No. 25A839

In the Supreme Court of the United States

DAVID TANGIPA, ET AL., APPLICANTS,

v.

GAVIN NEWSOM, GOVERNOR OF CALIFORNIA, ET AL.

ON APPLICATION FOR WRIT OF INJUNCTION FROM THE
UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

RESPONSE OF LEAGUE OF UNITED LATIN AMERICAN CITIZENS IN OPPOSITION TO APPLICATION FOR WRIT OF INJUNCTION

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JANUARY 29, 2026

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INTRODUCTION

The Court should deny Applicants' Emergency Application for Writ of Injunction Pending Appeal to enjoin California's 2025 Congressional redistricting plan—the "Proposition 50 Map"—which was passed by the Legislature and approved by over seven million California voters in a landslide vote. Citing the improper standard of review in their briefs, neither Applicants nor the United States acknowledge that they are asking this Court for extraordinary relief. Nor do they demonstrate that their entitlement to relief is both indisputably clear and necessary or appropriate to aid the Court's jurisdiction.

This Court, in its most recent racial gerrymandering merits decision—*Alexander v. South Carolina State Conference of the NAACP*, 602 U.S. 1, 11 (2024)—made clear that courts "must be wary of plaintiffs who seek to transform federal courts into 'weapons of political warfare' that will deliver victories that eluded them 'in the political arena.'" This Court warned that "future litigants and lower courts [could seek] to sidestep our holding in *Rucho* [*v. Common Cause*] that partisan-gerrymandering claims are not justiciable in federal court" by "repackag[ing] a partisan-gerrymandering claim as a racial-gerrymandering claim." *Id.* at 21.

It would be hard to imagine a more blatant example of plaintiffs repackaging a nonjusticiable partisan gerrymander as a purported racial gerrymander than the one presented here. Three of the four witnesses who testified for Applicants at the preliminary injunction hearing previously characterized the Proposition 50 Map as a "partisan" gerrymander. The lead Applicant, David Tangipa, a California state legislator, complained that the plan was an expressly partisan gerrymander during the legislative debate:

> Californians can look at their districts today, and they know that they were not manipulated for partisan advantage. And now, in just four days, with two rushed committee hearings and almost no opportunity for real public comment, we are on the verge of throwing all of that away. Let me remind this body. During committee hearings, one of our colleagues brazenly admitted that *this entire thing was about partisan gerrymandering*. Admitted partisan politics. . . . So how can we stand in this chamber and criticize Texas, Florida or other states for gerrymandering when we've joined them in the same practice?

App.6 (emphasis added). The other Applicant who testified at trial, Eric Ching, petitioned the California Supreme Court to block the Proposition 50 Map because it was a "partisan" gerrymander, and was represented by the same counsel who brought this litigation in that suit. App.7. And Applicants' mapping expert, Dr. Sean Trende, submitted a declaration in that same state court litigation stating that "it seems obvious that the purpose of this map is to favor one party or the other, as leaders in the state have not been particularly shy that the purpose of the map is to 'neutralize' a Republican gerrymander in Texas." App.7. It was only after their resounding defeats at the California Supreme Court and then at the ballot box that Applicants filed this litigation contending for the first time that the Proposition 50 Map is a racial gerrymander.

This is only the tip of the "mountain of evidence" cited by the district court that demonstrates that the voters and the Legislature intended to enact a partisan gerrymander. App.29, 37-45. The court's findings are grounded in the following unrebutted evidence: (1) the text of the legislation and Proposition 50 expressly stated that Proposition 50 had a partisan purpose; (2) California lawmakers stated that they were introducing redistricting legislation for partisan purposes; (3) both proponents and opponents of Proposition 50 stated during the legislative process and during the Proposition 50 campaign that Proposition 50 had a partisan purpose; and (4) the Proposition 50 Map has a strong partisan effect

that is likely to flip several districts from Republican to Democrat and which significantly strengthens Democratic performance in competitive districts.

Given the overwhelming evidence of partisan purpose and effect in the district court proceedings, Applicants and the United States have now changed tactics. Applicants now contend that the Proposition 50 Map had "dual" partisan and racial purposes, Emergency Application at 6—an argument never raised in the district court. But that theory is a non-starter under *Alexander*: "[A] party challenging a map's constitutionality *must disentangle race and politics* if it wishes to prove that the legislature was motivated by race *as opposed to* partisanship," 602 U.S. at 6 (emphasis added), and Applicants submitted no such proof to the district court.

Indeed, the United States admits that the intent of the map was partisan, except for District 13 which it claims was racially motivated because mapmaker Paul Mitchell stated that he "bolstered" Latino districts in the Central Valley, where District 13 and several other districts are located. U.S. Response at 1-2. But, as the district court found, under the Proposition 50 Map, Democratic performance in District 13 *increased* by three percentage points, whereas Hispanic citizen voting age population ("HCVAP") *decreased*. App.63-64. Moreover, it is the intent of the decisionmakers, the voters and the Legislature, that matters—not that of Mitchell, though Mitchell's intent also was clearly partisan. Mitchell characterized the goal of Proposition 50 as "flipping five . . . districts" from Republican to Democrat "[w]hile also bolstering Dems in" toss-up and Democratic-leaning districts—and specifically identified District 13 as one of the "bolster[ed]" districts. App.39.

Beyond the merits, Applicants and the United States fail on the equitable factors. They offer no compelling reason why it would be in the public interest to enjoin this map, when over seven million members of the public voted to pass it just months ago. Moreover, they cannot overcome the principle of *Purcell v. Gonzalez*, 549 U.S. 1 (2006), that the Court has invoked repeatedly to prevent federal courts from significantly changing an ongoing election process. Applicants repeatedly asserted below that they needed relief by December 19 because "congressional election candidates must know the district lines" by that date. App.142. Now that there is an active primary campaign and *Purcell* counsels against relief, they have changed their position. It would be extremely disruptive to election officials, voters, and political parties, in addition to candidates, to change California's entire redistricting map now, during an active primary campaign.

Ultimately, Justice Alito had it right when, in the Texas congressional redistricting case recently before this Court on a motion for stay, he observed that the "impetus" for the adopted map in California "was partisan advantage pure and simple." *Abbott v. League of United Latin Am. Citizens*, No. 25A608, 2025 WL 3484863, at *1 (U.S. Dec. 4, 2025) (Alito, J. concurring). Applicants' effort to recharacterize that plainly partisan gerrymander as an initiative to favor Latino voters is an affront to the League of United Latin American Citizens ("LULAC"), its members, and Latino communities across the state that imperils the rights of Latino voters who have had to fight tooth and nail to secure their right to vote. It is *Applicants* who are injecting race into California's political process—granting them relief would subvert the constitutional principles they are purporting to vindicate.

BACKGROUND

California's redistricting process started in Texas. Following pressure from the White House and the Department of Justice, in the summer of 2025 Texas added a special Congressional redistricting session to its legislative agenda. App.4. President Trump reportedly commented that Republicans were "entitled to five more seats." App.4. In August 2025, Texas enacted a Congressional redistricting plan that would take effect during the 2026 midterm elections. App.5.

