

1 **ARNOLD & PORTER KAYE SCHOLER**
2 **LLP**

3 SEAN O. MORRIS (SBN 200368)

4 Sean.Morris@arnoldporter.com

5 777 South Figueroa Street

6 44th Floor

7 Los Angeles, CA 90017

8 T: (213) 243-4000

9 F: (213) 243-4199

10 JOHN A. FREEDMAN

11 John.Freedman@arnoldporter.com

12 601 Massachusetts Ave, NW

13 Washington, DC 20001

14 T: (202) 942-5000

15 F: (202) 942-5999

16 **DEMOCRACY DEFENDERS ACTION**

17 NORMAN L. EISEN

18 ANDREW WARREN

19 SOFIA FERNANDEZ GOLD

20 JACOB KOVACS-GOODMAN

21 norman@democracydefenders.org

22 andrew@democracydefenders.org

23 sofia@democracydefenders.org

24 jacob@democracydefenders.org

25 600 Pennsylvania Ave SE, Unit 15180

26 Washington, DC 20003

27 T: (202) 594-9958

28 **JUSTICE LEGAL STRATEGIES PLLC**

JON M. GREENBAUM (SBN 166733)

jgreenbaum@justicels.com

P.O. Box 27015

Washington, DC 20038

T: (202) 601-8678

Counsel for Intervenor-Defendant

League of United Latin American Citizens

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

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

**REPLY BRIEF IN SUPPORT OF
INTERVENOR-DEFENDANT
LULAC'S MOTION TO
DISMISS**

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

Hearing Date: August 19, 2026
Time: 10:00 a.m.
Courtroom: 1

TABLE OF CONTENTS

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

INTRODUCTION 1

ARGUMENT 3

I. PLAINTIFFS MUST MEET A DEMANDING BURDEN TO PLAUSIBLY PLEAD RACE RATHER THAN PARTISANSHIP DROVE THE REDISTRICTING PLAN 3

II. PLAINTIFFS FAIL TO REBUT THE FOUR FUNDAMENTAL FLAWS THAT DEMONSTRATE PARTISAN INTENT 7

 A. Plaintiffs’ failure to adequately address the partisan findings and declarations in ACA 8 7

 B. Plaintiffs do not adequately address voter intent 8

 C. Plaintiffs’ failure to adequately address their contemporaneous statements that Proposition 50 was motivated by partisan intent 12

 D. Plaintiffs’ failure to adequately address other admissions in the Consolidated Complaint of partisanship 14

III. PLAINTIFFS’ AFFIRMATIVE ALLEGATIONS FAIL TO PLAUSIBLY ALLEGE THAT RACE, NOT PARTISANSHIP, DROVE THE PROPOSITION 50 MAP 16

 A. Legislator statements 16

 B. Statements of Paul Mitchell 18

 C. Racial targeting allegations 20

 D. Illustrative Plan 22

IV. THE UNITED STATES AND TANGIPA PLAINTIFFS HAVE NOT PLAUSIBLY ALLEGED A RACIAL GERRYMANDERING CLAIM UNDER THE EQUAL PROTECTION CLAUSE 24

 A. Plaintiffs have not plausibly alleged that race, and not partisanship, drove Proposition 50 24

 B. Plaintiffs have not plausibly alleged that race predominated over traditional districting principles 25

V. THE UNITED STATES’ VOTING RIGHTS ACT CLAIM FAILS BECAUSE IT HAS NOT PLAUSIBLY ALLEGED THE PLAN HAS A RACIALLY DISCRIMINATORY PURPOSE OR EFFECT AGAINST A RACIAL OR ETHNIC GROUP 27

VI. NOYES PLAINTIFFS’ CLAIMS ARE NOT LEGALLY COGNIZABLE, AND THEY LACK STANDING 28

CONCLUSION 31

TABLE OF AUTHORITIES

Page(s)

Cases

1

2

3

4 *Abbott v. LULAC,*

5 146 S. Ct. 418 (2025).....4, 8

6

7 *Abbott v. LULAC,*

8 2026 WL 1127246 (U.S. Apr. 27, 2026).....4

9

10 *Abbott v. Perez,*

11 585 U.S. 579 (2018).....7

12

13 *Ala. Legis. Black Caucus v. Alabama,*

14 575 U.S. 254 (2015).....21, 24, 25, 26

15

16 *Alexander v. State Conference of the NAACP,*

17 602 U.S. 1 (2024).....*passim*

18

19 *Allen v. Milligan,*

20 2026 WL 1552756 (U.S. June 2, 2026).....4, 8, 22, 23

21

22 *Ashcroft v. Iqbal,*

23 556 U.S. 662 (2009).....5, 26

24

25 *AT&T v. Compagnie Bruxelles Lambert,*

26 94 F.3d 586 (9th Cir. 1996)13

27

28 *Bell Atl. Corp. v. Twombly,*

550 U.S. 544 (2007).....5

Bethune-Hill v. Va. State Board of Elections,

580 U.S. 178 (2017).....21, 24, 25, 26

City of Los Angeles v. County of Kern,

462 F. Supp. 2d 1105 (C.D. Cal. 2006).....8, 10, 11

Cooper v. Harris,

581 U.S. 285 (2017).....*passim*

Davis v. Guam,

932 F.3d 822 (9th Cir. 2019)31

1 *Gant v. Wallingford Bd. of Educ.*,
2 69 F.3d 669 (2d Cir. 1995) 14

3 *Gomillion v. Lightfoot*,
4 364 U.S. 339 (1960)..... 31

5 *Harper v. Va. State Bd. of Elections*,
6 383 U.S. 663 (1966)..... 7, 8

7 *Harrison v. Institutional Gang of Investigations*,
8 2009 WL 1277749 (N.D. Cal. May 6, 2009)..... 14

9 *Hunter v. Erickson*,
10 393 U.S. 385 (1969)..... 10

11 *Hunter v. Underwood*,
12 471 U.S. 222 (1985)..... 10

13 *Lamie v. United States Trustee*,
14 540 U.S. 526 (2004)..... 7

15 *Louisiana v. Callais*,
16 146 S. Ct. 1131 (2026).....*passim*

17 *Lucas v. Forty-Fourth Gen. Assembly*,
18 377 U.S. 713 (1964)..... 9

19 *Miller v. Johnson*,
20 515 U.S. 900 (1995).....*passim*

21 *North Carolina v. Covington*,
22 585 U.S. 969 (2018)..... 30

23 *Perry v. Brown*,
24 671 F.3d 1052 (9th Cir. 2012) 10

25 *Personnel Administrator of Massachusetts v. Feeney*,
26 442 U.S. 256 (1979)..... 10

27 *Romer v. Evans*,
28 517 U.S. 620 (1996)..... 9

Shaw v. Hunt,
517 U.S. 899 (1996)..... 25

1 *Shaw v. Reno*,
2 509 U.S. 630 (1993).....27, 29, 30

3 *Starr v. Baca*,
4 652 F.3d 1202 (9th Cir. 2011)6

5 *Village of Arlington Heights v. Metropolitan Housing Development*
6 *Corp.*,
7 429 U.S. 252 (1977).....11, 27

8 *Washington v. Davis*,
9 426 U.S. 229 (1976).....27

10 *Washington v. Seattle School District No. 1*,
11 458 U.S. 457 (1982).....8, 10

12 *Wilkins v. Lowe*,
13 2020 WL 3065119 (C.D. Cal. Apr. 21, 2020).....14

14 **Constitutional Provisions**

15 U.S. Const. amend. XIV26, 28, 30

16 U.S. Const. amend. XV.....2, 28, 30

17 Cal. Const. art. XVIII, XXI10

18 **Statutes**

19 52 U.S.C. § 10301*passim*

20 **Other Authorities**

21 Federal Rule of Civil Procedure 10(c).....12

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

23

24

25

26

27

28

1 **INTRODUCTION**

2 The oppositions to the motions to dismiss filed by the United States (Dkt.
3 264), Tangipa Plaintiffs (Dkt. 263), and Noyes Plaintiffs (Dkt. 262) confirm that
4 LULAC’s Motion to Dismiss should be granted. Each Plaintiff acknowledges the
5 partisan motivation behind the Proposition 50 plan but contends that the plan was
6 also a product of race:

7 United States: “The United States does not dispute and has never disputed that
8 the Proposition 50 map is intended to bolster the performance of the
9 Democratic Party in congressional elections. However, States may not enact
10 a partisan gerrymander through racially discriminatory means.” Dkt. 264 at
11 2.

12 Tangipa Plaintiffs: “Parallel Partisan Objectives Do Not Render the Racial
13 Gerrymandering Claim Implausible.” Dkt. 263 at 18.

14 Noyes Plaintiffs: “Partisanship may have been the impetus, but race drew
15 legislative districts with deliberate racial outcomes.” Dkt. 262 at i.

