No. 25A839

IN THE

Supreme Court of the United States

DAVID TANGIPA, *et al.*,

Applicants,

v.

GAVIN NEWSOM, *in his official capacity as the Governor of California, et al.*,

Respondents.

DCCC'S RESPONSE IN OPPOSITION TO APPLICANTS' EMERGENCY APPLICATION FOR AN INJUNCTION PENDING APPEAL

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Per Supreme Court Rule 29.6, DCCC does not have a parent company and is not a publicly held company with a 10 percent or greater ownership interest in it.

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INTRODUCTION

During the legislative debate over Proposition 50, Assemblyman David Tangipa—the lead Applicant here—asked the legislation's co-sponsor about what was considered when drafting the measure. Her response did not mince words: "It's a partisan gerrymander. That's what we're talking about here. This is partisan politics . . . ." Ex. 453 at 245–46 (DCCC App. 386–87); *see also* Ex. 172 (DCCC App. 122).[1] Senator Gonzalez's frank answer made explicit what everyone in that committee room already knew: Prop 50 was an openly partisan effort to aid Democratic Party candidates in California as a counterbalance to similar efforts by the Republican Party in Texas. From Prop 50's conception last summer, up through election day and beyond, everyone in California—legislators, voters, the mapmaker, and even the Applicants—all understood that obvious fact, as a mountain of evidence in the record below proves again and again. Most notably, Applicants themselves vigorously campaigned against Prop 50's partisan motivations for months, with nary a mention of race.

On election day itself, the California electorate resoundingly endorsed this partisan effort, voting by a margin of nearly two-to-one in favor of Prop 50. Only then—once voters had passed Prop 50 into law and rejected appeals against its openly partisan aims—did Applicants turn on a dime to suddenly label the Prop 50 map a *racial* gerrymander, a claim that they and Prop 50's other opponents never made before the Legislature or voters. Their abrupt post-election day embrace of a racial-gerrymandering theory is readily explained—Applicants are playing the last card in their hand in view of this Court's holding in *Rucho v. Common Cause*, 588 U.S. 684 (2019), hoping to bluff this Court into "deliver[ing] [the] victor[y] that eluded them in the political arena," *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 11 (2024) (cleaned up). Yet even *after* filing this case, Applicants had difficulty keeping their new story straight. Assemblyman

[1] Citations to exhibits throughout this response refer to the parties' Second Amended Joint Exhibit List, ECF No. 176. These exhibits can be found in DCCC's supplemental appendix ("DCCC App.").

Tangipa posted on November 13—a week after he filed this suit—that he would "fight this partisan gerrymandering every step of the way." Ex. 367 (DCCC App. 325). And on the same day the United States intervened in the case, Attorney General Bondi posted that Prop 50 was a "redistricting power grab" by Governor Newsom to "rig[] his state for political gain." Ex. 131 (DCCC App. 103).

Applicants' clumsy pivot aside, this Court has already spotted Prop 50's overwhelmingly partisan purpose. In denying emergency relief in the Texas redistricting case, the Court observed that "several States have in recent months redrawn their congressional districts in ways that are predicted to favor the State's dominant political party," and that after "Texas adopted the first new map, . . . California responded with its own map for the stated purpose of counteracting what Texas had done." *Abbott v. League of United Latin Am. Citizens*, 607 U.S. ----, No. 25A608, 2025 WL 3484863, at *1 (Dec. 4, 2025) ("*LULAC*"); *cf. id.* (Alito, J., concurring) ("[T]he impetus for the adoption of the Texas map (*like the map subsequently adopted in California*) was partisan advantage pure and simple." (emphasis added)). The evidence of racial predominance in *this* case pales compared to Texas, compelling the conclusion that California's map, like Texas's, should stand while litigation proceeds.

The district court came to that same conclusion in its well-reasoned and comprehensive order denying Applicants' motion for a preliminary injunction. *See* ECF No. 216 ("PI Order"). As the court correctly held, Applicants failed to satisfy their burden to prove that race predominated when the Legislature adopted, and the voters approved, the Prop 50 map. Not only was there *no* evidence that the California electorate considered Prop 50 in racial terms, but the meager evidence Applicants scraped together—a grab-bag of out-of-context statements by mapmaker Paul Mitchell and California legislators—actually confirmed the map's partisan motivations. It is thus not surprising—and certainly not clear error—that the court held that Applicants "f[e]ll far short" of even "establish[ing] serious questions going to the merits," PI Order at 67, let alone a likelihood of success, and denied their request for preliminary injunctive relief.

Applicants now seek extraordinary relief in this Court. Their request is made all the more extraordinary by the capacious relief they seek—an injunction that ignores this Court's "district-by-district" standard for proving racial gerrymandering, *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 262–63 (2015), and instead enjoins the *entire* Prop 50 map as "an undifferentiated whole," *id.* at 264 (emphasis omitted), notwithstanding that Applicants directed their evidence towards a *single* district in California's 52-seat map. This relief would effectively give Applicants what they sought and failed to obtain in the district court without any final ruling that the district court erred on the merits, and "on a short fuse without the benefit of full briefing and oral argument." *Does 1-3 v. Mills*, 142 S. Ct. 17 (2021) (Barrett, J., concurring in the denial of application for injunctive relief pending appeal). Further still, it would trample upon the will of California's legislators and voters, who resoundingly endorsed Prop 50 last year.

This Court should reject Applicants' request. Applicants fall far short of the heightened standard required to obtain an injunction pending appeal, which demands "significantly higher justification" than a stay application. *Ohio Citizens for Responsible Energy, Inc. v. NRC*, 479 U.S. 1312, 1312 (1986) (Scalia, J., in chambers). To start, they have failed to show that the legal rights at issue are "indisputably clear." To the contrary, as illustrated by the district court's lengthy order, the record makes clear that race did *not* predominate in the Prop 50 map's manifestly partisan districting scheme. Further, Applicants wager nearly all their chips on the idea that the district court erred by holding that the intent of California voters—and voters alone—controls here. But that gambit is a contrivance: the court made clear that even under a more "traditional approach—focusing on legislative intent—[Applicants'] evidence remains insufficient to warrant a preliminary injunction." PI Order at 38. And while Applicants strain to focus the Court's attention on the mapmaker alone, they concede that he was *not* acting at the direction of the State, ECF No. 1 ¶ 50, and in any event the full context of his remarks, deposition testimony, and documents all confirm his overriding *partisan* motivations.

Finally, Applicants have failed to show irreparable harm or identify relief tailored to their alleged injuries, and the balance of the equities strongly supports Respondents. Because the relief Applicants request would "insert[] [the Court] into an active primary campaign [in California], causing much confusion and upsetting the delicate federal-state balance in elections," *LULAC*, 2025 WL 3484863, at *1 (staying an order enjoining a state's redistricting scheme), the Court should deny their Application.[2]

BACKGROUND AND PROCEDURAL HISTORY

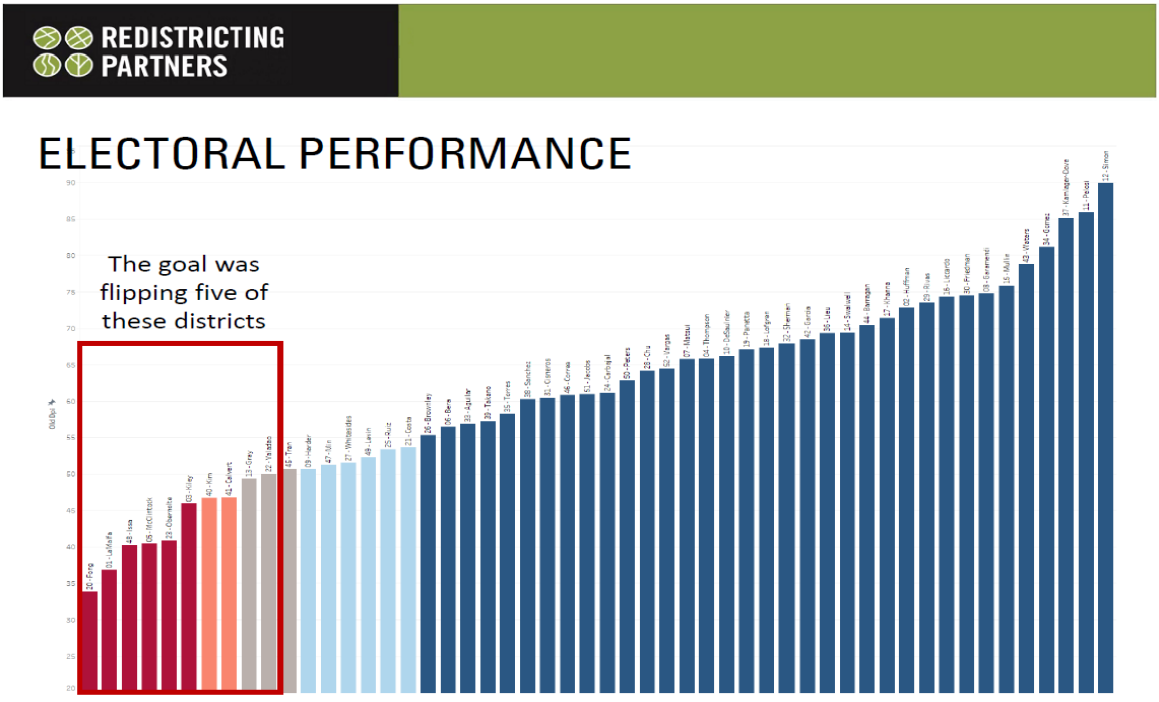
This past July, President Trump declared that his party was "entitled to five more seats" in Texas. Ex. 213 (DCCC App. 253). Texas obliged him by redrawing its congressional maps in a manner "predicted to favor the State's dominant political party." *LULAC*, 2025 WL 3484863, at *1. While that process played out, California's governor announced that—if Texas proceeded—California would redraw its own maps to "get a whole lot bluer," Ex. 101 (DCCC App. 83), so as "to offset the rigging of maps in red states," Ex. 93 (DCCC App. 81). Once it was clear that Texas would not back down, California lawmakers developed Prop 50 as a direct response to partisan gerrymandering efforts in Texas and elsewhere. *See* Ex. 1 at 2 (DCCC App. 32) (Assembly Constitutional Amendment No. 8).

While this legislation was being crafted, Paul Mitchell—an independent redistricting consultant—prepared a draft map. Mitchell made clear that he never had any agreement with the California Legislature to draw the map, nor did he ever receive payment from the Legislature for doing so. *See* Ex. 513 (Mitchell Dep. Tr.) at 26:20–27:16 (DCCC App. 394–95) (Mitchell testifies that he was never "under contract with the California Legislature to draw the Proposition 50 maps" and "was not paid by anybody in the [L]egislature to draw the map"). After learning that Mitchell had prepared a draft

[2] Applicants ask this Court to treat the Application as a jurisdictional statement, note probable jurisdiction, and expedite the appeal. *See* App. at 32–33. DCCC takes no position on whether to treat the Application as a jurisdictional statement, but opposes any finding of probable jurisdiction and the request to expedite the appeal. DCCC further reserves the right to file a motion for summary affirmance or dismissal in due course.

map, DCCC—the congressional campaign committee for the Democratic Party—reviewed the map and supported revisions to improve Democratic performance, purchased the revised version, and submitted it to the California Legislature. Ex. 210 ¶¶ 7–13 (DCCC App. 249–50).

Mitchell's declared purpose for drafting the map was clear: to "create a five district pick-up map" for the Democrats, including in Congressional District 13 ("CD-13"), the district that is the focus of Applicants' evidence and arguments. Ex. 10 at 10:17–22; 11:19–20 (DCCC App. 37–38). Mitchell's own internal documents, produced at Applicants' request, confirm that his "goal was flipping five . . . districts," including by redrawing CD-13—which Democrat Adam Gray won by just 184 votes in 2024, making it the closest House contest in the country that year—into a safe Democratic seat.



