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11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
13 WESTERN DIVISION
14

15 **DAVID TANGIPA, et al.,**
16 Plaintiffs,
17 and
18 **UNITED STATES OF AMERICA,**
19 Plaintiff-Intervenor
20
21 v.
22 **GAVIN NEWSOM, in his official
capacity as the Governor of California,
et al.,**
23 Defendants,
24 and
25 **DEMOCRATIC CONGRESSIONAL
26 CAMPAIGN COMMITTEE, et al.,**
27 Defendant-Intervenors.
28

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

**MEMORANDUM OF POINTS
AND AUTHORITIES
SUPPORTING DEFENDANTS'
MOTION TO DISMISS
CHALLENGERS'
COMPLAINTS**

Date: April 10, 2026
Time: 10:30 a.m.
Courtroom: 1
Judges: Hon. Josephine L. Staton, Hon. Kenneth K. Lee, and Hon. Wesley L. Hsu
Trial Date: None Designated
Action Filed: Nov. 5, 2025

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TABLE OF CONTENTS

	Page
INTRODUCTION	1
BACKGROUND	2
I. California Moves to Redistrict to Counteract Texas	2
II. California Voters Approve Proposition 50	3
III. Procedural History	4
LEGAL STANDARD	5
ARGUMENT	6
I. Challengers Fail to State a Racial Gerrymandering Claim Under the Fourteenth Amendment.....	6
A. Challengers Fail to Plead That Race Was the Predominant Factor Motivating the Relevant State Actors: the Voters.....	6
B. Challengers Fail to Plead Any Facts Regarding Voter Intent	9
C. Challengers Fail to Plead Sufficient Facts for Any of California’s Fifty-Two Districts	13
II. Plaintiffs Fail to State a Claim Under the Fifteenth Amendment.....	14
III. Plaintiff-Intervenor Fails to State a Claim Under the Voting Rights Act.....	17
IV. Sovereign Immunity Bars Challengers’ Claims Against Governor Newsom	20
CONCLUSION.....	21

RETRIEVED FROM EMO (PUBLIC ACCESS)

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15
16
17
18
19
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25
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27
28

TABLE OF AUTHORITIES

Page

CASES

<i>Abbott v. League of United Latin Am. Citizens</i> 607 U.S. ____ (2025)	2, 3, 11
<i>Abbott v. Perez</i> 585 U.S. 579 (2018)	15
<i>Adarand Constructors v. Pena</i> 515 U.S. 200 (1995)	17
<i>Alabama Legislative Black Caucus v. Alabama</i> 575 U.S. 254 (2015)	14
<i>Alexander v. S.C. State Conf. of the NAACP</i> 602 U.S. 1 (2024)	1, 8, 12, 17
<i>Allen v. Milligan</i> 599 U.S. 1 (2023)	17
<i>Ashcroft v. Iqbal</i> 556 U.S. 662 (2009)	5, 6, 14, 19
<i>Ass'n des Eleveurs de Canards et d'Oies du Quebec v. Harris</i> 729 F.3d 937 (9th Cir. 2013)	2, 20, 21
<i>Associated Home Builders etc., Inc. v. City of Livermore</i> 557 P.3d 473 (Cal. 1976).....	7
<i>Backus v. South Carolina</i> 857 F.Supp.2d 553 (D.S.C. 2012)	16
<i>Bell Atlantic Corp. v. Twombly</i> , 550 U.S. 544 (2007)	5, 18
<i>Bethune-Hill v. Virginia State Bd. of Elections</i> 580 U.S. 178 (2017)	12
<i>Brnovich v. Democratic Nat'l Comm.</i> 594 U.S. 647 (2021)	9

TABLE OF AUTHORITIES
(continued)

	Page
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
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18	
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462 F. Supp. 2d 1105 (C.D. Cal. 2006)..... 10

City of Mobile v. Bolden
446 U.S. 55 (1980) (plurality opinion)..... 16

Cooper v. Harris
581 U.S. 285 (2017) 6, 15

Cooper v. Pickett
137 F.3d 616 (9th Cir. 1997)..... 6

Democratic Nat’l Comm. v. Reagan
904 F.3d 686 (9th Cir. 2018) 17, 18, 19

Easley v. Cromartie
532 U.S. 234 (2001) 15

Garza v. County of Los Angeles
918 F.2d 763 (9th Cir. 1990)..... 19

Gomillion v. Lightfoot
364 U.S. 339 (1960) 16

Hunter by Brandt v. Regents of the Univ. of Cal.
971 F.Supp. 1316 (C.D. Cal. 1997)..... 17

Los Angeles Cnty. Bar Ass’n v. Eu
979 F.2d 697 (9th Cir. 1992)..... 20, 21

Miller v. Johnson
515 U.S. 900 (1995) 8, 15

Navarro v. Block
250 F.3d 729 (9th Cir. 2001)..... 13

Papasan v. Allain
478 U.S. 265 (1986) 20

Pennhurst State Sch. & Hosp. v. Halderman
465 U.S. 89 (1984) 20

TABLE OF AUTHORITIES
(continued)

	Page
1	
2	
3	
4	
5	
6	
7	
8	
9	
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996 P.2d 27 (Cal. 2000)..... 10

Prejean v. Foster
227 F.3d 504 (5th Cir. 2000)..... 15

Robert L. v. Superior Ct.
30 Cal. 4th 894 (Cal. 2003) 10

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665 F.Supp. 853 (C.D. Cal. 1987)..... 16

Rucho v. Common Cause
588 U.S. 684 (2019) 1

Schreiber Distributing Co. v. Serv-Well Furniture Co., Inc.
806 F.2d 1393 17

Shaw v. Hunt (Shaw II)
517 U.S. 899 (1996) 8

Shaw v. Reno
509 U.S. 630 (1993) (*Shaw I*)..... 15

Skorepa v. City of Chula Vista
723 F.Supp. 1384 (S.D. Cal. 1989) 16

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No. 2:25-cv-10616-JLS-WLH-KKL, 2026 WL 110585 (C.D. Cal.
Jan. 14, 2026).....*passim*

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No. 25A839, 2026 WL 291659 (U.S. Feb. 4, 2026) (Supreme Court
Order)..... 2

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515 U.S. 737 (1995) 16

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342 F.3d 903 (9th Cir. 2003) 6

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16
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TABLE OF AUTHORITIES
(continued)

