No. 25A839

In the Supreme Court of the United States

DAVID TANGIPA, ET AL., APPLICANTS

v.

GAVIN NEWSOM, GOVERNOR OF CALIFORNIA, ET AL.

BRIEF FOR THE UNITED STATES AS RESPONDENT IN SUPPORT OF THE APPLICATION

D. JOHN SAUER
Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

TABLE OF CONTENTS

In the Supreme Court of the United States

No. 25A839

DAVID TANGIPA, ET AL., APPLICANTS

v.

GAVIN NEWSOM, GOVERNOR OF CALIFORNIA, ET AL.

BRIEF FOR THE UNITED STATES AS RESPONDENT IN SUPPORT OF THE APPLICATION

The Solicitor General, on behalf of the United States, respectfully submits this brief as respondent in support of the application for an injunction pending appeal of the January 14, 2026, order issued by the United States District Court for the Central District of California.

INTRODUCTION

California's recent redistricting is tainted by an unconstitutional racial gerrymander. In November 2025, California voters adopted Proposition 50, which amended the state constitution to replace a 2021 map drawn by an independent redistricting commission with one created by an outside mapmaker and endorsed by the California legislature. See D. Ct. Doc. 216 (Op.), at 2 (Jan. 14, 2026). The stated impetus for the "Prop 50 map" was to "flip five congressional seats from Republicans to Democrats," *ibid.*, in order to "counteract[]" a political gerrymander by Texas, *Abbott* v. *LULAC*, No. 25A608, slip op. 1 (Dec. 4, 2025). But unlike Texas's map, the Prop 50 map suffers from a fatal constitutional flaw: one of the districts (District 13) was clearly drawn "on the basis of race." *Cooper* v. *Harris*, 581 U.S. 285, 291 (2017).

The mapmaker himself confirmed as much. In public statements, he candidly admitted that he drew district boundaries to "'ensure that the Latino districts' are 'bolstered in order to make them most effective, particularly in the Central Valley,'" *i.e.*, where District 13 is located. Op. 41; see Op. 83 (Lee, J., dissenting). As in *Cooper*, the mapmaker's statements are direct evidence that race, not politics, predominated in the drawing of District 13. See 581 U.S. at 299-301.

The record also contains indirect evidence that race predominated in the drawing of District 13's lines. In particular, an expert testified that a northern "plume" in the district, supposedly drawn to capture Democratic voters in the Stockton area, in fact "'bypasses heavily Democratic areas'" with "lower HCVAP [Hispanic Citizen Voting Age Population] percentages" in favor of "'politically marginal territory'" with "a higher HCVAP percentage, in pursuit of a racial goal." Op. 56-57 (brackets omitted). The mapmaker has not refuted that testimony. Indeed, he "went to great lengths to avoid testifying under oath about how he drew the California map—even though he publicly talked about it to the press and interest groups before this lawsuit." Op. 80 (Lee, J., dissenting). And unlike the plaintiffs in the Texas case, applicants and the United States provided three alternative maps, cf. *Alexander* v. *South Carolina State Conf. of the NAACP*, 602 U.S. 1, 10, 34-35 (2024), each of which achieved California's stated partisan goals for District 13 without "separating its citizens into different voting districts on the basis of race," *Cooper*, 581 U.S. at 291. See Op. 61 (acknowledging that "the alternative maps achieve roughly the same partisan outcomes for District 13 as the Proposition 50 Map."). Under this Court's precedents, that direct and indirect evidence is more than enough to overcome the presumption of good faith, cf. *Abbott*, *supra* (No. 25A608), slip op. 1, and establish that race predominated in drawing the boundaries of District 13. See *Cooper*, 581 U.S. at 299-301.

Yet a divided three-judge district court refused to preliminarily enjoin California officials from using the racially gerrymandered Prop 50 map. The court dismissed the mapmaker's statements principally on the theory that because California law required voters to approve the Prop 50 map, the challengers here "must prove that race was the predominant factor motivating * * * the voters." Op. 21; see Op. 18 ("[W]e must look to the intent of the voters."). But when the actual mapmaker "express[ly] acknowledg[es] that race played a role in the drawing of district lines," that is "[d]irect evidence" of a racial gerrymander, *Alexander*, 602 U.S. at 8—*regardless of* the state legislature's motive for adopting the map, see, *e.g.*, *Cooper*, 581 U.S. at 299-301. The same logic applies when the voters approving the gerrymandered map are ordinary citizens instead of legislators. The court fared no better in dismissing the circumstantial evidence that District 13's northern plume reflects a racial gerrymander. It accepted post-hoc testimony from experts—not the mapmaker—that the plume might have been drawn to protect "communities of interest" or an incumbent in an adjacent district (District 9), even though "there is no evidence that [the mapmaker] considered these communities of interest" and "[the mapmaker] explicitly disclaimed incumbent protection." Op. 108-109 (Lee, J., dissenting).

Of course, California's motivation in adopting the Prop 50 map as a whole was undoubtedly to counteract Texas's political gerrymander. But that overarching political goal is not a license for district-level racial gerrymandering. A map still reflects a racial gerrymander when race is used "'as a proxy' for 'political interests'" or "to advance other goals." *Cooper*, 581 U.S. at 291 n.1 (brackets omitted); cf. Oral Arg. Tr. at 130, *Louisiana* v. *Callais*, No. 24-109 (Oct. 15, 2025). That is plainly what occurred in District 13. And because respondents do not contend that California can satisfy strict scrutiny, applicants have clearly established that they are likely to succeed on

the merits. Applicants also will suffer irreparable harm from the use of a racially gerrymandered map in the upcoming midterm election. Nor does the principle of *Purcell* v. *Gonzalez*, 549 U.S. 1 (2006) (per curiam), preclude injunctive relief. The approximately monthlong candidate-filing period does not begin until February 9, 2026. That distinguishes this case from *Abbott*, *supra* (No. 25A608), where the district court issued an injunction 10 days *after* that monthlong period had begun. This Court should immediately enjoin, pending appeal, California's use of the Prop 50 map that displaced the independent commission's 2021 map.

