

S262530

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

LEGISLATURE OF THE STATE OF CALIFORNIA,

Petitioner,

v.

SHIRLEY N. WEBER, IN HER OFFICIAL CAPACITY AS SECRETARY
OF STATE OF THE STATE OF CALIFORNIA,

Respondent.

**CALIFORNIA CITIZENS REDISTRICTING
COMMISSION'S REPLY IN SUPPORT OF EMERGENCY
MOTION TO CLARIFY AND/OR MODIFY WRIT OF
MANDATE**

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INTRODUCTION

Neither the California Citizens Redistricting Commission (the “Commission”) nor any other party before the Court proposes that the June 7, 2022, primary election be postponed. There is also no dispute that the Court’s writ of mandate in *Legislature v. Padilla* (2020) 9 Cal.5th 867 (“*Padilla*”) ordered the Commission’s deadlines for the publication of preliminary maps and certification of final maps extended, on a day-for-day basis, for any “additional federal delay” in the release of census data past July 31, 2021. Further undisputed is the fact that, due to the Census Bureau’s delay, the Commission did not receive usable census data until August 18, 2021—an 18-day “additional federal delay.” Ineluctably, a faithful interpretation of *Padilla*, as expressed in the Commission’s Emergency Motion to Clarify and/or Modify Writ of Mandate (“Emergency Motion”), would extend the Commission’s deadline for the publication of preliminary maps from November 1, 2021, to November 19, 2021, and the date for certification of final maps from December 15, 2021, to January 3, 2022.

There is, however, a dispute about the standards under which the Court may reform constitutional and legal provisions. In particular, the parties dispute whether the Commission must demonstrate that it is impossible for it to fulfill its constitutional obligations without the above-mentioned 18-day extension and what the Respondent Secretary of State Shirley N. Weber must show in order for the Court to grant her relief from the *Padilla* writ of mandate.

The Secretary’s Opposition to Emergency Motion to Clarify and/or Modify Writ of Mandate (“Opposition”) contends that extending the Commission’s deadlines in conformity with the express text of *Padilla* or those requested in the Commission’s Emergency Motion would threaten the ability of election officials to prepare for the June 7, 2022, primary election.

Here is what we know about the time required: In the past four decades, the window between final redistricted maps and the subsequent primary election was 131 days in 1982, 127 days in 1992, 160 days in 2002, and 296 days in 2012. The Emergency Motion requests clarification that *Padilla* calls for certification of final maps on January 3, 2022 (155 days before the June 7, 2022, primary), which the Emergency Motion asks be further extended for public participation to January 14, 2022 (144 days before the June 2022 primary). In other words, the Secretary proposes a schedule more generous to election officials than they have previously met. In effect, seven months after the census delay was publicly known, the Secretary asks for the first time in an opposition brief that *Padilla* be rewritten to strike the “additional federal delay” relief the Court granted so that final maps would be released at the latest on December 15, 2021—174 days before the June 7 primary. This requested relief from *Padilla* is contrary to the policy judgments of the People—the enactors of the Voters First Acts—and thus contrary to law.

The Secretary’s Opposition is also constructed on a false premise. She argues that the June 7, 2022, primary election date cannot be met unless the election officials can complete the

promulgation of their own maps, allocating precincts to districts, by the March 11, 2022, closing of the nomination period; otherwise, she asserts, prospective candidates will not know in which districts they can run. But a candidate does not need to know what *precinct* he or she will be in, only which *district*, and that information will be precisely shown on the maps the Commission believes it is legally entitled to release in January.

The Commission fully appreciates the importance and complexity of the election officials' responsibilities, but the People have mandated a process governed by specific timelines to provide realistic opportunities for public participation, and the Legislature has codified procedures in accordance with that mandate. In addition, the Legislature has now passed amendments modifying those provisions to meet the challenges of this redistricting cycle.

In short, the Secretary's Opposition is based on a misreading of *Padilla* and of the Court's authority to judicially alter constitutional and statutory law. The Emergency Motion should be granted.

ARGUMENT

Although stemming from understandable concerns, the Secretary of State's Opposition reflects an attempt to judicially impose her preferred timelines for the fulfillment of the regular, statutorily mandated responsibilities of election officials at the expense of the constitutionally prescribed, once-in-a-decade, public-input-dependent duties of the Commission. Substantively, the Secretary's Opposition misreads *Padilla* and misunderstands

this Court’s reformation authority. In so doing, she calls on the Court to disregard the policy judgments of the enactors of the Voters First Acts and invites the Court to exercise powers that are legislative in nature and not for it to wield.