Page

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 429 U.S. 252 (1977) 19

Virginia Off. For Prot. & Advoc. v. Stewart
 563 U.S. 247 (2011) 20

Voinovich v. Quilter
 507 U.S. 146 (1993) 15

Washington v. Seattle Sch. Dist. No. 1
 458 U.S. 457 (1982) 9

Whole Woman’s Health v. Jackson
 595 U.S. 30 (2021) 21

Ex parte Young
 209 U.S. 123 (1908) 20, 21

STATUTES

52 U.S.C. § 10301 17, 19

52 U.S.C. § 10301(b) 18

Assembly Bill 604, 2025 Cal. Stat., ch. 96 3

Assembly Constitutional Amendment 8, 2025 Cal. Stat., ch. 156 3

Election Rigging Response Act 3

Voting Rights Act *passim*

CONSTITUTIONAL PROVISIONS

California Constitution, Article XVIII

§ 1 3, 7, 9

§ 4 3, 7

United States Constitution

Eleventh Amendment 2, 20, 21

Fourteenth Amendment *passim*

Fifteenth Amendment *passim*

1
2
3
4
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27
28

TABLE OF AUTHORITIES
(continued)

Page

COURT RULES

Federal Rule of Civil Procedure 12(b)(6)..... 5, 6

OTHER AUTHORITIES

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INTRODUCTION

1
2 Proposition 50 is “exactly what it was billed as: a political gerrymander
3 designed to flip five Republican-held seats to the Democrats.” *Tangipa v. Newsom*,
4 No. 2:25-cv-10616-JLS-WLH-KKL, 2026 WL 110585, *30 (C.D. Cal. Jan. 14,
5 2026).¹ “[T]he ‘impetus for adoption’ of the Proposition 50 Map was ‘partisan
6 advantage, pure and simple.’” *Id.* at *30 (quoting *Abbott v. League of United Latin*
7 *Am. Citizens*, 607 U.S. ___, 2025 WL 3484863 (2025) (slip op. at 2-3) (Alito, J.,
8 concurring)). Having failed to convince voters to reject Proposition 50 at the ballot
9 box—and because partisan gerrymandering claims are nonjusticiable, *Rucho v.*
10 *Common Cause*, 588 U.S. 684 (2019)—Plaintiffs and Plaintiff-Intervenors
11 (together, “Challengers”) now try to reframe an obvious partisan gerrymander as an
12 illegal racial gerrymander by citing certain statements of individual legislators and a
13 private consultant. But courts “must be wary of plaintiffs who seek” such a drastic
14 subversion of the voters’ will, and must afford voters “a presumption of good
15 faith[.]” *Tangipa*, 2026 WL 110585, at *11. Rather than plead facts to overcome
16 this presumption, the complaints do not mention the intent of the voters at all—a
17 fatal omission since voters are the “most relevant state actors,” *id.* at *8, at all.

18 Challengers fail to meet their “especially stringent” burden to sustain a claim
19 under the Fourteenth Amendment: aside from failing to plead a single fact about
20 voter intent, they plead no facts to support their claim that race *predominated* over
21 *all* other factors in the drawing of the new map, nor any facts specific to fifty-one
22 out of the fifty-two districts in the Proposition 50 map. *Alexander v. S.C. State*
23 *Conf. of the NAACP*, 602 U.S. 1, 7, 11 (2024). Each Challenger also proposes
24 meritless claims under other authorities. Plaintiffs allege a standalone racial

25
26 ¹ Only Plaintiffs filed a notice of appeal (ECF No. 217) of this Court’s order
27 denying their preliminary injunction motion (ECF No. 216) on January 15, 2026.
28 This Court denied Plaintiffs’ application for an injunction pending appeal on
January 16, 2026 (ECF No. 220), and the Supreme Court likewise denied Plaintiffs’
emergency application for a writ of injunction pending appeal on February 4, 2026
(ECF No. 224).

1 gerrymandering claim under the Fifteenth Amendment, but no such claim exists
2 under governing precedent. And Plaintiff-Intervenor offers no relevant allegations
3 that could support its claim of intentional racial discrimination under the Voting
4 Rights Act (VRA).

5 This Court has already rejected Challengers’ efforts to persuade it “to ignore
6 entirely the intent of the voters who overwhelmingly supported Proposition 50[.]”
7 *Tangipa*, 2026 WL 110585 at *8. It has likewise rejected the proposition “that the
8 intent of the map drawer and, by extension, the California Legislature, is
9 dispositive.” *Id.* And the Supreme Court has declined to upset this Court’s prior
10 ruling. *Tangipa v. Newsom*, No. 25A839, 2026 WL 291659, at *1 (U.S. Feb. 4,
11 2026) (Supreme Court Order). Consistent with that ruling, this Court should find
12 that Challengers’ failure to include a single allegation regarding the voters’ intent,
13 coupled with their failure to meet their burden with respect to any of their claims,
14 warrants dismissal of their complaints in their entirety. At the very least, Plaintiffs’
15 Fifteenth Amendment claim and Plaintiff-Intervenor’s Voting Rights Act claim
16 should be dismissed, and the scope of Challengers’ Fourteenth Amendment claim
17 should be narrowed to District 13 only.

18 Finally, Governor Newsom “is entitled to Eleventh Amendment immunity
19 because his only connection to [Proposition 50] is his general duty to enforce
20 California law,” and that is not enough to overcome the immunity. *Ass’n des*
21 *Eleveurs de Canards et d’Oies du Quebec v. Harris*, 729 F.3d 937, 943 (9th Cir.
22 2013), *cert denied*, 574 U.S. 932 (2014). Accordingly, he should be dismissed as a
23 Defendant from this suit.

24 **BACKGROUND**

25 **I. CALIFORNIA MOVES TO REDISTRRICT TO COUNTERACT TEXAS**

26 “With an eye on the upcoming 2026 midterm elections, several States have in
27 recent months redrawn their congressional districts in ways that are predicted to
28 favor the State’s dominant political party.” *Abbott*, 607 U.S. ___, 2025 WL

1 3484863, at *1. “Texas adopted the first new map,” *id.*, that would likely result in a
2 Republican advantage, *see* H.B. 4, 89th Leg., 2nd Special Sess. (Tex. 2025).
3 “California responded with its own map for the stated purpose of counteracting
4 what Texas had done.” *Abbott*, 607 U.S. at ___, 2025 WL 3484863, at *1.

5 To counter Texas, the California Legislature approved a three-part legislative
6 package called the Election Rigging Response Act (“ERRA”). One part, Assembly
7 Constitutional Amendment 8 (“ACA 8”), 2025 Cal. Stat., ch. 156, referred to
8 California voters a proposed state constitutional amendment that, if approved,
9 would authorize use of a new congressional district map for the next three
10 congressional elections. Defendants’ Request for Judicial Notice (“RJN”), Ex. 1.
11 In doing so, the Legislature acted consistent with state law providing that the
12 Legislature may propose constitutional amendments, Cal. Const., art. XVIII, § 1,
13 that will become effective if approved by a majority of votes cast, *id.* § 4. The
14 measure asking voters to consider ACA 8 was called Proposition 50.