16 The problem for Plaintiffs is that the Supreme Court has squarely held in
17 redistricting cases involving race, beginning with *Alexander v. State Conference of*
18 *the NAACP*, 602 U.S. 1 (2024), that Plaintiffs have the burden of disproving partisan
19 motivation when that motivation, as here, is asserted as a defense. Just last month,
20 the Court emphasized:

21 [A]s we have repeatedly made clear, when a State defends a districting scheme
22 on the ground that it was drawn for partisan purposes, plaintiffs have a
23 ‘special’ burden to overcome. ‘To prevail,’ the plaintiff ‘must disentangle race
24 from politics’ by proving ‘that the former *drove* a district’s lines.’ ‘That
25 means, among other things, ruling out the competing explanation that political
26 considerations dominated the legislature’s redistricting efforts. If either
27 politics or race could explain a district’s contours, the plaintiff has not cleared
28 its bar.’

29 *Louisiana v. Callais*, 146 S. Ct. 1131, 1156-57 (2026) (quoting *Alexander*, 602 U.S.
30 at 9-10) (cleaned up).

31 As the Court warned in *Alexander* of plaintiffs “repackag[ing] a partisan-

1 gerrymandering claim as a racial-gerrymandering claim,” 602 U.S. at 21, the Court
2 reiterated in *Callais* that “[i]f race and politics are not disentangled and a § 2 claim
3 is cynically used as a tool for advancing a partisan end, the VRA’s noble goal will
4 be perverted.” *Callais*, 146 S. Ct. at 1163.

5 This case is a paradigmatic example of what the Court warned of in *Alexander*
6 and *Callais*. The *Alexander/Callais* requirement of disproving partisan motivation,
7 when combined with the pleading requirements of *Twombly/Iqbal*, requires
8 Plaintiffs to allege well-pleaded facts showing that race, rather than partisanship,
9 explains the motivations behind Proposition 50.

10 When the governing legal standards are applied, all Plaintiffs fail to state a
11 claim because the relevant record—the Consolidated Complaint and its attachments,
12 as well as judicially noticed documents—is rife with language showing partisan
13 motivation. This includes the four fundamental flaws that LULAC previously
14 outlined, Dkt. 251-1 at 8-14, and additional problems, including the failure to assert
15 well-pleaded facts showing that race predominated over traditional principles and
16 concessions that voters vote along partisan rather than racial lines.

17 The best Plaintiffs can do is allege that race was *a* consideration—using
18 statements by legislators and the map drawer, allegations of racial targeting, and an
19 expert affidavit showing that the same partisan objective could have been met
20 through a redistricting plan that reduced, instead of maintained, the same number of
21 majority-Hispanic districts. But even in their best light, these allegations do not meet
22 the pleading burden of plausibly disproving partisan motivation. For example, the
23 legislators’ and Mitchell’s statements attached to the complaints reflect that these
24 legislators were acting out of partisan concerns and that Mitchell understood his task
25 was to create five additional Democratic districts.

26 Noyes Plaintiffs try to evade the applicable legal standards by asserting novel
27 and unrecognized claims—a racial gerrymandering claim under the Fifteenth
28

1 Amendment, and an intentional discrimination violation of the Voting Rights Act
2 that is not a vote dilution claim—and by asserting that a plaintiff can prevail by
3 showing that race was merely a motivating factor in redistricting. Courts have not
4 recognized such claims; rather, these claims fail. The Noyes Plaintiffs also fail to
5 establish standing.

6 ARGUMENT

7 **I. Plaintiffs Must Meet a Demanding Burden to Plausibly Plead Race** 8 **Rather Than Partisanship Drove the Redistricting Plan**

9 As LULAC previously established, Dkt. 251-1 at 17, the Supreme Court in
10 *Alexander* held that where there is a partisan defense in a racial gerrymandering
11 challenge to a redistricting plan, the plaintiffs have the “special challenge[]” of
12 “‘disentangl[ing] race from politics’ by proving ‘that the former drove a district’s
13 lines.’ That means, among other things, ruling out the competing explanation that
14 political considerations dominated the legislature’s redistricting efforts.” *Alexander*,
15 602 U.S. at 9-10.

16 Since LULAC’s opening brief, the Supreme Court in *Callais* reiterated that
17 the same “special burden” applies to plaintiffs in vote dilution cases. *Callais*, 146 S.
18 Ct. at 1156. As in *Alexander*, the Court in *Callais* warned of plaintiffs trying to
19 repackage partisan redistricting as racial redistricting. *Callais*, 146 S. Ct. at 1148,
20 1163. And *Callais* imposed new requirements for illustrative maps in partisan
21 redistricting cases:

22 [I]llustrative maps must meet all the State’s legitimate districting objectives,
23 including traditional districting criteria and the State’s specified political
24 goals. If the State’s aims in drawing a map include a target partisan
25 distribution of voters, a specific margin of victory for certain incumbents, or
26 any other goal not prohibited by the Constitution, the plaintiffs’ illustrative
27 maps must achieve these goals just as well.

28 *Id.* at 1159.

After *Alexander* and before *Callais*, the Supreme Court stayed the three-judge

1 district court opinion finding a racial gerrymander in *Abbott v. LULAC*, 146 S. Ct.
2 418 (2025). Justice Alito, the author of both *Alexander* and *Callais*, wrote a
3 concurring opinion, stating that it was “indisputable—that the impetus for the
4 adoption of the Texas map (like the map subsequently adopted in California) was
5 partisan advantage pure and simple,” and that this fact was decisive in granting the
6 stay. *Id.* at 420 (Alito, J., concurring). The Court later summarily reversed the district
7 court’s judgment. *Abbott v. LULAC*, 2026 WL 1127246 (U.S. Apr. 27, 2026).
8 Consistent with Justice Alito’s statement about the California redistricting in *Abbott*,
9 not a single justice opposed the denial of the stay that the Tangipa Plaintiffs sought
10 after this Court denied their motion for preliminary injunction.

11 Finally, on June 2, 2026, the Supreme Court issued a per curiam order in *Allen*
12 *v. Milligan*, 2026 WL 1552756 (U.S. June 2, 2026), where it stayed a three-judge
13 district court’s order enjoining Alabama’s 2023 redistricting plan, which the district
14 court had found intentionally diluted Black voters’ votes. Notably, the Supreme
15 Court found that the district court “did not heed the presumption of legislative good
16 faith.” *Id.* at *1. The Court also found that the “mere fact that voters of different
17 races vote for different parties is not relevant to proving racially polarized voting
18 patterns.” *Id.* Additionally, it applied the *Callais* requirement that the illustrative
19 map must satisfy all criteria set forth by the Legislature just as well as the challenged
20 plan does. *Id.*

21 These recent decisions have made clear the requirement of disentangling race
22 from partisanship in both racial gerrymandering and Voting Rights Act claims. Both
23 the United States and Tangipa Plaintiffs cite an earlier Supreme Court racial
24 gerrymandering case, *Cooper v. Harris*, 581 U.S. 285 (2017), to suggest that a racial
25 gerrymandering claim could be cognizable alongside a partisan gerrymander, such
26 as where race serves as the means to a partisan end. *See* Dkt. 264 at 20; Dkt. 263 at
27 3, 18-19, 30. Some portions of *Cooper*, namely footnotes 1 and 7, arguably suggest
28

1 as much. *Id.* at 291 n.1, 308 n.7. But the text preceding those footnotes foreshadowed
2 the formulation outlined in *Alexander* by stating that plaintiffs needed to show that
3 partisanship was subordinated to race, *id.* at 291, and that plaintiffs needed to
4 “disentangle race from politics and prove that the former drove a district’s lines.” *Id.*
5 at 308 (quotations omitted). In *Alexander*, the Supreme Court adopted the statements
6 in *Cooper*’s text while omitting the footnote language. Justice Kagan, the author of
7 *Cooper*, criticized this jurisprudential change, calling the “special rules to specially
8 disadvantage suits to remedy race-based redistricting” “most dispiriting” and stating
9 that this “altered perspective” misses that a legislature “may have sorted citizens by
10 their race ... for no reason other than to achieve partisan gain.” *Alexander*, 602 U.S.
11 at 69-70 (Kagan, J., dissenting). Thus, at a minimum, *Alexander* reoriented the
12 inquiry such that where racial intent and partisan intent are present, partisanship is
13 presumptively dominant, and Plaintiffs bear the burden of demonstrating otherwise.

14 As discussed in LULAC’s opening brief, Dkt. 251-1 at 17, plaintiffs must
15 plausibly allege that race, rather than partisanship, drove the districting process,
16 based on the substantive requirements discussed above and the pleading
17 requirements of *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) and *Bell Atl. Corp. v.*
18 *Twombly*, 550 U.S. 544 (2007). A plaintiff does not satisfy the plausibility standard
19 if there is an “obvious alternative explanation,” such as partisanship, under which
20 the defendant would not be liable. *Iqbal*, 556 U.S. at 682; *Twombly*, 550 U.S. at 567.
21 In another redistricting case where partisan motivations are not squarely invoked, a
22 plaintiff may not have to satisfy this burden of disproving partisan motivation. But
23 here, the complaint, its attachments, and several judicially noticed documents put
24 partisan motivation at issue. Moreover, as discussed in LULAC’s opening brief, Dkt.
25 251-1 at 6-7, the Supreme Court in *Miller* made clear that the presumption of
26 legislative good faith is one of the constitutional principles that applies at all stages
27 of redistricting litigation, including for Rule 12(b) motions. *Miller v. Johnson*, 515
28

1 U.S. 900, 916-17 (1995). This principle “requires courts to exercise extraordinary
2 caution in adjudicating claims that a State has drawn district lines on the basis of
3 race.” *Id.*

4 Neither the United States nor the Noyes Plaintiffs respond meaningfully to the
5 standards applicable at the motion to dismiss stage set forth by LULAC. Citing *Starr*
6 *v. Baca*, 652 F.3d 1202 (9th Cir. 2011), the Tangipa Plaintiffs assert that if there are
7 two alternative explanations, one asserted by the plaintiff and one by the defendant,
8 that is sufficient to defeat a motion to dismiss. Dkt. 263 at 18. Additionally, the
9 Tangipa Plaintiffs claim that the “obvious alternative explanation” standard is not
10 applicable because of the specificity of the race allegations in the Consolidated
11 Complaint, Dkt. 263 at 18, and that the presumption of legislative good faith is
12 evidentiary and thus does not apply at the pleading stage. Dkt. 263 at 11-12.

