from both chambers of the Texas 11 12 Legislature wherein Mr. Kincaid's name was used. 13 I know that the plaintiffs were frustrated by the setting that -- the date of the setting of this hearing. 14 They hoped to have it sooner. When we were talking about 15 09:08:00 16 when we were going to set this hearing, they said they 17 could be ready in 48 hours. They said they could be ready 18 in 48 hours knowing that Mr. Kincaid's name was all 19 through the legislative record. 20 When the Court then set this hearing for 30 days after 09:08:14 21 the status conference, the plaintiffs had time to try and 22 depose Mr. Kincaid if they wanted to. And indeed, when 23 they saw that he was on our witness list, they did try to 24 depose him. 25 Now, having heard the way that other trial witnesses, 09:08:28

- 1 2025 enacted congressional map?
- 2 A. I drew most of it, yes.
- 3 Q. We're going to get into that in some detail today.
- 4 But before we do that, I want for the Court to get to know 5 you a little bit.
- Whereabouts do you live? Don't give your address, please.
- 8 A. I live in northern Virginia.
- 9 Q. Have you ever been to Texas before?
- 09:36:17 10 **A.** I have.

09:36:10

- 11 Q. Tell us about that.
- 12 A. I lived here for three years in junior high school in
- 13 San Angelo, Texas. So I earned my Eagle Scout out here
- 14 and -- yeah, I loved it. I loved West Texas. But my
- 09:36:31 15 dad's work called us to Florida. So we moved to Florida.
 - 16 Q. I understand you have got some work to do with Scouts
 - 17 this weekend. So we're supposed to move your testimony
 - 18 along, as I understand it.
 - 19 A. I've got 20 kids to take on a campout this weekend,
- 09:36:43 20 yeah.
 - 21 Q. Mr. Kincaid, what is your educational background?
 - 22 A. Sure. So I earned my bachelor's degree in history and
 - 23 religion at Florida State University.
- I moved on from there to the University of Georgia and got a master's in public administration, with a

1 specialization in public policy.

And then I spent one semester at the College of
William & Mary for law school before quitting that and

- 4 coming back up to D.C.
- O9:37:05

 Q. That may make you the smartest person in the room.

 So you talked about getting your master's degree in

 Georgia. When did you finish that up? What year?
 - 8 **A.** 2006.
 - Q. What do you do for a living now?
- 09:37:19 10 A. I run the National Republican Redistricting Trust.
 - 11 Q. And without getting into specifics for specific
 - 12 clients, what kinds of work do you do? If I call it NRRT
 - 13 for short, it's kind of a mouthful, you'll understand what
 - 14 I'm talking about?
- 09:37:32 15 A. We call it NRRT. So you can call it NRRT if you want
 - 16 to.
 - 17 Q. That's much worse.
 - Without getting into specifics that you might have to
 - 19 handle confidentially for clients, what kind of work do
- 09:37:44 20 you do for NRRT?
 - 21 A. Generally, our work is to support Republican
 - 22 redistricting efforts across the country. That will vary
 - 23 from state to state. Some states, they don't need
 - 24 anything. Some states they might need map drawing support
- 09:37:59 25 or data or litigation support. It just depends from state

1 to state.

- 2 Q. You are using -- forgive me -- you are using some
- 3 corporate speak that I always have to fully understand.
- 4 When you say "support," and for example when you say "map
- 09:38:12 5 drawing support," what does map drawing support mean?
 - 6 A. Sure. There are some states where they have people
 - 7 who do their redistricting for them. They have mapping
 - 8 staff or they have expert consultants who can do it, and
 - 9 they don't really need somebody to come in and draw their
- 09:38:25 10 maps, right?
 - And then there is other states where they don't have
 - 12 that sort of -- that expertise. And so they may ask us or
 - 13 ask us to put them in touch with somebody who can do that
 - 14 for them.
- 09:38:36 15 So a lot of times we're a clearinghouse, you know,
 - 16 just trying to help connect Republicans in the states with
 - 17 other Republican lawyers and map drawers across the
 - 18 country.
 - 19 Q. Do you yourself ever draw maps?
- 09:38:49 20 **A.** Yes.
 - 21 Q. How often would you say you draw maps? Is it just
 - 22 sort of, you know, once every decennium? How frequently
 - 23 are you drawing maps?
 - 24 A. I mean, I -- we do a lot of different things in NRRT.
- 09:39:01 25 But when it's quiet, I'll sit down and I'll look at a map

- and see what I can do in different places. So it's pretty regularly that part of my job is to look at maps and see what is possible or what would have been possible, yeah,
- 4 across the entire country.
- 6 A. It wasn't until I started doing this in 2011 and then
 7 it became a hobby pretty quickly and somehow I turned that
- 8 into a career.

5

09:39:15

9 **Q.** You mentioned some other kinds of support that NRRT provides, and one of those was litigation. What were some of the others?

Is map drawing kind of a hobby for you?

- 12 A. Yeah. So we do a lot of data work. So we gather and
- process election results across the entire country and put
- 14 those into a format that's usable for redistricting
- 09:39:47 15 software. We do litigation support in the sense that, you
 - 16 know, we'll, you know, help lawyers connect with expert
 - 17 witnesses, connect expert witnesses with lawyers, all that
 - 18 sort of stuff. Some states, they need outside counsel,
 - 19 and so we'll refer them to outside counsel to help them
- 09:40:03 20 defend their maps.
 - 21 Q. You talked a little bit about data support. Are you
 - 22 involved in any of the data support work done by NRRT?
 - 23 A. Yes.
- 24 **Q.** Is any of the work -- is any of the data support work o9:40:18 25 that NRRT does proprietary?

1 **A.** Yes.

09:40:34

09:40:49

8

10

Α.

- 2 Q. And without asking about proprietary stuff -- look, I
- 3 don't want to hide the ball. I want to be able to talk.
- I want you to be able give the plaintiffs information they
 need while I'm getting the information that I need.

What about what NRRT does with data support is

- 7 proprietary so we sort of know what the line is?
- 9 during my deposition two years ago where we talked about

the election results that we gathered and how we process

Sure. Well, we kind of got into this a little bit

- 11 that. But we use a Python-based algorithm to take all the
- data that we have collected and distribute it out among
- 13 census blocks.
- Q. You are using a lot of computer words. You kind of sound like my son. When you say Python-based, Python is a programming language; is that right?
 - 17 A. Yes, that's right.
 - 18 Q. And an algorithm, you're talking about here, around
 - 19 here we call algorithms robots. Is it a computer program?
- 09:41:21 20 A. It's more of a script. So it's a series of
 - 21 instructions that we have custom to every single state
 - 22 because every state has different election results or, you
 - 23 know, voter file content. And so we have to have a
 - 24 different script for every single state.
- 09:41:32 25 Q. Okay. So I'm not going to ask you anything about that

- 1 code, the script, or your Python programming.
- 2 Have you ever drawn a redistricting map for a state or
- 3 a local jurisdiction?
- 4 A. Yes.
- 09:41:44 5 Q. How long have you been doing the kind of work that you
 - 6 just described as doing for NRRT?
 - 7 A. We started NRRT in 2017, but I was doing redistricting
 - 8 work before that.
 - 9 Q. Does NRRT -- I mean, it's got the word "Republican" in
- 09:42:01 10 it. Does it exclusively work with Republicans?
 - 11 A. NRRT does, yes.
 - 12 Q. Have you ever worked with non-Republican clients when
 - 13 you were not within NRRT?
 - 14 A. No.
- 09:42:17 15 Q. Have you ever worked for an employer that did not have
 - 16 the word "Republican" in it?
 - 17 **A.** Well, we have a 501(c)(4) and a 501(c)(3) that do not
 - 18 have the word "Republican" in it. But ever since I
 - 19 started working -- I can give you the list of the
- 09:42:31 20 organizations I have worked for if that's helpful, but
 - 21 every single one has had Republican in its name.
 - 22 Q. If you can do that briefly, yes, sir.
 - 23 A. So I started at the Georgia Republican Party. So I
 - 24 graduated on a Saturday and started work on a Monday at
- 09:42:43 25 the Georgia GOP.

From there I went and spent four years at the 1 2 Republican Governors Association. 3 After that I went to the National Republican Congressional Committee. 4 5 Then I spent a few years at the Republican National 09:42:54 Committee before founding the National Republican 6 7 Redistricting Trust. 8 Q. That reminds me of the Monty Python sketch about the People's Front of Judea and the Judean People's Front. When you draw maps for state and local jurisdictions, 10 09:43:09 11 are you always drawing those maps in the anticipation that 12 they will be adopted or considered for adoption? 13 Α. No. Not always, no. Is there a difference between the map drawing you do 14 for actual consideration by a jurisdiction and the sort of 15 09:43:24 hobby sketching that you described earlier? 16 17 I mean -- yes. When I am just kind of looking Α. Yeah. 18 at what is possible in a state, I'm not constrained the same way I would be if I'm drawing maps specifically for a 20 jurisdiction or for -- you know, for any jurisdiction. 09:43:38 I'm going to talk to you now a little bit about how 21 you draw maps. 22 23 Α. Sure. 24 And I want to -- I want to tell you that I'm not going 25 to ask you any questions about how other people should 09:43:54

- 1 draw maps --
- 2 **A.** Okay.
- 3 Q. -- or about your opinions about the right way or the
- 4 wrong way or how other people do it. I'm just asking you
- 09:44:03 5 about mechanically how you draw your maps. Clear?
 - 6 **A.** Yep.
 - $7 \mid \mathbf{Q}$. All right. Do you use software to draw maps or you do
 - 8 it by hand?
 - 9 A. Software.
- 09:44:11 10 **Q.** What kind of software do you use?
 - 11 A. We use Esri for Redistricting.
 - 12 Q. Can you tell spell that?
 - 13 A. E-s-r-i.
 - 14 Q. And what is Esri? Is that like a -- when I use
- 09:44:24 15 Microsoft Word, I have to go get a license in order to be
 - 16 able to use the program.
 - Does Esri work the same way?
 - 18 A. Yeah. You get a license or some sort of a contract
 - 19 and you can use their platform, yes.
- 09:44:35 20 Q. When you say "platform," does that mean like there is
 - 21 an icon on your desktop that you click on like Microsoft
 - 22 Word? How does that work? How do you access it?
 - 23 A. It's a web-based platform.
 - 24 Q. You are using another word there. "Web-based," does
- 09:44:49 25 that mean you have got to get on the internet and that's

- 1 how you get it?
- 2 A. Yes. That's right.
- 3 Q. Ms. Wells here is one of our two fantastic court
- 4 reporters. She is very good at her job, and she has been
- 09:44:59 5 so patient with me I can't even tell you. You are eager
 - 6 to answer the questions, and I appreciate that. Let me
 - 7 finish and then give her a chance and then you can answer.
 - 8 Okay?
 - 9 A. Sure.
- 09:45:07 10 Q. Does Esri when you use it come preloaded with any
 - 11 data?
 - 12 A. Esri the software comes preloaded with the census
 - 13 geography. So that's one thing you get from them when you
 - 14 sign on. They also provide the demographic data from the
- 09:45:31 15 Census Bureau. And anything else you have to add in
 - 16 yourself.
 - 17 Q. The Court has heard a lot of these terms; but so the
 - 18 record is clear, when you say "census geography," do you
 - 19 mean boundary line information from the Census Bureau or
- 09:45:45 20 what?
 - 21 A. That's correct.
 - 22 Q. And when you say "demographic data," what -- if you
 - 23 know, what is the source of that demographic data?
 - 24 A. The United States Census.
- 09:45:54 25 Q. If -- we have seen census data in this hearing and at

- 1 trial earlier this year that has racial data.
- 2 **A.** Sure.
- 3 Q. Is the census data that comes preloaded in Esri, your
- 4 redistricting software, your map drawing software, is
- 09:46:08 5 there racial data in there?
 - 6 **A.** Yes.
 - 7 Q. To your knowledge -- well, let me ask you this: Have
 - 8 you ever tried to get rid of the racial data that comes
 - 9 preloaded?
- 09:46:17 10 A. There is a way to get rid of it, but it makes it very
 - 11 impractical for what we use. Because we do redistricting
 - 12 across 50 states, right? And so sometimes you are
 - analyzing maps. Sometimes you are drawing maps. And so,
 - 14 no, we don't take it away from the entire platform.
- 09:46:32 15 That's just not what you can do, no.
 - 16 Q. Have you ever used any other kind of map drawing
 - 17 software?
 - 18 A. Yes.
 - 19 Q. Have other kinds of map drawing software you have used
- 09:46:48 20 come with preloaded data?
 - 21 A. Yes.
 - 22 Q. Can you tell the Court whether or not those other
 - 23 kinds of map drawing software that come with preloaded
 - 24 data sometimes come with preloaded racial data from the
- 09:46:59 25 Census Bureau?

then work with. 1

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At the bottom of the screen you have something that kind of looks like a spreadsheet; and it will have the district numbers on one side and then any other criteria or attributes that you have selected to work with in the plan will be in columns next to that, next to those district numbers.

- When you open up Esri and you are looking at this screen that you have just described, can you immediately see racial data?
- 11 Α. No.
- 12 Can you help the Court understand whether you can ever Q. see racial data on this screen? How that happens? 13
 - Sure. So you -- what Esri has at the top left corner is a -- it says it's a demographics tab. You click on that. But the demographics tab is really -- it really is attributes. And so what it is, it will have all of the census data that's provided by the bureau, as well as any other things that you have added in as well.

So you can select or not select, you know, whatever datasets you are looking to work with. And so all of our election data that we have loaded into the platform is also available in that drop-down.

I'm not going to ask you about whether you have any opinions about how other people draw maps, what is the

Laura Wells, RPR, RMR, CRR, RDR

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1 best way, what is appropriate.

- I just want to know when you draw a map on Esri, do you have racial data visible?
- 4 A. I do not.
- 09:49:29 5 **Q.** Can you tell the Court your reason why you make that 6 choice?
 - A. A couple of reasons. First off, when I'm drawing maps, I am working with Republican groups trying to draw Republican maps to benefit Republican candidates. And when I'm doing that, I want to use election results that show me how Republicans and Democrats vote in specific elections.
 - More philosophically, I just think it's -- I don't think it's constitutional to draw maps based off of race.
- 09:50:03 15 **Q.** We have talked a little bit about Esri and the data that comes preloaded and what you see when you boot up the software.
 - Is it possible to put other kinds of data into Esri to help you with your map drawing?
- 09:50:19 20 **A.** Yes.

09:49:48

- 21 Q. What kinds of data do you use? Not generally, not
- 22 what other people use, not what is the best do you think.
- 23 What kind of data do you upload into Esri when you draw a
- 24 map?
- 09:50:31 25 A. The current datasets that we have loaded into our

- 1 platform are every governor's race, senate race,
- 2 presidential race, and attorney general race since 2016
- 3 for a specific state. And those are the election results
- 4 that we have in the system.
- 09:50:52 5 Q. Where do you get that data?
 - 6 A. So we gather the election results from the individual
 - 7 states. So for Texas we get it from Texas Legislative
 - 8 Service. They make them public. So we gather those
 - 9 there.
- 09:51:03 10 Q. Why not just use the preloaded census data?
 - 11 A. It would not be helpful in drawing maps for partisan
 - 12 performance, and I don't think it's right to use race when
 - 13 drawing maps.
 - 14 Q. You talked about the census data that come preloaded
- 09:51:32 15 in Esri.
 - 16 **A.** Uh-huh.
 - 17 Q. Based on your use of Esri, are partisan data available
 - 18 at the block level from the census?
 - 19 **A.** No.
- 09:51:40 20 Q. Have you ever used partisan data at the block level?
 - 21 A. All the time.
 - 22 Q. I'm going to ask this question. I'm afraid that the
 - 23 answer is going to be more technical than I understand.
 - First, where do you get partisan data at the block
- 09:52:01 25 level?

	1	A. We produce it internally.			
	2	Q. We have heard testimony from other folks about			
	3	combining different kinds of data to help understand maps.			
	4	Can you help the Court understand what you mean when you			
09:52:14	5	say you internally produce block level partisan data?			
	6 MR. FOX: Objection, Your Honor. Calls for				
	7	expert testimony.			
	8	JUDGE GUADERRAMA: I'm sorry. What?			
	9	MR. FOX: Calls for expert testimony.			
09:52:25	10	MR. KERCHER: We are asking him how he does it,			
11 Your Honor, not whether it's the right way.					
	12	JUDGE GUADERRAMA: So we've decided we'll hear			
	13	it, and then we'll decide.			
	14	MR. FOX: I understand, Your Honor. I'm just			
09:52:34	15	objecting for the record.			
	16	JUDGE GUADERRAMA: Yes, sir. Thank you. I			
	17	appreciate that, Mr. Fox.			
	18	BY MR. KERCHER:			
	19	Q. So, Mr. Kincaid, the question is not why not			
09:52:42	20	opinions about it, not whether other people do it the			
	21	wrong way and you do it the best way.			
	22	As a practical mechanical process, how do you get			
	23	block level partisan data?			
	24	A. This will take a couple of minutes, so be patient with			
09:52:55	25	me. Okay?			

We've got to proceed in question and answer. So if I 1 put up my hand, that means let me ask a question. 2 3 So the way that we produce census election data at the block level is we will -- so we'll just start -- let's do 5 Texas. 09:53:06 So for Texas, Texas has some of the best election data 6 7 and geographic data in the country. They do it all 8 internally, which is amazingly helpful. And it's standardized. 9 So what we'll do is go to the Texas Legislative 10 09:53:18 Service website, or leg. counsel website. They provide 11 12 every election cycle a general election dataset which will give you the precinct results for every single election 13 14 that was held that cycle in the entire state, right? So anything from president of the United States down to court 15 09:53:40 or whatever the lowest one might be. 16 17 The other thing --18 So what do you do next? Q. 19 So the next thing that we do is we also go to the 20 Texas Legislative Council and we gather the precinct maps 09:53:55 21 for that specific election cycle. So one thing with 22 precinct maps is they are always changing. The problem 23 with -- and the reason we do that is because you want to 24 match up the election results for a cycle with the 25 precincts that were used for that cycle because, 09:54:13

	1	otherwise, you are matching election results to precincts			
	2	that don't exist anymore, right?			
	3	And so we will gather the 2020 precincts for the 2020			
	4	election. The 2022 precincts for the 2022 election, et			
09:54:28	5	cetera, et cetera.			
	6	Q. And then?			
	7 A. And then we also gather the voter files for the				
	8	of Texas statewide. And what we'll do is we will get th			
	voter file the first voter file produced by the state				
09:54:44	after the election.				
11 Q. How does so you have talked about collect					
	12 different kinds of information.				
	13	A. Uh-huh.			
	14	Q. How do you mix them? I assume you are mixing them			
09:54:56	15	together in order to get information about partisanship at			
	16	the block level. In a way that somebody who really is not			
	17	technically advanced beyond LEGOs, how do you do that?			
	MR. FOX: Objection, Your Honor. Same objection				
1:		for the record.			
09:55:07	09:55:07 20 JUDGE GUADERRAMA: Yes, sir.				
21 A. So what we do with the voter file at that poi		A. So what we do with the voter file at that point, the			
	22	voter file gives you a lot of different information on			
	23	Texas voters.			
	24	Number one, it gives you a list of all the voters in			
09:55:19	25	the state of Texas all the registered voters in the			

state of Texas. It will also tell you their address. 1 2 will also tell you if they voted in the election that you 3 are looking at. Sometimes, and Texas does this, it will give you the 4 vote method for how they voted, absentee, early, in 5 09:55:32 6 person, all those sorts of things. 7 And then it also gives you the vote history. So you 8 can know if someone voted in a Republican primary or a 9 Democrat primary, right? And so you can go through and you can sort all of 10 09:55:45 those things out. They are all available on the Texas 11 12 voter file. 13 From that point, what we do is we geocode. And I'll 14 explain what that means in a second. BY MR. KERCHER: 15 09:56:01 16 Well --Q. 17 Α. Go ahead. 18 What does "geocode" mean? Q. 19 MR. FOX: Same objection, Your Honor. 20 JUDGE GUADERRAMA: Yes, sir. 09:56:09 21 So what geocode means is we run the addresses, the 22 file, through mapping software. And it gives us the 23 latitude and longitude for every single address in the 2.4 state of Texas. So that way we know we can map out every 25 voter. Every voter that's registered, every voter that 09:56:24 Laura Wells, RPR, RMR, CRR, RDR

voted, every voter that voted absentee, every voter that 1 2 voted whatever way they voted, we are able to know with 3 precision where each of those people reside and if they voted or not. 4 BY MR. KERCHER: 5 09:56:41 Have you ever been questioned about this methodology 6 7 that you use in this litigation before? 8 Α. Yes. Q. When? During my deposition in 2023. 10 Α. 09:56:54 Has your method changed since then? 11 Q. 12 No. It's gotten faster. That's all. Α. 13 0. So we've talked about the method that you use when you draw a map to get partisan data at the block level. When you are drawing at the block level, are the only decisions 15 09:57:22 16 that you make as a mapmaker, as a map drawer, are the only 17 decisions you make at the block level partisan decisions? 18 MR. McCAFFITY: Objection, Your Honor. Calls for 19 expert testimony. 20 JUDGE GUADERRAMA: Yes, sir. 09:57:39 21 No. So the block level partisan data is very useful 22 when you aggregate it back up. And so what that means 23 is -- and so when you asked me before if I use it, you know, I said all the time, because we use it all the time 24 25 because it drives all of the election data that we work 09:57:57

	1	Q. So that brings me to my next question.			
	2	When you sit down to draw a map, do you start drawing			
	3	at the block level and work your way up? In terms of			
	4	census geography, where do you start?			
10:00:23	A. Yeah. We start big and work small. So that me				
	6	that I typically start with counties and then work down			
	7	7 from there to precincts or cities. Sometimes I'll sel			
	8	by a city geography because the city geography is also			
9 available in the census.					
This is another reason why we disaggregate		This is another reason why we disaggregate our			
	election results down to the block level is because census				
	12	blocks align with the census blocks align with the c			
	13	layers provided by the census because it's the same			
	14				
10:01:02	15				
	16	partisanship is of a city by using that block level			
	17	partisan data.			
	18	MR. FOX: Objection, Your Honor. Narrative.			
	19	MR. McCAFFITY: I object to move to strike his			
20 expert testimony. 21 JUDGE GUADERRAMA: All right. I'll susta		expert testimony.			
		JUDGE GUADERRAMA: All right. I'll sustain the			
	22	narrative objection. Let's ask a question.			
	23	BY MR. KERCHER:			
	24	Q. Have you ever used racial data to draw a map?			
10:01:25	25	A. Have I ever used racial data? Not for a very long			

- 1 time, if ever.
- 2 Q. What about using race as a proxy for partisanship?
- 3 You talked about how you are trying to draw
- 4 Republican-advantaged maps. When you draw a map, is it
- 10:01:41 5 your understanding that racial data can be used -- well,
 - 6 strike that.
 - 7 When you draw a map, do you use race as a proxy for
 - 8 partisanship?
 - 9 A. Ido not.
- 10:01:57 10 Q. Does that mean, though, that you never ever see racial
 - 11 data regarding maps you have drawn?
 - 12 **A.** No.
 - 13 Q. Chronologically, how does that work? You have said
 - 14 you don't use racial data when you draw maps.
- 10:02:12 15 **A.** Right.
 - 16 Q. You do see racial data. How do we understand those
 - 17 two things?
 - 18 A. Sure. So when you are working with the mapping
 - 19 software, you can choose what you shade the geography with
- 10:02:25 20 in the -- I figure you are going to -- no?
 - 21 So you can shade the geography within a jurisdiction
 - 22 that you are working on, right? So you can shade -- you
 - 23 can -- in the same way that you would select the data that
 - 24 appears at the bottom of the screen, you can select the
- 10:02:38 25 data that you shade on when you are drawing a map, right?

