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June 15, 2020

Honorable Chief Justice Tani Cantil-Sakauye  
and Associate Justices  
California Supreme Court  
350 McAllister Street  
San Francisco, California 94102

Re: *Legislature of the State of California v. Padilla*  
California Supreme Court Case No. S262530  
Amici Curiae Letter in Support of Emergency Petition for Writ of Mandate

Dear Chief Justice Cantil-Sakauye and Associate Justices:

Pursuant to California Rules of Court, rule 8.500(g), we write in support of the Emergency Petition for Writ of Mandate in this case on behalf of the following amici curiae: California Common Cause, the League of Women Voters of California, [additional amici?].<sup>1</sup>

### **Interest of Amici**

Amici are grassroots organizations committed to the core values of democracy with extensive experience reforming and overseeing redistricting efforts in California and across the country. Amici are well-positioned to assist the Court in understanding the impact of unprecedented census delays on California's restricting process.

California Common Cause is a nonpartisan citizens' organization dedicated to ensuring open, accountable, and effective government in California. Common Cause works to strengthen public participation in the political process and to ensure that process serves the public interest. To that end, Common Cause has pursued redistricting reform for several decades. Common Cause led efforts to reform California's state redistricting process by drafting Proposition 11. As one of the original proponents, Common Cause's goal was to create the Citizens

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<sup>1</sup> No counsel for a party wrote this letter in whole or in part, and no counsel for a party or party made a monetary contribution intended to fund the preparation or submission of this letter. No person other than the amici curiae, their members, or their counsel made a monetary contribution to fund the preparation or submission of this letter.

Redistricting Commission as an alternative to the Legislature drawing all state district lines, and to give the Commission the responsibility of drawing state districts that would follow new, prioritized mapping criteria and rules for transparency and public engagement. Common Cause also endorsed and devoted resources to the passage of Proposition 20, which expanded the responsibility of the Commission to draw congressional district lines and added additional language about communities of interest, timing of the adoption of maps, and referendum rules.

The League of Women Voters of California is a registered 501(c)(4) nonprofit, nonpartisan, political organization based in Sacramento, California, which encourages informed and active participation in the democratic process, and influences public policy through education and advocacy. The League served as a key member of the coalition that worked to develop the framework for Proposition 11. The League was integrally involved in drafting and finalizing the language of the initiative and was a signatory to the ballot arguments supporting the initiative. The League also provided input on Proposition 11's implementing regulations, including application and selection processes. The League and its education arm also regularly conduct education and outreach to encourage members of the public to learn about the Commission and apply for positions, and they provide input to the Commission about how to conduct its own public outreach.

[more amici?]

### **Why the Court Should Grant the Emergency Writ**

#### **I. The Court should take immediate action to ensure the Commission has sufficient time to complete its work.**

The Court should grant the Legislature's Petition for Writ of Mandate to ensure that the California Redistricting Commission (the "Commission") will carry out its constitutional role. The People of California amended the California Constitution to create a nonpartisan redistricting process with the Commission at its center. Article XXI, section 1 of the California Constitution provides that "[i]n the year following the year in which the national census is taken," the Commission "shall adjust the boundary lines of the congressional, State Senatorial, Assembly, and Board of Equalization districts." (Cal. Const. art. XXI, § 1.) In contrast to gerrymandering efforts that have damaged the underpinnings of democracy in many states, the Commission currently stands as a prototype for fair redistricting.

But COVID-19 has jeopardized the Commission's work by delaying the national census. Though state and federal law require the Commission to use census data for redistricting, delays in the national census mean that the Commission will be unable to meet its constitutional and statutory deadlines. This Court can and should take swift action by granting the Legislature's Petition. The requested relief—which amounts to a modest extension of deadlines—is necessary, within the Court's power, and the only option that does not carry significant risks of undermining the redistricting process.

**A. Due to the COVID-19 pandemic, the decennial census will not be completed on schedule.**

Under 13 U.S.C. § 141, the U.S. Census Bureau counts the population as of April 1 of the year of the decennial census. (13 U.S.C. § 141(a).) Nine months later, the Census Bureau must report the census data to the President of the United States. (*Id.* § 141(b).) Three months after that, by March 31 in the year following the census, the Census Bureau must transmit redistricting data to the states. (*Id.*, § 141(c).)

