

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.

**RESPONDENT SECRETARY OF STATE'S OPPOSITION TO
EMERGENCY MOTION TO CLARIFY AND/OR MODIFY WRIT
OF MANDATE**

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September 7, 2021

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TO THE HONORABLE CHIEF JUSTICE TANI G. CANTIL-
SAKAUYE, AND TO THE HONORABLE ASSOCIATE
JUSTICES OF THE CALIFORNIA SUPREME COURT:

Respondent Secretary of State Shirley N. Weber respectfully submits this Opposition to the Emergency Motion of California Citizens Redistricting Commission to Clarify and/or Modify Writ of Mandate, as requested by the Court on August 23, 2021.

INTRODUCTION

The California Citizens Redistricting Commission (“Commission”) has requested confirmation that its deadlines to produce preliminary and final maps using 2020 census data—deadlines that this Court previously extended to November 1, 2021 and December 15, 2021, respectively—are further extended by 18 days, in light of an 18-day “additional federal delay” in obtaining federal census data. The Secretary of State recognizes that this extension would preserve the Commission’s time to produce maps and take public comment. Unfortunately, the extension will also make it all but impossible for elections officials to implement the redistricted maps in time for use in the June 7, 2022 primary election. The Secretary of State must therefore oppose the request for the 18-day extension, as well as the request for an additional 12-day extension.¹

¹ The Secretary of State takes no position on the Commission’s request that the Court reform the public notice provision in Government Code section 8253, subdivision (a)(1).

BACKGROUND

I. CURRENT REDISTRICTING DEADLINES

A. The California Citizens Redistricting Commission

“Every 10 years, following the federal census, new maps must be drawn establishing the boundaries of the state’s congressional, Assembly, Senate, and Board of Equalization districts. California law assigns the task of redistricting to the Citizens Redistricting Commission, which draws new maps based on the federal census data.” (*Legislature v. Padilla* (2020) 9 Cal.5th 867, 871.) The Commission was created when “[t]he voters of California fundamentally reformed the redistricting process,” by “pass[ing] Proposition 11 in 2008 and Proposition 20 in 2010.” (*Vandermost v. Bowen* (2012) 53 Cal.4th 421, 490 (Liu, J., concurring).)

The Commission is charged with “conduct[ing] an open and transparent process enabling full public consideration of and comment on the drawing of district lines”; “draw[ing] district lines according to the redistricting criteria specified in this article”; and “conduct[ing] themselves with integrity and fairness.” (Cal. Const., art. XXI, § 2, subd. (b).) The Commission is statutorily required to “establish and implement an open hearing process for public input and deliberation that shall be subject to public notice and promoted through a thorough outreach program to solicit broad public participation in the redistricting public review process.” (Gov. Code, § 8253, subd. (a)(7).) This includes a requirement to conduct “hearings to

receive public input before the commission draws any maps and hearings following the drawing and display of any commission maps.” (*Ibid.*) And, these hearings “shall be supplemented with other activities as appropriate to further increase opportunities for the public to observe and participate in the review process.” (*Ibid.*)

The goal in having redistricting “debated in the open with public meetings,” such that “[e]very aspect of this process [is] open to scrutiny by the public and the press,” is to enable the Commission to “draw districts based on strict, nonpartisan rules designed to ensure fair representation.” (Prop. 11, as approved by voters, Gen. Elec. (Nov. 4, 2008), § 2, subd. (d).) These public participation requirements help to ensure that all Californians have an equal opportunity to participate in the electoral process. They also play a vital role in providing the Commission with sufficient information to comply with various state and federal redistricting criteria, including the federal Voting Rights Act. (See Cal. Const., art. XXI, § 2, subd. (d)(2) [“Districts shall comply with the federal Voting Rights Act”].)

California law provides that the Commission must release its first preliminary statewide maps by July 1 of the year following the census year, and take public comment for at least 14 days afterwards. (Gov. Code, § 8253, subd. (a)(7).) “Public comment shall be taken for at least seven days from the date of public display of any subsequent preliminary statewide maps and for at least three days from the date of public display of any final statewide maps.” (*Ibid.*) The deadline for the Commission to

approve and certify final maps to the Secretary of State is August 15 of the year following the census year, and is set by the California Constitution. (Cal. Const., art. XXI, § 2, subd. (g).)²

B. This Court’s Peremptory Writ and the Current Redistricting Deadlines

The Commission’s deadlines for the redistricting cycle based on 2020 federal census data differ from the dates set by statute and the California Constitution, due to delays in the federal census process. “As a result of the current COVID-19 pandemic . . . the federal Census Bureau . . . announced that census data collection and processing [would] be delayed” by up to four months, such that “the data required to draw new district maps will not be released to the states in time for the Commission to meet the redistricting deadlines set forth in California law.” (*Legislature v. Padilla* (2020) 9 Cal.5th 867, 871.) “In view of the anticipated delay and to ensure that the Commission will be able to perform its redistricting function in time for the 2022 elections,” the Legislature petitioned this Court for “relief from the deadlines set by California law,” and the request was joined by the Secretary of State and the Commission.

² The July 1, 2021 deadline for public display of the Commission’s draft maps provided in Government Code section 8253, subdivision (a)(7) was set through legislation enacted in 2012. (Stats. 2012, Ch. 271, § 4.) The August 15, 2021 deadline for the Commission to certify final maps, in Article 21, section 2 of the California Constitution, was enacted in 2010 through a voter-approved ballot initiative. (Prop. 20, as approved by voters, Gen. Elec. (Nov. 2, 2010), § 3.2.)

