

1 BENBROOK LAW GROUP, PC
BRADLEY A. BENBROOK (SBN 177786)
2 STEPHEN M. DUVERNAY (SBN 250957)
1301 Dove Street, 5th Floor
3 Newport Beach, CA 92660
Telephone: (916) 447-4900
4 brad@benbrooklawgroup.com

5 PUBLIC INTEREST LEGAL FOUNDATION
J. CHRISTIAN ADAMS*
6 KAYLAN PHILLIPS*
JOSEPH M. NIXON*
7 JEWEL M. LIGHTFOOT*
CAROLYN C. VALDES*
8 107 S. West Street
Alexandria, VA 22314
9 Telephone: (703) 745-5870

10 **Pro hac vice*

11 Attorneys for Plaintiffs

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14

15 MITCH NOYES, HOLDEN LOMELI,
16 and ANTHONY MCBROOM,

17 Plaintiffs,

18 v.

19 GAVIN NEWSOM, in his official capacity
as Governor of California; and SHIRLEY
20 WEBER in her official capacity as
California Secretary of State,

21 Defendants.
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) Case No.: 2:25-cv-11480-JLS-WLH-
KKL

) **MEMORANDUM IN RESPONSE TO**
ORDER TO SHOW CAUSE RE:
CONSOLIDATION

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

1 Plaintiffs in *Noyes* oppose consolidation but reluctantly concede that
2 consolidation may be appropriate, provided they are not prejudiced from conducting
3 discovery and otherwise litigating their claims in light of the litigation to date in
4 *Tangipa*. Plaintiffs highlight several aspects of their distinct case below to guard
5 against the risk that consolidation poses to their substantive and procedural rights.
6 “[T]he law is clear that an act of consolidation does not affect any of the substantive
7 rights of the parties.” *J. G. Link & Co. v. Cont’l Cas. Co.*, 470 F.2d 1133, 1138 (9th
8 Cir. 1972). As the Supreme Court recently explained, “consolidation is permitted as a
9 matter of convenience and economy in administration but does not merge the suits
10 into a single cause, or change the rights of the parties, or make those who are parties
11 in one suit parties in another.” *Hall v. Hall*, 584 U.S. 59, 70 (2018) (citation omitted).
12 Thus, where suits are consolidated, the “right of each to pursue his individual case ...
13 should not be compromised by the litigation conduct of the other,” and “consolidation
14 [cannot] prejudice rights to which the parties would have been due had consolidation
15 never occurred.” *Id.* 72. In light of these principles, the *Noyes* Plaintiffs request that
16 any consolidation order ensure that the *Noyes* and *Tangipa* cases “retain their separate
17 character.” *See Schnabel v. Lui*, 302 F.3d 1023, 1035–36 (9th Cir. 2002).

18 **I. *Noyes* Plaintiffs Bring A Distinct Fifteenth Amendment Claim.**

19 The Plaintiffs in *Noyes* oppose consolidation because their case advances an
20 entirely different cause of action solely under the Fifteenth Amendment. *Tangipa*
21 only nominally presents a Fifteenth Amendment claim that has been downplayed by
22 its focus on a Fourteenth Amendment claim. Count III of the *Tangipa* Complaint
23 blended the two as a “Violation of the Fourteenth and Fifteenth Amendments,” which
24 references only District 13. *See* ECF No. 1, Plaintiffs’ Complaint at 23–24, *Tangipa*
25 *v. Newsom*, 2:25-cv-10616-JLS-WLH-KKL (C.D. Cal. Nov. 5, 2025).

26 The elements of a Fourteenth Amendment cause of action are different than a
27 Fifteenth Amendment cause of action. Yet there was no acknowledgment or
28 separation of the analyses between the two Amendments in this Court’s Order

1 Denying Plaintiffs’ Motion for Preliminary Injunction. *See generally* ECF No. 216,
2 Order Denying Motion for Preliminary Injunction, *Tangipa v. Newsom*, 2:25-cv-
3 10616-JLS-WLH-KKL (C.D. Cal. Jan. 14, 2026); *see id.* at 67.