COVID-19's disruptive effect has left the Census Bureau unable to meet these statutory deadlines. On March 18, 2020, the Census Bureau announced that it would suspend field operations for collecting data for the 2020 Census due to the COVID-19 pandemic. (See *U.S. Census Bureau Director Steven Dillingham on Operational Updates*, U.S. Census Bureau, March 18, 2020, <https://www.census.gov/newsroom/press-releases/2020/operational-update.html>.) Though field operations were originally suspended for only two weeks, the evolving circumstances of the pandemic required extended closures of operations. The Census Bureau only recently began a phased reopening of its field operations, and many have yet to reopen. (See generally COVID-19, U.S. Census Bureau, <https://2020census.gov/en/news-events/press-kits/covid-19.html>.) The Census Bureau's call centers faced similar setbacks when social distancing regulations and shelter-in-place restrictions upended operations. (See *U.S. Census Bureau Statement on 2020 Census Call Centers*, U.S. Census Bureau, April 2, 2020, <https://2020census.gov/en/news-events/press-releases/2020-census-call-centers.html>.)

Due to these impediments, on April 13, 2020, the Census Bureau announced that “[i]n order to ensure the completeness and accuracy of the 2020 Census, the Census Bureau is seeking statutory relief from Congress of 120 additional calendar days to deliver final apportionment counts.” (*U.S. Department of Commerce Secretary Wilbur Ross and U.S. Census Bureau Director Steven Dillingham Statement on 2020 Census Operational Adjustments Due to Covid-19*, U.S. Census Bureau, April 13, 2020, <https://www.census.gov/newsroom/press-releases/2020/statement-covid-19-2020.html>.) This requested extension would change the Census Bureau's internal deadline for transmitting redistricting data to the states from March 31, 2021 to July 31, 2021. (See *ibid.*) As of today, the House of Representatives has passed one bill and introduced another containing the extension. (See HEROES Act, 116 H.R. 6800, Div. G, tit. II, § 70201 (May 15, 2020); 116 H.R. 7034, <https://www.congress.gov/bill/116th-congress/house-bill/7034/all-info>.)

Even without the enactment of legislation, the Census Bureau has already extended its schedule of operations. (See *2020 Operational Adjustments Due to Covid-19*, U.S. Census Bureau, <https://2020census.gov/en/news-events/operational-adjustments-covid-19.html>.) For example, the Census Bureau currently plans to allow self-responses to census questionnaires through October 31, 2020, three months after the original deadline. (*Ibid.*) There is no question that the Census Bureau will miss its statutory deadlines for transmitting redistricting data to the states.

**B. The COVID-related delays in obtaining census information will prevent the Commission from meeting constitutional and statutory deadlines.**

The Commission’s deadlines rely on the congressionally-mandated timeline for transmitting census redistricting data to the states. In 1975, Congress added the requirement that the Census Bureau transmit tabulations of the population to the states “within one year” of the April 1st census date. (13 U.S.C. § 141(c) (1975); H.R. 1753, 94th Congress, Pub. L. 94-171, 89 Stat. 1023 (Dec. 23, 1975).) Because the Census Bureau has consistently adhered to this schedule for the last five decades, multiple states, including California, have treated this transmittal deadline as definitive in crafting redistricting legislation. (See Letter from Tim Storey, Executive Director of the National Conference of State Legislatures, to Steven Dillingham, Director of the U.S. Census Bureau (May 26, 2020), <https://www.ncsl.org/documents/statefed/Census-Bureau-letter-May26-FINAL.pdf> [“Many states developed their redistricting schedules knowing that the April 1 P.L. 94-171 data delivery deadline was set by federal law.”]; *2020 Census Data & Redistricting*, California Common Cause, <https://www.commoncause.org/wp-content/uploads/2020/05/Redistricting-Deadlines-map-and-list.pdf>.)

