

JESUS A. OSETE*
Principal Deputy Assistant Attorney General
MATTHEW ZANDI (CA No. 203329)
Chief of Staff & Special Counsel
MAUREEN RIORDAN (NY No. 2058840)
Acting Chief, Voting Section
ANDREW BRANIFF (IN No. 23430-71)
Acting Chief, Appellate Section
DAVID GOLDMAN (VA No. 98922)
JOSHUA R. ZUCKERMAN (DC No. 1724555)
GRETA GIESEKE (TX No. 24132925)

Attorneys
Civil Rights Division
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
Telephone: (202) 514-3847
E-Mail: matt.zandi@usdoj.gov

TODD BLANCHE
Deputy Attorney General
BILAL A. ESSAYLI
First Assistant United States Attorney
JULIE A. HAMILL (CA No. 272742)
Assistant United States Attorney
United States Attorney's Office
300 North Los Angeles Street, Suite 7516
Los Angeles, California 90012
Telephone: (213) 894-2464
E-Mail: julie.hamill@usdoj.gov

Attorneys for Plaintiff-Intervenor
UNITED STATES OF AMERICA

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

DAVID TANGIPA, *et al.*,
Plaintiffs,

and

UNITED STATES OF AMERICA,
Plaintiff-Intervenor,

v.

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

Defendants,

Case No. 2:25-cv-10616-JLS-WLH-KKL
Three-Judge Court

**UNITED STATES' REPLY TO
DEFENDANTS' OPPOSITION TO
PLAINTIFF-INTERVENOR'S
MOTION FOR A PRELIMINARY
INJUNCTION**

Honorable Josephine L. Staton
Honorable Wesley L. Hsu

* Assistant Attorney General Harmmeet K. Dhillon is recused from this matter.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Honorable Kenneth K. Lee

Hearing Date: December 15, 2025

Time: 9:00 a.m.

Courtroom: One

RETRIEVED FROM DEMOCRACYDOCKET.COM

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Introduction.....1

I. Plaintiff-Intervenors Have Established a Likelihood of Success on the Merits.....4

 A. The California Legislature and Paul Mitchell Are the Relevant State Actors.....4

 1. The voters did not choose the map.....4

 2. As the map drawer, Paul Mitchell is a relevant state actor.....6

 B. Plaintiffs Have Established a VRA Violation Through the Intentional Use of Race in Redistricting.....8

 C. Plaintiffs Have Established an Equal Protection Violation Through the Intentional Use of Race in Redistricting Without a Compelling Interest.....13

II. The United States Has Demonstrated Irreparable Harm.....14

III. The Balance of Equities and the Public Interest Favor Injunctive Relief.....15

IV. The 2021 Map Should Be Used While Litigation Proceeds.....16

CONCLUSION.....18

TABLE OF AUTHORITES

1
2
3 **Cases** **Page**
4 *Abbott v. League of United Latin American Citizens,*
5 No. 25A608, 2025 WL 3484863 (U.S. Dec. 4, 2025)7, 12
6 *Allen v. Milligan,*
7 599 U.S. 1 (2023)6, 8
8 *Alexander v. South Carolina State Conf. of the NAACP,*
9 602 U.S. 1 (2024)*passim*
10 *Village of Arlington Heights v. Metro. Housing Dev. Corp.,*
11 429 U.S. 252 (1977)8, 9, 11
12 *Baird v. Bonta,*
13 81 F.4th 1036 (9th Cir. 2023)15
14 *Bethune-Hill v. Virginia State Bd. of Elections,*
15 580 U. S. 178 (2017)13
16 *Brnovich v. DNC,*
17 594 U.S. 647 (2021)8
18 *Chisom v. Roemer,*
19 501 U.S. 380 (1991)8
20 *City of Los Angeles v. County of Kern,*
21 462 F. Supp. 2d 1105 (C.D. Cal. 2006)5
22 *Cooper v. Harris,*
23 581 U.S. 285 (2017)*passim*
24 *Crawford v. Board of Educ. of City of Los Angeles,*
25 458 U.S. 527 (1982)5
26 *DNC v. Hobbs,*
27 948 F.3d 989 (9th Cir. 2020)8, 9, 11
28 *Flathead-Lolo-Bitterroot Citizen Task Force v. Montana,*
98 F.4th 1180 (9th Cir. 2024)3
Fusilier v. Landry,
963 F.3d 447 (5th Cir. 2020)9
Garza v. County of Los Angeles,
918 F.2d 763 (9th Cir. 1990)11

1 *Harris v. McCrory*,
159 F. Supp. 3d 600 (M.D.N.C. 2016)17

2
3 *Hollingsworth v. Perry*,
570 U.S. 693 (2013)5

4
5 *Johnson v. Miller*,
864 F. Supp. 1354 (S.D. Ga. 1994)9

6 *La Union del Pueblo Entero v. Abbott*,
93 F.4th 310 (5th Cir. 2024) 7

7
8 *League of United Latin Am. Citizens v. Abbott*,
708 F. Supp. 3d 870 (W.D. Tex. 2023)2

9
10 *League of Women Voters of N.C. v. North Carolina*,
769 F.3d 224 (4th Cir. 2014)15

11 *Lee v. City of Los Angeles*,
908 F.3d 1175 (9th Cir. 2018)7, 8

12
13 *LULAC v. Abbott*,
2025 WL 3215715 (W.D. Tex. Nov. 18, 2025)7, 8, 12

14
15 *McMillan v. Escambia County*,
748 F.2d 1037 (5th Cir. 1984)8

16
17 *Merrill v. Milligan*,
142 S. Ct. 879 (2022)17

18 *Michigan State A. Philip Randolph Inst. v. Johnson*,
833 F.3d 656 (6th Cir. 2016)14

