STUART NAIFEH (SBN 233295)
KATHRYN SADASIVAN
NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC.
40 Rector St., Floor 5
New York, NY 10006
Tel: (212) 965-2200
snaifeh@naacpldf.org
ksadasivan@naacpldf.org

ANUJA D. THATTE
KAMERON JOHNSTON (SBN 355691)
NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC.
700 14th St. NW, Floor 6
Washington, DC 20005
Tel: (202) 682-1300
athatte@naacpldf.org
kjohnston@naacpldf.org

Counsel for Amicus Curiae NAACP Legal Defense & Educational Fund, Inc.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DAVID TANGIPA, *et al.*,

Plaintiffs,

and

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

GAVIN NEWSOM, in his official Capacity as the Governor of California, *et al.*,

Defendants,

and

LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC), *et al.*,

Intervenor-Defendants.

No. 2-25-cv-10616-JLS-KES

[PROPOSED] BRIEF OF NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC. AS *AMICUS CURIAE* IN SUPPORT OF NEITHER PARTY AS TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

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

Hearing Date: December 15, 2025

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INTERESTS OF *AMICUS CURIAE*

Amicus curiae, the NAACP Legal Defense and Educational Fund, Inc. ("LDF"), is a non-profit, non-partisan law organization established under the laws of the state of New York to assist Black people and other people of color in the full, fair, and free exercise of their constitutional and statutory rights. Founded in 1940 under the leadership of Thurgood Marshall, LDF focuses on eliminating racial discrimination in education, economic justice, criminal justice, and political participation, using various tools including census data.

LDF has represented Black voters as parties in nearly all the precedent setting cases in the U.S. Supreme Court and lower federal courts related to protecting the ability of Black people and other people of color to fully participate in the political process. *See, e.g.*, *Louisiana v. Callais*, No. 24-109 (U.S.); *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1 (2024); *Allen v. Milligan*, 599 U.S. 1 (2023); *Shelby Cnty. v. Holder*, 570 U.S. 529 (2013); *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193 (2009); *Easley v. Cromartie*, 532 U.S. 234 (2001); *Nairne v. Landry*, 151 F.4th 666 (5th Cir. 2025); *Robinson v. Ardoin*, 86 F.4th 574 (5th Cir. 2023); *Ala. State Conf. of the NAACP v. Allen*, No. 2:21-CV-1531, 2025 WL 2451166 (N.D. Ala. Aug. 22, 2025); *Singleton v. Allen*, 782 F. Supp. 3d 1092 (N.D. Ala. 2025).

Given LDF's extensive experience and expertise litigating issues pertaining to redistricting, LDF submits this amicus curiae brief to assist the Court in the adjudication of Plaintiffs' motion for a preliminary injunction.

INTRODUCTION

Unconstitutional racial gerrymandering occurs when race is the predominant factor motivating a legislature's decision to assign voters into a specific district or districts. *Miller v. Johnson*, 515 U.S. 900, 916 (1995). For example, a racial gerrymander may follow from direct evidence that "state officials instruct[ed] their mapmaker to pack as many black voters as possible into a district." *Cooper v. Harris*, 581 U.S. 285, 318 (2017). In contrast, racial gerrymandering does not occur where a

mapmaker assigns voters to specific districts predominately based on non-racial criteria like geographic boundaries, political subdivisions, electoral data, or communities of interest—regardless of the effect of those line-drawing decisions on district demographics. *See Easley v. Cromartie*, 532 U.S. 234, 241 (2001) ("*Cromartie II*").

Racial gerrymandering concerns the "actual considerations that provided the essential basis" for a state actor's specific line drawing decisions. *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 189-90 (2017). The governing legal standard prohibits state actors from using race as the sole or predominate criteria for classifying or assigning voters to districts. But where a state actor does not rely predominantly on race in its map-making process, there is no racial gerrymander. Accordingly, so long as redistricting does not involve the race-based assignment of voters, it is irrelevant to the racial predominance analysis that a legislature had as one of its express goals complying with the Voting Rights Act ("VRA") or that the state enacted plan results in more majority-minority or crossover districts than prior plans.