This spurred California to respond. Governor Gavin Newsom vowed that California would nullify Texas's changes by passing a new map adding five congressional seats for California Democrats. App.5. On August 14, 2025, Governor Newsom introduced a legislative package entitled the Election Rigging Response Act ("ERRA"), proposing a Congressional redistricting plan that would be used for the 2026, 2028, and 2030 elections. *Id.* Because California voters had previously passed an initiative that placed responsibility for drawing Congressional plans in the hands of the independent Citizens Redistricting Commission (the "Commission"), a new plan passed by the Legislature and signed by the Governor would also have to be approved by California voters to override the plan drawn by the Commission in 2021 (the "2021 Map"). App.5. The ERRA included three bills: one ("ACA 8") that would place before voters a proposed constitutional amendment that, if approved, would replace the 2021 Map with an updated congressional map for the 2026, 2028, and 2030 elections; a second ("AB 604") that set forth the Proposition 50 Map; and a third ("SB 280") that would "authorize a statewide special election on November 4, 2025, in which California voters would vote on ACA 8 as Proposition 50." App.5-6. ACA 8 contained the

language: "President Trump and Republicans are attempting to gain enough seats through redistricting to rig the outcome of the 2026 United States midterm elections," and "it is the intent of the people that California's temporary maps be designed to neutralize the partisan gerrymandering being threatened by Republican-led states." App.29.

"The California Legislature's debate surrounding the ERRA included passionate defenses and criticism of its partisan goals," with Democratic members repeatedly saying that the ERRA package was designed to counter the President Trump and Republican-led redistricting in Texas by creating five new Democratic seats. App.6. Republicans, including lead Applicant David Tangipa, a member of the California Assembly, countered by criticizing the bills as naked partisan maneuvers. App.6-9. On August 21, 2025, the Legislature passed the ERRA package and Governor Newsom signed it into law. App.7.

"On August 25, four Republican California legislators and four voters, including [Applicant] Eric Ching, filed a Petition with the California Supreme Court, arguing that the ERRA violated the California Constitution and seeking a writ of mandate that ACA 8 not be presented to voters in the special election." App.7. In this Petition, captioned *Sanchez v. Weber*, the petitioners were represented by Applicants' counsel here. Dkt. 189-1, Ex. 234 at 810. Among the reasons the Petitioners claimed that the ERRA package violated the California constitution was that "the people expressly prohibited partisan gerrymandering." *Id.* at 821. That petition included as an attachment a declaration from Dr. Sean Trende, the mapping expert for Applicants in this case. *Id.* at 1216-24; App.7. In that declaration, Dr. Trende stated that he was asked to assess the "partisan fairness" of the Proposition 50 Map and he concluded that the map "was drawn with partisan objectives in mind; in particular

it was drawn to improve Democratic prospects in congressional elections in the state and to increase the share of seats that they would expect to win in an election." Dkt. 189-1, Ex. 234 at 1218, 1224. The California Supreme Court denied the Petitioners' request on August 27. App.7.

Proposition 50 was placed on the ballot for the November 4, 2025, special election, where it was the only ballot measure. App.9. The materials produced for voters by the Secretary of State reflected that both supporters and opponents of Proposition 50 focused on partisanship rather than race. The argument in favor of Proposition 50 included the statement: "STOP TRUMP FROM RIGGING THE 2026 ELECTION. Donald Trump and Texas Republicans are making an unprecedented power grab to steal congressional seats and rig the 2026 election before voting even begins." App.9. The rebuttal to this argument included the statement: "Vote NO on partisan gerrymandering. Vote NO on Prop. 50." App.9.

The focus on partisanship, and not on race, by proponents and supporters was similar in the Proposition 50 campaign. The California Democratic Party's webpage supporting Proposition 50 stated that the map "would negate the five Republican seats drawn by Texas" because "Democrats could gain up to 5 seats." App.7. The California Republican Party's public opposition included video advertisements stating that Proposition 50 was an attempt to "paint California blue" and text messages stating that "Gavin Newsom's Prop 50 political power grab is a scheme to gerrymander more congressional seats for Democrats so they can take control of Congress." App.8. Applicant Tangipa also created his own website opposing Proposition 50, which stated that Proposition 50 was a "unilateral decision to redraw Congressional

maps, eliminate five Republican districts, & strengthen Democrat held seats." App.8. On social media, Tangipa urged voters to "vote NO" because "one of the map's OWN authors admitted: 'this is partisan gerrymandering.'" App.8-9.

Voters passed Proposition 50 by a landslide margin: over seven million voters, representing 64.4% of those who cast ballots, voted in favor. App.3, 10.

On November 5, 2025, the day after the Proposition 50 election, Assemblymember Tangipa, the California Republican Party, and a group of California voters including Mr. Ching filed this case against Governor Newsom and Secretary of State Shirley Weber, claiming that Proposition 50 was an unconstitutional racial gerrymander that impermissibly favored Latinos. App.10. The United States filed a motion to intervene as plaintiffs, which the three-judge district court granted. *Id.*

Applicants then filed a motion for preliminary injunction asserting that *all sixteen districts* where Latinos were a majority of the citizen voting age population were racially gerrymandered. App.12. Their mapping expert, Dr. Trende, claimed only that District 13 was racially gerrymandered, "argu[ing] broadly that it was enacted to favor Latino voters." App.48. The United States also filed a motion for preliminary injunction where it asserted racial gerrymandering and intentional vote dilution claims solely as to District 13. App.12 n.5. In their motion, Applicants stated that because the "2026 congressional election candidates must know the district lines by December 19, 2025, Plaintiffs respectfully request that this court grant an order enjoining the implementation of Proposition 50's congressional district map while this matter proceeds." App.142.

On November 10, 2025, the Democratic Congressional Campaign Committee intervened as a defendant. App.124; Dkt. 20. LULAC intervened days later. App.124; Dkt. 39. In its motion, LULAC explained that it had a powerful interest in the outcome of the case because Plaintiffs' radical theory, which challenged *every single one* of California's majority-Hispanic districts, would, if countenanced, "effectively impose a presumption of unconstitutionality any time a districting plan creates majority-Latino districts—even when the map is drawn for reasons having nothing to do with race." Dkt. 39-1 at 2. Such a rule would "weaponize[] the very 'stereotypes that treat individuals as the product of their race' that Plaintiffs claim to have brought this suit to protect, and would trample the constitutional rights of Latino voters" of all parties. *Id.* at 2 (quoting *Miller v. Johnson*, 515 U.S. 900, 912 (1995)).

The three-judge panel held a preliminary injunction hearing from December 15 to December 17, 2025, that included all of the above parties. *See* App.10-11.