Ex. 523 at 9 (DCCC App. 416). DCCC's reason for submitting the proposed map to the Legislature was equally clear and equally partisan. *See* Ex. 210 ¶ 3 (DCCC App. 248) (noting that DCCC's "mission is to elect Democratic candidates"). As it explained in its cover letter to the map, "Democrats cannot sit idly by while Texas Republicans and their DC party bosses attempt to steal congressional seats and rig the election in their favor,

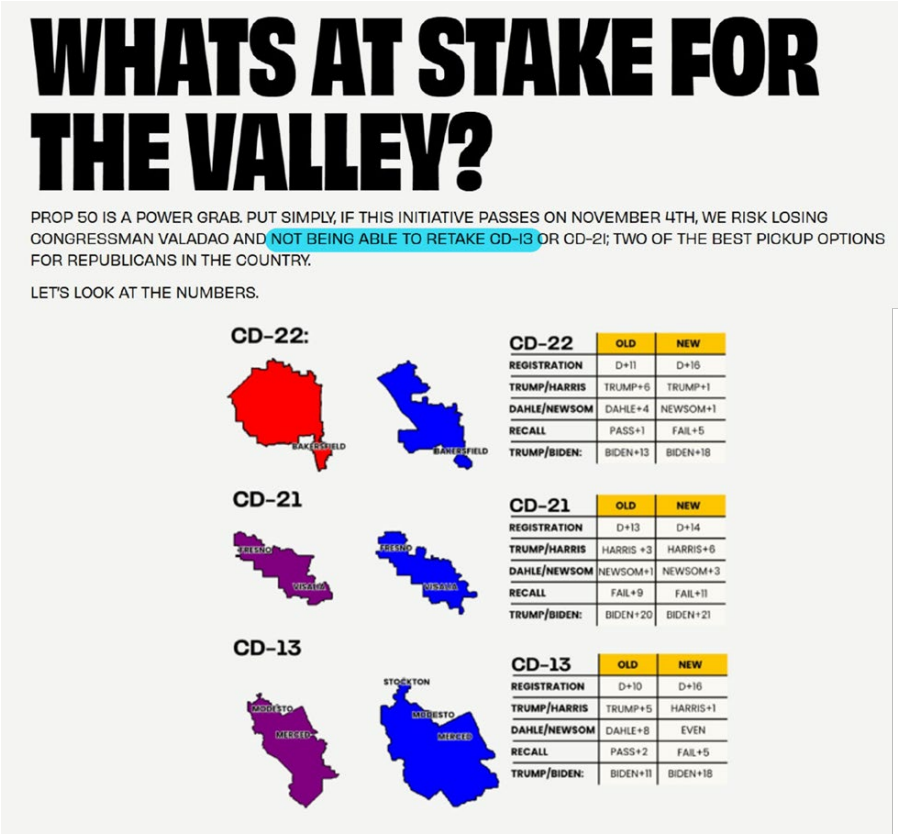
well before any votes have been cast." Ex. 255 (DCCC App. 318). The California Legislature then incorporated the proposed map into a legislative package, the express purpose of which was to ensure that "[t]he 2026 United States midterm elections for Congress [are] conducted on a level playing field without an extreme and unfair advantage for Republicans," and to "neutralize partisan gerrymandering being threatened by Republican-led states." Ex. 1 at 2 (DCCC App. 32).

As the district court ably summarized, the ensuing debate over Prop 50 in the California Legislature "included passionate defenses and criticism of its partisan goals." PI Order at 6 (collecting examples). Absent from that debate, however, were any accusations by Prop 50's opponents that it was a racial gerrymander or designed to favor Latino voters. Voting along party lines, the California Legislature ultimately passed the legislative package known as Prop 50, which consists of three bills, the last of which—Senate Bill 280—authorized a special election for the California electorate to decide whether to embrace the proposed new map. Thus, the Legislature's action alone was not enough to make Prop 50 law—that choice fell to voters.

An intensely partisan electoral campaign followed. Various committees formed to oppose Prop 50 labelled it "one of the most extreme partisan gerrymanders in modern American history," Ex. 143 at 2 (DCCC App. 106), and argued it allowed "political parties [to] subvert the will of the electorate for their own political advantage," Ex. 223 (DCCC App. 257). Many of the Applicants vigorously participated in that campaign—and each consistently attacked Prop 50 as a *partisan* gerrymander. *See* PI Order at 30 (pointing to the "abundant evidence in the record that Proposition 50's opponents, including the United States and many of the Plaintiffs in this case, vocally criticized the measure as a partisan gerrymander"); *see also, e.g.*, Exs. 238A, 240B, 242, 296, 306B, 366, 399 (DCCC App. 308, 310, 311, 320, 322, 323, 327). As the California Republican Party explained in its advertisements, Prop 50 "eliminates five congressional seats" for Republicans, "giving Democrats" more seats and threatening to "paint California blue."

Exs. 220, 243B (DCCC App. 256, 313). A representative for the California Republican Party admitted in a deposition that it never attacked Prop 50 as a racial gerrymander during the election campaign, focusing instead on its clearly partisan intent. Ex. 438 at 23:24–24:2, 44:11–45:18 (DCCC App. 335, 340–41).

Similarly, Assemblyman Tangipa raised funds to launch his own personal campaign against Prop 50, which resulted in a website that detailed how the measure would transform competitive "purple" congressional seats in the Central Valley into seats favored for Democrats. Among other things, his website decried that Prop 50 would make it impossible for Republicans "to retake CD-13 or CD-21, two of the best pickup options for Republicans in the country."



Ex. 244 at 2 (DCCC App. 316); *see also* Exs. 238A (DCCC App. 309) (Tangipa quotes Democratic legislators as saying Prop 50 is "a partisan gerrymander"), 240B (DCCC App. 310) (video depicting Tangipa, captioned "Californians Deserve More than Partisan Gerrymandering"), 242 (DCCC App. 311) (post by Tangipa stating that "One of the map's OWN authors admitted: 'this is partisan gerrymandering.'"). As Assemblyman Tangipa repeatedly admitted in his deposition, nothing in his website or campaign against Prop 50 alleged it was motivated by a desire to privilege Latino voters—only that it was meant to favor Democrats. Ex. 401A at 101:16–24 (DCCC App. 332).

Other Applicants also campaigned against Prop 50 solely on partisan grounds, *see, e.g.*, Ex. 296 (DCCC App. 320) (post by Applicant Costa stating that Prop 50 "is a partisan gerrymander"), one even appearing on a podcast to insist that Prop 50 is not about "preserving democracy" or "helping to enfranchise minorities" but instead "is raw, naked, craven, venal political power—that's it." Ex. 306B (Applicant Hoge) (DCCC App. 322).

Applicants did not merely attack Prop 50 in arguments to California voters—they also sought judicial intervention prior to election day. Applicant Eric Ching, a potential

Republican candidate for Congress, sued to enjoin the law in a petition to the California Supreme Court. Represented by his same counsel here, Applicant Ching alleged at that time that Prop 50 was passed "for an express partisan purpose." Ex. 234 at 19 (DCCC App. 279). As part of that challenge, Dr. Sean Trende—who also served as Applicants' expert here, where he attempted to characterize a tiny fragment of Prop 50 as a racial gerrymander—submitted a declaration stating "it seems obvious that the purpose of [the Prop 50] map is to favor" the Democratic Party. Ex. 129 at 3 (DCCC App. 88). That petition was summarily denied and Prop 50 went to the voters.

Political actors were not the only ones to characterize Prop 50 in partisan terms—the official voter guide likewise informed California's citizens of Prop 50's partisan stakes. The "Pro" side of the guide informed voters that Prop 50 would "counter Donald Trump's scheme to rig next year's congressional election," while the "Con" side said it would "eliminate[] voter protections that ban maps designed to favor political parties." Ex. 444 at 5 (DCCC App. 347). Nothing in the "Con" arguments suggested Prop 50 unlawfully favored Latinos or any other racial minority.

ARGUMENTS

PRO Proposition 50—The Election Rigging Response Act—approves temporary, emergency congressional district maps to counter Donald Trump's scheme to rig next year's congressional election and reaffirms California's commitment to independent, nonpartisan redistricting after the next census. Vote Yes on 50 for democracy in all 50 states. Learn more at *StopElectionRigging.com.*

CON Prop. 50 was written by politicians, for politicians—dismantling safeguards that keep elections fair, removes requirements to keep local communities together, and eliminates voter protections that ban maps designed to favor political parties. Vote NO to protect fair elections and keep citizens—not politicians—in charge of redistricting.

Id.; *see also id.* at 8 (DCCC App. 350) (explaining Prop 50 was passed "in response to Texas's partisan redistricting"); *id.* at 16–17 (DCCC App. 358–59) (setting out further arguments for and against Prop 50). In fact, the extensive record below is bereft of *any* evidence that Prop 50 was criticized as a *racial* gerrymander during a three-month election campaign, even as arguments about its *partisan* motivations—both pro and con—abounded.

On election day, the California electorate resoundingly endorsed Prop 50 by a roughly two-to-one margin, with nearly seven-and-a-half million voters supporting the measure. *See* Ex. 201 (DCCC App. 243). After their attacks on Prop 50 as a partisan gerrymander failed to persuade voters, Applicants abruptly changed tack. Just hours after they lost at the ballot box, they filed this lawsuit, alleging for the first time ever that Prop 50 was actually a *racial* gerrymander all along. Applicants filed a motion for a preliminary injunction soon thereafter. *See* ECF No. 15. The United States moved to intervene as a plaintiff as well and filed its own preliminary injunction motion. To broadcast the intervention, Attorney General Bondi tweeted that her Department of Justice had just sued Governor Newsom for his "brazen Proposition 50 redistricting power grab" that "rig[ged] his state for political gain"—an announcement that all but concedes the wholly pretextual nature of the United States's suit. Ex. 131 (DCCC App. 103). DCCC and LULAC intervened as Defendants and opposed the preliminary injunction motions.

After extensive briefing from all parties and expedited discovery, the district court held a three-day evidentiary hearing. At the hearing, Respondents introduced what the district court later described as a "mountain of statements reflecting the partisan goals of Proposition 50" from Applicants, Republican- and Democratic-affiliated politicians and organizations, and individuals involved in developing Prop 50. PI Order at 4. In short, the evidence at the hearing confirmed what everyone knew all along: Prop 50 was a partisan effort designed to get more Democrats elected to Congress.

In light of this evidence, on January 14, 2026, the district court issued a thorough and well-reasoned order denying the requests for preliminary injunctive relief. The court laid out several independently sufficient reasons its decision. *First*, the court observed that voters were ultimately the "relevant decisionmaker" for enacting the Prop 50 map because their approval was necessary for the map to become effective under California law. PI Order at 15. Because Applicants presented *no* evidence that the voters' motivations were anything other than partisan, the court correctly held that Applicants failed to meet their burden. *Id*. at 25. *Second*, the court found that the other "intent" evidence—including statements by Paul Mitchell and various California legislators—tended to *confirm* Prop 50's partisan intent. *See id.* at 37–38 ("[E]ven when Challengers' claims are evaluated using the traditional approach—focusing on legislative intent—Challengers' evidence remains insufficient to warrant a preliminary injunction."). *Third*, the court evaluated the *only* circumstantial evidence Applicants presented—which concerned small portions of just one of California's 52 congressional districts, CD-13—and found it lacking. *Id*. at 45. In a classic "battle of the experts," the Court determined that Applicants' expert, Dr. Sean Trende, failed to show how the boundaries of CD-13 reflected racial predominance in the drawing of the district, especially in view of "persuasive[]" critiques from Defendant parties' experts. *Id*. at 52–53. As the Court summarized, the "evidence presented reflects that Proposition 50 was exactly what it was billed as: a political gerrymander designed to flip five Republican-held seats to the Democrats." PI Order at 67.

On January 15, Applicants sought an injunction pending appeal in the District Court, which the court summarily denied the following day. ECF No. 220. Applicants then brought this emergency Application for injunctive relief on January 20. *See* Application (25A839) for Writ of Injunction Pending Appeal ("Appl."). On January 22, the Plaintiff-Intervenor the United States submitted a brief in support of the Application. *See* Brief for the United States as Respondent in Support of the Application ("U.S. Br.").

