No. 25A608

IN THE SUPREME COURT OF THE UNITED STATES

GREG ABBOTT, ET AL., *Applicants,*
v.
LEAGUE OF UNITED LATIN AMERICAN CITIZENS, ET AL., *Respondents.*

BRIEF OF AMERICA FIRST LEGAL FOUNDATION AS *AMICUS CURIAE* IN SUPPORT OF APPLICATION TO STAY

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IDENTITY AND INTEREST OF THE *AMICUS CURIAE*[1]

Amicus curiae America First Legal Foundation ("AFL") is a 501(c)(3) non-profit organization dedicated to promoting the rule of law in the United States and defending individual rights guaranteed under the Constitution and federal statutes. AFL believes that the federal judiciary must exercise its equitable powers with extraordinary caution when overriding the will of a democratically elected legislature.

SUMMARY OF THE ARGUMENT

The decision below made several critical, reinforcing errors that warrant an immediate stay.

First, the majority dramatically lowered Plaintiffs' burden on the merits. Instead of requiring a "substantial likelihood" or "clear showing" of success as dictated by this Court's precedent, the court below held that Plaintiffs need only show "some likelihood" of success. The court compounded this error by applying a "sliding scale" approach—one rejected by recent jurisprudence—permitting Plaintiffs to bolster an exceptionally weak case on the merits with supposedly stronger arguments on other preliminary injunction factors. These reinforcing errors led the majority below to grant relief on a record woefully insufficient to declare unconstitutional an act of a State legislature. *See* Part I.A, *infra*.

[1] No counsel for any party has authored this brief in whole or in part, and no entity or person, aside from *amicus curiae* and its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

Second, the majority below also created a false dichotomy, insisting that unless the record showed the legislature was motivated "exclusively" by partisan considerations, then it must have been primarily motivated by improper racial considerations. That is not only logically flawed, but also impossible to square with this Court's precedent. *See* Part I.B, *infra*.

Third, the balance of equities and irreparable harm tilt decisively toward Texas. Enjoining a duly enacted State congressional map constitutes a *per se* irreparable injury to State sovereignty. *See* Part II.A, *infra*. And, despite the majority's protestations to the contrary, the decision below throws an entire State's congressional elections into absolute chaos, just days before filing deadlines—precisely the kind of scenario where *Purcell* dictates a stay of any relief. *See* Part II.B, *infra*.

Fourth, judicial prudence counsels a stay pending this Court's decision in *Louisiana v. Callais*, No. 24-109, which squarely addresses the constitutional boundaries of race-conscious redistricting and the tension between the Voting Rights Act and the Fourteenth Amendment. The court below at the very least should have stayed its hand pending this Court's guidance. *See* Part III, *infra*.

For all these reasons, as well as those in Texas's own brief, the Court should grant the Application.

ARGUMENT

I. The Majority Decision Below Applied the Wrong Legal Standard.

Obtaining a preliminary injunction in this context is the legal equivalent of hurdling a difficult pole vault. But the district court's fundamental legal errors, which compounded each other as explained below, lowered the crossbar to the point that Plaintiffs could simply walk over it. Those errors warrant a stay.

A. "Some Likelihood" of Success Is Insufficient, Especially for Enjoining an Act of a State Legislature.

1. The majority opinion employed the wrong legal standard on the most important aspect of the case: Plaintiffs' burden on the merits. The majority stated that Plaintiffs need only demonstrate "some likelihood" of success—rather than a "substantial likelihood"—to obtain a preliminary injunction. App.53 & n.159; App.55.

That was wrong. This Court has held that even in a run-of-the-mill case, a plaintiff seeking an injunction must make a "strong showing" of likelihood of success on the merits, *Nken v. Holder*, 556 U.S. 418, 426 (2009), sometimes phrased as a "clear showing" or "substantial likelihood" of success on the merits, *Pharm. Rsch. & Mfrs. of Am. v. Walsh*, 538 U.S. 644, 662 (2003); *see* App.175 (Smith, J., dissenting) (arguing that "substantial" is "part of the first factor in no uncertain terms").

