No. 25A____

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.

EMERGENCY APPLICATION FOR STAY AND ADMINISTRATIVE STAY PENDING APPEAL

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PARTIES TO THE PROCEEDING AND RELATED PROCEEDINGS

Applicants are Greg Abbott, in his official capacity as Governor of the State of Texas, Dave Nelson, in his official capacity as Deputy Secretary of the State of Texas, Jane Nelson in her official capacity as Texas Secretary of State, and the State of Texas (State Defendants). Applicants are the defendants before the three-judge panel of the United States District Court for the Western District of Texas.

Respondents are six groups of Plaintiffs. First, the League of United Latin American Citizens (LULAC) Plaintiffs, which include: Jo Ann Acevedo, Diana Martinez Alexander, American GI Forum of Texas, Fiel Houston, Inc., La Union Del Pueblo Entero, League of United Latin American Citizens, David Lopez, Mexican American Bar Association of Texas, Mi Familia Vota, Jose Olivares, Proyecto Azteca, Reform Immigration for Texas Alliance, Paulita Sanchez, Southwest Voter Registration Education Project, Texas Association of Latino Administrators and Superintendents, Texas Hispanics Organized for Political Education, William C. Velasquez Institute, Workers Defense Project, Joey Cardenas. Second, the Brooks Plaintiffs, who include: Roy Charles Brooks, Felipe Gutierrez, Phyllis Goines, Eva Bonilla, Clara Faulkner, Deborah Spell, Sandra M. Puente, Jose R. Reyes, Shirley Anna Fleming, Louie Minor, Jr., Norma Cavazos, Lydia Alcahan, Martin Saenz, Dennis Williams, Justin Boyd, Charles Cave, Betty Keller, Lorraine Montemayor, Emmanuel Guerrero, Joetta Stevenson. Third, the Mexican American Legislative Caucus. Fourth, the Gonzales Plaintiffs, who include: Cecilia Gonzales, Agustin Loredo, Jana Lynne Sanchez, Jerry Shafer, Debbie Lynn Solis, Charles Johnson, Jr., Vincent Sanders, Rogelio Nuñez, Marci Madla, Mercedes Salinas, Heidi Cruz, Sylvia Bruni, and Gwendolyn Collins. Fifth, Texas NAACP. Sixth, the Intervenor Plaintiffs, who include: U.S. Representatives Alexander Green and Jasmine Crockett. Respondents are the plaintiffs before the three-judge panel.

The proceedings below were *League of United Latin American Citizens, et al., v. Greg Abbott, et al.*, No. 3:21-cv-00259-DCG-JES-JVB (W.D. Tex.). A preliminary injunction was entered on November 18, 2025, and a stay was denied on November 21, 2025.

RULE 29.6 STATEMENT

Pursuant to Supreme Court Rule 29.6, Applicants each represent that they do not have any parent entities and do not issue stock.

/s/ William R. Peterson
William R. Peterson

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TO THE HONORABLE SAMUEL A. ALITO, JR., ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE FIFTH CIRCUIT:

This summer, the Texas Legislature did what legislatures do: politics. *Rucho v. Common Cause*, 588 U.S. 684 (2019). It redistricted the State's 38 congressional districts mid-decade to secure five additional Republican seats in the U.S. House of Representatives. Other States answered in kind. California is working to add more Democratic seats to its congressional delegation to offset the new Texas districts, despite Democrats already controlling 43 out of 52 of California's congressional seats. Virginia Democrats initiated a constitutional amendment for a mid-cycle redraw.

Plaintiffs answered with litigation, asking a three-judge district court to preliminarily enjoin Texas's map for use in the upcoming 2026 elections. And over a dissent, the panel majority did just that, recasting Texas's partisan gerrymander as a racial one and allowing Plaintiffs to use the court as a "weapo[n] of political warfare." *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 11 (2024) (internal quotation marks omitted).

The majority failed to hold Plaintiffs to their demanding burden to "disentangle race and politics." *Id.* at 9. It disregarded the fact that "[w]hen partisanship and race correlate, it naturally follows that a map that has been gerrymandered to achieve a partisan end can look very similar to a racially gerrymandered map." *Id.* It failed to follow the strong presumption of legislative good faith, which directs courts to "draw the inference that cuts in the legislature's favor when confronted with evidence that could plausibly support multiple conclusions." *Id.* at 10. It rejected the State Defendants' powerful direct evidence of good faith: the unrebutted testimony of the mapdrawer, who "went district by district," "sometimes line by line," giving "political or practical—*i.e.*, non-racial—rationales for his decisions at every step." App. 95-96. And the majority excused Plaintiffs' failure to provide an alternative map, a mistake that this Court unequivocally held "would be clear error." *Alexander*, 602 U.S. at 37. A stay is warranted because this Court is likely to note probable jurisdiction and reverse the decision below.

Compounding the harm, the district court entered its sweeping injunction far too late in the day—ten days after Texas's candidate filing period had already opened. The injunction changes the boundaries of all but one of the State's 38 congressional districts, enjoining Texas from using its duly enacted 2025 map and resurrecting the repealed 2021 map. The chaos caused by such an injunction is obvious: campaigning had already begun, candidates had already gathered signatures and filed applications to appear on the ballot under the 2025 map, and early voting for the March 3, 2026, primary was only 91 days away. The lateness of the district court's injunction (issued 38 days after the hearing) alone warrants a stay. *Purcell v. Gonzalez*, 549 U.S. 1 (2006).

With the deadline for candidate filing rapidly approaching on December 8, to avoid further disruption and allow for filing in correct districts, this Court should stay the injunction pending appeal by **December 1** and enter an administrative stay while it considers this application.

OPINIONS BELOW

Applicants seek an administrative stay and a stay pending appeal of the three-judge district court's preliminary injunction, entered on November 18, 2025. The district court's opinion and order are reproduced at App. 1–160. The dissenting opinion is reproduced at App. 161–264. The district court's denial of a stay pending appeal is reproduced at App. 299–300.

JURISDICTION

This Court has jurisdiction over this direct appeal from the order granting a preliminary injunction entered by a three-judge district court. 28 U.S.C. § 1253; *see also* 28 U.S.C. § 2284 ("[A] district court of three judges shall be convened . . . when an action is filed challenging the constitutionality of the apportionment of congressional districts[.]").

The district court entered its order on November 18, 2025, and the State Defendants timely appealed on the same day. A stay of the district court's preliminary injunction would be in aid of this Court's jurisdiction over the State Defendants' appeal. 28 U.S.C. § 1651(a).

BACKGROUND

I. In June 2025, in an effort to preserve the Republican majority in the House of Representatives following the 2026 midterms, President Trump began urging state legislatures to redraw congressional districts to "pick up as many as four or five House seats." ECF 1364-5 (NYTimes reporting on June 9, 2025). On July 15th, President Trump made public statements that he wanted Texas to flip five seats to the Republican Party. ECF 1360-2.

The Department of Justice sent a letter in early July to the Texas governor and attorney general threatening to sue the State if it did not redraw its congressional districts. ECF 1326. The letter invoked a recent Fifth Circuit ruling correcting its precedent and clarifying that "coalitions of racial and language minorities" may not be combined for § 2 claims. ECF 1326 at 2 (citing *Petteway v. Galveston County*, 111 F.4th 596, 599 (5th Cir. 2024) (en banc)). But the letter suggested—incorrectly—that Texas drew race-based coalition districts in its 2021 map (CD9, CD18, CD29, and CD33), which was contrary to extensive evidence introduced at trial over the 2021 map, ECF 1357-6, and urged the State to "rectify the racial gerrymandering" of these districts.

On July 9, Governor Abbott announced that the agenda for an upcoming special session of the Legislature would include redrawing Texas's congressional map. ECF 1364-9 at 3. The weeks that followed were spent fighting over a quorum break by Texas House Democrats, who fled the State. ECF 1364-16 at 2–7. Eventually, once a quorum was achieved, the Governor called a second special session and again placed redistricting on the call. ECF 1373-16, at 2–3.

II. To achieve its partisan goals, the Texas Legislature turned to Adam Kincaid, the founder and executive director of the National Republican Redistricting Trust, the organization that the Republican Party uses to help States draw congressional maps. App. 454, 469–470. Kincaid previously worked with the Georgia Republican Party, the Republican Governors Association, the National Republican Congressional Committee, and the Republican National Committee. App. 453–454. Kincaid first had a conversation about redistricting in Texas in March 2025. App. 470. He was hired by the Republican National Committee and started drawing the Texas maps as early as June. App. 472–473. In "late June or early July," Kincaid started the "final phase of redrawing the map," which was presented to the Legislature in mid- to late-July. App. 473.

Two primary goals motivated the map-drawing: protecting Republican incumbents and finding five new strongly Republican seats. Kincaid's "top criteria" was ensuring that "every Republican incumbent who lived in their seat stayed in their seat." App. 475. "[E]very Republican incumbent who was in a district that President Trump had won with 60 percent of the vote or more in 2024" had to "sta[y] in a district that President Trump won by . . . 60 percent of the vote or more." App. 476. For Republican incumbents in districts that President Trump won by less than 60 percent of the vote, Kincaid "either had to improve them or keep their Partisan Voting Index exactly the same." App. 476. No similar restrictions applied to Democratic incumbents: Kincaid was not required to "le[ave] alone" or "protect[]" any Democratic district or incumbent. App. 539. At the same time, Kincaid would create five new Republican seats "that President Trump carried by ten points or more at a minimum" and were "carried by Ted Cruz in 2024." App. 478–479. Beyond that, Kincaid employed other traditional redistricting criteria to make the 2025 map "cleaner, more compact, more city-based, more county-based where [he] could." App. 477; *see also* App. 92–95 (reciting the full criteria).

