

STUART NAIFEH (SBN 233295)
KATHRYN SADASIVAN
NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC.
40 Rector St., Floor 5
New York, NY 10006
Tel: (212) 965-2200
snaifeh@naacpldf.org
ksadasivan@naacpldf.org

ANUJA D. THATTE
KAMERON JOHNSTON (SBN 355691)
NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC.
700 14th St. NW, Floor 6
Washington, DC 20005
Tel: (202) 682-1300
athatte@naacpldf.org
kjohnston@naacpldf.org

Counsel for Amicus Curiae NAACP Legal Defense & Educational Fund, Inc.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

DAVID TANGIPA, *et al.*,
Plaintiffs,
and
UNITED STATES OF AMERICA,
Plaintiff-Intervenor,
v.

GAVIN NEWSOM, in his official
Capacity as the Governor of
California, *et al.*,

Defendants,

and

LEAGUE OF UNITED LATIN
AMERICAN CITIZENS (LULAC),
et al.,

Intervenor-
Defendants.

No. 2-25-cv-10616-JLS-KES

**[PROPOSED] BRIEF OF NAACP
LEGAL DEFENSE &
EDUCATIONAL FUND, INC. AS
AMICUS CURIAE IN SUPPORT OF
NEITHER PARTY AS TO
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

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

Hearing Date: December 15, 2025

Hearing Time: 9:00 a.m.

Courtroom: 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....iii

INTERESTS OF *AMICUS CURIAE* 1

INTRODUCTION 1

ARGUMENT.....2

I. To Demonstrate That State Officials Acted with a Predominately Racial
Motive, a Plaintiff Must Show That Voters Were Assigned to Districts Because of
Their Race, Rather Than Because of Non-Racial Criteria. 3

II. That a Legislature Sought to Comply with the Voting Rights Act Is Not Proof
of Racial Predominance.....6

CONCLUSION.....8

CERTIFICATE OF COMPLIANCE.....9

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Abbott v. League of United Latin Am. Citizens</i> , No. 25A608, 2025 WL 3484863 (U.S. Dec. 4, 2025).....	5
<i>Abrams v. Johnson</i> , 521 U.S. 74 (1997)	4
<i>Ala. State Conf. of the NAACP v. Allen</i> , No. 2:21-CV-1531, 2025 WL 2451166 (N.D. Ala. Aug. 22, 2025)	1
<i>Alexander v. S.C. State Conf. of the NAACP</i> , 602 U.S. 1 (2024).....	<i>passim</i>
<i>Allen v. Milligan</i> , 599 U.S. 1 (2023)	1, 3, 4, 6
<i>Bartlett v. Strickland</i> , 556 U.S. 1 (2009)	3
<i>Bethune-Hill v. Va. State Bd. of Elections</i> , 580 U.S. 178 (2017)	2
<i>Bush v. Vera</i> , 517 U.S. 952 (1996)	6
<i>Cano v. Davis</i> , 211 F. Supp. 2d 1208 (C.D. Cal. 2002).....	5
<i>Cooper v. Harris</i> , 581 U.S. 285 (2017)	1
<i>DeWitt v. Wilson</i> , 856 F. Supp. 1409 (E.D. Cal. 1994), <i>summarily aff'd</i> , 515 U.S. 1170 (1995).....	7
<i>Easley v. Cromartie</i> , 532 U.S. 234 (2001)	<i>passim</i>
<i>Hunt v. Cromartie</i> , 526 U.S. 541 (1999) (<i>Cromartie I</i>)	3
<i>Hunter v. Underwood</i> , 471 U.S. 222 (1985)	5
<i>Lawyer v. Dep't of Just.</i> , 521 U.S. 567 (1997)	3, 4, 7