19
20 *Miller v. Johnson*,
515 U.S. 900 (1995)*passim*

21
22 *Perry v. Brown*,
671 F.3d 1052 (9th Cir. 2012)5

23 *Regents of Univ. of Cal. v. Bakke*,
438 U.S. 265 (1978)10

24
25 *Robert L. v. Superior Court*,
69 P.3d 951 (Cal. 2003)6

26
27 *Romer v. Evans*,
517 U.S. 620 (1996)5

1 *Shaw v. Reno*,
2 509 U.S. 630 (1993).15
3
4 *Shelby County v. Holder*,
5 570 U.S. 529 (2013)3
6
7 *South Carolina v. Katzenbach*,
8 383 U.S. 301 (1966)8
9
10 *Students for Fair Admissions v. President & Fellows of Harvard Coll.*,
11 600 U.S. 181 (2023)10
12
13 *United States v. Bilzerian*,
14 926 F.2d 1285, 1292 (2d Cir. 1991)2
15
16 *Washington v. Seattle School District No. 1*,
17 458 U.S. 457 (1982)6
18
19 *Wise v. Lipscomb*,
20 437 U.S. 535 (1978)17
21
22 *Veasey v. Abbott*,
23 796 F.3d 487 (5th Cir. 2015)10
24
25 **Statutes:**
26 Cal. Code AB 604,
27 codified at Cal. Elecs. Code § 21400 *et seq.* *passim*
28 Cal. Const. art. XXI, §§ 1, 2, 4 *passim*

1 **Other Sources**

2 2020 Cal. Citizens Redistricting Comm’n,
3 *Report on Final Maps 19-26* (Dec. 26, 2021)
4 <https://tinyurl.com/4khu3szb>17

5 Britannica, *What’s the Difference Between Hispanic and Latino?*,
6 <https://tinyurl.com/49mcy9xk>1

7 Cal. Legislative Info., AB-604 Redistricting: congressional districts,
8 *Bill History*, available at <https://tinyurl.com/52nz92yy>5

9 Dr. Raquel Centeno & Dr. Jarred Cuellar,
10 *Latino Voters and the November 2025 Special Election:*
11 *Redistricting and Representation* at 1, <https://tinyurl.com/5pjj9x7>11, 13

RETRIEVED FROM DEMOCRACYDOCKET.COM

INTRODUCTION

1
2 California redrew its congressional districts with the intent of empowering Latinos
3 at the expense of other racial groups.¹ But intentionally drawing congressional districts
4 based on the race of voters violates the Voting Rights Act. And using race as the
5 predominant factor in creating congressional districts without a compelling interest to do
6 so violates the Equal Protection Clause. On August 21, 2025, the California legislature
7 did both. The illegal racial sorting of voters cannot be later cured by a ballot initiative or
8 post-hoc salesmanship that attempts to retcon a race-based redistricting into a purely
9 political play. To be sure, the California legislature sought to increase Democrat voting
10 power. But from the start, unlawful racial targets dwarfed partisan ambitions.

11 Direct evidence reveals this racial priority. Paul Mitchell, who drew the map,
12 shamelessly admitted in an interview with Hispanas Organized for Political Equality’s
13 (“HOPE”) on October 17, 2025, that “the first thing [he] did in drawing the new map,”
14 was implement racial targets that HOPE lobbied for in a 2021 letter to alleviate concerns
15 “about the elimination of a majority/minority Latino district within the area of Los
16 Angeles gateway cities.”² See Doc. 28-2 at 48.

17
18 ¹ “The terms [Hispanic and Latino] are often used interchangeably, though the
19 words can convey slightly different connotations.” Britannica, *What’s the Difference*
20 *Between Hispanic and Latino?*, <https://tinyurl.com/49mcy9xk> (last visited Dec. 8, 2025).
21 “Latino” “refers to (almost) anyone born in or with ancestors from Latin America and
22 living in the U.S., including Brazilians.” *Id.* “‘Hispanic’ is generally accepted as a
23 narrower term that includes people only from Spanish-speaking Latin America, including
24 those countries/territories of the Caribbean or from Spain itself.” *Id.* The United States
25 will use these terms interchangeably.

26 ² Plaintiffs and Plaintiff-Intervenors had sought timely discovery of Paul Mitchell
27 and had negotiated a deposition on December 10, 2025 at 10:00 am PST. See App. A.
28 *Corresp. from Kimon Manolius re: Mitchell Resp. and Obj. to Non-Party* at 1. However,
at 1:17 am EST on December 10, 2025, Paul Mitchell’s attorney notified Plaintiffs that
they would be objecting and asserting legislative and other privileges “to deposition
inquiries that relate to the mapping work Mr. Mitchell undertook after July 2, the first date
he was in conversation with the legislature about drawing the map that would become the

1 HOPE’s requested racial targets that Mitchell discussed were two-fold: (1) create a
2 new Gateway Cities District centered around Downey, *allowing for the creation of five*
3 *Latino majority-minority districts where there are currently four*; and (2) take the current
4 LB North seat to the south, through Seal Beach into Huntington Beach, making a Latino-
5 influenced district at 35 percent Latino by voting age population. *Id.* at 24-25. Creating
6 the new Gateway Cities District, according to the HOPE Letter, would necessitate
7 “meld[ing] together two white-majority districts elsewhere.” App. B, Nov. 24, 2021 Letter
8 from HOPE to Commissioners at 8. Nonetheless, Mitchell boasted that he accomplished
9 both racial targets. *See* Doc. 28-2 at 49-50.

10 HOPE also suggested moving Latino populations from districts that were “likely
11 overpacked beyond what is required to definitively allow for the election of a Latino
12 candidate of choice,” and deemed 52-54% Hispanic Citizen Voting Age Population
13 (“CVAP”) an optimal racial quota to “still be very likely to elect Latino candidates of
14 choice.” App. B at 5. Circumstantial evidence indicates that Mitchell adopted this racial
15 target too: According to data from Defendant-Intervenor LULAC’s expert, 14/16
16 majority-Hispanic districts in the Proposition 50 Map have Hispanic CVAPs of 51.76-
17 55.01%, whereas only 5/16 districts in the 2021 were in this compact range. *Compare*
18

19
20 Proposition 50 map.” *Id.* Mitchell was the primary map drawer for the legislation that
21 became AB 604 and without additional testimony regarding the maps he drew, and any
22 changes made by the California legislature, this Court’s only evidence as to his intent are
23 his public statements to HOPE. While Mitchell should not be allowed to use legislative
24 privilege “as a shield and a sword,” by “selectively disclos[ing] portions of
25 communications or documents but withhold[ing] others in a way that favors [him],”
26 *League of United Latin Am. Citizens v. Abbott*, 708 F. Supp. 3d 870, 886 (W.D. Tex. 2023)
27 (quoting *United States v. Bilzerian*, 926 F.2d 1285, 1292 (2d Cir. 1991)), his public
28 statements are sufficient direct evidence for the United States to prevail, especially under
the “serious questions” standard that Defendants agree applies. *See* Def. Opp. 12, n.7.
Nonetheless, the United States reserves the right to supplement this reply following
Mitchell’s deposition.