(*Ibid.*) The Legislature turned to this Court for relief because “[t]he deadline for the release of the draft maps is set forth in a state statute that the Legislature is prohibited from amending either this year or next, and the deadline for the approval of final maps is specified in the California Constitution.” (*Id.*, at p. 874 [citing Gov. Code, § 8251, subd. (c)(5); Cal. Const., art. XXI, § 2, subd. (g)].)

This Court granted the Legislature’s petition and issued a peremptory writ of mandate extending the deadline for the Commission to produce preliminary maps to November 1, 2021, and extending the deadline for final maps to December 15, 2021. (*Legislature v. Padilla, supra*, 9 Cal.5th at pp. 881-882.) Extending these deadlines was an appropriate use of this Court’s “authority to issue an extraordinary writ under article VI, section 10 of the California Constitution,” which this Court has previously exercised “to consider and grant appropriate relief when necessary to the orderly functioning of our electoral system.” (*Id.*, at pp. 874-875 [citing *Vandermost, supra*, 53 Cal.4th at pp. 451-453].) This Court also held that the extensions were within this Court’s power to reform deadlines set by statute and voter-enacted initiatives, “to effectuate the enactors’ clearly articulated policy judgments when it is feasible to do so and when the enacting body clearly would have preferred reformation to invalidation.” (*Id.*, at p. 879 [citing *Kopp v. Fair Pol. Practices Com.* (1995) 11 Cal.4th 607, 615; *California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, 274-275].) In extending the Commission’s deadlines for preliminary and final maps, this

Court also acknowledged “that the dynamic nature of the global pandemic may lead the federal government to further postpone its delivery of the census data,” and therefore also provided “that the deadlines be further extended by the length of any additional delay in release of the federal census data beyond four months.” (*Id.*, at p. 881.) This Court also noted that if any such additional delay “risks interference with the timeline for conducting elections, appropriate parties may seek further relief in this court.” (*Ibid.*)

II. ELECTIONS OFFICIALS’ REDISTRICTING AND ELECTION ADMINISTRATION DUTIES

Elections officials must have sufficient time to prepare for any given election, in order to administer a successful election and secure public confidence in the electoral process. As this Court has previously described:

[P]reparing for elections is a complex and “sequential” process, requiring various tasks be performed before others may begin, including identifying the various district boundaries, developing county election precincts, assigning such districts to all registered voters, designing ballot styles, printing ballots, providing polling places, and training precinct workers. Early delays in one function can impact all other functions. As the Secretary [of State] points out, the need to know precise district boundaries “is at the front end of the process”

(*Wilson v. Eu* (1991) 54 Cal.3d 471, 548.) In preparation for the June 7, 2022 primary election, elections officials must add to their list of regular duties their once-in-a-decade redistricting responsibilities, through which they produce the “precise district

boundaries” that are needed “at the front end of the process.”

(Ibid.)

A. Duties of the Secretary of State and County Elections Officials in Preparing Redistricted Maps for Use

Once the Commission has certified its final maps, the Secretary of State and county elections officials must prepare those maps for use in statewide and local elections. The Secretary of State must create a database to implement the new congressional, Senatorial, Assembly, and State Board of Equalization district boundaries. (Declaration of Jana Lean, Chief of the Elections Division, California Secretary of State (“Lean Decl.”), ¶ 3.) The database is used to certify statewide candidates, provide for election night reporting, and produce the official Statement of the Vote required after each election. (*Id.*, ¶ 4.) The database comprises lists of districts by county; Assembly districts within each county; and congressional, Senate, and Board of Equalization districts within the appropriate Assembly districts in each county. (*Id.*, ¶¶ 7-9.) County elections officials must then conform their own election management systems and district databases to reflect the new district lines from the Secretary of State’s database. (*Id.*, ¶ 12.) This entire process results in final district maps that can be used by candidates for signature-gathering activities and nominating papers. (*Id.*, ¶¶ 17-20.)

During the 2011 redistricting process, elections officials had over four months to complete their work on the redistricted maps. The Secretary of State received certified maps from the

Commission on August 15, 2011, and county elections officials used the database created by the Secretary of State from the certified maps to complete all necessary changes to their district lines in late December 2011. (Lean Decl., ¶ 6.)

The Secretary of State anticipates that the process of preparing the Commission's new maps for use in the June 7, 2022 election will consist of the following steps:

1. The first step is the creation of district relationships for each county. In addition, a list of districts within each county's Assembly districts is created for candidate rotation purposes. This is done by using the Commission's newly drawn maps to generate an "overlap list" showing the Assembly districts within each county, and then showing the congressional, Senate, and Board of Equalization districts within each county's Assembly districts. Generating this base county/Assembly jurisdiction and overlap list requires a minimum of two weeks of full-time work by two employees. (Lean Decl., ¶ 8.)

2. Following creation of the base county/Assembly jurisdiction and overlap list, the next step is to perform data entry into VoteCal, the statewide voter registration system, to place each newly drawn congressional, Senate, and Board of Equalization district within the appropriate Assembly district in each county. The Secretary of State anticipates that it will take approximately 30 minutes per Assembly district/county combination to input and validate this data. In 2011, there were 150 Assembly district/county combinations, for a total of 75 hours of work, or 1.9 work weeks using 3 full-time employees. For the

upcoming redistricting cycle, there will likely be a similar number of Assembly district/county combinations, requiring a similar amount of work. (Lean Decl., ¶ 9.)