As detailed in the Legislature’s Petition, when the Census Bureau delivers data on schedule, the Commission’s normal deadlines provide sufficient time to perform the redistricting process. This year, however, the Census Bureau’s anticipated four-month delay of the transmittal data—from March 31 to July 31—will make it impossible for the Commission to complete its work on time. The deadline for the Commission to display a preliminary map, July 1, 2021, falls *before* the Census Bureau will transmit the data needed to make that map. As the Legislature explains in its Petition, the Commission also will lack sufficient time to approve a final map in between the July 31 transmittal date and the August 15 deadline. The Commission normally has four-and-a-half months to transform the census data into final maps (from March 31 to August 15). Even if the Commission were to streamline its process and work harder to act quickly, it would be impossible to shrink a process that normally spans months into two weeks.

**C. This Court has both equitable and legal authority to modify the Commission’s deadlines.**

This Court clearly has the authority to grant the Legislature’s requested relief. The Court routinely exercises its authority to address threats to the orderly functioning of the electoral system, without waiting for the system to be irreparably disrupted before it takes action. The Court has “original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition.” (Cal. Const. art. VI, § 10.) On a petition for writ of mandate, the Court has jurisdiction where the “issues presented are of great public importance and must be resolved promptly.” (*Vandermost v. Bowen* (2012) 53 Cal.4th 421, 453.) This Court has “exercised authority to entertain and decide petitions for original writs of mandate related to the . . . redistricting process in circumstances in which an expeditious ruling was necessary to the orderly functioning of the electoral system.” (*Vandermost*, 53 Cal.4th at 452; see also, e.g., *Wilson v. Eu* (1991) 54 Cal.3d 471, 473 (“*Wilson P*”) [judicial drawing of

redistricted map when Legislature and Governor were unable to reach agreement on redistricting plan]; *Legislature v. Reinecke*, 6 Cal.3d 595 (1972) [selecting the Legislature’s map in the same circumstances]; *Assembly v. Deukmejian* (1982) 30 Cal.3d 638 [exercising power to select an interim map during a pending referendum].)

This Court has broad equitable powers, based in federal authority, to ensure the adoption of lawful maps. In *Wilson I*, for example, the Court held that because the Legislature and the Governor (who, at the time, were responsible for the redistricting process) were at an “impasse,” the Court was obligated to appoint special masters to draft appropriate congressional district maps that complied with federal “equal protection guarantees” and the “right to equal participation.” (*Wilson I*, 54 Cal.3d at 473.) Much like in *Wilson I*, this case presents circumstances where the entity responsible for redistricting—the Commission—is unable to complete the redistricting process, at least under the current deadlines. Thus, this Court should exercise its equitable powers to extend those deadlines so that the Commission may draw lawful and appropriate maps. This relief is less extreme than appointing special masters to perform the redistricting, and it would direct the Court’s equitable powers towards supporting the redistricting process the People of California chose.

In addition to the Court’s equitable power, the Court must read the Commission’s deadlines in the broader context of the constitutional scheme requiring the **Commission** to perform the redistricting process. A statutory or constitutional provision’s “language must be construed in the context of the statute as a whole and the . . . overall . . . scheme.” (*Prof’l Eng’rs in Cal. Gov’t v. Kempton* (2007) 40 Cal.4th 1016, 1037.) Article XXI, section 1 of the California Constitution states that “[i]n the year following the year in which the national census is taken under the direction of Congress at the beginning of each decade, the **Citizens Redistricting Commission . . . shall . . . adjust the boundary lines**” of the state and federal districts. Meanwhile, the Commission’s July 1st deadline for displaying its first preliminary map is part of regulations meant to govern “[t]he activities” of the Commission. (Gov. Code, § 8253(a)(7).) Similarly, the August 15th deadline for approving final maps in the California Constitution is part of the “standards and process” for the Commission’s work. (Cal. Const., art. XXI, §§ 1, 2(g).) The voters and the Legislature could not have intended for these deadlines to take the redistricting process out of the Commission’s hands—the practical result if they are not extended.

