No. 25A608

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.

REPLY IN SUPPORT OF EMERGENCY APPLICATION FOR STAY PENDING APPEAL

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REPLY

As a safeguard against litigants "repackag[ing] a partisan-gerrymandering claim as a racial-gerrymandering claim," this Court imposed an unambiguous requirement: provide an alternative map disentangling race from politics and showing that the State could have achieved its goals through other means. *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 21, 34 (2024). Courts must treat Plaintiffs' failure to provide such a map as an "implicit concession" that they "cannot draw a map that undermines the legislature's defense." *Id.* at 35. Plaintiffs offered no such map below. The district court thus committed "clear error" when it refused to apply the alternative-map rule and instead "overlook[ed] this shortcoming." *Id.* at 37. This error alone makes reversal likely and warrants a stay.

Repeating another error from *Alexander*, the district court presumed the Texas Legislature set a racial target of just over 50% minority Citizen Voting Age Population (CVAP), inferring such a target from the map's racial demographics, just as the *Alexander* district court erroneously inferred that the South Carolina Legislature set a racial target of 17% BVAP. *Id.* at 21. The district court violated *Alexander*'s admonition not to "infe[r] bad faith based on the racial effects of a political gerrymander." *Id.* at 20-21.

Plaintiffs' (and the district court's) efforts to analogize this case to *Cooper v. Harris* fail. In *Cooper*, direct evidence, including the mapmaker's testimony, confirmed that legislators instructed him to use race in redistricting. 581 U.S. 285, 314 (2017). In contrast to *Cooper*—and as in *Alexander*—there is no expression of a racial target by a legislator or mapdrawer. Legislators first noted the racial composition of districts only after the map was drawn and submitted, and the isolated comments from only four legislators were descriptive, not prescriptive. Such "awareness" of race is "unsurprising" and "nothing nefarious." *Alexander*, 602 U.S. at 37. This case bears the hallmarks of *Alexander*, not *Cooper*, and the district court's racial-target finding is as unsupported as the finding rejected in *Alexander*, again underscoring that reversal is likely and a stay warranted.

Even apart from the strong likelihood that this Court will reverse, the district court's injunction comes too late in the day. *See* Senator Amicus Br. 2. Plaintiffs acknowledge that the injunction was issued in the middle of the candidate filing period, which ends on December 8. Tex. Elec. Code § 172.023(a). As amici confirm, the injunction caused immediate disruption for election officials and candidates, some of whom have been campaigning for months. *See* Election Official Amicus Br. 9-13; Candidate Amicus Br. 2. Plaintiffs attempt to dismiss the difficulties in running an election, but elections in Texas are unusually large and complex. Its decentralized system—in which the Secretary of State advises and assists local officials—will conduct an election for 38 districts spread across 254 counties in the largest State in the contiguous United States. Changes to this system necessarily require more preparation (and last-minute changes cause greater disruption) than other States. The *Purcell* principle warrants a stay of the injunction.

Finally, this Court should question why Plaintiffs now seek to reinstate the repealed 2021 map, despite alleging for years that the 2021 map is likewise an illegal and unconstitutional racial gerrymander. Only Plaintiffs' preference for the politics of the 2021 map compared to the politics of the 2025 map explains that about-face. Plaintiffs' preliminary injunction "transform[s] federal courts into weapons of political warfare that will deliver victories that eluded [Plaintiffs] in the political arena." *Alexander*, 602 U.S. at 11 (quotation marks omitted). For these reasons, this Court should stay the preliminary injunction pending appeal.

I. A Stay Is Warranted Under *Purcell*.

The district court's injunction fundamentally alters Texas's congressional map—indeed, the injunction changes 37 of Texas's 38 districts—in the midst of elections proceeding under it and on the eve of the rapidly approaching December 8 statutory candidate filing deadline. *See* Stay Appl. 13–19; Tex. Elec. Code § 172.023(a). "[L]ower federal courts should ordinarily not alter the election rules on the eve of an election."

Republican Nat'l Comm. v. Democratic Nat'l Comm., 589 U.S. 423, 424 (2020) ("*RNC*") (per curiam) (citing *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam)); *see* Senator Amicus Br. 8.

A. The "rules of the road should be clear and settled" because of how "complicated" it is to run an election. *Democratic Nat'l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 31 (2020) ("*DNC*") (Kavanaugh, J., concurring). That goes double for Texas. With 38 districts across 254 counties and more than 18 million registered voters,[1] by any of these metrics, Texas's congressional election is twice the size as—and correspondingly more complicated than—the Alabama election in *Merrill* and the Louisiana election in *Callais combined*.[2]

Local officials run much of Texas's decentralized election system. *See Lightbourn v. Cnty. of El Paso, Tex.*, 118 F.3d 421, 428 n.7 (5th Cir. 1997) (discussing "the decentralized nature of the Texas election system," including roles for "the state's 3,000 or so political subdivisions"); *see also* Stay Appl. 11, 15. County election officials have explained the uncertainty caused by the injunction, including how and whether to comply with the complex array of rules governing "re-precincting." Election Official Amicus Br. 9.

The sheer size and complexity of Texas elections explains why the "December 8 candidate filing deadline" is "earlier than the deadlines in 47 other states" and undermines Plaintiffs' suggestion that extending election deadlines would not be "an undue burden." NAACP Resp. 29 n.3; *cf.* Gonzales Resp. 35 n.11. According to unrebutted testimony,

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[1] *Turnout and Voter Registration Figures (1970-current)*, Texas Secretary of State, https://www.sos.state.tx.us/elections/historical/70-92.shtml.

