

In the Supreme Court of the United States

GREG ABBOTT, GOVERNOR OF TEXAS, ET AL., APPLICANTS

v.

LEAGUE OF UNITED LATIN AMERICAN CITIZENS, ET AL.

**BRIEF FOR THE UNITED STATES AS AMICUS CURIAE
IN SUPPORT OF APPLICANTS**

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INTEREST OF THE UNITED STATES

The Solicitor General, on behalf of the United States, respectfully submits this brief as amicus curiae in support of the application for a stay of the November 18, 2025, order issued by the United States District Court for the Western District of Texas. The district court preliminarily enjoined Texas officials from using a congressional map adopted by the Texas legislature for the 2026 election cycle, on the ground that certain districts likely constitute unconstitutional racial gerrymanders. The United States has a strong interest in protecting citizens from race discrimination in voting, and it has an equally strong interest in ensuring that federal courts do not erroneously interfere with federal elections and usurp the constitutional primacy of States in the drawing of congressional districts. The United States also has a particular interest in this case in correcting the district court’s misinterpretation and misuse of a letter sent to the Texas Governor and Attorney General by a senior official in the United States Department of Justice (DOJ).

INTRODUCTION AND SUMMARY OF ARGUMENT

“The Constitution entrusts state legislatures with the primary responsibility for drawing congressional districts, and redistricting is an inescapably political enterprise.” *Alexander v. South Carolina State Conference of the NAACP*, 602 U.S. 1, 6 (2024). This case involves an openly avowed partisan gerrymander: earlier this summer, the Texas legislature enacted a new congressional map for the express purpose of “improv[ing] Republican political performance” (in the words of the bill’s sponsor), Op. 77 n.274, by creating “five districts that Republicans could gain that [they] did not currently hold” (in the words of the Republican operative who drew the map), Op. 93 n.334. Objections to such partisan gerrymandering are not justiciable in federal court. *Rucho v. Common Cause*, 588 U.S. 684, 718 (2019).

Respondents challenged the Texas redistricting as an unconstitutional racial gerrymander. Because “federal-court review of districting legislation represents a serious intrusion on the most vital of local functions,” and “a legislature’s redistricting calculus” involves a “complex interplay of forces,” this Court has held that plaintiffs bringing a racial-gerrymander claim have the heavy burden “to 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.” *Alexander*, 602 U.S. at 7 (brackets and quotation marks omitted). Respondents thus had to “prove that the State ‘subordinated’ race-neutral districting criteria,” such that race “was the criterion that, in the State’s view, could not be compromised” when the district lines were drawn. *Ibid.*

Critically, because “race and partisan preference are highly correlated” in parts of Texas, respondents “must disentangle race and politics” to refute the State’s partisan-gerrymandering defense. *Alexander*, 602 U.S. at 6. In *Alexander*, this Court

set forth two related principles governing the inquiry. First, in determining whether plaintiffs have shown that race predominated in the redistricting process, courts must “start with a presumption that the legislature acted in good faith.” *Ibid.* Courts must “draw the inference that cuts in the legislature’s favor when confronted with evidence that could plausibly support multiple conclusions.” *Id.* at 10. Second, to overcome that presumption, plaintiffs generally must produce “an alternative map showing that a rational legislature sincerely driven by its professed partisan goals [c]ould have drawn a different map” that achieved those goals without the challenged racial demographics. *Ibid.* Courts “should draw an adverse inference from a plaintiff’s failure to submit” such a map since one would not be “difficult to produce” if the State in fact had relied on race rather than party, and that adverse inference is effectively “dispositive” absent “direct evidence or some extraordinarily powerful circumstantial evidence” that race predominated in the drawing of district lines. *Id.* at 35. Those principles apply with particular force here, where there is overwhelming evidence—both direct and circumstantial—of partisan objectives, and any inference that the State inexplicably chose to use racial means is implausible.

Yet the district court violated both of those principles. As Judge Jerry Smith emphasized in his dissent, the judges in the majority “flout[ed] *Alexander*’s presumption of good faith,” Dissent 47, and “ma[de] excuses for plaintiffs * * * for failing to produce an *Alexander* [alternative] map,” Dissent 17. Despite extensive testimony from the mapmaker and the chairs of the legislative redistricting committees that they did not consider race when drawing and adopting the 2025 congressional map on partisan grounds, the district court concluded that race predominated in the creation of certain districts, relying on an uncharitable view of that testimony and tenuous inferences from other, extrinsic evidence. In particular, the court first miscon-

strued a letter from DOJ as having demanded that Texas redraw its map in order to racially gerrymander certain districts, even though the letter denounced racial gerrymandering and asked Texas to rectify alleged racial gerrymanders in the prior map. The court then proceeded to treat any mention of DOJ by a state official as compelling evidence of racial predominance, even though none of those officials said that they needed to engage in *race-based* redistricting to address DOJ's concerns. The court compounded those errors by holding that, in light of the DOJ letter and the creation of certain districts where racial minorities are a numerical majority, respondents had produced sufficient direct evidence of racial predominance to overcome their failure to produce an alternative map, notwithstanding that everything the court cited was, at best, weak circumstantial evidence. And the court further held that an alternative map is unnecessary at the preliminary-injunction stage, notwithstanding that respondents had ample time to produce one and that the adverse inference from their failure to do so precludes them from establishing any likelihood of success.