15 The Legislature’s express statements and the legislative history make clear
16 that partisan considerations motivated the ERRA. The Legislature’s statement of
17 findings described ACA 8 as an attempt “to neutralize the partisan gerrymandering
18 being threatened by Republican-led states without eroding fair representation for all
19 communities” to ensure that the “2026 United States midterm elections for
20 Congress” are “conducted on a level playing field without an extreme and unfair
21 advantage for Republicans.” RJN, Ex. 1, Findings (*l*), (*n*). Committee hearing
22 materials for ACA 8 and Assembly Bill 604, 2025 Cal. Stat., ch. 96, emphasized
23 the same point. *See, e.g.*, ECF No. 42-5 at 385 (the ERRA “neutraliz[es] partisan
24 gerrymandering” by other states).

25 **II. CALIFORNIA VOTERS APPROVE PROPOSITION 50**

26 Before the election, all voters received an Official Voter Information Guide
27 that included the text of ACA 8, the official summary for Proposition 50, and
28 arguments submitted by proponents and opponents of Proposition 50. ECF No. 42

1 (U.S. Compl.) ¶ 42; RJN, Ex. 2. The text of ACA 8 explained that “[i]t is the intent
2 of the people that California’s temporary maps be designed to neutralize the
3 partisan gerrymandering being threatened by Republican-led states without eroding
4 fair representation for all communities.” RJN, Ex. 1, Findings (n). The official
5 summary similarly stated that “[i]n response to Texas’ mid-decade partisan
6 congressional redistricting, this measure temporarily requires new congressional
7 district maps, as passed by the Legislature in August 2025, to be used in
8 California’s congressional elections through 2030.” RJN, Ex. 2 at 8.

9 The official arguments for and against likewise had a partisan focus. The
10 former asserted that it “makes sure the 2026 mid-term elections are conducted on a
11 level playing field without an unfair advantage for Republicans” and “ensure[s] our
12 voices aren’t silenced by partisan gerrymandering in other states[.]” RJN, Ex. 2 at
13 16. The official argument against Proposition 50, in turn, called it a “political
14 power grab” that “draw[s] partisan seats without transparency or citizen input,
15 solely to protect incumbents,” argued the measure would create “the most partisan
16 maps in California’s history,” and encouraged voters to “[v]ote NO on partisan
17 gerrymandering.” *Id.* (italics removed).

18 The ballot label on voters’ ballots also emphasized the partisan focus, asking
19 voters to choose whether to vote for redistricting “in response to Texas’ partisan
20 redistricting.” RJN, Ex. 3. On November 4, 2025 California voters—presented
21 with this partisan framing for Proposition 50—approved the measure, with over
22 64% of votes cast in favor. RJN, Ex. 4 at 13.

23 **III. PROCEDURAL HISTORY**

24 Plaintiffs filed their complaint on November 5, 2025, bringing three racial
25 gerrymandering claims: (1) The Legislature violated the Fourteenth Amendment
26 when it drew sixteen congressional district lines allegedly on the basis of race; (2)
27 the Legislature violated the Fifteenth Amendment when it drew the same sixteen
28 congressional district lines allegedly on the basis of race; and (3) the Legislature

1 violated the Fourteenth and Fifteenth Amendments when it drew District 13, one of
2 the sixteen districts Plaintiffs attack in their first two claims, allegedly on the basis
3 of race. *See* ECF No. 1 (Pl. Compl.) ¶¶ 94-126.

4 After the Court granted its request to intervene, Plaintiff-Intervenor filed its
5 complaint-in-intervention. ECF No. 38; U.S. Compl. Plaintiff-Intervenor raised
6 two claims: (1) A racial gerrymandering claim alleging that the Legislature relied
7 on race when drawing “at least” one district in violation of the Fourteenth
8 Amendment; and (2) a statutory claim alleging that the Legislature adopted the
9 Proposition 50 map with the purpose of denying or abridging the right to vote based
10 on race or color in violation of Section 2 of the VRA. U.S. Compl. ¶¶ 67, 70.

11 Challengers later moved to preliminarily enjoin the State from implementing
12 the new voter-approved map, raising arguments under Fourteenth Amendment,
13 Fifteenth Amendment, and VRA. ECF No. 16-1 at 35, 29-1 at 8. This Court
14 denied both motions on all grounds following a multi-day evidentiary hearing.
15 *Tangipa*, 2026 WL 110585, at *1. Plaintiffs afterward appealed to the Supreme
16 Court, ECF No. 217, unsuccessfully sought a stay in this Court, ECF No. 220, and
17 unsuccessfully sought a writ of injunction pending appeal in the Supreme Court,
18 Supreme Court Order at *1.

19 LEGAL STANDARD

20 Challengers’ complaints can only survive dismissal under Federal Rule of
21 Civil Procedure 12(b)(6) if they “state a claim to relief that is plausible on its
22 face[.]” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has
23 facial plausibility when the pleaded factual content allows the court to draw a
24 reasonable inference that the defendant is liable for the misconduct alleged.”
25 *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009) (citing *Twombly*, 550 U.S. at 556).
26 And “whether a particular complaint sufficiently alleges” such a violation “cannot
27 be decided in isolation from the facts pleaded.” *Id.* at 673.

28

1 In ruling on a Rule 12(b)(6) motion, a court may consider the complaint,
2 documents attached to and incorporated by reference in it, and matters subject to
3 judicial notice “without converting the motion to dismiss into a motion for
4 summary judgment.” *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).
5 A court may also “consider the full texts of documents which the complaint quotes
6 only in part.” *Cooper v. Pickett*, 137 F.3d 616, 623 (9th Cir. 1997) (citations
7 omitted). Courts need not “credit a complaint’s conclusory statements without
8 reference to its factual context[,]” *id.*, and “pleadings that . . . are no more than
9 conclusions[] are not entitled to the assumption of truth[,]” *Iqbal*, 556 U.S. at 679.

10 ARGUMENT

11 I. CHALLENGERS FAIL TO STATE A RACIAL GERRYMANDERING CLAIM 12 UNDER THE FOURTEENTH AMENDMENT

13 Challengers’ burden for their Fourteenth Amendment claims is to “plead
14 sufficient factual matter to show,” *Iqbal*, 566 U.S. at 677, that “race was the
15 predominant factor motivating the relevant state actors,” *Tangipa*, 2026 WL
16 110585 at *11. Challengers do not “state a claim to relief that is plausible on its
17 face,” *Iqbal*, 566 U.S. at 570, and thus wholly fail to meet this burden.