I. THE COMMISSION’S REQUEST THAT THE COURT CLARIFY THAT THE COMMISSION’S DEADLINES ARE EXTENDED BY AN ADDITIONAL 18 DAYS IS SUPPORTED BY A FAITHFUL INTERPRETATION OF *PADILLA*

This Court in *Padilla* laid out a two-prong test for identifying the limited circumstances under which its inherent authority to reform a statute is properly exercised. The Court explained that its reformation power can only be exercised in a situation like the present one when: *first*, “impossibility would have the same effect as invalidity, preventing the statute from being carried out in accordance with its literal terms;” and, *second*, “the court can [reform the statute] consistent with the enactors’ intent.” (9 Cal.5th at pp. 876–877.)¹ In short, the Court’s authority to reform the Commission’s deadlines is properly exercised only if it would be impossible to comply with the original deadlines (impossibility) *and* reformation of those

¹ The Commission’s deadlines are imposed both by statute and the California Constitution. Under the present circumstances, the Court saw no reason to apply different tests for reforming statutorily mandated and constitutionally mandated deadlines. (*Id.* at p. 879 [“Although the August 15 deadline is set by a constitutional amendment passed by the voters, rather than by statute, we see no reason why the same principles would not permit a one-time adjustment of the deadline given the extraordinary circumstances we confront here.”].)

deadlines would be consistent with the intent of the enactors of those deadlines² (remedy conforms to underlying policy intent). These two prongs reflect the Court’s reasonable separation-of-powers concerns with an unelected body interposing its policy judgments for those of the Legislature and the People. (See *id.* at p. 876, citing *Kopp v. Fair Pol. Practices Com.* (1995) 11 Cal.4th 607, 615.)

Having noted that it would be impossible for the Commission to comply with its original July 1, 2021, and August 15, 2021, deadlines for its preliminary and final maps, respectively, the Court concluded that four-month extensions for each deadline, to November 1, 2021, and December 15, 2021, would be consistent with the intent of the enactors and mirror the framework and timing allocations of the original deadlines. (See *id.* at pp. 880–881). The Court determined that the constitutional August 15 deadline for certification of final maps (Cal. Const., art. XXI, § 2, subd. (g)) “was enacted against the backdrop of the federal deadline that requires the Census Bureau to transmit census data to the states by March 31” and “presumed that the voters who approved the initiatives establishing the Commission and the deadline for the approval of the final redistricting maps were aware of this federal deadline, and that the choice of the August 15 date reflects their judgment

² Elsewhere in *Padilla*, the Court described this second prong more practically as “whether [a] deadline can be reformed in a manner that closely approximates the framework designed by its enactors” thus “effectuat[ing] the policy judgment underlying the provision.” (*Id.* at pp. 877–878.)

about the amount of time that is ordinarily appropriate for an effective redistricting process after the necessary federal census data are released.” (*Id.* at p. 879.) In reaching this conclusion, the Court identified the underlying policy judgments to include “ensur[ing] the timely display of draft redistricting maps to the public so that Californians can voice their views about the proposed district boundaries;” “preserving the public’s right to provide input on electoral district maps before those maps are finalized,” and a considered “judgment about the amount of time that is ordinarily appropriate for an effective redistricting process after the necessary federal census data are released.” (*Id.* at pp. 877–879.)

Cognizant, however, “that the dynamic nature of the global pandemic may lead the federal government to further postpone its delivery of the census data,” the Court presciently incorporated into its order an automatic day-for-day additional extension of the Commission’s deadlines for any delay past July 31, 2020. (*Id.* at p. 881 [“[W]hile we today grant a minimum four-month adjustment to the relevant deadlines, we also order that the deadlines be further extended by the length of any additional delay in release of the federal census data beyond four months.”].) Thus, had the Census Bureau released on August 12, 2021, a traditional P.L. 94-171 dataset—instead of a dataset in a “legacy” format—the Commission’s resulting deadlines would have shifted 12 days to November 13, 2021, and December 27, 2021. The problem is that this redistricting cycle is no ordinary redistricting cycle and the “legacy” format dataset released by the Census