STATEMENT

1. As this Court has observed, "several States have in recent months redrawn their congressional districts in ways that are predicted to favor the State's dominant political party." *Abbott* v. *LULAC*, No. 25A608, slip op. 1 (Dec. 4, 2025). "Texas adopted the first new map, then California responded with its own map for the stated purpose of counteracting what Texas had done." *Ibid.* Since 2010, California's constitution has required congressional districts to be drawn by an independent commission. Op. 5; see *Arizona State Legislature* v. *Arizona Indep. Redistricting Comm'n*, 576 U.S. 787, 798 & n.7 (2015). To adopt a new mid-decade map, therefore, California voters had to approve a constitutional amendment. See Op. 5. Governor Newsom "announced a legislative package" to enable voters to approve the Prop 50 map, which was drawn by Paul Mitchell, a "third-party consultant" at a firm called Redistricting Partners. *Ibid.* The Prop 50 map, which is to be in effect for the next three election cycles (*i.e.*, until after the next decennial census), "is expected to make 'five of the nine Republican-held seats more likely to elect a Democrat.'" Op. 10.

Voters approved the Prop 50 map in a November 4, 2025, special election. Op. 9. Applicants immediately filed suit, challenging the map as an unconstitutional ra-

cial gerrymander and seeking a preliminary injunction against its use. Op. 10. The United States intervened as a plaintiff and likewise sought a preliminary injunction, alleging both an unconstitutional racial gerrymander and a violation of Section 2 of the Voting Rights Act of 1965 (VRA), Pub. L. No. 89-110, 79 Stat. 437 (52 U.S.C. 10301). Op. 10, 67; see D. Ct. Docs. 28, 29, 38; see also 42 U.S.C. 2000h-2; 52 U.S.C. 10301(a) and 10308(d). The Democratic Congressional Campaign Committee (DCCC) and the League of United Latin American Citizens (LULAC) intervened as defendants. Op. 10-11. A three-judge panel was convened, see 28 U.S.C. 2284(a), and held a hearing on the preliminary-injunction motions. Op. 10-11. The parties presented evidence and expert testimony.

Mitchell, however, "refused to appear before [the] court to explain how he drew the map." Op. 71 (Lee, J., dissenting). In response to a subpoena issued by the United States, Mitchell sat for a deposition, but "invoked legislative privilege over one hundred times." Op. 80 (Lee, J., dissenting). Mitchell "declined to answer how he drew the map, whether race played any role, and even the most basic questions." *Ibid.* Mitchell "even refused to answer whether he drew the Proposition 50 Map," *ibid.*, despite making public statements acknowledging that he drew the map and despite the State's own evidence recognizing him as the mapmaker, *e.g.*, Op. 38-43.

2. The district court denied a preliminary injunction 2-1, with Judge Lee dissenting. Op. 1-117. As relevant here, the court held that the Prop 50 map did not reflect an unconstitutional racial gerrymander. Op. 12-67.

a. The district court acknowledged that a plaintiff establishes a racial-gerrymandering claim where "race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." Op. 13-14 (brackets omitted). The court further recognized that a plaintiff

may support the claim "through direct evidence of legislative intent," which "often comes in the form of a relevant state actor's express acknowledgment that race played a role in the drawing of district lines." Op. 13 (quotation marks omitted).

Nevertheless, the district court dismissed the public statements of Mitchell, the mapmaker, in which he expressly acknowledged drawing district lines based on race. Op. 29, 37-45. Specifically, Mitchell told an advocacy group 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,'" where District 13 is located. Op. 41 (brackets omitted); see *id.* at 42 n.17 (saying that, when he was asked to draw the Prop 50 map, "the 'number one thing' that Mitchell 'started thinking about' was creating a 'replacement Latino majority' district in Los Angeles"). The court reasoned that because California law required the Prop 50 map to be approved by voters, the "voters are the most relevant state actors and their intent is paramount." Op. 15. Accordingly, the court concluded that it "must look to the intent of the voters, rather than the legislature." Op. 18. The court viewed Mitchell's statements as too "attenuated" to establish voter intent because "the voters did not engage or direct Mitchell, a private consultant." Op. 29. And the court concluded that "the voters intended the Proposition 50 Map to be a partisan gerrymander," based on its review of various campaigning materials related to the special election. Op. 37; see Op. 30-37.

The district court also held that circumstantial evidence did not prove a racial gerrymander. Op. 48-67. In particular, the court found unpersuasive the expert testimony of Dr. Sean Trende opining that a "plume" at the northern end of District 13, which reaches into and is almost entirely surrounded by District 9, "'bypasses heavily Democratic areas' to the west, which have lower HCVAP percentages, 'to get into

some politically marginal territory' to the north, which has a higher HCVAP percentage, in pursuit of a racial goal." Op. 56-57 (brackets omitted). The court held that the plume did not reflect a racial gerrymander because "there is no 'optimal' partisan gerrymander," so leaving the heavily Democratic areas in District 9, "even at the expense of District 13, could reflect a strategic partisan decision" instead of race. Op. 57-58. The court also thought the plume could be explained by a non-racial desire to preserve certain "communities of interest." Op. 58-59.