LEGAL STANDARDS

Applicants give short shrift to the relevant legal standard, and for good reason: An injunction pending appeal is an "extraordinary remedy," *Nken v. Holder*, 556 U.S. 418, 428 (2009) (citation omitted), particularly when it would prevent "enforcement of a presumptively constitutional state legislative act." *Respect Me. PAC v. McKee*, 562 U.S. 996, 996 (2010) (Kennedy, J., in chambers). Thus, the Court's "injunctive power is to be used sparingly and only in the most critical and exigent circumstances." *Ohio Citizens for Responsible Energy*, 479 U.S. at 1313 (1986) (internal quotation marks and citation omitted). Because the Court's "issuance of an injunction [pending appeal] 'does not simply suspend judicial alteration of the status quo but grants judicial intervention that has been withheld by the lower courts,' [it] 'demands a significantly higher justification' than that required for a stay." *Lux v. Rodrigues,* 561 U.S. 1306, 1307 (2010) (Roberts, C.J., in chambers) (quoting *Ohio Citizens for Responsible Energy*, 479 U.S. at 1313).

To satisfy this exacting standard, "an applicant must demonstrate that 'the legal rights at issue are "indisputably clear."' *Id.* (quoting *Turner Broad. Sys., Inc. v. FCC*, 507 U.S. 1301, 1303 (1993) (Rehnquist, J., in chambers)); *see also S. Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613 (2020) (Roberts, C.J., concurring in the denial of an application for injunctive relief pending appeal). If the record "casts some doubt" on the applicant's claim, that alone renders the applicant's "position [] less than indisputable." *Brown v. Gilmore*, 533 U.S. 1301, 1304 (2001) (Rehnquist, C.J., in chambers). The applicant must also show that an injunction "is 'necessary or appropriate in aid of [the Court's] jurisdictio[n].'" *Turner Broad. Sys., Inc.*, 507 U.S. at 1303 (Rehnquist, C.J., in chambers) (second alteration in original) (quoting 28 U.S.C. § 1651(a)). An injunction is not necessary to preserve the Court's jurisdiction unless "implementation of [the challenged law] would . . . prevent this Court's exercise of appellate jurisdiction to decide the merits of [the] applicants' appeal." *Id.*

This standard is difficult to surmount on its own, but the difficulty is compounded by the "stringent" proof this Court requires to prevail on a racial gerrymandering claim.

Alexander, 602 U.S. at 11. To establish racial gerrymandering, Applicants must prove that California "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." *Miller v. Johnson*, 515 U.S. 900, 916 (1995). They must also show that it was the state actors responsible for enacting specific challenged districts who had "discriminatory intent." *Abbott v. Perez*, 585 U.S. 579, 609 (2018); *see also Alexander*, 602 U.S. at 8 (focusing on the intent of a "relevant state actor[]"). This Court has left "no doubt" that "what matters[] . . . is the intent of the [enacting] Legislature," not a prior legislature or a third party. *Abbott*, 585 U.S. at 605. And in assessing legislative intent, courts must apply a "presumption of legislative good faith," which requires "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 applicable standards of review present further hurdles for Applicants. Although the Court reviews the district court's conclusions of law *de novo*, the "court's findings of fact—most notably, as to whether racial considerations predominated in drawing district lines—are subject to review only for clear error." *Cooper v. Harris*, 581 U.S. 285, 293 (2017). So long as "the district court's evidence is plausible in light of the record viewed in its entirety," this Court "may not reverse it even [if] convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently." *June Med. Servs. L. L. C. v. Russo*, 591 U.S. 299, 322 (2020) (citation omitted), *abrogated on other grounds by Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022).

REASONS TO DENY THE APPLICATION

I. Applicants are unlikely to succeed on the merits and have not shown an "indisputably clear" entitlement to the injunction they seek.

This Court has already weighed in on the predominant purpose of Prop 50, observing that California is one of several states to have "redrawn their congressional districts in ways that are predicted to favor the State's dominant political party." *LULAC*,

2025 WL 3484863, at *1. In other words, the "impetus for the adoption of the" Prop 50 map "was partisan advantage pure and simple." *Id.* at *2 (Alito, J., concurring). Even so, Applicants attempt to cobble together fragmentary statements from legislators and an independent mapmaker to suggest the predominant purpose of the Prop 50 map was to benefit Latinos. *See* Appl. at 7–10. That effort fails for a host of reasons, the first of which is that it ignores this Court's demand that racial gerrymandering claims proceed "district-by-district" rather than as "to a State considered as an undifferentiated 'whole.'" *Alabama*, 575 U.S. at 262. Nearly all of Applicants' so-called evidence is directed towards Prop 50 writ large, with no effort to map that evidence on "specific electoral districts." *Id.* at 263 (emphasis omitted). That same error of law is reflected in their egregiously overbroad request for an injunction setting aside the *entire* Prop 50 map, even though Applicants say nothing about nearly every district in that map.

Even taken on its own terms, Applicants' evidence amounts to little more than an effort to muddy the crystal-clear reality that Prop 50 was motivated by partisan advantage. Applicants point to (1) a hodgepodge of so-called "direct evidence" from legislators and Paul Mitchell purporting to show that race, rather than partisanship, predominated in enacting the Prop 50 map; and (2) "circumstantial evidence" that trains a microscope on one small corner of a single congressional district, while ignoring everything else. None of this is persuasive—much less indisputably clear—evidence that Applicants will prevail on the merits, let alone succeed in showing that the *entire* Prop 50 map must be set aside. *See Gill v. Whitford*, 585 U.S. 48, 73 (2018).

A. Applicants impermissibly attack the Prop 50 map as an undifferentiated whole.

This Court has held that "the basic unit of analysis for racial gerrymandering claims in general, and for the racial predominance inquiry in particular, is the district." *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 191 (2017). A racial gerrymandering claim cannot target a map as "an undifferentiated whole," *Alabama*, 575 U.S. at 264 (emphasis omitted), or seek "to invalidate the whole State's . . . districting

map," *Gill*, 585 U.S. at 66–67. "Racial gerrymandering claims" must instead "proceed 'district-by-district.'" *Bethune-Hill*, 580 U.S. at 191 (quoting *Alabama*, 575 U.S. at 262).

Despite these principles, Applicants make no effort to connect any of the offhand statements they characterize as direct evidence of discriminatory intent to any "specific electoral districts." *Alabama*, 575 U.S. at 263 (emphasis omitted). Their complaint, their preliminary injunction motion, and now their Application each makes meaningful reference to only a *single* congressional district—CD-13—even as they seek to invalidate California's entire statewide map. *But see Gill*, 585 U.S. at 66–67. Indeed, even their own amicus notes that Applicants "did not perform a district-by-district analysis." Br. of Public Interest Legal Foundation as *Amicus Curiae* ("PILF Br.") at 8. But the framework this Court has adopted for evaluating racial gerrymandering claims requires courts to consider "the lines of the district at issue," "any explanation for a particular portion of the lines," and the "districtwide context." *Bethune-Hill*, 580 U.S. at 192. The Court cannot perform that analysis here as to nearly every district Applicants wish to redraw, as Applicants have not introduced direct or circumstantial evidence as to 51 of California's 52 districts. That is reason alone to deny the requested injunction, which relies overwhelmingly on "state-wide analysis" that as a matter of law cannot show any specific district "was drawn based on race." *Alexander*, 602 U.S. at 33 (discounting evidence criticizing the statewide "map as a whole rather than [a district] in particular").

B. Applicants have failed to present direct evidence of racial predominance in the enactment of Proposition 50.

Even if the Court looks past Applicants' improper effort to replace an entire statewide map based on abstract, non-district-specific evidence, the evidence presented is itself paltry and falls miles short of the "especially stringent" evidentiary burden they face. *Id.* at 11. To succeed, Applicants must present evidence showing that the "relevant state actor[s]," *id.* at 8, "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." *Miller*, 515 U.S. at 916.

The relevant state actors here are, most obviously, the Legislature—which passed Prop 50 and placed it on the ballot—and the California voters who ultimately approved Prop 50 and made it law. Yet Applicants' evidence of racial motivation from these actors is virtually non-existent. They instead focus almost exclusively on offhand comments by a third-party contractor, mapmaker Paul Mitchell, but without offering any reason to ascribe his views to the Legislature or voters. In any event, Mitchell himself made clear that his overriding motivation—including as to District 13—was to create a "five district pick-up map" for Democrats. Ex. 10 at 10:17–22; 11:19–20 (DCCC App. 37–38). At bottom, Applicants simply lack any serious direct evidence that any specific district in the Prop 50 map was drawn for a reason other than to aid Democrats.

1. The record is entirely bereft of evidence suggesting that voters were motivated by racial considerations.

Unlike other congressional maps challenged as racial gerrymanders, Prop 50 was put before the electorate as a ballot measure, meaning that voters, rather than legislators or Paul Mitchell, ultimately enacted the map. *See* Cal. Const. art. II, § 1 (the California voters have the final power over amendments to the state constitution); *see also Hollingsworth v. Perry*, 570 U.S. 693, 707 (2013) (recognizing that, in California, ballot proposals "bec[o]me 'a duly enacted constitutional amendment or statute'" only once "approved by the voters" (quoting *Perry v. Brown*, 265 P.3d 1002, 1021 (Cal. 2011)). Because of this unique process, the district court concluded that "the voters are the most relevant state actors" for assessing whether Prop 50 was animated by racial or partisan intent. *See* PI Order at 15. The United States apparently agrees, noting in its brief that it is "appropriate here to treat the voters as the ultimate legislature for purposes of this Court's racial-gerrymandering precedents." U.S. Br. at 20. The Court need not conclusively resolve that question in this emergency posture; it is enough to recognize that the information put before voters—by both Prop 50's supporters and opponents—is

highly probative of its predominant purpose, meaning that Applicants cannot show an "indisputably clear" error in the district court's analysis.

This is because Applicants presented no evidence—literally none—suggesting any hint of racial motivation in the campaigns for and against Prop 50, or in the mind of any California voter, as Applicants all but conceded in their closing argument to the district court. *See, e.g.*, Tr. at 492 (DCCC App. 19) (Applicants' counsel conceding Applicants presented no evidence about voters' intent), 494 (DCCC App. 21) (conceding there were no commercials that referred to race-based gerrymandering), 495–97 (DCCC App. 22–24) (conceding that Prop 50 opponents did not publicly or privately discuss racial motivations behind Prop 50).[3] All the evidence about the contentious ballot campaign that culminated in Prop 50's passage makes clear that the arguments presented to voters both for and against Prop 50 framed the measure in exclusively partisan terms. The California Republican Party, for instance, sponsored numerous advertisements criticizing Prop 50's partisan motivations; Applicant Ching sued to challenge Prop 50 as a partisan gerrymander in state court; Applicant Tangipa inveighed against Prop 50 in the California Legislature as a partisan gerrymander and then sponsored a website against the measure that decried the partisan motivations of the map; Applicant Hoge expressly refuted the notion that Prop 50 was designed to help minority voters and insisted instead it was about raw political power; and many of the individual Applicants made similar statements in person, on social media, and in interviews when campaigning against the measure. *See, e.g.*, Exs. 220, 234, 238A, 240B, 242, 244, 296, 306B, 366, 367, 399 (DCCC App. 256, 260, 308, 310, 311, 314, 320, 322, 323, 325, 327). In fact, the *only* racial statement in the Prop 50 campaign that any party has cited suggests Prop 50 would *harm*, rather than unfairly benefit, minority voters. *See* U.S. Br. at 21 (citing Ex. 444 at 17 (DCCC App. 359) (official voter information guide including among the "argument[s] against Prop 50" the contention that "[w]hen politicians gerrymander, they divide our

[3] All citations to "Tr." refer to the transcript of the district court's three-day preliminary injunction hearing, held from December 15 through December 17. Excerpts of the hearing transcript are included in DCCC's supplemental appendix.

neighborhoods and weaken the voice of communities of color")). The only reference to "Latino" in the official voter guide is included in the "[r]ebuttal" to arguments in favor of Prop 50, asserting that the *previous* map resulted in "[b]etter [r]epresentation" for Latino voters—the exact opposite of what Applicants now claim. *See* Ex. 444 at 16 (DCCC App. 358). The conspicuous absence of race from the debate over Prop 50 is compelling evidence that Applicants' claim is meritless and made solely for litigation. *See Alexander*, 602 U.S. at 11 ("[W]e 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.'" (quoting *Cooper*, 581 U.S. at 335 (Alito, J., concurring in part and dissenting in part))).