On January 14, 2026, the Court issued its ruling. App.1-117. The panel majority denied the motions in a 70-page opinion. App.1-70. The court concluded: "We have reviewed briefing from all parties, held a 3-day evidentiary hearing with 9 witnesses (including 6 experts), and reviewed a record that includes over 500 exhibits totaling thousands of pages (along with video and audio evidence). We find that Challengers have failed to show that racial gerrymandering occurred, and we conclude that there is no basis for issuing a preliminary injunction." App.2. Judge Lee dissented. App.71-117.

LEGAL STANDARD

Applicants and the United States both fail to state the correct legal standard. The only source of authority for this Court to issue the emergency writ of injunction pending appeal Applicants seek is the All Writs Act, 28 U.S.C. § 1651(a). The All Writs Act specifies that the Supreme Court can issue an emergency injunction only when it is "necessary or appropriate in aid of [its] jurisdiction[]" and "agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). In accordance with the Act, this Court has "consistently stated, and [its] own Rules so require, that such power is to be used sparingly." *Turner Broadcasting System, Inc. v. FCC*, 507 U.S. 1301, 1303 (1993); S. Ct. Rule 20.1 ("Issuance by the Court of an extraordinary writ authorized by 28 U.S.C. § 1651(a) is not a matter of right, but of discretion sparingly exercised."). As such, the Court will issue an injunction only when "the legal rights at issue are indisputably clear and, even then, sparingly and only in the most critical and exigent circumstances." *S. Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613, 1613 (2020) (Roberts, C.J., concurring in denial of application for injunctive relief) (internal quotation marks omitted) (quoting Stephen M. Shapiro et al., Supreme Court Practice § 17.4, at 17-9 (11th ed. 2019)); *see also Hobby Lobby Stores, Inc. v. Sebelius*, 568 U.S. 1401, 1403 (2012); *Lux v. Rodrigues*, 561 U.S. 1306, 1307 (2010).

Requests for an injunction pending appeal require "'a significantly higher justification' than a request for a stay." *Respect Me. PAC v. McKee*, 562 U.S. 996, 996 (2010) (quoting *Ohio Citizens for Responsible Energy, Inc. v. Nuclear Regul. Comm'n*, 479 U.S. 1312, 1313 (1986)). That is because "unlike a stay, an injunction 'does not simply suspend judicial

alteration of the status quo but grants judicial intervention that has been withheld by lower courts.'" *Id.* (quoting *Ohio Citizens for Responsible Energy, Inc.*, 479 U.S. at 1313).

Moreover, because the district court's decision was based on findings of fact, this court's review is limited: "If the district court's view of the evidence is plausible in light of the entire record, an appellate court may not reverse even if it is convinced that it would have weighed the evidence differently in the first instance." *Brnovich v. DNC*, 594 U.S. 647, 687 (2021) (citation omitted).

Additionally, Applicants must satisfy all four requirements for an injunction: "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. NRDC*, 555 U.S. 7, 20 (2008). Where the injunction is against the state, the balance-of-the equities and public-interest factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

ARGUMENT

Applicants and the United States come nowhere close to establishing that they are entitled to the extraordinary remedy they seek—an order that would reverse the lower court, impose a mandatory injunction barring a statewide Congressional map, and upend an election process that has already begun. On the merits, they fall well short of establishing that traditional districting principles were subordinated to race, or that Proposition 50 was a racial, rather than partisan, gerrymander. As to equitable considerations, they do not even argue that overturning the votes of more than seven million voters and 64% of

California's electorate would be in the public interest. And they offer no persuasive argument for the Court to disregard the *Purcell* principle, which militates against making significant changes to an ongoing election process.

I. PROPOSITION 50 DOES NOT SUBORDINATE TRADITIONAL DISTRICTING PRINCIPLES TO RACE AND IS A PARTISAN, NOT RACIAL, GERRYMANDER

The merits case of Applicants and the United States fails at several levels. They failed to overcome the presumption that the "legislature acted in good faith." *Alexander*, 602 U.S. at 6. They failed to show that the legislature subordinated traditional districting principles to racial considerations, indeed, they did not even try to do so. They failed to disentangle race from politics and show that race, and not partisanship, drove the legislature's decision-making. They failed to make these showings on a district-by-district basis—again, outside one district, District 13, they did not even try. They failed to prove racial, as opposed to partisan, intent because District 13 is one where Democratic partisan performance improved significantly while HCVAP slightly decreased. App.63-64. And they failed to show that more than seven million voters were driven by racial considerations; once again, they did not even try.

A. The standard for assessing racial gerrymandering claims is especially stringent

Racial gerrymandering cases begin with the presumption that the decisionmakers have acted in good faith. *Alexander*, 602 U.S. at 6. The "presumption of legislative good faith directs district courts to draw the inference that cuts in the legislature's favor when confronted with evidence that could plausibly support multiple conclusions." *Id.* at 10. That presumption of good faith "explains why [the Court has] held that the plaintiff's evidentiary

burden in these cases is *especially stringent*." *Id.* at 11 (emphasis added).

This Court's first two racial gerrymandering cases, *Shaw v. Reno*, 509 U.S. 630 (1993) and *Miller v. Johnson*, 515 U.S. 900 (1995), set forth the constitutional definition of a racial gerrymandering claim, and the two-step test that applies to such claims. In *Shaw*, the Court defined a racial gerrymander as a districting plan that "rationally cannot be understood as anything other than an effort to segregate citizens into separate voting districts on the basis of race without sufficient justification." *Shaw*, 509 U.S. at 633. Two years later in *Miller*, the Court set out the two-step test for evaluating racial gerrymanders under this standard. The first step requires a plaintiff to demonstrate that traditional districting principles were subordinated to race. *Miller*, 515 U.S. at 916. In other words, the plaintiff must show that the decisionmaker classified voters based on race such that the configuration of the district is "unexplainable on grounds other than race." *Id.* at 905 (quoting *Shaw*, 509 U.S. at 644). Only if a plaintiff can satisfy step one does the inquiry proceed to step two, where the defendant has the burden of demonstrating that the racial predominance in a particular district is narrowly tailored to further a compelling interest. *Id.* at 920.

In addition to these requirements—which apply in every racial gerrymandering case—a "State's partisan-gerrymandering defense . . . raises 'special challenges' for plaintiffs." *Alexander*, 602 U.S. at 9. "To prevail, a plaintiff must 'disentangle race from politics' by proving 'that the former *drove* a district's lines.' That means, among other things, ruling out the competing explanation that political considerations dominated the legislature's redistricting efforts." *Id.* at 9-10 (quoting *Cooper v. Harris*, 581 U. S. 285, 308 (2017)). "If either politics or race could explain a district's contours, the plaintiff has not cleared its

bar." *Id.* at 10.

B. This racial gerrymandering claim fails at the outset because there has been no attempt to satisfy the *Shaw*/*Miller* subordination test

Applicants' proof fails at the starting block. The first step in every racial gerrymandering case—even those where the plaintiff must clear the additional hurdle of overcoming a partisan gerrymandering defense—is demonstrating that the contested plan subordinated traditional districting principles to race. *Miller*, 515 U.S. at 916. But Applicants did not even try to satisfy that requirement here. Applicants were so eager to address California's partisan gerrymandering *defense*, that they never satisfied their threshold burden of establishing a racial gerrymandering *claim*.

