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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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ABBOTT, GOVERNOR OF TEXAS, ET AL. *v.* PEREZ ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

No. 17–586. Argued April 24, 2018—Decided June 25, 2018*

In 2011, the Texas Legislature adopted a new congressional districting plan and new districting maps for the two houses of the State Legislature to account for population growth revealed in the 2010 census. To do so, Texas had to comply with a complicated legal regime. The Equal Protection Clause of the Fourteenth Amendment forbids "racial gerrymandering," that is, intentionally assigning citizens to a district on the basis of race without sufficient justification. *Shaw* v. *Reno*, 509 U. S. 630, 641. But other legal requirements tend to require that state legislatures consider race in drawing districts. Like all States, Texas is subject to §2 of the Voting Rights Act of 1965 (VRA), which is violated when a state districting plan provides "less opportunity" for racial minorities "to elect representatives of their choice," *League of United Latin American Citizens* v. *Perry*, 548 U. S. 399, 425. And at the time, Texas was also subject to §5, which barred it from making any districting changes unless it could prove that they did not result in retrogression with respect to the ability of racial minorities to elect the candidates of their choice, *Alabama Legislative Black Caucus* v. *Alabama*, 575 U. S. ___, ___. In an effort to harmonize these conflicting demands, the Court has assumed that compliance with the VRA is a compelling State interest for Fourteenth Amendment purposes, see, *e.g.*, *Bethune-Hill* v. *Virginia State Bd. of Elections*, 580 U. S. ___, ___; and a State's consideration of race in making a districting decision is narrowly tailored if the State has "good reasons" for believing that its decision is necessary in order to

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*Together with No. 17–626, *Abbott, Governor of Texas, et al.* v. *Perez et al.*, also on appeal from the same court.

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comply with the VRA, *Cooper* v. *Harris*, 581 U. S. ___, ___.

The Texas Legislature's 2011 plans were immediately tied up in litigation and never used. The case was assigned to a three-judge court (Texas court). Texas also submitted the plans for preclearance to the District Court for the District of Columbia (D. C. court). The Texas court drew up interim plans for the State's rapidly approaching primaries, giving no deference to the Legislature's plans. Texas challenged the court-ordered plans in this Court, which reversed and remanded with instructions for the Texas court to start with the Texas Legislature's 2011 plans but to make adjustments as required by the Constitution and the VRA. The Texas court then adopted new interim plans. After the D. C. court denied preclearance of the 2011 plans, Texas used the Texas court's interim plans for the 2012 elections. In 2013, the Legislature repealed the 2011 plans and enacted the Texas court's plans (with minor modifications). After *Shelby County* v. *Holder*, 570 U. S. 529, was decided, Texas, no longer covered by §5, obtained a vacatur of the D. C. court's preclearance order. But the Texas court did not dismiss the case against the 2011 plans as moot. Instead, it allowed the plaintiffs to amend their complaint to challenge the 2013 plans and held that their challenges to the 2011 plans were live. Texas conducted its 2014 and 2016 elections under the 2013 plans. In 2017, the Texas court found defects in several of the districts in the 2011 federal congressional and State House plans (the State Senate plan is not at issue here). Subsequently, it also invalidated multiple Congressional (CD) and House (HD) Districts in the 2013 plans, holding that the Legislature failed to cure the "taint" of discriminatory intent allegedly harbored by the 2011 Legislature. And the court relied on that finding to invalidate several challenged 2013 districts. The court also held that three districts—CD27, HD32, and HD34—were invalid under §2 of the VRA because they had the *effect* of depriving Latinos of the equal opportunity to elect their candidates of choice. And it found that HD90 was a racial gerrymander based on changes made by the 2013 Legislature. It gave the state attorney general three days to tell the court whether the Legislature would remedy the violations; and if the Legislature did not intend to adopt new plans, the court would hold remedial hearings.

Held:

1. This Court has jurisdiction to review the orders at issue. Pp. 11–21.

(a) The Texas court's orders fall within 28 U. S. C. §1253, which gives the Court jurisdiction to hear an appeal from an order of a three-judge district court "granting or denying . . . an interlocutory or permanent injunction." The Texas court did not *call* its orders "injunctions," but where an order has the "practical effect" of granting or

denying an injunction, it should be treated as such for purposes of appellate jurisdiction. *Carson* v. *American Brands, Inc.*, 450 U. S. 79, 83. Pp. 11–16.

(b) The text of the orders and the context in which they were issued make clear that they qualify as interlocutory injunctions under §1253. The orders were unequivocal that the current legislative plans "violate §2 and the Fourteenth Amendment" and that these violations "must be remedied." And the short time frame the attorney general was given to act is strong evidence that the court did not intend to allow the elections to go ahead under the plans it had just condemned. The unmistakable import of these actions is that the court intended to have new plans ready for use in this year's elections. Texas also had reason to fear that if it tried to conduct elections under those plans, the court would infer an evil motive and perhaps subject the State to the strictures of preclearance under §3(c) of the VRA. These cases differ from *Gunn* v. *University Comm. to End War in Viet Nam*, 399 U. S. 383, where the order did not have the same practical effect as an injunction. Nor does it matter that the remedy is not yet known. The issue here is whether this year's elections can be held under the plans enacted by the Legislature, not whether any particular remedies should ultimately be ordered if it is determined that the current plans are flawed. Section 1253 must be strictly, but sensibly construed, and here the District Court's orders, for all intents and purposes, constituted injunctions. Thus, §1253 provides jurisdiction. Pp. 16–21.