4 A Fourteenth Amendment claim requires proof that race predominated the
5 map-drawing decisions. *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 263
6 (2015) (citing *Miller v. Johnson*, 515 U.S. 900, 916 (1995)). A Fifteenth Amendment
7 claim, as pleaded in *Noyes*, only requires evidence that race was intentionally used to
8 draw the map. *Davis v. Guam*, 932 F.3d 822, 832 (9th Cir. 2019) (“The Fifteenth
9 Amendment’s prohibition on race-based voting restrictions is both fundamental and
10 absolute.”) (citing *Shaw v. Reno*, 509 U.S. 630, 639 (1993)). This case should not be
11 consolidated because *Tangipa* has been saturated with confusion on this point.

12 Allowing the *Noyes* Plaintiffs a full opportunity to prosecute their Fifteenth
13 Amendment claim will remedy this confusion. Should they enjoy a full opportunity to
14 advance the cause of action that was not cleanly presented in *Tangipa*—namely the
15 Fifteenth Amendment claim—with the comprehensive expert report aimed wholly at
16 the racial mechanics of the map draw, then the *Noyes* Plaintiffs concede that
17 consolidation could bring judicial economies while preserving their right to present
18 their entirely distinct case.

19 **II. *Noyes* Plaintiffs Are Entitled To Discovery On Their Distinct Claim.**

20 The *Noyes* Plaintiffs vigorously oppose consolidation if they are strapped with
21 the evasive and elusive statements of the witness Paul Mitchell. As the Court is well
22 aware, Mr. Mitchell invoked legislative privilege over 100 times. This despite
23 California and DCCC arguing that Mr. Mitchell was a private person, and not a state
24 actor. He refused to answer questions posed 120 times. This evasiveness followed
25 simple questions like: (1) whether he drew the map; (2) the meaning of the word
26 “contract”; (3) and the meaning of the word “agreement.” *See Tangipa* ECF No. 159-
27 1, Deposition of Paul Mitchell at 26–27. This is not how discovery works, and the
28 *Noyes* Plaintiffs are entitled to conduct discovery in their case. Intent is the

1 foundation of a Fifteenth Amendment claim, yet Defendants have shielded Mitchell
2 from testifying. Any consolidation must not preclude the *Noyes* Plaintiffs from
3 conducting their own discovery and fully litigating any legislative privilege claims.

4 **III. *Noyes* Should Not Be Burdened By *Tangipa*'s Procedural Posture.**

5 The cases should also not be consolidated if *Noyes* Plaintiffs will be shackled
6 by the procedural circumstances resulting from the *Tangipa* litigants' decisions. For
7 example, *Tangipa* sought and obtained an accelerated preliminary injunction hearing
8 following even more accelerated discovery. *See Tangipa* ECF No. 17, Joint
9 Stipulation for an Order Shortening Time. The *Noyes* Plaintiffs submit that due
10 process and a full evidentiary inquiry suffers from such an accelerated track and
11 opposes consolidation if they are shackled to the procedural stage in *Tangipa*. The
12 *Noyes* Plaintiffs are entitled to a preliminary injunction hearing on their distinct
13 claims. Put another way, if they are foreclosed from presenting evidence to the Court
14 and seeking appropriate relief for their distinct claims merely because *Tangipa*
15 enjoyed this Court's time and attention to conduct discovery and present evidence for
16 their distinct claims, the *Noyes* Plaintiffs oppose consolidation. Consolidation should
17 not result in *Noyes* being walled off from the normal discovery and procedural
18 course, including injunctive relief, that a party may seek.

19
20 **IV. The *Noyes* Plaintiffs Are Entitled to Brief and Argue Unresolved Constitutional Issues.**

21 The *Noyes* Plaintiffs further oppose consolidation if they are also shackled with
22 the absence of briefing regarding *Lucas v. Forty-Fourth General Assembly*, 377 U.S.
23 713 (1964), or the underlying substantive issues related to purported absolution of a
24 potentially unconstitutional Congressional map through the passage in a referendum.
25 This core constitutional question was not briefed by the parties in *Tangipa* but was
26 brought to the Court's attention in the *Noyes* Motion for Preliminary Injunction. *See*
27 ECF No. 37-1, Plaintiffs' Preliminary Injunction Br. at 12. These are fundamental
28

1 questions related to Constitutional rights—may the voters enact an unconstitutional
2 plan? The Supreme Court has said “No.”

