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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DAVID TANGIPA *et al.*,

Plaintiffs,

v.

GAVIN NEWSOM, *et al.*,

Defendants,

and

LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC),

Intervenor-Defendant.

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

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF LULAC'S MOTION TO DISMISS

Hon. Josephine L. Staton
Hon. Wesley L. Hsu
Hon. Kenneth K. Lee

Hearing Date: June 26, 2026
Time: 10:30 a.m.
Courtroom: 1

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Constitutions

Statutes

Court Rules

Other Authorities

INTRODUCTION

In *Alexander v. South Carolina State Conference of the NAACP*, 602 U.S. 1 (2024), the Supreme Court forewarned federal courts that they "must be wary of plaintiffs who seek to transform federal courts into 'weapons of political warfare' that will deliver victories that eluded them in the 'political arena.'" *Id.* at 11. The Court went on to express concern that "future litigants and lower courts [will seek] to sidestep our holding in *Rucho* [*v. Common Cause*] that partisan-gerrymandering claims are not justiciable in federal court" by "repackag[ing] a partisan-gerrymandering claim as a racial-gerrymandering claim." *Id.* at 21. This case shows that the Court's concern was well-founded.

The core allegation in the Consolidated Complaint supporting all five of Plaintiffs' counts is that the motivation behind the Proposition 50 plan was not to enact a partisan gerrymander, but rather to maintain sixteen majority-Hispanic (and for Noyes Plaintiffs, two Black-influence) districts. But a complaint must be dismissed where, as here, its own allegations or judicially noticeable facts establish an obvious alternative, non-actionable explanation for the challenged conduct, leaving the claim implausible on its face, or when a required element is entirely absent from the pleadings.

The Consolidated Complaint falls short because the alternative explanation here is uniquely obvious: it is written into the challenged measure, Assembly Constitutional Amendment No. 8 (ACA 8). ACA 8's findings and declarations—enacted by the California Legislature and approved by California voters as Proposition 50—establish exclusively partisan motivation in fourteen numbered findings and declarations, not one of which references race, Latino voters, Black voters, or minority voting strength. Moreover, the operative state constitutional provision, now codified as Article XXI, Section 4 of the California Constitution, states that the Proposition 50 plan was enacted

"[i]n response to the congressional redistricting in Texas in 2025": an explicitly partisan event.

This flaw, which Plaintiffs ignore, is the first of four fundamental flaws that defeat all of Plaintiffs' claims. The second is Plaintiffs' failure to allege that the California voters, who were the ultimate decision-makers, had a discriminatory intent. The third is Plaintiff Tangipa's contemporaneous statement on the Assembly floor, which is in an exhibit to the Consolidated Complaint, where he states that the Proposition 50 plan had a partisan motivation. The fourth is Plaintiffs' allegation that California voters vote along partisan, and not racial, lines. These last two flaws are both judicial admissions that completely undermine Plaintiffs' claims. And there are ***many*** additional claim-specific reasons why each of Plaintiffs' individual counts fail, including but not limited to Plaintiffs' failing to (i) produce district-specific allegations showing that decisionmakers were not motivated by partisanship, and (ii) allege how the plan has a discriminatory effect against any racial or ethnic group. Finally, Noyes Plaintiffs fail to establish standing by not alleging that they live in any of the districts they challenge.

LULAC intervened in this case to defend the Latino community from Plaintiffs' defamatory efforts to engage in ethnic scapegoating to challenge what is a clearly partisan battle. The Supreme Court has foreclosed relief for litigants, such as Plaintiffs, who attempt to convert a partisan issue into a racial claim.

BACKGROUND

Under Article XXI of the California Constitution, Congressional districts are drawn once per decade following the decennial census by the Citizens Redistricting Commission (CRC). Cal. Const. art. XXI; Dkt. 240 at ¶ 54. The CRC "drew a congressional map for California in 2021 following the 2020 Census (the 'Commission map')." Dkt. 240 at ¶ 55.

California law permits Congressional redistricting through voter referendum. Cal. Const. art. XXI, § 2(i); Dkt. 240 at ¶ 54. A referendum may be placed on the ballot through the enactment of legislation, among other means. Cal. Const. art. II, § 9.

"In August 2025, Governor Newsom and state legislative leadership announced a coordinated package to replace the congressional map adopted by the Commission with a new map for use in 2026, 2028, and 2030, subject to voter approval at a special election." Dkt. 240 at ¶ 57. One of the three bills in the package was "Assembly Constitutional Amendment No. 8 ('ACA 8') (Rivas & McGuire), a legislatively referred constitutional amendment authorizing temporary use of legislature-enacted congressional map through 2030 that would require voter approval to take effect." Dkt. 240 at ¶ 57. The other bills specified the proposed new congressional district boundaries, called for the special election in November 2025 for voters to consider the revised map, and created the mechanisms for holding the special election at that time. Dkt. 240 at ¶ 57.

ACA 8 included a series of findings and declarations of "the People of the State of California," which outlined that the purpose of ACA 8 was to combat the efforts of President Trump and Republican-led state legislatures to create more Republican seats in Congress beginning in the 2026 election. The last finding and declaration, subsection (n), makes clear that the intent of ACA 8 is partisan: "It is the intent of the people that California's temporary maps be designed to neutralize the partisan gerrymandering being threatened by Republican-led states without eroding fair representation for all communities." Assem. Const. Amend. 8, Res. Ch. 156, 2025 Cal. Stat., § 2(n). The preceding findings and declarations uniformly address Republican-led partisan redistricting efforts in other states. None mention race, Latino voters, Black voters, or minority voting strength. *Id.* at §§ 2(a–m).

In the days that followed introduction of the legislative package, both the California Assembly and California Senate debated the merits of the proposed

redistricting. Dkt. 240-5–8. Among those who spoke during the debates was lead Plaintiff David Tangipa, a member of the California Assembly. Dkt. 240-6, Dkt. 240 at ¶ 13. Plaintiff Tangipa spoke against the redistricting measure on the grounds that it was a partisan gerrymander. Dkt. 240-6 at 97–100. On August 21, 2025, the Assembly and the Senate passed the legislative package. Dkt. 240 at ¶ 58.

Proposition 50 was placed on the ballot for the November 4, 2025 election. Dkt. 240 at ¶ 61. "Proposition 50 asked voters to approve the constitutional amendment proposed by the Legislature in ACA 8 [and] to use the newly drawn congressional map adopted by the Legislature." Dkt. 240 at ¶ 61.

Among the election materials was the Official Voter Information Guide ("Voter Guide") published by Secretary of State Shirley Weber. Cal. Sec'y of State, Official Voter Information Guide: 2025 Statewide Special Election (2025), available at https://vig.cdn.sos.ca.gov/2025/special/pdf/prop50.pdf (last visited April 22, 2026). The Voter Guide reflected the partisan motivation for the Proposition 50 plan. The Voter Guide included the text of ACA 8, including the findings and declarations section referenced above. Voter Guide at 16. The Official Title read: "PROPOSITION 50: AUTHORIZES TEMPORARY CHANGES TO CONGRESSIONAL DISTRICT MAPS IN RESPONSE TO TEXAS' PARTISAN REDISTRICTING LEGISLATIVE CONSTITUTIONAL AMENDMENT." *Id.* at 8. The Voter Guide contained statements of proponents and opponents of Proposition 50. *Id.* at 16-17. Both proponents and opponents emphasized that the motivation for Proposition 50 was partisan. Neither stated that Proposition 50 was motivated by racial reasons. *Id.*

On November 4, 2025, Proposition 50 was passed in a special election by California voters, receiving 7,453,339 yes votes to 4,111,998 no votes. November 4, 2025, Statewide Special Election: Statement of Vote Summary, https://elections.cdn.sos.ca.gov/sov/2025-special/sov/06-sov-summary.pdf; Dkt. 240 at ¶ 61.

