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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.*,

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

UNITED STATES' REPLY TO OPPOSITION OF INTERVENOR-DEFENDANT LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC) TO MOTIONS FOR PRELIMINARY INJUNCTION

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

Defendants,	Hon. Josephine L. Staton Hon. Wesley L. Hsu Hon. Kenneth K. Lee Hearing Date: December 15, 2025 Time: 9 a.m. Courtroom: One

INTRODUCTION

Defendant-Intervenor League of United Latin American Citizens' ("LULAC") response to Plaintiffs' and Plaintiff-Intervenor's motions for a preliminary injunction alleges that Plaintiffs have "repackaged a nonjusticiable partisan gerrymander and called it an impermissible racial gerrymander." LULAC Opp. at 1. The allegations in LULAC's brief and the undisputed facts and evidence introduced in the United States' complaint and motion, however, establish that California intentionally used race as a predominant factor in creating the map that the legislature passed as Assembly Bill 604 ("AB 604").

A. The United States Has Established that AB 604 Violates the Equal Protection Clause

The Equal Protection Clause forbids a State, absent a compelling justification, from "separat[ing] its citizens into different voting districts on the basis of race." *Bethune-Hill v. Virginia State Bd. of Elections*, 580 U.S. 178, 187 (2017). Under this rubric, plaintiffs must show that race was the "predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." *Alexander v. South Carolina State Conf. of the NAACP*, 602 U.S. 1, 7 (2024). Here, Plaintiffs and the United States have introduced both "'direct evidence' of legislative intent, [and] 'circumstantial evidence of a district's shape and demographics.'" *Cooper v. Harris*, 581 U.S. 285, 291 (2017) (quoting *Miller v. Johnson*, 515 U.S. 900, 916 (1995)); *see generally* U.S. P.I. Mot. 3-6, 8-11; Pls.' P.I. Mot. 10-14.

In enacting AB 604, California no doubt sought to increase Democrats' voting power. But this partisan goal was second to racial priorities. Paul Mitchell, who drew the map, admitted in an interview with Hispanas Organized for Political Equality ("HOPE") on October 17, 2025, that his starting point for redistricting was implementing racial targets that HOPE lobbied for in a 2021 letter. Doc. 42-3 at 25-26. In addition to this direct evidence discussed in the United States' Reply to Def. Opp., *see* Doc. 140 at 1-3, 10-11, and Memo in Support of the Motion for a Preliminary Injunction, *see* Doc. 29-1 at 8-11,

there is ample circumstantial evidence of race-based gerrymandering. The HOPE letter also suggested moving Latino populations from districts that were "likely overpacked beyond what is required to definitively allow for the election of a Latino candidate of choice," and deemed 52-54% Hispanic Citizen Voting Age Population ("CVAP") an optimal racial quota to "still be very likely to elect Latino candidates of choice." App. A, *Nov. 24, 2021 Letter from HOPE to Commissioners* at 5. And the evidence demonstrates that Mitchell endeavored—indeed, successfully—to create a map that increased Democrat voting power while prioritizing a similar racial quota.

Data submitted by LULAC's own expert, Anthony Fairfax, indicates that Mitchell implemented a racial quota to ensure that at least sixteen districts would be "very likely to elect Latino candidates of choice": 14/16 majority-Hispanic districts in the Proposition 50 Map have Hispanic CVAPs of 51.76-55.01%, whereas only 5/16 districts in the 2021 were in this compact range. *Compare* Doc. 111-1 at 86-87 (2021 map's Hispanic CVAP percentages), *with id.* at 161-62 (Proposition 50 map's Hispanic CVAP percentages).

Of course, it could be a coincidence that all but two majority-Hispanic districts have Hispanic CVAP percentages within a compact range that is nearly identical to the range that HOPE deemed optimal. But as LULAC included in its recent brief in *LULAC v. Abbott*: "*Nothing's a coincidence*." No. 3:21-cv-00259, Doc. 1150 at 16 (W.D. Tex. Aug. 28, 2025) (quoting legislators' discussions regarding two districts that were "just above" 50% Hispanic CVAP and two districts that were "just above" 50% black CVAP); *see also LULAC v. Abbott*, --- F. Supp. 3d ---, 2025 WL 3215715, at *42 (W.D. Tex. Nov. 18, 2025) (finding it "very unlikely" that the map drawer "would have hit a barely 50% CVAP *three times* by pure chance"), *stayed on other grounds*, 607 U.S. ---, 2025 WL 3484863 (W.D. Tex. Dec. 4, 2025).

