No. 25-

In the
Supreme Court of the United States

DAVID TANGIPA, *et al.*,

Applicants,

v.

GAVIN NEWSOM, *et al.*,

Respondents.

ON APPLICATION FOR WRIT OF INJUNCTION FROM THE U.S. DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

To the Honorable Elena Kagan
Associate Justice of the Supreme Court of the United States and Circuit Justice for the Ninth Circuit

EMERGENCY APPLICATION FOR WRIT OF INJUNCTION PENDING APPEAL

RELIEF REQUESTED BY WEDNESDAY, FEBRUARY 9, 2026

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PARTIES AND RULE 29.6 STATEMENT

Applicants are David Tangipa, Eric Ching, Saul Ayon, Peter Hernandez, Roxanne Hoge, Joel Guiterrez Campos, Solomon Verduzco, Paul Ramirez, Jayne Ortiz-Wilson, Vernon Costa, Rachel Gunther, Doug Buchanan, Sayrs Morris, Mike Netter, Christina Raughton, Kristi Hays, James Reid, Michael Tardif, Alex Galicia, and the California Republican Party. Applicants are the Plaintiffs before the United States District Court for the Central District of California.

Applicant California Republican Party has no parent corporation, and there is no publicly held corporation owning 10% or more of its stock.

The United States of America is a Plaintiff-Intervenor before the United States District Court for the Central District of California.

Respondents are Gavin Newsom, in his official capacity as Governor of California, and Shirley Weber, in her official capacity as California Secretary of State. Respondents are Defendants before the United States District Court for the Central District of California.

Respondents also include the Democratic Congressional Campaign Committee (DCCC) and the League of United Latin American Citizens (LULAC). These Respondents are Intervenor-Defendants before the United States District Court for the Central District of California.[1]

[1] Defendant-Intervenor LULAC was granted limited intervention by the District Court. *See* ECF No. 79.

PROCEEDINGS BELOW

- *David Tangipa, et al. v. Gavin Newsom*, in his official capacity as Governor of California, *et al.,* No. 2:25-cv-10616 (C.D. Cal.) (three-judge court): denial of preliminary injunction entered January 14, 2026. The injunction pending appeal was denied on January 16, 2026.

Potential Related case:

- *Mitch Noyes, et al. v. Gavin Newsom, in his official capacity as Governor of California, et al.*, No. 2:25-cv-11480 (C.D. Cal.)[2]

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[2] The Complaint in *Noyes*, filed on December 2, 2025, alleges that the Proposition 50 Map violates the Fifteenth Amendment and § 2 of the Voting Rights Act by "intentionally concentrate[ing] Hispanic and Black populations into districts where they either constitute a slight majority or enjoy an influence district." Compl. ¶ 60, *Noyes v. Newsom*, No. 2:25-cv-11480 (C.D. Cal. Dec. 2, 2025). On December 4, 2025, Counsel for Plaintiffs in *Noyes* sent an email to all counsel in the *Tangipa* matter requesting permission to consolidate the *Noyes* matter into the *Tangipa* matter. All counsel objected at that time, as the hearing on the Motion for Preliminary Injunction was days away. To date, no motion to consolidate has been filed by the *Noyes* plaintiffs.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Statutes

Other Authorities

TO THE HONORABLE ELENA KAGAN,
ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES
AND CIRCUIT JUSTICE FOR THE NINTH CIRCUIT:

The Fourteenth Amendment's mandate of equality prohibits a State from "separating its citizens into different voting districts on the basis of race" absent compelling and "sufficient justification." *Cooper v. Harris*, 581 U.S. 285, 291 (2017). Even when a State claims that it is engaged in partisan rather than racial gerrymandering, it may not use race as a "proxy" for politics. *Id.* at 291 n.1. Regrettably, California has done precisely that. Under the guise of partisan line-drawing, California expressly used race as the "predominant factor" in placing "a significant number of voters within or without" Congressional District 13. *Id.* at 291. If left uncorrected, this pernicious and unconstitutional use of race will irreparably harm Applicants and the public. Applicants therefore respectfully request an injunction pending appeal precluding California from conducting any congressional election under the map enacted through Proposition 50 ("Proposition 50 Map") and requiring it to use the prior map adopted in 2021 by the independent Citizens Redistricting Commission.

California officials instigated mid-decade redistricting in 2025 in response to Texas's mid-decade redistricting. Those officials' professed purpose was to pick up five seats in Congress for the Democratic Party to offset the five seats the Republican Party gained in Texas. But those officials harbored another purpose as well: maximizing Latino voting strength to shore up Latino support for the Democratic Party. The mapmaker, Paul Mitchell, publicly admitted that he drew the map to "ensure that Latino districts … are bolstered in order to make them more effective, particularly in the Central Valley." App. 245. Mitchell pursued that aim with surgical precision, drawing Congressional District 13

to bypass heavily Democratic white neighborhoods near Stockton in favor of capturing less Democratic Latino areas.

As if this direct evidence were not enough, Applicants adduced substantial additional evidence, including expert testimony and alternative maps, demonstrating that race rather than politics predominated in the drawing of the District 13 lines. The two-judge majority, however, rejected that evidence and the conclusion of racial gerrymandering it compelled. As Judge Lee explained in dissent, the majority did so only through a series of legal errors that directly contravene the Court's caselaw—and failing to correct those errors would uphold California's "unlawful path" and "inevitably sow [the] racial divisions" the Fourteenth Amendment exists to prevent. App. 117. To name just one example, the panel majority ignored Mitchell's admission of racial predominance because California voters, rather than Mitchell, adopted the Proposition 50 Map. The majority's apparent belief that a State may launder a mapmaker's unconstitutional line-drawing through a legislative or popular vote not only would lead to untenable results, but also directly contravenes decades of this Court's cases, which have consistently held that the mapmaker's testimony is direct, highly probative evidence of racial predominance (or the lack thereof). *See, e.g.*, *Miller v. Johnson*, 515 U.S. 900, 916 (1995); *Cooper*, 581 U.S. at 291; *Alexander v. S. Carolina State Conf. of the NAACP*, 602 U.S. 1, 8 (2024) (citing *Alabama Legis. Black Caucus v. Alabama*, 575 U.S. 254, 259–60 (2015)).

Timing now forces this Application. Beginning February 9, 2026, congressional candidates across California will start submitting their paperwork to qualify in Proposition 50's racially gerrymandered districts. App. 300. Thus, this Court's immediate intervention is necessary to ensure that California's 2026 congressional elections do not proceed under

district lines that, on the record presented to the three-judge district court, are likely unconstitutional.

Applicants seek a narrow injunction pending appeal that would preclude the State of California from implementing or using the congressional district boundaries enacted through Proposition 50 (AB 604) and would temporarily reinstate the independent 2021 California Redistricting Commission ("CRC") map. The CRC districts governed the last two federal election cycles and represent the last operative lawful congressional map. Applicants do not ask this Court to draw districts, supervise mapmaking, or alter the election calendar. The requested injunction would do no more than preserve the status quo while the legality of Proposition 50 is adjudicated.