The next day, lead Plaintiff Tangipa, the California Republican Party, and a group of California registered voters filed this case against Defendants Newsom and Weber. Dkt. 1. The United States moved to intervene in support of plaintiffs and its motion was granted by the Court. Dkts. 28, 38. The DCCC and LULAC separately moved to intervene as defendants. Dkts. 20, 39. Their motions were granted by the Court. Dkts. 26, 79.

The Tangipa Plaintiffs and the United States both moved for preliminary injunction. Dkts. 15, 29. After the parties filed briefs in support and opposition, the Court held a three-day hearing. One month later, the Court denied the motions for preliminary injunction. Dkt. 216. In denying the preliminary injunction, the Court held, among other things, that Proposition 50 was enacted for partisan, not racial, reasons. Dkt. 216 at 67.

The Tangipa Plaintiffs appealed the denial of the preliminary injunction and moved for a stay in the Supreme Court. The Supreme Court denied the motion for stay in a single sentence with no noted dissents. Subsequently, the Tangipa Plaintiffs withdrew their appeal. Dkt. 239.

In the meantime, three voters (Noyes Plaintiffs) also filed suit challenging Proposition 50. The Court issued an order consolidating their case with this one and ordering the three sets of plaintiffs—the Tangipa Plaintiffs, the United States, and the Noyes Plaintiffs—to file a consolidated complaint. Dkt. 238.

On March 27, 2026, Plaintiffs filed their Consolidated Complaint, with each count sounding in racial gerrymandering or intentional voting discrimination. Dkt. 240. The counts are: Count I (Tangipa Plaintiffs), entitled "Racial Gerrymandering in Violation of the Equal Protection Clause of the Fourteenth Amendment"; Count II (Noyes Plaintiffs), entitled "Racial Gerrymandering in Violation of the Fifteenth Amendment"; Count III (Noyes Plaintiffs), entitled "Intentional Racial Discrimination in Violation of Section 2 of the Voting Rights Act"; Count IV (United States), entitled

"Racial Gerrymandering in Violation of the Equal Protection Clause of the Fourteenth Amendment"; and Count V (United States), entitled "Intentional Racial Discrimination in Violation of Section 2 of the Voting Rights Act." Dkt. 240 at 31-37.

STANDARD OF REVIEW

At the pleading stage, plaintiffs must allege "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). If there is an "obvious alternative explanation" under which the defendant would not be liable, plaintiffs will not survive a motion to dismiss under the plausibility standard. *Twombly*, 550 U.S. at 567; *Iqbal*, 556 U.S. at 682.

In addition to the allegations in a complaint, "[a] copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes." Fed. R. Civ. P. 10(c). "A statement in a complaint, answer or pretrial order is a judicial admission." *Am. Title Ins. Co. v. Lacelaw Corp.*, 861 F.2d 224, 226 (9th Cir. 1988). "[J]udicial admissions are formal admissions in the pleadings which have the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of the fact." *Perez-Mejia v. Holder*, 641 F.3d 1143, 1151 (9th Cir. 2011) (quoting *Am. Title Ins. Co.*, 861 F.2d at 226). Moreover, "[a] court may take judicial notice of 'matters of public record' without converting a motion to dismiss into a motion for summary judgment." *Lee v. City of L.A.*, 250 F.3d 668, 689 (9th Cir. 2001); *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007) ("In ruling on a 12(b)(6) motion, a court may generally consider ... matters properly subject to judicial notice.").

In cases alleging that a districting plan was adopted with a racially discriminatory intent, decisionmakers are entitled to a presumption of good faith. *Miller v. Johnson*, 515 U.S. 900, 916 (1995) (racial gerrymandering); *Abbott v. Perez*, 585 U.S. 579, 603 (2018) (intentional vote dilution). This presumption "requires courts to exercise extraordinary caution in adjudicating claims that a State has drawn district

lines on the basis of race" and applies at all stages of the litigation, including with respect to a 12(b)(6) motion. *Miller*, 515 U.S. at 916-17. This presumption underlies the "demanding" and "especially stringent" burden on plaintiffs in such cases. *Alexander*, 602 U.S. at 11, 17 (quoting *Miller*, 515 U.S. at 928 (O'Connor, J., concurring)).

Racial gerrymandering claims are "analytically distinct" from voting discrimination claims and apply "different analys[es]." *Shaw v. Reno* (*Shaw I*), 509 U.S. 630, 650, 652 (1993); *Alexander*, 602 U.S. at 38. In *Alexander*, the Supreme Court held that the district court erred in not analyzing the intentional discrimination claim differently than the racial gerrymandering claim. 602 U.S. at 38-39.

To establish a racial gerrymandering claim, a plaintiff must "prove that the legislature subordinated traditional race-neutral districting principles, including but not limited to compactness, contiguity, respect for political subdivisions or communities defined by actual shared interests, to racial considerations." *Miller*, 515 U.S. at 916. Where the issue of a partisan gerrymander is germane, "a plaintiff must 'disentangle race from politics' by proving 'that the former *drove* a district's lines.' That means, among other things, ruling out the competing explanation that political considerations dominated the legislature's redistricting efforts." *Alexander*, 602 U.S. at 9-10 (quoting *Cooper v. Harris*, 581 U.S. 285, 308 (2017)).

The Fourteenth and Fifteenth Amendments prohibit intentional racial discrimination in voting. *See, e.g.*, *Rogers v. Lodge*, 458 U.S. 613 (1982) (Fourteenth Amendment); *Gomillion v. Lightfoot*, 364 U.S. 339 (1960) (Fifteenth Amendment). Intentional voting discrimination claims can also be brought under Section 2 of the Voting Rights Act. *Garza v. County of Los Angeles*, 918 F.2d 763, 769-70 (9th Cir. 1990). Intentional discrimination challenges to redistricting plans require showing that the State's districting plan "'has the purpose *and* effect' of diluting the minority vote." *Alexander*, 602 U.S. at 39 (quoting *Shaw I,* 509 U.S. at 649).

ARGUMENT

The Consolidated Complaint includes three counts alleging racial gerrymandering—Count I (Tangipa), Count II (Noyes), and Count IV (United States)—and two counts alleging intentional voting discrimination—Count III (Noyes) and Count V (United States). These claims are derived from different constitutional protections and are subject to different analyses, though both are predicated on racial intent. There are four fundamental flaws in Plaintiffs' case that result in Plaintiffs failing to state a claim. Moreover, there are additional defects with the individual counts. Finally, Noyes Plaintiffs fail to establish standing because they do not identify any Plaintiff who resides in the districts they challenge.

I. Four Fundamental Flaws in the Consolidated Complaint Require Dismissal

There are four fundamental flaws underlying each cause of action that together require dismissal of all five causes of action because they undermine any claim of discriminatory intent.