Bureau on August 12 was unusable to the Commission and public unless converted to a format equivalent to the P.L. 94-171 dataset, a process which took another six days. (Emergency Motion (“Mot.”) at p. 15, citing Declaration of Karin Mac Donald in Support of Emergency Motion (“Mac Donald Decl.”), ¶ 13].) Adding those six days, the Commission maintains that a faithful interpretation of *Padilla* results in November 19, 2021, and January 2, 2022,³ deadlines.⁴

II. THE SECRETARY OF STATE’S OPPOSITION MISREADS *PADILLA* AND MISUNDERSTANDS THE COURT’S REFORMATION AUTHORITY

In opposition to this reading of *Padilla*, the Secretary of State presents two arguments that reflect a misreading of the Court’s opinion and a misunderstanding of the Court’s reformation authority. *First*, the Secretary argues that the Commission is not entitled to the 18-day extension explicitly

³ As the Commission explained in its Emergency Motion, because January 2, 2002, falls on a Sunday, this deadline is further extended by operation of law to Monday, January 3, 2022. (See Gov. Code, § 8251, subd. (b)(2) [“if the final day of a period within which an act is to be performed is a Saturday, Sunday, or holiday, the period is extended to the next day that is not a Saturday, Sunday, or holiday”].)

⁴ Through its Emergency Motion, the Commission also seeks clarification from the Court that the abbreviated three-day public-notice period for Commission meetings held in the 15 days before the deadline for certifying final maps authorized by Government Code section 8253, subdivision (a)(1), applies to the last 15 days of whatever timeline the Court mandates this redistricting cycle. (See Mot. at pp. 26–27.) Neither the Legislature nor the Secretary oppose this request.

authorized by the Court in *Padilla* because the Commission has not demonstrated it would be impossible to fulfill its duties without the extension. (Opposition (“Opp.”) at pp. 25–30.) *Second*, the Secretary claims the 18-day extension would undermine the ability of election officials to prepare for the June 7, 2022, primary election. (*Id.* at pp. 31–34.) Neither argument withstands scrutiny.

A. UNDER *PADILLA*, THE MERIT OF THE COMMISSION’S REQUEST FOR CLARIFICATION DOES NOT REQUIRE THE COMMISSION TO DEMONSTRATE THAT IT WOULD BE IMPOSSIBLE FOR IT TO FULFILL ITS DUTIES WITHOUT THE 18-DAY EXTENSION

The Secretary’s first argument, pertaining to impossibility, is based on a misreading of *Padilla*. As detailed above, the Court’s impossibility analysis begins and ends with an assessment of whether it would have been impossible for the Commission to comply with its *original* July 1, 2021, and August 15, 2021, deadlines. (9 Cal.5th at p. 875 “[G]iven the extraordinary and unforeseen circumstances that have rendered compliance with the deadline[s] impossible, the proper remedy is for this court to extend the deadline and thereby preserve the intended operation of the statutory framework.”.) At no point does the Court import this impossibility analysis into the second remedial prong, which requires the Court to reform the deadlines “in a manner that closely approximates the framework designed by its enactors” to “effectuate the policy judgment underlying the provision.” (*Id.* at pp. 877–878.)

If the Secretary’s interpretation of *Padilla* were correct, the Court may have considered fashioning much shorter remedial

deadlines based solely on *its own* judgment of the bare minimum amount time necessary for the Commission to fulfill its duties—in other words, the least amount of time required to make completion of the Commission’s work *possible*. But that is not what the Court did. The Court, to reiterate, refashioned deadlines “that closely approximate[] the framework designed by its *enactors*.” (*Id.* at p. 877, emphasis added.) To do this, the Court effectively took the deadlines as written, shifted them by the then-expected four-month delay, and added the “additional federal delay” safeguard at issue here. In so doing, the Court respected the underlying policy judgments of the enactors regarding how long a redistricting process should take—how long it should take to process census data, conduct meaningful public outreach, receive public input, publish preliminary maps, receive input in response to those preliminary maps, and certify final maps. The enactors’ articulated policy judgment is crystal clear: the Commission needs *at minimum* three months, from the receipt of P.L. 94-171 data to the publication of preliminary maps, and four-and-a-half months, from the receipt of P.L. 94-171 data to the certification of final maps, to meet its constitutional obligations.⁵ In enacting the Voters First Acts, the People