Applicants provided no alternative maps or district-by-district analysis purporting to make any claims about any district other than District 13. App.46; *see Alexander*, 602 U.S. at 34. And even as to District 13, Dr. Trende does not assert that any traditional districting principles—compactness, core retention, communities of interest, and the like—were subordinated to race. Instead, he claimed only that race explains two distinct *segments* of District 13's boundaries. But, in doing this "blank slate" analysis of just two areas of District 13, Dr. Trende failed to address the small changes from the prior district, *Alexander*, 602 U.S. at 27, and failed to present the required analysis "of the district as a whole," *Bethune-Hill v. Virginia State Bd. of Elections*, 580 U.S. 178, 192 (2017). Applicants' other evidence—isolated and acontextual statements by the mapmaker and individual legislators—likewise have nothing to say about the subordination of traditional districting principles.

Indeed, all evidence is to the contrary. The Proposition 50 plan and the prior plan are "similarly compact." App.206-07. The district court found that the Proposition 50 map was "designed to minimize disruption to the 2021 Map." App.43-44. And the court likewise found that testimony from Dr. Ines Ruiz-Huston, "a very credible fact witness with an in-depth knowledge of the community," and Dr. Jonathan Rodden, showed that "a desire to keep communities of interest together" explained the contours of District 13. App.58-59. Meanwhile, "Dr. Trende acknowledged that he performed no analysis of any communities-of-interest factors," nor did he contend that District 13 subordinated any traditional redistricting criterion. App.59.

Thus, Applicants failed to clear their threshold burden of satisfying the standard *Shaw/Miller* racial gerrymandering test—that race predominated over traditional districting principles. Their exclusive focus on trying to defeat the partisan gerrymandering defense put the partisan gerrymandering cart before the racial gerrymandering horse. In *Alexander*, the Court made clear that, in cases where Defendants assert a partisan gerrymandering defense, the traditional *Shaw/Miller* test still remains in place—plaintiffs just have the "special challenge" of *also* overcoming a partisan gerrymandering defense. 602 U.S. at 7-9. Indeed, in *Alexander* itself, the Court addressed traditional districting principles, including compactness, contiguity, and core retention, in addition to analyzing race and partisanship, to determine that race did not predominate. *Id.* at 26-27. Applicants' racial gerrymandering claim therefore fails on the merits even without considering their purported evidence that race better explains the Proposition 50 Map than does partisanship in certain areas of District 13 or anywhere else.

C. The district court properly found that the Legislature intended a partisan gerrymander, not a racial gerrymander

Even if Applicants had shown that the Proposition 50 map subordinated traditional districting principles—and they did not even try to do so—they would still need to show that race, not politics, drove the district's lines. They did not come close. As the district court found, overwhelming evidence shows that achieving a partisan result was the objective of the voters, the Legislature, and the mapmaker. And although Applicants assert that the district court only considered the intent of the voters, and not of the Legislature or Mitchell himself, Emergency Application at 14, that is patently wrong. The district court made its findings clear: "[W]e do not shy away from examining the intent of Paul Mitchell and the legislature, because taking either path leads to the same destination: a partisan gerrymander." App.45.

The evidence of Proposition 50's predominant partisan purpose is far *stronger* here than in *Alexander*. In *Alexander*, a Republican-led Legislature kept its partisan intent below the radar during the Legislative debate. The bill's sponsor, Senator Campsen, focused on how the bill united two counties that had previously been split within a single district, while expressly disclaiming that the plan was a partisan gerrymander. *South Carolina State Conf. of the NAACP v. Alexander*, 649 F. Supp. 177, 188 (D.S.C. 2023); *Alexander*, 602 U.S. at 79 (Kagan, J., dissenting). Still, this Court reversed the district court and concluded, notwithstanding the disclaimer of partisanship, that the map was a partisan gerrymander, relying on three main factors: (1) contextual evidence for the redistricting initiative; (2) decisionmakers' explicit statements about the purpose of the plan; and (3) evidence of the plan's partisan impact relative to its racial impact. *Alexander*, 602 U.S. at 13-24. All

the same evidence of partisan gerrymandering exists here—to a significantly greater degree than in *Alexander*. And there are additional categories of evidence here, most notably the statutory text and statements in the voter guide, that were not present in *Alexander* and provide even more evidence of partisan motivation.

First, the context for the Proposition 50 plan was unequivocally partisan. It is undisputed that California began its 2025 redistricting process in response to Texas's Congressional redistricting that added Republican seats. In August 2025, Texas enacted a Congressional redistricting plan that would become effective for the 2026 midterm election and add five Republican districts. App.4. California's leading Democratic officials responded swiftly. On August 8, 2025, California's Democratic Governor posted a video where he announced: "We will nullify what happens in Texas. We will pick up five seats with the consent of the people." App.5. The next day, California Assembly Speaker Robert Rivas issued a press release stating that he and other California Democrats were prepared to "fight back against Trump's redistricting power grab." App.5. And less than a week later, Governor Newsom and the Legislature introduced the three-bill legislative ERRA package to create the Proposition 50 Map. App.5. That context is powerful evidence that partisan aims drove the redistricting process.

Second, the statements of legislators and other political actors confirm Proposition 50's partisan objective. As noted, in *Alexander* the Court found a partisan gerrymander despite a relative *dearth* of contemporaneous public statements by legislators. In this case, there is a *deluge* of comments from legislators and other advocates—both those who

supported Proposition 50 and those who opposed it—making clear that the intent behind Proposition 50 was partisan.

Start with a sampling of proponents' statements. The district court found that "Assembly member Marc Berman introduced ACA 8 by stating, 'ACA 8 is before you today because President Trump and Republicans in Texas and other states across the country are attempting to redraw congressional districts mid-decade in an effort to rig the upcoming election.'" App.6. Assemblymember Robert Garcia similarly characterized ACA 8 as necessary "only because Republicans force partisan maps on voters in other states." App.6. Senator Sasha Renée Pérez emphasized that ACA 8 would "allow us to neutralize what is happening in Texas so that we can create an additional five Democratic seats to stop this mess and stop this chaos." App.6. And these statements go on and on: the district court also cited "dozens of social media posts by Governor Newsom and other members of the California Legislature supporting the measure, all of which present the map to voters as a partisan gerrymander." App.30.

Opponents likewise criticized Proposition 50 as a partisan gerrymander. Lead Applicant Tangipa was as vocal about this as anybody. On the Assembly floor, he criticized a Democratic colleague for "brazenly admit[ting] that this entire thing was about partisan gerrymandering," App.6, a single comment that reflects both the partisan motivation of the legislative proponents, and the partisan source of his opposition. Tangipa also "publicly described Proposition 50 as 'partisan gerrymandering' and a 'power grab' that 'eliminate[d] five Republican districts & strengthen[ed] Democrat held seats.'" App.3. He then launched a website entitled "Defeat Prop 50," characterizing Proposition 50 as a "unilateral decision

to redraw Congressional maps, eliminate five Republican districts, & strengthen Democrat held seats." App.8. The website warned that Proposition 50 would prevent Republicans from retaking District 13 or District 21, "two of the best pickup options for Republicans in the country." App.8. On social media, Assembly member Tangipa urged voters to "step up" to vote "NO on Prop 50" because "one of the map's OWN authors admitted: 'this is partisan gerrymandering.' They don't care about communities of interest—only power." App.8-9.