The district court acknowledged that Trende provided three alternative maps that "achieve roughly the same partisan outcomes for District 13 as the Proposition 50 Map." Op. 61; cf. *Alexander* v. *South Carolina State Conf. of the NAACP*, 602 U.S. 1, 34 (2024) (explaining that "an alternative map can perform the critical task of distinguishing between racial and political motivations when race and partisanship are closely entwined"). The court rejected those maps, however, on the ground that they did not preserve the aforementioned communities of interest and split the city of Tracy, where District 9's incumbent Democrat lives. Op. 61-63.

Having concluded that the Prop 50 map did not reflect a racial gerrymander, the district court denied a preliminary injunction without addressing the equitable factors for granting such relief. Op. 69 n.36.

b. Judge Lee dissented. Op. 71-117. He observed that this Court "has often looked at the mapmaker as the most natural and perhaps only viable way to discern the state's intent in drafting a congressional redistricting map." Op. 87 (citing *Alexander*, 602 U.S. at 19). Judge Lee explained that "Mitchell must be treated as a state actor" given that he "drafted the Proposition 50 maps" and even "asserted legislative privilege over one hundred times in his deposition, underscoring he was acting on behalf of the state." Op. 89. Judge Lee further noted that various legislators

expressed their support for Prop 50 in expressly racial terms, and that some of the materials the legislature was provided showed only racial, not partisan, data about the Prop 50 districts. Op. 90-94.

Judge Lee also viewed the circumstantial evidence as demonstrating a racial gerrymander in District 13. Op. 95-112. He found Mitchell's decision to include less Democratic but more Latino areas in District 13 as inconsistent "if political gerrymandering were the goal," but as "neatly reflect[ing] racial gerrymandering to create a Latino district" with a specified target HCVAP range. Op. 99. Judge Lee also noted that the alternative maps met or exceeded California's partisan goals without moving Latino voters into District 13, and also scored higher on compactness. Op. 105-110.

Judge Lee explained that applicants would suffer irreparable harm from an unconstitutional racial gerrymander, and that "the *Purcell* principle" did not foreclose injunctive relief given that the approximately monthlong window for candidates to "begin filing their paperwork declaring their candidacy in the appropriate district" does not open until early February. Op. 113-114; see Op. 112-114. He concluded that the proper remedy would be for the court to reinstate the 2021 map rather than draw one on its own. Op. 116.

ARGUMENT

This Court should preliminarily enjoin California officials from using the Prop 50 map pending further appellate proceedings. To clearly establish entitlement to injunctive relief pending appeal, applicants must show that (1) they are likely to succeed on the merits; (2) the denial of an injunction pending appeal would cause them irreparable harm; and (3) relief would not harm the public interest. *Roman Catholic Diocese of Brooklyn* v. *Cuomo*, 592 U.S. 14, 16 (2020) (per curiam); *Tandon* v. *Newsom*, 593 U.S. 61, 64 (2021) (per curiam). All three elements are satisfied here.

I. APPLICANTS ARE LIKELY TO SUCCEED ON THE MERITS

District 13 in the Prop 50 map clearly constitutes a racial gerrymander in violation of the Fourteenth Amendment's Equal Protection Clause. A racial gerrymander exists where "race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." *Cooper* v. *Harris*, 581 U.S. 285, 291 (2017). Race is a predominant factor where "the legislature 'subordinated' other factors—compactness, respect for political subdivisions, partisan advantage, what have you—to 'racial considerations.'" *Ibid.* Racial predominance may be shown by "'direct evidence' of legislative intent, 'circumstantial evidence of a district's shape and demographics,' or a mix of both." *Ibid.* Importantly, a map still reflects a racial gerrymander when race is used "'as a proxy' for 'political interests'" or "to advance other goals." *Id.* at 291 n.1 (brackets omitted). Here, both direct and indirect evidence show that race was a predominant factor in drawing District 13's lines and placing voters within or without the district. The intent of the voters who adopted Prop 50 does not alter that conclusion. And because respondents have never asserted that California could satisfy strict scrutiny, cf. *Cooper*, 581 U.S. at 292, applicants are likely to prevail on their equal-protection claim.

A. Direct Evidence Shows That Race Predominated In The Drawing Of Prop 50 District Boundaries

This Court has recognized that among the most probative direct evidence of racial gerrymandering is the mapmaker's description of how he drew the map. See, *e.g.*, *Cooper*, 581 U.S. at 299-300. After all, the "plaintiff must prove that 'race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district.'" *Id.* at 291. The decision to "place" voters "within or without a particular district" is made in the first instance by

the person actually engaged "in the drawing of district lines." *Alexander* v. *South Carolina State Conf. of the NAACP*, 602 U.S. 1, 8 (2024); see *id.* at 13-15, 19, 22-23 (extensively addressing the mapmaker's intent); *Cooper*, 581 U.S. at 299 (focusing on evidence that "the State's mapmakers * * * established a racial target").

California's mapmaker, Paul Mitchell, did not testify at the preliminary injunction hearing, but he sat for a deposition and made many public statements about the Prop 50 map that make clear that race predominated in his drawing of at least some district lines in the Prop 50 map, including District 13's. Cf. *Alexander*, 602 U.S. at 8 (acknowledging that direct evidence "can also be smoked out over the course of litigation," including through "'e-mails'" and other evidence).