⁵ Relative to the 2010 Commission, the 2020 Commission’s timeline is already compressed by three weeks. The 2010 Commission received census data on March 8, 2011, and certified its final maps on August 15, 2011. It, thus, had five months and one week in total. (Raphael J. Sonenshein, *When the People Draw the Lines: An Examination of the California Citizens Redistricting Commission* (June 12, 2013), p. 45 [available at <<https://cavotes.org/sites/default/files/jobs/RedistrictingCommissi>

mandated that the Commission have from April 1 of years ending in 1, the federal statutory deadline for the release of P.L. 94-171 census data (13 U.S.C., § 141, subd. (c)), until July 1 of that year to collect public input and publish preliminary maps (Gov. Code, § 8253, subd. (a)(7)) and then until August 15 of that year to certify final maps (Cal. Const., art. XXI, § 2, subd. (g)).

The Secretary's Opposition's objection to the 18-day extension cannot be reconciled with the policy judgment pronounced in *Padilla* and related authority. The Court should neither ignore those policy judgments of the enactors nor substitute the Secretary's (or the Court's) for those of the enactors.⁶ In reforming the Commission's deadlines, the only relevant policy judgments are those of the enactors. The Secretary's preferred deadlines violate the requirements in the Voters First Acts that the Commission have sufficient time to seek public input both before it publishes preliminary maps and for public review after the publication of these maps.

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⁶ The Secretary claims that voters would prefer prioritizing the regular work of election officials associated with preparing for the June 7, 2022, primary over the decennial work of the Commission. (Opp. at p. 29, fn. 8.) This claim is refuted by the fact that the Commission exists because of amendments to the California Constitution adopted by the voters at the November 2008 and 2010 general elections.

B. THE COURT MAY ONLY EXERCISE ITS REFORMATION AUTHORITY TO GRANT THE SECRETARY OF STATE RELIEF FROM ITS ORDER UNDER LIMITED CIRCUMSTANCES NOT PRESENT HERE

The Secretary's second argument, concerning the administrability of work to be undertaken by election officials in preparation for the June 7, 2022, primary election does not conform to the Court's reformation authority.

1. The Secretary of State Has Not Shown That It Would Be Impossible for Election Officials to Complete Their Work Before the June 2022 Primary

The Secretary's requested relief from the 18-day extension is not justified by impossibility—a requirement for any use of the Court's reformation power. At no point does the declaration attached to the Secretary's Opposition state that it would be *impossible* for election officials to complete their work in advance of the June 7, 2022, primary election.⁷ To be sure, election officials have faced shorter timelines in the past. During the 1990 redistricting cycle, final maps were not ready until January 27, 1992, for a June 2, 1992, primary election—127 days. (See *Wilson v. Eu* (1992) 1 Cal.4th 707.) And during the 1980 cycle, maps were not finalized until January 28, 1982, for a June 8, 1982,

⁷ Of note, neither letter brief submitted by Sutter County or San Benito County claims impossibility. In fact, counties of this size—with populations of 96,971 and 65,490, respectively—are very likely to be drawn entirely within single Senate, Assembly, Board of Equalization, and congressional districts. This means no boundary lines drawn by the Commission will need to be entered into their computer systems.

primary election—131 days. (See *Assembly of State of Cal. v. Deukmejian* (1982) 30 Cal.3d 638.)⁸ History has shown, time and again, that our election officials are adaptable and capable of meeting challenging deadlines.

Additionally, much of the Secretary’s Opposition is premised on the notion that the Secretary and county election officials must complete work on redistricted maps before the March 11, 2022, nomination deadline. (See Opp. at pp. 24, 31–33; see also Declaration of Jana M. Lean in Support of Respondent Secretary of State’s Opposition (“Lean Decl.”), ¶ 21.) This assertion is incorrect. The Secretary fails to adequately explain why the Commission’s final maps would not accurately inform potential candidates of the boundaries of districts. These maps