18 A. Challengers Fail to Plead That Race Was the Predominant 19 Factor Motivating the Relevant State Actors: the Voters

20 In Count I of their complaints, Challengers claim that the Proposition 50 map
21 is an illegal racial gerrymander in violation of the Fourteenth Amendment. Pl.
22 Compl. ¶¶ 94-111; U.S. Compl. ¶¶ 63-68. But they fail to raise a single allegation
23 concerning the key state actor here: the voters. “Where the legislature is the
24 relevant state actor,” *Tangipa*, 2026 WL 110585 at *7, plaintiffs bringing racial
25 gerrymandering claims typically “must prove that ‘race was the predominant factor
26 motivating the legislature’s decision to place a significant number of voters within
27 or without a particular district[,]” *Cooper v. Harris*, 581 U.S. 285, 291 (2017)
28 (quoting *Miller v. Johnson*, 515 U.S. 900, 916 (1995)).

1 But this case does not involve a circumstance in which “the legislature holds
2 the final decision-making authority as to whether a challenged map goes into
3 effect.” *Tangipa*, 2026 WL 110585 at *7. The “Proposition 50 map and its new
4 congressional district lines went into effect only because California voters enacted
5 it.” *Id.* Indeed, “all power of government ultimately resides in the people.”
6 *Associated Home Builders etc., Inc. v. City of Livermore*, 557 P.3d 473, 477 (Cal.
7 1976); *see* Cal. Const., art. XVIII, §§ 1,4. And “[w]hen the voters speak, we should
8 consider it to be with the utmost legislative authority.” *Tangipa*, 2026 WL 110585
9 at *9.

10 In the specific context of the passage of Proposition 50, this Court explained
11 that there are at least three relevant considerations. First, “California law
12 subordinates the legislature to the electorate when amending the constitution”;
13 second, ACA 8 “did not simply authorize the legislature to engage in partisan
14 gerrymandering as the legislature saw fit[,]” but rather “it was an amendment” that
15 voters approved, as a result of which they “enacted a particularly-drawn map that
16 everyone had the opportunity to review, debate, and critique[;]” and third, in
17 evaluating racial gerrymandering claims, courts must consider “why the relevant
18 decisionmaker chose to enact these congressional district maps.” *Id.* at *8.
19 Accordingly, this Court concluded, in determining whether the Proposition 50 map
20 was the product of an illegal racial gerrymander, that “voters are the most relevant
21 state actors.” *Id.* at *8. This Court clarified that this conclusion “does not mean
22 that legislative statements are irrelevant to [the] intent analysis.” *Id.* at *9.
23 Statements made by legislators, *id.*, and other state actors, *id.* at *17-21, are also
24 relevant to the extent that they inform the court’s understanding of voter intent, *id.*
25 at *9. In sum, “like in cases where a legislature has enacted a challenged map,
26 Challengers here must prove that race was the predominant factor motivating the
27 relevant state actors: the voters.” *Id.* at *11.
28

1 A “plaintiff’s evidentiary burden in cases accusing the voters of racial
2 gerrymandering must be, like in cases accusing the legislature of a racial
3 gerrymandering, especially stringent.” *Id.* (citing *Alexander*, 602 U.S. at 11)
4 (quotation marks omitted). The plaintiff must show that “other considerations were
5 subordinate” to race. *Tangipa*, 2026 WL 110585 at *7. In other words, the
6 plaintiff must show that race was “the criterion that . . . could not be compromised.”
7 *Shaw v. Hunt (Shaw II)*, 517 U.S. 899, 907 (1996). “[T]he plaintiff must make the
8 distinction between” the relevant state actor ““being *aware* of racial considerations
9 and being *motivated* by them.”” *Tangipa*, 2026 WL 110585 at *7 (quoting *Miller*,
10 515 U.S. at 916) (emphasis added). If “*either* politics *or* race could explain a
11 district’s contours, the plaintiff has not cleared its bar.” *Alexander*, 602 U.S. at 10
12 (emphasis added).

13 A plaintiff must also overcome “a presumption that the legislature acted in
14 good faith. *Id.* at 11 (citing *Cooper*, 581 U.S. at 291). This presumption requires
15 “courts to draw the inference that cuts in the legislature’s favor when confronted
16 with evidence that could plausibly support multiple conclusions” to ensure that
17 “race for its own sake, and not other districting principles, was the legislature’s
18 dominant and controlling rationale in drawing its district lines.” *Alexander*, 602
19 U.S. at 10 (citations and quotation marks omitted); *see id.* at 10-11. And “voters,
20 like the legislature, are entitled to a presumption of good faith.” *Tangipa*, 2026 WL
21 110585 at *11 (citing *Alexander*, 602 U.S. at 10-11). Federal courts “must exercise
22 extraordinary caution in adjudicating a claim that a State has drawn district lines on
23 the basis of race. *Miller*, 515 U.S. at 915-16. Particularly here, where, despite the
24 “paramount” importance of voters’ intent, *Tangipa*, 2026 WL 110585, at *8, facts
25 regarding the voters’ intent are entirely absent from Challengers’ complaints. Pl.
26 Compl; U.S. Compl.

B. Challengers Fail to Plead Any Facts Regarding Voter Intent

1 Challengers’ decision to plead facts only addressing the intent of the
2 Legislature and a private consultant dooms their claim where, as here, the voters’
3 “intent is paramount” “in the context of a redistricting ballot measure[.]” *Tangipa*,
4 2026 WL 110585 at *7-*8. Indeed, it was the voters who chose to enact the
5 challenged congressional district map, and the voters who had the sole authority to
6 approve the constitutional amendment that made possible the adoption of the new
7 map. *See* Cal. Const. art. XVIII, § 1; ACA 8. And this Court has squarely rejected
8 the idea that “the intent of the voters who overwhelmingly supported Proposition
9 50” “does not matter[.]” *Tangipa*, 2026 WL 110585, at *2, *8. This Court
10 explained that ignoring voter intent here would “essentially . . . apply the ‘cat’s
11 paw’ theory”—a theory that the Supreme Court has prohibited courts from
12 adopting—“to the voters[.]” *Id.* at *9-*10 (citing *Brnovich v. Democratic Nat’l*
13 *Comm.*, 594 U.S. 647, 689-90 (2021)).² Treating the voters as “dupes” of the
14 legislature, this Court found, “is completely antithetical to the position of voters in
15 California’s constitutional system—“it is the legislature’s power that is
16 *subordinated* to the power of the voters.” *Id.* at *10.

17 In neglecting the role of voters, Challengers ignore that courts have long
18 considered voter intent in the context of voter-approved initiatives. For example, in
19 *Washington v. Seattle Sch. Dist. No. 1*, 458 U.S. 457, 464-65, 471 (1982), the
20 Supreme Court examined the motivation of voters in supporting an initiative
21 regarding the use of mandatory busing in the context of a Fourteenth Amendment
22 Equal Protection claim. And this Court later held in another case that courts “may
23 look to the nature of the initiative campaign to determine the intent of the drafters
24 and voters in enacting it” in cases assessing equal protection and other
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26
27 ² “A ‘cat’s paw’ is a dupe who is used by another to accomplish his purposes.
28 A plaintiff in a ‘cat’s paw’ case typically seeks to hold the plaintiff’s employer
liable for the ‘animus of the supervisor who was not charged with making the
ultimate adverse employment decision.” *Brnovich*, 549 U.S. at 689-90.