This limited, interim relief is particularly appropriate given the present posture of the case. Unlike in Texas, where the mapmaker testified under oath at length to explain the non-racial considerations that informed his district line-drawing, the mapmaker here publicly acknowledged that he used race to design Proposition 50's districts but then invoked a broad claim of legislative privilege to avoid testifying about his work or his public acknowledgements of his racial purpose during the preliminary injunction proceedings. The legislators for whom he worked similarly invoked legislative privilege to avoid testifying with respect to the drawing of Proposition 50's lines. This has left various statements establishing a racial purpose in the drawing of the district lines unrebutted.

Applicants request that this Court grant an injunction by February 9, 2026, and issue a briefing schedule.

DECISIONS BELOW

Applicants seek an injunction pending appeal of the three-judge district court's denial of their motion for preliminary injunction, entered on January 14, 2026. The district court's opinion and order are reproduced at App. 1–117. The district court's denial of an injunction pending appeal is reproduced at App. 131.

JURISDICTION

This Court has jurisdiction over a direct appeal from an order denying a motion for a preliminary injunction entered by a three-judge district court. 28 U.S.C. §§ 1253, 1651, 2106, and 2284.

The district court entered an order denying Applicants' motion for a preliminary injunction on January 14, 2026, and Applicants timely filed their appeal on January 15, 2026. An injunction pursuant to 28 U.S.C. § 1651, enjoining the State of California from using the Proposition 50 Map during the pendency of Applicants' appeal, will be of aid to this Court's jurisdiction because it will ensure that this matter (the appeal of Applicants' Motion for Preliminary Injunction) remains a live case or controversy subject to this Court's review.

BACKGROUND

In July 2025, Texas Governor Greg Abbott placed mid-decade congressional redistricting on the Texas Legislature's Agenda. App. 4. In August 2025, Texas enacted a new congressional map, effective beginning with the 2026 midterm election. App. 5.

California officials announced that California would respond. On August 8, 2025, Governor Gavin Newsom publicly released video remarks stating that California would, on

a statewide basis, redraw its congressional map to offset the effects of Texas's redistricting efforts. ECF No. 189-1, Ex. 229. The next day, Assembly Speaker Robert Rivas issued a press release stating that California Democrats were prepared to "fight back" against the perceived "power grab" in Texas. ECF No. 188-9, Ex. 18 (Speaker Rivas August 9 Press Release).

The California Constitution establishes a once-per-decade congressional redistricting process administered by the CRC. *See* Cal. Const. art. XXI. Therefore, to conduct a mid-decade redistricting, California legislators required a vote of the people to amend the state Constitution.

On August 14, 2025, California's Governor and state legislative leadership announced a package of bills (collectively, "Proposition 50") to replace the 2021 congressional district map adopted by the CRC with a new map for use in 2026, 2028, and 2030, subject to voter approval at a special election on November 4, 2025. ECF No. 190-1, Ex. 102 (Gavin Newsom August 14 Press Release). The package consisted of:

(a) ACA 8 (Rivas & McGuire), a legislatively referred constitutional amendment authorizing use of a legislature-enacted congressional map through 2030 (*see* Assemb. Const. Amend. 8, 2025–26 Reg. Sess. (Cal. 2025));
(b) AB 604 (Aguiar-Curry & Gonzalez), the statute specifying the new congressional district boundaries (*see* Assemb. B. 604, 2025–26 Reg. Sess. (Cal. 2025)); and
(c) SB 280 (Cervantes & Pellerin), the bill calling the special election, appropriating funds, and making conforming calendar changes (*see* Sen. B. 280, 2025–26 Reg. Sess. (Cal. 2025)).

ECF No. 1 (Compl. ¶ 39). On August 21, 2025, the California Legislature passed Proposition 50, and Governor Newsom signed it into law. App. 7.

As explained *infra*, public statements made by both the consultant who drew the Proposition 50 Map and California public officials indicate that Proposition 50 had two

distinct but parallel purposes: on the one hand, increasing political performance for Democratic candidates statewide, and on the other, offsetting the perceived loss of Latino voting power in other states. To accomplish these dual aims, the Proposition 50 Map was drawn to ensure that Democratic candidates enjoyed greater success, but not so great in any particular district that it reduced the relative voting power of Latinos in others. In District 13 in particular, for example, a potential pro-Democratic partisan advantage was subordinated to a pro-Latino racial goal.

Proposition 50 was the sole ballot measure in the November 4, 2025, special election. App. 9. The Official Voter Information Guide stated that, if Proposition 50 passed, California "would use new, legislatively drawn congressional district maps starting in 2026." ECF No. 190-3, Ex. 187 (Voter Information Guide). California voters approved Proposition 50. App. 10. Accordingly, "Proposition 50's Map is set to dictate California's 52 congressional districts for the 2026, 2028, and 2030 elections." *Id.*

The day after the election, Applicants filed this action against Governor Newsom and Secretary of State Shirley Weber, seeking to enjoin the use of the Proposition 50 map. ECF No. 1 (Complaint). On November 7, 2025, Applicants moved for a preliminary injunction seeking to bar the use of the Proposition 50 map and to require the use of the CRC's 2021 map during the litigation. App. 132–167. On November 13, 2025, the United States of America (as Plaintiff-Intervenor) filed a parallel motion seeking the same relief. (ECF No. 29, U.S Mot. for Prelim. Inj.). Both the Democratic Congressional Campaign Committee ("DCCC") and the League of United Latin American Citizens ("LULAC") intervened as Defendants. ECF Nos. 26, 79 (Orders granting intervention). The three-judge district court

held a preliminary injunction hearing from December 15, 2025, through December 17, 2025. App. 10.

Applicants alleged that the State respondents violated the Fourteenth and Fifteenth Amendments by using race as the predominant factor in drawing the boundaries of sixteen congressional districts—Districts 13, 18, 21, 22, 25, 29, 31, 33, 34, 35, 38, 39, 41, 44, 46, and 52. App. 149. At the preliminary injunction stage, the United States challenged only District 13 as a racial gerrymander under the Fourteenth Amendment (and separately advanced a claim under § 2 of the Voting Rights Act). ECF No. 29-1 (U.S. Mot. for Prelim. Inj.).