⁸ During the 2000 cycle, maps were finalized on September 27, 2001, for a March 5, 2002, primary election—160 days. (See Assembly Bill No. 632 (Reg. Sess. 2001–2002), available at <https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=200120020AB632>; Senate Bill No. 802 (Reg. Sess. 2001–2002), available at <https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=200120020SB802>; Secretary of State’s Statement of Vote for March 2002 Primary, available at <<https://www.sos.ca.gov/elections/prior-elections/statewide-election-results/primary-election-march-5-2002/statement-vote>>.) During the 2010 cycle, maps were finalized on August 15, 2011, for a June 5, 2012, primary election—296 days. (See 2010 California Citizens Redistricting Commission’s Final Report, available at <https://wedrawthelines.ca.gov/wp-content/uploads/sites/64/2011/08/crc_20110815_2final_report.pdf>; Secretary of State’s Statement of Vote for June 2012 Primary, available at <<https://www.sos.ca.gov/elections/prior-elections/statewide-election-results/presidential-primary-election-june-5-2012/statement-vote>>.)

will have exact boundaries needed for anyone to determine in which districts their residence falls. The maps will be publicly available to everyone, including candidates and elections officials at the latest by January 14 if the Court grants the Commission its request for additional time for public comment. Each prospective candidate will be able to review the Commission's maps and know exactly what Senate, Assembly, Board of Equalization, and congressional district they will be in. And they will know in which neighborhoods prospective signers of petitions can be found. All that the Secretary of State and county election officials will be adding is each voter's precinct assignment. That information will not alter the eligibility of any candidate or registered voter. Paragraph 21 of the Lean Declaration, asserting that "[a]s a practical matter, it is not possible to run an election if elections officials do not have the final map ready for use by the end of the nomination period" because "candidates might file to run for an office in a district in which they do not reside" is simply incorrect.

The Commission fully appreciates that this is a particularly challenging election cycle for the Secretary, just as it has been and will continue to be for the Commission. But unfortunately, no officials are immune to the demands of present emergencies. Over the course of the last 19 months, nearly every governmental entity across the country has had to rise to the challenges presented by the global pandemic. Election officials, in particular, have demonstrated extraordinary determination and adaptability throughout the nation. It is in this context that the Court might

consider the claims in the supporting declaration attached to the Secretary's Opposition that election officials need *even more* time (several more weeks) than previously attested. (See Lean Decl., ¶ 16 ["I [previously] estimated that the Secretary of State's work on the new maps could take at least eight weeks, and that county elections officials' work could take several additional weeks."].) It is difficult to reconcile the Secretary's claim that the Commission can draw preliminary maps in six weeks (an effort that requires an enormous dedication of resources to process public input and census data, conduct dozens of public meetings, and undertake careful analysis of legal requirements and liabilities) with her assertion that election officials will take at least twice as long to incorporate the same district boundaries drawn by the Commission into computer systems (largely a data processing endeavor). (Compare Opp. at p. 30 with Lean Decl., ¶ 13.) Indeed, the Secretary's request for relief will give election officials 175 days to prepare for the June 2022 primary (from December 15, 2021, to June 7, 2022)—more time than in 1980 (131 days) or 1990 (127 days), as highlighted above.

The Secretary points out that some of aspects of the task will be more demanding in this cycle. But she does not acknowledge any of the reasons why it is reasonable to expect the task to go *more quickly*. This year's redistricting will have the benefit of 11 years of technological development that was not available ever before. For example, the Secretary's office has developed "a new statewide voter registration system (known as VoteCal)," which "was designed to follow a process similar to" the

predecessor systems. (Lean Decl., ¶ 5.) Presumably the replacement was an upgrade, expected to offer advantages to the Secretary. Yet the projections offered in the Opposition reflect none of those advantages.

The Secretary has had ample opportunity to seek relief from the Court’s order in *Padilla*, particularly the portion granting further extension based on “additional federal delay.” This Court’s order was published on July 17, 2020, and the Census Bureau announced on February 12, 2021, that it would not release P.L. 94-171 census data until September 30, 2021. (See Census Bureau Statement on Redistricting Data Timeline (Feb. 12, 2021), available at <https://www.census.gov/newsroom/press-releases/2021/statement-redistricting-data-timeline.html>.) Were it impossible for election officials to fulfill their obligations before the June 7, 2022, primary election, the Secretary should have objected to the Court’s order soon after its publication—or at the very least promptly after the Census Bureau announced census data would not be released on July 31, 2021. After all, the central theme of the Secretary’s briefing in this case in 2020 was the need for certainty in the Commission’s deadlines. (Respondent Secretary of State’s Preliminary Response to Petition for Writ of Mandate, June 11, 2020, pp. 19–20, 24–27.) At the time, in notable support of the Legislature’s petition, the Secretary stated: “the Commission’s redistricting deadline must be extended for the Commission to perform its redistricting responsibilities. . . . the Secretary of State and other entities need

to know, as soon as possible, whether, how, and when to undertake the many preparations necessary to administer a successful primary election in 2022[.]” (*Id.* at pp. 19–20.) One would reasonably expect that if the ordered “further federal delay” extension truly rendered the Secretary’s work impossible, she would have affirmatively sought relief from that order long before passively doing so for the first time in an opposition brief.