Kincaid accomplished those aggressive partisan goals only by using proprietary data estimating partisanship at the census block level—data that Plaintiffs, who expressly

declined discovery, never requested.[1] At the preliminary injunction hearing, Plaintiffs' experts admitted that they were unaware that this block-level data existed, and this lack of knowledge led to crucial errors in their opinions. App. 425–27 (Barretto); App. 433–35 (Duchin). Plaintiffs' experts simply could not duplicate the partisanship of Kincaid's map using VTD-level data. App. 425; App. 433–37.

Kincaid never considered racial data. He did not "have racial data visible" on his computer while drawing the map. App. 459 ("I don't think it's constitutional to draw maps based off of race."). He did not "use race as a proxy for partisanship," App. 467, or "use race as a pretext," App. 522. Using racial data would have interfered with Kincaid's partisan goals: racial data "would not be helpful in drawing maps for partisan performance," App. 460, particularly because minority voters in Texas are "moving . . . towards the Republican Party," App. 512. He repeatedly testified that he did not "us[e] race to hit racial targets." App. 523. And he did not "make any changes" after "becoming aware of the racial or demographic" information. App. 511.[2]

At the hearing, testifying for two days without notes, Kincaid "went district by district—sometimes line by line—explaining the logic behind each of the redistricting choices he made" using partisan, race-neutral criteria. App. 95. Even the majority acknowledged that Kincaid "gave political or practical—*i.e.*, non-racial—rationales for his decisions at every step of the mapdrawing process" and that his "statewide tour of his map was compelling." App. 95-96. Judge Smith's dissent details that district-by-district

[1] The Census Bureau provides voting data for voting tabulation districts (VTDs), the smallest geographic area where people go to vote. App. 535–38. Kincaid relied on proprietary software that incorporated primary voting history of Texas voters to estimate the partisanship of each block within a VTD rather than assume uniform partisanship across an entire VTD. App. 528–30. Participation in multiple Republican primaries, for example, would indicate that a voter would likely vote Republican. App. 527.

[2] Kincaid, who also drew the 2021 map, dismissed the DOJ letter as a "bad idea" and "completely unnecessary" because the 2021 map was "a completely political draw from start to finish." App. 518–19.

testimony. App. 188–204 (Smith, J., dissenting); *see also* App. 203 (noting that Kincaid's "two-day testimony (without any notes) was detailed, methodical, and meticulous" and that "on both direct and cross, he had a perfectly legitimate and candidly partisan explanation for his every decision").

The district court found that Plaintiffs demonstrated a likelihood of success on their challenges to six districts: CD9, CD18, CD27, CD30, CD32, and CD35.

The first two—CD9 and CD18—are located in the Houston area, where Democrats controlled four districts under the 2021 map (CD7, CD9, CD18, and CD 29). Kincaid had to leave CD7 largely unchanged because of the requirement to protect nearby Republican incumbents' districts. App. 539 ("There were political constraints on the west side of Harris County. I actually wanted to flip [CD7]. And because of three [Republican incumbents], I was not able to do that."); App. 542 ("[T]he structuring of the seats in that area with the other incumbent needs and the thresholds of the partisanship made that not possible to go after 7 as well."). He tried to make CD29, which stretches north of Houston, "the most Democrat seat [he] could draw in the area," App. 503, and he put the "most heavily Democrat areas of Harris County" into CD18, App. 541, with the effect of converting CD9 into a Republican-leaning district.

Democrats controlled three seats (CD30, CD32, and CD33) in Dallas under the 2021 map. Kincaid first combined the less Democratic precincts in North Dallas County (some are 40 percent Republican areas) with heavily Republican counties in East Texas to create a Republican district in CD32. App. 482-94. He grouped the most Democratic voters into a "super district" (a "blue lump"), App. 496–97, placed the most heavily Democratic precincts into CD30, and followed a neutral border (streets and highways) to divide CD30 and CD33, App. 498–99.

CD27 is located along the Gulf Coast. Because it was a Republican district under the 2021 map, Kincaid had to protect the incumbent and keep it "above 60 percent Trump." App. 503. Kincaid had to keep Victoria County in CD27 because "that's where the

incumbent lives." App. 507. And he had to fit CD27 under the adjacent CD10, which had already been drawn to protect the CD10 incumbent and keep CD10 above 60 percent Trump. App. 507. Kincaid thus extended CD27 northwest into Hays County to get that district "just above 60 percent Trump in 2024." App. 507.

CD35 is located in Central Texas near San Antonio. It was drawn to be a Republican pickup opportunity in the 2025 map. App. 508. After making changes to nearby districts (CD15 and CD28) to protect a Republican incumbent and create another Republican pickup opportunity, Kincaid drew CD35 by combining the whole counties of Guadalupe, Wilson, and Karnes with the south side of Bexar County, resulting in a Trump-plus-10 seat. App. 508–09 ("[CD35] coming to the south side of Bexar County, into that area below [CD]20, enabled me to make the 35th District more Republican on the Trump numbers and the Cruz numbers in 2024.").

As even the majority found, the State Defendants presented a specific, detailed, non-racial, unrebutted explanation for every single redistricting decision. Kincaid's testimony was internally consistent. App. 97 n.356. Not a single explanation was undermined or falsified, and no expert ever produced an alternative map that duplicates those goals (including partisanship and incumbent protection). If Kincaid's testimony does not conclusively demonstrate a non-racial, partisan explanation for the redistricting, it is difficult to imagine what evidence could suffice.

III. From the start, everyone recognized that the purpose of Texas's redistricting effort was Republican political advantage. U.S. House Minority Leader Hakeem Jeffries explained, "[T]he redistricting arms race has already begun, and it was started by Donald Trump and compliant Republicans in Texas." ECF 1364-18 (August 7). Congresswoman Sylvia Garcia (D-TX), who previously served in the Texas Legislature, recognized that Texas was redistricting "because Donald Trump . . . has got to find seats somewhere." ECF 1353-21 at 72–73 (July 26). She saw DOJ's letter as "just a pretext . . . to get those five districts that . . . the White House needs[.]" ECF 1353-19 at 66–68 (July 24).

Congresswoman Lizzie Fletcher (D-TX) knew the goal was "to remove five Democratic members and replace them with five Republican members." ECF 1353-21 at 70–71 (July 26). Democratic State Senator Royce West wrote, "Let's call this redistricting what it is: a naked, partisan, political power grab." ECF 1353-11 at 5–7 (August 22).[3]

Democratic State Representative Senfronia Thompson, the Legislature's longest-tenured Black representative who has served for over fifty years, largely agreed on the map's partisan nature. She "resent[ed] . . . the Department of Justice . . . accusing our state that we have drawn some race based maps . . . because you and I know that [Lieutenant Governor] Dan Patrick never would have passed [such] a map out of the Senate and we never would have passed one out of the House." ECF 1353-19 at 27 (July 24). She testified that there was "no way" that Attorney General Paxton would allow the Legislature to pass a race-based map. App. 407–09. And while she later claimed at the hearing to "know" that the 2025 map is "racial based," App. 411, she ultimately confirmed that she objected to how District 9 was drawn "[b]ecause it had previously been a Democratic district and it was taken from Democrats." App. 414.

Democrats, including Plaintiffs' counsel, urged lawmakers to consider race. Gary Bledsoe, counsel for Intervenor-Plaintiffs, claimed "it's an act of discrimination in itself when you decide you're not going to look at race." ECF 1353-19 at 135 (July 24). Nina Perales, counsel for LULAC Plaintiffs, testified that the Legislature should consider "minority population voting patterns." ECF 1353-26 at 27 (July 29). Democratic State Senator Nathan Johnson contended that the map was racially discriminatory because the map drawer did not use racial data. ECF 1357-3 at 66-68 (August 22).

[3] Other Democratic legislators were quickly educated that they needed to accuse their colleagues of racism. Plaintiff Congressman Al Green said, "[I]f we don't say that this is racial . . . we're not going to get to Section 2 and we can't win." ECF 1353-24 at 36.

As the map moved through the procedural steps for passage, legislators confirmed that politics, not race, motivated the redistricting. Senator Phil King, Chair of the Senate Redistricting Committee, testified that it was important that the map was (1) lawful, (2) improved Republican political performance, and (3) increased compactness, where possible. App. 443. Outside counsel reviewed the map for VRA compliance, but Senator King never reviewed racial data. App. 444–45. Representative Vasut, Chair of the House Redistricting Committee, explained at the time, "This is a political performance map." App. 577 (confirming statement made on August 2). Representative Hunter, the map's sponsor in the House, stated that the "five new districts [are] based on political performance." ECF 1353-29 at 72. As for the DOJ Letter, the Senate Chair testified that it "didn't carry any significance" even though "people tried to make it into something of influence." App. 442.

