

In the Supreme Court of the State of California

LEGISLATURE OF THE STATE OF CALIFORNIA,

Petitioner,

Case No. S262530

v.

ALEX PADILLA, in his official capacity as Secretary of State of the State of California,

Respondent.

**RESPONDENT SECRETARY OF STATE'S
PRELIMINARY RESPONSE TO
PETITION FOR WRIT OF MANDATE**

CRITICAL DATE: JULY 13, 2020

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TABLE OF CONTENTS

	Page
Introduction.....	8
Background	9
I. The California Citizens Redistricting Commission	9
II. The Secretary of State’s Redistricting Duties	11
III. Election and Redistricting Deadlines	13
A. Election Administration Deadlines Following Redistricting	13
B. Deadlines Relating to Placement of a Legislative Constitutional Amendment on the November 2020 Ballot.....	15
C. Efforts to Address the Impact of Delayed U.S. Census Data on Redistricting in California.....	16
Jurisdiction.....	18
Argument.....	19
I. This Court Should Grant Relief Now to Resolve Uncertainty That Threatens to Undermine the Electoral Process.....	19
A. Successful Implementation of Redistricted Maps Will Require Significant Election Administration Efforts	20
B. The Petition Implicates Important Election Administration Issues and Is Ripe for Resolution	22
1. This Court Has Frequently Found Controversies Raising Important Elections Issues to be Ripe	23

TABLE OF CONTENTS
(continued)

	Page
2. This Matter Is Ripe Because Certainty Is Needed Now, for Redistricting to Succeed	24
C. The Legislature’s Requested Relief is Authorized by Law	27
Conclusion	30

TABLE OF AUTHORITIES

	Page
CASES	
<i>Assembly v. Deukmejian</i> (1982) 30 Cal.3d 638	23, 28
<i>California Redevelopment Assn. v. Matosantos</i> (2011) 53 Cal.4th 231.....	29
<i>Connerly v. State of California</i> (2014) 229 Cal.App.4th 457	9
<i>Jolicoeur v. Mihaly</i> (1971) 5 Cal.3d 565	23
<i>Knoll v. Davidson</i> (1974) 12 Cal.3d 335	14, 22
<i>Kopp v. Fair Pol. Practices Com.</i> (1995) 11 Cal.4th 607.....	28, 29
<i>Legislature v. Reinecke</i> (1972) 6 Cal.3d 595	23
<i>Legislature v. Reinecke</i> (1973) 10 Cal.3d 396	28
<i>Pacific Legal Foundation v. California Coastal Com.</i> (1982) 33 Cal.3d 158	23
<i>Perry v. Jordan</i> (1949) 34 Cal.2d 87	23
<i>Senate v. Jones</i> (1999) 21 Cal.4th 1142.....	28
<i>Silver v. Brown</i> (1965) 63 Cal.2d 270	23, 28

TABLE OF AUTHORITIES
(continued)

	Page
<i>Thompson v. Mellon</i> (1973) 9 Cal.3d 96	23
<i>Vandermost v. Bowen</i> (2012) 53 Cal.4th 421.....	<i>passim</i>
<i>Wilson v. Eu</i> (1991) 54 Cal.3d 471	23, 24
<i>Wilson v. Eu</i> (1992) 1 Cal.4th 707.....	28
 STATUTES	
13 U.S.C. § 141(c).....	16
 Elections Code	
§ 333.....	14
§ 359.5.....	14
§ 8020.....	14
§ 8020, subd. (b)	14, 22
§ 8023, subd. (c).....	13
§ 8040.....	13, 14
§ 8041.....	14
§ 8103.....	14
§ 8106.....	14
§ 8106, subd. (b)	14, 22, 25
§ 8106, subd. (d)	14
§ 9040.....	15
§ 13108, subd. (c).....	13, 21
 Government Code	
§ 8251, subd. (c)(5)	26
§ 8253, subd. (a)(7).....	<i>passim</i>

TABLE OF AUTHORITIES
(continued)