1 constitutional claims challenging voter-approved initiatives. *City of L.A. v. Cnty. of*
2 *Kern*, 462 F. Supp. 2d 1105, 1114 (C.D. Cal. 2006) (citing *Washington*, 458 U.S. at
3 471). California state law further clarifies that “analyses and arguments contained
4 in the official ballot pamphlet” are particularly important “indicia of the voters’
5 intent[.]” *People v. Rizo*, 996 P.2d 27, 30 (Cal. 2000); see *Robert L. v. Superior*
6 *Ct.*, 30 Cal. 4th 894, 896-97 (Cal. 2003) (courts may look to contents of a ballot
7 pamphlet to determine voters’ intent). State law also explains the relationship
8 between the intent of a statute’s drafters and that of the electorate that must vote to
9 adopt it. See *id.* at 904 (“the motive or purpose of the drafters of a statute is not
10 relevant to its construction, absent reason to conclude that the body which adopted
11 the statute was aware of that purpose and believed the language of the proposal
12 would accomplish it” (citations omitted)). Accordingly, courts considering the
13 intent of the actor responsible for adopting legislation and how and when to
14 consider the intent of the drafting body is not new.

15 As evidenced by Plaintiff-Intervenor’s complaint, materials ordinarily
16 available to voters, like the Official Voter Information Guide and its contents and
17 partisan campaigns encouraging a vote in favor of the measure, were also available
18 to Challengers. See U.S. Compl. ¶ 42 (citing a link to the Voter Guide and *Yes on*
19 *Prop 50*).³ Tellingly, Challengers do not claim that any of these materials even
20 hinted at a racial gerrymander. They also do not allege that any official materials
21 would lead voters to believe that the maps were drawn with a predominantly racial
22 intent. Nor could they. As discussed below, the cited materials speak for
23 themselves.

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26 ³ The link to the Voter Information Guide provided in Plaintiff-Intervenor’s
27 complaint is no longer valid. The guide may be accessed via the following active
28 link: Cal. Sec’y. of St. *Official Voter Information Guide*,
<https://vig.cdn.sos.ca.gov/2025/special/pdf/complete-vig.pdf> (last visited Jan. 28,
2026).

1 Quoting from the *Yes on 50* website cited in its complaint, Plaintiff-Intervenor
2 itself points out that “[t]he professed purpose for the new map was to ‘negate the
3 five Republican seats drawn by Texas by adding up to 5 Democrat seats in the U.S.
4 House of Representatives.’” U.S. Compl. ¶ 42. And the Voter Guide—which
5 includes “particularly important evidence of voter intent,” *Tangipa*, 2026 WL
6 110585, at *12 (citing *Rizo*, 996 P.2d at 30)—was distributed to voters across
7 California. See U.S. Compl. ¶ 42; RJN, Ex. 2.⁴ It included arguments for and
8 against Proposition 50 that each frame the initiative in purely partisan terms and as
9 a response to the recent redistricting in Texas at President Trump’s direction.

10 For example, the Argument in Favor of Proposition 50 starts with “STOP
11 TRUMP FROM RIGGING THE 2026 ELECTION” and explains that “Prop. 50
12 makes sure the 2026 mid-term elections are conducted on a level playing field
13 without an unfair advantage from Republicans.” RJN, Ex. 2 at 16. The Rebuttal to
14 the Argument in Favor of Proposition 50 frames the measure in similar terms:
15 “Districts do not belong to either party; they belong to the People. But, party
16 bosses want to call the shots—again[.]” *Id.* And the Argument Against Proposition
17 50 includes its title, “A Power Grab by Politicians[.]” and states that “Prop. 50” is
18 “the most partisan map[] in California’s history[.]” *Id.* at 17.

19 In other words, the messaging in the Voter Guide was purely partisan.
20 Challengers plead nothing to suggest that the voters’ “impetus for the adoption” of
21 the Proposition 50 map was anything other “partisan advantage pure and simple.”
22 *Abbott*, 607 U.S. at ___, 2025 WL 3484863, at *1 (Alito, J., concurring). And they
23 come nowhere close to pleading that a different motivation altogether—racial
24 gerrymandering—was, in fact, the *predominant* purpose.

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26
27 ⁴ Because Plaintiffs do not reference the Voter Guide in their complaint (see
28 Pl. Compl.), Defendants request judicial notice of it in addition to citing the website
in Plaintiff-Intervenor’s complaint.

1 The Voter Guide also included six pages of images of both the Commission’s
2 district lines and the proposed lines that would be implemented if voters approved
3 Proposition 50, for each of California’s 52 congressional districts, *id.* at 10-15, “as
4 it must, given that the voters[,]” in authorizing ACA 8, “were not merely lifting a
5 procedural bar but doing so *for a specific map*[,]” *Tangipa*, 2026 WL 110585, at
6 *10 (emphasis in original). “[V]oters look to a litany of materials to determine
7 whether to vote for or against an initiative.” *Id.* at *11. And armed with this
8 information, they overwhelmingly approved Proposition 50 by a margin of millions
9 of votes. RJN, Ex. 4 at 13.

10 In ignoring voter intent in their complaints and instead focusing on a few
11 stray, out-of-context statements of individual legislators and a private consultant
12 who prepared an initial draft of the map, Challengers appear to extend the “cat’s
13 paw” theory to voters, suggesting that “although the voters have the real power,
14 they are mere dupes of the legislature’s impermissible will”—an argument that this
15 Court has already rejected. *Id.* at *10. The cherry-picked statements of those
16 actors do not substitute for facts speaking to voter intent because “the voters are the
17 *most* relevant state actors” here. *Id.* at *8. This conclusion would be the same even
18 if the voters were not the “paramount” state actor. *Tangipa*, 2026 WL 110585, at
19 *8. At a minimum, voter intent is highly relevant to whether Proposition 50 was a
20 racial gerrymander, and the absence of any allegation that race predominated for
21 California voters is fatal to Challengers’ claims. And even setting aside voter
22 intent—an implausible course here, where the voters approved the Proposition 50
23 map—Challengers also do not allege facts sufficient to show that “race was the
24 predominant factor” motivating the Legislature in adopting Proposition 50.
25 *Alexander*, 602 U.S. at 7. Instead, their selective quotes from Mr. Mitchell and
26 individual legislators at most suggest a permissible and inevitable “aware[ness] of
27 race.” *Bethune-Hill*, 580 U.S. at 187.