ARGUMENT

In racial gerrymandering cases, the plaintiffs' burden is to prove that "race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without *a particular district.*" *Miller*, 515 U.S. at 916 (emphasis added).

To satisfy this "demanding" burden, a plaintiff must prove that "the [State] subordinated traditional race-neutral districting criteria . . . to racial considerations" in its decisions about where to place district boundaries. *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 17 (2024) (citing *Miller*, 515 U.S. at 916). To do so, a plaintiff must prove that race predominated over all other considerations–like communities of interest, natural geographic boundaries, political subdivisions, or partisanship. *See Cromartie II*, 532 U.S. at 253-54. It is only where a plaintiff has satisfied its burden to establish that a map is "unexplainable on grounds other than

race" that the district is analyzed under the strict scrutiny standard. *Hunt v. Cromartie*, 526 U.S. 541, 546 (1999) (*Cromartie I*) (cleaned up). "Race must not simply have been a motivation for the drawing of a majority-minority district, but the 'predominant factor' motivating the legislature's districting decision." *Cromartie II*, 532 U.S. at 241 (cleaned up).

This is because "there is nothing nefarious about [a mapmaker's] awareness of the State's racial demographics." *Alexander*, 602 U.S. at 37. There is a "long recognized [] distinction between being aware of racial considerations and being motivated by them." *North Carolina v. Covington*, 585 U.S. 969, 978 (2018) (citation omitted). "The former is permissible; the latter is usually not. Redistricting legislatures will almost always be aware of racial demographics, but such race consciousness does not lead inevitably to impermissible race discrimination." *Allen v. Milligan*, 599 U.S. 1, 30 (2023) (plurality) (cleaned up).

I. To Demonstrate That State Officials Acted with a Predominately Racial Motive, a Plaintiff Must Show That Voters Were Assigned to Districts Because of Their Race, Rather Than Because of Non-Racial Criteria.

A redistricting plan drawn to respect communities of interests or similar traditional principles that results in the creation of a majority-minority or crossover district[1] is not a racial gerrymander, and thus, evidence of a district's demographics alone is insufficient to establish a predominately racial motive. For example, evidence that a state sought to draw districts that bring together certain communities with shared socioeconomic, geographic, and political interests does not support the inference of racial predominance. *See Cromartie I*, 526 U.S. at 550-51; *Lawyer v. Dep't of Just.*, 521 U.S. 567, 581 (1997). Instead, the consideration of communities of interests can reflect a legitimate and race-neutral adherence to traditional

[1] A "crossover district" is one in which minority voters make up less than a majority of the voting-age population, but the minority population, at least potentially, is large enough to elect the candidate of its choice with help from voters who are members of the majority and who cross over to support the minority's preferred candidate. *See Bartlett v. Strickland*, 556 U.S. 1, 13 (2009).

redistricting principles, and without more, courts must draw the inference in favor of that legitimate purpose.

Moreover, a state is free to recognize communities that have a particular racial makeup provided those communities have "some common thread of relevant interests." *Miller*, 515 U.S. at 920; *cf. Milligan*, 599 U.S. at 21; *Cromartie II*, 532 U.S. at 244-45. "[W]hen members of a racial group live together in one community, a reapportionment plan that concentrates members of the group in one district and excludes them from others may reflect wholly legitimate purposes." *Shaw v. Reno*, 509 U.S. 630, 646 (1993) ("*Shaw I*"). For example, a plaintiff cannot prove that state officials had a predominately racial motive merely because a district respects a densely concentrated majority-minority community, like downtown Atlanta, *Abrams v. Johnson*, 521 U.S. 74, 84 (1997), or Harlem in uptown Manhattan, *Wright v. Rockefeller*, 376 U.S. 52, 57 (1964). Here, to the extent California's adherence to race-neutral principles—like communities of interest or geographic compactness—led the state to draw a majority-minority district in an urban area, the mere creation of such a district would not establish that the map-drawer had a racial motive.