1 Doc. 111-1 at 86-87 (2021 map’s Hispanic CVAP percentages) *with id.* at 161-62
2 (Proposition 50 map’s Hispanic CVAP percentages).

3 Defendants pitch several partisan explanations for the November 4, 2025,
4 referendum vote. But this case is not about the ballot initiative. It is about the map that the
5 legislature adopted in Assembly Bill 604 (“AB 604”) and enrolled and presented to the
6 Governor on August 21, 2025. Post-enactment sales tactics used to convince voters to
7 amend their constitution to make the new map operable are not relevant. The referendum
8 vote did not change the boundaries of the map, offer voters an alternative map, or
9 retroactively cure the race-based criteria used to draw the map. Defendants’ numerous but
10 spurious post-hoc reasons for the new districts are red herrings, intended to distract from
11 the reality that Mitchell’s stated goal, when drawing the map, was to increase Latino
12 political power.

13 As Defendants concede, *see* Def. Opp. 12, n.7, the Ninth Circuit has adopted “a
14 sliding scale variant of the *Winter* test—under which a party is entitled to a preliminary
15 injunction if it demonstrates (1) serious questions going to the merits, (2) a likelihood of
16 irreparable injury, (3) a balance of hardships that tips sharply towards the plaintiff, and (4)
17 the injunction is in the public interest.” *Flathead-Lolo-Bitterroot Citizen Task Force v.*
18 *Montana*, 98 F.4th 1180, 1190 (9th Cir. 2024) (quotation marks omitted). “[T]he serious
19 questions standard is ‘a lesser showing than likelihood of success on the merits,’” *id.*, a
20 burden that the United States has met. “Any racial discrimination in voting is too much.”
21 *Shelby County v. Holder*, 570 U.S. 529, 557 (2013). And the evidence demonstrates that
22 Mitchell purposefully drew the map using race-based considerations to bolster the power
23 of Latino voters, thereby diminishing the political power of all other races and demeaning
24 the very Latino voters the California legislature sought to prioritize. Defendants have not,
25 and cannot, contradict this evidence. Consequently, the United States has established the
26 necessary basis for a preliminary injunction.

1 **I. The United States Has Established a Likelihood of Success on the Merits**

2 Defendants do not rebut the United States’ evidence that the California legislature
3 both had a race-based purpose in drawing the new map in violation of the Voting Rights
4 Act (“VRA”) and used race as the predominant factor in drawing the new map in violation
5 of the Equal Protection Clause.

6 **A. The California Legislature and Paul Mitchell Are the Relevant State Actors**

7 Before addressing the evidence of discrimination, it is important to clarify who are
8 the “relevant state actor[s]” for purposes of assessing the legality of the Proposition 50
9 map. *See Alexander v. South Carolina State Conf. of the NAACP*, 602 U.S. 1, 8 (2024).
10 Defendants try to divert attention from the plainly racial overtones of California
11 legislators’ discussions and debates (U.S. P.I. Mot., Doc. 29-1 at 4-5, 9) and statements
12 by map-drawer Mitchell (*id.* at 3-4, 8-9) by insisting that the ““relevant state actor[s]”” are
13 “the voters” in California. Def. Opp. 22 (quoting *Alexander*, 602 U.S. at 8). Their
14 argument fails.

15 **1. The voters did not choose the map**

16 The voters did *not* choose the actual Proposition 50 map—the legislature did. The
17 map was enacted pursuant to AB 604, which was enacted by the legislature. AB 604, 2025
18 Cal. Legis. Serv. Ch. 96 (West) (codified at Cal. Elecs. Code § 21400 *et seq.*). But because
19 Article 21 of the California Constitution had vested redistricting authority in the California
20 Citizens’ Redistricting Commission (the “Commission”), AB 604 was constitutionally
21 prohibited from going into effect. Cal. Const. art. XXI, §§ 1-2. So, the legislature proposed
22 to the voters Assembly Constitutional Amendment 8 (“ACA 8”), known as “Proposition
23 50,” which would temporarily lift the state constitution’s prohibition to allow the
24 legislature to use its preferred map. Assemb. Const. Amend. 8, 2025-26 Reg. Sess. (Cal.
25 2025) (codified at Cal. Const. art. XXI, § 4). The United States does not suggest that
26 returning redistricting authority to the legislature—all that the California voters did, albeit
27 temporarily—is unlawful. What is unlawful is the map itself, as contained in AB 604 and
28

1 approved by the legislature *before* the 2025 Special Election.

2 The relevant intent behind the map was locked in when AB 604 was passed by the
3 legislature and signed by the Governor on August 21, 2025. *See* Cal. Legislative Info.,
4 AB-604 Redistricting: congressional districts, *Bill History*, <https://tinyurl.com/52nz92yy>
5 (last visited Dec. 8, 2025). Voters’ authorization to lift an otherwise applicable barrier to
6 using AB 604 did not cleanse the taint.

