No. 25A839

In the
# Supreme Court of the United States

DAVID TANGIPA, *et al.*,

*Applicants*,

*v.*

GAVIN NEWSOM, *et al.*,

*Respondents.*

ON APPLICATION FOR WRIT OF INJUNCTION FROM THE U.S. DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

**To the Honorable Elena Kagan**
**Associate Justice of the Supreme Court of the United States and Circuit Justice for the Ninth Circuit**

## APPLICANTS' REPLY IN SUPPORT OF EMERGENCY APPLICATION FOR WRIT OF INJUNCTION PENDING APPEAL

**RELIEF REQUESTED BY MONDAY, FEBRUARY 9, 2026**


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## INTRODUCTION

"The Equal Protection Clause of the Fourteenth Amendment provides that no State shall 'deny to any person within its jurisdiction the equal protection of the laws.'" *Miller v. Johnson*, 515 U.S. 900, 904 (1995) (quoting U.S. Const. amend. XIV, § 1). "Its central mandate is racial neutrality in governmental decisionmaking." *Id.* Racial gerrymandering violates the Fourteenth Amendment and "reinforces the perception that members of the same racial group—regardless of their age, education, economic status, or the community in which they live—think alike, share the same political interests, and will prefer the same candidates at the polls." *Shaw v. Reno*, 509 U.S. 630, 647 (1993) ("*Shaw I*"). The constitutional harm is not merely, as Professor Hasen would have this Court rule, "expressive." Br. of Prof. Richard L. Hasen as *Amicus Curiae* ("Hasen Br.") 2. It is not simply about what message the relevant state actor intended to send. Rather, "[a] racial classification, regardless of purported motivation, is presumptively invalid and can be upheld only upon an extraordinary justification." *Shaw I*, 509 U.S. at 643–44 (quoting *Personnel Adm'r of Mass. v. Feeney*, 442 U.S. 256, 272 (1979) (emphasis added)). When the government sorts voters into districts based predominantly on race, the constitutional harm exists independent of anyone's subjective motivations. *See id.* "Racial classifications with respect to voting carry particular dangers" because they "threaten[] to carry us further from the goal of a political system in which race no longer matters." *Id.*.

The person who drew the congressional district lines enacted through California's Proposition 50 publicly boasted that he drew district lines to favor voters of one race. App. 245, 261. The organization that transmitted his map to the California legislature, Respondent DCCC, transparently stated in the cover letter that the map pushes back on

racial gerrymandering that they believed had occurred in other states, in addition to its partisan goal. App. 466. Legislators similarly stated on the legislative floor and in press releases that Proposition 50's map expanded one race's power, the most numerous race in the state, as a response to the perceived harm done to them by another state. App. 263, 228.

Moreover, fourteen of California's 52 congressional districts were drawn with that race as a majority precisely in a 51–55% range, App. 321–326, hitting the racial target described as the optimal range to maximize that race's voting power, as identified in the prior work of the map drawer. App. 256. Finally, Applicants' expert analyzed one district to corroborate that its lines could not be explained by a predominantly partisan motive, and provided alternate maps showing a partisan goal could be reached without using race.

In the face of this direct and circumstantial evidence of one of the most divisive and unconstitutional abuses of government power, not one member of either the Governor's office or the state Legislature offered so much as a sentence in a declaration defending the drawing of Proposition 50's map. Not one witness for the state and intervenors opining about the drawing of district lines was involved in that effort or spoke to the man who did.

The Proposition 50 map thus represents a state government policy that one race should choose the member of Congress in up to fourteen congressional districts. With approximately 760,000 voters in each district, the consequence is that at least 46% of residents in each district of approximately 760,000 voters, that is, approximately 5.2 million voters, were consigned to districts in which the state decided that their votes should never determine the winner of an election for one reason alone—their race.

Respondents and an academic *amicus* argue that, as the District Court held, no constitutional violation occurred because a majority of the state's voters who participated

in the election approved the Proposition 50 map following a campaign that focused on its partisan goal only, and they were thus seemingly ignorant of the racial sorting the Proposition 50 map accomplished.