Having already conceded their lack of evidence as to voter intent, Applicants argue the California electorate simply does not matter, despite its lawful role as the ultimate arbiter of Prop 50. Instead, they claim that the district court erred by considering the electorate's motivations to the exclusion of the Legislature's and Mitchell's views. Appl. at 14–15. That is wrong on multiple levels. *First*, it blatantly mischaracterizes the district court's order. The court expressly noted that legislative statements are *not* "irrelevant to [its] intent analysis" because they "often speak directly to voters." PI Order at 18. The court also grappled directly with Applicants' so-called "direct evidence" on its own terms, explaining that *even if* it considered Applicants' claims using the "traditional approach" of focusing on legislative intent alone, Applicants *still* failed to present enough evidence to "warrant a preliminary injunction." *Id.* at 38. In its own words—and as explained at greater length below, *see infra*, Argument § I.B.2–3—the court did 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." *Id.* at 45. The district court's analysis of the California electorate was thus one of multiple independently sufficient reasons—not the *only* reason—for its holding.

Second, Applicants' view is legally doubtful, as their co-litigant—the United States—acknowledges. U.S. Br. at 20. Applicants have not cited a single authority for

their apparent position that the intent of the electorate is categorically irrelevant in a race discrimination challenge against a ballot referendum. The authorities are against them: this Court and others often focus on voters' intent in evaluating whether race discrimination tainted a ballot referendum. *See, e.g.*, *Washington v. Seattle Sch. Dist. No. 1*, 458 U.S. 457, 471 (1982) (highlighting statements by "the initiative's sponsors" and the awareness of "[t]he [state] electorate" in finding a ballot initiative discriminatory); *Stout by Stout v. Jefferson Cnty. Bd. of Educ.*, 882 F.3d 988, 1007–09 (11th Cir. 2018) (similar); *Smith v. Boyle*, 144 F.3d 1060, 1065 (7th Cir. 1998) ("a referendum[] express[es] the views of the electorate and not just of some backroom schemers"); *Hall v. Holder*, 117 F.3d 1222, 1230 (11th Cir. 1997) (similar); *cf. Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 798 & n.7 (2015).[4]

Third, while the United States acknowledges the role of voters in enacting Prop 50, it contends that the Prop 50 map "on its face reflects a racial gerrymander," U.S. Br. at 22, apparently obviating any need for actual evidence that lawmakers or voters were motivated by race. But that argument is farcical: the United States itself presented *zero* evidence as to how Prop 50's boundaries reflect a racial gerrymander, while Applicants presented evidence solely as to a sliver of CD-13 in the southern Stockton area, relying upon an expert's use of census track racial data and choropleth maps to do so. The notion that an ordinary California voter glancing at Prop 50's boundaries would understand—on the face of the map alone—the racial consequences of how one corner of one district was drawn is not only absurd, but also wholly unsupported by the record. Indeed, the record evidence demonstrates that CD-13—the sole focus of Applicants' circumstantial evidence—"is one of the most compact districts in the Prop 50 map," Ex. 184 (Grofman Report) at 13 (DCCC App. 137), and that Dr. Trende's alternative maps reflected only

[4] *Lucas v. Forty-Fourth General Assembly*, relied upon by Amicus PILF, PILF Br. at 3, is wholly inapposite. PILF Br. at 3. That decision held that a popular referendum could not absolve Colorado's violation of the one-person, one-vote rule—an objective, mathematical principle that does not turn on *anyone*'s intent, legislature or electorate. 377 U.S. 713, 736–37 (1964).

"trivial" differences in compactness, *id.*[5] Further undercutting the United States's theory, the record shows at length that voters were bombarded with messages—from legislators, advocates, political parties, and even the official voter guide—stressing the partisan consequences of Prop 50. *See supra*, Argument § I.B.1. Thus, the only thing made "obvious[]" to voters, U.S. Br. at 14, was that Prop 50 was about partisan politics.[6]

In short, the California electorate was, at minimum, a highly "relevant state actor" in the passage of Prop 50, *Alexander*, 602 U.S. at 8, yet Applicants ignored it entirely. The district court did not err in holding this omission against them. *See* PI Order at 15.

2. The legislative debate over Prop 50, as well as the legislation itself, reflect overwhelmingly partisan motivations.

As the district court put it, there is a "mountain of evidence," PI Order at 29, that partisan gain motivated California's legislators to pass Prop 50. The text of the relevant statute is the best evidence of legislative intent. *See, e.g.*, *Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 815 (2024) (internal quotation marks and citation omitted) (explaining "the text of a law controls over purported legislative intentions unmoored from any statutory text" and that courts "may not replace the actual text with speculation" as to legislative intent); *People v. Prunty*, 355 P.3d 480, 486 (Cal.

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[5] Accordingly, the United States's reliance upon *Gomillion v. Lightfoot* is misplaced. That case concerned the Alabama legislature's effort to redraw the city of Tuskegee, previously a perfect square, into "an uncouth twenty-eight-sided figure" that removed nearly *every* Black resident from the city. *See* 364 U.S. 339, 340 (1960). As this Court explained, the allegations in *Gomillion* indicated that the statute at issue "was not an ordinary geographic redistricting measure even within familiar abuses of gerrymandering" and instead was "tantamount for all practical purposes to a mathematical demonstration[] that the legislation is solely concerned with segregating white and colored voters by fencing Negro citizens out of town." *Id.* at 341. That is decidedly not this case.

[6] The dissent's concern with the complexity of discerning voter intent is therefore not relevant here. PI Order at 88 (Lee, J., dissenting). To be sure, evidence of voter intent may sometimes cut crosswise or show a multiplicity of motivations. The record below, however, shows a total void of evidence that *anyone*—even the Applicants—believed Prop 50 to be racially motivated prior to election day. In contrast, "a mountain of evidence," *id.* at 29, spoke to the measure's partisan motivations. That, at minimum, "casts some doubt" on Applicants' racially gerrymandering claim, thus rendering their "position [] less than indisputable." *Brown*, 533 U.S. at 1304.

2015) ("The text of the statute is our starting point, and generally provides the most reliable indicator of the Legislature's intended purpose." (citation modified)). The constitutional amendment within the Prop 50 legislative package states that the measure's purpose is to "neutralize the partisan gerrymandering being threatened by Republican-led states." Ex. 1 at 2 (DCCC App. 32). Committee materials for pieces of the Prop 50 legislative package stressed the same. *See, e.g.*, Ex. 157 at 3 (DCCC App. 112) (Assembly Elections Committee analysis noting that Prop 50 "neutraliz[es] partisan gerrymandering by other states"); Ex. 160 at 2 (DCCC App. 118) (Senate Elections Committee analysis stating that Prop 50 is California's "response" to Republicans' "effort to rig the upcoming election to keep their own party in power in Washington"). One of Prop 50's sponsors commented during the legislative debates that "[i]t's a partisan gerrymander." Ex. 453 at 245–46 (DCCC App. 386–87). And of course, the legislative debate itself was intensely partisan. *See, e.g.*, Ex. 18 at 1 (DCCC App. 56) (the purpose of Proposition 50 is to "fight back against [Republicans'] unprecedented power grab"), Ex. 21 at 1–2 (DCCC App. 60) (Proposition 50 is designed to "fight[] back against reckless attacks by Trump and Republicans" to "stop Texas and Trump from rigging the election"); Ex. 452 at 37:17–40:25 (DCCC App. 379–82) (describing Proposition 50 as a measure to stop "Texas" from "carv[ing] up districts *to keep their wannabe dictator in power*," and calling on "Democrats" to "fight to survive"). This Court's precedent requires taking these proclamations of partisan intent at face value. *E.g.*, *Alexander*, 602 U.S. at 11; *Miller*, 515 U.S. at 915–16.

Applicants do not address any of this. Instead, they allude to a few stray legislator statements about Prop 50 that mention race or the Voting Rights Act in abstract terms, Appl. at 7—the sort of mere awareness of race that fails to show that race *predominated* over considerations of partisanship. *See Easley v. Cromartie*, 532 U.S. 234, 253 (2001) ("*Cromartie II*"). It is not surprising that Applicants note these statements only in passing, because even a modest examination makes clear they are either boilerplate puffery about the Prop 50 map's preservation of minority voting rights, or accusations of

racial gerrymandering in *other redistricting plans* in *other states*. *See* Appl. at 7; *see also* PI Order at 91–92 (Lee, J., dissenting) (collecting statements from California legislators criticizing *Texas's* redistricting efforts and its impacts on Black and Latino voters).

Applicants also appear to suggest that California legislators were racially motivated because "contemporaneous material used to brief legislators on the [Prop 50] plan [] highlighted race as the organizing metric," including a so-called "Atlas" of voter statistics. Appl. at 20. But the "Atlas" is just one of many documents that California legislators reviewed and considered when deliberating on Prop 50—Applicants offer nothing to suggest that it guided their decision, much less that "race [w]as the principal lens through which" they viewed the plan. Appl. at 20–21. As this Court has admonished, it is not enough to show "that the legislature considered race, along with other partisan and geographic considerations," in approving a districting plan. *Cromartie II*, 532 U.S. at 253. Yet that is all the "Atlas" can possibly show—*i.e.*, the California legislators, sensibly enough, chose to inform themselves about demographic statistics of current and proposed districts. Neither the Atlas nor the grab-bag of legislator statements that Applicants identify is sufficient to outweigh the "mountain" of evidence showing Prop 50's partisan motivations.

Absent any evidence of predominant racial motive on behalf of the Legislature, Applicants attempt to equate Mitchell's intent with legislative intent. This effort fails several times over. *First*, Applicants are unable to point to any evidence that legislators, during committee hearings or floor debates on Prop 50, gave any weight to Mitchell's views or motivation for drawing the Prop 50 map. Mitchell did not testify before the Legislature or any committee, and nearly all the Applicants' cherrypicked statements from Mitchell came *after* the Legislature had already approved Prop 50 and sent it to the voters. *Second*, Applicants ignore undisputed evidence that the Prop 50 map submitted to the Legislature was first purchased by DCCC, which then submitted it to the Legislature in furtherance of its political mission. *See* Ex. 210 at ¶¶ 7–13 (DCCC App. 249–50). Thus, a key intermediary between the mapdrawer and the Legislature is an

undisputedly partisan organization with undisputedly partisan motivations. *Third*, even if Mitchell *did* harbor racial motivations—and overwhelming evidence shows he did not, *infra* Argument § I.B.3—Applicants offer no reason to ascribe those motivations to the Legislature. This Court's precedent bars such imputation. *See Abbott*, 585 U.S. at 603. Simply put, any alleged "original sin" on Mitchell's part does not travel with his map and thus infect the Legislature by proxy. *See id.*

Most importantly, Applicants' attempt to impugn the Legislature's motives based on such threadbare and indirect evidence runs roughshod over the strong "presumption of legislative good faith," *id.* at 610, which requires courts to "exercise extraordinary caution" in adjudicating racial gerrymandering claims, *Miller*, 515 U.S. at 916. This Court has repeatedly applied that presumption in cases where there was substantial evidence—much stronger than what Applicants have mustered here—that a legislature was motivated to suppress minority voting groups, including its recent decision in *LULAC*. *See infra*, Argument § I.E; *see also LULAC v. Abbott*, No. 21-CV-259, 2025 WL 3215715, at *93 (Nov. 18, 2025) (Smith, J., dissenting) (explaining that the White House's pressure campaign, DOJ correspondence, and statements from Texas executive branch officials could "[not] easily be attributed to the Legislature" without "butt[ing] up against *Alexander*'s presumption of good faith for legislatures"), *appeal docketed*, No. 25-845 (U.S. Jan. 13, 2026). And it has further found the presumption of good faith particularly appropriate where a legislature has openly proclaimed, and achieved, its partisan goals—which is precisely the case here. *See, e.g.*, *Alexander*, 602 U.S. at 21 (noting that the state's "avowed partisan objective easily explains" alleged evidence of racial motive). Applicants' insistence that the Court disregard the presumption of good faith afforded the California Legislature based on a handful of ambiguous statements by a third party flies in the face of these precedents.