Nonetheless, according to LULAC, California must not have racial gerrymandered the Proposition 50 map because it has the same number of majority-Hispanic districts—

sixteen—as did the 2021 map, which undisputedly complied with the VRA.[1] Doc. 111 at 10 (accusing the United States of "fail[ing] to explain how the sixteen districts in the Commission plan could be constitutional while the sixteen districts in the current plan are not"). But while fifteen of the sixteen majority-Hispanic districts may nominally be the same in both maps, their boundaries are not the same. Instead, the districts are drawn to racially sort voters into the most politically advantageous districts that satisfy desired racial quotas.

Take District 13 for example. In the 2021 map, it had a bulge that protruded into District 9. Doc. 111-1 at 22. But the Proposition 50 map adds a plume atop the existing bulge. *Id.* at 22-23. Accepting the data submitted by LULAC's expert, Fairfax, the revised District 13 in the Proposition 50 map increased Democrats' voting power while keeping Hispanic CVAP roughly the same at 53.73%, compared to 53.66% in the 2021 map. *Compare* Doc. 111-1 at 86, 137, 140, 143 (2021 District 13 Hispanic CVAP and Democrat populations), *with id.* at 161, 214, 217, 220 (Proposition 50 District 13 Hispanic CVAP and Democrat populations). Had partisan goals predominated, Mitchell could have maximized Democrats' voting power in District 13, while keeping District 9 reliably Democrat and drawing a more regular district. This is demonstrated by Trende's three alternative maps. *See* Doc.16-5 at 37-42.[2] Even under Fairfax's data, Trende's Map A shows that when push came to shove, Mitchell prioritized the racial quota over partisan goals.[3] *Compare* Doc. 111-1 at 161, 214, 217, 220 (Proposition 50 District 13 Hispanic

[1] Different data sets and analyses produce varying conclusions about the number of majority-Hispanic districts in the 2021 map. *See, e.g.*, Dr. Raquel Centeno & Dr. Jarred Cuellar, *Latino Voters and the November 2025 Special Election: Redistricting and Representation* at 1, https://tinyurl.com/5pjj9x7r; *see also infra* note 3.

[2] LULAC disposes of the United States' arguments on the basis that the United States did not retain its own expert and instead merely cites an academic analysis. Doc. 111 at 11. This is not true; the United States relies on Trende. *See* U.S. P.I. Mot. 11.

[3] Fairfax's report shows unequal populations between the districts in Trende's alternative maps. LULAC Opp. 17; *see, e.g.*, 111-1 at 569. Fairfax testified, however, that data produced in one redistricting application may not populate accurately when reviewed on different software. App. B, *Deposition of Anthony Fairfax* at 74:1-18 ("If you use

CVAP and Democrat populations), *with id.* at 240, 389, 392, 395 (Trende Map A District 13 Hispanic CVAP and Democrat populations). Prior VRA compliance does not create a safe harbor for subsequent unlawful discrimination.

Even if California had good in increasing the voting power of Latinos, the Proposition 50 map remains an illegal racial gerrymander. Supposedly "benign" racial classifications are held to the same strict scrutiny as "invidious" ones. *Adarand Constructions, Inc. v. Pena*, 515 U.S. 200, 229-30 (1995). That is because in "zero-sum" contexts such as electoral politics, a "benefit provided to some" racial groups "but not to others necessarily advantages the former group at the expense of the latter." *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181, 218-19 (2023). When a state intentionally draws majority-minority districts to empower one racial group, it therefore necessarily harms the political power of other racial groups. Here, California's "benign" discrimination to increase the political power of Latinos results in a corresponding decrease in the political powers of other racial groups. That violates the Equal Protection Clause. There is no "special category of 'benign' racial classification" when voting rights are at stake. *Shaw v. Reno*, 509 U.S. 630, 653 (1993).