In sum, respondents “seek to transform federal courts into weapons of political warfare that will deliver victories that eluded them in the political arena,” *Alexander*, 602 U.S. at 11 (quotation marks omitted), and the district court erroneously allowed them to do so by “repackag[ing] a partisan-gerrymandering claim as a racial-gerrymandering claim [and] exploiting the tight link between race and political preference,” *id.* at 21. Because the district court's legal errors under *Alexander* are clear, and the harm to Texas from enjoining the use of its congressional map is irreparable and substantial, this Court should stay the district court's order.

ARGUMENT

A stay of a preliminary injunction pending appeal is warranted where the applicant establishes a reasonable probability that the Court will note probable jurisdiction, a fair prospect of success on the merits, and a likelihood of irreparable harm. *Indiana State Police Pension Trust v. Chrysler LLC*, 556 U.S. 960, 960 (2009) (per curiam). In “close cases,” the Court will also balance the equities and weigh the relative harms. *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam).

This is not a close case. “Any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.” *Maryland v. King*, 567 U.S. 1301, 1304 (2012) (Roberts, C.J., in chambers) (brackets omitted). That irreparable injury is especially significant here because enjoining use of the State’s congressional map “represents a serious intrusion on the most vital of local functions.” *Alexander v. South Carolina State Conference of the NAACP*, 602 U.S. 1, 7 (2024). Texas is also highly likely to succeed on the merits. While that is true for many reasons, the United States focuses in this amicus brief on respondents’ failure to offer an “alternative map” under *Alexander*. *Id.* at 35. That failure is “dispositive” here, *ibid.*, because it means that respondents in turn failed to disentangle race from party, overcome the presumption that the Texas legislature enacted the 2025 congressional map in good faith, or demonstrate that race predominated in the drawing of district lines, see *id.* at 10. Where, as in *Alexander* and this case, a “trial court bases its findings upon a mistaken impression of applicable legal principles”—such as whether an alternative map is unnecessary and how the presumption of legislative good faith operates—“the reviewing court is not bound by the clearly erroneous standard.” *Id.* at 18.

Indeed, the record here affirmatively shows that the 2025 map was drawn in a race-blind manner. The mapmaker, Adam Kincaid, “testified unequivocally that he drew the 2025 Map completely blind to race” and based “entirely on partisan, political, and other race-neutral criteria.” Op. 91-92; see *id.* at 92-95 (listing criteria). His testimony, provided “totally without notes,” offered a “district by district—sometimes line by line—expla[nation]” of “his decisions at every step of the mapdrawing process,” which the district court acknowledged “was compelling.” Op. 95-96 & n.349. Likewise, the chair of the state House redistricting committee (Cody Vasut), the chair of the state Senate redistricting committee (Phil King), and the state representative who introduced the redistricting bill (Todd Hunter) all repeatedly insisted that the map was “primarily driven by non-racial partisan motivations.” Op. 77; see Op. 80, 89. Given the extensive record evidence that race did not predominate in the drawing of the 2025 map—to say nothing of the presumption of good faith—respondents were required under *Alexander*, at a bare minimum, to provide an alternative map that would satisfy the State’s partisan goal of adding five Republican seats but that would not have the racial demographics challenged by respondents.

Yet the district court relieved respondents of that burden for two reasons, both of which lack merit. Op. 130-134. First, the court held that an alternative map was unnecessary because respondents had sufficient direct evidence of racial predomination. Op. 132. But, as in *Alexander*, respondents offered at most weak circumstantial evidence that cannot overcome the presumption of legislative good faith absent an alternative map. Second, the court held that an alternative map is unnecessary at the preliminary-injunction stage. Op. 132-134. But precisely because it is so easy and quick for experts to create alternative maps—as *Alexander* recognized and the record in this case confirms—respondents’ failure to offer one at the preliminary-in-

junction stage warrants an equally fatal adverse inference as to their likelihood of success on the merits.

A. When A State Raises A Partisan-Gerrymandering Defense To A Racial-Gerrymandering Claim, An Alternative Map Generally Is Required To Disentangle Race From Party And To Overcome The Presumption Of Legislative Good Faith

This Court has “repeatedly emphasized that federal courts must ‘exercise extraordinary caution in adjudicating claims that a State has drawn district lines on the basis of race.’” *Alexander*, 602 U.S. at 7 (citation omitted). “Such caution is necessary because federal-court review of districting legislation represents a serious intrusion on the most vital of local functions,” as “[r]edistricting constitutes a traditional domain of state legislative authority.” *Ibid.* (brackets and quotation marks omitted). Accordingly, federal courts addressing racial-gerrymandering claims must apply a “starting presumption that the [state] legislature acted in good faith.” *Id.* at 10. That presumption “reflects the Federal Judiciary’s due respect for the judgment of state legislators,” avoids “declaring that the legislature engaged in offensive and demeaning conduct,” and prevents “transform[ing] federal courts into weapons of political warfare that will deliver victories [to plaintiffs] that eluded them in the political arena.” *Id.* at 11 (quotation marks omitted).