	Page
 CONSTITUTIONAL PROVISIONS	
United States Constitution	
Fourteenth Amendment	14
 California Constitution	
Article VI § 10	18
Article XVIII § 1	15
Article XXI § 2	29
Article XXI § 2, subd. (i)	11
Article XXI § 2, subd. (b)	10, 25
Article XXI § 2, subd. (d)	25
Article XXI § 2, subd. (c)(1)	9, 11
Article XXI § 2, subd. (d)(2)	11
Article XXI § 2, subd. (g)	11
Article XXI § 2, subd. (j)	11
Article XXI § 3, subd. (b)(2)	11
 OTHER AUTHORITIES	
Senate Bill 970 (Reg. Sess. 2019-20), http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB970	
	14, 17
 Assembly Constitutional Amendment No. 26 (Reg. Sess. 2019-20), https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200ACA26	
	18
 Senate Constitutional Amendment No. 10 (Reg. Sess. 2019-20), https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SCA10	
	18

TABLE OF AUTHORITIES
(continued)

	Page
U.S. Census Bureau, “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,” https://www.census.gov/newsroom/press-releases/2020/statement-covid-19-2020.html	17
H.R. 6800, The HEROES Act, https://www.congress.gov/bill/116th-congress/house-bill/6800/text	17
H.R. 7034, The Fair and Accurate Census Act, https://www.congress.gov/bill/116th-congress/house-bill/7034/text or https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Fair%20and%20Accurate%20Census%20Act.pdf	17
Proposition 11	10
Proposition 20	29
Stats. 2012, Ch. 271, § 4	29

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

Respondent Secretary of State Alex Padilla respectfully
submits this Preliminary Response to the Petition for a Writ of
Mandate, as requested by the Court on June 5, 2020.

INTRODUCTION

Secretary of State Alex Padilla joins with the Legislature in
seeking the immediate intervention of this Court to extend the
August 15, 2021 redistricting deadline to December 15, 2021.
This relief is necessary and appropriately granted now so that
the California Citizens Redistricting Commission can perform its
redistricting duties using data from the 2020 federal census. Not
only does the Commission need to know whether it will be able to
perform its constitutionally mandated duties—which are subject
to robust public participation and transparency requirements—
but the Secretary of State must have enough time to properly
prepare the redistricted maps for use in the 2022 primary
election. Use of redistricted maps in that election may also
require statutory changes beyond what is currently contemplated
in the Petition. In light of the operational and legal complexities
posed by events that would occur even after a December 15, 2021
redistricting deadline, it is vitally important that the question of
the redistricting deadline be resolved now. This will provide the
Secretary of State—and other entities impacted by redistricting—
sufficient time to consider the relevant election administration
issues and plan for any contingencies.

BACKGROUND

I. THE CALIFORNIA CITIZENS REDISTRICTING COMMISSION

“The voters of California fundamentally reformed the redistricting process when they passed Proposition 11 in 2008 and Proposition 20 in 2010.” (*Vandermost v. Bowen* (2012) 53 Cal.4th 421, 490 (Liu, J., concurring).) These propositions “changed the way California’s State Senate, State Assembly, congressional, and Board of Equalization voting districts are adjusted after each national census, assigning the corresponding duties to the California Citizens Redistricting Commission (Commission).” (*Connerly v. State of California* (2014) 229 Cal.App.4th 457, 461 [citing *Vandermost, supra*, 53 Cal.4th at pp. 442-448].)

The selection process for the Commission is “designed to produce a commission that is independent from legislative influence and reasonably representative of this State’s diversity.” (Cal. Const., art. XXI, § 2, subd. (c)(1).) “The Commission has 14 members. Five must be registered with the largest political party in California (based on voter registration), five must be registered with the second largest political party in California, and four must be individuals who are not registered with either of the two largest political parties.” (*Vandermost, supra*, 53 Cal.4th at p. 443 [citing Cal. Const., art. XXI, § 2, subd. (c)(2)].)

The Commission is charged with “conduct[ing] an open and transparent process enabling full public consideration of and comment on the drawing of district lines”; “draw[ing] district

lines according to the redistricting criteria specified in this article”; and “conduct[ing] themselves with integrity and fairness.” (Cal. Const., art. XXI, § 2, subd. (b).) The Commission is statutorily required to “establish and implement an open hearing process for public input and deliberation that shall be subject to public notice and promoted through a thorough outreach program to solicit broad public participation in the redistricting public review process.” (Gov. Code, § 8253, subd. (a)(7).) This includes a requirement to conduct “hearings to receive public input before the commission draws any maps and hearings following the drawing and display of any commission maps.” (*Ibid.*) And, these hearings “shall be supplemented with other activities as appropriate to further increase opportunities for the public to observe and participate in the review process.” (*Ibid.*) In the upcoming redistricting cycle, the Commission must display its draft maps for public comment by July 1, 2021. (See *ibid.*)

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

redistricting criteria, including the federal Voting Rights Act. (See Cal. Const., art. XXI, § 2, subd. (d)(2) [“Districts shall comply with the federal Voting Rights Act”].)