3. After all Assembly district/county combinations are entered into VoteCal, a four-week process of testing and validating the redistricting database for a new election must begin. (Lean Decl., ¶ 10.)

4. When testing and validation is completed, additional days will be needed to create certified maps for each of California's 58 county elections officials. (Lean Decl., ¶ 11.)

5. Upon receiving certified copies of the maps from the Secretary of State, each of California's 58 county elections officials will immediately begin their redistricting and election activities based on the county-specific maps provided by the Secretary of State. County elections officials must then conform their own election management systems and district databases to reflect the new district lines from the Secretary of State's database. This means that counties must determine which precincts fall within their district lines, associate each precinct with only one district of each type (congressional, State Senate, Assembly, and State Board of Equalization), enter the precincts and districts into their local election management system, and associate voters to precincts. Once this has occurred, the information must be proofed and verified for accuracy. This process is estimated to take several weeks at a minimum, and could take eight weeks or more. (Lean Decl., ¶ 12.)

The Secretary of State currently estimates that the entire process described above could take 12 to 16 weeks to complete.³ (Lean Decl., ¶ 13.) This is the Secretary of State’s best estimate based on currently available information, but there are many factors that could potentially extend the time it takes to finish this work. Since the last redistricting cycle, there have been numerous changes to the electronic programs used to administer elections, at the statewide and county levels. (*Id.*, ¶ 14.) Many elections officials have new personnel in place, unfamiliar with redistricting data processing, compared to ten years ago. (*Ibid.*) It is possible that the data from the Census Bureau that the Commission will be using could pose complications, as it has been processed using different procedures than those used in 2011. (*Id.*, ¶ 14.) And, planning for this redistricting cycle is taking place against the backdrop of significant operational disruptions due to the COVID-19 pandemic and the upcoming gubernatorial recall election. The elections officials responsible for planning how their offices will process the final certified maps from the Commission are the same ones charged with administering that election, on September 14, 2021. (*Id.*, ¶ 22.)

The Secretary of State will do everything feasible to complete its process as quickly as possible, and to assist county elections officials in doing so as well. However, elections officials

³ In the previous briefing on the peremptory writ, the Secretary of State estimated that its work on the new maps could take at least eight weeks, and that county elections officials’ work could take several additional weeks. (Lean Decl., ¶ 16.)

cannot accelerate the process simply by adding more personnel, as each step of the process requires subject-matter experts to perform highly technical tasks that cannot be outsourced. (Lean Decl., ¶ 15.)

B. Election Administration Duties of the Secretary of State and County Elections Officials⁴

Once the Secretary of State and county elections officials complete processing of the new maps as described above, potential candidates for office will use those maps to decide whether to run for office from the district in which they reside, and county elections officials will use the maps to verify candidate residency. (Lean Decl., ¶ 17; Elec. Code, §§ 8023, subd. (c), 8040.) The maps are also used to determine whether a candidate will be deemed an incumbent, which may depend on whether a district with new boundaries contains territory previously contained in the former district from which a candidate was previously elected. (Lean Decl., ¶ 18; Elec. Code, § 13108, subd. (c).)

Candidates will also rely on the maps when conducting signature-gathering activities associated with the nominating

⁴ The Lean Declaration attaches, as Exhibits A through D, respectively, calendars showing election-related deadlines for the following statewide elections: June 2012 primary election (the most recent post-redistricting primary election); June 2018 primary election (the most recent non-presidential primary election); March 2020 primary election (the most recent primary election, which was a presidential primary election); and November 2020 general election (the most recent election).

papers every candidate must file. (Lean Decl., ¶ 19.) To run for office, candidates must submit nomination papers with the required number of signatures of registered voters from the district for that office, along with a Declaration of Candidacy. (Elec. Code, §§ 333, 8020, 8040, 8041, 8068.)⁵ In addition, candidates must pay a filing fee to the Secretary of State. (*Id.*, § 8103.) In lieu of paying that fee, candidates can submit petitions containing, depending on the office, signatures of 1,000 to 7,000 registered voters from that district. (*Id.*, § 8106.) Those signatures may also be used towards the number of signatures required for the candidate's nomination papers. (*Id.*, § 8106, subd. (d).) The signature-in-lieu process is constitutionally required. (See *Knoll v. Davidson* (1974) 12 Cal.3d 335, 349 [requiring a filing fee as a condition to becoming a candidate violates equal protection clause of the Fourteenth Amendment].)

The Secretary of State or an elections official must provide forms for securing signatures in lieu of a filing fee beginning 60 days before the first day for circulating nomination papers, and completed forms must be filed at least 30 days before the close of the nomination period. (Elec. Code, § 8106, subds. (b), (b)(3).)

The 2022 primary election is scheduled for June 7, 2022. (Elec. Code, § 1201.) Under existing law, the period for gathering signatures in lieu of a filing fee runs from December 16, 2021,

⁵ These requirements apply to candidates for statewide constitutional office, United States Senator, United States Representative in Congress, State Senator, and Member of the State Assembly. (See Elec. Code, § 359.5.)

through February 9, 2022. (*Id.*, § 8106, subds. (b), (b)(3).) The period for filing nomination papers runs from February 17, 2022 through March 11, 2022. (*Id.*, § 8020, subd. (b).)