3. Mitchell does not supply any relevant evidence of intent.

With little to show as to the supposed racial motivations of California's legislators and voters—the actors responsible for making Prop 50 law—Applicants try to focus

nearly all the Court's attention on mapmaker Paul Mitchell. But that effort falls flat for two independently sufficient reasons: (a) Mitchell is not a state actor and Applicants offer no persuasive reason to ascribe his thoughts to the Legislature or voters; and (b) the actual evidence from Mitchell reflects overwhelming evidence of partisan motivation.

a. Applicants never adequately explain how Mitchell—whom they admit was a third-party consultant—supplies any sort of direct evidence at all. This Court has been clear such direct evidence "comes in the form of a relevant *state actor's* express acknowledgment that race played a role in the drawing of district lines," *id.* at 8 (emphasis added); *see also Cromartie II*, 532 U.S. at 253–54 (treating statements of legislators and their staff as direct evidence); *Cooper*, 581 U.S. at 300 (similar). Here, Mitchell was not a state actor—as Applicants themselves concede, he was never under contract with the Legislature and was not paid by the Legislature to draw the State's congressional map. *See* ECF No. 1 ¶ 50 (alleging that Prop 50 "was not drawn by legislators or paid for by the state of California" but was instead "drafted by Paul Mitchell of Redistricting Partners"); *see also* Ex. 513 (Mitchell Dep. Tr.) at 26:20-27:16 (DCCC App. 394–95) (Mitchell testifying that he was never "under contract with the California Legislature to draw the Proposition 50 maps" and "was not paid by anybody in the legislature to draw the map").

To bridge this gap, Applicants contend that courts must always "treat the mapmaker's intent and testimony as direct evidence." Appl. at 16; *see also* U.S. Br. at 9–10. But no such "mapmaker rule" exists in this Court's precedent. Rather, this Court has given weight to the mapmaker's motivations specifically when the mapmaker *is* a state actor or otherwise acting at the state's behest. In *Cooper*, for example, the legislative chairmen "responsible for preparing the revamped" map directly "hired" the mapmaker as a legislative consultant for the purpose of "assist[ing] them in redrawing district lines." 581 U.S. at 295. These legislators then announced in committee the specific racial "objective[s] [that were] communicated in no uncertain terms to the legislator's consultant," who "followed those directions to the letter." *Id.* at 295, 299–300 (noting the

legislators "were not coy in expressing that goal"). In *Alexander*, the person "who drew the Enacted Map" was a "career employee" *of the legislature*—and thus, indisputably a state actor by virtue of his job title. 602 U.S. at 19, 22. And in *LULAC*, neither the *per curiam* majority opinion nor the concurrence so much as mentions mapmaker testimony. *See generally* 2025 WL 3484863 at *1–2; *see also Prejean v. Foster*, 227 F.3d 504, 504–10 (5th Cir. 2000) (explaining mapmaker's intent could not be "taken as conclusive proof of the legislature's intent"). None of Applicants' cited cases indicate that mapmaker testimony is automatically direct evidence of state actor intent or that mapmakers necessarily are state actors, as Applicants suggest.

The dissent notably does not rely on Applicants' fictional mapmaker rule, and instead suggests that Mitchell is a state actor because (1) he invoked legislative privilege in his deposition and (2) he "spoke to several legislators and their staff about the map." PI Order at 90 (Lee, J., dissenting). Neither of these reasons is sufficient to render Mitchell a state actor. As to his invocation of legislative privilege, the dissent is simply confused. The legislative privilege *belongs to* the Legislature, but *covers* communications with non-legislative entities, including, for example, lobbyists and party activists. As the Fifth Circuit has explained, legislative privilege extends to communications "with parties outside the legislature, such as party leaders and lobbyists" because meeting and conferring with such third parties "is part and parcel of the modern legislative procedures through which legislators receive information possibly bearing on the legislation they are to consider." *La Union del Pueblo Entero v. Abbott*, 68 F.4th 228, 236 (5th Cir. 2023) (quoting *Bruce v. Riddle*, 631 F.2d 272, 280 (4th Cir. 1980)); *Arnold v. Barbers Hill Indep. Sch. Dist.*, 157 F.4th 749, 756 (5th Cir. 2025); *Lee v. City of Los Angeles*, 908 F.3d 1175, 1188 (9th Cir. 2018) (similar); *Puente Ariz. v. Arpaio*, 314 F.R.D. 664, 671 (D. Ariz. 2016) (collecting authority). It is therefore unremarkable for third parties outside the Legislature—like Mitchell—to invoke *the Legislature's* privilege to avoid waiver, but this does not convert these third parties into state actors. *See La Union del Pueblo Entero v. Abbott*, 93 F.4th 310, 322 (5th Cir. 2024). Thus, Mitchell's mere invocation of the privilege

is hardly reason to conclude—contrary to Applicants' own pleading—that he was a state actor.[7]

Relatedly, the mere fact that Mitchell had communications with a small number of legislators is also no reason to treat him as a state actor.[8] This Court has cautioned that "[a]ction taken by private entities with the mere approval or acquiescence of the State is not state action." *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 52 (1999). And as the legislative privilege cases above show, communications with private third parties are an ordinary, but indispensable, aspect of the legislative process.

b. Even assuming Mitchell's statements or views have *any* probative value to discerning the intent of a "relevant state actor," *Alexander*, 602 U.S. at 8, their full context reveals that Prop 50 was a partisan endeavor—not a racial one. Start with the actual evidence from Mitchell in this case, including his deposition testimony and

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[7] The dissent further quarrels with the *volume* of Mitchell's privilege objections. PI Order at 80. But that is a matter for discovery motion practice, which can readily be resolved as proceedings advance below—it is not reason to simply proclaim Mitchell a state actor and draw an inference in a movant's favor that relieves them of their burden the preliminary injunction stage. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). That is particularly so since legislative privilege is *often* invoked in redistricting cases and the dissent does not appear to dispute that it is often proper to do so. *See, e.g.*, *League of United Latin Am. Citizens v. Abbott*, 708 F. Supp. 3d 870, 880 (W.D. Tex. 2023) (substantially upholding assertions of legislative privilege in redistricting case and recognizing it can be asserted by non-legislators); *Williams v. Hall*, No. 1:23-CV-1057, 2025 WL 3240456, at *16 (M.D.N.C. Nov. 20, 2025) (explaining that the legislature's "desire to shield the confidentiality of legislators' redistricting communications" was both "consistent with the legislature's avowed partisan motivation[s]" and also consistent with "the presumption of legislative good faith").

[8] The dissent assumes—with no citation whatsoever—that it could "safely conclude that Mitchell conveyed to the state legislature similar thoughts about the Proposition 50 map that he told advocacy groups, the press, and others." PI Order at 90 (Lee, J., dissenting). But the dissent offered no basis for the assumption, which ignores that (1) several of Mitchell's later comments were made in settings where he was expressly told to avoid partisan commentary, Ex. 11 at 28:8–11 (DCCC App. 49); (2) Mitchell's own deposition testimony confirmed his partisan motivation to choosing to draw a map around the time he conversed with legislators, and (3) Mitchell's conversations with legislators came months apart from the comments Applicants rely upon here.

document production. *See* Ex. 526 at 1 (DCCC App. 459) (Mitchell's report on his preparation of the Prop 50 map, stating that "[i]f [Texas is] going to perform a mid-decade redistricting to put five Democratically held seats into the Republican column, we can target five Republican seats in return"); Ex. 525 at 3, 5 (DCCC App. 438, 440) ("The goal was flipping five [competitive] districts" to "put[] California on track to win 48 Democratic seats in 2026."); Ex. 513 at 303:5–20 (DCCC App. 405) (Mitchell testifying that he "agreed to [Prop 50] because of what Texas did. Normally, I wouldn't agree to partisan redistricting [but] in this case, because of the circumstances, I did agree to it."). Applicants have no answer to this evidence.

Instead, Applicants myopically highlight three statements from Mitchell, two of which postdate the Legislature's adoption of Prop 50. *First*, they cite an excerpt from a presentation Mitchell delivered to Hispanas Organized for Political Equality ("HOPE"). *See* Appl. at 19; U.S. Br. at 10–11. The statement reads, in full:

> The Prop 50 maps I think will be great for the Latino community in two critical ways. One is that they ensure that the Latino districts that are the VRA seats are bolstered in order to make them the most effective, particularly in the Central Valley.

Ex. 11 at 30:6–11 (DCCC App. 51). Mitchell made the statement during a presentation to a Latino-oriented advocacy group on October 17, several months after submitting the Prop 50 maps. The statement occurs on page 30 of the presentation transcript, after Mitchell had already explained that the "core . . . idea of this project" was to create "an opportunity for Democrats to pick up five seats, and to counterbalance to what Texas was doing." *Id.* at 22:1–6 (DCCC App. 43). And Mitchell made the statement at issue in response to a question *which asked him not to discuss partisan politics*. The HOPE-affiliated interviewer asked him: "*trying as much as we can to keep it nonpartisan*, from your perspective, what should Latino voters pay the most attention to when it comes to this -- to these Prop. 50 maps?" *Id.* at 28:8–11 (DCCC App. 49) (emphasis added). In other words, Mitchell was not asked to explain his *motivation* in drawing the map, but to explain its effects on the Latino community in a *nonpartisan* way. And in responding to

the question, Mitchell did *not even mention any specific district* tailored for Latinos. Instead, he simply reiterated a point he had made previously in the presentation, namely that Prop 50 "maintain[s] the status quo in terms of the Voting Rights Act." *Id.* at 26:22–25 (DCCC App. 47).

Second, Applicants cite another of Mitchell's statements during the HOPE presentation that the "number one thing that [he] started thinking about" when drawing the Prop 50 map was to create a "Latino majority/minority district" in Los Angeles that the independent redistricting committee had eliminated from the previous iteration of the map. Appl. at 19–20; U.S. Br. at 11. Again, the broader context reveals that this was a *political* decision, not a racial one. Mitchell explained that in making the "new" Latino-majority district, "[h]e essentially reversed the Redistricting Commission's decision to eliminate a Latino district from *LA* [*to*] *eliminat*[*e*] *the Ken Calvert district in Riverside*." Ex. 11 at 25:7–18 (emphasis added) (DCCC App. 46). Applicants cite the first portion of this excerpt but conspicuously omit the emphasized text, which emphasizes that Mitchell's goal was to depose a sitting Republican congressman by restoring a previously existing district likely to support Democrats—an obviously partisan rationale. He confirmed this point at his deposition, noting that he chose to restore a district that pre-dated California's 2021 map in order to eliminate Republican Ken Calvert's district because the previous district "was already drawn" and would "create[] an additional [D]emocratic seat in the middle of Los Angeles." Ex. 513 at 117:19–118:5 (DCCC App. 398–99); *see id.* at 129:17–22 (DCCC App. 402) ("What I told HOPE was that the off the shelf, [sic] the first thing available to us in trying to create an additional [D]emocratic seat was to utilize a map that had already been drawn . . . ."). Far from "establishing that race was front and center when [Mitchell] drew several Prop 50 districts," *see* U.S. Br. at 12, this statement only underscores Mitchell's unapologetically partisan motivation to replace a Republican-held seat with a previously-drawn district that he already knew would back Democrats.

Third, Applicants cite a post by Mitchell on X—again, months after the Legislature had voted—that Prop 50 will "increase Latino voting power" and "add[] one more Latino influence district." Appl. at 19 (quoting Ex. 14 (DCCC App. 54)). But this post does not even contain Mitchell's own original writing—it is a quote from a *post-hoc* analysis by two professors describing the *effect* of the Prop 50 map—not its drafter's intent. *See* Ex. 14 (DCCC App. 54). And that analysis actually confirms that Prop 50 was *not* racially motivated: it explains that "[t]he new map maintains the same number of Latino-majority districts as the current map," and observes that "a number of Latino-majority districts in the proposed Proposition 50 map change very little relative to the current map." *See* Ex. 88 at 8 (DCCC App. 72). The report also notes that "Latino voters often prefer Democrats in California," which reinforces that any benefit to Latino voters from the Prop 50 map was incidental to its intended goal of helping Democrats. *Id.* at 5 (DCCC App. 68).