By August 15 in every year ending in 1 (e.g., 2011, 2021, 2031), the Commission shall approve maps “by at least nine affirmative votes which must include at least three votes of members registered from each of the two largest political parties in California based on registration and three votes from members who are not registered with either of these two political parties.” (Cal. Const., art. XXI, § 2, subds. (g), (c)(5).)

The Commission’s maps may be the subject of a referendum. (Cal. Const., art. XXI, § 2, subd. (i).) If a referendum challenging a map is “likely to qualify” for the ballot, “[a]ny registered voter” may file an action seeking to stay implementation of the challenged map. (*Id.*, § 3, subd. (b)(2).) “If the commission does not approve a final map by at least the requisite votes or if voters disapprove a certified final map in a referendum, the Secretary of State shall immediately petition the California Supreme Court for an order directing the appointment of special masters” to draw maps “in accordance with the redistricting criteria and requirements set forth” in the Constitution. (*Id.*, § 2, subd. (j).) The Supreme Court then approves and certifies the final map to the Secretary of State. (*Ibid.*)

II. THE SECRETARY OF STATE’S REDISTRICTING DUTIES

After the Commission has certified the new maps, the Secretary of State must create a database to implement the new congressional, Senatorial, Assembly, and State Board of

Equalization district boundaries. (Declaration of Jana Lean, Chief of the Elections Division, California Secretary of State (“Lean Decl.”), ¶ 3.) The database is used to certify statewide candidates, provide for election night reporting, and produce the official Statement of the Vote required after each election. (*Id.*, ¶ 4.) The database comprises of lists of districts by county; Assembly districts within each county; and congressional, Senate, and Board of Equalization districts within the appropriate Assembly districts in each county. (*Id.*, ¶¶ 7-8.) County elections officials must then conform their own election management systems and district databases to reflect the new district lines from the Secretary of State’s database. (*Id.*, ¶ 11.) This entire process results in final district maps that can be used by candidates for signature-gathering activities and nominating papers, as described in more detail below. (*Id.*, ¶ 12; see *post*, at pp. 13-14.)

During the 2011 redistricting process, the Secretary of State received certified maps from the Commission on August 15, 2011, and county elections officials used the database created by the Secretary of State from the certified maps to complete all necessary changes to their district lines in late December 2011. (Lean Decl., ¶ 13.) The Secretary of State’s Office is currently formulating its operational plans for the creation of the database for the 2021 redistricting cycle, but anticipates that work on the database could take eight weeks. (*Id.*, ¶¶ 7-9.) Processing by county elections officials could take several additional weeks. (*Id.*, ¶ 11.) However, there is still a great deal of technical and

operational planning to do for the upcoming redistricting cycle, and these estimates are subject to change. (*Id.*, ¶ 6.)

III. ELECTION AND REDISTRICTING DEADLINES

A. Election Administration Deadlines Following Redistricting¹

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

Candidates will also rely on the maps when conducting signature-gathering activities associated with the nominating papers every candidate must file. (Lean Decl., ¶ 12.) To run for office, candidates must submit nomination papers with the required number of signatures, along with a Declaration of

¹ The Lean Declaration attaches calendars showing election-related deadlines for the following elections: June 2012 primary election (the most recent post-redistricting primary election); June 2018 primary election (the most recent non-presidential primary election); and March 2020 primary election (the most recent primary election, which was a presidential primary election), as Exhibits A through C.

Candidacy. (Elec. Code, §§ 333, 8020, 8040, 8041.)² In addition, candidates must pay a filing fee to the Secretary of State. (*Id.*, § 8103.) In lieu of paying that fee, candidates can submit petitions containing, depending on the office, signatures of 1,000 to 7,000 registered voters from that district. (*Id.*, § 8106.) Those signatures may also be used towards the number of signatures required for the candidate's nomination papers. (*Id.*, § 8106, subd. (d).) The in-lieu signature process is constitutionally required. (See *Knoll v. Davidson* (1974) 12 Cal.3d 335, 349 [requiring a filing fee as a condition to becoming a candidate violates equal protection clause of the Fourteenth Amendment].)

