

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.

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

Fredric D. Woocher (SBN 96689)*
Andrea Sheridan Ordin (SBN 38235)
Salvador E. Pérez (SBN 309514)
STRUMWASSER & WOOCHEER LLP
10940 Wilshire Boulevard, Ste. 2000
Los Angeles, California 90024
Telephone: (310) 576-1233
Facsimile: (310) 319-0156
fwoocher@strumwooch.com

Anthony Pane, Chief Counsel (SBN 250176)
California Citizens Redistricting
Commission
721 Capital Mall, Suite 260
Sacramento, California 95814
Telephone: (916) 323-0323
anthony.pane@crc.ca.gov

* *Counsel of Record*

Attorneys for California Citizens Redistricting Commission

TABLE OF CONTENTS

TABLE OF CONTENTS.....	2
TABLE OF AUTHORITIES.....	3
INTRODUCTION.....	5
BACKGROUND AND POST- <i>PADILLA</i> DEVELOPMENTS.....	8
ARGUMENT.....	16
I. THE COURT SHOULD MODIFY THE WRIT OF MANDATE ISSUED IN <i>PADILLA</i> TO CLARIFY THAT THE COMMISSION’S DEADLINE FOR RELEASING THE FIRST PRELIMINARY REDISTRICTING MAPS IS EXTENDED BY AN ADDITIONAL 18 DAYS TO NOVEMBER 19, 2021, IN ORDER TO ACCOUNT FOR THE “ADDITIONAL FEDERAL DELAY” IN TRANSMITTING USABLE CENSUS DATA TO THE STATE.....	16
II. THE COURT SHOULD MODIFY THE WRIT OF MANDATE ISSUED IN <i>PADILLA</i> TO ORDER THAT THE COMMISSION’S DEADLINE FOR APPROVING AND CERTIFYING THE FINAL REDISTRICTING MAPS IS EXTENDED TO JANUARY 14, 2022, IN ORDER TO ACCOUNT FOR THE “ADDITIONAL FEDERAL DELAY” IN TRANSMITTING USABLE CENSUS DATA TO THE STATE AND TO PERMIT MEANINGFUL PUBLIC INPUT INTO THE FINAL MAP-DRAWING PROCESS.....	21
III. THE COURT SHOULD MODIFY THE WRIT OF MANDATE ISSUED IN <i>PADILLA</i> TO ORDER THAT ONLY THREE DAYS’ NOTICE IS REQUIRED FOR COMMISSION MEETINGS HELD IN THE FIFTEEN DAYS BEFORE THE DEADLINE FOR CERTIFYING THE FINAL REDISTRICTING MAPS.....	26
CONCLUSION.....	27
CERTIFICATE OF WORD COUNT.....	29

TABLE OF AUTHORITIES

State Cases

<i>Assembly v. Deukmejian</i> (1982) 30 Cal.3d 638.....	26
<i>Legislature v. Padilla</i> (2020) 9 Cal.5th 867.....	passim
<i>Wilson v. Eu</i> (1991) 54 Cal.3d 546	26

Federal Constitution

13 U.S.C. § 141, subd. (a)	19
----------------------------------	----

California Constitution

Cal. Const., art. XXI,	
§ 2, subd. (a)	8
§ 2, subd. (b)(1).....	7, 24
§ 2, subd. (g)	8, 9, 27

Statutes

Elec. Code,	
§ 12262.....	25
Gov. Code,	
§ 8251, subd. (b)(2).....	21
§ 8253.....	8, 9, 27
§ 8253, subd. (a)(1).....	7, 8, 26, 27
§ 8253, subd. (a)(7).....	9, 24
§ 8253, subd. (b)	6, 18

Other Authorities

Census Bureau Statement on Redistricting Data Timeline (Feb. 12, 2021).....	11
Raphael J. Sonenshein, <i>When the People Draw the Lines: An Examination of the California Citizens Redistricting Commission</i> (June 12, 2013)	22

U.S. Census Bureau Statement on Release of Legacy Format
Summary Redistricting Data File (Mar. 15, 2021) 12

INTRODUCTION

By this motion, the California Citizens Redistricting Commission (“CCRC” or the “Commission”) respectfully requests that this Court issue an order clarifying and/or modifying the writ of mandate issued by the Court in this action on July 17, 2020, in order to establish with certainty the adjusted deadlines that apply to the Commission’s release for public display and comment of the first preliminary statewide maps for the congressional, State Senatorial, Assembly, and State Board of Equalization districts, and to the Commission’s approval and certification of the final statewide maps to the Secretary of State. (See *Legislature v. Padilla* (2020) 9 Cal.5th 867, 881-882 (“*Padilla*”).)

In response to the Census Bureau’s announcement that its release of the data necessary for the Commission to draw new district maps would be delayed from March 31, 2021, to July 31, 2021, this Court in *Padilla* extended the Commission’s deadlines by a comparable four months, issuing a writ of mandate directing the Commission “to release the first preliminary statewide maps for the congressional, State Senatorial, Assembly, and State Board of Equalization districts for public display and comment no later than November 1, 2021,” and “to approve and certify the final statewide maps to the Secretary of State by no later than December 15, 2021.” (*Ibid.*) Recognizing “that the dynamic nature of the global pandemic may lead the federal government to further postpone its delivery of the census data,” the Court also ordered that the adjusted November 1, 2021, and December 15, 2021, deadlines should be further extended by the length of any

additional delay in the release of the federal census data beyond the then-predicted four months. (*Ibid.*) The further postponement in the delivery of the census data foreseen by this Court in *Padilla* has indeed come to pass, but the Census Bureau's decision to transmit the census data to the states in *two different formats on two different dates* has created an ambiguity in how the length of this "additional federal delay" should be interpreted and calculated. The Commission therefore seeks an order from the Court clarifying that the "additional federal delay" should run from July 31, 2021, to August 18, 2021, which is the date on which the Statewide Database was able to complete the reformatting of the "legacy" version of the federal census data and make it publicly available *in a usable format* both for the public and for the Statewide Database to begin building the official statewide redistricting database that the Legislature is required to provide to Commission in order to formally begin the redistricting process. (See Gov. Code, § 8253, subd. (b).) Under this interpretation of the "additional federal delay," the deadlines for the Commission's release of the preliminary maps and its certification of the final maps would each be extended by an additional 18 days, to Friday, November 19, 2021, and to Monday, January 3, 2022, respectively.