And so I will shade off of partisanship on election 1 results. But I'm never going to pull up a shading of the 2 3 racial makeup of an area and draw maps using that to target specific racial groups. But I --Let me -- I'm going to -- let me interject here. 5 10:03:00 MR. McCAFFITY: Objection, Your Honor. Move to 6 7 strike that testimony as improper expert testimony. 8 JUDGE GUADERRAMA: Yes, sir. BY MR. KERCHER: Q. You have talked about what kind of shading you can 10 10:03:12 have on while you are drawing a map and you can turn it on 11 12 and off. A. Uh-huh. 13 Q. Do you ever become aware of racial data after you draw a map? 15 10:03:22 16 Α. Yes. 17 Do you then incorporate that racial data into your 18 next draw of the map? "Incorporate" mean continue to use or what do you 20 -- I'm sorry. Can you clarify what that means? 10:03:33 21 0. Sure. 22 So let's say -- have you ever been in a situation where you drew a map without looking at race? 23 2.4 Α. Uh-huh. 25 Q. And then found out the racial makeup of a given

- 1 district and then gone back and made changes to that
- 2 district based on that racial understanding?
- 3 A. No.
- 4 **Q.** I want to turn your attention now to how you came to draw the maps in Texas in 2025 or the map.
 - We've heard evidence about a New York Times article in

 June of 2025 that said something to the effect of

 President Trump having conversations with Texas Republican

 officials about mid-cycle redistricting.
- 10:04:18 10 **A.** Uh-huh.
 - 11 Q. When, if ever, did you first become aware that the
 - 12 White House was having conversations about redistricting?
 - 13 A. It would have been earlier in 2025. I think I
 - 14 was -- I was aware that people were meeting with White
- 10:04:36 15 House officials on redistricting probably February or
 - 16 March.
 - 17 Q. When you first learned about those meetings, did you
 - 18 know at that point whether Texas would redistrict in 2025?
 - 19 A. No.
- 10:04:51 20 Q. You have testified -- you testified that you wound up
 - 21 drawing most of the map that passed in 2025 in Texas. How
 - 22 did it happen that you got involved in that process?
 - 23 A. Yeah. So running the National Republican
- 24 Redistricting Trust, typically when redistricting comes up
 10:05:11 25 in conversation, you know, people suggest that they talk

1 to me about it.

- 2 So I was -- in early 2025, during these conversations
- 3 there was somebody going around Washington, D.C. talking
- 4 about redrawing the Texas congressional map; and they were
- 10:05:30 5 directed repeatedly to me. And eventually they got my
 - 6 contact information.
 - $7 \mid \mathbf{Q}$. Don't be coy, Mr. Kincaid. Who was it?
 - 8 A. It was the national committeeman for Texas, Robin
 - 9 Armstrong.
- 10:05:42 10 Q. What does "national committeeman" mean?
 - 11 A. He is one of the three members of the Republican
 - 12 National Committee from Texas.
 - 13 MR. KERCHER: Richard, could you please bring up
 - 14 the demonstratives of Mr. Armstrong.
- 10:06:04 15 BY MR. KERCHER:
 - 16 Q. Is this him?
 - 17 A. Yes.
 - 18 Q. Do you recall when you first began speaking with
 - 19 Mr. Armstrong about redistricting in Texas?
- 10:06:12 20 MR. KERCHER: Thank you, Richard. You can take
 - 21 it down.
 - 22 A. I believe it was in March was when I first had a
 - 23 conversation with Robin about this.
 - 24 BY MR. KERCHER:
- 10:06:25 25 Q. Did you ever get hired by anybody as a part of

- 1 mid-cycle redistricting in 2025?
- 2 **A.** Yes.
- 3 **Q.** Who?
- 4 A. The Republican National Committee.
- 10:06:35 5 Q. And how does that work? Does the Republican National
 - 6 Committee contract with NRRT? Is that directly with you?
 - 7 A. It was directly with me.
 - 8 Q. Are there -- was the work that you were doing with the
 - 9 RNC, the Republican National Committee; is that right?
- 10:06:52 10 **A.** That's correct.
 - 11 Q. Was the work that you were contracted to do with the
 - 12 RNC, is any of it confidential, to your knowledge?
 - 13 A. Yes.
 - 14 Q. To your knowledge, has the RNC waived confidentiality
- 10:07:07 15 concerning the work you did for Texas?
 - 16 A. I'm authorized to speak on my work for Texas, yes.
 - 17 Q. So when you -- and what kind of an agreement is it?
 - 18 Do they just -- do you become an employee for the RNC?
 - 19 How does that work?
- 10:07:21 20 A. It's just a retainer. So it's a retainer to provide
 - 21 redistricting support to the RNC counsel's office.
 - 22 Q. So, at that point, what are you doing for the RNC?
 - 23 Are you drawing maps?
 - 24 A. It's more than just drawing maps. I mean, that's part
- 10:07:39 25 of it. But it's also process and procedure research and

- 1 other things.
- 2 Q. At the time that the RNC put you on retainer and you
- 3 start drawing maps and doing other redistricting
- 4 support --
- 10:07:53 5 **A.** Sure.
 - 6 Q. -- did you know at that point that you would be the
 - 7 map drawer for Texas?
 - 8 A. I did not.
 - 9 Q. You've talked a little bit about how you draw maps as
- 10:08:06 10 a hobby, you kind of sketch, you are doing some map
 - 11 drawing when the RNC put you on retainer.
 - 12 At some point you must have had a map that was
 - 13 something like a plan for what might happen in Texas?
 - 14 A. Uh-huh.
- 10:08:22 15 Q. Can you tell the Court when that happened?
 - 16 A. I didn't have a final map or close to a final map for
 - 17 Texas until mid July of this year.
 - 18 Q. And so when you say "a final map," it sounds like -- I
 - 19 don't mean to pick on you, but it sounds like you were
- 10:08:37 20 probably doing serious work on map drawing for Texas prior
 - 21 to mid July. Is that fair?
 - 22 **A.** Yes.
 - 23 Q. When did that work begin, or when did you switch from
 - 24 the sort of ordinary sketching to drawing a map that would
- 10:08:49 25 become finalized?

- 1 A. I think the final phase of the redistricting for 2025
- 2 probably started late June or early July is when I got in
- 3 the final phase of redrawing the map.
- 4 Q. When did you learn, if ever, that you would be the map
- 10:09:15 5 drawer for the Texas Legislature?
 - 6 A. I wasn't entirely clear that was going to be the case
 - 7 until after Governor Abbott issued the call and I
 - 8 connected with attorneys for the Texas House.
 - 9 **Q.** Who were the Texas -- who were the attorneys for the
- 10:09:33 10 Texas House?
 - 11 A. Tommie Cardin.
 - 12 Q. Is he with Butler Snow?
 - 13 **A.** Yes.
 - 14 Q. When was your first contact with Mr. Cardin regarding
- 10:09:42 15 Texas redistricting?
 - 16 A. It was also mid-July. I think it was around the 13th
 - 17 or 14th.
 - 18 Q. And at that point did you hand him whatever map you
 - 19 had been working on?
- 10:09:51 20 **A.** I did not.

10:10:08

- 21 Q. When did you first provide a map to the Texas
- 22 legislature?
- 23 A. It would have been about a week and a half later.
- 24 Q. Did you ever speak with Texas State Senator Phil King 25 during the redistricting process?

- 1 **A.** I did.
- 2 Q. How many times?
- 3 A. Three or four-ish, maybe five. But not many.
- 4 Q. Did Senator King ever ask you whether maps you were
- 10:10:32 5 working on were drawn based on race?
 - 6 A. He did at one point ask me if I was using race data,
 - 7 and I said no.
 - 8 Q. We've talked about the ordinary map drawing process.
 - 9 We've talked about how you came to draw maps for Texas.
- 10:10:49 10 Let's talk about drawing the Texas maps.
 - 11 **A.** Okay.
 - 12 MR. KERCHER: Richard, could we please bring up
 - 13 C2308.
 - 14 BY MR. KERCHER:
- 10:11:24 15 Q. While we're waiting on that to come up, Mr. Kincaid,
 - 16 do you know what Plan C2308 is?
 - 17 **A.** Yes.
 - 18 Q. Did you draw that map?
 - 19 **A.** Yes.
- 10:11:33 20 Q. Can you tell the Court what your -- what your criteria
 - 21 were, not what anybody else told you, what -- when you sat
 - 22 down to the map with your Esri software, what you wanted
 - 23 to do when you drew the map?
 - 24 MR. McCAFFITY: Objection, Your Honor. Calls for
- 10:11:48 25 expert testimony.

	1	JUDGE GUADERRAMA: Yes, sir.			
	2	A. When you say criteria that no one else told me, what			
	3	do you mean by that?			
	4	BY MR. KERCHER:			
10:12:02	5	Q. Well, you had explained to the Court that you were			
	6 involved in an effort for Republican redistricting mid				
	7 cycle, right?				
	A. Sure. Yeah.				
	9	Q. Is it fair to say that that effort was to draw a Texas			
10:12:20	10	map that would improve Republican performance in some way			
	in Texas?				
12 A. Yes.					
	13	Q. Did you have goals for how to do that?			
	14	A. I did.			
10:12:29	15	Q. Describe those to the Court, please.			
MR. McCAFFITY: Objection, Your Honor. Call					
	17	expert testimony.			
	JUDGE GUADERRAMA: Yes, sir.				
	19	A. I had multiple goals, multiple criteria across			
10:12:41 20 multiple tiers. So I'll start with my top tie		multiple tiers. So I'll start with my top tier criteria.			
Given that you have to work with the incumbents that					
	22 are you know, the Republican incumbents that ar				
	23	office, my number my top criteria was to make sure that			
	24	every Republican incumbent who lived in their seat stayed			
10:13:02	25	in their seat. That was one of the criteria.			

Another criteria was to make sure that every 1 Republican incumbent who was in a district that President 2 3 Trump had won with 60 percent of the vote or more in 2024 stayed in a district that President Trump won by -- with 60 percent of the vote or more. I was not allowed to take 5 10:13:21 any incumbent Republican who was above 60 below 60. 6 7 In addition to that, there were a series of members across the state who were in districts that President 8 Trump had carried but by less than 60 percent of the vote. So for those seats, I either had to improve them or 10 10:13:40 keep their Partisan Voting Index exactly the same. So 11 12 those were all criteria that I had to consider when 13 drawing the map. 14 In addition to that --15 BY MR. KERCHER: 10:13:55 16 Let me -- let me stop you there. 17 Α. Sure. 18 First of all, we've got 2308 up. Now that you can see Ο. it on the screen, did you draw this map? 20 Α. Yes. 10:14:03 21 Okay. You mentioned, I think, Partisan Voting Index; 2.2 is that correct? 23 Α. That's correct. When you say "Partisan Voting Index," what do you 24 25 mean? 10:14:15

The Partisan Voting Index is technically called the 1 Α. Cook Partisan Voting Index. It's produced by a group 2 3 called the Cook Political Report. And it's really just a way of indexing all the districts in the country from the most Republican and the most Democrat, comparing them to 5 10:14:27 the last two presidential elections. 6 7 When you said a moment ago that you were not allowed Q. to make certain changes based on how districts had previously performed --10 Α. Sure. 10:14:43 -- by whom? 11 Q. 12 By the delegation. Α. Okay. So you had talked about looking at incumbent 13 0. districts and what you wanted to do with those concerning their past performance and how they would look in the new 15 10:14:56 16 map? 17 Right. Α. 18 What other criteria, if any, did you use when you drew Q. 19 the map? 20 I wanted to improve the overall compactness of the 10:15:03 21 map. That was another criteria. So there was the 22 2193 map, the 2021 map. I just wanted to take those 23 districts and make them cleaner, more compact, more 24 city-based, more county-based, where I could than the 25 previous one. That's more of a personal preference more 10:15:22

than anything else. I like, when I can, to draw clean 1 districts. And so that was one thing. 2 3 Another one was the five pickup opportunities. criteria for those -- should I just go on or do you want 5 to ask? 10:15:38 Wait a minute. 6 Q. 7 Α. Okay. Q. You mentioned five pickup opportunities. 9 Α. That's right. Can you tell the Court whether you had criteria for 10 10:15:42 drawing those -- well, wait a minute. 11 12 Let me ask you this: What do you mean by pickup opportunities? 13 The five districts that Republicans could gain that we 14 currently did not hold in the 2026 midterms. 15 10:15:53 16 Can you tell the Court whether you had criteria for Q. what those potential pickup districts would look like? 17 18 Α. I did. 19 Q. What were they? 20 Yes. So all five of those new seats, the new pickup 10:16:03 21 opportunities -- I really shouldn't say "new," because two 22 of them already existed. So the three new pickup 23 opportunities plus the other two, so the five, at a 24 minimum, every single one of them had to be a district 25 that President Trump carried by ten points or more at a 10:16:21

minimum. 1

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Second was that every one of those seats had to be carried by Ted Cruz in 2024. There was no set amount of range on how much he had to win it by, but he had to win each of those five seats.

10:16:36

- 6 Let me stop you there.
 - A moment ago you said that one of the criteria was that you wanted the pickup districts to be districts that President Trump had won by 10 points or more.

10 10:16:48

10:16:56

- Did I hear that correctly?
- That's correct. 11 Α.
- 12 When you say that President Trump won, in which Q.
- election? 13
- The 2024 presidential election.
- 15 16 data?
 - 17 Α. Yes.
 - 18 And so you talked about the metric for the 2024 Trump Ο.

For that criterion were you only looking at the 2024

- vote as having a specific amount to it. And then you also
- described a metric for Senator Cruz in 2024. 20 10:17:14
 - 21 Α. That's correct.
 - 22 Did that Senator Cruz metric have an amount to the win Q.
 - 23 or was it just purely a win?
 - The Cruz one was a minimum. 2.4
- 25 And to be clear on the presidential one, the 10 points 10:17:28

- was a minimum result. He had to win it by a minimum of 2 10 percent. It didn't mean I couldn't draw a district at
- 3 Trump plus 20, right? So...
- 4 Q. And as it shook out, when you were ultimately drawing
- 10:17:46 5 districts, were you able to draw districts that were
 - 6 greater than Trump plus 10?
 - 7 **A.** Yes.
 - 8 Q. If you were able to draw districts that were
 - 9 more -- Republican districts that were more than Trump
- 10:18:00 10 plus 10, did you take that opportunity?
 - 11 **A.** Could you say that one more time?
 - 12 **Q.** Sure.
 - 13 MR. McCAFFITY: Objection. Calls for expert
 - 14 testimony.
- JUDGE GUADERRAMA: Yes, sir.
 - 16 BY MR. KERCHER:
 - 17 Q. My question is about the choice that you made.
 - If you had the opportunity to draw a district that was
 - 19 more Republican than Trump plus 10 in '24, did you try to
- 10:18:19 20 take that opportunity?
 - 21 A. Absolutely.
 - 22 Q. Before we move on, you mentioned a moment ago that
 - 23 compactness was important to you. What data do you have
 - 24 available to you -- I'm not going to try to make you into
- 10:18:34 25 a compactness expert; but when you are trying to measure

	1	Are those metrics that matter to you?			
	2	A. Yes.			
	3	Q. Now, we have been talking about the criteria that you			
	4	used in drawing the five opportunity districts, the five			
10:20:28	5	Republican pickup districts.			
	6	A. That's right.			
	7	Q. You talked about using a minimum of Trump '24 plus			
	8	ten. You talked about using Cruz '24 bear win.			
		What other criteria, if any, did you use in drawing			
10:20:44	those Republican pickup opportunities?				
	11	A. I also looked at Governor Abbott's performance in 2022			
	and 2018. We wanted to make sure that all of those				
	13	3 districts, or at least most of them, were seats that he			
	14 carried by as decent a margin as possible within				
10:20:58	15	criteria in '22 and '18 because, obviously, the first test			
	of this map would be in a midterm election versus a				
	17 presidential election.				
	18	Q. So far we have been talking about partisan goals for			
	19	these partisan seats. Were there any other partisan			
metrics that you used when you drew those		metrics that you used when you drew those seats?			
	21	A. Partisan? Partisan?			
	22	MR. McCAFFITY: Same objection, Your Honor.			
	23	JUDGE GUADERRAMA: Yes, sir.			
	24 BY MR. KERCHER:				
10:21:32	25	Q. Let me ask you this: Did it matter to you how these			
		Laura Wells, RPR, RMR, CRR, RDR			

	1	elections with has changed significantly from 2012 to now.			
	2	And so what I wanted to do is look at how these			
	3	districts performed over the last three iterations of the			
	4	Republican coalition.			
10:23:02	5	BY MR. KERCHER:			
	6	Q. You've talked about partisan goals for the Republican			
pickup districts. You've talked about compactness.					
	You mentioned city and county boundaries?				
	9 A. That's right.				
10:23:18	10	Q. How do you is there a software that allows you to			
	account for that? Is that part of the census geography?				
	12	MR. FOX: Objection, Your Honor. Expert			
	13	testimony.			
14		JUDGE GUADERRAMA: I'm sorry. Say that again?			
10:23:29	15	MR. FOX: Expert testimony.			
	16	JUDGE GUADERRAMA: Yes, sir.			
17 A. The census provides a layer, a place layer th					
18 city lines, yes. So we jus		city lines, yes. So we just use that. It's in Esri.			
	19	MR. KERCHER: Richard, could we zoom in on the			
10:23:50	20	Dallas-Fort Worth area. And a little bit closer. Thank			
	21	you. Then could you click on cities. Zoom in just a			
22 little bit further.		little bit further.			
	BY MR. KERCHER:				
	24	Q. Okay. So, for the record, we are looking at Plan			
10:24:09	25	C2308 in DistrictViewer. We have zoomed in so that			
		Laura Wells, RPR, RMR, CRR, RDR			

Tarrant and Dallas Counties are a little bit more visible, 1 and we have turned on cities. 2 3 Mr. Kincaid, we can see that the cities are beautifully illuminated in various colors across the DFW 5 area. 10:24:27 Do you see that? 6 7 Α. T do. 8 Q. When you talk about the census geography provided in Esri and what you are looking at when you see that geography, does it look like what we are seeing here in 10 10:24:37 DistrictViewer? 11 12 MR. McCAFFITY: Objection. Calls for expert 13 testimony. 14 JUDGE GUADERRAMA: Yes, sir. 15 Α. Similar, yes. 10:24:43 BY MR. KERCHER: 16 17 What about natural geographic features and 18 other -- and other geographic units or boundaries for drawing districts? Are those things that you consider 20 when you draw maps --10:25:00 21 Α. Yes. -- or when you drew the Texas map? Excuse me. 22 Q. 23 Α. Yes. 24 And you mentioned earlier that drawing the maps with Q. 10:25:11 25 the appropriate equality in population was a part of the

- 1 process.
- 2 Generally, is that something you did when you drew the
- 3 Texas maps?
- 4 A. Yes. I equalized the populations when drawing the
- 10:25:22 5 maps, yes.
 - 6 Q. All right. Since we're zoomed in to the Dallas-Fort
 - 7 Worth area, let's start there in terms of how you drew it.
 - 8 A. Yeah.
 - 9 Q. Can you tell the Court where did you -- when you sat
- 10:25:52 10 down to draw the map or when you sat down to draw the
 - 11 Dallas-Fort Worth area, did you start with District 30 or
 - 12 33 or 32? How did you do that?
 - 13 **A.** So --
 - MR. McCAFFITY: Objection, Your Honor, to the
- 10:26:06 15 extent it calls for expert testimony.
 - JUDGE GUADERRAMA: Yes, sir.
 - 17 A. I started work on the DFW area in actually the
 - 18 Panhandle.
 - 19 BY MR. KERCHER:
- 10:26:14 20 Q. Did you say the Panhandle?
 - 21 A. Yeah. Texas 13. That's right.
 - 22 **Q.** Okay.
 - 23 MR. KERCHER: Richard, can you zoom out -- and
 - 24 let's turn off cities so the map looks a little cleaner.
- 10:26:23 25 And I guess we need to see the Panhandle.

- 1 series of whole cities throughout Collin. So Allen and
- 2 McKinney are both made whole in 3.
- 3 BY MR. KERCHER:
- 4 Q. Is that why you get -- about halfway down the border
- 10:34:53 5 between 3 and 4, you have this funny little misshapen peg
 - 6 that juts out into the west? Is that to keep the city of
 - 7 McKinney whole?
 - 8 A. That's the city boundary of McKinney, yes.
 - Q. Keep going, please.
- 10:35:07 10 A. And then if you work north, the city of Celina, which
 - 11 is in northwestern Collin County, goes across the county
 - 12 border; but all of Celina that is in Collin is whole in
 - 13 the 4th District.
 - 14 Q. So that's Districts 3 and 4. What was the
- 10:35:21 15 next -- what districts did you tackle next in the DFW
 - 16 area?
 - 17 A. Sure. Well, I had to fix 4 out east for population as
 - 18 well. So I don't know if you need to zoom out for that or
 - 19 not, but I made the county in the northeastern corner
- 10:35:36 20 whole. I think it was Clarksville -- not Clarksville, but
 - 21 the city has -- the county that has Clarksville in it, was
 - 22 split. So I made that whole.
 - 23 And then I made sure that the -- is it the Red River
 - 24 munitions plant? I can't remember the exact name of it,
- 10:35:52 25 but there is a military installation in -- if you could go

- 1 a little bit further to the east -- in -- yeah, in Bowie
- 2 County. So I made sure that that -- that little carveout
- 3 there is the military installation. So I made sure that
- 4 was whole still in the 4th District.
- 10:36:14 5 Q. Okay. So in our efforts to understand how you drew
 - 6 DFW, we're now in far northeast Texas. Can you bring us
 - 7 back to DFW and tell us what happened next in that area as
 - 8 the map drawer?
 - 9 A. Sure. So the 3rd District was the next thing I had to
- 10:36:29 10 tackle. It had picked up a lot more Democrats in the
 - 11 Plano area than it had had before. And so what I did is I
 - 12 moved that east to pick up more Republican strength in the
 - 13 more rural East Texas counties. And then from there
 - 14 you'll note again, as I was doing throughout the area, the
- 10:36:45 15 border between 4, 3, and 32 is the city boundary of
 - 16 Richardson.
 - 17 MR. McCAFFITY: Objection. Move to strike based
 - 18 on it's expert testimony.
 - 19 JUDGE GUADERRAMA: Yes, sir.
- 10:36:59 20 A. Richardson is the purple that spans the border.
 - 21 BY MR. KERCHER:
 - 22 Q. So if we're looking at the southern border of Collin
 - 23 County, we see the city of Richardson is in purple. And
 - 24 we see a boundary then kind of pop up across that southern
- 10:37:12 25 Collin County border.