13 These arguments are unavailing. *Starr* holds that a plaintiff defeats a motion
14 to dismiss when two competing explanations are *equally* plausible, and the court
15 must choose between them. Here, the two explanations—race and partisanship—are
16 not on equal footing. Post-*Alexander*, partisanship is presumed to be the dominant
17 explanation, and Plaintiffs must plausibly allege otherwise. Rather than plausibly
18 alleging the predominance of race, the Consolidated Complaint and its attachments
19 repeatedly recognize that the plan had partisan objectives, offering an obvious
20 alternative explanation: partisanship, not race alone, motivated the plan.

21 As for the presumption of legislative good faith at the pleading stage, the
22 Court in *Miller* explicitly cited Rule 12(b) in writing, “[a]lthough race-based
23 decisionmaking is inherently suspect, until a claimant makes a showing sufficient to
24 support that allegation the good faith of a state legislature must be presumed.” *Miller*,
25 515 U.S. at 916-17 (citation omitted). Indeed, *Miller* counsels courts to exercise
26 extraordinary caution when assessing whether decisionmakers were motivated by
27 race, and the Court identifies the presumption of legislative good faith as one of the
28

1 three reasons for such caution. *Id.* at 916. In other words, the Supreme Court in
2 *Miller* clearly intended the presumption of good faith to apply at the pleading stage.
3 The presumption, with other factors, sets the threshold of pleading sufficiency:
4 whether, given the presumption of good faith, the complaint plausibly alleges that
5 the decisionmakers acted because of race.

6 **II. Plaintiffs Fail To Rebut The Four Fundamental Flaws That Demonstrate**
7 **Partisan Intent**

8 LULAC’s opening brief sets forth four fundamental flaws that doom
9 Plaintiffs’ case because they undermine any claim of discriminatory intent. Dkt. 251-
10 1 at 8-14. Plaintiffs’ response is insufficient and confirms dismissal is warranted.

11 **A. Plaintiffs’ failure to adequately address the partisan findings and**
12 **declarations in ACA 8**

13 As LULAC established, the starting point for determining intent is the text of
14 the challenged act, and ACA 8 includes a series of findings and declarations of the
15 people of the State of California that include numerous expressions of partisan
16 intent. Dkt. 251-1 at 8-9.

17 Neither Tangipa nor Noyes Plaintiffs address these findings. The United
18 States acknowledges the significance of the referendum’s statement of intent, Dkt.
19 264 at 20, but asserts that whether the findings are pretextual must be decided at
20 trial, citing *Harper v. Va. State Bd. of Elections*, 383 U.S. 663 (1966) for the
21 proposition that “[l]egislatures cannot make discriminatory voting policies
22 constitutional simply by declaring that the policies have a legitimate purpose.” Dkt.
23 264 at 20.

24 The United States’ arguments fall flat. Because statutory text is the starting
25 point in assessing decisionmaker intent, *Lamie v. United States Trustee*, 540 U.S.
26 526, 539 (2004), it is primary objective evidence in assessing intent, not a secondary
27 consideration, as the United States suggests. And the Supreme Court has repeatedly
28 noted that pretext is not something easily established, particularly given the

1 presumption of good faith that applies to redistricting challenges. *Abbott v. Perez*,
2 585 U.S. 579, 605 (2018) (finding the lower court erred in not applying the
3 presumption when it found intentional discrimination as to a Texas redistricting).
4 Last week, the Supreme Court applied the presumption of good faith again in *Allen*:
5 “As to intentional vote dilution, the District Court did not heed the presumption of
6 legislative good faith, because it interpreted the State’s legal disagreement with the
7 court’s earlier remedial order as proof of discriminatory animus.” *Allen*, 2026 WL
8 1552756, at *1 (citing *Alexander*, 602 U.S. at 10). And as discussed above, *Miller*
9 makes clear that the presumption applies at the 12(b)(6) stage. *Miller*, 515 U.S. at
10 916-17.

11 Here, the partisan intent appears in black and white in ACA 8’s findings. That
12 is stronger evidence of motivation than that presented in *Abbott* and *Allen* and is a
13 key distinction from *Harper*, where the state’s purported justification (the need to
14 collect revenue) was argued only *post hoc* in court, not on the face of the challenged
15 act. As to Plaintiffs’ allegations of racial intent, they are not sufficient here where
16 the Plaintiffs have not disentangled race from partisanship. Thus, the United States’
17 response comes up short.

18 Plaintiffs’ oppositions confirm they cannot overcome this fundamental
19 problem regarding the text of ACA 8 and its numerous explicit references to
20 partisanship, and this in itself is sufficient to grant the motion to dismiss.

21 **B. Plaintiffs do not adequately address voter intent**

22 As discussed in LULAC’s opening brief, the Consolidated Complaint is silent
23 as to voter intent. Dkt. 251-1 at 9. This is a fundamental flaw: because ACA 8 was
24 enacted through a voter referendum, the collective intent of the voters is an essential
25 part of the constitutional inquiry, and collective intent must be assessed through
26 objective criteria as outlined in *Washington v. Seattle School District No. 1*, 458 U.S.
27 457, 471-74 (1982), and *City of Los Angeles v. County of Kern*, 462 F. Supp. 2d
28

1 1105, 1114 (C.D. Cal. 2006). The text of ACA 8 and the Official Voter Guide, which
2 includes the Title and Official Summary of Proposition 50 and Proponent/Opponent
3 statements, were provided to voters and demonstrate a partisan purpose. Dkt. 251-1
4 at 10-11.

5 The United States and Tangipa Plaintiffs explicitly acknowledge that the
6 Consolidated Complaint intentionally omitted allegations of voter intent and
7 incorrectly contend that such allegations are irrelevant. Dkt. 263 at 28; Dkt. 264 at
8 11. While the Noyes Plaintiffs state that “[i]t is not to say that evidence of voter
9 intent could *never* be relevant to constitutional questions,” they contend “voter intent
10 cannot be the *determinative* issue.” Dkt. 262 at 29.

11 Plaintiffs’ arguments as to voter intent are wrong. Tangipa and the United
12 States assert that the lack of discriminatory voter intent cannot cure discriminatory
13 legislative action by “laundering” it through referendum, Dkt. 263 at 2; Dkt. 264 at
14 10, while the Noyes Plaintiffs cite various blatantly discriminatory laws, such as
15 literacy tests, as examples of laws that would be inappropriate to cure through
16 referendum. Dkt. 262 at 28. Noyes and Tangipa Plaintiffs attempt to distinguish the
17 authorities cited by LULAC regarding the assessment of voter intent in a
18 discrimination challenge, because those cases did not turn on voter intent and were
19 citizen-initiated, not legislative-initiated, referenda. Dkt. 263 at 14; Dkt. 262 at 29.
20 Relatedly, each Plaintiff asserts there is no practical way to assess voter intent. Dkt.
21 264 at 11; Dkt. 263 at 13; Dkt. 262 at 28. LULAC takes each argument in turn.

22 Regarding the “laundering” argument, it is certainly the case that an illegal or
23 facially discriminatory legislative act cannot be saved by voter referendum. But the
24 cases Plaintiffs cite, Dkt. 262 at 26-28; Dkt. 263 at 15-16; Dkt. 264 at 10, are no help
25 to them here, since they do not involve intent, express intent on the face of the
26
27
28

1 referendum, or do not involve a referendum.¹ Conceivably, a plaintiff could
2 overcome the presumption of legislative good faith and show that a legislative body
3 *chose* to submit an issue to voters to avoid a discriminatory intent challenge, either
4 knowing that voters would approve the referendum for their own discriminatory
5 reasons or because they would be misled. But that theory is not plausible here
6 because California law *required* the Legislature to submit any proposed mid-decade
7 redistricting to the voters. Cal. Const. art. XVIII, XXI.