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

If the 2022 primary were to be held on June 7, 2022, as has been proposed in pending legislation (S.B. 970), the period for gathering signatures in lieu of a filing fee would run from December 16, 2021, through February 9, 2022. (Elec. Code, § 8106, subds. (b), (b)(3).) The period for filing nomination papers would run from February 14, 2022 through March 11, 2022. (*Id.*, § 8020, subd. (b).)

² These requirements apply to candidates for statewide constitutional office, United States Senator, United States Representative in Congress, State Senator, and Member of the State Assembly. (See Elec. Code, § 359.5.)

B. Deadlines Relating to Placement of a Legislative Constitutional Amendment on the November 2020 Ballot³

The Legislature may place a constitutional amendment on the ballot to be approved by the voters, through a measure passed by a two-thirds vote in each house of the Legislature. (Cal. Const., art. XVIII, § 1.) The statutory deadline for placing a ballot measure on the November 2020 ballot is June 25, 2020. (Elec. Code, § 9040.) In the past, the Legislature and Governor have enacted legislation waiving this deadline. (Lean Decl., ¶ 17.) This process significantly reduces the time the Secretary of State’s Office and others have to prepare the related materials to be included in the state Voter Information Guide (“VIG”) and on ballots. (*Id.*, ¶ 18.) As a practical matter, the last day that the Legislature can place a measure on the ballot and have that measure be included in the principal state VIG is July 1, 2020. (*Id.*, ¶ 19.) There will be at least seven statewide ballot measures on the November 2020 ballot (unless withdrawn by their proponents by June 25, 2020), with four additional ballot measures pending signature verification. (*Id.*, ¶ 26.)

Any measure for a legislative constitutional amendment enacted after July 1, 2020 would require a supplemental state VIG to be sent to all registered voters. (Lean Decl., ¶ 20.) As a practical matter, the very last day on which the Legislature can

³ The calendar showing election-related deadlines for the upcoming November 2020 general election is appended to the Lean Declaration as Exhibit D.

pass a measure to place a constitutional amendment on the ballot for the November 2020 election is July 26, 2020. (*Id.*, ¶ 21.)

A legislative measure to place a constitutional amendment on the ballot that is passed between July 1 and July 26, 2020 would need to include language waiving certain statutory provisions, and providing additional funding to the Secretary of State’s budget allocation for the state VIG. (Lean Decl., ¶ 22.) Depending on the number of measures and the page count, a supplemental state VIG could cost approximately four to five million dollars. (*Id.*, ¶ 23.) Any measure passed after July 1, 2020 will significantly reduce the time the Secretary of State’s Office and others have to prepare the related materials to be included in the state VIG and on ballots. (*Id.*, ¶ 24.) A separate supplemental VIG therefore generates a significant cost to state taxpayers and creates unnecessary risks and complications for the election process, including a delay in the printing and mailing of translated voter materials. (*Id.*, ¶ 25.) This increases the likelihood of confusion for all voters. (*Ibid.*)

C. Efforts to Address the Impact of Delayed U.S. Census Data on Redistricting in California

The United States Commerce Department must provide states with the block-level population and demographic data needed to redraw congressional and legislative districts no later than April 1 of the year after the census. (13 U.S.C. § 141(c).) Because of operational delays resulting from the COVID-19 pandemic, the Census Bureau has proposed to extend the response period for the 2020 census to October 31, 2020, and has

asked Congress to extend the deadline for delivering data to the states to July 31, 2021.⁴ Two separate pieces of legislation to carry out this extension are pending in Congress.⁵

In California, the Legislature has undertaken several efforts to address the effect of the delayed census data on decennial redistricting and the work of the Commission.

First, in recognition of the Census Bureau’s announcement that the release of census data will be delayed up to four months, Senate Bill 970 would move California’s March 2022 primary to June 7, 2022. (See Leg. RJN, Ex. E.)⁶

Second, legislation to place a constitutional amendment on the ballot for the November 2020 election has been introduced. (See Senate Constitutional Amendment No. 10 & Assembly

⁴ U.S. Census Bureau, “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,” News Release No. CB20-RTQ.16, April 13, 2020, <https://www.census.gov/newsroom/press-releases/2020/statement-covid-19-2020.html>. See also Legislature’s Request for Judicial Notice (“Leg. RJN”), Ex. A (same).

⁵ See H.R. 6800, The HEROES Act, available at <https://www.congress.gov/bill/116th-congress/house-bill/6800/text>; H.R. 7034, The Fair and Accurate Census Act, <https://www.congress.gov/bill/116th-congress/house-bill/7034/text>, or <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Fair%20and%20Accurate%20Census%20Act.pdf>.

