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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

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,

DEMOCRATIC CONGRESSIONAL CAMPAIGN COMMITTEE, *et al.*,

Defendant-Intervenors.

2:25-cv-10616-JLS-WLH-KKL
Three-Judge Court

**DEFENDANT-INTERVENOR
DCCC'S RESPONSE TO
PLAINTIFFS' RENEWED
MOTION FOR ADVERSE
INFERENCE**

1 **INTRODUCTION**

2 Plaintiffs' most recent last-minute discovery motion continues to highlight the
3 weakness of their case. Central to their motion is the claim that DCCC controls
4 mapmaker Paul Mitchell, which Plaintiffs assert by misconstruing a bookkeeping clause
5 in a boilerplate contract for services. DCCC produced this contract to Plaintiffs shortly
6 after midnight on ***December 5***—ten days ago. *See* ECF No. 162-1 ¶ 29.¹ Yet only now—
7 on the literal eve of trial and days after their opportunity to depose Mr. Mitchell—do they
8 assert that this contract shows that DCCC controls Mr. Mitchell. Plaintiffs' belated
9 assertion is dead wrong. For one, the contract they point to terminated in August
10 according to its own terms. *See* ECF No. 162-10 § 2. That much is unsurprising; at that
11 point, DCCC had obtained what it wanted from Mr. Mitchell (his map), for the reason it
12 wanted it (Democratic gains), and had paid Mr. Mitchell for it. *See* ECF No. 159-1 at
13 230:1-10. More absurdly, the provision Plaintiffs rely on has nothing to do with Mr.
14 Mitchell's files or work product—it concerns “books and records,” a well-worn common
15 law reference to *bookkeeping and ledgers*, as the Ninth Circuit has held. *See In re MC2*
16 *Cap. Partners*, No. 11-14366, 2015 WL 777649, at *5 (B.A.P. 9th Cir. Feb. 25, 2015)
17 (noting this term refers to “ledgers, but also financial statements, records pertaining to
18 receivables and payables, purchase orders, and invoices”). Simply put, Plaintiffs continue
19 to try to slam square pegs into round holes to build up their paper-thin case at the last
20 minute. The Court should look past this desperate effort.

21 Their remaining arguments are equally flawed. The Supreme Court could not
22 possibly be clearer in holding that the Legislature is entitled to a presumption of good
23 faith. Indeed, just weeks ago it faulted another three-judge district court—armed with
24 evidence that casts a mile-long shadow over the record here—for failing to honor that
25 presumption. *See Abbott v. League of United Latin Am. Citizens (“LULAC”*), No.

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27
28 ¹ Despite having had this document for nearly ten days, Plaintiffs only sought to add it
to their exhibit list on Sunday, December 14.

1 25A608, 2025 WL 3484863, at *1 (U.S. Dec. 4, 2025) (noting that failure to presume
2 good faith amounts to “serious error[]”). Plaintiffs now ask this Court to turn that
3 standard on its head by simply erasing Plaintiffs’ twin burdens to make a “clear showing”
4 of entitlement to relief at this preliminary stage *and* to rebut the presumption of legislative
5 good faith. Plaintiffs are hardly subtle in their attempt at overreach: Their proposed order
6 asks that this Court simply assume the ultimate merits question in dispute and “find[],
7 for purposes of a preliminary injunction, that race predominated in the drawing of the
8 Proposition 50 map.” ECF No. 162-12. But *LULAC* makes plain this Court cannot
9 properly grant such a windfall, particularly given that Plaintiffs failed to raise even
10 rudimentary allegations against nearly every challenged district. Further still, Plaintiffs’
11 request for an adverse inference continues to become more attenuated and confused. On
12 their reasoning (apparently), this Court should draw an adverse inference as to why *the*
13 *Legislature and voters* adopted Proposition 50 because DCCC did not collect documents
14 from a third-party mapmaker based on the belated and wrong assertions of Plaintiffs
15 about the meaning of a contract they’ve had in their possession for ten days.