A. The findings and declarations in ACA 8 demonstrate partisan, not racial, intent

It is a fundamental principle that when assessing legislative intent, the starting point is the text of the legislation. *Lamie v. United States Trustee*, 540 U.S. 526, 539 (2004); *Schroeder v. United States*, 793 F.3d 1080, 1082–83 (9th Cir. 2015). The text of ACA 8 clearly indicates that the intent of Proposition 50 was partisan, not racial.

Section 2 of ACA 8 includes a series of findings and declarations of "[t]he people of the State of California." Those findings and declarations expressly demonstrate partisan intent. The clearest expression of this is in the last finding and declaration: "It is the intent of the people that California's temporary maps be designed to neutralize the partisan gerrymandering being threatened by Republican-led states without eroding fair representation for all communities." ACA 8, § 2(n). The other findings and declarations indicate a similar intent. For example, subsections (a)-(h) and (l)-(m) name

"President Donald Trump," "partisan redistricting," efforts to "unfairly advantage Republicans," and "election-rigging," all partisan references. ACA 8, §§ 2(a–h, l-m). Conversely, there is no mention of race in these findings and declarations. Plaintiffs' failure to contend with the text of ACA 8 in the Consolidated Complaint is itself dispositive.

B. Plaintiffs' failure to address voter intent

The second flaw is that there are no allegations in the Consolidated Complaint that address the intent of the voters who enacted ACA 8. The bulk of allegations about decisionmaker intent involve the alleged intent of mapmaker Paul Mitchell, supplemented with a few statements by individual legislators.

Washington v. Seattle School District No. 1, 458 U.S. 457 (1982), establishes that when voters enact a law through referendum, their collective intent is part of the constitutional inquiry. As the district court found, and the Supreme Court affirmed, collective intent must be assessed through objective criteria—the law's text, campaign materials, and what proponents and opponents represented to voters about the measure's purpose. *Id.* at 471-74; *see also City of Los Angeles v. County of Kern*, 462 F. Supp. 2d 1105, 1114 (C.D. Cal. 2006) (finding that the collective intent of the voters in voting for a referendum could be determined by the nature of the campaign). Consistent with *Seattle*, this Court identified the same objective factors in its Order Denying Preliminary Injunction and held that Plaintiffs were required to establish discriminatory intent on the part of the electorate. Dkt. 216 at 14-21, 23.

Despite that clear instruction, and a roadmap for how voter intent must be established, the Consolidated Complaint is entirely silent on the subject. Whatever intent may be attributed to Mitchell or individual legislators, Plaintiffs have failed to plead any basis for concluding that the voters who enacted Prop 50 understood themselves to be approving a racial gerrymander.

Nor could Plaintiffs establish such intent: every iota of the objective evidence under the relevant criteria for determining collective voter intent set forth by the Supreme Court in *Seattle* and by this Court shows a partisan, not racial, intent.

Law's Text: As discussed, the text of ACA 8 includes findings and declarations of the people of the State of California expressing a partisan, not racial, intent.

Title and Official Summary of Proposition 50: The Voter Guide, which was prepared by the Secretary of State and mailed to every registered voter pursuant to Section 9094(a) of the California Elections Code[1] demonstrates that Proposition 50 was motivated by partisanship and not race. The title of Proposition 50 indicates that it is California's response to redistricting in Texas: "PROP 50: AUTHORIZES TEMPORARY CHANGES TO CONGRESSIONAL DISTRICT MAPS IN RESPONSE TO TEXAS' PARTISAN REDISTRICTING. LEGISLATIVE CONSTITUTIONAL AMENDMENT." Voter Guide at 8. The summary prepared by the Attorney General similarly begins with this explanation: "[i]n response to Texas' mid-decade partisan congressional redistricting, this measure temporarily requires new congressional district maps, as passed by the Legislature in August 2025, to be used in California's congressional elections through 2030." *Id.* Unlike the specific mention of partisanship, there is no mention of race.

Proponent/Opponent Statements: The Voter Guide's "Argument in favor of Proposition 50"—co-authored by Defendant Governor Newsom—explains that Proposition 50 serves as a counterweight to efforts by President Trump and "Republican states" to create more Republican seats. Race is not mentioned. *Id.* at 16. As for the opponents, in the Voter Guide's "Rebuttal to Argument in Favor of

[1] The Voter Guide is appropriate for judicial notice. A document can be judicially noticed under Rule 201 of the Federal Rules of Evidence if it "is not subject to reasonable dispute because it ... can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. § 201(b). Given that the Voter Guide is an official state document that was mailed to every voter, it easily satisfies the requirements for judicial notice. *See, e.g.*, *Daniels-Hall v. National Education Association*, 629 F.3d 992, 998–99 (9th Cir. 2010) (Ninth Circuit took judicial notice of information on school district websites at motion to dismiss phase).

Proposition 50," they urge voters to "Vote NO on partisan gerrymandering. Vote NO on Prop. 50." *Id.* In the Argument Against Proposition 50, opponents state that "Prop. 50 is not democratic; it gives voters a take-it-or-leave-it decision on the most partisan maps in California's history." *Id.* at 17. No opposition argument suggests Proposition 50 is a racial gerrymander. Indeed, the only mention of race is in the opposition, and its argument is that Proposition 50 would "weaken the voices of communities of color," *id.* at 17, which contradicts the allegations in the Consolidated Complaint.

Plaintiffs do not attempt to address the Voter Guide in the Consolidated Complaint except in an indirect reference that "Proposition 50 was frequently marketed to the public as a lawful partisan gerrymander intended to counter redistricting efforts in Texas." Dkt. 240 at ¶ 6.

Plaintiffs come nowhere close to meeting the requirement of alleging racial intent on behalf of the voters. Indeed, the objective evidence shows a partisan intent.

C. Lead Plaintiff Tangipa's contemporaneous statement that Proposition 50 was motivated by partisan intent

In the transcript of the Proposition 50 Assembly Floor debate, which Plaintiffs attached to their Consolidated Complaint as Exhibit F, Dkt. 240-6, Plaintiff Tangipa criticizes his Democratic colleagues for moving forward with a map that he admitted is a partisan gerrymander:

> Californians can look at their districts today, and they know that they were not manipulated for partisan advantage. And now, in just four days, with two rushed committee hearings and almost no opportunity for real public comment, we are on the verge of throwing all of that away. Let me remind this body. During committee hearings, one of our colleagues brazenly admitted that this entire thing was about partisan gerrymandering. Admitted partisan politics. . . . So how can we stand in this chamber and criticize Texas, Florida or other states for gerrymandering when we've joined them in the same practice?

Id. at 97–98. In contrast, nowhere in his statement does Plaintiff Tangipa characterize Proposition 50 as a racial gerrymander.

This statement is a judicial admission that conclusively establishes partisan intent on behalf of legislators. As discussed *supra* in the Standard of Review Section, judicial admissions are formal admissions that establish a fact and withdraw it from issue. Statements in complaints are judicial admissions, as are statements in documents attached to the complaint. And Plaintiff Tangipa's admission applies to all Plaintiffs as (unlike with other parts of the Consolidated Complaint) no Plaintiff disclaimed this statement.