Particularly relevant is an October 17, 2025, presentation Mitchell gave to the advocacy group Hispanas Organized for Political Equality (HOPE). D. Ct. Doc. 42-3 (Nov. 17, 2025) (transcript of videoconference). In that presentation, Mitchell explained that he had "worked with HOPE" in the "last redistricting process" in 2021, and that his 2025 mapmaking efforts had been guided by a November 2021 letter from HOPE to the independent redistricting commission. *Id.* at 24; see *id.* at 24-25. Among other things, that letter explained that because certain "Latino CVAP majority districts ha[d] a very high propensity of electing Latino candidates of choice" with "very high margins of victory," the commission should "unpack some of these districts to provide greater Latino voting strength to surrounding district(s)." D. Ct. Doc. 141-2, at 6 (Dec. 10, 2025). The letter proposed a target range of "between 52% and 54% Latino CVAP" for that unpacking, which "would still be very likely to elect Latino candidates of choice." *Ibid.*

Consistent with that request, Mitchell expressly assured HOPE that the Prop 50 map "will be great for the Latino community" because it "ensure[s] that the Latino

districts that are the VRA seats are bolstered in order to make them *most effective*, particularly in the Central Valley." D. Ct. Doc. 42-3, at 30 (emphasis added). Even the district court understood that statement to be a veiled reference to District 13, which is located in the Central Valley. See Op. 41. Indeed, the projected HCVAP of District 13 is 53.8% in the Prop 50 map—precisely in the target range of 52-54%. Op. 105 (Lee, J., dissenting).

Mitchell made statements about other districts confirming that race predominated when he drew the Prop 50 map. See *Alabama Legislative Black Caucus* v. *Alabama*, 575 U.S. 254, 266-267 (2015) (explaining that "statewide evidence" that "race predominated in the drawing of individual district lines * * * is perfectly relevant" to "district-specific claims"). He explained that when asked to draw the new map, "I started listing out this concept of drawing a replacement Latino majority/minority district in the middle of Los Angeles. That was the number one thing that I first started thinking about." D. Ct. Doc. 42-3, at 23-24. He also admitted that "the first thing we did in drawing the new map" was the "creation of five Latino majority/minority districts in an area [centered around Downey] where there are currently four," and "making a Latino-influenced district at 35 percent Latino by voting age population." *Id.* at 24-25. That mirrors the HOPE letter's request for the "creation of FIVE Latino Majority minority districts where there currently are four," and the conversion of an existing district into "a Latino influence seat at 35-40% Latino by voting age population." D. Ct. Doc. 141-2, at 3 (boldface omitted).

All of those statements are exactly the type of direct evidence of racial predominance in the drawing of district lines that this Court has found establishes a racial gerrymander. *E.g.*, *Cooper*, 581 U.S. at 299-301. This Court has recognized that direct evidence "in the form of a relevant state actor's express acknowledgment that

race played a role in the drawing of district lines" is "not uncommon because States often admit to considering race for the purpose of satisfying our precedent interpreting the Voting Rights Act of 1965." *Alexander*, 602 U.S. at 8. So even if Mitchell's statements could charitably be viewed as pursuing nothing more than VRA compliance, they *still* would constitute direct evidence that race predominated in the drawing of at least some district lines, including District 13's. And contrary to the district court (Op. 21-22), direct evidence of a racial gerrymander is sufficient to overcome the "presumption of legislative good faith." *Alexander*, 602 U.S. at 10. Indeed, where, as here, "the State cannot satisfy strict scrutiny"—and does not even try to—"direct evidence of this sort amounts to a confession of error." *Id.* at 8.

The district court nevertheless dismissed Mitchell's statements about his racial motivations in drawing District 13 on the ground that Mitchell also used the word "bolster" in a different interview, two months before his HOPE presentation, to refer to political considerations: "So we did a lot to bolster Democratic candidates up and down the state that are potentially in tough races like Adam Gray in the Central Valley." Op. 41 (emphasis omitted). The court's reliance on that slim reed was clearly erroneous, especially in light of Mitchell's multiple candid admissions that race predominated in the drawing of the Prop 50 map—including by being "the number one thing that I first started thinking about." D. Ct. Doc. 42-3, at 24. The court observed (Op. 42 n.17) that the "number one thing" statement refers to an "unchallenged district" in Los Angeles, but that misses the point: the statement is still relevant, along with Mitchell's many other statements, to establishing that race was front and center when he drew several Prop 50 districts, including District 13. D. Ct. Doc. 42-3, at 24-30; see *Alabama Legislative Black Caucus*, 575 U.S. at 266-267. And Mitchell's refusal to testify, much less to provide a race-neutral justification for District 13's

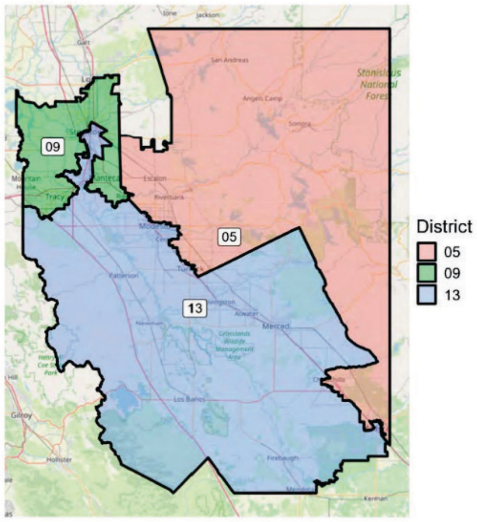
boundaries, starkly contrasts with the Texas redistricting case. There, the mapmaker "testified extensively" and "unequivocally that he drew the 2025 Map completely blind to race," providing "political or practical—*i.e.*, non-racial—rationales for his decisions at every step of the mapdrawing process," in a "district by district—sometimes line by line" "statewide tour of his map" that even the district court admitted was "compelling." *LULAC* v. *Abbott*, No. 21-cv-259, 2025 WL 3215715, at *39, 41 (W.D. Tex. Nov. 18, 2025), jurisdictional statement pending, No. 25-845 (filed Jan. 13, 2026).