16 Plaintiffs’ waiver argument is equally confused. For one, neither Paul Mitchell
17 (nor DCCC) can waive *the Legislature’s* privilege. *See Puente Ariz. v. Arpaio*, 314
18 F.R.D. 664, 671 (D. Ariz. 2016) (citing *Marylanders for Fair Representation, Inc. v. Schaefer*, 144 F.R.D. 292, 298 (D. Md. 1992); *Gravel v. United States*, 408 U.S. 606, 616 (1972)). Legislators alone can make that call. *See id.* Furthermore, it is hardly clear
21 why Mitchell’s production of 3.4GB of *non-privileged documents*—previously withheld
22 under a *burden* objection—constitutes any kind of waiver. Those are precisely the
23 category of documents this Court ordered him to produce on Saturday. And Plaintiffs’
24 suggestion that Mr. Mitchell is slow walking his production—made just hours after the
25 Court ordered it—is remarkable given that they themselves have made *two separate*
26 *productions* on the night before the hearing in response to document requests served prior
27 to Thanksgiving. The Court should deny the motion in all respects.

28

1 **ARGUMENT**

2 **I. DCCC does not control Mitchell's documents.**

3 Plaintiffs' renewed motion hinges on the notion that DCCC has control over Paul
4 Mitchell or his documents. This argument is based on a flawed reading of a single
5 provision in the standard-form independent contractor agreement between DCCC and
6 Mitchell, which, read in context, refers to accounting and actuarial documents—not the
7 sort of documents Plaintiffs believe they are entitled to. Plaintiffs hang their hopes on
8 Paragraph 14 in DCCC's contract with Mitchell, titled "Maintenance of Records." The
9 Paragraph reads, in full:

10 Consultant shall maintain adequate books and records in a
11 manner consistent with the accounting and professional
12 standards ordinarily followed within Consultant's industry,
13 except as Consultant be otherwise directed by Client. All books
14 and records shall be maintained for up to thirty-six (36) months
15 after expiration or termination of this Agreement and open to
16 inspection and copying by Client. Consultant shall reimburse
17 Client for any additional costs incurred by Client in reviewing,
18 updating, supplementing or otherwise correcting the books and
19 records of Consultant in connection with any breach of its
20 obligation under this Section 14, if, after demand by Client,
Consultant shall fail to promptly correct the breach. Consultant
shall maintain a complete record of all contracts or other
agreements for the work relating to the Services.

21 Ex. A ¶ 14.

22 Plaintiffs argue that under this provision, "DCCC [c]ontrols Mitchell's
23 [d]ocuments," Mot.8, because it "has a contractual right to access and copy any
24 documents in Mitchel's possession that relate to the drawing of the Proposition 50 map
that he was paid to create." Mot.9. But that is a gross misreading of Paragraph 14. The
25 Paragraph provides only that DCCC has the right to inspect Mitchell's "books and
26 records" that are "maintaine[d] . . . in a manner consistent with the accounting and
27 professional standards ordinarily followed within [Mitchell's] industry." Ex. A ¶ 14.

1 In context, the term “books and records” clearly refers to accounting and financial
2 records—not the entirety of Mitchell’s documents that might conceivably relate to
3 DCCC. This is so for several reasons. For one, multiple courts have interpreted the
4 contractual term “books and records” as limited to businesses’ bookkeeping obligations
5 for tax and accounting purposes. The Ninth Circuit’s bankruptcy panel, for example,
6 observed that “the term ‘books and records’ . . . at common law included not only ledgers,
7 but also financial statements, records pertaining to receivables and payables, purchase
8 orders, and invoices.” *In re MC2 Cap. Partners*, No. 11-14366, 2015 WL 777649, at *5
9 (B.A.P. 9th Cir. Feb. 25, 2015); *see also Garner v. Authenticity.ai Invs., LLC*, 334 A.3d
10 1108, 1127 (Del. Ch. 2025) (rejecting the use of a “books and records” proceeding to
11 investigate “broad” allegations about a company’s misconduct); *Hous. Works, Inc. v.*
12 *Turner*, No. 00CIV.1122(LAK)(JCF), 2004 WL 2101900, at *17 (S.D.N.Y. Sep. 15,
13 2004) (noting testimony that the term “restated books and records” is understood to mean
14 “records . . . focused on the general ledger, which is the fundamental focal document in
15 all *accounting records*” (emphasis added; quotation omitted)); *Int’l Bhd. of Elec.*
16 *Workers v. Internet Const., Inc.*, No. 03 C 1082, 2004 WL 2931301, at *2 (N.D. Ill. Dec.
17 15, 2004) (noting that the plaintiff “engaged a certified public accounting firm to conduct
18 an audit” of the defendant’s “books and records”); *Deutsche Bank Nat’l Tr. Co. v. Fed.*
19 *Deposit Ins. Corp.*, 109 F. Supp. 3d 179, 199 (D.D.C. 2015) (the contract term “reflected
20 on the Books and Records” was “unambiguous” in that it referred to only liabilities
21 “stated . . . on [the party’s] accounting records”).²