2. The Legislative Process Remains Available to the Secretary and Other Election Officials

The Court also made clear in *Padilla* that a necessary precondition of even considering the propriety of exercising its reformation authority is the unavailability of the democratic process to adjust the deadlines as written. The Court noted that the “Legislature . . . filed this emergency petition because, without the requested relief, the Legislature’s only alternative will be to ask voters to enact a constitutional amendment that alters the Commission’s deadlines for purposes of the 2020 redistricting cycle . . . [and] the last day that it can pass a bill placing a constitutional amendment on the November ballot is July 26, 2020.” (9 Cal.5th at p. 874.) Here, by contrast, none of the deadlines for the administrative and technical work to which the Opposition refers, are prescribed in the California Constitution, so any relief election officials require could presumably be addressed by the Legislature.⁹ Because of the

⁹ While the Legislature entered recess on September 10, 2021, it reconvenes on January 3, 2022, and the Governor may call a special session before then. (Cal. Const., art. IV, § 3, subd. (b).)

availability of the democratic process and obvious separation-of-powers concerns, the Secretary’s requested relief from the 18-day extension is plainly unauthorized by *Padilla*. The Court should not be the venue of first resort for addressing concerns the Secretary raises in opposition. The first resort, and proper locus for resolving these election administration matters, is the legislative process. The relief the Secretary of State seeks is for the Legislature—and the Legislature alone—to consider and grant.

Indeed, the recent passage of Senate Bill No. 594 (Reg. Sess. 2021–2022) (“S.B. 594”), which awaits the Governor’s signature, undercuts the Secretary’s position. S.B. 594 would, for the June 7, 2022, primary election, make various changes to existing law “relating to candidate nominations and compilation of registered voter data in order to accommodate the extended state redistricting deadline.” (Legis. Counsel’s Dig., Sen. Bill No. 594 (Reg. Sess. 2021–2022); see also Response of the Legislature to the Commission’s Emergency Motion at pp. 11–13.) The Legislature’s consideration and approval of the bill makes clear that the Legislature has been monitoring and is aware of the election administration challenges of this redistricting cycle. The fact that S.B. 594 addresses a number of those challenges, but not all of those noted in the Opposition (primarily, leaving intact the existing deadline for filing nomination documents), is strong evidence of the Legislature’s faith in the elections officials’ abilities to meet their deadlines under present circumstances without those changes.

The Secretary is not entitled to relief from the Court's order.

III. THE COMMISSION'S REQUEST THAT THE COURT MODIFY THE WRIT OF MANDATE TO FURTHER EXTEND THE COMMISSION'S DEADLINE FOR CERTIFYING FINAL MAPS TO JANUARY 14, 2022, TO PERMIT MEANINGFUL PUBLIC INPUT IS SUPPORTED BY THE UNDERLYING POLICY JUDGMENTS OF THE ENACTORS OF PROPOSITIONS 11 AND 20

If the Court agrees with the Commission's interpretation of the Court's order, the Commission's deadlines are now November 19, 2021, for the publication of preliminary maps, and January 3, 2022, for the certification of final maps. These resulting deadlines, however, mean that the most crucial phase of the state's redistricting process—the period in which the public has the opportunity to review and comment on the Commission's preliminary maps (including the opportunity for impacted communities to present their proposed maps) and in which the Commission can reconsider and revise its draft maps in response to public input—would fall almost entirely within the traditional holiday period between the Friday before Thanksgiving and the Monday after the New Year's weekend.

As detailed in its Emergency Motion, the Commission has received extensive public input from individuals and community organizations that public participation will be significantly depressed during this critical holiday period. This reality is explained at length in the amici curiae letter submitted to the Court by Common Cause, the League of Women Voters, the Advancement Project, and others. Quite simply, the legitimacy of

the state's redistricting process depends on meaningful public participation.