Both major political parties agreed. The California Democratic Party advocated for Proposition 50 as "negat[ing] the five Republican seats drawn by Texas" since "[u]nder the proposed lines, Democrats could gain up to 5 seats in the U.S. House of Representatives." App.3. Meanwhile, the Applicant Republican Party opposed Proposition 50 as a "political power grab to help Democrats retake Congress and impeach Trump." App.3.

All these contemporaneous statements—which are "direct evidence" of the intent behind Proposition 50—are categorical and unrebutted: Proposition 50 was motivated above all else by partisan aims. *Alexander*, 602 U.S. at 19. And at the same time, legislators' statements provide "no direct evidence of a racial gerrymander" whatsoever. *Id.* at 18. As the district court put it: This conclusion is "obvious to anyone who followed the news in the summer and fall of 2025." App.2; *cf. Abbott*, 2025 WL 3484863, at *1 (Alito, J., concurring) (the "impetus" for the adopted map in California "was partisan advantage pure and simple").

Third, the partisan impact of the plan, especially as compared to its racial impact, is additional strong evidence of the partisan goal. The district court found that "everyone agrees" the Proposition 50 Map is likely to "flip five congressional seats from Republicans

to Democrats," App.2, while at the same time bolstering Democrats in several other toss-up or lean-Democrat districts. App.39-40. Lead Applicant Tangipa agreed, publicly describing Proposition 50 as "partisan gerrymandering" and a "power grab" that "eliminate[d] five Republican districts & strengthen[ed] Democrat held seats." App.3. Even Applicants' map-drawing expert Dr. Trende stated that the plan "*was drawn* with partisan objectives in mind; in *particular it was drawn to improve Democratic prospects* in congressional elections in the state, and to increase the share of seats that they would expect to win in an election." App.40. Meanwhile, there is no similar racial impact. The Proposition 50 Map has the same number of majority-Hispanic districts—sixteen—as the Commission Map. App.204.

The same holds true for District 13. It is undisputed that Democratic performance in District 13 increases by approximately three percentage points under the Proposition 50 map. App.41-42. That partisan difference is more than *double* the gain that was evidence of partisan motive in *Alexander*. 602 U.S. at 15. By contrast, District 13's HCVAP *slightly decreases* under the Proposition 50 map, an inexplicable change for a district purportedly drawn to increase Hispanic voting power. App.63.

Finally, there is additional direct evidence here that did not exist in *Alexander*: The text of Proposition 50 and the Voter Information Guide. *Cf. King v. Burwell*, 576 U.S. 473, 486 (2015) ("We begin with the text" in examining legislative intent). The text of ACA 8, which was presented to voters in the Voter Information Guide, reads: "President Trump and Republicans are attempting to gain enough seats through redistricting to rig the outcome of the 2026 United States midterm elections," and that "it is the intent of the people

that California's temporary maps be designed to neutralize the partisan gerrymandering being threatened by Republican-led states." App.29.

Consistent with that purpose, the Ballot Label provided to voters identifies the measure as "AUTHORIZ[ING] TEMPORARY CHANGES TO CONGRESSIONAL DISTRICT MAPS IN RESPONSE TO TEXAS' PARTISAN REDISTRICTING." App.33. The arguments for and against the measure in the Voter Information Guide reflect the same theme. The Argument in Favor of Proposition 50 states that the Proposition is a response to a partisan power grab from President Trump. App.9. The Rebuttal to Argument In Favor of Proposition 50 urges voters to "Vote NO on partisan gerrymandering. Vote NO on Proposition 50." App.9. Indeed, contrary to the argument Applicants advance now that Proposition 50 favors Latino voters, opponents to Proposition 50 previously claimed it would *harm* voters of color. In the "Argument Against" Proposition 50 in the Voter Information Guide, an opponent stated: "When politicians gerrymander, they divide our neighborhoods and weaken the voice of communities of color." App.37. Opponents continued the argument in their Rebuttal, contending "that after the Commission began drawing maps, 'Women in the Legislature doubled, Asian representation tripled, Black representation nearly doubled, and Latino seats grew by 8%.'" App.37.

All this provides far more robust and far more direct evidence of partisan purpose than anything present in *Alexander*.

D. Applicants' meager evidence does not show a racial gerrymander

Ultimately, Applicants and the United States' evidence of racial gerrymandering comes down to (1) the fact that the plan keeps sixteen majority-Hispanic districts; (2) three statements made by the mapmaker in interviews after the Legislature passed Proposition 50; and (3) the testimony of Dr. Trende—a witness who previously opined the Proposition 50 plan was a "partisan" gerrymander.

Majority-Hispanic Districts. On the 15 districts Applicants challenge outside of District 13, Applicants provide no district-specific evidence. But Applicants—like any plaintiff—are required to present evidence of racial gerrymandering "district-by-district." *Ala. Leg. Black Caucus v. Alabama*, 575 U.S. 254, 262 (2015). Moreover, the mere fact that the districts are majority-Hispanic is far from sufficient to establish a racial gerrymandering claim. *See generally Miller*, 515 U.S. at 916 ("a plaintiff must prove the….subordinat[ion of] traditional race-neutral principles…."). At any rate, the Proposition 50 Map has the same number of majority-Hispanic districts as the Commission Map, and Applicants and the United States presented no analysis demonstrating how the sixteen majority-Hispanic districts in the Proposition 50 Map are meaningfully different from the sixteen majority-Hispanic districts in the Commission Map, which no one contends was a racial gerrymander. It is telling—and fatal to Applicants' statewide claims—that Dr. Trende opined only that District 13 was racially gerrymandered, App.48, and equally telling that the United States limits its racial gerrymandering claim to District 13, App.12 n.5.

Mapmaker Intent. Applicants and the United States make a series of arguments with respect to mapmaker Paul Mitchell, but they are smoke and mirrors. They elevate him

to a status above the actual decisionmakers—the Legislature and the seven million voters who voted for the Proposition 50 Map. The United States implicitly suggests that the mapmaker's intent, and not the Legislature's intent, matters by stating the Legislature "endorsed" a map "created by an outside mapmaker." U.S. Response at 1. But the suggestion that the Legislature merely "endorsed" the map is patently false. By law, for Proposition 50 to go onto the ballot, the Legislature had to introduce a legislative package and pass it through votes of both the Assembly and the Senate. Indeed, the record confirms that the Legislature modified Mitchell's proposed map prior to passage. App.402 (describing "changes made" to the submitted "map before it was put on the ballot"). Even lead Applicant Tangipa blamed Proposition 50 on his fellow legislators, criticizing them for "brazenly admit[ing] that this entire thing was about partisan gerrymandering." App.6.