Moreover, the additional delay in the release of the federal census data has pushed 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 own proposed maps) and in which the Commission will reconsider and revise its draft maps in response to the public's input — squarely and almost *entirely* into the traditional Thanksgiving-Christmas-New Year's holiday period. Numerous individuals and community organizations have warned the Commission that there will be great difficulty in obtaining meaningful public engagement and participation in the map-drawing process during the holiday period, and they have urged the Commission to ensure that sufficient time is provided in the month of January — after the holiday period has concluded — for the critical map review, refinement, and finalization process. The Commission agrees that a further adjustment to the deadline for certification of the final redistricting maps is warranted under these unusual circumstances in order for the Commission to be able to fulfill its constitutional mandate to “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).) Accordingly, the Commission requests that the Court also modify the writ of mandate it issued in *Padilla* to extend the deadline for the Commission's approval and certification of the final redistricting maps to January 14, 2022, in order to “effectuate the policy judgment underlying the [deadline] and preserve the public's right to provide input on electoral district maps before those maps are finalized.” (9 Cal.5th at p. 878.)

Finally, Government Code section 8253, subdivision (a)(1) requires the Commission to “provide not less than 14 days' public

notice for each meeting held for the purpose of receiving public input testimony, *except that meetings held in August in the year ending in the number one* may be held with three days' notice.” (Emphasis added.) The evident intent of the shortened notice period for the month of August was to permit the Commission to be able to respond more quickly to public input and to hold more frequent meetings in the final days of drawing and revising the redistricting maps — which, under the originally anticipated timetable for finalizing and certifying those maps, was scheduled to occur from August 1 to August 15 in each year ending in the number one. (See Cal. Const., art. XXI, § 2, subd. (g).) Although the Court in *Padilla* adjusted the *deadlines* for the preparation of the preliminary and final maps for the current redistricting cycle to account for the delay in the release of the federal census data, no similar adjustment was made to the required *public notice period* for the Commission’s final meetings under Government Code section 8253. The Commission therefore requests that the Court “preserve the intended operation of the statutory framework” (9 Cal.5th at p. 875) by also modifying *Padilla’s* writ of mandate to direct that Government Code section 8253, subdivision (a)(1), requires only three days’ notice for Commission meetings held in the fifteen days before the deadline for certifying the final redistricting maps.

BACKGROUND AND POST-PADILLA DEVELOPMENTS

Article XXI, section 2, subdivision (a) of the California Constitution provides that “[t]he Citizens Redistricting Commission shall be created no later than December 31 in 2010,

and in each year ending in the number zero thereafter.”

Article XXI, section 2, subdivision (g) then states that “[b]y August 15 in 2011, and in each year ending in the number one thereafter, the commission shall approve four final maps that separately set forth the district boundary lines for the congressional, Senatorial, Assembly, and State Board of Equalization districts. Upon approval, the commission shall certify the four final maps to the Secretary of State.”

Government Code section 8253 further fleshes out the timeline for the Commission’s work, mandating that the Commission must “establish and implement an open hearing process for public input and deliberation that . . . shall include hearings to receive public input before the commission draws any maps and hearings following the drawing and display of any commission maps.” (Gov. Code, § 8253, subd. (a)(7).) In particular, section 8253 requires that “[p]ublic comment shall be taken for at least 14 days from the date of public display of the first preliminary statewide maps of the congressional, State Senatorial, Assembly, and State Board of Equalization districts, which shall be publicly displayed no later than July 1 in each year ending in the number one. . . . 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.*)

Thus, under the constitutional and statutory scheme enacted by the voters with the adoption of Propositions 11 and 20

(and as subsequently amended by the Legislature in 2012), the Commission was required to draw and display its preliminary redistricting maps no later than July 1, 2021, and to adopt and certify its final maps by August 15, 2021.

COVID-19 and the Census Bureau, however, disrupted this timetable for the current redistricting cycle. In April 2020, the Census Bureau announced that due to the coronavirus pandemic, it would not be able to meet the March 31, 2021, deadline for delivering final census population figures to the states, and that it would be asking Congress for a four-month extension of that deadline, to July 31, 2021. Recognizing that the projected four-month delay in receiving the federal census data would make it impossible for the Commission to meet the state constitutional and statutory redistricting deadlines, the California Legislature proactively filed an original writ petition with this Court in June 2020 asking for those deadlines to be extended to account for the anticipated delay in the release of the federal census data; the Secretary of State and the 2010 Commission concurred in the Legislature's request.

On July 7, 2020, this Court granted the Legislature's petition, noting that "the Census Bureau's adjusted timeline for release of the census data will make it impossible for the Commission to meet the statutory July 1 deadline for release of the first preliminary statewide redistricting maps," and holding that "given the extraordinary and unforeseen circumstances that have rendered compliance with the deadline impossible, the proper remedy is for this court to extend the deadline and

thereby preserve the intended operation of the statutory framework.” (*Padilla*, 9 Cal.5th at p. 875.) Observing that “our goal in fashioning such a remedy is to disturb the original language of the provision as little as possible,” the Court concluded that “[a] four-month adjustment of these deadlines addresses this issue while leaving sufficient time for the maps to be finalized in advance of the 2022 primaries. For these reasons, we agree that a four-month adjustment of the deadlines for the release of the draft maps and the approval of the final maps is appropriate.” (*Id.* at pp. 880-881.) The Court therefore issued a writ of mandate directing the Commission “to release the first preliminary statewide maps for the congressional, State Senatorial, Assembly, and State Board of Equalization districts for public display and comment no later than November 1, 2021” and “to approve and certify the final statewide maps to the Secretary of State by no later than December 15, 2021. If the maps are approved and certified by this date, the Secretary of State shall consider the maps approved and certified consistent with the requirements of article XXI, section 2, subdivision (g) of the California Constitution.” (*Id.* at pp. 881-882.)

In issuing its decision in *Padilla*, however, this Court understood that there was still some uncertainty regarding when the Census Bureau would actually be able to release the census data to the state so that the Commission could begin the redistricting process. Accordingly, the Court included the following caveat in its ruling:

If the federal government transmits the census data to the state later than July 31, 2021, the

number of days of additional delay shall be considered to be the “additional federal delay.” In the event additional federal delay occurs, the Commission is directed to release the first preliminary statewide maps by no later than the date following November 1, 2021, that extends the November 1 deadline by the additional federal delay, and to approve and certify the final maps by no later than the date following December 15, 2021, that extends the December 15 deadline by the additional federal delay. (*Id.* at p. 882.)

In sum, under the writ of mandate issued by this Court in *Padilla*, the respective deadlines for the Commission to release and approve the preliminary and final redistricting maps are November 1, 2021, and December 15, 2021, *plus the number of additional days beyond July 31, 2021, that the federal government delays in “transmit[ting] the census data” to the state.*

As this Court anticipated in *Padilla*, “the dynamic nature of the global pandemic” did in fact “lead the federal government to further postpone its delivery of the census data.” (*Id.* at p. 881.) On June 12, 2021, the Census Bureau announced that it would not meet the projected July 31, 2021, transmittal date but that it would instead deliver the Public Law (P.L.) 94-171 redistricting data to all states by *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>>.)

