

No. 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.

**RESPONSE OF THE LEGISLATURE OF THE STATE OF
CALIFORNIA TO EMERGENCY MOTION OF CALIFORNIA
CITIZENS REDISTRICTING COMMISSION TO CLARIFY
AND/OR MODIFY WRIT OF MANDATE**

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INTRODUCTION

The Legislature of the State of California respectfully submits this response at the Court's request to the motion of the California Citizens Redistricting Commission to Clarify and/or Modify Writ of Mandate, dated August 20, 2021.

Under the Court's initial order in this case, the Commission's deadline for issuance of final maps should be December 27, 2021 to compensate for the additional delay in the release of the federal census data. Provided that it does not delay the primary election, the Legislature does not object to the Commission's first request to extend that deadline to January 3, 2022. The Legislature takes no position on the Commission's second request that the deadline be extended to January 14, 2022 provided it does not delay the primary election.

However, if an extension beyond the current December 27, 2021 deadline will not allow elections officials sufficient time to conduct the June 7, 2022 primary election, the Legislature urges the Court to reject any request—whether from elections officials or any other interested party—that would require postponing the primary election to any subsequent date. Postponement of the primary election not only interferes with the Legislature's constitutional responsibility to set election dates, but it would jeopardize administration of the November 8, 2022 general election.

BACKGROUND

On July 17, 2020, this Court granted the Legislature's request for a writ of mandate permitting the California Citizens Redistricting Commission an additional four months in which to issue final district maps for the State's legislative, congressional, and Board of Equalization districts. The basis for the Legislature's request was that the

Census Bureau had announced that release of the 2020 census data would be delayed four months due to the COVID-19 pandemic. (*Legislature v. Padilla* (2020) 9 Cal. 5th 867.)

Although the Court set a new deadline of December 15, 2021 for the Commission, it also recognized that the census data might be delayed longer than four months and said:

We recognize, however, that the dynamic nature of the global pandemic may lead the federal government to further postpone its delivery of the census data. In the event of further federal delay, we conclude the relevant state deadlines should be shifted accordingly, for the reasons outlined here. Thus, while 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. In the event that an additional extension of time risks interference with the timeline for conducting elections, appropriate parties may seek further relief in this court. Conversely, should the federal government release the census data sooner than July 31, 2021, the Commission should make every effort to expedite its process and release the preliminary and final maps in advance of the deadlines set forth in this order.

(*Id.* at p. 881.)

The Court was correct in anticipating further delay. On February 12, 2021, the Census Bureau announced that it would not be able

to release the census data until September 30, 2021.¹ Shortly thereafter, however, on March 15, 2021, the Census Bureau announced that in addition to releasing the data in its normal format (known as “PL 94-171 data”) on September 30, 2021, it would release the same data but in a different, less user-friendly format known as the legacy format redistricting data (“legacy formatted data”) on or before August 16, 2021.² The Bureau released the legacy formatted data on August 12, 2021,³ which with the Additional Delay of 12 days yields a deadline of December 27, 2021.

No party has disputed the conclusion of Karin Mac Donald, Director of the Statewide Database, that the legacy formatted data are the same as the PL 94-171 data that will be released in September or that once the Statewide Database has adjusted the data to include the necessary information, they can be used for redistricting.⁴

The earlier release of the legacy formatted data was a critical step in accommodating any Additional Federal Delay while still allowing for the conduct of elections. When the PL 94-171 data was not anticipated for release until September 30, 2021, the adjusted dataset needed by the Commission would not have been available until approximately

¹ U.S. Census Bureau, 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>.

² U.S. Census Bureau, Census Bureau Statement on Release of Legacy Format Summary Redistricting Data File (Mar. 15, 2021), available at: <https://www.census.gov/newsroom/press-releases/2021/statement-legacy-format-redistricting.html>.

³ Decl. of Karin Mac Donald in Support of Emergency Motion at p. 7, ¶ 13.