⁶ This bill is also available at http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB970.

Constitutional Amendment No. 26 (Reg. Sess. 2019-20).⁷ The amendment would provide the Commission with the authority, for 2021 only, to extend its August 15, 2021 deadline to as late as December 15, 2021, if census data is delayed past April 1, 2021. The amendment would also allow the Commission to extend its statutory July 1, 2021 deadline for public display of its draft maps.

Finally, the Legislature filed the June 4, 2020 petition for writ of mandate, asking this Court to require the Secretary of State to accept the final maps approved by the Commission until December 15, 2021, and to extend to November 1, 2021 the date by which the Commission must release its draft maps for public display. (See Gov. Code, § 8253, subd. (a)(7)).

JURISDICTION

This Court has original jurisdiction in proceedings for extraordinary relief in the nature of mandamus. (Cal. Const., art. VI, § 10.) “[T]his court may appropriately exercise its jurisdiction over a petition for an original writ of mandate when the issues presented are of great public importance and must be resolved promptly.” (*Vandermost, supra*, 54 Cal.4th at p. 453 [internal quotation marks and citations omitted].)

⁷ These bills are available at https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SCA10 and https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200ACA26.

ARGUMENT

The Commission’s redistricting deadline must be extended for the Commission to perform its redistricting responsibilities. It is clear that it will be impossible for the Commission to complete its critical redistricting responsibilities—including its responsibility to engage with the public through numerous hearings and outreach efforts—within the currently required timeframe. Because redistricting has enormous impacts on election administration, this Court should provide clarity on the timing for redistricting as soon as possible. If this Court does not intervene and provide relief, the resulting rushed process and confusion about how and when redistricting will happen will have severe negative consequences for election administration and ultimately undermine the integrity of the election.⁸

I. THIS COURT SHOULD GRANT RELIEF NOW TO RESOLVE UNCERTAINTY THAT THREATENS TO UNDERMINE THE ELECTORAL PROCESS

It is necessary and appropriate for the Court to extend the Commission’s redistricting deadline to December 15, 2021.⁹ Not only does the Commission need to know whether it will be able to carry out redistricting, but the Secretary of State and other entities need to know, as soon as possible, whether, how, and

⁸ The Secretary of State does not oppose the Legislature’s Request for Judicial Notice.

⁹ The Secretary of State also supports the Legislature’s request that this Court extend the date by which the Commission must release its draft maps for public display from July 1, 2021 (Gov. Code, § 8253, subd. (a)(7)) until November 1, 2021.

when to undertake the many preparations necessary to administer a successful primary election in 2022, using redistricted maps. A breakdown in the redistricting process—which includes work performed by the Secretary of State and county elections officials after the Commission approves new maps—will negatively impact the Secretary of State’s election administration work and ultimately undermine public confidence in the electoral process.

A. Successful Implementation of Redistricted Maps Will Require Significant Election Administration Efforts

A change to the redistricting deadline—which the Secretary of State agrees is needed to allow the Commission to perform redistricting—will introduce significant challenges to the election administration process that the Secretary of State and other impacted entities must have sufficient time to address. To prepare redistricted maps for use in the 2022 primary, the Secretary of State and county elections officials will need to grapple with numerous operational complexities. It is also quite likely that the Legislature will need to adjust certain statutory election-related deadlines, to protect the rights of candidates and voters.

The Secretary of State’s current estimate of the time needed to construct the database used by county elections officials to administer the 2022 primary election (and subsequent elections) is eight weeks from the receipt of the Commission’s certified maps, with several additional weeks needed for implementation and testing by county elections officials. (Lean Decl., ¶¶ 7-11.) If

the Commission sends its maps to the Secretary of State on December 15, 2021, it could be March 2022 by the time the official maps for use in the June 2022 primary are ready. (*Id.*, ¶ 15.) However, this estimate is subject to change, as planning for the upcoming redistricting cycle is still underway. (*Id.*, ¶ 6.)

Candidates use redistricted maps to determine whether they have incumbent status (Elec. Code, § 13108, subd. (c)), or whether to run at all, given the boundaries of the district in which they reside. However, preparations by candidates and county elections officials for the 2022 primary election, using redistricted maps, cannot proceed based solely on the maps that the Commission certifies to the Secretary of State. Only after the Secretary of State’s database has been created, tested, and implemented, and 58 county elections officials have processed that information into their respective election management systems, will candidates and county elections officials have maps that can be reliably used for the upcoming election. (Lean Decl., ¶12.)

