No. 25A839

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 Issued by the United States District Court for the Central District of California

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Brief of Public Interest Legal Foundation as *Amicus Curiae* in Support of Application for Writ of Injunction

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INTERESTS OF *AMICUS CURIAE*[1]

The Public Interest Legal Foundation (the "Foundation") is a non-partisan, public interest organization whose mission includes working to protect the fundamental right of citizens to vote and preserving election integrity across the country. The Foundation has sought to advance the public's interest in having elections free from unconstitutional racial intent. At the state level, this is best done by ensuring that state laws enacted by each state's legislature are constitutional. It is also done by ensuring the state Congressional district maps are drawn constitutionally. This case is of interest to the Foundation as it is concerned with protecting the integrity of American elections and preserving the Constitutional right to be free from election laws that were passed on account of race.

The Foundation has extensive experience in redistricting. *See e.g., Petteway v. Galveston Cnty.,* 111 F.4th 596 (5th Cir. 2024) (en banc); *Jackson v. Tarrant Cnty.*, 158 F.4th 571 (5th Cir. 2025). The Foundation also regularly files *amicus curiae* briefs in cases on redistricting issues. *See e.g.,* Brief of the Public Interest Legal Foundation, *et al.* as *Amici Curiae* supporting Appellees, *Louisiana v. Callais,* No. 24-109 (2025).

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[1] No counsel for a party authored this brief in whole or in part, nor did any person or entity, other than *amicus curiae* and its counsel, make a monetary contribution intended to fund the preparation or submission of this brief.

SUMMARY OF ARGUMENT

A referendum cannot absolve an unconstitutionally drawn Congressional map. The District Court erred in failing to grant the preliminary injunction where the overwhelming evidence proved that race was a part of the decision-making process of both the map drawer and the Legislature. Holding that voters, through a referendum, can absolve the racial intent of the map's author and legislative proponents ignores settled law, Supreme Court precedent, and common sense.

The denial of the preliminary injunction based on the flawed reasoning that a referendum adopting a legislative enactment may absolve constitutional violations impairs the plaintiffs in a seemingly similar, but wholly distinct, case, *Noyes v. Newsom*, No. 2:25-cv-11480 (C.D. Ca. Dec. 2, 2025). The plaintiffs in *Noyes*, represented by counsel for *Amicus*, are seeking an injunction against the same Congressional district map ("Prop 50 Map") passed through the bill package that became Proposition 50 but assert a straightforward Fifteenth Amendment claim supported by evidence not introduced in the accelerated posture of the case before this Court. Worse yet, the factually and legally distinct *Noyes* case is stayed pending the outcome in this case. The Fifteenth Amendment claim in *Noyes* is supported by an independent Expert Report challenging the entire Prop 50 Map as well as an *Alexander*[1] map demonstrating the Defendants' partisan goals could have been

[1] Referring to *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1 (2024).

achieved without first sorting the electorate by race, further supporting the Fifteenth Amendment cause of action in *Noyes*.

ARGUMENT

I. The District Court erred when it found the voters absolved the racial intent of the Prop 50 Map proponents.

A referendum cannot absolve a Congressional map drawn by a legislature on account of race. Otherwise, the promises of the Fifteenth Amendment could be circumvented by the simple step of subjecting a brazenly unconstitutional map to public vote. This is the central issue before this Court.

This Court has previously held that voters cannot absolve constitutional violations in legislative maps. In *Lucas v. Forty-Fourth Gen. Assembly*, this Court explained:

> "[T]he fact that an apportionment plan is adopted in a popular referendum is insufficient to sustain its constitutionality or to induce a court of equity to refuse to act. … 'One's right to life, liberty, and property . . . and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.' A citizen's constitutional rights can hardly be infringed simply because a majority of the people choose that it be."
>
> 377 U.S. 713, 736-37 (1964) (internal citations omitted).

The referendum that approved the Prop 50 Map cannot absolve the intent of the legislature and map drawer that drew a map on account of race.

The District Court did not address *Lucas*. Indeed, it would seem no party brought the case to the attention of the panel.

Instead, the District Court distinguished several cases, including two cases

cited by Applicants, *Romer v. Evans*, 517 U.S. 620 (1996) and *Perry v. Brown*, 671 F.3d 1052 (9th Cir. 2012). The District Court asserted that *Romer* and *Perry* stand for the proposition that, "[w]hen voters' discriminatory intent is clear, the courts will strike down laws as violative of the Equal Protection Clause." Appx. 20 at 20.