⁴ *Id.* at pp. 5-6, ¶¶ 9-10.

October 30, 2021. Now, the Statewide Database will be able to publish the adjusted dataset needed by the Commission on or before September 20, 2021, a full five weeks earlier than previously expected. (Mac Donald Decl., at p. 8, ¶ 14.)

With the new date in mind, the Commission has now requested that the Court clarify that its final deadline adjusted for the Additional Federal Delay is January 3, 2022, but the Commission also asks the Court to allow it an additional 11 days due to the effect of the winter holidays on the Commission’s receipt of public comment.

ARGUMENT

I.

THE COMMISSION’S INTERPRETATION THAT THE ADDITIONAL FEDERAL DELAY SETS A NEW DEADLINE OF JANUARY 3, 2022 IS A REASONABLE ONE

For purposes of the Commission’s motion, there are two possible ways of calculating the Commission’s new deadline to take into account the Additional Federal Delay. First, the Commission’s deadline could be calculated from August 12, 2021, when the Census Bureau released the legacy formatted data, meaning that the Additional Delay from July 31, 2021 would be 12 days, which would yield a deadline of December 27, 2021 for release of the Commission’s final maps. This interpretation is closest to the prior decision of the Court, under which the Additional Federal Delay was to be calculated from “release” of the federal census data. (*Legislature v. Padilla, supra*, 9 Cal. 5th at p. 881.)

Second, the new deadline could be calculated from August 18, 2021, which was the day the Statewide Database completed processing the legacy formatted data into a format suitable for public

release and for building the adjusted dataset needed by the Commission. Because the Court's original ruling could not have anticipated that the Census Bureau would release the data in a format that would require some additional time for state processing, it is reasonable to add that additional time into the calculation.

This second calculation would result in a deadline of January 2, 2022 for release of the final maps. The Commission argues that because January 2nd falls on a Sunday, January 3rd is the appropriate date under this Court's decision in *Padilla*, citing Government Code section 8251(b)(2). (Citizens Redistricting Commission ("CRC"), Motion at 21, fn. 2.) Although it is not clear that section 8251 applies to constitutional deadlines, the Legislature believes that the Commission's interpretation of the *Padilla* ruling is otherwise a reasonable one, and it does not object to the Court clarifying its original intent to result in a January 3, 2022 deadline *provided* that it will not interfere with the conduct of the primary election. In addition, as noted above, the Legislature takes no position on the Commission's request to extend its deadline to January 14, provided it does not interfere with the June 7, 2022 primary.

II.

THE LEGISLATURE HAS ACTIVELY SOUGHT TO MITIGATE PROBLEMS CAUSED BY THE CENSUS DELAY

As demonstrated by the procedural history of this case, the Legislature has been focusing on the issue of the Commission's deadline and its effect on the election calendar for well over a year. The Legislature's efforts began with the filing of its emergency petition in this action, but they have continued since the Court issued its decision on July 17, 2020.

On August 24, 2020 the Legislature fulfilled its commitment to the Court, delaying the primary from March 8, 2022 to June 7, 2022. While other states are only now beginning to confront changes to their electoral calendar, California took steps more than a year ago to provide more time for the redistricting process while still allowing for the orderly conduct of its elections.⁵

On March 26, 2021, the four legislative leaders sent a letter to the Commission informing it that the Legislature would invest the additional state financial resources necessary for the Statewide Database to be able to use the legacy formatted data to create the adjusted dataset needed for redistricting. The letter noted that under the Court's order in this case, the deadline for issuance of final maps would still be delayed depending on when the legacy formatted data were received and would require adjustments to the election calendar to accommodate this revised timeline.⁶

Moreover, even before the Commission requested that its deadlines be extended, it was clear that at least one election deadline would

⁵ The new primary date of the first Tuesday after the first Monday in June has historical precedent. Six of the last seven post-redistricting primaries have been held on this date, with none thereafter. Indeed, no primary in California has been held after this date since 1942. *See* Cal. Sect. of State, Historical Voter Registration and Participation in Statewide Primary Elections 1914-2018, available at: <https://elections.cdn.sos.ca.gov/sov/2018-primary/sov/04-historical-voter-reg-primary.pdf>.