Approximately a month later, however, on March 15, 2021, the Census Bureau announced that in recognition of the difficulties that the September 30th delivery date would create for the states’ redistricting and election deadlines, it had

identified an opportunity to shorten the processing schedule by releasing the census data using “legacy” format summary redistricting data files that did not include the final steps in the Census Bureau’s process of creating “tabulations” (data tables) from the data collected for each state and creating a user-friendly system for data access. The Census Bureau determined that states should be given the opportunity to process the legacy format summary redistricting data files themselves if they had the capacity to tabulate the data on their own, but that given the difficulty of using the data in this format, any state using legacy format summary redistricting data files would have to accept responsibility for how they processed these files, whether correctly or incorrectly. The Census Bureau projected that it would be able to provide a legacy format summary redistricting data file to all states by *mid-to-late August 2021*, significantly earlier than the promised September 30, 2021, delivery date for the traditional P.L. 94-171 fully-formatted dataset. (See U.S. 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>>.)

On March 26, 2021, the California Legislative Leadership sent a letter to the Citizens Redistricting Commission advising the Commission that in response to the Census Bureau’s March 15, 2021, announcement, the Statewide Database had been working diligently to determine whether the Bureau’s “legacy” format release could be used to meet the mandate for the

Legislature to ensure a complete and accurate computerized database for redistricting, and that “[t]he Database has determined this interim release consists of the exact same data as the P.L. 94-171 file, only in a more complicated and less refined format.” (Letter of March 26, 2021, from California Legislative Leadership to California Citizens Redistricting Commission, p. 1, attached as Exh. 2 to Declaration of Karin Mac Donald (“Mac Donald Decl.”).) The Legislature’s letter explained that because “[t]he processing of this legacy format redistricting data is more complicated than the Public Law 94-171 [dataset] . . . , the Database will need some additional processing time, but believes it will be able to provide access to unadjusted Census data approximately two weeks after its release. Once this step is completed and consistent with the original timeline, the Database will be able to deliver the complete computerized database within one more month, including adjusted Census data for incarcerated persons and electoral data to aid compliance with the federal Voting Rights Act.” (*Id.*, pp. 1-2.)¹

¹ The Director of the Statewide Database (SWDB), Karin Mac Donald, sent a memo to the Commission that same date further elaborating on the distinction between the interim “legacy” dataset and the Public Law 94-171 redistricting datafiles. Dr. Mac Donald confirmed that “the ‘legacy’ data are the same data that will be released by September 30, 2021 in the ‘traditionally’ formatted P.L. 94-171 file,” but “[t]he ‘legacy’ datafiles consist of the final data product that is essentially not user friendly and necessitates more advanced database, analysis and manipulation skills to be usable for redistricting purposes than the later release of the P.L. 94-171.” Dr. Mac Donald’s memo to the Commission likewise stated that “a 2-week period of time from the release of the ‘legacy’ data would be a reasonable timeframe to complete the processing, run accuracy checks, compare the data and allow for any discrepancies to be analyzed and resolved. This 2-week period would be in addition to, and precede, the 30-day period of time that the SWDB will require to

The Census Bureau released the “legacy” redistricting dataset through its public FTP site on August 12, 2021, and the Statewide Database immediately downloaded the data and began the reformatting and data verification process necessary to convert the “legacy” data into a usable format for the public and for building the statewide redistricting database for the Legislature and the Commission. (Mac Donald Decl., ¶ 13.) Working throughout the ensuing weekend, the Statewide Database was able to complete the reformatting in less than a week’s time, and the Chief of the California Demographic Research Unit, State Demographer Dr. Walter Schwarm, validated the accuracy of the reformatted data. The dataset was then posted on the Statewide Database’s website on the afternoon of August 18, 2021. (*Ibid.*) Director Mac Donald has further advised the Commission and the Legislature that the Statewide Database expects to be able to complete and release the adjusted statewide redistricting database that combines the federal census data with the voter registration data and historical statewide election results by Monday, September 20, 2021. (*Id.*, ¶ 14.)

build the State’s official redistricting database.” (Memorandum dated March 26, 2021, from Karin Mac Donald to California Citizens Redistricting Commission & State of California Legislative Leadership, attached as Exh. 1 to Mac Donald Decl.) Dr. Mac Donald subsequently advised the Commission that the Statewide Database believed that it would be able to complete the process of reformatting and checking the accuracy of the “legacy” data within *one week* of receiving it from the Census Bureau. (Mac Donald Decl., ¶ 12.)

ARGUMENT

I. THE COURT SHOULD MODIFY THE WRIT OF MANDATE ISSUED IN *PADILLA* TO CLARIFY THAT THE COMMISSION'S DEADLINE FOR RELEASING THE FIRST PRELIMINARY REDISTRICTING MAPS IS EXTENDED BY AN ADDITIONAL 18 DAYS TO NOVEMBER 19, 2021, IN ORDER TO ACCOUNT FOR THE "ADDITIONAL FEDERAL DELAY" IN TRANSMITTING USABLE CENSUS DATA TO THE STATE

As set forth above, this Court in *Padilla* anticipated that the release of the federal census data to the states might be further delayed beyond the then-expected date of July 31, 2021, and the Court's decision provided for that eventuality by ordering that the deadlines for the Commission to display and approve its preliminary and final redistricting maps should "be further extended by the length of any additional delay in release of the federal census data beyond four months." (9 Cal.5th at p. 881.) What the Court did not and could not have anticipated in *Padilla*, however, is that the Census Bureau would release *two different versions* of the federal census data on *two different dates*: the traditional fully-formatted version (the "P.L. 94-171" dataset), which the Bureau currently promises to release no later than September 30, 2021; and an interim version, in a prototype format that required further processing by the state (the "legacy" dataset), which the Census Bureau released on August 12, 2021, and which was re-formatted, validated, and made publicly available by the Statewide Database on August 18, 2021. The release of the interim "legacy" formatted dataset has created an ambiguity in how the "additional federal delay" in the release of the federal census data should be interpreted, warranting this

Court’s modification and clarification of the writ of mandate it issued in *Padilla* so that the Commission and the public can know with certainty — and as soon as possible — what the applicable deadlines are for the preparation and approval of the Commission’s redistricting maps.