Communities of interest may have a racial or ethnic make-up different from surrounding areas or other nearby communities and may not align with political subdivisions like counties or municipalities, and States are not required to divide communities merely because keeping them whole might affect the racial demographics of the district into which they are drawn or might involve trade-offs against other principles. Likewise, party preferences may correlate to race. Accordingly, a plaintiff cannot rely on the mere fact that a challenged district has a higher percentage of minority residents than the surrounding county or area to show a predominately racial motive. *See Lawyer*, 521 U.S. at 582.

Nor does a state's mere adjusting of district boundaries affecting discrete populations of minority voters at the margins or perimeters of districts that largely remain unchanged rise to the level of predominance. In *Cromartie II*, the plaintiffs

failed to establish racial predominance where their expert did not consider whether excluded precincts "were located near enough to [the district's] boundaries or each other for the legislature as a practical matter to have drawn [the district's] boundaries to have included them, without sacrificing other important political goals." 532 U.S. at 247, 254-57; *see also Alexander*, 602 U.S. at 28-29 (similar). To hold otherwise would "render suspect virtually any legislative decision regarding the districts in which to place areas or groups of precincts that are predominantly populated by one racial or ethnic group." *Cano v. Davis*, 211 F. Supp. 2d 1208, 1220 (C.D. Cal. 2002) (three-judge court). Instead, to prevail in any racial gerrymandering challenge, plaintiffs must "rule out the possibility that politics [or other considerations] drove the districting process", *Alexander*, 602 U.S. at 24, and establish that "race for its own sake" was the legislature's "dominant and controlling rationale in drawing its district lines." *Id*. at 10 (quoting *Miller*, 515 U.S. at 913). "If either politics or race," or any other race-neutral justification, "could explain a district's contours, the plaintiff has not cleared its bar." *Id.* at 9-10.

Finally, a state's effort to use electoral data to assign voters to districts with the goal of drawing "safer" districts for one party does not *per se* amount to racial gerrymandering. This is true even if that process results in the creation of more crossover or majority-minority districts. *See, e.g.*, *Cromartie II*, 532 U.S. at 249.

Here, California has openly sought to redraw its congressional districts in a way "predicted to favor the State's dominant political party." *Abbott v. League of United Latin Am. Citizens*, No. 25A608, 2025 WL 3484863, at *1 (U.S. Dec. 4, 2025). Of course, a state cannot pursue its partisan goals by using the race of individual voters as a proxy for their party affiliation. *See Alexander*, 602 U.S. at 7 n.1 (citing *Cooper*, 581 U.S. at 291 n.1 & *Miller*, 515 U.S. at 914). Nor can a state enact laws or redistricting plans that intentionally make it harder for people of color to vote based on who they support at the ballot box. *See League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 440 (2006); *Hunter v. Underwood*, 471 U.S. 222,

230-31 (1985); *N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204, 222-23 (4th Cir. 2016). And, of course, state action may violate other legal protections, such as Section 2 of the VRA, 52 U.S.C. § 10301, if the state's choices are made with the purpose or if they have the result of denying minority voters an equal opportunity to participate in the political process. *Milligan*, 599 U.S. at 17-18. But so long as the state does not predominately rely on the race of voters in accomplishing its particular goal, the State's redistricting process does not raise racial gerrymandering concerns.

In sum, the incidental racial effects of redistricting undertaken to accomplish non-racial goals, like reuniting communities of interest, or to adjust the boundaries of districts, even when the boundaries consist of heavily-minority populations, do not amount to racial predominance.

II. That a Legislature Sought to Comply with the Voting Rights Act Is Not Proof of Racial Predominance.

The mere fact that a state recognized its obligation to comply with the VRA or that it labeled certain districts "VRA districts" is not proof—or even particularly probative evidence—of racial predominance. The racial predominance inquiry concerns how the specific challenged districts were drawn and whether a voter's race was the predominant factor in the decision to draw that voter into or out of a district.