Finally, Applicants briefly contend that Mitchell's racial motivations can simply be inferred from his invocation of the Legislature's privilege and his refusal to expressly disavow the statements above during his deposition or to appear at the preliminary injunction hearing. *See* Appl. at 21. But there is nothing untoward about Mitchell's invocation of privilege or availing himself of Rule 45's 100-mile rule for subpoenas—a limitation on subpoena power granted by Congress.[9] Moreover, punishing California's legislators and voters for *Mitchell's* invocation of privilege would be particularly egregious. *See also supra*, Argument § I.B.2. As this Court has regularly warned, courts

[9] Drawing an adverse incentive against a deponent for invoking privilege—over a privilege claim the district court has not yet even resolved—"would be tantamount to punishing a party for asserting a privilege—[] one that as of yet has not been determined to be unavailable." *N.C. State Conf. of NAACP v. McCrory*, 997 F. Supp. 2d 322, 361 n.47 (M.D.N.C.) (refusing to draw an adverse inference based on executive's assertion of legislative privilege), *rev'd on other grounds*, 769 F.3d 224 (4th Cir. 2014). Courts routinely refuse to punish such lawful behavior. *See, e.g.*, *Florida v. United States*, 885 F. Supp. 2d 299, 353 n.65 (D.D.C. 2012) (similarly declining to grant an adverse inference based on assertion of legislative privilege); *Rodriguez v. Pataki*, 308 F. Supp. 2d 346, 460 (S.D.N.Y.) (per curiam) (same), *aff'd*, 543 U.S. 997 (2004).

commit "serious error[]" when they "fail[] to honor the presumption of legislative good faith by construing ambiguous direct and circumstantial evidence against the legislature." *LULAC*, 2025 WL 3484863, at *1; *see also, e.g.*, *Abbott*, 585 U.S. at 603; *Hunt v. Cromartie*, 526 U.S. 541, 553 (1999); *Miller*, 515 U.S. at 915. That is precisely what Applicants demand in suggesting the Court should make adverse inferences against California's legislators and voters based on a third party's invocation privilege—an invocation the district court never even found to be improper.

* * *

In sum, Applicants' direct evidence amounts to a few out-of-context statements from a private contractor paid by the DCCC, stray bits of puffery from legislators, and absolutely no evidence of voter intent—none of which even refers to any specific district. All of which is to say, Applicants present no real direct evidence whatsoever.

C. The district court did not clearly err in finding Applicants' circumstantial evidence on District 13 unpersuasive.

The lack of any meaningful direct evidence of racial motivation is fatal to Applicants' demand for an injunction pending appeal, which requires "indisputably clear" evidence that they will succeed on the merits. This Court has "never invalidated an electoral map in a case in which the plaintiff failed to adduce any direct evidence." *Alexander*, 602 U.S. at 8. And while the Court has, "at least in theory, kept the door open" for a racial gerrymandering claim based solely on "circumstantial evidence," *id.*, this is neither the case nor the posture to apply that theory—Applicants' circumstantial evidence is unpersuasive and poorly matched to the sweeping relief they request.

To start, the circumstantial evidence Applicants offer—which consists of testimony and an expert report by Dr. Sean Trende—is exceedingly narrow. It concerns only one congressional district: CD-13. *See* Appl. at 21.[10] And it concerns only two

[10] Though Applicants presented additional circumstantial evidence in the form of testimony from Dr. Thomas Brunell to the district court, they have wisely abandoned that evidence, which the district court rightly found to be "particularly weak." PI Order at 46.

portions of the boundary of that district: (1) the area near the towns of Ceres and Modesto and (2) the "protrusion" of the northern tip of the district into the town of Stockton. *See* PI Order at 49. Applicants offer no evidence, direct *or* circumstantial, as to the remaining fifty-one districts of the Prop 50 map or the bulk of CD-13's border. The dissent agrees: Judge Lee wrote that Applicants "have not provided sufficient evidence for other districts at the preliminary injunction stage." *Id.* at 78 (Lee, J., dissenting).[11]

The district court considered Dr. Trende's analysis of CD-13, along with rebuttal analysis by three of Respondents' experts and a lay witness who lives in CD-13. *See generally id.* at 48–59 (majority op.). After viewing the evidence as a whole, the district court found that Dr. Trende's analysis was less persuasive than Respondents' experts, and concluded that "Proposition 50 was exactly what it was billed as: a political gerrymander designed to flip five Republican-held seats to the Democrats." *Id.* at 67.

Although Applicants never acknowledge the applicable standard, this Court reviews the district court's fact-bound analysis of CD-13 only for clear error. *Cooper*, 581 U.S. at 298–99. This means that so long as "there are two permissible views of the evidence," and the district court's is one of them, this Court "may not reverse . . . even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently." *Anderson v. City of Bessemer City*, 470 U.S. 564, 574 (1985). The relevant standard of review therefore disposes of Applicants' circumstantial evidence argument, which is essentially just a rehash of Dr. Trende's testimony. *See* Appl. at 21–25. Applicants offer no reason to find the district court clearly erred in determining who won the battle of the experts below.

A brief review of the evidence confirms this conclusion. Indeed, Applicants lack any credible argument that the majority's findings as to the lack of racial predominance in CD-13 were clearly erroneous. Applicants and the dissent rely on Dr. Trende's "choropleth" maps, which purport to show that an isolated and "protru[ding]" part of CD-

[11] As explained below, this creates a substantial mismatch between Applicants' claimed injuries and their requested relief. *See infra*, Argument § II.

13's boundary "bring[s] in" Republican-leaning areas that have slightly higher percentages of Latino voters while "leav[ing] out" Democratic-leaning areas. Appl. at 22. On their logic, someone motivated by partisanship cannot have "bypass[ed]" those "Democratic areas"—the only plausible explanation, in their telling, is that the motivation must have been racial. *Id.* The argument falls apart at every turn.[12]

Most fundamentally, Applicants' theory relies on the unworkable assumption that Prop 50 aimed to improve Democratic performance in CD-13 *alone*, blind to effects on surrounding districts. *See* Appl. at 22 (focusing solely on purported moves "into" or "out of" CD-13). Applicants thus disregard the "tradeoff . . . inherent" in "every redistricting"—that "some voters are shifted out of one district and into another." *Jackson v. Tarrant County*, 158 F.4th 571, 582 (5th Cir. 2025); *see* PI Order at 107 (Lee, J., dissenting) (conceding that "redistricting is an exercise in robbing Peter to pay Paul" (quoting testimony of Dr. Trende)).

Recognizing this, the district court weighed evidence about motivations relevant to CD-13's neighboring districts—including CD-9, Democrat Josh Harder's district—and reached the obvious conclusion that, even assuming the credibility of Dr. Trende's analysis,[13] race-neutral reasons explain the boundary. PI Order at 56–58. The record shows that Democrats had *strong* incentives to move some of the "Democratic areas" into CD-9 rather than CD-13: under the 2021 map, that district only "lean[ed] Democrat"—*i.e.*, it was "competitive." *Id.* at 57 (citing Grofman Report ¶¶ 16–17 and Rodden Report at 23)). In other words, Democrats had every reason to make this district safer for Harder.

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[12] Applicants argued below that the Prop 50 map's lines in the Modesto-Ceres area provided circumstantial evidence of racial predominance, but even Dr. Trende ultimately walked away from that conclusion. *See* PI Order at 54. Applicants do not even mention this evidence in their Application to this Court, relying on the Stockton portion of the map alone to substantiate their request for statewide relief.

[13] *But see* PI Order at 53 (finding Dr. Trende's analysis was driven by "measurement error" because his "choropleth maps" did "not show political data on either side of [relevant boundaries] with the requisite specificity"). Neither Applicants nor the dissent offer any reason that this factual conclusion was clearly erroneous.

Id. at 56–57; *see also* ECF No. 189-1 at 57 (Van Nuys Decl.); ECF No. 189-1 at 51 (Palmer Report).

The dissent suggests Prop 50 does not reflect a partisan gerrymander because including a greater share of Democratic voters from the Stockton area in CD-9 rendered the district *too* safe in comparison to CD-13, where Democrats would also benefit from inclusion of the same voters. *See* PI Order at 96 (Lee, J., dissenting); *see also* U.S. Br. at 16 (making a similar argument). But that logic fails under scrutiny. CD-9 previously only "lean[ed] Democrat," and it *favored the Republican in the most recent presidential election*. PI Order at 57. Thus, "shor[ing] up" CD-9 for Democrats was an entirely plausible strategic political goal. *Id.* The fact that the Prop 50 map keeps the greater Tracy area (home to incumbent Josh Harder) whole in CD-9 further confirms the point. Applicants and the dissent say that decision also casts doubt on partisan motivations because splitting Tracy *could* have accomplished the goal of strengthening Democratic performance in CD-13, but the far more sensible inference from the evidence is that "sweeping" Harder's "local constituency" in Tracy into CD-13 could "quite possibly undermine Democrats' overall success," as the district court ultimately concluded. *Id.* at 63. Indeed, as the district court further noted, courts should not "assume expertise over which redistricting decisions will maximize Democratic success in various future elections." *Id.* at 62. At bottom, Prop 50 successfully converted both CD-13 and CD-9 from competitive seats into solid Democratic seats, reflecting the obviously partisan motivations of the Legislature. *See* ECF No. 189-1 at 51 (Palmer Report). The dissent's effort to nitpick precisely how Prop 50 achieved that overarching political goal is far beyond its ken. *See, e.g.*, *Alexander*, 602 U.S. at 7 (stressing the "extraordinary caution" courts must show when intruding upon a legislative function like redistricting).

Nor does a stray statement that Mitchell did not intend to draw an "incumbent preference gerrymander" change this conclusion. Appl. at 24. Mitchell took pains to specify that "[n]o current member of Congress is being placed at risk as a result of this redistricting effort, as that would not support goals." Ex. 528 at 11 (DCCC App. 476).

Thus, he *did* seek to avoid placing incumbents at risk to secure the broader goal of partisan advantage—providing an explanation for his choices vis-à-vis CD-9. The evidence further shows that CD-9 and CD-13 were among the specific districts Democrats sought to improve through changes to the draft map Mitchell initially showed them. ECF No. 189-1 at 56–57 (Van Nuys Decl.). Thus, even if it were true that Mitchell does not *ordinarily* draw incumbent preference maps, the record confirms he wanted to avoid placing any Democratic incumbent at risk. *See id.* at 56–57; *id.* at 51 (Palmer Report); PI Order at 57, 63. In the end, Applicants fail to make even a dent in "the competing explanation that political considerations dominated," much less rule it out. *Alexander*, 602 U.S. at 9–10. And they certainly cannot show clear error in the district court's conclusions on that point.

Further still, and even while insisting that the line-drawing around Stockton is their "best" circumstantial evidence of racial predominance, Appl. at 22, Applicants do not attempt to rebut the district court's independent finding that *another* race-neutral principle more readily explains the boundaries: "respect for communities with shared interests." PI Order at 58–59 (citing *Miller*, 515 U.S. at 916). That is for good reason: they have no cogent response to the majority's thorough and thoughtful analysis. *See id.* at 59 (explaining Dr. Rodden's and Dr. Ruiz-Houston's "unrebutted" testimony corroborate one another on this matter). Even assuming the failure to address this finding does not amount to waiver, the majority's findings are plainly supported by the evidence. And while the dissent briefly suggests that no direct evidence shows that the mapmaker considered communities of interest, that suggestion is plainly contradicted by the record. *Compare id.* at 58–59 & n.26 (majority op.), *with id.* at 108–09 (Lee, J., dissenting).

The weakness of Applicants' circumstantial evidence is also highlighted by their choice to effectively abandon their original theory of racial predominance—that CD-13's boundaries reflected a desire to maximize Latino vote share—to a distinct "racial target" theory. After evidence showed that Prop 50 actually *decreased* the Latino voter share in CD-13, PI Order at 63 (citing Tr. at 35 (DCCC App. 4)), Applicants shifted gears to try to

show that CD-13 was crafted with a racial "target"—a so-called "optimal range" of Latino voters—in mind. Appl. at 21, 24–25; *see also* Tr. at 487 (DCCC App. 14). Applicants conceded that they never raised this "target" theory in their preliminary injunction motion. Tr. at 487:20–24 (DCCC App. 14). Indeed, even *their own amicus* rightly points out that Applicants "failed to timely raise" this argument. PILF Br. at 8. Even so, the district court chose to address this theory on the merits and rightly rejected it. *See* PI Order at 64–65.