1	<i>League of United Latin Am. Citizens v. Perry</i> ,	
2	548 U.S. 399 (2006)	5
3	<i>Louisiana v. Callais</i> ,	
4	No. 24-109 (U.S.)	1
5	<i>Miller v. Johnson</i> ,	
6	515 U.S. 900 (1995)	1, 2, 4
7	<i>N.C. State Conf. of NAACP v. McCrory</i> ,	
8	831 F.3d 204 (4th Cir. 2016)	6
9	<i>Nairne v. Landry</i> ,	
10	151 F.4th 666 (5th Cir. 2025)	1
11	<i>North Carolina v. Covington</i> ,	
12	585 U.S. 969 (2018)	3
13	<i>Nw. Austin Mun. Util. Dist. No. One v. Holder</i> ,	
14	557 U.S. 193 (2009)	1
15	<i>Robinson v. Ardoin</i> ,	
16	86 F.4th 574 (5th Cir. 2023)	1
17	<i>Shaw v. Reno</i> ,	
18	509 U.S. 630 (1993)	4, 6
19	<i>Shelby Cnty. v. Holder</i> ,	
20	570 U.S. 529 (2013)	1
21	<i>Singleton v. Allen</i> ,	
22	782 F. Supp. 3d 1092 (N.D. Ala. 2025)	1
23	<i>United States v. Hays</i> ,	
24	515 U.S. 737 (1995)	7
25	<i>Wright v. Rockefeller</i> ,	
26	376 U.S. 52 (1964)	4
27	Statutes	
28	52 U.S.C. § 10301	6
	52 U.S.C. § 10301(b)	7

INTERESTS OF AMICUS CURIAE

Amicus curiae, the NAACP Legal Defense and Educational Fund, Inc. (“LDF”), is a non-profit, non-partisan law organization established under the laws of the state of New York to assist Black people and other people of color in the full, fair, and free exercise of their constitutional and statutory rights. Founded in 1940 under the leadership of Thurgood Marshall, LDF focuses on eliminating racial discrimination in education, economic justice, criminal justice, and political participation, using various tools including census data.

LDF has represented Black voters as parties in nearly all the precedent setting cases in the U.S. Supreme Court and lower federal courts related to protecting the ability of Black people and other people of color to fully participate in the political process. *See, e.g., Louisiana v. Callais*, No. 24-109 (U.S.); *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1 (2024); *Allen v. Milligan*, 599 U.S. 1 (2023); *Shelby Cnty. v. Holder*, 570 U.S. 529 (2013); *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193 (2009); *Easley v. Cromartie*, 532 U.S. 234 (2001); *Nairne v. Landry*, 151 F.4th 666 (5th Cir. 2025); *Robinson v. Ardoin*, 86 F.4th 574 (5th Cir. 2023); *Ala. State Conf. of the NAACP v. Allen*, No. 2:21-CV-1531, 2025 WL 2451166 (N.D. Ala. Aug. 22, 2025); *Singleton v. Allen*, 782 F. Supp. 3d 1092 (N.D. Ala. 2025).

Given LDF’s extensive experience and expertise litigating issues pertaining to redistricting, LDF submits this amicus curiae brief to assist the Court in the adjudication of Plaintiffs’ motion for a preliminary injunction.

INTRODUCTION

Unconstitutional racial gerrymandering occurs when race is the predominant factor motivating a legislature’s decision to assign voters into a specific district or districts. *Miller v. Johnson*, 515 U.S. 900, 916 (1995). For example, a racial gerrymander may follow from direct evidence that “state officials instruct[ed] their mapmaker to pack as many black voters as possible into a district.” *Cooper v. Harris*, 581 U.S. 285, 318 (2017). In contrast, racial gerrymandering does not occur where a

1 mapmaker assigns voters to specific districts predominately based on non-racial
2 criteria like geographic boundaries, political subdivisions, electoral data, or
3 communities of interest—regardless of the effect of those line-drawing decisions on
4 district demographics. *See Easley v. Cromartie*, 532 U.S. 234, 241 (2001)
5 (“*Cromartie II*”).

6 Racial gerrymandering concerns the “actual considerations that provided the
7 essential basis” for a state actor’s specific line drawing decisions. *Bethune-Hill v. Va.*
8 *State Bd. of Elections*, 580 U.S. 178, 189-90 (2017). The governing legal standard
9 prohibits state actors from using race as the sole or predominate criteria for
10 classifying or assigning voters to districts. But where a state actor does not rely
11 predominantly on race in its map-making process, there is no racial gerrymander.
12 Accordingly, so long as redistricting does not involve the race-based assignment of
13 voters, it is irrelevant to the racial predominance analysis that a legislature had as one
14 of its express goals complying with the Voting Rights Act (“VRA”) or that the state
15 enacted plan results in more majority-minority or crossover districts than prior plans.

16 ARGUMENT

17 In racial gerrymandering cases, the plaintiffs’ burden is to prove that “race was
18 the predominant factor motivating the legislature’s decision to place a significant
19 number of voters within or without *a particular district*.” *Miller*, 515 U.S. at 916
20 (emphasis added).