B. Circumstantial Evidence Reinforces That Race Predominated In The Drawing Of District 13

Circumstantial evidence bolsters the direct evidence showing that race predominated in the drawing of District 13. Circumstantial evidence includes "a district's shape and demographics." *Cooper*, 581 U.S. at 291. District 13's shape and demographics show that Mitchell drew the boundary lines to hit a particular racial goal at the expense of the partisan advantage that purportedly drove the Prop 50 map. As Dr. Trende explained, several areas of District 13 "appear crafted to enhance the number of Latino voters in District 13, in ways that 'cannot be explained by traditional redistricting principles,'" including "'politics.'" Op. 49.

Most notable is the "plume" in the northwest part of District 13, which juts into and is almost entirely surrounded by District 9:

Figure 1: California District 13



Op. 49. That oddly shaped appendage obviously does not satisfy traditional districting criteria. And while respondents have contended that the plume was drawn for partisan advantage, expert testimony belies that contention.

The racial gerrymander is clear from close-ups of the plume with partisan and racial demographic data:

Figure 15: District 9/13 Boundary, Stockton Area, By Politics and Precinct

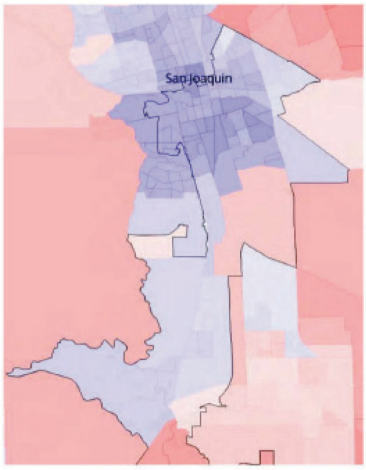
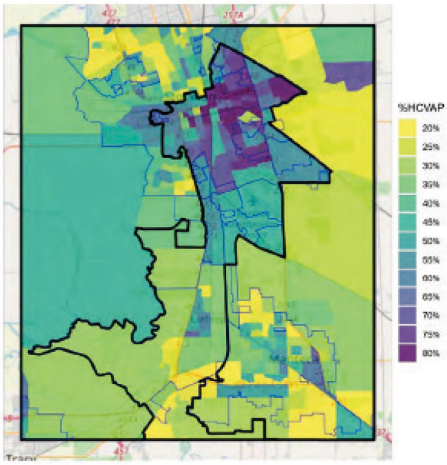


Figure 16: District 9/13 Boundary, Stockton Area, By HCVAP and Block Group



Op. 55-56. The picture on the left shows partisan data, with more heavily Democratic areas in a darker blue. The right shows HCVAP data for the same region.

As Trende explained, the plume "provides 'one of the more egregious examples' of racial gerrymandering." Op. 54. The plume's "boundary 'bypasses heavily Democratic areas' to the west, which have lower HCVAP percentages, 'to get into some politically marginal territory' to the north, which has a higher HCVAP percentage, in pursuit of a racial goal." Op. 56-57 (brackets omitted). The plume thus "leaves a lot of Democrats on the table," D. Ct. Doc. 16-5, at 31 (Nov. 7, 2025), which belies California's purported purpose of engaging in a partisan gerrymander. It also creates a district less consistent with traditional districting principles; as Trende explained, "this appendage bypasses white Democrats, making the district less compact, to gain Hispanic areas that are less heavily compact. From a [partisan] gerrymandering perspective, this makes little sense." *Id.* at 34.

Trende also observed that "the intent to 'shore up' Democratic votes in District 9," as respondents' experts had conjectured, could not justify that boundary. Op. 57. Trende explained that the Prop 50 map "transformed District 9 from 'leaning Democrat' to being 'solid Democrat,' while District 13 stayed a 'toss up,' meaning that District 9 has Democratic 'votes to spare' for District 13." *Ibid.* As Trende put it, "District 9 doesn't need the heavily Democratic White areas in Stockton to perform well. But they would help District 13." Op. 107 (Lee, J., dissenting).

Mitchell's choice to exclude the more Democratic but less Latino areas to the west of the plume in favor of the less Democratic but more Latino areas to the north is thus flatly inconsistent with a partisan gerrymander—but perfectly consistent with a racial gerrymander. Notably, District 13's HCVAP percentage in the Prop 50 map is 53.8%. Op. 63. As Judge Lee observed, "[t]hese district lines would not be ideal if political gerrymandering were the goal, but they neatly reflect racial gerrymandering to create a Latino district in the 52 to 54 percent HCVAP range to ensure a Latino-

preferred congressional representative as advocated for in the HOPE letter which Mitchell cited." Op. 99. The district court responded that District 13 could not reflect a racial gerrymander because, while its Democratic vote share increased by three percentage points, its HCVAP negligibly decreased from 54% in the 2021 map to 53.8% in the Prop 50 map. Op. 63-64. That misses the point: the HCVAP would have decreased even more, below the target 52-54 range, and the Democratic vote share would have been even higher, had Mitchell drawn the plume in a race-neutral, partisan way.