	1	Is that what you are describing?			
	2	A. That's correct, yes.			
	Q. Okay. So Richardson is now whole in Distr				
	4	that right?			
10:37:22	5	A. That's correct.			
Q. Is that the only change that you made to Distri					
	7	A. No.			
	8	Q. What other changes, if any?			
Ç		MR. McCAFFITY: Objection. Calls for expert			
10:37:29	10	testimony.			
	11	A. I completely transformed Texas 32.			
	12	12 BY MR. KERCHER:			
	13 Q. How?				
1		A. Texas			
10:37:36	15	MR. McCAFFITY: Same objection.			
	16	MR. KERCHER: Do you guys just want placards?			
	17	A. So Texas 32 was a district that I knew existed four			
	18	years ago and wanted to take the opportunity to draw it at			
this time. And so what I did is I took the month of the Inc. 20 Republican areas of North Dallas County 21 BY MR. KERCHER:		this time. And so what I did is I took the more			
		Republican areas of North Dallas County			
		BY MR. KERCHER:			
	22	Q. Now wait a minute. You said you knew that District 32			
	23 existed four years ago and you wanted to do something				
	24 it this time.				
10:38:11	25	What do you mean by that? Of course there was			
		Laura Wells, RPR, RMR, CRR, RDR			

- 1 District 32. What does that mean?
- 2 A. I knew there was a Republican district in North Dallas
- 3 County that could be drawn four years ago that we did not
- 4 draw.
- 10:38:23 5 Q. Okay. Okay. So understanding then that you are now
 - 6 looking at 32 four years later, how do you approach it?
 - 7 **A.** Yeah.
 - 8 MR. FOX: Objection. Expert testimony.
- 9 **A.** What you'll find is that the VTDs, so the precincts in North Dallas County are not as Democrat as the precincts
 - 11 in Central and Southern Dallas County.
 - 12 And so I took the -- a lot of those are about
 - 13 40 percent Republican areas. And so I took those and then
 - 14 I extended the district east using a series of whole
- 10:38:55 15 counties out into East Texas, with the exception of Hunt,
 - 16 which I had to split because it spanned the whole, you
 - 17 know, width of the district.
 - 18 BY MR. KERCHER:
 - 19 Q. Okay. What happened next?
- 10:39:09 20 A. Let's see here.
 - 21 Q. Well, let me ask you, before you do that. You talked
 - 22 about the voting population in North Dallas County as
 - 23 being -- correct me if I'm wrong -- less Democrat than
 - 24 much of the rest of the county; is that right?
- 10:39:31 25 **A.** That's correct.

- 1 of peninsula that drops down into North or North Central
- 2 Dallas County; is that right?
- 3 A. That's correct.
- 4 Q. Okay. And you said what about those cities? You kept
- 10:46:36 5 them whole?
 - 6 **A.** I did.
 - 7 Q. And so when we see this southern boundary to
 - 8 District 24 beneath University and Highland Park, is part
 - 9 of that the city boundary for Highland Park?
- 10:46:48 10 A. To the southeast, those are areas that I had to go
 - 11 into to balance the population. Those are also VTDs that
 - 12 are -- well, they are in Dallas city proper, but they are
 - 13 also precincts that are in the 40s for President Trump
 - 14 versus the ones further down that are much bluer.
- 10:47:05 15 MR. McCAFFITY: Objection. Move to strike as
 - 16 expert testimony.
 - 17 BY MR. KERCHER:
 - 18 Q. Okay. So we have talked about how you made some
 - 19 changes to the Park Cities, as you say, and District 24.
- 10:47:15 20 What else did you do to that district when you redrew
 - 21 it for District 5?
 - 22 A. Yeah. So I took Farmers Branch and made that whole as
 - 23 the conduit from the Park Cities to the west. So the city
 - 24 of Farmers Branch is made whole in Texas 24. It was split
- 10:47:30 25 previously.

- 1 **Q.** Okay.
- 2 A. And so you don't want to draw a map -- and I used to
- 3 make this mistake when I was a young map drawer, where you
- 4 are drawing something and you finish and then you don't
- 10:55:55 5 have the right population for a district that you are
 - 6 drawing, and so you have to go find population other
 - 7 places and redo whole areas of your map.
 - 8 And so what I did is I took what became 30 and 33 and
 - 9 drew one megadistrict, for lack of a better term, of the
- 10:56:15 10 most Democrat VTDs I could find in Dallas and Tarrant
 - 11 County and put them all in one district.
 - 12 Q. Okay. So once you had this Democratic megadistrict --
 - 13 **A.** Yeah.
 - 14 Q. -- how did you go about putting that into
- 10:56:36 15 making -- putting -- taking the megadistrict and putting
 - 16 it into two pieces?
 - 17 **A.** Yeah.
 - 18 MR. McCAFFITY: Objection. Calls for improper
 - 19 expert testimony.
- 10:56:43 20 A. So, actually, the next thing I did is I went over and
 - 21 drew the 6th District.
 - 22 BY MR. KERCHER:
 - 23 Q. So if I understand you, you have got this
 - 24 mega-Democratic district in mostly Dallas County, part of
- 10:56:55 25 Tarrant County?

1	A.	That's	right.
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- 2 Q. And then you put a pin in that and went over to
- 3 District 6; is that right?
- 4 A. That's right.
- 10:57:00 5 Q. Okay. Let's talk about the changes that you made to
 - 6 District 6.
 - 7 A. Yeah. Could you put the 2193 layer back and zoom in
 - 8 to Irving, please.
 - 9 So Irving was carved up a lot in the 2021 redraw.
- 10:57:35 10 You'll see all those red lines all over the place there.
 - 11 What was remarkable when I looked at the political data
 - 12 for 2024 is that these areas in Irving had moved
 - 13 significantly to the right, and most of them were over --
 - 14 Q. When you say "areas" --
- 10:57:52 15 MR. FOX: Objection, Your Honor. Move to strike
 - 16 the last answer as based on expert testimony.
 - JUDGE GUADERRAMA: Based on expert --
 - 18 MR. FOX: Expert testimony.
 - JUDGE GUADERRAMA: -- testimony? Yes, sir.
- 10:58:01 20 BY MR. KERCHER:
 - 21 Q. So I want to make sure I'm following this, because
 - 22 we're looking at a lot of lines right now with the 2021
 - 23 map overlay. You were talking about looking at Irving.
 - 24 And then you said that there were areas that had moved to
- 10:58:12 25 the right.

Did I follow that closely enough? 1 Yeah. The reason Irving --2 Α. 3 Hold on. Q. Did I follow that closely enough? 4 5 Α. Yes. 10:58:17 Okay. When you say that there are areas around Irving 6 Ο. that have moved to the right, what did you understand -- what do you mean by that? What does that 9 mean to you? MR. FOX: Same objection, Your Honor. 10 10:58:27 11 JUDGE GUADERRAMA: Yes, sir. 12 The urban area became significantly more pro Trump in Α. 2024 than it had been in 2020. And so if you take that 13 2193 layer back off again, you'll note that the new line for Texas 6 is a much cleaner line. That's --15 10:58:43 THE WITNESS: Can I get another bottle of water 16 by any chance? I'm talking a lot more than I usually do. 17 18 Thank you. So you'll see that the new Texas 6 is bound by the 20 city of Irving on the eastern side. And then --10:59:01 21 BY MR. KERCHER: 22 Well, I'm sorry. I'm going to need you to kind of piece that together for me. 2.4 You said portions of Irving became more pro Trump in 25 2024? 10:59:17

- 1 A. That's correct.
- 2 Q. And so you made a change regarding those portions
- 3 compared to District 6. Why?
- 4 MR. McCAFFITY: Objection, Your Honor. Calls for 10:59:27 5 improper expert testimony.
 - 6 A. It's putting more Republicans in the Texas 6 and out
 - 7 of 30 and 33. Because I wanted to make sure that the
 - 8 future 30 and 33 were as Democrat as I could possibly make
 - 9 them.
- 10:59:40 10 BY MR. KERCHER:
 - 11 Q. Okay. And so that helps us understand what is going
 - 12 on in Irving regarding District 6.
 - What other changes, if any, did you make to District
 - 14 6?
- 10:59:49 15 A. Sure. If you can put the 2193 layer back on.
 - MR. KERCHER: Your Honor, I know we're close to
 - 17 break. I think we'll finish District 6, and then we'll
 - 18 take a break. Does that make sense?
 - 19 JUDGE GUADERRAMA: Yes, sir.
- 11:00:01 20 BY MR. KERCHER:
 - 21 Q. All right. Mr. Kincaid, what other changes to
 - 22 District 6 did you make?
 - 23 A. Yeah. So you'll note there that the 6th District had
 - 24 this very narrow throat that went up from -- I think it
- 11:00:12 25 was Ellis County to the south, to carve in and pull in

- 1 these -- the urban population. So instead of doing that,
- 2 I cleaned it up and used the city boundaries of Arlington
- 3 for the most part, as well as if you can go down a little
- 4 bit further south, the city boundary of -- I can't see
- 11:00:33 5 that -- of Rendon is also used there as a boundary for
 - 6 Texas 6.
 - 7 So I used Rendon, Arlington, for the most part, and
 - 8 then when I reached -- the entertainment district had to
 - 9 remain in the 25th District.
- 11:00:50 10 Q. When you say "entertainment district," for those who
 - 11 may be reading this transcript later who are not familiar
 - 12 with DFW, what do you mean by that?
 - 13 A. The entertainment district is where the stadiums and
 - 14 other things are in eastern Arlington.
- 11:01:05 15 Q. I think most people from Texas would say that's where
 - 16 the Cowboys play.
 - 17 **A.** Okay.
 - 18 Q. Yeah. So you are talking about the area there where
 - 19 you are -- where Mr. Jones has his big house.
- 11:01:16 20 What was important about that as you are drawing this
 - 21 line?
 - 22 A. I knew it was an important area for Congressman
 - 23 Williams. And he has the coolest district office in the
 - 24 country. It's actually in Ranger Stadium. And so that
- 11:01:28 25 stayed in Texas 25.

	1	Q. Okay. Does that round out the changes that you made
	2	to District 6?
	3	A. No. I made some changes to the south as well for
	4	population reasons. So it lost a whole bunch of counties
11:01:42	5	that it had to the east and became a more compact
	6	district.
	7	Q. Is that on account of reaching further into the more
	8	densely populated areas of Tarrant and Dallas County?
	9	A. It picked up a lot of Arlington and had to lose some
11:01:55	10	rural counties to the southeast, yes.
	11	Q. Does that round out the changes you made to 6?
	12	A. Yes.
	13	MR. KERCHER: Your Honor, would now be a good
	14	time for our morning break?
11:02:04	15	JUDGE GUADERRAMA: Yes, sir. Let's recess to
	16	11:15.
	17	COURT SECURITY OFFICER: All rise.
	18	MR. VELEZ: This court stands in recess.
	19	(Recess from 11:02 a.m. to 11:17 a.m.)
11:17:23	20	JUDGE GUADERRAMA: Be seated, please.
	21	The witness, Mr. Kincaid, is on the witness stand.
	22	Mr. Kercher.
	23	JUDGE BROWN: Mr. Kercher, before you start up
	24	again. You mentioned yesterday that you have a lawyer who
11:17:37	25	just passed the bar and needs to be sworn in?
		Laura Wells, RPR, RMR, CRR, RDR

MR. KERCHER: Yes, Your Honor. Grey Johnston. 1 2 JUDGE BROWN: Okay. I bet that one of us could 3 do that at the beginning of the lunch break, if that works out for you-all. 4 5 MR. KERCHER: We would very much appreciate that. 11:17:48 6 Thank you, Your Honor. 7 Richard, if we could please bring back up the DistrictViewer version of 2308. BY MR. KERCHER: Mr. Kincaid, when we broke -- let's see where we were. 10 11:17:59 You had said that you created a super district between 11 12 what are now 30 and 33 by just lumping a bunch of Democrat 13 areas together. That's correct. 14 Α. And that you put a pin in that and then went and made 15 11:18:14 16 changes to District 6; is that right? 17 Α. That's correct. 18 Okay. And you have completed telling us the changes Q. that you made to District 6. 20 Let's go -- does that mean that you then turned back 11:18:26 21 to the super district; is that right? 22 Yeah. We can skip over 25, yeah. Because it's pretty Α. much that border between 6 and 25 set 6 as well, so yes. 24 So I don't want to skip over anything. When you say 25 the border with 6 set 25, what does that mean?

A. It just means that if you look there -- it may be worth taking off 2193 to make it cleaner. Yeah.

So it just means there that the border between 6 and 25 was set between the two seats, all the way up through using the Rendon border, using the -- you'll notice there in Cleburne it is split. And the reason for that is because Mr. Williams' district office in Cleburne was drawn into that seat there.

MR. McCAFFITY: Objection. Move to strike.

Improper expert testimony.

11 BY MR. KERCHER:

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- Q. Okay. So let's talk about what you are calling the super district. And just so I'm all clear, when you say "super district," are you saying that the two areas that now comprise Districts 30 and 33 for this period you had sort of left as a big blue lump; is that right?
- 17 A. It was a big blue lump, that's right.
- Q. All right. At some point you had to divide the big blue lump into two blue lumps. How did you do that?
 - A. Yeah. So with Texas 30 was the one I had focused on, if you had if we had the partisan shading, what you would see here is south of downtown is a decent number of clustered precincts that are all districts where President Trump received 20 percent of the vote or less or, yeah, or less, right? So I put all of those together in one

	1	Q. And so explain to me, again, why it is that you took
	2	that portion of Tarrant County and added it to 30.
	3	Are those Democrats as well or is there another
	4	reason?
11:21:33	5	MR. McCAFFITY: Objection. Calls for improper
	6	expert testimony.
	7	A. Those are heavily Democrat precincts in southeastern
	8	Tarrant County.
	9	BY MR. KERCHER:
11:21:42	10	Q. And what about equalizing the population? How are you
	11	managing that as you are dividing this big blue lump
	12	between 30 and 33?
	13	A. Sure. So if you
	14	MR. McCAFFITY: Same objection, Your Honor.
11:21:49	15	A. If you zoom in, I would like to show you the border
	16	between 30 and 33.
	17	BY MR. KERCHER:
	18	Q. Sure. Which part of that border, because it looks
	19	like they share kind of a long one?
11:21:57	20	A. You just you can start there where it said Grand
	21	Prairie a second ago, and we can work to the east.
	22	So yeah. Let's do this here.
	23	So the border was set again, like I had been doing in

I-20. And then from there I worked north to some streets

the rest of the region, using neutral boundaries.

24

25

- 1 and then up the local metro line, I think it is -- I can't
- 2 remember what it's called. And then again joined a
- 3 highway.
- 4 Q. So you are doing a great job, but you lost me. Where
- 11:22:25 5 are we here on the map? I'm sorry.
 - 6 A. The black line between 30 and 33.
 - 7 Q. But that 30 and 33 line, right, goes more or less
 - 8 through the center of Dallas County and then trails off to
 - 9 the southeast?
- 11:22:37 10 **A.** That's correct.
 - 11 Q. If we start in the southeast and we can follow that
 - 12 border around, it's very bumpy in the southeast. Why is
 - 13 that?
 - 14 A. Those are precinct lines.
- 11:22:46 15 Q. As we move into Southeast Dallas, what lines are you
 - 16 following there?
 - 17 A. In Southeast Dallas?
 - 18 **O.** Yes.
 - 19 A. Those are the precinct lines there. And then you work
- 11:22:57 20 up from there. And if you zoom in -- let's see here.
 - Do you see where it says "Dallas" there?
 - 22 Q. Right in the center. Yes, sir.
 - 23 A. Yeah. Just to the northeast of there. A little
 - 24 further in. A little further in.
- Do you see that little nub there that drops below the

- 1 Dallas-Fort Worth area; is that right?
- 2 A. That's correct.
- 3 Q. And is it right to say -- well, let me ask.
- than the red districts, do the lines that you draw from
 - 6 your perspective in the 2308 map, this portion that became

When you say the blue districts are more Democratic

- 7 the 2333 map, do they follow those blue districts -- those
- 8 boundaries between the blue and red districts or no?
- 9 A. Not perfectly, but they do follow them.
- 11:28:19 10 Q. The way they follow, is that intentional?
 - 11 A. You have to go back. I'm sorry. Could you ask that
 - 12 one more time?
 - 13 **Q.** Sure.

4

- Where the district lines that you drew appear to line
- 11:28:28 15 up with the boundaries between the red areas and the blue
 - 16 areas --
 - 17 A. Right.
 - 18 **O.** -- is that intentional?
 - 19 **A.** Yes.
- 11:28:36 20 MR. KERCHER: Understanding that -- and I imagine
 - 21 we'll get the same objection from counsel -- I'll ask
 - 22 Richard to bring up, for demonstrative purposes only at
 - 23 this time, Defendants' Exhibit 1539.
 - MR. FOX: And, yes, Your Honor. Same objection
- 11:28:47 25 to all the questions about this demonstrative.

	1	18. So the shape of the seat was I liked it. My
	2	objective was to clean up the overall twisting profile of
	3	18, 29, and 9.
	4	Q. Under the 2021 map?
11:41:04	5	A. On the 2021 map. Yeah.
	6	Q. So was 18 held by what is now 18, was that held by
	7	a Democrat incumbent or a Republican incumbent under the
	8	'21 map?
	9	A. It was actually open when I was drawing the map over
11:41:18	10	the summer.
	11	Q. Had 18 been held by a Republican incumbent
	12	A. No.
	13	Q would that have changed your approach as the map
	14	drawer to how radically you would alter the shape of the
11:41:32	15	district?
	16	MR. McCAFFITY: Objection. Calls for improper
	17	testimony as an expert and also hypothetical.
	18	JUDGE GUADERRAMA: What was the second part?
	19	MR. McCAFFITY: It's an improper hypothetical.
11:41:44	20	JUDGE GUADERRAMA: I'll
	21	MR. KERCHER: That's fair. I'll withdraw the
	22	question. I'll ask a better question.
	23	JUDGE GUADERRAMA: All right.
	24	BY MR. KERCHER:
11:41:49	25	Q. As the map drawer, did you consider core retention
		Laura Wells, RPR, RMR, CRR, RDR

- 1 more closely when dealing with districts with a Republican
- 2 incumbent or did that -- did that partisan consideration
- 3 not matter?
- 4 A. I was definitely trying to minimize the disruption in
- 11:42:07 5 the Republican incumbent seats, yes.
 - 6 Q. What about the Democratic incumbent seats?
 - 7 A. No. I was trying -- I had to rework most of the
 - 8 Democrat seats to create new pickup opportunities. So
 - 9 that wasn't a consideration.
- 11:42:19 10 Q. When we look at District 18 in Plan 2308, there is
 - 11 sort of a -- I don't know -- an epiglottis that sticks
 - 12 down, a trigger, if you will, that sticks down from the
 - 13 northeast portion of it?
 - 14 A. Sure.
- 11:42:36 15 Q. Where did that come from?
 - 16 A. Those are some -- that's -- I think it's two or three
 - 17 very Democrat VTDs that extend down there. It's a feature
 - 18 that exists on the 2193 map as well.
 - 19 Q. Okay. So we talked about sort of the changes you make
- 11:42:52 20 to 18 and why. And then you were going to tell us about
 - 21 changes to District 29, which is adjacent to 18. What
 - 22 changes did you make to 29 for Plan 2308?
 - 23 A. If you don't mind, the next seat I drew is actually
 - 24 the 9th District.
- 11:43:07 25 Q. It's your party here, Mr. Kincaid.

- 1 Q. So we've zoomed in here on the northeast portion of
- 2 29, and we're looking at the city of Humble here in green;
- 3 is that right?
- 4 A. That's right.
- 11:49:30 5 Q. When you say that there are districts on the eastern
 - 6 side of it, is this sort of the finger that curves around
 - 7 to the eastern border of Humble?
 - 8 A. Those are all heavily Democrat VTDs, yes.
 - 9 Q. And explain to the Court why the fact that those are
- 11:49:45 10 heavily Democrat VTDs matter to you as the map drawer when
 - 11 you were creating CD 29 under 2308?
 - 12 MR. McCAFFITY: Objection. Calls for improper
 - 13 expert testimony.
 - 14 A. I couldn't put them in 2 because that would have
- 11:49:58 15 endangered the 60 percent Trump target in 2.
 - 16 BY MR. KERCHER:
 - 17 Q. What was the partisan character of 2 you were trying
 - 18 to create?
 - 19 A. I was trying to keep it above 60 percent Trump.
- 11:50:08 20 **Q.** What was the partisan character of 29 you were trying
 - 21 to create?
 - 22 A. The most Democrat seat I could draw in the area.
 - 23 Q. Okay. What other changes to 29 did you make, sir?
 - 24 A. Yeah. So I worked down again to the highway there.
- 11:50:23 25 And on the east side -- on the west side, like I mentioned

- 1 Q. Okay. Did you draw District 27 in Plan 2308?
- 2 **A.** Yes.
- 4 MR. KERCHER: And, Richard, that will be to the
- 12:01:48 5 west of 22. Yes, sir.
 - 6 BY MR. KERCHER:
 - 7 Q. Mr. Kincaid, can you tell the Court how you drew
 - 8 District 27?
 - 9 A. Sure. Can you go ahead and take off 2193? We won't
- 12:02:04 10 need that for a little while.
 - All right. So for 27, it's important to look at 37
 - 12 first, if that's all right.
 - 13 Q. However it makes sense to you, sir.
 - 14 A. All right.
- MR. KERCHER: Richard, could we please zoom in to
 - 16 District 37, which is right over the center of Travis
 - 17 County.
 - 18 BY MR. KERCHER:
 - 19 Q. What do we see or -- so we've got District 37 as drawn
- 12:02:26 20 in 2308.
 - 21 Mr. Kincaid, tell us about how you drew District 37.
 - 22 A. Yeah. So that line for 37 on the eastern side and the
 - 23 southern side of 37, if you shaded this on partisanship,
 - 24 what you would find is that all of the VTDs that are in 27
- 12:02:44 25 are 30 percent or more Trump in 2024. Every single VTD to

- 1 the north and to the west of that line is less than
- 2 30 percent Trump. So it's a purely partisan draw in
- 3 Travis County that aligns with the President's performance
- 4 in 2024.
- 12:03:02 5 MR. McCAFFITY: Objection. Move to strike.
 - 6 Calls for improper undisclosed expert testimony.
 - 7 BY MR. KERCHER:
 - 8 Q. Mr. Kincaid, are you suggesting under oath that
 - 9 Central Travis County did not vote heavily for President
- 12:03:13 10 Trump in 2024?
 - 11 A. Well, the governor's mansion actually did,
 - 12 interestingly enough. So there was an area there in
 - 13 Downtown Austin that had trended to the right and so
 - 14 that's why it's drawn over there in 10. So since I'm
- 12:03:25 15 under oath, I want to make sure I'm as specific as I
 - 16 possibly can be.
 - But, yes, the rest of that 37 was very, very heavily
 - 18 Democrat.
 - 19 Q. So let me ask you, because you said it's -- I'm
- 12:03:36 20 paraphrasing. You said something like 37 is a strictly
 - 21 partisan draw.
 - 22 Are you saying that there were no other lines that
 - 23 were shifted for population equality and that sort of
 - 24 thing or am I misunderstanding?
- 12:03:48 25 A. No. No. There was definitely population balancing.