III. THE DELAYED CENSUS DATA AND ITS IMPACT ON REDISTRICTING AND ELECTIONS ADMINISTRATION DEADLINES

A. The Commission’s Request to Clarify and/or Modify the Writ, in Response to Further Delays in Census Data

On August 20, 2021, the Commission filed the instant emergency motion to clarify and/or modify the writ of mandate, through which this Court previously extended the Commission’s redistricting deadlines. In granting that peremptory writ, this Court exercised its power of reformation to push out the statutory and constitutional deadlines for preliminary and final maps by four months, plus any “additional federal delay.” (*Legislature v. Padilla, supra*, 9 Cal.5th at p. 882.) The Commission now seeks clarification and modification of the writ, in three respects:

1. The Census Bureau is generating two releases of data to the States: the final, fully processed dataset will be released by September 30, 2021 (an additional two-month delay beyond the four-month delay that was already anticipated); and an interim dataset that requires additional processing by the States before it can be used for state-level redistricting, which was released on August 12, 2021. (Mot. at p. 16.) Further processing of the interim dataset for California, by the Statewide Database (the redistricting database for the State of California), took until August 18, 2021, which is 18 days later than the July 31, 2021

date anticipated in this Court’s peremptory writ. (*Ibid.*) The Commission now asks this Court to clarify that the “additional federal delay” contemplated by the peremptory writ consists of 18 days. (*Id.*, at pp. 18-20.) This would extend the deadline for producing preliminary maps from November 1, 2021 to November 19, 2021. (*Id.*, at p. 21.)

2. This 18-day “additional federal delay” would also extend the deadline for certification of final maps from December 15, 2021 to January 2, 2022. The Commission points out that this means the period for public review and comment on the Commission’s preliminary maps and any revisions to those maps, would fall entirely within the weeks encompassing the end-of-year holidays, from November 19, 2021 to January 2, 2022. (Mot. at pp. 21-22.) The Commission asks this Court to authorize an additional 12-day extension of its deadline to produce and certify the final maps, to January 14, 2022, so that public comment and any necessary revisions will not occur entirely within the traditional end-of-year holiday season. (*Id.*, at pp. 22-25.)

3. The Commission must provide 14 days’ public notice for each public comment meeting, except for meetings held in August of redistricting years, when three days’ notice is allowed. (Gov. Code, § 8253, subd. (a)(1).) The Commission states that the option for providing three days’ notice was meant to provide more flexibility in holding public comment meetings, during the final stages of its map-drawing process. (Mot. at pp. 26-27.) Because the redistricting schedule has already shifted away from a schedule under which maps would be finalized in August, the

Commission is asking the Court to permit the Commission to give three days' notice for public comment meetings held in the fifteen days before the deadline to certify the final maps, and not simply for those held in August 2021. (*Ibid.*)

B. Legislation to Extend Certain Election Administration Deadlines

The Legislature recently passed a bill—not yet signed by the Governor—intended to address the already-compressed election administration timeline resulting from the previously authorized four-month extension to the Commission's redistricting deadlines, and in anticipation of further modification to those deadlines by this Court. But although that legislation would adjust certain pre-election deadlines, it does not change the deadline for candidates to file their nomination papers—which, as a practical matter, is also the deadline for elections officials to finish their work on the redistricted maps. (Lean Decl., ¶ 21.)

Senate Bill 594 (Reg. Sess. 2021-22) (“S.B. 594”) would, for the June 7, 2022 primary election only, push back and shorten the periods for gathering signatures in lieu of a filing fee, and for submitting candidate nomination papers, as well as make other adjustments to alleviate the effects of delayed redistricting. The bill ties these dates to the Commission's deadline for certifying its final maps to the Secretary of State “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.” (S.B. 594, § 1, proposed Elec. Code, §§ 8161, subd. (b), 8163, 8164.)

The signature-in-lieu period under existing law runs from December 16, 2021 through February 9, 2022. (Elec. Code, §§ 8106, subd. (b), (b)(3) [in-lieu-filing fee petitions available 60 days before beginning of nomination period, and are due 30 days before end of nomination period]). S.B. 594 provides that the signature-in-lieu period would begin seven days after the Commission’s final map deadline, as specified by this Court; signature-in-lieu petitions would be due on February 9, 2022, or 41 days after the Commission’s final deadline, whichever is later; and the number of required signatures would be reduced in proportion to the reduction in the overall length of the signature-in-lieu period. (S.B. 594, § 1, proposed Elec. Code, §§ 8163, subds. (a), (b), (c).) Thus, per S.B. 594, an 18-day extension to the Commission’s current December 15, 2021 deadline, to January 2, 2022, would result in a signature-in-lieu period that runs from January 9, 2022 to February 12, 2022. An additional 12-day extension of the Commission’s final deadline to January 14, 2022 would result in a signature-in-lieu period that runs from January 21, 2022 to February 24, 2022. Under both scenarios, the signature-in-lieu period and number of signatures required would be reduced to 62.5 percent of the normal requirements.