"Strict scrutiny does not apply merely because redistricting is performed with consciousness of race." *Cromartie II*, 532 U.S. at 253-54 (quoting *Bush v. Vera*, 517 U.S. 952, 958 (1996) (plurality)). "Nor does it apply to all cases of intentional creation of majority-minority districts." *Vera*, 517 U.S. at 958 (plurality). This precept reflects a recognition that "the legislature always is aware of race when it draws district lines." *Shaw I*, 509 U.S. at 646. Indeed, complying with Section 2 of the Voting Rights Act "demands" an awareness of race. *Milligan*, 599 U.S. at 30–31 (plurality) (quoting *Abbott v. Perez*, 585 U.S. 579, 587 (2018)). But that alone does not show that race predominately drove the state's individual line-drawing decisions.

See Cromartie II, 532 U.S. at 241 (holding that plaintiffs in racial gerrymandering litigation must prove, at a minimum, that the state subordinated traditional race-neutral districting principles to racial considerations). For example, comments from a mapmaker that he "check[ed] that the maps he produced complied with [] Voting Rights Act precedent" are not constitutionally suspect. *Alexander*, 602 U.S. at 22.

Thus, a plaintiff cannot prove that a state had a predominately racial motive merely by showing that a mapmaker was aware of a state's racial demographics or that a certain number of districts in an enacted plan have a certain racial makeup. *Cf. Lawyer*, 521 U.S. at 582; *United States v. Hays*, 515 U.S. 737, 746 (1995) ("We have never held that the racial composition of a particular voting district, without more, can violate the Constitution."). The mere fact that a state's new map might contain more districts in which Latino voters can elect their preferred candidates than a prior map is not *per se* proof *of any* racial motive—let alone a predominate one. Neither the VRA nor the Constitution sets a floor or ceiling on the number of minority-opportunity districts that a state can draw using non-racial or other criteria. *See* 52 U.S.C. § 10301(b) ("nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population").

Indeed, the Supreme Court has already once affirmed the constitutionality of a California redistricting plan that was expressly drawn to "withstand section 2 challenges under any foreseeable combination of factual circumstances and legal rulings" despite a claim of racial gerrymandering. *DeWitt v. Wilson*, 856 F. Supp. 1409 (E.D. Cal. 1994), *summarily aff'd*, 515 U.S. 1170 (1995)). As the three-judge panel in *DeWitt* explained, California's intentional creation of majority-minority districts through the application of traditional redistricting principles—not based predominantly on race—does not offend equal protection principles. 856 F. Supp. at 1413.

In short, neither the mere existence (or revision) of majority-minority districts nor a state's professed desire to comply with the VRA, nor its belief that the

redistricting plan it adopts in fact complies with the VRA, without more, raises an inference of racial predominance.

CONCLUSION

Amicus curiae respectfully urges that the Court apply the principles articulated above in adjudicating Plaintiffs' preliminary injunction motion.

DATED: December 8, 2025

Respectfully submitted,

/s/ Stuart Naifeh
Stuart Naifeh (SBN 233295)
Kathryn Sadasivan*
NAACP Legal Defense & Educational Fund, Inc.
40 Rector St., Floor 5
New York, NY 10006
Tel: (212) 965-2200
snaifeh@naacpldf.org
ksadasivan@naacpldf.org

Anuja D. Thatte*
Kameron Johnston (SBN 355691)
NAACP Legal Defense & Educational Fund, Inc.
700 14th St. NW, Floor 6
Washington, DC 20005
Tel: (202) 682-1300
athatte@naacpldf.org
kjohnston@naacpldf.org

Counsel for Amicus Curiae NAACP Legal Defense & Educational Fund, Inc.

**Pro hac vice application forthcoming*

CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Amicus Curiae NAACP Legal Defense & Educational Fund, Inc., certifies that this brief contains 2,378 words, which complies with the word limit set by L.R. 11-6.1; *see also* Doc. 72 (setting 14,000 word limit for opposition brief); Fed. R. App. P. 29(a)(5) (limiting amicus briefs to half the length of principal briefs).

/s/ Stuart Naifeh
Stuart Naifeh

Counsel for Amicus Curiae NAACP Legal Defense & Educational Fund, Inc.