To overcome the presumption of legislative good faith, plaintiffs bringing racial-gerrymandering claims must “untangle race from other permissible considerations” by showing that race was the “predominant factor motivating the legislature’s decision to place a significant number of voters within or without a particular district.” *Alexander*, 602 U.S. at 7. A plaintiff can make that showing “through some combination of direct and circumstantial evidence.” *Id.* at 8. “Direct evidence” is akin to “a relevant state actor’s express acknowledgment that race played a [predominant]

role in the drawing of district lines,” which can be revealed through discovery or even conceded by the State. *Ibid.* “Such concessions are not uncommon because States often admit to considering race for the purpose of satisfying” the perceived mandate of Section 2 of the Voting Rights Act of 1965 (VRA), Pub. L. No. 89-110, 79 Stat. 437 (52 U.S.C. 10301). *Alexander*, 602 U.S. at 8; see, e.g., U.S. Supp. Br. at 7-8, *Louisiana v. Callais*, No. 24-109 (Sept. 24, 2025).

“Proving racial predominance with circumstantial evidence alone is much more difficult,” and “especially difficult when,” as here, “the State raises a partisan-gerrymandering defense.” *Alexander*, 602 U.S. at 8-9. Because of the “high correlation between race and partisan preference,” a “map that has been gerrymandered to achieve a partisan end can look very similar to a racially gerrymandered map.” *Id.* at 9. While the State cannot use voters’ “race as a proxy” for their partisan affiliation, *id.* at 7 n.1, the State may place voters in a district based on political data “even if it so happens that [those voters] happen to be [a particular race] and even if the State were *conscious* of that fact,” *id.* at 9. Accordingly, “disentangl[ing] race from politics” requires a plaintiff to prove that race “*drove* a district’s lines” and to “rul[e] out the competing explanation that political considerations dominated the legislature’s redistricting efforts.” *Id.* at 9-10. “If either race or politics *could* explain a district’s contours,” a federal court must accept the latter explanation, because the “presumption of legislative good faith directs district courts to draw the inference that cuts in the [state] legislature’s favor when confronted with evidence that could plausibly support multiple conclusions.” *Id.* at 10 (emphasis added).

Alexander thus recognized that a plaintiff generally cannot overcome the presumption of legislative good faith without providing “an alternative map showing that a rational legislature sincerely driven by its professed partisan goals [c]ould have

drawn a different map” that achieved those goals without the challenged racial demographics. 602 U.S. at 10. Such a map “can perform the critical task of distinguishing between racial and political motivations.” *Id.* at 34. And such maps are not “difficult to produce” because “[a]ny expert armed with a computer can easily churn out redistricting maps that control for any number of specified criteria.” *Id.* at 35 (quotation marks omitted). Indeed, “[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 [partisan-gerrymandering] defense.” *Ibid.*

Accordingly, district courts should “draw an adverse inference from a plaintiff’s failure to submit” an alternative map satisfying the State’s partisan goals without the challenged racial demographics. *Alexander*, 602 U.S. at 35. And that adverse inference “may be dispositive in many, if not most, cases where the plaintiff lacks direct evidence or some extraordinarily powerful circumstantial evidence” that race predominated in the drawing of district lines. *Ibid.* Such a map is not required when the relevant state actors expressly “announced” and “admitted” that they “purposefully established a racial target” in drawing district boundaries and “subordinated other districting criteria” to that target. *Cooper v. Harris*, 581 U.S. 285, 299-300, 322 (2017). But absent such “direct evidence,” “‘only an alternative map of that kind’ can ‘carry the day.’” *Alexander*, 602 U.S. at 34-35 (quoting *Cooper*, 581 U.S. at 322) (emphasis added; brackets omitted). Respondents produced no such map here. Op. 132.

B. Respondents Produced No Direct Evidence Of Racial Predominance That Could Remove Their Burden To Provide An Alternative Map

The district court erroneously held that respondents did not need to provide an alternative map because the court believed that they “ha[d] produced substantial di-

rect evidence indicating that race was the predominant driver in the 2025 redistricting process.” Op. 132. The court relied on four alleged categories of such evidence: a letter from DOJ; statements by the Texas Governor; the creation of three majority-minority districts in the 2025 map with just over 50% minority CVAP (citizen voting age population); and various statements of Texas state legislators. Op. 59-104. But *none* of those constitutes “[d]irect evidence” akin to “a relevant state actor’s express acknowledgment that race played a [predominant] role in the drawing of district lines.” *Alexander*, 602 U.S. at 8. At most, they are weak “circumstantial evidence” that “could plausibly support multiple conclusions,” *id.* at 10—especially given that partisan and racial gerrymanders “are capable of yielding similar oddities in a district’s boundaries,” *id.* at 9—thereby requiring an “alternative map” to overcome the “starting presumption that the legislature acted in good faith,” *id.* at 10.