This argument depends on a chain of logical leaps: (a) that the choice to racially sort voters must be intentional and not an accident of geography or other circumstance; (b) that the courts must look to the subjective intent of some chosen "relevant state actor;" (c) that the relevant state actor is not the person who drew the state's map to achieve racial goals, or the legislature that used those maps and echoed those goals, but rather the subjective intent of the voters who voted for Proposition 50; (d) that courts can and should endeavor to ascertain the intent of a state's voters; and (e) that a racial gerrymander does not violate the Constitution if the voters approving it were ignorant of the state's racial designs.

In addition to assigning courts the impractical task of making findings of a singular "intent of the voters" based on the government's own publications, like the ballot pamphlet or the court's impression of the ballot campaign rhetoric, this "voter intent" doctrine would risk laundering a publicly discussed racial gerrymander based on a determination that the public didn't know what it was being asked to approve. Fortunately, this Court's precedent is clear that the intent of the mapmaker is critical in determining whether a state intended to sort its voters based on race. For the reasons addressed below, it is not too late to avoid the violation of the constitutional rights of millions of Californian voters. Applicants, therefore, respectfully request that this honorable Court hold that the Proposition 50 map be enjoined.

## ARGUMENT

### I. THE EVIDENCE UNAMBIGUOUSLY DEMONSTRATES THAT RACE PREDOMINATED IN THE DRAWING OF DISTRICT 13

Respondents and the district court majority contend that this Court should disregard the mapmaker's candid admissions and instead attempt to divine the subjective motivations of the seven-and-a-half million Californians who voted to approve Proposition 50. App. 14–22; State Opp'n. 17–18; LULAC Opp'n. 30–31; DCCC Opp'n. 16–20. This novel approach finds no support in this Court's precedents and would render the constitutional prohibition on racial gerrymandering effectively unenforceable whenever a state submits its maps to a referendum. The racial gerrymandering inquiry has always focused on the intent of those who actually drew the challenged lines, not on the downstream intentions of those who ratified the result. *See Miller*, 515 U.S. at 916 (A plaintiff must prove "the legislature subordinated traditional race-neutral districting principles . . . to racial considerations."); *Cooper v. Harris*, 581 U.S. 285, 291 (2017) (noting that the inquiry turns on whether "race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district"). Moreover, this Court has explicitly held that an unconstitutional act is not cleansed by voter approval. *Lucas v. Forty-Fourth General Assembly of the State of Colorado*, 377 U.S. 713, 736–37 (1964).

This Court has consistently treated evidence concerning the mapmaker's decision-making process as the most probative direct evidence in racial gerrymandering cases, even where it is a legislature that ultimately enacts the challenged plan, precisely because the mapmaker is the actor who makes the "placement decisions" the constitutional test polices.[1]

[1] State Respondents attempt to minimize the significance of the mapmaker's role by

*See Alexander v. S. Carolina State Conf. of the NAACP*, 602 U.S. 1, 13–15, 19, 22–23 (2024) (extensively analyzing the mapmaker's intent, and treating the person "who drew the Enacted Map" as providing "direct evidence" (emphasis added)); *Cooper*, 581 U.S. at 299–300 (focusing on evidence that "the State's mapmakers . . . purposefully established a racial target"); *Allen v. Milligan*, 599 U.S. 1, 15–16 (2024); *Shaw v. Hunt*, 517 U.S. 899, 906 (1996); App. 87 (recognizing this Court "has often looked at the mapmaker as the most natural and perhaps only viable way to discern the state's intent in drafting a congressional redistricting map").

The "voter intent" rule's proponents mistakenly rely on *Brnovich v. Democratic National Committee*. *See* LULAC Opp'n 11; Hasen Br. 11–12. *Brnovich,* which is not a redistricting case, addressed whether one legislator's discriminatory intent could be attributed to fellow legislators who enacted a facially neutral voting law. *See* 594 U.S. 647, 688 (2021). But the question here is not whether voters shared Mr. Mitchell's or the legislature's racial motivations. It is whether Mr. Mitchell sorted voters by race. *See Cooper*, 581 U.S. at 292.