Applicants' preliminary injunction submissions contained direct evidence illustrating the State's racial motivations in drawing certain of Proposition 50's districts. For example, the letter transmitting the Proposition 50 map from the mapmaker to the legislature stated that it was intended to "push back" against what was perceived as "a clearly racially gerrymandered, partisan map." App. 466. State Senator Mark McGuire said in a press release on August 19, 2025, that the "new map . . . retains and expands Voting Rights Act districts that empower Latino voters to elect their candidates of choice." App. 263. As discussed further *infra*, other legislators echoed that the Proposition 50 map was meant to counteract racial gerrymandering they perceived in other states' redistricting, essentially fighting fire with fire. One example was the following statement by Assemblymember Gonzalez: "If Florida wants to silence voters of color, we will not sit quietly. . . . This is about whether a Latino child in Texas, a black family in Florida, or an immigrant community in California, has a voice in their own democracy members. . . . It's not just a bill, it's [a] shield. A shield against racist maps . . . ." App. 228.

Moreover, even though nothing in the legislative record demonstrated a "strong basis in evidence to conclude that § 2 [of the Voting Rights Act] demanded such race-based steps," *Cooper v. Harris*, 581 U.S. 285, 304 (2017), legislators made numerous references to Proposition 50 complying with the race-based dictates of the Voting Rights Act. These statements further indicated underlying objectives and districting choices rooted in racial considerations. For example, Senator McGuire said that "the Voting Rights Act in all districts in every corner of California is upheld. Full stop." App. 214. Assemblymember Marc Berman told the Assembly Elections Committee, "California's maps strictly abide by the Federal Voting Rights Act, which the Texas maps don't. . . . [T]he Voting Rights Act and the principles of the Voting Rights Act were taken into very high consideration when those maps were drawn." App. 217.

Consistent with the Legislature's decision to engage in the "sordid business" of "divvying us up by race," *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 511 (2006) (Roberts, C.J. concurring), legislative leadership circulated to legislators a document known as the "Atlas" prior to the floor vote on Proposition 50. App. 320–378. The purpose of the Atlas was to explain Proposition 50's district lines—and the *only* data it provided legislators was the racial composition of each district, with no mention of political composition. App. 320–378. This further corroborates that race, not politics, was the operative criterion.

Furthermore, the Proposition 50 mapmaker, Paul Mitchell, explained in a presentation to an organization called Hispanas Organized for Political Equality ("HOPE") that the first thing he did was to add a "Latino district," specifically reversing the CRC's decision to eliminate that district in 2021. App. 239–240. He also stated that "the Prop 50

maps I think will be great for the Latino community" as "they ensure that the Latino districts [] are bolstered in order to make them most effective, particularly in the Central Valley." App. 245. Mitchell bragged on social media that the "proposed Proposition 50 map will further increase Latino voting power" and "adds one more Latino influence district." App. 261.

Mitchell's confidence that Proposition 50 would augment Latino voting power is unsurprising. Just four years earlier, during the CRC's redistricting efforts in 2021, HOPE submitted a letter to the CRC proposing two district configurations: (1) "a new GATEWAY CITIES District centered around Downey . . . allowing for the creation of FIVE Latino Majority minority districts where there are currently four"; and (2) "tak[ing] the current LBNorth seat to the south, through Seal Beach into Huntington Beach, making that a Latino influence seat at 35-40% Latino by voting age population." App. 253 (capitals in original). That proposal was based on a report created by Dr. Christian Grose and Raquel Centeno, with assistance from Mitchell. *See* App. 254; *see* also App. 438 (Mitchell confirming that he "consulted with Christian Grose" in drafting the report). In concluding that these two changes would enhance Latino voting power, that report determined that districts most optimally achieve that result when they are drawn to contain "between 52% and 54% Latino CVAP." App. 256.[3]

Ultimately, the CRC disregarded HOPE's suggestions and eliminated a Latino-majority district in Los Angeles. App. 240. But when the California Legislature placed

[3] Applicants note that Dr. Grose, who is not an attorney, is the same person Mr. Mitchell trusted to evaluate whether Proposition 50 complied with the Voting Rights Act. App. 446–447.

Mitchell in a position to reverse that change, that is precisely what he did. Moreover, Mitchell created the district configurations HOPE proposed to the CRC—as Proposition 50 Districts 41 and 42—and ensured that the overwhelming majority of Proposition 50's Latino-majority districts stayed within a narrow HCVAP band of 51–55%. *See* App. 321–326 (Atlas showing racialized CVAP statistics for Proposition 50 districts), App. 416–418 (deposition testimony of Paul Mitchell discussing the realization of HOPE's proposal in his map). At bottom, Mr. Mitchell made deliberate decisions to deliver HOPE's earlier wishes in an explicit effort to protect, if not enhance, Latino voting power. This was not accidental correlation; it was the execution of a preexisting racial design to achieve specific racial targets.

As to District 13 in particular, Applicants presented not only the direct evidence of Mitchell's racial admissions but also circumstantial evidence that Mitchell crafted the precise boundaries of District 13 to bolster Latino voting strength at the expense of increasing Democratic performance.

That evidence included testimony from Dr. Sean Trende, an expert this Court has credited in a prior racial gerrymandering case. *Alexander*, 602 U.S. at 25. Dr. Trende concluded that District 13's "twisted shapes cannot be explained by traditional redistricting principles, nor can they be explained by politics," and he identified the district map's protrusion into the city of Stockton as the clearest example. App. 295. Instead of drawing lines to capture the most proximate Democratic precincts, which would most directly advance the Legislature's professed partisan objective, the District 13 map bypassed those precincts in favor of less-Democratic Latino neighborhoods, thereby keeping District 13's HCVAP essentially locked within the narrow 52–54% band previously identified (by HOPE,

with Mr. Mitchell's assistance) as "optimal" for Latino electoral effectiveness. App. 537–538; App. 256. Dr. Trende then tested the State's partisan rationale by producing three alternative maps of District 13. In each, Dr Trende demonstrated a possible configuration of District 13 that increased Democratic performance while lowering HCVAP below the target range, all while adhering to traditional districting criteria. App. 290–295.

In the district court, Applicants sought the deposition and hearing testimony of both Mitchell and legislative leaders to obtain their explanations of these statements and their actions with respect to the Proposition 50 Map. Instead of providing an alternative explanation, they claimed legislative privilege. Although Mitchell appeared for a deposition, he invoked this privilege over 100 times to avoid explaining his public comments acknowledging his racial motive in drawing certain districts. *See generally* App. 387–465.

This consistent body of evidence illustrates that race predominated in the design of Proposition 50's map. This reality, however, does not end the constitutional inquiry. Rather, it triggers strict scrutiny and requires the State to justify its actions as narrowly tailored to achieve a compelling state interest. *See Cooper*, 581 U.S. at 291. The State, however, did not even try to make that showing. For example, it made no effort to show, for Section 2 purposes, that a "white majority votes sufficiently as a bloc to enable it—in the absence of special circumstances, such as the minority candidate running unopposed—usually to defeat the minority's preferred candidate." *Thornburg v. Gingles*, 478 U.S. 30, 51 (1986) (internal citation omitted). That showing is particularly crucial in a Democratic State where white voters frequently vote for Democratic candidates, and where statewide election results amply demonstrate that Latino voters have no issue electing their candidates of choice. App. 155–157. Indeed, minorities are regularly elected to California state office, with

at least half of the California Senate consisting of representatives who come from an ethnic-minority background, and at least 15 (of the 40) Senators being Latino. *Id.*

Despite Applicants' voluminous evidence, the two-judge majority denied both Applicants' and the United States's motions for a preliminary injunction. App. 1–70. Holding that it is the intent of California's 11 million voters, rather than the intent of the mapmaker or legislators, that should be assessed when evaluating racial predominance, the majority found that Applicants had failed to carry their burden. App. 21 (noting that the court "center[ed] voters' intent as the dispositive inquiry").