⁶ Senate President pro Tempore Toni G. Atkins, Assembly Speaker Anthony Rendon, Senate Republican Leader Scott Wilk, and Assembly Republican Leader Marie Waldron, letter to CRC re Statewide Database, Mar. 26, 2021, available at: https://d3n8a8pro7vhm.cloudfront.net/ccrc/pages/129/attachments/original/1617031967/Redistricting_Letter_March_2021_FINAL.pdf?1617031967.

have to be adjusted because of the Additional Federal Delay. Under the Court's ruling, the Census Bureau's issuance of the legacy formatted data on August 12, 2021 meant that final redistricting maps would be due no later than December 27, 2021. However, under Elections Code section 8106, elections officials would be required to make forms available for candidates to gather signatures in lieu of paying the statutory nomination fee by December 16, 2021, a date that could not possibly be met. The Additional Federal Delay would almost certainly require changes to other provisions in the elections calendar. These are not changes that the Secretary of State can make administratively, as the Commission has suggested. (CRC Mot. at 25, fn. 4.) They are changes that only the Legislature – or, if absolutely necessary, the courts⁷ – can make, and in this case, the Legislature has made them.

On September 3, 2021, the Legislature passed Senate Bill 594, which makes one-time adjustments to the Elections Code to accommodate the new deadlines required by the census delay.⁸ The bill is a bipartisan effort, having passed out of the Assembly with 16 Republican votes and out of the Senate unanimously.⁹

⁷ See *Wilson v. Eu* (1992) 54 Cal. 3d 546 [adopting Secretary of State's suggested plan for adjusting election deadlines in light of redistricting delay, but not altering the election date itself].

⁸ Senate Bill 594 and its procedural history can be found here: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB594.

⁹ The voting history for Senate Bill 594 can be found here: https://leginfo.legislature.ca.gov/faces/billVotesClient.xhtml?bill_id=202120220SB594.

SB 594 keys the new dates for the 2022 primary election off the deadline established by this Court and reads in pertinent part as follows:

8161. As used in this chapter:

(a) “Commission” means the Citizens Redistricting Commission established in accordance with Article XXI of the California Constitution.

(b) “State redistricting deadline” means the deadline established by subdivision (g) of Section 2 of Article XXI of the California Constitution, as modified by the California Supreme Court in *Legislature of State of California v. Padilla* (2020) 9 Cal.5th 867, and in any subsequent proceedings in or relating to that case, for the Commission to approve four final maps that separately set forth the district boundary lines for the congressional, State Senatorial, Assembly, and State Board of Equalization districts.

(Sen. Bill No. 594, (2021-2022 Reg. Sess.) § 1.)

Under SB 594, if the Court orders that the Commission’s deadlines be extended, the relevant election calendar deadlines will automatically be adjusted to accommodate the Court’s order. Those adjustments, however, are all intended to apply to a June 7, 2022 primary election. SB 594 does *not* change the date of that election, and in fact, it specifically references the June 7th date by adding new Elections Code section 8160, which states: “This chapter applies only to the June 7, 2022, statewide direct primary election.”¹⁰ (*Id.*)

¹⁰ See also Sen. Bill No. 594 (2021-2022 Reg. Sess.) § 1 [adding Elec. Code, § 8165, subds. (b) & (c) (Secretary of State shall prepare statewide lists of voters “before the June 7, 2022 primary election.”)].