[2] *Texas Has 18.6 Million Registered Voters Texas*, Secretary of State, https://www.sos.state.tx.us/about/newsreleases/2024/101924.shtml; *Statewide Report of Registered Voters*, Louisiana Secretary of State, https://electionstatistics.sos.la.gov/Data/RegistrationStatistics/statewide/20250101stacob.pdf (under 3 million registered voters); *Voter Registration Statistics – 2025*, Alabama Secretary of State, https://www.sos.alabama.gov/alabama-votes/voter/election-data (about 3.8 million registered voters).

"shifting" the "candidate filing period" "shifts everything" and "ha[s] an effect on all of those other dates," potentially leading to "[c]hanging the primary date," which could be "catastrophically bad." App. 561 (Adkins).

Candidates continue to rely on the 2025 map, filing for congressional races after the entry of the administrative stay.[3] Plaintiffs admit candidates are "campaigning under both the 2021 and the 2025 maps," reflecting "ongoing confusion among candidates." Brooks Resp. 44; *see* Stay Appl. 15–16. As amici confirm, the confusion the district court's order has injected into Texas's congressional elections is real, not merely hypothetical. *See* Candidate Amicus Br. 20 (explaining the "cascading disruptions for candidates and mass confusion among voters"). "Candidates throughout Texas do not know where to knock on doors this week," and voters face "an entirely new cast of candidates." *Id.* at 2–3.

Nor should Plaintiffs "get the benefit of the delay that they caused by breaking quorum." Stay Appl. 18 (quoting App. 181 (Smith, J., dissenting)). Plaintiff MALC's members broke quorum to delay the map's passage and succeeded in doing so for weeks. Stay Appl. 18. Allowing Plaintiffs to profit from their own delay would create the perverse incentives of which Plaintiffs complain. *See* MALC Resp. 11; *cf. Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring) (requiring the plaintiff to establish it "has not unduly delayed bringing the complaint to court").

B. Plaintiffs' three remaining arguments would vitiate the *Purcell* principle. *Purcell* applies whenever a lower court "alter[s] the election rules on the eve of an election." *RNC*, 589 U.S. at 424. That is why this Court has had to enforce it "repeatedly." *Id.*

First, Plaintiffs would penalize Texas for engaging in mid-decade redistricting, faulting the State for "cho[osing] to redistrict" when it "had no obligation to" do so. MALC

[3] *Primary Filing Information*, Tex. GOP Univ., https://texasgop.org/primary-filing-information/ (showing candidates filing for "United States Representative" in two separate districts on November 22 and November 24).

Resp. 11; *see* Gonzales Resp. 37. Texas has the right to redistrict mid-decade, just as the other States now pursuing redistricting do. And this Court has previously rejected the suggestion that the voluntary nature of mid-decade redistricting should affect judicial review. *See League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 418–19 (2006).

A State's legislative decision to change its election laws does not empower a court's even later injunctive change. *See Merrill*, 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."); *DNC*, 141 S. Ct. at 31 (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."); Senator Amicus Br. 10.

Second, Plaintiffs argue *Purcell* should not apply because the State can return to the 2021 map. *E.g.*, Brooks Resp. 45. But the Legislature repealed the 2021 map. Stay Appl. 10. Reverting to it reflects no deference to the Legislature's priorities. The Legislature's repeal of the 2021 map represents an affirmative rejection of it. If anything, reimposing a repealed map expressly repudiates the Legislature, akin to judicially reinstating a repealed law. App. 255 (Smith, J., dissenting). This is no different than the error precipitating *Purcell* itself, where a lower court barred enforcement of new voter identification requirements and restored a previous legislative baseline. *See, e.g.*, 549 U.S. at 4–6.

Moreover, the district court's remedy—reinstating the 2021 map because it would be "impracticable" for the Legislature to redraw the map, App. 158—only confirms the

Purcell issues.[4] Although it found a likelihood of success on only 6 districts (out of 38), by reimposing the 2021 map statewide, the district court changed boundaries across the entire State, affecting 37 of 38 districts. *But cf. Upham v. Seamon*, 456 U.S. 37, 43 (1982) (stating judicial "modifications of a state plan [should be] limited to those necessary to cure any constitutional or statutory defect"). The district court entered this sweeping judicial order because it concluded that there was no time for a proper, tailored remedy. But if there is no time to act properly, *Purcell* directs that a court should not act at all.

Plaintiffs suggest that candidate confusion could "be remedied by a denial of the stay just as effectively as" by a grant of the stay. Brooks Resp. 44. But "[c]orrecting an erroneous lower court injunction of a state election rule cannot itself constitute a *Purcell* problem." *DNC*, 141 S. Ct. at 31-32 (Kavanaugh, J., concurring). "To be sure, it would be preferable if federal district courts did not contravene the *Purcell* principle by rewriting state election laws close to an election. But when they do, appellate courts must step in." *Id.* at 32; *see RNC*, 589 U.S. at 425 ("[W]hen a lower court intervenes and alters the election rules so close to the election date, our precedents indicate that this Court, as appropriate, should correct that error.").

Third, Plaintiffs focus on the election calendar to downplay the injunction's harm on voters and candidates. Gonzales Plaintiffs insist "[t]he *only* significant date on the 2026 election calendar that has passed is the opening of the candidate filing period on November 8." Gonzales Resp. 32; *see* Brooks Resp. 43. They omit the unrebutted evidence of candidate, voter, and administrative reliance on the 2025 map preceding the candidate-filing period. *See* App. 568 (Adkins) ("I do believe candidates have already initiated that application process or campaign process based on new maps."); *id.* at 564–65 (Adkins)

[4] Brooks Plaintiffs are incorrect to suggest that the State Defendants "agreed" that the district court would reinstate the 2021 map. Brooks Resp. 41. In the cited transcript, State Defendants were describing Plaintiffs' requested relief. ECF 1145 at 32.