2. The Texas court erred in requiring the State to show that the 2013 Legislature purged the "taint" that the court attributed to the defunct and never-used plans enacted by a prior legislature in 2011. Pp. 21–32.

(a) Whenever a challenger claims that a state law was enacted with discriminatory intent, the burden of proof lies with the challenger, not the State. *Reno* v. *Bossier Parish School Bd.*, 520 U. S. 471, 481. In redistricting cases, the "good faith of [the] state legislature must be presumed." *Miller* v. *Johnson*, 515 U. S. 900, 915. The allocation of the burden of proof and the presumption of legislative good faith are not changed by a finding of past discrimination, which is but "one evidentiary source" relevant to the question of intent. *Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U. S. 252, 267. Here, the 2011 plans were repealed, and not reenacted, by the 2013 Legislature. Nor did it use criteria that arguably carried forward the effects of the 2011 Legislature's discriminatory intent. Instead, it enacted, with only small changes, the Texas court plans developed pursuant to this Court's instructions. The Texas court contravened these basic burden of proof principles, referring,

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e.g., to the need to "cure" the earlier Legislature's "taint" and concluding that the Legislature had engaged in no deliberative process to do so. This fundamentally flawed approach must be reversed. Pp. 21–25.

(b) Both the 2011 Legislature's intent and the court's interim plans are relevant to the extent that they give rise to—or tend to refute—inferences about the 2013 Legislature's intent, but they must be weighed together with other relevant direct and circumstantial evidence of the Legislature's intent. But when this evidence is taken into account, the evidence in the record is plainly insufficient to prove that the 2013 Legislature acted in bad faith and engaged in intentional discrimination. Pp. 25–32.

3. Once the Texas court's intent finding is reversed, there remain only four districts that were invalidated on alternative grounds. The Texas court's holding as to the three districts in which it relied on §2's "effects" test are reversed, but its holding that HD90 is a racial gerrymander is affirmed. Pp. 32–41.

(a) To make out a §2 "effects" claim, a plaintiff must establish the three "*Gingles* factors": (1) a geographically compact minority population sufficient to constitute a majority in a single-member district, (2) political cohesion among the members of the minority group, and (3) bloc voting by the majority to defeat the minority's preferred candidate. *Thornburg* v. *Gingles*, 478 U. S. 30, 48–51. A plaintiff who makes that showing must then prove that, under the totality of the circumstances, the district lines dilute the votes of the members of the minority group. Pp. 33–39.

(1) The Texas court held that CD27 violates §2 because it has the effect of diluting the votes of Nueces County Latino voters, who, the court concluded, should have been included in a Latino opportunity district rather than CD27, which is not such a district. Plaintiffs, however, could not show that an additional Latino opportunity district could be created in that part of Texas. Pp. 33–35.

(2) The Texas court similarly erred in holding that HD32 and HD34, which make up the entirety of Nueces County, violate §2. The 2013 plan created two districts that lie wholly within the county: HD34 is a Latino opportunity district, but HD32 is not. The court's findings show that these two districts do not violate §2, and it is hard to see how the ultimate *Gingles* vote dilution standard could be met if the alternative plan would not enhance the ability of minority voters to elect the candidates of their choice. Pp. 35–38.

(b) HD90 is an impermissible racial gerrymander. HD90 was not copied from the Texas court's interim plans. Instead, the 2013 legislature substantially modified that district. In 2011, the Legislature, responding to pressure from counsel to one of the plaintiff groups, in-

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creased the district's Latino population in an effort to make it a Latino opportunity district. It also moved the city of Como, which is predominantly African-American, out of the district. When Como residents and their Texas House representative objected, the Legislature moved Como back. But that decreased the Latino population, so the Legislature moved more Latinos into the district. Texas argues that its use of race as the predominant factor in HD90's design was permissible because it had "*good reasons* to believe" that this was necessary to satisfy §2, *Bethune-Hill*, 580 U. S., at ___. But it is the State's burden to prove narrow tailoring, and Texas did not do so on the record here. Pp. 38–41.

No. 17–586, 274 F. Supp. 3d 624, reversed; No. 17–626, 267 F. Supp. 3d 750, reversed in part and affirmed in part; and cases remanded.

ALITO, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, THOMAS, and GORSUCH, JJ., joined. THOMAS, J., filed a concurring opinion, in which GORSUCH, J., joined. SOTOMAYOR, J., filed a dissenting opinion, in which GINSBURG, BREYER, and KAGAN, JJ., joined.

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