7 In any event, there is no rule of constitutional law whereby unlawful discrimination
8 can be laundered through popular referendum and cleansed of its discriminatory purpose.
9 For example, when Colorado voters amended their constitution to prohibit any state action
10 designed to protect gay and lesbian individuals from discrimination on the basis of their
11 sexual orientation, the amendment violated the Equal Protection Clause and “classifie[d]
12 homosexuals not to further a proper legislative end but to make them unequal to everyone
13 else.” *Romer v. Evans*, 517 U.S. 620, 623-24, 635 (1996). Likewise, in *Perry v. Brown*,
14 California violated the Equal Protection Clause when enacting Proposition 8—a ballot
15 initiative that “amended the state constitution to eliminate the right of same-sex couples
16 to marry.” 671 F.3d 1052, 1063 (9th Cir. 2012), *vacated on other grounds sub nom.*
17 *Hollingsworth v. Perry*, 570 U.S. 693 (2013), *and dismissed on remand*, 725 F.3d 1140
18 (9th Cir. 2013) (order).

19 Defendants’ cited authorities are not to the contrary. *See* Def. Opp. 15, 22. To be
20 sure, where campaign materials for a ballot initiative expressly advertise the drafters’
21 discriminatory intent, that is relevant evidence that the ballot measure has such a
22 discriminatory purpose. *See City of Los Angeles v. County of Kern*, 462 F. Supp. 2d 1105,
23 1113-14 (C.D. Cal. 2006) (analyzing, in dormant Commerce Clause challenge, ballot
24 materials that demonstrated an intent “to burden out-of-county economic interests”). And
25 on the flipside, where there is no evidence that *either* the drafters *or* the voters harbored
26 discriminatory intent, courts are wary of inferring such an intent. *See Crawford v. Board*
27 *of Educ. of City of Los Angeles*, 458 U.S. 527, 544-45 (1982). These cases do not suggest,
28

1 however, that where the legislative history of a ballot initiative betrays legislators’ intent
2 to discriminate on the basis of race that the voters can sanitize this intent at the ballot box.³

3 Even further afield are California cases regarding statutory interpretation in the
4 context of ballot initiatives. *See* Def. Opp. 15 (citing *Robert L. v. Superior Court*, 69 P.3d
5 951, 957 (Cal. 2003)); Br. of Prof. Hasen as *Amicus Curiae* 10-12 (arguing that California
6 cases on the topic of “statutory interpretation ... can and should guide the Court” here).
7 California law is irrelevant. State law has nothing to say about whether California acted
8 with discriminatory intent in violation of the United States Constitution or a federal
9 statute. Moreover, these California cases answer a question that differs from the one
10 presented here. Those cases used extratextual materials to elucidate ambiguities in
11 statutory text. *E.g.*, *Robert L.*, 69 P.3d at 955. But Proposition 50 is unambiguous, and as
12 in similar Equal Protection Clause (or Voting Rights Act) cases, the pertinent question is
13 whether a facially neutral law was *created* with an impermissible intent to discriminate.
14 *See Allen v. Milligan*, 599 U.S. 1, 11 (2023); *Cooper v. Harris*, 581 U.S. 285, 291 (2017).
15 Regardless of how that test applies in cases involving other California ballot initiatives, it
16 is clear that AB 604—on which California voters had no say—was created in the
17 legislature.

18 **2. As the map drawer, Paul Mitchell is a relevant state actor**

19 Defendants state (Def. Opp. 26) that Mitchell “is not a state actor and was not hired
20 by the Legislature.” But courts routinely consider the factors used by the map drawer in
21 assessing whether race predominated over other redistricting criteria in the map adopted
22 by the legislature. *See, e.g., Alexander*, 602 U.S. at 22-23; *Cooper*, 581 U.S. at 299.

23 _____
24 ³ Defendants also cite (Def. Opp. 22) *Washington v. Seattle School District No. 1*,
25 but that case involved a ballot initiative under Washington’s constitution, which “reserves
26 to the people of the State ‘the power to propose bills, laws, and to enact or reject the same
27 at the polls, *independent of the legislature.*’” 458 U.S. 457, 462 n.4 (1982) (emphasis
28 added) (quoting Wash. Const. art. II, § 1); *see id.* at 461-62 (describing residents’ efforts
to put the initiative on the ballot). There, only the voters’ intent could have been relevant.

1 Regardless of whether the California legislature approached Mitchell, or he
2 approached them (Def. Opp. 26), he was “involved in the legislative process.” *La Union*
3 *del Pueblo Entero v. Abbott*, 93 F.4th 310, 322 (5th Cir. 2024) (citation omitted). As
4 already noted, *supra* note 2, Mitchell has invoked legislative privilege over “deposition
5 inquiries that relate to the mapping work [he] undertook after July 2, the first date he was
6 in conversation with the legislature about drawing the map that would become the
7 Proposition 50 map” App. A at 2. Because legislative privilege “extends to material
8 provided by or to third parties *involved in the legislative process.*” *La Union del Pueblo*
9 *Entero*, 93 F.4th at 322 (emphasis added), Mitchell apparently concedes that he was
10 “involved in the legislative process” with leaders of California’s legislature, *id.*, and thus
11 qualifies as a “relevant state actor,” *Alexander*, 602 U.S. at 8.

12 Mitchell was not just part of the legislative process; the legislature adopted his work
13 product and endorsed it as its own with only minute changes.⁴ *Cf. LULAC v. Abbott*, --- F.
14 Supp. 3d ---, 2025 WL 3215715, at *93 (W.D. Tex. Nov. 18, 2025) (Smith, J., dissenting)
15 (explaining that the panel majority had improperly prioritized “evidence on the White
16 House’s pressure, outside media coverage, the DOJ’s letter, the Texas AG’s letter, and
17 Governor Abbott’s statements, *none* of which can easily be attributed to the Legislature”
18 over the testimony of the map drawer and relevant legislators), *stay pending appeal*
19 *granted*, No. 25A608, 2025 WL 3484863 (U.S. Dec. 4, 2025). Mitchell is therefore unlike
20 the Council President and his appointee to the Redistricting Commission in *Lee v. City of*
21 *Los Angeles*, 908 F.3d 1175 (9th Cir. 2018), discussed by Defendants (Opp. 27).
22 Statements and actions from these two officials in *Lee* “certainly show[ed] that race was
23

24 ⁴ Mitchell testified to this at his deposition on December 10, 2025. Mitchell also
25 testified that he spoke to several legislators, but notable is Sen. Sabrina Cervantes (Chair
26 of Senate Election Committee) and Assemblymember Macedo (Vice Chair of House
27 Election Committee), but he is asserting legislative privilege over what was said. The
28 United States will supplement this brief with the deposition transcript when it is available.