21 To satisfy this “demanding” burden, a plaintiff must prove that “the [State]
22 subordinated traditional race-neutral districting criteria . . . to racial considerations”
23 in its decisions about where to place district boundaries. *Alexander v. S.C. State Conf.*
24 *of the NAACP*, 602 U.S. 1, 17 (2024) (citing *Miller*, 515 U.S. at 916). To do so, a
25 plaintiff must prove that race predominated over all other considerations—like
26 communities of interest, natural geographic boundaries, political subdivisions, or
27 partisanship. *See Cromartie II*, 532 U.S. at 253-54. It is only where a plaintiff has
28 satisfied its burden to establish that a map is “unexplainable on grounds other than

1 race” that the district is analyzed under the strict scrutiny standard. *Hunt v.*
2 *Cromartie*, 526 U.S. 541, 546 (1999) (*Cromartie I*) (cleaned up). “Race must not
3 simply have been a motivation for the drawing of a majority-minority district, but the
4 ‘predominant factor’ motivating the legislature’s districting decision.” *Cromartie II*,
5 532 U.S. at 241 (cleaned up).

6 This is because “there is nothing nefarious about [a mapmaker’s] awareness of
7 the State’s racial demographics.” *Alexander*, 602 U.S. at 37. There is a “long
8 recognized [] distinction between being aware of racial considerations and being
9 motivated by them.” *North Carolina v. Covington*, 585 U.S. 969, 978 (2018) (citation
10 omitted). “The former is permissible; the latter is usually not. Redistricting
11 legislatures will almost always be aware of racial demographics, but such race
12 consciousness does not lead inevitably to impermissible race discrimination.” *Allen*
13 *v. Milligan*, 599 U.S. 1, 30 (2023) (plurality) (cleaned up).

14 **I. To Demonstrate That State Officials Acted with a Predominately Racial**
15 **Motive, a Plaintiff Must Show That Voters Were Assigned to Districts**
16 **Because of Their Race, Rather Than Because of Non-Racial Criteria.**

17 A redistricting plan drawn to respect communities of interests or similar
18 traditional principles that results in the creation of a majority-minority or crossover
19 district¹ is not a racial gerrymander, and thus, evidence of a district’s demographics
20 alone is insufficient to establish a predominately racial motive. For example,
21 evidence that a state sought to draw districts that bring together certain communities
22 with shared socioeconomic, geographic, and political interests does not support the
23 inference of racial predominance. *See Cromartie I*, 526 U.S. at 550-51; *Lawyer v.*
24 *Dep’t of Just.*, 521 U.S. 567, 581 (1997). Instead, the consideration of communities
25 of interests can reflect a legitimate and race-neutral adherence to traditional

26 ¹ A “crossover district” is one in which minority voters make up less than a majority of the
27 voting-age population, but the minority population, at least potentially, is large enough to elect the
28 candidate of its choice with help from voters who are members of the majority and who cross over
to support the minority’s preferred candidate. *See Bartlett v. Strickland*, 556 U.S. 1, 13 (2009).

1 redistricting principles, and without more, courts must draw the inference in favor of
2 that legitimate purpose.

3 Moreover, a state is free to recognize communities that have a particular racial
4 makeup provided those communities have “some common thread of relevant
5 interests.” *Miller*, 515 U.S. at 920; *cf. Milligan*, 599 U.S. at 21; *Cromartie II*, 532
6 U.S. at 244-45. “[W]hen members of a racial group live together in one community,
7 a reapportionment plan that concentrates members of the group in one district and
8 excludes them from others may reflect wholly legitimate purposes.” *Shaw v. Reno*,
9 509 U.S. 630, 646 (1993) (“*Shaw I*”). For example, a plaintiff cannot prove that state
10 officials had a predominately racial motive merely because a district respects a
11 densely concentrated majority-minority community, like downtown Atlanta, *Abrams*
12 *v. Johnson*, 521 U.S. 74, 84 (1997), or Harlem in uptown Manhattan, *Wright v.*
13 *Rockefeller*, 376 U.S. 52, 57 (1964). Here, to the extent California’s adherence to
14 race-neutral principles—like communities of interest or geographic compactness—
15 led the state to draw a majority-minority district in an urban area, the mere creation
16 of such a district would not establish that the map-drawer had a racial motive.