Plaintiffs' judicial admission of the Legislature's partisan motivation is fatal in light of the burden that Plaintiffs challenging a partisan gerrymander must overcome. In both partisan gerrymandering and intentional voting discrimination cases, legislators are entitled to a presumption of good faith. *Alexander*, 602 U.S. at 6 (presumption of good faith in racial gerrymandering claims); *Abbott*, 585 U.S. at 605 (presumption of good faith in voting discrimination cases). "This presumption of legislative good faith directs district courts to draw the inference that cuts in the legislature's favor when confronted with evidence that could plausibly support multiple conclusions." *Alexander*, 602 U.S. at 10 (citing *Abbott*, 585 U.S. at 610–12). Moreover, in racial gerrymandering cases where there is a partisan defense, "a party challenging a map's constitutionality must disentangle race and politics if it wishes to prove that the legislature was motivated by race as opposed to partisanship." *Id.* at 6. Though neither *Alexander* nor *Abbott* were decided at the pleading stage, the presumption of good faith and showing that Proposition 50 was drawn for racial, as opposed to partisan, reasons are constitutional "principles" that apply at the pleading stage. *See Miller*, 515 U.S. at 917 (stating that constitutional principles in racial gerrymandering cases apply at various stages and citing to Federal Rule of Civil Procedure 12(b)).

Moreover, at the pleading stage, as established above, if there is an "obvious alternative explanation" under which the defendant would not be liable, plaintiffs will

not survive a motion to dismiss under the plausibility standard. *Twombly*, 550 U.S. at 567; *Iqbal*, 556 U.S. at 682.

This case is akin to *Tennessee State Conference of the NAACP v. Lee*, 746 F. Supp. 3d 473 (M.D. Tenn. 2024), a post-*Alexander* decision where the court granted a motion to dismiss racial gerrymandering and intentional voting discrimination claims challenging the post-2020 congressional and state senate redistricting plans in Tennessee. The court found that "*on the Complaint's own terms*," a political gerrymander served as an "obvious alternative explanation" for the racial effect of the plan. *Id.* at 483 (emphasis added). So too here. Plaintiff Tangipa's statement (in addition to the text of the law and the evidence of voter intent) sets forth a uniquely obvious alternative explanation—that Proposition 50 was enacted for partisan reasons.

D. The allegations in the Consolidated Complaint that voters vote on partisan, as opposed to racial lines

In their Consolidated Complaint, Plaintiffs allege that partisan, rather than racial, dynamics drive California voting outcomes. For example, in Paragraph 49, Plaintiffs state that "[r]esults in California are largely driven by partisan bloc voting rather than racial bloc voting," and the remainder of that paragraph and most of the following paragraph provide examples illustrating that point. Dkt. 240 at ¶¶ 49-50. Similarly, Paragraph 50 concludes by alleging that "[a]cross elections, votes received by candidates of the same party in the same year are stable, indicating high levels of partisan straight-ticket voting regardless of race." Dkt. 240 at ¶ 50. And Paragraph 51 states that, "[i]n other words, division amongst California voters is attributable primarily to partisan differences, not race." Dkt. 240 at ¶ 51. In addition, the United States and Noyes Plaintiffs allege that "Proposition 50 will likely reduce California's Republican delegation from nine to four members," an admission of the partisan effect of the challenged plan. Dkt. 240 at ¶ 93.[2]

[2] The Tangipa plaintiffs state that they do not join this paragraph of the Consolidated Complaint. Dkt. 240 at 21 n.7.

As with the Tangipa statement, these allegations are judicial admissions, and damning ones. By pleading that partisan, rather than racial, dynamics determine California voting outcomes, Plaintiffs have only underscored the alternative explanation that partisanship, not race, drove the adoption of Proposition 50 and each of the districts in it. Plaintiffs devote much of their complaint to lamenting California's yeoman effort to adopt a new congressional plan on an expedited basis but offer no plausible reason the State would undertake such an effort—aside from partisanship. It is simply implausible that the State would dedicate its political machinery to amending its Constitution at breakneck speed to adopt a plan for a racial purpose, particularly where, they allege, voting does not diverge along racial lines. Plaintiffs have thus failed to provide any plausible basis for believing that the State's decision to pass Proposition 50 was based on race.

* * *

Together, these flaws are fatal: the text of ACA 8 expresses a partisan intent and is silent as to race; the Consolidated Complaint is silent as to voter intent and the objective criteria show a partisan, not racial, intent; lead Plaintiff Tangipa has admitted that the intent was partisan; and the Consolidated Complaint affirmatively acknowledges that voters vote along partisan, not racial, lines. No amount of discovery can cure these flaws. The Court should dismiss all five causes of action.

II. Beyond the Four Fundamental Flaws, there are Numerous Additional Reasons for Dismissal

In addition to the four fundamental flaws in the Consolidated Complaint, Plaintiffs' claims should be dismissed for additional claim-specific reasons.

Each set of Plaintiffs has brought a racial gerrymandering claim: the Tangipa Plaintiffs (Count I) and the United States (Count IV) have brought their claims under the Fourteenth Amendment, and the Noyes Plaintiffs (Count II) have brought their claim under the Fifteenth Amendment. The Fourteenth Amendment claims fail to state a cause of action because Plaintiffs fail to bring forth well-pleaded allegations that

plausibly allege that the Proposition 50 plan was enacted for a racial, and not partisan, purpose, and that race predominated over traditional districting principles. The Noyes Plaintiffs' Fifteenth Amendment claim fails because they have failed to establish standing and because racial gerrymandering claims are Fourteenth Amendment claims, not Fifteenth Amendment claims.

Both the Noyes Plaintiffs (Count III) and the United States (Count V) have also brought intentional vote discrimination claims. Neither is able to state a claim for relief because, among other things, they fail to show that the map has a discriminatory purpose and discriminatory effect against a racial or ethnic group, both of which are requirements in vote dilution claims. Additionally, the Noyes Plaintiffs lack standing.

A. The Tangipa Plaintiffs and the United States fail to state a claim for racial gerrymandering under the Fourteenth Amendment

The Tangipa Plaintiffs allege that "Defendants violated the Equal Protection Clause ... by using race as a predominant factor in drawing the boundaries" of the sixteen majority-Latino districts in the Proposition 50 plan. Dkt. 240 at ¶ 125. They base their claim on their allegations that members of the California Legislature issued a press release stating that they were seeking to empower Latino voters to elect their candidates of choice, that mapdrawer Mitchell stated that the first thing he intended to do was to add a Latino district that had previously been eliminated, and that the "Hispanic CVAP of the challenged districts predominantly falls within a narrow range to optimize Hispanic voting power, that is, to meet a racial target." Dkt. 240 at ¶ 126. Based on these allegations, the Tangipa Plaintiffs conclude that "[r]ace thus predominated over traditional, race-neutral districting principles such as compactness, contiguity, respect for political subdivisions, and communities of interest." Dkt. 240 at ¶ 126.

The United States also alleges that "[t]he Proposition 50 map was racially gerrymandered, in violation of the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States." Dkt. 240 at ¶ 154. They claim

that race was a "predominant factor in drawing the boundaries of at least sixteen congressional districts" and then identify the same sixteen Hispanic majority districts as the Tangipa Plaintiffs. Dkt. 240 at ¶ 157.