Every vote regarding the 2025 map followed partisan, not racial, lines both in committees and before the full chambers. *See* App. 418–19 (Rep. Romero); App. 404-06 (Sen. West); ECF 1376-15 at 1-2 (senate committee vote); App. 575 (house vote in first special session); App. 577 (house vote in second special session). The map passed on party-line votes in both the Senate and the House. App. 571; App. 401 (Speaker Moody). Members of the bipartisan Mexican American Legislative Caucus, for example, voted for and against the map according to their party affiliations. App. 419–20 (Rep. Romero).

Governor Abbott signed the new map into law on August 29, 2025, ECF 1353-14 at 7-8, boasting that "Texas is now more red in the United States Congress." ECF 1383-25 (video exhibit).

IV. Even before the map was signed into law, Plaintiffs—various Democratic-aligned public interest groups, voters, members of Congress, and others—challenged it as an unconstitutional racial gerrymander. They quickly filed complaints and sought a preliminary injunction to prevent use of the map for the 2026 midterms. They told the three-judge district court in late August that they were ready for a preliminary injunction hearing as soon as possible and "just need time to get [our witnesses] here." App. 591.

The hearing was set for October 1, 2025. Despite having a month for preliminary injunction-stage discovery, Plaintiffs sought none. Even though they were well aware Kincaid "had been working on the map for months," ECF 1150 at 36, they waited until the hearing was already underway to request Kincaid's deposition.[4] As their experts spent the month preparing their case, Plaintiffs never conducted discovery into Kincaid's map-drawing to inform their experts' opinions. Having failed to seek discovery, neither Plaintiffs nor their experts knew Kincaid's map-drawing criteria, methodology, or data until he testified midway through the hearing.

The preliminary injunction hearing was held from October 1 to October 10, 2025. The witnesses included Plaintiffs' six experts, members of the Texas House and Senate, Kincaid, the State Defendants' two experts, and the Director of Elections from the Texas Secretary of State.

V. Nearly 40 days later, on November 18, the district court enjoined the State Defendants from using the 2025 map for the 2026 election. App. 160. Rather than schedule remedial proceedings, it ordered the State Defendants to revert to the repealed 2021 map. App. 160. Judge Smith dissented and released his opinion the following day. App. 161-264.

The district court found that Plaintiffs demonstrated a likelihood of success on their challenges to six districts in the 2025 map as unconstitutional racial gerrymanders. According to the district court, the Legislature acted in bad faith pursuant to a racial directive of DOJ, App. 98, even though the Legislature changed all but one congressional district across the State pursuant to widely publicized (and criticized) partisan motives. It is undisputed that the Legislature did not accomplish all the racial goals DOJ supposedly instructed it to accomplish. App. 214 (Smith, J., dissenting) ("Two districts looked like the DOJ wanted them to look and two didn't. Far from the record's making it obvious that

[4] The district court correctly held that this request came too late in the day. App. 403.

Kincaid and the Legislature did the DOJ's bidding, it seems as though Kincaid drew his map blind to race[.]"); App. 98 ("three of the four").

The district court's conclusion is, to put it mildly, implausible. The district court would be right only if, in this highly polarized partisan political environment with a narrow Republican majority in the U.S. House of Representatives, the 108 Republican legislators in the Republican-controlled Texas Legislature consciously chose not to draw a map that maximized partisan advantage and protected Republican incumbency but instead drew one that *sacrificed political opportunity* to "engag[e] in offensive and demeaning conduct that bears an uncomfortable resemblance to political apartheid." *Alexander*, 602 U.S. at 11 (quotation marks and citations omitted). To state such a conclusion is to falsify it.

VI. Election deadlines began before the court preliminarily enjoined the 2025 map. Before that late-breaking injunction, the State's Director of Elections testified that last-minute changes would "be harder on candidates, harder on voters, harder on election officials the closer we get to an election." App. 564.

Well before the injunction, candidates had already started campaigning in the 2025 map's districts, App. 552–53. The candidate filing period began November 8 and ends on December 8—just 17 days from now (including the Thanksgiving holiday). Counties then have roughly three weeks to test mail ballots along with voting system "equipment" and "programming." App. 561. Even if the candidate filing deadline could lawfully be shifted, doing so would "shif[t] everything." App. 561. There is already a "very tight window" between the filing period and when mail ballots have to be sent out. App. 560. And a delay in the filing period would cause a "cascading effect" on all deadlines that could affect the counties' ability to prepare and test ballots ahead of the January 17 deadline for mailing overseas ballots. App. 560. This legally mandated testing is "very, very important" to ensure accuracy of election results. App. 561. Meeting each of these interim deadlines is critical for holding the State's primary election on March 3, 2026, and the early voting period beginning on February 17, 2026. *See* App. 548.

Changing the primary date could be "catastrophically bad." App. 561. Among other concerns, candidates using the convention process and minor party candidates could face changed convention dates and deadlines. App. 562. Independent and write-in candidates would face hardship in collecting petition signatures ahead of the general election. App. 562. The State's Director of Elections further testified that changing the primary date could affect the outcomes of elections by negatively affecting candidates' campaigns. App. 562–63. And holding a bifurcated primary, in which congressional primaries are held separately from others on the ballot, would be "extremely challenging," lead to voter confusion, and create a "substantial funding issue." App. 563–65.

Indeed, the panel majority concluded that its eleventh-hour injunction came so close to the election that it could not "afford [the Legislature] an adequate opportunity to enact revised districts." App. 158 (quoting *In re Landry*, 83 F.4th 300, 303 (5th Cir. 2023) (orig. proceeding)). "Giving the Legislature that opportunity is impracticable." App. 158. As a result, the district court determined the remedy itself, enjoining the State Defendants from using the 2025 map in the election and instructing them to use the (repealed) 2021 map. In other words, the district court concluded that the lateness of its injunction expanded its authority to select a remedy that would not otherwise be permissible.

The State Defendants filed a notice of appeal on the day of the decision and requested a stay of the injunction pending appeal to this Court from the district court the following day. That stay request was denied on November 21.

The State Defendants now respectfully seek a stay from this Court pending appeal. Given the immediate impact on the State's ongoing election and upcoming closure of the candidate filing window on December 8, the State Defendants request a ruling by **December 1** and an administrative stay while this Court considers the application.

ARGUMENT

A stay of the district court's preliminary injunction is warranted. The district court's last-minute replacement of the State's congressional map—changing 37 of the State's 38 congressional districts—midway through the candidate filing period, violates *Purcell* and should be stayed for that reason alone. Nor was there any good reason for throwing the State's congressional elections into disarray. There can be little doubt that a majority of this Court will note probable jurisdiction and conclude that the decision below cannot stand given *Alexander*.

I. A Stay Is Warranted Under *Purcell*.

The district court's injunction comes far too late in the day under *Purcell*. Campaigns have begun in the 2025 districts. The candidate filing period ends on December 8. Ballots will then soon be printed, checked and re-checked, and sent overseas. In the middle of all of that, the district court has ordered the State to stop. Worse, because there is no time for remedial proceedings by the district court's own admission, the district court has ordered the State to replace the 2025 districts *in medias res* with repealed redistricting legislation—reviving the 2021 map that changes all but one of Texas's 38 congressional districts, in many cases changing them dramatically.

A. This Court "has repeatedly emphasized that lower 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). "[W]hen a lower court intervenes and alters the election rules so close to the election date," this Court "should correct that error." *Id.* at 425; *see also Merrill v. Milligan*, 142 S. Ct. 879, 879 (2022) (Kavanaugh, J., concurring) ("[F]ederal appellate courts should stay injunctions when, as here, lower federal courts contravene that [*Purcell*] principle.").[5]

[5] Nor could Plaintiffs establish that "(i) the underlying merits are entirely clearcut in favor of the plaintiff; (ii) the plaintiff would suffer irreparable harm absent the injunction; (iii) the plaintiff has not unduly delayed in bringing the complaint to court; and (iv) the

The principle of preventing federal courts from making late-breaking changes to elections is not new. In *Reynolds v. Sims*, 377 U.S. 533 (1964), this Court explained that the lower court "acted wisely in declining to stay the impending primary election in Alabama," *id.* at 586, even though the challenged redistricting plan was plainly unconstitutional, *id.* at 545. "*Sims* has been the guidon to a number of courts that have refrained from enjoining impending elections," *Chisom v. Roemer*, 853 F.2d 1186, 1190 (5th Cir. 1988), "even in the face of an undisputed constitutional violation," *Sw. Voter Registration Educ. Project v. Shelley*, 344 F.3d 914, 918 (9th Cir. 2003) (per curiam); *Ely v. Klahr*, 403 U.S. 108, 114–15 (1971).