Although *Padilla* did not contemplate and therefore did not provide a direct answer as to how the “additional federal delay” should be interpreted in this unusual circumstance, the Commission believes that the logic of the Court’s decision — in combination with the subsequent actions of the Legislature and the Statewide Database — compels the conclusion that the “additional federal delay” should be calculated to run from July 31, 2021, to August 18, 2021, which is the date on which the Statewide Database was able to complete the reformatting of the interim “legacy” version of the federal census data into a version that is equivalent to the traditional “P.L. 94-171” dataset. August 18 is the date on which the federal census data for California was first made available *in a usable format* for redistricting purposes; significantly, it is also the date on which the Statewide Database was first able to begin the month-long process of combining the federal census data with the state voter registration and historical election data in order to build the statewide redistricting database that is a prerequisite for the Commission (and local government agencies and commissions) to begin preparing redistricting maps. (See Mac Donald Decl., ¶¶ 3-6, 14) Using August 18 as the endpoint in calculating the “additional federal delay” beyond July 31, 2021, would extend the

deadline for the Commission to produce and release the first preliminary statewide redistricting maps by an additional 18 days from November 1, 2021 — to Friday, November 19, 2021.

As the Court explained in *Padilla*, “[i]n California, the redistricting process begins with the Legislature preparing a dataset that combines the federal census data with voter registration data and historical statewide election results. (Gov. Code, § 8253, subd. (b).) The Legislature then provides this dataset to the Citizens Redistricting Commission.” (9 Cal.5th at p. 871.) Elsewhere in the opinion, the Court reiterates that given the announced delay in the release of the federal census data, the original July 1st deadline for the Commission to display the first preliminary statewide maps would be impossible to meet because “*the Commission cannot begin the process of creating the maps until the Legislature has first built the redistricting database for the Commission to use.* In a declaration submitted with the Legislature’s petition, the director of the database explains that it takes approximately one month to create this database after the state receives the census data. This means that if the census data are not delivered until July 31, 2021, then the earliest the Commission could begin drawing maps would be August 31, 2021 — fully two months after the statutory deadline for the Commission to publicly release the first round of draft maps.” (*Id.* at p. 875 [emphasis added; citation omitted].)

In other words, *Padilla* recognized that the critical determinant for when the redistricting process can start in California is when the Legislature, through the Statewide

Database, can begin building the statewide redistricting database that combines the federal census data with the individual voter registration and historical election data necessary for the Commission to draw districts that comply with the federal Voting Rights Act. (See Mac Donald Decl., ¶¶ 3-6.) Normally, this would simply be the date on which the Census Bureau releases the traditional P.L. 94-171 census dataset to the states, because that is the format in which federal law calls for the census data to be delivered to the states (see 13 U.S.C. § 141, subd. (a)), and that is the dataset that the Statewide Database can immediately begin using to build the official statewide redistricting database. This year, however, in an effort to mitigate the harm from the extended delay in the availability of the traditional P.L. 94-171 dataset, the Census Bureau agreed to release an interim “legacy” version of the census data and to allow states possessing the necessary capability to complete the processing of the “legacy” data by tabulating the data themselves and converting it into a usable format equivalent to the P.L. 94-171 dataset. The Legislature and the Statewide Database determined not to wait until the end of September for the release of the P.L. 94-171 dataset, and to instead finish processing the “legacy” dataset themselves and convert it into the format needed for building the statewide redistricting database for the Commission. But doing that extra work to reformat the “legacy” dataset into a usable format for redistricting purposes took the Statewide Database an additional six days, and that time should properly be included in calculating the length of the “additional federal delay” beyond

July 31, 2021, in “releasing the federal census data needed to draw the maps.” (*Padilla*, 9 Cal.5th at p. 875.)

Interpreting the “additional federal delay” to include the additional time necessary for the Statewide Database to reformat the “legacy” census data into the format needed for building the statewide redistricting database and drawing the maps “preserve[s] the intended operation of the statutory framework.” (*Ibid.*) As the Court observed in *Padilla*, the deadlines for the Commission to display and approve the preliminary and final redistricting maps were “enacted against the backdrop of the federal deadline that requires the Census Bureau to transmit census data to the states by March 31 of the year following the census,” and those deadlines “reflect[] [the voters’] 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 p. 879.) Under the original redistricting timetable as envisioned by the voters, the state was expected to receive the P.L. 94-171 federal census data no later than April 1st; the Commission would receive the statewide redistricting database from the Legislature by May 1st; and the Commission would therefore have at least two full months — until July 1st — to take public input and to produce the first set of preliminary maps. Unless the deadline for calculating the “additional federal delay” includes the time that the Statewide Database needed to reformat the “legacy” dataset into a usable format for building the statewide redistricting database, the Commission would have substantially less time to consider the

public's comments and to prepare the first preliminary redistricting maps than had been intended by the electorate.

Accordingly, based on the new and unanticipated information regarding the timing and nature of the release of the federal census data to the state, the Commission requests that the Court modify the writ of mandate issued in *Padilla* to clarify that the deadline for the Commission to release the first preliminary redistricting maps for public display and comment is extended from November 1, 2021, to November 19, 2021, based upon the “additional federal delay” of 18 days from July 31, 2021, to August 18, 2021, in releasing usable federal census data.

II. THE COURT SHOULD MODIFY THE WRIT OF MANDATE ISSUED IN *PADILLA* TO ORDER THAT THE COMMISSION'S DEADLINE FOR APPROVING AND CERTIFYING THE FINAL REDISTRICTING MAPS IS EXTENDED TO JANUARY 14, 2022, IN ORDER TO ACCOUNT FOR THE “ADDITIONAL FEDERAL DELAY” IN TRANSMITTING USABLE CENSUS DATA TO THE STATE AND TO PERMIT MEANINGFUL PUBLIC INPUT INTO THE FINAL MAP-DRAWING PROCESS

Interpreting the “additional federal delay” in the release of the census data to run from July 31st to August 18th would similarly extend *Padilla*'s December 15, 2021, deadline for the Commission to approve and certify the final redistricting maps by an additional 18 days to January 2, 2022.² This schedule, however, would mean that the most crucial phase of the state's redistricting process — the period in which the public has the

² Because that date falls on a Sunday, the deadline would be 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”].)

opportunity to review and comment on the Commission’s preliminary maps (including the opportunity for impacted communities to present their own proposed maps) and in which the Commission can reconsider and revise its draft maps in response to the public’s input — would fall squarely and *almost entirely* within the traditional Thanksgiving and December holiday period, between the Friday before Thanksgiving and the Monday after New Year’s weekend.