The Court's standard for determining whether race predominated in a redistricting plan passed by a legislative body focuses on the intent of that body—not the mapmaker. *See, e.g.*, *Alexander*, 602 U.S. at 6 (emphasis added) ("[I]f a *legislature* gives race a predominant role in redistricting decisions, the resulting map is subjected to strict scrutiny and may be held unconstitutional.") (emphasis added); *Miller*, 515 U.S. at 916 (A racial gerrymandering "plaintiff must prove that the *legislature* subordinated traditional race-neutral districting principles, including but not limited to compactness, contiguity, and respect for political subdivisions or communities defined by actual shared interests, to racial considerations.") (emphasis added).

While there are certainly cases where examining the mapmaker's motivations and actions is relevant, such considerations are still in service of determining the intent of the

Legislature. The United States cites two cases regarding mapmaker intent, *Cooper* and *Alexander*. U.S. Response at 9-10. In both cases, the Court treated evidence regarding the mapmaker's intent as corroborating evidence of the Legislature's intent; these cases did not attribute independent significance to the mapmaker's personal intent. *See Cooper*, 581 U.S. at 300 (The legislature's mapmaker followed legislators' "directions to the letter."); *Alexander*, 602 U.S. at 14 (The mapmaker "moved a series of precincts in Charleston from District 1 to District 6. In keeping with the legislature's partisan objectives, the precincts moved out of District 1 had a 58.8% Democratic vote share.").

In any event, as the district court found, Mitchell had the same partisan intent as the Legislature. App.45. The DCCC hired Mitchell and submitted his draft map which, as subsequently modified by the Legislature, became the Proposition 50 Map. App.2. It strains credulity that Mitchell would draw a map that did not have a partisan purpose given that a partisan organization hired him to achieve a partisan outcome. Mitchell himself made that clear: In his documents discussing the map, he states that the "goal" of the plan was "flipping five . . . districts" from Republican to Democrat "while also bolstering Dems" in ten toss-up or Democrat leaning districts. App.39-40 (brackets omitted).

Nevertheless, Applicants hinge virtually their entire case on three of Mitchell's statements. Emergency Application at 19. Those "meager" statements—which Applicants remove from all recognizable context and adorn with hyperbole—do not come close to providing "direct evidence of a racial gerrymander." *Alexander*, 602 U.S. at 34.

The first statement Applicants identify is Mitchell's observation that the map would "ensure that the Latino districts . . . are bolstered in order to make them most effective,

particularly in the Central Valley." Emergency Application at 19. Applicants take that statement entirely out of context. Mitchell made this statement during an interview only *after* the host asked him, "what should *Latino voters* pay the most attention to when it comes to . . . these Prop. 50 maps," and specifically instructed him to "*keep it nonpartisan*." App.243 (emphasis added). Mitchell explained in response that Latino districts would be "bolstered" in the "Central Valley," while caveating that he was tailoring his answer so as not "to be too political or partisan." App.245. Thus, this statement is about the map's *effect*, in response to a question about the map's significance *to Latino voters*, in a context where Mitchell was expressly instructed *to be non-partisan,* that does not even reference District 13 *at all*. It makes no sense to infer Mitchell drew District 13, or any other District, for racial, rather than partisan, purposes because of his response to a question he was directed to answer in racial, rather than partisan, terms. Indeed, when Mitchell discussed Proposition 50 without these constraints, he made explicit that the "goal" was "flipping five . . . districts" for Democrats—including District 13. App.39-40.

Applicants point next to a tweet stating that the "proposed Proposition 50 map will further increase Latino voting power" and "adds one more Latino influence district." Emergency Application at 19. But those were not *Mitchell's* statements: they were the statements of *a third-party* interest group that Mitchell quoted, and they also describe only the *effects* of the map while saying nothing about Mitchell's *intent* in drawing it. App.261. And "where race and partisan preferences are very closely tied, as they are here . . . it is obvious that any map with the partisan breakdown that the legislature sought . . . would inevitably involve" an increase in Latino voting power as a result of the increase in Democratic voting

power. *Alexander*, 602 U.S. at 20. So Mitchell's statement is simply an accurate comment on the plan's impact that says nothing about his motivation while drawing it.

The last statement Applicants cite is Mitchell's comment 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." Emergency Application at 19 (quoting App.76, 238-39). But Mitchell explained in his deposition that he "started thinking about" that district, which is "wholly unchallenged" and nowhere near District 13, only because he was aware of it from a 2021 proposal and knew that "using it would be an 'easy' way to 'pick up a democratic seat.'" App.42 n.17. Then, in a portion of the interview Applicants fail to cite, Mitchell went on to explain that he drew the map "*in order to create a push back to what Texas was doing, an opportunity for Democrats to pick up five seats, and to counterbalance the five Republican seats in Texas*." App.241 (emphasis added). That partisan goal was the driving purpose of Mitchell's plan, and Applicants may not "repackage" his statements as racial rather than partisan by ignoring the context in which they were made. *Alexander*, 602 U.S. at 21.

Dr. Trende. Applicants' last evidence of a purported racial gerrymander comes from Dr. Trende. His expert report identifies two areas where the Legislature could have made District 13 more Democratic and less Hispanic: (1) an area near the cities of Modesto and Ceres, where District 13 shares a boundary with District 5, and (2) an area in and near Stockton, where District 13 shares a boundary with District 9. App.50-59. He then presents three alternative maps where he makes changes that he claims show a more Democratic, less Hispanic district could be achieved. App.59-60.

But Dr. Trende's report displays the precise flaw the Supreme Court identified in *Alexander*: He provides an analysis "that do[es] not replicate the myriad considerations that a legislature must balance as part of its redistricting efforts." *Alexander*, 602 U.S. at 24 (quotation omitted). Without more, such a report "cannot sustain a finding that race played a predominant role in the drawing" of a district's lines. *Id.* The Court in *Alexander* discounted each of the four expert reports in that case by pointing out where they were incomplete. *Id.* at 24-33.