S.B. 594 also provides, consistent with existing law (Elec. Code, § 8106, subd. (b)(3)), that elections officials have ten days from the time they receive a signature-in-lieu petition to notify the candidate of any deficiency, and that the candidate “shall then, at the time of obtaining nomination forms, pay a pro rata portion of the filing fee to cover the deficiency.” (S.B. 594, § 1,

proposed Elec. Code, § 8163, subd. (c).) Thus, if any signatures are ultimately disqualified because a voter’s residence ends up being in a different district than anticipated after elections officials finalize the maps, any shortfall in valid signatures can be addressed by payment of a pro rata portion of the filing fee. Similarly, if there is a shortfall in the total number of required signatures—which for certain offices can be based on the number of registered voters in the district in which the candidate seeks nomination (Elec. Code, § 8106, subds. (a)(4) & (a)(5))—this can also be remedied by a pro rata payment of the filing fee.

Under existing law, the nomination period begins 113 days before the primary election, which is February 14, 2022. (Elec. Code, § 8020, subd. (b).) S.B. 594 provides that “nomination documents shall first be available on February 14, 2022, or the 46th day after” the Commission’s final deadline to certify maps, “whichever is later.” (S.B. 594, § 1, proposed Elec. Code, § 8164.) If the Commission’s final redistricting deadline were January 2, 2022, the nomination period would begin on February 17, 2022. A final redistricting deadline for the Commission of January 14, 2022 would result in a nomination period that begins on March 1, 2022.

Under existing law, nomination documents are due by the 88th day prior to the primary election, and S.B. 594 does not change this. (Elec. Code, § 8020, subd. (b).) Thus, regardless of whether the Commission’s final deadline is December 15, 2021, January 2, 2021, or January 14, 2021, S.B. 594 contemplates that

the end of the nomination period for the June 7, 2022 primary election will be March 11, 2022, consistent with existing law.

As a practical matter, it is not possible to run an election if elections officials do not have the final maps ready for use by the end of the nomination period. (Lean Decl., ¶ 21.) This is because, without final maps to rely on, candidates might file to run for an office in a district in which they do not reside or do not intend to file, or collect signatures from voters who are not registered to vote within the district boundary. (*Ibid.*) These candidates would have no opportunity to correct these deficiencies, if the final maps are not available by the end of the nomination period. (*Ibid.*)

The deadline for the Governor to sign or veto S.B. 594 is October 10, 2021. (Cal. Const., art. IV, § 10, subd. (b)(1).) S.B. 594 is urgency legislation that would take effect immediately upon signing by the Governor.

JURISDICTION

This Court has original jurisdiction in proceedings for extraordinary relief in the nature of mandamus. (Cal. Const., art. VI, § 10.) “[T]his court may appropriately exercise its jurisdiction over a petition for an original writ of mandate when the issues presented are of great public importance and must be resolved promptly,” including when necessary to the orderly functioning of our electoral system.” (*Vandermost, supra*, 54 Cal.4th at p. 453 [internal quotation marks and citations omitted]; *Legislature v. Padilla, supra*, 9 Cal.5th at p. 867, 874 [citing *Vandermost, supra*, 54 Cal.4th at pp. 451-453].)

ARGUMENT

While the Commission's requested extensions would likely serve the laudable goal of increasing time for public comment on its draft maps, the extensions would make it effectively impossible for the new maps to be used, in the June 2022 election. The Secretary of State estimates that elections officials' processes for preparing the new maps for use in an election could take 12 to 16 weeks. New maps must be in place before the end of the nomination period for that election, which is March 11, 2022. That is 12 weeks from the current deadline for final maps—December 15, 2021. Pushing this date out by 30 days, as the Commission requests, will seriously jeopardize elections officials' ability to prepare the new maps for use in the June 2022 election.

The Secretary of State recognizes the importance of a robust public comment participation process, as part of the Commission's redistricting work. Unfortunately, however, the Commission's proposed extensions simply cannot be reconciled with the realities of the election calendar, even assuming that legislation adjusting certain election-related deadlines is ultimately signed.

I. THE COURT SHOULD DECLINE TO EXTEND REDISTRICTING DEADLINES BY 18 DAYS.

The Commission asks this Court to formally extend the deadline for producing preliminary maps from November 1, 2021 to November 19, 2021, and the deadline for certifying final maps from December 15, 2021 to January 2, 2022. Although the 18-day

extension requested by the Commission would support its mission of performing redistricting through a robust public comment process, the extension creates the near certainty that elections officials will have insufficient time to prepare the new maps for use. Such an outcome would actually undermine the intent of the voters who assigned redistricting responsibilities to the Commission, because it would make it impossible for those redistricted maps to be used in the upcoming election. And, last-minute disruption to elections procedures or uncertainty about the accuracy of the maps would greatly undermine confidence in the electoral system.

A. The Peremptory Writ Should Not Be Read to Automatically Extend the Commission’s Deadlines

The Secretary of State does not dispute the Commission’s statement that it received 2020 census data in the format required for its redistricting work on August 18, 2021, which is 18 days later than the July 31, 2021 date originally contemplated in this Court’s opinion issuing the peremptory writ. (Mot. at p. 16.) Nor does the Secretary of State dispute that this Court’s opinion explicitly contemplated the possibility “that the dynamic nature of the global pandemic may lead the federal government to further postpone its delivery of the census data.” (*Legislature v. Padilla, supra*, 9 Cal.5th at p. 881.)