First, Applicants purport to rely on Dr. Trende's testimony to support their "racial target" theory, Appl. at 23, but Dr. Trende affirmatively *disclaimed* offering any such opinion, PI Order at 65 (quoting Tr. at 92 (DCCC App. 7)); *see also* PILF Br. at 8 (agreeing Dr. Trende "stated that he was not opining that District 13, nor any other Prop 50 district, was drawn with a racial target in mind"). *Second*, one of Dr. Trende's own "alternative maps" (Map A)—which he testified was drawn only with *political* considerations in mind and *no* racial target—resulted in a Latino voter percentage within the same "51% to 55% range" that Applicants claim Mitchell *must* have *intentionally* targeted. *Id.* at 65–66. That completely undercuts Applicants' "target" theory, as it shows that even purely partisan motivations could yield a district of similar racial composition. *Third*, Applicants offer no reason to doubt the majority's finding—following a "holistic" analysis of the district—that evidence showed the overwhelming majority of voters moved into or out of CD-13 were clearly relocated based on partisanship, eclipsing any limited meaning that could be derived from maintaining a similar percentage of Latino voters compared to the 2021 map. *Compare* Appl. at 24–25, *with* PI Order 66 (quoting *Allen v. Milligan*, 599 U.S. 1, 32 (2023) (plurality opinion)).

In sum, neither direct nor circumstantial evidence shows that race predominated over race-neutral considerations in CD-13, and nothing in the Application or otherwise suggests the court below clearly erred—much less "indisputably" so—in so holding.

D. Applicants' failure to present a valid alternative map is independently fatal to their argument.

In *LULAC*, this Court made clear that a racial gerrymandering plaintiff *must* present a "viable alternative map that met the [s]tate's avowedly partisan goals" or face a "dispositive or near-dispositive adverse inference" against them. 2025 WL 3484863, at *1; *see also Alexander*, 602 U.S. at 10 ("[T]he plaintiffs failed to meet the high bar for a racial-gerrymandering claim by failing to produce . . . an alternative map showing that a rational legislature sincerely driven by its professed partisan goals would have drawn a different map with greater racial balance.").

Although Applicants' expert, Dr. Trende, presented three "alternative maps" (identified as "A," "B," and "C,"), the district court found that those maps had serious flaws, PI Order at 59–63—an issue Applicants do not even bother to discuss in their brief. *See* Appl. at 23–24. As an initial matter, Applicants offered no alternative maps whatsoever for any districts other than CD-13—let alone a 52-district map that still achieves the Legislature's statewide partisan goals of adding five Democratic seats while simultaneously resolving Applicants' professed racial gerrymandering concerns. Instead, Dr. Trende's alternative maps make only minor adjustments to the boundaries of CD-13—and none of these miniscule changes satisfies the Legislature's "professed partisan goals" while demonstrating "greater racial balance," *Alexander*, 602 U.S. at 10. Alternative Map A features a Latino voter share of 51.3% in CD-13—not materially different from the 53% in Prop 50's CD-13—and splits two important communities of interest. *See* PI Order at 61–62. Alternative Maps B and C drop the Latino voter share of CD-13 by barely five percentage points, and then too only by splitting the city of Tracy, home of CD-9's current Democratic incumbent, as well as the other communities of interest split by Alternative Map A. *Id.* at 62–63 & n.30; *see id.* at 63 (noting that moving the incumbent's "local constituency" in Tracy into CD-13 could "quite possibly undermine Democrats' overall success").

Applicants' half-hearted attempt to redraw a single district comes nowhere close to satisfying the standard for a "viable" alternative map set forth by this Court. *LULAC*,

2025 WL 3484863, at *1. This evidentiary failure dooms Applicants' circumstantial case.

E. This Court's *LULAC* order further compels denying the Application.

Beyond their scattershot evidence and flawed statewide attack on Prop 50, Applicants have another problem: Texas. The enactment of Prop 50 is indelibly bound up with Texas's own mid-decade redistricting effort. California's governor made that clear when he offered to abandon redistricting efforts if Texas did likewise. *See* Ex. 93 (DCCC App. 81). Because Texas proceeded to enact a map adding five additional seats for Republican members of Congress, California enacted Prop 50 to neutralize the impact of Texas's map by creating a "five district pick-up map" for Democrats. Ex. 10 at 10:17–22; 11:19–20 (DCCC App. 37–38). Indeed, Paul Mitchell himself explained that he could have drawn a map with *more* than five Democratic pick-ups, but elected not to do so specifically because his map was intended only to offset Texas. *Id.*

This Court has already recognized the interplay between redistricting efforts in Texas and California. *See LULAC*, 2025 WL 3484863, at *1 ("Texas adopted the first new map, then California responded with its own map for the stated purpose of counteracting what Texas had done."); *id.* (Alito, J., concurring) (similar). And the same " presumption of legislative good faith," *id.* (majority op.), that permitted Texas's revised map to remain in place pending litigation applies with equal force here. Remarkably, Applicants do not even *cite* the Court's order in *LULAC* in their Application, never mind distinguish it.

This Court's order in *LULAC* weighs against granting the Application for another reason—the evidence of racial motivation in Texas dwarfs the evidence here. Critically, Texas drew new maps against the backdrop of the Fifth Circuit's *en banc* ruling that the Voting Rights Act does not create a right to racial coalition districts. *See generally Petteway v. Galveston County*, 111 F.4th 596, 599 (5th Cir. 2024) (en banc). After initially declining President Trump's entreaties to redistrict for nakedly partisan reasons, Texas endeavored to do so for the stated purpose of eliminating existing coalition districts—a task deeply inflected with racial considerations. *See LULAC*, 2025 WL 3215715, at *2 (concluding Texas's redistricting was motivated by the "racial goal of eliminating

coalition districts"). As a result of this unique posture, the evidence in Texas showed uncommonly race-conscious rationales for its new map. Among substantial other evidence, this included:

- Governor Abbott explicitly *denying* that the purpose of redistricting was "to give Trump and Republicans in the House of Representatives five additional seats," and insisting instead that "the reason why we are doing this is because of that [*Petteway*] court decision" and because "we wanted to remove those coalition districts." *Id.* at *13.

- Governor Abbott stating in an interview: "[W]e want to make sure that we have maps that don't impose coalition districts." *Id.* at *14 n.115 (citation omitted).

- The Texas House Speaker describing the map's purpose as "to address concerns raised by the Department of Justice," *id.* at *25 (emphasis omitted), referring to DOJ's letter "urging Texas to change the racial compositions of CDs 9, 18, 29, and 33," *id.* at *8.

- A Texas Representative and redistricting sponsor denying that the redistricting was "gerrymandering . . . for political gain," and instead insisting that it was "required" to eliminate minority coalition districts. *Id.* at *26.[14]

The *LULAC* plaintiffs also amassed significant circumstantial evidence. Unlike Applicants, they challenged the drawing of specific districts—the former coalition districts which were altered beyond recognition—rather than mounting a broadside attack against the whole map. And they presented evidence that those districts were redrawn with the primary purpose of changing their racial makeup. *See id.* at *15–17 (noting the boundaries of one district were "radically reconfigure[ed] … to remove various Latino communities"). The plaintiffs further pointed to "a legislative record replete with racial statistics," *id.* at *31, and the increase in the number of single-race majority districts statewide, *id.*

[14] Notably, Applicants here fail to show meritorious racial gerrymandering claims even under the *dissent's* opinion in *LULAC*. *See* 2025 WL 3484863, at *2–8 (Kagan, J., dissenting). As Justice Kagan reasoned, the *LULAC* plaintiffs demonstrated a likelihood of success based upon "three kinds of direct evidence," *id.* at *4, including Texas's "embrace[]" of DOJ's "ultimatum to change various districts' racial composition," *id.* at *4; Texas lawmakers' "consistent[]" and "repeated[]" "support for the new map in those same racial terms," *id.*; and Governor Abbott's "consistent[] reject[ion of] the idea that Texas was redistricting to fulfill President Trump's demand for additional Republican districts," *id.* (citation modified). This stands in stark contrast to the misleading soundbites Plaintiffs offer as so-called direct evidence here. *See supra* Argument § I.B.

This Court nonetheless stayed the district court's preliminary injunction order because it found the plaintiffs were unlikely to succeed on the merits. Specifically, the Court found that the district court "failed to honor the presumption of legislative good faith by construing ambiguous direct and circumstantial evidence against the Legislature," and "[f]ailed to draw a dispositive or near-dispositive adverse inference against [the plaintiffs] even though they did not produce a viable alternative map." *LULAC*, 2025 WL 3484863, at *1. Applicants now invite the Court to do the same here without any explanation as to how doing so could be consistent with *LULAC*.

At the end of the day, Applicants' evidence is even less compelling than the evidence that this Court deemed "ambiguous" in *LULAC*. *See* 2025 WL 3484863, at *1 (district court erred by "construing ambiguous direct and circumstantial evidence against the legislature"). There is a multitude of evidence that partisanship, rather than race, motivated California's voters, elected officials, and Mitchell. *Supra*, Argument § I.A.1–2. In light of the records in these parallel cases, the Court cannot reasonably rule that Texas can implement its gerrymandered maps for the 2026 midterm, but that California cannot implement its voter-approved partisan maps in the same election.

II. Applicants have not shown irreparable harm.

Applicants also have not shown the sort of "exigent circumstances" that warrant the "extraordinary" relief of an injunction pending appeal. *Ohio Citizens for Responsible Energy*, 479 U.S. at 1313. Indeed, their irreparable harm arguments are entirely bound up with their success on the merits, suggesting they will suffer a constitutional injury if forced to compete and vote in unlawful districts. Appl. at 26–28. Accordingly, the Court may readily dispatch this factor upon concluding Applicants are unlikely to succeed on the merits.

Applicants' theory of harm in this case suffers from another critical defect: The statewide injunction sought here is grossly out of proportion to Applicants' meagre evidence, which focuses almost exclusively on a handful of boundary lines in a single district on the southside of Stockton. As Judge Lee explained in oral argument, "the *only*

evidence the [Applicants] have provided really is [on] CD-13." Tr. at 555:2–3 (DCCC App. 28) (emphasis added). Thus, even if Applicants *had* raised a question on the merits about CD-13, there is a conspicuous mismatch between their evidence pertaining to a narrow portion of that district—implicating just part of the southside of California's eleventh largest city—and their request to revert the entirety of California's 52-seat congressional map in a manner that impacts 23 million registered voters. Granting such an injunction would run headlong into this Court's rules about proper relief for racial gerrymandering claims.

Indeed, Applicants' request mocks this Court's strict admonition that a redistricting "plaintiff's remedy must be limited to the inadequacy that produced [his] injury in fact." *Gill*, 585 U.S. at 66 (alteration in original) (internal quotation marks and citation omitted). That means "the remedy that is proper and sufficient lies in the revision of the boundaries of the [plaintiff's] own district." *Id.*; *Alabama*, 575 U.S. at 264 (explaining relief can only be granted as "to the individual districts subject to the appellants' racial gerrymandering challenges"). Applicants do not even try to explain why a claim centered on a narrow slice of CD-13 warrants enjoining Prop 50 as a whole. They simply assert, rather cheekily, that they seek a "narrow injunction" restoring the 2021 map in full—even as to the 51 districts where they have not offered a scintilla of evidence. Appl. at 3. Nowhere do they explain how that is consistent with this Court's holdings that a plaintiff's proof *and remedy* must be district-specific—never mind the fundamental equitable principle that "injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979); *see also Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 765 (1994) (noting an "injunction [should be] no broader than necessary to achieve its desired goals"). Because the statewide relief Applicants seek is obviously inconsistent with their own evidence about the limited scope of any harm, their Application should be denied.