Dr. Trende fares no better. App.61-63. He identifies no traditional districting principle that is subordinated in District 13, even though that is part of the test for establishing a racial gerrymander. He does no analysis comparing the Proposition 50 Map to the Commission Map, even though the Court explained in *Alexander* that "[l]awmakers do not typically start with a blank slate; rather, they usually begin with the existing map and make alterations to fit various districting goals." 602 U.S. at 27. And he provides no full alternative map, even though *Alexander* requires it. *Id.* at 34-35. All that is telling, in particular because a comparison between the prior map and the Proposition 50 Map would have revealed that the racial demographics of District 13 were essentially unchanged. Though looking at portions of a district can be relevant to the racial gerrymandering question, the ultimate question is whether the district as a whole is racially gerrymandered. *Bethune-Hill*, 580 U.S. at 192. And where the racial demographics of a district have remained constant

and the political performance has changed, as here, that demonstrates a partisan gerrymander, not as racial one. *Alexander*, 602 U.S. at 20-21.[1]

Most of Dr. Trende's analysis focuses on the Stockton area and his claim that the plan could have been drawn to make it more Democratic. There are at least two non-racial explanations why the Legislature did not do this. The first explanation was purely partisan. As the district court found:

> [B]y excluding certain heavily Democratic areas from District 13, they remain in District 9, another "competitive seat." (Grofman Report ¶¶ 16–17, Ex. 184; Rodden Report at 23, Ex. 207.) Accordingly, the intent to "shore up" Democratic votes in District 9 could explain why District 13 bypasses those same votes. (Grofman Report ¶ 16, Ex. 184.) . . . . But here, because District 9 voted Republican in the 2024 presidential election (*see* Grofman Report ¶ 17, Ex. 184), the increased Democratic vote share in District 9, even at the expense of District 13, could reflect a strategic partisan decision. We therefore cannot "rul[e] out the competing explanation that political considerations" drove the inclusion of Democratic voters in District 9. *Alexander*, 602 U.S. at 9.

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[1] The United States claims that Mitchell created a target range between 52-54% HCVAP for majority-Hispanic districts based on a letter that an advocacy group sent to the redistricting commission in 2021 and his relationship with the group, and that this alleged targeting is evidence of a racial gerrymander. U.S. Response at 10-11. While the Court has found that the existence of a specific racial target might be evidence of a racial gerrymander, *see Bethune-Hill*, 580 U.S. at 182-92, those facts are not present here. In *Bethune Hill*, it was undisputed that the legislature decided that certain districts needed to have at least a 55% black age voting population ("BVAP"). *Id.* at 184. Here, as the district court found, Mitchell denied having a Hispanic population target, App.42, and there is no evidence that the Legislature had any racial targets. Instead, this case is akin to *Alexander*, where the Court reversed the district court's determination that there was a racial gerrymander based on a 17% BVAP target for two reasons: (1) there was no express target and the district court improperly inferred such a target, and (2) there was evidence that the district's BVAP was a side effect of the partisan goal given the correlation between race and partisan performance. 602 U.S. at 20-21. Here, there was no evidence of an express population target and Applicants acknowledge that a majority of Hispanics vote for Democrats. App.157.

App.57-58. Dr. Trende's maps, by contrast, extended the borders of District 13 to land practically next door to Congressman Harder's residence in District 9, and reduced Democratic performance in District 9, which would increase the vulnerability of that Democratic candidate. App.62. Because that would make no sense for a Legislature intending a statewide partisan gerrymander, Dr. Trende's plans fail to demonstrate that the Legislature chose race over partisanship.

The second nonracial explanation the court identified was that the Proposition 50 Map in District 13 better maintained communities of interest, a traditional redistricting principle, *Miller*, 505 U.S. at 916, than Dr. Trende's alternatives. App.58-59. Dr. Ines Ruiz-Huston, "a very credible fact witness with an in-depth knowledge of the community," testified that areas of north Stockton included in District 13 in the Proposition 50 Map, and excluded from Dr. Trende's alternative maps, shared a community of interest with the south Stockton area of District 13 because "they contain working-class families who share resources with and are otherwise connected to south Stockton." App.58. Conversely, Dr. Ruiz-Huston testified that areas Dr. Trende included in his District 13 alternatives, but that are excluded in the Proposition 50 map, do not share a community of interest with south Stockton. They are "separated from the areas of south Stockton within District 13 by Interstate-5" and they "are more suburban, more educated, and wealthier than south Stockton." *Id.* Given that the "presumption of legislative good faith directs district courts to draw the inference that cuts in the legislature's favor when confronted with evidence that could plausibly support multiple conclusions," *Alexander*, 602 U.S. at 10, the district court properly accepted these nonracial explanations for the district boundaries of District 13 instead of

the racial explanation offered by Dr. Trende. Applicants' contrary conclusions are "flatly inconsistent with that presumption." *Id.* at 20.

E. It is uncontested that the voters intended a partisan, and not racial, gerrymander

Applicants and the United States do not even try to establish that the intent of the voters who voted in favor of Proposition 50 was racial and not partisan. And indeed, proving the discriminatory intent of a statewide electorate is a challenging task that typically requires evidence that the text of the initiative and nature of the campaign focused on racial issues. *Washington v. Seattle Sch. Dist. No. 1*, 458 U.S. 457, 471 (1982). The district court here correctly found that "there is voluminous and overwhelming evidence in the record indicating that the voters intended the Proposition 50 Map to be a partisan gerrymander." App.37.

Here, the language of Proposition 50 does the opposite, specifically stating that it is a partisan gerrymander. Its text proclaims that: "'President Trump and Republicans are attempting to gain enough seats through redistricting to rig the outcome of the 2026 United States midterm elections,' and that 'it is the intent of the people that California's temporary maps be designed to neutralize the partisan gerrymandering being threatened by Republican-led states.'" App.29. Indeed, Proposition 50 even "added amended language to the state Constitution that expressly stated the mid-cycle redistricting was '[i]n response to the congressional redistricting in Texas in 2025.'" App.29-30. As the district court found, "the text of the initiative is clear and unambiguous" that it was intended "to respond to *partisan*

redistricting in Texas." App.30.[2] And the campaign was no different: The arguments for and against Proposition 50 in the Voter Guide focus on its partisan impact, and only discuss race when *opponents* of Proposition 50 claim it will *hurt* racial minorities—the opposite of the argument Applicants and the United States make here. App.36-37. Neither Applicants nor the United States submitted a shred of evidence that more than seven million voters voted for Proposition 50 for racial reasons.

* * *

For all these reasons, Applicants and the United States fail on the merits, and come nowhere near the elevated "indisputably clear" standard for an extraordinary writ.

II. THE EQUITIES FAVOR MAINTAINING THE STATUS QUO AND DENYING THE REQUEST FOR A WRIT OF INJUNCTION

Applicants' characterization of the relief they seek—"a narrow injunction pending appeal," Emergency Application at 3, "limited, interim relief," *id.*, a "narrow return to *status quo ante*," *id.* at 26—betrays a fundamental misunderstanding of how extraordinary the relief they seek is. They also fail to recognize how disruptive it would be to change the Congressional districting plan now, despite previously claiming that the districting plan for the 2026 election would need to be resolved by December 19, 2025.

Applicants completely fail to show that an injunction would vindicate the public interest. As discussed, the nature of the relief Applicants and the United States seek—an extraordinary writ requesting an injunction that has been denied by a lower court—is extraordinary and rarely granted. And the relief Applicants seek is the opposite of limited

[2] The United States contends that Proposition 50 was not racially neutral on its face. U.S. Response at 22. That is plainly false.

and narrow: It would change the Congressional redistricting plan for the upcoming election in the most populous state in the country, a redistricting plan that seven million people cast a ballot in favor of. Though there may be circumstances where the public interest would be served by negating the vote of over seven million people comprising more than 64% of the electorate, that burden is not met here. The harm that would result from the imposition of an injunction to the millions of California voters who voted for Proposition 50 far outweighs any harm Applicants might experience under the current map as they continue their appeal. Neither Applicants nor the United States attempt to address how the initiative vote factors into the public interest.