1 a motivation in drawing” a particular City Council district. 908 F.3d at 1183. But the
2 redistricting process in that case “incorporated multiple layers of decisions and alterations
3 from the entire Commission, as well as the City Council,” including to the very district
4 that the officials had purportedly sought to draw along racial lines. *Id.* at 1184. That is not
5 the case here.

6 **B. Plaintiffs Have Established a VRA Violation Through the Intentional Use
7 of Race in Redistricting**

8 The VRA prohibits intentionally dividing voters by race. *See South Carolina v.*
9 *Katzenbach*, 383 U.S. 301, 315 (1966) (“The Voting Rights Act of 1965 reflects Congress’
10 firm intention to rid the country of racial discrimination in voting.”). Although a plaintiff
11 “need not prove a discriminatory purpose ... to establish a violation” of the VRA, such an
12 “intent” is sufficient to establish a violation. *Chisom v. Roemer*, 501 U.S. 380, 394 n.21
13 (1991) (citation omitted); *DNC v. Hobbs*, 948 F.3d 989, 1037-38 (9th Cir. 2020) (en banc),
14 *rev’d on other grounds sub nom. Brnovich v. DNC*, 594 U.S. 647 (2021); *see Allen*, 599
15 U.S. at 11 (“The Fifteenth Amendment—and thus § 2 [of the VRA]—prohibits States
16 from acting with a ‘racially discriminatory motivation’ or an ‘invidious purpose’ to
17 discriminate.” (citation omitted)); *McMillan v. Escambia County*, 748 F.2d 1037, 1046-
18 47 (5th Cir. 1984) (holding that Section 2 included both a Results Test and an Intent Test,
19 and that the at-large system violated both).

20 Even when race does not predominate for purposes of the Equal Protection Clause,
21 *see* Section I.C., *infra*, it may nevertheless be an impermissible motivating factor for
22 purposes of the VRA, which imposes a lower burden than the Equal Protection Clause on
23 plaintiffs at step one of the analysis. *Hobbs*, 948 F.3d at 1038; *see Village of Arlington*
24 *Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977) (explaining that a
25 “motivating factor” need not be either “dominant” or “primary”). If race is a motivating
26 factor, the burden then shifts “to the law’s defenders to demonstrate that the law would
27 have been enacted without this factor.” *Hobbs*, 948 F.3d at 1038. Here, Defendants must
28

1 demonstrate that AB 604 would have been enacted by the legislature absent the purpose
2 of increasing Latino influence—with evidence that *predates* the passage of AB 604. *See*
3 p. 3, *supra*. They have failed to do this. *Cf.* Def. Opp. 4-13 (detailing post-hoc evidence
4 for the voters’ passage of Proposition 50.)

5 Determining whether discriminatory intent is a motivating factor requires “a
6 sensitive inquiry” into direct and circumstantial evidence, including: (1) the historical
7 background of the decision, particularly if it reveals a series of decisions undertaken with
8 discriminatory intent; (2) the sequence of events leading to enactment, including any
9 substantive or procedural departures from the normal legislative process; (3) the
10 legislative history, especially where there are contemporary statements by members of the
11 decisionmaking body; and (4) the impact of action and whether it bears more heavily on
12 one race than another. *Arlington Heights*, 429 U.S. at 266-68; *see also Hobbs*, 948 F.3d at
13 1039-41.

14 This inquiry is not difficult here. First, the discriminatory intent behind the
15 Proposition 50 map is “overwhelming, and practically stipulated by the parties involved.”
16 *Miller v. Johnson*, 515 U.S. 900, 910 (1995) (quoting *Johnson v. Miller*, 864 F. Supp.
17 1354, 1375 (S.D. Ga. 1994)). “While it is true that it is unlikely for a legislator to stand in
18 the well of the state house or senate and articulate a racial motive,” *Fusilier v. Landry*,
19 963 F.3d 447, 464 (5th Cir. 2020) (quoting *Veasey v. Abbott*, 796 F.3d 487, 503 n.16 (5th
20 Cir. 2015), *reh’g en banc granted*, 830 F.3d 216 (5th Cir. 2016)), that is precisely what
21 occurred in this case. As already recounted (U.S. P.I. Mot. 4-5, 9), the legislative history
22 is replete with statements by legislators who gave racial reasons for voting for the
23 Proposition 50 map.

24 Defendants fault the United States for not specifying “a particular minority group”
25 that California has sought to harm. Def. Opp. 42; *see also id.* 44 (arguing that the United
26 States has also therefore not demonstrated irreparable harm). Their claim that a racial
27 gerrymander drawn with a desire to “benefit Latino voters” does not equate to an “inten[t]

1 to harm” other groups resembles the once-familiar view that race discrimination is simply
2 “a matter of whose ox is gored.” *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 296 n.35
3 (1978) (opinion of Powell, J.). That mistaken understanding of race discrimination is not
4 the law. *See Students for Fair Admissions v. President & Fellows of Harvard Coll.*, 600
5 U.S. 181, 218-19 (2023). Just as a map drawn to favor white voters would necessarily
6 harm all other groups, a map drawn to favor Latino voters harms all other California
7 voters—not to mention the Latino voters that have been “treat[ed]” as “the product of their
8 race.” *Miller*, 515 U.S. at 912.

9 Second, the enactment of the Proposition 50 map departed from normal procedures
10 so much so that it required amending California’s constitution. Since 2010, California
11 voters have entrusted an independent commission, rather than the state legislature, to draw
12 the State’s congressional district maps every ten years, in “the year following the year in
13 which the national census is taken.” Cal. Const. art. XXI, § 1. Yet here, the legislature
14 scrapped the 2021 map after just four years, bypassed the normal mapmakers, and secretly
15 enlisted Mitchell to draw a new map—a map that he has repeatedly and unabashedly
16 attributed to racial favoritism (U.S. P.I. Mot. 3-4, 8-9).