A strong standard is especially appropriate because Plaintiffs sought to enjoin an act of a State legislature on the basis that it was racist. As this Court has explained, not only is there a presumption of good faith by State legislatures, but courts must also consider (1) "the Federal Judiciary's due respect for the judgment of state legislators, who are similarly bound by an oath to follow the Constitution";

(2) avoiding "declaring that the legislature engaged in 'offensive and demeaning' conduct"; and (3) wariness of "plaintiffs who seek to transform federal courts into 'weapons of political warfare' that will deliver victories that eluded them 'in the political arena.'" *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 11 (2024).

If there were ever a scenario where a plaintiff must make a "clear," "strong," and "substantial" showing of likelihood of success, this is it. By requiring only "some likelihood" of success, the majority opinion below circumvented the "extraordinary caution" required in these cases and failed to afford the legislature the presumption of good faith mandated by the court.

Further, the majority opinion itself made clear that this is no trivial distinction. The majority declined to say, for example, that Plaintiffs would prevail under any test. If anything, the court highlighted the weakness of Plaintiffs' merits by saying that a borderline showing could be bolstered by a stronger showing on other preliminary injunction factors. App.55.

Applying the wrong legal test to the most important aspect of this case was clearly an error worthy of granting Texas's application for a stay.

2. The premise of the lower court's "sliding scale" approach is also wrong. As then-Judge Kavanaugh explained, the "sliding-scale approach to preliminary injunctions—under which a very strong likelihood of success could make up for a failure to show a likelihood of irreparable harm, or vice versa—is 'no longer controlling, or even viable.'" *Davis v. Pension Benefit Guar. Corp.*, 571 F.3d 1288, 1296 (D.C. Cir. 2009) (Kavanaugh, J., concurring); *see also, e.g.*, *Diné Citizens Against*

Ruining Our Env't v. Jewell, 839 F.3d 1276, 1282 (10th Cir. 2016) ("Under [the Supreme Court's] rationale, any modified test which relaxes one of the prongs for preliminary relief and thus deviates from the standard test is impermissible."); *EOG Res., Inc. v. Lucky Land Mgmt., LLC*, 134 F.4th 868, 885 (6th Cir. 2025) (same).

Plaintiffs therefore could not bolster a weak merits case with supposedly strong showings on other factors—and, to be clear, Texas is right that Plaintiffs did not make strong showings on those factors anyway. Emergency.Appl.for.Stay.38.

Even if the sliding-scale framework were viable, it still requires the court to find the other factors make up for a weaker showing of "substantial likelihood" of success on the merits, not just "some likelihood." In other words, the court improperly gave Plaintiffs two breaks: one by lowering the merits showing, and then a second by letting other factors bolster that already-weak merits requirement. Judge Smith's dissent thus rightly called out the majority for using a "watered-down formulation because of the omission of the word 'substantial'" (as discussed above), combined with "a watered-down formulation because of the sliding scale." App.178 (Smith, J., dissenting).

By the end, the lower court did not require anything remotely close to the strong merits showing this Court's precedent mandates.

B. The Majority Created a False Dichotomy by Saying the 2025 Map Was Either Exclusively Partisan or Predominantly Racial.

This Court's precedent holds that Plaintiffs must show that race was "the legislature's dominant and controlling rationale." *Alexander*, 602 U.S. at 10. On numerous occasions, however, the court below said the record must demonstrate the

Texas Legislature's motivation was "exclusively partisan" or else it would be deemed predominantly racial. App.79. The court even framed them as alternatives: "exclusively partisan rather than predominantly racial." App.106.