Even apart from the fundamental flaws discussed above, Plaintiffs cannot state a claim because they have not introduced well-pleaded factual allegations showing that race, rather than partisanship, drove the Proposition 50 plan and that race predominated over traditional districting principles.

1. Plaintiffs are required to allege well-pleaded facts that show that race and not partisanship explains the Proposition 50 plan and that race predominated over traditional districting principles

Racial gerrymandering claims are brought under the Equal Protection Clause of the Fourteenth Amendment of the Constitution. *Shaw I*, 509 U.S. at 642. In *Shaw I*, the Supreme Court stated that the question in a racial gerrymandering case is whether "a reapportionment plan rationally cannot be understood as anything other than an effort to segregate citizens into separate voting districts on the basis of race without sufficient justification." *Shaw I*, 509 U.S. at 652.

In *Miller*, the Supreme Court set forth a two-part test that applies to all racial gerrymandering claims. In part one, the plaintiff needs to show the decisionmakers classified voters based on race such that the configuration of the district is "unexplainable on grounds other than race." *Miller*, 515 U.S. at 905 (quoting *Shaw*, 509 U.S. at 644). The Court elaborated that plaintiffs must show, "either through circumstantial evidence of a district's shape and demographics or more direct evidence going to legislative purpose, that race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." *Id.* at 916. "To make this showing, a plaintiff must prove that the legislature subordinated traditional race-neutral districting principles, including but not limited to compactness, contiguity, respect for political subdivisions or communities defined by actual shared interests, to racial considerations." *Id.*

Only if a plaintiff can prove step one does the inquiry proceed to step two, where the defendant has the burden of demonstrating that the racial predominance in a particular district is narrowly tailored to further a compelling interest. *Id.* at 920.

In *Alexander*, the Supreme Court expanded on the *Shaw*/*Miller* framework and addressed the issue of how courts should evaluate a racial gerrymandering claim when there is a question of whether a redistricting plan is a partisan gerrymander or a racial gerrymander. The Court held that these cases "raise[] 'special challenges' for plaintiffs. *Alexander*, 602 U.S. at 9 (quoting *Cooper v. Harris*, 581 U.S. 285, 308 (2017)). To prevail, a plaintiff must 'disentangle race from politics' by proving 'that the former *drove* a district's lines.' That means, among other things, ruling out the competing explanation that political considerations dominated the legislature's redistricting efforts." *Id.* at 9-10 (citation omitted). The Supreme Court described a plaintiff's burden as "demanding," *id.* at 17 (quoting *Miller*, 515 U.S. at 928 (O'Connor, J., concurring)), and "especially stringent." *Id.* at 11.

At the pleading stage, *Iqbal* requires that a plaintiff articulate well-pleaded facts, not just conclusory recitations of the elements of a claim. *Iqbal*, 556 U.S. at 678. This is especially true in racial gerrymandering cases because "courts must [] recognize ... the intrusive potential of judicial intervention into the legislative realm, when assessing under the Federal Rules of Civil Procedure the adequacy of a plaintiff's showing at the various stages of litigation and determining whether to permit discovery or trial to proceed." *Miller* 515 U.S. at 916–17 (citing Fed. R. Civ. P. 12(b)). Applying this standard to a racial gerrymandering claim under *Alexander*, a plaintiff must at least plausibly allege that race rather than partisanship "drove the districting process." 602 U.S. at 24.

2. The Consolidated Complaint fails to adequately plead that race plausibly explains the Proposition 50 plan

For almost all of the sixteen districts that the Tangipa Plaintiffs and the United States claim are racially gerrymandered, there is a notable lack of district-specific facts

alleged indicating that the district boundaries were motivated by race over partisanship. Instead, these districts were identified because of their racial demographics and the related allegation that most of them fall within a targeted HCVAP of between 52-55%.

There are two fundamental problems with these allegations. First, allegations need to be district-specific because racial gerrymandering claims apply to an individual district, not to the plan as a whole: "A racial gerrymandering claim ... applies to the boundaries of individual districts. It applies district-by-district. It does not apply to a State considered as an undifferentiated 'whole.' We have consistently described a claim of racial gerrymandering as a claim that race was improperly used in the drawing of the boundaries of one or more *specific electoral districts*." *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 262-63 (2015); *see also Miller*, 515 U.S. at 916 (a plaintiff 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.").

The only district where the Tangipa (and Noyes) Plaintiffs bring forth allegations that directly address the issue of race versus partisanship is District 13, which they claim is "an Exemplar of Racial Gerrymandering." Dkt. 240 at 30.[3] But their alleged facts do not back up the claim. Plaintiffs allege that District 13's boundaries "were drawn predominantly to improve Hispanic performance in the district," and they provide examples where heavily Hispanic areas were placed in the district whereas white Democrats were left out. Dkt. 240 at ¶¶ 120–23.

But Plaintiffs' claim as to District 13 is undermined by their allegations in the Consolidated Complaint that the Hispanic population in District 13 was *reduced* from 65.9% Hispanic to 64.8% Hispanic. Dkt. 240 ¶¶ 117–18. It simply cannot be the case that District 13 was drawn to improve Hispanic performance in the district when the Hispanic population actually decreased. Moreover, the Supreme Court has made clear that "[t]he ultimate object of the [racial gerrymandering] inquiry is the legislature's

[3] The United States explicitly states that it does not join this section of the Consolidated Complaint. Dkt. 240 at 30 n.8.

predominant motive for the design of the district as a whole," not decisions as to particular lines. *Bethune-Hill v. Virginia State Bd. of Elections*, 580 U.S. 178, 192 (2017). Given this principle, the requirements of *Alexander*, and the reduction in Hispanic population in District 13, Plaintiffs' threadbare allegations regarding District 13's lines and conclusory assertion that District 13 was not drawn "to improve the prospects of Democratic Congressional candidates," Dkt. 240 at ¶ 120, are not sufficient to establish that race, rather than partisanship, predominated in the drawing of District 13.

Second, theories based on Plaintiffs' targeting allegations have been squarely rejected by the Supreme Court. The racial demographics of a district are not sufficient to establish a claim because in areas where groups "tend to cluster," "concentrating minority voters in a single district ... can simply reflect 'adherence to compactness and respect for political subdivision lines' or 'the traditional criterion of incumbency protection.'" *Alexander*, 602 U.S. at 45 (Thomas, J., concurring) (quoting *Vieth v. Jubelirer*, 541 U.S. 267, 298 (2004) (plurality opinion)). Indeed, in *Alexander*, the Supreme Court rejected the trial court's determination that the South Carolina legislature's setting of a target black voting age population for the district at issue demonstrated racial intent when by doing so the legislature was also achieving a partisan objective. *Alexander*, 602 U.S. at 19–20.

Plaintiffs also allege that they have "direct evidence that race predominated in the drawing of the Proposition 50 map" based primarily on the statements of the mapdrawer and a few alleged statements of legislators that they were concerned about maintaining Latino voting strength. Dkt. 240 at ¶¶ 76-78. But as the DCCC plaintiffs explain (at 17-19), the mapdrawer in this case was not a "state actor[]," and cannot supply evidence of racial intent. *Alexander*, 602 U.S. at 8. Especially in light of the overwhelming evidence of partisanship—which the complaint accepts—those statements are insufficient under *Alexander* and the pleading standards of

Iqbal/Twombly. Direct statements regarding the partisan intent of Proposition 50 are on the face of ACA 8 and in the Voter Guide, while those official documents are silent as to racial motivation. Under the governing standards, Plaintiffs are required to allege facts showing that race plausibly motivated Proposition 50. They fail to do that. Partisanship is a blindingly "obvious alternative explanation" in this unique case that makes dismissal at the pleading stage appropriate.