- But as far as that line between 37 and 27, it just lines up perfectly with the 30 percent Trump number.
- 3 Q. Okay. So then that takes us -- well, let me ask you:
- 4 Does that then allow us to transition into talking about
- 12:04:03 5 how you drew the rest of 27?
 - 6 A. Sure. That's fine. Yeah.
 - 7 Q. Did you have a partisan goal when you were drawing 27?
 - 8 **A.** Yes.
 - $9 \ \mathbf{Q}$. What was it?
- 12:04:11 10 A. I had to figure out a way to keep the 27th District
 - 11 above 60 percent Trump.
 - 12 Q. Okay. Can you tell the Court the first thing that you
 - 13 did in order to make that happen?
 - 14 A. Well, the first thing that -- I'll take that, if you
- 12:04:25 15 don't mind, in the opposite direction, in that the first
 - 16 thing I had to do is -- yeah. So when I got to 27, I had
 - already worked through the Rio Grande Valley seats at that
 - 18 point. And so I took the -- in order to get the 34th, and
 - 19 I know we'll talk about this later, to be a Trump plus
- 12:04:48 20 10 district, I had to carve out some heavily Democrat
 - 21 precincts in Nueces County and Corpus Christi in order to
 - 22 do that.
 - 23 And so what the 27th District did at that point is it
 - 24 moved to the north along the Gulf, like it currently does.
- 12:05:01 25 I made sure that Victoria County was in the 27th, because

	1	that's where the incumbent lives. And then from there I
	2	had to fit it underneath the 10th District and then reach
	3	population over in Hays County.
	4	Q. Why did you have to fit it underneath the 10th
12:05:16	5	District?
	6	A. Well, because by that point the 10th District had been
	7	stretched all the way from western Travis to accommodate
	8	where Congressman McCaul lived, out to the east to also
	9	pick up all of Brazos County, because he had to have all
12:05:31	10	of Brazos County, and then keep it above 60 percent Trump.
	11	Q. Would it have been nice to know Representative McCaul
	12	was going to retire before you had to draw District 10
	13	across the center of the state?
	14	A. I have a list of five members I wish had been retired
12:05:45	15	before I drew this map.
	16	Q. All right, Mr. Kincaid, what other changes did you
	17	make to District 27?
	18	A. After that, so the line in Hays County there, between
	19	21 and 27, allowed me to get the 27th District just above
12:05:58	20	60 percent Trump in 2024. You'll notice there that there
	21	is a split that I tried to avoid, but I didn't have any
	22	way to avoid it, in Refugio, Aransas, and San Patricio, to
	23	make sure that the 27th District was contiguous by road
	24	because, otherwise, it would have been only contiguous by
12:06:18	25	water. So I split those three counties in order to do
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	1	And so Guadalupe, Wilson, and Karnes were whole
	2	counties that were combined with with that area of
	3	Bexar County there to make the 35th District. And that's
	4	how I drew it.
12:20:49	5	Q. Did you have a partisan goal when you drew the
	6	35th District?
	7	A. I did.
	8	Q. What was it?
	9	A. Like the other pickup opportunities, it was drawn to
12:20:55	10	be a Trump plus 10 seat that Ted Cruz had also carried in
	11	2024.
	12	Q. Did you look at the Abbott numbers?
	13	A. I did.
	14	Q. How, if at all, did that affect the draw?
12:21:05	15	A. Governor Abbott did pretty well in those seats, and so
	16	he carried them. I didn't use them much more than that.
	17	Q. Did you perform the durability analysis that you
	18	described where you were looking at older elections to see
	19	how
12:21:18	20	A. I did.
	21	Q 35 might perform going forward?
	22	A. Backward, yes.
	23	Q. Okay.
	24	A. And so I think the thing here with
12:21:26	25	Q. Hold on. There is not another question. You answered
		Laura Wells, RPR, RMR, CRR, RDR

had looked at it a couple different ways. And so you have 1 got about 100,000 people east of the loop there in the 2 Kirby area. And so the question that I had to deal with was whether to draw in the Kirby area of 35 or the area south of where you see the line there with 20 into 35 --12:26:04 into 35. 6 7 And so I looked at both options. The Kirby area was 8 more Democrat for -- so let me say it a different way. 9 35 coming to the south side of Bexar County, into that area below 20, enabled me to make the 35th District more 10 12:26:23 Republican on the Trump numbers and the Cruz numbers in 11 12 2024. 13 MR. McCAFFITY: Objection, Your Honor. Move to strike based on improper expert testimony. 14 15 BY MR. KERCHER: 12:26:34 16 You lost me. I made the mistake of trying to make a Q. note while you were talking. Now I don't know where we 17 18 are on the map. 19 So you are talking about some of the changes in 20 and 20 how that affected the way that you drew 35. We are now 12:26:44 21 looking at the boundary here between northwest 35 and 22 eastern 20. 23 Α. Yep. And I heard you say -- did you say I-35 or are you 24

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25

12:26:56

talking about District 35?

- 1 marginal VTDs.
- 2 MR. KERCHER: Can we look at Defendants'
- 3 Exhibit 1543, which we show here for demonstrative
- 4 purposes only at this time.
- 12:54:59 5 BY MR. KERCHER:
 - 6 O. Mr. Kincaid --
 - 7 MR. FOX: Same objection, Your Honor.
 - 8 JUDGE GUADERRAMA: Yes, sir.
 - 9 BY MR. KERCHER:
- 12:55:05 10 **Q.** Mr. Kincaid, do you recognize 1543?
 - 11 A. Yes.
 - 12 Q. Did you make it?
 - 13 **A.** Yes.
 - 14 Q. What is it?
- 12:55:09 15 A. It's the same overlay, just further south, that shows
 - 16 the eastern border of Texas 18.
 - 17 One thing I'll note --
 - 18 Q. Let me ask you this: Is there anything that you would
 - 19 note about 1543?
- 12:55:21 20 A. Yeah. There is a little blue blob there at the bottom
 - 21 of that feature that we talked about earlier.
 - 22 **Q.** Yeah.
 - 23 A. There is no population there.
 - 24 Q. Okay. So when you say "the blue blob we talked about
- 25 earlier," we're talking about the epiglottis or the

- 1 trigger that branches south of northeast 18th; is that
- 2 right?
- 3 A. That's correct.
- 4 Q. And when you say "the blob," are you talking about the
- 12:55:46 5 blue area just outside of the white boundary of 18 there?
 - 6 A. That's correct.
 - 7 Q. Okay. What is noteworthy about that?
 - 8 A. There is no population there.
 - 9 Q. Then how can it be blue?
- 12:55:57 10 A. Because it was zero votes for President Trump, because
 - 11 there was no people there. But it's still a VTD.
 - 12 Q. Okay. It is so obvious when you say it, I guess.
 - 13 Mr. Kincaid, at some point after drawing 2308 did you
 - 14 become aware of any of the racial or demographic
- 12:56:19 15 characteristics of the districts in 2308?
 - 16 A. I did.
 - 17 Q. Did you make any changes as a result of becoming aware
 - 18 of the racial or demographic character of the districts in
 - 19 2308?
- 12:56:35 20 **A.** I did not.
 - 21 **Q.** Why not?
 - 22 A. I don't draw off of race.
 - 23 Q. You described being involved in a nationwide
 - 24 Republican redistricting effort that included Texas; is
- 12:57:01 25 that right?

	1	A. Yes.
	2	Q. And I'm not asking for any I'm not asking
	3	for well, did you have a personal belief as to whether
	4	voters let's call them voters of color, Hispanic and
12:57:22	5	African American voters in Texas were moving towards the
	6	Republican Party?
	7	A. Yes.
	8	MR. FOX: Objection, Your Honor. Improper expert
	9	testimony.
12:57:30	10	BY MR. KERCHER:
	11	Q. So, I mean, what was what was your plan here as a
	12	part of this redistricting effort in Texas? Was it to
	13	dilute the votes of populations who were moving, in your
	14	personal opinion, towards the Republican Party?
12:57:47	15	A. No.
	16	Q. Mr. Kincaid, you have been a trooper.
	17	MR. KERCHER: Pass the witness.
	18	MR. GABER: Your Honors, it's four to 1:00.
	19	JUDGE GUADERRAMA: All right. Let's go ahead and
12:58:05	20	recess to 2:00, and we'll resume our proceedings then.
	21	JUDGE SMITH: That's only an hour.
	22	JUDGE GUADERRAMA: Oh, I'm sorry. 2:15. We'll
	23	resume our proceedings then.
	24	COURT SECURITY OFFICER: All rise.
12:58:23	25	(Morning session adjourned at 12:58 p.m.)
		Laura Wells, RPR, RMR, CRR, RDR

Date: October 7, 2025 COURT REPORTER'S CERTIFICATE I, Laura Wells, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. ____/s/ Laura Wells Laura Wells, CRR, RMR Laura Wells, RPR, RMR, CRR, RDR

- 15:02 1 A. Yes.
 - 2 Q. Which attorneys?
 - 3 A. Tommie Cardin.
 - 4 Q. Anyone else?
 - 5 A. I think I did a Zoom with a couple of the -- with Tommie
 - 6 and a couple of associates.
 - 7 Q. Do you know the names of any of the associates?
 - 8 A. I don't recall their names.
 - 9 Q. How many different conversations did you have with --
 - 10 Tommie -- what's his last name?
 - 11 A. Cardin.
 - 12 Q. Cardin.
 - With Mr. Cardin?
 - 14 A. I don't know. Tommie and I stayed in pretty regularly --
 - 15 regular communication.
 - 16 Q. And what were the -- you said Zoom was one method. Were
 - 17 | there other methods of communication?
 - 18 A. Phone.
 - 19 Q. Phone?
 - 20 A. Yeah.
 - 21 Q. Any written communications back and forth?
 - 22 A. There are some emails.
 - 23 Q. Okay.
 - 24 A. That I retained.
 - 25 Q. And when did those conversations happen?

- 15:03 1 | A. Um, they started in mid-July, about July 13th.
 - 2 Q. And when did they go through?
 - 3 A. The second special session.
 - 4 Q. What about anyone at BakerHostetler?
 - 5 A. I talked to Trevor Stanley at BakerHostetler.
 - 6 O. When was that conversation?
 - 7 A. I think that was late July or early August, during one of
 - 8 the sessions.
 - 9 Q. Anyone else at BakerHostetler?
 - 10 A. I mean, I worked with the Baker folks a lot on a lot of
 - 11 | stuff, so it's hard for me to say that --
 - 12 Q. Okay.
 - 13 A. -- about Texas specifically.
 - 14 Q. Now, when you were drawing the map, I gather from the
 - 15 | answers you've given me that there were no legislators present
 - 16 | for that process?
 - 17 A. When I was drawing the map? No.
 - 18 Q. There were no -- the Governor wasn't there?
 - 19 A. He was not looking over my shoulder, no.
 - 20 Q. Did you have staff that was involved in helping you draw
 - 21 | the map, or did you do it all yourself?
 - 22 A. Myself.
 - 23 Q. And because you didn't have conversations with anyone, the
 - 24 | House -- for example, the Texas State House, they are -- you've
 - 25 | not relayed to them any of your mental impressions or thoughts

- 15:05 1 or processes for how the map was drawn?
 - 2 A. I had conversations with their counsel.
 - 3 | O. Which counsel was that?
 - 4 A. Tommie Cardin.
 - 5 Q. Now, I think you said you don't have an attorney-client
 - 6 relationship with Mr. Cardin?
 - 7 A. Mr. Cardin represents the Legislature.
 - 8 Q. And what did you relay to Mr. Cardin?
 - 9 MR. KERCHER: Your Honor, just to give Mr. Gaber a
 - 10 | sense of where we are headed, I am authorized to waive
 - 11 | Chair Vasut's legislative privilege for Mr. Cardin's
 - 12 | conversations with Mr. Kincaid concerning the redistricting bills
 - 13 | in the two special sessions. Not authorized to waive any other
 - 14 | legislator's -- legislative privilege, but just to sort of give
 - 15 | everybody a sense, because I think we're all waiting on when
 - 16 | Kercher's gonna jump up and object to legislative privilege.
 - 17 That's where we come down on that.
 - JUDGE GUADERRAMA: So who's -- which legislator -- I
 - 19 mean, whose privilege are you waiving?
 - 20 MR. KERCHER: Chairman Vasut, who was the chair of the
 - 21 | House Redistricting Committee -- his legislative privilege
 - 22 | concerning Mr. Cardin's communications with Mr. Kincaid regarding
 - 23 the redistricting bills during the two special sessions this
 - 24 summer.
 - JUDGE GUADERRAMA: Oh, thank you.

- 16:29 1 | Justice, right?
 - 2 A. Yeah.
 - 3 Q. Did you discuss the letter with her?
 - 4 A. Yes, I did.
 - 5 Q. Okay. And what was the content of that conversation?
 - 6 A. I told her it was dumb and unnecessary, and I didn't think
 - 7 | we needed to send the letter -- that a letter needed to be sent
 - 8 to the State.
 - 9 Q. And so Department of Justice was on notice that map drawer
 - 10 says, "Bad idea," and Department of Justice sends the letter?
 - 11 A. I'm not a lawyer, and most lawyers don't listen to me when
 - 12 | I tell them things, so...
 - 13 (LAUGHTER.)
 - 14 Q. And you -- when was that conversation with Mrs. Reardon?
 - 15 A. Around the same time, sometime in June.
 - 16 Q. But it was separate from your conversation with Mr. Gates?
 - 17 A. It was, yeah.
 - 18 Q. And where did it occur?
 - 19 A. Phone.
 - 20 Q. Did you call her or did she call you?
 - 21 A. I don't recall that. I think I called her.
 - 22 Q. Did you call her to ask her not to send the letter?
 - 23 A. No. That wasn't -- no. It's above my pay grade.
 - 24 Q. Who brought the letter up?
 - 25 A. I don't remember that, either.

- 16:30 1 Q. Did you relay that you thought, to Ms. Reardon, it was a
 - 2 bad idea as well?
 - 3 A. I told everyone it was a bad idea.
 - 4 Q. And part of the reason you were saying that was because it
 - 5 | was raising issues related to the racial composition of the
 - 6 districts, right?
 - 7 A. My issue with it was that I thought it was unnecessary. I
 - 8 | thought that it wasn't needed for Texas to redraw the map.
 - 9 That was my view of it.
 - 10 Q. But, in addition, the letter was objecting to the racial
 - 11 | composition of the districts in the 2021 map. That's -- right?
 - 12 A. It was objecting to those, yes. Yeah.
 - 13 Q. On the basis of their racial composition?
 - 14 A. It was, yeah.
 - 15 Q. And is that part of the reason you thought it was a bad
 - 16 | idea to send that out?
 - 17 A. Well, it was part of the reason I thought the letter was a
 - 18 | bad idea in general, right, is because, one, like I said before
 - 19 | the districts -- I drew the race-blind, I didn't know of any
 - 20 discovery into the other four seats, but I let them know those
 - 21 | seats were the ones I didn't draw.
 - 22 And I -- yeah, I mean, when the issue first came up,
 - 23 | my response was, "Well, you don't have any partisan
 - 24 | gerrymandering claims. You don't have any compactness issues.
 - 25 All you could really send a letter on is race, and that's

- 16:32 1 | completely unnecessary. Because this is a completely political
 - 2 draw from start to finish."
 - 3 Q. And nevertheless, the letter was sent. It was cited in the
 - 4 proclamation as the reason for the special session, and then
 - 5 | you saw Governor Abbott say on that CNN interview that that was
 - 6 the reason, from his perspective, the map was being redrawn,
 - 7 | correct?
 - 8 A. I acknowledge that that was his perspective.
 - 9 Q. If we could -- first, I want to ask, did you -- I think I
 - 10 | asked a little bit earlier if you had watched any of the floor
 - 11 proceedings in the Senate and the House of Texas, and you said
 - 12 you'd seen some, right?
 - 13 A. Yeah.
 - 14 Q. Did you watch any of the public hearings where members of
 - 15 | the public came and testified about whether they thought there
 - 16 | should be redistricting or once there was a map, what they
 - 17 | thought of the proposed map?
 - 18 A. I don't really remember. I mean, most of what I saw were
 - 19 things people tagged me on social media.
 - 20 Q. Yeah?
 - 21 A. So I wasn't sitting there watching the live-streaming
 - 22 testimony.
 - 23 Q. Did you ever get sort of a briefing about what the members
 - 24 of the public had said about whether redistricting should occur
 - 25 at any of those public hearings across the state?

- 16:33 1 A. I didn't ask specifically about that issue.
 - 2 | Q. No? You didn't see that?
 - And that's true with respect to both the House and the
 - 4 | Senate hearings?
 - 5 A. Yeah. I mean, I didn't spend a lot of time watching the
 - 6 public hearings so...
 - 7 Q. So as far as the public is concerned, folks who took off
 - 8 | work, came and testified, spoke to their representatives about
 - 9 the map, that's completely untethered to your drawing of the
 - 10 map?
 - 11 A. I drew my map using politics from start to finish and
 - 12 provided that to the Legislature.
 - 13 Q. Mm-hmm. But you didn't speak to the Legislature, other
 - 14 | than to Senator King?
 - 15 A. I spoke to Senator King, that's right.
 - 16 Q. Okay.
 - MR. GABER: If we could play, please, Brooks
 - 18 Exhibit 309, page 98, 21 through 101, 7. And that's the page and
 - 19 line of the transcript.
 - 20 (Video played.)
 - 21 REPRESENTATIVE PIERSON: I really want to focus on the
 - 22 | public testimony during the field hearings, which I believe were
 - 23 | helpful. And it looks like you've taken a lot of those concerns
 - 24 | in consideration with this map. In all of those hearings, there
 - 25 | were several Black voters who were concerned that their voices

- 17:00 1 not advocating now" with respect to turning off racial data,
 - 2 correct?

9

- 3 A. Yeah, that's what I said.
- 4 Q. Thank you.
- 5 MR. GABER: I pass the witness to my co-counsel, who 6 may have more questions.
- 7 JUDGE GUADERRAMA: All right.
- 8 MR. GABER: Your Honor, if I could move to admit
- National Republican Redistricting Trust, Brooks Exhibit 340,

Brooks Exhibit 518, which is the Galveston report from the

- 11 which is the American Enterprise Institute video, and Brooks
- 12 Exhibit 341, which is the University of Chicago video.
- JUDGE GUADERRAMA: Mr. Kercher, 518 was what?
- 14 Mr. Kincaid's email?
- MR. GABER: The mail with Galveston County.
- MR. KERCHER: Your Honor, I'm told reliably that we --
- 17 | we do not yet have them. So we will -- we would like the
- 18 opportunity just to be able to review the whole thing, and if we
- 19 | can check back with the Court tomorrow, and I'll let the Court
- 20 know if we have any objections.
- MR. GABER: We'll send it right now.
- MR. KERCHER: Sure.
- MR. GABER: Thanks.
- 24 Q. (BY MR. GABER) Thank you, Mr. Kincaid.
- 25 A. Thank you.

- 17:01 1 JUDGE GUADERRAMA: Mr. McCaffity, you're up next.
 - 2 MR. McCAFFITY: Get my technology set up here. Give
 - 3 Mr. Dunn a break, hopefully. We'll see.
 - 4 All right. Okay. I don't know what's going on. All
 - 5 right.
 - 6 CROSS-EXAMINATION
 - 7 BY MR. McCAFFITY:
 - 8 Q. Mr. Kincaid, my name's Sean McCaffity. I represent the
 - 9 Mexican American Legislative Caucus. How are you doing?
 - 10 A. Fine. How are you?
 - 11 Q. Great. I believe you said, during the -- sort of the close
 - 12 or the end of Mr. Gaber's cross-examination, you commented that
 - 13 | it was a political draw start to finish?
 - 14 A. That's correct.
 - 15 Q. Does that include using race as a political pretext to draw
 - 16 | the districts for partisan purpose?
 - 17 A. Did not use race as a pretext.
 - MR. McCAFFITY: Objection, nonresponsive.
 - 19 Q. (BY MR. McCAFFITY) Does your statement about political
 - 20 | cover or political process, include using race as a pretext for
 - 21 | political draw?
 - MR. KERCHER: Objection, asked and answered.
 - JUDGE GUADERRAMA: Yeah, I think he answered it. He
 - 24 | said he didn't use race as a pretext.
 - MR. McCAFFITY: Okay. Fair enough.

- 17:03 1 Q. (BY MR. McCAFFITY) Does it include -- does your -- when
 - 2 | you drew the map, you did not use race, according to your
 - 3 testimony, on direct, right?
 - 4 A. That's correct.
 - 5 Q. But you acknowledge that the map was drawn as a political
 - 6 process, start to finish, right?
 - 7 A. That's correct.
 - 8 Q. And you heard the chair of the Redistricting Committee on
 - 9 the floor, Mr. Representative Hunter, talking about touting the
 - 10 racial characteristics of four new districts that were
 - 11 minority/majority?
 - 12 A. I heard that, yes.
 - 13 Q. Does that -- is it possible for your -- the use of race as
 - 14 | a political pretext to inform your decisions when you were
 - 15 drawing partisanship to hit certain racial targets so they
 - 16 | could have that political talking point?
 - 17 A. I wasn't using race to hit racial targets.
 - 18 Q. How do we know you weren't using race?
 - 19 A. Because I've said so multiple times.
 - 20 | Q. Who retained you again? The Republican National Committee?
 - 21 A. That's correct.
 - 22 Q. And you were paid for your map drawing services?
 - 23 A. I -- it's a general retainer. It's not specific --
 - 24 Q. How much?
 - 25 A. I'm sorry?

