No. 25A839

IN THE

Supreme Court of the United States

DAVID TANGIPA, *et al.*,

Applicants,

v.

GAVIN NEWSOM, GOVERNOR OF CALIFORNIA, *et al.*,

Respondents.

ON EMERGENCY APPLICATION FOR A WRIT OF INJUNCTION PENDING APPEAL

BRIEF OF *AMICI CURIAE* PHILLIP CALLAIS, LLOYD PRICE, BRUCE ODELL, ELIZABETH ERSOFF, ALBERT CAISSIE, JOYCE LACOUR, CANDY CARROLL PEAVY, TANYA WHITNEY, MIKE JOHNSON, GROVER JOSEPH REES, AND ROLFE MCCOLLISTER IN SUPPORT OF APPLICANTS

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INTERESTS OF *AMICI CURIAE*

Amici curiae are Phillip Callais, Lloyd Price, Bruce Odell, Elizabeth Ersoff, Albert Caissie, Joyce Lacour, Candy Carroll Peavy, Tanya Whitney, Mike Johnson, Grover Joseph Rees, and Rolfe McCollister.[1] *Amici* are Appellees in *Louisiana v. Callais, et al.*, No. 24-109 (U.S.), and *Robinson, et al., v. Callais et al.*, No. 24-110 (U.S.), which are currently pending before this Court.

Like the State of California did here, the State of Louisiana violated the constitutional rights of *amici* through a racially gerrymandered congressional map. And like Applicants did here, *amici* presented evidence to a three-judge district court panel demonstrating that race predominated when the State of Louisiana drew its congressional map. But unlike Applicants' case, in *amici's* case, the three-judge district court applied the correct standard to find that the State of Louisiana's new map was an impermissible racial gerrymander and granted *amici's* request for injunctive relief.

Despite *amici's* early win, nearly two years have passed, and *amici* have yet to have their constitutional rights vindicated. Due to the State of Louisiana's reliance on *Purcell v. Gonzales*, 549 U.S. 1 (2006) (per curiam), for the 2024 election cycle, Louisianians were forced to vote under a plainly unconstitutional congressional map.

[1] No counsel for any party authored this brief, in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. Private Citizen made a monetary contribution to the preparation or submission of this brief. Apart from Private Citizen, amici curiae, or their counsel, no other person made a monetary contribution to the preparation or submission of this brief.

Given the related nature of the issues presented in the Emergency Application and in *amici's* pending case, *amici* have an interest in ensuring that Applicants have the opportunity to vote under a constitutional map in the 2026 election.

SUMMARY OF THE ARGUMENT

Beyond the reasons stated in the Emergency Application, the Court should grant an injunction pending appeal for two additional reasons. First, accepting California's invocation of *Purcell v. Gonzales*, 549 U.S. 1 (2006) (per curiam), to justify withholding emergency injunctive relief would confirm states' new favorite racial gerrymandering tactic. Banking on *Purcell*, states are enacting racial gerrymanders at the metaphorical end of regulation, hoping the buzzer will sound on litigation as early election-related dates loom on the calendar. This tactic must end. Second, as demonstrated by *amici's* pending case before this Court, states are using *Purcell* to force voters to operate for years under plainly unconstitutional congressional maps. But encouraging last-minute trick-plays—with years-long unconstitutional effects—is the exact opposite of the interest in election regularity and settled expectations that this Court originally sought to protect with *Purcell*. Where, as here, it remains possible to block an unconstitutional racial gerrymander, litigants should be allowed to play to the buzzer.

1. The California State Legislature rushed to approve a racially gerrymandered congressional map and put it to a popular vote in record time. Then, when Applicants immediately tried to challenge the new map as unconstitutional, the State deliberately caused delay. Whatever the precise contours of the Court's *Purcell* principle are, they certainly should not be twisted into a perverse incentive for the State to insert last-minute (and blatantly unconstitutional) chaos into its elections, then cause delay, and then insist that the Court stay out of it all. Granting

an injunction, rather than allowing *Purcell* to shield the State's unconstitutional actions, is the right result.