8 *Seattle* and *Kern* address the relevance of voter intent and the workability of
9 assessing it. In *Seattle*, the Court looked to the text, the proponents’ statements, and
10 the initiative’s effects as objective factors in determining intent. In analyzing
11 whether the initiative was enacted for discriminatory reasons, the Supreme Court
12 then focused on what the *electorate* knew:

13 [A]s we have noted, Initiative 350 in fact allows school districts to bus their
14 students “for most, if not all,” of the nonintegrative purposes required by their
15 educational policies. The Washington electorate surely was aware of this, for
16 it was “assured” by CiVIC officials that ““99% of the school districts in the
17 state””—those that lacked mandatory integration programs—“would not be
18 affected by the passage of 350.” It is beyond reasonable dispute, then, that the
19 initiative was enacted “because of, not merely in spite of, its adverse effects
20 upon” busing for integration.

20 ¹ In *Lucas v. Forty-Fourth Gen. Assembly*, 377 U.S. 713, 734-35 (1964), intent was not at issue
21 because the underlying problem was that the referendum’s voting districts violated the one-person,
22 one-vote standard, which is a technical standard in which intent was irrelevant. In *Romer v. Evans*,
23 517 U.S. 620, 624 (1996) and *Perry v. Brown*, 671 F.3d 1052, 1063-64 (9th Cir. 2012), both of which
24 involved challenges to laws that limited the rights of gay people, the alleged discrimination was on
25 the face of the referendum. *Hunter v. Erickson*, 393 U.S. 385, 389-92 (1969), involved a challenge to
26 a city charter amendment passed by voter referendum involving housing, under which any Akron city
27 ordinance addressing housing discrimination had to be enacted by voter referendum, whereas other
28 ordinances did not; again, there was no need to assess voters’ discriminatory intent because the
ordinance created a discriminatory structure through its practical “impact.” *Hunter v. Underwood*,
471 U.S. 222, 223-24 (1985), did not involve a voter referendum, but a challenge to a felony
disenfranchisement statute that was enacted at Alabama’s Constitutional Convention of 1901, of
which the trial court found a “major purpose” was to disenfranchise Black people; this case is of no
import here given that it does not involve a voter referendum and it was part of a larger process that
had an indisputably racial purpose.

1 *Seattle*, 458 U.S. at 471 (quoting *Personnel Administrator of Massachusetts v.*
2 *Feeney*, 442 U.S. 256, 279 (1979)) (cleaned up). Citing *Seattle*, the court in *Kern*
3 stated that it “may look to the nature of the initiative campaign to determine the
4 intent of the drafters and voters in enacting it,” explicitly identifying voter intent as
5 relevant. 462 F. Supp. 2d at 1114. More generally, courts routinely assess the
6 collective intent of a legislative body, even in the absence of express statements by
7 its members. *See Village of Arlington Heights v. Metropolitan Housing Development*
8 *Corp.*, 429 U.S. 252, 268 (1977) (contemporaneous legislative statements are among
9 the relevant sources of intent but not required).

10 The Tangipa Plaintiffs also assert that voter intent should not be assessed
11 because voters are not drafters but ratifiers, and that only the mapmaker’s intent, not
12 that of the voters (or legislators), is relevant. Dkt. 263 at 14. The United States
13 similarly argues that because the mapmaker designs the plan, voter intent is
14 irrelevant. Dkt. 264 at 10. But these arguments are refuted by the very decisions the
15 United States and Tangipa Plaintiffs rely upon. Contrary to Plaintiffs’ suggestions,
16 the Supreme Court has held in multiple redistricting cases that, when the legislature
17 adopts a plan, the legislature’s intent matters, and the mapmaker’s statements and
18 actions are only relevant in assessing legislative intent. For example, in *Cooper*
19 (cited at Dkt. 264 at 6-7; Dkt. 263 at 13), the Court emphasized the legislature’s
20 motivation: “[T]he plaintiff must prove that ‘race was the predominant factor
21 motivating the legislature’s decision to place a significant number of voters within
22 or without a particular district.’” *Cooper*, 581 U.S. at 291 (quoting *Miller*, 515 U.S.
23 at 916). The *Cooper* Court noted evidence from the mapmaker was relevant, but only
24 to the extent it determined legislative intent, with the Court finding that the
25 mapmaker followed the instructions from the legislative committee chairs
26 spearheading the redistricting “to the letter.” *Id.* at 299-300. Similarly, in *Alexander*,
27 the Court’s opening paragraph identifies the legislature, not the mapmaker, as having
28

1 the constitutional responsibility for map drawing: “The Constitution entrusts state
2 legislatures with the primary responsibility for drawing congressional districts, and
3 redistricting is an inescapably political enterprise.” 602 U.S. at 6. The *Alexander*
4 Court discussed the mapmaker’s actions only in the context of determining
5 legislative intent: the mapmaker drew a map “that reflected the legislature’s
6 priorities” and achieved “the legislature’s partisan objectives.” *Id.* at 14. The
7 Plaintiffs’ asserted designer/ratifier distinction fails when scrutinized.

8 Rather, the throughline of these decisions is that the relevant intent belongs to
9 the body that adopts the map—those whose votes give it legal effect—not the
10 individual who drafts it. Of course, this case is different in that two groups needed
11 to vote on the Proposition 50 map for it to take effect: the legislators and the voters.
12 Thus, the intent of both voters and legislators matters.

13 And, as outlined in the LULAC initial brief, Dkt. 251-1 at 9-11, the text of
14 ACA 8, the Title and Official Summary of Proposition 50, and the
15 Proponent/Opponent Statements within the Voter Guide—the information used to
16 assess voter intent—show that Proposition 50 was driven by partisan intent.
17 Plaintiffs do not seriously contest what these documents convey. The Tangipa
18 Plaintiffs note only that ACA 8 states that it will not “erod[e] fair representation for
19 all communities” and that the section of the Voter Guide covering the “Argument
20 Against Proposition 50” states that the map would “divide our neighborhoods and
21 weaken the voice of communities of color.” Dkt. 263 at 27. These examples do not
22 reflect a racial intent on behalf of decisionmakers, and even if they did, they pale in
23 comparison to the explicit repeated references to partisanship.

24 **C. Plaintiffs’ failure to adequately address their contemporaneous**
25 **statements that Proposition 50 was motivated by partisan intent**

26 As detailed in LULAC’s opening brief, Dkt. 251-1 at 11-13, when the
27 Assembly was debating Proposition 50, Plaintiff Tangipa delivered a floor statement
28 criticizing its partisan motivation. He did not mention race. Because the transcript is

1 attached to the Consolidated Complaint, it is part of the pleading for all purposes
2 under Rule 10(c) of the Federal Rules of Civil Procedure. Accordingly, the lead
3 Plaintiff’s own contemporaneous characterization of the measure as partisan is a
4 well-pleaded fact to be accepted as true, and one that Plaintiffs cannot now contradict
5 to manufacture a racial-predominance inference.

6 Tangipa Plaintiffs offer several responses. Citing *AT&T v. Compagnie*
7 *Bruxelles Lambert*, 94 F.3d 586 (9th Cir. 1996), they assert that “where Defendants
8 rely on exhibit language that they contend contradicts the Complaint, the Court must
9 still draw all reasonable inferences from documentary evidence in Plaintiffs’ favor,
10 including inferences about the meaning of that language.” Dkt. 263 at 11. Second,
11 they claim that Tangipa was only “criticizing the majority party, not making a
12 deliberate factual concession about map-drawing methodology.” Dkt. 263 at 29.
13 Third, citing three cases, they contend that “an exhibit containing a legislative debate
14 transcript does not transform every characterization within it into a binding judicial
15 admission.” *Id.* Fourth, they note that Tangipa made his statement two months before
16 “Mitchell publicly disclosed his racial methodology for the first time.” *Id.*

17 These responses are unavailing. First, *AT&T* does not stand for the proposition
18 that Tangipa claims. *AT&T* involved conflicting evidence on a personal-jurisdiction
19 motion, where the court drew inferences in the plaintiff’s favor between competing
20 submissions; it did not hold that a court must adopt an inference that contradicts an
21 admission the opposing party itself attached to the complaint. *Id.* at 588-89. Second,
22 Tangipa’s concession that Democrats admitted the map was motivated by partisan
23 intent is confirmation of the lead Plaintiff’s partisan intent, not something to
24 overlook. Moreover, the statement contains Tangipa’s own view that there was a
25 partisan motivation. Dkt. 240-6 at 99-101 (referring to “Trump derangement
26 syndrome in this party”). The distinction made by Tangipa Plaintiffs, criticizing the
27 majority rather than conceding partisan map-drawing, is beside the point, because
28

1 the content of Tangipa’s criticism was that the map was partisan and did not mention
2 race. Third, the three cases cited by Tangipa Plaintiffs do not involve situations
3 where the plaintiff’s own statements were being used against them, but rather
4 statements by the opposing party—either the defendant or an employee of the
5 defendant. *See Wilkins v. Lowe*, 2020 WL 3065119, at *5 (C.D. Cal. Apr. 21, 2020)
6 (statement was defendant’s characterization of a statement by plaintiff); *Harrison v.*
7 *Institutional Gang of Investigations*, 2009 WL 1277749, at *2 (N.D. Cal. May 6,
8 2009) (statements were those of defendants’ employees); and *Gant v. Wallingford*
9 *Bd. of Educ.*, 69 F.3d 669, 674 (2d Cir. 1995) (statements were those of the
10 defendant’s school superintendent). Fourth, when Plaintiff Tangipa made the floor
11 statements, his not knowing what Mitchell would say two months later is irrelevant:
12 the floor statement is objective contemporaneous evidence of the enactment’s
13 partisan character, and Plaintiff Tangipa’s lack of awareness suggests that legislators
14 acted on the partisan record before them, not on Mitchell’s later-disclosed
15 statements.