Thus, the Legislature has made clear its intent that the next statewide primary election will be conducted on June 7, 2022. It did so with the knowledge that the Census Bureau had released the census data in legacy format on August 12, 2021, four days earlier than expected, and that the Director of the Statewide Database stated that she expected the official redistricting database to be released on or before September 20, 2021.¹¹ It also did so knowing that the Commission had requested an extension of time to issue final maps to and including January 14, 2022.¹² SB 594 provides the statutory accommodation for the Commission’s approval of final plans up to the requested date, provided that deadline allows enough *practical* time for state and local election officials to administer the election.

With these facts in mind, the Legislature necessarily concluded that the June 7th primary election should proceed as planned. As demonstrated below, that conclusion is entitled to deference as a matter of law.

III.

THE COURT SHOULD REJECT ANY REQUEST TO POSTPONE THE JUNE 7, 2022 PRIMARY ELECTION

The critical issue before the Court is whether extending the Commission’s deadline would allow elections officials sufficient time to prepare for the June primary election.

¹¹ Assem. Comm. on Elections, Analysis of Sen. Bill No. 594 (2021-2022 Reg. Sess.), (Aug. 22, 2021), p. 8, available at: https://leginfo.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220SB594.

¹² *Id.* at p. 9.

In a footnote in its opening brief, the Commission acknowledges that delaying release of the final maps “will impose additional burdens on the county elections officials in preparing for the June 7, 2022, primary election.” (CRC Mot. at 25, fn. 4.) The Commission goes on to state, however, that it believes these difficulties “are not insurmountable,” saying that a January 14, 2022 release date would give elections officials 144 days before the election, which is more than the 125 days the Elections Code requires for submission of jurisdictional boundary changes. (*Id.*) That may be true, but there is a considerable difference between implementing new boundary lines for 176 legislative, congressional, and Board of Equalization districts and accounting for the occasional jurisdictional boundary line change that may occur between election cycles.

The better analogy—and higher authority—is to the amount of time that this Court intended for elections officials to have with which to implement the new boundaries under *Legislature v. Padilla*, *supra*, 9 Cal. 5th 867. There, the Court stated that giving the Commission a four-month extension of time would “leav[e] sufficient time for the maps to be finalized in advance of the 2022 primaries.” (*Id.* at p. 881, footnote omitted.)

As demonstrated below, the Court has extended certain election deadlines, but not the election date itself, to accommodate past redistricting delays. This is presumably the kind of relief the Court expected the Secretary of State and local elections officials to seek in stating: “In the event that an additional extension of time risks interference with the timeline for conducting elections, appropriate parties may seek further relief in this court.” (*Id.*) Because the Legislature cannot predict

precisely what those officials will say about their ability to conduct the June primary and because other parties have suggested that the primary should be postponed to give them more time, the Legislature respectfully offers the following reasons why the primary election should not be postponed.

A. The Court’s Prior Redistricting Decisions Have Always Been Designed to Avoid Postponing an Election

Any suggestion that the Court should move the primary election in order to accommodate the winter holidays is entirely inconsistent with the Court’s past judicial practice. Indeed, such an order would be unprecedented. Each time the Court has been faced with redistricting challenges that threatened to derail a scheduled election, it has purposefully adopted a remedy that permits the election to go forward as planned. The changes it has made to the election calendar have been minor adjustments, not the wholesale rescheduling of an election.

For example, when the State failed to enact legislative or congressional redistricting bills in time for the 1972 primary and general elections, the Court did not order a delay of the scheduled election. Rather, the Court framed its task as “determin[ing] how this impasse should be resolved in time for the orderly conduct of the 1972 elections,” and it undertook to decide which redistricting plans should be used for the scheduled election in the event that the Legislature could not enact valid maps in time. (*Legislature v. Reinecke* (1972) 6 Cal. 3d 595, 601, 603-604.)