17 Communities of interest may have a racial or ethnic make-up different from
18 surrounding areas or other nearby communities and may not align with political
19 subdivisions like counties or municipalities, and States are not required to divide
20 communities merely because keeping them whole might affect the racial
21 demographics of the district into which they are drawn or might involve trade-offs
22 against other principles. Likewise, party preferences may correlate to race.
23 Accordingly, a plaintiff cannot rely on the mere fact that a challenged district has a
24 higher percentage of minority residents than the surrounding county or area to show
25 a predominately racial motive. *See Lawyer*, 521 U.S. at 582.

26 Nor does a state’s mere adjusting of district boundaries affecting discrete
27 populations of minority voters at the margins or perimeters of districts that largely
28 remain unchanged rise to the level of predominance. In *Cromartie II*, the plaintiffs

1 failed to establish racial predominance where their expert did not consider whether
2 excluded precincts “were located near enough to [the district’s] boundaries or each
3 other for the legislature as a practical matter to have drawn [the district’s] boundaries
4 to have included them, without sacrificing other important political goals.” 532 U.S.
5 at 247, 254-57; *see also Alexander*, 602 U.S. at 28-29 (similar). To hold otherwise
6 would “render suspect virtually any legislative decision regarding the districts in
7 which to place areas or groups of precincts that are predominantly populated by one
8 racial or ethnic group.” *Cano v. Davis*, 211 F. Supp. 2d 1208, 1220 (C.D. Cal. 2002)
9 (three-judge court). Instead, to prevail in any racial gerrymandering challenge,
10 plaintiffs must “rule out the possibility that politics [or other considerations] drove
11 the districting process”, *Alexander*, 602 U.S. at 24, and establish that “race for its
12 own sake” was the legislature’s “dominant and controlling rationale in drawing its
13 district lines.” *Id.* at 10 (quoting *Miller*, 515 U.S. at 913). “If either politics or race,”
14 or any other race-neutral justification, “could explain a district’s contours, the
15 plaintiff has not cleared its bar.” *Id.* at 9-10.

16 Finally, a state’s effort to use electoral data to assign voters to districts with
17 the goal of drawing “safer” districts for one party does not *per se* amount to racial
18 gerrymandering. This is true even if that process results in the creation of more
19 crossover or majority-minority districts. *See, e.g., Cromartie II*, 532 U.S. at 249.

20 Here, California has openly sought to redraw its congressional districts in a
21 way “predicted to favor the State’s dominant political party.” *Abbott v. League of*
22 *United Latin Am. Citizens*, No. 25A608, 2025 WL 3484863, at *1 (U.S. Dec. 4,
23 2025). Of course, a state cannot pursue its partisan goals by using the race of
24 individual voters as a proxy for their party affiliation. *See Alexander*, 602 U.S. at 7
25 n.1 (citing *Cooper*, 581 U.S. at 291 n.1 & *Miller*, 515 U.S. at 914). Nor can a state
26 enact laws or redistricting plans that intentionally make it harder for people of color
27 to vote based on who they support at the ballot box. *See League of United Latin Am.*
28 *Citizens v. Perry*, 548 U.S. 399, 440 (2006); *Hunter v. Underwood*, 471 U.S. 222,

230-31 (1985); *N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204, 222-23 (4th Cir. 2016). And, of course, state action may violate other legal protections, such as Section 2 of the VRA, 52 U.S.C. § 10301, if the state’s choices are made with the purpose or if they have the result of denying minority voters an equal opportunity to participate in the political process. *Milligan*, 599 U.S. at 17-18. But so long as the state does not predominately rely on the race of voters in accomplishing its particular goal, the State’s redistricting process does not raise racial gerrymandering concerns.

In sum, the incidental racial effects of redistricting undertaken to accomplish non-racial goals, like reuniting communities of interest, or to adjust the boundaries of districts, even when the boundaries consist of heavily-minority populations, do not amount to racial predominance.

II. That a Legislature Sought to Comply with the Voting Rights Act Is Not Proof of Racial Predominance.

The mere fact that a state recognized its obligation to comply with the VRA or that it labeled certain districts “VRA districts” is not proof—or even particularly probative evidence—of racial predominance. The racial predominance inquiry concerns how the specific challenged districts were drawn and whether a voter’s race was the predominant factor in the decision to draw that voter into or out of a district.