16 For reasons discussed in the opening brief, this admission fatally undermines
17 Plaintiffs’ claims.

18 **D. Plaintiffs’ failure to adequately address other admissions in the**
19 **Consolidated Complaint of partisanship**

20 As noted in the opening brief, the Consolidated Complaint contains additional
21 admissions. Dkt. 251-1 at 13-14. For example, Plaintiffs allege that California voters
22 vote on partisan, not racial, lines. Dkt. 240 at ¶¶ 49-51. Relatedly, the United States
23 and the Noyes Plaintiffs allege that the Proposition 50 plan will likely reduce the
24 number of Republicans from nine to four, thereby admitting a partisan effect. Dkt.
25 240 at ¶ 93. These admissions are fatal because they support the obvious alternative
26 explanation that partisanship, not race, drove the adoption of Proposition 50.

27 The United States and Tangipa Plaintiffs argue that the import of the
28 Consolidated Complaint’s allegations that voters vote along partisan, not racial, lines

1 is limited to rebutting the argument that majority-Hispanic districts were necessary
2 to further the compelling interest of Section 2 of the Voting Rights Act—the strict
3 scrutiny second step of the racial gerrymandering framework. Dkt. 264 at 21-22. But
4 Plaintiffs cannot cabin the legal significance of their admission. Moreover, before
5 Plaintiffs reach the second step, their allegations must be sufficiently plausible to
6 establish that race was the driving factor behind the plan's adoption. In fact, the
7 Tangipa Plaintiffs' and United States' admissions prevent Plaintiffs from reaching
8 the second step because they show that partisan affiliation, not race, determines how
9 people vote and that the plan had a partisan effect. This admitted partisan effect,
10 combined with all the undisputed statements of partisan intent discussed above,
11 undermines any plausible argument that something other than partisanship was the
12 driving factor.

13 The Tangipa Plaintiffs make a second argument, shared by the Noyes
14 Plaintiffs: it does not matter whether the plan was motivated by partisan purpose,
15 contending it does not “preclude” finding that race predominated. Dkt. 263 at 29-30;
16 Dkt. 262 at 22, 23. Again, Plaintiffs misunderstand the case law. As discussed above,
17 the Supreme Court's jurisprudence demonstrates that the Court presumes that when
18 race and partisanship are both present, partisanship is presumed to be the dominant
19 motivation. Thus, Plaintiffs must do more than claim that race was used as a means
20 to a partisan end. Moreover, the Consolidated Complaint undermines Plaintiffs'
21 theory that race was used as a tool to achieve a partisan effect because Plaintiffs
22 allege that partisanship, not race, determines how voters vote; thus, partisanship
23 itself does the work to create a partisan effect, not race. Dkt. 240 at ¶¶ 49-51, 93.

24 * * *

25 Plaintiffs' failure to rebut these four fundamental flaws is fatal to their case
26 because it prevents them from plausibly alleging that race, not partisanship, drove
27 the decision of voters and legislators to enact the Proposition 50 map.
28

1 **III. Plaintiffs’ Affirmative Allegations Fail to Plausibly Allege That Race, Not**
2 **Partisanship, Drove the Proposition 50 Map**

3 The fundamental flaws identified above are sufficient to demonstrate that
4 Plaintiffs have not plausibly alleged that race, rather than partisanship, drove the
5 Proposition 50 Map and are sufficient grounds for granting the motion to dismiss.
6 This failure is confirmed by the affirmative allegations and arguments made by
7 Plaintiffs in their opposition briefs.

8 **A. Legislator statements**

9 Plaintiffs selectively cite press and hearing statements of legislators
10 mentioning race with respect to Proposition 50. But the statements (attached to the
11 Consolidated Complaint) are part of larger statements from those legislators
12 indicating that Proposition 50 was a response to improper partisan efforts by
13 President Trump and out-of-state Republicans to gerrymander:

14 1. *Senate President pro Tempore Mike McGuire* (referenced by Plaintiffs at
15 Dkt. 240 at ¶ 84; Dkt. 262 at 21; Dkt. 263 at 27; Dkt. 264 at 17; Dkt. 240-9 at 2):
16 Senator McGuire’s attached press release contains numerous statements regarding
17 partisan intent. The first paragraph states that Democrats are “fighting back against
18 reckless attacks by Trump and Republicans.” Dkt. 240-9 at 1. The first bullet point
19 explicitly identifies Proposition 50 as a response to partisan gerrymandering: “The
20 legislation includes a trigger to ensure that maps will take effect only if other states
21 effectuate partisan gerrymandering.” Dkt. 240-9 at 2.

22 2. *Speaker of the Assembly Robert Rivas* (referenced by Plaintiffs at Dkt. 240
23 at ¶ 85; Dkt. 263 at 27; Dkt. 264 at 17; Dkt. 240-10 at 1): The subtitle of the attached
24 press release makes clear that California’s effort is a partisan response: “As Trump
25 and Republicans rig the vote in Texas and other states, California lawmakers are
26 fighting back.” Dkt. 240-10 at 1. The second bullet notes that the maps will go into
27 effect “only if other states effectuate partisan gerrymanders.” Dkt. 240-10 at 1.

28 3. *Assemblymember Isaac Bryan* (referenced by Plaintiffs at Dkt. 240 at ¶ 79;

1 Dkt. 262 at 20; Dkt. 264 at 17–18; Dkt. 240-5 at 6; Dkt. 240-6 at 49).
2 Assemblymember Bryan’s attached statement described the Proposition 50 map as
3 a response to partisan gerrymandering: “These maps will be used through the 2030
4 congressional term only and—only if Texas and other states enact their partisan
5 gerrymandering, their power grab of their own congressional districts at the behest
6 of the President.” Dkt. 240-5 at 7.

7 4. *Assemblymember Mark Gonzalez* (referenced by Plaintiffs at Dkt. 240 at ¶
8 80; Dkt. 262 at 20; Dkt. 264 at 17; Dkt. 240-6 at 40): Assemblymember Gonzalez’s
9 attached statements described the legislation as a partisan response to election
10 rigging. *See* Dkt. 240-6 at 39 (“If Texas wants to carve up districts to keep their
11 wannabe dictator in power, we will not bow”) and Dkt. 240-6 at 177 (“Reporters
12 aren’t grilling Republicans in Texas about who’s drawing their maps, even though
13 those maps are blatant gerrymandering designed to silence voters and lock in power
14 . . . , Republicans in Texas, Florida and across the country are actively rigging
15 districts to silence voters and protect Donald Trump, your hero.”).

16 5. *Assemblymember Mark Gibson* (referenced by Plaintiffs at Dkt. 240 at ¶
17 81; Dkt. 262 at 18; Dkt. 264 at 17; Dkt. 240-6 at 53): Assemblymember Gibson’s
18 attached statement identifies that Proposition 50 has a partisan purpose of standing
19 in the way of President Trump and his power. Dkt. 240-6 at 53.

20 6. *Senator Sabrina Cervantes* (referenced by Plaintiffs at Dkt. 240 at ¶ 82;
21 Dkt. 240-7 at 75): Senator Cervantes’ attached statement describes the partisan
22 context: “What Trump knows is that the only path for Republicans to hold onto the
23 House in the midterms is to change the rules in the middle of the game. That is why
24 in Texas and in other red states, Republican legislators are preparing to redraw their
25 congressional map so that Republican politicians get to choose their voters instead
26 of letting voters choose their representative.” Dkt. 240-7 at 75.

27 7. *Senator Lola Smallwood-Cuevas* (referenced by Plaintiffs at Dkt. 240 at ¶
28

1 83; Dkt. 262 at 20–21; Dkt. 264 at 17; Dkt. 240-8 at 149–50): Senator Smallwood-
2 Cuevas’ attached statement says that ACA 8 was a response to partisan efforts:
3 “Californians, we understand that we cannot sit back while these extremists tilt the
4 balance of power under this hand of Donald Trump and unchecked control of
5 Congress. We cannot let this happen. And ACA 8 provides a safeguard. It states that
6 if Texas gerrymanders their maps, California will temporarily adjust ours to level
7 the playing field.” Dkt. 240-8 at 150.

8 8. *Senator Aisha Wahab* (referenced by Plaintiffs at Dkt. 240 at ¶ 86; Dkt.
9 240-8 at 172). Senator Wahab’s attached statement described events in partisan
10 terms: “And I heard multiple times today a number of things - that you know it’s
11 wrong, what’s being done; and there’s zero transparency; and it’s a power grab. And
12 I call that into question. So when President Trump calls for Texas to do a partisan
13 mid-decade redraw, which handed themselves plus five GOP seats behind closed
14 doors, is that okay?” Dkt. 240-8 at 172.