- 17:05 1 Q. How much?
 - 2 A. \$2500 a month.
 - 3 Q. And the general retainer, that includes your map drawing
 - 4 services. Does it include any type of specific map drawing
 - 5 product?
 - 6 A. No.
 - 7 Q. Does it require -- does it give them -- the Republican
 - 8 National Committee the discretion to tell you exactly what kind
 - 9 of map to draw?
 - 10 A. No.
 - 11 Q. Do you consider yourself a third-party consultant that was
 - 12 hired for their map drawing services that you then provided to
 - 13 | the Republican National Committee?
 - 14 A. I -- I was retained as a consultant. I don't know if I
 - 15 | would say a third party or whatever else. I mean, I was
 - 16 | retained as a consultant for the RNC.
 - 17 Q. And you were paid for that work as part of the retainer
 - 18 | agreement?
 - 19 A. That's correct.
 - 20 Q. In other words, you weren't doing the redistricting work on
 - 21 | behalf of the National Republican Committee for free?
 - JUDGE SMITH: You've asked that three times now.
 - 23 Q. (BY MR. McCAFFITY) The maps you generated during the
 - 24 | legislative session of 2025, those maps contain -- or are drawn
 - 25 based on projections and formulas that informed your

- 17:06 1 | understanding of the partisan nature of the Texas electorate?
 - 2 A. I don't think I've testified using any projections.
 - 3 Q. Well, I think you didn't really testify a lot about the
 - 4 detail other than you said there was some Python code and a
 - 5 database, right?
 - 6 A. That's a Python script, yes.
 - 7 Q. Well, a Python is -- it's a computer language, right?
 - 8 A. You said projections. I'm...
 - 9 Q. Does the Python code include any projections?
 - 10 A. No.
 - 11 Q. Does it include any modeling?
 - 12 A. No.
 - 13 Q. Does it include any third-party data whatsoever?
 - 14 A. No. It's just Government-issued data.
 - 15 Q. And the Government-issued data that you include is the TLC
 - 16 data for election results?
 - 17 A. We use the census geography. We use the election results
 - 18 | from the State or municipality if we have to gather it at a
 - 19 lower level. And we use the voter file and the precinct lines.
 - 20 All of those are produced from the States or from the
 - 21 | localities. We don't use any third-party data in our work.
 - 22 Q. Okay. And in the Python code, the script runs. And what
 - 23 does it create for you?
 - 24 A. Block-level political data.
 - 25 Q. And the -- do you believe that the average person, without

- 17:07 1 | technical training, would be able to verify or reproduce your
 - 2 results at the block level?
 - 3 A. The average person would not be able to.
 - 4 Q. And you -- in fact, to generate those R codes, you used
 - 5 | specialized software and script that you created, right?
 - 6 A. I didn't create it, no.
 - 7 Q. Did you create the Python script?
 - 8 A. I didn't create it.
 - 9 Q. Oh. Who created the Python script?
 - 10 A. A former data consultant of ours, yeah. A couple of them
 - 11 | worked together on it.
 - 12 Q. Okay. But it's owned by the NRRT?
 - 13 A. It's proprietary to our 501(c)(4).
 - 14 Q. And you haven't disclosed that to us in this litigation,
 - 15 | right?
 - 16 A. The script?
 - 17 Q. Correct.
 - 18 A. I have not disclosed the script.
 - 19 Q. And based on your experience and specialized knowledge with
 - 20 | redistricting, you're able to interpret the data, and the
 - 21 | results received as a result of running that script for
 - 22 purposes of redistricting?
 - MR. KERCHER: Object to the extent the question calls
 - 24 | for a legal conclusion. My friend, Mr. McCaffity, is cleverly
 - 25 inserting language from the Rules of Evidence into his question.

MR. KERCHER: Objection. This is asked and answered. 17:31 1 2 It's also a hypothetical. He has already stated repeatedly that 3 that's not what he looks at, that's not how he uses the data, and 4 whether he might use it that other way is hardly relevant. 5 MR. McCAFFITY: It is relevant, Your Honor, because the 6 particular targeting --7 JUDGE GUADERRAMA: I'm gonna overrule the objection. 8 He can answer it again. I think he's already answered it but... MR. McCAFFITY: Okay. 9 10 JUDGE SMITH: When you asked the question -- I'm just 11 confused; I'm trying to clarify. When you asked the question, 12 how they voted? Are you asking which primary they voted in, or 13 you are asking, did they vote for Trump or Harris or whatever? 14 MR. McCAFFITY: Well, that's sort of where I'm trying 15 to get to. 16 JUDGE SMITH: Okay. It would be helpful if you would 17 clarify that. MR. McCAFFITY: Yeah. I appreciate the clarification. 18 19 (BY MR. McCAFFITY) So your -- your partisan data is based 20 on primary election history, correct? 21 A. Our partisan data is based off of more than that. It's 22 also based off of vote method, right, and also primary vote 23 history is one thing we use to try to figure out how someone's 2.4 political leanings might be, yeah.

Q. What else goes under the partisan -- your formula for

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- 17:32 1 | determining partisanship?
 - 2 A. There would be nothing else in Texas other than that,
 - 3 because there's no party registration.
 - 4 Q. Okay. So it's just election history and vote by mail?
 - 5 A. It would be election history, vote method, and then primary
 - 6 vote history would be how we would disaggregate the results
 - 7 down the block.
 - 8 Q. And that would give you an idea of about, potentially,
 - 9 | 30 percent of the electorate?
 - 10 A. What it would do is it would give us the ability to
 - 11 understand where specific voters might be, and then the ones
 - 12 | that are not -- so you're -- I get where you're going. So let
 - 13 | me clarify this a little bit more.
 - 14 So --
 - 15 MR. McCAFFITY: Objection, nonresponsive.
 - 16 Q. (BY MR. McCAFFITY) My question was simply, your partisan
 - 17 data is based on the election results, which would only be --
 - 18 primary election history, which would only be 30 percent of the
 - 19 | electorate?
 - 20 | A. So let me go a little bit further, then, if you don't mind
 - 21 | to explain that next step that I seem to need to communicate,
 - 22 | if that's all right.
 - 23 Q. Well, so, okay. Can you start with a "yes" or a "no," and
 - 24 | then say whatever you need to say?
 - 25 A. We would use the primary vote history to assign the -- the

- 17:33 1 | likely partisan leaning of voters, and then after the -- after
 - 2 | the primary votes are exhausted in a particular block, the rest
 - 3 of the results are washed across the -- the block or the VTD --
 - 4 uniformly across the VTD.
 - 5 Q. What do you mean when they're washed across the VTD
 - 6 uniformly? What does that mean?
 - 7 A. What that means is -- okay, you're talking about
 - 8 | 30 percent. So let's talk about that for a second.
 - 9 So say there's a thousand people in a VTD, right? And
 - 10 | 600 of them are -- and we'll just use one election for the sake
 - of simplicity here. And so 600 of them voted, right, and of
 - 12 | that 600, I have primary vote history for only 200 of those,
 - 13 right? So a little bit more than your 30 percent.
 - So the other 400 votes from that VTD, we don't have
 - 15 any way to assign the partisanship on those individuals,
 - 16 | because we don't have the primary vote history. And so what we
 - 17 | would do in that case is take those 400 voters, vote history,
 - 18 and -- well, those 400 votes, not vote history -- let me be
 - 19 more clear.
 - 20 The 400 votes cast in that precinct, then wash them
 - 21 uniformly across the census blocks in that VTD.
 - 22 Q. Okay. That's what I don't understand. What does "wash
 - 23 | them uniformly across the census blocks" mean?
 - 24 A. It means assign them across the census blocks within that
 - 25 VTD.

- 17:35 1 Q. How does that tell you anything about partisanship?
 - 2 A. It's not a perfect -- you're assuming this is perfect. I
 - 3 | wish it was, but I mean, it's not a perfect method. It just
 - 4 gives us a more granular level of data than we otherwise would
 - 5 have at the block level.
 - 6 Q. I agree it's more granular and it's more precise,
 - 7 | surgically so, based on some of the maps we've seen, right?
 - 8 A. Okay. Yes.
 - 9 | Q. You agree with that?
 - 10 A. Yeah, it's good data.
 - 11 Q. So it's good data, but it's only like a 30-percent guess?
 - 12 A. Um, where we have primary vote history, we use that to
 - 13 | assign, but you have to remember primary vote history isn't
 - 14 | just for one election; you might have primary vote history for
 - 15 | a large number of people across the precinct over the course of
 - 16 | several cycles. So you're not just looking at the primary vote
 - 17 history in one year. You might have the primary vote history
 - 18 over several years.
 - 19 Q. Right.
 - 20 A. So you have some level of primary vote history for probably
 - 21 more than 30 percent of the electorate in the state.
 - JUDGE SMITH: Getting back to the previous distinction
 - 23 | that I was asking about -- I just want to make sure. As I
 - 24 | understand it, the voting results in a given election, let's say
 - 25 Trump versus Harris, is only available at the precinct or VTD

	1	PROCEEDINGS
	2	(Call to order of the Court.)
	3	JUDGE GUADERRAMA: Good morning, everyone.
	4	Please be seated.
09:01:35	5	Mr. Kincaid is on the witness stand.
	6	And Mr. Fox.
	7	MR. FOX: Good morning, Your Honors. Before
	8	resuming the examination of Mr. Kincaid, the Gonzales
	9	plaintiffs filed a motion last night, two pages. I don't
09:01:45	10	know if the Court has seen it. I have copies, if not.
	11	We would like to be heard on it, if possible, before
	12	Mr. Kincaid resumes. It relates to his testimony.
	13	JUDGE GUADERRAMA: Yes, sir. We want to give the
	14	State an opportunity to respond and certainly will take it
09:01:59	15	in order.
	16	MR. FOX: Yes. And, of course, I assumed the
	17	State would respond. We would if possible, in the
	18	order for this morning, obviously this relates to the
	19	ongoing cross-examination of Mr. Kincaid.
09:02:07	20	JUDGE GUADERRAMA: Yes, sir.
	21	JUDGE SMITH: Well, they will have an opportunity
	22	to respond in writing if they wish to. If they don't wish
	23	to, that's okay, too; but that's up to them.
	24	MR. EZELL: I wish to, sir. And we would be
09:02:17	25	happy to do it as fast as we can. Obviously, I need to be
		Laura Wells, RPR, RMR, CRR, RDR

	1	in here for Mr. Kincaid's testimony as the only person
	2	as the only person authorized to assert the privilege.
	3	But my colleague Anthony Rodregous and I tried to
	4	crank something out in the two hours we had this morning.
09:02:31	5	So we have a draft in progress, but we would appreciate
	6	until, you know, the end of the day, after lunch sometime
	7	to put something together.
	8	JUDGE GUADERRAMA: All right. Thank you, sir.
	9	MR. FOX: And, Your Honor, just to be clear, from
09:02:38	10	our perspective it is obviously critical that Mr. Kincaid
	11	stay here in El Paso and available to be cross-examined
	12	until the motion is ruled on.
	13	JUDGE GUADERRAMA: You know, I need to confer
	14	with my colleagues. That would be my preference as well.
09:02:48	15	I don't think Mr. Ezell is saying that that's not going to
	16	happen. He said it's going to happen right after lunch,
	17	he hopes. So depending on the ruling, you may have
	18	another shot.
	19	MR. FOX: Yes, Your Honor. I understand.
09:03:00	20	If possible, I think that if we finish otherwise the
	21	cross-examination of Mr. Kincaid before lunch, then in
	22	that case we would just ask that pending this motion he be
	23	asked to stay available for testimony.
	24	JUDGE GUADERRAMA: Yes, sir.
09:03:12	25	JUDGE SMITH: Are there any other updates from
		Laura Wells, RPR, RMR, CRR, RDR

either side regarding the scheduling issues that were 1 discussed before we adjourned yesterday? If you are not 2 3 ready for it, we can do it later. We just need to get all that worked out as soon as possible. And I understand 4 it's complicated. 5 09:03:29 MR. KERCHER: Understood, Your Honor. I think 6 7 right now we have conferred. It looks like we will 8 probably wrap evidence -- I think right now, at the latest, it looks like probably midday Friday. We have conferred, both sides, regarding what closing argument 10 09:03:41 might look like. 11 12 I understand that the plaintiffs are asking for 20 minutes per party. Since there are six parties, that 13 would be two hours for them. That would -- if it were 14 equal time, that would be two hours for the State. I 15 09:03:55 16 don't think the Court wants to hear me talk for two more 17 hours, so I would ask for an hour and a half. 18 I don't know if plaintiffs -- I'll leave it to 19 plaintiffs on whether they would like to reserve some 20 portion of their 20 minutes for rebuttals, anything 09:04:06 21 inflammatory that I might say. But I think we're looking 22 at something like three and a half or four hours for 23 closing argument, which would probably work if we are able 24 to wrap evidence by lunch on Friday. 25 JUDGE SMITH: Evidence and argument? Or the 09:04:21

	1	argument would be Friday afternoon? I'm just trying to
	2	understand.
	3	MR. KERCHER: I think we're thinking that
	4	argument would be Friday afternoon. Assuming evidence
09:04:30	5	closes at by lunch on Friday, then we could come back
	6	after lunch for closings at that point.
	7	JUDGE SMITH: Does that include the possibility
	8	of a rebuttal case by the plaintiffs or not? I mean, I
	9	can obviously hear from the plaintiffs about that.
09:04:47	10	Mr. KERCHER: I'll leave it to the plaintiffs to
	11	discuss the possibility of rebuttal evidence.
	12	JUDGE SMITH: Because, obviously, in advance we
	13	need to know whether to anticipate anything on Saturday.
	14	And there are some courthouse issues that we can talk
09:04:58	15	about at a later time about that. It's not as simple as
	16	it may seem. So we're just trying to get some idea of
	17	what to expect.
	18	MS. PERALES: Your Honor, our best estimate is
	19	that we will end on Friday. It could be 6:00 or, maybe
09:05:13	20	with the Court's indulgence, 6:30; but that's our best
	21	estimate right now.
	22	JUDGE SMITH: That everything would end on
	23	Friday?
	24	MS. PERALES: Yes, Your Honor.
09:05:22	25	JUDGE GUADERRAMA: Including closings?
		Laura Wells, RPR, RMR, CRR, RDR

- 1 is VTDs, correct?
- 2 A. That's correct.
- 3 Q. And then there is precincts?
- 4 A. No.
- 10:59:17 5 Q. No.

10:59:29

- 6 **A.** No.
- 7 Q. Explain that. Because we hear a lot about precincts,
- 8 so I want to understand the difference there.
- 9 **A.** So when it comes to the census geography, you 10 typically get it in two different hierarchies when you are
- 11 doing redistricting maps.
- 12 The standard one that I use is county, VTD, census
- 13 block. So it's only three layers of geography, right?
- 14 You have other layers that you could add on, like census
- 10:59:45 | 15 | places or county subdivisions, and there is a whole host
 - 16 of different ones.
 - If you are working in areas that have, you know,
 - 18 tribes, you know, and reservations, you can highlight
 - 19 those and make sure you are not splitting a reservation if
- 10:59:59 20 that's something that you are concerned about.
 - JUDGE SMITH: If I could just interrupt. One of
 - 22 the things that I found confusing, and maybe it's just me,
 - 23 throughout these various witnesses is whether in Texas a
 - 24 VTD is the same as a precinct. Is that just another way
- of saying precinct? Or if they are different, I'm

confused.

THE WITNESS: I'll do my absolute best to clarify the difference between those two things.

So a VTD is the census's term for a voting tabulation district. And they standardize those once per decade, right? So they collect — they are — typically, the census receives precinct lines or other geography from either local jurisdictions or states every decade; and they use those to build out what's called their TIGER geographic files, right? So they are different layers.

And the point of that is to make sure that all of their layers align with the individual census blocks. So if you have the census blocks and they don't align with everything else, it creates all sorts of problems when you are trying to use the data.

And so right after lines are drawn in redistricting, in the first or second year of a decade, states and local jurisdictions go in and they readjust those precinct lines that they have to align with the new districts, right?

So the local jurisdictions will use precincts for voting and, you know, for holding elections and administrative elections and everything else.

And so a lot of people use the term "VTD" as a proxy for a precinct. They are not technically the same. They are very similar in size, typically, and scope. But a VTD

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is a census term for a voting tabulation district; while a 1 precinct, like when we're talking about gathering results 2 3 in geography from the state of Texas, they produce their data using the election results matched to the precincts. 4 And that's part of what makes all this so complicated, 5 11:01:56 is a lot of jurisdictions will split census blocks where 6 7 they draw their new precincts, which creates all sorts of 8 different levels of complication on top of everything 9 else, which is why we take the election results and disaggregate them back down to the census block, so we can 10 11:02:14 continue to use them in our redistricting software. 11 12 otherwise, that would not be possible. 13 JUDGE BROWN: So does that mean that precincts 14 and VTDs are the same kind of at the beginning of the 15 decade and then -- but they can change as the decade wears 11:02:30 16 on? 17 The precincts definitely change as THE WITNESS: 18 the decade goes on. And a lot of times the precincts 19 align with the VTDs; but this is another thing that makes 20 this fun, is a lot of times the VTDs are set by local 11:02:41 21 jurisdictions in, like, the eighth year or the ninth year 22 of a decade. And so then they change them again before 23 the, you know, election gets held in the zero year of the 2.4 decade. And so a lot of times the VTDs will not align 25 with the precincts as they exist. 11:02:56

	1	A. Yes.
	2	MR. FOX: Thank you very much. No further
	3	questions.
	4	JUDGE GUADERRAMA: Plaintiff? Anyone else?
12:38:11	5	(No response.)
	6	JUDGE GUADERRAMA: All right. Mr. Kercher.
	7	MR. KERCHER: The Court knows how truculent I
	8	like to be. Nevertheless, no redirect.
	9	May this witness be excused?
12:38:25	10	JUDGE BROWN: I think I have a few. I know he is
	11	trying to get out of here, but just real quick. And I
	12	think most of this is just going to be a little bit of
	13	clarification for me.
	14	When you drew the 2025 map, did you know that CDs 9,
12:38:39	15	18, 29, and 33 under the 2021 map were considered minority
	16	opportunity districts, in that they provided minorities an
	17	opportunity to elect candidates of their choice?
	18	THE WITNESS: I did.
	19	JUDGE BROWN: And in 2020 and 2024, in at least
12:38:59	20	some parts of the state, President Trump did better among
	21	Hispanic voters than Republicans typically do. Aside from
	22	those instances, are you aware that Hispanics that a
	23	comfortable majority of Hispanics in Texas vote in favor
	24	of Democrat candidates, though not as cohesively and
12:39:19	25	overwhelmingly as Black voters?
		Laura Wells, RPR, RMR, CRR, RDR

	1	THE WITNESS: Generally, yes. I know that
	2	President Trump carried Hispanic voters by about
	3	10 percent statewide by various reports in 2024.
	4	JUDGE BROWN: In Harris County you changed CD 9
12:39:34	5	from Democrat to Republican but left CD 7 Democrat. Can
	6	you tell us why you chose to flip 9 and not 7?
	7	THE WITNESS: Yes. There were political
	8	constraints on the west side of Harris County. I actually
	9	wanted to flip that one. And because of three members of
12:39:49	10	congress that are not currently running for re-election, I
	11	was not able to do that.
	12	So with the way Mr. McCaul's seat and Mr. Luttrell's
	13	seat and Mr. Hunt's seat were structured there, I wasn't
	14	able to go and restructure the population in 7 enough to
12:40:03	15	redraw that seat.
	16	JUDGE BROWN: You testified that you received
	17	some instructions while drawing the 2021 map that some
	18	Democrat districts were to be left alone or not messed
	19	with or protected. You've told us what your criteria
12:40:18	20	the criteria that you used to draw this map. And it
	21	sounds like from that that you did not receive any similar
	22	instructions with regard to the 2025 map.
	23	THE WITNESS: I did not receive similar
	24	instructions, no.
12:40:30	25	JUDGE BROWN: I think that's all I've got.
		Laura Wells, RPR, RMR, CRR, RDR

	1	THE WITNESS: All right. Thank you, sir.
	2	JUDGE GUADERRAMA: Any objection from plaintiffs
	3	to Mr. Kincaid being permanently excused?
	4	MR. FOX: Your Honor, just one matter on the
12:40:44	5	privilege issue.
	6	JUDGE GUADERRAMA: Yes.
	7	MR. FOX: Mr. Kincaid testified yesterday about
	8	some of the instructions he received from the Republican
	9	congressional delegation. In particular, he testified
12:40:51	10	about two counties that he was instructed to include in a
	11	particular district. If the ruling is going to be I
	12	mean, our position is that waived this categorically and
	13	he should be able to talk about those instructions. I
	14	think, at a minimum, if the ruling is going to be that he
12:41:03	15	can't, then that ought to be stricken.
	16	JUDGE GUADERRAMA: Hold on. So what two
	17	districts were those?
	18	MR. FOX: So he was told it was two counties.
	19	JUDGE GUADERRAMA: Two counties?
12:41:12	20	MR. FOX: It was two counties he was told that
	21	had to be included in 25, in CD 25.
	22	THE WITNESS: CD 5. And it was Kaufman and Van
	23	Zandt Counties.
	24	MR. FOX: Thank you.
12:41:22	25	JUDGE GUADERRAMA: Do you remember discussing
		Laura Wells, RPR, RMR, CRR, RDR

- 1 A. Yes. Absolutely.
- 2 Q. Okay. What were those constraints? Protecting
- 3 congressional district, what was it, 22 or 2?
- 4 A. I can go through those if you would like. So there is
- 12:46:36 5 a few. So --
 - 6 (Sotto voce discussion between counsel.)
 - 7 BY MR. BLEDSOE:
 - 8 Q. (Motioning.)
 - 9 A. It would be the 10th District with Mr. McCaul, the 8th
- 12:46:54 10 District with Mr. Luttrell, the 22nd District with
 - 11 Mr. Nehls, and the 38th District with Mr. Hunt. All of
 - 12 those seats had a role to play with cabining in Texas 7
 - 13 because of the population there.
 - 14 Q. And now 7 touches 9 and 18, correct?
- 12:47:15 15 **A.** Yes. It does.
 - 16 **Q.** Okay.
 - 17 A. Under the current draw, yes.
 - 18 Q. So you could have made changes going in the other
 - 19 direction without regard to those constraints, correct?
- 12:47:22 20 A. No. Because the partisanship of 18, like I had said
 - 21 before, is what became 18, those were the most heavily
 - 22 Democrat areas of Harris County, so -- in that region. So
 - 23 I was putting all of those into one district on purpose.
- Q. Okay. So because you desired to put all in 18, then you couldn't make the changes to 7 because you originally

	1	made that decision about 18?
	2	A. It was one of the few reasons. Like I said, so the
	3	22nd District, right, has a hook down in the middle of
	4	Fort Bend County. It has a carve-out for Mr. Nehls' home
12:47:58	5	and a lot of population over there on that side. That has
	6	to go somewhere.
	7	And just the structuring of the seats in that area
	8	with the other incumbent needs and the thresholds of the
	9	partisanship made that not possible to go after 7 as well.
12:48:15	10	MR. BLEDSOE: Okay. Thank you.
	11	JUDGE GUADERRAMA: Plaintiff, anyone else?
	12	(No response.)
	13	MR. KERCHER: No redirect. May the witness be
	14	excused at this time?
12:48:26	15	JUDGE GUADERRAMA: Any objection to Mr. Kincaid
	16	being permanently excused?
	17	MR. GABER: No, Your Honor.
	18	MS. PERALES: No objection, Your Honor.
	19	MR. FOX: No, Your Honor.
12:48:34	20	MR. BLEDSOE: No objection.
	21	MR. McCAFFITY: No, Your Honor.
	22	MS. COHAN: No, Your Honor.
	23	JUDGE GUADERRAMA: Mr. Kincaid, thanks so much
	24	for coming in. You are excused and free to go, sir.
12:48:42	25	THE WITNESS: Thanks very much.
		Laura Wells, RPR, RMR, CRR, RDR