Discriminatory intent of voters, however, never made any appearance in either *Romer* or *Perry*. No mention was made. No explanation was made as to how voter intent could be captured and measured or otherwise squeezed into any relevancy inquiry in a constitutional challenge to a legislatively enacted map. This is plain, and outcome determinative error. Instead, the District Court conducted an erroneous and circular intent analysis itself by looking at the "effect of the law[s]," and whether it, "obfuscates the intent behind it." Appx. 22 at 22.

The District Court committed error when it allowed voters to absolve unconstitutional maps. The District Court "trust[s] that voters are discerning and that the campaign and electoral process will out the truth." Appx. at 19. Perhaps, but perhaps not.

Had, for example, the voting qualifications challenged in *Rice v. Cayetano* been subjected to statewide referendum in Hawaii, would it have absolved that brazen violation of Fifteenth Amendment protections? *Rice v. Cayetano*, 528 U.S. 495, 522 (2000). Can the victims of an unconstitutional election procedure enacted on account of race have their constitutional claim foreclosed merely because they were outvoted in a referendum to ratify the election procedure? Our Fifteenth Amendment

architecture answers – no.

The dissent discerned this radical transformation of Fifteenth Amendment protections. As Judge Lee dissented, this creates "perverse incentives for the governor and the state legislature to shroud their unlawful racial designs and package their actions in more popular terms for the public." Appx. at 72. An electoral majority cannot absolve the sins of a legislature that acted on account of race.

The practical implications of the majority's radical reinterpretation of constitutional protections are aggravated by evidentiary problems. How must a plaintiff prove an intent claim after a referendum? Is the intent of every single voter in California now discoverable? Judge Lee's dissent also foresaw this problem. He explained, "We cannot discern the intent of 11 million Californians for redrawing a single congressional district when they voted on a statewide referendum that changed all 52 congressional districts." Appx. at 72. The evidentiary complexities presented in *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252 (1977), seem simplistic compared to the evidentiary labyrinth the District Court created here.

II. The Plaintiffs in *Noyes v. Newsom* brought a factually and legally distinct case, and that case is pending below.

a. The Three-Judge Panel incorrectly analyzed any Fifteenth Amendment claim under a Fourteenth Amendment standard

Tangipa raises allegations that the Prop 50 Map was drawn in violation of the Fourteenth Amendment because race predominated the map-drawing decisions. *Amicus'* case, *Noyes*, alleges that the map was drawn on account of race and by using

racial tools in violation of the Fifteenth Amendment. The lower court's ruling in *Tangipa* misapplies the law and did not enjoy the benefit of a full airing of all factual and legal claims. If left standing, the ruling could swallow a resolution of the distinct and robust Fifteenth Amendment claims in *Noyes*.

Noyes challenges Prop 50's map as violating the Fifteenth Amendment by: (1) intentionally preserving sixteen Hispanic-majority districts; (2) deliberately racially engineering the Hispanic population in these districts to a uniform 52-55% band; and (3) walling off two unconstitutional Black influence districts by deliberately redistributing racial populations in all the surrounding districts. Complaint, *Noyes v. Newsom*, No. 2:25-cv-11480 (C.D. Ca. Dec. 2, 2025), ECF No. 1 at ¶¶26-27, 33-34. These decisions violated the Fifteenth Amendment rights of voters not in the preferred racial groups. *Noyes'* deconstruction of California's specific racial strategies, tactics, and aims establishes a textbook Fifteenth Amendment violation, and is nothing like the evidence presented to the District Court in *Tangipa*.

The Fifteenth Amendment promises that "[t]he right of citizens of the United States to vote shall not be denied or abridged … on account of race." U.S. CONST. amend. XV, § 1. This prohibition is "fundamental and absolute." *Davis v. Guam*, 932 F.3d 822, 832 (9th Cir. 2019) (citing *Shaw v. Reno*, 509 U.S. 630, 639 (1993)). Similarly, Section 2(a) of the Voting Rights Act (VRA) forbids enforcing election procedures enacted with a racial intent or that result in a denial, or abridgement, of the rights of any citizen to vote on account of race. 52 U.S.C. § 10101(a).