Circuit Judge Lee dissented, identifying clear, outcome-determinative errors of law, not disputed factual findings or credibility determinations. As Judge Lee explained, the majority adopted a novel and unworkable framework that turns on "voters' intent," treating the relevant subject in an Equal Protection inquiry as the motives of 11 million Californians who approved Proposition 50 and disregarding the intent of the mapmaker and the legislators who enacted the map. *See* App. 72. As Judge Lee noted, this unworkable framework also contradicts the Court's precedent treating the mapmaker's testimony as direct evidence of legislative intent in racial gerrymandering cases. App. 87 (citing *Alexander*, 602 U.S. at 19). Indeed, even the district court acknowledged that its consideration of voter intent as relevant in the redistricting context created "an issue of first impression." App. 14.

Moreover, as Judge Lee recognized, Proposition 50's "larger partisan goal" did not stop the California legislature from also pursuing the goal of maintaining and expanding "the racial spoil system." App. 73. That is, while there was an overall statewide partisan goal of adding to the number of congressional seats won by the Democratic Party, on a

district level, there was unlawful racial gerrymandering, either by crudely and unlawfully substituting voters' race for their partisan affiliation or simply racially gerrymandering to favor voters of one race over voters of other races.

The majority did not specify a date by which the rules that will govern California's 2026 congressional election must be settled. Judge Lee, however, identified February 4, 2026, as the latest date for effective injunctive relief. App. 114. Judge Lee identified February 4, 2026, as the *Purcell* deadline because it "starts a month-long period when the candidates can begin filing their paperwork." While Judge Lee properly identified the *Purcell* deadline as the day candidates can file their paperwork declaring their candidacy, February 9, 2026, is the actual date on which candidates seeking public office may file paperwork declaring their candidacy. App. 300.

ARGUMENT

A party seeking an injunction pending appeal must make four showings. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). First, that it "is likely to succeed on the merits." *Id.* Second, that it "is likely to suffer irreparable harm" absent relief. *Id.* Third, "that the balance of equities tips in [its] favor." *Id.* And fourth, "that an injunction is in the public interest." *Id.* Of these factors, the first is the most important. *See id.* Applicants satisfy all four factors. The Court should grant the Application.

I. APPLICANTS ARE LIKELY TO SUCCEED ON THE MERITS

A. The District Court Erred in Disregarding Unrebutted Direct Evidence of the Mapmaker's Racial Intent.

Mitchell's own admissions of his racial intent were clear. He boasted publicly and on social media that Proposition 50, including in District 13, would maintain, if not expand, Latino voting power in California. Those admissions included his candid statement that he sought to "ensure that Latino districts … are bolstered in order to make them more effective, particularly in the Central Valley." App. 71, 245. Mitchell and the legislators behind Proposition 50 declined the opportunity to rebut these admissions, choosing to invoke legislative privilege rather than to testify below.

The Court's precedents required the district court to consider these admissions and treat them as direct evidence of intent. *Miller*, 515 U.S. at 916; *Cooper*, 581 U.S. at 291; *Alexander*, 602 U.S. at 8 (citing *Alabama Legis. Black Caucus*, 575 U.S. at 259–60). The majority, however, sidestepped that requirement through a detour into what it deemed to be "an issue of first impression." App. 14. The majority held that because California voters, rather than Mitchell, approved the Proposition 50 Map, only the voters' intent, and not Mitchell's or the California Legislature's, could bear on the racial predominance inquiry. App. 14–22. The majority reasoned that, absent proof that voters "knew why [the mapmaker] decided to draw the lines of individual districts in the way that he did," his admissions could not establish racial predominance. App. 29 ("Without a connection between the mapmaker's statements and the voters' intent, [Applicants] cannot rely on Mitchell to show that race predominated in the enactment of Proposition 50."). Thus, the majority concluded, because the voters did not universally know why Mitchell placed the lines where he did, his admissions are irrelevant. App. 14–29.

The majority's holding is breathtaking, untenable, and contrary to this Court's case law. The majority's notion that a State can launder racial discrimination simply by putting its discrimination to a vote of the people would offer a clear path for States to bypass the Fourteenth Amendment's guarantee of racial equality. Indeed, nothing would prevent a State legislature from doing what the California Legislature did here: use race to shore up a racial group's support for the supermajority party, sell that use of race to the supermajority as a partisan act, and then ask the supermajority to ratify that act.

The unconstitutionality of racial gerrymandering is not cured by the public either being ignorant of it or agreeing with it. To return to first principles: A racial gerrymandering claim is a constitutional challenge by voters alleging they were unlawfully assigned to a district based on their race. Accordingly, the constitutional question in a racial gerrymandering claim is whether race was the "dominant and controlling rationale" in the "drawing" of district lines. *Miller*, 515 U.S. at 913. Such claims turn upon whether a plaintiff can adduce evidence that the "decision to place a significant number of voters within or without a particular district" was driven by racial motivations. *Cooper*, 581 U.S. at 291. And the person who "place[s]" voters by drawing lines is the mapmaker. When that individual states, contemporaneously and repeatedly, that he set out to design districts around a racial objective, that is not irrelevant or superseded by a vote of approval by an unsuspecting public. It is, instead, direct evidence of the precise kind this Court has recognized as controlling. *See, e.g.*, *id.* at 299–300 ("Uncontested evidence in the record shows that the State's *mapmakers*, in considering District 1, purposefully established a racial target." (emphasis added)).

Moreover, the majority's approach is impractical, transforming the constitutional inquiry into an exercise in divining the district-specific subjective motivations of the voters—eleven million people in this case, who have little incentive or ability to analyze the minutiae of decisions on the adjustment of the 51 districts in California, with the possible exception of their own district. As Judge Lee explained, the majority's approach produces an analytically unworkable and doctrinally perverse regime: "[W]e would now face 11 million cat paws scratching in myriad directions in trying to figure out an abstract 'voters' intent." App. 88.