3. The Consolidated Complaint does not adequately plead that race predominated over traditional districting principles

The Consolidated Complaint contains a general, conclusory allegation that "[r]ace thus predominated over traditional, race-neutral districting principles such as compactness, contiguity, respect for political subdivisions, and communities of interest." Dkt. 240 at ¶ 126. But this is not enough under the pleading standards demanded by *Iqbal* and *Miller*. There are no allegations setting forth how any district lacks compactness, contiguity, respect for political subdivisions, or fails to recognize communities of interest. In *Bethune-Hill*, the Supreme Court stated that it was the rare case in which Plaintiffs could prevail on the predominance issue without demonstrating that the challenged plan conflicts with traditional districting principles:

> In general, legislatures that engage in impermissible race-based redistricting will find it necessary to depart from traditional principles in order to do so. And, in the absence of a conflict with traditional principles, it may be difficult for challengers to find other evidence sufficient to show that race was the overriding factor causing neutral considerations to be cast aside. In fact, this Court to date has not affirmed a predominance finding, or remanded a case for a determination of predominance, without evidence that some district lines deviated from traditional principles.

580 U.S. at 190. There, the Court hypothesized that a Plaintiff could establish a claim without showing subordination of traditional districting principles when it had "direct evidence of the legislative purpose and intent or other compelling circumstantial evidence." *Id.* at 191.

As discussed above, though Plaintiffs allege direct evidence of a racial gerrymander, those allegations do not hold up given the express language of intent to conduct a partisan gerrymander contained in ACA 8 and the Voter Guide. And Plaintiffs offer no other compelling reason for departing from the general requirement of alleging facts showing that traditional principles were subordinated to race.

Thus, Tangipa Plaintiffs and the United States fail to establish a racial gerrymandering claim under the Fourteenth Amendment.

B. Noyes Plaintiffs do not have Standing to Bring a Fifteenth Amendment Racial Gerrymandering Claim and Cannot State a Claim for Relief

In the second cause of action, Noyes Plaintiffs allege that the Proposition 50 plan violates the Fifteenth Amendment by allegedly "packing Hispanic and black voters into districts in order to preserve the number of Hispanic-majority districts at a precise set number [of sixteen], as well as maintaining two black-influence districts—maximizing the voting strength of these racial minorities." Dkt. 240 at ¶ 141. In attempting to state a racial gerrymandering claim under the Fifteenth Amendment, Noyes Plaintiffs assert that such a claim would not be subject to a partisanship defense: "California's racially motivated and racially drawn districts violate the Fifteenth Amendment's prohibition of state action for which **any** racially discriminatory intent or racial means are used, even to gain political or partisan advantage. *See* U.S. Const. amend. XV." Dkt. 240 at ¶ 136. The implication is that under this theory, Noyes Plaintiffs would not need to satisfy the longstanding requirement of showing that race predominated over traditional districting principles, either.

Plaintiffs' allegations here miss the mark for three reasons. First, Noyes Plaintiffs have not established standing. Under racial gerrymandering jurisprudence, plaintiffs have standing only to bring challenges to districts in which they live, and Noyes Plaintiffs have not identified the districts in which they live. Second, the Supreme Court has not recognized racial gerrymandering claims under the Fifteenth

Amendment. The Fifteenth Amendment addresses racial discrimination in voting, and racial gerrymandering claims are "analytically distinct" claims under the Fourteenth Amendment. Third, even if racial gerrymandering claims were recognized under the Fifteenth Amendment, there is no basis to suggest such claims would be subject to different requirements than racial gerrymandering claims brought under the Fourteenth Amendment, including the burden of showing racial predominance and disaggregating partisanship.

1. Plaintiffs lack standing because they have not plead that they reside in any district they challenge

As discussed above, racial gerrymandering claims are brought district-by-district—a plaintiff cannot simply challenge a plan as a whole. Consistent with this standard, it has been a longstanding standing requirement that a plaintiff in a racial gerrymandering case only has standing to challenge a district in which they live. In *United States v. Hays*, 515 U.S. 737 (1995), voters who lived in district 5 in a Louisiana Congressional redistricting plan brought a racial gerrymandering challenge to district 4. The Supreme Court rejected the argument made by the voters that any voter in the state had standing. *Id.* at 744. The Court stated: "Any citizen able to demonstrate that he or she, personally, has been injured by that kind of racial classification [in racial gerrymandering cases] has standing to challenge the classification in federal court." *Id*. The Court identified only two instances where a citizen would have such an injury: (1) where the citizen lived in the challenged district, or (2) where the citizen had put forth specific information that they had "personally been subjected to a racial classification." *Id.* at 744–45. The Supreme Court has repeatedly applied this standing requirement to dismiss racial gerrymandering claims on standing grounds. *See, e.g.*, *Shaw v. Hunt* (*Shaw II*), 517 U.S. 899, 904 (1996) (dismissing claim with respect to one of two challenged districts where no plaintiff lived in the district); *Sinkfield v. Kelley*, 531 U.S. 28, 30–31 (2000) (holding that plaintiffs who resided in neighboring districts to the challenged district lacked standing).

There are three Noyes Plaintiffs: Mitch Noyes, Holden Lomeli, and Anthony McBroom. Each Plaintiff is described in one short paragraph: "Plaintiff [name] is a California resident and is registered to vote in California. Under the challenged map, he is assigned to a district drawn with racial intent." Dkt. 240 at ¶¶ 33–35.

These allegations are patently insufficient to establish standing under *Hays*. The Noyes Plaintiffs fail to allege what districts any of them live in and they do not provide specific allegations that they personally were subjected to a racial classification.

The fact that other plaintiffs may have standing to bring a distinct racial gerrymandering claim does not save the Noyes Plaintiffs. "At least one plaintiff must have standing to seek each form of relief requested in the complaint." *Town of Chester v. Laroe Estates, Inc.*, 581 U.S. 433, 439 (2017). Noyes Plaintiffs have elected to bring a different racial gerrymandering claim under the Fifteenth Amendment than the other plaintiffs brought under the Fourteenth Amendment. This Fifteenth Amendment versus Fourteenth Amendment distinction is made clear in the first two footnotes on page 1 of the Consolidated Complaint and in how the causes of action are styled. Dkt. 240 at 1, 31–34, 36 & nn.1–2. The Noyes Plaintiffs thus lack standing to bring their unique claim.

2. Racial gerrymandering claims are Equal Protection Clause claims, not Fifteenth Amendment claims

Even if the Noyes Plaintiffs had standing, racial gerrymandering claims are Equal Protection Clause claims under the Fourteenth Amendment, not intentional racial discrimination in voting claims under the Fifteenth Amendment. As detailed above, the Supreme Court in *Shaw I* held that racial gerrymandering claims are analytically distinct from intentional voting discrimination claims. Consistent with the doctrinal framework set forth in *Shaw I*, numerous racial gerrymandering cases have been resolved by the Supreme Court, all involving claims under the Equal Protection Clause of the Fourteenth Amendment, none as racial discrimination claims under the Fifteenth Amendment. *See, e.g., Miller*, 515 U.S. at 903–05; *Hays*, 515 U.S. at 738–39; *Shaw II*,

517 U.S. at 901–02; *Alabama Legis. Black Caucus*, 575 U.S. at 258; *Bethune-Hill*, 580 U.S. at 181; *Alexander*, 602 U.S. at 7.