	1	JUDGE BROWN: And I hope your camping trip
	2	doesn't get rained out.
	3	THE WITNESS: Thank you.
	4	MR. DUNN: While they arrange the next witness, I
12:48:49	5	just need to move in some exhibits.
	6	If you will recall, on the first day of the hearing
	7	the Court asked me to transcribe some of these media
	8	interviews that have been played. So we have done that.
	9	So Brooks 322-T, as in Tom, to 337-T, are transcripts
12:49:05	10	of the recordings that share that same exhibit number. We
	11	would put them in the folder with the other side. We move
	12	admission of those.
	13	JUDGE GUADERRAMA: 337-T?
	14	MR. DUNN: 332-T to 337-T.
12:49:18	15	(Plaintiffs' Exhibit Numbers 332-T to 337-T
	16	offered into evidence.)
	17	JUDGE GUADERRAMA: So, also, just now Mr. Fox
	18	used Exhibit 342, which was purposely omitted. It was a
	19	video, I think, with Judge Henry.
12:49:34	20	MR. DUNN: Yes I'm sorry. I didn't mean to
	21	interrupt you. So we have 348 to 342 now exist that have
	22	been provided to the State. We're working on an amended
	23	exhibit list for those. We'll move admission once we have
	24	that exhibit list on file.
12:49:49	25	JUDGE GUADERRAMA: All right. Thank you.
		Laura Wells, RPR, RMR, CRR, RDR

	1	Who is your next witness?
	2	MR. DUNN: Did I get a ruling on the admission of
	3	the three
	4	JUDGE GUADERRAMA: They are admitted. Yes, sir.
12:49:55	5	Well, do we see any objection, Ms. Thorburn? Sorry.
	6	MS. THORBURN: Did he say 332?
	7	MR. DUNN: Yes.
	8	JUDGE GUADERRAMA: 332-T through 337-T, which
	9	corresponds to 332 to 337.
12:50:10	10	MS. THORBURN: No objection, Your Honor.
	11	JUDGE GUADERRAMA: They are admitted. Thank you.
	12	(Plaintiffs' Exhibit Numbers 332-T to 337-T
	13	admitted into evidence.)
	14	MS. THORBURN: The State calls Christina Adkins.
12:50:18	15	JUDGE GUADERRAMA: Christina Adkins.
	16	Good afternoon, Ms. Adkins. Raise your right hand,
	17	ma'am, to receive the oath.
	18	Do you solemnly swear or affirm the testimony that you
	19	will give in this proceeding will be the truth, the whole
	20	truth, and nothing but the truth so help you God?
	21	THE WITNESS: I do.
	22	JUDGE GUADERRAMA: Thank you, ma'am. Have a seat
	23	there, please.
	24	Ms. Thorburn, whenever you are ready, ma'am.
12:50:54	25	MS. THORBURN: Thank you, Your Honor.
		Laura Wells, RPR, RMR, CRR, RDR

	1	CHRISTINA ADKINS,
	2	having been first duly sworn, testified as follows:
	3	DIRECT EXAMINATION
	4	BY MS. THORBURN:
12:50:57	5	Q. Can you hear me all right?
	6	A. I can.
	7	Q. Well, good afternoon, Ms. Adkins, and welcome to El
	8	Paso.
	9	A. It's nice to be back.
12:51:04	10	Q. Could you please state and spell your name for the
	11	Court?
	12	A. Of course. My name is Christina Adkins.
	13	C-h-r-i-s-t-i-n-a. Adkins is A-d-k-i-n-s.
	14	Q. And we are very glad to have you back in El Paso.
12:51:20	15	Since you were here so recently, could you just remind
	16	the Court what it is that you do?
	17	A. Of course. I am currently serving as the director of
	18	elections for the Texas Secretary of State's office. And
	19	in that role I oversee the elections division where we
12:51:34	20	provide advice and assistance to local election officials.
	21	We oversee the statewide election management system. We
	22	provide auditing and training services. A number of
	23	things related to the administration of elections.
	24	Q. How long have you been doing that?
12:51:47	25	A. In my current role as director, I have been in this
		Laura Wells, RPR, RMR, CRR, RDR

- position for a little over two years; but I have worked 1 for the Secretary of State's office in the election 2 3 division for about 13 years. How many election cycles would you say that you have 4 worked in elections? 5 Well, I began my employment in the elections division 6 7 in 2012. So I have worked four presidential elections and then all of the accompanying elections in between. Before we get into the details of how elections are 10 really run and the procedures, I want to talk about just a couple of things that have come up in the case. 11 12 Α. Of course. 13 Are you aware of what Spanish surname voter registration is? 14 15 Α. Yes. 16 What is it? Q. 17 So we are required to send out a mailer to certain 18 individuals that have a Hispanic surname when it comes to
- 12:52:43 20

19

12:52:01

12:52:17

12:52:28

21 translation of the amendment themselves, or the language,

lists the constitutional amendments and provides a

our constitutional amendments. We provide a mailer that

- 22 the proposed language, and an explanatory statement. And
- 23 that list is derived from a list that's created by the
- 24 U.S. Census Bureau, and it's a list of Hispanic surnames.
- 12:53:02 25 Q. Is the Spanish surname voter registration list a

- 1 **A.** Yes.
- 2 Q. What is the public required to provide when they
- 3 request that information?
- 4 A. So I believe it's under 18.067. It provides that
- 12:55:27 5 individuals have to sign an affidavit, essentially, that
 - 6 says that they will not be using it for certain types of
 - 7 commercial purposes. And I'm paraphrasing there.
 - 8 Q. And are those individuals who sign that affidavit, are
 - 9 they allowed to then share that information with third
- 12:55:41 10 parties?
 - 11 A. There is nothing in the law that would prevent them
 - 12 from sharing it with third parties, no.
 - 13 Q. Are those third parties then required to sign an
 - 14 affidavit?
- 12:55:49 15 **A.** No.
 - 16 Q. Okay. Now I want to talk about the details of
 - 17 elections.
 - 18 A. Excellent.
 - 19 Q. I'm going to have Richard bring up what we've marked
- 12:56:00 20 as State's Exhibit 1460.
 - 21 MS. THORBURN: Yeah. If we could scroll down, I
 - 22 believe it's page 4 of the PDF, and zoom in on the bottom
 - 23 where it says "Important election dates." Okay.
 - 24 BY MS. THORBURN:
- 12:56:16 25 Q. Have you seen this document before?

	1	A. Yes, I have.
	2	Q. What is it?
	3	A. This document was created by our office, the Secretary
	4	of State's office. We provide a list typically on a
12:56:27	5	two-year cycle of all of the upcoming important dates
	6	related to upcoming elections. We do that prior to
	7	issuing a more detailed calendar for each election.
	8	MS. THORBURN: Okay. Richard, if you could,
	9	maybe we need to look at this page and the next page.
12:56:52	10	Great.
	11	BY MS. THORBURN:
	12	Q. Ms. Adkins, just on a high level, running through each
	13	of these dates, could you just explain to the Court the
	14	process going from precinct chair filing to the primary
12:57:02	15	election?
	16	A. So our primary election is scheduled for March 3rd of
	17	2026 this next year. Prior to the primary election taking
	18	place, there is a number of very relevant dates and
	19	deadlines that pertain specifically to candidacy.
12:57:16	20	The first date that you have on the list that you
	21	provided here, Tuesday, September 9th, 2025, that is the
	22	first day of the filing period for individuals that are
	23	applying for a party office. And that's the office of
	24	precinct chair.
12:57:31	25	The next date that's listed on this calendar is

Saturday, November 8th, 2025. That is the first day of 1 2 the filing period for candidates that are primarily 3 seeking public office. That's the big filing period start date. That filing period takes place for about 30 days. And the final date for which a person can submit an 5 12:57:48 application for seeking the nomination in the primary 6 7 election process, if we're speaking about primaries 8 specifically, is Monday, November -- I'm sorry -- Monday, December 8th, 2025. So am I correct that Tuesday, September 9th, was about 10 12:58:03 11 a month ago? 12 Α. That's correct. 13 Ο. And the November 8th date, would that apply to congressional candidates? Yes. That's correct. 15 Α. 12:58:15 16 How do the deadlines that you just described interact Q. 17 with each other? 18 So we have deadlines in the election code that are keyed off of our election date, where we count backwards from our election date. 20 12:58:30 21 And then we've got a number of deadlines, and I think these are a good example of those, that are set by 22 23 statute. And they are set not keyed off of the election date itself but are defined in Texas law. 2.4 25 These -- the deadlines for an election kind of all 12:58:43

	1	meet in the middle or they have a point where they all
	2	come together. And these candidate filing deadlines are
	3	the first big deadlines in the election process that
	4	pertain to the primary election and that a number of other
12:58:58	5	election deadlines are keyed off of.
	6	Q. Now that we've talked about the deadlines, I want to
	7	talk about the preparation that counties do for these
	8	deadlines in these elections.
	9	Do you know what map counties are planning on using
12:59:14	10	for the primary, the upcoming primary?
	11	A. For the upcoming primary in March, the maps that our
	12	counties would be working under at this moment would be
	13	the maps that are current law, that were came out of
	14	our most recent special session and that were signed by
12:59:29	15	the governor in early September.
	16	Q. So that would be C2333 or the 2025 map?
	17	A. The 2025 maps, correct, yes.
	18	Q. How do you know that they are planning on using those
	19	maps?
12:59:41	20	A. Our office is charged with providing guidance to our
	21	election officials related to new laws as they are passed
	22	by the Texas Legislature. So when these maps were signed
	23	into law and we had effective maps essentially to work off
	24	of because these maps will be in effect for the primary
01:00:00	25	election, we began educating county election officials of

the adoption of these maps to make sure that they were 1 2 aware that they needed to be reviewing them to determine 3 if there is any additional efforts they needed to make on the local level for compliance. 4 5 And so we began that process immediately thereafter 01:00:14 6 the maps -- after the governor signed the map or signed 7 the law regarding the maps. We have done a number of 8 web-based trainings. We had an in-person training with our county political party chairs. And at this training a lot of our election officials also attend in person. And 10 01:00:32 have been answering a lot of questions about this, you 11 12 know, over the last few months. 13 In all of our interactions with the counties, we have 14 been reiterating that these maps are the maps that are in place for the primary. Unless there is something, a court 15 01:00:45 16 order or something telling us otherwise, we have to 17 proceed and move forward with the maps that are law, that 18 will be law. Do you know when the counties began preparing to use 20 these maps? 01:01:01 21 I speak to a lot of county election officials on a 22 regular basis. Again, we have been reiterating the need 23 to review these maps very regularly. And a number of 2.4 counties that were impacted by these changes have 25 indicated to me that they began reviewing them immediately 01:01:15

- 2 **Q.** Do you know how much work has already been completed in implementing these maps?
- 4 A. Some of that is going to vary on a county-by-county 5 basis. So I can't speak to what each individual county
- 6 has done. But I can say that counties -- many counties
- 7 have already begun the review process to determine what
- 8 those local changes are that they need to make and are in
- 9 the process of redrawing their county election voter
- 01:01:46 10 registration precincts, which is the change that counties
 - 11 would have to make to comply with the new maps. And many
 - 12 counties have already begun that process and started
 - 13 mapping all those changes out.
- Q. Now that we've gone through the topics the counties
 are going to have to do, I want to talk about how the new
 maps affect the candidates.
 - Have candidates begun campaigning under the new maps to your knowledge?
 - 19 A. Yes.

01:01:29

- 01:02:09 20 Q. Do you know when candidates started campaigning under
 - 21 the new map?
 - 22 **A.** I would say that I noticed -- and I try to keep track
 - 23 of these things, but I did notice that we were starting to
 - 24 see announcements from different individuals right after
- 01:02:24 25 the maps were adopted and, you know, have continued to

	1	receive inquiries from candidates that were seeking to run
	2	under the new map to determine what their requirements
	3	were for seeking public office.
	4	Q. To your knowledge, what efforts have candidates
01:02:39	5	undertaken to campaign under the new map?
	6	A. Well, there is that's going to vary depending on
	7	the candidate, depending on the race. One of the things
	8	that I from our perspective of the Secretary of State's
	9	office that I have observed is we have a lot of questions
01:02:53	10	about what the candidate filing process entails.
	11	To file for public office, you submit a candidate
	12	application and you can also pay a filing fee or you could
	13	submit a petition in lieu of that filing fee. And that
	14	petition process requires gathering signatures of
01:03:09	15	individuals in your specific district. And so we have had
	16	a lot of questions about that candidate petition process
	17	and what territory lines should be used.
	18	So I think based on the number of inquiries that have
	19	come in to us on this issue, I would say that many
01:03:24	20	campaigns are in that process of preparing their candidate
	21	filings and interacting with voters in that capacity.
	22	Q. You mentioned petitions. How many signatures does a
	23	candidate need if they are going to go the petition route
	24	instead of filing a filing fee?
01:03:40	25	A. The specific number of signatures is different for the

	1	different types of office. But if we're speaking
	2	specifically about congressional races, those candidates
	3	would need 500 signatures from individuals that reside
	4	within their district.
01:03:53	5	JUDGE GUADERRAMA: Ms. Thorburn, it's 1:00. I
	6	don't know if you are close to being done with the witness
	7	and trying to reach that goal or
	8	MS. THORBURN: I think I apologize, Your
	9	Honor. I think we can be done in about ten minutes. Or
01:04:06	10	we can break now for lunch. It is completely up to you,
	11	Your Honor.
	12	JUDGE GUADERRAMA: Well, we have a lot of
	13	plaintiffs over there and if they are all planning to ask
	14	questions, we probably should break for lunch. So let's
01:04:15	15	go ahead and recess. Be back at, let's say, 2:20.
	16	(Morning session concluded 1:04 p.m.)
	17	Date: October 8, 2025
	18	COURT REPORTER'S CERTIFICATE
	19	I, Laura Wells, certify that the foregoing is a
	20	correct transcript from the record of proceedings in the
	21	above-entitled matter.
	22	/s/Laura Wells
	23	Laura Wells, CRR, RMR
	24	
	25	
		Laura Wells, RPR, RMR, CRR, RDR

1	APPEARANCES: (Continued)				
2	FOR THE WITNESS ADAM KINCAID:				
3	Mr. Phillip J. Strach Nelson Mullins 301 Hillsborough Street, Suite 1400 Raleigh, North Carolina 27603				
4					
5	phil.strach@nelsonmullins.com				
6	Also Present: Mr. Richard Rienstra				
7	Court Reporter:				
8	Leticia Perez, RMR, CRR 525 Magoffin Avenue, Third Floor				
9	El Paso, Texas 79901				
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13:38 1	PROCEEDINGS
2	JUDGE GUADERRAMA: Ms. Adkins is on the witness stand.
3	Ms. Thorburn, your witness.
4	CHRISTINA ADKINS,
5	previously duly sworn by the Court, was examined and testified
6	as follows:
7	CONTINUED DIRECT EXAMINATION
8	BY MS. THORBURN:
9	Q. Good afternoon, Ms. Adkins.
10	A. Good afternoon.
11	Q. Welcome back from lunch break. I think we had just been
12	talking about whether voters about candidates collecting
13	signatures instead of paying a filing fee. Do you remember
14	that?
15	A. Yes.
16	Q. Okay. Why would a candidate collect signatures instead of
17	paying a filing fee?
18	A. For certain offices in Texas well, all of our all of
19	our offices have a filing fee requirement. Some of them are a
20	little heftier than others the size of that filing fee.
21	Many candidates will opt to do a petition in lieu of paying
22	that filing fee so that they're not having to pay that cost.
23	Some candidates also choose to do it as a way of
24	introducing themselves to voters.

Q. Where do those signatures have to come from?

25

- 14:21 1 A. The signatures must be collected from individuals that
 - 2 reside within the territory for which that person is seeking
 - 3 office.
 - 4 Q. What would the effect be if the 2023 map is not used on
 - 5 those who are already collecting signatures?
 - 6 A. The 2023 maps?
 - 7 Q. The C2333. I apologize.
 - 8 A. Just wanted to clarify.
 - 9 Q. Thank you.
 - 10 A. So with respect to the 2025 maps -- so if candidates have
 - 11 | already begun the petition-gathering process and started
 - 12 | collecting signatures, relying on those lines for the different
 - 13 | congressional offices that were outlined in those maps, if they
 - 14 | were not able to -- if that changed -- let me phrase it like
 - 15 that.
 - If the maps changed, then it's possible that those
 - 17 | individuals that were gathering petition signatures may have
 - 18 | signatures, then, that are no longer valid and can't be counted
 - 19 | towards the overall signature total that they're required to
 - 20 gather.
 - 21 Q. Would it be possible for those candidates' filing to be
 - 22 invalidated?
 - 23 A. If a candidate filed a petition and it contained signatures
 - 24 of individuals that did not reside within the territory, those
 - 25 | signatures would not be counted towards the required totals

- 14:22 1 they -- they must obtain. And so it could impact the validity
 - 2 of that petition and could -- could lead to a candidate
 - 3 application -- application being rejected.
 - 4 Q. Are you aware of whether candidates have begun collecting
 - 5 | signatures?
 - 6 A. We've had a number of inquiries to our office on this
 - 7 | particular issue from a lot of candidates. And so I would say
 - 8 | that it is very likely that many candidates have already begun
 - 9 the petition-gathering process at this point.
 - 10 Q. So right before the lunch break, we had talked about how
 - 11 C2333, and not using C2333, would affect the candidates. I
 - 12 | want to ask what the effect of an injunction would be on the
 - 13 voters.
 - 14 A. Well, I think for voters, particularly, as they're
 - 15 | interacting with candidates, that -- that campaigning process,
 - 16 | that process of gathering petition signatures, that's how folks
 - 17 | are introduced -- how voters are introduced to various
 - 18 candidates.
 - So if candidates have been engaged in the campaign
 - 20 process, engaged in the petition-gathering process and
 - 21 interacting with a substantial number of voters, it could
 - 22 | create some voter confusion if there are some changes that
 - 23 impact what these individuals would eventually be voting on.
 - 24 Q. Now, I want to talk about the logistical consequences of
 - 25 changing any of the deadlines.

the Secretary of State's office.

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Just broadly, does any change to election dates have an impact on the process of conduction of the election?

- 3 A. Absolutely.
 - O. How so?
- A. Well, what we're speaking is -- with respect to the primary election, for example, we have our candidate filing periods that are set by statute. When that candidate filing period ends, the political party chairs are then required to enter information into our candidate filing system, which is run by

That candidate filing system provides a public display of all the candidates that have filed for that office. Many party chairs will receive a lot of applications at the late — at the last minute. So it takes several days to get all of that information entered into our system.

There's also a requirement immediately following that for a ballot drawing. Those ballot drawings are conducted on a local level. Sometimes the State will -- will assist with ballot drawings for local counties, but it is kind of a mad dash to get to that ballot drawing.

And then, at that point, immediately after the ballot drawing, counties will begin preparing their ballots. So they'll begin the programming process. They'll be testing their ballots. This all has to be done within about a three-week period.

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this is actually a change in the law that requires it to be

done much earlier in the process. And this is all because mail

done much earlier in the process. And this is all because mail ballots have to be sent out 45 days before election day. This

is a requirement under federal law. And for the primary

election, that 45-day deadline is January 17.

So from the time the candidate filing period closes, candidate information is entered into our system, the ballot drawing occurs, ballots have to be prepared, ballots and voting system equipment has to be tested, and in some cases, ballots printed in order to meet that 45-day deadline. It's already a very, very tight calendar. There's not very much wiggle room there.

They have to do public logic and accuracy testing,

- Q. So what would be the impact of changing the deadline for the opening of candidate filing?
- A. Changing the opening of the candidate filing period, delaying it -- if we're talking about a delay -- would impact all of these dates and deadlines. It has a kind of a cascading effect there, in the sense that we already have a very tight window with our filing period, between the filing period and date, and the time that mail ballots have to be sent out.

There's not very much time on the calendar that we have to play with. And it could impact the ability for counties to adequately prepare and test their ballots, and could impact their ability to meet that 45-day deadline.

- 14:27 1 Q. Why is testing the ballots important?
 - 2 A. For two reasons. One, it's required under State law that
 - 3 our election officials do require what we call logic and
 - 4 | accuracy testing. This is done in a public forum, so people
 - 5 can come in and observe that process.
 - So there's a compliance issue with State law, and then
 - 7 on top of that, that was the process by which we ensure that
 - 8 our equipment and the programming related to that equipment is
 - 9 accurate and will adequately -- I'm sorry, accurately tabulate
 - 10 | the election results. It's a very, very important piece of the
 - 11 process, because it ensures accuracy for your outcomes.
 - 12 Q. And so I want to make sure I'm understanding you correctly.
 - 13 Is what you're saying that moving the opening of the candidate
 - 14 | filing deadline, that would affect that timeline?
 - 15 A. Well, if we're moving that opening and we're shifting
 - 16 | everything, so if that candidate filing period is a 30-day
 - 17 period and it shifts everything, it does have an effect on all
 - 18 of those other dates.
 - 19 | O. What's the impact of changing the primary date?
 - 20 A. Changing the primary date could potentially be
 - 21 | catastrophically bad. It could be very difficult because we
 - 22 | also -- again, when we have a primary, we have our primary
 - 23 runoff. That is so many days after the primary itself, again,
 - 24 | because of the requirements to meet military and overseas
 - 25 ballots, those deadlines.

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Shifting that, there's not a lot of room there.

Though, it's happened before, it's -- it's very difficult to do because it impacts the ability to plan and prepare for the ballot for the general election. And that general election being in November, we already have, again, a tight time frame for preparing all of that information to get it ready for -- for the general election. And so any shifting there, again, compresses those time frames.

It also has the impact -- or I would say, it also potentially impacts candidates outside of the primary, candidates that are using the convention process, what we refer to as our minor parties. This impacts their dates and deadlines and impacts those convention dates and deadlines.

And then our Independent and write-in candidates, those deadlines could all be impacted as well, and it could impact, for example, an Independent candidate's ability to collect petition signatures, which is the only option those Independent candidates have under the law to get on the ballot.