California's sorting of population by race and then drawing new congressional boundaries based on the concentration of each racial group violates the Fifteenth Amendment and the VRA. "[S]tate authority over the boundaries of political subdivisions, 'extensive though it is, is met and overcome by the Fifteenth Amendment to the Constitution.'" *Rice*, 528 U.S. at 522 (internal citation omitted). Unlike a Fourteenth Amendment claim requiring proof that race superseded all other redistricting consideration, the Fifteenth Amendment forbids any state action for which a racially discriminatory intent or purpose is a motivating factor—including using race to gain a partisan political advantage. This distinction is where *Noyes* and *Tangipa* deviate.

While *Noyes* and *Tangipa* raise similar constitutional claims, the *Tangipa* plaintiffs did not provide comprehensive statewide evidence and a straight path to resolution under the Fifteenth Amendment. Instead, the *Tangipa* plaintiffs only pleaded a Fifteenth Amendment claim as a barely-supported stand-alone alternative to a Fourteenth Amendment claim.

The *Tangipa* court analyzed the pleadings on the basis that "the *predominant* reason for [the Prop 50 Map's] adoption was not politics but rather unconstitutional and unlawful racial gerrymandering." *See* Appx. at 2 (emphasis added). This is a Fourteenth Amendment analysis. "Predominate reason" is a Fourteenth Amendment concept, not a Fifteenth Amendment one. In fact, if a map was drawn on account of race at all, even if that reason was well down the rankings of reasons, the map violates the Fifteenth

Amendment. Predominance comes out of the Fourteenth Amendment lexicon, not the Fifteenth.

Noyes' stand-alone Fifteenth Amendment claim sets it apart from *Tangipa*. The issues of law and burden-shifting and strict scrutiny analysis the court must do in *Tangipa* under the Fourteenth Amendment is irrelevant to *Noyes*' Fifteenth Amendment claim. The District Court denied *Tangipa*'s motion for preliminary injunction, used voter absolution, and solely applied a Fourteenth Amendment analysis. Scrutiny analysis is out of the Fourteenth Amendment lexicon, not the Fifteenth.

b. Tangipa Plaintiffs did not perform a district-by-district analysis.

The factual posture between the cases is also different. *Noyes* presents: (1) a complete statewide factual analysis of the Prop 50 Map; (2) an analysis of demographic shifts on a district-by-district level; and (3) a race-blind illustrative *Alexander* map of the entire State, not just District 13. Complaint, *Noyes*, No. 2:25-cv-11480, ECF No. 1 at ¶¶33-52; Expert Report & Illustrative Map Attached to Motion for Preliminary Injunction, *Noyes*, No. 2:25-cv-11480, ECF Nos. 37-2, 37-5. Unlike *Noyes*, *Tangipa* plaintiffs failed to timely raise the argument that the tight 52-55% band of majority-Hispanic CVAP demonstrates racial intent. Additionally, *Tangipa*'s analysis of only District 13 inhibited them from providing the holistic view of Prop 50's racial intent necessary to succeed on a Fourteenth or Fifteenth Amendment claim. *See* Appx. at 46. *Tangipa* plaintiffs' expert witness even stated

that he was not opining that District 13, nor any other Prop 50 district, was drawn with a racial target in mind. *See* Appx. at 65.

Conversely, the *Noyes* plaintiffs performed a holistic evaluation of Prop 50's Map, demonstrating that California could have achieved its stated partisan goals without using race, but did not. Expert Report & Illustrative Map Attached to Motion for Preliminary Injunction, *Noyes*, No. 2:25-cv-11480, ECF Nos. 37-2, 37-5. Any partisan goals were achieved using race.

Because the legal and factual bases underlying the two cases are so distinct, a full airing of all legal and factual claims would suffer if the *Tangipa* application was not granted. The District Courts' decision denying *Tangipa* plaintiffs' motion for preliminary injunction, particularly on the ground that voters' referendum absolves the legislature and mapmaker of their racial intent, was error and would exonerate a map drawn on account of race.

CONCLUSION

The Supreme Court has previously held that voters cannot absolve the constitutional violations of state legislatures. The holding of *Lucas* applies here. We respectfully request this Court grant the application for writ of injunction.

Respectfully submitted,

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