During the 1980 census cycle, the State’s redistricting plans were automatically stayed by a referendum petition. (*Assembly v. Deukmejian* (1982) 30 Cal. 3d 638, 655.) In describing its approach to

defining potential remedies, the Court gave “consideration to any practical alternative which is available,” (*id.* at p. 660), and quickly rejected a proposal to order a split primary. Noting that proposed changes to the primary could have a serious impact on the state treasury, voter turnout, deadlines for the general election and time for computer programming, the Court wrote: “The court is reluctant to step in and make such sweeping changes in the electoral process. The consequences of such a proposal are far-reaching and belong more properly before the Legislature.” (*Id.* at p. 658, fn. 15.) Ultimately, the Court ordered that the Legislature’s referred plans be used as an interim measure for the 1982 elections to minimize the potential disruption of the electoral process and ensure that the 1982 elections could proceed as planned. (*See id.* at pp. 658, fn. 15, & 669, 678 [“The new plans are temporarily adopted solely because they represent the only alternative available to this court that both maximizes adherence to equal protection principles and minimizes disruption to the election process.”].)

Even where litigation over redistricting plans resulted in the delay of interim election-related deadlines, the Court has consistently ensured that the election date remains intact. In 1982, for example, the Court’s consideration of *Assembly v. Deukmejian* necessitated extending the deadline for in-lieu petition signature gathering by twenty-four (24) days, and the Court extended other related deadlines commensurately. (30 Cal. 3d at pp. 678-679 [in-lieu signature gathering, candidate filing declarations, and filing nomination papers].) But the Court was clear that “in no event should such extensions be permitted to delay the primary election.” (*Id.* at p. 679.)

Ten years later, when the State redistricting plans met a legislative impasse, this Court again resolved the controversy in a manner that ensured the primary election would not be disrupted. (*Wilson v. Eu* (1992) 1 Cal. 4th 707, 713; *Wilson v. Eu* (1991) 54 Cal. 3d 546, 550.) Although the Court took care to ensure that the election would not be moved, it permitted interim election-related deadlines to be shortened or adjusted as necessary. And in 2012, again faced with a referendum challenge to the first Citizen Redistricting Commission’s State Senate redistricting plan, the Court made clear that it would proceed expeditiously “to avoid potential disruption of the statewide primary and general elections to be held in June and November 2012.” (*Vandermost v. Bowen* (2012) 53 Cal. 4th 421, 435, 443 fn. 15.)

As each of these cases illustrates, although election-related deadlines for filing nomination papers, submitting signatures in lieu of filing fees, or the like may be adjusted to accommodate a redistricting delay, the date of the election has always remained a fixed star for the Court. That history reflects not only the confusion and effect on voter turnout caused by postponing a statewide election, but the fact that the choice of a primary election date is constitutionally committed to the Legislature. (Cal. Const., art. II, § 3 [“The Legislature shall define residence and provide for registration and free elections.”].) The date for the primary election, in turn, must be chosen to allow elections officials enough time to prepare for and conduct the general election on the first Tuesday after the first Monday in November, a date that cannot be moved because for congressional seats it is set by federal law. (2 U.S.C. § 7.) As demonstrated below, postponing the June 7 primary election would be

highly disruptive and pose a real threat to the successful administration of the November general election.

B. Any Postponement Would Confuse Voters and Disrupt The 2022 Primary Election

As discussed more fully in Part C below, over the past two decades, the Legislature has consistently taken steps to encourage voter turnout by doing things like making it easier for people to vote by mail or requiring local jurisdictions to hold their elections on statewide election days. The results have paid off, but given the State's size and the number of people eligible to vote, voter turnout is still a concern. While the state has recently had several high turnout primary elections, as recently as 2014 only 18% of eligible voters cast ballots, the lowest turnout in a primary since 1916.¹³

Californians expect to vote in early June. They do not expect to vote in late June or early July. The last time California held a primary after June 8th was 1942 during the height of World War II when the state had fewer than 4 million registered voters. No matter how well-publicized, a change in the election date is bound to confuse and deter some voters. It is impossible to predict how many that will be, but the impact will be greater because of two changes in the law that set California apart from other states.