- Q. Substantively, can changing the date of the primary affect the outcome of election?
- A. In my experience, I would say that's very possible, that it could impact outcomes. From what I have observed in my role over the years, going all the way back to 2012, there have been times where -- changing time frames and giving candidates more opportunities or longer time periods to campaign, sometimes

Leticia D. Perez 525 Magoffin Avenue El Paso, Texas 79901

- 14:29 1
- 1 allows different issues to come up, allows different candidates
 - 2 | to get momentum. So it could impact outcomes in the sense that
 - 3 | candidates may not have been prepared for that, and it could
 - 4 impact campaigning and their ability to educate the public on
 - 5 their -- on their views.
 - 6 Q. Could the deadline problems be solved by bifurcating the
 - 7 primary?
 - 8 A. Bifurcating the primary and -- and having federal elections
 - 9 | separate from state elections would be extremely challenging
 - 10 for a couple of reasons. First and foremost, we are not used
 - 11 to that structure in Texas. Though other states have that, we
 - 12 have never conducted our elections that way in recent -- in
 - 13 recent times, with any kind of bifurcated process.
 - So voters have an expectation that they're going to be
 - 15 | voting on their primary election on Super Tuesday for all of
 - 16 our races, state and federal races. So there's an expectation
 - 17 | there associated with what voters believe to be our election
 - 18 dates. So there's definitely an educational component to that
 - 19 that would be very hard to overcome, I think, this late in the
 - 20 game.
 - 21 And then on top of that, that -- that would create a
 - 22 | substantial funding issue. We have a primary fund where the
 - 23 State pays for and administers most of the -- or we pay for
 - 24 | most of the expenses associated with the primary election and
 - 25 we administer these funds. These allocations are based on the

- 14:31 1 | assumption that we're having a primary and a primary runoff,
 - 2 and if we were to bifurcate the system, we would now have four
 - 3 elections instead of two.
 - And so that was not budgeted for on the stateside.
 - 5 But I think an even bigger problem would be our local
 - 6 jurisdictions, our county election offices. They have
 - 7 | significant costs associated with running primary elections
 - 8 that, by law, they have to cover. And nobody's budgeted for
 - 9 two additional elections on that scale.
 - 10 Q. If any changes were to be made -- or an injunction entered,
 - 11 | are changes -- does the timing of the change affect the
 - 12 magnitude of the impact on the process?
 - 13 A. I would say yes to that. That the later we are in the
 - 14 process, the harder it is to adapt to changes, and the harder
 - 15 | it is to effectively modify policy and procedures to, you know,
 - 16 | adequately impact -- or adequately do that change. It's going
 - 17 to be harder on candidates, harder on voters, harder on
 - 18 | election officials the closer we get to an election with any
 - 19 kind of changes in election policy.
 - 20 Q. And are counties already preparing to run the election
 - 21 under the 2025 map?
 - 22 A. Yes.
 - 23 Q. Ms. Adkins, in your opinion, when did the 2026 primary
 - 24 begin?
 - 25 A. Oh. Well, I believe that as soon as we had the maps, as

- 14:32 1 | soon as we knew what -- what the lines were gonna be, knowing
 - 2 | that redistricting was taking place, I would say that that's
 - 3 when the process began for most of our counties that were
 - 4 impacted, because that's when they began looking at those to
 - 5 review for potential changes.
 - And then on top of that, our precinct chair filing
 - 7 period started in September. And so the wheels are already in
 - 8 motion for the primary election. Many counties are already
 - 9 making plans, making preparations for that election.
 - I know we have an election or two before then, but as
 - 11 | far as the magnitude of what a primary is, and the amount of
 - 12 | work that takes to go into it and the amount of planning that
 - 13 goes into that, that work has already begun.
 - 14 Q. If this Court issues an injunction tomorrow, will it cause
 - 15 | some level of voter confusion?
 - 16 A. I would say yes.
 - 17 Q. Will some candidates have to reconsider what district
 - 18 | they're running in?
 - 19 A. Yes.
 - 20 Q. Will some candidates have to restart the process of
 - 21 | collecting signatures?
 - 22 A. Yes.
 - 23 Q. Will an injunction, even if it's issued tomorrow, impact
 - 24 this election?
 - 25 A. Yes.

- 14:33 1 Q. Sitting here today, can you know exactly what that impact will be?
 - A. I would say that the impact depends on the individuals that we're looking at. Those impacts might be more significant for
 - 5 our candidates. They would -- you know, they might be more
 - 6 | significant for voters in certain parts of the State. It just
 - 7 depends kind of geographically where they were, how they were
 - 8 impacted, and where those county election officials are in the
 - 9 process. Some of them are further along than others.
 - And so while I can say that there would be -- I
 believe that there would definitely be impacts, the scale of
 those impacts is hard to evaluate because it varies -- it's
 going to vary depending on the group we're talking about, or
 - 15 Q. Is this redistricting process and the timeline novel?

the part of the state we're talking about.

14

- 16 A. No, no. The timelines that we're operating on right now
- 17 | are very similar to the timelines that we were operating in, in
- 18 | 2021. Redistricting then was delayed because of the census
- delays as a result of COVID. And so we're actually very
- 20 closely aligned with those time frames were back then.
- I would say the difference between 2021 and this
- 22 mid-decade redistricting is that this is a smaller scale of
- 23 redistricting. In 2021, we were having to make a lot more
- 24 changes because all of our maps were impacted, and I think even
- 25 locally there were impacts to county offices or even cities and

- 15:07 1 A. Correct.
 - 2 Q. Okay. And then, when that election comes up again next
 - 3 year, many of those same voters won't be able to vote for the
 - 4 | candidates running for CD18. Isn't that correct?
 - 5 A. You mean in the primary, when the actual primary takes
 - 6 place?
 - 7 O. Yes.
 - 8 A. That is not an uncommon phenomenon that happens after any
 - 9 kind of redistricting. We had a situation in 2021, I think it
 - 10 | was Representative Filemon Vela -- his seat. There was a
 - 11 vacancy, and we had to conduct that election under different
 - 12 lines.
 - So that -- that scenario happens with -- anytime
 - 14 | there's a vacancy that occurs in an existing office, even when
 - 15 | there's a redistricting change.
 - 16 Q. So you mentioned one other instance. That seems -- still
 - 17 | seems to be -- the word is "uncommon." You just cited one
 - 18 instance. Does it happen a lot of times?
 - 19 A. I would say it probably has happened every time we've done
 - 20 | redistricting, that a vacancy will occur sometime after the
 - 21 | redistricting plan is adopted for the remainder of that
 - 22 | individual's term. And so having to run an election on
 - 23 different lines is something that our counties have had to do
 - 24 before.
 - 25 Q. Okay. But you can't cite any other specific ones?

- 15:09 1 A. The Representative Vela seat in 2022, I just remember that
 - 2 | off the top of my head, but I'm sure we can find other examples
 - 3 | if need be.
 - 4 Q. Okay. Thank you.
 - 5 A. Yes, sir.
 - 6 MR. BLEDSOE: Thank you, Your Honor.
 - JUDGE GUADERRAMA: Thank you, Mr. Bledsoe.
 - 8 Ms. Thorburn?
 - 9 MS. THORBURN: Very briefly, Your Honor.
 - 10 REDIRECT EXAMINATION
 - 11 BY MS. THORBURN:
 - 12 Q. Ms. Adkins, would you say that this current redistricting
 - 13 | cycle has been highly publicized?
 - 14 A. Yes.
 - 15 Q. And would you say that candidates have been planning on
 - 16 | running under the 2025 map?
 - 17 A. Yes. Based on the inquiries that have come into our
 - 18 office, I do believe candidates have already initiated that
 - 19 application process or campaign process based on new maps.
 - 20 Q. You spoke with my friends on the other side about redrawing
 - 21 | some precinct lines. Do you remember that?
 - 22 A. I do.
 - 23 Q. Will all of the precinct lines have to be redrawn?
 - 24 A. No.
 - 25 Q. Why not?

- 15:10 1
- 1 A. There were large parts of Texas that were not impacted by
 - 2 this congressional redistricting, and so for those counties --
 - 3 | I mean, we have entire counties that were impacted, so those
 - 4 | counties don't have to make any changes and then, you know,
 - 5 depending on how the lines were modified in a given county, it
 - 6 may not impact other precincts within that county. It just
 - 7 | varies depending on the county itself.
 - 8 Q. And I believe you mentioned to my friends on the other
 - 9 | side, something about entering the changes into a system. And
 - 10 | I think you said the changes can't be entered until after the
 - 11 election in November. Is that right?
 - 12 A. That's correct.
 - 13 Q. Does that mean they can't start making the changes until
 - 14 after the election?
 - 15 A. No. I mean, I think we've -- in the counties that I've
 - 16 | spoken to about this, they began that process of making the
 - 17 determinations on those changes. I mean, they began that a
 - 18 | month ago, you know, well, in advance of, I think, the November
 - 19 election, so that they could move swiftly after the November
 - 20 election to formalize those changes.
 - 21 This is the same process they filed -- or followed in
 - 22 | 2021. This is the normal process and time frame with respect
 - 23 to entering changes into our system anytime redistricting takes
 - 24 place.
 - MS. THORBURN: I pass the witness.

2.4

do not support open borders. These are not just talking
points. These are the words and values of the people that I
represent in South Texas. And therein lies the truth, members.

The other party lost us Hispanic voters. They lost us when they shut down our churches during COVID. They lost us when they dismissed faith, family, and the sanctity of life. They lost us when they stopped listening to the very people that they claim to represent. And they keep losing us more and more and more, especially in South Texas.

This is not a racial shift. This is a value shift.

And no amount of shouting racism is going to change that. The people of South Texas have spoken, and Washington, DC now needs to start listening. We've all seen the political shift in South Texas over the past several years. It came to a head this last election. I won my seat. President Trump won counties all along the southern border that had not voted Republican in generations, if ever.

President Trump won with 55 percent of the Latino vote, and doubled his support among Black voters from where it was in 2020. So let's stop pretending that this is all about race. It is about values. It is about representation -- real representation. The fact that we are redrawing the maps is to ensure that, as these shifts have happened and continue to happen, that the people are able to have representation that reflects their values, not their last name, not their skin

1 color.

- These maps give Texans a voice. A voice that reflects
- 3 their values, not outdated assumptions about race or party.
- 4 That is why I support them, because our job is to ensure that
- 5 | the people of Texas, their voices, their families, and their
- 6 priorities, are represented at our nation's Capital.
- 7 So if you're worried about losing minority votes in
- 8 this next election, stop blaming maps and start looking in the
- 9 mirror. Stop judging people by the color of their skin and
- 10 start focusing on the content of their character. And with
- 11 | that, members, I proudly stand and look forward to casting my
- 12 vote in favor of House Bill 4.
- Thank you, Mr. President. And thank you, members.
- 14 (Video concluded.)
- 15 Q. (BY MR. BRYANT) Senator, did you thereafter, in fact, vote
- 16 for HB4?
- 17 A. I did.
- 18 Q. Was that vote in the Texas Senate a hundred percent on
- 19 party lines?
- 20 A. Yes.
- 21 Q. Do you still believe today that HB4 was really about
- 22 | enacting congressional districts that better reflect the values
- of Texas voters, and not about race or ethnicity?
- 24 A. T do.
- 25 Q. And, in your judgment, was HB4 also about creating more

- 15:47 1 | congressional districts in Texas where voters have a realistic
 - 2 | chance, or choice, if they choose to do so, to send Republicans
 - 3 to go represent them in Washington?
 - 4 A. That's correct, yes.
 - 5 Q. Senator, in this case, Plaintiffs accuse you and other
 - 6 Republican senators who voted for HB4 of intentionally
 - 7 discriminating against Texas Hispanic voters on the basis of
 - 8 their race or ethnicity.
 - 9 As a Hispanic senator representing a district that's
 - 10 | over 80 percent Hispanic, was it your intention in voting for
 - 11 | HB4 to discriminate against Hispanic Texans on the basis of
 - 12 their race or ethnicity?
 - 13 A. Not at all.
 - 14 Q. And in voting for HB4, did you intend to discriminate
 - 15 | against Black Texans or Asians -- Asian Texans or any other
 - 16 | group of Texans on the basis of their race or ethnicity?
 - 17 A. Not at all.
 - 18 MR. BRYANT: Pass the witness.
 - 19 JUDGE GUADERRAMA: Ms. Perales?
 - 20 CROSS-EXAMINATION
 - 21 BY MS. PERALES:
 - 22 Q. Good afternoon, Senator Hinojosa.
 - 23 A. How are you?
 - 24 Q. I'm well, thank you. My name is Nina Perales. I represent
 - 25 | the LULAC Plaintiffs in this case.

- 16:49 1 Q. And where did this hearing take place?
 - 2 A. That took place in Austin.
 - 3 O. Who introduced the bill in committee?
 - 4 A. Representative Hunter, as the bill author, was recognized
 - 5 by me to lay out the bill.
 - 6 Q. Approximately, how much time did he take to lay out the
 - 7 | bill?
 - 8 A. I'd have to say somewhere between -- and I want to make
 - 9 | sure I understand your question. Are you talking about the
 - 10 | time when he would have just presented it, or the total time
 - 11 | when he would have presented it and answered questions?
 - 12 Q. The latter.
 - 13 A. Okay. So that total time would have been approximately an
 - 14 | hour plus or minus 15 minutes.
 - 15 Q. In his remarks, did Representative Hunter comment on the
 - 16 racial demographics of specific districts?
 - 17 A. He did.
 - 18 Q. Did he also comment on the political performance of
 - 19 specific districts?
 - 20 A. He did.
 - 21 Q. Do you recall if his comment on the racial demographics or
 - 22 on the political performance of specific districts was in
 - 23 response to questions by members of the committee?
 - 24 A. At first, I think he -- he -- when laying out the measure,
 - 25 gave CVAP data for certain districts, and then also answered

- 16:50 1 questions about CVAP data from members of the committee.
 - 2 Q. At the time of this hearing, for the plan that was
 - 3 introduced, were racial demographics available to the members
 - 4 of the committee?
 - 5 A. Yes.
 - 6 Q. Were they available to the public?
 - 7 A. Yes.
 - 8 Q. And so anybody could look at them if they so chose?
 - 9 A. Yes. All you had to do was go to
 - 10 redistricting.capitol.tx.gov, I believe, and it's all there to
 - 11 this day.
 - 12 Q. Have you looked at the racial demographics of any plan?
 - 13 A. I have not looked at the details. I have seen the cover
 - 14 page out of the corner of my eye because Vice Chair Rosenthal
 - 15 | printed them out and was asking questions of Chairman Hunter
 - 16 | about how Chairman Hunter had prepared this data. But the
 - 17 | truth was, he had Texas Legislative Council -- is the one that
 - 18 prepares that data, not members of the Legislature.
 - 19 O. And at this hearing, was there a vote on the bill?
 - 20 A. Not on August 1st. We would have had a formal meeting the
 - 21 | next day to vote the bill out.
 - 22 Q. So at the formal meeting the next day, August 2nd, was
 - 23 | there a vote on HB4?
 - 24 A. Yes.
 - 25 Q. And what -- did HB4 pass through committee?

- 16:51 1 A. It did.
 - 2 Q. And do you remember the partisan makeup of the vote?
 - 3 A. It would have been -- I believe the vote was 12 to some
 - 4 number less than the balance of the committee because some
 - 5 Democratic members were not there. All Republicans -- everyone
 - 6 that voted "yes" was a Republican. Everyone that voted "no"
 - 7 | was Democrat.
 - 8 Q. So it was along party lines?
 - 9 A. Along party lines, yes.
 - 10 Q. All right. After the committee met on August 2nd, what
 - 11 happened?
 - 12 A. Well, immediately, there were public comments made online
 - 13 | that there may be a quorum break by my Democratic colleagues.
 - 14 And then there was a quorum break over the weekend, where
 - 15 | members took a charter jet to Chicago, Illinois, before the
 - 16 House was to convene that Monday on August 4th.
 - 17 Q. And I'm sure the Court is well aware of this, but what does
 - 18 | a break in quorum in the House -- how does that affect the
 - 19 House's ability to conduct business?
 - 20 A. Under the constitution, Article III, Section 10, a
 - 21 | two-thirds of the members duly elected for the Texas House must
 - 22 be present to conduct business as that is interpreted, under
 - 23 | the House rules, the -- and the parliamentarians.
 - 24 What that means is if you don't have quorum, the first
 - 25 | step, as a point of order of a lack of quorum, a call of the

- 17:02 1 | Cruz to 60.08 percent.
 - These are examples in the 12 that we've laid out.
 - 3 CD36, the Republican political performance remains strong.
 - 4 Trump at 61.75 percent, Cruz both high performance.
 - 5 CD38 increases Republican political performance from
 - 6 59.46 percent Trump to 59.64. Cruz would increase from
 - 7 | 56.57 percent to 56.73 percent.
 - 8 Now, CD22, it increases Republican political
 - 9 performance from 59.47 percent Trump to 60.05 percent. It --
 - 10 (Video concluded.)
 - MR. RHINES: You can stop that right there, Richard.
 - MR. RIENSTRA: Where did it stop?
 - 13 MR. RHINES: I don't know. It was after he talked
 - 14 about CD22 in the transcript.
 - MR. RIENSTRA: Line 23.
 - MR. RHINES: Thank you.
 - 17 Q. (BY MR. RHINES) Do you remember that?
 - 18 A. I do.
 - 19 Q. Was the stated reason for the changes in the CD22, in
 - 20 Brazoria County, for partisan purposes?
 - 21 A. It certainly improved the partisan purposes -- performance
 - 22 of CD22.
 - 23 Q. And just to clarify, do you have constituents that live in
 - 24 Brazoria County?
 - 25 A. Yes. I represent western and southern Brazoria County.

- 17:04 1 Q. Fantastic. And so eventually, does this bill, 2333, HB4's
 - 2 2333 -- does that pass committee?
 - 3 A. It does.
 - 4 Q. And does it pass in the House?
 - 5 A. It does.
 - 6 Q. Does it pass on partisan lines in both instances?
 - 7 A. It did.
 - 8 Q. I want to show you one last very short video. I promise.
 - 9 It's gonna be Exhibit 1385.
 - 10 (Video played.)
 - 11 REPRESENTATIVE VASUT: I see no evidence that this was
 - 12 racially drawn. This is a political performance map. I
 - 13 haven't looked at those. The question I had when I, you know,
 - 14 looked at this -- and I was evaluating it myself, was -- does
 - 15 | this improve the political performance of Republicans in Texas?
 - 16 Which is where we have been trending and what we need to do to
 - 17 | respond nationally. This is not just a Texas issue. It's a
 - 18 | nationwide issue, it's perhaps one of the biggest issues that
 - 19 | we're taking up. And when we've seen all of these blue states
 - 20 | over-perform with their maps and Texas is underperforming, that
 - 21 | puts Republicans at a distinct disadvantage nationwide, and
 - 22 | it's right for Texas to step up.
 - So I have not seen any evidence that this map was
 - 24 racially based. What I have seen is evidence that this map was
 - 25 politically based. And that's totally legal, totally allowed,

17:05 1 | alleged totally fair.

2 UNIDENTIFIED SPEAKER: To be clear, the Department of
3 Justice raised racial concerns, saying that some of these
4 districts may be unconstitutional. As a pretense to kick off

5 this process.

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You're saying this was about politics. This is about political power?

REPRESENTATIVE VASUT: I disagree with the assumption that this process had anything to do with the DOJ letter.

Yeah, they sent a letter, but as you know, the proclamation called us in to do congressional redistricting, and we did congressional redistricting when we passed HB4 based off of political performance.

So I frankly don't care what the DOJ letter said -- and I think it's pretty clear that no one does. And I ought to probably prepare to sign this bill. So this bill was not based off of that DOJ letter. That bill was based off of improving political performance.

19 (Video concluded.)

- 20 Q. (BY MR. RHINES) Do you recall giving this interview,
- 21 | Chairman Vasut?
- 22 A. I do.
- 23 Q. When did you give it?
- 24 A. That would have been right after the formal meeting on
- 25 August 2nd, 2025.

- 16:52 1 | House could be put on where they could go and issue civil
 - 2 arrest warrants to bring them in. No further business can be
 - 3 transacted on the floor of the House. Business could be
 - 4 transacted in committees if bills were already referred to
 - 5 there. But once they're voted out of the committee, they can't
 - 6 be considered on the floor of the House because no business can
 - 7 be done.
 - 8 Q. When was quorum reestablished?
 - 9 A. Quorum would have been reestablished on the second
 - 10 legislative day of the second called session.
 - 11 Q. So when did the first called session adjourn sine die?
 - 12 A. We adjourned sine die on August 15th, 2025. I believe it
 - 13 was that Friday.
 - 14 Q. And when did the second session convene?
 - 15 A. I believe it was an hour later, or approximately an hour
 - 16 later.
 - 17 Q. And you said on the 2nd day of that Second Special Session,
 - 18 quorum was restored?
 - 19 A. Yes. That would have been Monday. I believe that's
 - 20 August 18th, 2025.
 - 21 Q. Apologies. I just need to reorient my notes.
 - 22 Did the committee hold any hearings? And by the
 - 23 | committee, I mean the Redistricting Committee. Did they hold
 - 24 any hearings or any formal meetings?
 - 25 A. During the second call session?

1 Q. Hit me.

11:32:52

11:33:09

11:33:38

10

2 A. Okay. Great.

So the way this works is, as I mentioned earlier, when you fuse two districts and you split them in a new way, you do that with something called a spanning tree. What I call here a surcharge impacts which tree is chosen. And so, yes, that has a downstream impact on which districts are chosen, but it's not like a weighted coin telling you to prefer certain things over others. It is used in the

- 11 Q. The way that you are weighting core retention does not
- 12 differentiate between the core retention of Republican
- 13 districts, Republican-held districts, and Democrat-held
- 14 districts. Is that fair?

tree generation process.

- 11:33:24 15 **A.** Right. How core -- should I tell you how it's defined?
 - 17 Q. Well, let's answer my question first.

The way that you are talking to your robot about core retention doesn't say, I care more about core retention of Republican-held seats than Democrat-held seats, right?

- 21 A. Right. The measurement doesn't differentiate.
- Q. We'll talk about some of the other measurements that
 you used in drawing these maps, but it does stand to
 reason, right, that a Republican partisan who is drawing a

11:33:53 25 map might well prefer core retention of Republican-held

- 1 seats to Democrat-held seats?
- 2 A. My understanding is that the traditional districting
- 3 principle doesn't look at that; but as we've seen, the
- 4 principles do change over time.
- 11:34:08 5 Q. Now, on page 23 you talk -- you describe what you
 - 6 called your winnowing conditions, right?
 - 7 A. That's right.
 - 8 Q. That's an elegant phrase, Dr. Duchin. Is that an
 - 9 original to you?
- 11:34:19 10 **A.** The word "winnow"? No.
 - 11 Q. I'm not asking you if you generated the word; but
 - 12 winnowing conditions, is that your term?
 - 13 A. To apply a winnow to an ensemble is not original to
 - 14 me.
- 11:34:30 15 Q. It comes from the idea of separating the wheat from
 - 16 the chaff, right?
 - 17 A. That's exactly right.
 - 18 Q. So you have got some additional parameters that are
 - 19 designed to filter out or to make less likely that certain
- of the maps drawn are going to be unhelpful to your
 - 21 project; is that right?
 - 22 A. The filtering doesn't make it less likely. It's just
 - 23 yes/no.
 - 24 Q. It's just cutting those out altogether; is that right?
- 11:34:52 25 **A.** That's right.