2. In hindsight, the years-long delay in relief in *amici's* similar litigation in *Callais* illustrates the problem with allowing a state to claim *Purcell* protection for plainly unconstitutional maps. *Amici* immediately challenged Louisiana's racial gerrymander in January 2024. However, after an initial victory in which the three-judge district court panel found that Louisiana had violated *amici's* constitutional rights, defendants used *Purcell* to run out the clock based on their dubious claims about the timing of that election cycle. Now, even after the State of Louisiana conceded that it drew its congressional map based on race, *amici* have yet to have their rights vindicated. As a result, Louisianans have been forced to vote under a racially gerrymandered map for one congressional election, with another looming on the horizon. This unfortunate result counsels caution in applying *Purcell*.

ARGUMENT

I. *Purcell* Should Not Apply Where the State's Own Actions Upended Settled Expectations and Forced Emergency Litigation.

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, 880-81 (2022) (Mem) (Kavanaugh, J., concurring in grant of applications for stays). After all, "[u]nclear rules threaten to undermine [the electoral] system. They sow confusion and ultimately dampen confidence in the integrity and fairness of elections." *Republican Party of Penn. v. Degraffenreid*, 141 S. Ct. 732, 734 (2021) (Mem) (Thomas, J., dissenting from denial of certiorari). Thus, when a state's rules are clear and settled, "[l]ate judicial tinkering with election laws can lead to disruption and to unanticipated and unfair consequences," *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring in grant of applications for stays), such as "voter confusion and consequent incentive to remain away from the polls." *Purcell*, 549 U.S. at 4-5.

But here, for several reasons, *Purcell* does not apply. First, California's new laws are far from "clear and settled." The State engaged in mid-decade, expedited, and unexpected redistricting. Any voter confusion and ensuing chaos are the State's fault. Second, after swiftly overturning the apple cart, the State Respondents then stalled Applicants' resulting legal challenge. On these facts, the types of concerns addressed in *Purcell* are a product of the State Respondents' own undue delay—not delay by the Applicants or courts. Third, the requested remedy of an injunction

pending appeal is "feasible before the election without significant cost, confusion, or hardship" and requires no "judicial tinkering" with maps. *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring in grant of applications for stays). No relevant election deadlines have yet to pass, and California is far from the "eve of an election." *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U.S. 423, 424 (2020) (per curiam) (citations omitted). The schedule alone provides sufficient reason to reject any *Purcell* concerns. Finally, an injunction is necessary because, as explained in the Emergency Application, the merits clearly favor the Applicants, the Applicants will suffer irreparable harm from use of the Prop 50 map in the 2026 election, and the Applicants have sought expeditious resolution at every turn. *See generally* Emergency Application; *cf. Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring in grant of applications for stays).

A. The State created chaos with its mid-decade redistricting.

To the extent there is any confusion or chaos, it is plainly a result of the State's own expedited, mid-decade redistricting. *Cf. Degraffenreid*, 141 S. Ct. at 735 (Thomas, J., dissenting from denial of certiorari) (noting that "[c]hanging the [electoral] rules in the middle of the game" "is not a prescription for confidence"). If *Purcell* immunizes the State's unconstitutional gerrymander from relief in advance of the 2026 election because it was rushed through on a short fuse, then *Purcell* rewards strategic timing. But that is not *Purcell.* The doctrine was intended to protect against gamesmanship by plaintiffs, not to morph into a vehicle for the exact same gamesmanship by states.

Following the 2020 decennial census, the independent California Citizens Redistricting Commission completed its normal redistricting process pursuant to California Constitution Article XXI. The State used the resulting congressional map in its 2022 and 2024 congressional elections. The map never faced any constitutional challenge, and Paul Mitchell himself, the mapmaker charged with creating the 2025 congressional map underlying Proposition 50, stated that the map complied with the Voting Rights Act. Dkt. 29-1 at 3; Dkt. 28-2 at 50.[2]

Even though the State had no concerns with the map's lawfulness, in August 2025, the State expeditiously sought to enact a new map in advance of the 2026 election cycle. Less than four days passed from the first reading of the constitutional amendment and supporting legislation on August 18, 2025, to the final legislative vote on August 21, 2025. The California State Legislature even suspended procedural safeguards to expedite the process. As a result, legislators and members of the public had very little time to review amendments to the map and other bill changes before the final vote. The Governor quickly signed the bill package on August 21, 2025, leaving the public with just 75 days to review the constitutional amendment and map containing boundaries for 52 congressional districts in advance of the November 4, 2025, special election.