Without any adjustments to currently effective statutory deadlines, the new maps will not be ready for use by candidates and county elections officials by the time of the earliest statutory deadline. Assuming a December 15, 2021 redistricting deadline and a June 7, 2022 primary, the period for candidates to gather signatures in lieu of a filing fee—an option that is constitutionally required to be made available (see *Knoll, supra*, 12 Cal.3d at p. 349)—would run from December 16, 2021, through February 9, 2022. (Elec. Code, § 8106, subds. (b), (b)(3).)

The period for filing nomination papers would run from February 14, 2022 through March 11, 2022. (Elec. Code, § 8020, subd. (b).)

There may be additional statutory deadlines that require legislative adjustment, in light of the census and redistricting delays.¹⁰ But the complications posed by the in-lieu signature period demonstrate the need for a careful review of the entire election calendar, with respect to any delayed redistricting deadline.

Thus, the Secretary of State must not only coordinate with county elections officials and plan the technical aspects of its redistricting database project, but must also determine whether legislation adjusting various statutory election deadlines is necessary. Granting the relief requested by the Legislature now will help ensure that there is sufficient time for all of these efforts.

B. The Petition Implicates Important Election Administration Issues and Is Ripe for Resolution

This matter is ripe for adjudication. This Court has previously recognized that it is appropriate to resolve election-related controversies promptly to provide the clarity that elections officials need to successfully administer an election. The current uncertainty caused by the census delay undermines the redistricting process and also threatens the integrity of the

¹⁰ See Lean Decl., Exs. A, B, C (calendars for June 2012, June 2018, and March 2020 primary elections).

first election in which redistricted maps are to be used, the 2022 primary election.

1. This Court Has Frequently Found Controversies Raising Important Elections Issues to be Ripe

“The ripeness requirement, a branch of the doctrine of justiciability, prevents courts from issuing purely advisory opinions.” (*Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 170 [citation omitted].) However, the ripeness requirement “should not prevent courts from resolving concrete disputes if the consequence of a deferred decision will be lingering uncertainty in the law, especially when there is widespread public interest in the answer to a particular legal question.” (*Ibid.* [citations omitted].) This Court has “frequently found challenges ripe . . . in cases involving significant legal issues affecting the electoral process, when a speedy resolution of the underlying controversy is necessary to avoid a disruption of an upcoming election.” (*Vandermost, supra*, 53 Cal.4th at p. 453 [citing *Wilson v. Eu* (1991) 54 Cal.3d 471, 472-473; *Assembly v. Deukmejian*, (1982) 30 Cal.3d 638, 646; *Thompson v. Mellon* (1973) 9 Cal.3d 96, 98; *Legislature v. Reinecke* (1972) 6 Cal.3d 595, 598; *Jolicoeur v. Mihaly* (1971) 5 Cal.3d 565, 570, fn. 1; *Silver v. Brown*, (1965) 63 Cal.2d 270, 277-278; *Perry v. Jordan* (1949) 34 Cal.2d 87, 90-91].)

Certainty about the schedule for any given election is paramount to preparing for and administering a successful election and securing public confidence in the electoral process.

As this Court acknowledged in similar circumstances in 1991, based on representations by the Secretary of State:

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

(*Wilson v. Eu, supra*, 54 Cal.3d at p. 548.)

During the last round of redistricting in 2011 and 2012, this Court considered the *Vandermost* writ petition, which asked the Court to decide on the proper map to use for an upcoming primary election, if a referendum challenging a map approved by the Commission ultimately qualified for a spot on the ballot for the subsequent general election. (*Vandermost, supra*, 53 Cal.4th at pp. 435-438.) “Given the realities of the timing of redistricting and the statutory electoral process,” this Court found the petition to be ripe “even in the absence of a showing that the proposed referendum is likely to qualify for the ballot.” (*Id.*, at pp. 457, 463.)

2. This Matter Is Ripe Because Certainty Is Needed Now, for Redistricting to Succeed

The case for ripeness here is clearer than in *Vandermost*. It is already apparent that a problem exists and a solution is required. The Census Bureau has announced that it “is seeking

statutory relief from Congress of 120 additional calendar days to deliver final apportionment counts,” which would allow “redistricting data to be delivered to the states no later than July 31, 2021.” (Leg. RJN, Ex. A, at p. 2.) Legislation to provide this statutory relief is pending in Congress. California’s redistricting deadline must be moved or the Commission will not be able to perform its redistricting duties.