First, as mentioned above, local jurisdictions are now required to consolidate their elections with a statewide election in most circumstances. (Elec. Code, § 14052.) Because 57 of the 58 counties hold

¹³ Cal. Sect. of State, Historical Voter Registration and Participation in Statewide Primary Elections 1914-2020, available at: <https://elections.cdn.sos.ca.gov/sov/2020-primary/sov/05-historical-voter-reg-primary.pdf>.

primary elections for their boards of supervisors¹⁴ and a number of municipalities are scheduled to hold their elections in June,¹⁵ moving the statewide primary will also require moving a host of local elections, causing further voter confusion and disruption. Those elections will also include local ballot measures. If moving the primary causes lower voter turnout, those ballot measures will be decided by a smaller proportion of eligible voters, thereby affecting local policy in ways that will be difficult to change for years to come.

Second, California has what is known as a “top-two primary” whereby the top two vote getters in the primary election advance to the general election regardless of their party affiliation. (Cal. Const., art. II, § 5(a).) Under this system, it is entirely possible for two members of the same party to face off in the general election. As a result, even a relatively small reduction in voter turnout for one party could have an outsized effect on voter choice in the general election.

C. Postponing the 2022 Primary Election Would Interfere With Administration of the November General Election

If the Court were to take the unprecedented step of postponing the June primary, it would also seriously compromise elections

¹⁴ Elections for county office are held at the same time as gubernatorial primary elections pursuant to Elections Code section 1300. Because the City and County of San Francisco uses instant runoff voting to select its supervisors in November, it does not have county supervisorial seats on the ballot in June.

¹⁵ For example, Los Angeles County will hold 36 municipal and district elections on June 7, 2022. *See* County of Los Angeles Registrar-Recorder/County Clerk, 2022 Scheduled Elections (as of August 30, 2021), available at: https://lavote.net/docs/rcc/Election-Info/scheduled_elections_2022.pdf?v=9.

officials' ability to conduct the November general election. Although the five months between the primary and general elections may seem like a long time, it is barely enough for elections officials to be able to perform the tasks they are required by law to do. That is because there are not only more time-consuming tasks that must be done both *after* the primary and *before* the general election than followed the earlier redistrictings described above, but also many more votes to count.

After the June 7 primary election, elections officials will have more ballots that must be counted after election day than ever before. This is largely due to the increased number of mail-in ballots now that any voter may vote permanently by mail. Moreover, on September 3, 2021, the Legislature passed Assembly Bill 37, which will permanently require elections officials to send every registered voter a mail-in ballot as was done for the November, 2020 general election.¹⁶ In addition, more counties are moving toward administering all mail-in elections under the Voter's Choice Act (*see* Elec. Code, § 4500 et seq.), where every voter's ballot can be returned by mail, at a drop box, or at staffed voting centers, where the voter can receive assistance and also vote in-person. (Elec. Code, §§ 3201, 4005.)

As a result, the number of votes cast on mailed ballots has grown exponentially, from slightly over 1.0 million (16.66% of the total) in the 1992 primary election, to 4.8 million (67.7% of the total) in the 2018

¹⁶ Assem. Bill No. 37 (2021-2022 Reg. Sess.), available at: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB37.

primary election.¹⁷ The numbers for the 2020 primary election are even higher – nearly 7 million votes cast on mailed ballots (72.08% of the total) – although the COVID-19 pandemic may have played a part in that. The more likely explanation is that more counties chose to use an all-mail election under the Voter’s Choice Act, which made it easier for more people to vote.