15 These statements reveal that while these legislators referenced race,
16 partisanship was front and center. As *Miller* explains, legislatures will almost always
17 be aware of race. 515 U.S. at 916. But awareness does not establish predominance—
18 the question is whether the legislature and the voters acted because of race, not
19 whether individual legislators mentioned race. Here, the full statements of several
20 identified legislators, including the leaders in both houses, stated that the
21 redistricting would not move forward unless Texas or another state engaged in
22 partisan gerrymandering. That demonstrates that partisanship, not race, was their
23 driving motivation: a partisan counter to partisan redistricting in other states.
24 Plaintiffs’ citation of these select statements does not come close to plausibly
25 disentangling race from politics.

26 **B. Statements of Paul Mitchell**

27 Plaintiffs’ Consolidated Complaint and oppositions to LULAC’s Motion to
28

1 Dismiss heavily rely on statements of mapmaker Paul Mitchell. Drawing largely
2 from a transcript of statements Mitchell made in a discussion with HOPE, Dkt. 240-
3 2, Plaintiffs focus on Mitchell’s alleged statements that the “number one thing that
4 [he] first started thinking about” was restoring a Hispanic majority district in Los
5 Angeles and that he thought the map would be “great” for the Latino community
6 because it maintained the number of Hispanic majority districts and bolstered certain
7 Latino districts, particularly in the Central Valley. Dkt. 240 at ¶ 63-77; Dkt. 262 at
8 1-2; Dkt. 263 at 4-6; Dkt. 264 at 12-16. The only Central Valley district Plaintiffs
9 mention is District 13, which the Consolidated Complaint identifies as “an Exemplar
10 of Racial Engineering,” whose boundaries “were drawn predominantly to improve
11 Hispanic performance in the district.” Dkt. 240 at 30 and ¶ 120; *see also* Dkt. 262 at
12 23; Dkt. 263 at 15; Dkt. 264 at 13-14.

13 These allegations do not set forth plausible allegations of racial predominance.
14 First, as discussed *supra* at II.B, Mitchell’s statements and actions are only relevant
15 to the extent they reflect on the intent of the enacting bodies (the Legislature and the
16 voters). Whether he personally had a predominant racial intent is irrelevant.

17 Second, Mitchell’s statements during the HOPE presentation demonstrate he
18 understood his assignment was to create a plan that responded to the Texas partisan
19 gerrymander:

20 [A] lot changed after Texas did what they did to, you know, redo their maps
21 responding to President Trump. And the idea of this as being a counterbalance
22 to what Texas was doing became a core kind of idea of this project. . . So even
23 before I started looking at potential maps, that was what I was thinking
24 about. . .

25 I did have some elected officials call me and say, well, if Texas is going to
26 throw away the VRA, we should just throw away the VRA. You should just
27 draw anything you can.

28 Dkt. 240-2 at 21-22.

We kept about 80 percent of [the Commission map] the same, but in certain
areas we made small, modest changes in order to create a push back to what

1 Texas was doing, an opportunity for Democrats to pick up five seats, and to
2 counterbalance the five Republican seats in Texas.

3 Dkt. 240-2 at 26. Mitchell’s own words, in a document attached to the
4 Consolidated Complaint, directly contradict Plaintiffs’ claim: he understood his
5 assignment, above all else, was to draw a map that responded to Texas and would
6 result in the election of five more Democrats. Other objectives, including race, were
7 subordinate. And this partisan objective was, by Mitchell’s own account, antecedent
8 to any district-specific thinking.

9 Third, the partisan priority Mitchell described is consistent with the
10 legislators’ statements about partisan purpose, as well as the plan’s effect of creating
11 a net of five additional Democratic districts. Moreover, District 13 is not an
12 “exemplar” of racial redistricting. Although the Complaint alleges its boundaries
13 “were drawn predominantly to improve Hispanic performance,” Dkt. 240 at ¶ 120,
14 the Hispanic share of the district’s population in fact *decreased*—as LULAC showed
15 in its opening brief, Dkt. 251-1 at 18-19, and Plaintiffs ignore.

16 Far from establishing racial predominance, Plaintiffs fail to show that
17 Mitchell’s statements plausibly indicate he was given a racial rather than a partisan
18 objective.

19 **C. Racial targeting allegations**

20 Plaintiffs claim that the Proposition 50 plan has a racial target that
21 demonstrates racial predominance with respect to all sixteen majority-Hispanic
22 districts. They allege that 14 of the 16 majority-Hispanic districts have HCVAP
23 populations within a narrow band and that Mitchell adopted this narrow band from
24 a 2021 letter that HOPE submitted when the Commission redistricted. Dkt. 240 at
25 ¶¶ 64, 88-92; Dkt. 240-3; Dkt. 262 at 21-22; Dkt. 263 at 25; Dkt. 264 at 13-14.

26 Plaintiffs’ allegations fall short of plausibly alleging racial predominance
27 under the governing standards. The Supreme Court has found that an express racial
28

1 target, with other evidence, can support a finding of racial predominance. *Cooper*,
2 581 U.S. at 300-01. But the case law also makes clear that the claim of racial
3 predominance must be established in the drawing of a specific district, rather than in
4 challenging any district that fell within the target. *Ala. Legis. Black Caucus v.*
5 *Alabama* (“ALBC”), 575 U.S. 254, 259-60, 274-75 (2015) (Alabama’s stated goal of
6 not reducing Black population percentage in majority-Black districts could, with
7 other evidence, support a racial gerrymandering claim in particular districts);
8 *Cooper*, 581 U.S. at 300-01 (“an announced racial target that subordinated other
9 districting criteria and produced boundaries amplifying divisions between blacks
10 and whites” supported finding of race predominance); *Bethune-Hill v. Va. State*
11 *Board of Elections*, 580 U.S. 178, 181, 192-93 (2017) (finding that express racial
12 target of 55% BVAP could support racial predominance in particular districts but
13 declining to hold that the target, on its own, constituted racial predominance).

14 Indeed, the Supreme Court has been reluctant to infer a racial target in the
15 manner Plaintiffs suggest this Court do here. In *Alexander*, the district court had
16 “inferred a racial motive from the fact that District 1’s BVAP stayed around 17%,”
17 despite differences in various plans considered for District 1. *Alexander*, 602 U.S. at
18 20. The Supreme Court found that this was reversible error, particularly in light of
19 partisan motivation and the presumption of good faith. *Id.* The Court also expressed
20 concern that, where race and partisanship correlate, a plaintiff could seek to reverse-
21 engineer “partisan data into racial data and argue that the State impermissibly set a
22 particular BVAP target.” *Id.* at 20-21.

23 Plaintiffs’ arguments about racial targets are akin to *Alexander* and unlike
24 *ALBC*, *Bethune-Hill*, and *Cooper*. Like *Alexander*, and unlike the other cases, this
25 case involves a partisanship defense. Moreover, the target Plaintiffs allege is inferred
26 (as in *Alexander*) rather than expressed; there are no allegations that either the
27 Legislature or Mitchell identified a target percentage for majority-Hispanic districts.
28

1 And the supposed source for the percentage target, the HOPE letter, does not hold
2 up as the basis for a statewide target. The HOPE letter does not propose a statewide
3 target, but an optimal range for districts in Los Angeles County: “If these districts
4 were between 52% and 54% Latino CVAP, for instance, they would still be very
5 likely to elect Latino candidates of choice.” Dkt. 240-3 at 5. Moreover, the
6 Consolidated Complaint provides three different target ranges. Dkt. 240 at ¶¶ 64, 89,
7 92. These flaws reflect Plaintiffs’ reverse-engineering, not racial targeting.² None of
8 this plausibly establishes racial predominance.

9 **D. Illustrative Plan**

10 Noyes Plaintiffs reference reports from John Morgan stating that he had
11 prepared an Illustrative Map including five additional Democratic districts without
12 considering race. Dkt. 240 at ¶ 135; Dkt. 240-11 at 224-25, 257-58. His plan includes
13 11 majority-Hispanic districts. Dkt. 240-11 at 255-56. Citing *Alexander* and *Callais*,
14 Noyes Plaintiffs assert that “this Illustrative Map means Noyes Plaintiffs carried
15 their pleading burden of disentangling race from politics.” Dkt. 262 at 9.

16 Noyes Plaintiffs overstate the significance of an illustrative plan under
17 *Alexander* and *Callais* and ignore what *Callais* and *Allen* now require. *Alexander*
18 explained the difficulty plaintiffs face without an alternative map, but it did not state
19 that plaintiffs automatically prevail with one. “Without an alternative map, it is
20 difficult for plaintiffs to defeat our starting presumption that the legislature acted in
21 good faith.” *Alexander*, 602 U.S. at 10; *see also id.* at 34-35 (noting that only an
22 alternative map “can ‘carry the day’” where there is “‘meager direct evidence of a
23 racial gerrymander’”) (quoting *Cooper*, 581 U.S. at 322). Similarly, *Callais* states
24

25 ² The United States contends that the continuity between the Commission map and the Proposition
26 50 map—the same number of majority-Hispanic districts—is itself evidence of racial predominance.
27 Dkt. 264 at 19-20. But the logical conclusion of this argument is perverse, suggesting a plan is
28 presumptively race-based unless it changes the number of majority-minority districts. Inferring racial
motive from the stability of the racial composition across maps that achieve the partisan goal is
precisely the reverse-engineering that *Alexander* forecloses. 602 U.S. at 20-21.