Although *Purcell* is not "just a tallying exercise," *Robinson v. Ardoin*, 37 F.4th 208, 229 (5th Cir. June 12, 2022) (per curiam) (denying stay), this Court's precedent confirms that Texas is in the heartland of *Purcell* concerns. In *Robinson*, this Court stayed a preliminary injunction under *Purcell* when the "primary elections [were] five months away." *Id.* at 228–29, *stay issued sub nom.*, *Ardoin v. Robinson*, 142 S. Ct. 2892, 2892–93 (June 28, 2022); *see also Merrill*, 142 S. Ct. at 879. Likewise, in *Callais*, this Court stayed a preliminary injunction under *Purcell* that was entered more than six months before the November 2024 primary elections. *Callais v. Landry*, 732 F. Supp. 3d 574, 613–14 (W.D. La. Apr. 30, 2024), *stay issued sub nom.*, *Robinson v. Callais*, 144 S. Ct. 1171 (May 15, 2024).

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changes in question are at least feasible before the election without significant cost, confusion, or hardship." *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring). For the reasons detailed below, the merits are nowhere near "entirely clearcut" in favor of Plaintiffs. Particularly given the district court's failure to follow *Alexander*, they are clearcut *against* Plaintiffs. At minimum, the 100-page dissent from an experienced and respected circuit court judge only confirms that the merits are far from "entirely clearcut" and are, at least, debatable. Moreover, the credited testimony from Adkins confirms the preliminary injunction imposes significant cost, confusion, and hardship on the State, on candidates, and on voters. *Id.*

B. The preliminary injunction flouts *Purcell*. Even before the October hearing, candidates had already selected the districts in which to run and began campaigning under the 2025 map, App. 552–53, including collecting signatures so that their names could appear on the ballot. App. 553. State election administrators had already begun to prepare for the 2026 primaries under the 2025 map, App. 564, 550, including educating election officials across Texas's 254 counties to help them "determine if there [are] any additional efforts they needed to make on the local level for compliance." App. 551; *see also* App. 552 (Counties are responsible for drawing county election voter registration precincts, and "many counties ha[d] already begun that process and started mapping all those changes out.").

The candidate filing period opened on November 8—13 days ago. More pressingly, it closes shortly, on December 8. That deadline is tightly linked to future deadlines. App. 560. There is "a very tight window" between the close of the filing period and "the time that mail ballots have to be sent out" under federal law. App. 560. A shorter period between the candidate filing deadline and the mail-in ballots "could impact the ability of counties to adequately prepare and test their ballots and could impact their ability to meet" the federal deadline to mail out overseas and military ballots by January 17. App. 560. Ballot testing, which state law requires, is "a very, very important piece of the process, because it ensures accuracy for your outcomes." App. 561.

All of this culminates in Texas's March 3 primary election, with early voting beginning on February 17, 2026, less than three months from now. App. 548. Changing the primary date could be "catastrophically bad." App. 561.

The injunction has thrown the election into disarray over the last 72 hours. According to media reports, "the ruling has set off a domino effect for politicians, with Democrats who had previously announced retirement now planning to run for their current

districts under the lines set in 2021."[6] "Many GOP candidates have already filed for election, raised money and begun campaigning under the new lines, but those districts, under the ruling, would now revert to ones that favor Democrats." *Id.* Congressional candidates are campaigning for election under different maps. *See id.* Republicans Briscoe Cain and Josh Cortez—primary candidates—are continuing to campaign under the 2025 map. *Id.* Others must quickly decide whether and where they are running: Congressman Lloyd Doggett intended to retire under the 2025 map but now plans to run in CD37. *Id.* Congressman Al Green, a plaintiff in this case, does not know whether he will run in CD9 or CD18. *Id.* Put simply, voters "do not know who will be running against whom in the primaries." *Merrill*, 142 S. Ct. at 880 (Kavanaugh, J., concurring); *see also id.* ("Filing deadlines need to be met, but candidates cannot be sure what district they need to file for."). With the candidate filing period closing on December 8, there is simply no time for Texas to restart the congressional campaign season anew under a repealed map where 37 of 38 districts are different.

Given the sheer size of the State and number of counties, districts, and voters affected, these timing constraints put Texas in a worse position than the timing constraints that justified a stay in *Robinson*, *Milligan*, and *Callais*. Consistency warrants a stay here.

C. No evidence at the hearing justified the district court's failure to follow *Purcell*. The district court credited the testimony of Christina Adkins, the Director of Elections in the Texas Secretary of State's office who oversees the statewide election management system, App. 144, but it misstated her testimony as, "Texas election officials and systems are more than capable of proceeding with the 2026 congressional election under any map that is the law." App. 151. In the cited testimony, Adkins stated, "Unless there is something, a court order or something telling us otherwise, we have to proceed and

[6] Gabby Birenbaum, Court order striking down Texas redistricting map upends plans for candidates across the state, KWTX (Nov. 19, 2025), https://www.kwtx.com/2025/11/19/court-order-striking-down-texas-redistricting-map-upends-plans-candidates-across-state/.

move forward with the maps that are law, that will be law." App. 551. As Judge Smith's dissent notes, "Nowhere does Ms. Adkins indicate that . . . Texas is 'more than capable' of proceeding under any map that's law, nor does she imply that." App. 260 (Smith, J., dissenting). "[H]er statement represents the admirable but mundane proposition that Texas will do everything in its power to comply with the law under either map." App. 260. Adkins explained that even in October, changing the congressional map would have "cause[d] some level of voter confusion," App. 565, and that "the later we are in the process, the harder it is to adapt to changes." App. 564. The closer to an election that a change occurs, "it's going to be harder on candidates, harder on voters, harder on election officials." App. 564. And Adkins warned that the "cascading effect" of deadlines could lead to a "catastrophically bad" changing of the primary date. App. 560-61.

Nor was the district court correct to rely on the fact "that *the entire* State has [not] been operating under the 2025 map for months." App. 145. The fact that a single county is preparing for a January 2026 runoff election under the 2021 map is no basis to find that an injunction would not be disruptive when the State's 253 other counties have been operating under the 2025 map for the 2026 primary. App. 550.

The district court also erred legally, reasoning that because Plaintiffs have "a right to bring their constitutional claims," they must necessarily have a "real opportunity for their requested remedy for a preliminary injunction." App. 152 (emphasis removed). This Court has held the opposite, recognizing that a lower court may well "ac[t] wisely in declining to stay [an] impending primary election," *Reynolds*, 377 U.S. at 586, even though the challenged redistricting plan was plainly unconstitutional, *id.* at 545. The point of *Purcell* is that a party will not always be able to obtain a preliminary injunction: "what purpose does *Purcell* serve but to deny injunctive relief that might, hypothetically, be merited and to do so because of the proximity to an election?" App. 254 (Smith, J., dissenting). *Purcell* necessarily means that sometimes parties will be able to bring claims but that the remedy of a preliminary injunction will be unavailable.

Nor was the district court correct not to apply *Purcell* on the ground that Texas "invited this issue by enacting a new map within *Purcell*'s range." App. 147; *see also* App. 146 (faulting the State for "cho[osing] to toy with its election laws close to" the 2026 election). District courts do not referee the permissible timing of changes to a State's election laws. *See, e.g.*, *Milligan*, 142 S. Ct. at 881 (Kavanaugh, J., concurring) ("It is one thing for a State on its own to toy with its election laws close to a State's elections. But it is quite another thing for a federal court to swoop in and re-do a State's election laws in the period close to an election."); *see also Wise v. Circosta*, 978 F.3d 93, 98 (4th Cir. 2020) ("[I]t is not federal court decisions, but state decisions, that establish the status quo."). And in enacting the 2025 map, Texas acted in roughly the same time period as Alabama in *Milligan*. *Compare Singleton v. Merrill*, 582 F. Supp. 3d 924, 935 (N.D. Ala. 2022) (per curiam) (challenged statute enacted 85 days before candidate filing deadline closed and 201 days before next election), *stay granted sub nom.*, *Allen v. Milligan*, 599 U.S. 1 (2023), *with* App. 548–49 (2025 map enacted 101 days before the candidate filing deadline closed and 186 days before the next election).

The Legislature did not bear sole—or even primary—responsibility for the lateness of the injunction. *Contra* App. 146. The district court waited nearly 40 days after the hearing to issue the injunction, and Plaintiffs themselves delayed enactment of the map. Some Plaintiffs in this case are Democratic members of the Texas Legislature who broke quorum by fleeing the State (evading warrants for their arrest) while the Legislature was attempting to pass the 2025 map—a tactic that "delayed the passage of the 2025 map for weeks." App. 181 (Smith, J., dissenting). Considering the equities, Plaintiffs "should not get the benefit of the delay that they caused by breaking quorum." App. 181.

The district court's remedy compounds its *Purcell* error. "When a federal court declares an existing apportionment scheme unconstitutional, it is therefore, appropriate, whenever practicable, to afford a reasonable opportunity for the legislature to meet constitutional requirements by adopting a substitute measure rather than for the federal

court to devise and order into effect its own plan." *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978) (opinion of White, J.). But the district court did not afford the Legislature the opportunity to adopt a substitute measure. It instead ordered the State to use the (repealed) 2021 map, reasoning that there was insufficient time before the upcoming election for the Legislature to draw a new map. App. 158. *But see* App. 256 (Smith J., dissenting) ("The court should afford the legislature at least an opportunity[.]"). The district court's reasoning only confirms the error in its *Purcell* analysis: if there is insufficient time before an election for a court to order a legally correct injunction, then an injunction should be denied, not an erroneous remedy ordered because there remains insufficient time for the correct one.