“Strict scrutiny does not apply merely because redistricting is performed with consciousness of race.” *Cromartie II*, 532 U.S. at 253-54 (quoting *Bush v. Vera*, 517 U.S. 952, 958 (1996) (plurality)). “Nor does it apply to all cases of intentional creation of majority-minority districts.” *Vera*, 517 U.S. at 958 (plurality). This precept reflects a recognition that “the legislature always is aware of race when it draws district lines.” *Shaw I*, 509 U.S. at 646. Indeed, complying with Section 2 of the Voting Rights Act “demands” an awareness of race. *Milligan*, 599 U.S. at 30–31 (plurality) (quoting *Abbott v. Perez*, 585 U.S. 579, 587 (2018)). But that alone does not show that race predominately drove the state’s individual line-drawing decisions.

1 *See Cromartie II*, 532 U.S. at 241 (holding that plaintiffs in racial gerrymandering
2 litigation must prove, at a minimum, that the state subordinated traditional race-
3 neutral districting principles to racial considerations). For example, comments from
4 a mapmaker that he “check[ed] that the maps he produced complied with [] Voting
5 Rights Act precedent” are not constitutionally suspect. *Alexander*, 602 U.S. at 22.

6 Thus, a plaintiff cannot prove that a state had a predominately racial motive
7 merely by showing that a mapmaker was aware of a state’s racial demographics or
8 that a certain number of districts in an enacted plan have a certain racial makeup. *Cf.*
9 *Lawyer*, 521 U.S. at 582; *United States v. Hays*, 515 U.S. 737, 746 (1995) (“We have
10 never held that the racial composition of a particular voting district, without more,
11 can violate the Constitution.”). The mere fact that a state’s new map might contain
12 more districts in which Latino voters can elect their preferred candidates than a prior
13 map is not *per se* proof of *any* racial motive—let alone a predominate one. Neither
14 the VRA nor the Constitution sets a floor or ceiling on the number of minority-
15 opportunity districts that a state can draw using non-racial or other criteria. *See* 52
16 U.S.C. § 10301(b) (“nothing in this section establishes a right to have members of a
17 protected class elected in numbers equal to their proportion in the population”).

18 Indeed, the Supreme Court has already once affirmed the constitutionality of
19 a California redistricting plan that was expressly drawn to “withstand section 2
20 challenges under any foreseeable combination of factual circumstances and legal
21 rulings” despite a claim of racial gerrymandering. *DeWitt v. Wilson*, 856 F. Supp.
22 1409 (E.D. Cal. 1994), *summarily aff’d*, 515 U.S. 1170 (1995)). As the three-judge
23 panel in *DeWitt* explained, California’s intentional creation of majority-minority
24 districts through the application of traditional redistricting principles—not based
25 predominantly on race—does not offend equal protection principles. 856 F. Supp. at
26 1413.

27 In short, neither the mere existence (or revision) of majority-minority districts
28 nor a state’s professed desire to comply with the VRA, nor its belief that the

1 redistricting plan it adopts in fact complies with the VRA, without more, raises an
2 inference of racial predominance.

3 **CONCLUSION**

4 Amicus curiae respectfully urges that the Court apply the principles articulated
5 above in adjudicating Plaintiffs' preliminary injunction motion.

6
7 DATED: December 8, 2025

Respectfully submitted,

8 /s/ Stuart Naifeh

9 Stuart Naifeh (SBN 233295)

10 Kathryn Sadasivan*

11 NAACP Legal Defense &

Educational Fund, Inc.

12 40 Rector St., Floor 5

13 New York, NY 10006

14 Tel: (212) 965-2200

snaifeh@naacpldf.org

ksadasivan@naacpldf.org

16 Anuja D. Thatte*

17 Kameron Johnston (SBN 355691)

18 NAACP Legal Defense &

Educational Fund, Inc.

19 700 14th St. NW, Floor 6

Washington, DC 20005

20 Tel: (202) 682-1300

21 athatte@naacpldf.org

kjohnston@naacpldf.org

22 ***Counsel for Amicus Curiae NAACP***
23 ***Legal Defense & Educational Fund,***
24 ***Inc.***

25 **Pro hac vice application forthcoming*
26
27
28

CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Amicus Curiae NAACP Legal Defense & Educational Fund, Inc., certifies that this brief contains 2,378 words, which complies with the word limit set by L.R. 11-6.1; *see also* Doc. 72 (setting 14,000 word limit for opposition brief); Fed. R. App. P. 29(a)(5) (limiting amicus briefs to half the length of principal briefs).

/s/ Stuart Naifeh
Stuart Naifeh

***Counsel for Amicus Curiae
NAACP Legal Defense &
Educational Fund, Inc.***