22 This limited definition of “books and records” is also consistent with widespread
23 usage. The Internal Revenue Service, for example, maintains a webpage advising
24 business owners that, for tax purposes, they “must keep a complete and separate set of
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27 ² The Agreement contains a choice-of-law provision indicating that it “shall be governed
28 by the laws of the District of Columbia.” Ex. A. ¶ 16. Plaintiffs have cited no authority
from the District of Columbia or elsewhere supporting their interpretation of Paragraph
14 of the Agreement.

1 *books and records* for each business”—indicating that the term refers to financial and tax
2 information.³ The Code of Federal Regulations also harmonizes with an understanding
3 of “books and records” as referring to financial documents. For instance, 17 C.F.R. §
4 275.204-2(a) details the “books and records” that investment advisers must maintain, and
5 “cash receipts and disbursements,” “ledgers,” and records of purchase orders. By
6 contrast, Plaintiffs’ motion includes not a shred of authority—legal or otherwise—to
7 support their claim that “books and records” should be interpreted broadly to include all
8 of Paul Mitchell’s documents.

9 Plaintiffs’ expansive interpretation of Paragraph 14 is also inconsistent with the
10 paragraph as a whole. The first clause of the paragraph, for example, requires Mitchell
11 to maintain “books and records in a manner consistent with the *accounting* and
12 professional standards ordinarily followed within [his] industry.” Ex. A ¶ 14. There are,
13 of course, generally accepted accounting and professional standards for how small
14 business owners should maintain financial records, as just discussed. But there are no
15 such standards—or at least, Plaintiffs cite no such standards—for how redistricting
16 consultants should maintain the sum total of their documents.

17 Finally, Plaintiffs’ interpretation of “books and records” to encompass every
18 document related to Mitchell’s work for clients would render much of the rest of the
19 contract language superfluous. The final clause of Paragraph 14 requires Mitchell to
20 “maintain a complete record of all contracts or other agreements for the work relating to
21 [his] Services,” Ex.A ¶ 14—a provision which would be surplusage if “books and
22 records” already encompassed all documents that relate in a broad sense to Mitchell’s
23 redistricting work. Plaintiffs’ interpretation is thus inconsistent with basic principles of
24 contract interpretation. *D.C. v. D.C. Pub. Serv. Comm’n*, 963 A.2d 1144, 1157 (D.C.
25
26

27 ³ Internal Revenue Service, “Publication 583 (12/2024), Starting a Business and Keeping
28 Records,” available at <https://www.irs.gov/publications/p583> (last visited Dec. 15,
2025).

1 2009) (noting that “we must avoid” an “interpretation which . . . would render
2 [contractual] language surplusage”).

3 Thus, Plaintiffs have failed to show that DCCC had possession, custody, or control
4 of the documents belonging to Paul Mitchell that form the basis for their motion. They
5 are therefore entitled to none of the relief they request.