(testifying to "some level of voter confusion" even if the injunction had issued on October 9 instead of November 18 and that "the later we are in the process" the "harder on voters"); *id.* at 564 (Adkins) (agreeing that "counties [were] already preparing to run the election under the 2025 map"). Candidate Amici confirm that they "cannot be sure of the precise boundaries of their districts going forward" and are "currently directing advocacy to voters they are certain will not be in their ultimate district—but at this time, they do not know which voters those voters are." Candidate Amicus Br. 2. Plaintiffs are not correct that Adkins testified that the State could easily implement the 2021 map. *Compare* MALC Resp. 10 *with* Stay Appl. 16–17 (discussing the district court's misstatement regarding Adkins' testimony).

Nor are the merits "entirely clearcut" in Plaintiffs' favor. *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring); *see also* Stay Appl. 13 n.5. For the reasons stated below, in the application, the dissent, and numerous amicus briefs, the merits strongly favor State Defendants. At a bare minimum, the 100-page dissent, the various amicus briefs supporting the State Defendants, including a brief from the United States and a brief from 22 States, and Plaintiffs filing six separate responses totaling 257 pages, confirms that the merits are, at least, debatable.

* * *

At heart, Plaintiffs disagree with *Purcell*. Refusing to treat a preliminary injunction as "an extraordinary remedy never awarded as of right," *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008), Plaintiffs reject the possibility that *Purcell* could bar an injunction they believe is justified on the merits. That is why they suggest opinions granting stays were wrong and those dissenting from stays are right. *See* Brooks Resp. 42 (suggesting Justice Kavanaugh's *Merrill* concurrence incorrectly burdened plaintiffs). It is why they rely on an opinion dissenting from a previous *Purcell* stay. *See* NAACP Resp. 29–30 (citing *Robinson v. Callais*, 144 S. Ct. 1171, 1172 (2024) (Jackson, J., dissenting)). And it is why their arguments appear to be drawn from other dissenting opinions. *Compare*

LULAC Resp. 2 (arguing a stay would disrupt "the status quo" established by the injunction), *with Raysor v. DeSantis*, 140 S. Ct. 2600, 2603 (2020) (Sotomayor, J., dissenting) (objecting that "an appellate court stay . . . disrupts a legal status quo").

Purcell requires judicial restraint when a State's electoral machinery is already in motion. The injunction below violated these principles, upset an election in progress, and should be stayed pending resolution of the appeal.

II. A Stay Is Warranted Under the Traditional Stay Factors Because this Court Is Likely to Reverse.

A. This Court is likely to reverse the decision below as contrary to *Alexander*.

This Court will likely reverse, as it reversed in *Alexander*. Plaintiffs' call for deference to the district court's fact-finding is no different than the calls for deference in *Alexander*. But a district court receives no deference when it applies the incorrect legal principles. *Alexander*, 602 U.S. at 18-19 (citing *Inwood Lab'ys, Inc. v. Ives Lab'ys, Inc.*, 456 U.S. 844, 855, n.15 (1982)). The district court did not hold Plaintiffs to their "especially stringent" evidentiary burden, nor did it "draw the inference that cuts in the legislature's favor when confronted with evidence that could plausibly support multiple conclusions." *Id.* at 10-11.

Plaintiffs do not deny that Adam Kincaid's detailed testimony provided "a specific, legitimate, race-neutral explanation for every redistricting decision." Stay Appl. 30. As the United States explains, the testimony of the mapmaker is "among the most probative direct evidence of racial gerrymandering." U.S. Br. 19–20 (discussing *Cooper*, 581 U.S. at 299-300); *see also Alexander*, 602 U.S. at 19 (noting that the map-drawer "testified that he used only political data"). Even the majority conceded that Kincaid's testimony was "compelling." App. 96;[5] *see also* App. 203-04 (Smith, J., dissenting). The majority committed

[5] Brooks Plaintiffs are wrong to suggest that the district court disbelieved Kincaid because of his "demeanor." Brooks Resp. 32. Brooks Plaintiffs also point to Kincaid's and

the same error as in *Alexander*, rejecting his unrebutted testimony based on speculation about racial targets, particularly in the absence of an alternative map. Stay. Appl. 29–30.

1. The district court erred by excusing Plaintiffs' failure to produce an alternative map.

Because Plaintiffs failed to submit an alternative map, the district court was compelled to infer that they "cannot draw a map that undermines the legislature's defense." *Alexander*, 602 U.S. at 35; Stay Appl. 21–22; *see also* U.S. Br. 9, 25; State Amicus Br. 6.

The district court correctly and unanimously found that Plaintiffs failed to present an alternative map under *Alexander*. App. 132 n.488; App. 236–38 (Smith, J., dissent). MALC Plaintiffs disagree, contending that Dr. Duchin's computer simulations, which were not introduced into evidence, constituted an alternative map. MALC Resp. 25–27; *see also* NAACP Resp. 23–25 (admitting that they "did not introduce an alternative map into evidence" but arguing that "computer code" satisfied their burden). *Alexander*'s requirement is simplicity itself: produce a map, not testimony about maps, not statistics about maps, and not computer code outside the record. Accepting these arguments would be inconsistent with *Alexander* itself, in which the plaintiffs failed to satisfy the requirement even though (as here) their experts simulated thousands of maps. 602 U.S. at 24.