Nevertheless, the district court held that the boundary did not reflect a racial gerrymander because "there is no 'optimal' partisan gerrymander," such that leaving the heavily Democratic areas in District 9, "even at the expense of District 13, could reflect a strategic partisan decision." Op. 57-58. But the court did not identify any statement from Mitchell, a legislator, or anyone involved in the map's creation and adoption expressing a desire to pursue such a strategy. The court simply adopted it based on ex post, implausible theorizing by respondents' experts. California's stated goal in redistricting was to flip seats to favor Democrats, which generally means drawing districts to make them safe—but not too safe—for Democrats, while packing as many Republicans as possible into as few districts as possible. Cf. *Rucho* v. *Common Cause*, 588 U.S. 684, 693 (2019) (describing "packing" and "cracking"). A mapmaker who wanted to ensure that both Districts 9 and 13 elect a Democrat typically would not leave one a "solid Democrat" and the other a "toss up," when heavily Democratic voters can easily be moved from the former into the latter. But a mapmaker who wanted to ensure that District 13 had a sufficiently high HCVAP would.

The district court alternatively conjectured that the plume's boundary might be explained by a "respect for communities with shared interests." Op. 58. The court

stated that "the western areas excluded from District 13[,] including the neighborhoods of Brookside and Weston Ranch," are "more suburban, more educated, and wealthier" than "south Stockton" (which is in District 13), whereas the "northern areas included within District 13[,] including the neighborhoods of Garden Acres and August," are "similar to south Stockton, as they contain working-class families." *Ibid.* But although Mitchell mentioned "preserv[ing] communities of interest" as one of his goals, D. Ct. Doc. 42-3, at 23; see Op. 59 n.26, "there is no evidence that Mitchell considered *these* communities of interest" when drawing the plume, Op. 108 (Lee, J., dissenting) (emphasis added).

Moreover, the district court's "speculative and post-hoc justification of communities of interest seems implausible." Op. 108 (Lee, J., dissenting). Trende explained that the Prop 50 map "does not, in fact, adhere to the socioeconomic boundaries" that the court viewed as playing an essential role in the plume. *Ibid.* He also observed that "there's no real evidence that the mapmaker would be particularly motivated by the difference between a tract with say 71% high school education and 74% high school education." *Ibid.* And Trende noted that even the 2021 map, "drawn by an independent body laboring under a demand that communities of interest be kept together," did not keep those supposed communities of interest together. *Ibid.* Indeed, neither Mitchell nor California legislators ever mentioned that type of socioeconomic or educational communities of interest when discussing Prop 50; instead, they focused solely on race or partisanship. *Ibid.* Preserving communities of interest thus cannot plausibly explain Mitchell's choice in drawing the plume. Race, on the other hand, explains it perfectly.

C. Alternative Maps Confirm That California Could Have Achieved Its Partisan Aims For District 13 Without Race Predominating

As this Court has emphasized, "an alternative map can perform the critical task of distinguishing between racial and political motivations when race and partisanship are closely entwined." *Alexander*, 602 U.S. at 34; see *Abbott*, *supra* (No. 25A608), slip op. 1-2. Given the direct evidence that Mitchell predominantly considered race in drawing District 13's boundaries, applicants did not need to provide an alternative map here. See *Cooper*, 581 U.S. at 318. Nevertheless, expert testimony below supplied such maps, providing "highly persuasive [evidence] to disprove [the] State's contention that politics drove a district's lines," by "show[ing] that the legislature had the capacity to accomplish all its partisan goals without moving so many members of a minority group into the district." *Id.* at 317.

In particular, Trende provided three alternative maps of District 13, with HCVAP percentages of 51.3%, 48.9%, and 48.1%. Op. 105 (Lee, J., dissenting). The district court acknowledged that all three alternative maps "achieve roughly the same partisan outcomes for District 13 as the Proposition 50 Map." Op. 61. And "[e]ach alternative map also scores higher on the Polsby-Popper metric of compactness." Op. 106 (Lee, J., dissenting).

Yet the district court rejected all three maps on the ground that they "remove[] the neighborhoods of Garden Acres and August out of District 13 and into District 9, and include[] Weston Ranch in District 13," thereby "split[ting] communities of interest." Op. 61; see Op. 62 n.30. That reasoning simply echoes the court's meritless reliance on conjured communities of interest in concluding that Mitchell did not draw the plume based on race. See pp. 16-17, *supra*. The court rejected two of the maps on the additional ground that they split the city of Tracy, which "could be undesirable

as a partisan gerrymander" because District 9's current Democratic incumbent lives in Tracy. Op. 62. But Mitchell "explicitly disclaimed incumbent protection" in drawing the Prop 50 map. Op. 109 (Lee, J., dissenting). Besides, "[e]ven if Tracy were split, [District 9] under the new map would be a safer Democratic seat than [District 13] in the new map and safer than its previous composition under the Commission map." *Id.* at 110 (Lee, J., dissenting).

The district court also mentioned, but did not decide, that the alternative maps might be invalid because the districts might "have an overall population deviation of 923 persons," which would exceed the strict one-person, one-vote threshold this Court has established for congressional districts. Op. 61 n.28. But as Judge Lee explained, the witness who suggested that infirmity likely made a "mistake or an error," given that a review of "the areas and data" revealed "no meaningful population deviations." Op. 110. Indeed, that same witness, despite initially claiming that the "alternative maps were inferior to the Prop. 50 map based on traditional redistricting criteria," admitted on cross-examination that, in fact, at least one of the maps "would improve Democratic party performance over the Prop. 50 map, is more compact, and splits fewer communities of interest." Op. 110-111 (Lee, J., dissenting).

D. The Voters' Intent Cannot Shield The Mapmaker's Racial Gerrymander

The district court badly erred in dismissing the direct and circumstantial evidence that race predominated in the drawing of District 13 on the ground that California voters approved Proposition 50, thus essentially curing any racial predominance that infected the district's boundaries. See Op. 14-30. The court justified its decision to discount that evidence, notwithstanding this Court's decision in cases like *Cooper*, because "the centrality of voters here distinguishes this case from nearly all

precedent on racial gerrymandering." Op. 14. That difference is not legally relevant in these circumstances.