3 [T]he fact that an apportionment plan is adopted in a popular referendum
4 is insufficient to sustain its constitutionality or to induce a court of equity
5 to refuse to act. ... “One’s right to life, liberty, and property ... and other
6 fundamental rights may not be submitted to vote; they depend on the
outcome of no elections.” A citizen’s constitutional rights can hardly be
infringed simply because a majority of the people choose that it be.

7 *Lucas*, 377 U.S. at 736–37 (internal citations omitted).

8 Had, for example, the voting qualifications challenged in *Rice v. Cayetano*, 528
9 U.S. 495 (2000) been subjected to statewide referendum in Hawaii, would it have
10 absolved that brazen violation of Fifteenth Amendment protections? *See id.* at 522.
11 Can the victims of an unconstitutional election procedure enacted on account of race
12 have their constitutional claim foreclosed merely because they were outvoted in a
13 referendum to ratify the election procedure? The briefing in *Tangipa* was silent on
14 these questions. Accordingly, the *Noyes* Plaintiffs must not be precluded by *Tangipa*
15 from presenting and litigating this fundamental question.

16
17 **V. The Fifteenth Amendment Claim In *Noyes* Is Supported With An
Alexander Map.**

18 Plaintiffs in *Noyes* presented an *Alexander*¹ map showing the partisan aims
19 could have been achieved without using racial tools. They have further presented a
20 detailed expert report that goes far beyond any evidence this Court heard in *Tangipa*.
21 It demonstrates the statewide design to use race in multiple districts in multiple ways.
22 It shows the deliberate preservation of racial influence districts. It demonstrates that
23 given the choice between adjusting the population of Democrats compared with
24 adjusting the population of racial groups, the Defendants chose race. The expert
25 report meticulously catalogs with precision the use of racial sorting to draw the
26 statewide map, district by district—evidence this Court never heard in *Tangipa*.

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¹ *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1 (2024).

1 The expert report is corroborated with direct evidence of racial intent from both
2 the map drawer, Paul Mitchell, and many key legislators.

3 If the *Noyes* Plaintiffs are allowed to present evidence supporting their cause of
4 action, then consolidation would not prejudice them on this point. On the other hand,
5 saddling the *Noyes* Plaintiffs after consolidation with the evidence presented in
6 *Tangipa* would inflict severe injustices on them. More importantly, it would deprive
7 this court of full examination of the evidence behind the map's construction and
8 would work to prevent this Court's inquiry into the facts.

9 CONCLUSION

10 The *Noyes* Plaintiffs recognize there are substantial judicial economies in
11 consolidating these cases. Indeed, they sought consent from the *Tangipa* parties to
12 consolidate the cases in mid-November. All the *Tangipa* parties opposed
13 consolidation then, so the *Noyes* Plaintiffs did not pursue consolidation. As such, they
14 were excluded from the fast-moving flurry of discovery and presentation of evidence
15 to this Court in the ensuing weeks. That opposition should not hinder the *Noyes*
16 Plaintiffs from fully prosecuting their important and distinct constitutional claim.
17 Most importantly, this Court, sitting in equity, would benefit from the evidence and
18 argument *Noyes* will present on its distinct Fifteenth Amendment claim.

19 For the foregoing reasons, Plaintiffs object to consolidation. If the Court orders
20 consolidation, the *Noyes* Plaintiffs request (1) a scheduling order specific to their case
21 allowing discovery, including the deposition of Paul Mitchell and his co-workers who
22 helped prepare the map; (2) a ruling on the applicability of the legislative privilege
23 claimed by Mr. Mitchell prior to his deposition; (3) a hearing date for a Preliminary
24 Injunction; and (4) a hearing at which the *Noyes* Plaintiffs can brief and argue to the
25 Court the issue of voter exoneration of a constitutionally illicit map.

1 February 27, 2026

BENBROOK LAW GROUP, PC

2

/s/ Bradley Benbrook

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Bradley A. Benbrook

4

Stephen M. Duvernay

5

PUBLIC INTEREST LEGAL
FOUNDATION

6

J. Christian Adams

7

Kaylan Phillips

8

Joseph M. Nixon

9

Jewel M. Lightfoot

10

Carolyn C. Valdes

11

Attorneys for the Plaintiffs

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