The whiplash of the State's recent changes to its congressional map has eliminated any possible clear or settled expectations for the 2026 election. As such,

[2] *Amici* cite documents available on the district court docket as "Dkt." followed by the docket number, "at," and page number(s) where applicable.

the public has no settled expectations, much less settled expectations that will be upset by a reversion to the preexisting status quo—*i.e.*, a map enacted through the normal constitutional procedure and used in the 2022 and 2024 elections.

B. The State has caused undue delay during the litigation.

After the State expedited the legislative process and the constitutional referendum, it shifted gears to slow this litigation. As a result, it may now argue that its unconstitutional map must remain in place for the 2026 election. *Purcell* does not protect such whipsawing.

Initially, the State Respondents and Applicants, along with then-existing other parties, filed a Joint Stipulation for an Order Shortening Time. Dkt. 17. The parties proposed a schedule where briefing on the preliminary injunction motion would conclude by November 17, 2025. Dkt. 17 at 4. Applicants requested, and the State Respondents did not expressly oppose, a hearing on the preliminary injunction motion between November 18, 2025, and November 24, 2025. Dkt. 17 at 1-2. As such, the State Respondents represented that they could prepare for a hearing as early as November 18, 2025. After several parties intervened, Applicants, State Respondents, and other parties proposed a new Joint Stipulation for an Order Shortening Time with preliminary injunction briefing to conclude by November 24, 2025. Dkt. 33 at 2-3. The State Respondents did not oppose Applicants' request for the court to issue an order on the preliminary injunction motions by December 5, 2025. Dkt. 33 at 2. The court adopted the joint proposed schedule and scheduled the preliminary injunction hearing to begin on December 3, 2025. Dkt. 38 at 2.

But then, almost week after the court's scheduling order and two days before State Respondents' briefing deadlines, State Respondents sought to extend the briefing deadlines; move the preliminary injunction hearing to January 20, 2026; and obtain discovery in advance of the hearing. Dkt. 71. As a result of State Respondents' eleventh-hour about-face, the court extended the briefing schedule, postponed the preliminary injunction hearing until December 15, 2025, and allowed the parties to proceed with limited discovery. Dkt. 81.

The Applicants, on the other hand, sought to avoid *Purcell* problems at every turn. They filed this lawsuit the day after the November 4 vote on Proposition 50. Dkt. 1. They were ready to file their application for a temporary restraining order on November 6, 2025, but postponed for a day upon request of the State Respondents to consider it. Dkt. 75 at 4. The Applicants filed a motion for a preliminary injunction the very next day, upon request from the State Respondents to file a preliminary injunction motion instead. *Id.* They worked with other parties to craft joint proposed schedules. *Id.* at 5. They opposed the State Respondents' attempts to go back on their word and delay the litigation. Dkt. 75.

Any timing crisis is one of the State's—not the Applicants'—own making. While normally *Purcell* rightly "discourages last-minute litigation and instead encourages litigants to bring any substantial challenges to election rules ahead of time, in the ordinary litigation process," those incentives do little to discourage a State's own extraordinary gamesmanship or to protect litigants, who do sue at the earliest opportunity, from the State's strategic maneuvers. *Democratic Nat'l Comm.*

v. Wis. State Legislature, 141 S. Ct. 28, 31 (2020) (Mem) (Kavanaugh, J., concurring in denial of application to vacate stay). The State should not receive *Purcell* deference because applying it here would only punish Applicants and reward the State for its rush-then-delay tactics.