Numerous individuals and community organizations have apprised the Commission that it will have great difficulty in obtaining meaningful public engagement and participation in the map-drawing process during the holiday period, and they have urged the Commission to ensure that sufficient time is provided during the month of January — after the holiday period has concluded — for the critical map review, refinement, and finalization process.³ Many people use the holiday period to take vacations or to visit family members in other states and are physically unavailable during the Thanksgiving-Christmas-New

³ Typical of these cautionary comments is a May 23, 2021, letter that the Commission received from the Integrated Voter Engagement (IVE) Redistricting Alliance, a coalition of more than a dozen community-based organizations and civil rights advocates formed to empower low-income, Black, Indigenous, and people of color (BIPOC) residents to participate in the 2021 state and local redistricting processes. The Alliance’s letter documented the challenges that the communities it represented would have in reviewing the Commission’s draft maps and providing public input during the holiday period, and it urged the Commission to extend the deadline for final map approval until at least January 28, 2022, in order to be consistent with the purposes of the Voters First Act. A copy of the IVE Alliance’s letter is posted on the Commission’s website and is available at <https://d3n8a8pro7vhm.cloudfront.net/ccrc/pages/188/attachments/original/1621820560/IVE_Redistricting_Alliance_Deadline_Analysis_and_Recommendations.pdf?1621820560>.

Year holiday period; for some other individuals, religious observances take priority over other events at this time; and for many more, the holidays simply provide a distraction that makes it difficult to focus on complex and arcane matters like redistricting. Worse yet, the impact is greatest on minority and other under-represented communities that do not traditionally participate in the political process, yet who are precisely the groups from whom the Commission is most in need of input.

Moreover, despite the best efforts of the Commission to solicit public comment throughout the redistricting process (even prior to the release of the census data), the reality is that it is not until the first preliminary maps are released — with their concrete proposals for boundary lines and clear visualizations of the location of electoral districts — that many affected individuals and communities engage in the process and are able to provide meaningful input to the Commission. As the League of Women Voters' report analyzing the 2010 Redistricting Commission's experience concluded: "No matter how many opportunities people have to speak at public meetings, or how many draft maps people or groups transmit to a commission, nothing generates real public input more than a concrete proposal." (Raphael J. Sonenshein, *When the People Draw the Lines: An Examination of the California Citizens Redistricting Commission* (June 12, 2013), p. 37 [available at <<https://cavotes.org/sites/default/files/jobs/RedistrictingCommission%20Report6122013.pdf>>].) As a result, the prior Commission's release of its first draft maps sparked an intense period of public

comment and mapping activities that “constituted the heart of the citizen redistricting process.” (*Id.* at p. 46.)

The Commission is concerned that having this critical component of the redistricting process take place almost entirely during the holiday period would contravene its mandate to “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).) Robust public participation is supposed to be one of the hallmarks of the citizen-controlled redistricting process: The Commission must 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).) Indeed, this Court in *Padilla* stressed that “the July 1 deadline for displaying preliminary maps was chosen to ensure that the public has the opportunity to provide input on the proposed maps before the Commission certifies them as final.” (9 Cal.5th at p. 878.)

Of course, as the quoted passage from *Padilla* indicates, the period for the public to review and comment on the Commission’s preliminary maps was never intended to fall in the midst of the busy Thanksgiving-Christmas-New Year’s holiday period. Rather, under the schedule envisioned by the electorate, the initial release, refinement, and finalization of district maps was to occur between July 1 and August 15 — a period with minimal

competition from other events to distract and prevent the public from fully engaging in the redistricting process.

For all of these reasons, the Commission believes that in order to “preserve the intended operation of the statutory framework” (*id.* at p. 875), it is appropriate, if not imperative, to briefly extend the time period for the public to review and to provide input on the Commission’s preliminary maps (and for the Commission to consider and respond to the public’s input), so that this critical phase of the redistricting process is not forced to occur almost entirely during the Thanksgiving-Christmas-New Year’s holiday period. Accordingly, the Commission requests that the Court also modify the writ of mandate it issued in *Padilla* to extend the deadline for the Commission’s approval and certification of the final redistricting maps to Friday, January 14, 2022, in order to “effectuate the policy judgment underlying the [deadline] and preserve the public’s right to provide input on electoral district maps before those maps are finalized.” (*Id.* at p. 878.)⁴

⁴ The Commission is not unmindful that delaying the certification of the final redistricting maps to January 14, 2022, will impose additional burdens on the county elections officials in preparing for the June 7, 2022, primary election. Nevertheless, the Commission believes that any difficulties created by the requested two-week extension for finalizing the new district maps are not insurmountable and are in any event outweighed by the need to ensure adequate public participation in the drawing of district boundaries that will govern state elections for the next decade. Even with an extended January 14, 2022, deadline, the maps will be finalized almost five months (144 days) before the June 7, 2022 election — comfortably more time than the Elections Code allows for boundary changes to be implemented. (See Elec. Code, § 12262 [jurisdictional boundary changes must occur no less than 125 days before an election].) Likewise, the candidate nomination period for the June election does not open until February 14, 2022, providing a full month for candidates

III. THE COURT SHOULD MODIFY THE WRIT OF MANDATE ISSUED IN *PADILLA* TO ORDER THAT ONLY THREE DAYS' NOTICE IS REQUIRED FOR COMMISSION MEETINGS HELD IN THE FIFTEEN DAYS BEFORE THE DEADLINE FOR CERTIFYING THE FINAL REDISTRICTING MAPS

One other unanticipated and unintended anomaly stemming from the delay in the release of the federal census data warrants the Court's modification of the writ of mandate issued in *Padilla*. Government Code section 8253, subdivision (a)(1) requires the Commission to "provide not less than 14 days' public notice for each meeting held for the purpose of receiving public input testimony, *except that meetings held in August in the year ending in the number one* may be held with three days' notice." (Emphasis added.) The evident intent of the shortened notice period for the month of August was to permit the Commission to be able to respond more quickly to public input and to hold more frequent meetings in the final days of drawing and revising the redistricting maps — which, under the originally anticipated timetable for finalizing and certifying those maps, was scheduled

and elections officials to adjust to the new district boundaries. And although the signatures-in-lieu-of-filing-fees nomination petition period for the June 7, 2022, primary election is scheduled to begin on December 16, 2021, adjustments can readily be made to that process, either by the Legislature or administratively by the Secretary of State — as has been done in the past when the preparation of redistricting maps has run up against impending election deadlines. (See, e.g., *Wilson v. Eu* (1991) 54 Cal.3d 546, 549-550 [approving Secretary of State's proposal to postpone period for gathering "in lieu" signatures and to adjust other election deadlines in order to accommodate a January 28, 1992, deadline for the Court's designation of district boundaries for use in the June 2, 1992, primary election]; *Assembly v. Deukmejian* (1982) 30 Cal.3d 638, 679 [decision issued on January 28, 1982, establishing district boundaries for June 1982 primary election and extending deadline for filing in-lieu petitions by 24 days].)

to occur from August 1 to August 15 in each year ending in the number one. (See Cal. Const., art. XXI, § 2, subd. (g).) Although the writ of mandate issued by this Court in *Padilla* adjusted the *deadlines* for the preparation of the preliminary and final maps for the current redistricting cycle to account for the delay in the release of the federal census data, no similar adjustment was made to the required *public notice period* for the Commission’s final meetings under Government Code section 8253. The Commission therefore requests that the Court “preserve the intended operation of the statutory framework” (9 Cal.5th at p. 875) by also modifying *Padilla*’s writ of mandate to direct that Government Code section 8253, subdivision (a)(1), requires only three days’ notice for Commission meetings held in the fifteen days before the deadline for certifying the final redistricting maps.