Unsurprisingly, this Court's directly controlling case law forecloses the majority's approach. This Court's racial gerrymandering decisions consistently treat the mapmaker's intent and testimony as direct evidence—even where a legislature, rather than the mapmaker, enacts the challenged plan—precisely because the mapmaker is the actor who makes the "placement decisions" the constitutional test polices. *Cooper*, 581 U.S. at 291; *see also Alexander*, 602 U.S. at 19, 22–23 (treating the testimony of the person "who drew the Enacted Map" as "direct evidence" and analyzing the mapmaker's knowledge and intent). Indeed, as recently as November of last year, this Court stayed an injunction where the lower court had refused to give substantial weight to testimony offered by the mapmaker in a racial gerrymandering case. *See Abbott v. League of United Latin Am. Citizens*, 602 U.S. ___, No. 25A608, 2025 WL 3484863, at *1 (Dec. 4, 2025).

When the record contains unambiguous direct admissions by the mapmaker that racial objectives drove line placement, that is not ancillary commentary. Rather, it is direct evidence of the alleged constitutional violation. *See Alexander*, 602 U.S. at 8 ("Direct evidence often comes in the form of a relevant state actor's express acknowledgment that

race played a role in the drawing of district lines."). This makes perfect sense. The predominance inquiry targets the line-drawing process itself—*i.e.*, who drew the specific lines, what information they prioritized, what tradeoffs they made, and what objectives they pursued. *See Miller*, 515 U.S. at 915–16; *Cooper*, 581 U.S. at 291; *see also Alexander*, 602 U.S. at 8 (explaining that direct evidence of racial predominance "often comes in the form of a relevant state actor's express acknowledgment that race played a role in the *drawing of district lines*" (emphasis added)).

The majority thought that this Court's decision in *Brnovich v. Democratic National Committee*, 594 U.S. 647 (2021), supported its approach. App. 18–19. The majority was mistaken. The question in *Brnovich* was *whether* racial intent was even present in the legislature's enactment of the challenged law. *See, e.g.*, *Brnovich*, 594 U.S. at 689. This Court rightly rejected a "cat's paw" theory that legislators are mere agents or dupes of their co-legislators when they decide whether to enact a proposed law. *See id.* After all, legislators are able to evaluate the text and impact of a proposed statute, regardless of a co-legislator's subjective intent in proposing it, in a way that is readily distinguishable from the voters' ability to understand the racial intent in how district lines were changed in a bill sold to them as partisan gerrymandering. Moreover, the *Brnovich* rule prevents courts from defeating the presumption of good faith simply by treating ambiguous evidence of one legislator's motivations as evidence of racial discrimination by the legislature as a whole. *See id.* at 689 ("[T]he legislators who vote to adopt a bill are not the agents of the bill's sponsor or proponents.").

Brnovich thus does nothing to change the rule that express statements of racial intent by an individual who *is* the legislature's "agent[]" are probative direct evidence of intent. *Id.*

Accordingly, *Brnovich* (which was not a redistricting case) does not affect, much less alter, the rule that a mapmaker's admissions of racial predominance in how he drew district lines are probative direct evidence of racial predominance in those lines—even where the legislature or some entity other than the mapmaker wields the legislative power to enact the lines. *See Miller*, 515 U.S. at 915–16; *Cooper*, 581 U.S. at 291; *see also Alexander*, 602 U.S. at 8.

The majority committed reversible error in concluding otherwise, so Applicants are "likely to succeed on the merits" for this reason alone. *Winter*, 555 U.S. at 20; *see* App. 112.

B. Applicants Adduced Sufficient Direct and Indirect Evidence of Racial Predominance to Defeat the Presumption of Good Faith

A plaintiff in a racial gerrymandering case must prove that "race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a district." *Cooper*, 581 U.S. at 291 (quoting *Miller*, 515 U.S. at 916). Thus, the plaintiff must show that the legislature "subordinated other factors—compactness, respect for political subdivisions, partisan advantage, what have you—to racial considerations." *Id.* (cleaned up). To make that showing, a plaintiff may rely on "direct evidence of legislative intent, circumstantial evidence of a district's shape and demographics, or a mix of both." *Id.* (cleaned up).

This Court has emphasized that, in redistricting litigation, the "good faith of [the] state legislature must be presumed," and the "burden of proof lies with the challenger, not the State." *Abbott v. Perez*, 585 U.S. 579, 603 (2018) (quoting *Miller*, 515 U.S. at 915). But that presumption is rebuttable: Plaintiffs may carry their burden with "direct evidence going to legislative purpose," and where that evidence shows "that race was the

predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district," the State must satisfy strict scrutiny. *Miller*, 515 U.S. at 916, 920. On the record before the district court, Applicants offered adequate direct and circumstantial evidence to rebut this presumption, and Respondents failed to justify the State's decision to use race in drawing District 13's lines.

1. Direct Statements of the Mapmaker and Legislators Established that Race Predominated the Design of the Proposition 50 Map.

The record contains direct, contemporaneous admissions by the mapmaker and legislators demonstrating that race drove the line-drawing decisions.

From the outset of California's redistricting efforts, the aim of offsetting a perceived racial gerrymander in Texas was explicit. On August 15, 2025, when Respondent DCCC transmitted to the California Legislature the map it paid Mitchell to draw, the cover letter stated that the maps were designed to "push back" against "a clearly racially gerrymandered, partisan map" in Texas. App. 466.

Three contemporaneous admissions by the mapmaker are especially probative of racial predominance and underscore that the presumption of legislative good faith has been defeated. First, the mapmaker boasted that he drew the map to "ensure that the Latino districts … are bolstered in order to make them most effective, particularly in the Central Valley." App. 245. Second, he bragged on X/Twitter that the "proposed Proposition 50 map will further increase Latino voting power" and "adds one more Latino influence district." App. 261. Third, the mapmaker said to a Latino interest group that the "number one thing that I started thinking about" when drafting the Proposition 50 map was creating a "Latino majority/minority district" in Los Angeles that the CRC had eliminated in 2021. App. 76,

238–239. These statements are direct evidence that a large portion of voters in California were placed in districts "because of their race." *Cooper*, 581 U.S. at 308 n.7.

The District Court did not find admissions by the mapmaker, stating that he deliberately drew certain districts to augment Latino voting power, to be false, non-credible, or retracted. *See* App. 41 (acknowledging Paul Mitchell's statements indicating that "certain Central Valley districts which are majority-Latino, like District 13, have been 'bolstered' to be 'most effective' in some way"). Instead, the majority treated the mapmaker's admissions as legally immaterial absent a wholly separate showing that the voters shared them—a significant legal error alone warranting reversal. *See supra* Part I.A.

Moreover, members of the California Legislature also repeatedly spoke in racialized terms when discussing Proposition 50. *See, e.g.,* App. 214, 217, 220. The State did not meaningfully rebut that direct evidence with testimony from the key decision-makers or any witness with personal knowledge of their actual intent, in no small part because Mitchell and the legislators hid behind broad invocations of legislative privilege.