When the inquiry properly centers on the motivations of those who designed the district lines—*i.e.*, the mapmaker and the legislators who reviewed and enacted his work—rather than "center[ing] voters' intent as the dispositive inquiry," App. 21, the evidence of racial predominance is unambiguous.

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noting that he "drew the first version of the new map." State Opp. 2. But Mitchell testified that the enacted map differed only negligibly from what he submitted to the Legislature. App. 402.

### A. The Mapmaker's Unrebutted Admissions Constitute Direct Evidence of Racial Predominance.

Respondents argue that Paul Mitchell's public statements merely describe the "effect[s]" of the Proposition 50 Map rather than his "intent" in drawing it. State Opp'n 21. This characterization cannot withstand scrutiny. Mr. Mitchell did not passively observe that the maps happened to benefit Latino voters. He declared, openly and proudly, that he drew them to ensure that outcome. In a presentation to the advocacy group Hispanas Organized for Political Equality ("HOPE"), Mr. Mitchell stated that the Proposition 50 Map "will be great for the Latino community" because it "ensure[d] that the Latino districts" were "bolstered in order to make them most effective, particularly in the Central Valley." App. 245. District 13 is located in the Central Valley. App. 41. Mr. Mitchell also bragged on social media that the "proposed Proposition 50 map will further increase Latino voting power over the current Commission map" and "adds one more Latino influence district." App. 261.

These statements are precisely the type of direct evidence this Court has recognized as establishing racial predominance. In *Cooper*, this Court relied heavily on direct evidence that "the State's mapmakers . . . established a racial target" of at least "50%-plus" African-American voting-age population. 581 U.S. at 299–300. Similarly, in *Alexander*, this Court explained that "[d]irect evidence often comes in the form of a relevant state actor's express acknowledgment that race played a role in the *drawing* of district lines." 602 U.S. at 8 (emphasis added). Mr. Mitchell's statements are candid declarations of this sort, illustrating that racial objectives drove his line-drawing decisions.

The record includes additional circumstantial evidence corroborating that Mr. Mitchell's statements were not isolated remarks but reflected a deliberate methodology. Mr.

Mitchell worked closely with HOPE during the 2021 redistricting process and, during his October 2025 presentation, expressly referenced a 2021 HOPE letter as guiding his approach to drawing the Proposition 50 Map. App. 239–240. That letter advocated for a racial target of "between 52% and 54% Latino CVAP" to ensure districts would "still be very likely to elect Latino candidates of choice." App. 256. This includes District 13, which has an HCVAP of 53.8%, squarely within that target range. State Opp'n 29. The precision with which District 13's demographics align with this racial target, despite the massive reconfiguration of the district's boundaries, is powerful circumstantial evidence that race, not partisanship, drove the line-drawing. *See Bethune-Hill v. Virginia State Bd. of Elections*, 580 U.S. 178, 183–85 (2017) (use of racial target is evidence of predominance).[2]

Faced with this evidence, Mr. Mitchell declined to offer any competing explanation. He refused to testify at the preliminary injunction hearing, even though he acknowledged having no pressing obligations and even though he lives in California. App. 79. He invoked legislative privilege over one hundred times during his deposition.[3] App. 89. A mapmaker confident that partisanship, rather than race, drove his decisions would have every incentive to say so under oath. *Cf. Bush v. Vera*, 517 U.S. 952, 960–61 (1996) (pl. op.) (reviewing "substantial direct evidence of the legislature's racial motivations[,]" including

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[2] State Respondents assert that Applicants' argument concerning a racial target "was not preserved below." State Opp'n 22. On the contrary, the specific HCVAP of District 13 was a pronounced element of Dr. Trende's initial analysis, App. 290–295, and Applicants directly raised Mr. Mitchell's decision to pursue HOPE's objectives in their motion, ECF No. 16-1 at 17–18.

[3] To the extent Respondents assert that Mr. Mitchell is not a relevant state actor, *see* DCCC Opp'n 24, his decision to invoke legislative privilege plainly suggests otherwise. Moreover, it is clear from Mr. Mitchell's deposition that he began drafting the map at the express request of legislative staff. App. 394–395.

the "testimony of individual state officials"). Mr. Mitchell's refusal to testify, coupled with his unrebutted public admissions, compels the conclusion that race predominated in his design of District 13.