Noyes Plaintiffs cannot demonstrate why their case should be any different. Paragraph 3 of the Consolidated Complaint cites *Shaw I* in asserting that racial gerrymandering violates the Fifteenth Amendment. Dkt. 240 at ¶ 3. Though the particular page of *Shaw I* cited in Paragraph 3, page 640, discusses the history of the Fifteenth Amendment, it does not discuss it as the basis for racial gerrymandering. Indeed, after the Court in *Shaw I* discussed discrimination claims under the Fifteenth Amendment and the Fourteenth Amendment, it then explained how racial gerrymandering claims under the Equal Protection Clause are analytically distinct from those claims. *Shaw I*, 509 U.S. at 640–52.

In the claim for relief section for Count II, Dkt. 240 at ¶¶ 134–47, Noyes Plaintiffs cite numerous cases, but only one, *Prejean v. Foster* (*Prejean I*), 227 F.3d 504 (5th Cir. 2000), even arguably involves a post-*Shaw I* racial gerrymandering claim under the Fifteenth Amendment. After the district court granted summary judgment to defendants in a case challenging a plan for electing judges under the Fourteenth Amendment, the Fifteenth Amendment, and Section 2 of the Voting Rights Act, the Fifth Circuit reversed and found that the plaintiffs had brought forward triable issues of fact. *Id.* The Fifth Circuit was clear that the Fourteenth Amendment claim was a racial gerrymandering claim, and it analyzed the claim under the racial predominance test outlined in *Shaw I*. *Id.* at 509–18. It was less clear as to whether it considered the Fifteenth Amendment claim as a vote dilution claim or a racial gerrymandering claim, *id.* at 518–19, and several courts have characterized the Fifteenth Amendment claim in *Prejean I* as a vote dilution claim. *See, e.g.*, *LULAC v. Abbott*, 601 F. Supp 3d 147, 160 n.4 (W.D Tex. 2022); *Backus v. South Carolina*, 857 F. Supp. 2d 553, 569 (D.S.C. 2012).

After *Prejean I* was remanded and the district court found in favor of defendants at trial, the plaintiffs filed a second appeal. *Prejean v. Foster* (*Prejean II*), 83 F. App'x 5 (5th Cir. 2003). The Fifth Circuit in *Prejean II* seemed to characterize the Fifteenth Amendment claim as a racial gerrymandering claim but made clear that the racial predominance test applied: "We agree with the district court's assessment that the boundaries were drawn with traditional political concerns rather than race predominating." *Id.* at 11. In any event, neither the *Prejean* litigation nor anything else has led plaintiffs to bring racial gerrymandering cases under the Fifteenth Amendment. In over thirty years of extensive jurisprudence, not a single Supreme Court decision has sustained a racial gerrymandering claim under the Fifteenth Amendment, and this Court should not go where the Supreme Court has not.

The bottom line is that the Noyes Plaintiffs' racial gerrymandering claim under the Fifteenth Amendment is inconsistent with the Supreme Court's doctrinal basis for recognizing the claim as an Equal Protection Clause issue.

3. Noyes Plaintiffs cannot evade the *Shaw/Miller* racial predominance test and the *Alexander* standard for cases involving a partisanship defense

Even if a claim for racial gerrymandering were recognized under the Fifteenth Amendment, it would still be subject to the longstanding *Shaw/Miller* racial predominance test and the *Alexander* standard for cases involving a partisanship defense. In *Alexander*, the Supreme Court stated that racial gerrymandering plaintiffs must satisfy a "demanding" and "especially stringent" standard to overcome the "presumption of legislative good faith" and show that the decisionmakers "engaged in 'offensive and demeaning' conduct." *Alexander*, 602 U.S. at 10–11, 18. Given that, it is inconceivable that a plaintiff could evade the racial predominance standard under the Equal Protection Clause by simply pleading the racial gerrymandering claim as a Fifteenth Amendment violation. And because the Noyes Plaintiffs have not even

attempted to assert that they satisfy the standards for a racial gerrymandering claim under the Equal Protection Clause, they have not stated a claim for relief.

C. Noyes Plaintiffs and the United States Cannot State a Claim for Intentional Voting Discrimination and the Noyes Plaintiffs Lack Standing to Bring Such a Claim

Both the United States and the Noyes Plaintiffs' claims for intentional vote discrimination also fail to state a claim because they both fail to show that the map has a discriminatory purpose and a discriminatory effect against a particular racial or ethnic group.

The Noyes Plaintiffs characterize their claim in Count III as one under Section 2 of the Voting Rights Act and the Fifteenth Amendment. Dkt. 240 at ¶ 152. The basis of the claim is their assertion that "race was a motivating factor in the decision to draw California's congressional map." Dkt. 240 at ¶ 150. The core allegations underlying this assertion are similar to the allegations underlying the racial gerrymandering claim: "By deliberately ensuring that the Hispanic population maintains a slight majority in all 16 previously Hispanic-majority districts and ensuring the two black influence districts (Districts 37 and 43) were untouched, California's boundaries disperse the non-Hispanic population into districts in which they will remain an ineffective minority." Dkt. 240 at ¶ 151.

The United States' claim is based only on Section 2 of the Voting Rights Act, without reference to a constitutional provision. Dkt. 240 ¶¶ 159–66. Like its racial gerrymandering claim, it is directed to the sixteen Hispanic-majority districts. The central allegation supporting its claim of discriminatory purpose is that "[t]he Proposition 50 map achieved the legislators and Mitchell's stated racial goals, as evidenced by the preservation of Hispanic-majorities in precisely sixteen districts (despite carefully lowering the percentage) and the implausibly coincidental tight range (roughly 52–55%) of Hispanic population in the resulting districts." Dkt. 240 ¶ 164.

The Supreme Court has identified two types of voting discrimination claims — vote denial and vote dilution claims—that can be brought under the Fourteenth or Fifteenth Amendment or under Section 2 of the Voting Rights Act. *Allen v. State Bd. of Elections*, 393 U.S. 544, 569 (1969) ("The right to vote can be affected by a dilution of voting power as well as by an absolute prohibition on casting a ballot."); *Shaw I*, 509 U.S. at 640–61 (discussing voter access and dilution cases); *Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 655–60 (2021) (discussing the history of vote denial and vote dilution cases under the Constitution and Section 2). Vote denial claims involve whether a voter is denied access to the ballot through devices such as literacy tests, grandfather clauses, and good character clauses. *Shaw I*, 509 U.S. at 639-40. Vote dilution claims concern circumstances where a racial or ethnic group is not denied the right to vote outright, but their vote is diluted in the redistricting process by reducing or nullifying their ability to elect their candidates of choice. *See id.* at 641. Intentional vote dilution violates the Constitution when a districting plan is "adopted with a discriminatory purpose and ha[s] the effect of diluting minority voting strength." *Id.*

In *Alexander*, the Supreme Court reinforced the Court's statement in *Shaw I* and elaborated further:

> A plaintiff pressing a vote-dilution claim cannot prevail simply by showing that race played a predominant role in the districting process. Rather, such a plaintiff must show that the State "enacted a particular voting scheme as a purposeful device to minimize or cancel out the voting potential of racial or ethnic minorities." *Miller*, 515 U.S. at 911. In other words, the plaintiff must show that the State's districting plan "has the purpose *and* effect" of diluting the minority vote. *Shaw I*, 509 U.S. at 649.