	1	Q. And so your project here, the purpose for which you
	2	are drawing these maps, is to draw partisan maps so you
	3	can compare the racial features of this sort of baseline
	4	of partisan maps to the enacted maps; is that right?
11:35:08	5	A. Right. I think the way I described it before is the
	6	parameters attempts to achieve partisanship and the winnow
	7	confirms that partisanship is at least as strong as the
	8	map I'm comparing to.
	9	Q. One of the winnowing conditions that you set concerns
11:35:24	10	incumbency, right?
	11	A. That's right.
	12	Q. And you write [as read:] Incumbency, the double
	13	bunking of incumbents with respect to the address file
	14	provided by counsel, is no greater than in C2333.
11:35:37	15	Is that right?
	16	A. Yes.
	17	Q. And so, again, with the incumbency parameter that you
	18	are using in this report, you are not concerned about the
	19	partisan nature of the double bunking or the pairing of
11:35:55	20	incumbents, right?
	21	A. Right. What I did so this report just looked at
	22	the number of double bunks.
	23	Q. Stands to reason that a Republican partisan map drawer
	24	would care more about not pairing Republican incumbents
11:36:08	25	than pairing Democrat incumbents. Fair?

- That goes further than I'm comfortable saying. 1 Α.
- 2 don't --
- In either event, for this report, you did not tell the 3 Q.
- map drawing robot or -- to winnow out maps that paired
- Republicans, true? 5 11:36:27
 - Right. For this report I just filtered on the basis 6
 - 7 of a count of double bunks.
 - 8 Q. You describe the way that you are using -- the way
 - that you are analyzing for incumbency is that you are
- relying on an address file provided by counsel for this 10 11:36:54
 - 11 report, right?
 - 12 That's what it says, yes. Α.
 - In the weeks leading up to this hearing, I asked for 13 Ο.
 - you to produce the data -- to produce data in support of
- your reports; and you provided a ton of it, right? 15 11:37:06
 - 16 Yes. Quite a lot. Α.
 - 17 300 gigabytes, something like that, right?
 - 18 Α. I -- that's a lot. I believe you.
 - And that data you provided in support of your map
- 20 drawing project included the code that you used, right? 11:37:23
 - 21 Α. Definitely.
 - 22 The inputs that you would have then -- the input data
 - 23 that you would have then run through the code; is that
 - 24 right?
- 25 Α. Yes. 11:37:34

- And then also the outputs or the literal maps; is that 1 2 right?
- 3 Α. Yes.
- So I can see what your code was supposed to do, what
- you ran through the code, and what resulted from you 5 11:37:43
 - running through the code. Is that -- or what resulted 6
 - 7 from running that data through your code, right?
 - 8 Α. That's right.
 - Is it your standard practice to produce all of your
- inputs, all of your code, and all of your outputs? 10 11:37:57
 - My standard practice varies a little by context, 11
 - 12 depending on whether it's academic publication or court.
 - I'm sorry. In litigation? 13 0.
 - 14 I try to do that, yes.
- MR. KERCHER: Richard, let's look at Defendants' 15 11:38:19
 - Exhibit 1573, please. If we could zoom in a little bit on 16
 - 17 that. Even I can't see that. Maybe just give us the top
 - 18 left quadrant.
 - 19 BY MR. KERCHER:
- 20 All right. Dr. Duchin, this is the incumbent file you 11:38:40 Q.
 - 21 used for your August and September reports, true?
 - 22 That looks possible. Α.
 - 23 And I'll represent to you that I have redacted out the
 - actual addresses of the members of congress for obvious
- 25 reasons, right? 11:38:56

- Probably wise. 1 Α.
- This address file only contains 36 Texas congressional 2
- 3 members, right?
- That's right. Α.
- Because it is from 2020, right? 5 Q. 11:39:06
 - Possibly 2021, but certainly it contains 36. I agree 6 Α.
 - with that.
 - 8 Q. That means that for the incumbency analysis that your
 - robot ran in your August and September reports, you were
- relying on incumbent addresses that were out of date. 10 11:39:21
 - Fair? 11
 - 12 A. Well, as you know, I was then provided with updated
 - 13 addresses.
 - I want you to listen carefully to my question because
- I am asking you about your August and September reports, 15 11:39:35
 - 16 right?
 - 17 Α. Yes.
 - 18 Because those are the only reports that I have data Q.
 - for that I didn't get last night, right?
- A. 20 That sounds right. 11:39:45
 - 21 So for your August and September reports --
 - 22 Α. Yes.
 - -- when you were asking your robot to draw 100,000 23
 - maps at a time, it was relying on incumbency information
- 25 that was out of date? 11:39:58

- That's right. The reports use this information which 1 Α. contains incumbents from 2020 or 2021. 2
- 3 And, in fact, ten of the incumbents listed on Exhibit 1573 are not in congress as of 2024 or 2025, true?
- I'm willing to believe that. 5 Α. 11:40:17
 - Dr. Duchin, I have not yet had an opportunity to 6 analyze the additional analysis to which you just referred concerning an updated congressional address file. So I'm

not going to ask you about those conclusions.

10 Α. Okay. 11:40:56

11:41:14

- But I am going to ask you why you used an updated 11 12 address file for your maps. Was that because you thought that that would give you a better analysis? 13
- What is the question? Is the question about what was done in the report or is the question about what was done 15 16 since the report?
 - 17 Q. My question is about -- it's not about either one. My 18 question is: Did you change? Did you do initial analysis
 - because you realized your -- did you change from your
- 20 initial analysis because you realized you had not relied 11:41:31 21 on the correct data for your initial analysis?
 - 22 Well, I have been aware for some time that these 23 incumbent addresses are out of date and have been requesting updated incumbent addresses for months.
- 25 O. From whom? 11:41:46

	1	redistricting that you have read generally? Or are you
	2	trying to draw 100,000 maps that in some way resemble the
	3	character of the enacted map?
	4	A. I'm trying to layer in hypotheses that I have heard
11:51:47	5	for some of the legitimate factors that might have
	6	driven some of the legitimate or arguably legitimate
	7	factors that might have driven map creation.
	8	Q. I'm not sure that answers my question.
	9	My question is whether you are trying to draw 100,000
11:52:01	10	maps that simply look like maps in Texas that would abide
	11	by these general principles or that look like maps or
	12	are you trying to draw 100,000 maps that look in some way
	13	like the enacted map?
	14	A. Well, I'm just not aware of the principles used to
11:52:18	15	create the enacted map. So I can't simulate those. What
	16	I can do is take principles that I have heard articulated
	17	as reasonable principles that might be in play, and I have
	18	tried to test how those principles interact.
	19	Q. So it doesn't matter for you if, for example, the
11:52:35	20	partisan character that you have given to the maps your
	21	robot is drawing are in no way similar to the partisan
	22	characteristics of the enacted map?
	23	A. Well, it's always possible that the partisanship
	24	measurement used by the mapmaker was something I can't
11:52:49	25	contemplate. So that's why I have tried so many different

- Were you contacted while the maps were being considered in 1
- 2 the legislature or after they passed?
- Do you know when they were passed? 3 Α.
- If you don't know, that's fine.
- 5 Α. Okay. I don't know. 12:16:09
 - As a part of your analysis, though, that you have done 6
 - for the 2025 maps, you produced at least 100,000 maps from
 - your robot, right?
 - Α. Oh, millions.
- Millions. 10 Ο. 12:16:21
 - And part of the reason, Dr. Duchin, that you do the 11
 - 12 work that you do and you fly all the way out to El Paso,
 - not once but twice in a single calendar year, is because 13
 - voting rights matter to you, right?
- I'm here to provide my expertise. 15 12:16:36
 - 16 Well, I know. Q.
 - 17 But voting rights are important to you, fair?
 - 18 Α. I think voting rights are important. I do think that.
 - And I think, like the rest of us, you hope to be able
- 20 to eliminate racial discrimination in voting rights. 12:16:48
 - That's fair? 21
 - 22 Are we talking about my personal views or my expert
 - 23 view?
 - Q. Well, let's talk about motivations for doing the work
- 12:16:57 25 that you do.

8

```
MR. DUNN: The deadline for veto?
09:13 1
      2
                   JUDGE GUADERRAMA: Right.
      3
                   MR. DUNN: Well, it's unfortunate -- I don't know,
      4
          because we don't know when the legislature's going to adjourn.
      5
          And the Texas Constitution gives the governors deadlines based
      6
          upon when -- first the deadline happens from adjournment.
      7
                   And then, second, it depends on how long the session
      8
          is as to whether or not the bill came out within the last
      9
          ten days of session or not.
     10
                   JUDGE GUADERRAMA: So this is a special session.
     11
          Doesn't it have a built-in deadline?
     12
                   MR. DUNN: It does. It started Friday last, and so it
     13
          has 30 days from that date.
     14
                   JUDGE GUADERRAMA: So that date, then after that
     15
          there's another 20 -- ten days, because the bill would have
     16
          passed in the first part of it.
     17
                   JUDGE SMITH: But I think what Mr. Dunn is saying is
     18
          that they could adjourn early, sine die, before the 30 days.
     19
                   JUDGE GUADERRAMA: I'm just trying to figure out what
     2.0
          the --
     21
                   MR. DUNN: Sure.
     22
                   JUDGE GUADERRAMA: -- the latest -- the farthest-out
     23
          deadline for this is.
     24
                   MR. KERCHER: If that math is correct, ten days -- I
     25
          don't have any reason to challenge Mr. Dunn; it's been a minute
```

since I've looked at that portion of the Texas Constitution, 09:14 1 2 but if it's ten days after sine die and the 30-day session 3 lasted 30 days, then that would put us at about September the 4 25th. 5 And just for context, I believe the Governor has just 6 added a couple of things to the call for this session. Which, 7 they could move very rapidly, but that may suggest it may last 8 the full 30 days. 9 JUDGE GUADERRAMA: So then a hearing would be 10 appropriate outside that window, the first part of October? 11 Well, we would ask for a hearing before. MR. DUNN: 12 can address that in a minute, but what I call Gaber GPT was 13 able to pull up a Fifth Circuit here called Choice, Inc. of 14 Texas versus Greenstein, 691 F.3d 710. It's an August 2012 15 case. 16 This is a quote. "Importantly, the Supreme Court has 17 explained that one does not have to await the consummation of 18 threatened injury to obtain preventative relief. If the injury 19 is certainly impending, that is enough." 20 So on the matter of scheduling, shall I address that 21 now? 22 JUDGE GUADERRAMA: Yeah, we'll get to it in a second. 23 MR. DUNN: Okay. In fact, maybe -- it may be a good 24 JUDGE GUADERRAMA: 25 time to do it now. We'll come back. But let's talk about

09:16 1 | scheduling.

Do you have a general idea how many days of court time it would take to get this thing done?

MR. DUNN: Well --

JUDGE GUADERRAMA: Because that impacts when our three schedules could come together to accommodate.

MR. DUNN: Understood, Your Honor.

The Plaintiffs have conferred. What I'll state at the outset is the Motion to Schedule the hearing was initially filed on just some of the Plaintiff groups, but all of the Plaintiff groups joined in that motion. And all of them are ready and wanting to proceed on the Preliminary Injunction Hearing. And we'd like it to last no longer than five days. But we understand if the Court can't provide us five days because of its schedule. We'll take what we can get.

And to just be candid about it, we'll call our first witness on Tuesday. We just need time to get them here. We have been preparing to go to trial the minute this Court will let us do so. And we have -- the State at this point, at least with respect to the Brooks Plaintiffs, has had our pleadings and our expert report longer than we had to prepare them.

So we don't believe that this can't proceed in reasonable haste in order to give our clients their day in court, get a record. Ultimately this case, I think it's clear, will be decided by the U.S. Supreme Court on whatever decision

09:17 1 | this Court makes.

What I can say is that September 15th, the week that the Court has said it's first available is, we believe, the last week that this hearing should occur. We believe the Court should rule around October the 8th. That way the Supreme Court has approximately a month before the opening of the filing period to review this Court's decision.

If it took another couple of weeks it could possibly do so because their filing period lasts until December the 8th. So, in theory, if a final ruling from the Supreme Court were to come a week or two before the end of the filing period, people could adjust their filings and there would be no other changes necessary to the election calendar.

And that said, we think that the egregious unconstitutional conduct that we've laid out in our Preliminary Injunction and that we intend to prove here at trial is of the nature that justifies this Court changing the election deadlines if it becomes necessary.

If we proceed as we proposed, we don't believe it's necessary to change the dates. We think that this is an orderly process that allows the Court to weigh the evidence and make a decision on the evidence and law.

What I will also say, though, is, if it is the State's desire to delay, the State should also not be able to claim now, in October or November or December, that it's -- our

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS EL PASO DIVISION

LEAGUE OF UNITED LATIN | Case No. 3:21-cv-00259 AMERICAN CITIZENS,

[Lead Case]

Plaintiffs,

GREG ABBOTT, et al.,

Defendants.

SUPPLEMENTAL EXPERT REPLY OF SEAN P. TRENDE, Ph.D.

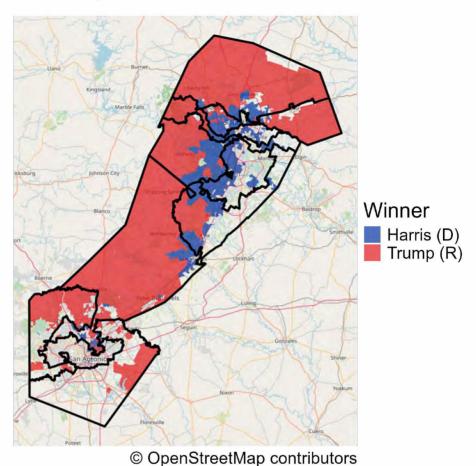
App. 593

Defendants' **Exhibits**

571

TXRD25_007000

Figure 29: Austin/San Antonio area white majority precincts, shaded red for Trump win and blue for Harris win, with C2333 district boundaries overlaid



3 Simulations Overview

Throughout these cases the various experts have repeatedly discussed computerized simulations, but the purpose and limitations of these simulations are often glossed over. But because a full treatment of the simulations included in the Barreto/Rios reports involves some deeper considerations than we have encountered in the past, I will spend some time up front discussing the simulations generally before turning to their specific simulations. This discussion is intentionally kept at a high level and simplified for readability, so nuances will be glossed over. But it will hopefully help the Court to better evaluate the data and to answer relevant questions.

The goal of determining whether a plan is drawn with partisan intent is a difficult one. In particular, the astronomically (literally) large number of maps available makes it difficult to compare a given map to the universe (again, literally) of possibilities, since there are, for all human purposes, a limitless number of possibilities.

With advances in computing power, however, it has become possible to have a computer generate a large number of maps conforming to certain criteria. A few of these techniques, if allowed to run an infinite amount of time, produce every map available (subject to given constraints).

Two of these techniques, "sequential monte carlo" and "merge-split" algorithms are employed in this matter. Without getting too far into the details of the algorithms, sequential monte carlo draws maps "from scratch," while merge-split changes a map in steps by selecting two adjacent districts, merging them together, and then re-splitting them into two (hopefully) different districts. Over the course of many, many "steps," this approach will explore the possible maps available.

In effect, these techniques produce a poll of potential maps. It's impossible to speak to every American to learn their political preferences, so instead we speak to a small sample and draw inferences from based upon that sample. In the same way, since it is impossible to enumerate every map, we ask the computer to produce a sample of those maps. The political or racial makeup of an enacted map can then be compared to the political or racial makeup of the computer-drawn ensemble. If the political or racial makeup of the enacted map differs from that of our ensemble, we might conclude that the enacted map was drawn with political or racial considerations in mind. Put differently, if our ensemble were truly produced under the same constraints as those which constrained the mapmaker, save for political and racial concerns, we might conclude that politics or race entered the mapmaker's calculations. If our ensemble is markedly different from the enacted map, we might conclude that race or politics was the predominate consideration.

There are three important caveats. First, these ensembles are powerful tools in certain circumstances. For example, when a map is so convoluted that there really can

be no valid consideration other than something like race or politics – in other words the map maker was effectively unconstrained – lightly constrained simulations will easily identify the map as a partisan or racial outlier. Since race is often unavailable as an explanation due to the limitations of the 14th Amendment, that will often leave politics as the explanation. This is the situation I confronted in my testimony in Maryland and New York.

When it clear a map is a gerrymander, but it is unclear whether it is a racial or political gerrymander, it can be more complicated. It can be especially complicated if state law allows for one of those types of gerrymanders. First and foremost, it is difficult to achieve a representative map set because these algorithms were not created to draw gerrymanders. In other words, it is hard to get them to draw a set of race-neutral political gerrymanders in order to rule out the possibility of race as an explanation, or vice-versa although there are workarounds of varying utility. The algorithms naturally tend to draw compact districts, so if a mapmaker is largely indifferent to compactness, or isn't at least theoretically constrained by a "strong" compactness requirement in a state constitution, it can be difficult to truly approximate the non-racial or non-political constraints under which the mapmaker was operating, because you have to force the simulations to act against their natural tendency.

Moreover, because race and politics are often intertwined in America, they are difficult to disaggregate. To the extent compliance with the federal Voting Rights Act is a legitimate reason to draw heavily on the basis of race, these explanations can sometimes be ruled out by "freezing" potentially protected districts – again, this tactic has been explored elsewhere, including by myself in New York and Maryland – and restricting analyses to areas where race is not a viable explanation. This is effectively what Dr. Barreto attempts to do in some of his analyses, although there are problems with the way that he has implemented it. Second, it is important to ensure that the simulations operate under the same set of constraints as the mapmaker. Because many of these constraints – compactness for example – often relate to political outcomes, failure to

constrain oneself in the same way as the map drawer can result in a politically skewed ensemble (relative to the map maker). Returning to our polling analogy, if you are polling Texas and have a list of residents of Dallas and Tarrant counties, you will probably obtain a racially diverse sample. If you see some other Texas pollster who gets a heavily all-White sample, you might suspect something is amiss and conclude that he was a bad pollster. If, however, this other pollster had a list that contained mostly panhandle counties, it will be difficult to isolate problems with his technique from the fact that you and he were simply operating under different constraints.

To make this more concrete, if a mapmaker is unconcerned with compactness and your algorithm tends to produce compact maps, it becomes more difficult to isolate politics (or race) as a driving factor in an enacted plan. The mapmaker might simply be drawing less compact districts than the algorithm, and because politics, race and compactness often intertwine, that compactness preference has a second order effect of producing a different racial or political makeup.

Or, a mapmaker might be interested in protecting incumbents of his or her party. He might do this by (a) ensuring they are not drawn into a district with another incumbent of the same party (b) ensuring that they are not drawn into a district that is politically unfavorable and/or (c) ensuring that they are not drawn into unfamiliar territory, risking a primary challenge. In my experience drawing maps, working with incumbents can constrain the acceptable outcomes in ways that are difficult to quantify; a map that placed them in a district with another incumbent or left them vulnerable to a primary challenge would be dead on arrival. Also, because race and politics are often interrelated in America, a map maker who wanted to draw districts that strongly favored his party would likely be sampling from a different set of possible districts than a simulation ensemble produced pursuant to generalized redistricting concerns.

Third, these simulations can be quite fragile, and their output must be carefully examined. The simulations tend to take user-imposed constraints quite seriously, and when too many constraints are imposed they may produce only a handful of unique plans.

An ensemble that nominally produces hundreds of thousands of maps may, in fact, only produce only a handful of *unique* maps, rendering useful comparisons impossible.

In the "step-based" approach that the Barreto/Rios reports utilize, there is an additional problem that the mathematics involved rely on something called a Markov Chain. While this is a mathematically complex subject, the following should loosely explain the issues that can arise from this.

Imagine that you intend to explore a planet using remote "rovers," or if you prefer, "a robot." One robot therefore sent to a foreign planet. To explore the planet, it makes random choices to turn. Rather than constantly sending back video, which would be time consuming to evaluate, it sends pictures at set times. From this sample of pictures, you hope to learn about the general features of the planet as the robot moves through polar regions, forests, etc.

For the first few moves the robot makes, you are likely going to receive pictures that are highly dependent on the starting point and are therefore not representative of the planet. But after enough random choices, the robot will make choices that lead it away from the starting point and, eventually (in theory), around the entire planet. Given enough time, your pictures will produce a representative sampling of what the planet looks like. If the robot is allowed to continue long enough, it will eventually send pictures from all over the planet, and you will have valid inferences about what the planet is like from your photo set, and your starting point will be irrelevant. This is (basically) what "convergence" means.

You may have two questions in your head immediately: (1) How long will it take to achieve this state and (2) what if my robot starts in a crater that it has trouble getting out of? The first question is a very good one, and it honestly doesn't have a clear answer, but this is a complex subject that is beyond my critique here. Long story short: It's part of why such a massive number of plans are typically created. The second question provides a bigger practical stumbling block. Suppose your robot starts out in a crater with only a narrow path out. It might take your robot an extremely long time to find

this path. If you've called a stop to exploration before that, believing that surely you've covered the whole planet by now, you might conclude that the crater is representative of the world when in fact your robot was just stuck in a bottleneck.

There are solutions and workarounds here. The most common – employed by Dr. Barreto here – is to land multiple robots. They likely won't all land in the crater. When they all eventually start to return pictures that, in their totality, look the same, you'll assume that the different landing points have likely converged and you now have a good sample you can draw inferences from.

In the real world, if the program is strongly constrained by a compactness requirement, but the map has a narrow strip of precincts (or one large precinct), it may have a difficult time producing maps that move through that area, and thus fail to explore the full sample space until an unusually large time is spent. If the chain is terminated before that happens, it will not produce a valid sample.

To address this, many packages, including *redist*, which I used earlier in the case and the Barreto/Rios reports employ here, enable you to run multiple chains and include diagnostics that will tell you whether your ensemble is sufficiently diverse (*i.e.*, it does not repeatedly return the same maps) and whether the chains have converged. In other words, if you explore the diagnostics, it will tell you whether you have a usable ensemble from which you can draw inferences.

3.1 Data creation and management

During the course of this litigation, experts have generally been good about providing the data to each other that they will need to reproduce each others' work. For example, Dr. Duchin has provided her chains to defense to examine, and Dr. Ansolabehere provides all data and computer code needed to replicate his work. I've provided clearly labeled code and shapefiles needed to recreate my ensembles.

The Barreto/Rios report is different. They have declined to produce his simulation set for inspection. This would not necessarily be a huge problem. At the time of my

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Conclusion — 56

I declare under penalty of perjury under the laws of the State of Ohio that the foregoing is true and correct to the best of my knowledge and belief. Executed on September 22, 2025 in Delaware, Ohio.

Sean PTrende

Sean P. Trende