CONCLUSION

In *Padilla*, this Court recognized that “the usual order of redistricting operations has been upended by the COVID-19 pandemic” (*id.* at p. 873), and — confident that the enactors of article XXI, section 2 and Government Code section 8253 would have preferred adjusting the pertinent deadlines for the Commission’s display and approval of the preliminary and final redistricting maps to the available alternatives — the Court fashioned a limited remedy that sought to “effectuate the policy judgment underlying the provision[s] and preserve the public’s right to provide input on electoral district maps before those maps are finalized.” (*Id.* at p. 868.) The relief sought by the Commission in this motion likewise seeks to preserve the

maximum opportunity for the public to be involved throughout the redistricting process and for the Commission to be able to receive and respond to the public's input, while adhering as closely as possible to the framework envisioned and adopted by the enactors of the Voters First Act.

For the reasons and upon the authorities cited above, the Commission respectfully requests that the Court clarify and/or modify the writ of mandate issued in *Padilla* as set forth above in order to enable the Commission to fully perform the important obligations entrusted to them by California's electorate.

DATED: August 20, 2021

Respectfully submitted,

CALIFORNIA CITIZENS
REDISTRICTING COMMISSION
Anthony Pane, Chief Counsel

STRUMWASSER & WOOCHELL LLP
Fredric D. Woocher
Andrea Sheridan Ordin
Salvador E. Perez

By:




Fredric D. Woocher

*Attorneys for California Citizens
Redistricting Commission*

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 **EMERGENCY MOTION OF CALIFORNIA CITIZENS REDISTRICTING COMMISSION TO CLARIFY AND/OR MODIFY WRIT OF MANDATE** is proportionately spaced, has a typeface of 13 points or more and contains 6,353 words as counted by the Microsoft Word 365 word processing program used to generate the brief.

Dated: August 20, 2021



Fredric D. Woocher

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.

PROOF OF SERVICE

Fredric D. Woocher (SBN 96689)*
Andrea Sheridan Ordin (SBN 38235)
Salvador E. Pérez (SBN 309514)
STRUMWASSER & WOOCHEER LLP
10940 Wilshire Boulevard, Ste. 2000
Los Angeles, California 90024
Telephone: (310) 576-1233
Facsimile: (310) 319-0156
fwoocher@strumwooch.com

Anthony Pane, Chief Counsel (SBN 250176)
California Citizens Redistricting
Commission
721 Capital Mall, Suite 260
Sacramento, California 95814
Telephone: (916) 323-0323
anthony.pane@crc.ca.gov

* *Counsel of Record*

Attorneys for California Citizens Redistricting Commission

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.

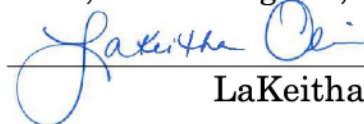
On **August 20, 2021**, I served the foregoing document(s) described as:

- **EMERGENCY MOTION OF CALIFORNIA CITIZENS REDISTRICTING COMMISSION TO CLARIFY AND/OR MODIFY WRIT OF MANDATE; and**
- **DECLARATION OF KARIN MAC DONALD IN SUPPORT OF CALIFORNIA CITIZENS REDISTRICTING COMMISSION'S 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 **August 20, 2021**, at Los Angeles, California.



LaKeitha Oliver

SERVICE LIST

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

<p><i>Via (EFS)</i> Robin B. Johansen Thomas Andrew Willis Olson Remcho, LLP 1901 Harrison Street, Suite 1550 Oakland, California 94612 Telephone: (510) 346-6200 Facsimile: (510) 346-6201 Email: rjohansen@olsonremcho.com twillis@olsonremcho.com</p> <p><i>Attorney for Petitioner Legislature of the State of California</i></p>	<p><i>Via (EFS)</i> Rob Bonta, Attorney General of California Thomas S. Patterson, Senior Assistant Attorney General Anthony R. Hakl, Supervising Deputy Attorney General P. Patty Li, Deputy Attorney General California Department of Justice 455 Golden Gate Ave., Ste.11000 San Francisco, CA 94102-7004 Telephone: (415) 510-3817 Email: patty.li@doj.ca.gov</p> <p>Steven Reyes, Chief Counsel Secretary of State 1500 11th Street, 6th Floor Sacramento, California 95814 Telephone: (916) 651-8297 Email: steve.reyes@sos.ca.gov</p> <p><i>Attorneys for Respondent Alex Padilla</i></p>
--	---

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.

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

Fredric D. Woocher (SBN 96689)*
Andrea Sheridan Ordin (SBN 38235)
Salvador E. Pérez (SBN 309514)
STRUMWASSER & WOOCHEER LLP
10940 Wilshire Boulevard, Ste. 2000
Los Angeles, California 90024
Telephone: (310) 576-1233
Facsimile: (310) 319-0156
fwoocher@strumwooch.com
* *Counsel of Record*

Anthony Pane, Chief Counsel (SBN 250176)
California Citizens Redistricting
Commission
721 Capital Mall, Suite 260
Sacramento, California 95814
Telephone: (916) 323-0323
anthony.pane@crc.ca.gov

Attorneys for California Citizens Redistricting Commission

I, Karin Mac Donald, hereby declare:

1. I am the Director of the Statewide Database (“SWDB” or the “Database”), the redistricting database for the State of California, located at the University of California, Berkeley, Law School. I have held this position since 1996. I previously submitted a declaration in this case on June 4, 2020, in support of the Legislature’s Emergency Petition for Writ of Mandate and Request for Immediate Relief. I have personal knowledge of the statements herein, and if called upon to do so, could and would testify competently thereto.

2. As set forth in my prior declaration, I oversaw the construction of the Statewide Database during both the 2000 and 2010 redistricting cycles, and I also designed and implemented the California-wide public access project that provided technical assistance and mapping technology to enable Californians to participate in the line-drawing process. I also served as the principal demographer and consultant to the 2010 California Citizens Redistricting Commission, and I am serving in a similar capacity for the present Commission in the current redistricting cycle, assisting the Commission in drawing the state legislative, congressional, and Board of Equalization districts for California.