As the Court has noted, the constitutional and statutory framework created by Propositions 11 and 20 reflect “policy judgment that the public should have the opportunity to be involved throughout the redistricting process.” (9 Cal.5th at p. 877.) The California Constitution mandates that the Commission “conduct an open and transparent process enabling full public consideration of and comment on the drawing of district lines.” (Cal. Const., art. XXI, § 2, subd. (b)(1).) State law, meanwhile, calls on the Commission to conduct hearings to receive public input both before and “following the drawing and display of any commission maps,” and it must “display the maps for public comment in a manner designed to achieve the widest public access reasonably possible.” (Gov. Code, § 8253, subd. (a)(7).)

The intent behind these mandates is not only to advance transparency; it is for public participation to *drive* the redistricting process. The California Constitution requires that redistricting be undertaken pursuant to enumerated criteria, including respect for “communities of interest,” which is defined as any “contiguous population which shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation.” (*Id.* at subd. (d)(4).) Because each Commissioner is naturally only familiar with a limited number of communities within the state, the Commission must rely on the public for information about the characteristics of communities with which they are not familiar.

Without robust input from the public during the critical holiday period, this task is extraordinarily difficult and undermines the Commission's obligation to draw districts that effectively and fairly represent the state's communities.

Because the Commission's request to extend the deadline for certification of final maps is supported by the policy judgments of the enactors of Proposition 11 and 20, the Commission respectfully requests that the Court extend the Commission's deadline for final maps to January 14, 2022.

CONCLUSION

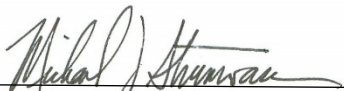
The Commission doubts neither the challenges that election officials confront in carrying out their responsibilities nor the diligence that they bring to their work. Nevertheless, *Padilla*, and the Court's respect for the policy judgments of the People it reflects, remain the proper framework for considering the Emergency Motion and the Opposition. Seen through this lens, the grounds for the Emergency Motion are clear. The Commission respectfully requests that the Court grant the Emergency Motion.

//

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DATED: September 13, 2021 Respectfully submitted,

CALIFORNIA CITIZENS
REDISTRICTING COMMISSION
Anthony Pane, Chief Counsel
STRUMWASSER & WOOCHER LLP
Fredric D. Woocher
Michael J. Strumwasser
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By: 

Michael J. Strumwasser

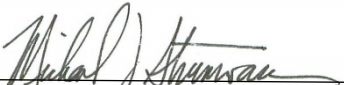
*Attorneys for California Citizens
Redistricting Commission*

Document received by the CA Supreme Court.

CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, rule 8.204(c)(1).)

Pursuant to Rule 8.204 of the California Rules of Court, I certify that this **CALIFORNIA CITIZENS REDISTRICTING COMMISSION'S REPLY IN SUPPORT OF EMERGENCY MOTION TO CLARIFY AND/OR MODIFY WRIT OF MANDATE** is proportionately spaced, has a typeface of 13 points or more and contains 4,948 words as counted by the Microsoft Word 365 word processing program used to generate the brief.

Dated: September 13, 2021



Michael J. Strumwasser

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PROOF OF SERVICE

STATE OF CALIFORNIA

Re: *Legislature of the State of California vs. Weber,*
Case No. S262530

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 10940 Wilshire Boulevard, Suite 2000, Los Angeles, California 90024. My electronic email address is loliver@strumwooch.com.

On **September 13, 2021**, I served the foregoing document(s) described as **CALIFORNIA CITIZENS REDISTRICTING COMMISSION'S REPLY IN SUPPORT OF EMERGENCY MOTION TO CLARIFY AND/OR MODIFY WRIT OF MANDATE** on all appropriate parties in this action, as listed on the attached Service List, by the method stated:

If Electronic Filing Service (EFS) is indicated, I electronically filed the document(s) with the Clerk of the Court by using the EFS/TrueFiling system as required by California Rules of Court, rule 8.70. Participants in the case who are registered EFS/TrueFiling users will be served by the EFS/TrueFiling system. Participants in the case who are not registered EFS/TrueFiling users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this is executed on **September 13, 2021**, at Los Angeles, California.



LaKeitha Oliver

Document received by the CA Supreme Court.

SERVICE LIST
Legislature of the State of California vs. Weber,
Case No. S262530

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