* * *

The district court credited Adkins, App. 144, whose testimony shows the need for a *Purcell* stay. The preliminary injunction will "lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others," *Merrill*, 142 S. Ct. at 880 (Kavanaugh, J., concurring), "inviting confusion and chaos and eroding public confidence in electoral outcomes." *Democratic Nat'l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 30 (2020) (Gorsuch, J., concurring). To "protec[t] the State's interest in running an orderly, efficient election and in giving citizens (including the losing candidates and their supporters) confidence in the fairness of the election," *id.* at 31 (Kavanaugh, J., concurring), this Court should stay the preliminary injunction under *Purcell*.

II. A Stay Is Warranted Under the Traditional Stay Factors.

A stay pending appeal is equally warranted under the traditional factors because there is "(1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari or to note probable jurisdiction; (2) a fair prospect that a majority of the Court will conclude that the decision below was erroneous; and (3) a likelihood that irreparable harm will result from the denial of a stay." *Ind. State Police*

Pension Tr. v. Chrysler LLC, 556 U.S. 960, 960 (2009) (per curiam) (quotation omitted); *see also Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam) ("In close cases the Circuit Justice or the Court will balance the equities and weigh the relative harms to the applicant and to the respondent.").

A. This Court is likely to note probable jurisdiction and reverse the decision below as contrary to *Alexander*.

There is at least a fair prospect that a majority of this Court will conclude that the decision below was erroneous under *Alexander*.

A preliminary injunction is "an extraordinary remedy never awarded as of right" but only "upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22, 24 (2008). Plaintiffs bear an "especially stringent" evidentiary burden, *Alexander*, 602 U.S. at 11, and whether the court below "applied the correct burden of proof is a question of law subject to plenary review," *Abbott v. Perez*, 585 U.S. 579, 607 (2018). Likewise, the decision below gets no deference when determining whether it "misapplied controlling law." *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 187-88 (2017). Although findings of fact are reviewed for clear error, "[i]f [a] trial court bases its findings upon a mistaken impression of applicable legal principles, the reviewing court is not bound by the clearly erroneous standard." *Alexander*, 602 U.S. at 18–19 (quoting *Inwood Lab'ys, Inc. v. Ives Lab'ys, Inc.*, 456 U.S. 844, 855 n.15 (1982)); *see, e.g.*, *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 261–62 (2015) (finding that errors of law infected factual determinations and "affected the District Court's conclusions").

The district court erred by not following *Alexander*. Most obviously, the district court "overlook[ed] th[e] shortcoming" of Plaintiffs' failure to produce an alternative map, a mistake that this Court already held "would be clear error." *Alexander*, 602 U.S. at 37. Nor did the district court follow the two fundamental rules governing racial gerrymandering claims. "First, a party challenging a map's constitutionality must disentangle race and politics if it wishes to prove that the legislature was motivated by race

as opposed to partisanship." *Id.* at 6. "Second, in assessing a legislature's work we start with a presumption that the legislature acted in good faith." *Id.* In finding that the Texas Legislature likely "engaged in offensive and demeaning conduct that bears an uncomfortable resemblance to political apartheid," *id.* at 11 (citation modified), the district court did not apply the strong presumption of legislative good faith. The opinion instead resolves (at best) ambiguous evidence against the Legislature and infers legislative bad faith. Like the decision reversed in *Alexander*, the district court's analysis does not "rule out the possibility that politics drove the districting process," consistently "crediting the less charitable conclusion that the legislature's real aim was racial" even when "partisan goal[s] can easily explain [the legislature's] decision[s]." *Id.* at 22, 24. Any of these errors independently warrants reversal.

1. The district court clearly erred by not giving effect to Plaintiffs' failure to produce an alternative map.

The district court's most straightforward error is that it did not give effect to Plaintiffs' failure to produce an alternative map. *Alexander* instructs that "[a] plaintiff 's failure to submit an alternative map—precisely because it can be designed with ease—should be interpreted by district courts as an implicit concession that the plaintiff cannot draw a map that undermines the legislature's defense that the districting lines were 'based on a permissible, rather than a prohibited, ground.'" *Id.* at 35 (quoting *Cooper v. Harris*, 581 U.S. 285, 317 (2017)). "[A]n adequate alternative map is remarkably easy to produce." *Id.* at 36. "Any expert armed with a computer can easily churn out redistricting maps that control for any number of specified criteria, including prior voting patterns and political party registration," *id.* at 35 (internal quotation marks omitted), and "any plaintiff with a strong case has . . . every incentive to produce such an alternative map," *id.* at 10. *Alexander* increased that incentive even further: "The evidentiary force of an alternative map, coupled with its easy availability, means that trial courts should draw an adverse inference from a plaintiff's failure to submit one." *Id.* at 35. And this adverse inference should "pac[k] a

wallop." *Id.* at 36. After all, "if a sophisticated plaintiff bringing a racial-gerrymandering claim cannot provide an alternative map, that is most likely because such a map cannot be created." *Id.* at 36–37.

It is undisputed that Plaintiffs failed to submit an alternative map, App. 132 & n.488, and the district court did not draw the adverse inference required by *Alexander*. *See* App. 132 & n.488, 133 ("It would be improper to infer . . . ."). Plaintiffs' failure was particularly glaring because Plaintiffs' expert purportedly "generated tens of thousands of pro-Republican maps that obey traditional redistricting principles without producing the enacted map's exaggerated racial features," App. 134, yet Plaintiffs did not introduce even one into evidence. *Alexander* requires a factfinder to treat this failure as an implicit concession that Plaintiffs "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 (internal quotation marks omitted). It was "clear error for the factfinder to overlook this shortcoming." *Id.* at 37.

The district court excused Plaintiffs' failure to supply an alternative map on three grounds. None has merit.

First, the district court did not apply *Alexander* because the court was in "th[e] early phase of the proceedings," considering whether to issue a preliminary injunction. App. 132. The district court reasoned that "[i]t's one thing to draw an adverse inference if a plaintiff fails to produce a suitable *Alexander* map after preparing for a trial for a year or more; it's quite another if a plaintiff fails to produce a suitable *Alexander* map at an accelerated, preliminary phase of the litigation." App. 133.

This reasoning is backwards. Plaintiffs who seek the "extraordinary remedy" of a preliminary injunction, *Winter*, 555 U.S. at 24,—particularly one disrupting a State's electoral process at the eleventh-hour—must come forward with their strongest evidence. After all, "an adequate alternative map is remarkably easy to produce." *Alexander*, 602 U.S. at 36. If no map were required at the preliminary injunction stage, it would be

malpractice for redistricting plaintiffs to introduce such maps when they could instead prevail with an "early phase of the proceedings" defense, App. 132, avoid subjecting any alternative map to scrutiny, and still obtain a preliminary injunction displacing the State's districts for an entire election.

Second, drawing an inference in favor of Plaintiffs and against the Legislature, the district court speculated that "[t]he most likely reason [Plaintiffs did not produce a map] is that they simply didn't have time." App. 134. And the district court expressed "confiden[ce] that the Plaintiff Groups will be able to produce a suitable *Alexander* map once the Court ultimately tries this case on the merits." App. 134.

This is clear error. Not only does the district court disregard the fact that these maps "can be designed with ease," *Alexander*, 602 U.S. at 35, but Plaintiffs' expert purportedly "generated tens of thousands of pro-Republican maps that obey traditional redistricting principles without producing the enacted map's exaggerated racial features," App. 134. If this were true, there was ample time to submit an *Alexaander* map. And the district court never asked the obvious question: why did Plaintiffs not introduce a single map from their expert into evidence, where it could be subjected to adversarial scrutiny? At a minimum, *Alexander* requires an adverse inference from the failure to introduce *these maps* into evidence. If Plaintiffs' expert truly had time to generate tens of thousands of maps, there was more than ample time to submit one *Alexander*-compliant map.

Rather than draw the inference that this Court commands—that the failure to introduce such a map means that one "cannot be created"—the district court drew the opposite inference, resting its decision on speculation that Plaintiffs will, in the future, introduce such a map. Such reasoning is contrary to *Alexander*'s unequivocal command: "A plaintiff's failure to submit an alternative map—precisely because it can be designed with ease—should be interpreted by district courts as an implicit concession that the plaintiff cannot draw a map that undermines the legislature's defense that the districting lines were

'based on a permissible, rather than a prohibited, ground.'" 602 U.S. at 35. The failure to follow this "basic logic" was "clearly erroneous." *Id.*

Third, the district court suggested that the failure to produce a map was "not fatal" because Plaintiffs produced "substantial direct evidence." App. 132. Not so. The district court incorrectly characterized circumstantial evidence as "direct evidence," *see infra* II(A)(2), but more significantly, the district court relied on *circumstantial evidence* to reject the State Defendants' compelling *direct evidence*. The district court rejected the most powerful direct evidence—the painstakingly detailed testimony of Adam Kincaid, the mapdrawer—based on circumstantial evidence: racial demographics that it found "extremely unlikely" to result from chance. App. 96. But *Alexander* forecloses such speculation in the absence of an alternative map. Drawing the proper inference, Plaintiffs failed to submit an alternative map because "such a map cannot be created." 602 U.S. at 37. Thus, there is nothing unlikely or suspicious about the map that was drawn—on this record, it was simply the only map that would achieve the State's partisan goals. Put simply, unless other maps could have been drawn to achieve the State's partisan goals, the district court had no basis to refuse to credit Kincaid's race-neutral explanations for his districts.