C. The remedy is feasible and does not require judicial activism.

Finally, the requested remedy of an injunction pending appeal does not ask the Court to "re-do a State's election laws in the period close to an election." *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring in grant of applications for stays) (footnote omitted). For one, the Applicants only ask the Court to enjoin use of an unconstitutional map and allow Californians to vote under a legally enacted constitutional map while the litigation proceeds. That map was already in place for the past two elections and would have otherwise been used for the 2026, 2028, and 2030 elections. This remedy is far less intrusive than the remedy contemplated in *Purcell* and requires no "judicial tinkering" with maps. *Id.* Any changes are clearly "feasible before the election without significant cost, confusion, or hardship." *Id.*

Additionally, Applicants have requested this remedy well in advance of the election. As explained in the Emergency Application and the United States' Brief in Support, the election is months away and the first possible relevant date is February 9, 2026, unlike in *Purcell* where the election itself was weeks away. *See Purcell*, 549 U.S. at 4; Emergency Application at 30-32; United States' Brief at 24-25. That later February 9 deadline is one of several factors that distinguishes this case from *Abbott v. League of United Latin Am. Citizens*, 607 U.S. ___, No. 25A608 (2025).

There, the legislature passed its new map on August 29, 2025, long before election deadlines, by which time plaintiffs had already sued. A preliminary injunction hearing was held from October 1-10, 2025, but then the district court waited 40 days—until November 18, 2025, 10 days after the candidate filing period had already commenced, to issue an injunction. *See Abbott*, No. 25A608, Appendix to Application for Stay at 52. In contrast, in California, the Applicants were ready for a December 5th trial—still over two months before any early election deadline—and even now, no such deadline has passed.[3] Even if this Court disregarded all other arguments, this would be reason enough to reject the *Purcell* principle's application.

Moreover, if the State was not concerned about "voter confusion" when it gave voters 75 days to review a map redistricting 52 congressional districts prior to the public vote, the State cannot claim ensuing voter confusion this far in advance of the congressional election. Californians' familiarity with the map used for the 2022 and

[3] Judge Lee's dissenting opinion in the district court further details how the Applicants' situation is distinguishable from *Abbott*. *See* Appendix to Emergency Application at 114-15. Another aspect of *Abbott* warrants mention. In *Abbott*, the very first reason this Court cited to grant a stay was Texas's ability to satisfy the traditional criteria for interim relief, including the likelihood of success on the merits. The Court stated: "Texas is likely to succeed on the merits of its claim that the District Court committed at least two serious errors." *Abbott*, 607 U.S. ___ (slip op. at 1). The strength of Texas's case was front and center to the Court's decision. *See* United States' Brief at 9-22; *see also Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring in grant of applications for stays) (opining that the "*Purcell* principle [ ] might be overcome even with respect to an injunction issued close to an election if a plaintiff establishes…the underlying merits are entirely clearcut in favor of the plaintiff," among other factors). Put another way, in Texas, not only had the buzzer already sounded on plaintiffs, the merits were also on the State's side. By contrast, here, the merits are not on California's side and there is still time on the clock.

2024 elections actually alleviates any voter confusion the State generated through its mid-decade redistricting.

II. Louisiana's Two Years Under an Obvious Racial Gerrymander Present a *Purcell* Cautionary Tale.

Amici are Louisiana voters who filed a federal lawsuit challenging a racial gerrymander in Louisiana's congressional redistricting. They acted quickly, suing on January 31, 2024, a mere nine days after the map was enacted, and fought through intervenor-defendants' efforts at litigation delays to secure a favorable judgment on April 30, 2024. *Callais, et al. v. Landry, et al.*, No. 3:24-CV-00122-DJS-CES-RRS (W.D. La. 2024). Yet, because the defendants called a *Purcell* play to run out the clock, that gerrymander controlled the 2024 election cycle. It may even persist through the 2026 election.