1. The district court misconstrued both the DOJ letter and its relevance to the challenged redistricting

The district court heavily emphasized its finding that the Texas legislature was persuaded to engage in racial gerrymandering by a July 7, 2025, letter to the Texas Governor and Attorney General sent by the head of DOJ’s Civil Rights Division. See Op. 17-19 (reproducing text of letter). The court, however, misinterpreted the letter’s meaning; and more importantly, the court misunderstood the letter’s significance to the legislature’s adoption of the 2025 map.

a. The DOJ letter expressed “serious concerns regarding the legality of four of Texas’s congressional districts” (Districts 9, 18, 29, and 33) under the 2021 map. Op. 17. The letter stated that those districts were “unconstitutional ‘coalition districts’” that had been created using “race-based considerations.” *Ibid.* A “coalition district,” in voting-rights vernacular, is a district where no single racial minority

group constitutes an effective voting majority, but where “two minority groups form a coalition to elect the candidate of the coalition’s choice.” *Bartlett v. Strickland*, 556 U.S. 1, 13 (2009) (plurality opinion). Although a State’s creation of such a district is not necessarily unconstitutional, it does trigger strict scrutiny if race predominated in the drawing of the district lines. See *id.* at 21-24. And that is what the DOJ letter asserted: namely, that Districts 9 and 18 “sort[ed] Houston voters along strict racial lines to create two coalition seats, while creating [District 29 as] a majority Hispanic district; and that District 33 was “another racially-based coalition district that resulted from a federal court order years ago.” Op. 18; see Op. 19 (urging the State “to rectify the racial gerrymandering of” these districts).

The DOJ letter acknowledged that longstanding circuit precedent had interpreted Section 2 of the VRA to require coalition districts under certain circumstances, but the letter emphasized that the Fifth Circuit’s recent en banc decision in *Petteway v. Galveston County*, 111 F.4th 596 (2024), had overruled that precedent. Op. 18. Accordingly, the letter deemed these districts to be “nothing more than vestiges of an unconstitutional racially based gerrymandering past, which must be abandoned, and must now be corrected by Texas.” Op. 18.

The district court, however, mischaracterized DOJ’s letter as itself “direct[ing] Texas to engage in racial gerrymandering.” Op. 58. That mischaracterization was based on two related errors.

First, the district court asserted that the DOJ letter adopted an erroneous “reading of *Pettaway*” that coalition districts are “*per se* unconstitutional,” when *Pettaway* held only that Section 2 of the VRA does not require the creation of coalition districts. Op. 20; see Op. 19-20 (characterizing the letter as saying 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 gerrymandering’”); Op. 59 (asserting that “the districts [were] objectionable to DOJ solely because of their racial composition”). But while the letter contained a single sentence stating that “so-called ‘coalition districts’ run afoul [of the] Voting Rights Act and the Fourteenth Amendment,” that sentence must be read in light of the immediately preceding sentence, which objected only to districts “[w]hen race is the predominant factor above other traditional redistricting considerations.” Op. 18. The letter thus did not claim that, as a legal matter, coalition districts are always unconstitutional even when created using race-neutral principles. Rather, it claimed that, as a factual matter, the four identified districts had been created using “race-based considerations” that “sort[ed] * * * voters along strict racial lines” in order “to comply with” VRA precedent that had since been abrogated by *Petteway*. Op. 17-18. Whether or not that factual assertion is correct—and the United States acknowledges that Texas disputes it, see D. Ct. Doc. 1380-25, at 3; Op. 14-15, 24—DOJ never asserted that the four districts would have been unconstitutional even if they had not been created by racial gerrymandering in the first place.

Second, the district court viewed the DOJ letter as claiming that the only “remedy” was “to change the offending districts’ racial makeup so that they no longer qualify as coalition districts,” Op. 20, by “redraw[ing] [them] so a single racial group constitutes a 50% majority by CVAP,” Op. 59. But again, the letter said no such thing. It did not urge any particular course of action “to rectify the racial gerrymandering of” the identified districts. Op. 19; see Op. 17-18. It did not, for instance, insist that the districts be converted into ones where a single racial group constitutes a 50% majority—after all, a “coalition” district can be eliminated, without any racial group’s being a majority, so long as the three or more racial groups present have *different*

“candidate[s] of * * * choice.” *Bartlett*, 556 U.S. at 13. Likewise, the letter did not insist that the districts be converted into ones that were majority-*minority* rather than majority-*white*. And the letter certainly did not demand that Texas redraw the districts in a manner that was race-predominant rather than race-neutral: racial gerrymandering was itself the problem that the DOJ letter asserted regarding the districts, and a State obviously can remedy racial gerrymandering without engaging in more racial gerrymandering. In short, the court badly misinterpreted DOJ’s letter as urging Texas to make race predominant in eliminating the identified districts, when in fact the letter urged Texas to eliminate race from consideration when redrawing those four districts (and all other districts as well).

b. Even if the district court’s mischaracterization of the DOJ letter were correct—that is, even if the letter had directed Texas to engage in racial gerrymandering to eliminate the identified districts—that still would not constitute direct evidence that the *Texas legislature* actually engaged in racial gerrymandering when redrawing the congressional map. That is so for three reasons.