Even if this Court were inclined to afford Applicants any relief, it is duty-bound to afford relief as narrow as the evidence Applicants have presented. Any such relief must

first offer the California Legislature an opportunity to ameliorate the alleged harm. As this Court noted in *Wise v. Lipscomb*, "redistricting and reapportioning legislative bodies is a legislative task which the federal courts should make every effort not to pre-empt," so it is "appropriate, whenever practicable, to afford a reasonable opportunity for the legislature to meet constitutional requirements by adopting a substitute measure." 437 U.S. 535, 539–40 (1978). Even the authorities cited in the United States' brief agree with this basic principle. *See* U.S. Br. at 25 (acknowledging that California has an "interest in drawing its own map" and citing *Harris v. McCrory*, 159 F. Supp. 3d 600, 627 (M.D.N.C. 2016), *aff'd sub nom. Cooper*, 581 U.S. 285, for the proposition that "a state should have the first opportunity to create a constitutional redistricting plan"). California's elected officials—not this Court—should decide how California conducts its 2026 primary.

And even if the Court believes such a solution is impracticable in view of election deadlines, the record provides another, more tailored alternative to a statewide injunction: Dr. Trende's alternative maps. The dissent insists that a court cannot "adjust the Proposition 50 lines to resolve Plaintiffs' racial gerrymandering complaints" because it "would have to consider factors such as political party affiliation, incumbent protection, city limits, compactness, communities of interest, and other inherently political factors in drawing district lines." PI Order at 116 (Lee, J., dissenting). But this is simply untrue: the Prop 50 map already encompasses the Legislature's analysis of those factors, and Applicants themselves *insist* as part of their own evidence that each of Dr. Trende's maps—which make slight alterations to CD-13—is a "possible configuration of District 13 that increase[s] Democratic performance while lowering HCVAP below the target range, all while adhering to traditional districting criteria." Appl. at 11. Neither Applicants nor the dissent offer any reason why the Court should discard the Prop 50 map as a whole—challenged and unchallenged districts alike—instead of adopting an approach that would preserve nearly all of the Prop 50 map that California voters endorsed at the ballot box while addressing Applicants' supposed concerns about racial gerrymandering.

III. The balance of the equities tips sharply against Applicants.

Because Applicants have failed to show a likelihood of success on the merits or any exigent circumstances that warrant the extraordinary relief they seek, the Court need not consider the balance of the equities. *See Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (the Court balances the equities only in "close cases"). But the balance tilts sharply against granting the Application as well.

The population that would be affected by Applicants' requested relief—namely, California voters—have already expressed their opposition to that relief. Nearly two-thirds of California voters endorsed Prop 50 at the ballot box last November. Thus, "granting a preliminary injunction . . . would be counterproductive to the public interest" because "it was the public—namely, the California voters—who passed" the challenged proposition. *Chamness v. Bowen*, No. 11-cv-1479, 2011 WL 13128410, at *12 (C.D. Cal. Mar. 30, 2011); *Bowyer v. Ducey*, 506 F. Supp. 3d 699, 724 (D. Ariz. 2020) (denying preliminary injunction motion to overturn election results, in part because "the requested relief would cause enormous harm to Arizonans, supplanting the will of nearly 3.4 million voters"). Enjoining the Prop 50 map and replacing it with the prior map by judicial fiat, as Applicants request, would only "undermine the will of the electorate." *Chamness*, 2011 WL 13128410, at *12.

An injunction would also impose a hardship on California and the state respondents, who have an interest in enforcing California's duly enacted laws. "Any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (alteration omitted) (quoting *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers)). California's interest is especially compelling here, where the challenged law was overwhelmingly endorsed by both the Legislature and the electorate.

Against these weighty interests, Applicants have little to say. They suggest that the public interest weighs in their favor because the public has an interest in

"constitutionally valid district lines," Appl. at 29, once more folding their argument into the merits. *But see supra*, Argument § I. They also argue that California voters have an interest in "orderly election administration." Appl. at 29. This is undoubtedly true, but Applicants' requested injunction would hinder that interest, not advance it, by disrupting ongoing preparations for California's 2026 primary election. *See infra*, Argument § IV; *see also LULAC*, 2025 WL 3484863, at *1. Finally, Applicants say that the "requested injunction respects democratic administration while preserving constitutional adjudication." Appl. at 30. The injunction Applicants request does no such thing: to the contrary, it would undermine the will of the California electorate and Legislature, effectively overrule the district court's careful analysis and conclusions for at least one election, and impose outsized judicial relief to Applicants' extremely narrow legal claims. If the Court issues an injunction, "the inability to enforce its duly enacted plans [will] inflict[] irreparable harm" on California and its voters. *Abbott*, 585 U.S. 579, 602 n.17. The Court should deny Applicants' request.

IV. *Purcell* supplies another independent basis for denying relief.

"This Court has repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election." *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U.S. 423, 424 (2020) (per curiam). This tenet, "known as the *Purcell* principle," embodies "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) (Kavanaugh, J., concurring in the grant of a stay pending appeal). Justice Kavanaugh has highlighted the risks of contravening this principle on more than one occasion. Not only does late-stage judicial interference in the electoral process risk "voter confusion" and "election administrator confusion," but it also requires "election administrators [to] first understand the court's injunction, then devise plans to implement that late-breaking injunction, and then determine as necessary how best to inform voters, as well as state and local election officials and volunteers, about those last-minute changes." *Democratic Nat'l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 31

(2020) (Kavanaugh, J., concurring in the denial of an application to vacate a stay of an injunction).

Thus, injunctions that affect ongoing elections may "work[] a needlessly chaotic and disruptive effect upon the electoral process." *Benisek v. Lamone*, 585 U.S. 155, 161 (2018) (per curiam) (internal quotation marks and citation omitted). That is precisely the effect that Applicants' requested relief would have. California's primary election is scheduled for June 2, 2026, just a little over four months from now. *Cf. Merrill*, 142 S. Ct. at 880 (Kavanaugh, J., concurring in grant of application for stays) (explaining on February 7 that *Purcell* required setting aside an injunction applicable to May 24 primary election). Candidates are *already* in the process of collecting signatures and preparing filing papers to support their campaigns—campaigns that are, of course, centered in the specific congressional districts where the candidates plan to run.[15] As an employee of the California Secretary of State's office declared in the district court, "the current [primary] schedule leaves almost no room for uncertainty regarding the applicable congressional district map, or to accommodate any delays in its implementation." ECF No. 113-2 (Southard Decl.) ¶ 9. This is because "[e]ach step of the process of applying the new congressional district map throughout California requires subject-matter experts at the state and county level to perform highly technical tasks that cannot be outsources." *Id.* These tasks include determining "which voters and precincts fall within [each county's] district lines," "ensur[ing] that each precinct is associated with only one district of each type," "associat[ing] each of over 23 million voters to their proper election precincts," "validat[ing] the updated county precincts," and correcting any discrepancies. *Id.* ¶ 13. Further, changing the map at this juncture could cause voter uncertainty, and even make it "possible that voters could receive incorrect ballots and voter information guides." *Id.* ¶ 14.

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[15] *Primary Election – June 2, 2026*, CAL. SEC'Y OF STATE, https://www.sos.ca.gov/elections/upcoming-elections/primary-election-june-2-2026/key-dates-and-deadlines (last visited Jan. 20, 2026).

Applicants ignore this evidence, and the United States pays it short shrift, U.S. Br. at 25, but make no mistake—enjoining Prop 50 at this late date would have a devastating impact on California's election process. Indeed, that is precisely what *Applicants* argued in the district court. On multiple occasions, they represented to the court that December 19, 2025—the date on which candidates can begin collecting signatures for ballot access—was the relevant *Purcell* cutoff date, and that they would suffer irreparable harm if they did not receive injunctive relief by that date. In their own words, the "2026 congressional election candidates *must know* the district lines by December 19, 2025." ECF No. 16-1 at 4 (emphasis added). Applicants were still more explicit in opposing a request for an extension of time to complete the preliminary injunction briefing, claiming that they "will suffer irreparable harm if the unlawful map is not enjoined by December 19, 2025, and delaying judicial review increases the risk of *Purcell* issues that would ensure even further irreparable harm." ECF No. 75 at 3.

The United States attempts to evade this December 19 cutoff by suggesting that "there is no evidence that any candidate is collecting signatures." U.S. Br. at 24. That is an astounding claim given that Applicant Ching—one of the United States's own co-plaintiffs below—testified at the hearing that he would do just that. Specifically, he testified that "on December 19th," he would "go to the county office," "pull the papers" needed to declare his candidacy, and begin "gather[ing] volunteers and then start, pass [sic] out the signature papers and try to collect as many as possible." Tr. at 238:5–24 (DCCC App. 10). While the United States ignores this testimony, the Court should take Applicants at their own sworn word: the deadline for preliminary injunctive relief has "already come and gone." *Benisek*, 585 U.S. at 160 (citation omitted).

Now, however, following the dissent, Applicants have identified another date—conveniently located in the future—as the *Purcell* cutoff. Specifically, they suggest that this Court must issue an order by "Wednesday, February 9, 2026," because that date "marks the point at which effective injunctive relief may issue without implicating *Purcell* concerns." Appl. at Cover, 30. Setting aside that "Wednesday, February 9, 2026"

does not exist because February 9 falls on a Monday, Applicants' position squarely contradicts their position in the district court. This about-face is yet another reason to reject Applicants' request. *See Benisek*, 585 U.S. at 160 (affirming denial of preliminary injunction, in part because the appellants "themselves represented to the District Court that any injunctive relief would have to be granted by" a certain date, which had "long since passed").

Thus, "[g]iven the imminence of the election and the inadequate time to resolve the factual disputes," the balance of harms strongly favors "allow[ing] the election to proceed without an injunction" against the congressional map approved by two-thirds of California voters. *Purcell v. Gonzalez*, 549 U.S. 1, 5–6 (2006) (per curiam). Indeed, in *LULAC*, the district court issued its injunction "four months out from the primary election," 2025 WL 3215715, at *62—essentially the same timeframe here—yet this Court vacated the injunction because the district court "improperly inserted itself into an active primary campaign, causing much confusion and upsetting the delicate federal-state balance in elections." *LULAC*, 2025 WL 3484863, at *1.[16] The Court should afford the same respect to California.

V. The requested injunction is unnecessary to preserve the Court's jurisdiction to address the merits at an appropriate time.

Separate and apart from the merits, to obtain an injunction from this Court—which can issue injunctions only pursuant to the All Writs Act—Applicants must show why an injunction is "necessary or appropriate in aid of" the Court's jurisdiction. *Turner Broad. Sys.*, 507 U.S. at 1301 (quoting 28 U.S.C. § 1651(a)). Applicants apparently recognize this requirement; they contend that the injunction they request "will be of aid to this Court's jurisdiction because it will ensure that this matter (the appeal of Applicants' Motion for Preliminary Injunction) remains a live case or controversy subject to this Court's review." Appl. at 4.

[16] Contrary to the dissent's suggestion, this case is not on a significantly different timeline from *LULAC* as to state election deadlines. *See* PI Order at 114 (Lee, J., dissenting).

That makes no sense. According to Applicants' irreparable harm theory, they and other California voters are harmed because Prop 50 subjected them to unconstitutional racial classifications. *See supra*, Argument § II. This injury, they claim, is "immediate and structural," and "is not measured solely by election outcomes." Appl. at 26–27. Thus, under Applicants' own characterization of their harm, a live case or controversy will remain so long as Prop 50 is in effect. Applicants have therefore presented no reason why an injunction will aid the Court's exercise of jurisdiction, which will still presumably exist to review this same issue either from appeal of a final judgment or the pending appeal from the district court's preliminary injunction decision. In other words, "[e]ven without an injunction pending appeal, the applicants may continue their challenge to [Prop 50]. in the lower courts" and "[f]ollowing a final judgment, they may, if necessary," seek review "in this Court." *Hobby Lobby Stores, Inc. v. Sebelius*, 568 U.S. 1401, 1404 (2012) (Sotomayor, J., in chambers). The failure to explain how an injunction is necessary to preserve this Court's jurisdiction supplies an independently sufficient reason to deny the Application.

CONCLUSION

For the foregoing reasons, the Application for injunctive relief should be denied.

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Respectfully submitted,

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