1 that an alternative map “may” satisfy the disentanglement burden, not that it
2 necessarily does. *Callais*, 146 S. Ct. at 1157.

3 Importantly, the Noyes Plaintiffs fail to mention that *Callais* (and now *Allen*)
4 require that an illustrative map perform as well on every measure deemed a criterion
5 by the legislature under the challenged plan. *Callais*, 146 S. Ct. at 1159; *Allen*, 2026
6 WL 1552756 at *1. And the Illustrative Map does not perform as well for Democrats
7 as the Proposition 50 Map, as Morgan’s own analysis reflects. Consider District 13:
8 in 2024, the Democratic and Republican candidates each received 50 percent of the
9 vote, with the Democrat winning. In the Presidential election, Republicans received
10 51.1% of the vote. The Proposition 50 Map boosts Democratic performance by 3
11 percentage points. However, in the Illustrative Map, Morgan reverted District 13 to
12 its state in the Commission Map and made it a toss-up district at best for Democrats,
13 rather than a district a Democrat is likely to win. Dkt. 240-11 at 318. This fails the
14 *Callais/Allen* test.

15 More generally, neither Morgan nor Noyes Plaintiffs allege that the
16 Illustrative Map performs as well on every criterion set forth by the legislature in the
17 Proposition 50 map as *Callais/Allen* requires.

18 Even if Morgan had presented a map that did as well on every partisan and
19 other metric that was considered in the Proposition 50 map, an illustrative map
20 showing the political goals were achievable without race shows only that race was
21 not necessary to the partisan result; it does not show that race motivated or
22 predominated the plan. Here, the record includes the partisanship findings in ACA
23 8 and the Voter Guide statements. Against that, a map demonstrating that the
24 partisan goal could have been met differently does not, on its own, disentangle race
25 from politics. Moreover, the Illustrative Map here exemplifies a flaw in the principle
26 underlying the Noyes Plaintiffs’ argument. The Illustrative Map reduced the number
27 of majority-Hispanic districts from 16 to 11, compared with the Commission and
28

1 Proposition 50 Maps. It certainly cannot be the case that if the Proposition 50 Plan
2 had reduced the number of majority-Hispanic districts from 16 to between 12 and
3 15, the Noyes Plaintiffs would have established disentanglement of race from
4 politics. A standard under which the only lawful number of majority-minority
5 districts is the partisan minimum is not a test for racial predominance; no case holds
6 as much.

7 **IV. The United States and Tangipa Plaintiffs Have Not Plausibly Alleged a**
8 **Racial Gerrymandering Claim under the Equal Protection Clause**

9 As detailed by LULAC in its opening brief, Dkt. 251-1 at 16-17, Plaintiffs’
10 allegations must be sufficient to satisfy both the race-and-not-partisanship test
11 outlined in *Alexander* and the traditional *Shaw/Miller* test that race predominated
12 over traditional districting principles. Among other things, the allegations must state
13 a claim as to specific electoral districts, *ALBC*, 575 U.S. at 262-63, and the level of
14 analysis is the district as a whole, not particular district lines, *Bethune-Hill*, 580 U.S.
15 at 192. The United States and Tangipa Plaintiffs fail to satisfy either test, let alone
16 both.

17 **A. Plaintiffs have not plausibly alleged that race, and not partisanship,**
18 **drove Proposition 50**

19 Given Plaintiffs’ acknowledgment that there was partisan intent and the fact
20 that this intent appears throughout the record, *see supra* at II, Plaintiffs cannot satisfy
21 their substantial burden to show that race was the driving factor behind Proposition
22 50. As discussed in Section I, the recent jurisprudence requires Plaintiffs to
23 disentangle race from partisanship and plausibly allege that race drove the plan. In
24 addition, Plaintiffs must overcome the presumption that decisionmakers acted in
25 good faith.

26 Partisanship supplies the “obvious alternative explanation” here, based on: the
27 partisan findings in ACA 8; the partisan purpose reflected in the Voter Guide;
28 Tangipa’s floor statement; the allegation in the Consolidated Complaint that party,

1 not race, drives voter decisions; and the plan’s addition of five Democratic seats
2 while maintaining the same racial composition. Plaintiffs’ affirmative allegations
3 and arguments do not show otherwise: the legislators uniformly attested to a partisan
4 purpose; Mitchell understood his partisan objective; the racial targeting allegations
5 suffer from inconsistency; and the Illustrative Plan does not meet the *Callais*
6 standard and does not show racial motivation given the overwhelming record of
7 partisan motivation.

8 Contrary to Tangipa Plaintiffs’ contention, the Consolidated Complaint fails
9 to plausibly allege that “race, not politics, was ‘the criterion that . . . could not be
10 compromised.’” Dkt. 263 at 19 (quoting *Shaw v. Hunt*, 517 U.S. 899, 907 (1996)
11 (*Shaw II*)).

12 **B. Plaintiffs have not plausibly alleged that race predominated over**
13 **traditional districting principles**

14 Both Tangipa Plaintiffs and the United States address only briefly whether
15 their allegations are sufficient to satisfy the *Shaw/Miller* test that traditional
16 districting principles be subordinated to race. Tangipa Plaintiffs cite: (1) *Bethune-*
17 *Hill*, arguing that alleged “direct” evidence of racial intent based on statements by
18 Mitchell and those of Democratic leadership provides an exception to the
19 subordination requirement; (2) Consolidated Complaint paragraph 126, which
20 contains a general allegation that race predominated over traditional, race-neutral
21 districting principles; and (3) the example of District 13. Dkt. 263 at 31-32. For its
22 part, the United States does not directly address how the Consolidated Complaint
23 satisfies the *Shaw/Miller* test but claims that predominance is evident through: (1)
24 alleged direct evidence of predominant racial intent based on statements from
25 Mitchell and legislators; and (2) alleged circumstantial movement of individual
26 district boundaries and the alleged statewide targeting to keep Hispanic districts at
27 52-55%. Dkt. 264 at 12-24. The United States does not identify any individual
28 districts where specific traditional districting principles were subordinated to race.

1 Instead, it relies on *ALBC* for the proposition that statewide evidence is “perfectly
2 relevant” to district-specific predominance and that it need only state a claim as to
3 “one or more” districts. Dkt. 264 at 14, 23-24.

4 These arguments fail. As discussed above, the alleged direct evidence
5 regarding Mitchell’s statements and the legislature fails to plausibly show that the
6 predominant motivation behind Proposition 50 was racial rather than partisan. As a
7 result, the “*Bethune-Hill* exception” does not apply, and Plaintiffs must sufficiently
8 allege particular districts where traditional districting principles were subordinated
9 to race, which they have not done. The general allegation in paragraph 126 is not
10 sufficient under the *Twombly/Iqbal* pleading standards: “Threadbare recitals of the
11 elements of a cause of action, supported by mere conclusory statements, do not
12 suffice.” *Iqbal*, 556 U.S. at 678. District 13 cannot support a predominance argument
13 because the Hispanic population as a whole decreased in the district, which is
14 contrary to Plaintiffs’ argument that it was bolstered in violation of the Fourteenth
15 Amendment. With respect to population shifts among districts, aside from District
16 13, the Consolidated Complaint does not identify any specific traditional districting
17 principle that was subordinated to race in any specific district. As to the United
18 States’ argument regarding *ALBC* and statewide evidence, this fails for legal and
19 factual reasons. *ALBC* involved an express, stated racial target, and even there, the
20 Court remanded the case to the district court to determine whether that target and
21 district-specific evidence established claims. *ALBC*, 575 U.S. at 262-64, 274-75. In
22 contrast, as discussed above, the alleged target here is inferred and appears to be
23 reverse-engineered—the precise concern expressed in *Alexander*. As a result, the
24 Consolidated Complaint does not sufficiently allege that race predominated over
25 traditional districting principles.

1 **V. The United States’ Voting Rights Act Claim Fails Because it has not**
2 **Plausibly Alleged the Plan has a Racially Discriminatory Purpose or**
3 **Effect Against a Racial or Ethnic Group**

4 LULAC’s Opening Brief, Dkt. 251-1 at 26-29, demonstrated that the United
5 States failed to plausibly allege intentional vote dilution claims under the Voting
6 Rights Act because the Consolidated Complaint did not plausibly allege that the
7 “State’s districting plan ‘has the purpose *and* effect’ of diluting the minority vote.”
8 *Alexander*, 602 U.S. at 38-39 (quoting *Shaw v. Reno*, 509 U.S. 630, 649 (1993)
9 (“*Shaw*”).

10 In opposition, the United States claims that the requirements of *Alexander* do
11 not apply because its Voting Rights Act Section 2 claim is not a vote dilution claim
12 but rather is based on packing Hispanic voters into the sixteen Hispanic-majority
13 districts. Dkt. 264 at 28. Implicitly conceding that they have not identified a racial
14 or ethnic group that the Proposition 50 plan harms, the United States cites *Shaw* in
15 asserting the injury of intentionally sorting voters by race to benefit Latinos, and that
16 it is enough to show that the Plan benefits a racial or ethnic group. The United States
17 also claims they have sufficiently alleged a discriminatory purpose under the
18 *Arlington Heights* factors, based on the rushed legislative process and statements by
19 legislators and Mitchell. Dkt. 264 at 25-28.