Plaintiffs do not offer excuses for their failure to introduce a map. No Plaintiff defends the district court's inference that they "simply didn't have the time" to prepare one. App. 134. If their expert truly possessed tens of thousands of alternative maps, there is no reason Plaintiffs could not have submitted one. In these circumstances, the failure can only be strategic, and *Alexander*'s inference should be particularly strong.

Senator King's differing memories regarding a brief conversation at a conference several months before the hearing. Brooks Resp. 28–29. Any inconsistency is unrelated to why the map lines were drawn.

Some Plaintiffs complain that they did not have the data necessary for an alternative map, having first learned the precise criteria applied by Kincaid at the hearing. *E.g.*, Brooks Resp. 39 n.58. But it was Plaintiffs' decision to forego discovery. Stay Appl. 10 & n.4. Nor did Plaintiffs even produce an alternative map that made the same changes to the political makeup of Texas's congressional delegation as the 2025 map—the political goals for which were broadcast across the country.

MALC attempts to defend the district court's conclusion that *Alexander* does not apply at the preliminary-injunction stage. MALC Resp. 24–25. But as the United States and the State Amici explain, strict adherence to *Alexander* is only more critical in the preliminary-injunction context, where courts must make important decisions on a limited record, and a plaintiff must make a "clear showing" of entitlement to relief. U.S. Br. 24–25 (citing *Winter*, 555 U.S. at 7); State Amicus Br. 8–10. Such a map, which can be produced easily and quickly, is equally available in the preliminary-injunction context, and given the showing necessary to receive this extraordinary remedy, the failure should be viewed even more severely.

Brooks Plaintiffs contend that *Alexander*'s requirement does not apply "when there is no change to the affected district's politics." Brooks Resp. 37. Not even the district court accepted that argument. There is no such thing as a single "affected district." Redistricting necessarily affects multiple districts. Although the politics of CD27 did not change, for example, voters from its southwest corner were shifted into the adjacent CD34 (to change *its* politics), requiring CD27 to add additional voters, changing its racial makeup. ECF 1419 at 155–157. And even when two adjacent districts share politics in one configuration, alternative maps disentangle racial motives from traditional redistricting criteria, such as compactness and natural boundaries. *See* ECF 1419 at 110–112 (Kincaid testimony that the border between CD33 and CD30 follows natural boundaries).

Because Plaintiffs failed to submit an alternative map, the district court was required to infer that they "cannot draw a map that undermines the legislature's defense

that the districting lines were "'based on a permissible, rather than a prohibited, ground.'" 602 U.S. at 35 (quoting *Cooper*, 581 U.S. at 317).

2. As in *Alexander*, the district court erred in inferring that the map was drawn to satisfy a racial target.

The district court committed the same error as the district court in *Alexander*: identify a racial statistic in the enacted map, then infer that the map must have been drawn to meet that target. *See id.* at 20–21 (inferring a "17% BVAP" target). In this case, the district declared, with no support other than its own *ipse dixit*, that drawing a map with three districts "just barely 50%+ CVAP" was "extremely unlikely." App. 96.

Plaintiffs' failure to present an alternative map forbids this inference. On this record, a factfinder must assume that Plaintiffs could not draw a map showing that a legislature "driven only by its professed mapmaking criteria, could have produced a different map with [different] racial balance." 602 U.S. at 34. With no proffered alternative, a plaintiff cannot "disentangle race and politics," and a court must assume that any statistical oddities in the map result from the Legislature's partisan goals, in light of the correlation between race and partisanship. *See id.* at 9 (explaining that "partisan and racial gerrymanders 'are capable of yielding similar oddities in a district's boundaries'"). As in *Alexander*, Plaintiffs "cannot point to even one map in the record that would have satisfied the legislature's political aim" without also yielding districts with just over 50% minority CVAP. *Id.* at 20.

A court cannot simply identify a statistic regarding a map's racial demographics, declare such a result "unlikely," conclude that it constitutes a "target," and infer that the map was drawn to satisfy this target (all while rejecting the unrebutted testimony of the mapmaker to the contrary). The erroneous analysis in this case tracks the erroneous analysis in *Alexander* precisely. There, the district court noted that the map maintained a 17% BVAP, inferred that this statistic constituted a "target" that the map was drawn to achieve, and discredited the mapmaker's contrary testimony. *See id.* at 19. There, as here, no direct evidence supported the district court's conclusion, and the only direct evidence

was to the contrary. *Id.* Such speculation was insufficient "to support an inference that can overcome the presumption of legislative good faith." *Id.*

There is no evidence in support of the proposition that three districts with just over 50% minority CVAP was "extremely unlikely" among maps that would achieve the Texas Legislature's goals. Despite presenting six experts and days of testimony at trial, Plaintiffs cite only the district court's declaration, which as the United States explains, is nothing more than a "layman's conjecture." U.S. Br. 17. Disentangling race and partisanship is a complex endeavor, requiring serious analysis. *Alexander*, 602 U.S. at 19–33. Whether this result was "unlikely" depends on how many districts one would expect a race-neutral, partisan gerrymander to create with a minority CVAP percentage just over 50% minority CVAP. Such a calculation would, in turn, require accounting for factors such as the correlation between race and partisanship. *See* U.S. Br. 17–18; *Alexander*, 602 U.S. at 9 (noting that partisan and racial gerrymanders "are capable of yielding similar oddities in a district's boundaries"). This crucial finding—that the number of districts with a minority CVAP of just over 50% are an "unlikely" result of a partisan gerrymander—required evidence, not conjecture.