There is more. Under current law, mail ballots may now be received up to three days after election day, a period that the Legislature just extended to seven days with passage of Assembly Bill 37. That means that the signature verification and counting process cannot be completed until those ballots have arrived. (Elec. Code, § 3020, subd. (b).) Signature verification is a labor-intensive process requiring comparison of the signature on the mail ballot envelope with the voter’s registration card. The numbers are huge. In the last statewide election, 30% of the ballots were counted after Election Day.¹⁸

In addition, voters whose ballots are rejected because elections officials determine that the envelope was not signed or the signature on the ballot envelope does not match the voter registration card

¹⁷ See Cal. Sect. of State, Historical Vote-By-Mail (Absentee) Ballot Use in California, available at: <https://www.sos.ca.gov/elections/historical-absentee>.

¹⁸ Compare Cal. Sect. of State, California Secretary of State Issues Unprocessed Ballots Report (Nov. 5, 2020), available at: <https://www.sos.ca.gov/administration/news-releases-and-advisories/2020-news-releases-and-advisories/ap20111> (Election Day counts included 12.4 million ballots) with Cal. Sect. of State, Voter Participation Statistics, available at: <https://elections.cdn.sos.ca.gov/sov/2020-general/sov/03-voter-participation-stats-by-county.pdf> (final official election results included more than 17.7 million ballots).

have up to 29 days after the election in which to cure their signatures with elections officials. (Elec. Code, § 3019, subs. (d)-(e).)

Finally, there is the issue of a possible recount in a close race, a request for which can be filed as late as 36 days after the primary election is held. (Elec. Code, §§ 15620, 15621.) The recount must be conducted and resolved in order to know which candidates will proceed to the general election. If a voter or a candidate demands a manual recount under Elections Code section 15627, a recount board must examine every ballot or machine-generated paper audit trail cast in that race, a time-consuming and labor-intensive process.

These factors, combined with the fact that the number of registered voters is now 22.1 million compared to only 17.8 million in 2014,¹⁹ indicate that elections officials will have their work cut out for them in the weeks following the 2022 primary election. Nevertheless, they must begin canvassing election results no later than the Thursday after the primary election (*id.*, § 15301) and send the results to the Secretary of State no later than the 31st day after the election. (*Id.*, § 15375.) Because of the crush of mailed and provisional ballots, it is extremely unlikely that elections officials will have time to prepare for the November election for at least a month after the June primary.

That means that elections officials realistically will have only four months in which to prepare for the November election. Once again,

¹⁹ See footnote 13, *supra*; Cal. Sect. of State, 60-Day Report of Registration for the September 14, 2021 California Gubernatorial Recall Election (July 16, 2021), available at: <https://elections.cdn.sos.ca.gov/ror/60day-recall-2021/historical-reg-stats.pdf>.

those four months will be busier than in most past redistricting years for at least two reasons. First, as noted above, in 2015 the Legislature required that elections for most local offices like cities and school districts be consolidated with statewide elections. (Elec. Code, §§ 14050-14057.) The result has been a greatly increased number of local jurisdictions that now hold their elections in November of even-numbered years. For example, as of August 30, 2021, Los Angeles County reported that it is scheduled to conduct elections for 170 other local jurisdictions (32 special districts, 84 school districts, and 54 cities) at the November 8, 2022 statewide general election.²⁰ By contrast, for the November 6, 2012, statewide general election following the last round of redistricting, Los Angeles County conducted elections for just 43 other local jurisdictions (9 special districts, 21 school and community college districts, and 13 cities).²¹

Second, a huge number of jurisdictions have switched from at-large elections to district-based elections in order to comply with the California Voting Rights Act. (*Id.*, § 14025 et seq.) Many of those districts will have to be redrawn in light of the new census data, which means that elections officials must first redraw their precincts using the newly drawn lines, then determine which districts voters reside in and send them the appropriate ballot materials for their district. A 2018 bill analysis by the

²⁰ Los Angeles County Registrar-Recorder/County Clerk, 2022 Scheduled Elections (August 30, 2021), available at: https://www.lavote.net/docs/rcc/Election-Info/scheduled_elections_2022.pdf?v=9).