First, as the district court itself acknowledged, “[w]hat ultimately matters is the Legislature’s motivation for devising and enacting the 2025 Map—not the motivations of [other] actors outside the legislative branch.” Op. 65; see *Brnovich v. DNC*, 594 U.S. 647, 689 (2021) (“The ‘cat’s paw’ theory has no application to legislative bodies” because “legislators have a duty to exercise their judgment.”). The DOJ letter is thus at most circumstantial evidence of the legislative motive, not direct evidence.

Second, the district court failed to cite any direct evidence that its flawed interpretation of the DOJ letter was even shared by, let alone acted on by, the Texas legislature. The court did not identify a single legislator who understood DOJ to be demanding that the State engage in race-predominant districting to eliminate the

four specified districts. Instead, the court merely cited some legislators who characterized the new map as addressing DOJ’s concerns. See Op. 66-68. But their statements are equally consistent with an effort to placate DOJ by resolving its gerrymandering concerns—whether or not they agreed with those concerns—by redistricting the entire electoral map using race-blind methods to achieve partisan goals. See *ibid.* At minimum, that construction of equivocal evidence is compelled by the presumption of legislative good faith. See *Alexander*, 602 U.S. at 10-11.

Third, contrary to the district court’s assertion (Op. 35, 105), the record shows that Texas did not actually follow any purported DOJ directive to engage in racial gerrymandering. Most obviously, District 33 in the 2025 map remains a coalition district. Op. 39. If Texas were truly responding to a DOJ directive to eliminate coalition districts because they are per se unconstitutional, it would not have preserved one of the four districts DOJ had specifically identified in its letter. Moreover, while Districts 9 and 18 are no longer coalition districts in the 2025 map, they have become majority-Hispanic (50.3% CVAP) and majority-black (50.5% CVAP) districts, respectively. Op. 35-36, 38. It would be nonsensical for Texas to have responded to a DOJ directive “to rectify the racial gerrymandering” of two coalition districts, Op. 17-18, by intentionally gerrymandering two majority-minority districts instead. As for District 29, that was not a coalition district in the first place, as the DOJ letter itself recognized. Op. 18 (describing District 29 as “a majority Hispanic district”). Yet in the 2025 map, District 29’s Hispanic CVAP dropped to 43.3%, *creating* a potential coalition district, see Op. 38—precisely the opposite of what the district court claimed DOJ ordered the State to do. The court speculated that Texas may have been “perplexed,” *ibid.*, but the only perplexing thing is how the court could have concluded that Texas was doing DOJ’s bidding when DOJ (in the court’s view) asked it to elim-

inate four coalition districts—and in response, Texas ignored the request as to one district, acted on two by purportedly considering race (the very thing DOJ had complained about), and created a potential coalition district in the fourth.

In sum, the evidence clearly demonstrates that Texas was *not* doing DOJ's supposed bidding—much less in a race-conscious way—but instead was engaged in a race-blind partisan gerrymander that happened to affect the districts DOJ identified (along with every other district in the State but one). In fact, that is precisely what the *actual* direct evidence shows: namely, the consistent testimony of the chairs of the legislative redistricting committees and the sponsor of the bill that they paid no heed to the DOJ letter. See Op. 77, 80, 89. At minimum, nothing about the Texas legislature's response to the DOJ letter constitutes “direct evidence” or even “extraordinarily powerful circumstantial evidence” that would obviate the need for respondents to produce an alternative map. *Alexander*, 602 U.S. at 35.

2. The district court's reliance on the governor's statements was misplaced

The district court next relied on the governor's July 9, 2025, proclamation adding redistricting to the legislative agenda and comments he made to the press touting the creation of majority-Hispanic districts in the 2025 map. Op. 62-64. But as explained, the governor's statements, like DOJ's letter, are not direct evidence of the Texas legislature's motive. See p. 13, *supra*. Moreover, the governor's statements are especially weak circumstantial evidence of racial gerrymandering.

The July 9 proclamation added to the legislative agenda consideration of “[l]egislation that provides a revised congressional redistricting plan in light of constitutional concerns raised by the U.S. Department of Justice.” D. Ct. Doc. 1326-1, at 3. From that single sentence (one of eighteen similarly terse line items in the proclama-

tion), the district court concluded that the governor “was asking the Legislature to give DOJ the racial rebalancing it wanted.” Op. 31; see Op. 61-62. Again, however, that conclusion is doubly wrong: (1) the DOJ letter asserted that Districts 9, 18, 29, and 33 had been racially gerrymandered, but did not purport to dictate any particular remedy to that problem, much less a “racial rebalancing” that would replicate the very flaw that DOJ identified with those districts in the first place, see pp. 10-13, *supra*; and (2) nothing in the governor’s proclamation suggests that he wanted the legislature to address DOJ’s perceived concerns by enacting a racial gerrymander, as opposed to the race-blind map pursuing partisan goals that the legislature actually enacted, see pp. 13-15, *supra*.