As the United States notes, the mapmaker provided a "detailed explanation of the race-neutral line-drawing decisions that, in fact, happened to result in those racial percentages." U.S. Br. 17. These explanations went unrebutted, and "the mere fact that Districts 9, 18, and 30 happened to wind up containing Hispanic or black CVAPs slightly above 50% . . . is in no way inconsistent with a purely partisan gerrymander," "given the correlation between race and party." U.S. Br. 17-18. Particularly in the absence of an alternative map, the district court erred by "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." 602 U.S. at 20–21.

In contrast, in *Cooper*, the two legislators hired the mapmaker "to assist them in redrawing district lines." 581 U.S. at 295. The legislators did not merely comment on racial

statistics but instructed the mapmaker to change the racial composition of a district and thus "'draw a plan that would pass muster under the Voting Rights Act.'" *Id.* at 311 (citation omitted). The legislators, not the mapmaker, decided to bring "the black community in Guilford County into the" district. *Id.* at 312. And one of the legislators responsible for drawing the map told a fellow officeholder that "his leadership had told him that he had to ramp the minority percentage in [District 12] up to over 50 percent to comply with the Voting Rights Law." *Id.* at 311. And at his deposition, the mapmaker admitted that the legislators "'decided' to shift African–American voters into District 12 'in order to' ensure preclearance under § 5." *Id.* at 314. And the mapmaker was permitted "to use race . . . with regard to Guilford County" in drawing the district. *Id.*

Cooper, in which direct evidence demonstrated that legislators instructed the mapmaker to achieve a particular racial composition, *id.* at 300, is a far cry from this case and from *Alexander*, in which district courts erroneously inferred the existence of racial targets based on the demographics of enacted maps. 602 U.S. at 22.

3. Plaintiffs' other evidence did not satisfy their "stringent" evidentiary burden.

This Court has "never invalidated an electoral map in a case in which the plaintiff failed to adduce any direct evidence" that "race played a role in the drawing of district lines." *Id.* at 8. The difference between "direct" and "circumstantial" evidence is crucial in this context. Stay Appl. 24–27.

"Direct evidence" is evidence "that, if true, proves a fact without inference or presumption." *Evidence*, Black's Law Dictionary (12th ed. 2024); *accord Coghlan v. Am. Seafoods Co.*, 413 F.3d 1090, 1095 (9th Cir. 2005) (O'Scannlain, J.) (same); *Jones v. Robinson Prop. Grp., L.P.*, 427 F.3d 987, 992 (5th Cir. 2002) (same); *Burns v. Gadsden State Cmty. Coll.*, 908 F.2d 1512, 1518 (11th Cir. 1990) (per curiam) (same). Direct evidence, if credited, "amounts to a confession of error." *Alexander*, 602 U.S. at 8.

Plaintiffs have no direct evidence. Stay Appl. 27–29. And in the light of the presumption of legislative good faith, which "directs district courts to draw the inference that cuts in the legislature's favor when confronted with evidence that could plausibly support multiple conclusions," *Alexander*, 602 U.S. at 10, it was error for the district court to mischaracterize "circumstantial evidence" as "direct evidence" in determining whether Plaintiffs satisfied their "stringent" burden.

a. The DOJ letter does not demonstrate that race played a role in the drawing of district lines.

Plaintiffs argue that the DOJ letter is direct evidence of the Legislature's intent with respect to the drawing of district lines because Texas "chose to comply with DOJ's demand." MALC Resp. 15. At the outset, this is not "direct evidence" because the Legislature's intent is being "infer[red] or presum[ed]" from its actions. *Jones*, 427 F.3d at 992. Nor is it correct. As the United States explains, the DOJ letter does not "urge any particular course of action." U.S. Br. 12; *see also id.* at 13 ("[A] State obviously can remedy racial gerrymandering without engaging in more racial gerrymandering."). And even under the district court's incorrect interpretation, "Texas ignored the [alleged] 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." U.S. Br. 15.

Several Plaintiffs also argue that the DOJ letter is probative of legislative intent because the allegedly suspicious "sequence of events" "establishes the context in which Texas's redistricting occurred." MALC Resp. 15; *id.* at 19 ("course of conduct"); *see* Brooks Resp. 29 (same); NAACP Resp. 1 ("a sequence of events"). But the "sequence of events leading up to the challenged decision" is one of the traditional forms of *circumstantial* evidence of "discriminatory purpose," *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 267 (1977), not direct evidence. And there is nothing unusual about this chain of events that could lead to an inference of racially discriminatory line drawing, given that the Legislature did not follow the purported goals laid out in the DOJ letter, *supra* at

14, and no evidence supports the theory that the Legislature set racial targets for the districts that were drawn, *supra* at 11–13.

b. Governor Abbott's special session proclamation and press statements do not demonstrate racial gerrymandering.

Departing from the district court's reasoning, Brooks Plaintiffs and Gonzales Plaintiffs contend that the Governor's intent is "of singular importance" to ascertaining the Legislature's intent—so much so that the Court could "start and stop its analysis there"—because he called the special session and wields a veto. Brooks Resp. 30; *see* Gonzales Resp. 15 ("The Court could stop there."). But the relevant question is "the predominance of race in the *legislature's line-drawing process*." *Cooper*, 581 U.S. at 321 (emphasis added); *Alexander*, 602 U.S. at 8 ("drawing of district lines"); *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 267 (2015) ("motivated *the drawing of particular lines*") (emphasis added). And while the Governor calls a special session, he does not exercise "Legislative power," Tex. Const. art. III, § 1, or draft legislation.[6] It is undisputed that he played no "role in the drawing of district lines." *Alexander*, 602 U.S. at 8. For that reason, he is not a "relevant state actor" for purposes of the racial-gerrymandering inquiry. *Id.*

Plaintiffs also develop a novel theory that, because the Governor called the special session and could have vetoed the map, he is the "but for cause" of the map's passage and thus his (allegedly improper) intent could sustain a racial gerrymandering claim. Brooks Resp. 26, 30–31; Gonzales Resp. 15; *see also* NAACP Resp. 19. Plaintiffs distill this single-actor-intent theory from *Hunter v. Underwood*, 471 U.S. 222 (1985), but it offers no support.