20 All these arguments fail. The United States cannot evade *Alexander*. Under
21 *Alexander*, an intentional discrimination challenge involving a redistricting plan
22 requires that there be a purpose to harm an identified racial or ethnic group: a
23 plaintiff “cannot prevail simply by showing that race played a predominant role in
24 the districting process. Rather, such a plaintiff must show that the State ‘enacted a
25 particular voting scheme as a purposeful device to minimize or cancel out the voting
26 potential of racial or ethnic minorities.’” *Alexander*, 602 U.S. at 38-39 (quoting
27 *Miller*, 515 U.S. at 911). And the plan must have the “‘effect’ of diluting the minority
28 vote,” again reflecting that a racial and ethnic group must be harmed. *Id.* (quoting

1 *Shaw*, 509 U.S. at 649).

2 The United States’ invocation of *Arlington Heights* does not help. *Arlington*
3 *Heights* states that “the impact of the official action,” “whether it ‘bears more heavily
4 on one race than another,’ may provide an important starting point” in determining
5 purpose. *Arlington Heights*, 429 U.S. at 266 (quoting *Washington v. Davis*, 426 U.S.
6 229, 242 (1976)). But the United States does not mention or present the negative
7 impact of the Proposition 50 plan on any race. And the two *Arlington Heights* factors
8 the United States claims the Complaint alleges—the sequence of events leading up
9 to the adoption of Proposition 50 and legislator/mapmaker statements—are instead
10 examples of race entangled with partisanship. Dkt. 264 at 26. For example, the
11 United States cannot plausibly allege that partisan concerns did not dictate the rushed
12 legislative schedule. That does not suffice under *Callais*.

13 The United States’ Voting Rights Act claim should be dismissed for failure to
14 state a claim.

15 **VI. Noyes Plaintiffs’ Claims are not Legally Cognizable, and They Lack**
16 **Standing**

17 Noyes Plaintiffs have tried to evade the standards set forth above for racial
18 gerrymandering claims under the Equal Protection Clause and for intentional
19 discrimination vote dilution claims by framing them differently. As to the intentional
20 discrimination Section 2 claim, they argue it is not a vote dilution claim. Dkt. 262 at
21 26. Regarding their racially gerrymandering claim, they claim that it is brought under
22 the Fifteenth Amendment, not the Equal Protection Clause of the Fourteenth
23 Amendment. Dkt. 262 at 5, 14-16. Claiming to be freed from the standard
24 requirements and declaring that *Callais* “cripples” defendants’ arguments, they
25 assert that “[u]nder the Fifteenth Amendment and Section 2 ... using race to achieve
26 partisan political advantage with racially engineered districts” is illegal. Dkt. 262 at
27 6. From there, they claim that they do not need to show district-based standing
28 because their challenge is to “every district.” Dkt. 262 at 11.

1 Noyes Plaintiffs’ arguments are not supported by any authority. Since their
2 inception, intentional racial discrimination redistricting challenges have been vote
3 dilution challenges, and racial gerrymandering claims have been Fourteenth
4 Amendment claims, not Fifteenth Amendment claims. *Callais* confirms that those
5 principles and the Noyes Plaintiffs’ efforts to circumvent pleading requirements by
6 inventing new causes of action should be rejected. In any event, the Noyes Plaintiffs
7 lack standing because they are limited to challenging districts in which the individual
8 Plaintiffs reside, which are not identified in the Consolidated Complaint.

9 As discussed in LULAC’s opening brief, Dkt. 251-1 at 27-28, the Supreme
10 Court has recognized two types of voting discrimination claims that can be brought
11 under the Fourteenth or Fifteenth Amendments or the Voting Rights Act: vote denial
12 claims, that involve circumstances where a group of voters is denied the right
13 because of their race, and vote dilution cases, where a racial or ethnic group is not
14 denied the right to vote outright, but their vote is diluted in the redistricting process
15 by reducing or nullifying their ability to elect their candidates of choice. Voting
16 discrimination challenges to redistricting plans are vote dilution challenges, not vote
17 denial challenges, because voters are not alleging that they cannot vote but that their
18 votes are diluted.

19 As to racial gerrymandering claims, they are “analytically distinct” from
20 voting discrimination claims and apply “different analys[es].” *Shaw*, 509 U.S. at
21 650, 652; *Alexander*, 602 U.S. at 38. They are based on the Equal Protection Clause
22 and involve the question of whether “a reapportionment plan rationally cannot be
23 understood as anything other than an effort to segregate citizens into separate voting
24 districts on the basis of race without sufficient justification.” *Shaw*, 509 U.S. at 652.

25 In *Callais*, the Court addressed both voting discrimination and racial
26 gerrymandering theories. The case involved a racial gerrymandering challenge to a
27 redistricting plan that Louisiana had adopted as a remedy in a Section 2 vote dilution
28

1 case. It led the Court to analyze the requirements for a Section 2 redistricting
2 challenge: “[W]e must understand exactly what § 2 of the Voting Rights Act
3 demands with respect to the drawing of legislative districts.” *Callais*, 146 S. Ct. at
4 1153. In doing so, the Court discussed the history of vote denial and vote dilution
5 claims and described a vote dilution claim as “a claim that a districting scheme
6 impermissibly lessens the weight of the votes of minority voters.” *Id.* at 1145. The
7 Court later describes the case before it as a “vote dilution case.” *Id.* at 1162. Contrary
8 to authorizing the claim asserted by Noyes Plaintiffs, *Callais* defines voting
9 discrimination challenges to redistricting plans as vote dilution challenges. As to
10 racial gerrymandering, the Court stated that “*the decision before us is based on the*
11 *Fourteenth Amendment,*” specifically its Equal Protection Clause, rather than the
12 Fifteenth Amendment. *Id.* at 1160 n.2. Accordingly, the claims framed by Noyes
13 Plaintiffs are not legally cognizable.

14 In any event, the Noyes Plaintiffs lack standing because standing for
15 gerrymandering and vote dilution claims is district-based, and they have not
16 identified the districts in which they live. *See* Dkt. 251-1 at 22-23. Notably, while
17 the Noyes Plaintiffs’ standing section emphasizes that “[a]ny voter in a state that
18 unconstitutionally uses race to draw a Congressional district map may bring a
19 Fifteenth Amendment challenge to the implementation of the map,” Dkt. 262 at 10,
20 the three cases they cite for this proposition are all Fourteenth Amendment racial
21 gerrymandering cases in which the Court applied district-specific standing. *North*
22 *Carolina v. Covington*, 585 U.S. 969, 976 (2018) (“[P]laintiffs have standing to
23 challenge racial gerrymanders only with respect to those legislative districts in which
24 they reside”); *Shaw*, 509 U.S. at 636; and *Miller*, 515 U.S. at 909. The only Fifteenth
25 Amendment cases Noyes Plaintiffs cite for the proposition that standing is not
26 district-based, Dkt. 262 at 10-11, were vote-denial challenges in which voters could
27 not vote at all and thus are not applicable. *Davis v. Guam*, 932 F.3d 822, 824 (9th
28

1 Cir. 2019) (challenge to “Native Inhabitants of Guam” voter eligibility restriction);
2 *Gomillion v. Lightfoot*, 364 U.S. 339, 340-41 (1960) (challenge by Black voters
3 denied the vote because their residences were fenced out of the city). Thus, the
4 Noyes Plaintiffs have failed to establish standing. Moreover, their claims fail to state
5 a claim on the merits for the reasons discussed above.

6 **CONCLUSION**

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

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 DATED: June 12, 2026

2 /s/ John Freedman

3 **ARNOLD & PORTER KAYE**
4 **SCHOLER LLP**

5 SEAN O. MORRIS (SBN 200368)

6 Sean.Morris@arnoldporter.com

7 777 South Figueroa Street

8 44th Floor

9 Los Angeles, CA 90017

10 T: (213) 243-4000

11 F: (213) 243-4199

12 JOHN A. FREEDMAN

13 John.Freedman@arnoldporter.com

14 601 Massachusetts Ave, NW

15 Washington, DC 20001

16 T: (202) 942-5000

17 F: (202) 942-5999

18 **JUSTICE LEGAL STRATEGIES**
19 **PLLC**

20 JON M. GREENBAUM (SBN 166733)

21 jgreenbaum@justicels.com

22 P.O. Box 27015

23 Washington, DC 20038

24 T: (202) 601-8678

25 *Counsel for Intervenor-Defendant*

26 *League of United Latin American*

27 *Citizens*

Respectfully submitted,

DEMOCRACY DEFENDERS
ACTION

NORMAN L. EISEN

ANDREW WARREN

SOFIA FERNANDEZ GOLD

JACOB KOVACS-GOODMAN

norman@democracydefenders.org

andrew@democracydefenders.org

sofia@democracydefenders.org

jacob@democracydefenders.org

600 Pennsylvania Ave SE, Unit

15180

Washington, DC 20003

T: (202) 594-9958

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 June 12, 2026, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

REPLY BRIEF 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 June 12, 2026, at Washington, D.C.

/s/ John A. Freedman

Signature