### B. The Legislature's Own Materials Confirm that Race Was the Organizing Metric.

Respondents contend that it is "unexceptional" for legislators to have access to racial demographic data and that the mere viewing of such data does not establish racial predominance. State Opp'n 19. This argument fundamentally mischaracterizes the records. In *Alexander*, this Court found it significant that "several legislative staffers . . . considered . . . racial data only after" the maps were drawn, "to check that the maps . . . complied with [the] Voting Rights Act." 602 U.S. at 22 (emphasis in original). This Court treated this post hoc compliance review as consistent with legitimate, race-neutral mapmaking.

State Respondents assert that the legislature's public press releases claiming Proposition 50 "retains and expands Voting Rights Act districts that empower Latino voters to elect their candidates of choice" merely reflect a back-end "VRA-compliance check." App. 263; State Opp. 19. Nothing in the evidentiary record supports that characterization. Those contemporaneous statements describe VRA districts as affirmative objectives of the map, not passive constraints. Indeed, the "Atlas" that Redistricting Partners provided to brief legislators exclusively focused on race. The first six pages after the cover provide tables of the census population and Citizen Voting Age Population of each district, both broken down by race. App. 321–326. The next fifty-two pages present each district's map with bar graphs and tables of the district's racial composition. App. 327–378. Critically, "[p]olitical party affiliation of voters in a district is nowhere to be seen on this atlas." *Id.*; App. 93.

The Legislature was asked to evaluate and enact a map using a document that communicated almost entirely in racial terms. If partisanship were truly the predominant consideration, one would expect the official legislative materials to highlight relevant partisan performance metrics. Instead, legislators received racial data alone. This is not a case where legislators incidentally "viewed racial data" in the court of a politically motivated redistricting. *Alexander*, 602 U.S. at 22. It is a case where race was the very language in which the Legislature was taught to understand the map it was being asked to approve. Moreover, as Applicants have already explained, the legislative record is replete with statements showing that legislators viewed Proposition 50 as a means of neutralizing the perceived racial impact of the mid-cycle map adopted by Texas. *See* Appl. 7.

Additionally, DCCC notes that Mitchell's map retained many of the VRA districts that existed under the Commission map. DCCC Opp'n 26–27. And yet the State concedes that the VRA does not now compel the drawing of any Latino districts. *See* State Opp'n 19. Respondents cannot have their cake and eat it, too. That the CRC drew districts based on race because the CRC concluded that conditions in 2021 allowed it doesn't mean that for all time those districts can remain racially drawn and immune from review. Mitchell's choice to adopt racially gerrymandered districts requires that the state satisfy strict scrutiny.

### C. The Configuration of District 13 Is Inexplicable on Partisan Grounds

Applicants further corroborated their direct evidence through expert analysis from Dr. Trende, which confirms that the enacted districts reflect racial sorting rather than neutral redistricting principles. Respondents' briefs acknowledge the mapmaker's admissions but argue they are too generalized, post-hoc, and inconsistent with the map's demographic outcomes to establish racial predominance. Respondent DCCC contends that

Trende erred by analyzing the shape of the district, claiming that he focused "almost exclusively on a handful of boundary lines in a single district on the outside of Stockton." DCCC Opp. 39. That argument misunderstands this Court's precedent. *Bethune-Hill* expressly recognizes that race-based decision-making may be evident in particular portions of a district, and that courts may consider evidence regarding those portions even if the district is viewed as a whole. 580 U.S. at 192.

Respondents further argue that the absence of any increase in Latino CVAP undermines any inference that race predominated in the drawing of Proposition 50's districts. *See* State Opp'n 2, 7, 15. But as Dr. Trende explained, the inquiry is not whether Latino CVAP changed slightly, but whether race was used as a controlling criterion across the map. App. 295. In a statewide redistricting affecting millions of voters, it strains credulity that an allegedly race-neutral partisan process produced more than a dozen Latino majority-CVAP districts, with CVAP levels in the same narrow percentage bands as a map expressly designed to comply with the racially based mandates of the Voting Rights Act and HOPE's expressed optimal range to maximize that race's voting power. Act. App. 182.