That is a false dichotomy. A legislature can be predominantly—but not exclusively—motivated by partisan interests over racial interests. Under this Court's precedent, that is lawful. Indeed, this Court's current precedent holds that a legislature may consider race, but it cannot be the predominant motivating factor. *See Miller v. Johnson*, 515 U.S. 900, 916 (1995). The error of the decision below is even more obvious when one considers that this Court has recognized that legislative awareness and discussions of race are commonplace in redistricting, meaning a plaintiff will almost always be able to find references to or even some consideration of race. *See Alexander*, 602 U.S. at 37. Under this Court's precedent, such evidence is insufficient for a plaintiff to obtain relief; under the decision below, however, this would defeat the "exclusively partisan" purpose of redistricting and therefore entitles a plaintiff to a preliminary injunction.

Furthermore, the majority's purity test ignores the political reality of redistricting. The court never paused to ask why the Texas Legislature—which is inherently political—would draw districts based on race rather than party, when partisan votes are what secure seats in the U.S. House. By demanding proof of "exclusively partisan" motivation, App.79, the majority fell hook, line, and sinker for an openly cynical attempt to fit the square peg of partisan mapmaking into the round hole of racial discrimination.

All told, the majority below required Texas to satisfy an impossible purity test—one this Court has already rejected. Combine that ultra-strict purity test with the majority's dramatically watered down standard for obtaining a preliminary injunction (discussed above)—and *voila* the court was able to conjure a basis for a preliminary injunction based on a record woefully short of satisfying this Court's requirements for enjoining an act of a State legislature as racist.

II. The Remaining Stay Factors Decisively Favor Texas.

When considering a stay, the Court examines the irreparable harm to the applicant and the balance of equities, noting that the harm to the opposing party and the public interest "merge when the Government is the opposing party." *Nken*, 556 U.S. at 435. Here, the balance tilts sharply in favor of Texas, as the injunction inflicts *per se* irreparable harm on the State's sovereignty and causes chaos in an election already underway.

A. The Injunction Inflicts Irreparable Harm on State Sovereignty.

A State suffers a unique, irreparable injury "any time" its laws are enjoined because it is precluded "from effectuating statutes enacted by representatives of its people." *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (cleaned up). In the context of redistricting, this harm is particularly acute because the "inability to enforce its duly enacted plans clearly inflicts irreparable harm on the State." *Abbott v. Perez*, 585 U.S. 579, 602 n.17 (2018).

The injunction below did not make a few tweaks along the edges. It enjoined the entire 2025 congressional map for the State of Texas and resurrected a repealed

2021 map. This fundamentally interferes with a core legislative function, contradicting the principle that "reapportionment is primarily a matter for legislative consideration and determination" and that "a district court should not pre-empt the legislative task." *White v. Weiser*, 412 U.S. 783, 794–95 (1973) (quotation marks omitted); *see also Growe v. Emison*, 507 U.S. 25, 34 (1993).

Judicial restraint in these circumstances is constitutionally mandated. As this Court recently reaffirmed, the Elections Clause "expressly vests power" to regulate federal elections in the state legislature—"a deliberate choice that this Court must respect." *Moore v. Harper*, 600 U.S. 1, 34 (2023). While courts retain the power of judicial review, they "do not have free rein" to "arrogate to themselves the power vested in state legislatures." *Id.* at 34, 36. Yet the panel below did just that. By discarding the State's enacted 2025 map and imposing a map the Legislature explicitly repealed, the panel "exceed[ed] the bounds of ordinary judicial review" and "intrude[d] upon the role specifically reserved to state legislatures by Article I, Section 4." *Id.* at 37.

The disruptive effect of this judicial intervention outweighs any alleged harm to Plaintiffs. "The purpose of … interim equitable relief is not to conclusively determine the rights of the parties, but to balance the equities as the litigation moves forward." *Trump v. Int'l Refugee Assistance Project*, 582 U.S. 571, 580 (2017) (citation omitted). The public interest favors the stability of duly enacted state laws and the presumption of legislative good faith. *Alexander*, 602 U.S. at 6.

B. The Eleventh-Hour Injunction Disrupts Ongoing Elections.

The majority opinion below concluded that "[a]n injunction in this case would not cause significant disruption." App.144. Nothing is further from the truth. As Texas details in its Application, the district court's injunction violates the *Purcell* principle by injecting profound confusion into an election cycle already well underway.