B. The United States Has Established a VRA Violation Based on the Intentional Use of Race in Redistricting

Without ever citing the Voting Rights Act, LULAC further argues that the United States is limited to bringing a vote-dilution claim under the VRA. *Compare* LULAC Opp. 14 (arguing that the United States "appears to … bring[] an intentional vote dilution claim" (citing U.S. P.I. Mot. 7-8)), *with* U.S. P.I. Mot. 7-8 (describing the legal standard for the VRA claim). And according to LULAC, the United States' vote-dilution claim is inadequate. LULAC Opp. 14-15. In this case, there is ample evidence that the redistricting

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Census block, which is what I use when I transfer or transmit a plan, it matches up correctly … If you use some other – he used JSON, like I said, they may not conform to Census geography correctly.").

process—including in District 13—began with, and was motivated by, race-based considerations.

1. Section 2 of the VRA Prohibits Purposeful Race-Based Redistricting

Section 2 imposes a "permanent, nationwide ban on racial discrimination in voting." *Shelby County v. Holder*, 570 U.S. 529, 557 (2013). Section 2 allows plaintiffs to bring both "intent" (or "purpose") claims and "results" claims. *See Democratic Nat'l Comm. v. Hobbs*, 948 F.3d 989, 1011 (9th Cir. 2020) (*en banc*), *rev'd on other grounds sub nom. Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647 (2021). Section 2 prohibits both "those voting practices directly prohibited by the Fifteenth Amendment" and "also any practice 'imposed or applied . . . in a manner which results in a denial or abridgement of the right . . . to vote on account of race or color.'" *United States v. Marengo Cnty. Comm'n*, 731 F.2d 1546, 1553 (11th Cir. 1984) (emphasis removed). Or, said differently, a Section 2 plaintiff "must either prove [discriminatory] intent, or, alternatively, must show that the challenged system or practice, in the context of all the circumstances in the jurisdiction in question, results in minorities being denied equal access to the political process." *Chisom v. Roemer*, 501 U.S. 380, 394 n.21 (1991); *Hobbs*, 948 F.3d at 1011.

When a state intentionally draws district lines on the basis of race, "[t]he racial classification itself is the relevant harm." *Alexander*, 602 U.S. at 38.[4] That is because "[c]lassifying citizens by race … threatens special harms that are not present in … vote-dilution cases." *Shaw v. Reno*, 509 U.S. 630, 649-50 (1993).

2. The United States Has Established a Section 2 Intent Claim

When considering a discriminatory purpose claim under Section 2, courts apply the familiar approach outlined in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266-68 (1977). *Hobbs*, 948 F.3d at 1038. Under this

[4] Moreover, to the extent that a claim of intentional racial gerrymandering requires a showing that a certain racial or ethnic group's voting power has been diminished (*see* LULAC Opp. 14), the Proposition 50 map's boost of Latino voting power necessarily entails the concomitant diminution of the voting power of all other racial groups.

standard, plaintiffs must show that race was a motivating factor for the official action, but they need not show "that the challenged action rested solely on racially discriminatory purposes" or even that the discriminatory purpose "was the 'dominant' or 'primary' one." *Arlington Heights*, 429 U.S. at 265; *see also Allen v. Milligan*, 599 U.S. 1, 37 (2023) (rejecting the contention that plaintiffs must show that a challenged districting plan "rested *solely* on racially discriminatory purpose" (quoting *Arlington Heights*, 429 U.S. at 265)).

LULAC contends, and the United States does not dispute, that members of the California legislature and government sold this plan to California voters as an attempt to counteract the redistricting plans occurring in other states. *See* LULAC Opp. at 5-9. However, these post-hoc rationalizations were made after the California legislature passed, and the Secretary of State enrolled, AB 604, which set the proposed map in stone. For example, the Official Voter Information Guide, *see* LULAC Opp. at 6, could not have been created until after AB 604 passed. *See* Prop. 50 Voter Guide, *available at ps://vig.cdn.sos.ca.gov/2025/special/pdf/complete-vig.pdf* (last visited Dec. 8, 2025). As the United States has explained in its reply to the Defendants' Opposition, the intent of the voters is irrelevant to the analysis here. Doc. 140 at 6, 14. The Guide, and statements by Governor Newsom and Republican Legislators who voted against the proposal, *see* LULAC Opp. at 6-8, are similarly irrelevant as they were not made by relevant state actors. *See Alexander*, 602 U.S. at 8; *see also Cooper*, 581 U.S. at 299 (finding a racial gerrymander by examining evidence from the "State's mapmakers"). Here Paul Mitchell and the members of the California legislature were the State's mapmakers—and relevant state actors—who determined the final map that AB 604 enacted.