Alexander held that "[i]t would be clear error for the factfinder to overlook th[e] shortcoming" of failing to produce an alternative map. *Id.* at 37. As *Alexander* plainly states, the district court committed clear error.

2. The district court misapplied *Alexander* in finding direct evidence of racial intent.

The district court also erred in finding direct evidence of racial intent. 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," such as "a relevant state actor's express acknowledgement" or "leaked e-mails from state officials instructing their mapmaker to pack as many black voters as possible into a district." *Id.* at 8 (quoting

Cooper, 581 U.S. at 318). Direct evidence, if credited, would "amoun[t] to a confession of error." *Id.*

Plaintiffs offered no such evidence. There is no statement from any relevant state actor "express[ly] acknowledg[ing] that race played a role in the drawing of district lines," *id.*, and no evidence that state officials instructed the mapmaker to use racial criteria.

The district court erroneously characterized three pieces of evidence as "direct evidence": (1) statements in a letter from DOJ Assistant Attorney General Harmeet Dhillon urging Texas to redistrict in order to address allegedly unconstitutional coalition districts in the 2021 map; (2) statements by Governor Abbott in his proclamation and to the press referencing DOJ's "constitutional concerns" as a motivation for calling a special session to address redistricting and other statements noting the map's racial demographics after signing the bill into law; and (3) floor statements and press statements from various Texas House members referencing the DOJ letter, *Petteway*, or the racial makeup of certain districts. App. 66–79. None constitutes direct evidence that "[r]ace was the criterion that, in the State's view, could not be compromised" in the drawing of district lines. *Shaw v. Hunt*, 517 U.S. 899, 907 (1996).

a. Start with the statements from Assistant Attorney General Dhillon and those from Governor Abbott. Neither is a "relevant state actor" for purposes of the racial-gerrymandering inquiry because neither "played a role in the drawing of district lines." *Alexander*, 602 U.S. at 8. They are federal- and state-level executive-branch officials. Neither had any official or unofficial role in the mapdrawing. *Id.* The testimony was undisputed that Adam Kincaid personally drew the 2025 map without staff, the Governor, or legislators present. App. 515.

Timing alone vitiates the district court's inference that the 2025 map was drawn for the purpose of achieving racial goals (which it did not achieve) in later statements by these executive officials. The uncontroverted evidence showed that Adam Kincaid began drawing the map long before the Dhillon Letter and before Governor Abbott called the special

session. He started the "final phase of redrawing the map" before the Dhillon Letter was sent. App. 473.

Governor Abbott's statements to the press about the 2025 map "increasing the number of majority-Hispanic districts," App. 34, 62–64, reflected the (correct) observation that minority voters in Texas are "moving . . . towards the Republican Party," App. 512. And in any event, these statements were made only "after the map [was] revealed" at the end of July, indicating that the Governor merely "adjusted his rhetoric to defend the map in a forward-facing capacity," App. 215 (Smith, J., dissenting). At the very least, this ambiguous evidence mandates an inference "that cuts in the legislature's favor." *Alexander*, 602 U.S. at 10.

In any event, as the district court acknowledged, the motivations of the Department of Justice and the Governor are relevant only to the extent that other evidence connects them to the intent of the Legislature as a whole. App. 65–66. The district court said that this intent could be linked by "show[ing] that a majority of [the Legislature's] members shared and purposefully adopted (*i.e.*, ratified) the [Governor and DOJ's] motivations," App. 65 (first alteration added), but it points to no evidence that a majority of the 181 legislators ratified these motivations. By its own reasoning, these statements are not evidence—direct or circumstantial—of the Legislature's racial intent.

The district court also drew the incorrect inference from the fact that the maps accomplished only some of the DOJ's purported racial goals. The Dhillon letter mentioned four districts: CD9, CD18, CD29, and CD33. App. 19. But the district court found that the Legislature achieved only "three of the four explicit racial directives outlined in the DOJ Letter." App. 98; *see also* App. 214 (Smith, J., dissenting) ("[T]he tally stands at 2-2 for doing things that the DOJ letter suggested."). If the Legislature truly shared these purported goals and made race "the criterion that, in the State's view, could not be compromised," the "dominant and controlling rationale in drawing its district lines," *Alexander*, 602 U.S. at 7, 10 (quoting *Miller v. Johnson*, 515 U.S. 900, 913 (1995)), then the

Legislature would surely have satisfied every "explicit racial directiv[e]," App. 98. The district court's recognition that the Legislature did not achieve these purported racial goals is powerful evidence demonstrating that partisanship, not race, drove the drawing of district lines.

b. The district court similarly erred by treating statements from four of "the 2025 Map's sponsors and primary champions" as a proxy for "the Legislature's intent" as a whole. App. 88; *see also* App. 66–79. This Court has cautioned that "the legislators who vote to adopt a bill are not the agents of the bill's sponsors and proponents." *Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 689 (2021). That fact is particularly important in this case, where there is significant "contrary" testimony from legislators that racial motives did not predominate in the drawing of district lines, App. 79–90, and the district court's analysis rests on statements of only four Republican members of the Texas House, App. 66–79, to the "exclus[ion of] over 80 other Republicans in the House, [and] scores more in the Senate," App. 213 (Smith, J., dissenting).

The district court first pointed to the statements of a handful of legislators that it later repeatedly (and correctly) qualified do not indicate racial motive. For example, the opinion points to a press release issued by Speaker of the House Dustin Burrows stating that the House had just "delivered legislation to redistrict certain congressional districts to address concerns raised by the Department of Justice." App. 66 (emphasis removed). Yet, the district court quickly acknowledged that "the press release is also peppered with statements that could suggest a partisan motive," and "[f]or that reason" it "does not establish by itself that race predominated over partisan concerns during the 2025 redistricting cycle." App. 67. Even less probative are fleeting press statements made by Representatives Oliverson and Toth identifying *Petteway* as the motivation for redistricting. *See* App. 67–69. In Representative Oliverson's "NPR interview, he mentions *Petteway*, but in the next breath disclaims specific knowledge of the bill and invokes *Rucho*." App. 208 (Smith, J., dissenting). And Representative Toth's reference to *Petteway*

was made "while offering a wide range of conflicting purely-partisan and *Petteway* rationales." App. 208 (Smith, J., dissenting). On these "conflicted piece[s] of evidence, *Alexander* requires the partisan inference." App. 208 (Smith, J., dissenting).

The district court's "central[] focus," App. 206 (Smith, J., dissenting), was on floor statements and colloquies from Chairman Hunter about the racial makeup of certain districts. *See* App. 70–75. The district court concluded those floor statements were impermissible because they indicated not just "mere awareness" of racial composition, *cf. Alexander*, 602 U.S. at 22, but instead a value judgment that the racial demographics of the 2025 map were an improvement over those of the 2021 map. App. 70–75. This was legal error.

Drawing such a fine line creates a trap for legislators inconsistent with *Alexander* and the presumption of good faith. This Court has held that there is "nothing nefarious" about "aware[ness] of the racial makeup of the various districts." *Alexander*, 602 U.S. at 37; *see also Miller*, 515 U.S. at 916 ("Redistricting legislatures will, for example, almost always be aware of racial demographics."). But under the district court's test, legislators may only convey their awareness of racial demographics in precisely the right way, careful not to make any "value-laden" statement that the demographics are "good." App. 73. The district court also ignores "the more plausible explanation": "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).

Moreover, these statements came long after the map was drawn, showing only an after-the-fact awareness of a plan's racial demographics on the House floor, not "that race played a role in the drawing of district lines." *Alexander*, 602 U.S. at 8.

Most consequentially, the district court later admitted that Chairman Hunter also (1) "stated repeatedly that the bill was primarily driven by non-racial partisan motivations"; (2) "often referred to *Rucho* as another primary driver for the 2025 redistricting—

sometimes in the same breath as *Petteway*"; (3) "stated on the House floor that he was 'not guided' by the DOJ Letter in the redistricting process"; and (4) "had taken other race-neutral districting criteria like compactness into account." App. 77-78.

The district court characterized this inconsistent and ambiguous testimony of a handful of legislators as "direct evidence" of racial intent while disregarding their political remarks, which contravenes the "presumption of legislative good faith [that] 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. The district court inverted the *Alexander* presumption, taking testimony that is, at best, ambiguous and contradictory, and inferring that "[t]he answer *must be* that race and *Petteway* were essential ingredients." App. 79 (emphasis added). Moreover, "direct evidence" does not require inferences—racial motive would be evident on the face of the statements. Nothing the district court cited qualifies as "direct evidence" as *Alexander* defines it—*i.e.*, an express "admi[ssion] to considering race" in drawing district lines or explicit instructions to draw lines based on race. 602 U.S. at 8.

c. In contrast to the ambiguous floor and press statements from a few legislators, the State presented extensive, uncontradicted direct evidence that race played no role in the drawing of district lines. Adam Kincaid "went district by district—sometimes line by line—explaining the logic behind each of the redistricting choices he made." App. 95. He "gave political or practical—*i.e.*, non-racial—rationales for his decisions at every step of the mapdrawing process." App. 95–96. Without notes, Kincaid testified unequivocally and without contradiction that he used only political data to draw the map. App. 95–96; *see also* App. 97 n.356 (noting consistency). The district court noted, correctly, that this testimony was "compelling," App. 96, and it defeats any finding that Plaintiffs' racial gerrymandering claims are likely to succeed.