Alexander, 602 U.S. at 38-39.[4]

[4] Though the above quotes in *Shaw I* and *Alexander* focused on claims that the minority vote was diluted, and most claims are brought by racial and ethnic minorities, the Supreme Court recognized in *United Jewish Orgs. of Williamsburgh v. Carey* (*UJO*), 430 U.S. 144 (1977), that white voters can bring intentional vote dilution claims. The Court in *Shaw I* discussed *UJO* in differentiating between an intentional vote dilution claim brought by white voters as opposed to a racial gerrymandering claim. *Shaw I*, 509 U.S. at 651–52.

Though Plaintiffs do not use the terms vote denial or vote dilution, the claim here, as in *Alexander*, is by its nature a vote dilution claim given that no registered voter is being denied the right to vote.

The Noyes Plaintiffs and the United States have not plausibly alleged discriminatory purpose or effect, let alone both. "'Discriminatory purpose' ... implies more than intent as volition or intent as awareness of consequences. It implies that the decisionmaker ... selected ... a particular course of action at least in part 'because of,' **not** merely '**in spite** of,' its adverse effects upon an identifiable group.'" *Hernandez v. New York*, 500 U.S. 352, 360 (1991) (quoting *Personnel Administrator of Mass.* v. *Feeney*, 442 U.S. 256, 279 (1979)) (emphasis added). It requires that the plaintiff show that the decisionmakers acted "*because of* an anticipated racially discriminatory effect." *McCleskey v. Kemp*, 481 U.S. 279, 298 (1987).

The decisionmakers did not enact Proposition 50 to create an adverse effect upon any racial or ethnic group: Plaintiffs' intentional discrimination theory is that the legislature's discriminatory purpose was to allegedly maintain the number of majority-Hispanic and Black influence districts by use of racial targets. That cannot explain why California went through the effort of engaging in mid-decade redistricting because the Proposition 50 plan contained the same number of majority-Hispanic and Black influence districts as the previous Commission plan. The "obvious alternative explanation" was to create more districts likely to elect Democrats and fewer likely to elect Republicans, an effect that two of the three Plaintiff groups explicitly admit. Dkt. 240 at ¶ 93.

In *Tennessee State Conference*, where, like *Alexander* and this case, Plaintiffs had both racial gerrymandering and intentional vote dilution claims, the court dismissed the intentional vote dilution claim (in addition to the racial gerrymandering claim) at the pleading stage because partisan motivation provided the obvious alternative explanation that made an intent claim implausible. *Tenn. State Conf.*, 746

F. Supp. 3d at 506, 511. The intentional discrimination claims here should be dismissed for similar reasons. Because race is the tail wagging the partisan dog, Plaintiffs cannot state a discriminatory purpose claim.

Regarding discriminatory effect, *Alexander* italicized "and" when stating that claims required discriminatory "purpose *and* effect" to emphasize the necessity of showing a discriminatory effect. 602 U.S. at 38-39. But the Noyes Plaintiffs and the United States fail to affirmatively allege that Proposition 50 has the effect of diluting the vote of any racial or ethnic group. Moreover, in alleging that "[r]esults in California are largely driven by partisan bloc voting rather than racial bloc voting," Dkt. 240 at ¶ 49, and that "division amongst California voters is attributable primarily to partisan differences, not race," Dkt. 240 at ¶ 51, they undermine any such claim by disconnecting the racial demographics of a district from any effect on the voting strength of any racial or ethnic group.

On top of this merits problem, by not identifying the districts in which they live, Dkt. 240 ¶¶ 33–35, the Noyes Plaintiffs have the same standing problem with their vote dilution claim as with their racial gerrymandering claim. In *Gill v. Whitford*, 585 U.S. 48 (2018), the Supreme Court held that vote dilution challenges to a redistricting plan were district-specific and that plaintiffs only had standing to challenge those districts in which they lived. Though *Gill* involved a partisan vote dilution claim as opposed to a racial vote dilution claim, the Supreme Court's theory of harm for dilution of the vote is no different:

> [The] harm arises from the particular composition of the voter's own district, which causes his vote—having been packed or cracked—to carry less weight than it would carry in another, hypothetical district. Remedying the individual voter's harm, therefore, does not necessarily require restructuring all of the State's legislative districts. It requires revising only such districts as are necessary to reshape the voter's district—so that the voter may be unpacked or uncracked, as the case may be.

Gill, 585 U.S. at 67; *see also Shaw II*, 517 U.S. at 917 (Section 2 targets vote-dilution injury to individuals in a particular area, not members of the racial group anywhere in the state.).[5] Since *Gill*, courts have consistently held that a plaintiff's standing in racial vote dilution cases is limited to the district in which the plaintiff lives. *See, e.g.*, *Williams v. Hall*, 2025 WL 1553759, at *3 (M.D.N.C. Apr. 8, 2025); *LULAC v. Abbott*, 2022 WL 4545757, at *5 (W.D. Tex. Sept. 28, 2022).

Accordingly, the Noyes Plaintiffs lack standing to bring Count III by failing to identify the districts in which they live. Dkt. 240 ¶¶ 33–35.

CONCLUSION

For the foregoing reasons, LULAC respectfully requests that the Court dismiss the Consolidated Complaint for failure to state a claim as to all Plaintiffs and for lack of standing as to the Noyes Plaintiffs.

[5] LULAC recognizes that there are pre-*Gill* vote dilution decisions, including a decision in this district, that do not limit plaintiffs' standing in vote dilution cases to the districts in which they live. *See Luna v. Cty. of Kern*, 291 F. Supp. 3d 1088, 1123 n.14 (C.D. Cal. 2018) and cases cited therein. Notably, the first case *Luna* cites in support was the district court decision in *Gill*, which the Supreme Court reversed.

DATED: April 24, 2026

Respectfully submitted,

/s/ John Freedman

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**Application for admission pro hac vice forthcoming*

CERTIFICATION OF COMPLIANCE WITH LOCAL RULE 11-6.2

The undersigned, counsel for Defendant-Intervenor LULAC, certifies that this brief contains 9,715 words, which complies with the Court's order, Dkt. 249.

/s/ John Freedman
John Freedman

ATTESTATION PURSUANT TO LOCAL RULE 5-4.3.4

This certifies, pursuant to Local Rule 5-4.3.4, that all signatories to this document concur in its content and have authorized this filing.

/s/ John Freedman
John Freedman

CERTIFICATE OF SERVICE

Case Name: **Tangipa et al v. Newsom et al** No. **2:25-cv-10616-JLS-WLH-KKL**

I hereby certify that on April 24, 2026, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF INTERVENOR-DEFENDANT LULAC'S MOTION TO DISMISS

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 24, 2026, at Washington, D.C.

/s/ John A. Freedman
Signature