1 Allegations that that the map itself harbors another actor’s discriminatory
2 intent, Pl. Compl. ¶ 107-109; U.S. Compl. at 1:17-18, also do not satisfy the
3 plausibility standard for pleadings because courts “are not directed to look at the
4 motivation behind a *map*,” rather, they “are directed to look at the motivation of the
5 enacting *legislature*.” *Tangipa*, 2026 WL 110585, at *17 (citing *Miller*, 515 U.S. at
6 916) (emphasis in original). And the Supreme Court has already addressed this
7 theory: “an enacting legislature’s discriminatory intent could not infect a map with
8 racial gerrymandering in the manner of ‘original sin[.]’” *Tangipa*, 2026 WL
9 110585, at *17 (quoting *Abbott v. Perez*, 585 U.S. 579, 603-05 (2018)).

10 Because Challengers fail to sufficiently plead a Fourteenth Amendment racial
11 gerrymandering claim by failing to state any facts regarding voter intent. *See id.* at
12 678 (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). When there is “an
13 absence of sufficient facts alleged to support a cognizable legal theory[.]” as there
14 is here, “the court must dismiss the claim.” *Navarro v. Block*, 250 F.3d 729, 732
15 (9th Cir. 2001). Accordingly, Count I in both complaints should be dismissed.

16 **C. Challengers Fail to Plead Sufficient Facts for Any of**
17 **California’s Fifty-Two Districts**

18 As discussed, Challengers fail to allege sufficient facts supporting a
19 Fourteenth Amendment claim. But in the alternative, if the Court declines to
20 dismiss Count I in either complaint in full, it should find that the scope of the
21 claims is limited to District 13. Challengers here seek the extraordinary remedy of
22 enjoining the entire fifty-two-district Proposition 50 map, but claim that in enacting
23 the Proposition 50 map, Defendants engaged in racial gerrymandering in only
24 sixteen of the fifty-two congressional districts. Pl. Compl. ¶¶ 70, 95; U.S. Compl.
25 ¶ 47. And of those sixteen, Challengers allege facts specific to only one district,
26 District 13. Pl. Compl. ¶¶ 99, 120-126; U.S. Compl. ¶¶ 49-55. But even the facts
27 alleged with respect to District 13 are insufficient to state a racial gerrymandering
28 claim.

1 “A racial gerrymandering claim . . . applies to the boundaries of individual
2 districts. It applies district-by-district. It does not apply to a State considered as an
3 undifferentiated ‘whole.’” *Alabama Legislative Black Caucus v. Alabama*, 575
4 U.S. 254, 262 (2015). The Supreme Court has “consistently described a claim of
5 racial gerrymandering as a claim that race was improperly used in the drawing of
6 the boundaries of one or more *specific electoral districts*.” *Id.* (emphasis in
7 original) (collecting cases). Here, Challengers fail to plead sufficient facts
8 regarding *any* district as a whole (including District 13), and consequently fail to
9 give Defendants fair notice of the facts forming the basis of their claims as to any
10 district, much less the sixteen they challenge. *See Iqbal*, 556 U.S. at 570. Their
11 also complaints wholly fail to explain the mismatch between the allegations they
12 raise and the relief they seek—an injunction of the *entire* fifty-two-district
13 Proposition 50 map. Pl. Compl. at 24; U.S. Compl. at 16. On these pleadings,
14 Challengers at best could have sought injunctive relief for only District 13. But
15 Challengers are not “entitled to relief” as to any district where, as here, their factual
16 allegations “do not permit the Court to infer more than the mere possibility of
17 misconduct” in one out of fifty-two districts. *Iqbal*, 556 U.S. at 679. However,
18 should the Court permit Challengers’ Fourteenth Amendment claims to proceed,
19 the scope of those claims should be narrowed to District 13 only.

20 **II. PLAINTIFFS FAIL TO STATE A CLAIM UNDER THE FIFTEENTH** 21 **AMENDMENT**

22 In addition to their claim for racial gerrymandering under the Equal Protection
23 Clause of the Fourteenth Amendment, Plaintiffs’ Count Two purports to plead a
24 standalone racial gerrymandering claim under the Fifteenth Amendment.⁵ *See* Pl.
25 Compl. ¶¶ 112-119. The Fifteenth Amendment prohibits states from “den[ying] or
26 abridg[ing]” the “right of citizens of the United States to vote . . . on account of

27 ⁵ Plaintiff-Intervenor chose not to include a similar separate Fifteenth
28 Amendment claim. *See* U.S. Compl.

1 race, color, or previous condition of servitude.” U.S. Const. amend. XV. There is
2 no legal basis for such a claim, but even if there was, Plaintiffs fail to allege facts
3 sufficient to support it.

4 The Supreme Court’s racial gerrymandering case law has developed under the
5 Equal Protection Clause of the Fourteenth Amendment. *See, e.g., Miller*, 515 U.S.
6 at 904; *Abbott v. Perez*, 585 U.S. 579, 585 (2018); *Easley v. Cromartie*, 532 U.S.
7 234, 237 (2001); *Cooper*, 581 U.S. at 285; *accord Voinovich v. Quilter*, 507 U.S.
8 146, 159 (1993) (“[W]e never have held any legislative apportionment inconsistent
9 with the Fifteenth Amendment”). Though the Supreme Court has referenced the
10 Fifteenth Amendment in racial gerrymandering cases, *see, e.g., Shaw v. Reno*, 509
11 U.S. 630 (1993) (*Shaw I*), no governing precedent applies a separate test for racial
12 gerrymandering other than the one developed under the Equal Protection Clause.
13 Therefore, to the extent there is a racial gerrymandering cause of action under the
14 Fifteenth Amendment, it is coextensive with the test under the Equal Protection
15 Clause.⁶ And, as discussed extensively above in Argument § I, Plaintiffs fail to
16 plead a plausible claim under the Equal Protection Clause, including because they
17 do not allege facts sufficient to show that race predominated in the voters’ adoption
18 of the Proposition 50 map.⁷ *See Tangipa*, 2026 WL 110585, at *11 (voters’ intent
19 is the relevant inquiry).

20 _____
21 ⁶ The Court’s majority and dissenting opinions applied the test under the
22 Fourteenth Amendment’s Equal Protection Clause in the order denying
23 Challengers’ motions for preliminary injunction, not any separate test under the
24 Fifteenth Amendment. *See Tangipa*, 2026 WL 110585, at *13, *78.