It is therefore also already apparent that the Secretary of State and other impacted entities will need to prepare for the possibility of revisions to the timeframes and procedures for use of those redistricted maps in the 2022 primary. The Secretary of State, the Commission, and the Legislature need certainty about whether redistricting by the Commission will even be possible, and the schedule for that redistricting. The Commission needs to know what its deadline is so it can provide to the Secretary of State maps that are the product of an “open and transparent process enabling full public consideration of and comment on the drawing of district lines,” and that comply with state and federal redistricting criteria, including the Voting Rights Act. (Cal. Const., art. XXI, § 2, subs. (b), (d); see *ante*, at p. 10.) The Secretary of State also needs certainty regarding the redistricting deadline, to undertake the complex planning process required to create the database that generates official maps used to run elections, and relied upon by county elections officials, candidates, and voters for numerous election-related tasks. And, as the in-lieu signature period demonstrates (Elec. Code, § 8106, subs. (b), (b)(3)), it is quite likely that some changes to the Elections Code

will be required, to align election administration deadlines with any new redistricting deadline. Both the Secretary of State and the Legislature must know whether to proceed with preparations for securing those legislative changes.

The possibility of extending the redistricting deadline through a constitutional amendment does not obviate the need for this Court to grant relief now.¹¹ The months of uncertainty about the outcome of the election in November deprives the Commission, the Secretary of State, the Legislature, and other interested entities of critical time that could be used to help ensure a successful redistricting effort and primary election in 2022.¹² And, the extension of the redistricting deadline would present voters with a potentially confusing procedural issue that is not well suited to an up-or-down vote, at an election that could

¹¹ With respect to the July 1, 2021 deadline for public display of draft maps (Gov. Code, § 8253, subd. (a)(7)), this Court is the only entity capable of providing relief, because the Legislature cannot amend the statutes governing the Commission's work in years ending in 9, 0, or 1. (See *id.*, § 8251, subd. (c)(5).)

¹² Because the bills proposing the legislative constitutional amendments were introduced so recently, it may be procedurally impossible for the Legislature to pass them before each house adjourns for summer recess (June 19, 2020 for the Assembly and July 2, 2020 for the Senate). (Leg. RJN, Ex. G.) There are also procedural, fiscal, and operational complexities associated with placing a legislative constitutional amendment on the ballot after July 1. Measures placed on the ballot during the July 1-26 period, present a significant challenge to elections officials, which could undermine their ability to carry out important election administration duties. (*Ante*, at pp. 15-16; Lean Decl., ¶¶ 16-25.)

have eleven or more other measures on the ballot. (Lean Decl., ¶ 26.)

Given all of these considerations, if the redistricting deadline will be December 15, 2021, then it is crucial for the Secretary of State and other entities to know that as soon as possible, so that the many election-administration-related tasks described above can begin. If the redistricting deadline will be some other date—or if redistricting will ultimately happen through some other mechanism, such as through special masters appointed by this Court—it will be important to know that as far in advance as possible, so that there will be sufficient time to adjust election administration activities accordingly. As this Court recognized in *Vandermost*, “detrimental consequences to the orderly process of an election may result if the court fails to exercise jurisdiction expeditiously,” and such consequences “may reasonably support a judicial determination that the proposed mandate action is sufficiently ‘ripe’ to permit this court to exercise jurisdiction over the mandate action at that earlier juncture.” (*Vandermost*, *supra*, 53 Cal.4th at p. 456.) Any continuing uncertainty about the redistricting timeline would impede the Secretary of State’s ability to run a successful election using redistricted maps, and it is appropriate for this Court to address this uncertainty now.