This Court addressed Louisiana's law, SB8, when it recognized jurisdiction over the defendants' appeals of the judgment. *See Louisiana v. Callais, et al.*, No. 24-109 (U.S.); *Robinson, et al., v. Callais, et al.*, No. 24-110 (U.S.) (consolidated for briefing, oral argument, supplemental briefs, and rehearing). The record showed that SB8 drew a snake-like second Black-majority district that wound from Shreveport, Louisiana, 250 miles to Baton Rouge. Joint Appendix at 253a-255a, *Robinson, et al., v. Callais, et al.*, No. 24-110 (U.S. July 30, 2024) [hereinafter "J.A."]. That district barely topped 50% Black Voting Age Population, but only by linking two distant clusters of Black voters through long, "narrow swamp corridors," forming a demographic barbell. J.A. 168a-70a, 188a (quotation omitted); *see also Miller v.*

Johnson, 515 U.S. 900, 908 (1995). Direct evidence from the Louisiana State Legislature established that its "mission" was to "create two majority-Black districts," so race was the factor that could not be compromised. J.A. 497a. And finally, on rehearing of the appeal before this Court, Louisiana dropped all pretense that any other factors had predominated and admitted SB8 was a racial gerrymander. Supplemental Brief of Appellant Louisiana at 1, *Louisiana v. Callais, et al.*, No. 24-109 (U.S. Aug. 27, 2025). In reality, the fact of the racial gerrymander was never in serious question.

But while litigation progressed, *amici* and thousands of other Louisiana voters had to cast votes in racially gerrymandered districts in November 2024. Why? Because Louisiana and its fellow appellants invoked the *Purcell* doctrine to terminate remedial proceedings in the district court.

Again, the three-judge district court's judgment was issued on April 30, 2024. On May 7, 2024, that court, relying on statements Lousiana had made in an earlier litigation, set a schedule that would have yielded a remedial map by June 4, 2024, if Louisiana did not sooner pass its own remedial map. *See Callais*, Dkt. 219 at 3.[4] Defendant Secretary of State Nancy Landry had argued that notwithstanding the fact that Louisiana's primary election would not occur until November 2024, a remedial map must be in place by May 15, 2024. *Id.* at 2; *Callais*, Dkt. 217 at 6. The defendants then filed emergency applications to stay in this Court, renewing the

[4] *Amici* cite documents available on the *Callais* district court docket, No. 3:24-CV-00122-DJS-CES-RRS (W.D. La.), as "*Callais*, Dkt." followed by the docket number, "at," and page number(s) where applicable.

"deadline" arguments the district court had rejected. *See* Application for Stay, *Robinson, et al., v. Callais, et al.*, No. 23A994 (U.S. May 8, 2024); Application for Stay, *Landry, et al., v. Callais, et al.*, No. 23A1002 (U.S. May 10, 2024). On May 15, 2024, this Court granted a *Purcell* stay. This stay guaranteed that SB8's racial gerrymander would control Louisiana's 2024 congressional elections.

This Court later accepted jurisdiction of the defendants' appeals. After briefing and oral argument, the Court on June 27, 2025, restored *Callais* to the calendar for supplemental briefing and re-argument. Re-argument occurred on October 15, 2025. Now, as Louisiana's 2026 elections loom on the horizon, this Court's stay of the district court's May 2024 remedial proceedings continues to freeze an unconstitutional gerrymander in place.

The experience of *amici* is an apt case study. It indicates that just as often as the *Purcell* doctrine protects settled expectations in election procedures, it entrenches unconstitutional districts that legislatures draw up like trick plays at the end of regulation. No candidate or voter has time to develop settled expectations in these districts. To the contrary, it is often the *existing* districts—as in California and in Louisiana—that *were* the settled expectations, only to be upended by the States in rushed fashion. When used in those circumstances, *Purcell* grants a win to the last-second trick play rather than to the last settled and constitutional plan. Just as *Purcell*, in hindsight, should not have applied in Louisiana in 2024, and it definitely should not apply in Louisiana in 2026, neither should *Purcell* apply here. The

litigants should be able to use all their time when an unconstitutional racial gerrymander is at stake. This Court should let them play to the buzzer.

CONCLUSION

For the foregoing reasons, *Purcell* is no reason to deny the Applicants' request for an injunction pending appeal.

Respectfully submitted,

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