25 ⁷ Plaintiffs also cite a case they suggest eliminates the compelling interest
26 defense to racial gerrymandering claims, seemingly inviting the Court to create a
27 loophole in the existing test for racial gerrymandering claims. *See* Pl. Compl. ¶ 113
28 (citing *Prejean v. Foster*, 227 F.3d 504, 519 (5th Cir. 2000)). However, *Prejean*
does not hold that a State cannot assert a compelling interest as a defense to a racial
gerrymandering claim. In fact, it says the opposite. The plaintiffs there challenged
a Louisiana judicial district as a racial gerrymander, and the court’s analysis of that
claim proceeded exclusively under the Fourteenth Amendment, *Prejean*, 227 F.3d
at 509, including reviewing Louisiana’s proposed compelling interest, *id.* at 515.
The language Plaintiffs cite suggesting that there is no compelling interest defense

1 If Plaintiffs instead intend to encourage the Court to recognize a new cause of
2 action that allows an analytically distinct claim for racial gerrymandering under the
3 Fifteenth Amendment, their allegations still fail. Claims brought under the
4 Fifteenth Amendment are reserved for government actions that “den[y]” or
5 “abridge[]” the right to vote on account of race. *See City of Mobile v. Bolden*, 446
6 U.S. 55, 65 (1980) (plurality opinion), *superseded by statute on other grounds*;
7 *accord Gomillion v. Lightfoot*, 364 U.S. 339, 345 (1960) (striking down municipal
8 boundaries under Fifteenth Amendment on the grounds that boundaries wholly and
9 discriminatorily denied Black voters the right to vote in municipal elections). For
10 example, courts have held that redistricting plans do not violate the Fifteenth
11 Amendment absent a showing that a minority voter was *denied the ability* to vote.
12 *See, e.g., Romero v. City of Pomona*, 665 F.Supp. 853, 869 (C.D. Cal. 1987) (“the
13 15th Amendment is not relevant to a question of ethnic vote dilution unless the
14 claim concerns the purposeful denial of minority rights to register to vote and cast
15 ballots”), *affirmed* 883 F.2d 1418 (9th Cir. 1989); *Skorepa v. City of Chula Vista*,
16 723 F.Supp. 1384, 1393 (S.D. Cal. 1989) (same); *Backus v. South Carolina*, 857
17 F.Supp.2d 553, 569 (D.S.C. 2012), *affirmed* 568 U.S. 801 (2012). Here, Plaintiffs
18 allege that the State intended to “empower” or “favor” Latinos, Pl. Compl. ¶ 96, but
19 do not allege that the voters or anyone else intended to deny or abridge any group’s
20 right to vote. Nor do they allege that the State actually denied any group’s right to
21 vote. Instead, they allege only “stigmatic and representational” harms that are
22 insufficient to support a Fifteenth Amendment claim. *See id.* ¶¶ 6-24, 32-33, 36;
23 *see also U.S. v. Hays*, 515 U.S. 737, 744 (1995) (describing abstract racial
24 classifications as “stigma[ti]c” and “representational” harms) (citing *Shaw I*, 509
25 U.S. at 643, 648).

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to a Fifteenth Amendment claim actually concerns disenfranchisement claims, not
racial gerrymandering claims. *Id.* at 519.

1 Plaintiffs cannot cure what ails their claim, which is that no standalone cause
2 of action for racial gerrymandering exists under the Fifteenth Amendment.
3 Moreover, they do not allege that the State intended to deny or abridge any group’s
4 right to vote based on race, nor identify any group that was harmed by Proposition
5 50. Courts may dismiss a claim without leave to amend when “the allegation of
6 other facts consistent with the challenged pleading could not possibly cure the
7 deficiency.” *Schreiber Distributing Co. v. Serv-Well Furniture Co., Inc.*, 806 F.2d
8 1393, 1401 (citing *Bonanno v. Thomas*, 309 F.2d 320, 322 (9th Cir. 1962)). That is
9 the case here. Accordingly, the Court should dismiss Plaintiffs’ meritless Fifteenth
10 Amendment claim with prejudice.

11 **III. PLAINTIFF-INTERVENOR FAILS TO STATE A CLAIM UNDER THE VOTING
12 RIGHTS ACT**

13 Plaintiff-Intervenor alleges that “Proposition 50 was adopted with the purpose
14 of denying or abridging the right to vote on account of race or color in violation of
15 Section 2 of the VRA, 52 U.S.C. § 10301.”⁸ U.S. Compl. ¶ 70. But because
16 Plaintiff-Intervenor does not allege any plausible facts supporting that claim, it fails
17 as a matter of law.

18 To show that a State had a discriminatory intent in adopting a voting scheme,
19 Challengers must allege that the State acted with a “‘racially discriminatory
20 motivation’ or an ‘invidious purpose,’” *Allen v. Milligan*, 599 U.S. 1, 11 (2023)
21 (quoting *City of Mobile, Ala. v. Bolden*, 446 U.S. 55, 61–65 (1980)), to impose
22 “adverse effects upon an identifiable group,” see *Democratic Nat’l Comm. v.*
23 *Reagan*, 904 F.3d 686, 717 (9th Cir. 2018) (quoting *Pers. Adm’r of Mass. v.*
24 *Feeney*, 442 U.S. 256, 279 (1979)). Intentional discrimination claims under Section
25 2 are “analytically distinct” from racial gerrymandering claims under the
26 Fourteenth Amendment, which provide a remedy regardless of whether a legislature
27 intended to harm any identifiable group. See *Alexander*, 602 U.S. at 38; *Hunter by*

28 ⁸ Plaintiffs do not bring a claim under the VRA. See Pl. Compl.

1 *Brandt v. Regents of the Univ. of Cal.*, 971 F.Supp. 1316, 1322 (C.D. Cal. 1997);
2 *Adarand Constructors v. Pena*, 515 U.S. 200, 227-28 (1995).

3 Here, Plaintiff-Intervenor fails to identify the racial group or groups whose
4 right to vote has allegedly been denied or abridged. U.S. Compl. Its VRA claim
5 can be dismissed for this reason alone. *See Reagan*, 904 F.3d at 717; *see also* 52
6 U.S.C. § 10301(b). This omission also fails to “give the defendant fair notice of
7 what the . . . claim is and the grounds upon which it rests,” falling short of the
8 minimum pleading standard. *Twombly*, 550 U.S. at 555 (citation and quotation
9 marks omitted).

10 Plaintiff-Intervenor also fails to allege a single fact to show that the State bore
11 a racially discriminatory motivation toward any identifiable minority group. To
12 begin, it fails to allege anything with respect to the intent of the voters who adopted
13 the map, *see supra* Argument § I, much less that they adopted the Proposition 50
14 map with a racially discriminatory motivation, U.S. Compl. Because the voters are
15 the most relevant actors, that omission is also fatal to its claim. *See Tangipa*, 2026
16 WL 110585, at *7-8.