17 And finally, the Proposition 50 map achieved the legislators’ and Mitchell’s stated
18 racial goals. Mitchell declared that he increased the number of Latino-influence districts
19 from 14 to 16. *See* Doc. 16-7 at 28. One detailed statistical study concluded that “the
20 proposed Proposition 50 map [would] further increase Latino voting power over the
21 current Commission map” and “likely increase Latino voting power, given its creation of
22 two new Latino community influence districts and the expansion of the Latino electorate
23 in other districts.” Dr. Raquel Centeno & Dr. Jarred Cuellar, *Latino Voters and the*
24 *November 2025 Special Election: Redistricting and Representation* at 1,
25 <https://tinyurl.com/5pjj9x7r> (emphasis omitted) [hereinafter Centeno & Cuellar Report];
26 *see id.* at 9–10 (explaining how Latino voting power was increased in districts that were
27 majority-Latino under the prior map by shifting Latino voters across district lines). The
28

1 study further explained that District 13, in the Central Valley between San Jose and
2 Fresno, “increases from 50.2% Latino CVAP” (citizen voting-age population) “to about
3 54% Latino CVAP ... allowing greater opportunity for Latino voters to choose the
4 winning candidate.” *Id.* at 12.

5 Likewise, Plaintiffs’ expert Sean Trende determined that District 13 prioritized
6 Hispanic voting power. Trende’s report concludes that the new map’s “boundaries
7 between districts 5, 9 and 13 [near Los Angeles] appear to have been crafted to enhance
8 the Hispanic Voting Age Population and Hispanic Citizen Voting Age Population in the
9 district.”⁵ Doc. 16-5 at 3. According to Trende, the District’s “twisted shapes cannot be
10 explained by traditional redistricting principles, nor can they be explained by politics.”
11 *Id.*; see *Alexander*, 602 U.S. at 9-10 (explaining that it is important to “rul[e] out the
12 competing explanation that political considerations dominated the legislature’s
13 redistricting efforts”). And Trende’s alternative maps demonstrate that maximizing
14 political gain came second to satisfying the optimal racial quota to elect a Latino candidate
15 of choice. Doc. 16-5 at 37-42. Because “[r]ace predominated in these lines,” *id.* at 3, it
16 was necessarily a motivating factor. See *Arlington Heights*, 429 U.S. at 265. The burden
17 thus shifts to Defendants to demonstrate that the Proposition 50 map would have been
18 enacted without this racial motivation. Defendants’ brief fails to do this.

19 Defendants’ partisan goals do not neutralize their impermissible focus on race:
20 “[I]ntentionally targeting a particular race’s access to the franchise because its members
21 vote for a particular party, in a predictable manner, constitutes discriminatory purpose.”
22 *Hobbs*, 948 F.3d at 1038; *Garza v. County of Los Angeles*, 918 F.2d 763, 771 (9th Cir.
23 1990) (stating that it is sufficient that legislators “chose fragmentation of the Hispanic
24 voting population as the avenue by which to” protect incumbents); see also *Bush v. Vera*,

25
26 ⁵ The United States understands that Trende will be filing an additional statement
27 in response to the Defendants’ updated evidence and reserves the right to update this reply
28 once that statement is filed.

1 517 U.S. 952, 968 (1996) (plurality opinion) (explaining in the equal-protection context
2 that “to the extent that race is used as a proxy for political characteristics, a racial
3 stereotype requiring strict scrutiny is in operation”).

4 Whether the former District 13 had a slightly higher percentage of Latinos than the
5 current district (*see* Def. Opp. at 33-34) is immaterial to and consistent with the optimal
6 racial quota established by HOPE.⁶ To be sure, Mitchell sought to increase democrat
7 voting power. But when push came to shove, his priority was ensuring that majority-
8 Hispanic districts met the racial target necessary for Latino voters to elect their candidate
9 of choice. *See* Centeno & Cuellar Report 9-10; Doc. 16-5 at 37-42.

10 Finally, Defendants’ reliance on *Abbott v. League of United Latin American*
11 *Citizens*, No. 25A608, 2025 WL 3484863 (U.S. Dec. 4, 2025), is similarly misplaced. *See*
12 Doc. 139 at 2. The Supreme Court’s opinion in *Abbott* followed a lengthy hearing before
13 a three-judge panel, followed by the entry of a preliminary injunction, *see LULAC v.*
14 *Abbott*, 2025 WL 3215715, at *69 (W.D. Tex. Nov. 18, 2025). The conclusions drawn by
15 the Supreme Court were thus made with the benefit of evidence provided to the Texas
16 three-judge panel. That has yet to happen in this case, and the Court does not yet have the
17 benefit of the evidence of racial bias in the creation of the map in AB 604. Moreover, as
18 the Supreme Court noted in *Abbott*, the central flaw in the challenge to the Texas
19 redistricting was the lack of an alternate map. *Abbott*, 2025 WL 3484863, at *3. As
20 Defendants concede, Plaintiffs’ expert has created an alternate map. Finally, the timing
21 concerns noted by Defendants can still be avoided in this case unlike in Texas should this
22 Court enter an injunction by December 18. *See* Doc. 113-2 at 7.

23
24
25
26
27 ⁶ *But see* Centeno & Cuellar Report at 12 (providing that Latino CVAP in District
28 13 increased in the Proposition 50 map).

1 **C. Plaintiffs and United States Have Established an Equal Protection Violation**
2 **Through the Intentional Use of Race in Redistricting Without a Compelling**
3 **Interest**

4 The Equal Protection Clause forbids a State, absent a compelling justification, from
5 “separat[ing] its citizens into different voting districts on the basis of race.” *Bethune-Hill*
6 *v. Virginia State Bd. of Elections*, 580 U.S. 178, 187 (2017). Under this rubric, plaintiffs
7 must show that race was the “predominant factor motivating the legislature’s decision to
8 place a significant number of voters within or without a particular district.” *Alexander*,
9 602 U.S. at 7. Here, Plaintiffs and the United States have introduced both “‘direct
10 evidence’ of legislative intent, [and] ‘circumstantial evidence of a district’s shape and
11 demographics.’” *Cooper*, 581 U.S. at 291 (quoting *Miller*, 515 U.S. at 916); *see generally*
12 U.S. P.I. Mot. 3-6, 8-11; Pls.’ P.I. Mot. 10-14.