6 **II. The adverse inference Plaintiffs seek is foreclosed by precedent.**

7 Plaintiffs’ request for an “adverse inference” flies in the face of the Supreme
8 Court’s recent and repeated admonition that federal courts commit “serious error[]” when
9 they “fail to honor the presumption of legislative good faith by construing ambiguous
10 direct and circumstantial evidence against the legislature.” *LULAC*, 2025 WL 3484863,
11 at *1; *see also, e.g.*, *Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018); *Hunt v. Cromartie*,
12 526 U.S. 541, 553 (1999); *Miller v. Johnson*, 515 U.S. 900, 915 (1995). Even in cases
13 involving “serious claims” of “racial gerrymandering,” the Court has been clear that
14 “good faith of the legislative body must be presumed, and the burden of proof rests with
15 the challenger to demonstrate that race predominated the districting process.” *Lee v. City*
16 *of Los Angeles*, 908 F.3d 1175, 1183 (9th Cir. 2018) (citations omitted). In contrast,
17 Plaintiffs cannot cite even a *single example* of a Court drawing an adverse inference
18 against a legislature in a redistricting case based on the invocation of legislative privilege.

19 Plaintiffs’ own proposed order illustrates how egregious such legal error would be.
20 It asks the Court to “find[], for purposes of a preliminary injunction, that race
21 predominated in the drawing of the Proposition 50 map” and also “that race was a
22 motivating factor in the drawing of the Proposition 50 map.” ECF No. 162-12 at 1. To
23 simply assume those things—with no record no less—would make an utter mockery of
24 the presumption of legislative good faith. Plaintiffs’ attempt to dupe the Court into not
25 only violating Supreme Court precedent but also deciding the ultimate issue of this case
26 on that basis only demonstrates their own bad-faith efforts to skirt the law.

27 Even if Plaintiffs’ theory had merit, their request for an immediate sanction from
28 this Court in these preliminary emergency proceedings is a nonstarter. In view of the

1 “onerous” consequences of an adverse evidentiary inference, courts routinely deny such
2 requests where the issue has not yet been fully developed. *See, e.g., Vega v. Delaware N.*
3 *Cos.*, No. 1:19-CV-00484, 2023 WL 6940198, at *5 (E.D. Cal. Oct. 20, 2023) (denying
4 motion for adverse inference as premature where discovery issue not yet fully litigated
5 by the parties and resolved by the court) (collecting cases); *see also, e.g., United States*
6 *v. Veeraswamy*, No. 23-CV-9379, 2025 WL 2740374, at *21 (E.D.N.Y. Sep. 26, 2025),
7 *decision affirmed on reconsideration*, 2025 WL 3187284 (E.D.N.Y. Nov. 14, 2025).
8 Plaintiffs, again, cite no authority whatsoever supporting the notion that an adverse
9 inference can be drawn at the preliminary injunction stage merely because the parties
10 remain locked in a privilege dispute—an evergreen feature of redistricting litigation.
11 And, as explained in DCCC’s opposition to Plaintiffs’ first *ex parte* request, courts have
12 routinely refused to draw an adverse inference based on assertions of legislative
13 privilege, which would be “tantamount to punishing a party for asserting a privilege—
14 especially one that as of yet has not been determined to be unavailable.” *N.C. State Conf.*
15 *of NAACP v. McCrory*, 997 F. Supp. 2d 322, 361 n.47 (M.D.N.C. 2014); *see* ECF No.
16 157 at 9–10.

17 **III. Plaintiffs have failed to show that Mitchell waived the legislative
18 privilege.**

19 Plaintiffs’ final argument is that Mitchell has somehow “waived” the right to assert
20 legislative privilege. This argument fails for several reasons. First, the United States
21 asserts no authority that Mitchell, a third party, *can* waive the legislative privilege.
22 Although the privilege protects some of his communications with legislators and their
23 staff, the “underlying right”—i.e., the privilege itself—belongs to “individual
24 legislators” or the legislature, not Mitchell. *Arnold v. Barbers Hill Indep. Sch. Dist.*, 157
25 F.4th 749, 756 (5th Cir. 2025). Accordingly, “only the state actor who holds the privilege
26 can waive the privilege.” *Arpaio*, 314 F.R.D. at 67. Mitchell thus cannot waive the
27 privilege as a matter of law. Nor is there anything unusual about Mitchell’s conduct. By
28 invoking the privilege, Mitchell—again, a non-party haled into this litigation via a

1 subpoena—was simply trying to protect the legislature’s rights. There is nothing
2 untoward about “a party taking the usual course of defending its privilege,” *see ABN*
3 *Corp. v. Groupe PELM Int’l Corp.*, No. 23-CV-00004-RFL (LJC), 2025 WL 660194, at
4 *11 n.7 (N.D. Cal. Feb. 28, 2025)—much less exercising appropriate diligence in
5 protecting another party’s privileged information.