However, the peremptory writ should not be read to *automatically* extend the Commission’s deadlines, without confirmation that this use of the power of reformation is appropriate. That power allows this Court to “‘rewrite’ . . . a

statute in order to preserve it against invalidation under the Constitution,” or “in situations where *impossibility* would have the same effect as invalidity, preventing the statute from being carried out in accordance with its literal terms.” (*Kopp, supra*, 11 Cal.4th at pp. 660-661; *Legislature v. Padilla, supra*, 9 Cal.5th at pp. 876-877; see also *Matosantos, supra*, 53 Cal.4th at p. 274 [power of reformation exists when circumstances have “rendered it impossible for the parties and others affected to comply with the legislation’s literal terms”].) ⁶ Before reforming a statutory deadline, this Court must ask “whether this deadline can be reformed in a manner that closely approximates the framework designed by its enactors, and whether the enactors would have preferred the reform to the effective nullification of the statutory language.” (*Legislature v. Padilla, supra*, 9 Cal.5th at p. 877 [citing *Matosantos, supra*, 53 Cal.4th at p. 275].)

In deciding to issue the peremptory writ, this Court found that the requirements for reformation based on impossibility had been satisfied, concluding that “the Census Bureau’s adjusted timeline for release of the census data will make it impossible for the Commission to meet” its original deadlines for preliminary and final maps, and that extension of these deadlines would “preserve the intended operation of the statutory framework.” (*Legislature v. Padilla, supra*, 9 Cal.5th at p. 875.) In doing so,

⁶ This Court can exercise this authority with respect to statutes enacted by the Legislature and voter-approved ballot initiatives. (*Legislature v. Padilla, supra*, 9 Cal.5th at pp. 660-662.)

this Court emphasized “the extraordinary and unforeseen circumstances that have rendered compliance with the deadline[s] impossible.” (*Ibid.*) That is why “these adjustments to the relevant deadlines are limited to this redistricting cycle and these extraordinary circumstances”—namely the sudden global public health crisis that threatened to delay federal census data by four months. (*Ibid.*)

The four-month extension provided by the peremptory writ therefore reflects this Court’s determination that the Census Bureau’s anticipated four-month delay would render compliance with the Commission’s statutory and constitutional deadlines impossible. But that reasoning does not apply to the hypothetical “additional federal delay” that the Court’s opinion discussed in the abstract. The Court recognized the potential for continuing disruption and uncertainty, but it could not have preemptively concluded that any “additional federal delay” would result in the type of impossibility needed to justify further application of its power to reform statutory deadlines.

Here, the Commission’s current request for an 18-day extension is not driven by the same “extraordinary circumstances” that previously prompted this Court to act. Rather, the Commission is now facing an 18-day delay, on top of the four-month delay that was already anticipated and addressed. The Commission’s motion assumes that clarification regarding the application of the peremptory writ is needed, in light of the multiple, delayed releases of data from the Census Bureau. This suggests that an extension based on any “additional federal

delay” contemplated in the peremptory writ is based on changed circumstances that must be evaluated on their own merits.⁷ A new exercise of this Court’s power to reform statutory deadlines, based on these changed circumstances, requires a new finding that compliance with the existing deadlines is impossible.⁸

B. The Commission Can Still Perform Its Work, Even With an 18-Day Delay.

The 18 additional days that elapsed before the Commission received usable data does not present the same risk of impossibility as the anticipated four-month delay previously addressed by this Court. Without any adjustment to the current November 1, 2021 deadline for preliminary maps, if the Statewide Database provides the redistricting database to the

⁷ These changed circumstances also include the upcoming gubernatorial recall election. The elections officials responsible for planning how their offices will process the final certified maps from the Commission are the same ones charged with administering an election, on September 14, 2021. (Lean Decl., ¶ 22.)

⁸ To the extent this Court interprets the peremptory writ to automatically extend the Commission’s deadlines, by any amount of time, this Court can construe this opposition as an affirmative request for relief from that extension. (See *Legislature v. Padilla*, 9 Cal.5th at p. 881 [noting that if any “additional federal delay . . . risks interference with the timeline for conducting elections, appropriate parties may seek further relief in this court].) As set forth below, this request satisfies the criteria for reformation of deadlines that might be already set in the peremptory writ: compliance with a statutory mandate (use of redistricted maps in the next election) will be impossible, and voters would prefer deadlines that give elections officials sufficient time to prepare the maps for use in the election. (*Post*, at pp. 31-34.)

Commission by September 20, 2021, as anticipated (Mot. at p. 15 [citing Mac Donald Decl., ¶ 14]), the Commission would have six weeks to prepare its preliminary maps. The period of time normally available to the Commission for this task “[u]nder the original redistricting timetable as envisioned by the voters” is about eight-and-a-half weeks—from May 1 to July 1. (Mot. at p. 20.) Although the Commission and the public could certainly benefit from an 18-day extension to the November 1 deadline, it does not appear to be impossible for the Commission to create its preliminary maps in six weeks, as opposed to eight-and-a-half weeks.

The Commission would then have the same amount of time as originally contemplated for public comment and revisions to its preliminary draft and final maps: one and a half months, from November 1, 2021 to December 15, 2021. As the Commission notes, it is this period after the release of the preliminary maps that is “most crucial,” in terms of public engagement with the redistricting process. (Mot. at pp. 21-22.) And, keeping this public comment and revision period as currently scheduled means the Commission will finish taking public comment and produce its final maps before the last two weeks of the year. For these reasons, leaving the current deadlines in place will not result in the kind of impossibility needed for this Court to exercise its power of reformation.