13 Defendants state that “Plaintiff-Intervenor proffers no alternative map.” Def. Opp.
14 36. First, an alternative map is not required where, like here, there is more than “meager
15 direct evidence of racial gerrymander.” *See Cooper*, 581 U.S. at 322. Even so, the United
16 States has relied (U.S. P.I. Mot. 11) on the alternative maps submitted in Trende’s expert
17 report. There is no requirement that *each* plaintiff submit *separate* alternative maps. *See*
18 *Alexander*, 602 U.S. at 10 (explaining that “an alternative map” provides evidence “that a
19 rational legislature sincerely driven by its professed partisan goals would have drawn a
20 different map with greater racial balance”). As for Defendants’ expert, Dr. Grofman, he
21 cannot testify to why Mitchell drew the lines he did, because Grofman was not involved
22 in the map-drawing process. *See generally* Doc. 113-1.

23 Besides insisting (Def. Opp. 22-27) that only the voters’ intentions count,
24 Defendants respond that the Proposition 50 map was meant to further California’s *political*
25 objectives only by focusing on the campaign prior to the Special Election. Def. Opp. 14-
26 40. It is no doubt true that Proposition 50 *also* furthered some political objectives. *See id.*
27 6-7. But it was not the vote on Proposition 50 that decided the map here. AB 604 was
28

1 enacted on August 21, 2025. In any event, concurrent political objectives do not save
2 Defendants’ case. It is still unconstitutional to racial gerrymander “in order to advance
3 [non-race-based] goals, including political ones.” *Cooper*, 581 U.S. at 291, n.1.⁷

4 Notably, in their response, Defendants do not even attempt to establish a compelling
5 interest for “us[ing] race as their predominant districting criterion with the end goal of
6 advancing their partisan interests.” *Id.* at 308 n.7; *see* Def. Opp. 40. So the Court’s Equal
7 Protection analysis ends with the United States’ satisfaction of step one. *See Cooper*, 581
8 U.S. at 322.

9 **II. The United States Has Demonstrated Irreparable Harm**

10 Defendants claim that the United States has not shown irreparable harm because:
11 “Plaintiffs make no showing that any voters will *lose* their right to vote because of Prop
12 50.” Def. Opp. 43 (emphasis added). But this is not the correct standard for claims under
13 the VRA or the Equal Protection Clause. These maps were not designed to *erase* the votes
14 of non-Latino voters in California, but to *diminish* them in an unconstitutional race-based
15 manner that also violates the precepts of the VRA. “[W]hen constitutional rights are
16 threatened or impaired, irreparable injury is presumed. A restriction on the fundamental
17 right to vote therefore constitutes irreparable injury.” *Michigan State A. Philip Randolph*
18 *Inst. v. Johnson*, 833 F.3d 656, 669 (6th Cir. 2016) (citation omitted). And “discriminatory
19 voting procedures in particular are ‘the kind of serious violation of the Constitution and
20
21

22 ⁷ Defendants’ reliance on the United States Attorney General’s characterization of
23 the Proposition 50 map (or comments from political challengers to the Proposition 50
24 map) as partisan is misplaced. *See* Def. Opp. 7-9. It is the intent of the “relevant state
25 actor[s],” not outside voices, that determine whether race played an unlawful role in the
26 map-drawing process. *Alexander*, 602 U.S. at 8. Outsiders, including the United States,
27 may object in the first instance to the Proposition 50 map’s partisan results and then, upon
28 seeing the evidence of discriminatory intent, appreciate and object that the map is a racial
gerrymander.

1 the Voting Rights Act for which courts have granted immediate relief.” *League of Women*
2 *Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) (citation omitted).

3 **III. The Balance of Equities and the Public Interest Favor Injunctive Relief**

4 The balance of equities and the public interest weigh heavily in favor of preventing
5 a government from segregating its citizens into voting districts based on their race. *See*
6 *Baird v. Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2023) (stating that the third and fourth factors
7 of the preliminary-injunction analysis “merge” when “the nonmovant is the government”);
8 U.S. P.I. Mot. 15-17. Time and again, the Supreme Court has emphasized the importance
9 of the right to vote in our constitutional republic and the improper and invidious nature of
10 using race as a proxy to sort its citizens for voting districts. *See Miller*, 515 U.S. at 911.

11 “The idea is a simple one: At the heart of the Constitution’s guarantee of equal
12 protection lies the simple command that the Government must treat citizens as individuals,
13 not as simply components of a racial, religious, sexual or national class.” *Id.* (citations and
14 internal quotation marks omitted). “When the State assigns voters on the basis of race, it
15 engages in the offensive and demeaning assumption that voters of a particular race,
16 because of their race, ‘think alike, share the same political interests, and will prefer the
17 same candidates at the polls.’” *Id.* at 912 (citations omitted).

18 The California legislature improperly treated Latino voters as a stereotypical
19 monolith, assuming that when the Hispanic CVAP in a given district hits the optimal racial
20 quota, Latino voters will “be very likely to elect Latino candidates of choice.” App. B at
21 5. *See Miller*, 515 U.S. at 912 (“Race-based assignments ‘embody stereotypes that treat
22 individuals as the product of their race....’” (internal citations omitted)). This invidious
23 stereotyping always “cause[s] society serious harm,” *Miller*, 515 U.S. at 912, “may
24 balkanize us into competing racial factions,” and “threatens to carry us further from the
25 goal of a political system in which race no longer matters—a goal that the Fourteenth and
26 Fifteenth Amendments embody, and to which the Nation continues to aspire,” *Shaw v.*
27 *Reno*, 509 U.S. 630, 657 (1993).