Applicants also face an additional insurmountable barrier: the *Purcell* principle. *Purcell* creates a presumption against last-minute changes that would create voter confusion and administrative chaos before an election. 549 U.S. at 4-5. In *Merrill v. Milligan*, the Court applied *Purcell* to stay a lower court preliminary injunction of a just-enacted Congressional map. 142 S. Ct. 879 (2022). In his opinion concurring with the Court's unsigned order, Justice Kavanaugh, joined by Justice Alito, explained the *Purcell* principle:

> [T]he traditional test for a stay does not apply (at least not in the same way) in election cases when a lower court has issued an injunction of a state's election law in the period close to an election. *See Purcell*, 539 U.S. 1. This Court has repeatedly stated that federal courts ordinarily should not enjoin a state's election laws in the period close to an election, and this Court in turn has often stayed lower federal court injunctions that contravened that principle.
>
> That principle—known as the *Purcell* principle—reflects a bedrock tenet of election law: When an election is close at hand, the rules of the road must be clear and settled. Late judicial tinkering with election laws can lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others.

Milligan, 142 S. Ct. at 880-81 (Kavanaugh, J., concurring) (cleaned up).

Justice Kavanaugh went on to find that the *Milligan* plaintiffs could not "overcome even a more relaxed version of the *Purcell* principle" because they could not demonstrate that the "merits [were] clearcut in favor of the plaintiff, and that the changes [were] feasible without significant cost, confusion, or hardship." *Id.* at 881-82. Notably, when the Court addressed the merits in *Milligan* the following term, it affirmed the district court's finding of liability. *See Allen v. Milligan*, 599 U.S. 1 (2023). This reflects that even when plaintiffs have a strong case on the merits—which Applicants here lack—they *still* are not entitled to enjoin a redistricting plan during the course of an election.

More recently, this Court stayed the three-judge district court's preliminary injunction of Texas's 2025 Congressional redistricting plan. In doing so, the Court again invoked the *Purcell* principle:

> Texas has also made a strong showing of irreparable harm and that the equities and public interest favor it. "This Court has repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election." *Republican National Committee v. Democratic National Committee*, 589 U. S. 423, 424 (2020) (*per curiam*). The District Court violated that rule here. The District Court improperly inserted itself into an active primary campaign, causing much confusion and upsetting the delicate federal-state balance in elections.

Abbott, 2025 WL 3484863, at *1.

Applicants and the United States try to distinguish *Abbott* by claiming that an active primary campaign had begun in Texas but has not yet begun here. Emergency Application at 30-32; U.S. Response at 24-25. But, as with their merits claim, Applicants reverse positions when it suits them. In their motion for preliminary injunction, Applicants stated that candidates "must know where the congressional districts are located in order to run for office starting on December 19, 2025." App.163. This is because—as Applicant Ching

testified—on December 19, candidates began collecting petition signatures to qualify for the ballot. App.296. And there were other aspects of the election process that began for candidates on December 19, including filing $5,000 Contribution reports, verification of independent expenditure forms, and candidate intention statements. *Id.* An active primary campaign is well underway in California now.

Applicants also argue that *Purcell* does not apply because *Purcell* dealt with a change in election procedure weeks before the election, whereas the California primary is months away. Emergency Application at 30-32. Although *Purcell* itself dealt with an order that enjoined a newly enacted voting change a month before the election, the Court has since applied *Purcell* to stay injunctions ordered several months before the election, including in *Milligan* and *Abbott*. Applicants fail to explain how changing the Congressional plan now would avoid disruption to election administrators, voters, and candidates in the ongoing primary. The best Applicants can come up with is that there have been special elections to fill vacancies and that Proposition 50 itself was placed on the ballot on a shorter time frame. Emergency Application at 30-32. But there is a clear difference between a state voluntarily deciding to fill single-seat vacancies or placing a proposition on the ballot on a short time frame and a federal court imposing election rule changes in a statewide redistricting plan: "It is one thing for a State on its own to toy with its election laws close to a State's elections. But it is quite another thing for a federal court to swoop in and re-do a State's election laws in the period close to an election." *Milligan,* 142 S. Ct. at 881 (Kavanaugh, J., concurring). And all these same arguments would have applied with equal force to Texas.

Nor do the cases the United States cites urging that an injunction would comply with *Purcell* support the argument for the relief it seeks. U.S. Response at 24-25. *RNC v. Genser*, 145 S. Ct. 9 (2024) and *Berger v. North Carolina State Bd. of Elections*, 141 S. Ct. 658 (2020) are state court cases, so the *Purcell* principle does not even apply. And in *Rose v. Raffensberger*, 143 S. Ct. 58 (2022), the Court sent the case back for remand and the lower court cancelled the election, which is not the remedy sought by Applicants and the United States here. *Rose v. Sec'y, State of Georgia*, No. 22-12593, 2024 WL 1710472 (11th Cir. Apr. 16, 2024).

Applicants and the United States cannot overcome the compelling equitable reasons for leaving the Proposition 50 Map in place—over seven million voters have demonstrated their interest in using the Proposition 50 Map, Applicants are far from establishing a clear cut case on the merits, and changing the entire Congressional redistricting map now would upend California's ongoing primary election.

III. LULAC IS ENTITLED TO HAVE THE OPPORTUNITY TO MOVE TO DISMISS

Citing *Milligan* and *Perry v. Perez*, 565 U.S. 1090 (2011), Applicants request that the Court treat their "application as a jurisdictional statement and note probable jurisdiction so that the parties may proceed directly to merits briefing." Emergency Application at 32-33.

LULAC objects to Applicants' request that the Court note probable jurisdiction without permitting LULAC the opportunity to move to dismiss under Rule 18.6. The circumstances in *Milligan* and *Perry* are not present here. In both cases, it was the State respondents defending the plan making the request, not the plaintiffs challenging the plan.

Milligan, 142 S. Ct. at 879-80; *Perry*, 565 U.S. 1090. In *Milligan*, the Court noted probable jurisdiction when it granted a stay, *Milligan*, 142 S. Ct. at 879-80, but Applicants here are not entitled to an injunction. In *Perry*, the Court noted probable jurisdiction and scheduled the case for full briefing and oral argument so the case could be resolved before the upcoming election, ultimately noting probable jurisdiction and issuing a decision 42 days later. *Perry v. Perez*, 565 U.S. 388 (2012). But it is undisputed that the timing in *Perry* would not work here. The Court should not note probable jurisdiction at this premature stage.

CONCLUSION

For the foregoing reasons, LULAC respectfully requests that the Court deny Applicants' Emergency Application for Writ of Injunction Pending Appeal.

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JANUARY 29, 2026