But the district court speculated that Kincaid must have "had both racial and partisan data turned on while drawing the 2025 Map and that he used the former to achieve

the racial targets . . . as he simultaneously used the latter to achieve his partisan goals." App. 99. No evidence supports this inference, and no evidence suggests that this hypothetical mapdrawing process would even be possible. The district court erred by drawing this inference against the Legislature. *Cf. Alexander*, 602 U.S. at 10.

In declaring, without citation, that it was "extremely unlikely" that "Mr. Kincaid could have created so many [three] districts that were just barely 50%+ CVAP by pure chance," App. 96, the district court committed the error identified in *Alexander* of "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 this case, as this Court predicted, this reasoning was "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. At a minimum, nothing ruled out the possibility that the CVAP percentages were simply a side effect of the Legislature's partisan goal. *Cf.* App. 98 n.359 (noting that one of the plaintiffs' experts "drew a 50.1% Black district without purposefully trying to do so"). "In light of the presumption of legislative good faith, that possibility is dispositive." *Alexander*, 602 U.S. at 20.

Kincaid provided "political or practical—*i.e.*, non-racial—rationales for his decisions at every step of the mapdrawing process." App. 95–96. His testimony was clear, consistent, and not undermined in any way on cross examination. If such testimony—a specific, legitimate, race-neutral explanation for every redistricting decision—cannot prove that race played no role in the drawing of district lines, then it is difficult to imagine any testimony that could. When a legislature presents a race-neutral explanation for its redistricting decisions that the plaintiffs fail to rebut or falsify, the case should end.

3. The district court misapplied *Alexander* in finding circumstantial evidence of discrimination.

The district court's analysis also errs in its handling of circumstantial evidence, inferring racial intent despite the absence of evidence that the Legislature could have

achieved its partisan goals through maps with a different impact. None of the circumstantial evidence discussed by the district court satisfies Plaintiffs' burden to "disentangle race and politics." *Alexander*, 602 U.S. at 6.

The district court relied on five pieces of circumstantial evidence. Four concerned statistics of the map that the district court found were suspicious: that the map "fulfilled almost everything that DOJ and the Governor desired"; that three districts became majority-minority with just over 50% CVAP; that the map did not "make significant modifications to" CD37 (the only remaining Democratic district in Austin); and that the map altered the racial demographics of a Republican district. App. 105–08. For all this evidence, the district court failed to "rul[e] out th[e] possibility" that the characteristics "w[ere] simply a side effect of the legislature's partisan goal." *Alexander*, 602 U.S. at 20. And for the two specific districts that it criticized, the district court did not identify a reason to rule out the specific and credible partisan explanation for why each district was drawn. *Id.*

Finally, the district court credited one of six experts presented by Plaintiffs: Dr. Moon Duchin. App. 108–27. Her testimony has consistently been rejected by this Court—including most recently in *Alexander*, where she committed the same errors as in this case. Although she purports to have generated thousands of maps (not a single one of which was introduced into evidence), these maps admittedly did not satisfy the Legislature's criteria, either in its partisan goals or in its requirement for Republican-incumbency protection. App. 126 n.460, 580. Given this failure, her testimony has no bearing on the relevant question: whether the Legislature's map is an outlier *among maps that satisfy the Legislature's criteria.*

a. The district court did not rule out the possibility that the aspects of the map that concerned it were a side effect of the Legislature's partisan goals.

The district court found that the map "fulfilled *almost* everything that DOJ and the Governor desired" and inferred that the Legislature was "following a '50%-plus racial target'" because of minority CVAP numbers in three districts. App. 105 (emphasis added).

But the district court never grappled with the crucial question: whether these aspects of the map were "simply a side effect of the legislature's partisan goal"? *Alexander*, 602 U.S. at 20–21. Its reasoning—"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"—conflicts with the presumption of good faith, which requires *ruling out* a partisan explanation. *Id.*

Consider Houston. Much of the district court's findings are based on CD9 and CD18. But it is unrebutted (and indisputable) that Kincaid's incumbent-protection requirement prevented him from eliminating CD7 as a Democratic district. App. 503. CD29 was used as Democratic vote sink on the north side of Houston. App. 503. Given these unrebutted political constraints and goals, to eliminate a Democratic seat (and add a Republican seat) in Houston, Kincaid's only choice was to pack the most partisan Democratic voters into one of CD9 or CD18. App. 502–03. Given the correlation between race and partisanship, it is hardly surprising that this resulted in a majority-Black CVAP in CD18, the remaining Democratic seat. *Alexander*, 602 U.S. at 9 ("When partisanship and race correlate, it naturally follows that a map that has been gerrymandered to achieve a partisan end can look very similar to a racially gerrymandered map.").[7] And given the shift in Hispanic voters

[7] In addition to Kincaid's specific explanations for the drawing of each district, the basic correlation between race and partisanship refutes the district court's inferences of nefarious intent from the creation of single-race majority districts. *See* App. 35–49 (detailing the district court's suspicions). The (admitted) correlation between race and partisanship means that a more aggressive partisan gerrymander would correlate with sharper racial divisions (*i.e.*, more single-race majority districts).

to the Republican party, it is hardly surprising that partisan redistricting would, in at least some of the 38 districts in the State, have the "side effect" of a majority-Hispanic CVAP. *Id.* at 20.

The district court erred by not ruling out the possibility that these aspects of the map were a side effect of the Legislature's partisan goals, and it erred by presuming bad faith rather than good faith. Just as it was clear error in *Alexander* to attribute a "racial 'target'" to the Legislature when there was direct evidence "to the contrary," *id.* at 19, it was undoubtedly clear error to do so here. The district court's reliance on *Cooper*, where the mapdrawer had explicit instructions from legislators to hit a racial target and "[u]ncontested evidence in the record" proved that the mapdrawer followed that "announced racial target," was misplaced. 581 U.S. at 299-300; *see id.* at 312-13. Giving effect to "the presumption of legislative good faith," particularly in the absence of an alternative map and absence of racial instructions, "that [partisan] possibility is dispositive." *Alexander*, 602 U.S. at 20.

b. The district court erred by inferring racial intent because the Legislature did not transform Austin (CD37) into a Republican district.

Without explanation, the district court announced that "[i]f the Legislature's aims were exclusively partisan," then it would have "ma[d]e significant modifications to CD 37, a majority-White district that generally elected Democrats." App. 106. The district court compared CD37 to CD9, suggesting that they should have been treated identically, but CD9 was one of four Democratic districts in Houston, and CD37 is the only remaining Democratic district in Austin. A partisan gerrymander requires the Democratic voters in cities to be packed somewhere. In Houston, they are packed into CD7, CD18, and CD29. In Austin, they are packed into CD37.

The opinion does not explain what "significant modifications" the Legislature should have made, much less how those modifications would have served the Legislature's partisan

goals and whether they would have complied with the Legislature's other criteria, such as protecting Republican incumbents. To be clear, CD37 did move significantly eastward geographically, incorporating areas formerly in CD35.

CD37 covers Austin, a "very, very heavily Democrat" area. App. 505. In the 2021 map, Democrats controlled both CD35 and CD37. The 2025 map removes CD35 from the Austin area and extends CD37 east to CD27, where the boundary is drawn on purely partisan lines: the VTDs in CD27 "are 30 percent or more Trump in 2024," and the VTDs in CD37 are "less than 30 percent Trump." App. 504–05. With CD35 eliminated, Kincaid packed Democratic Austin voters into CD37. App. 504–06, 508. Neither Kincaid—nor anyone else—suggested that any additional modifications to CD37 could somehow serve the Legislature's partisan goals. App. 505. In any event, the district court failed to identify evidence excluding this partisan motive. App. 106; *see also* App. 216 (Smith, J., dissenting).

The district court erred by inferring bad faith and racial intent because the Texas Legislature's map did not (through some hypothetical means) transform the only Democratic district in Austin—an exceptionally Democratic city—into a Republican stronghold. Far from holding Plaintiffs to their "stringent" evidentiary burden, *Alexander* 602 U.S. at 11, the district court's opinion erroneously rests on speculation and inferences of bad faith.

c. The district court erred by drawing an adverse inference from the changes to the demographic makeup of CD27.

The district court also faulted the State for redrawing CD27, which was "an existing majority-non-White Republican district" but now, under the 2025 map, is a "majority-White" Republican district. App. 107–08. "[I]f the Legislature's aims were partisan rather than racial," the district court reasoned, "one would expect the Legislature not to make fundamental changes to the racial demographics of Republican districts." App. 107. The district court's inference of racial purpose, without ruling out partisan explanations, constitutes clear error.