1 **IV. The 2021 Map Should Be Used While Litigation Proceeds**

2 The appropriate remedy is to prohibit California from using its unlawful Proposition
3 50 map. Ordinarily, courts should “make every effort not to pre-empt” the “legislative
4 task” of “redistricting and reapportioning legislative bodies” and “afford a reasonable
5 opportunity for the legislature to ... adopt[] a substitute measure.” *Wise v. Lipscomb*, 437
6 U.S. 535, 540 (1978) (opinion of White, J.). However, when “the state legislature cannot
7 or will not adopt a remedial map that complies with federal law in time for use in an
8 upcoming election,” then “the job of drawing an interim map fall[s] to the courts.”
9 *Singleton v. Merrill*, 582 F. Supp. 3d 924, 1033 (N.D. Ala. 2022) (citing *Wise*, 437 U.S.
10 at 540).

11 Under California’s constitution, the power to redistrict lies with the Commission.
12 Cal. Const. art. XXI, §§ 1-2. Proposition 50 only temporarily vested that authority with
13 the legislature to instead use the map adopted in AB 604. Given the extensive and lengthy
14 process that the Commission must undertake to draw a new map, *see* 2020 Cal. Citizens
15 Redistricting Comm’n, *Report on Final Maps* 19-26 (Dec. 26, 2021) [Comm’n 2021
16 Report], <https://tinyurl.com/4khu3szb> (last visited Dec. 7, 2025), it is unrealistic to expect
17 the Commission to develop a new map in time for the 2026 election.

18 The Commission’s 2021 map provides a ready solution to balance the needs to
19 prevent California from violating federal law and protect the voting rights of Californians,
20 with the comity and federalism principles that make courts wary of imposing their own
21 maps on states. First, the United States and California agree that the 2021 map complies
22 with the VRA. Second, use of the 2021 map promotes principles of comity and federalism.
23 State policy supports a return to a Commission-drawn map. The California Constitution
24 provided that the Commission would draw congressional maps. Cal. Const. art. XXI, §§ 1-
25 2; *see also id.* § 4(a) (“It is the policy of the State of California to support the use of fair,
26 independent, and nonpartisan redistricting commissions nationwide.”). Proposition 50
27 provided only a temporary break from this rule, *id.* § 4(d). The Commission also has had—
28

1 and continues to have—strong bipartisan support amongst California legislators. For
2 example, during the debates on Proposition 50, Assembly Majority Leader Garcia, a
3 Democrat, declared that “[i]f California Democrats had our way, the midterms would
4 continue under the maps drawn by our independent Citizens Redistricting Commission.”
5 Doc. 42-5 at 215. Assemblymember Pellerin, a Democrat who chaired the Assembly’s
6 Election Committee hearings on Proposition 50, likewise proclaimed that “California
7 believes in independent redistricting. We want every state to adopt it.” *Id.* at 9. And
8 Senator Strickland, a Republican, argued that the new map “demonstrate[s] why we need
9 a Nonpartisan Citizens’ Redistricting Commission, and why it was passed in the first
10 place.” Doc. 42-6 at 38.

11 Third, a return to the 2021 map would reduce voter confusion. When forced to
12 impose a new map on states, federal courts should ensure “that the changes [are] feasible
13 without significant cost, confusion, or hardship.” *Merrill v. Milligan*, 142 S. Ct. 879, 881
14 (2022) (Kavanaugh, J., concurring in the grant of applications for stays). The 2021 map
15 already has been used in two congressional elections and was in effect until November 4,
16 2025. A return to this map is the least disruptive option for California voters.

17 Defendants allege that “the text of both AB 604 and ACA 8 also contemplate a
18 narrow remedy in the event any part of this redistricting plan is invalidated.” Def. Opp.
19 47. But that is not clear from the text. And any change to even just District 13 would
20 necessarily impact every other district that intersects with it. That is why it is sometimes
21 necessary to use an entirely new map when even a small number of districts are deemed
22 unlawful under the Equal Protection Clause or the VRA. *See, e.g., Harris v. McCrory*, 159
23 F. Supp. 3d 600, 627 (M.D.N.C. 2016) (“requir[ing] the North Carolina General Assembly
24 to draw a new congressional district plan”), *aff’d sub nom. Cooper v. Harris*, 581 U.S.
25 285.

CONCLUSION

For the foregoing reasons and those in the United States’ memorandum in support of its motion for a preliminary injunction, the Court should grant the United States’ motion.

DATED: December 10, 2025

Respectfully submitted:

TODD BLANCHE
Deputy Attorney General
BILAL A. ESSAYLI
First Assistant United States Attorney
s/ Julie A. Hamill
JULIE A. HAMILL
Assistant United States Attorney
United States Attorney’s Office

JESUS A. OSETE*
Principal Deputy Assistant Attorney General
s/ Matthew Zandi
MATTHEW ZANDI
Chief of Staff & Special Counsel

MAUREEN RIORDAN
Acting Chief, Voting Section

ANDREW BRANIFF
Acting Chief, Appellate Section

DAVID GOLDMAN
JOSHUA R. ZUCKERMAN
GRETA GIESEKE
Attorneys

Civil Rights Division
United States Department of Justice

Attorneys for Plaintiff-Intervenor
UNITED STATES OF AMERICA

* Assistant Attorney General Harmeet K. Dhillon is recused from this matter.

CERTIFICATE OF COMPLIANCE

1
2 The undersigned, counsel of record for the United States of America certifies that
3 this brief contains 6000 words, which complies with the word limit required by the court
4 in Doc. No 82.
5

6 Dated: December 10, 2025

s/ Matthew Zandi
Matthew Zandi
Chief of Staff & Special Counsel

7
8
9
10 **ATTESTATION**

11 PURSUANT TO LOCAL RULE 5-4.3.4 This certifies, pursuant to Local Rule 5-
12 4.3.4, that all signatories to this document concur in its content and have authorized this
13 filing.
14

15
16 Dated: December 10, 2025

s/ Matthew Zandi
Matthew Zandi
Chief of Staff & Special Counsel