17 Plaintiff-Intervenor instead attempts to plead that other individuals acted
18 predominantly based on race. But its complaint does not allege that any of those
19 individuals acted with a goal of disadvantaging any identifiable group. Instead, it
20 alleges that one legislator said the Proposition 50 map would retain and expand
21 VRA districts that empower Latino voters to elect their preferred candidates. U.S.
22 Compl. ¶ 59. And further, that several legislators said Texas redistricted to
23 suppress minority voters. *Id.* ¶ 57. As to Paul Mitchell, it alleges that he reversed
24 the prior elimination of a “Latino district from LA,” created a district with a 35%
25 Latino voting age population, and described the anticipated effects of the
26 Proposition 50 map, including that one analysis found it would “maintain[] the
27 status quo in terms of the Voting Rights Act and add[] one more Latino-influence
28 district. *Id.* ¶¶ 44-46. Plaintiff-Intervenor also alleges that the State would have

1 drawn one district, District 13, differently had partisanship been the true motivating
2 factor for the redistricting. *Id.* ¶ 53. Based on these allegations, Plaintiff-
3 Intervenor claims that at least for District 13, the State redistricted predominantly
4 based on race. *Id.* ¶ 67. But these allegations are inadequate to support a plausible
5 intentional discrimination claim under Section 2 because they plainly do not show a
6 racially discriminatory motivation to impose “adverse effects upon an identifiable
7 group.” *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266
8 (1977) (emphasis added); *Reagan*, 904 F.3d at 717.

9 Additionally, to determine whether a State acted with a racially discriminatory
10 motivation, courts look to a non-exhaustive list of factors provided in *Arlington*
11 *Heights*. The factors include (1) the historical background; (2) the sequence of
12 events leading to enactment, including any substantive or procedural departures
13 from the normal legislative process; (3) the relevant legislative history; and (4)
14 whether the law has a disparate impact on a particular racial group. *Arlington*
15 *Heights*, 429 U.S. at 266-68. Notably, Plaintiff-Intervenor’s complaint does not
16 attempt to show that any of the *Arlington Heights* factors were present in the
17 passage of Proposition 50. Instead, it simply claims that “Proposition 50 was
18 adopted with the purpose of denying or abridging the right to vote on account of
19 race or color in violation of Section 2 of the VRA, 52 U.S.C. § 10301.” U.S.
20 Compl. ¶ 70. But this conclusory allegation is insufficient to survive a motion to
21 dismiss, for “[t]hreadbare recitals of the elements of a cause of action, supported by
22 mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678.

23 Finally, Plaintiff-Intervenor does not allege that the Proposition 50 map had an
24 adverse *effect* on any group. For a Section 2 claim to prevail, Plaintiff-Intervenor
25 must plead that the State’s action had *both* a discriminatory purpose *and* effect. *See*
26 *Tangipa*, 2026 WL 110585, at *31 (citing *Alexander*, 602 U.S. at 38-39). An effect
27 is cognizable under Section 2 if it is alleged that “members of a [protected] class”
28 are unable to equally access the political process. *Garza v. County of Los Angeles*,

1 918 F.2d 763, 771 (9th Cir. 1990). Plaintiff-Intervenor does not even attempt to
2 plead that the Proposition 50 map has any such effect. *See Tangipa*, 2026 WL
3 110585, at *31 n.35.

4 This claim should be dismissed because of Plaintiff-Intervenor’s failure to
5 plead any facts relevant to an intentional discrimination claim under Section 2.

6 **IV. SOVEREIGN IMMUNITY BARS CHALLENGERS’ CLAIMS AGAINST**
7 **GOVERNOR NEWSOM**

8 Challengers name Governor Newsom as a Defendant in his official capacity as
9 Governor of California. Pl. Compl. ¶ 28; U.S. Compl. ¶ 14. However, the
10 Governor has immunity from Challengers’ claims and should be dismissed from
11 this litigation.

12 The Eleventh Amendment to the United States Constitution prohibits suit
13 against a State or its instrumentalities absent consent by the State or an abrogation
14 of that immunity by Congress. *Papasan v. Allain*, 478 U.S. 265, 276-77 (1986);
15 *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100-02 (1984). A third
16 exception, the *Ex parte Young* doctrine, permits actions for prospective relief
17 against state officers sued in their official capacities for “an ongoing violation of
18 federal law.” *Virginia Off. For Prot. & Advoc. v. Stewart*, 563 U.S. 247, 255
19 (2011); *see Ex parte Young*, 209 U.S. 123, 159-60 (1908). The *Ex parte Young*
20 exception applies if the state official sued has direct responsibility for enforcement
21 of an allegedly unconstitutional statute. *Harris*, 729 F.3d at 943. A “generalized
22 duty to enforce state law” is insufficient. *Los Angeles Cnty. Bar Ass’n v. Eu*, 979
23 F.2d 697, 704 (9th Cir. 1992).

24 None of the three exceptions applies here. First, the State has not consented to
25 suit and, second, Challengers do not allege that Congress has “unequivocal[ly]
26 express[ed]” an “intent to overturn” the State’s immunity. *Pennhurst*, 465 U.S. at
27 106. Third, Challengers allege that the California Constitution vests in the
28 Governor “[t]he supreme executive power” of the State, that he is charged with

1 “see[ing] that the law is faithfully executed[,]” and that he signed the laws that
2 placed Proposition 50 on the ballot. Pl. Compl. ¶ 28; U.S. Compl. ¶ 14. These
3 allegations state nothing more than the Governor’s “general duty to enforce
4 California law.” *Harris*, 729 F.3d at 943. The *Ex parte Young* exception does not
5 apply here because the “connection” between the state official and the challenged
6 law “must be fairly direct[,]” *Eu*, 979 F.2d at 704, and Challengers’ complaints “do
7 not direct this Court to any enforcement authority the [Governor] possesses in
8 connection with [Proposition 50] that a federal court might enjoin him from
9 exercising[,]” *Whole Woman’s Health v. Jackson*, 595 U.S. 30, 43 (2021).
10 Accordingly, the Governor is “entitled to Eleventh Amendment immunity” because
11 “a generalized duty to enforce state law or general supervisory power over the
12 persons responsible for enforcing the challenged provision will not subject an
13 official to suit.” *Id.* (citation and quotation marks omitted). Governor Newsom
14 should, therefore, be dismissed as a party from this suit because Challengers have
15 not pleaded and could not plead facts establishing his direct role in enforcing
16 Proposition 50.

17 CONCLUSION

18 For the foregoing reasons, Challengers’ complaints should be dismissed in
19 their entirety, and the Governor should be dismissed as a Defendant.
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1 Dated: February 11, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendants California Governor Gavin Newsom and Secretary of State Shirley Weber, certifies that this brief contains 6,880 words, which complies with L.R. 11-6.1.

Dated: February 11, 2025

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