Likewise, the governor’s “contemporaneous” press statements (Op. 62) touting the majority-Hispanic districts in the 2025 map do not suggest that the legislature engaged in racial gerrymandering. The only such statements the district court identified were from August 2025, see Op. 62-64 & nn.207-209 (citing August 7 and August 11 interviews), even though the 2025 map was completed in July, see Appl. App. 473. Especially given the timing, “there is nothing nefarious about [the Governor’s] awareness of the [map’s] racial demographics.” *Alexander*, 602 U.S. at 37. That he personally viewed the majority-Hispanic districts as a “sellable” feature of the map does not come close to being direct evidence that the “legislators use[d] race as their predominant districting criterion” in creating those districts. See *Cooper*, 581 U.S. at 308 n.7. Indeed, unless “the legislature subordinated traditional race-neutral districting principles,” even the “intentional creation of majority-minority districts” would not trigger strict scrutiny (and the governor’s statements are not even direct evidence of that). *Bush v. Vera*, 517 U.S. 952, 958 (1996) (plurality opinion).

In short, the district court again flouted *Alexander*'s directive to presume legislative good faith. 602 U.S. at 10-11. The court adopted the least charitable reading of the governor's statements and then assumed that the legislature shared that reading without citing a single legislator who actually said so. That illogic cannot possibly excuse respondents' failure to produce an alternative map under *Alexander*.

3. The district court's reliance on three majority-minority districts with just over 50% minority CVAP was also misplaced

The district court similarly treated as a smoking gun the fact that the 2025 map creates three majority-minority districts with minority CVAP percentages just over 50%. See Op. 97-98, 105. Specifically, the court observed that District 9 is a majority-Hispanic district with 50.3% Hispanic CVAP, and Districts 18 and 30 are majority-black districts with 50.5% and 50.2% black CVAPs, respectively. Op. 97. According to the court, "it is very unlikely" that a purely partisan gerrymander "would have hit a barely 50% CVAP *three times* by pure chance." Op. 98. But the court offered no basis (statistical or otherwise) for that layman's conjecture. Op. 97-98. Nor did it identify any flaw in the mapmaker's detailed explanation of the race-neutral line-drawing decisions that, in fact, happened to result in those racial percentages. *Ibid.*; see Dissent 31-32, 34-36, 55 (detailing the mapmaker's testimony about those three districts). In all events, this Court already has rejected the proposition that supposedly suspicious minority CVAP percentages themselves constitute direct evidence that race predominated in the redistricting process.

In *Alexander*, this Court observed that "where race and partisan preferences are very closely tied, as they are here, the mere fact that [a challenged district's] BVAP stayed more or less constant proves very little." 602 U.S. at 20. The same is true with respect to the mere fact that Districts 9, 18, and 30 happened to wind up

containing Hispanic or black CVAPs slightly above 50%, which is in no way inconsistent with a purely partisan gerrymander. In fact, some districts wound up with white CVAP percentages within a fraction of a percentage point from 50% as well, yet the district court (correctly) did not view those CVAP percentages as suspicious. See D. Ct. Doc. 1326-12 (CVAP table for 2025 map) (Districts 8, 22). The bottom line is that Texas engaged in a statewide redistricting effort with the ambitious goal of shifting five seats from Democrats to Republicans; given the correlation between race and party, it is unsurprising that a few districts ended up with minority CVAP percentages just above 50%. See *Alexander*, 602 U.S. at 9 (noting that partisan and racial gerrymanders “are capable of yielding similar oddities in a district’s boundaries”).

Thus, contrary to the district court’s suggestion (Op. 96-97), this case is a far cry from *Cooper*, where the “on-the-nose attainment of a 50% BVAP,” 581 U.S. at 313, was the “purposefully established,” “announced racial target” of key legislators, *id.* at 299-300. Indeed, the court committed precisely the same error that the district court in *Alexander* committed: “inferring bad faith based on the racial effects of a political gerrymander in a jurisdiction in which race and partisan preference are very closely correlated”—an error that “would, if accepted, provide a convenient way for future litigants and lower courts to sidestep [the] holding in *Rucho* that partisan-gerrymandering claims are not justiciable in federal court.” *Id.* at 21. As in *Alexander*, particular minority CVAP percentages are not direct evidence of a racial gerrymander absent additional evidence showing those percentages were the intended target rather than the incidental and correlative effects of a partisan gerrymander, 602 U.S. at 20-21; and as in *Alexander*, without such additional evidence, an alternative map is needed to disentangle race from party, *id.* at 35.

4. The district court erred in its evaluation of statements and testimony from the mapmaker and legislators

This Court has recognized that testimony and statements of legislators who voted on an electoral map and the individuals who drew the map can constitute direct evidence for purposes of a racial-gerrymandering claim. See, *e.g.*, *Alexander*, 602 U.S. at 13-14; *Cooper*, 581 U.S. at 299-300. But the district court here improperly treated ambiguous statements of legislators with minimal involvement in the redistricting process as direct evidence of a racial gerrymander, while erroneously disregarding unequivocal statements of the mapmaker and legislators who led the redistricting efforts that race played no role in the process.

a. This Court has recognized that among the most probative direct evidence of racial gerrymandering is the testimony of the mapmaker. See, *e.g.*, *Cooper*, 581 U.S. at 299-300. After all, the “plaintiff must prove that race was the predominant factor motivating the legislature’s decision *to place a significant number of voters within or without a particular district.*” *Id.* at 291 (emphasis added; quotation marks omitted). The decision to “place” voters “within or without a particular district” is made in the first instance by the person actually drawing the district lines.