**D. The Court should act now.**

To ensure that the Commission can act as soon as it obtains data from the Census Bureau, the Commission needs a viable schedule as soon as possible. The new Commission will be formed on August 15, 2020. (Gov. Code, § 8252(g).) Once that date passes, the Commission must begin hiring staff and advisors (Gov. Code, § 8253(a)(5)) and calendaring a series of public hearings and meetings to obtain the public’s input (*id.*, § 8253(a)(7)). The broad range and significant scale of this work takes time. The 2011 Commission “held more than 70 business meetings and 34 public hearings in 32 cities throughout the state” and considered “more than 2,000 written submissions.” (*Vandermost*, 53 Cal.4th at 445.) This hearing process will also

likely be complicated by COVID-19, given ongoing stay-at-home and social distancing mandates. The Commission will be unable to effectively plan around these logistical challenges if it does not even know whether the Commission will be allowed the time needed to complete its work, or when relevant benchmarks must be met. (Cf. *Wilson v. Eu* (1991) 54 Cal.3d 546, 548 (“*Wilson II*”) [providing early relief because elections are “a complex and ‘sequential’ process” and that “[e]arly delays in one function can impact all other functions”].)

If the Court does not provide scheduling relief for the Commission, the Legislature has indicated that it would consider placing an initiative on the November 2020 ballot to amend the constitutional and statutory deadlines. But the prospect of a future ballot initiative is not an adequate substitute for immediate judicial relief. As the Legislature explains in its Petition, the ballot process itself would impose a significant procedural and financial burden. (Declaration of Edson Perez in Support of the Petition (“Perez Decl.”), ¶¶ 2-3 & Ex. A.) There is no guarantee that the Legislature will succeed in placing an initiative on the November 2020 ballot, given the limited window for legislative action and the multiple emergencies California and the nation currently face. And given the emergency nature of the initiative, there is no existing funding or campaign for educating voters. Even if placed on the ballot, the voters may reject the constitutional amendment—at which point, only another Petition could provide relief.

Finally, granting the narrow judicial relief now will help the Court avoid embroiling itself more deeply in the “political thicket” of drawing electoral maps in the future. (*Deukmejian*, 30 Cal. 3d at 693 [conc. & dis. opn. of Mosk, J.].) This Court has held that redistricting “is primarily a legislative task, undertaken by this court only when circumstances permit no alternative.” (*Deukmejian*, 30 Cal.3d at 665 [maj. opn.].) Should the impossible deadlines the Commission faces make it unable to draw appropriate maps, the Court will need to step in to ensure lawful maps. (*Id.* at 660; Cal. Const., art. XXI, § 2(j).) By granting the Petition, the Court will minimize the risk that it will need to take a direct role in drawing electoral maps in the future.

## **II. The Legislature’s requested extensions will protect the Commission’s transparency and inclusiveness.**

Proposition 11 compelled heightened inclusiveness and transparency in the Commission’s redistricting processes. It required the Commission to “draw districts based on strict, nonpartisan rules designed to ensure fair representation,” guaranteeing that debates occur “in the open with public meetings” and declaring that “every aspect of this [redistricting] process will be open to scrutiny by the public and the press. (See Prop. 11, Findings and Purpose, as approved by voters, Gen. Elec. (Nov. 4, 2008).) Proposition 11 amended the Constitution to mandate “an open and transparent process enabling full public consideration of and comment on the drawing of district lines.” (Cal. Const, art. XXI § 2(b).) To implement this charge, the Government Code requires the Commission to hold hearings both before and after the Commission draws its maps, and to display the maps “in a manner designed to achieve the widest public access reasonably possible.” (Gov. Code, § 8253(a)(7).)