Because populations must be balanced, changes to one district necessarily require changes to other districts. As Judge Smith's dissent explains, "in a political gerrymander, the voting power for flipped districts must come from somewhere." App. 216 (Smith, J., dissenting). Indeed, "the only way one is going to pick up seats in a partisan gerrymander is by taking strength from heavily Republican districts," like CD27, "and adding them to slightly Democrat districts (or some similar formulation)." App. 217 (Smith, J., dissenting). Indeed, Kincaid's map changed 37 out of the State's 38 congressional districts. App. 188 (Smith, J., dissenting).

Kincaid testified that to get the adjacent CD34 "to be a Trump plus 10 district," he shifted Republican precincts from CD27 in Nueces County and Corpus Christi into CD34, "carv[ing] out some heavily Democrat precincts" that were left in CD27. App. 506. This necessitated further changes, including extending CD27 into Hays County to get CD27 "just above 60 percent Trump in 2024." App. 506. That unrebutted testimony is more than a possible non-racial explanation; it is "dispositive." *Alexander*, 602 U.S. at 20.

A partisan gerrymander will necessarily affect both Republican and Democratic districts, and redrawing district lines will often change racial demographics. The district court erred under *Alexander* by inferring legislative bad faith and failing to rule out obvious, unrebutted, partisan explanations.

d. The district court erred by crediting Dr. Duchin's testimony.

Although Plaintiffs presented days of testimony from six different experts, the district court relied on only a single one: Dr. Moon Duchin. The district court relied heavily on Dr. Duchin's testimony but did not engage meaningfully with her methodological errors—the same errors that have previously rendered her opinions of "no probative force with respect to . . . racial-gerrymandering claim[s]," *Alexander*, 602 U.S. at 33, because they were "flawed in [their] fundamentals," *Milligan*, 599 U.S. at 35.

As in *Milligan* and *Alexander*, Dr. Duchin purportedly used software to draw "millions" of race-neutral maps to establish a statistical expectation for the racial character of Texas congressional districts drawn race-blind. App. 588; ECF 1384-8 at 14–15. Plaintiffs offered none of those maps into evidence, and all of those maps suffer from the same flaws as her work in *Milligan* and *Alexander*: they do not "accurately represen[t] the districting process in" Texas. *Milligan*, 599 U.S. at 34. Dr. Duchin conceded she was "just not aware of the principles used to create the enacted map," so she "c[ould]n't simulate those." App. 438. That concession should have foreclosed any reliance on her opinion.

It is undisputed that Dr. Duchin's maps do not satisfy the Legislature's criteria. Her simulations treated districts that President Trump would have won in 2024 with 55% of the vote as meeting the partisan objectives. App. 438. The district court admitted that Dr. Duchin applied a different standard than Kincaid. App. 125 (referring to a purported "60% threshold"). *But see* App. 92–95 (detailing the full list of Kincaid's complex criteria). Dr. Duchin's analysis admittedly failed to apply the same redistricting criteria as Kincaid.

And in measuring partisanship, Dr. Duchin used fundamentally different data than Kincaid. Dr. Duchin utilized "[Texas Legislative Council] electoral data and not ancillary sources" to conduct her analysis. App. 436–37. In contrast, Kincaid testified at length about the proprietary block and sub-block electoral data he used to meet his partisan criteria. App. 451–52; 461–65.[8]

Nor did Dr. Duchin account for Kincaid's "top criteria": ensuring "Republican incumbents who lived in their seat stayed in their seat," App. 475, a requirement that did not apply to Democrats, App. 501–02. This requirement was a crucial constraint for Kincaid's redistricting: in Houston, for example, neighboring Republican incumbents

[8] The district court also relied on the wrong data in erroneously finding that CD32 has only a 57.7% Trump victory in 2024. App. 125 n.458. Kincaid's block-level partisan data allowed him to more accurately (in his view, at least) measure the partisanship of his districts.

prevented Kincaid from redrawing CD7, forcing him to combine CD9 and CD18. But Dr. Duchin simply ignored the critical Republican-protection requirement: the core-retention requirements for her maps did not differentiate between Republican- and Democratic-held districts. App. 580. And Dr. Duchin's incumbent-protection criterion ignored the prohibition on paired Republican incumbents, allowing them to be placed in the same district. App. 582. Dr. Duchin's failure to apply the State's incumbent protection criteria in this case mirrors her failure in *Alexander*. App. 582; *Alexander*, 602 U.S. at 33 ("Dr. Duchin's report did not account for partisanship or core retention."). Finally, just as she relied on outdated census data in *Milligan*, 599 U.S. at 34, Dr. Duchin relied on outdated incumbent addresses in this case, App. 583–86, which accounted for only 36 incumbents from 2020 (over a quarter of whom are no longer in office) rather than the actual 38 current incumbents. App. 585–86.

At best, Dr. Duchin's simulations might be evidence that a mapdrawer who relied on different data, applied different and significantly relaxed partisan goals, and disregarded the Texas Legislature's "top criteria" of protecting Republican incumbents would have been unlikely to draw a map with the same racial demographics as Kincaid's map. But it says nothing about the likelihood of such a map being drawn using Kincaid's data to achieve Kincaid's partisan goals while satisfying Kincaid's stringent Republican-protection criteria.

The district court erroneously inverted the burden of proof and faulted the State Defendants for failing to introduce evidence that Dr. Duchin would have reached different conclusions had she actually applied Kincaid's criteria. That is an error of law: the proponent of expert testimony bears the burden to prove its reliability. When an expert's model "fails to track the considerations that governed the legislature's redistricting decision," evidence from that model is "irrelevant." *Alexander*, 602 U.S. at 25 ("Because Dr. Imai's model fails to track the considerations that governed the legislature's redistricting decision, it is irrelevant that the racial makeup of District 1 in his maps differs from that in the version of the district in the Enacted Plan."). Put another way, Dr. Duchin's

testimony, even if credited, cannot "rule out" Kincaid's actual criteria—his true partisan goals, his true data, and his true requirement of Republican incumbency protection—"as another plausible explanation for the difference between the Enacted Plan and the average [Duchin] simulation." *Id.* at 27.

And far from her testimony being unrebutted, Dr. Trende's report capably describes the pitfalls of using map simulations to attempt to disentangle race from politics—all of which is applicable and rebuts Dr. Duchin's analysis. ECF 1332 at 40–43.

* * *

None of this circumstantial evidence "is sufficient to support an inference that can overcome the presumption of legislative good faith." *Alexander*, 602 U.S. at 19–20. *Alexander* confirms that plaintiffs bear an "especially stringent" burden when they contend that a partisan gerrymander was truly driven by race. *Id.* at 11. The district court erred in finding a likelihood of success because it failed to follow this Court's precedent. It refused to "draw an adverse inference from [the] plaintiff 's failure to submit" an alternative map, *id.* at 35, a shortcoming that "would be clear error for the factfinder to overlook," *id.* at 37. It mischaracterized circumstantial evidence as direct evidence, and at every turn, it resolved ambiguous evidence against the Legislature and presumed bad faith, often based on its own speculation. There is more than a fair prospect that a majority of this Court will reverse the decision below.

B. The remaining traditional factors support a stay.

The remaining factors—whether a stay applicant "will be irreparably injured absent a stay," "whether issuance of the stay will substantially injure the other parties interested in the proceeding," and "where the public interest lies," *Nken v. Holder*, 556 U.S. 418, 426 (2009)—also support a stay.

"[A]ny time a State is enjoined by a court from effectuating statutes enacted by the 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) (quoting *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers)). By contrast, Plaintiffs will suffer no substantial injury by proceeding under the 2025 map, "the status quo" on which counties, candidates, and voters have been relying. App. 180.

If *Purcell* does not independently compel a stay, the last-minute disruption to state election procedures—and resulting candidate and voter confusion—demonstrates both the irreparable harm that the preliminary injunction will cause the State Defendants and that the public interest overwhelmingly favors a stay and reversion to the 2025 maps. *See supra* at I(B). The confusion sown by the district court's eleventh-hour injunction poses a very real risk of preventing candidates from being placed on the ballot and may well call into question the integrity of the upcoming election. *Id.* The public interest weighs strongly in favor of a stay of the preliminary injunction.

III. This Court Should Treat this Application as a Jurisdictional Statement and Note Probable Jurisdiction.

The State Defendants respectfully request that this Court treat this application as a jurisdictional statement and note probable jurisdiction so that the parties may proceed directly to merits briefing. This Court has done so in the redistricting context so that election litigation does not continue longer than necessary. *See Milligan*, 142 S. Ct. at 879; *Perry v. Perez*, 565 U.S. 1090 (2011).

* * *

With the State's election already in progress, the district court enjoined the 2025 map based on an opinion that does not follow *Alexander* in numerous respects. This Court should stay the injunction pending appeal, and because of the immediate disruption to ongoing campaigning that the injunction has caused, this Court should issue an administrative stay while this application is pending "to permit time for briefing and deliberation." *United States v. Texas*, 144 S. Ct. 797, 798 (2024) (Barrett, J., concurring in denial of applications to vacate stay).

CONCLUSION

For these reasons, Applicants respectfully request that this Court enter a stay pending appeal and an immediate administrative stay while it considers the application. With the candidate filing period set to end on December 8, Applicants respectfully request a ruling by **December 1**.

This Court should also construe this stay application as a jurisdictional statement, note probable jurisdiction, and expedite the appeal.

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