[6] NAACP Plaintiffs are wrong to argue (at 18) that the Governor's invocation of the legislative privilege rendered him a "relevant state actor" for a racial gerrymandering claim. Executive-branch officials may claim the legislative privilege when they are exercising legislative functions, but it is undisputed that the Governor did not participate in the drawing of district lines. *See Am. Trucking Ass'ns v. Alviti*, 14 F.4th 76, 87–88 (1st Cir. 2021); *In re Hubbard*, 803 F.3d 1298, 1308 (11th Cir. 2015); *see also Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) ("We have recognized that officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.").

In *Hunter*, this Court considered the intent of the Alabama legislature as a whole by consulting "the proceedings of the convention, several historical studies, and the testimony of two expert historians." *Id.* at 229. Nowhere does *Hunter* hold that a racial-gerrymandering claim can be based on a single individual treated as the "but-for" cause of a law's passage. If anything, *Hunter* endorses the opposite proposition. *See id.* at 228–29 (citing *United States v. O'Brien*, 391 U.S. 367, 383–84 (1968)); *see also Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 689 (2021).

Plaintiffs lastly point to press statements by Governor Abbott that purportedly "reinforce" the Legislature's racial motivations. MALC Resp. 16–17; Gonzales Resp. 1, 10, 13; LULAC Resp. 16. That such statements allegedly "reinforce" or "shed light" on the Legislature's motives is a concession that these statements are, at most, circumstantial evidence. And in any event, they do not demonstrate that race drove the drawing of district lines. Those statements instead "reflected the (correct) observation that minority voters in Texas are "'moving . . . towards the Republican Party.'" Stay Appl. 26 (quoting App. 512). The Governor's statement that Texas Republicans "wanted to remove those coalition districts" was premised on the notion that they "trapped" Republicans "in a Democrat congressional district." App. 32. And when asked whether the goal was to add Republican seats, the Governor ultimately explained that the redistricting sought to "give [the] ability" to people in "districts where the electorate voted heavily for Trump" to "vote for a member of Congress who is a Republican." App. 32. In the process, the 2025 map "turned out to provide more seats for Hispanics"—"[It] just coincides it's going to be to Hispanic Republicans elected to those seats." App. 32.

Furthermore, the Governor's press statements were made in August, long after the map had been submitted to the Legislature. Stay Appl. 26 (citing App. 473). The most plausible explanation, Judge Smith notes, is that the Governor "adjusted his rhetoric to

defend the map in a forward-facing capacity," App. 215 (Smith, J., dissenting).[7] And at least where "evidence could plausibly support multiple conclusions," the "presumption of legislative good faith directs district courts to draw the inference that cuts in the legislature's favor." *Alexander*, 602 U.S. at 10.

c. Isolated statements from a handful of legislators do not establish that race drove the drawing of district lines.

Nor do various statements from Speaker Burrows, Representatives Toth and Oliverson, and Chairman Hunter constitute direct evidence of racial intent. Stay Appl. 27–29. In Plaintiff MALC's own words (at 19), no statement amounts to an "explicit confession that race predominated over all other considerations," meaning no statement is direct evidence. *Alexander*, 602 U.S. at 8 (direct evidence "amounts to a confession of error"). And here, lawmakers' mere awareness of the map's racial demographics is not evidence—direct or circumstantial—of racial purpose.

Nor can the "announcement[s]" and "characterization[s]" of "legislative leadership" function as a proxy for the intent of the legislature as a whole. MALC Resp. 16. "[T]he legislators who vote to adopt a bill are not the agents of the bill's sponsor or proponents." *Brnovich*, 594 U.S. at 689. And where several key legislators—including Chairman Vasut and Senator King, "legislative leadership" by any metric—disclaimed any racial motivation, App. 79–90, it was clear error for the district court to rely on statements of only four Republican members of the Texas House to the "exclus[ion of] over 80 other Republicans in the House, [and] scores more in the Senate," App. 213 (Smith, J., dissenting).

[7] MALC Plaintiffs note (at 16–17) that the Governor's July 9th call of the special session was issued before the map was provided to the Legislature, but Kincaid testified he began drawing the map well before and had already entered the "final phase." App. 472–73. And in any event, that proclamation produced no legislation at all. On August 15th, Governor Abbott issued a second proclamation calling a new special session, adding one item, and altering the language for three others. ECF 1373-16 at 2–3. It also omitted any reference to the DOJ letter.

Brooks Plaintiffs note that *Cooper* "affirmed a finding of racial predominance based primarily upon the statements of the two bill sponsors." Brooks Resp. 33 (citing 581 U.S. at 299–300). But these sponsors worked with the mapmaker to draw district lines, *Cooper*, 581 U.S. at 295 (hired a mapmaker "to assist them"), and the "statements" were instructions to the mapmaker to engage in racial gerrymandering, *id.* at 310–14. *See also id.* at 314 (noting the instruction not to use race "except perhaps with regard to Guilford County"). No similar evidence is present here.