3. The Legislature has the obligation to provide the Commission and the public with a dataset that can be used for redistricting, but the process of constructing that dataset cannot begin until the Census Bureau has released the census data, known as the P.L. 94-171 data, to the State. Once that occurs, the Statewide Database must merge the census data with

historical individual-level voter registration records and historical precinct-level election results in order to build the redistricting database.

4. While the census provides the data necessary to ensure that each district meets equal population standards, as well as provides data on race and ethnicity, the voter registration data and election results (known as the “Statement of Registration” and the “Statement of Vote”) are necessary to ensure compliance with the federal Voting Rights Act. For example, the statement of vote data are necessary to perform racially-polarized voting (RPV) analyses, which in turn are necessary to determine whether a particular district or area of the state may raise concerns under Section 2 of the federal Voting Rights Act.

5. Merging election returns to census data is a complicated process because the datasets are reported on different geographical units. Election returns are not reported by census geography, but census block geography is used to build electoral districts that comply with the federal Voting Rights Act. Furthermore, the precinct geography in which election returns are reported changes frequently between elections. As a result, the election data must be allocated to census blocks, using various statistical processes. The process of constructing the redistricting dataset in 2011 took approximately five weeks following the receipt of the P.L. 94-171 data from the Census Bureau. After the redistricting dataset is complete, the Statewide Database also releases a public report setting forth the

details about how the dataset was constructed.

6. In addition to the steps described above, for this redistricting cycle, unlike in previous cycles, state law calls for an adjustment to be made to the census data: Inmates incarcerated in facilities under the control of the California Department of Corrections and Rehabilitation (where they are counted for purposes of the federal census) will be reassigned to the smallest census geography unit containing their last known residential address, based on a database that is provided by the Department of Corrections and Rehabilitation. (See Elec. Code, § 21003.)

7. In the last redistricting cycle, the Census Bureau released the P.L. 94-171 census data to the State on or about March 8, 2011; we completed the initial release of the statewide redistricting database to the Commission by April 13; and the Commission issued preliminary draft maps on June 10, revised draft maps on July 29, and approved the final redistricting maps on August 15, 2011.

8. For this redistricting cycle, the coronavirus pandemic has wreaked havoc on the timing of the Census Bureau's release of the P.L. 94-171 data to the states. In April 2020, the Census Bureau announced that it would not be able to meet the March 31, 2021, deadline for delivering final census population figures to the states and that it did not expect the data to be available for release until July 31, 2021. In February 2021, the Census Bureau announced that the projected release of the P.L. 94-171 dataset had been delayed even further, to September 30, 2021.

9. The Census Bureau’s announcement resulted in considerable push-back and even legal action by states with redistricting and election deadlines that could not be met according to that schedule. Consequently, on March 15, 2021, the Census Bureau announced that their continued evaluation of plans and processes had resulted in a determination that an *interim* version of the P.L. 94-171 dataset could be released at an earlier date, by mid-to-late August of 2021. This interim data product is referred to as the “legacy” dataset. The Census Bureau suggested that some states might be able to use the “legacy” formatted data files for redistricting if they had the capacity to tabulate the data on their own, but that any state using legacy format summary redistricting data files would have to accept responsibility for how they processed these files.

10. Upon receiving this new information, the Statewide Database staff immediately began to research exactly how the “legacy” data was expected to differ from the traditional P.L. 94-171 data, and whether the legacy dataset could accurately and timely be converted into the same format as the P.L. 94-171 data that was not projected to be released by the Census Bureau until late September. On March 26, 2021, I wrote a memorandum on behalf of the Statewide Database to the Redistricting Commission and to the California Legislative Leadership informing them that we had concluded that the “legacy” datafiles contained the same data that would be released by the Census Bureau in the “traditionally” formatted P.L. 94-171 dataset file, but that the “legacy” datafiles were not user-friendly and

required more advanced database, analysis, and manipulation skills than the P.L. 94-171 datafiles in order to be usable for redistricting purposes. I also advised the Commission and the Legislature, however, that the Statewide Database staff was confident that it possessed the necessary skills and expertise to process and reformat the “legacy” data accurately, and we estimated that it would take approximately two weeks from the release of the “legacy” data to complete the processing, run accuracy checks, compare the data, and allow for any discrepancies to be analyzed and resolved. This two-week period would be in addition to, and would necessarily precede, the 30-day period of time that the SWDB would require to build the State’s official redistricting database. A true and correct copy of my March 26, 2021, memorandum is attached hereto as Exhibit 1.

11. On that same date, the Legislative Leadership sent a letter to the Commission reiterating the Statewide Database’s determination that the Census Bureau’s mid-August “legacy” format release of the census data could be reformatted and used to meet the Legislature’s mandate to ensure a complete and accurate computerized database for redistricting, that it would take approximately two weeks to process the “legacy” format redistricting data and to provide access to the unadjusted census data, and that the Statewide Database would be able to deliver the complete computerized redistricting database within one more month, including the adjusted census data for incarcerated persons and the electoral data needed to aid compliance with the

federal Voting Rights Act. A true and correct copy of the Legislative Leadership's March 26, 2021, letter to the Commission is attached hereto as Exhibit 2.

12. As the mid-August release date for the "legacy" census data approached and the staff at the Statewide Database continued to prepare for receiving and reformatting the data, I informed the Commission that we believed we would be able to complete the reformatting and data verification process within a week of receiving the "legacy" datafiles, not two weeks as originally estimated.

13. On Thursday, August 12, 2021, the Census Bureau released the "legacy" redistricting dataset through its public FTP site, and the Statewide Database immediately downloaded the data and began the reformatting and data verification process necessary to convert the "legacy" data into a useable format for the public and for building the statewide redistricting database for the Legislature and the Commission. Working throughout the ensuing weekend, the Statewide Database was able to complete the reformatting in less than a week's time, and the Chief of the California Demographic Research Unit, State Demographer Dr. Walter Schwarm, validated the accuracy of the reformatted data. The dataset was then posted on the Statewide Database's website on the afternoon of August 18, 2021.

14. As I previously advised the Legislature and the Commission, it will now take the Statewide Database another 30 days to perform the state-mandated inmate data reallocations and to merge the adjusted census data with the voter registration

and historical election return information in order to create the complete statewide redistricting database. My best estimate is that the Legislature should be able to provide the Commission with the redistricting dataset necessary for it to begin drawing the state legislative, congressional, and Board of Equalization districts on or before Monday, September 20, 2021.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 19 day of August, 2021, at
Oakland, California.

A handwritten signature in blue ink, appearing to read "Karin Mac Donald", written over a horizontal line.