6 Second, Plaintiffs’ waiver argument is simply unintelligible—it is nearly
7 impossible to understand from their frantic motion what trove of documents they believe
8 Mr. Mitchell has waived legislative privilege over, even if he *could* lawfully do so. To
9 the extent they are referring to documents like those Mr. Mitchell has recently produced,
10 they ignore that those are *non-privileged documents* previously withheld on the basis of
11 burden objections; Mr. Mitchell has indicated that he remains in the process of producing
12 such materials. If, instead, they mean to refer to documents solely within Mr. Mitchell’s
13 custody—but to which Plaintiffs wrongly believe the DCCC has some contractual
14 entitlement—they simply misread the relevant contract. *See supra* § I. And if they mean
15 to refer documents Mr. Mitchell did in fact share with DCCC, they neglect that DCCC
16 has either already produced such documents or identified them on a privilege log. Simply
17 put, while Plaintiffs’ motion is long on rhetoric, it is nearly impossible to parse the scope
18 of their waiver argument. That is because Plaintiffs are grasping at straws.

19 Plaintiffs also appear to assert that Mitchell waived the privilege “by sharing his
20 documents, methodologies, and factors considered when drafting the map with third
21 parties, including DCCC.” Mot.11. Again, Plaintiffs cite no authority for this position,
22 and it is inconsistent with caselaw on the scope of the privilege. The legislative privilege,
23 as the Ninth Circuit has held, covers anything “pertinent to potential legislation or
24 investigation,” or otherwise “concerning matters within the legitimate legislative
25 sphere.” *Miller v. Transamerican Press, Inc.*, 709 F.2d 524, 530 (9th Cir. 1983). There
26 is no allegation that “the legislators [sent] privileged documents to third parties *outside*
27 the legislative process; instead they brought third parties *into* the process.” *La Union Del*

1 *Pueblo Entero v. Abbott*, 68 F.4th 228, 237 (5th Cir. 2023). Thus, Plaintiffs’ waiver
2 argument is wrong as a matter of law.

3 Third, Plaintiffs appear to suggest that Mitchell waived the privilege because his
4 production was “untimely.” Mot.10–11. Plaintiffs do not explain why Mitchell’s
5 production was untimely or how this relates to their waiver argument. Mitchell’s initial
6 responses to Plaintiffs’ subpoena include broad objections to the scope and undue burden
7 of Plaintiffs’ requests. *See United States v. Acad. Mortg. Corp.*, 968 F.3d 996, 1006 (9th
8 Cir. 2020) (noting “the important interest in ensuring that non-parties are not subjected
9 to burdensome discovery requests”). Nonetheless, Mitchell moved promptly to respond
10 to Plaintiffs’ requests and appeared for a deposition—and, when the Court ordered him
11 to accelerate his production of documents, he swiftly complied. *See* ECF No. 153.
12 Nothing about Mitchell’s conduct suggests bad faith or dilatory tactics. To the contrary,
13 Plaintiffs—who have been in receipt of Defendants’ requests for weeks—nonetheless
14 chose to produce several troves of documents that are clearly responsive to those requests
15 *on the literal eve of trial*.

16 **CONCLUSION**

17 The Court should deny Plaintiffs’ renewed motion for an adverse inference.

18
19 Dated: December 15, 2025

Respectfully submitted,

20 /s/ Lalitha D. Madduri

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 15, 2025, I electronically served the foregoing document via electronic mail on all counsel of record.

/s/ Lalitha D. Madduri
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