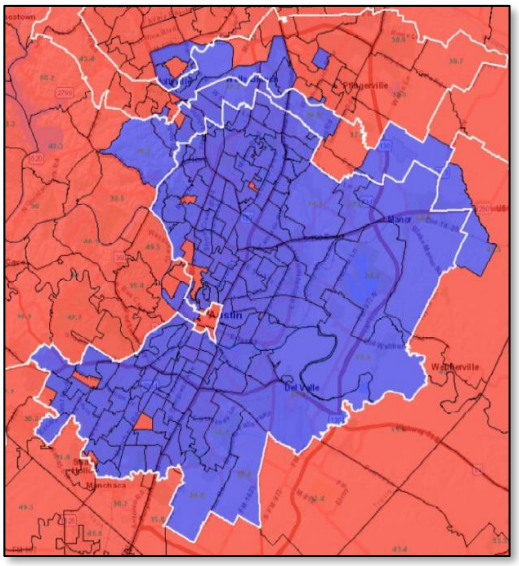
Plaintiffs also devote significant attention to the floor statements of Chairman Hunter discussing, in response to his colleagues' colloquies, the racial makeup of certain districts. LULAC Resp. 5–7, 10, 11–15; MALC Resp. 18; NAACP Resp. 8. But "[r]edistricting legislatures will . . . almost always be aware of racial demographics," *Miller v. Johnson*, 515 U.S. 900, 916 (1995), so there is "nothing nefarious" about Chairman Hunter's "aware[ness] of the racial makeup of the various districts," *Alexander*, 602 U.S. at 37.

And Chairman Hunter's statements must be understood in the context of the litigation over the 2021 maps, in which Plaintiffs levied charges of racial discrimination based, in part, on the absence of Hispanic CVAP majority districts. *See, e.g.*, ECF 985 at 6 (LULAC Plaintiffs) ("Defendants crafted a new map [the 2021 map] that reduced the number of Hispanic CVAP majority congressional districts, and failed to create any new Hispanic CVAP majority congressional districts."). The most plausible explanation is that "Chairman Hunter was publicly attacked in the 2021 redrawing . . . and felt motivated to defend his reputation and that of the Texas house by expositing the racial statistics of the new map." App. 207 (Smith, J., dissenting). LULAC Plaintiffs suggest (at 21 n.6) that "there is no evidence" that Chairman Hunter's statements "were an attempt to seem non-discriminatory after having received criticism in 2021," but Plaintiffs' filings are in the record, and the attacks themselves provide context to the statements. *See* ECF 985 at 6; App. 207 (Smith, J., dissenting).

Brooks Plaintiffs respond (at 33) that the district court made a factual finding entitled to deference that Chairman Hunter's comments reflected "value-laden" racial motivation instead of mere awareness. Not only are "value-laden" discussions of racial demographics no evidence of racial intent, Stay Appl. 28, but the fact that the district court was drawing inferences or presumptions from "tone, expressions, and demeanor," Brooks Resp. 32, merely confirms that these ambiguous statements must be interpreted in the light most favorable to the Legislature, as the presumption of legislative good faith requires. *See Alexander*, 602 U.S. at 6.

d. The drawing of CD37 and CD27 does not constitute circumstantial evidence of racial gerrymandering.

Like the district court, some Plaintiffs fault the Legislature for not dismantling CD37, a highly-compact, majority-white Democratic district comprising the City of Austin. Its borders track partisan boundaries, with the blue areas "less than 30 percent Trump" and red areas "30 percent or more Trump in 2024." App. 504–05; ECF 1382-25 (CD 37 map).



No Plaintiff has offered any reason that the Legislature should have targeted CD37 rather than any other Democratic district, much less presented evidence that that doing so would have served the Legislature's partisan goals better than its actual map. The district court—and Plaintiffs—simply declare that because CD37 is majority-White, its presence in the 2025 map demonstrates racial intent. Such reasoning is facially untenable.

Plaintiffs (like the district court) fail to ask the obvious question: How many plurality-White Democratic districts would a race-neutral gerrymander be expected to

eliminate?[8] The answer reveals that contrary to Plaintiffs' theory that the Legislature targeted minority districts, Texas's partisan redistricting affected different racial groups within the Democratic party proportionally. The 2021 map includes three plurality-White districts (CD7, CD32, and CD37) out of thirteen Democratic districts (23%). The 2025 map includes two plurality-White districts out of eight Democratic districts (25%).

The district court's reasoning—the Legislature leaving *any* plurality-White Democratic district in place shows that "racial concerns predominated," App. 107 n.403—collapses under scrutiny.

The accusation that the Legislature "completely gutted majority-non-White CD9 and not majority-White CD37" is also wrong on its own terms. App. 106. CD9 was not dismantled, it was renumbered as CD18, which retains 60-65% of the former CD9. ECF 1341 at 15 (only "35 or 40 percent" of the voters in CD9 "were not moved to [CD]18"); *see also* ECF 1415 at 104 (testifying that "two-thirds" of former CD9 is in CD18). Kincaid explained that "the core of Texas 9 is now in Texas 18." ECF 1420 at 98. "Most of what was the 9th District is now still together in the 18th District." *Id.*; *see also* App. 225 n.157 (Smith, J., dissenting) ("CD-9 substantially swapped locations with CD-18 measured by core retention[.]").