Karin Mac Donald

EXHIBIT 1

Memorandum

From: Karin Mac Donald, Director, Statewide Database (SWDB)

To: California Citizens Redistricting Commission; State of California Legislative Leadership

Date: 3/26/2021

Re: Census Bureau Legacy Data

On February 12, 2021, the Census Bureau published a revised timeline for the delivery of the P.L. 94-171 Redistricting Datafiles. These data had been anticipated for release by July 30, 2021 and that date has now been changed to a release by September 30, 2021. This announcement resulted in considerable push-back and legal action by states with redistricting and election deadlines that could not be met with that schedule. Subsequently, the Census Bureau announced that their continued evaluation of plans and processes had resulted in a determination that an interim version of the P.L. 94-171 dataset could be released at an earlier date: by mid to late August of 2021. This interim data product is referred to as the 'legacy' dataset.

Upon receipt of this information, Statewide Database staff immediately began to research four issues related to the 'legacy' data:

1. What exactly are these 'legacy' data and how do they differ from the P.L. 94-171 that will be released by census by September 30, 2021?
2. If the actual data in the legacy product are the same, can they be accurately converted into the format that will be released by census by September 30, 2021?
3. If the legacy data are the same and they can be accurately converted, how long will this process take?
4. What are the cost implications and what supplemental funding, if any, would need to be requested from the Legislature?

1. Our research found, and conversations with the Census Bureau's Redistricting and Voting Rights Data Office confirmed, that the 'legacy' data are the same data that will be released by September 30, 2021 in the 'traditionally' formatted P.L. 94-171 file. The 'legacy' datafiles consist of the final data product that is essentially not user friendly and necessitates more advanced database, analysis and manipulation skills to be usable for redistricting purposes than the later release of the P.L. 94-171.

Having confirmed in that these data are identical and will not be changed by the Bureau between August and September, we moved on to answer question 2.

2. The 'legacy' dataset will be released in the same format as a prototype dataset that is available on the census website. SWDB staff downloaded the prototype data (which consists of data for a small state) and evaluated the specific tasks that needed to be undertaken to manipulate and extract the necessary data, along with the complexity of implementing these tasks for a state as large as California, with it's ~530,000 census blocks. We determined that we are well equipped to undertake these tasks and to produce an accurate dataset, considering that SWDB has a 25year+ track record of producing much more complex datasets on even more units of analysis.

Because SWDB would, upon completion of the reformatting of the 'legacy' dataset, immediately move into the 30-day process of building the State's redistricting database, we determined that independent verification of accuracy prior to the Census Bureau's September release of the data, would be a well-advised best practice. SWDB subsequently reached out to California's State Demographer, Dr. Walter Schwarm, who serves as the Chief of the Demographic Research Unit (DRU) of the State's Department of Finance. The Demographic Research Unit represents the State in national programs relating to population statistics including the Federal-State Cooperative Program for Population Projections and Estimates, and the Census Data Center Programs. Collectively we determined that the best way to ensure accuracy of the dataset would be to set up parallel processing of the data at SWDB and the DRU, which will allow for data to be processed using different systems independent of each other, and be compared along the same parameters.

In sum, we are confident that we will be able to process and reformat these data accurately.

3. Once the collaboration and basic methodology had been established, we determined that a 2-week period of time from the release of the 'legacy' data would be a reasonable timeframe to complete the processing, run accuracy checks, compare the data and allow for any discrepancies to be analyzed and resolved. This 2-week period would be in addition to, and precede, the 30-day period of time that the SWDB will require to build the State's official redistricting database.

4. We are still awaiting technical documentation for the data and are preliminarily working on the code to set up the processing. At this point, we have not completed our budget estimate for this process.

EXHIBIT 2



March 26, 2021

California Citizens Redistricting Commission
721 Capitol Mall, Suite 260
Sacramento, CA 95814

Dear Commissioners:

As the leaders of the California State Legislature, we want to thank each member of the Citizens Redistricting Commission for the tremendous commitment of time and energy that you have undertaken with this important work. We know that the Commission, the State Legislature, the Statewide Database, the Secretary of State, local election officials, and others have been working to address challenges to state and local redistricting timelines along with the elections calendar. These challenges were created by the Census Bureau's February 12th announcement that delivery of the Public Law 94-171 redistricting data would be delayed to September 30th.

While these discussions were ongoing, the Bureau subsequently announced on March 15th that, in an effort to aid states with impacted redistricting timelines, it would release an interim data product ("legacy format summary redistricting data") for the 2021 Census by mid-to-late August. The announcement noted that using such data requires states to have particular expertise and, "any state using legacy format summary redistricting data files would have to accept responsibility for how they process these files."

The Statewide Database has been working diligently to determine whether this legacy format release could be used to meet the mandate for the Legislature to ensure a complete and accurate computerized database is available for redistricting. The Database has determined this interim release consists of the exact same data as the P.L. 94-171 file, only in a more complicated and less refined format. The Database has also concluded the product will meet their needs and can be used to provide earlier delivery of the data necessary for the Commission and local jurisdictions to complete their work.

The processing of this legacy format redistricting data is more complicated than the Public Law 94-171. As a result, the Database will need some additional processing time, but believes it will be able to provide access to unadjusted Census data

approximately two weeks after its release. Once this step is completed and consistent with the original timeline, the Database will be able to deliver the complete computerized database within one more month, including adjusted Census data for incarcerated persons and electoral data to aid compliance with the federal Voting Rights Act.

In *Legislature of the State of California v. Padilla*, the California Supreme Court granted an extension of Commission deadlines to December 15th for approval and certification of final maps. The Court also provided that the Commission shall adopt final maps no later than those dates plus any additional days of federal delay in transmission of census data after July 31st. The computerized redistricting database can be built from the legacy format data, which is expected to be transmitted in the second half of August. As a result, the deadline to adopt maps will need to be extended two to four weeks from the original deadline set by the Court, depending on the actual date the legacy format data is received.

Creating the official redistricting database using this alternative methodology will require the investment of additional state financial resources. The Commission has already indicated it will require supplemental funding, in part to accommodate changing deadlines. Even with the accelerated release of data local jurisdictions will face a significant time crunch. Legislation, hard work by election officials, and additional resources will also be required to adjust election calendars to accommodate this revised timeline. However, these worthwhile investments could achieve our common goal of ensuring the integrity of California's independent redistricting process, and we look forward to continuing to work with the Commission moving forward.

Thank you and we look forward to continuing to coordinate with you on this matter,



TONI G. ATKINS
Senate President pro Tempore
Senator, 39th Senate District



ANTHONY RENDON
Speaker of the Assembly
63rd Assembly District



SCOTT WILK
Senate Republican Leader
21st Senate District



MARIE WALDRON
Assembly Republican Leader
75th Assembly District