This Court has, of course, recognized that "[r]edistricting constitutes a traditional domain of state legislative authority," *Alexander*, 602 U.S. at 7, and has thus described the racial-gerrymandering inquiry as turning on "legislative intent," *Cooper*, 581 U.S. at 291. And the California legislature, like those of some other States, generally has outsourced that responsibility to independent commissions or, ultimately, to the voters. Cf. *Arizona State Legislature* v. *Arizona Indep. Redistricting Comm'n*, 576 U.S. 787, 798 & n.7 (2015). It thus is appropriate here to treat the voters as the ultimate legislature for purposes of this Court's racial-gerrymandering precedents.

But contrary to the district court's analysis, that does not license jettisoning the most probative direct evidence of racial gerrymandering: the mapmaker's own description of the actual process of "the drawing of district lines." *Alexander*, 602 U.S. at 8. As this case illustrates, the mapmaker often is a private party, not a member of the legislature or legislative staff. *E.g.*, *Cooper*, 581 U.S. at 295; *LULAC*, 2025 WL 3215715, at *39. And if anything, as Judge Lee pointed out (Op. 89), Mitchell's repeated invocations of legislative privilege arguably demonstrate his status as a state actor akin to a legislative staffer, like the one in *Alexander*, 602 U.S. at 13. Either way, this Court has always treated the mapmaker's statements as direct evidence pertinent to a racial-gerrymandering claim, even though the legislature ultimately votes to adopt the map. *E.g.*, *Cooper*, 581 U.S. at 299-301; cf. *Abbott*, *supra* (No. 25A608), slip op. 5, 9 (Kagan, J., dissenting).

Nothing changes just because the relevant "legislature" consists of the State's voters. If a mapmaker "place[s] a significant number of voters within or without a

particular district" predominantly based on race, *Cooper*, 581 U.S. at 291, those voters will find themselves in or out of those districts because of their race regardless of whether the legislators are aware of why the district lines were drawn the way they were drawn. It is far-fetched to think that *Cooper* would have come out the other way had North Carolina simply put its redistricting map up for a vote (while hiding the mapmaker's instructions and testimony from the public). Or that the Alabama legislature's redrawing of the City of Tuskegee from a square to "a strangely irregular twenty-eight-sided figure" that removed nearly all black residents from the city's boundaries would have been acceptable had Alabama voters ratified it through a ballot initiative emphasizing non-racial effects of the map. *Gomillion* v. *Lightfoot*, 364 U.S. 339, 341 (1960).

It thus makes no difference that "the voters did not engage or direct Mitchell" themselves, Op. 29, or that most of the campaigning materials that voters saw did not reference race or Mitchell's racial motivations in drawing district boundaries. (Though even that is not entirely true; the official voter information guide included a description of the Prop 50 map as "divid[ing] our neighborhoods and weaken[ing] the voice of communities of color." Op. 37.) Adoption by voters—whether those voting are legislators or ordinary citizens—does not purge an overt racial gerrymander from an unconstitutional map.

In reaching a contrary conclusion, the district court relied (Op. 18-19) on this Court's admonishment in *Brnovich* v. *DNC*, 594 U.S. 647 (2021), that a "'cat's paw' theory has no application to legislative bodies." *Id.* at 689; see *ibid.* ("A 'cat's paw' is a 'dupe' who is 'used by another to accomplish his purposes.'"). That reliance was misplaced. *Brnovich* involved a *facially race-neutral* statute governing who could collect mail-in ballots. See *id.* at 662 (statute permitted only "a postal worker, an elec-

tions official, or a voter's caregiver, family member, or household member" to collect a mail-in ballot). The plaintiffs nevertheless alleged that the statute "was enacted with a discriminatory purpose." *Id.* at 687. In that context, the Court cautioned against treating legislators who indisputably lacked any discriminatory purpose as the mere "dupes or tools" of a few legislators whose purposes might have been questionable, and thereby attributing the intentions of the latter to the former's enactment of a facially race-neutral law. *Id.* at 690. The Court emphasized that "legislators who vote to adopt a bill are not the agents of the bill's sponsor or proponents" and "have a duty to exercise their judgment and to represent their constituents." *Id.* at 689-690.

The Prop 50 map, in contrast, is not facially neutral; irrespective of voters' purposes, District 13 on its face reflects a racial gerrymander because "race played a role in the drawing of district lines" and the placing of "a significant number of voters within or without [the] district," *Alexander*, 602 U.S. at 7-8—just like the map in *Gomillion* on its face reflected impermissible racial gerrymandering. By way of analogy, this Court explained in *Allen* v. *Milligan*, 599 U.S. 1 (2023), that a State may not "immunize from challenge a new racially discriminatory redistricting plan simply by claiming that it resembled an old racially discriminatory plan." *Id.* at 22. Presumably that would remain true even if a new state legislature reenacted exactly the same plan after a complete turnover of membership (thus vitiating any claim of discriminatory purpose on the new legislators' part). A racially drawn map remains a racially drawn map. Recognizing that District 13 remains a racial gerrymander even after (innocent) voters adopted the Prop 50 map thus does not accuse the voters (or California legislators) of being Mitchell's "dupes or tools." *Brnovich*, 594 U.S. at 690.