The district court also declared, with no explanation or citation, that "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," such as CD27. App. 107. None of the Plaintiffs defend this reasoning. As the dissent explains, not only is the assumption unsupported, but it conflicts with common sense: a partisan gerrymander necessarily requires moving both Republican and Democratic voters. App. 216 (Smith, J., dissenting). The 2025 map changes 37 out of the State's 38 congressional

[8] The district court's opinion appears to assume that all three should have been eliminated. App. 107 n.403 (criticizing the Legislature for not eliminating CD7 as well).

districts, and Republican voters from CD27 were shifted into adjacent CD34 to turn it into a new Republican district. App. 506; ECF 1419 at 155–57.

e. Plaintiffs' defense of Dr. Duchin is unavailing.

The district court erred by placing any reliance on Dr. Moon Duchin, whose analysis in this case suffers from the same flaws as in previous cases. Stay Appl. 35–38. Dr. Duchin was "just not aware of the principles used to create the enacted map," so she "c[ould]n't simulate th[em]." App. 438. This concession should be fatal: her analysis cannot say anything meaningful about the likelihood of the "enacted map" if she knew nothing about the principles used to create it.

Plaintiffs do not deny this fact—they simply complain that Dr. Duchin "had no access" to Kincaid's data and criteria. Brooks Resp. 38. But that lack of access resulted from their failure to conduct discovery. Stay Appl. 9–10. The related contention that Kincaid's mapdrawing criteria were shielded by privilege, NAACP Resp. 20–21, is belied by his twelve hours of testimony and by the description of those criteria in the district court's published opinion, App. 92–93.

Plaintiffs also attempt to justify Dr. Duchin using the wrong criteria, asserting that her maps were "at least as favorable to Republicans" as Kincaid's. NAACP Resp. 15; *see also* Brooks Resp. 37–38. This is incorrect—as the district court recognized, Dr. Duchin applied a lower Republican-vote threshold than Kincaid. App. 125. Brooks Plaintiffs suggest that the different threshold is irrelevant because Dr. Duchin's "performance floor" of 55% Trump 2024 districts would include the 60% districts Kincaid drew. Brooks Resp. 37–38. Not so—Dr. Duchin's analysis tried to determine whether Kincaid's maps were a statistical outlier among the entire set of maps she generated. But by setting a lower partisan threshold for her maps, Dr. Duchin made Kincaid's map an outlier in the dataset in partisanship and, as one would expect, in other ways as well. *See Alexander*, 602 U.S. at

9 (noting that "partisan and racial gerrymanders 'are capable of yielding similar oddities in a district's boundaries'").

Nor does any Plaintiff defend Dr. Duchin's use of outdated incumbent data, App. 583–85, or her failure to protect against paired Republican incumbents. Stay Appl. 37. These are the same types of errors she made in *Allen v. Milligan*, 599 U.S. 1, 34 (2023), and *Alexander*, 602 U.S. at 33. And like the testimony of the flawed experts in *Alexander*, because she "fail[ed] to track the considerations that governed the legislature's redistricting decision," her testimony is "irrelevant." 602 U.S. at 25.

B. The remaining *Nken* factors favor a stay.

The State will be irreparably injured absent a stay, and the public interest likewise favors a stay. Stay Appl. 38–39. "[A]ny 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, 1303 (2012) (Roberts, C.J., in chambers); *see Trump v. CASA, Inc.*, 606 U.S. 831, 861 (2025); Am. First Legal Amicus Br. 7-8. Likewise the public interest in orderly and accurate elections is overwhelming: Avoiding voter confusion, administering an orderly election, and giving citizens confidence in the fairness of their election is always in the public interest. *DNC*, 141 S. Ct. at 31 (Kavanaugh, J., concurring).

Plaintiffs argue that the State will suffer no irreparable harm because the State used the 2021 maps in the past and can do so again. LULAC Resp. 28; Brooks Resp. 39; NAACP Resp. 26–27; Gonzales Resp. 39. But, as various amici demonstrate, a reversion to the 2021 maps would cause disruption for local election administrators and candidates alike who have been proceeding under the 2025 maps. *See* Election Official Amicus Br. 8–13; Candidate Amicus Br. 2–20; Senator Amicus Br. 15–20. Brooks Plaintiffs separately suggest (at 40) that Texas will not be irreparably harmed because permitting elections to proceed under the 2025 map would vindicate an interest that is "incompatible with democratic principles."

Brooks Resp. 40. But Plaintiffs cannot circumvent *Rucho* and render objections to partisan gerrymandering justiciable through the *Nken* factors.

Finally, Plaintiffs fail to demonstrate that a stay would harm them. Plaintiffs contend that allowing the election to be held under the 2025 map would cause them the irreparable harm of being "forced to vote under a racially discriminatory map that violates their constitutional rights." NAACP Resp. 26; MALC Resp. 38–39; Gonzales Resp. 39–40; LULAC Resp. 27; Brooks Resp. 41. But according to Plaintiffs, the preliminary injunction would not prevent this harm because they allege that the 2021 map is also an unconstitutional racial gerrymander: "[T]he Texas Legislature engaged in intentional racial discrimination and racial gerrymandering in the drawing of [CD9, CD18, and CD30 in the 2021 map.]" ECF 983 at 1 (Plaintiff-Intervenors); *see also* ECF 981 at 4 (NAACP Plaintiffs); ECF 985 at 7 (LULAC Plaintiffs); ECF 975 at 4 (MALC Plaintiffs).

Plaintiffs' newfound embrace of the 2021 map, which they challenged for years of litigation, is explained by their preference for the politics of the 2021 map compared to the politics of the 2025 map. They 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).

CONCLUSION

For these reasons, this Court should enter a stay pending appeal.

Respectfully submitted,

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