C. The 18-Day Extension Would Seriously Compromise Elections Officials' Ability to Prepare New Maps In Time for the Next Election.

Although no impossibility will result from leaving the existing November 1, 2021 and December 15, 2021 deadlines in place, an 18-day extension to the Commission's final deadline seriously undermines elections officials' ability to prepare the redistricted maps for use for the June 7, 2022 primary election. Even though that election is six months from the Commission's proposed final deadline of January 2, 2022, potential candidates must have access to the maps as processed by elections officials well in advance of any given election. Candidates use these maps to determine whether they have incumbent status (Elec. Code, § 13108, subd. (c)), or whether to run at all, given the boundaries of the district in which they reside. (Lean Decl., ¶¶ 17-18.) Candidates also rely on the maps when conducting signature-gathering activities associated with the nominating papers every candidate must file, such as gathering signatures in-lieu of a filing fee or for their nomination papers. (Elec. Code, §§ 333, 8020, 8040, 8041, 8068, 8103, 8106; Lean Decl., ¶ 19.)

These candidate preparations cannot proceed based solely on the redistricted maps that the Commission certifies to the Secretary of State. Only after the Secretary of State's database has been created, tested, and implemented, and 58 county elections officials have processed that information into their respective election management systems, will candidates and county elections officials have maps that can be reliably used for

the June 7, 2022 election. (Lean Decl., ¶ 20.) These election preparation activities require that the new maps be implemented in all state and local election management systems before the end of the nomination period for the June 7, 2022 election. That date will be March 11, 2022, regardless of whether S.B. 594 is signed into law. (Elec. Code, § 8020, subd. (b) [nomination period ends 88 days prior to election day].)

It is simply not feasible to run an election if final maps are not in place prior to the close of the nomination period, which is the deadline for candidates to submit their required nomination papers, in order to appear on the ballot.⁹ As this Court has recognized, “preparing for elections is a complex and sequential

⁹ Nor would it be feasible to extend the nomination deadline. This would require extending all subsequent election-related deadlines (see Lean Decl., Exs. A-D), and would ultimately require postponing the election. But no party has suggested that the June 7, 2022 primary election should be moved in order to address the 18-day period at issue here. Postponement of the June 7, 2022 primary election would raise its own set of practical difficulties and significant risks, as it would compress the schedule of election administration events between that election and the November 8, 2022 general election. (See Lean Decl., Ex. D, November 3, 2020 general election calendar.) For example, the Secretary of State must officially certify the results of the primary election by July 15, 2022, and the nomination period for certain offices appearing on the general election ballot opens on July 18, 2022. (Elec. Code, § 15501; Cal. Const., art. VI, § 16; Elec. Code, §§ 8103, 8105, 8201; Lean Decl. ¶ 23.) However, the date of the November general election is fixed by federal law. (2 U.S.C. § 7 [establishing Tuesday after the first Monday in November in every even numbered year as the day of election for congressional representatives].)

process,” in which “[e]arly delays in one function can impact all other functions.” (*Wilson v. Eu, supra*, 54 Cal.3d at p. 548 [internal quotation marks omitted].) “[T]he need to know precise district boundaries is at the front end of the process” (*ibid.*), so a delay in finalizing district boundaries will affect all subsequent activities and deadlines. (See Lean Decl., Exs. A & B [calendars for June 2012 and June 2018 primary elections].) Such a delay would also leave candidates and elections officials unable to engage in basic election preparations. For example, if the Secretary of State and county elections officials are unable to complete work on the redistricted maps before the March 11, 2022 nomination deadline, candidates might file to run for an office in a district in which they do not reside or do not intend to file, or collect signatures from voters who are not registered to vote within the district boundary. (Lean Decl., ¶ 21.) These candidates would have no opportunity to correct these deficiencies, if the final maps are not available by the end of the nomination period. (*Id.*)

The Secretary of State’s best, most current, estimate is that elections officials will need 12 to 16 weeks to prepare the new maps for use in elections activities. (Lean Decl., ¶ 13; see *ante* at pp. 14-16.) Twelve weeks from the Commission’s proposed January 2, 2022 deadline (assuming an 18-day extension) is March 27, 2022. Thus, under the Commission’s proposed 18-day extension, even the lowest end of the currently estimated timeframe for elections officials to complete work on the redistricted maps will fall two weeks after the March 11, 2022

nomination deadline.¹⁰ Pushing the existing December 15, 2021 deadline for final maps out by any amount—whether by 12, 18, or 30 days—could seriously jeopardize elections’ officials ability to prepare the new maps in time for the June 2022 election.

An election thrown into disarray in this manner will severely undermine public confidence in the electoral process. Any extension thus risks invalidating the will of the voters who placed the Commission in charge of redistricting in California—by making it impossible for the redistricted maps to be ready for use in the next election.

Because the existing deadlines do not make it impossible for the Commission to fulfill its redistricting duties, and because any extension to those deadlines materially increases the risk that elections officials will have insufficient time to prepare the redistricted maps, the Court should leave the existing deadlines as they are.