Respondents also attack Dr. Trende's analysis by asserting that traditional redistricting criteria—such as population equality, county boundaries, or protecting incumbents—explain the challenged line placements. *See* State Opp'n 3; LULAC Opp'n 15. Dr. Trende's alternate maps demonstrate precisely the opposite: The State could have achieved comparable or superior partisan outcomes without sorting voters by race. App. 290–295. That is the point of his analysis. And as this Court held in *Miller*, a plaintiff may establish that race predominated in a district's design over these criteria by producing "circumstantial evidence of a district's shape and demographics . . . ." 515 U.S. at 916.

Respondents' speculation that racial effects were merely incidental to partisan aims does not rebut Dr. Trende's showing that political objectives could have been achieved without the race-based line drawing reflected in the enacted map. App. 295. Respondents assert that Dr. Trende's proposed adjustments are insignificant. DCCC Opp'n 36. That criticism misunderstands his role. Dr. Trende was only to demonstrate that the challenged districts could be drawn in a race-neutral manner while still satisfying legitimate redistricting objectives. His analysis does exactly that. Indeed, even Respondents' expert, Anthony Fairfax, "acknowledged that Trende's Alternative Map A would improve Democratic party performance over the Prop. 50 map," and that the map "is more compact, and splits fewer communities of interest." App. 110–111.

The evidence before the Court tells a consistent and damning story. Paul Mitchell sought to maintain Latino-majority districts and drew lines that sacrificed partisan advantage to achieve these racial objectives. He briefed the Legislature using materials that communicated exclusively about race. And when called to account, he refused to testify. Respondents' recharacterization of this as a purely partisan endeavor cannot overcome the record of the mapmaker's unrebutted and un-retracted admissions, or the configuration of District 13 itself. Accordingly, at least that district's lines are "unexplainable on grounds other than race." *Alexander*, 602 U.S. at 31 (quoting *Shaw I*, 509 U.S. at 644).

## II. *PURCELL* DOES NOT BAR RELIEF WHERE APPLICANTS SEEK TO PREVENT THE USE OF AN UNCONSTITUTIONAL MAP

The fundamental principle of *Purcell* is to prevent voter confusion and voter disenfranchisement. Nothing in the Respondents' briefs reveals how the voters of California will be confused if this Court issues an injunction. Respondents argue that the *Purcell*

deadline is December 19, 2025, when candidates could start gathering signatures to reduce their filing fee, an optional candidate-filing procedure. That does not implicate voter confusion. As Judge Lee demonstrated, this is clearly not the *Purcell* deadline. App. 113.

Respondents are correct that Applicants sought relief before December 19, 2025, in the district court because one Applicant planned to pursue signature gathering. But the timing of a candidate's optional filing strategy does not define the *Purcell* inquiry, nor does it exhaust the constitutional harms suffered by all Applicants from having the 2026 election administered under an unconstitutional, racially gerrymandered map.

Here, no ballots have been printed, no candidates have qualified, no voter expectations have been set, and no election machinery has been irreversibly engaged. As Applicants have already shown, California regularly runs special elections for Congress in significantly less time than would be required if this Court grants an injunction before February 9, 2026. An injunction would "return to the status quo before" the passage of the racially gerrymandered Proposition 50 map. App. 116. If this Court grants an injunction pending appeal by February 9, 2026, California will have ample time to administer the 2026 election in an orderly manner, consistent with both *Purcell* and the Constitution, to include either waiving fees or re-opening the signature-in-lieu-of-fee period.

## III. APPLICANTS SATISFY THE STANDARD FOR AN INJUNCTION PENDING APPEAL

As shown above, Applicants have demonstrated a strong likelihood of success on their Equal Protection claim. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). There can be no debate that if the Proposition 50 map is held to be unconstitutional, Applicants will suffer irreparable harm if it is used in the 2026 elections. It is well established that the

Constitution prohibits states from "separating its citizens into different districts on the basis of race." *Cooper*, 581 U.S. at 291. The State's use of race to structure political participation and representation would immediately harm Applicants. Once a state forces candidates to campaign and voters to participate under a racially sorted districting regime, that injury cannot be remedied by post-election adjudication.