The person who drew those lines here, Adam Kincaid, did not consider race at all in making those placement decisions. A Republican operative, Kincaid “testified unequivocally that he drew the 2025 Map completely blind to race”; “testified that he instead based his districting choices entirely on partisan, political, and other race-neutral criteria”; and “went district by district—sometimes line by line—explaining the logic behind each of the redistricting choices he made,” giving “political or practical—*i.e.*, non-racial—rationales for his decisions at every step of the mapdrawing process.” Op. 93-96. The district court itself acknowledged that Kincaid’s testimony—

delivered “‘totally without notes’”—was “compelling.” Op. 96 & n.349. In fact, the court recognized that “nothing that Mr. Kincaid said at the preliminary-injunction hearing was self-contradictory,” Op. 97 n.356—underscoring that the court could not identify even a single thing Kincaid said that belied the credibility of his race-neutral account of how he drew the challenged lines.

Nevertheless, the district court entirely discounted Kincaid’s testimony as not credible for four reasons. Three of them have already been refuted above: (1) Districts 9, 18, and 30 wound up being majority-minority districts with CVAPs close to 50%, Op. 96-98; but see pp. 17-18, *supra*; (2) the 2025 map purportedly followed the supposed directive in the DOJ letter to engage in racial gerrymandering, Op. 98; but see pp. 10-15, *supra*; and (3) the 2025 map achieved Governor Abbott’s alleged goal of creating majority-Hispanic districts, Op. 99; but see pp. 15-17, *supra*. As for the fourth reason, the district court noted “significant inconsistencies between Mr. Kincaid’s testimony and [Senator] King’s testimony and his contemporaneous statements on the Senate floor.” Op. 99. In particular, Kincaid testified that he and King, who chaired the Senate redistricting committee, discussed details of the redistricting efforts at a conference in mid-July 2025, whereas King initially testified that they had not discussed those efforts in detail before “conced[ing] that either he was misremembering or Mr. Kincaid’s testimony was incorrect.” Op. 84; see Op. 83-84. In late August 2025, King also told a colleague on the Senate floor that “he didn’t know” “‘who physically drew the maps’” or whether “the mapdrawer had looked at race.” Op. 85-86. The court viewed those memory lapses as reasons to discredit *King*, Op. 87; but that does not remotely justify finding *Kincaid* non-credible because someone else misremembered their conversations—especially given Kincaid’s concededly “compelling” ability to recount his redistricting decisions line by line (without notes), Op. 96.

b. This Court also has considered statements and testimony of legislators involved in the redistricting process as direct evidence of the legislature’s intent. See, *e.g.*, *Cooper*, 581 U.S. at 299. Here, the three most important legislators—the chairs of the House and Senate redistricting committees and the legislator who introduced and championed the redistricting bill—repeatedly testified that the 2025 map was drawn with only partisan goals in mind and without considering race.

The House chair (Vasut) “insisted that the 2025 Map was motivated by partisan rather than racial considerations,” that “the DOJ Letter did not influence the Legislature in the redistricting process,” and that “he wasn’t influenced by the Governor’s media statements conveying a desire to eliminate coalition districts.” Op. 89. The Senate chair (King) “insisted that the DOJ Letter did not motivate his votes and actions during the 2025 redistricting process,” that “he did not look at racial data at all,” and that “to his knowledge, the 2025 Map was drawn blind to race.” Op. 80. And the bill’s sponsor (Hunter) “stated repeatedly that the bill was primarily driven by non-racial partisan motivations,” that “he was ‘not guided’ by the DOJ Letter in the redistricting process,” and that “he ‘didn’t go at’ any coalition districts.” Op. 77-78.

Yet the district court discounted that evidence on the flimsiest of grounds. The court discredited Hunter’s statements because he employed “value-laden” language praising the majority-Hispanic districts, Op. 73, and referred to *Petteway* in addition to *Rucho* as justification for mid-decade redistricting, Op. 79. But as with the governor’s press comments, touting majority-Hispanic districts as a selling point after they have been drawn is not direct evidence of a racial gerrymander because it proves nothing about whether race-neutral principles were subordinated in creating the districts in the first place. See p. 16, *supra*. Moreover, Hunter *correctly* described *Petteway* as holding that “Section 2 does not require” coalition districts and thereby free-

ing the State to redraw such districts on race-neutral grounds, Op. 74, which refutes the court’s theory that the DOJ letter misled Texas legislators into thinking that *Petteway* prohibited coalition districts and compelled race-predominant efforts to eliminate them. As for King’s statements, the court discounted them on the even shakier ground that he misremembered his discussions with Kincaid, Op. 83-87, even though those discussions have no bearing on King’s *own* consideration of race. And the court could not muster any objections whatsoever to Vasut’s statements. Op. 89-90.