The record also contained contemporaneous material used to brief legislators on the plan that highlighted race as the organizing metric. The "Atlas" distributed throughout the Legislature "provide[d] no numerical data besides race." *See* App. 94, 320–378. Despite the State's claim that it was partisanship, not race, that was chiefly considered in determining whether to proceed with Mr. Mitchell's proposed districts, as Judge Lee observed: "[p]olitical party affiliation of voters in a district is nowhere to be seen on this Atlas." App. 93. Instead, the Atlas featured race-by-race breakdowns of citizen voting-age population within each district and bar graphs indicating racial composition. App. 321–326 (Atlas showing CVAP by race per district). While it may inevitably be the case that State actors relevant in the

redistricting process are generally aware of race, *see Miller*, 515 U.S. at 916, the use of race as the principal lens through which a districting plan is presented and evaluated goes beyond mere awareness and lends credence to the notion that race predominated.

But perhaps most telling is what the record does not contain: any testimony by either Mr. Mitchell or California's legislators explaining, contextualizing, or disavowing these admissions. Indeed, during his deposition, Mr. Mitchell "invoked legislative privilege over one hundred times" when pressed to explain his statements and decisions. *See* App. 385–465; App. 80. "He declined to answer how he drew the map" or refute the notion that "race played any role." *Id.*

Under this Court's doctrine, this is the paradigmatic case for finding racial predominance. Absent a compelling state interest in racially gerrymandering, "direct evidence of this sort amounts to a confession of error." *Alexander,* 602 U.S. at 8.

2. District 13's Design Cannot Be Understood as Anything Other Than Race-based Line-Drawing.

Applicants' evidence regarding Congressional District 13 supplies the circumstantial proof the majority demanded but then discounted. The Proposition 50 map did not merely make District 13 modestly more favorable to Democrats. Rather, it made specific boundary choices that predictably—and intentionally—increased Latino voting power while bypassing readily available and objectively desirable partisan alternatives that would have made the district even more Democratic. As with thirteen other districts, its lines were significantly redrawn, yet its HCVAP remained within the tight band identified as optimizing Latino voting power. In other words, Mitchell excluded more Democratic, less Latino areas from District 13 in favor of less Democratic, more Latino areas—and landed

District 13's HCVAP precisely in what he considered the optimal range for Latino voting strength.

Dr. Trende's analysis provides circumstantial evidence that racial motivation played a part in the drawing of District 13. App. 272–290, 529–535 (Rebuttal Analysis); *see also* App. 95. That analysis concluded that District 13's "twisted shapes cannot be explained by traditional redistricting principles, nor can they be explained by politics." App. 269; App. 95.

Dr. Trende's review of the Stockton protrusion was particularly persuasive circumstantial evidence of racial predominance. Dr. Trende presented maps showing both the political and racial breakdown of voters in the area of the protrusion. Those maps made clear that the new boundaries captured Latino neighborhoods to add as many Latinos as possible to the new District 13, while bypassing more heavily Democratic but less Latino areas. App. 286–287; App. 170–172.

Respondents' own evidence actually confirmed Dr. Trende's showing that the placement of a "significant number of voters within or without" District 13 was because of race. *Miller*, 515 U.S. at 916. For his part, defense expert Jonathan Rodden agreed that Mitchell removed "the entire southern portion of District 13 in Fresno County." App. 382 (Rodden Report at 5). To compensate for this change, Mitchell added approximately 100,133 people north of the old District 13 from the Stockton area to create the new District 13. *Id.* The individuals removed from the southern part of the district had a Hispanic citizen voting-age population (HCVAP) of 60 percent, while the 100,133 people added in the northern portion of District 13 had an HCVAP share of 62 percent. App. 383 (Rodden Report at 6).

Incredibly, the net result of this massive shift of over 100,000 voters was only a slight change in District 13's HCVAP percentage, from 54% to 53.8%. App. 339; App. 111.

This nearly exact pegging of District 13's HCVAP percentage was damaging circumstantial evidence of racial predominance. As early as 2021, Mitchell identified what he viewed as the optimal HCVAP range for maximizing Latino voting strength. As part of his work with HOPE to advocate for more "majority/minority Latino districts," HOPE sent a letter to the Citizen Redistricting Commission advocating a racial target of 52–54% HCVAP to ensure that the district would elect a Latino-preferred candidate. App. 256; App. 83. Evidence showed that just weeks after completing the Proposition 50 map, Paul Mitchell spoke to HOPE and told them that this 2021 letter was a roadmap for his 2025 redistricting goals. App. 239–240; App. 83. His accomplishment of that objective despite the movement of more than 100,000 people into and out of District 13 thus evinced racial predominance. *Compare Cooper*, 581 U.S. at 310 (movement of thousands of voters to achieve racial target supported predominance showing).

Dr. Trende also drew three different alternative maps for District 13 that increased Democratic performance but reduced the HCVAP below the HOPE target of 52–54%. App. 290–295.[4] All three alternative maps scored "higher on the Polsby-Popper metric of compactness" than Mitchell's District 13. App. 291–295. Dr. Trende's maps also achieved the State's professed political goals without pursuing Mitchell's racial goals, showing that

[4] Although Dr. Trende provided alternative maps only for District 13, this Court has repeatedly emphasized that alternative maps may only be necessary in cases where plaintiffs have failed to adduce direct evidence of racial predominance. *See Cooper*, 581 U.S. at 320–22. The requirement thus has limited, if any, application to this case, where direct evidence abounded. *See supra* Parts I.A–I.B.1. Applicants nonetheless provided three such alternative maps, further underscoring the showing of racial predominance.

if Mitchell were "sincerely driven by professed partisan goals," District 13 would have resulted in a "greater racial balance." *Alexander*, 602 U.S. at 10.

Indeed, even Respondent LULAC's expert, Anthony Fairfax, "acknowledged that Trende's Alternative Map A would improve Democratic party performance over the Prop. 50 map, is more compact, and splits fewer communities of interest." App. 110–111. And it accomplished all of this while improving partisan performance for Democrats, App. 290–295, App. 202–211, demonstrating the quintessential indicia of racial gerrymandering. *See Alexander*, 602 U.S. at 34 (discussing the importance of "providing a substitute map that shows how the State 'could have achieved its legitimate political objectives' in [a congressional district] while producing 'significantly greater racial balance'" (quoting *Easley v. Cromartie*, 532 U.S. 234, 258 (2001)).[5]

In an attempt to explain away Dr. Trende's alternative maps, Respondents below claimed that Mr. Mitchell's design of District 9, which borders District 13, was intended to protect the incumbent representative of District 9, Josh Harder. App. 384. But, as Judge Lee noted, this explanation is unavailable and unpersuasive because Mitchell publicly disclaimed any interest in protecting incumbents. App. 573 ("[T]his is not an incumbent preference gerrymander."); App. 109. This aligns with the method by which Mr. Mitchell has, by his own admission, historically drawn congressional maps. App. 231–232.

