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 8 *Redistricting Commission and California Secretary*
of State

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 10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 12
 13

14 **TIMOTHY A. DEWITT,**

Plaintiff,

v.

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 18 **CALIFORNIA CITIZENS**
REDISTRICTING COMMISSION, a
California agency; SECRETARY OF
 19 **STATE OF THE STATE OF**
 20 **CALIFORNIA, ALEX PADILLA,**

Defendants.

3:15-cv-05261-WHA

**DEFENDANTS' REPLY IN SUPPORT
 OF MOTION TO DISMISS**

Date: May 26, 2016
 Time: 2 p.m.
 Courtroom: 8, 19th Floor
 Judge: Hon. William Alsup
 Trial Date: n/a
 Action Filed: Nov. 17, 2015

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 23 Defendants California Citizens Redistricting Commission (Commission) and California
 24 Secretary of State Alex Padilla (Secretary) offer this reply in support of their motion to dismiss
 25 plaintiff's Second Amended Complaint (Dkt. # 30)
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ARGUMENT

I. PLAINTIFF’S “ONE PERSON, ONE VOTE” ALLEGATIONS DO NOT STATE A CLAIM

The SAC alleges that California’s redistricting plans violate the constitutional principle of “one person, one vote” because the districts are drawn to have equal total population, as opposed to equal numbers of “actual voters.” (SAC ¶ 57.) This claim is foreclosed by the Supreme Court’s recent *Evenwel* opinion, which rejected a virtually identical challenge to Texas’ state senate districts. *Evenwel v. Abbott*, ___ U.S. ___, 136 S.Ct. 1120, 1126-27 (2016) [it is “plainly permissible” under the Equal Protection Clause to equalize districts by total population]. To the extent that plaintiff now argues that California has a constitutional obligation to draw districts that equalize both total population and eligible-voter population, that claim also was squarely rejected by *Evenwel*. *Id.* at 1133, fn. 15 [“this Court has never required jurisdictions to use multiple population baselines”]. Plaintiff’s assertion that the principles of voting equality and equality of representation “must and plainly can be, maximized/harmonized in practice and in fact simultaneously” has no legal basis. (See Opposition Brief [Dkt. # 37] at p. 9, ll. 20-21.)

The SAC does not state a claim for violation of the “one person, one vote” principle.

II. PLAINTIFF’S VIEWPOINT DISCRIMINATION ALLEGATIONS DO NOT STATE A CLAIM.

As set forth in defendants’ opening brief, a viewpoint discrimination claim must allege—at the least—that district lines were intentionally drawn to disadvantage an identifiable political group. (Opening Brief [Dkt. # 33] at 7-9.) Plaintiff does not claim that the Commission purposely drew districts to disadvantage a political group. Rather plaintiff’s claim is that the Redistricting Commission had a duty to consider the partisan makeup of districts, but did not do so because California law forbids it. (See Opposition Brief [Dkt. # 37] at 10, ll. 9-15 [California Constitution prohibits the Commission from “noticing, much less actually protecting, the disfavored minority Republican Party”] (emphasis deleted).) Further, plaintiff does not have standing to make this claim because he does not allege that he—a Republican—resides in predominantly Republican districts. See *Baker v. Carr*, 369 U.S. 186, 206 (1962) (“voters who allege facts showing disadvantage to themselves as individuals have standing to sue”).

The SAC does not state a claim for viewpoint discrimination.

1 **III. PLAINTIFF’S ALLEGATIONS OF VOTE DILUTION BY “SUPER CITIZENS” DO NOT**
2 **STATE A CLAIM.**

3 This claim—that the Secretary does not investigate whether people born in the United
4 States are actually citizens—is esoteric. As set forth in defendants’ opening brief, plaintiff does
5 not have standing to make this claim because he does not plead facts which would tend to show
6 any impact on him. *See Baker v. Carr, supra*, 369 U.S. at 206. Further, the allegation is entirely
7 conclusory and therefore is not entitled to the presumption of truth. *See Fayer v. Vaughn*, 649
8 F.3d 1061, 1064 (9th Cir. 2011).

9 The California Constitution requires voters to be citizens. Cal. Const. art. II, § 2 (“A
10 United States citizen 18 years of age and resident in this State may vote”). State law requires that
11 all persons registering to vote attest, under penalty of perjury, that they meet all voter eligibility
12 requirements, including that they are United States citizens. Cal. Elec. Code §§ 2101, 2102, 2150.
13 Plaintiff has pled no facts to support the conclusion that the current statutory system is inadequate.

14 The SAC does not state a claim for vote dilution by “super citizens.”

15 **CONCLUSION**

16 For the reasons set forth above, the motion to dismiss should be granted without leave to
17 amend.

18 Dated: May 6, 2016

Respectfully submitted,

19 KAMALA D. HARRIS
20 Attorney General of California
21 MARK R. BECKINGTON
22 Supervising Deputy Attorney General

23 /s/ George Waters
24 GEORGE WATERS
25 Deputy Attorney General
26 Attorneys for Defendants
27 Defendants California Citizens Redistricting
28 Commission and California Secretary of
State

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CERTIFICATE OF SERVICE

Case Name: **DeWitt, Timothy A. v.
California Citizens
Redistricting Commission, et al.**

No. **3:15-cv-05261-WHA**

I hereby certify that on May 6, 2016, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

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 collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

I further certify that some of the participants in the case are not registered CM/ECF users. On May 6, 2016, I have caused to be mailed in the Office of the Attorney General's internal mail system, the foregoing document(s) by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within three (3) calendar days to the following non-CM/ECF participants:

Timothy A. DeWitt
2729 Dwight Way, No. 402
Berkeley, CA 94704

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 May 6, 2016, at Sacramento, California.

Tracie L. Campbell
Declarant


Signature