²¹ Los Angeles County Registrar-Recorder/County Clerk, Final Official Election Returns, November 6, 2012 General Election, available at: <https://www.lavote.net/documents/nov-6-2012-official-election-returns.pdf>.

California Assembly Committee on Elections and Redistricting reported that at least 200 local government bodies had transitioned from at-large to district-based elections since the enactment of the CVRA.²² The numbers have continued to grow as more jurisdictions make the change under threat of litigation.²³ Many of these jurisdictions have November elections, and given the pressures of preparing for the primary election, many local elections officials will be unable to make the necessary precinct adjustments until after the primary.

The result of more consolidated elections and more district-based elections means that elections officials are now responsible for creating more ballot types than ever before to ensure each voter receives a ballot properly reflecting the combination of races in which they may cast a vote. Those ballots need to be finalized, printed, and mailed to military and overseas voters no later than 45 days before an election to minimize mail delivery issues. (Elec. Code, § 3105.) For the November election, that means that ballots must be mailed to these voters no later than Saturday, September 24, 2022. Elections officials must start mailing ballots to other voters no later than 29 days before the election, or on Monday, October 10. (*Id.*, § 3001(b).)

²² Assem. Comm. on Elections and Redistricting, Analysis of Assem. Bill No. 2231 (2017-2018 Reg. Sess.), Apr. 25, 2018, p. 4, available at: https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB2231.

²³ *See, e.g.*, City of San Mateo, Agenda Report, June 21, 2021, available at: <https://www.cityofsanmateo.org/DocumentCenter/View/85369/Transition-to-Elections-By-District---Resolution-of-Intention-Staff-Report-June-21-2021>.

The consistent purpose of these legislatively adopted electoral reforms was to lower barriers to participation, increase voter turnout, ensure registered voters' ballots are counted whenever possible and reduce disenfranchisement. They have been successful in doing that, and California can be rightly proud of its efforts to encourage voter participation when so many other states appear to be trying to do the opposite.

The result of these changes, however, is that between the primary and general elections local elections officials will have more to do and less time in which to do it than in most previous redistricting cycles. They should not be required to do all that work under even greater time pressure than the law would normally allow. At a time when the integrity of the election process is under scrutiny nationwide, it would be a grave mistake to jeopardize administration of the November election by shortening the time allotted to elections officials to prepare for it.

CONCLUSION

Although the COVID-19 pandemic has caused an unprecedented delay in release of the census data, California has experienced problems with timely redistricting before. Those problems, however, have never been allowed to interfere with the primary election date, and the problem caused by the recent census delay should not be allowed to do so now. No matter how the Court concludes it should rule on the Commission's motion, the Legislature respectfully urges it to reject any proposal that would result in postponing the June primary election.

Dated: September 7, 2021

Respectfully submitted,

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**BRIEF FORMAT CERTIFICATION PURSUANT TO
RULE 8.204 OF THE CALIFORNIA RULES OF COURT**

Pursuant to Rule 8.204 of the California Rules of Court, I certify that this brief is proportionately spaced, has a typeface of 13 points or more and contains 5,522 words as counted by the Microsoft Word 365 word processing program used to generate the brief.

Dated: September 7, 2021

/s/ Robin B. Johansen

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury that:

I am a citizen of the United States, over the age of 18, and not a party to the within cause of action. My business address is 1901 Harrison Street, Suite 1550, Oakland, California 94612.

On September 7, 2021, I served a true copy of the following document(s):

**RESPONSE OF THE LEGISLATURE OF THE STATE OF CALIFORNIA
TO EMERGENCY MOTION OF CALIFORNIA CITIZENS
REDISTRICTING COMMISSION TO CLARIFY AND/OR
MODIFY WRIT OF MANDATE**

on the following party(ies) in said action:

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Executed on September 7, 2021, in Los Angeles, California.

/s/ Alex Harrison
Alex Harrison