The balance of equities strongly favors Applicants. DCCC contends that enjoining Proposition 50 would "undermine the will of the electorate," DCCC Opp'n 42, and the State invokes *Maryland v. King*, 567 U.S. 1301 (2012), for the proposition that California suffers "irreparable injury" whenever enjoined from enforcing its laws. State Opp'n 42. But these arguments cannot overcome Applicants' showing of constitutional harm. Racial classifications in voting "threaten[] to carry us further from the goal of a political system in which race no longer matters," *Shaw I*, 509 U.S. at 657, and the violation of such fundamental rights "unquestionably constitutes irreparable injury," *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Moreover, the principle that voter approval can cure constitutional defects was squarely rejected in *Lucas*, which held that a citizen's constitutional rights cannot be infringed simply because a majority of the electorate approves. 377 U.S. at 736–37.

Respondents' reliance on state sovereignty interests rings hollow where the constitutional violation is established. The State has no cognizable interest in segregating citizens "according to a criterion barred to the Government by history and the Constitution," *Miller*, 515 U.S. at 912, and it is "always in the public interest to prevent the violation of a party's constitutional rights," *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist.*, 82 F.4th 664, 695 (9th Cir. 2023). As Judge Lee correctly observed, Applicants "will

be irreparably harmed by the continuation of California's racially gerrymandered district," App. 113, a harm that outweighs the administrative inconveniences Respondents cite, particularly given that the relief sought is a narrow return to the *status quo ante* under the previously operative CRC map.

## IV. THE SCOPE OF APPLICANTS' REQUESTED RELIEF IS PROPER

Respondents contend that Applicants' request for a statewide injunction is overbroad because of the focus on District 13. State Opp'n 42; DCCC Opp'n 15. This argument misunderstands both the nature of Applicants' claims and the remedial posture of this case.

Direct evidence from Mr. Mitchell establishes that race was a controlling criterion throughout his entire design process, not an isolated drafting decision about District 13's northern boundary, but rather a systematic methodology applied across the map. Additionally, California presented voters with a binary choice on November 4, 2025: either accept the Proposition 50 Map as drafted or reject it. Voters could not approve District 13's boundaries while rejecting those of Districts 4, 6, or 20, or accept the Los Angeles configurations without modifying the Central Valley. The map was indivisible. The interdependence of the 52 districts is a feature of California's design, not Applicants' litigation strategy. And as Respondent LULAC's own expert acknowledged, redrawing District 13 in isolation would necessarily affect Districts 9 and 5, which share its boundaries, and the ripple effects would extend across the entire map. App. 116.

Finally, the precise scope of relief is ultimately a question for the merits. At this preliminary stage, and in this emergency posture, the relevant question is whether Applicants have demonstrated a likelihood of success on their claim—which they have, as

to District 13 at a minimum—and whether the balance of harms and equities favors preserving the status quo pending appeal. *See Winter*, 555 U.S. at 20. It does.

If this Court grants the requested injunction, California will conduct the 2026 election under a map that all parties agree is constitutional under current law. The appeal will proceed, and the district court (or, eventually, this Court) will determine on a full record whether the constitutional violation extends beyond District 13 and what remedy is appropriate. If this Court denies the injunction, California will conduct the 2026 election under a map that one federal judge concluded was a racial gerrymander, that no state official has defended under oath, and that the mapmaker refused to explain. Candidates will campaign, voters will cast ballots, and representatives will be seated, all under a cloud of constitutional illegitimacy. If the map is later invalidated, the disruption will be orders of magnitude greater than reverting to the familiar CRC map now.

Applicants seek to preserve the status quo while this Court considers Applicants' appeal of a clearly erroneous order relying on a novel theory of voter intent, an appropriate exercise of the Court's power to issue a preliminary injunction on an emergency basis.

## CONCLUSION

Applicants respectfully request that this Court enter an injunction pending this appeal by **February 9, 2026**, considering the candidate filing period.

Respectfully submitted,

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