The mindset of the mapmaker is highly relevant to the question of whether invidious discrimination tainted the mapmaking process. *See Perez v. Texas*, 891 F. Supp. 2d 808, 833 n.94 (W.D. Tex. 2012) (noting that "the actual mapdrawer['s] ... state of mind and decision-making appears to be the most relevant evidence concerning the extent to which race played a role in determining district lines"); *see also Arlington Heights*, 429 U.S. at

266 ("Determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available."). Here, as demonstrated in the motion for a preliminary injunction, U.S. P.I. Mot. 8-10, Mitchell prioritized bolstering the voting power of Latino voters as a bloc when he set out to draw the map in AB 604.

"[T]argeting a particular race's access to the franchise because its members vote for a particular party, in a predictable manner, constitutes discriminatory purpose." *League of Women Voters of Florida Inc. v. Florida Sec'y of State*, 66 F.4th 905, 924 (11th Cir. 2023) (quoting *N.C. State Conf. of the NAACP v. McCrory*, 831 F.3d 204, 222 (4th Cir. 2016)). Although "[o]utright admissions of impermissible racial motivation are infrequent[,]" *Hunt v. Cromartie*, 526 U.S. 541, 553 (1999), such admissions actually occurred in this case. Mitchell stated the "number one thing that [he] first started thinking about" when creating the map was "drawing a replacement Latino majority/minority district in the middle of Los Angeles." Doc. 42-3 at 24-25. He told HOPE that the "[t]he Prop. 50 maps [would] be great for the Latino community … they [would] ensure that the Latino districts that are the VRA seats are bolstered in order to make them most effective, particularly in the Central Valley." *Id.* at 31. He also boasted that he had redrawn another district to create a "Latino-influenced district at 35 percent Latino by voting age population." *Id.* at 25-26. "Once racial discrimination is shown to have been a 'substantial' or 'motivating' factor behind enactment of the law, the burden shifts to the law's defenders to demonstrate that the law would have been enacted without this factor." *Hunter v. Underwood*, 471 U.S. 222, 228 (1985) (quoting *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 287 (1977)). Neither LULAC nor the State Defendants have satisfied this burden.

C. The United States Has Established the Basis for a Preliminary Injunction

As Defendants concede, *see* Def. Opp. 12, n.7, the Ninth Circuit has adopted "a sliding scale variant of the *Winter* test—under which a party is entitled to a preliminary

injunction if it demonstrates (1) serious questions going to the merits, (2) a likelihood of irreparable injury, (3) a balance of hardships that tips sharply towards the plaintiff, and (4) the injunction is in the public interest." *Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180, 1190 (9th Cir. 2024) (quotation marks omitted). "[T]he serious questions standard is 'a lesser showing than likelihood of success on the merits,'" *id.*, a burden that the United States has met. "Any racial discrimination in voting is too much," *Shelby County*, 570 U.S. at 557, and "[t]he federal interest in protecting voting rights is a serious one," *Harris v. Ariz. Indep. Redistricting Comm'n*, 993 F. Supp. 2d 1042, 1071 (D. Ariz. 2014). *See also Badham v. U.S. Dist. Ct. for N. Dist. of Cal.*, 721 F.2d 1170, 1173 (9th Cir. 1983) ("The right to vote is fundamental 'because it is preservative of all rights." (alteration adopted and citation omitted)). Likewise, the right to be free from discrimination on the basis of race is a vital constitutional right: "At the heart of the Constitution's guarantee of equal protection lies the simple command that the Government must treat citizens as individuals, not as simply components of a racial, religious, sexual or national class." *Miller*, 515 U.S. at 911 (internal quotation marks and citation omitted). The Proposition 50 map, including District 13, was purposefully drawn, using race-based considerations, to bolster Latino voting power in California politics, thereby diminishing the political power of all other races. LULAC has not, and cannot, contradict this evidence. A preliminary injunction is proper.

LULAC raises no other new arguments not raised by Defendants. Accordingly, Plaintiff-Intervenor refers the Court to, and incorporates, the United States' Reply to Defendants, Doc. 140.

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

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for the United States of America certifies that this brief contains 2823 words, which complies with the word limit required by the court in Doc. No 82.

Dated: December 10, 2025

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