II. THE EQUITABLE FACTORS SUPPORT AN INJUNCTION PENDING APPEAL

Like the violation of a person's First Amendment rights, placing a voter in a racially gerrymandered district in violation of the Fourteenth Amendment "unquestionably constitutes irreparable injury." *Elrod* v. *Burns*, 427 U.S. 347, 373 (1976). No ex-post monetary damages or other legal remedy can compensate applicants for being forced to vote in a certain district on account of race. See *Shaw* v. *Hunt*, 517 U.S. 899, 908 (1996) (explaining that "a racial classification [in districting] causes 'fundamental injury' to the 'individual rights of a person'").

In addition, it is "always in the public interest to prevent the violation of a party's constitutional rights." *Fellowship of Christian Athletes* v. *San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 695 (9th Cir. 2023) (en banc). On the other side of the balance, California has an undoubted interest in drawing its own congressional maps, even for partisan gain, see *Abbott* v. *Perez*, 585 U.S. 579, 602 & n.17 (2018)—but not when it uses race to accomplish that function, *Cooper*, 581 U.S. at 291 n.1. The State has no legitimate interest in segregating its citizens "according to a criterion barred to the Government by history and the Constitution." *Miller* v. *Johnson*, 515 U.S. 900, 912 (1995). Moreover, given the State's interest in drawing its own maps, this Court should not try to create a remedial District 13 on its own, but rather should simply enjoin use of the Prop 50 map, allowing the State to use its own 2021 map for the upcoming election. See Op. 116 (Lee, J., dissenting); cf. *Harris* v. *McCrory*, 159 F. Supp. 3d 600, 627 (M.D.N.C. 2016) (enjoining map because two districts were racially gerrymandered, but not drawing a remedial map because "a state should have the first opportunity to create a constitutional redistricting plan"), aff'd sub nom. *Cooper* v. *Harris*, 581 U.S. 285 (2017).

Purcell v. *Gonzalez*, 549 U.S. 1 (2006) (per curiam), does not prohibit injunctive relief here. *Purcell* "reflects a bedrock tenet of election law: When an election is close at hand, the rules of the road must be clear and settled." *Merrill* v. *Milligan*, 142 S. Ct. 879, 880-881 (2022) (Kavanaugh, J., concurring in grant of applications for stays). That is because "[c]ourt orders affecting elections * * * can themselves result in voter confusion and consequent incentive to remain away from the polls." *Purcell*, 549 U.S. at 4-5. The risk of voter confusion "will increase" "[a]s an election draws closer." *Id.* at 5; see *id.* at 4 (declining to "enjoin operation of voter identification procedures just weeks before an election").

The earliest relevant deadline here is February 9, 2026: that is the start of an approximately "monthlong period when the candidates can begin filing their paperwork declaring their candidacy in the appropriate district." Op. 114 (Lee, J., dissenting) (mistakenly listing February 4 as the start date); see D. Ct. Doc. 190-3, at 607 (Dec. 19, 2025). To be sure, the window for prospective candidates to collect signatures in lieu of a filing fee to appear on the primary ballot opened on December 19 and closes on February 4, but there is no evidence that any candidate is collecting signatures—which is hardly surprising, given that "candidates can pay the fairly modest filing fee [of $1,740] rather than collect signatures." Op. 113 (Lee, J., dissenting). An injunction issued even fairly close to February 9 thus would not run afoul of *Purcell*. Cf., *e.g.*, *RNC* v. *Genser*, 145 S. Ct. 9 (2024) (denying application to stay judgment issued two weeks before election day); *Rose* v. *Raffensperger*, 143 S. Ct. 58 (2022) (vacating stay of injunction 7 days before deadline for certain districts); *Berger* v. *North Carolina State Bd. of Elections*, 141 S. Ct. 658 (2020) (denying stay of judgment issued 13 days before start of in-person early voting). That distinguishes this case from *Abbott*, *supra* (No. 25A608), where the injunction was issued 10 days *after*

the monthlong candidate filing period had already begun. See *LULAC*, 2025 WL 3215715, at *124 (Smith, J., dissenting) (noting that "the filing period for candidates seeking public office runs from November 8 to December 8, 2025," and the injunction was issued on November 18).

In the district court, respondents put forth only one vague declaration from Joanna Southard, Assistant Chief of the Elections Division in the Office of the California Secretary of State, suggesting that an injunction would cause confusion or difficulties in the State's ability to carry out the 2026 elections. See D. Ct. Doc. 113-2 (Dec. 3, 2025). Southard stated that "county election officials and the Secretary of State must finalize implementation of the new congressional districts no later than December 18, 2025." *Id.* at 7 ¶ 13. Southard also stated that implementation "is a complex, time intensive, and collaborative process." *Ibid.*

But the Proposition 50 vote was not certified until December 12, see D. Ct. Doc. 113-2, at 6 ¶ 12, so it is dubious that election officials could ever have "finalized implementation" of the Prop 50 map by December 18, especially given that the three-day preliminary injunction hearing in this case did not start until December 15—in part because *respondents* requested an "eleventh-hour" delay. D. Ct. Doc. 81, at 1 (Nov. 21, 2025); see D. Ct. Doc. 71, at 11 (Nov. 19, 2025) (requesting delay until January 20, 2026). Respondents have never supplemented Southard's declaration or provided more concrete details regarding the process of implementing the Prop 50 map, what steps (if any) the State had taken to prepare for contingencies, or the difficulties that would be caused by an injunction. If anything, Southard's declaration suggests that an injunction effectively requiring California to return to the 2021 commission maps would be *less* disruptive to the State's election apparatus than allowing the Prop 50 map to go into effect.

CONCLUSION

The application for an injunction pending appeal should be granted.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

JANUARY 2026