Petitioner’s requested extensions are necessary to enable the Commission to afford meaningful public participation. Historically, community members have been highly involved in the redistricting process. They offer testimony at hearings and, working in coalitions, often hire their own demographers, voting experts, and voting rights attorneys to analyze census data, review the Commission’s maps, and formulate proposals. The prior Commission received oral comments from more than 2,700 speakers at hearings, and it collected written submissions from more than 2,000 organizations and more than 20,000 individuals. (Rafael J. Sonenshien, *When the People Draw the Lines: An Examination of the California Citizens Re districting Commission* (2013) at 40-41, [https://cavotes.org/sites/default/files/jobs/Redistricting Commission%20Report6122013.pdf](https://cavotes.org/sites/default/files/jobs/Redistricting%20Report6122013.pdf).) But public engagement does not materialize overnight; it develops as a product of sustained outreach and education over the course of the mapping process. A shortened schedule poses a greater risk of excluding the impacted community members by reducing their opportunities to provide input, eroding the perceived legitimacy of the redistricting process.

Additionally, the earlier that Commissioners obtain schedule certainty, the more likely it is that the Commission itself will be “reasonably representative of the State’s diversity” in accordance with constitutional mandates. (See Cal. Const, art. XXI, § 2(c)(1).) The role of a Commissioner is time-consuming and travel-intensive, and Commissioners must perform their official redistricting duties in addition to existing work and personal obligations. If the upcoming Commission’s tenure will stretch months later than usual, into Fall 2021, current Commission finalists deserve to know as soon as possible, and before the Commission membership is finalized by August 15, 2020. Current Commission finalists who do not have flexible work schedules, such as those who are not self-employed or who do not work in white-collar jobs, will likely be the individuals hardest hit by schedule uncertainty in the redistricting process. If, after August 15, a Commissioner must resign due to scheduling hardships, the Commission will need to devote significant time and effort to filling the vacancy. (See Gov. Code, § 8252.5(b).)

### **III. The Legislature’s requested extensions are a nonpartisan response to unanticipated scheduling issues.**

The Legislature’s extension request is not an effort by any political group to obtain a perceived electoral advantage. Both Democrat and Republican-led state legislatures are now grappling with how to maintain orderly and fair redistricting processes despite COVID-19-related disruptions. Two states—Virginia and New Jersey—are scheduled to hold 2021 primary elections before the states are to receive the now-delayed census data. (*2020 Census Data & Redistricting*, California Common Cause, <https://www.commoncause.org/wp-content/uploads/2020/05/Redistricting-Deadlines-map-and-list.pdf>.) The census delays also imperil the redistricting timelines in seventeen other states, including California. (*Ibid.*) Although California’s redistricting procedures are unique, the Legislature’s desire to protect a fundamental step in the electoral process is not.

The Legislature’s requested extensions are consistent with the Commission’s nonpartisan status. Supporters of Proposition 11 sought to insulate the Commission’s map-drawing functions from political manipulation. (Ballot Pamp., Gen. Elec (Nov. 4, 2008), argument in favor of Prop 11, <http://vigarchive.sos.ca.gov/2008/general/argu-rebut/argu-rebutt11.htm> [“There is a serious conflict of interest when legislators are allowed to draw their own district boundaries.”].) By setting constitutionally-mandated dates for crucial steps of the redistricting procedure (Cal. Const, art. XXI, § 2(g)), Proposition 11 provided a further firewall against partisan interference. Here, however, the Legislature’s request for a one-time modification of that procedure does not raise any such concerns. The Legislature is seeking to maintain the status quo, by ensuring that the redistricting process can be completed before the 2022 primaries. The request is narrowly tailored and proportional to the census delays motivating it, and does not disturb any unrelated deadlines or procedures. By petitioning the Court, the Legislature involves an outside authority to confirm that it is not seeking relief contrary to the Commission’s nonpartisan goals. Amici are particularly sensitive to any efforts to undercut the Commission’s independence, but find no such danger here.

Ultimately, the Legislature’s requested relief provides the least invasive means of addressing what is—hopefully—a once-in-a-lifetime disruption. The Commission’s scheduling procedures are sound, but even our society’s best procedures have been upended by the COVID-19 pandemic. The Court should take limited action in this specific instance to address those disruptions. If, instead, the Legislature must pursue a constitutional amendment to address COVID-19-related delays, the procedural changes may inject unnecessary complexity to the process and may expose redistricting schedules to further changes in the future. The Legislature’s Petition proposes a common-sense solution that avoids these risks.

Respectfully submitted,

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