

1 UNITED STATES DISTRICT COURT  
2 CENTRAL DISTRICT OF CALIFORNIA

3  
4 DAVID TANGIPA, et al.,

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

5  
6 Plaintiffs,

**ORDER RE: MOTION TO COMPEL TESTIMONY OF PAUL MITCHELL**

7  
8 v.

9  
10 GAVIN NEWSOM, in his official capacity  
11 as the Governor of California, et al.,

12  
13 Defendants,  
14

15  
16 This case turns on whether California’s congressional redistricting map  
17 reflects political—or racial—gerrymandering. The parties agree that Paul Mitchell  
18 was hired by Defendant-Intervenor Democratic Congressional Campaign  
19 Committee and drafted the maps in question. Supreme Court precedent highlights  
20 the importance of mapmakers’ testimony in these cases. *See Alexander v. S.C. State*  
21 *Conf. of the NAACP*, 602 U.S. 1, 8, 19, 22–23 (2024); *Cooper v. Harris*, 581 U.S.  
22 285, 338 (2017); *Easley v. Cromartie (Cromartie II)*, 532 U.S. 234, 254 (2001).  
23 According to Plaintiffs and Plaintiff-Intervenor, Mr. Mitchell allegedly told groups  
24 that he considered race as a primary factor in drawing the bounds of one or more  
25 congressional districts.

26 Plaintiff-Intervenor served a subpoena on Mr. Mitchell on December 1, 2025  
27 requiring him to appear for a deposition on December 5. At his request, his  
28

1 deposition was rescheduled for December 10. But on the early morning of  
2 December 10—the day of the Mr. Mitchell’s deposition and two business days  
3 before the preliminary injunction hearing—Mr. Mitchell’s counsel, Kimon  
4 Manolius of Hansen Bridgett LLP, asserted for the first time that Mitchell is  
5 protected by legislative and other privileges. It is not clear why Mr. Manolius waited  
6 until the morning of the deposition to inform Plaintiffs that Mr. Mitchell would be  
7 asserting the legislative privilege. During Mr. Mitchell’s deposition, Mr. Manolius  
8 invoked legislative privilege dozens of times and repeatedly directed Mr. Mitchell  
9 not to answer.

10 Mr. Manolius also served responses and objections to the subpoena that  
11 declined to produce any documents. In a separate email, he suggested he may  
12 produce non-privileged documents but said no documents or a privilege log would  
13 be produced before December 15, the day the preliminary injunction hearing will  
14 begin, and will take weeks to produce. Mr. Manolius also stated during the  
15 deposition that Mr. Mitchell will not appear at the preliminary injunction hearing,  
16 noting that it would be a “burden” on him.

17 First, we turn to Mr. Mitchell’s claim of legislative privilege. While the  
18 federal Speech or Debate Clause protects members of Congress, state legislative  
19 activity is protected by a Federal Common Law doctrine based in comity. *United*  
20 *States v. Gillock*, 445 U.S. 360, 372, 374 (1980). Both privileges extend only to  
21 “legislative acts.” *Gravel v. United States*, 408 U.S. 606, 626 (1972). Matters  
22 outside of “speech or debate in either House” are only protected if they constitute  
23 “an integral part of the deliberative and communicative process by which Members  
24 participate in committee and House proceedings.” *Id.* at 625. In other words, the  
25 protection applies “only when necessary to prevent indirect impairment of  
26 deliberations” within the legislature. *Id.*

1 We need not address the precise legal contours of the legislative privilege as  
2 applied to our case at this time. Mr. Mitchell admits that he has non-privileged and  
3 responsive documents but has yet to produce a single document. For example, we  
4 question whether Mr. Mitchell can invoke a blanket legislative privilege for his  
5 actions, knowledge, and communications before July 2, 2025, which is the first time  
6 he communicated with California state legislators about redistricting. It should not  
7 take weeks to produce responsive documents, as Mr. Manolikus contends. **Mr.**  
8 **Mitchell must immediately produce non-privileged and responsive documents**  
9 **on a rolling basis starting today.**

10 Next, we turn to the First Amendment and deliberative process privileges.  
11 Neither is properly invoked here—and Mr. Mitchell appears to acknowledge it as  
12 much, as he does not try to defend these privileges in his opposition brief. Mr.  
13 Mitchell’s freedom of association is not threatened here nor has he shown any  
14 likelihood of “harassment, membership withdrawal, [] discouragement of new  
15 members, or [] other consequences which objectively suggest an impact on, or  
16 chilling of . . . associational rights.” *Perry v. Schwarzenegger*, 591 F.3d 1147, 1160  
17 (9th Cir. 2010). The First Amendment privilege does not apply. So too with the  
18 deliberative process privilege, which is “a form of executive privilege” that protects  
19 initial deliberations within an agency. *United States Fish & Wildlife Serv. v. Sierra*  
20 *Club, Inc.*, 592 U.S. 261, 267 (2021). No one contends that Mitchell worked within  
21 the California executive branch. Even if he did, final positions are not protected by  
22 the privilege. *Id.* at 269.

23 Therefore, the court orders that Mr. Mitchell must immediately produce on a  
24 rolling basis all responsive and non-privileged documents starting today. Mr.  
25 Mitchell must also produce a privilege log identifying any documents being  
26 withheld. Plaintiffs’ request for an adverse inference instruction is denied without  
27 prejudice to being renewed later.

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

DATED: December 13, 2025

HON. JOSEPHINE L. STATON  
UNITED STATES DISTRICT JUDGE

HON. KENNETH K. LEE  
UNITED STATES CIRCUIT JUDGE

HON. WESLEY L. HSU  
UNITED STATES DISTRICT JUDGE

RETRIEVED FROM DEMOCRACYDOCKET.COM