C. The Legislature’s Requested Relief is Authorized by Law

In its Petition, the Legislature has asked this Court to require the Secretary of State to accept the final maps approved by the Commission from August 15, 2021 until December 15,

2021, and to extend the date by which the Commission must release its draft maps for public display (Gov. Code, § 8253, subd. (a)(7)) from July 1, 2021 until November 1, 2021. (Petition, at p. 18.) This Court “has repeatedly exercised authority to entertain and decide petitions for original writs of mandate related to the referendum, initiative, and redistricting process in circumstances in which an expeditious ruling was necessary to the orderly functioning of the electoral system.” (*Vandermost*, *supra*, 52 Cal.4th at p. 452 [citing *Senate v. Jones* (1999) 21 Cal.4th 1142; *Wilson v. Eu*, *supra*, 54 Cal.3d 546; *Wilson v. Eu* (1992) 1 Cal.4th 707; *Assembly v. Deukmejian*, *supra*, 30 Cal.3d 638; *Legislature v. Reinecke* (1973) 10 Cal.3d 396; *Silver v. Brown*, *supra*, 63 Cal.2d 270].) The relief sought here is consistent with the Court’s previous exercise of authority in this area.

In addition, this Court has the power of reformation, which allows it to “‘rewrite’ . . . a statute in order to preserve it against invalidation under the Constitution, when [the Court] can say with confidence that (i) it is possible to reform the statute in a manner that closely effectuates policy judgments clearly articulated by the enacting body, and (ii) the enacting body would have preferred the reformed construction to invalidation of the statute.” (*Kopp v. Fair Pol. Practices Com.* (1995) 11 Cal.4th 607, 660-661.) This Court can exercise this authority with respect to statutes enacted by the Legislature and voter-approved ballot initiatives. (*Id.*, at pp. 660-662.) The power of reformation exists not just for instances of invalidity, but also for impossibility, when circumstances have “rendered it impossible for the parties

and others affected to comply with the legislation’s literal terms.” (*California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, 274.)

Here, it is clear that it will be impossible for the Commission to comply with the August 15, 2021 redistricting deadline and the July 1, 2021 deadline for public display of its draft maps. This Court therefore has the authority to grant the requested relief with respect to both the August 15, 2021 and July 1, 2021 deadlines, which were enacted by the voters and by the Legislature, respectively.¹³ And, it is evident that in enacting Proposition 11 and Proposition 20, the voters intended to have redistricting performed by the Commission, in a manner that welcomes public comment and participation. Granting the petition would thus “effectuate[] policy judgments clearly articulated by” the voters, who would undoubtedly prefer under these circumstances that the Commission perform redistricting on an extended schedule, rather than not perform it at all. (*Kopp, supra*, 11 Cal.4th at p. 661.) Extending the deadlines now would also enable the Secretary of State to take all steps necessary for successful use of the redistricted maps, which is inherent in the voters’ motivations for creating the Commission.

¹³ The August 15, 2021 redistricting deadline in Article 21, section 2 of the California Constitution was enacted in 2010 through a voter-approved ballot initiative. (Prop. 20, as approved by voters, Gen. Elec. (Nov. 2, 2010), § 3.2.) The July 1, 2021 deadline for public display of the Commission’s draft maps provided in Government Code section 8253, subdivision (a)(7) was set through legislation enacted in 2012. (Stats. 2012, Ch. 271, § 4.)

CONCLUSION

For the foregoing reasons, this Court should grant the relief sought in the Petition.

Dated: June 11, 2020

Respectfully submitted,

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/s/ P. PATTY LI

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Document received by the CA Supreme Court.

CERTIFICATE OF COMPLIANCE

I certify that the attached RESPONDENT SECRETARY OF STATE'S PRELIMINARY RESPONSE TO PETITION FOR WRIT OF MANDATE uses a 13 point Century Schoolbook font and contains 5,433 words.

Dated: June 11, 2020

XAVIER BECERRA
Attorney General of California

/s/ P. PATTY LI

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Deputy Attorney General
*Attorneys for Secretary of State Alex
Padilla*

Document received by the CA Supreme Court.

DECLARATION OF ELECTRONIC SERVICE

Case Name: *Legislature v. Alex Padilla*

No.: **S262530**

I declare:

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

On June 11, 2020, I electronically served the attached **RESPONDENT SECRETARY OF STATE’S PRELIMINARY RESPONSE TO PETITION FOR WRIT OF MANDATE** by transmitting a true copy via this Court’s TrueFiling system, addressed as follow:

Robin Johansen Attorney at Law Olson Remcho, LLP 1901 Harrison St., #1550 Oakland, CA 94612 Email: rjohansen@olsonremcho.com <i>Attorney for Legislature of the State of California</i>	Marian M. Johnston Attorney at Law Email: marianmjohnston@comcast.net <i>Attorney for 2010 California Citizens Redistricting Commission</i>
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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 11, 2020, at San Francisco, California.

Susan Chiang
Declarant

/s/ Susan Chiang
Signature