This Court has long recognized that "[c]ourt orders affecting elections … can themselves result in voter confusion and consequent incentive to remain away from the polls." *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006). Accordingly, the *Purcell* principle dictates that "federal courts ordinarily should not enjoin a state's election laws in the period close to an election." *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring in grant of applications for stays). As Justice Kavanaugh emphasized, "When an election is close at hand, the rules of the road must be clear and settled. Late judicial tinkering with election laws can lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others." *Id.* at 880–81.

The district court flatly ignored this admonition by waiting until November 18—ten full days *after* the candidate filing period opened on November 8—to issue its injunction. Emergency.Appl.for.Stay.2. For months beforehand and in the days leading up to candidate filing, the 2025 map was the operative law. Candidates necessarily relied on those district lines to make critical, often irrevocable decisions. The injunction upends these reliance interests by changing the boundaries of nearly

all of Texas's 38 congressional districts. This chaos, occurring mere weeks before the December 8 filing deadline, strongly counsels in favor of a stay.

The majority tried to deflect these concerns by saying this sizable disruption "is attributable to the Legislature, not the Court." App.146. But that makes little sense. As Judge Smith correctly noted, the "duly enacted [2025] Texas congressional districting map is the 'status quo.'" App.180 (Smith, J., dissenting). It is the map under which the election cycle began. The court decision below—not that of the legislature—is obviously what has disrupted the status quo. As Justice Kavanaugh explained, "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." *Milligan*, 142 S. Ct. at 881.

III. The Court Should Stay the Decision Below Pending the Outcome of *Callais*.

The majority opinion does not even mention that this Court has noted probable jurisdiction in *Louisiana v. Callais*, No. 24-109, a case argued this Term that directly confronts the constitutional boundaries of race-conscious redistricting. *Callais* squarely presents the question of "[w]hether the State's intentional creation of a second majority-minority congressional district violates the Fourteenth or Fifteenth Amendments to the U.S. Constitution." Suppl.Br.for.Appellant.Louisiana.i, *Callais*, No. 24-109 (Aug. 27, 2025).

The resolution of *Callais* will likely clarify, if not fundamentally reshape, the legal framework governing Plaintiffs' claims against Texas. The appellants in *Callais*

argue that the Constitution mandates color-blindness, asserting that race-based redistricting, even in the name of Voting Rights Act compliance, is unconstitutional and violates the principle that "[e]liminating racial discrimination means eliminating all of it." *Id.* at 2 (quoting *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 206 (2023)). Louisiana contends that the current jurisprudence forces sovereign States into a no-win, goldilocks scenario where they must consider race but "perennially suffer the indignity of … being sued for considering race too much or too little," putting the federal judiciary in the position of having to "pick winners and losers" in this racial calculus. *Id.* at 2.

Texas is caught in this precise predicament. The majority opinion below invalidates the State's 2025 map, concluding that the Texas Legislature's actions constituted impermissible racial gerrymandering. App.2–3. Texas maintains its actions were driven by permissible partisan objectives. Emergency.Appl.for.Stay.1. As Judge Smith's dissent below aptly explained, this "tension between Section 2 of the Voting Rights Act and racial-gerrymandering jurisprudence" will likely be resolved by *Callais*. App.173 (Smith, J., dissenting).

But the majority ignored this pending sea-change and proceeded with the drastic remedy of reshaping Texas's 38 congressional districts at the eleventh hour, based on a highly dubious finding of racial predominance derived from a legal framework this Court is actively re-examining.

Judicial prudence dictates that a stay is warranted to allow this Court to provide the clarity that States "desperately need" before a duly enacted map is

enjoined based on unstable precedent. Suppl.Br.for.Appellant.Louisiana.5, *Callais*, No. 24-109.

CONCLUSION

The Court should grant the Application.

November 24, 2025

Respectfully submitted,

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