II. THE COURT SHOULD DECLINE TO EXTEND THE FINAL REDISTRICTING DEADLINE BY 12 ADDITIONAL DAYS.

In addition to the 18-day extension, the Commission also requests that its deadline for certifying final maps be extended by 12 more days. Together, these extensions would move the Commission’s final deadline out by 30 days, from December 15, 2021 to January 14, 2022. This request for 12 additional days is predicated on the Court granting the 18-day extension, as it

¹⁰ Twelve weeks from the Commission’s current December 15, 2021 deadline for final maps is March 9, 2022.

assumes that the public comment period and final map revisions will occur entirely over the end-of-year holidays, up until January 2, 2022. The request is aimed at increasing public participation in the redistricting process, by moving the final period of public comment and map revisions to the two weeks after the holidays.

This request may very well become moot, if the Court declines to grant the 18-day extension. With no 18-day extension to the existing deadlines, the Commission's final maps are due on December 15, 2021, which is before the traditional peak of the end-of-year holiday period. And, the Commission will have the same amount of time to take public comment and revise its draft maps as originally intended by the voters: one and a half months. However, if the request does not become moot because the Court decides to grant the 18-day extension, then the 12-day extension provides even less of a basis for this Court to exercise its power of reformation, and poses an even greater risk of disruption to the election.

This Court's ability to reform a constitutional deadline does not encompass an extension aimed at optimizing the timing of that deadline around other events on the calendar. The judicial power to rewrite a statute or constitutional provision must be exercised with restraint. This Court has previously stated that its "goal in fashioning such a remedy is to disturb the original language of the provision as little as possible," which is why this Court described the remedy in the peremptory writ as a "narrow, one-time adjustment." (*Kopp, supra*, 11 Cal.4th at p. 661; *Legislature v. Padilla, supra*, 9 Cal.5th at p. 881.)

Although the 12-day extension is meant to serve the important goal of increasing public engagement with the redistricting process, the type of impossibility required to support application of this Court’s power of reformation simply is not present. As this Court determined when issuing the peremptory writ, “the enactors would have preferred this deadline be adjusted — and the opportunity for public comment on the preliminary maps preserved — to effectively eliminating the public comment process because of extraordinary circumstances that make compliance with the statutory deadline impossible.” (*Legislature v. Padilla, supra*, 9 Cal.5th at p. 879.) But here, the end-of-year holidays will not “effectively eliminate[] the public comment process.” (*Ibid.*) Taking final public comments and performing final revisions to maps over the traditional end-of-year holiday period does not mean it will be impossible for the Commission to receive public comment or make final map revisions. The Commission will have the same amount of time as originally contemplated for public comment and revisions to its maps: one and a half months, from November 1, 2021 to December 15, 2021, or from November 19, 2021 to January 2, 2022.

In contrast, an additional 12-day extension makes it even more challenging for elections officials to prepare the new maps for use in the June 7, 2022 election, as compared with the challenges already presented by the requested 18-day extension. As set forth above, the 18-day extension would likely result in elections officials completing their work with the redistricted

maps by March 27, 2022—about two weeks after the close of the nomination period, which cannot be moved without moving the June 7, 2022 election. (See *ante*, at pp. 33-34.) An additional 12-day extension means elections officials would finish their work 12 days later, or by April 8. This is four weeks after the March 11, 2022 close of the nomination period. And as also explained above, it is simply not possible to hold an election in which the maps to be used in that election are not available before the nomination deadline. (See *ante*, at pp. 32-33.)

The Secretary of State recognizes that the 12-day extension from January 2, 2022 to January 14, 2022 would allow final map drawing and public comments to take place after the holidays, and that this would be beneficial for public participation and engagement. But this Court’s power to reform statutory and constitutional provisions is a limited one. Having public comment over the end-of-year holidays—or even in the weeks before the peak of those holidays—would not make it impossible for the Commission to take public comment at all. And, extending the Commission’s final deadline to January 14, 2022 seriously jeopardizes elections officials’ ability to prepare redistricted maps for the June 7, 2022 election. For these reasons, the Secretary of State unfortunately cannot support the Commission’s request for the additional 12-day extension.

CONCLUSION

For the foregoing reasons, this Court should deny the relief sought in the Commission’s motion.

September 7, 2021

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached **RESPONDENT SECRETARY OF STATE'S OPPOSITION TO EMERGENCY MOTION TO CLARIFY AND/OR MODIFY WRIT PETITION** uses a 13 point Century Schoolbook font and contains **7,829** words.

September 7, 2021

ROB BONTA
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/S/ P. PATTY LI
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Deputy Attorney General
*Attorneys for Secretary of State Shirley
N. Weber*

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DECLARATION OF ELECTRONIC SERVICE

Case Name: *Legislature of the State of California v. Shirley N. Weber*
Case No.: **S262530**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic correspondence. In accordance with that practice, correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically

On September 7, 2021, I electronically served the attached

- 1. RESPONDENT SECRETARY OF STATE'S OPPOSITION TO EMERGENCY MOTION TO CLARIFY AND/OR MODIFY WRIT OF MANDATE**

- 2. DECLARATION OF JANA M. LEAN IN SUPPORT OF RESPONDENT SECRETARY OF STATE'S OPPOSITION TO EMERGENCY MOTION TO CLARIFY AND/OR MODIFY WRIT OF MANDATE**

by transmitting a true copy via this Court's TrueFiling system, addressed as follows:

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Redistricting Commission*

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on September 7, 2021, at San Francisco, California.

M. Mendiola
Declarant



Signature

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