c. On the other side of the ledger, the district court highlighted a few statements from legislators who had far less involvement in the redistricting process—and those stray statements also do not remotely qualify as direct evidence of a racial gerrymander, especially when viewed in light of the presumption of legislative good faith. The court emphasized a snippet in a press release from Speaker Burrows stating that the map “*address[ed] concerns raised by [DOJ]*.” Op. 66. For the reasons already discussed, responding to the DOJ letter is not direct evidence of racial predominance, particularly since the same press release is also “peppered with statements that could suggest a partisan motive,” Op. 67. Likewise, isolated snippets from press interviews of Representatives Oliverson and Toth at most suggest that they viewed redistricting as required by *Petteway*. Op. 67-69. That, however, falls far short of direct evidence that they viewed *Petteway* as not just eliminating the justification for the past race-predominant creation of coalition districts, but as further requiring the use of race-predominant means to eliminate all coalition districts (which, to repeat, the 2025 map did *not* do).

* * * * *

At bottom, the district court did not identify any direct evidence that race predominated in the redistricting process; the court relied at best on weak circumstantial

evidence that it misconstrued in light of the presumption of legislative good faith. Respondents thus needed to produce an alternative map disentangling race from party because this case bears no resemblance to *Cooper* and is essentially a retread of *Alexander*.

In *Cooper*, the state Senate and House chairs of the relevant committees “repeatedly told their colleagues that [the challenged district] had to be majority-minority.” 581 U.S. at 299; see *id.* at 299-300 (recounting some of the statements). “And that objective was communicated in no uncertain terms” to the mapmaker, who “testified multiple times at trial that [the legislators] instructed him ‘to draw [the district] with a BVAP in excess of 50 percent,’” and who then “followed those directions to the letter.” *Id.* at 300. Indeed, the mapmaker testified that “he sometimes could not respect county or precinct lines as he wished because ‘the more important thing’ was to create a majority-minority district.” *Ibid.*

Contrast that to this case, where the Senate and House chairs of the relevant committees repeatedly and unequivocally testified that they wanted to pursue only partisan goals, and the mapmaker testified at length that he drew the districts in an entirely race-blind manner. See pp. 19-22, *supra*. That echoes the testimony in *Alexander*, where the mapmaker “testified that he used only political data, and his colleagues likewise steadfastly denied using race in drawing the” map. 602 U.S. at 19. Indeed, *Alexander* rejected reliance by the district court on the same sort of evidence on which the district court relied in this case—such as a suspicious BVAP percentage (there, one that stayed the same; here, one that was too close to 50% for the court’s liking), *id.* at 20-21, and testimony from individuals involved in the redistricting process that they were “aware of racial demographics,” *id.* at 22. Just as that was insuf-

ficient to relieve the plaintiffs in *Alexander* of their burden to show an alternative map, so too is the evidence on which the district court relied insufficient here.

C. The Preliminary-Injunction Posture Does Not Remove Respondents’ Burden To Provide An Alternative Map

Finally, the district court also held that *Alexander*’s alternative-map requirement does not apply because “this case is still at the preliminary injunction phase.” Op. 133. But a preliminary injunction is “an extraordinary remedy that may only be awarded upon a *clear showing* that the plaintiff is entitled to such relief.” *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008) (emphasis added). And absent “direct evidence or some extraordinarily powerful circumstantial evidence,” the “adverse inference from a plaintiff’s failure to submit [an alternative map]” is effectively “dispositive,” *Alexander*, 602 U.S. at 35, which logically forecloses any showing that the plaintiff “is likely to succeed on the merits,” *Winter*, 555 U.S. at 20.

The district court, however, reasoned that *Alexander*’s adverse inference is “improper here” based on speculation that respondents’ experts “simply didn’t have time” to create an alternative map. Op. 134. That reasoning conflicts with a core rationale of the adverse inference, which is that alternative maps are *not* “difficult to produce” since “[a]ny expert armed with a computer can easily churn out redistricting maps that control for any number of specified criteria.” *Alexander*, 602 U.S. at 35 (quotation marks omitted). Tellingly, the court cited no testimony by respondents’ experts that they lacked sufficient time or data to create an alternative map that would satisfy *Alexander*. See Op. 134 n.498 (citing only testimony about time constraints in performing *other* analyses). Any such testimony would have been utterly implausible: “[t]he parties had approximately one month to prepare for [the] preliminary-injunction hearing,” Op. 147; and one of respondents’ experts had sufficient time to

generate “approximately 40,000 hypothetical maps” that the State “could have conceivably passed,” Op. 109, yet “didn’t offer any of [them] as an *Alexander* map,” Op. 134. So *Alexander* fully applies to this preliminary-injunction proceeding. Respondents’ “failure to submit an alternative map—precisely because it can be designed with ease—should be interpreted * * * as an implicit concession that [they] cannot draw a map” without the challenged racial demographics that achieves the State’s partisan goals. *Alexander*, 602 U.S. at 35. That concession is fatal to respondents’ claim.

CONCLUSION

The application for a stay should be granted.

Respectfully submitted.

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