Finally, Respondents argued below—and the majority concluded—that the overall statewide purpose of Proposition 50 was to gain Democratic congressional seats, a goal that

[5] Respondents' experts, Dr. Grofman, Dr. Rodden, and Mr. Fairfax, each attacked Dr. Trende's alternative maps for various reasons. Dr. Trende addressed all of these in his rebuttal report. App. 537–560; App. 107.

was widely and publicly discussed. App. 67. But the State cannot salvage a racially gerrymandered congressional district by invoking a general statewide partisan objective. For one thing, racial gerrymandering claims are analyzed on a district-by-district basis. *Cooper*, 581 U.S. at 318.

For another, even when it pursues political considerations, a legislature triggers strict scrutiny if it elevates race to the predominant criterion, whether because race is used as a proxy for partisan advantage or because a race-based narrative is viewed as more "sellable" than an openly partisan explanation. *Cooper*, 581 U.S. at 308 n.7. Thus, a State engages in racially predominant line-drawing when it places "a significant number of voters within or without a district predominantly because of their race, regardless of [its] ultimate objective in taking that step." *Id.* at 308.

Accordingly, the State violates voters' constitutional rights when those who design and enact the map sort voters by race in drawing district boundaries. *Cooper*, 581 U.S. at 291 (citing *Bethune-Hill v. Virginia State Bd. of Elections*, 580 U.S. 178 (2017)); *see also Miller*, 515 U.S. at 916. That there were general partisan goals on a statewide basis for the redistricting does not cure the racial gerrymandering in particular districts.

C. The State Cannot Demonstrate Its Use of Race Satisfied Strict Scrutiny.

Once racial predominance is established, strict scrutiny applies, and the burden shifts to the State to show that its use of race was narrowly tailored to further a compelling interest. *Miller*, 515 U.S. at 920. Here, the State did not carry that burden before the district court. Indeed, it did not even attempt to do so. California would not be able to satisfy strict scrutiny, because Californians regularly elect Latino candidates, and even Respondents'

own expert admitted that there was no evidence in California of any voting bloc that prevents Latinos from electing the candidates of their choice. App. 155–157, 187, and 197. As Judge Lee noted: "California d[id] not argue that the Proposition 50 map satisfies strict scrutiny." App. 82. "Rather, California insist[ed] that strict scrutiny does not apply because it did not rely on race as a predominant factor in drawing the districts." *Id.*

Applicants are likely to succeed on the merits.

II. THE REMAINING *WINTER* FACTORS FAVOR AWARDING IMMEDIATE RELIEF

Applicants' strong showing on the merits alone militates in favor of an injunction pending appeal. *See Winter*, 555 U.S. at 20. The remaining factors, moreover, further demonstrate that relief is warranted. *See id.* The harm here is neither merely political nor speculative in nature. Rather, it is the State's imminent use of district lines drawn with the goal of placing voters based on their race as a controlling criterion—an injury that will occur the moment candidates and voters are forced to operate within unconstitutional districts, *see Cooper*, 581 U.S. at 291, and one that cannot be unwound after the fact. And because Applicants seek a narrow return to the *status quo ante* Proposition 50—*i.e.*, the temporary restoration of the last lawfully operative CRC map—Respondents cannot show any countervailing hardship comparable to the constitutional harm that will otherwise occur.

A. Applicants Will Suffer Irreparable Harm Absent Immediate Relief.

This Court has long recognized that "[r]acial classifications with respect to voting carry particular dangers" because they "threaten[] to carry us further from the goal of a political system in which race no longer matters." *Shaw v. Reno*, 509 U.S. 630, 657 (1993). That harm is immediate and structural. It is not measured solely by election outcomes, nor can it be fully repaired by post-election adjudication. Once a State forces candidates to

campaign and voters to participate under a racially sorted districting regime, the injury has already been inflicted. Voters have been classified and will be represented on terms the Constitution forbids. *See Cooper*, 581 U.S. at 291 (noting that the Constitution prohibits a state from "separating its citizens into different voting districts on the basis of race"); *cf. Students for Fair Admissions v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 230 (2022) ("[I]n view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens." (quoting *Plessy v. Ferguson*, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting)).

When a plaintiff alleges a constitutional violation and "shows he is likely to prevail on the merits, that showing usually demonstrates he is suffering irreparable harm no matter how brief the violation." *Baird v. Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2023). Applying that principle to this case, Judge Lee concluded: "Here, the Fourteenth Amendment claim at issue is fundamental to our republic and what it means to be on equal footing with one's neighbor. [Applicants] have proven they will be irreparably harmed by the continuation of California's racially gerrymandered district." App. 112–113.

That conclusion invariably follows from the nature of the right and the timing of its threatened violation. The relief sought is prospective, preventing the State from using Proposition 50's districts during the 2026 election cycle. Without an injunction, the State will imminently lock in candidate decisions, including where to campaign, with which constituencies to communicate, and to which activities scarce resources should be most prudently allocated, and base such decisions on the contours of districts that Applicants contend were drawn to the satisfaction of explicitly race-based objectives. Relief awarded

after campaigns are underway, ballots are printed, and votes are cast cannot restore the lost opportunity to participate in a constitutionally valid districting regime. At that point, a court may be left only with blunt and unwieldy remedial measures, such as allowing an unconstitutional election to stand, ordering disruptive special elections, or imposing belated changes that themselves increase voter confusion. The Constitution does not demand that sequence of events, particularly where timely relief in the form of a return to the *status quo* is available.

B. The Balance of Equities and the Public Interest Strongly Favor Relief.

The equities here are one-sided. Applicants face an imminent constitutional injury in being compelled to participate in federal elections administered under a map that, on Applicants' showing, sorts voters by race. Respondents, by contrast, can identify no comparable hardship from temporarily reverting to the CRC map that governed the last two federal cycles and remains unrepealed and readily administrable. Applicants do not ask this Court to design districts, supervise a remedial process, or impose any affirmative redistricting obligation on the State. As Judge Lee noted, redistricting "is an inescapably political enterprise," and it is likely that direct adjustment to the Proposition 50 lines "is beyond the judicial power" of this Court. App. 115–116. Instead, Applicants seek only to preserve the last lawfully operative map of congressional districts while the legality of Proposition 50 is fully adjudicated.

Nor do generalized assertions of the burden of electoral administration under the CRC map carry the day where the only viable alternative is the use of unconstitutional districts. Where the *Winter* factors are satisfied, a court "must not shrink from its obligation to enforce [a plaintiff's] constitutional rights." *Baird*, 81 F.4th at 1041. That is particularly

true here because Applicants' requested injunction reduces, rather than increases, the risk of volatility in California's election rules, going only so far as to reinstate, temporarily, familiar lines used in recent federal elections and avoid entrenching Proposition 50 before judicial review can run its course.

Moreover, when the government is the opposing party, the balance-of-equities and public-interest factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). In constitutional cases, those merged factors ordinarily align with preventing the violation because "it is always in the public interest to prevent the violation of a party's constitutional rights." *Baird*, 81 F.4th at 1040. Judge Lee applied that principle here, concluding that where Applicants have shown likely success, that showing "tips the public interest sharply in [their] favor." App. 113.

That conclusion is sound for at least three reasons.

First, the public has a paramount interest in elections conducted under constitutionally valid district lines. The integrity of representative government is undermined when the State sorts voters by race in constructing the very units of representation. *See Wisconsin Legislature v. Wisconsin Elections Comm'n*, 595 U.S. 398, 401 (2022), ("Under the Equal Protection Clause, districting maps that sort voters on the basis of race 'are by their very nature odious.' (quoting *Shaw*, 509 U.S. at 643)).

Second, immediate relief serves the public's interest in orderly election administration. An injunction now prevents the State from organizing an active election cycle around lines that may later be held unconstitutional. That avoids instability and disruptive remedies after campaigns are underway or, worse yet, after elections have concluded. *Cf. Bost v. Ill. State Bd. of Elections*, 607 U.S. ___ (2026) (Jackson, J., dissenting)

(slip op. at 12) (noting the "disruptive" nature of "legal action in federal court after [an] election is over").

Third, the requested injunction respects democratic administration while preserving constitutional adjudication. Applicants do not ask the Court to displace California's election machinery. They ask the Court to ensure that machinery operates, for the time being, using the last map adopted through California's ordinary constitutional redistricting process and used in recent federal elections. In the ordinary course, that map would have been in use for the 2026, 2028, and 2030 election cycles. That is a measured and interim remedy tailored to the public's interest in both constitutional compliance and electoral stability.

* * *

Because Applicants have satisfied each requirement of the test articulated in *Winter*, they have met their burden to demonstrate the propriety of immediate relief.

III. *PURCELL* DOES NOT BAR RELIEF HERE

February 9, 2026, marks the point at which effective injunctive relief may issue without implicating *Purcell* concerns. While *Purcell* dealt with a change in election procedures just "weeks before an election," *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006), here, the California top two open primary is not scheduled until June 2, 2026. *See* App. 300. Unlike *Abbott*, the Texas redistricting case where the candidate filing period had already begun at the time the injunction had issued, here, that deadline has not yet occurred. App. 114. An injunction by February 9, 2026, would "return to the status quo before" the passage of the racially gerrymandered Proposition 50 map. App. 116.

As Judge Lee further explained, December 19, 2025, did not mark a *Purcell* cutoff. Although December 19 was the date that "individuals could begin collecting 1,714

signatures to qualify to appear on primary ballots," this deadline "does not shut the door to judicial review" for four reasons. First, the purpose of collecting signatures is merely so that candidates can avoid paying the "fairly modest filing fee." Second, candidates have until February 4, 2026, to collect and submit signatures to avoid the filing fee. Third, "Defendants essentially conceded that the December 19 date does not preclude judicial review as they sought a preliminary injunction hearing" to be postponed until January 20, 2026. Fourth, the fundamental principle of *Purcell* is to prevent confusing voters or causing voters to stay away from the polls, something that Judge Lee concluded is unlikely to happen should an injunction issue prior to the commencement of the filing period. App. 113.

California's own special-election laws further confirm that injunctive relief by February 9 is administratively feasible and fully consistent with *Purcell*. Upon the death of a Member of Congress, California law requires the Governor to call a special election within a compressed timeframe. Cal. Elec. Code §§ 10700–10704. Under that framework, the State regularly qualifies candidates, prepares ballots, and conducts elections in as little as 56 days. An injunction by February 9, 2026, would leave approximately 113 days before the June top two open primary, more than double the time California law contemplates for special elections.[6]

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[6] On January 8, 2024, Governor Newsom proclaimed a special election to replace Congressman Kevin McCarthy. There were only 71 days between the Governor's proclamation and the March 19, 2024, special election. *See Special Election Calendar: Special Primary Election March 19, 2024*, Cal. Sec'y of State (2024), available at: https://elections.cdn.sos.ca.gov/special-elections/2024-cd20/primary-calendar.pdf. On January 7, 2022, Governor Newsom proclaimed a special election to replace Congressman David Nunes. There were only 88 days between the Governor's proclamation and the April 5, 2022, special primary election. *See Special Election Calendar: Special Primary Election April 5, 2022*, Cal. Sec'y of State (2022), available at: https://elections.cdn.sos.ca.gov/special-elections/2022-cd22/primary-calendar.pdf. On January 25, 2017, Governor Jerry Brown called a special

That timeline also exceeds the notice voters had for the November 2025 special elections at which Proposition 50 was approved. Between the Governor's signing of the legislation placing Proposition 50 on the ballot and the November 2025 election, voters had approximately 75 days to evaluate and vote on a constitutional amendment. If more than eleven million Californians could do so without confusion on that timeline, it defies credulity to suggest that 113 days is insufficient to implement lawful district lines without voter confusion, especially since the lines that would be in effect should this Court grant an injunction would be the lines that have been in place for the last two federal elections.

This Court has never identified a fixed *Purcell* deadline for redistricting cases, and its prior decisions instead address situations where relief was sought too late. Applicants cannot be faulted for delay: they filed suit the day after Proposition 50 was approved, and throughout "this process, they have sought to expedite where Defendants have wanted delay." *See* ECF No. 71 (Respondents' Appl. for Relief from P.I. Schedule); ECF No. 75 (Applicants' Opp'n. to Relief); App. 114. If this Court grants an injunction pending appeal by February 9, 2026, California will have ample time to administer the 2026 election in an orderly manner, consistent with both *Purcell* and the Constitution.

IV. THE COURT SHOULD TREAT THIS APPLICATION AS A JURISDICTIONAL STATEMENT AND NOTE PROBABLE JURISDICTION

Applicants respectfully request that this Court treat this application as a jurisdictional statement and note probable jurisdiction so that the parties may proceed

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election to replace Congressman Xavier Becerra. There were only 69 days between the Governor's proclamation and the April 4, 2017, special primary election. *See Special Election Calendar – April 4, 2017*, Cal. Sec'y of State (2017), available at: https://www.sos.ca.gov/elections/prior-elections/special-elections/congressional-district-34-special-election/primary-calendar.

directly to merits briefing. This Court has done so in the redistricting context to prevent election litigation from continuing longer than necessary. *See Merrill v. Milligan*, 142 S. Ct. 879 (2022) (mem.); *Perry v. Perez*, 565 U.S. 1090 (2011).

CONCLUSION

For these reasons, Applicants respectfully request that this Court enter an injunction pending this appeal. In light of the candidate filing period, Applicants respectfully request a ruling by **February 9, 2026**.

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

Respectfully submitted,

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